

BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF: : NO. 2019-17
:
William B. Duncan and :
Caitlin M. Duncan :
:
: PREMISES LOCATION:
: 146 W. Granada Avenue
: Hershey, Derry Township, PA 17033

MEMORANDUM, FINDINGS, OPINION, AND ORDER

This is the application of William B. Duncan and Caitlin M. Duncan with regard to their property located at 146. W. Granda Avenue, Hershey, Derry Township, Pennsylvania. A hearing in this matter was held on December 18, 2019, after proper advertising. At that time, William B. Duncan appeared, was sworn, and testified.

The application indicates that the subject property is located in the Hershey Mixed Use zoning district. The property is a residential dwelling, and the applicants propose to continue that use. The application seeks a variance from the side yard setback.

The applicants purchased the subject property in 2017. Mr. Duncan explained that his lot is very narrow, which makes complying with the Ordinance’s setbacks difficult. The side property line is approximately seven feet from the house whereas the sidewalk is approximately three feet, four inches from the property line.

Mr. Duncan testified that he had obtained a building permit, which was approved, to construct a patio in his back yard. The existing concrete sidewalk and patio had deteriorated so he removed and replaced the deteriorated portion. The new sidewalk follows the footprint of the deteriorated sidewalk. The patio edge is flush with the edge of the sidewalk, including the patio extension toward the rear of the property, which extended into the setback. In addition, he removed and did not replace approximately eight square feet of a concrete walkway that

connected to his neighbor's sidewalk, returning it to green space. He argued that the total noncompliant surface is only approximately 16 2/3 square feet. Although the property's impervious coverage increased, it was within the limits established by the Ordinance, and no relief was required.

Mr. Duncan submitted photographs of the subject property as well as properties of neighboring properties that have sidewalks and patios that extend to the side property lines. In addition, he submitted letters from three neighboring property owners who support the requested relief. All of the photographs and letters were admitted into the record. No members from the public testified.

The Director of Community Development, Charles Emerick, confirmed that neighboring properties have patios that abut the side property lines. David Habig, Assistant Director of Community Development, testified that the subject property was 40 feet by 85 feet.

The Ordinance requires a side yard setback of 5 feet. *See* Ordinance, §225-315, Table 29. 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 narrowness of the lot. There is no evidence on the record that the applicants 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. Both of the adjacent properties have patios or sidewalks that abut the property lines. There is no evidence in the record to indicate that the requested variance would negatively impact surrounding properties. No neighbors appeared to testify in opposition to the application. In fact, three neighboring property owners signed letters in support of the applicants' requested relief.

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.B. Based on the Board's findings and conclusions, the Board adopts the following:

ORDER

AND NOW, this 15th day of January, 2020:

1. The applicants' request for a variance from §225-315, Table 29 regarding the 5 feet side yard setback for the patio is GRANTED. The applicants may encroach to within three feet four inches of the side property line for the patio.
2. The applicants shall maintain the improvements in strict compliance with the plans and specifications submitted to the Board during the hearing of this matter.
3. 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.

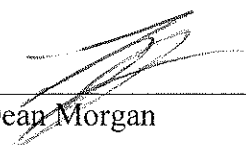


Stephen Moniak

Matthew Luttrell

Sandra Ballard

Lindsay Drew



F. Dean Morgan