

BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF: : NO. 2020-07
:
Charles Kovacs and :
Betty Kovacs :
: PREMISES LOCATION:
: 747 Olde Trail Road
: Hummelstown, PA 17036

MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of Charles Kovacs and Betty Kovacs with regard to their property located at 747 Olde Trail Road, Hummelstown, Derry Township. A hearing in this matter was held on August 19, 2020, by video conference due to the COVID-19 emergency, after proper advertising and after proper notice to allow for public participation. The applicants appeared, Mr. Kovacs was sworn, and he testified at the hearing. No other members of the public testified.

The application indicates that the subject property is located in the R-1 zoning district. The property is improved with a single family residence, and the applicants propose to continue that use. The application seeks a variance regarding the amount of impervious coverage.

The applicants are the original homeowners and have owned the property since the home was built in 1999. The lot has multiple slopes and has a 20' drainage easement at the rear of the property. It is bordered on the rear and side of the property by the development's common area. The property has been eroded by a water flow into a gentle swale across the property and into the common area adjacent to the property.

In order to address the erosion and water flow issues of the property as well as enhance the enjoyment of their property, the applicants propose to construct a patio/terraced English garden. The patio would consist of an additional 200 square feet, and the landscape natural stone terraced walls would comprise no more than 100 square feet. The landscape terraced walls

would be backfilled, creating an additional flat planting area of approximately 300 to 400 square feet, which would eliminate the erosion problem and slow the water flow on the existing slope. The walls would also serve to limit the water onto the proposed patio. Because of the drainage easement, the patio will not encroach on any setbacks, and no other variances are requested. The applicants installed temporarily a smaller patio to confirm proof of concept before submitting the instant application.

The homeowner's association has approved the project. In addition, Keith Miller, who also maintains the common area between his property and the applicants' property, has approved the proposed design.

The Ordinance requires the properties in the R-1 zoning district limit the maximum impervious coverage to 30%. *See* Ordinance, §225-304, Table 7. 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 applicants are entitled to the requested relief.

Initially, the Board finds that the property is unique because of the multiple slopes throughout the property. While the applicants are the original homeowners, there is no evidence on the record that the applicants created the hardship by creating the multiple slopes. 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. Indeed, the homeowners' association has approved the proposed project. Moreover, Keith Miller, a neighbor, who also maintains the common area, approves of the proposed patio and retaining wall. Finally, the Board finds that this represents the minimum relief necessary.

ORDER

AND NOW, this 16th day of September, 2020:

1. The applicants' request for a variance from §225-304, Table 7, regarding maximum impervious coverage on the property, is **GRANTED**. The applicants may increase maximum impervious coverage by 300 square feet to 33.09%.

2. The applicants shall construct the improvements 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.

3. 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 applicants have 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 applicants shall be required to comply with the then existing terms of the Zoning Ordinance.

4. 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 3 – 0 vote as indicated by the Chairman’s signature as authorized by the Zoning Hearing Board.



Steven Seidl, Chairman