

**DERRY TOWNSHIP
ZONING HEARING BOARD MEETING MINUTES
May 15, 2024**

CALL TO ORDER

The Wednesday, May 15, 2024, Derry Township Zoning Hearing Board meeting was called to order at 6:01 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; Secretary Mike Angello; Member Bill Tafuto; Member Joe Nocera

Board member absent: Vice Chairman Tom DeDonatis

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: Frank Nardo, 207 Cedar Avenue; Kelly Means, 257 Hemlock Court; Carlos Paniagua, 103 Cocoa Avenue; Robert Yurick, 535 Beech Avenue; Charles Duncan, 348 Cedar Avenue; Phil Guarno, 102 West Chocolate Avenue; Brian Boltz, 108 West Chocolate Avenue; Pat Lyons, Mountain Climb Partners; Bruce Warshinsky, U & ME LLC; Charles Suhr, U & ME LLC

APPROVAL OF MINUTES

On a motion made by Chairman Seidl, seconded by Secretary Angello, and a majority vote, the April 17, 2024, minutes were approved as written. Member Nocera abstained due to his absence at the April meeting.

OLD BUSINESS

**A. Adoption of Decision in the Case of John Fugate (2024-03)
Property location: 86 Rear East Derry 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 variance from §225-315, Table 29, regarding the side yard setback for an accessory structure is GRANTED. The applicant may encroach to within 4 feet of the side yard property line for the proposed garage.*
2. *The applicant's request for a variance from §225-315, Table 29, regarding the rear yard setback for an accessory structure is GRANTED. The applicant may encroach to within 4 feet of the rear yard property line for the proposed garage.*

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On a motion made by Chairman Seidl, seconded by Member Tafuto, and a majority vote, the Decision was adopted as written. Member Nocera abstained due to his absence at the April meeting.

B. Adoption of Decision in the Case of Hershey History Center (2024-04)
Property location: 40 Northeast Drive, 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 §225-502.10 regarding the sign area of the proposed sign is GRANTED. The applicant may install the proposed sign with a sign area of 54.5 square feet.*

On a motion made by Chairman Seidl, seconded by Secretary Angello, and a majority vote, the Decision was adopted as written. Member Nocera abstained due to his absence at the April meeting.

C. Adoption of Decision in the Case of Fontana Outdoors (2024-05)
Property location: 110 Forest Avenue, Hershey

Chairman Seidl read a portion of the terms of the Decision into the record as follows:

1. *The applicant's request for a variance from §225-315, Table 29, regarding the rear yard setback for an accessory structure is GRANTED. The applicant may encroach to within 5 feet of the rear yard property line for the proposed greenhouse.*

On a motion made by Chairman Seidl, seconded by Secretary Angello, and a majority vote, the Decision was adopted as written. Member Nocera abstained due to his absence at the April meeting.

D. Adoption of Decision in the Case of Michael Angello (2024-06)
Property location: 20 Linden 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 variance from §225-401.1.1.3.b., regarding the required off-street parking is GRANTED. The two spaces required for off-street parking are hereby waived for the esthetician and massage therapist.*

On a motion made by Chairman Seidl, seconded by Member Tafuto, and a majority vote, the Decision was adopted as written. Member Nocera abstained due to his absence at the April meeting. Secretary Angello abstained due to being the applicant in this case.

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NEW BUSINESS

**A. Hearing in the Case of Carlos Paniagua (2024-07)
Property location: 103 Cocoa Avenue, Hershey**

The property is located in the Hershey Mixed Use and Downtown Core O9.3 Overlay zoning districts. It is improved with a single-family detached dwelling. The applicant desires to use the property as a Bed and Breakfast Home. Relief is sought from the front setback for a principal structure and compliance with all applicable lot criteria to establish a Bed and Breakfast Home.

Carlos Paniagua of 103 Cocoa Avenue was sworn in. Mr. Paniagua would like to establish a Bed and Breakfast Home in a spare portion of his property. The portion of the property does not have a stove; however, it does have a microwave. David Habig, Assistant Director of Community Development, explained that a cooking facility is not defined in the Zoning Ordinance. A Bed and Breakfast Home is not to have access to cooking facilities, whereas a short-term rental does have access.

In response to questions from Secretary Angello, Mr. Paniagua does not currently have the area rented nor has he rented it in the past. He stated that the previous owners had rented out the space to family members and when he bought the property, he did some remodeling that took the stove out of the space.

