

**BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD**

IN THE MATTER OF: : NO. 2022 – 13  
: :  
Davis Enterprises LLC : :  
: :  
: PREMISES LOCATION:  
: 1512 E. Caracas Avenue  
: Hershey, Derry Township, PA

**MEMORANDUM, FINDINGS, OPINION AND ORDER**

This is the application of Davis Enterprises LLC with regard to the property located at 1512 E. Caracas Avenue, Hershey, Derry Township, which is owned by Sweet Dreams Properties, LLC. The applicant has signed an agreement of sale to purchase the subject property. A hearing in this matter was held on October 19, 2022, and continued on November 16, 2022, at the request of the applicant. Both hearings were held after proper advertising. At both hearings, Donald Davis appeared, was sworn, and testified. Robert Fox, a realtor, appeared, was sworn, and testified on behalf of the applicant at the hearing in October 2022. At both hearings, Zoning Hearing Board Member Thomas Dedonatis recused himself from the deliberation and voting with respect to this matter.

The application indicates that the subject property is located in the Palmdale Mixed Use zoning district. The property is improved with a mixed use building. A previous owner obtained relief from the Zoning Hearing Board to use the property as an office building. The current owner previously obtained relief from the Zoning Hearing Board to use a portion of the property that had been used as a medical related research facility, specifically for sleep studies, as a

healthcare practitioner's office or chiropractor's office. Since that application, a portion of the property was converted to a chiropractor's office. The current application seeks a special exception to substitute one nonconforming use for another. Specifically, the applicant proposes to substitute a portion of the remaining section of the property that had last been used for the sleep studies for use as a guest lodging, dining, and conference facility.<sup>1</sup>

The mixed use building was built in the 1990s and contains approximately 17,500 square feet on two floors. There is a sidewalk along the property. There are currently two tenants occupying other portions of the building: a chiropractor's office on the second floor and a psychologist or psychiatrist's office on the first floor. The proposed guest lodging, dining, and conference facility would use approximately 3,500 square feet on the second floor that had last been used as a medical related research facility for sleep studies. The applicant envisions small groups or non-profit organizations using the space for training, team building, or strategic planning activities. The subject space contains a large conference room, a small conference room, 6 lodging rooms, 3 full bathrooms, and a lunch room. Participants would not be restricted from conducting activities outside but the sloping grounds and parking lot would not be conducive to outside activities. There are no kitchen facilities onsite so the participants would have to go offsite for meals, order for delivery, or use third party catering services using prepared

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<sup>1</sup> Initially, the applicant sought a special exception to substitute one nonconforming use for another to use a portion of the property as a conference and meeting center. The Ordinance defines conference and meeting centers as "a facility used for service organizations, business, and professional conferences, and seminars limited to accommodations for conference attendees, including catering not prepared on site for conference attendees but not including sleeping quarters." Ordinance, §225-1103. Because the applicant is proposing sleeping quarters, the applicant amended its application in advance of the November 16, 2022 hearing to propose the use as a guest lodging, dining, and conference facility.

meals. It is possible that alcohol could be consumed by the participants in the space, but it would not be sold or stored onsite.

The proposed guest lodging, dining, and conference facility would be limited to 12 or few participants because there are only 6 lodging rooms for overnight stays. No more than two individuals would be permitted in each sleep room. No lodging would be permitted for the general public but only in conjunction with use of the conference rooms. There are 70 parking spaces available, which, according to the applicant, is more than sufficient for all uses of the property. Mr. Davis argued that the guest lodging, dining, and conference facility use would be less intensive than a healthcare practitioner's office or chiropractor's office, but he did not know how the space was used for sleep studies, the last use of the subject space. Mr. Davis testified that the space would not be advertised as an Airbnb but would be advertised on a website for businesses.

