

**TOWNSHIP OF DERRY
ZONING HEARING BOARD MEETING MINUTES
May 15, 2019**

CALL TO ORDER

The May 15, 2019 meeting of the Township of Derry Zoning Hearing Board was called to order at 6:00 p.m. by Chairman Steve Moniak in the Meeting Room of the Derry Township Municipal Complex, 600 Clearwater Road, Hershey, PA, 17033.

ROLL CALL

Board members in attendance: Chairman Steve Moniak; Vice Chairman Matthew Luttrell; Secretary Sandra Ballard; Member Lindsay Drew

Board member absent: Member Philip Wood

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

Public Registering Attendance: Robert and Michelle Quirin, 308 E. Derry Road; Dave Getz, Cacao Way; Carmen Hoyt, 353 E. Derry Road; Brandon Johnson, Monarch; Jacob Krieger, RGS Associates; Andrew J. Fischer, II, 239 E. Derry Road; Mike Kearney, Monarch; John M. Aut, Brayson Services; Kurt McCombs, 25 Maple Avenue; Wayne and Jean Schaeffer, 102 N. Lingle Avenue; Deb Steele, 500 Park Avenue; Cliff Myers, 1248 Harding Avenue; Richard Zimmerman, 322 E. Derry Road; Tracy Brown, 319 Park Avenue; Mark Hackenburg, RGS Associates; Jim and Denise Gainer, 107 N. Lingle Avenue; Charleen and Robert Betz, 163 E. Derry Road; Carter and Katey Wyckoff, 1661 Sherwood; Karen Pearson, 938 Hillside Avenue

APPROVAL OF MINUTES

On a motion by Member Drew, seconded by Secretary Ballard, and a majority vote, the April 17, 2019 minutes were approved as written. Chairman Moniak abstained from voting due to being absent from the last meeting.

OLD BUSINESS

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

On a motion made by Secretary Ballard, seconded by Member Drew, and a majority vote, the decision was adopted as written. Chairman Moniak abstained from voting because he was not present for the hearing.

**B. Adoption of Decision in the Case of Penn State Milton S. Hershey Medical Center (2019-04)
Property location: 600 University Drive, Hershey**

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On a motion made by Secretary Ballard, seconded by Member Drew, and a majority vote, the decision was adopted as written. Chairman Moniak abstained from voting because he was not present for the hearing.

**C. Adoption of Decision in the Case of Kenneth C. Kremer (2019-05)
Property location: 227 Homestead Road, Hershey**

On a motion made by Vice Chairman Luttrell, seconded by Member Drew, and a majority vote, the decision was adopted as written. Chairman Moniak abstained from voting because he was not present for the hearing.

**D. Adoption of Decision in the Case of Troegs Brewing Company (2019-06)
Property location: 200 East Hersheypark Drive, Hershey**

On a motion made by Secretary Ballard, seconded by Member Drew, and a majority vote, the decision was adopted as written. Chairman Moniak abstained from voting because he was not present for the hearing.

NEW BUSINESS

**A. Hearing in the Case of Cacao Way, LLC (2019-07)
Property location: 50 Northeast Drive, Hershey**

This property located, in the Hershey Mixed Use and Compact Development Overlay zoning districts, is improved with a building formerly used as a lodging facility. The applicant is proposing to demolish the existing building and construct a new building containing 92 multifamily apartment units and associated amenities. Relief is sought from maximum height restrictions for a principal structure, minimum parking lot landscaping requirements, and the location of access areas for fire apparatus.

Attorney Dave Getz and Landscape Architect Mark Hackenburg were sworn in and gave testimony. Mr. Getz verbally amended the petition regarding the requested maximum height variance. The petition stated that the applicant is seeking a maximum height of 62 feet for the principal structure. The proposed height is actually 63 feet based on Chuck Emerick's calculations.

Mr. Hackenburg stated that the proposed 92-unit building will consist of 50 one-bedroom units and 42 two-bedroom units and will feature underground parking beneath the building. Mr. Hackenburg explained that there is a grade difference of approximately 29 feet between the front and the back of the subject property, which is significant in terms of the applicant's request for a variance regarding maximum building height.