In response to a question from Chairman Seidl, Mr. Paniagua said there is adequate parking on the property. Mr. Habig confirmed this. Chairman Seidl went through the criteria for running a Bed and Breakfast Home and Mr. Paniagua confirmed he meets all the requirements.

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 Philip Guarino (2024-08)
Property location: 108 West Chocolate Avenue, Hershey**

The property is located in the Hershey Mixed Use and Downtown Core O9.2 Overlay zoning districts. It is improved with the Philip Arthur's restaurant. The applicant desires to add a walk-in freezer to the property. Relief is sought from the side setback for an accessory structure.

Phil Guarino of 740 Stauffers Church Road, Palmyra, was sworn in. Mr. Guarino is requesting a variance regarding the side setback in order to add a walk-in freezer. The intent is to make 102 West Chocolate Avenue and 108 West Chocolate Avenue self-sufficient. Both properties

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contain restaurants and they currently have shared refrigeration. Initially Mr. Guarno was going to create an easement agreement with himself for the properties, since he owns both of them; however, he has now sold 108 West Chocolate Avenue to the Boltz family. Mr. Guarno is working with the new owners to create an easement agreement in order to place the freezer on both properties. It would be two feet on 108 West Chocolate Avenue and four feet on 102 West Chocolate Avenue.

Brian Boltz of 107 West Governor Road was sworn in. Mr. Boltz is the new owner of 108 West Chocolate Avenue and approves of the easement agreement.

Mr. Guarno requested that the Zoning Hearing Board hold a special meeting in two weeks to vote on a Decision for this case so that he can order the freezer.

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.

C. Hearing in the Case of Mountain Climb Partners, LLC (2024-09)
Property location: 441 East Chocolate Avenue, Hershey

The property is located in the Hershey Mixed Use, Downtown Core O9.3 Overlay, and Commercial Sign Overlay zoning districts. It is improved with a healthcare practitioners office and an existing nonconforming sign. The applicant desires to alter the existing nonconforming sign. Relief is sought from alteration of a nonconforming sign.

Patrick Lyons of 808 Michigan Avenue, Lemoyne, and Bill Tafuto of 15 Almond Drive, Hershey, were sworn in. The current sign on the property is in need of repair work. When the property was surveyed, it showed the sign to be in the PennDOT right-of-way by a few feet. The request is for two minor alterations to the sign. Brackets were placed on the back of the sign to better secure it. The applicant also wants to move the sign a few feet so that it is out of the PennDOT right-of-way.

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.

D. Hearing in the Case of Hershey Square 2014, LP (2024-10)
Property location: Intersection of Mae Street and Hersheypark Drive, Hummelstown

The property is located in the General Commercial, Hersheypark Drive/Route 39 (O3) Overlay, and the Environmental Overlay zoning districts. The eastern portion of the property

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is currently improved with a shopping center and several detached commercial buildings. The applicant is seeking a time extension of one year for relief previously granted under Petition 2022-07 regarding the requirements of the Hersheypark Drive/Route 39 Overlay district 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 as previously extended by Petition 2023-03.

Charlie Suhr of Stevens & Lee stated that U & ME, LLC, is the new owner of the property at the corner of Hersheypark Drive and Mae Street. There have been several applications to the Zoning Hearing Board for this property for variances that have been granted. All variances were previously extended for one year. The applicant is before the Board again to request an additional year on the expiration of the Decisions previously granted, due to a building permit not being applied for or issued as required by the Decisions. The applicant is still working on the Highway Occupancy Permit with PennDOT in regards to traffic and the land development plan. Mr. Suhr anticipates they will be applying for a building permit within the next year.

Bruce Warshinsky of 2320 North 2nd Street, Harrisburg, was sworn in. Mr. Warshinsky confirmed Mr. Suhr's testimony on behalf of U & ME, LLC.

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.

**E. Hearing in the Case of Robert Yurick (2024-11)
Property location: 535 Beech Avenue, Hershey**

The property is located in the Hershey Mixed Use zoning district. It is improved with a single-family detached dwelling, a shed, and a concrete parking pad. The applicant desires to remove the existing parking pad and build an addition to the dwelling. Relief is sought from off-street parking requirements.

Robert Yurick of 535 Beech Avenue, Hershey, was sworn in. Mr. Yurick is seeking to put an addition on his dwelling and in order to do that he will need to remove the parking pad that is on the property. This parking pad is required off-street parking for the property, so he is seeking relief from that requirement in order to build the addition. He stated there are several properties in the area that do not meet the off-street parking requirements or have gravel areas for parking.

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.

