

**DERRY TOWNSHIP  
ZONING HEARING BOARD MEETING MINUTES  
April 20, 2022**

**CALL TO ORDER**

The Wednesday, April 20, 2022, Derry Township Zoning Hearing Board meeting was called to order at 6:01 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 Lindsay Drew, Member Mike Angello, Member Tom DeDonatis

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: Charles Suhr, Stevens & Lee; David Narkiewicz, Commonwealth of Pennsylvania/DGS; Holly Evans, Evans Engineering

**APPROVAL OF MINUTES**

On a motion made by Member Angello, seconded by Vice Chairwoman Ballard, and a unanimous vote, the March 16, 2022, minutes were approved as written.

**OLD BUSINESS**

**A. Adoption of Decision in the Case of Matthew and Melinda Curran (2022-04)  
Property location: 2046 Joann Avenue, Hummelstown**

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

1. *The applicants' request for a variance from §225-305, Table 9, Item E, regarding the side yard setback for a principal use is GRANTED. The applicants may encroach to 12.6 feet of the side yard property line for the proposed garage and woodshop.*
2. *The applicant's request for a variance from §225-305, Table 9, Item E, regarding the side yard setback for a principal use for the master bedroom and bathroom is WITHDRAWN.*

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

**DERRY TOWNSHIP  
ZONING HEARING BOARD MEETING MINUTES  
April 20, 2022**

**B. Adoption of Decision in the Case of Commonwealth of Pennsylvania (2022-05)  
Property location: 175 East Hersheypark Drive and 187 Police Academy Drive,  
Hershey**

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

1. *The applicant's request for a variance from §225-401.4.F.B.1, Table 36, regarding the maximum horizontal sign face and the maximum area for two freestanding signs and one ground sign is GRANTED. The applicant may install the following wall signs with the maximum horizontal wall face and maximum area as follows:*
  - A. *Freestanding sign: Hersheypark Drive: 5'1" high x 15' 5 7/8" long, and 72.57 square feet.*
  - B. *Freestanding sign: Swatara Road: 5'1" high x 15' 5 7/8" long, and 72.57 square feet.*
  - C. *Ground sign: Kieffer Road: 4' high x 10' long, and 36.45 square feet.*

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

**C. Adoption of Decision in the Case of Commonwealth of Pennsylvania (2022-06)  
Property location: 176 East Hersheypark Drive, Hershey**

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

1. *The applicant's request for a special exception from §225-502.5, regarding the communication tower is GRANTED. The applicant may a 120 feet high communication tower with an additional 3 feet for a lightning rod at the subject property as represented during the hearing of this matter.*

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

**NEW BUSINESS**

**A. Hearing in the Case of Hershey Square 2014, LP (2022-07)  
Property location: The southeast corner of the intersection of Mae Street and  
Hersheypark Drive, Hummelstown**

The property is located in the General Commercial zoning district, the Hersheypark Drive/Route 39 Overlay district (O3), and the Environmental Overlays district. The eastern

**DERRY TOWNSHIP**  
**ZONING HEARING BOARD MEETING MINUTES**  
**April 20, 2022**

portion of the property is currently improved with a shopping center and several detached commercial buildings. Petitioner desires to develop the vacant western portion of the property with a 7,500-square-foot commercial multi-tenant building and associated parking and access drive. Relief is sought from the requirements of the Hersheypark Drive/Route 39 Overlay district (O3) regarding the 40-foot required landscape buffer, the construction of a white fence to match existing established fencing in the Overlay, and the planting of additional trees. Petitioner also seeks a time extension of one year for relief previously granted under Petition 2021-02 regarding impervious coverage on the subject property.

Charlie Suhr, Attorney with Stevens and Lee in Harrisburg, and Holly Evans of Evans Engineering in Harrisburg were sworn in.

Mr. Suhr testified to the current use of the property. A land development plan has been submitted for the lower portion of the parcel along Hersheypark Drive and recommended for approval by the Planning Commission; however, the applicant is awaiting the outcome of the hearing this evening before moving forward. Additional zoning relief is needed within the Overlay district involving a setback and buffer issue, which is the subject of this evening's hearing. Mr. Suhr distributed additional exhibit packets to the Board.

Holly Evans, President of Evans Engineering, stated that she has been a professional engineer for 33 years. In response to a question from Mr. Suhr, Ms. Evans explained that Exhibit 1 is the deed to the property; Exhibit 2 is the application narrative for the hearing; Exhibit 3 is the May 2021 Decision of the Zoning Hearing Board regarding impervious coverage for this property; and Exhibit 4 is the cover page of the zoning application plan that identifies the overall parcel and the location of the project. Ms. Evans described the buildings on the parcel and access to the existing shopping center. There is a lower entrance that goes back to the hotel and the lower portion of the existing shopping center and will lead into the proposed development, and an upper entrance that leads to the rest of the existing shopping center. Ms. Evans described the differences in elevation that exist on the parcel. Mr. Suhr asked Ms. Evans to confirm that the exhibits presented were prepared by her. Ms. Evans confirmed. Exhibit 5 is an enlargement of the area showing Hersheypark Drive and the Overlays. It also shows the stream identified as a tributary of the Swatara Creek, which requires a setback for development. The overall impervious coverage relief will be less than what the applicant originally requested, even though the size of the building is 400 square feet more than what was originally proposed. The building is broken up into three proposed tenants: Starbucks, Aspen Dental, and a third tenant that has not been established yet. A land development plan was submitted in December of 2021. It was reviewed and comments were issued. As a result of those comments, the land development plan was resubmitted in March 2022. The Planning Commission conditionally approved the plan in early April 2022, pending approval from the Zoning Hearing Board and other outside entities. Ms. Evans described where the Overlay district is located. Exhibit 6 shows the extent of the Overlay district along Route 39, with the various widths of the right-of-way marked.

