

**BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD**

IN THE MATTER OF: : NO. 2020-01  
:   
Absolute Solar & Energy Solutions :  
: PREMISES LOCATION:  
: 618 Stoverdale Road  
: Hummelstown, Derry Township, PA 17036

**MEMORANDUM, FINDINGS, OPINION, AND ORDER**

This is the application of Absolute Solar & Energy Solutions with regard to the property owned by Peter Owens. The subject property is located at 618 Stoverdale Road, Hummelstown, Derry Township, Pennsylvania. A hearing in this matter was held on February 19, 2020, after proper advertising. At that time, Richard Fortney, Jr., the owner of the applicant, appeared, was sworn, and testified.

The subject property is located in the R-3 zoning district. The property contains a residential dwelling, and the homeowner proposes to continue that use. The application seeks a variance from the front yard setback to install a generator, an accessory structure.

Mr. Fortney testified that he is the owner of the applicant, a solar/generator contractor. The applicant received a permit to install a generator at the subject property. The generator is 46 inches long and 28 inches deep. Originally, the generator was supposed to be installed on the same side of the house as the gas and electric meters. However, on the day the generator was to be installed the Homeowner's Association ("HOA") had an objection to the location of the generator. Mr. Fortney was unavailable as he was in an all-day seminar so the homeowner and the HOA agreed to move the generator to the opposite side of the house. Mr. Fortney did not know the nature of the HOA's objection. Nonetheless, the generator was installed on the opposite side of the house, but it was installed within the front yard setback. It is 46 feet, 2 inches from the property line, encroaching 3 feet, 10 inches into the front yard setback.

He testified that the current location was the optimum location for the generator. The property has steep slopes and pushing the generator back so it was out of the front yard setback would require the generator to be installed on the steep slope. Mr. Fortney explained that the generator must be kept level. The generator weighs approximately 500 pounds and vibrates. Therefore, it cannot be installed on a platform because it may shift off the platform. In addition, moving the generator back out of the front setback would put it closer to a window or air conditioner unit. The safety guidelines indicate the generator should be installed no less than 5 feet from a window or vent to limit the concerns of carbon monoxide from the generator's exhaust entering the house.

Mr. Fortney explained that installing the generator at the bottom of the steep slope was not ideal because a door was in the back of the house, leading to the same carbon monoxide exhaust concerns, and the area is swampy. In addition, at the location at the bottom of the slope, the distance from the transfer switch to the generator would be approximately 85 feet, and the power wiring from the transfer switch to the generator should not exceed 100 feet. Otherwise, the generator may not operate correctly in the event of a power outage.

When it was suggested that the generator could be placed on the side of the house originally selected regardless of the HOA objections, Mr. Fortney explained that there was slope on that side of the house too. The house takes up a lot of the lot. He further explained that it was not ideal to turn the generator horizontally to limit the encroachment into the front yard setback because more of the mechanics of the generator would be exposed. More importantly, the exhaust and noise would be directed toward the neighbors, and there would still be the issues with the slope. No members of the public testified.

The Ordinance requires a front yard setback of 50 feet for accessory uses. *See* Ordinance, §225-306, Table 11, Item H. 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 property's steep slopes.

There is no evidence on the record that the applicant or the property owner 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 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. 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.B. Based on the Board's findings and conclusions, the Board adopts the following:

**ORDER**

AND NOW, this 18<sup>th</sup> day of March, 2020:

1. The applicant's request for a variance from §225-306, Table 11, Item H, regarding the front yard setback for an accessory use is GRANTED. The applicant may encroach to within 46 feet, 2 inches of the front property line for the generator.
2. The applicant 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.

Adopted by 4-0 vote as indicated by the Chairman's signature

  
Stephen Moniak, CHAIRMAN