

**BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD**

IN THE MATTER OF:	: NO. 2022 – 016
	:
Matthew R. Luttrell	:
	:
	: PREMISES LOCATION:
	: 840 and 844 East Chocolate Avenue
	: Hershey, Derry Township, PA

**MEMORANDUM, FINDINGS, OPINION AND ORDER**

This is the application of Matthew R. Luttrell with regard to the property located at 840 and 844 East Chocolate Avenue,<sup>1</sup> Derry Township, that is owned by Irvin and Lucinda Hess. A hearing in this matter was held on December 21, 2022, after proper advertising. At that time, the applicant, an architect with Thynk design, LLC, appeared with Irvin Hess and Irene Hess, all of whom were sworn, and testified at the hearing. In addition, David Habig, the Assistant Director of Community Development and Zoning Officer for the Township, was sworn and testified at the hearing. Prior to the applicant’s testimony, Board Members Michael Angello and Thomas Dedonatis disclosed that they used the applicant for their respective unrelated projects in the past and no conflict exists. Solicitor, Megan Huff, disclosed that her firm represented the applicant on unrelated matters, and as such, no conflict exists. No other members of the public testified.

The application indicates that the subject property is located in the Palmdale Mixed Use and O-10 zoning districts. The property is improved with a bakery with retail sales and limited customer seating, and the applicant proposes to continue that use. The application seeks a

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<sup>1</sup> The applicant orally amended his application at the hearing to reflect the two parcels that are currently in the process of being combined.

variance to permit head-in parking spaces in order to reconfigure the parking on the property to construct an addition.<sup>2</sup>

The lot is narrow with approximately 90 feet of road frontage, and the existing building sits back further, approximately 20 feet, on the lot than the surrounding buildings on adjacent lots. It is a two story structure with a basement. The second floor contains the offices for Desserts Etc., which has operated at the property since 2012. The owners propose to construct an addition to the existing structure. The addition would allow for the existing kitchen to be moved from the basement to the new addition. This would allow for the kitchen to be on the same level as the customers. In addition, the addition would promote employee safety as the employees would no longer have to climb the stairs.

As granted in prior relief, the business is permitted to have 21 seats for customers. No new seating will be added as a result of the addition. Desserts, Etc. has 30 employees. The number of employees at the store on any given day will vary. There are 5 to 6 bakers and retail employees.<sup>3</sup> Because of the holiday season, there is a refrigerated truck parked on the property to store Christmas orders because the existing structure does not have enough refrigerated space as there is no walk-in refrigerator on the premises. The addition will alleviate the need for the

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<sup>2</sup> In July 2000, the Board granted relief regarding parking and maximum impervious coverage. In October 2012, the Board granted relief to use the property as a coffee shop with 21 seats for customers. In June 2013, the Board granted relief for maximum impervious coverage and encroachment into the front yard setback for installation of a patio.

<sup>3</sup> Mr. Habig confirmed that the Ordinance's parking requirements are dependent on the number of customers' seating and does not require a certain amount of parking for employees.

refrigerated truck. The addition will reduce the impervious coverage a minimal amount, of which the exact amount will be determined during the permitting process.

The property is accessed through a one-way driveway. There are currently 16 parking spaces for the property. Currently, there is no loading space. The existing parking configuration has not changed since the owners purchased the property in 2012. However, the owners do rent space from the Hershey Trust for off-site parking. This is for a matter of convenience as the existing parking is compliant with the Ordinance. The addition would extend into the existing parking area. Because of the addition, the applicant proposes to reconfigure the parking to reduce the number of spaces to 14 plus 1 loading space. This reduction in parking would not reduce the number of customer seating available.

The applicant proposes 7 head-in parking spaces that are accessed along South Alley that is located south of the property. These proposed parking spaces would require vehicles to back onto South Alley, a two-lane road. The applicant argued that South Alley services a limited number of properties and five commercial properties use South Alley to facilitate traffic movement on their respective properties. According to the applicant, the traffic on South Alley is primarily customers or employees of the respective businesses. South Alley is part of the Township's on-road bike path network. While South Alley can be congested, it is not unique to the area as there are other part of the bike path network that have heavier traffic and are more congested.

The Ordinance requires vehicles to enter the public street in a forward direction. *See* Ordinance, §225-402.2.B. 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. Initially, the Board finds that the property is unique because of the location of the structure and the narrowness of the lot. 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 to 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 variance would negatively impact surrounding properties. No neighbors testified in opposition to the application. Finally, the Board finds that this represents minimum relief necessary.

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**

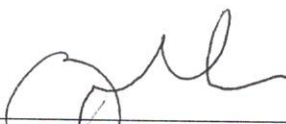
AND NOW, this 18<sup>th</sup> day of January, 2023:

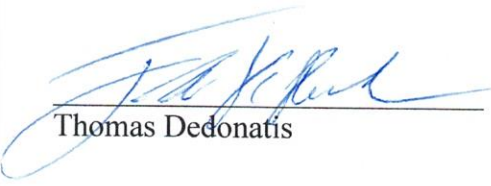
1. The applicant's request for a variance from §225-402.2.B., regarding entering the public street in a forward direction is GRANTED. The applicant may construct seven head-in parking spaces.
2. The applicant shall construct the improvements in strict compliance with the plans and specifications submitted 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.

**THE FOLLOWING BOARD MEMBERS VOTE TO ADOPT THIS DECISION AS WRITTEN AND GRANT THE RELIEF TO THE APPLICANT:**

  
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Michael Angello

  
\_\_\_\_\_  
Thomas Dedonafis

**THE FOLLOWING BOARD MEMBER VOTES AGAINST THIS DECISION AS WRITTEN AND WOULD INSTEAD DENY THE RELIEF REQUESTED BY THE APPLICANT:**

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

As a result of a vote of two members in favor of the requested relief, and one member against the requested relief, the relief is **GRANTED**.