

BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF: : NO. 2021 – 02
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 : PREMISES LOCATION:
 : 1154 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 1154 Mae Street, Hummelstown, Derry Township. A hearing in this matter was held on April 21, 2021, by video conference due to the COVID-19 emergency, after proper advertising and after proper notice to allow for public participation. At that time, the applicant’s engineer, Holly Evans of Evans Engineering, Inc., appeared, with the applicant’s attorney, Charles M. Suhr, both of whom were sworn, and testified at the hearing. In addition, Pablo Medeiros, who is employed by the applicant’s parent company, Heidenberg Properties Group, appeared but did not testify. No other members of the public testified. 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. The current application seeks a variance regarding the amount of impervious coverage.

The application indicates that the subject property is located in the General Commercial zoning district. Because of its topography, the property consists of two different levels. The upper portion of the property is improved with a shopping center and other freestanding buildings. No further new development is available on the upper portion. The lower portion

consists of the main entrance to the property off Mae Street, the freestanding signage for the shopping center and adjacent hotel, and the access drives to the upper portion of the property and the adjacent hotel. The rest of the lower portion of the property is vacant, and the applicant, who has owned the property since 2014, proposes to develop it.

Holly Evans, P.E., of Evans Engineering, Inc., designed the upper portion of the property in 1992, and has been involved in the modifications and expansions of the property over the years. The property is 28.09 acres with a net developable area of 24.82 acres. The property is currently compliant with all zoning requirements as they relate to the development of the property. Currently, the impervious coverage is 57.3% and the vegetative coverage is 43.7%. Ms. Evans argued that each portion of the property is essentially independent developments because each has its own access, circulation, and utilities. The lower portion consists of approximately 4 acres of undeveloped land in addition to the Bullfrog Valley Creek, a stormwater management basin for the property, and steep rocky area. Much of the area is within a floodplain.

The applicant proposes to develop the lower portion with a 7,150 square feet commercial, multi-tenant building with associated parking. The applicant is proposing three tenants for the building, but potentially could have just two tenants. The building would be accessed from the existing access drive to the upper portion and adjacent hotel. There would be 43 parking spaces, including 2 ADA compliant spaces. While the Ordinance requires 35 spaces, the applicant is proposing 43 spaces to have flexibility to account for uses other than retail as the tenants have

not yet been secured. Further, according to Ms. Evans, shared parking between the upper and lower portions is not feasible.

According to Ms. Evans, the access drive to the building would cross the Bullfrog Valley Creek with an open channel arch crossing, which would require a DEP permit. This would allow the applicant to maintain the natural vegetation of the creek and the 50 feet buffer on each side of the creek. The driveway to the building is necessary to access the site as there is no access available from Hersheypark Drive. In addition, the applicant will have to secure approval and/or permits for a Land Development Plan, Erosion and Sediment Control Plan, and Stormwater Management Plan, none of which Ms. Evans thought should be problematic.

As a result of the project, the impervious coverage of the property would increase 4.6% to 61.87%. The vegetative coverage would decrease to 38.13%, which is still compliant with the Ordinance requirements. Ms. Evans argued that the requested relief does not impact the adjacent property owners because the uses in the surrounding area are similar and the lower portion is its own isolated area for development. Instead, Ms. Evans argued that this project would enhance the viability of the other stores in the area. According to Ms. Evans, the requested relief is the minimum relief necessary. Because of the access issues over the creek, circulation and parking requirements, the building could not be smaller and still meet the zoning requirements. For instance, even if the building were half the size and reduced the required parking, there would still be impervious coverage issues because of the access and parking requirements. The applicant considered other locations on the lower portion but is restricted by the creek, the floodplain, the rocky area, and the stormwater management basin. Moreover, the applicant

considered other uses for the property. However, regardless of the location or use, the applicant would still have to deal with the general conditions of access and parking, which cause the impervious coverage issues.

The Ordinance limits impervious coverage to 60%. *See* Ordinance, §225-307, Table 13. 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 property is unique because of its physical characteristics, namely the topography of the two tiered elevations. There is no evidence on the record that the applicant created the hardship. Most significantly, the Board finds that the proposed relief will not have a detrimental impact on any other property in the area or the public welfare. As such, the Board finds that the requested variance would not negatively impact surrounding properties. In addition, the proposed relief will not alter the essential character of the neighborhood as there are other retail and commercial businesses in the area. Finally, the Board finds that this request represents the 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

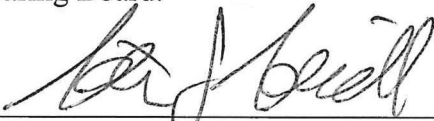
AND NOW, this 19th day of May, 2021:

1. The applicant's request for a variance from §225-307, Table 13, regarding maximum impervious coverage is GRANTED. The applicant may increase impervious coverage to 61.87%.
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 a 3 – 2 vote as indicated by the Chairman’s signature as authorized by the Zoning Hearing Board.

A handwritten signature in cursive script, appearing to read "Steven Seidl", written in black ink over a horizontal line.

Steven Seidl, Chairman