

TOWNSHIP OF DERRY
ZONING HEARING BOARD MEETING MINUTES
April 15, 2015

CALL TO ORDER

The April 15, 2015 meeting of the Township of Derry Zoning Hearing Board was called to order at 6:00 p.m. by Chairman Michael Kushner in the Meeting Room of the Derry Township Municipal Complex, 600 Clearwater Road, Hershey, PA 17033.

ROLL CALL

Board members in attendance: Chairman Michael Kushner; Vice Chairman Philip Wood; Secretary Matthew Luttrell; Member Mark Shrift; Member Catherine Wagner

Board members absent: None

Also Present: Anthony Nestico, Solicitor to the Board; Charles Emerick, Director of Community Development; Brandon Williams, Assistant Director of Community Development; Pam Packer, Court Reporter; Tracy Telesha, Stenographer

Public Registering Attendance: Frank Betley, 1077 Stonegate Road, Hummelstown; Brian T. Evans, Evans Engineering, Inc.; Joseph P. and Jo-Ann L. Lippincott, 1366 Fox Glen Drive, Hummelstown; Charles Huth, *The Sun*; Mark & Lindy Plevelich, 1061 Greenhill Drive; Frank & Marilyn Ferguson, 1255 Edgewood Drive; Charles Courtney, McNees; Nick and Annemarie Steyn, 1381 Fox Glen Drive, Hummelstown; Mike and Vicki Gesford, 1336 Fox Glen Drive, Hummelstown; Jim Rafferty, Event Horizon; Stephen Dzurainin, Wix, Wenger & Weidner; Julie and Jon Tsaaca, 845 Providence Circle; Kent Crawford, 1115 Stonegate Road; Michael Halse, 1215 Stonegate Road; Kirk Knappman, Yingst Engineering; Todd Green, 1581 Cortland Circle, Hummelstown

APPROVAL OF MINUTES

On a motion by Vice Chairman Wood, seconded by Member Wagner, and a unanimous vote, the March 18, 2015 minutes were approved as written.

OLD BUSINESS

- A. Adoption of Decision in the Case of Kenneth Gonder and Jacquelyn Huzvar-Gonder (2015-03)**
Property location: 549 Cedar Avenue, Hershey

- B. Adoption of Decision in the Case of Hershey Entertainment & Resorts Company (2015-04)**
Property location: 100 West Hersheypark Drive, Hershey

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C. Adoption of Decision in the Case of Tyler Boland (2015-05)

Property location: 268 McCorkle Road, Hershey

On a motion made by Vice Chairman Wood, seconded by Member Shrift, and a unanimous vote, the decisions for items 'A' and 'B' were adopted as written by consent agenda.

On a motion by Vice Chairman Wood, seconded by Member Shrift, and a vote of 4 to 1 (Member Wagner voted in opposition), the decision for item 'C' was adopted as written.

NEW BUSINESS

A. Hearing in the case of Yingst Engineers & Associates, Inc. (2015-06)

Property location: 1581 Cortland Circle, Hummelstown

This property, located in the Village Residential zoning district, is improved with a single family dwelling. The applicant is proposing to construct a single story addition to the east side of the dwelling. Relief was sought regarding maximum impervious coverage requirements.

Kirk Knappman, Yingst Engineers & Associates, and the homeowner, Todd Green, were sworn in and gave testimony. Mr. Green stated that he would like to construct a first floor bedroom and sunroom for his aging parents to live in. The proposed addition will increase the impervious coverage on the property from 31.56% to 36.08%.

Vice Chairman Wood questioned what methods were taken to minimize the impervious cover. Mr. Knappman replied that the existing patio is being reduced. Mr. Williams added that in order for the home to be in compliance with ADA requirements, the existing walkways must remain.

Chairman Kushner questioned whether there would be a need for an additional HVAC pad. Mr. Knappman replied that there would be no need at this time.