Mr. Getz commented that the original plan was for a smaller building that would utilize above-grade parking; however, in an effort to retain more green space and existing mature trees, the current plan featuring underground parking was determined to make better use of the property.

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Member Drew asked the applicant to elaborate on their statement in their application package that the project will not be economically sustainable if the requested height variance is not granted. She referenced Mr. Getz's statement that putting the parking below grade was done in an effort to save the green space, which resulted in the increased building height. Member Drew also commented she is aware that a sketch plan was presented to the Planning Commission and Board of Supervisors that depicted the building at a similar height and proposed 72 units. Member Drew asked the applicant to address the reasoning behind the changes in what was proposed on the sketch plan and what is proposed with this Zoning Hearing Board application.

Mr. Hackenburg responded that when the concept was originally developed, the building was to be located further back on the site. That was before detailed surveying information revealed the location of the utilities on the property and before the applicant had conversations with the Derry Township Historical Society. The Historical Society expressed concern about the proximity of the proposed parking to their property. The original sketch depicted a shorter building that had a slight angle in the middle. It also depicted all of the parking being on the surface and would have eliminated a lot of green space, which was not desirable to the Historical Society. The applicant then researched the notion of whether or not this is a market rate project that could support the cost of underground parking. Through the process of obtaining more information about the site constraints and the market capacity for the proposed use, the applicant decided to revise the plan to address the Historical Society's concerns and to be able to work with the Township regarding possibly extending a bike path through the property. Mr. Getz noted that at the time the sketch plan was presented to the Planning Commission and the Board of Supervisors, the applicant had not conducted the full financial and market studies and they were originally proposing a lower number of units. The research results indicated that the project would not be economically viable with 72 units.

Secretary Ballard questioned if it is possible to build any other use on the property that is permitted in this zoning district without requiring a variance. Mr. Hackenburg confirmed that yes, there are a variety of other uses that could be developed on this property without the need for variances. Mr. Getz added that there are deed restrictions on the property that prohibit certain uses.

Regarding the requested variance from the requirement that a minimum of 15% of the parking lot interior is landscaped area, Mr. Hackenburg said that the proposed plan would limit interior landscaping in the parking area to 11% while setting aside a large green area that would exceed the required minimum 30% of vegetative cover on the site. While unhealthy trees on the property would be removed, it is the intention to retain as many trees as possible.

Mr. Hackenburg explained that a dedicated fire apparatus access area would increase the impervious coverage by prohibiting parking close to the building and pushing it further out in the lot. The Hershey Volunteer Fire Company reviewed and approved the proposed plan to make use of the driving lane for fire apparatus, along with an emergency access drive along the south end of the building. The building itself will feature a sprinkler system.

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Vice Chairman Luttrell questioned whether the underground parking would be accessible from both ends of the structure. Mr. Hackenburg stated that due to the slope of the property, two separate parking areas will be accessible from either end of the building. Mr. Hackenburg also added that the existing driveway will be realigned to match up with the Tanger Outlets driveway to create a better sight line.

Chuck Emerick suggested conditions of approval (if granted) regarding the applicant agreeing to install a stabilized fire lane on the southern end of the building and receiving approval from the Hershey Volunteer Fire Company for the location of the fire connections.

PUBLIC COMMENT

Jonathan Crist, attorney, stated that he represents Brayson Services, Inc., who is the owner of the three residential properties located at 101 through 115 East Derry Road. Mr. Crist stated that his client has concerns about the proposed height of the structure. Mr. Crist believes the increased maximum building heights permitted by the 2017 Zoning Ordinance are not working for the Township, particularly regarding the recent improvements along the Chocolate Avenue corridor. Further, Mr. Crist believes economic hardship should not be a reason for variance approval as per the case of Yeager v. Zoning Hearing Board of The City of Allentown, which basically overruled the case of Hertzberg v. Zoning Board of Adjustment of Pittsburgh in regard to economics as the basis for a hardship.

Robert Quirin, who lives on Derry Road, believes a traffic study should be done to determine the impact 92 new residences will have on the area. He also has concerns about stormwater runoff, as his property lies nearby, and any environmental impact from possible contaminants due to razing the existing structure.

