

TOWNSHIP OF DERRY
ZONING HEARING BOARD MEETING MINUTES
December 13, 2017

CALL TO ORDER

The December 13, 2017 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

Board member absent: Member Steve Moniak

Also Present: Megan Huff, Solicitor to the Board; Brandon Williams, Assistant Director of Community Development; Chuck Emerick, Director of Community Development; Maria O'Donnell, Court Reporter; Tracy Telesha, Stenographer

Public Registering Attendance: Carol Gisselquist, 29 W. Governor Road; Rich Gamble, 39 Hockersville Road; Brian Palmer, 25 Ridgeview Road, Hummelstown; Lorena Brown, 744 Fishburn Road; Staci Wisniewski, 115 Peach Avenue; Marlin Lerch, Sand Hill Road; Joan Nielsen, 10 Golden Court; Irene Youngman, 14 Golden Court; Randy Haldeman, 618 Appenzell Drive; Kathy Miller, 329 Elm Avenue; LeAnn Easterwood, 160 Maple Avenue; Lynn Schuck, 850 Zermatt Drive; Beverly Kortright, 130 W. Governor Road; Kathy Cantore, 420 Elm Avenue; Peggy Bravacos, 344 Maple Avenue; Nancy Morgan, 430 Cherry Drive; Robert Erwin, 1745 Brookline Drive; Scott Harvey, 961 Sunnyside Road, Hummelstown; Tom Stang, 25 Boxwood Drive; Charles Huth, *The Sun*; Amy Backenstose, Hershey; Lee Freeman, Hershey; Daniel Rossi, Hershey; John Payne, BIR; Jim Snyder, Snyder Secary & Assoc.; Ron Lucas, Stevens & Lee; David Kray, C&S Kray; Chadd Blannett, C&S Kray; Brent Brubaker, Sheetz; Mike LaCesa, Sheetz; Marvin Smith, Hershey Medical Center; Theresa and Ron Wilkins, Governor Road; Oran and Kathy Burns, Fishburn Road; Richard and Mary Danze, Brownstone Drive; Mary Beth Backenstose; Frank Montgomery, Sand Hill Road; Michella Cassidy, Sand Hill Road; Jonathan Crist, Esq., 226 W. Chocolate Avenue; Jeannie Kollar Harvey, 961 Sunnyside Road; Sara Kray, 90 JMR Circle; Chuck Gassert, 1345 Bradley Avenue; Ray Wenger, Strickler Sign; Keith Heigel, Palmyra; Tom and Terri Brier, 231 Cedar Avenue; Ray Deimler, 402 Sand Hill Road; Phil Jurus, 58 Locust Avenue; Sandy Ballard, 650 Cocoa Avenue; Anne Newman, 531 Elm Avenue; Marie McAndrews, 115 Oak Lane; Jill Campbell, 535 Hockersville Road, Kelley Peffley, 412 Sand Hill Road; John and Kathleen Mawk, 96 Cambridge Drive; Chuck Kray; Lisa Gesert, 551 Sand Hill Road; Dennis Michel, 198 W. Governor Road; Walter Patton, 858 Fishburn Road; Maryellen Sheehan, 408 Elm Avenue; Estreya & Angel Rosado, 672 Fishburn Road; Maria Thompson, 33 Elm Avenue

APPROVAL OF MINUTES

On a motion by Member Shrift, seconded by Vice Chairman Wood, and a unanimous vote, the October 18, 2017 minutes were approved as written.

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OLD BUSINESS

None.

NEW BUSINESS

- A. Hearing in the Case of 906 Newville Road, LP (2017-15)**
Property location: 1040, 1048, 1052 Old West Chocolate Avenue, Hershey

At the request of the applicant, this case was continued to a future meeting.

- B. Hearing in the Case of LSP Investments, LLC (2017-16)**
Property location: 1210 Sand Hill Road, Hershey

This property, located in the R-1 zoning district, is improved with a single-family detached dwelling. The applicant is proposing to subdivide the property into three lots. Relief was sought from minimum lot width requirements.

Keith Heigel, Light-Heigel & Associates, was sworn in and gave testimony. Mr. Heigel explained that the applicant would like to combine two existing lots and from that new area, create three separate parcels; one containing the existing dwelling and two others for future single-family dwellings. A unique feature of the property is a utility easement owned by Met-Ed that runs north to south across the parcel.

Due to the property size, topography, and easement restrictions, the applicant is proposing a shared use driveway for the two new parcels. With only 39 feet and 33 feet of street frontage for each lot, a shared driveway off of Sand Hill Road would allow a 90-degree entry which will create better visibility.

Brandon Williams added that the existing dwelling's front yard setback is an existing nonconformity that would be permitted by the Ordinance to be continued after subdivision of the property.

Vice Chairman Wood questioned whether the building plans for the two proposed lots had been prepared. Mr. Heigel replied no.

