

BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF: : NO. 2020-05
Cacao Way LLC :
: :
: :
: PREMISES LOCATION:
: 50 Northeast Drive
: Hershey, Derry Township, PA 17033

MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of Cacao Way LLC with regard to the property located at 50 Northeast Drive, Hershey, Pennsylvania. The property is owned by the Hershey Trust Company and leased by the applicant. A hearing in this matter was held on May 20, 2020, by video conference due to the COVID-19 emergency after proper advertising and after proper notice to allow for public participation. At that time, David Getz, Esquire, and Mark Hackenburg appeared, 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 Hershey Mixed Use and Compact Development Overlay (O8) Zoning Districts. The property is currently vacant but had been used previously as a former farmhouse and student home. The applicant proposes to raze the current building improve the property with a building for multifamily apartment dwellings.

The applicant requests relief in the form of a variance from §225-1007.9.C., which provides that any relief granted by the Board will expire if a zoning permit, building permit, or certificate of use and occupancy is not obtained within one year of the date the variance is granted. The relief requested in this hearing relates entirely to the length of time relief previously granted by the Board remains valid for the subject property and project.

That prior relief, granted by decision dated, June 19, 2019¹, granted the applicant a variance from §225-417 regarding access areas for fire apparatus. Specifically, the applicant was permitted to locate the fire apparatus access area between 28 feet and 48 feet from the building. Other relief was also requested and granted, but the applicant indicated that relief was no longer necessary.

The testimony revealed that after the Board denied the request for a height variance, the applicant modified its plan for the multifamily apartment dwellings by lowering the height of the proposed structure. In addition, the number of units was decreased, and the proposed building is not as long. Further, the parking was redesigned to move the initially designed underground parking to surface parking. However, the witnesses testified that the points of access and the width of the access lane are materially the same as what was approved in the June 19, 2019 decision.

The witnesses testified that the applicant is moving through the Master Plan process, which they argued is a large application and takes some time to complete all of the necessary requirements. They also argued that the applicant was delayed by a vacancy on the Derry Township Board of Supervisors. The applicant wished to have a full Board to rule on its conditional use application. The Board of Supervisors granted the conditional use approval on April 14, 2020, which approval will expire on April 14, 2022. Additionally, the witnesses testified that the COVID-19 crisis has further delayed the project. The applicant proposes to extend the relief from §225-417 regarding access areas for fire apparatus, granted in the June 19, 2019 decision, to April 14, 2022, so it is coterminous with the conditional use approval.

¹ In the decision, dated June 19, 2020, the Board denied the applicant's request for a variance from §225-315, Table 29, Item G, for the maximum height of the proposed principal structure. The Board granted the applicant's request for a variance from §225-403.2.A. to decrease the parking lot interior landscaped area to 11.5%. The applicant, however, redesigned the parking to meet the Ordinance requirements and does not need a variance for the parking lot interior landscaped area. Therefore, that variance is not the subject of this hearing.

In support of its request, the applicant submitted a letter from the Hershey Volunteer Fire Department, dated November 23, 2019, that indicated its support of the modified project for vehicle access and fire protection. In addition, the applicant submitted a letter, dated May 20, 2020, from Kenneth Gall, Director of Real Estate for the Hershey Trust Company, Trustee for the Milton Hershey School, the owner of the subject property, which unequivocally supported the applicant's request. Both letters were entered into the record.

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

Initially, the Board finds that the applicant experienced a hardship due to a confluence of circumstances, including (i) the lengthy Master Plan application process; (ii) the delay in conditional use approval from the Derry Township Board of Supervisors due to a vacancy on the

Board; and (iii) the COVID-19 emergency. Most significantly, the Board finds that an extension of the expiration period for the previously granted relief will not have a detrimental impact on any other property in the area or the public welfare. Similarly, the Board finds that it will not alter the essential character of the neighborhood or negatively impact surrounding properties. No neighbors appeared to testify in opposition to the application. Finally, the Board finds, however, that a one year extension of the expiration period for the previously granted relief represents the 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. *Ordinance*, §225-1007.9.B. Based on the Board's findings and conclusions, the Board adopts the following:

ORDER

AND NOW, this 17 day of June, 2020:

1. The applicant's request for a variance from §225-1007.9.C. is GRANTED in part and DENIED in part. The relief granted by the Board on June 19, 2019, shall remain viable for one additional year, that is, until June 19, 2021.
2. All other terms, conditions, and limitations set forth in the decision of June 19, 2019, shall remain in full force and effect and are incorporated herein by reference.

Adopted by 4 – 0 vote as indicated by the Vice Chairwoman's signature as authorized by the Zoning Hearing Board.



Sandra Ballard, Vice Chairwoman