

BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF: : NO. 2024 - 09
:
Mountain Climb Partners, LLC :
:
:
: PREMISES LOCATION:
: 441 E. Chocolate Avenue
: Hershey, Derry Township, PA

MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of Mountain Climb Partners, LLC, with regard to the property it owns located at 441 E. Chocolate Avenue, Hershey, Derry Township. A hearing on this matter was held on May 20, 2024, after proper advertising. At that time, Patrick Lyons and William Tafuto appeared, were sworn, and testified at the hearing. Prior to the testimony, Board Member Michael Angello disclosed that he is a partner Patrick Lyons and William Tafuto in other business ventures, but could be impartial in this zoning matter. In addition, Solicitor Megan Huff disclosed that her firm represented the Patrick Lyons, William Tafuto, and their entities on unrelated matters, and as such, no conflict exists. No members from the public testified at the hearing. .

The application indicates that the subject property is located in the Hershey Mixed Use and Downtown Core O9.3 zoning districts. The property is improved with a medical office, and the applicant proposes to continue that use. The application seeks a variance to modify a nonconforming sign.

The applicant purchased the property in 2023, and the sign came with the property. The sign was installed several decades ago, and the applicant would like to preserve it. It was in need of repair because it was leaning over. Due to liability and safety concerns, brackets were already

installed at the back of the sign to further support the sign. According to the witnesses, the brackets cannot be seen from the front of the sign, and the brackets were disguised in the back, so they are not readily noticeable. In addition, after a survey, it was discovered that the PennDOT right-of-way expanded since the sign was installed. As a result, the sign face extends less than 2 feet into the right-of-way, and the applicant would like to move it out of the right-of-way. In addition, there is a border around the sign that the applicant would like the option of removing. The Design Review Board approved the proposed changes to the sign. The applicant submitted photographs of the sign and the reinforcement brackets, which were admitted into the record.

The Ordinance prohibits any changes to existing nonconforming signs except to bring said sign into full compliance under the Ordinance. *See* Derry Township Zoning Ordinance, §225-401.4.I. 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, creating an unnecessary hardship, because of the safety concerns. There is no evidence on the record that the applicant created the hardship. The Board finds that the proposed relief will not have a detrimental impact on any other property in the area or 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 the surrounding properties. No neighbors testified in opposition to the application. Finally, the Board finds that this represents the 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 18th day of June, 2024:

1. The applicant's request for a variance from §225-401.4.I., regarding changes to existing nonconforming signs is GRANTED. The applicant may:

- A. Install brackets to reinforce the sign foundation.
- B. Move the face of the sign 2 feet out of the PennDOT right-of-way.
- C. Remove the border around the sign.

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.



Steven Seidl



Michael Angello

Joseph Nocera