Maria DeCarmine-Bender, who resides at 1445 E. Caracas Avenue, testified at both hearings that she has lived at her property for nine years. Her property is across the street from the subject property. Even limited to 12 individuals, she thinks the applicant's proposed use of the property will have a big impact on this quiet neighborhood. There are about 10 children who live within a block of the property. In addition, there is a bus stop at the subject property. She did not think it was a good idea to have strangers within a close proximity of the children. Moreover, because there are not sidewalks in the neighborhood, the neighbors use the streets for walking. When the space was used for a sleep study, the neighbors never saw the patients, who came in the evening and left early in the morning. She testified that even a healthcare

practitioner's office or chiropractor's office would be finished by 4:30 p.m. or 5:00 p.m. Instead, as a guest lodging, dining, and conference facility, people could be coming and going at any hour of the day. This presents a safety concern for her as the people using the space may not be local or have a vested interest in the neighborhood. In addition, with people present at the property at night, light pollution will be a problem. The streets are narrow and 12 people coming and leaving at the same time will present traffic issues. According to Ms. DeCarmine-Bender, there are other conference rooms available within a mile of the subject property, such as the Best Western and Hampton Inns & Suites.

Samuel Moyer, who resides at 1505 Caracas Avenue, testified at the October hearing. He agreed with Ms. DeCarmine-Bender's testimony. He thought there were a sufficient number of motels within a mile of the property. He was concerned about delivery trucks delivering food for the subject space at all times during the day.

Deb Fisher, who owns 1504, 1510, and 1514 E. Chocolate Avenue, testified at the October hearing. She is concerned about traffic with the proposed use. She said that Walker Avenue is too narrow, and it is already difficult to pull out onto Chocolate Avenue. According to Ms. Fisher, this is a primarily residential area.

Ginger Lowe, who resides at 453 Chestnut Avenue, testified at the November hearing. She is the President of Derry Township Community Cats, which is a trap, neuter, and return free roaming cats organization that began in 2012. The organization is supported by Derry Township and the police department. The current owner of the subject property cooperates with the organization by allowing a feeding station at the back of the property. The colony in the area is

not growing, and there are about 15 cats remaining. She would like any new owner to ensure the safety of the cats and cooperate with the organization.

The Ordinance defines a guest lodging, dining, and conference facility as “a facility used for service organizations, business and professional conferences, and seminars limited to accommodations for conference attendees, including catering that is prepared on site and lodging provided on site for conference attendees.” Ordinance, §225-1103. The Zoning Ordinance allows the Zoning Hearing Board to grant a special exception to substitute one nonconforming use of land, building, or structures with another nonconforming use of land, building, or structures if the applicant can demonstrate to the Zoning Hearing Board’s satisfaction that the proposed nonconformity is no more detrimental to the area than the existing nonconforming use. *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. Finally, the applicant must also demonstrate compliance with criteria set forth in §225-502, Specific Criteria For Special Exception Uses:

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.

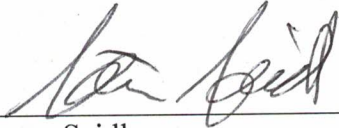
The Board finds that the applicant is not entitled to the requested relief with respect to the use of the subject property. As this Board has often repeated, a special exception is neither special nor an exception. Instead, it is a permitted use provided the applicant can demonstrate compliance with the applicable criteria. In this case, the applicant did not demonstrate its compliance with the applicable criteria. The Board finds that the hours of the guest lodging, dining, and conference facility will be greater than the hours for the sleep studies. As a result, the Board cannot find that the proposed use as a guest lodging, dining, and conference facilities would be no more intense. To the contrary, the guest lodging, dining, and conference facility use will be more intense as guests will be coming to and from the building at all hours rather than arriving at night to sleep for the sleep studies and leaving early in the morning. In addition, the Board finds that the application, if approved, will have a negative impact on the health safety and welfare of residents of the mostly residential area. The transient nature of the participants for the use proposed simply is incompatible with the established neighborhood character of the area. Consequently, the Board finds that the applicant is not entitled to the requested special exception for the substitution of one nonconforming use with another nonconforming use.

Based on the Board's findings and conclusions, the Board adopts the following:

**ORDER**

AND NOW, this 5<sup>th</sup> day of December, 2022:

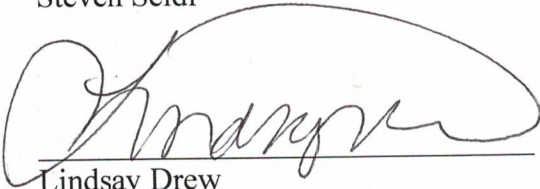
1. The applicant's request for a special exception from §225-603, regarding the substitution of one nonconforming use for another is **DENIED**.




Steven Seidl



Sandra Ballard



Lindsay Drew



Michael Angello