

**DERRY TOWNSHIP
ZONING HEARING BOARD MEETING MINUTES
February 15, 2023**

CALL TO ORDER

The Wednesday, February 15, 2023, 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 Chairman Tom DeDonatis; Secretary Lindsay Drew; Member Bill Tafuto

Board member absent: Member Mike Angello

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

Public registering attendance: Mike Zemba, U-Haul; Jeff Levengood, U-Haul; Darlene Sims, U-Haul; Kurt Hoffman, U-Haul; Paul Navarro, Navarro & Wright Consulting Engineering, Inc.; Ambrose Heinz, Stevens & Lee; Kevin Ferguson

APPROVAL OF MINUTES

On a motion made by Secretary Drew, seconded by Vice Chairman DeDonatis, and a unanimous vote, the January 18, 2023, minutes were approved as written.

OLD BUSINESS

**A. Adoption of Decision in the Case of Dwayne Morris (2022-17)
Property location: 117 West Governor Road, 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 pursuant to §225-502.9.A regarding an accessory dwelling unit is GRANTED.*
2. *The occupancy of the accessory dwelling unit shall be limited in accordance §225-502.9.A.5 and 6 of the Ordinance. The applicant shall notify the Township if the primary occupant, the applicant's granddaughter, of the accessory dwelling unit changes.*
3. *The property owner shall execute a recordable agreement with the Township, assignable to the property owner's heirs and successors, which shall be recorded in the Dauphin County Courthouse. This agreement shall clarify that the future use*

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of the accessory dwelling unit shall not be for any nonconforming use, residential or otherwise, if the use specifically authorized by the Township Zoning Hearing Board ceases to exist, and that the property owner and the Township agree that no variance will be granted by the Township Zoning Hearing Board to allow the use of the accessory dwelling unit for other nonconforming purposes in the future. Such agreement shall be drafted and recorded at the applicant's expense.

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

NEW BUSINESS

**A. Hearing in the Case of U-Haul of Hershey (2023-01)
Property location: 1000 Old West Chocolate Avenue, Hershey**

The property is located in the Industrial zoning district. It is improved with a one-story storage facility. The applicant desires to demolish the existing building and construct a new storage facility. The applicant is appealing the Zoning Officer's decision regarding restricting parking within required yard areas, and/or a determination regarding existence of an existing non-conforming structure. The applicant, in lieu thereof, seeks relief from the placement of parking in the required front yard area.

Mike Zemba, U-Haul, and Paul Navarro, Navarro & Wright Consulting Engineering, Inc., were sworn in.

Ambrose Heinz of Steven & Lee explained the current use of the property. A land development plan was submitted in November 2022 proposing a new building and changes to impervious coverage. At that time, the Derry Township Zoning Officer raised a concern with parking in the front setback. The applicant withdrew the land development plan and submitted the current application to the Zoning Hearing Board for consideration regarding the Zoning Officer's interpretation of the Zoning Ordinance regarding parking. If the Zoning Officer's determination is upheld, the applicant requests a variance to allow parking in the front setback.

Mike Zemba responded to questions from Mr. Heinz in reference to his employment with U-Haul and his responsibilities. Mr. Zemba explained the historic ownership of the property. The current use is a U-Haul facility with a retail store. The proposed four-story building would be strictly storage, with a small retail store for boxes and other moving supplies.

Paul Navarro responded to questions from Mr. Heinz in reference to his credentials. Mr. Navarro explained the current site plan and surrounding area and several historical aerial photos of the property.

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In response to questions from Member Tafuto, Mr. Heinz and Mr. Navarro defined the site map legend in more detail. They also explained the parking areas on the plan, as well as the proposed grass areas.

Mr. Navarro explained the current setback rules according to the Zoning Ordinance. He also explained the Zoning Ordinance definitions pertaining to this case. The Industrial zoning district does not provide setbacks for accessory structures like the other zoning districts do. The General Commercial zoning district also does not provide setbacks for accessory structures. Mr. Navarro determined that the paved area existed prior to the current Zoning Ordinance and therefore should be deemed as nonconforming. Mr. Navarro stated that he was not aware of any regulations pertaining to parking in the Industrial zoning district.

