

TOWNSHIP OF DERRY
ZONING HEARING BOARD MEETING MINUTES
April 17, 2019

CALL TO ORDER

The April 17, 2019 meeting of the Township of Derry Zoning Hearing Board was called to order at 6:02 p.m. by Vice Chairman Matt Luttrell in the Meeting Room of the Derry Township Municipal Complex, 600 Clearwater Road, Hershey, PA.

ROLL CALL

Board members in attendance: Vice Chairman Matt Luttrell; Secretary Sandy Ballard; Member Lindsay Drew

Board members absent: Chairman Steve Moniak; Member Phil Wood

Also Present: Megan Huff, Solicitor to the Board; Chuck Emerick, Director of Community Development; Maria O'Donnell, Court Reporter

Public Registering Attendance: Joseph B. Gray, 159 Elm Avenue, Hershey; Jamie Strong, McNees Wallace & Nurick; Rich Barley, 29 Maple Avenue, Hershey; Kurt McCombs, 25 Maple Avenue, Hershey; Dennis Phillippy, 20 Maple Avenue, Hershey; Ken Kremer, 227 Homestead Road, Hershey; Marvin Smith, Mark Faulkner, Carolyn Stoner – Penn State Hershey; Chris Trogner, Troegs

APPROVAL OF MINUTES

On a motion by Member Drew, seconded by Secretary Ballard, and a unanimous vote, the March 20, 2019 minutes were approved as written.

OLD BUSINESS

A. Adoption of Decision in the Case of Korch Orthodontics (2019-02)
Property location: 357 West Governor Road, Hershey

On a motion by Member Drew, seconded by Secretary Ballard, and a majority vote, the decision was adopted as written. Vice Chairman Luttrell recused himself from voting.

NEW BUSINESS

A. Hearing in the Case of Saving American History, LLC (2019-03)
Property location: 213 Linden Road, Hershey

This property, located in the Hershey Mixed Use zoning district, is improved with a commercial building formerly used as a retail business selling musical instruments. The applicant desires to use the building as a retail business selling antiques. Relief is sought in the form of a special exception for the substitution of a nonconforming use.

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Kurt McCombs, owner of Saving American History, LLC, was sworn in. Mr. McCombs stated that the business has existed in Pennsylvania since 2003, and the offices are currently located in Harrisburg. Mr. McCombs and his wife live on Maple Avenue in Hershey and would like to relocate the business to Hershey to be closer to home. The business involves the sale of antiques with the majority of the sales (95%-98%) being conducted online. Mr. McCombs noted that the only time a sale is not conducted online is when a customer pays for an item online, comes to the shop to pick it up, and decides to purchase another item while in the shop. Mr. McCombs proposes the same format if the business is relocated to Hershey; there will be little to no walk-in traffic, and business hours will likely be by appointment only. No changes are proposed to the building. Mr. McCombs is proposing an equal or lesser number of vehicles than the previous use of the building. Mr. McCombs, his wife, and his father-in-law are the only employees of the business, and Mr. and Mrs. McCombs will be within walking distance of the subject property. Most of the items for sale are small and easy to ship. There are some larger items that the business sells, but these will be kept in an off-site storage unit.

Member Drew inquired if items that are shipped are picked up from the business by UPS or a similar service. Mr. McCombs stated that the United States Postal Service will pick up the smaller parcels; larger parcels are taken to a UPS facility by the McCombs for shipment.

Secretary Ballard noted that it appears as though the applicant has addressed the Zoning Ordinance requirement that the proposed nonconforming use is no more detrimental to the surrounding neighborhood than the previous nonconforming use. She asked if Mr. McCombs will be requesting any other relief, such as for a sign. Mr. McCombs responded that he does not think they are going to install a sign. He prefers to keep the business private and does not really encourage walk-in customers.

Vice Chairman Luttrell inquired about the typical number of daily or weekly appointments at the business. Mr. McCombs estimated there is one appointment per day, usually on a Thursday, Friday, or Saturday. There are approximately 4-5 appointments per week.

Vice Chairman Luttrell commented that the applicant's petition for relief states that they hope to hire up to 4 full-time employees and 2 part-time employees, which would be equal to or less than the number of employees for the previous use. He asked how many employees the previous business had. Joseph Gray, Sr., owner of the previous business, was sworn in and stated that they used to have 6-8 employees who came in every weekday. On the weekend there may have been even more employees in the business. However, the business closed at 5:30 p.m. or 6:00 p.m. so there was never a parking issue in the evening.