Chairman Kushner asked the applicant to further explain the intentions for the shared driveway. Mr. Heigel replied that the proposed shared driveway would include a formal use and maintenance agreement between the two property owners and would be referenced in the deeds for each property. The driveway agreement will contain language that would be reviewed and approved by the Township at the time of Subdivision and Land Development plan submittal.

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Vice Chairman Wood questioned whether the proposed shared driveway would be able to accommodate emergency vehicles. Mr. Heigel affirmed that it would indeed be large enough to do so.

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 Tracey Ford (2017-18)
Property location: 761 Hilltop Road, Hummelstown**

This property, located in the R-1 zoning district, is improved with a single-family detached dwelling. The applicant is proposing to demolish the dwelling and construct a new dwelling that is to contain an accessory dwelling unit. Relief was sought in the form of a special exception to permit the accessory dwelling unit.

Tracey Ford was sworn in and gave testimony. Ms. Ford stated that the existing home will be razed and a new dwelling will be constructed, with attached accessory dwelling unit containing its own living area, kitchen and bathroom. The main dwelling unit will be separated from the accessory dwelling unit by a two-car attached garage, but they both will share a single basement. Brandon Williams reviewed the Zoning Ordinance criteria for an accessory dwelling unit and indicated that the application complies with all of the requirements.

Chairman Kushner questioned whether the adjacent neighbors were contacted regarding the proposed plans. Ms. Ford affirmed that they were contacted and that no concerns were shared by the neighbors.

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 C&S Kray Real Estate, LLC and Sheetz, Inc. (2017-17)
Property location: Southwest corner of Fishburn Road and Governor Road,
Hershey**

These properties, located in the Hershey Mixed Use, Southern Core Overlay, and General Sign Overlay zoning districts, are either vacant or are improved with residential uses and a seasonal produce stand. The applicants are proposing to construct a commercial mixed-use center containing professional offices, large and small retail uses, and a major fuel service establishment, along with signage for the development. Relief was sought in the form of a special exception to permit larger signs than what is normally prescribed by the Ordinance; relief was also sought from maximum impervious coverage, and from illumination requirements for a sign.

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Andrew Giorgione, attorney for C&S Kray Real Estate, LLC; Ron Lucas, attorney for Sheetz, Inc.; James Snyder, Snyder Secary & Associates; Mike LaCesa and Brent Brubaker, Sheetz; and Ray Wenger, Strickler Signs, were sworn in and gave testimony.

Mr. Snyder stated that 23 properties will be combined into a single tract of 7.9 acres. This development will contain a pharmacy, small shops, a convenience store with fuel pumps, and a medical office building. A bike and pedestrian path will be constructed along the public road frontages of the property. Mr. Snyder further explained that road widening will occur along Governor Road in order for a right-turn lane to be constructed onto Fishburn Road. The developer will also re-locate Sand Hill Road further south and will create a new signalized intersection.

Requested relief includes a variance for maximum impervious coverage requirements. The maximum impervious coverage allowed in this district is 60% and the applicants are proposing 67.5%. The applicant indicated that since the property has three frontages, the numerous road improvements will require right-of-way dedication, which reduces the property area that may be considered when calculating impervious coverage, and at least 2.25% of the excess coverage comes directly from the proposed bike/walking path. Mr. Snyder noted that had a Master Plan been used for the development, it would have allowed for 70% impervious coverage. The developers opted not to do a Master Plan at this point in time, and instead request variance relief.

Mr. Snyder believes the community will benefit from the proposed development due to improved traffic and stormwater management.

Member Shrift questioned why a bike path is being proposed rather than simply a sidewalk. Mr. Snyder stated that the proposed bike path is a multi-use path for bikes and pedestrians since it will connect to the Township's existing trail network on nearby properties. In meeting with the Township, the Township expressed its desire and support for the trail network extension in-lieu of the standard 5-foot-wide concrete sidewalks.

Member Shrift questioned how far Sand Hill Road will be moved and whether the adjacent lots will conform to the Ordinance standards for lot area and setbacks. Mr. Snyder replied that the road will be moved approximately 600-700 feet and the adjacent lots will comply with the Ordinance criteria.

Secretary Luttrell questioned whether a traffic study was done for the intersection of Elm Avenue and Governor Road. Mr. Snyder replied that a study on that intersection was not required.

Upon being questioned by Chairman Kushner regarding the Township's position on the impervious coverage relief, Mr. Williams confirmed that the Township provided comments on this application to the applicant. Mr. Williams indicated that the Township recommends the applicant consider additional areas of porous pavement to further reduce final impervious

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coverage on the property. This may be implemented as part of the stormwater management plan, which would result in any pervious pavement areas not counting against impervious coverage.

Secretary Luttrell asked why the development was not designed to comply with impervious cover requirements. Mr. Snyder stated that once the final design is complete, the developer will have a better idea of impervious coverage and possible methods to create more pervious areas. A Master Plan was not completed due to the small amount of impervious relief needed.

