

**DERRY TOWNSHIP
ZONING HEARING BOARD MEETING MINUTES
November 17, 2021**

CALL TO ORDER

The Wednesday, November 17, 2021, Derry Township Zoning Hearing Board meeting was called to order at 6:02 p.m. by Chairman Steve Seidl in the Meeting Room of the Derry Township Municipal Complex, 600 Clearwater Road, Hershey, PA.

ROLL CALL

Board members in attendance: Chairman Steve Seidl; Vice Chairwoman Sandy Ballard; Secretary Dean Morgan; Member Lindsay Drew; Member Mike Angello

Board members absent: None

Also present: Megan Huff, Solicitor to the Board; David Habig, Assistant Director of Community Development; Maria O'Donnell, Court Reporter; Valerie Wood, Community Development Secretary

Public registering attendance: Thaddeus Stager, 8 Edgehill Drive; Scott Campbell, Brownstone; Charles Beckley, Beckley & Madden; Todd Lechleitner, Brownstone; Jeffrey Mackneer, 593 Hilltop Road; Chuck Kray, Hershey Care; Jason McNicholl, 975 Briarcrest Drive; Cathy Weaver; Sidney and Maryann Keller, 963 Briarcrest Drive

APPROVAL OF MINUTES

On a motion made by Member Drew, seconded by Vice Chairwoman Ballard, and a unanimous vote, the October 20, 2021, minutes were approved as written.

OLD BUSINESS

**A. Adoption of Decision in the Case of Mountain View Bible Church (2021-10)
Property location: 64 and 74 Sipe Avenue, Hummelstown**

Chairman Seidl read the terms of the Decision into the record as follows:

1. *The applicant's request for a variance from §225-307, Table 13, Item A regarding the minimum lot width is GRANTED. The applicant shall provide a minimum width of 92.97 feet for 74 Sipe Avenue (Lot 1) and 93.41 feet for 64 Sipe Avenue (Lot 2) as depicted on the plan submitted to the Board during the hearing of this matter.*
2. *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.*

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On a motion made by Member Angello, seconded by Member Drew, and a unanimous vote, the Decision was adopted as written.

**B. Adoption of Decision in the Case of Paul Furniss (2021-11)
Property location: 125 Robin Road, Hershey**

Chairman Seidl read the terms of the Decision into the record as follows:

1. *The applicant's request for a variance from §225-315, Table 29 regarding the front yard setback for an accessory use is GRANTED. The applicant may encroach to within 9 feet of front yard right-of-way for the proposed shed.*
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.*

On a motion made by Vice Chairwoman Ballard, seconded by Member Drew, and a unanimous vote, the Decision was adopted as written.

**C. Continuance in the Case of Thaddeus Stager (2021-12)
Property location: 8 Edgehill Drive, Hershey**

The property is located in the R-1 zoning district. It is improved with a single-family detached dwelling. The applicant desires to build a garage and is requesting a variance on the maximum height for an accessory structure.

Thaddeus Stager was sworn in.

Mr. Stager wishes to construct a bank barn that is outside the maximum allowed height for an accessory structure and is requesting a variance of 5.5 feet to properly construct the garage. Mr. Stager wishes to preserve the natural slope of the property. In order to have safe entry

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into the garage, the entrance will have to be constructed in the same manner as the home entrance, requiring the building to be taller than the Zoning Ordinance allows.

In response to questions from members of the Board, Mr. Stager replied that the garage will be visible from the road and aligned with the house and will be slightly closer to Edgewood Drive.

Mr. Habig confirmed the 75-foot setback requirement from the centerline of Laurel Ridge Road.

Chairman Seidl asked if there is anything else on the property, such as a sand mound. Mr. Stager replied that there is not, and the property has public sewer service.

In response to Chairman Seidl asking if the garage is proposed to be located as far forward as it can be, Mr. Stager replied that they could go forward more; however, they want to be able to utilize their yard and he would not be able to make the turn going into the garage from the driveway.

Chairman Seidl requested to know why the garage is so large. Mr. Stager replied that he has four children, the oldest being 16, and they are all in different activities, so the Stagers will end up with a couple of additional vehicles in the yard. The Stagers also have a boat and a car that Mr. Stager is restoring, so the proposed size of the garage would be the best to meet his family's growing needs. A single-level garage would not work out with the land the way it is.

