

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

CALL TO ORDER

The Wednesday, November 15, 2023, Derry Township Zoning Hearing Board meeting was called to order at 6:00 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; Member Angello; Member Tafuto

Board member absent: Secretary Lindsay Drew

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: Sherri Stom, 2427 Zell Court, Hummelstown; Lloyd E. Stom, 2427 Zell Court, Hummelstown; Krishna and Rick Wilhelm, 565 Hilltop Road, Hummelstown; Nancy Sajeski, 2147 Carey Way, Hummelstown; Steve and Terry Novchich, 2421 Zell Court, Hummelstown; Reverend Richard L. Sheffield, 2441 Zell Court, Hummelstown; Reverend James E. Stough, 1134 Cord Drive, Hummelstown; Kenny Hinebaugh, The Hershey Company; Lynn and Rose Knepp, 2141 Carey Way, Hummelstown; Rob Muscalus, 2471 Zell Court, Hummelstown; Frank and James Nardo, 2177 Swatara Creek Road, Hummelstown; Tom Scott, 218 Pine Street, Harrisburg; Alice Hamilton, 2140 Carey Way, Hummelstown; Tucker Hull, 108 West Main Street, Hummelstown; Angelina Marnickas, 2137 Carey Way, Hummelstown; Joseph Marnickas, 2137 Carey Way, Hummelstown; David and Jane Erikson, 2459 Zell Court, Hummelstown; Thomas and Elizabeth *[last name not provided]*, 1280 Stone Creek Drive, Hummelstown; Peter Wertz, McNees, Wallace, and Nurick; Michael Kushner, 2167 Carey Way, Hummelstown; Gary Petrewicz, 2453 Zell Court, Hummelstown; Paul Pintarch, 2122 Carey Way, Hummelstown; Mike Nortrup, *The Sun*; Eugene A. Sajeski, 2147 Carey Way, Hummelstown; Jen Geduldig, 2483 Zell Court, Hummelstown; Steve Geduldig, 2483 Zell Court, Hummelstown; Brian Prucha, 1220 Auburn Avenue, Hummelstown; Tom and Sara Rogalli, 621 Hilltop Road, Hummelstown; Raphael and Tammy Peters, 1110 Middletown Road, Hummelstown; Elwood and Marjorie Menear, 1215 Upton Court, Hummelstown

APPROVAL OF MINUTES

On a motion made by Member Angello, seconded by Vice Chairman DeDonatis, and a unanimous vote, the October 11, 2023, minutes were approved as written.

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OLD BUSINESS

A. Continuance in the Case of Loudoun Centre, LLC (2023-13)

Property location: 2177 and 2181 Swatara Creek Road, Hummelstown

The property is located in the R-3 Small Lot, Mixed Residential zoning district. It is currently improved with a farmhouse, single-family dwelling, and multiple accessory buildings. The applicant is seeking to develop the land with six multifamily apartment buildings. Relief is sought from the maximum height for a principal structure.

Frank Nardo of Loudoun Centre, LLC, was sworn in. Tom Scott, attorney with Killian and Gephart, described the current state of the property and the structures on the property. Mr. Scott described the elevation changes in the topography of the property. The property has more than 50 feet in elevational changes. The height variance request is 13.5 feet due to the Zoning Ordinance only allowing for a maximum height of 40 feet in the R-3 zoning district. If the property is developed in conformance with the Zoning Ordinance, it would be developed with eight buildings and limited green space. To allow for more green space and accomplish what the property owners desire to build, they would need to build six four-story buildings instead of eight three-story buildings. Parking will be sufficient for the number of units due to an underground parking floor for each unit. The intention is to leave the existing dwelling and barn on the property. Mr. Scott believes the neighborhood would not be affected by the development since there is a 100-foot cell tower and mature pine trees that act as a buffer.

In response to a question from Chairman Seidl, Mr. Nardo showed where the existing buildings are on the property, which ones will remain, and what will be removed. Mr. Nardo also explained that the existing barn is 48 feet at its maximum height.

Member Tafuto asked for clarification on whether the property could be developed in conformity with the Zoning Ordinance. Mr. Nardo confirmed that the property could be developed with eight buildings and will max out the impervious coverage limitations; however, the applicant is requesting the height variance to maximize green space with only six buildings.

Mr. Nardo confirmed they will not be doing subsurface parking with the eight-building plan; however, it could be an option. Mr. Nardo also supplied pictures of what the buildings would generally look like.

David Habig, Assistant Director of Community Development, confirmed that the measurement of building height is from the average finished grade to the highest point of the building.

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Public Comment:

Bryan Prucha, 1220 Auburn Avenue, President of Stone Creek Homeowners Association, was sworn in. Mr. Prucha believes there are 16 duplex homes that would be impacted by this height variance. Mr. Prucha said the four-story apartment buildings are not in conformity with the neighborhood that contains all one- or two-story single-family homes.

