

BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF: : NO. 2020-03
:
David Stein :
:
:
: PREMISES LOCATION:
: 515 Rear West Chocolate Avenue
: Hershey, PA 17033

MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of David Stein with regard to property owned by Hershey Car Barn LLC, in which the applicant is the lessee for the new Hidden Still Restaurant. The subject property is located at 515 Rear West Chocolate Avenue, Hershey, Derry Township. A hearing in this matter was initially scheduled for March 18, 2020, but was continued at the request of the applicant until April 15, 2020. At that time, the continued hearing was held by video conference due to the COVID-19 emergency, after proper advertising and after proper notice to allow for public participation. The applicant and Allison Krichman, an architect with Chris Dawson Architects, appeared, were sworn, and testified at the hearing. No other members of the public testified.

The subject property is located in the Hershey Mixed Use and Downtown Core Overlay zoning districts. The property is currently a vacant warehouse, and the applicant is converting the use to a restaurant.

In order to maintain the warehouse/industrial character of the building that was built in the early 1900s, the applicant is using the existing brick façade. The east side of the building will have a sign consisting of “Hidden Still Spirits” with a black background and white letters with the restaurant’s brand font, measuring 3’ x 33’1” or 99 square feet, painted directly on the east façade. For the south side of the building, there will be a sign of the Hidden Still brand

logo, which will be approximately 11'4" x 10' or 28 square feet, with a painted in black directly on the south façade. This is the same logo Hidden Still Spirits used since its inception almost five years ago and was used at its Lebanon location, which was recently sold. The total area of both of the proposed signs would equal 127 square feet.

The building is a block north of West Chocolate Avenue, the main street for patrons to access the property. Existing businesses are located at the corner of West Chocolate Avenue and Orchard Road, resulting in limited visibility to the property. Because of these circumstances, the witnesses testified that it was important to have both signs on the building to help patrons identify the building. Mr. Stein asserted that the requested relief was a reasonable increase over the allowed sign area.

The applicant requests relief from the total signage area permitted under the Ordinance. The Ordinance limits total area sign area for all applicable signs to a total of 100 square feet. *See* Ordinance, §225-401.4.F.C.2.a.¹ Although the applicant requested a variance in his application, he did cite to the correct Ordinance section, §225-502.10, in the narrative of his application for a special exception and at the hearing, orally amended his application to request a special exception.² The Ordinance, at §225-401.4 Table 38, limits the size of medallion signs. The applicant requests a special exception for its logo sign on the south façade, measuring approximately 11'4" x 10' or 28 square feet, pursuant to Ordinance §225-502.10, which permits the Board to allow larger signs than otherwise permitted in a given district when the applicant can demonstrate compliance with the specific criteria applicable to the special exception. Those criteria include:

¹ Wall signs are not included in the 100 sq. ft. maximum.

² The applicant's request for a variance from §225-429.G.6a(ii) for dimensional relief was deemed moot when the Downtown Core Design Board approved painting the signs directly on the brick facade of the building.

1. Demonstrating that the property is subject to unique conditions that cause signs of the normally prescribed areas, size, or location to be of lower communication value than that which would exist on another property in the same Sign District.
2. The modification of the sign regulations is the least necessary to afford the relief.
3. The proposed signage is not the type of a sign that would otherwise be permitted in non-street fronting conditions.

In this matter, the Board finds that the applicant is entitled to the relief requested.

Initially, this Board has often held that special exceptions are neither special, nor an exception, but are instead permitted uses so long as the applicant can demonstrate compliance with the specific criteria associated with the special exception request. Here, the Board finds that the applicant is entitled to the special exception. The property is a block off Chocolate Avenue and visibility to the property is limited because of existing buildings. Consequently, the Board finds that the applicant has demonstrated the unique character of the property and that character reduces the communicative value of signage that might be sufficient on another property lacking these characteristics. The requested modification of the sign regulations is the least necessary to ensure safe access and visibility to the site. The proposed sign is not a sign that is only permitted in non-street fronting conditions.

In granting any relief, the Zoning Hearing Board may attach such reasonable conditions and safeguards as it deems necessary to implement the purposes of the Pennsylvania Municipalities Planning Code, and the Ordinance. *Ordinance*, §225-1007.10.A. Based on the Board's findings and conclusions, the Board adopts the following:

ORDER

AND NOW, this ____ day of May, 2020:

1. The applicant's request for a special exception pursuant to §225-502.10 regarding the total sign area for the south façade of the building is **GRANTED**. The applicant may install the proposed brand logo sign, measuring 11'4" x 10' or 28 square feet, on the south side of the building.

2. The applicant shall construct the proposed signage in strict compliance with the plans and specifications submitted to the Board during the hearing of this matter, provided, however, that if the improvements that are the subject of this hearing, as finally constructed, require less relief than granted by the Board herein, no additional relief from this Board shall be required.

3. Except as extended by applicable law, the relief granted herein shall be valid for one (1) year from the date hereof. In the event the applicant has not, within the time period provided herein, commenced operations, applied for a building permit relative to the improvements where permits are necessary, or constructed the improvements not requiring permits, the relief granted herein shall be deemed to have expired and the applicant shall be required to comply with the then existing terms of the Zoning Ordinance.

4. Any violation of any condition imposed herein shall be a violation of the Township Zoning Ordinance and shall be enforced as provided in the Ordinance.

Sandra Ballard

Lindsay Drew

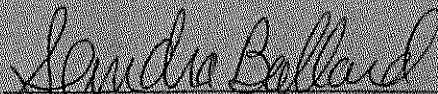
F. Dean Morgan

Steven Seidl

ORDER

AND NOW, this 25th day of May, 2020:

1. The applicant's request for a special exception pursuant to §225-502.10 regarding the total sign area for the south façade of the building is **GRANTED**. The applicant may install the proposed brand logo sign, measuring 11'4" x 10' or 28 square feet, on the south side of the building.
2. The applicant shall construct the proposed signage in strict compliance with the plans and specifications submitted to the Board during the hearing of this matter, provided, however, that if the improvements that are the subject of this hearing, as finally constructed, require less relief than granted by the Board herein, no additional relief from this Board shall be required.
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4. Any violation of any condition imposed herein shall be a violation of the Township Zoning Ordinance and shall be enforced as provided in the Ordinance.



Sandra Ballard

Adopted by 4-0 vote as indicated by the Chairwoman's signature

Lindsay Drew

F. Dean Morgan

Steven Seidl