Mr. Green added that he shared his plans with his neighbors and they wrote letters of support, which Mr. Green submitted to the Township.

No other persons provided testimony at this hearing.

Chairman Kushner informed the applicant that the Board has 45 days to render a decision and if the applicant is aggrieved in any way, they have 30 days to appeal the decision.

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B. Hearing in the Case of Event Horizon, LLC, d/b/a The Mill (2015-07)
Property location: 810, 852, 858 West Chocolate Avenue, Hershey

These properties, located in the Industrial zoning district, are improved with The Mill restaurant, (810), two unoccupied nonresidential buildings, and a defunct mobile home park (852/858). The applicant desires to install outdoor seating at the restaurant and to improve an off-street parking area on the defunct mobile home park property to offset the proposed outdoor seating and to serve future occupants of the nonresidential buildings. Relief was sought in the form of a special exception to permit off-street parking for the restaurant use on another property. The applicant also requested a modification to a previous condition of approval from the Zoning Hearing Board, under case number 2012-40, regarding the permitted times for live music events held by the restaurant.

Attorney Steve Dzurainin, engineer Brian Evans, and restaurant owner James Rafferty were sworn in and gave testimony. Mr. Dzurainin stated that the restaurant owner purchased property which is one property removed from the restaurant. This property, located at 852 and 858 West Chocolate Avenue, formerly housed a small restaurant, service station, and mobile home court. The former restaurant and service station remain intact and will be put to use in some capacity in the future. The mobile home court has been removed. Twenty-two spaces and one ADA space are proposed to be developed on the former mobile home court. This area will be used for overflow parking for the restaurant when the outdoor seating area is in use. A defined walk area will be created, guiding customers and employees from the off-site parking to the restaurant along West Chocolate Avenue. There is a property (owned by Wilfong) that is located between the restaurant and the subject property which is currently on the market. When improvements are made to that property, a sidewalk will be constructed.

Secretary Luttrell questioned who would maintain the Wilfong property pedestrian walkway during inclement weather until it is developed. Mr. Evans replied that the parking off-site will be primarily used to offset the outdoor seating, which will not be used in the winter. However, the restaurant will maintain the pedestrian walkway until the Wilfong property is developed.

Secretary Luttrell questioned whether the pedestrian walkway would be lit. Mr. Evans affirmed that it would be well lit and marked.

Member Wagner questioned why there is an ADA space so far from the restaurant. Mr. Evans replied that the space is existing and the parking spaces are being restriped. It is the restaurant's desire to maintain the ADA space for any future potential use.

Member Shrift questioned what measures will be taken to prevent on-street parking. Mr. Evans responded that signs could be installed.

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Member Wagner asked if a temporary barrier of some sort could be installed along West Chocolate Avenue to increase pedestrian safety. Mr. Evans agreed to this request.

Discussion was also had regarding modification of the permitted hours of live music at the restaurant. Currently, live music is permitted two days a week until 10:00 p.m. with only non-amplified music outdoors.

Mr. Rafferty stated that musical entertainment has been very successful and he would like the opportunity to offer this type of entertainment more often. Mr. Rafferty proposed permitting music 7 days a week until 1:00 a.m. inside and until 11:00 p.m. outside. Typically music will end around midnight and occur three to five nights a week.

Chairman Kushner questioned whether the Township had received any noise complaints. Mr. Emerick replied that there have been no noise complaints.

No other persons provided testimony at this hearing.

Chairman Kushner informed the applicant that the Board has 45 days to render a decision and if the applicant is aggrieved in any way, they have 30 days to appeal the decision.

C. Hearing in the Case of Charter Homes at Hershey, Inc. (2015-08)
Property location: Deer Run Commons, Hummelstown

The subject properties are currently vacant and are located west of Whitetail Drive, adjacent to the Swatara Creek, and on the north and south sides of Fawn Lane, within the Deer Run Commons development. The applicant is proposing to construct nine single-family attached dwelling buildings, totaling 38 dwelling units. Relief was sought regarding maximum height requirements.

