

BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF: : NO. 2021 – 13
:
Brownstone Brokers, LLC :
:
:
: PREMISES LOCATION:
: 501 W. Governor Road
: Hershey, Derry Township, PA

MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of Brownstone Brokers, LLC with regard to its property located at 501 W. Governor Road, Hershey, Derry Township. A hearing in this matter was held on November 17, 2021, after proper advertising. At that time, the applicant’s owners, Scott Campbell and Todd Lechleitner, with their counsel, Charles Beckley, Esquire of Beckley & Madden, and Chuck Kray of HersheyCare, appeared, were sworn, and testified at the hearing. Board Member, Lindsay Drew, disclosed that she had a previous familial relationship with Mr. Kray but that such relations would not present a conflict of interest in this matter. Megan Huff, Esquire, Solicitor, disclosed that she and her firm had represented Brownstone Real Estate Company on other matters, but such representation would not present a conflict of interest in this matter.

The application indicates that the subject property is located in the Hershey Mixed Use zoning district. The application seeks a special exception to substitute nonconforming uses.¹ The applicant purchased the subject property in June 2020, from the Antique Auto Club of

¹ The applicant previously submitted an application for a special exception to substitute nonconforming uses, which hearing was held on September 15, 2021, but the applicant withdrew the application prior to a decision being rendered.

America (“AACA”). In 1985, the AACA constructed an addition, which was approved for use as a library. The AACA had four full-time employees and five volunteers working, and groups tours could be given several times a year. In addition, individuals could be doing research in its library. During its annual event, approximately 1,500 people could go through the property.

The subject property is 2.6 acres, and the existing building is 14,876 square feet. It is serviced by public water and public sewer. The applicant renovated the exterior of the building, including installing new windows and a new roof. The applicant would have to install a ramp at the main entrance to make the space available for lease handicapped accessible. In addition, the applicant expanded the parking lot to accommodate the entire square footage of the building and used pervious asphalt. The parking lot has 81 spaces, including 4 handicapped spaces, which is sufficient under the Ordinance for the real estate office and the proposed tenant’s use. In a four week period, Mr. Campbell counted the number of cars in the parking lot every day at 10 a.m. and 2 p.m. Approximately, 10 spaces were used at 10 a.m., and approximately 9.1 spaces were used at 2 p.m. Mr. Campbell testified that the number of lights that exist around the parking lot and building were required. They provide security around the building. They operate on a timer and are not on in the morning. They turn on at dusk in the evening and turn off at approximately 7 p.m.

The applicant uses 7,456 square feet of the building for real estate offices for Brownstone Real Estate Company. The applicant proposes to lease the remaining 7,420 square feet of the building to HersheyCare. HersheyCare is a closed-door pharmacy that provides prescription services to mostly nursing homes and other continuing care retirement communities. It fills

orders and delivers the orders. It is not a retail pharmacy so there are no customers on-site. The lower level of the space leased to HersheyCare would be used by HersheyCare for storage. HersheyCare is presently located at the Blue Barn, which is a commercial property immediately adjacent to the subject property. HersheyCare has been at the Blue Barn for approximately 3 ½ years and is approximately 100 feet from the subject property.

HersheyCare operates daily. Generally, HersheyCare has two to three pharmacists and about five technicians working at any given time. They use robotic packaging to fill orders. The proposed lease space would allow HersheyCare to lay out its operations more efficiently as the space is bigger than what it currently has at the Blue Barn, and there would be room to grow if the business grew. The pharmacy uses four or five vehicles such as a Prius or CRVs to deliver prescriptions. They are approximately five vehicles parked in the parking lot when not in use. The space would be fully secured in compliance with the Commonwealth requirements for pharmacies. The state licensing board inspects the property to ensure it complies with the state's health and safety regulations. A sign on the door would allow people to know which entrance to use to get HersheyCare.

Mr. Kray testified that he has been in business for 39 years and in the closed-door pharmacy business for 10 to 12 years. He hopes that his business will grow and expand. In the last five years, financially, the business has expanded approximately 10 percent, but he has not added any additional employees, and the deliveries are the same. If business increases, there will be more stops on the delivery routes as opposed to more stops back at the property. He may also

install another robotic machine, but even if business doubled, only six to eight additional employees would be added.

Mr. Campbell testified that no other non-conformities would be created by the proposed tenant's use. Mr. Campbell argued that the proposed tenant's use would not affect the health or safety of the neighborhood. Mr. Campbell did not think that the proposed tenant's use would affect the public services. In addition, he argued that the proposed tenant's use would not alter the essential character of the neighborhood. He pointed out that HersheyCare is already operating in the neighborhood at the property immediately adjacent to the subject property. Further, he testified that the proposed closed-door pharmacy would not affect the noise, dust, odor, or light in the area. He reached out by letter to neighbors who had voiced concern over the applicant's prior application that was withdrawn. The applicant submitted the deed to the property, a survey exhibit, and photographs of the property, all of which were admitted into the record.