Mr. Hines explained that the applicant is requesting a variance for parking in the setback in the event the Zoning Hearing Board upholds the Zoning Officer's determination. In response to Mr. Heinz, Mr. Navarro agreed that the existing conditions on this property, including the nature of the impervious coverage and lot depth, create a hardship in meeting the required setbacks for parking. The proposed building is within the buildable area for the site. Mr. Navarro said the current design would not allow for a different use of the property. He stated it would not be possible to have parking on the site without being in the setback. Mr. Navarro believes having parking in the setback would not alter the surrounding area, as some of the properties already have parking within the setbacks. The proposed parking spaces are the minimum number of parking spaces needed, as determined by the Zoning Officer.

In response to a question from Secretary Drew, Mr. Navarro said there are 26 spaces total along the side and front of the property and an additional four spaces to the rear. Mr. Zemba said the parking spaces were already lined when they purchased the property in 2021.

In response to questions from Vice Chairman DeDonatis, the property is not in the O.9 Overlay, and diagonal parking is permitted by the Township. Mr. Navarro stated the diagonal parking would take away from space needed for emergency vehicle access. Mr. Zemba said the building is custom for this site. Mr. Navarro said that making the building smaller to accommodate parking outside the setback would not be feasible with the design and features of the building. Mr. Zemba confirmed that making the building smaller would cause them to lose rentable space inside the building.

In response to a question from Secretary Drew, Mr. Navarro said they looked at several designs for the building which was originally going to be a six-story building, so it has already been diminished in size to fit the footprint. Mr. Zemba stated in their original land development plan submission, they proposed fewer parking spaces. They did not believe they needed 20 spaces but redesigned the layout based on the Zoning Officer's determination of how many spaces would be needed.

Mr. Zemba confirmed the footprint of the existing building is 13,872.61 square feet and the footprint of the proposed building is 29,152 square feet.

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Chuck Emerick, Director of Community Development, was sworn in. Mr. Emerick stated that Township staff does not have any objection to a variance being granted to allow parking in the setbacks, but that parking is regulated to the setbacks. He then explained the historic ownership and usage of the property and what permits were issued for and when. None of the plans for these permits showed where pavement was lined for parking. Under the Zoning Ordinance, there is no definition for principal or accessory yard area. The yard area definition allows for such protrusions as allowed by the Zoning Ordinance for parking for residential uses. Mr. Emerick also provided Google Earth and Dauphin County GIS photos of historic views of the property that show parking was not being used. It is believed that 2018 was when parking was established in the front of the property, which created a violation of the Zoning Ordinance. The Zoning Ordinance calls for one parking space for every five storage units. In this case, 210 parking spaces would be required. The Zoning Ordinance also allows for the applicant to petition the Zoning Officer with credible evidence that a lesser amount of parking would be sufficient. U-Haul did a study that said 12 parking spaces would be sufficient and provided that information to Mr. Emerick. It was determined by Mr. Emerick through his own research of similar uses across the country that 20 parking spaces would be suitable. Mr. Emerick also described the definition of a parking lot based on the Zoning Ordinance and what is included as a parking lot.

In response to questions from Chairman Seidl, Mr. Emerick confirmed that the applicant is proposing 1,013 storage units in the proposed building.

In response to questions from Mr. Heinz, Mr. Emerick confirmed that parking was happening in the west side and rear setbacks over the history of the property and at one point was used as loading and unloading space. Mr. Emerick agreed there are other properties along the Old West Chocolate Avenue corridor that have parking within the front setback. Those properties were established before the current Zoning Ordinance; therefore, the parking in the front setback would be an existing nonconformity.

In response to an inquiry from Secretary Drew, Mr. Emerick confirmed that the existing nonconformity on the property is loading/unloading space, not parking. He also confirmed that he would not be opposed to a variance being granted for parking in the setback to keep in conformity with the neighborhood.

In response to a question from Secretary Drew, Mr. Hines confirmed that the applicant is before the Zoning Hearing Board to appeal the determination of the Zoning Officer regarding the restriction of parking in the setbacks, or to determine that a nonconformity exists. If denied the appeal, the applicant is requesting a variance be granted to allow for parking in the setback.

No one else offered testimony.

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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

None.

ADJOURNMENT

On a motion made by Secretary Drew, seconded by Vice Chairman DeDonatis, and a unanimous vote, the meeting was adjourned at 7:57 p.m.

DELIBERATION

The Board met to deliberate in the case of U-Haul of Hershey (2023-01) and directed the Solicitor to prepare the draft decision on the case for formal action at the March 2023 meeting.

Submitted by:

Lindsay Drew, Secretary