Josh Smith was sworn in and gave testimony. Mr. Smith stated that in order to lessen the impact of off-street parking, the townhomes were re-designed to be three stories, with the first story housing a two-car garage. The proposed townhome units will reach a maximum height of 40 feet. The end units would have a side-by-side two-car garage and the interior units will have a single spaced, front to back "stacked" two-car garage.

Vice Chairman Wood questioned whether on-street parking would be restricted. Mr. Smith stated that with a 24 foot cartway width, the homeowners' association will most likely need to restrict on-street parking to manage traffic flow.

No other persons provided testimony at this hearing.

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Chairman Kushner informed the applicant that the Board has 45 days to render a decision and if the applicant is aggrieved in any way, they have 30 days to appeal the decision.

D. Hearing in the Case of Donald J. and Debra M. Dinello (2015-09)
Property location: 1321 Fox Glen Drive, Hummelstown

This property, located in the Agricultural/Conservation zoning district, is improved with a single family dwelling. The applicants propose to subdivide the property and create 5 residential lots, including one lot that will contain the existing dwelling. The applicants are seeking confirmation from the Zoning Hearing Board that an increase from four to five lots remains compliant with the previous approvals granted by the Board under case number 2014-54; or in the alternative, relief was sought from the lot criteria exceptions in the Agricultural/Conservation district, in order to permit the five-lot subdivision to occur.

Joel McNaughton was sworn in and gave testimony. Mr. McNaughton stated that when the original variance was granted in October, 2014, the plan was to create 4 total lots; however during combination of the two existing parcels, it was discovered that five compliant lots could be created.

Mr. Emerick added that the new five lots would still maintain the 100 foot buffer between the adjacent properties to the rear.

Member Wagner questioned why the two parcels were not combined during the original request. Mr. McNaughton replied that the 1978 zoning provision enabling the subdivision of 5 lots was utilized when the application was originally submitted and the Zoning Hearing Board placed, as a condition on the first hearing, a requirement to combine the parcels. If they proposed to combine the parcels from the beginning, they would lose the entitlement to subdivide 5 lots.

Public Comment

Kent Crawford stated that the subject properties are on a severe slope and storm water runoff is a concern to the adjacent neighbors.

Mr. Emerick replied that storm water management issues would be addressed during the land development plan review.

Frank Betley raised his concerns that allowing additional homes to be built would aggravate storm water runoff issues.

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Nick Steyn stated his concerns about the plans to widen Fox Glen Drive. He is concerned that if four feet is taken from his driveway, the slope up to his home would be too steep in bad weather.

Steve Briouett questioned whether the widening of the road will affect the properties to the south and whether new property owners could add additional structures on the lots.

Mr. Emerick clarified that the 100-foot buffer will remain and that an easement or restriction will be included in the full disclosure statement and deeds that nothing can be built there.

Mr. McNaughton further added that Fox Glen Drive is 36 feet wide until the area of the subject property, at which point it becomes a driveway. There presently is no curbing or runoff controls. Under the proposed development plan, curbing and inlets will be created to assist in the runoff issues.

No other persons provided testimony at this hearing.

Chairman Kushner informed the applicants that the Board has 45 days to render a decision and if the applicants are aggrieved in any way, they have 30 days to appeal the decision.

Hearings closed at 8:10 p.m.

DELIBERATIONS

The Board met to deliberate in the cases of Yingst Engineers & Associates, Inc. (2015-06); Event Horizon, LLC, d/b/a The Mill (2015-07); Charter Homes at Hershey, Inc. (2015-08); and Donald J. and Debra M. Dinello (2015-09) and directed the Solicitor to prepare the draft decisions on each case for formal action at the May, 2015 meeting.

Submitted by:

Matthew R. Luttrell, Secretary