Sidney Keller, who resides at 963 Briarcrest Road, testified at the hearing in this matter. His property is directly behind the Blue Barn property. He has lived there for 14 years and never had a problem with the Blue Barn, but recently he has noticed an increase of traffic in and out of the Blue Barn that he attributes to HersheyCare. There are children in the neighborhood, and the vehicles do not obey the 25 m.p.h. speed limit. He would like the applicant to access the subject property from 322. He is concerned that the proposed use will affect property values. He admitted he did not know that HersheyCare was at the Blue Barn prior to the September 2021 hearing on the previous application that was withdrawn. Mr. Kray acknowledged that since

renovations were made at the Blue Barn property in the last 18 months, the number of tenants and traffic has increased but denied the problems were caused by HersheyCare. Mr. Keller received Mr. Campbell's letter and did not think it was neighborly to threaten the neighbors with what type of establishments could lease the space without zoning approval.

Jason McNicholl, who resides at 975 Briarcrest Road directly across from the street, testified at the hearing in this matter. He was concerned about an increase in employees at the property, particularly if HersheyCare expands, which would increase the traffic.

Maryann Keller, who resides at 963 Briarcrest Road, testified at the hearing in this matter. She was concerned about an increase in traffic and an expansion of the existing building footprint.

The Zoning Ordinance allows the Zoning Hearing Board to “grant a special exception to substitute a nonconforming use of land, buildings or structures with another nonconforming use of land, buildings or structures if the applicant can demonstrate to the Township Zoning Hearing Board’s satisfaction that the proposed nonconformity is no more detrimental to the area than the existing nonconformity.” *See* Ordinance, §225-603. In addition, the applicant must demonstrate that the proposed new nonconforming use will cause no other new nonconformities except for the use. *See* Ordinance, §225-603. The Zoning Hearing Board may attach reasonable conditions to the grant of a special exception to ensure that the new nonconforming use remains no more detrimental to the area than the existing nonconforming use. *See* Ordinance, §225-603.

In addition, the applicant must also demonstrate compliance with criteria for special exception uses set forth in §225-502.B.:

1. The Township Zoning Hearing Board shall find that the use will not adversely affect the health or safety of residents in the neighborhood or district in which the use is located.

2. The Township Zoning Hearing Board shall find that the use will not overburden existing public services, including water, sanitary sewer, public roads, storm drainage or other public improvements.

3. The Township Zoning Hearing Board shall find that the use will not be detrimental to the use or development of, or change the essential character of, the neighborhood or district in which the use is proposed. The Township Board of Supervisors shall consider, at a minimum, the impact of noise, dust, light, odor, and adequacy of parking.

4. The use shall meet all other requirements of this Chapter that may apply.

5. The minimum lot area shall be one acre when the use relies on an on-lot septic system.

Ordinance, §225-502.B.

The Board finds that the applicant is entitled to the requested relief with respect to the use of the subject property. As this Board has often repeated, a special exception is neither special nor an exception. Instead, it is a permitted use provided the applicant can demonstrate compliance with the applicable criteria. Here, the Board finds that the substitution of the closed-door pharmacy is no more detrimental to the area than a library. Because of the permitted uses in the zoning district, such as schools, places of worship or assembly, and personal service establishments such as barber shops, hair salons, and massage therapy, for example, the Board finds that the proposed closed-door pharmacy will be less detrimental on traffic and noise than the permitted uses. There is adequate parking. The Board finds that the change in use will not adversely affect the health or safety of the residents. Similarly, the Board finds that the closed-door pharmacy will not be detrimental or change the essential character of the neighborhood, particularly as the permitted uses would. No new nonconformities other than use will be created.

In addition, there will be no increase in the dust, light, and odors. There is no testimony in the record to indicate that the requested special exception would overburden existing public services. Consequently, the Board finds that the applicant is entitled to the requested special exception for the change in use of the property to a closed door pharmacy.

As noted above, in granting any special exception, 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. *See* Ordinance, §§225-603 and 225-1007.10.A. Based on the Board's findings and conclusions, the Board adopts the following:

ORDER

AND NOW, this 15th day of December, 2021:

1. The applicant's request for a special exception from §225-603, regarding the substitution of one nonconforming use for another is GRANTED. The applicant may establish a closed-door pharmacy as represented during the hearing of this matter.


2. The relief granted herein shall be strictly contingent upon there being no change in the use of the business without additional review by the Board under §225-603 for substitution of a nonconforming use.

3. 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.



Steven Seidl

Sandra Ballard



F. Dean Morgan



Lindsay Drew



Michael Angello