

BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF: : NO. 2023 – 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 the property owned by U&ME Hershey, LLC located at Mae Street and Hersheypark Drive, Hummelstown, Derry Township. A hearing in this matter was held on May 17, 2023, after proper advertising. At that time, Pablo Medeiros, the Director of Development for the applicant, and the applicant’s engineer, Holly Evans of Evans Engineering, Inc., appeared, with the applicant’s attorney, Charles M. Suhr, were 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, the amount of impervious coverage, and most recently, a landscape buffer.

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 owned the property from 2014 until February 2023, proposes to develop it under a Master Lease with the current owner. In 2021, by the Zoning Hearing Board’s decision, dated May 19,

2021, to No. 2021 – 02, the applicant obtained a variance to increase impervious coverage on the property to 61.87% to construct a commercial, multi-tenant building with associated parking on the lower portion (the “2021 Relief”). In 2022, by the Zoning Hearing Board’s decision, dated May 18, 2022, filed to No. 2021 – 07, the applicant obtained a variance to maintain a landscape buffer of 17’10” from the right-of-way of Hersheypark Drive (the “2022 Relief”).

While the Zoning Hearing Board granted the 2021 Relief and the 2022 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 the date of the decisions, unless the applicant had obtained a zoning permit, building permit, or certificate of use or occupancy. As a result, as part of the 2022 Relief, the applicant sought, and received, an extension until May 19, 2023, for the 2021 Relief. The current application seeks an extension for both the 2021 Relief and 2022 Relief to remain viable until May 19, 2024.

Since the relief granted by the Zoning Hearing Board, the applicant has been working on obtaining approval for its land development plan. On December 20, 2022, following a public hearing on December 6, 2022, the Board of Supervisors gave conditional approval of the land development plan but deferred final approval pending the results of a traffic impact study. During the land development process and prior to the hearing on December 6, 2022, the applicant was under the impression that the Township would accept a fee in lieu of the traffic impact study. The Planning Commission approved the project in November 2022 without requiring a traffic impact study. In addition, Township staff had supported a waiver of the traffic impact study in lieu of payment since March 2022. Following the December 6, 2022 hearing,

the applicant's traffic engineer and the Township's engineer agreed on the scope of the traffic impact study. The traffic counts were taken on December 18, 2022, and the study was submitted to the Township in February 2023. The proposed roadway improvements require approval from PennDOT, and the applicant and the Township are working with their respective counsel on a draft agreement for the Township, as the applicant, to submit the PennDOT Highway Occupancy Permit application. The applicant anticipates final approval of its land development plan upon receipt of the PennDOT permit, which can take time depending on PennDOT's comments.

The applicant argued that it was diligently working on obtaining all of the necessary approvals, and the delay is outside of the applicant's control. According to the applicant, if it had known a traffic study would be required, it could have done it earlier while it was waiting for the Department of Environmental Protection and the Army Corps of Engineers to approve the crossing of Bullfrog Valley Creek, which took almost a year. The applicant anticipates the project being finished in no more than a year, but hopefully sooner. The applicant introduced various exhibits at the hearing, all of which were introduced into the record.

In this matter, the Board finds that the applicant is entitled to an extension of one year, until May 19, 2024, to complete the development of the lower portion to construct the multi-tenant building as permitted in the 2021 Relief and 2022 Relief. The Board finds that the permitting process has caused the applicant a hardship. The Board previously found that the 2021 Relief and 2022 Relief would not have any detrimental impact on the use or development of any surrounding properties or generally in the neighborhood. 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, until May 19, 2024, for the 2021 Relief and 2022 Relief.

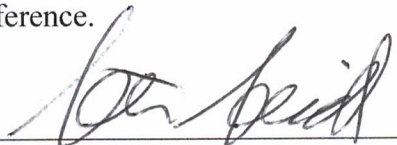
Based on the Board’s findings and conclusions, the Board adopts the following:

ORDER


AND NOW, this 20th day of June, 2023:

1. 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 and on May 18, 2022, to No. 2022-07 shall remain viable until May 19, 2024.

2. All other terms, conditions, and limitations set forth in the decisions of May 19, 2021 and May 18, 2022, shall remain in full force and effect and are incorporated herein by reference.



Steven Seidl



Thomas DeDonatis

Lindsay Drew



Michael Angello

William Tafuto