

**TOWNSHIP OF DERRY  
ZONING HEARING BOARD MEETING MINUTES  
October 19, 2016**

**CALL TO ORDER**

The October 19, 2016 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; Secretary Matthew Luttrell; Member Steve Moniak; Member Mark Shrift

Board members absent: Vice Chairman Philip Wood

Also Present: Megan Huff, Solicitor to the Board; Brandon Williams, Assistant Director of Community Development; Diane Fultz, Court Reporter; Tracy Telesha, Stenographer

Public registering attendance: Dave Buffington, *The Sun*; Rosemary Elmi, 144 Maple Avenue; Esch McCombie, 120 Pine Street, Harrisburg; Dave Getz, 508 N. 2<sup>nd</sup> Street; Jim Snyder, 2000 Linglestown Road, Harrisburg; Brandon Harner, 2000 Linglestown Road, Harrisburg; Tom DeDonatis, The DeDo Corp.; Lee Eckert, 1109 E. Chocolate Avenue; Erin O'Brien, 366 E. Chocolate Avenue; Margaret McGinley, 404 E. Chocolate Avenue; Bill Hoy, Shaner Hotel Group; Jim Kwon, Chafia

**APPROVAL OF MINUTES**

On a motion by Member Moniak, seconded by Member Shrift, the September 29, 2016 minutes were approved as written.

**OLD BUSINESS**

- A. Adoption of Decision in the Case of Carin and Matthew Kaag (2016-24)  
Property location: 231 Elm Avenue, Hershey**
  
- B. Adoption of Decision in the Case of Hershey Entertainment & Resorts Company (2016-25)  
Property location: 100 W. Hersheypark Drive, Hershey**

On a motion by Secretary Luttrell, seconded by Member Moniak, and a unanimous vote, the decisions for items A and B were adopted by consent agenda.

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**NEW BUSINESS**

**A. Hearing in the Case of Rosemary Elmi (2016-26)  
Property location: 144 Maple Avenue, Hershey**

This property, located in the Village Residential zoning district, is improved with a single family dwelling. The applicant is proposing to construct a front porch. Relief was sought regarding front yard setback requirements.

Rosemary Elmi was sworn in and gave testimony. Ms. Elmi stated that she would like to convert an existing flower bed into a front porch, using decking material. The porch will have a railing but no roof. The proposed porch will be 6 feet by 9 feet and will be located 21 feet from the front yard property line.

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.

**B. Hearing in the Case of Chafia Capital Partners, LLC (2016-27)  
Property location: 555 and 565 East Chocolate Avenue, Hershey**

The subject properties are located in the Neighborhood Commercial zoning district. 555 East Chocolate Avenue is improved with an office building; 565 East Chocolate Avenue is currently undeveloped. The applicant desires to construct two commercial buildings, of which the western building is proposed to contain two restaurant spaces, one with drive-through service, and the eastern building is proposed to contain a medical office use. Relief was sought regarding permitted uses in the Neighborhood Commercial zoning district to permit the restaurant with drive-through service; front, side, and rear yard setback requirements; maximum impervious cover; minimum parking stall depth; minimum parking aisle width; minimum number of off-street parking spaces; minimum number of loading spaces; and maximum number and area of permitted signs.

Dave Getz, attorney, and Jim Snyder, engineer, were sworn in and gave testimony. Mr. Getz stated that in May, 2015 the applicant received approval for improvements on the property. The development plans have been amended. The applicant is now proposing to construct a smaller medical building and a dual-use building that will house two restaurants. One will be a larger sit-down style restaurant and the other will be a coffee shop style restaurant with drive-through service.

Mr. Getz explained that the drive-through lane and menu board will be located to the rear of the building. There will be no parking in front of the restaurant to allow for patios and access to sidewalks.

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Mr. Getz further explained that the proposed medical building will be located closer to the front yard setback to allow more parking to the rear. The parking area will encroach to within two feet of the rear property line in the area of the proposed restaurant building. The parking area behind the medical building will be set back a greater distance due to an existing utility easement.

The applicant is also proposing four free-standing signs. Mr. Getz stated that if the property lots were not combined, 6 signs would have been permitted.

Mr. Getz also asked for the originally approved structural barrier to shield the highway from the parking lot be removed, as there will be no parking along the highway with the new configuration.

Secretary Luttrell questioned how the new proposed use will affect the number of trips and traffic to the site. Mr. Snyder replied that the trips should be less due to the decreased use of the property. Mr. Snyder added that an amended traffic study will be completed during the land development phase.

