

**BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD**

IN THE MATTER OF:	: NO. 2020 – 13
	: :
Hershey Square 2014, LP	: : :
	: PREMISES LOCATION:
	: 1158 Mae Street
	: Hummelstown, Derry Township, PA

**MEMORANDUM, FINDINGS, OPINION AND ORDER**

This is the application of Hershey Square 2014, LP with regard to its property located at 1158 Mae Street, Hummelstown, Derry Township. A hearing in this matter was held on December 16, 2020, by video conference due to the COVID-19 emergency, after proper advertising and after proper notice to allow for public participation. At that time, Pablo Medeiros, who is employed by the applicant’s parent company, Heidenberg Properties Group, appeared, with the applicant’s attorney, Charles M. Suhr, was sworn, and testified at the hearing. In addition, Todd Shively, who is a representative of one of the applicant’s tenant at the property, Planet Fitness, appeared but did not testify. Prior to the applicant’s testimony, Solicitor, Megan Huff, disclosed that one of the applicant’s tenants, Where the Wild Things Play, is a client of her firm in unrelated matters, and as such, no conflict exists. No other members of the public testified.

The application indicates that the subject property is located in the General Commercial zoning district. The property is improved with a shopping center and retail stores, and the applicant proposes to continue that use. The applicant previously obtained relief from the Zoning Hearing Board with respect to signs at the property as well as for parking spaces and

expansion of storage area at Case No. 2014-58. The current application seeks a variance for the maximum area for individual wall signs.

Pablo Medeiros is the Director of Development for Heidenberg Properties Group, the parent company of the applicant, which is a wholly owned subsidiary. Heidenberg Properties Group is in the business of redeveloping and constructing shopping centers from Vermont to West Virginia.

The subject property located at the southeast corner of Mae Street and Hersheypark Drive. It is approximately 28 acres. The street frontage of the property is in excess of 300 feet. The applicant is in the process of reconfiguring the old K-Mart building that is approximately 103,000 square feet (reduced from 107,000 square feet) to accommodate six tenants. The renovations are approximately 50% complete, and the tenants hope to open in the spring of 2021. Currently, five tenants are under lease: Five Below, TJ Maxx, Big Lots, Planet Fitness, and Where the Wild Things Play.<sup>1</sup> On behalf of the tenants, the applicant proposes wall signs with the following area:

- A. Five Below: 224.0 square feet;
- B. TJ Maxx: 199.06 square feet;
- C. Big Lots: 206.66 square feet; and
- D. Planet Fitness: 199.82 square feet.

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<sup>1</sup> The applicant is not seeking any sign relief for its tenant, Where the Wild Things Play.

The tenant spaces are significantly set back from Mae Street and Hersheypark Drive. In addition, no part of the tenants' building is visible from Mae Street. The existing Panera Bread is approximately 475 feet from the old K-Mart building. The applicant is most concerned with visibility at Panera Bread as customers will be coming up the hill to access the parking lot and the tenants' stores.

The applicant submitted renderings of the proposed signs for the tenants using the front façade of the K-Mart building, which has been vacant for 2 years. These renderings also included the signs with the dimensions as proposed as well as the signs with dimensions in compliance with the Ordinance. Without larger signs than the Ordinance allows, the signs would be barely visible from Panera Bread, or anyone entering the shopping center, or Hersheypark Drive, resulting in confusion. Without the proposed signs, tourists would not know the tenants were in the shopping center. The applicant also submitted photographs showing the site from various points on Hersheypark Drive. The photographs along with the renderings were all admitted in to the record.

The individual tenants requested the signs for brand awareness, which allow customers to recognize the signs. According to the applicant, brand recognition leads to retailer success. Although the individual tenants determined the size of their respective signs, Mr. Medeiros argued that the signs were reasonably proportionate to their respective façades. Further, he argued that there would be no impact on the neighboring property as this relief was necessary for the economic redevelopment of the shopping centers. To the contrary, Mr. Medeiros asserted that the proposed signs would encourage business growth and help the surrounding neighbors.

The Ordinance limits the maximum area for an individual wall sign to 45 square feet. *See* Ordinance, §225-401.4.F.B.1, Table 36. The criteria for issuing zoning variances are set forth in §225-1007.9.A of the Derry Township Zoning Ordinance. The Zoning Board may grant a variance provided that all of the following findings are made where relevant:

1. There are unique physical circumstances or conditions of the lot in question, and due to these conditions, an unnecessary hardship results to the property owner;
2. That because of the physical circumstances, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance, and that the authorization of the variance is necessary to enable the reasonable use of the property;
3. The unnecessary hardship has not been created by the applicant;
4. The variance will not alter the essential character of the neighborhood or otherwise impair the appropriate use or development of adjacent property or be detrimental to the public welfare; and
5. That the variance if authorized will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation at issue.

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

Initially, as noted above, the Board finds that the property is unique because of its distance from the roadways. In addition, the property is unique because the parking lot and stores are located up a hill. There is no evidence on the record that the applicant created this hardship. Most significantly, because of the distance from the roadways and the hill, the Board finds that the

proposed relief will not have a detrimental impact on any other property in the area or the public welfare. The Board finds that the proposed relief will not alter the essential character of the neighborhood. There is no testimony in the record to indicate that the requested variances would negatively impact surrounding properties. No neighbors testified in opposition to the application. Finally, the Board finds that this represents minimum relief necessary.

In granting any variance, 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*, §225-1007.9.B. Based on the Board's findings and conclusions, the Board adopts the following:

**ORDER**

AND NOW, this 20<sup>th</sup> day of January, 2021:

1. The applicant's request for a variance from §225-401.4.F.B.1, Table 36, regarding the maximum area for an individual wall sign is GRANTED. The applicant may install the following wall signs with the maximum area:

- E. Five Below: 224.0 square feet;
- F. TJ Maxx: 199.06 square feet;
- G. Big Lots: 206.66 square feet; and
- H. Planet Fitness: 199.82 square feet.

2. The applicant shall construct the improvements 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.

Adopted by 4 – 0 vote as indicated by the Chairman’s signature as authorized by the Zoning Hearing Board.

  
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Steven Seidl, Chairman