Chuck Emerick summarized the history of the prior uses for the subject building. The first Zoning Hearing Board case for this building was in 1977, and the relief requested was for the substitution of a nonconforming use. The original use of the building was a "self-service" grocery store, i.e., the customer carried their groceries out of the building on their own. That use was replaced by a boutique flower shop. In 1991 the boutique flower shop was replaced

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by a photography studio, and then the photography studio was replaced by the musical instrument business.

Mr. Emerick inquired if the proposed business will be open on Sundays. Mr. McCombs responded that it will not. Mr. Emerick recommended that Mr. McCombs consider putting up at least a small sign for the business to help direct customers to the correct location.

Vice Chairman Luttrell 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 Penn State Milton S. Hershey Medical Center (2019-04)
Property location: 600 University Drive, Hershey

This property, located in the Medical Campus Central and General Sign Overlay zoning districts, is improved with the Milton S. Hershey Medical Center campus. The applicant desires to install a sign on the Children's Hospital expansion to identify the Milton S. Hershey Medical Center as the principal building on campus. Relief is sought from the maximum height and/or length for a wall sign and the requirement that a sign shall not exceed the height of the upper building face, extend above the roof eave, or extend above the lower sill of any upper story window, whichever is lowest.

Marvin Smith, Assistant Vice President for Facilities for the Penn State Milton S. Hershey Medical Center, was sworn in and testified that the applicant is seeking relief for signage on the Children's Hospital expansion to permit a letter height of 54", which will allow for a sign that is proportional to the mass of the structure. The applicant is also seeking relief to allow the placement of the proposed sign on a screen wall located on the building roof. Mr. Smith explained that the applicant was previously granted a variance under Case No. 2018-03 for the installation of a screen wall as a permitted structure on the roof of the Children's Hospital building. The screen wall obscures vision of mechanical equipment that is located outside of the penthouse on the front side of the building. The screen wall is positioned in a manner that will give an appearance of the top floor of the building. The proposed sign on the screen wall will be visible above the three main entrances to the hospital and will serve as a wayfinding sign to help direct patients to the main entrances. Mr. Smith stated that the applicant considered placing the sign below the uppermost windows; however, the sign would be obscured from view by the Cancer Institute building. The Medical Center campus is unique in that the buildings are a considerable distance from public roads, typically at least 1,500 feet, making it difficult to read a sign on a building if the letters are a height permitted by the Zoning Ordinance (maximum is 36").

Noting that the maximum viewing distance for 54" letters is 2,250 feet, Vice Chairman Luttrell asked what the maximum viewing distance is for 36" letters. Mr. Smith responded that per Appendix A of the Zoning Ordinance, it is 1,500 feet.

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In response to a question from Member Drew, Mr. Smith stated that the sign will be illuminated.

Secretary Ballard asked Mr. Smith to explain why he believes the proposed sign will not have a negative impact on the surrounding neighborhood. Mr. Smith replied that the main reason there will not be a negative impact is because of the distance of the location of the sign from the edge of the Medical Center property. There are few residential properties within the 2,250-foot arc of visibility of the sign.

Vice Chairman Luttrell 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 Kenneth C. Kremer (2019-05)
Property location: 227 Homestead Road, Hershey

This property, located in the Hershey Mixed Use and Downtown Core Overlay zoning districts, is improved with a single-family dwelling. The applicant desires to convert existing floor area in the dwelling into an accessory dwelling unit to accommodate elderly family members. Relief is sought in the form of a special exception for the establishment of an accessory dwelling unit.

Kenneth Kremer was sworn in. He stated that the purpose for the request is to be able to move his in-laws from the main living space of the dwelling into their own private space. The existing floor area above the garage was initially constructed as play space for Mr. Kremer's children. Mr. Kremer stated that the proposal is in compliance with the requirements of Section 225-502.9 of the Zoning Ordinance regarding accessory dwelling units.

Member Drew inquired about the size of the floor area of the main living space of the dwelling. Mr. Kremer responded that it is more than 5,000 square feet. The accessory living space contains 1,700 square feet.

Secretary Ballard asked if the proposal is able to meet the specific criteria for special exception uses as stated in Section 225-502 of the Zoning Ordinance. Mr. Kremer answered yes.

In response to a question from Member Drew, Mr. Kremer explained that the subject floor area already contains a bathroom and the remaining space will be converted to include two bedrooms, a kitchen, a living room, and an elevator. No new entrances will be added.

Vice Chairman Luttrell asked if the Township has any concerns about the accessory dwelling unit converting back to part of the main residence in the future. Mr. Emerick responded that the Zoning Ordinance requires the applicant to execute a recordable agreement with the Township to clarify that the future use of the accessory dwelling unit cannot be for any nonconforming use and if it ceases to be an accessory dwelling unit, some kind of action must be taken to bring the unit back into full compliance as part of a single family dwelling.