Member Shrift questioned the plans for managing trash removal and deliveries to the restaurants. Mr. Snyder explained that delivery timing is scheduled during off-peak hours. Trash dumpsters will be located on the site and pick up times will also be scheduled for off-peak hours.

Member Moniak asked how large the proposed drive-through would be. Mr. Snyder replied that the restaurant currently interested in the space requires at least five car lengths from the menu board to the service window. Mr. Snyder added that any vehicle stacking would be located on the property.

Secretary Luttrell questioned how this property will be zoned when the Zoning Ordinance update is completed. Mr. Williams stated that the area is proposed to be within the Hershey Mixed Use Zoning District and would also be within the East Chocolate Avenue Overlay zoning district. It was the intent of Township staff and the planning consultants working on the Zoning Ordinance update to allow drive-through restaurants as a conditional use, which means applicants could propose the use on certain properties in the East Chocolate Avenue Overlay so long as the use meets the criteria defined by the Zoning Ordinance. Within the draft Ordinance that is presently under review, the addition of the drive-through use was never completed. The current Zoning Ordinance also does not permit drive-through restaurants in the Neighborhood Commercial zoning district, which necessitates the use variance request. The applicant has worked to incorporate most of the recommendations of staff and the planning consultants, which included moving the building more towards the street, providing outdoor seating elements, and screening the drive-through facility and queuing area from East Chocolate Avenue.

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Member Shrift asked what the likelihood of damaging the tree line to the rear of the property is. Mr. Getz responded that the adjacent owner, Hershey Trust Company, has given permission to trim the trees if need be.

**PUBLIC COMMENT**

Margaret McGinley, neighbor, stated her concerns about increased traffic and noise.

Erin O'Brien, neighbor, echoed her concerns about traffic and shared concerns about trash being an issue in the area.

Mr. Snyder stated that the applicant is willing to restrict usage to low-volume fast food; i.e.: Starbucks, etc.

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 the Point, Inc. (2016-28)**  
**Property location: North of Stoverdale Road and west of Buck Drive,**  
**Hummelstown**

This property, located in the Attached Residential zoning district, is currently vacant and has historically been identified as the Camp Stoverdale tract. In the future the property will consist of a portion of The Point residential subdivision. The applicant is proposing to construct 10 single family dwellings on Lots 57 through 66 of the subdivision plan. Relief was sought regarding maximum building height.

Joshua Smith, Charter Homes, and Esch McCombie, attorney, were sworn in and gave testimony. Mr. Smith is proposing a maximum building height of 40 feet due to the property's location near the banks of the Swatara Creek, which results in significant grade variations on Lots 57 through 66 of The Point subdivision. Mr. Smith added that the adjacent Multifamily Residential zoning district allows a maximum height of 40 feet. The majority of lots have a rear frontage along the creek and as a result, the height variations will not be visible from any public rights-of-way.

Member Moniak stated that he observed at least one house currently under roof and questioned whether there were others. Mr. Smith replied that there is at least one, but he was not sure of the status of others. Mr. Smith added that the final height of the homes will not be determined until the owners choose a style and grading. Mr. Williams confirmed that a permit has been issued for the dwelling under construction at a compliant height of 35 feet; however, if approved tonight, the property may be regraded in the future in a manner that would allow the average height of the building to increase beyond the 35 feet currently permitted.

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Member Shrift observed that the walkout basement feature seems to be what is driving the need for relief. Mr. Smith agreed and added that slope of the property also contributes.

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.

**D. Hearing in the case of Lee R. Eckert (2016-29)**  
**Property location: 1115 and 1121 East Chocolate Avenue, Hershey**

The applicant requested a continuance prior to the meeting.

**E. Hearing in the case of Thomas M. DeDonatis (2016-30)**  
**Property location: 125 Elm Avenue, Hershey**

This property, located in the Village Residential zoning district, is improved with a single family dwelling. The applicant is proposing to construct a second floor addition. Relief was sought regarding permitted floor area expansion of a nonconforming building.

Thomas DeDonatis was sworn in and gave testimony. Mr. DeDonatis is proposing a second floor addition over the existing first floor. The addition will be a 198-square-foot increase and will contain an additional bathroom and closet.

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.

Hearings closed at 8:00 p.m.

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**DELIBERATIONS**

The Board met to deliberate in the cases of Rosemary Elmi (2016-26); Chafia Capital Partners, LLC (2016-27); Charter Homes at the Point, Inc. (2016-28); and Thomas M. DeDonatis (2016-30) and directed the Solicitor to prepare the draft decisions on each case for formal action at the November 2016 meeting.

Submitted by:

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Matthew Luttrell, Secretary