Tucker Hull, the attorney for Stone Creek Homeowners Association, asked Mr. Prucha to describe the topography of where the proposed buildings will be. Mr. Prucha responded that the buildings are very close to the Stone Creek neighborhood. The existing tree line does not block the view of the property from the neighborhood. Mr. Prucha said the proposed buildings would tower over the existing dwellings and are not in character with the neighborhood.

Mr. Habig showed a topographical view of the property and explained the topography.

In response to a question from Vice Chairman DeDonatis, Mr. Prucha confirmed there are 207 residences in the Stone Creek neighborhood, and he did not poll the residents to get their opinions on the proposed development.

In response to a question from Member Tafuto, Mr. Prucha confirmed that the Homeowners Association is opposed to the development, even if it was done in strict conformity with the Zoning Ordinance.

Mr. Prucha confirmed there was a For Sale sign on the property before the current owners purchased it. The Homeowners Association discussed buying the property but did not.

Robert Muscalus of 2471 Zell Court was sworn in. Mr. Muscalus was concerned that these issues were not addressed or researched by the applicant prior to buying the property. He believes the variance will significantly affect the quality of life for him and his neighbors. The properties that border the development are where the homeowners have their decks and screened in porches, and most of the bedrooms in those dwellings are on the side that faces the proposed development. He believes the buildings will impact the privacy of those residents.

Nancy Sajeski of 2147 Carey Way was sworn in. Ms. Sajeski stated that her duplex is the closest to the proposed development and because of the height she will be one that has to stare at 53 feet of building. She is also concerned that she will no longer see the sun from her residence.

Richard Sheffield of 2441 Zell Court was sworn in. Mr. Sheffield moved to the area from Manhattan about seven years ago and is concerned that this development will cut off a lot of natural light to his home. He stated he can barely see the roof of the barn from his property because of how steep the drop off is from the top of the property. Mr. Sheffield believes there

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is no hardship on the part of the applicant because they bought the property without doing the research to see if what they wanted to do would be feasible.

Terry Novchic of 2421 Zell Court was sworn in. Mrs. Novchic is opposed to the variance request and is concerned about excavation, should the project be approved.

Jane Erikson of 2459 Zell Court was sworn in. Ms. Erikson took pictures from her residence that show the berm will not shield anything from the neighborhood. She is concerned about having the residents of the apartments being able to look down into their bedrooms.

Thomas¹ of 1280 Stone Creek Drive was sworn in. Thomas stated that the applicant can develop the property in strict conformance with the Zoning Ordinance. He believes the applicant has not demonstrated the evidence for the Zoning Hearing Board to be able to grant the variance. Thomas believes the park-like atmosphere that the applicant seeks to demonstrate already exists without the proposed development. There are no other dwelling units along the Middletown Road corridor that are of this design. Thomas is also concerned that if the variance is granted, the applicant will then continue on to build eight buildings instead of six.

Sherri Stom of 2427 Zell Court was sworn in. Mrs. Stom is distressed that the Zoning Ordinance would allow this use in a residential area. The entire neighborhood is all one- and two-story single-family, owner-occupied dwellings. If the proposal was for single-family homes or duplexes, she would not oppose the project. Mrs. Stom believes this project will drastically alter the character of the neighborhood.

Steve Geduldig of 2483 Zell Court was sworn in. Mr. Geduldig is upset because the legal counsel for the developer did not provide proof of their position. He believes the argument that the trees will block the view of the buildings is false.

Rose Knepp of 2141 Carey Way was sworn in. Mrs. Knepp said the view from the back of her residence is of a lot of dead trees and she can see the second floor of the small house on the subject property. As a real estate professional, she feels the owners did not do their due diligence in regard to making sure what they wanted to do was indeed able to be done. Mrs. Knepp believes the proposed development will affect property values in the area.

Elwood Menear of 1215 Upton Court was sworn in. Mr. Menear believes this project will replicate Clifton Heights and is not in character with the Stone Creek neighborhood. Rental properties change hands and will not be managed with the same care that the original builders would give. Mr. Menear is concerned about what the development will look like in the future.

¹ Thomas declined to provide his last name for the record.

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Mr. Scott responded to the public comment that the residents would still oppose the development if it was built in conformity. The residents live in the R-3 zoning district and also could have done their research to see what was allowable in that zoning district before buying their homes. If the variance is granted, the developer has no intention of building eight buildings due to the density requirements. Mr. Scott believes a building height of 40 feet, that is permissible, would have the same visual effects as a building of the proposed height because of the slope of the land.

In response to a question from Chairman Seidl, Mr. Nardo confirmed that a topographical survey has been done but due to his engineer being out of town, he was unable to provide the survey for this hearing. Mr. Nardo did not, however, go to the neighboring streets to take photographs of the view.

Thomas stated that there is a population density so they could make the units bigger and construct eight buildings.

Chairman Seidl reiterated that the Board will only consider the height variance in this case and nothing else related to the development, as it is not in their purview to do so.

