

IN THE MATTER OF:

: NO. 2024-18

ThYNK Design, LLC

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: PREMISES LOCATION:

: 840 and 844 East Chocolate Avenue

: Hershey, Derry Township, PA

## MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of ThYNK Design, LLC with regard to the property located at 840 and 844 East Chocolate Avenue, Derry Township, that is owned by Irvin and Lucinda Hess. A hearing in this matter was held on August 21, 2024, after proper advertising. At that time, Matthew Luttrell, an architect with applicant, appeared with Irene Bartolomei, the daughter of the owners, both of whom were sworn, and testified at the hearing. No other members of the public testified.

The application indicates that the subject property is located in the Palmdale Mixed Use and O-10 zoning districts. The property is improved with a bakery with retail sales and limited customer seating, and the applicant proposes to continue that use. In January 2023, the Board granted relief to permit seven head-in parking spaces in order to reconfigure the parking on the property to be able to construct an addition, but the relief expired.<sup>1</sup> As such, the application seeks a variance again to permit those seven head-in parking spaces. Because of the recent Ordinance

<sup>1</sup> In July 2000, the Board granted relief regarding parking and maximum impervious coverage. In October 2012, the Board granted relief to use the property as a coffee shop with 21 seats for customers. In June 2013, the Board granted relief for maximum impervious coverage and encroachment into the front yard setback for installation of a patio.

change, the application also seeks a variance from the side yard setbacks to construct the addition. The proposed addition will be 5 feet from the side property line.

The lot is narrow with approximately 90 feet of road frontage, and the existing building sits back further, approximately 20 feet, on the lot than the surrounding buildings on adjacent lots. It is a two story structure with a basement. Desserts Etc. operates at the property. The second floor is used for its administrative offices. The first floor is retail space, and the kitchen is currently located in the basement. The owners propose to construct an addition to the existing structure. The addition would allow for the existing kitchen to be moved from the basement to the new addition. This would allow for the kitchen to be on the same level as the customers. In addition, the addition would promote employee safety as the employees would no longer have to climb the stairs. With the addition, the basement would be then used primarily for storage.

As granted in prior relief, the business is permitted to have 21 seats for customers. No new seating will be added as a result of the addition. Mr. Luttrell acknowledged the owners may construct a deck for more outdoor seating, but the total number of seats for customers, 21, would be redistributed between indoor and outdoor seating.

There are currently 16 parking spaces for the property. Because of the addition, the applicant proposes to reconfigure the parking to reduce the number of spaces to 14 plus 1 loading space. This reduction in parking would not reduce the number of customer seating available.

The applicant proposes 7 head-in parking spaces that are accessed along South Alley that is located south of the property. These proposed parking spaces would require vehicles to back

onto South Alley. Mr. Luttrell argued that other businesses use South Alley for head in parking. Therefore, Mr. Luttrell argued that the relief would not change the character of the neighborhood.

The Ordinance requires vehicles to enter the public street in a forward direction. *See* Derry Township Zoning Ordinance, §225-402.2.B. The Ordinance also requires a side yard setback of 15 feet for a primary structure. *See* Ordinance, §225-314, Table 27. The criteria for issuing zoning variances are set forth in §225-1007.9.A of the Derry Township Zoning Ordinance. 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 because of the location of the structure and the



narrowness of the lot. There is no evidence on the record that the applicant created this hardship. Most significantly, the Board finds that the proposed relief will not have a detrimental impact on any other property in the area or to 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 surrounding properties. No neighbors testified in opposition to the application. Finally, the Board finds that this represents 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**

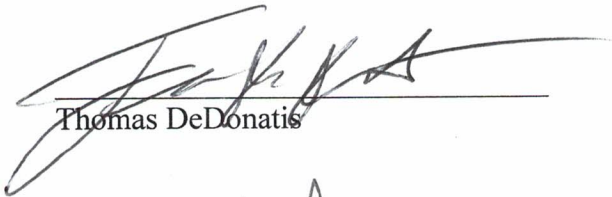
AND NOW, this 18<sup>th</sup> day of September, 2024:

1. The applicant's request for a variance from §225-402.2.B., regarding entering the public street in a forward direction is GRANTED. The applicant may construct seven head-in parking spaces.
2. The applicant's request for a variance from §225-314, Table 27, regarding the side yard setback for an accessory structure is GRANTED. The applicant may encroach to within 5 feet of the side yard property line for the proposed addition.
3. 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.

4. 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.

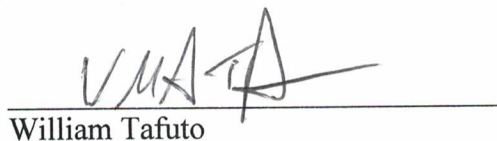
5. Any violation of any condition imposed herein shall be a violation of the Township Zoning Ordinance and shall be enforced as provided in the Ordinance.



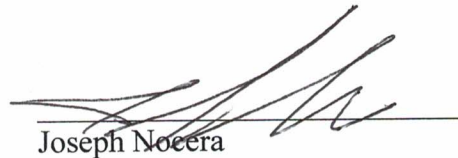
Thomas DeDonatis



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