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Vice Chairman Luttrell 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 Troegs Brewing Company (2019-06)
Property location: 200 East Hersheypark Drive, Hershey

This property, located in the Hershey Mixed Use, Hersheypark Drive/Route 39 Overlay, and Limited Sign Overlay zoning districts, is improved with a brewing facility. The applicant desires to install a wall sign. Relief is sought from the requirement that a sign shall not exceed the height of the upper building face, extend above the roof eave, or extend above the lower sill of any upper story window, whichever is lowest.

James Strong, attorney with McNeese Wallace & Nurick, and Chris Troegner, co-owner of Troegs Brewing Company, were sworn in. Mr. Strong stated that the subject property is a long property with a lot of frontage on East Hersheypark Drive. The building is set back approximately 200 feet from East Hersheypark Drive at the western end and approximately 160 feet at the eastern end. There is a difference in the elevation between the travel lanes for East Hersheypark Drive and the grade at the front of the building. The difference in elevation changes from approximately 15 feet to 10 feet, so the grade at the western end of the property is approximately 15 feet lower than East Hersheypark Drive.

Mr. Strong explained that the applicant is proposing a wall sign on the front of the building. The sign would be located above the row of windows on what would be considered the upper story. The height of the sign letters is 36", which in conformance with the Zoning Ordinance. Mr. Strong stated that the Zoning Ordinance requirement regarding the placement of the wall sign is generally intended to facilitate pedestrian views of signs on buildings; however, there are no public sidewalks on the subject property so the proposed sign will mainly be viewed by motorists who are traveling along East Hersheypark Drive.

Mr. Strong noted that there had been a wall sign facing East Hersheypark Drive on the eastern end of the building that was similar in vertical placement to the proposed sign. The previous sign was removed a few years ago when the applicant renovated the eastern portion of the building and added the "splinter cellar" for wood-aging beers.

In response to a question from Vice Chairman Luttrell, Mr. Strong stated that the height of the building is 33 feet.

Mr. Troegner summarized Exhibits A1 through A9 as follows:

- Exhibits A1, A2, and A3 are photos of existing conditions of the building.
- Exhibit A4 is a short video showing the perspective of a passenger in a vehicle as they are traveling on East Hersheypark Drive.

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- Exhibit A5 is a photo of the original signage on the building in approximately 2010 or 2011.
- Exhibit A6 is a photo of the building with the proposed wall sign.
- Exhibit A7 shows the dimensions of the proposed wall sign (36" high by 964.45" wide).
- Exhibit A8 includes an aerial view of the property, a street view of the building from the eastbound travel lanes of East Hersheypark Drive, and a street view of the building from the westbound travel lanes of East Hersheypark Drive.
- Exhibit A9 is a site plan of the property.

Mr. Trogner believes that the proposed sign will not have a negative impact on the surrounding properties. The property across East Hersheypark Drive from the subject building is currently vacant. Only motorists traveling on East Hersheypark Drive will see the sign. The proposed location of the sign is necessary in order for it to function properly as a sign viewable from East Hersheypark Drive.

Chuck Emerick commented that the previous wall sign was placed in a grandfathered location from when the building was used as the Hershey Commissary. Also, the existing ground sign was installed prior to the enactment of the 2017 Zoning Ordinance. Under the previous regulations, a sign that would be 8 feet in height could not exceed 8 feet in height from the ground within 10 feet of the base of the sign. That resulted in the ground sign being a very low sign because the height had to be measured from the bottom of the hill.

Vice Chairman Luttrell asked if the vacant tract across East Hersheypark Drive from the subject property has the potential to be developed. Mr. Emerick responded that the vacant tract is owned by Hershey Trust Company and he is not aware of any development plans at this time.

Member Drew inquired if the sign will be illuminated. Mr. Trogner stated that the sign will consist of internally illuminated channel letters. The sign will likely be illuminated 24 hours a day since the building is in operation 24 hours a day.

Vice Chairman Luttrell 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 7:13 p.m.

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DELIBERATIONS

The Board met to deliberate in the cases of Saving American History, LLC (2019-03), Penn State Milton S. Hershey Medical Center (2019-04), Kenneth C. Kremer (2019-05), and Troegs Brewing Company (2019-06) and directed the Solicitor to prepare the draft decisions on the cases for formal action at the May 2019 meeting.

Submitted by:

Sandra Ballard, Secretary