Chairman Seidl asked for clarification on the height of the stories. Mr. Stager replied that the lower-level doors will be 12 feet wide by 10 feet high and the upper-level doors will be 9 feet wide by 8 feet high. The 13-foot wall height is based on the slope of the ground so Mr. Stager would not have to infill to grade.

No one else offered testimony.

Chairman Seidl 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.

NEW BUSINESS

**A. Hearing in the Case of Brownstone Brokers, LLC (2021-13)
Property location: 501 West Governor Road, Hershey**

The property is located in the Hershey Mixed Use zoning district and the Central Master Plan Overlay. It is improved with an office building used by Brownstone Real Estate. The applicant is seeking a special exception for the substitution of a nonconforming use.

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Charlie Beckley, an attorney with Beckley and Madden in Harrisburg, stated that he is representing the applicant and will be asking the applicant questions.

Member Drew stated that she does not feel there is a conflict of interest or ethical issue regarding her participation in the discussion and will hear the case after previously recusing herself.

Scott Campbell and Chuck Kray were sworn in.

Testimony was given by Mr. Campbell in reference to the improvements that were made to the building since Brownstone Brokers, LLC purchased it, which included interior renovations and parking lot renovations. Currently half of the building is occupied by Brownstone Real Estate and the applicant would like to rent the other half of the building to Hershey Care, which is a closed-door pharmacy. Hershey Care would move from The Blue Barn, where they are currently located, to the east side of the Brownstone building, which is a couple hundred feet from The Blue Barn. The applicant has abandoned their previous request for relief regarding the martial arts studio and now proposes to rent the other half of the building only to Hershey Care. Having Hershey Care in the Brownstone building would not result in any additional nonconformities to the building. There is adequate parking to have Hershey Care in the building. Over a four-week timeframe, the applicant was able to count the number of cars in Brownstone's lot daily. The times that were observed were 10:00 a.m. and 2:00 p.m. on weekdays. The average number of parking spaces used at 10:00 a.m. was 10 and the average number of spaces used at 2:00 p.m. was 9.1. The only change necessary to the building to have Hershey Care rent the space would be to make the entrance to the building handicap accessible. There would be no change to the footprint. Both businesses together in the building would occupy the same amount of space as the Antique Automobile Club of America. Moving Hershey Care into the Brownstone building would not change the character of the neighborhood since Hershey Care is already in the neighborhood in The Blue Barn, where it has been for the past three years. There is a four-year lease agreement in the works with Hershey Care. Steps have been taken to address the concerns of the neighbors, including abandoning the proposal to have the martial arts studio in the building and changing the times the parking lot lights are turned on and off. Letters were composed and sent to the neighbors who attended the last meeting, explaining the applicant's intentions for the building now and the changes that are being made.

Testimony was given by Mr. Kray in reference to Hershey Care. He stated that Hershey Care is a closed-door pharmacy where they do not see customers, they service long-term care facilities. Testimony was given on how the pharmacy operates. Hershey Care is currently in The Blue Barn, which is located about 100 feet from the Brownstone building. Hershey Care has been in The Blue Barn for the past three years. There have been no complaints made to the Township about Hershey Care since it has been in The Blue Barn. The hours of operation were discussed, as well as the number of deliveries received by the pharmacy and how many deliveries are made to various long-term care facilities. Hershey Care pharmacy is completely secured by fire and burglary alarms. The only sign for the pharmacy would be on the door so

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delivery personnel would know what door to use. Moving into the Brownstone building will make the Hershey Care business more efficient. They are currently limited on space and moving into the Brownstone building would give them the ability to spread out more and maybe to grow a little bit.

In response to a question from Vice Chairwoman Ballard, Mr. Kray stated that the proposed space is larger than the space they are currently in which will allow them to operate more efficiently by spreading out their workspace. The potential for small growth is there as well.

Secretary Morgan confirmed with Mr. Berkley that the applicant wants to seek a special exception to replace the existing nonconforming use of the Antique Automobile Club of America's library with the new nonconforming use of the pharmacy.

Secretary Morgan acknowledged the Antique Automobile Club of America came before the Zoning Hearing Board previously and that hearing involved impervious coverage. Mr. Berkley responded that it may have been an element that was discussed but it was not all that was discussed. One of the major issues was expanding the nonconforming use. At that time, they wanted to double the size of the building.