Michelle Quirin stated that her nearby home is a registered historic house and she has concerns about the proposed project negatively affecting the neighborhood and potentially decreasing her property's value.

Charleen Betz, who lives along Derry Road near the alley that is proposed to become a second egress for the proposed development, is concerned about the potential for increased traffic from not only the new tenants but from the general public when they learn of a new shortcut.

Kurt McCombs questioned what the pricing will be on the rental units. He also is concerned that having higher numbers of transient tenants compared to homeowners could make the community less stable and could raise safety issues overall. Mr. Getz stated that while a final number has yet to be determined, the units will be at market rate and will be higher-end units.

Tracy Brown does not feel that the proposed building will match the nearby neighborhood of mostly older, smaller homes. She also questioned the likelihood of higher-end tenants wanting to live next to an active railroad line.

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Deborah Steele questioned the effect 92 or more cars will have on traffic flow in the area.

Robert Quirin questioned whether an egress to Derry Road is required. Mr. Getz stated that the egress locations have not yet been determined.

Secretary Ballard commented that the case of Yeager v. Zoning Hearing Board of The City of Allentown seems to be the more applicable case to govern the impact of economic hardships. Mr. Getz responded he does not think that is correct and he is not prepared to address the point at this meeting, but the applicant has not been giving testimony regarding economics, with the exception of responses to questions. The maximum height limit in the Zoning Ordinance is complicated in this situation because of the 29-foot drop in grade from the front of the property to the back of the property. Additionally, the narrowness of the property along Northeast Drive, existing easements, and consideration for the adjacent Historical Society property restrict the location of the proposed building to one corner of the property.

Member Drew commented that the application states the height variance is necessary for this project to be economically viable. Mr. Getz replied that the testimony provided at this hearing was relying on the constraints of the site, not on economics, but he confirmed that the application makes reference to economic viability. He mentioned that another option for the building that would not require a height variance would be to consider a flat roof, but that would not be aesthetically pleasing for the project or the surrounding neighborhood. Member Drew inquired if the project would be economically viable if the maximum height of the building was 50 feet. Mr. Getz stated that it would not be economically viable, and it would not be as aesthetically pleasing as what is currently being proposed.

Chairman Moniak 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 Karen Pearson (2019-08)
Property location: 113 North Lingle Avenue, Hershey

This property, located in the Palmdale Mixed Use zoning district, is improved with a single-family dwelling. The applicant is proposing to use the dwelling as a bed and breakfast home. Relief is sought in the form of a special exception for the establishment of a bed and breakfast home.

Karen Pearson was sworn in and gave testimony. Ms. Pearson recently purchased the home and is in the process of renovations. The six-bedroom house will have four bedrooms rented out to guests. Ms. Pearson is targeting families and intends to rent to a single family, rather than multiple un-related guests, for 1-14 nights. All guest parking and activities will take place behind the home and will not be visible from Lingle Avenue. A privacy fence will be installed to the rear of the property along the adjacent neighbor's property line.

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Chairman Moniak questioned whether there is any outdoor space that the guests could access. Ms. Pearson replied that there is a small patio area but stressed that house rules dictate quiet time after 10:00 p.m.

Chairman Moniak also asked whether there are any future employees intended for the bed and breakfast home. Ms. Pearson stated that only she, her husband, and her son would reside on the property full time and that she has no immediate plans to hire staff.

Secretary Ballard questioned whether the property is currently listed on any rental sites. Ms. Pearson stated that she does have it listed to gauge interest but is not yet accepting reservations.

PUBLIC COMMENT

Jim Gainer, who lives at 119 North Penn Street in Palmyra and is also the owner of the neighboring property at 107 North Lingle Avenue, stated that he supports the proposal and would prefer to have short-term tenants rather than risk a long-term bad tenant.

Chairman Moniak questioned whether any other neighbors expressed opposition. Ms. Pearson replied that she has received no concerns.

Chairman Moniak 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 8:10 p.m.

DELIBERATIONS

The Board met to deliberate in the cases of Cacao Way, LLC (2019-07) and Karen Pearson (2019-08) and directed the Solicitor to prepare the draft decisions on each case for formal action at the June 2019 meeting.

Submitted by:

Sandra Ballard, Secretary