Mr. Sheffield stated that the attorney for the applicant is incorrect. The location of the proposed buildings is at the top of the property and they will tower over the existing dwellings in the neighborhood.

Mr. Scott requested that if the board grants the variance, the timeframe coincides with the land development plan approval and not one year from the date of approval.

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.

NEW BUSINESS

**A. Hearing in the Case of Raphael Peters (2023-16)
Property location: 1110 Middletown Road, Hummelstown**

The property is located in the Conservation zoning district. It is currently unimproved. The applicant seeks to develop the land with a single-family dwelling and detached garage. Relief is sought from the maximum height for an accessory structure.

Raphael Peters of 1785 Aberdovey Road was sworn in. Mr. Peters explained that he desires to build his dream home on the subject property. The previous property owner had a foundation built and then stopped the construction, which left a hole. Mr. Peters would like to build a detached garage in the space that is built into the hill where the old foundation was.

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Mr. Peters spoke with his neighbors, and they have no issues with the location or height of the garage. He provided letters from the neighbors confirming this. Mr. Peters pointed out where the properties of the neighbors he spoke with are located.

In response to a question from Chairman Seidl, Mr. Peters confirmed that the properties are owned by his business, RP Electric.

Mr. Habig confirmed the exact amount of relief being requested is 4 feet, 9 inches. The height is based on the average grade to the top of the structure.

In response to a question from Member Angello, Mr. Peters confirmed his property can be seen from Middletown Road due to the tree clearing from the previous owners of the adjacent property.

Mr. Peters confirmed the dwelling will have an attached garage as well.

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.

B. Hearing in the Case of Richard H. Wilhelm II and Krishna C. Pulgar (2023-17)
Property location: 565 Hilltop Road, Hummelstown

The property is located in the Conservation zoning district. It is currently improved with a single-family dwelling. The applicants seek to construct a detached garage. Relief is sought from the minimum setback for an accessory structure.

Richard Wilhelm and Krishna Pulgar of 565 Hilltop Road were sworn in. Ms. Pulgar explained that they are looking to add a detached garage to house their two vehicles and tractor. The setback requirement is 50 feet; however, due to the irregular shape of their property, in order to conform to the requirement the garage would have to be placed either in front of or behind the house. Behind the house there is a geothermal system and in the front there is a well. They are situated on top of the hill so there is a dramatic drop off. The only other place to put the detached garage would be to the side of the house. Mr. Wilhelm described the neighboring propertyies' locations. The neighbors surrounding their property do not have any issues with the location of the garage. Ms. Pulgar took pictures from where the garage would be located facing each neighbor. The requested setback is 5 feet instead of 50 feet.

In response to a question from Chairman Seidl, Ms. Pulgar stated that the garage cannot be located closer to Hilltop Road because of the drop off.

Thomas Rogalli of 621 Hilltop Road stated he has no issues with where the proposed garage's location.

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No one else offered testimony.

Chairman Seidl informed the applicants that the Board has 45 days to render a decision and if the applicants are aggrieved in any way, they have 30 days to appeal the decision.

**C. Hearing in the Case of The Hershey Company (2023-18)
Property location: 925 and 1000 Reese Avenue, Hershey**

The property is located in the Industrial zoning district. It is improved with the Reese Candy Plant and another manufacturing/warehousing building presently under construction. The applicant seeks to place a freestanding sign and wall signs on the site. The applicant is seeking a special exception to allow larger signs, greater than the prescribed total sign area, and a greater number of signs per street frontage.

Peter Wertz of McNeese, Wallace and Nurick, attorney for The Hershey Company, described the current state of the property, existing signage, and proposed signage. The relief requested is for sign area.

Kenny Hinebaugh of The Hershey Company was sworn in. Mr. Hinebaugh answered several questions from Mr. Wertz in relation to the property's location and surroundings. He also answered several questions as to the size and location of the proposed signs.

In response to questions from Member Tafuto, Mr. Hinebaugh confirmed that a perspective analysis was not done and described why the signs are the size they are proposed to be.

In response to questions from Chairman Seidl, Mr. Hinebaugh confirmed the ground sign is intended to be the same size as the existing sign and there are no sight line issues. The existing Reese's signs are approximately four feet high by nine feet long. Mr. Hinebaugh stated that along Reese Avenue both wall signs are approximately fifty feet from Reese Avenue. The proposed wall signs will be in excess of 350 feet from Reese Avenue.

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

None.

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ADJOURNMENT

On a motion made by Chairman Seidl, seconded by Vice Chairman DeDeonatis, and a unanimous vote, the meeting was adjourned at 8:29 p.m.

DELIBERATION

The Board met to deliberate in the cases of Loudoun Centre, LLC (2023-13), Raphael Peters (2023-16), Richard H. Wilhelm II and Krishna C. Pulgar (2023-17), and The Hershey Company (2023-18), and directed the Solicitor to prepare the draft decisions on the cases for formal action at the December 2023 meeting.

Submitted by:

Lindsay Drew, Secretary