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F. Hearing in the Case of Charles L. Duncan (2024-12)
Property location: 348 Cedar Avenue, Hershey

The property is located in the Hershey Mixed Use zoning district. It is improved with a single-family detached dwelling. The applicant desires to add a patio and pool to the property. Relief is sought from maximum impervious coverage.

Charles "Chuck" Duncan of 348 Cedar Avenue was sworn in. Mr. Duncan is looking to improve his property with pavers and a swim spa. This project will add an additional 8.8% of impervious coverage over the maximum allowed of 40%.

Chairman Seidl noted that public sidewalks do not count as impervious coverage for a property because they are in the right-of-way.

Luke Hanmer of 7515 Moyer Road, Harrisburg, was sworn in. Mr. Hanmer hand measured everything and calculated 364 square feet for the driveway, 1,250 square feet for the public sidewalks, 128 square feet for the walkway, 180 square feet for the patio, 78 square feet for the greenhouse, and 145 square feet for the brick oven area. The total new impervious would be 1,158 square feet. The patio, brick oven, and greenhouse will be removed.

Mr. Habig confirmed that the house contains 3,324 square feet. With the driveway, walkway, patio, greenhouse, and brick oven area added in, the total impervious is 4,219 square feet. The proposed addition is 1,588 square feet. Subtracting the patio, greenhouse, and brick oven area of 403 square feet brings the total impervious for the lot to 5,404 square feet, which is 43.93% total impervious coverage.

Mr. Duncan confirmed that if the requested relief is granted, he will submit a stormwater management plan to the Township for review and 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.

G. Hearing in the Case of Frank Nardo (2024-13)
Property location: 207 Cedar Avenue, Hershey

The property is located in the Hershey Mixed Use zoning district. It is improved with a single-family detached dwelling. The applicant desires to construct an addition to the attached garage on top of an existing foundation. Relief is sought from the expansion of a nonconforming structure.

Frank Nardo of 207 Cedar Avenue was sworn in. Mr. Nardo is seeking relief from expanding a nonconforming structure in order to construct an addition to the attached garage on top of

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an existing foundation. The foundation was constructed in August of 2022, but the addition was not completed due to financial reasons. This was intended to be a phased construction project, and at the time the expansion had been conforming. In February 2024, the Zoning Ordinance was amended and the setbacks for his property and the structure as proposed are no longer conforming. The garage will not contain living space.

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

A. Adoption of Decision in the Case of Hershey Square, LP (2024-10)
Property location: Intersection of Mae Street and Hersheypark Drive, Hummelstown

Mr. Habig explained that the Hershey Square 2024, LP, Decision will need to be voted on at this meeting due to the current expiration date of May 17, 2024.

On a motion made by Chairman Seidl, seconded by Member Tafuto, and a unanimous vote, the Decision was adopted.

On a motion made by Secretary Angello, seconded by Member Tafuto, and a unanimous vote, the Board authorized Chairman Seidl to sign the Decision on behalf of the Board.

B. Adoption of Decision in the Case of Philip Guarno (2024-08)
Property location: 108 West Chocolate Avenue, Hershey

The Board met to deliberate in the case of Philip Guarno (2024-08) to decide if they will render a Decision now or hold a special meeting in two weeks.

The Board elected to render a Decision at this meeting. Chairman Seidl read a portion of the Decision into the record as follows:

1. *The applicant's request for a variance from §225-315, Table 29, regarding the side yard setback for an accessory structure is GRANTED. The applicant may encroach to within 0 feet of the side yard property line for the proposed walk-in cooling unit.*
2. *The relief granted herein is strictly contingent upon:*
 - A. *The relief shall be used only for the walk-in cooling unit. If the walk-in cooling unit is removed from use for longer than 12 consecutive months, this*

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relief shall automatically terminate, and the unit shall be removed from the property.

B. The easement shall be recorded before the walk-in cooling unit is installed.

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

On a motion made by Secretary Angello, seconded by Member Tafuto, and a unanimous vote, the Board authorized Chairman Seidl sign the Decision on behalf of the Board.

ADJOURNMENT

On a motion made by Chairman Seidl, seconded by Member Nocera, and a unanimous vote, the meeting was adjourned at 8:04 p.m.

DELIBERATION

The Board met to deliberate in the cases of Carlos Paniagua (2024-07), Mountain Climb Partners, LLC (2024-09), Robert Yurick (2024-11), Charles L. Duncan (2024-12), and Frank Nardo (2024-13) and directed the Solicitor to prepare the draft decisions on the cases for formal action at the June 2024 meeting.

Submitted by:

Mike Angello, Secretary