The second part of the relief requested included a special exception request for a greater number of signs and for larger signs relative to permitted area of signs for the property. During the hearing, Mr. Lucas indicated that the relief request for canopy signs and lighting is withdrawn from the application.

Mr. LaCesa stated that due to the unique location of the proposed store on the property, signage is crucial. Typically, stores are located more prominently on the lots. With the proposed store location, visibility from Governor Road is not apparent. Mr. LaCesa is proposing two multi-tenant signs, one at the proposed intersection of Sand Hill Road/Fishburn Road and one along Governor Road. Mr. Wenger stated that the size and location of the signs is determined by the traffic flow and speed. Mr. Brubaker added that the placement and height visibility of the signs is important to safely inform drivers of location and directions. In addition to the multi-tenant signs, a ground sign will be proposed, as will two canopy signs and three wall signs on the building. The multi-tenant signs are the only two signs that will require a larger area and size.

Mr. Snyder stated that the proposed canopy will be 500 feet from Governor Road and will not be lit from within like many Sheetz canopies, but will contain lighting beneath the canopy to safely illuminate the fueling areas.

Mr. Strickler stated that the proposed multi-tenant signs are currently rendered to allow for the maximum anticipated tenant space. Member Shrift asked if smaller signs could be read by motorists. Mr. Strickler confirmed that smaller signs may be readable, but the areas proposed under the application would be the optimal size for readability based on the speed limit of the adjoining road.

Vice Chairman Wood questioned whether the developer had a conversation with any Township safety professionals about the sign size. Mr. LaCesa stated that he was simply going on past experiences.

Secretary Luttrell asked whether most Sheetz stores are in commercial or residential areas. Mr. LaCesa replied that it is a mix, with older Sheetz locations closer to residential areas. Mr. LaCesa added that Sheetz typically does not intentionally go into areas that require zoning variances.

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Secretary Luttrell questioned if lighted signs would be visible to nearby residences. Mr. LaCesa said that the lights may be visible to a certain extent, but methods will be taken to minimize impacts. It was added that there are existing businesses along Governor Road across the street from this location, and signage would not be any more impactful than the existing signs in this location.

PUBLIC COMMENT

- Brian Palmer questioned why pervious pavement methods were not considered.
- Richard Gamble stated that the Township went to the trouble to update codes and determine zoning limits, and ultimately questioned why there is a need to grant variances under codes that were just adopted.
- Philip Jurus believes the 300-foot radius zone to inform neighbors is not good enough, and not all residents within the radius appear to have been notified. Mr. Jurus further added that impervious pavement captures pollutants that will eventually run off to somewhere else.
- Lee Freeman questioned how the plan fits into stormwater planning. Mr. Snyder replied that the developer must meet Township stormwater regulations. The developer must manage erosion and water discharge levels. Infiltration beds, piping, and collection basins will be part of the final plan in order to meet requirements.
- Sandy Ballard is concerned that even the current regulations do not manage a 100 to 500-year storm. Mr. Snyder responded that the current regulations go up to a 100-year storm, which is a very large storm. A 500-year storm would be considered an “act of God” and is not realistically manageable. Ms. Ballard questioned whether the entire project could be physically smaller so as to comply with impervious coverage limits.
- Jonathan Crist stated that a variance is for a hardship or a unique feature of the property and should not be used to the developers’ economic benefit. Mr. Crist does not believe the developer has met the definition of a hardship.
- Carl Rohrer is concerned about the re-location of Sand Hill Road, as the proposed location is presently a natural swale. He is concerned stormwater runoff will increase if the swale is removed.
- Angel Rosado, who lives adjacent to the proposed Sand Hill Road relocation, is concerned that the stormwater runoff will worsen.
- Walter Patton is concerned about possible sinkholes in the area and would like the developer to be acutely aware of the geography.

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- Oran Burns questioned where the third lane on Fishburn Road will be coming from. He stated that it looks as though it will encroach on his property. Mr. Snyder replied that the final improvements have not yet been drawn. Mr. Burns also asked how high and what illumination method are to be used on the canopy. Mr. Brubaker stated that the canopy will be 18 feet in height and lit underneath only.
- Tom Brier questioned why the tower signs are on a two-foot pedestal. Brandon Williams responded that the pedestal is permitted.
- Scott Harvey stated that if there were fewer tenants, there would be no need for variances/special exceptions.
- Curt Sisco added that regardless of sign size, patrons may or may not pay attention to them.

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 8:55 p.m.

DELIBERATIONS

The Board met to deliberate in the cases of LSP Investments, LLC (2017-16); Tracey Ford (2017-18); and C&S Kray Real Estate, LLC and Sheetz, Inc. (2017-17) and directed the Solicitor to prepare the draft decisions on each case for formal action at the January 2018 meeting.

Submitted by:

Matthew Luttrell, Secretary