

BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF: : NO. 2020 – 09
 :
 Robert J. Cerminara and :
 Diane T. Cerminara :
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 : PREMISES LOCATION:
 : 1014 Fairdell Drive
 : Hummelstown, Derry Township, PA

MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of Robert J. Cerminara and Diane T. Cerminara with regard to the property they own, located at 1014 Fairdell Drive, Hummelstown, Derry Township. A hearing in this matter was held on October 21, 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, 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 R-1 zoning district. The property is improved with a single family residence, and the applicant proposes to continue that use. The application seeks variances from the front and side yard setbacks to construct a detached garage, an accessory structure.

The subject property has multiple slopes, including a drop off of approximately 20 feet. The placement of the house on the lot and the grading make it difficult to find a location to build the detached garage. While the applicants considered a 24 feet x 24 feet garage, the applicants propose to construct a 22 feet x 24 feet two-car garage on the northeast corner of the lot, which is

opposite the existing attached garage. At this location, the garage would encroach 10 feet into the front yard setback and 5 feet into the side yard setback.

The garage cannot be located further back from the front yard setback because of the 20 foot drop off. The existing macadam driveway extends to the proposed location of the detached garage. The applicants indicated that it would be cost prohibitive to build the garage in compliance with the Ordinance setback requirements because of the fill and the size of the retaining wall that would be needed. The applicants testified that if the proposed garage was any smaller, they would have difficulty opening the vehicle doors in the garage.

The applicants intend to match the siding and roof of the garage with the existing siding and roof the house. Similarly, they intend to replace the garage doors of the existing attached garage so that the garage doors for both the existing attached garage and the proposed garage are the same. Further, the lot is heavily wooded so the garage would be screened. No trees will be cut down to construct the garage. The applicants submitted a letter from their neighbors adjacent to the side yard encroachment who have no objection to the applicants' project.

The Ordinance requires a front yard setback of 50 feet and a side yard setback of 10 feet for accessory uses. *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 applicant is entitled to the requested relief.

Initially, the Board finds that the property is unique because of the existing slopes of the property and the placement of the house. There is no evidence on the record that the applicants created these hardships. 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 testimony in the record to indicate that the requested variance would negatively impact surrounding properties. No neighbors testified in opposition to the application. In fact, the applicants' adjacent neighbor, who is closest to the location for the proposed garage, indicated no objection to the project in a letter submitted with the application. Finally, the Board finds that this represents 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*, §225-208.B. Based on the Board's findings and conclusions, the Board adopts the following:

ORDER

AND NOW, this 26th day of October, 2020:

1. The applicants' request for a variance from §225-304, Table 7, regarding the front yard setback for a detached accessory use is **GRANTED**. The applicants may encroach to within 40 feet of the front property line to construct the proposed garage.

2. The applicants' request for a variance from §225-304, Table 7, regarding the side yard setback for a detached accessory use is **GRANTED**. The applicants may encroach to within 5 feet of the side property line to construct the proposed garage.

3. 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.

4. 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.

5. 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 as authorized by the Zoning Hearing Board.



Steven Seidl, Chairman