

**BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD**

IN THE MATTER OF:	: NO. 2022 – 07
	:
Hershey Square 2014, LP	:
	:
	: PREMISES LOCATION:
	: Mae Street and Hersheypark Drive
	: Hershey, Derry Township, PA

**MEMORANDUM, FINDINGS, OPINION AND ORDER**

This is the application of Hershey Square 2014, LP, with regard to its property located at Mae Street and Hersheypark Drive, Hummelstown, Derry Township. A hearing in this matter was held on April 20, 2022, after proper advertising. At that time, the applicant’s engineer, Holly Evans of Evans Engineering, Inc., appeared, with the applicant’s attorney, Charles M. Suhr, was sworn, and testified at the hearing. No other members of the public testified. The applicant previously obtained relief from the Zoning Hearing Board with respect to signs at the property, parking spaces, expansion of storage area, and most recently, the amount of impervious coverage.

The application indicates that the subject property is located in the General Commercial and Hersheypark Drive/Route 39 Overlay zoning districts. 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. The lower portion is vacant, and the applicant, who has owned the property since 2014, proposes to develop it. In 2021, the applicant obtained a variance to increase impervious coverage on the property to 61.87% to construct a 7,150 square feet commercial, multi-tenant building with associated parking on the lower portion (the “2021

Relief”). While the Zoning Hearing Board granted the 2021 Relief, it specifically imposed a condition generally contained in Ordinance §225-1007.9.C providing that the relief granted would be valid only for period of one year from that date of the prior decision, unless the applicant had obtained a zoning permit, building permit, or certificate of use or occupancy. The current application seeks a variance from a required 40 feet landscape buffer as it was determined in obtaining the necessary permits that the landscape buffer was required. Otherwise, the applicant could have sought relief at the time the 2021 Relief was granted. In addition, the applicant requests an extension of one year for the 2021 Relief to remain viable.

Holly Evans, P.E. is familiar with the property and the applicant’s prior zoning decisions. She is familiar with the applicant’s needs and authorized to speak on the applicant’s behalf. The lower portion of the property 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, which requires its own 50 feet buffer.

The right-of-way along Hersheypark Drive varies from 125 feet to 225 feet wide. At the subject property, the right-of-way is approximately 200 feet wide and the cartway is 90 feet wide. The property has natural vegetation comprised of overgrown grass, bushes, and vines that separates Hersheypark Drive from the buildable area on the lower portion of the property. This natural buffer is 40.8 feet from the right-of-way and widens to 57.2 feet further down Hersheypark Drive. With the current revised plans, the applicant would maintain an additional buffer from the right-of-way of a minimum of 17 feet 10 inches, resulting of a maximum encroachment of 22 feet, 2 inches into the required landscape buffer.

Since the 2021 Relief, the applicant is now constructing a 7,500 square foot multi-tenant building, which is 350 square feet more than the project approved in the 2021 Relief. There will be three tenants occupying the building. Despite the bigger building, the impervious coverage is less than approved with the 2021 Relief because the applicant was able to shrink the necessary asphalt. The vegetative coverage increased from 38.1% to 38.3% under the current plan. According to Ms. Evans, a smaller building will not result in less impervious coverage than the applicant's current proposal, which maximizes the building's use but minimizes the impervious coverage.

The building is placed on the property at the location depicted on the current plans because of flood plain concerns. This location is totally out of the current flood plain and will be predominately outside of the proposed future flood plain. The building is not in the flood plain. The location of the building cannot be adjusted because of Bullfrog Valley Creek and a stormwater management basin. The applicant intends to maintain the natural vegetation in the buffer and will not be planting multiple trees or installing a fence.

Following the 2021 Relief, the applicant submitted its land development plan in December 2021. Following comments, it was resubmitted in March 2022. In April 2022, the Planning Commission granted conditional approval, but the applicant cannot move forward without relief for the landscape buffer.

Ms. Evans argued that the requested relief will not have any impact on the surrounding properties. To the contrary, Ms. Evans explained that other properties on Hersheypark Drive have existing encroachments into the landscape buffer. For example, the fast-food restaurants

across the street have a service drive in the buffer. According to Ms. Evans, the other properties encroach into the buffer more than the applicant would under the current plans. The redesigned project pulled the site as tight as possible to minimize impervious coverage. Therefore, Ms. Evans argued the requested relief is the minimum request necessary. Even with just two tenants, the service drive, adequate space for parking, and the fire lane would not avoid the need for relief from the required landscape buffer.

With respect to the extension request for the 2021 Relief, the permitting with the Department of Environmental Protection to cross Bullfrog Valley Creek to access the lower portion has taken time. In addition, the applicant is working with Township staff on flood plain restoration and environmental credits. All of this has extended the permitting process. The applicant introduced various plans and other exhibits, all of which were introduced into the record.

The Ordinance requires a 40 feet landscape buffer closest to the right-of-way line of natural vegetation or turf grass for any development on lots or portions of lots within the designated Hersheypark Drive/Route 39 Overlay zoning district. *See* Ordinance, §225-401.1.C. 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 for a variance from the required landscape buffer. Initially, the Board finds that the property is unique because of its physical characteristics, namely the topography of the two-tiered elevations. Moreover, the Board finds the lower portion of the property is unique with its irregular shape, the stream that crosses the property, and the stormwater management basin on the property. There is no evidence on the record that the applicant created this 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. 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 as there are other retail and

commercial businesses in the area. Finally, the Board finds that this represents minimum relief necessary.

In addition, the Board finds that the applicant is entitled to an extension of one year, until May 19, 2023, to complete the development of the lower portion to construct the multi-tenant building as permitted in the 2021 Relief. The Board finds that the permitting process has caused the applicant a hardship. The Board previously found that the 2021 Relief would not have any detrimental impact on the use or development of any surrounding properties or generally in the neighborhood. In fact, the amount of impervious coverage has decreased. Therefore, the Board finds that an extension will not have a detrimental impact on any surrounding properties or the neighborhood. The Board further finds that the one year extension represents the minimum relief requested. As a result, the Board finds that the applicant is entitled to a one year extension for the 2021 Relief.

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 18<sup>th</sup> day of May, 2022:

1. The applicant's request for a variance from §225-401.1.C, regarding the landscape buffer is GRANTED. The applicant may maintain a landscape buffer of 17'10" from the right-of-way of Hersheypark Drive.
2. The applicant's request for an extension from §225-1007.9.C is GRANTED. The relief granted by the Zoning Hearing Board on May 19, 2021, to No. 2021 – 02, shall remain viable until May 19, 2023. All other terms, conditions, and limitations set forth in the decision of May 19, 2021, shall remain in full force and effect and are incorporated herein by reference.
3. 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.
4. Except as extended by applicable law and as provided herein, 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.

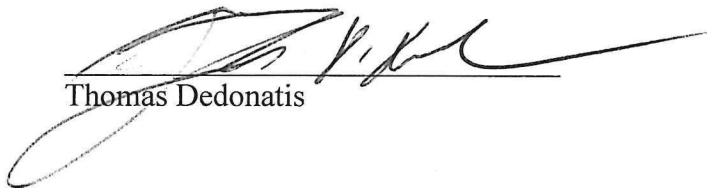
5. Any violation of any condition imposed herein shall be a violation of the Township Zoning Ordinance and shall be enforced as provided in the Ordinance.

  
\_\_\_\_\_  
Steven Seidl

  
\_\_\_\_\_  
Sandra Ballard

\_\_\_\_\_  
Lindsay Drew

  
\_\_\_\_\_  
Michael Angello

  
\_\_\_\_\_  
Thomas Dedonatis