Chairman Seidl asked if Mr. Kray anticipates the pharmacy hours expanding and Mr. Kray replied that no, he is not anticipating that.

In response to Vice Chairwoman Ballard's question about staffing if the business grows, Mr. Kray replied that yes, he will hire additional staff, although the automation robots would be added before human staffing.

Member Angello confirmed with Mr. Campbell that there are 81 parking spaces currently and if the businesses were to expand the parking would still be sufficient.

Chairman Seidl confirmed with Mr. Campbell that during his observation of Brownstone's parking lot, the maximum space usage was 13.

Mr. Campbell followed up on Vice Chairwoman Ballard's question about the previous use of the Antique Automobile Club of America's library, stating that in conversations with the president of the club, they had four employees and five volunteers that worked there. They did not track how many people came in throughout the year, but they did do tours several times a year and during Antique Auto week they would have 1,500 people through the building.

Member Drew inquired as to when the property was last used, to which Mr. Campbell replied it was used up until June 23, 2021. Brownstone always intended to rent out some of the space. Member Drew asked if the closed-door pharmacy would be a comparable use to the previous use. Mr. Campbell replied that yes, it is comparable, especially since they are already in the neighborhood, and it is already known how they operate. Mr. Campbell stated

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that there are some things the applicant could do with the building by right that would be detrimental to the neighborhood, but they have no intention of seeking out tenants like those uses.

Public Comment

Sydney Keller of 963 Briarcrest Drive was sworn in. He gave the Zoning Hearing Board his copy of the letter Brownstone Brokers, LLC sent to the neighbors.

Mr. Keller testified that he felt the letter Brownstone sent was of a threatening nature. The letter indicated that there could be a lot worse tenants the applicant could have if they do not get approval for the pharmacy. Mr. Keller has lived in the neighborhood for the past 14 years and has never had a problem with The Blue Barn. Mr. Keller stated there is a lot of traffic that goes in and out of there throughout the day.

In response to Member Drew asking if Mr. Keller has contacted the police about the traffic issues, he stated that yes, he has, and their response was they speed everywhere.

Secretary Morgan explained the Zoning Hearing Board does not pass ordinances, they hear cases like this and hear the public comments in order to make a decision on the proposed changes.

In response to Member Angello asking if the letter is the issue, Mr. Keller replied that if the applicant would take away the access from Briarcrest Drive and put it on Governor Road, he would have no issue with the proposal.

Mr. Berkley asked Mr. Keller if he had known the Hershey Care Pharmacy was in The Blue Barn and Mr. Keller replied that no, before the last hearing he did not know it was there.

Mr. Campbell responded to Mr. Keller's testimony about the letter, stating that the letter's intention was not to threaten, it was to inform the neighbors that the applicant is trying to keep the neighborhood the same as it is now instead of putting in one of the by-right uses that would be detrimental to the neighborhood.

Mr. Kray responded to Mr. Keller's testimony, stating when Hershey Care went into The Blue Barn, there was only two other tenants. Recently a cleaning service has rented space, which takes up about 20 parking spaces with their employees; there is a stockbroker that moved in; and the Blood Bank is in there. The Blue Barn is now full and the change that Mr. Keller is talking about did not occur three years ago when Hershey Care moved in, it happened about a year ago when the building filled up.

Member Angello confirmed that MaidPro moved into The Blue Barn. They have a lot of business and volume which creates employees, and he has had problems with them before as well.

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Secretary Morgan confirmed with Mr. Keller that if the entrance was off Governor Road instead of Briarcrest Drive then he would have no problem with Hershey Care moving to the Brownstone building. Mr. Keller confirmed.

Jason McNicholl of 975 Briarcrest Drive was sworn in. Mr. McNicholl wanted to clarify what it would look like if the Hershey Care business were to grow. Mr. Kray responded that in an ideal world, he would like to triple the business but that is not realistic. Testimony was given about how the business works now with robotics. There would possibly be another delivery car or two. Mr. Kray is not looking to be a big business, just the best.