**DERRY TOWNSHIP**  
**ZONING HEARING BOARD MEETING MINUTES**  
**April 20, 2022**

Ms. Evans read the portion of the Zoning Ordinance that described the requirements for development within the Overlay buffer and described the existing conditions of the land. The development plan shows encroachments into the buffer of a service entrance to the property and a small portion of the parking area, as well as green space. Ms. Evans explained that the property is dealing with floodplain areas, and the design was made with that in mind. The Department of Environmental Protection requires a buffer for the Bullfrog Tributary that runs along the northern edge of the property; therefore, the building could not be moved to the north and out of the Overlay buffer.

In response to a question from Secretary Drew, Ms. Evans explained that the service road that goes to the new development and encroaches on the buffer is not existing at this time.

Ms. Evans explained that the property has an irregular shape, and there are several conditions that necessitate the need for a dimensional variance. The stream that runs through the property has additional buffer requirements. Being adjacent to the floodplain means the building can only be placed a certain way on the property to minimize the impact to the floodplain. There are slopes associated with the stream which limits the development area significantly. It would not be possible to develop the land in conformity with the Zoning Ordinance because of these conditions. The building itself will not encroach on the buffer, it will be the access drive and parking as well as some green space, which are necessary components to the development. The encroachment into the buffer will not have any negative impact to the neighborhood and it will be conforming with what is already there. Ms. Evans explained that there are already existing encroachments on the buffer that are considered existing nonconformities. The development has been designed to require the minimum amount of relief possible.

The applicant also requested a one-year time extension for Decision 2021-02 regarding the same property. The applicant mentioned hardships with floodplain restoration and needing additional relief from the Zoning Hearing Board as reasons why a time extension is required.

In response to a question from Member Angello, Ms. Evans explained that the square depicted on the northwest side of the property is an existing transformer pad that is required to sit above the floodplain. The impervious coverage was decreased by approximately 3,000 square feet, which is significantly less than what was initially proposed. Even if the building were only to house Starbucks and Aspen Dental, the access drive and parking layout would not change due to emergency vehicle access requirements. Eliminating the extra tenant space would only eliminate one or two parking spaces and the applicant would still need to seek the same relief.

In response to a question from Secretary Drew, Ms. Evans clarified that the vegetative coverage for the lot would increase with this new plan.

Ms. Evans clarified for Chairman Seidl that the utility pole will be relocated from its current position and will be routed underground to the transformer which will then power the building.

**DERRY TOWNSHIP  
ZONING HEARING BOARD MEETING MINUTES  
April 20, 2022**

The building site would not be able to shift due to where the stormwater sites are located because of topography. There are also paving setbacks to consider.

In response to a question from Member DeDonatis, David Habig explained that the buffers at Applebee's and across the street are existing nonconformities because they were there before the Overlay district was created. Ms. Evans explained that the applicant consulted with a geotechnical engineer who recommended that the applicant not put the stormwater basin or swale underneath the asphalt as it was shown on the original plans. Parking was also clarified in that more spaces were needed the originally thought so they would not be able to eliminate any. The tenant spaces would not be able to be switched due to the drive-through queue for the Starbucks.

In response to a question from Vice Chairwoman Ballard, Ms. Evans explained the applicant will not be putting up a fence. Per the Zoning Ordinance, they can choose to leave it as natural vegetation. The elevations at the site were clarified.

In response to a question from Secretary Drew, Mr. Habig explained how this was not caught with the previous variance request. This issue was discussed with the land development plan, at which point the Zoning Officer determined the meaning of the Zoning Ordinance to include properties abutting the Overlay district. This happened six months after the variance approval.

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.

**OTHER BUSINESS**

**A. Discussion regarding Hearing Officers and remote attendance**

Solicitor Megan Huff explained that the purpose of having Hearing Officers is if a quorum is not present for a meeting, the meeting could go on with one or two Hearing Officers. The applicant would then decide whether to have the Hearing Officer(s) make the decision, or to have the hearing transcribed for the entire Board to review the testimony and make the decision.

Solicitor Huff recommended remote attendance for voting purposes only. Participating in a hearing remotely would not be appropriate due to the Board member(s) not being able to see exhibits provided at the hearing or the person(s) presenting the case.

On a motion made by Chairman Seidl, seconded by Secretary Drew, and a unanimous vote, the Board decided to allow remote attendance for voting purposes only.

**DERRY TOWNSHIP  
ZONING HEARING BOARD MEETING MINUTES  
April 20, 2022**

The decision of the Board was to not appoint Hearing Officers unless circumstances arise that require the need for them on a case-by-case basis.

**ADJOURNMENT**

On a motion made by Vice Chairwoman Ballard, seconded by Chairman Seidl, and a unanimous vote, the meeting was adjourned at 7:38 p.m.

**DELIBERATION**

The Board met to deliberate in the case of Hershey Square 2014, LP (2022-07) and directed the Solicitor to prepare the draft decision on the case for formal action at the May 2022 meeting.

Submitted by:

\_\_\_\_\_  
Lindsay Drew, Secretary