

BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF:

: NO. 2023 - 15

Hummelstown Investors, LLC

: PREMISES LOCATION:

570 Walton Avenue

Hummelstown, Derry Township, PA

MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of Hummelstown Investors, LLC with regard to its property located at 570 Walton Avenue, Hummelstown, Den-y Township. A hearing in this matter was held on December 20, 2023, after proper advertising. At the hearing, Brian Cleary, PE, and Joseph DePascale appeared on behalf of the applicant with the applicant's attorney, Michael Malloy. Mr. Cleary and Mr. DePascale were sworn and testified. No members of the public testified at the hearing.

The application indicates that the subject property is located in the General Commercial zoning district. The property is improved with a Taco Bell fast food restaurant, and the applicant proposes to continue that use with a dual ordering layout. The application seeks a special exception to increase the sign area and number of signs per street frontage greater than is permitted under the Ordinance. In the alternative, the application seeks a variance for the number of signs per street frontage. Lastly, the application seeks a variance to install signs above the roof eave.

The property is narrow and triangularly shaped. It fronts Walton Avenue and has a seven percent slope along the property frontage. The building frontage is 29.4 feet. The Taco Bell has existed at the property since 1990. The applicant intends to demolish the existing building and

construct a new building to have a dual ordering layout. The new building will have a tower at the corner.

The property currently has a free-standing sign and a wall sign on the façade of the building. The applicant proposes a new decorative free-standing sign and four wall signs. The height of the free-standing sign will be reduced from 15 feet to 8 feet with a sign face of 6'9". The free-standing sign will have a sign area of 31.25 square feet.

A wall sign will be installed on two sides of the proposed tower. Each tower wall sign will feature Taco Bell and the Taco Bell logo. The words Taco Bell on the tower wall signs each will have a sign area of 10.8 square feet, and the Taco Bell logo tower wall signs each will have a sign area of 13.6 square feet. A wall sign featuring the Taco Bell logo, with a sign area of 13.6 square feet, will be installed on the front façade of the building. A wall sign featuring Taco Bell, with a sign area of 5.1 square feet will be installed on the building's awning.

No sign exceeds 24 square feet, and the applicant does not require any other zoning relief. The signs will be illuminated only during business hours.

Mr. Cleary noted that if the building was rotated so as to have greater building frontage, the applicant would be permitted to have sign area greater than 29.4 square feet. Mr. Cleary argued that the proposed signs were necessary to more easily identify the property for motorists. He also argued that the proposed signs would not alter or harm the surrounding properties because those commercial properties had a similar number and size signs. In support of his argument, the applicant introduced photographs of the nearby Sheetz and Pizza Hut properties. Mr. Cleary noted that the Sheetz has six signs whereas Pizza Hut has four signs.

The applicant agreed to move the proposed free-standing sign from the sight-distance triangle. The applicant submitted a site plan, renderings of the proposed signage, and photographs of the neighboring properties' signs, all of which were admitted into the record.

The Ordinance limits total sign area for all applicable signs to one square foot for each linear foot of building front, per street frontage. *See* Ordinance, §225-401.1.F.B.2.a. In addition, the Ordinance limits the allowable number of signs to three per street frontage. *See* Ordinance, §225-401.1.F.B.3.a. However, the Ordinance permits the Board to allow larger and a greater number of signs than otherwise permitted in a given district when the applicant can demonstrate compliance with the specific criteria applicable to the special exception. *See* Ordinance, §225-502-10. Those criteria include:

1. Demonstrating that unique conditions exist on the property or in the immediate area of the property which would cause signs of the normally prescribed areas, size, or location to be of lower communication value than that which would exist on another property in the same Sign District.
2. The modification of the sign regulations must be the least necessary to afford the relief.
3. The proposed signage must not be of a type of a sign that would otherwise be permitted in non-street fronting conditions.

See Ordinance, §225-502-10.

In this matter, the Board finds that the applicant is entitled to the relief requested. Initially, this Board has often held that special exceptions are neither special, nor exceptions, but are instead permitted uses so long as the applicant can demonstrate compliance with the specific criteria

associated with the special exception request. Here, the Board finds that the applicant is entitled to the special exception. The property is unique because of its narrow, triangular shape that is sloped along the property frontage. Consequently, the Board finds that the applicant has demonstrated the unique character of the property and that character reduces the communicative value of signage that might be sufficient on another property lacking these characteristics. In addition, the Board finds that proposed modification is the minimum relief necessary to afford relief. The Board finds that the proposed relief will not alter the essential character of the neighborhood.

The Ordinance requires that “signs shall not exceed the height of the upper building face, extend above the roof eave or extend above the lower sill of any upper story window, whichever is lowest.” *See* Ordinance, §225-401.4.F.B.1 – Table 36, Special Note #2. 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, as noted above, the Board finds that the property is unique because of the property's narrow, triangular shape that is sloped along the property frontage. There is no evidence on the record that the applicant created the hardship. Most significantly, 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 surrounding properties. Indeed, other neighboring properties have similar signs. No neighbors testified in opposition to the application. Finally, the Board finds that this represents minimum relief necessary.

In granting any relief, 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. *See* Ordinance, §225-1007.9.B, §225-1007.10.A. Based on the Board's findings and conclusions, the Board adopts the following:

ORDER

AND NOW, this 17th day of January, 2024:

1. The applicant's request for a special exception pursuant to §225-502.10 regarding the sign area of the proposed sign is GRANTED. The applicant may install the proposed signs as follows:

- A. A free-standing sign with a sign area of 31.25 square feet;
- B. A wall sign with the Taco Bell logo on the front façade with a sign area of 13.6 square feet;
- C. A wall sign with the words "Taco Bell" on the awning with a sign area of 5.1 square feet;
- D. A wall sign with the Taco Bell logo with a sign area of 13.6 square feet and the words "Taco Bell" with a sign area of 10.8 square feet each on two sides of the tower.

2. The relief granted herein is strictly contingent on the free-standing sign being moved out of the sight distance triangle.

3. The applicant's request for a variance from §225-401.4.F.B.3.a regarding the number of signs per street frontage is MOOT as a result of the special exception being granted.

4. The applicant's request for a variance from §225-401.4.F.B.1 – Table 36, Special Note #2 regarding the location of a wall sign is GRANTED. The applicant may install the wall signs above the roof eave.

5. The applicant shall construct the proposed signage 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 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.

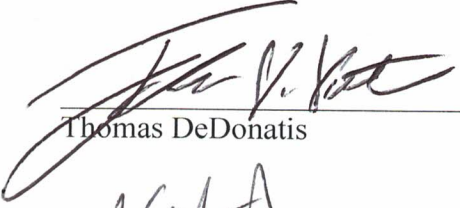
7. Any violation of any condition imposed herein shall be a violation of the Township Zoning Ordinance and shall be enforced as provided in the Ordinance.




Steven Seidl



Michael Angello



Thomas DeDonatis



William Tafuto