

**DERRY TOWNSHIP
ZONING HEARING BOARD MEETING MINUTES
May 17, 2023**

CALL TO ORDER

The Wednesday, May 17, 2023, Derry Township Zoning Hearing Board meeting was called to order at 6:02 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 Mike Angello; Member Bill Tafuto

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: Kyle D'Angello, 1251 Swatara Road; Pablo Medeiros, Hershey Square 2014, LP; Charles Suhr, Stevens & Lee; Holly Evans, Evans Engineering, Inc.

APPROVAL OF MINUTES

On a motion made by Vice Chairman DeDonatis, seconded by Secretary Drew, and a unanimous vote, the April 19, 2023, minutes were approved as written.

OLD BUSINESS

**A. Adoption of Decision in the Case of Kyle D'Angelo (2023-02)
Property location: 1251 Swatara 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 §225-407.F. regarding the maximum height of a fence is GRANTED in part and DENIED in part. The applicant may construct a fence that has a maximum height of 10 feet for the enclosed portion around the orchard/garden. The applicant may construct a fence that has a maximum height of 6 feet on the rear property line that does not enclose the orchard/garden.*
2. *The relief granted herein is strictly contingent on no part of the fence crossing the applicant's property lines.*

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3. *For all the foregoing reasons, the applicant's challenge to validity of §225-407 of the Ordinance is DENIED.*
4. *The applicant's request for reimbursement of the filing fees is beyond the purview of this Zoning Hearing Board.*
5. *The applicant shall construct the improvements, as approved, 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.*
6. *Except as extended by applicable law, the relief granted herein shall be valid for two (2) years 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.*

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

Kyle D'Angelo requested that the Board explain their Decision. The Board responded that their reasoning is included in the written Decision, which Mr. D'Angelo will receive via mail and e-mail.

NEW BUSINESS

A. Hearing in the Case of Hershey Square 2014, LP (2023-03)

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 portion of the property is currently improved with a shopping center and several detached commercial buildings. The applicant seeks a time extension of one year for relief previously granted under Petition 2021-02 regarding impervious coverage on the subject property and Petition 2022-07 regarding the requirements of the Hersheypark Drive/Route 39 Overlay district (O3) relating to 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.

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Pablo Medeiros of Hershey Square 2014, LP, and Holly Evans of Evans Engineering, Inc., were sworn in.

Charlie Suhr of Stevens & Lee (the applicant's legal counsel) explained what is located on the subject property, as well as the applicant's previous visits to the Zoning Hearing Board. In response to questions from Mr. Suhr, Pablo Medeiros explained that the property was recently sold to U & Me Hershey, LLC. Mr. Medeiros explained Hershey Square 2014, LP's previous visits to the Zoning Hearing Board and the difficulties that have led them to request an extension on the granted relief. It was suggested by Township staff and the Planning Commission that in lieu of the applicant providing a traffic study regarding the anticipated increase in vehicle trips to and from the site as part of the land development plan process, a financial contribution could be made to the Township for traffic improvements. The Board of Supervisors did not agree with this suggestion and required the applicant to submit a traffic study. The traffic study was completed in December 2022 and submitted to the Township in February 2023. PennDOT will also be involved in this process, and they require the Township to be the applicant on the Highway Occupancy Permit Application. Currently, Hershey Square 2014, LP, and the Board of Supervisors are trying to come to an agreement regarding this matter. Additionally, it will likely take several months for PennDOT to review and respond to the Highway Occupancy Permit Application after it is submitted.

In response to a question from Member Tafuto, Mr. Suhr confirmed that the Board of Supervisors did not grant the applicant's request for a waiver from the Subdivision and Land Development Ordinance requirements regarding the submission of a traffic study in conjunction with the land development plan, and that caused the delay in the process of the applicant receiving approval on the land development plan and applying for a building permit.

Holly Evans responded to a question from Chairman Seidl by explaining why the land development plan was submitted later than expected.

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

Kyle D'Angelo had questions for the Board regarding the Decision in his case. He wanted to know what the governmental interest is in restricting fence heights for residential properties as opposed to agricultural properties.

The Board and their Solicitor asked Mr. D'Angelo to read the Decision, when received, to get the answers to his questions and if he is aggrieved, he can appeal the Decision to the Dauphin County Court of Common Pleas. If he is not happy with how the Zoning Ordinance is written, that is a matter for the Board of Supervisors.

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ADJOURNMENT

On a motion made by Secretary Drew, seconded by Vice Chairman DeDonatis, and a unanimous vote, the meeting was adjourned at 7:12 p.m.

DELIBERATION

The Board met to deliberate in the case of Hershey Square 2014, LP (2023-03) and directed the Solicitor to prepare the draft decision on the case for formal action at the June 2023 meeting.

Submitted by:

Lindsay Drew, Secretary