Member Drew asked Mr. Kray to explain the difference between a closed-door pharmacy and a retail pharmacy and why expanding would not mean public access. Mr. Kray explained they do not see the public. The only people in the building are employees and delivery personnel. The public will not have access to shop in the building. There are no signs advertising the business.

In response to Secretary Morgan's questions, Mr. Kray replied that he has been in business for 39 years and has run a closed-door pharmacy for about 12 years. In the last five years his business has not grown very much. There are maybe one or two closed-door pharmacies within a 25-mile radius of Hershey. The business has experienced maybe a 10% customer growth in the last five years. He would like to double his business's volume in the next five years, but it has not grown very much in the last five years, so it is unlikely to grow very much.

Member Angello mentioned that more customers would mean more additional stops to a delivery and not additional deliveries. Mr. Kray confirmed that there would not be additional deliveries but that the existing deliveries would be longer.

In response to Vice Chairwoman Ballard, Mr. Campbell said that beyond the letters sent to neighbors, they have not talked to anyone additional because no one else has raised an issue. Mr. Kray replied that he did not discuss the matter with the neighbors since he is already in the neighborhood.

Maryann Keller of 963 Briarcrest Drive was sworn in. Mrs. Keller asked about the future of the Brownstone building as far as expanding. Solicitor Huff replied that the applicant would have to comply with ordinance regulations in place at that time. Mr. Campbell replied that for any other use than a library or the proposed closed-door pharmacy, the applicant would have to come back to the Zoning Hearing Board for approval. Currently, the applicant has no intention of expanding the building.

Mr. Keller asked if the change in the ordinance will stay with the building if Brownstone Brokers, LLC sells the building. Solicitor Huff explained that the Zoning Hearing Board is not changing the Zoning Ordinance, they are looking at the possibility of granting a special

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exception to the current ordinance and yes, if the relief is granted it would stay with the land and any new owners.

No one else offered testimony.

Chairman Seidl 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 Jeffrey Mackneer (2021-14)
Property location: 593 Hilltop Road, Hummelstown**

The property is located in the Conservation zoning district. It is improved with a single-family detached dwelling. The applicant desires to place a swimming pool on the property and is seeking a variance from side setback requirements for an accessory structure.

Member Drew stated for the record that the applicant is an employee of Derry Township School District and she serves on the School Board, but that has no impact on her ability to hear the case.

Jeffrey Mackneer, owner of 593 Hilltop Road, was sworn in. He testified that the property is oddly shaped and in factoring in the required 50-foot setback, it makes it harder to build on. There is a steep grade on the land that is not suitable for building anything on and is basically used for sledding. There is a septic system on the other side of the lot which makes that area unsuitable for building. The relief he is seeking would put the pool approximately 38 feet from the property line to a vacant lot. The next building is about three properties away. Each of the lots are very narrow. Mr. Mackneer wants to keep the trees on the lot and the topography of the land.

In response to questions from Chairman Seidl, Mr. Mackneer confirmed the steep slopes are on the north side of the property and they are steep upward slopes. Where the stormwater management area will be is a wooded area except for where the contractor put the sand mound. The pool will be about 375 square feet total. The pool is as close to the house as it can be without compromising the house or the well. More information was provided to the Board on where things are on the site map and the shape of the lot. Mr. Mackneer stated that the lot beside his lot is currently a vacant wooded lot that is also very narrow and runs up the hill. He is not sure it is possible to fit a structure on any of those properties. The owner of the vacant lot also owns the lot beside the vacant one where the house sits back from the road. Mr. Mackneer did not talk to any of his neighbors about the requested relief.

No one else offered testimony.

Chairman Seidl 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.

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OTHER BUSINESS

Secretary Morgan made a motion to exclude the hours of operation in the minutes, decision, and order of the closed-door pharmacy. The motion was seconded by Member Drew and passed by a unanimous vote.

ADJOURNMENT

On a motion made by Vice Chairwoman Ballard, seconded by Chairman Seidl, and a unanimous vote, the meeting was adjourned at 7:40 p.m.

DELIBERATION

The Board met to deliberate in the cases of Thaddeus Stager (2021-12), Brownstone Brokers, LLC (2021-13), and Jeffrey Mackneer (2021-14), and directed the Solicitor to prepare the draft decisions on the cases for formal action at the December 2021 meeting.

Submitted by:

Dean Morgan, Secretary