

BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF: : NO. 2020 – 11
:
Wayne A. Ford and :
Dawn L. Carpenter :
:
:
: PREMISES LOCATION:
: 1605 Landvater Road
: Hummelstown, Derry Township, PA

MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of Wayne A. Ford and Dawn L. Carpenter with regard to the property they own, located at 1605 Landvater Road, 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, with their attorney James F. Spade, Esquire, were sworn, and testified at the hearing. In addition, the prior owner of the property, Steven Allen, the applicants’ neighbor, Dorothy Bell, and the applicants’ surveyor, Steven Wible, 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 Conservation zoning district. The property is improved with a single family residence, and the applicants propose to continue that use. The application seeks a variance from the side yard setback for a detached garage, an accessory structure.

Wayne Ford testified that when he and his wife purchased the property, the detached garage existed on the property. He learned of the zoning violation for the garage’s location when he applied for a permit to install a patio off the existing deck. Instead of the permit he sought for

the patio, he received an enforcement notice. He obtained a survey to determine the location of the improvements. Mr. Ford testified that the property is irregularly shaped and has a severe slope. As a result, the house has to be located to the right, and there was no other place for the detached garage. In addition, the property is wider at the road frontage and narrows to a width of 115 feet at the back. There is already a tight clearance between the house and the garage. It cannot be moved further away from the side property line because of the septic tanks. It cannot be moved back because of the sand mound. According to Mr. Ford, the garage's current location makes the most sense because it is relatively flat and has driveway access. This is a rural neighborhood and not part of a planned development. The homes in the neighborhood vary in distance from the public road. Mr. Ford argued that the detached garage does not alter the neighborhood. He acknowledged and agreed that he would have to have a storm water management plan approved. Mrs. Carpenter confirmed her husband's testimony.

Steve Wible, a professional land surveyor with A to Z Land Consulting Services, LLC, testified that he surveyed the applicants' property. He located the improvements on the property, including an existing detached garage. The minimum distance of the garage from the side property line is 10.93 feet. The survey plat and photographs of the property were admitted into the record.

Dorothy Bell, the applicants' adjacent neighbor, whose property is closest to the garage, testified that the nearest corner of the detached garage is approximately 60 – 70 feet from the nearest corner of her house. She reviewed Mr. Wible's survey. While she questioned the location of the garage when it was constructed by the prior owners, she has no objection to its

location. She does not think the applicants should be required to tear down or move the garage. She asserted that the garage does not negatively impact the use, occupancy, or enjoyment her property or any property in the neighborhood. While her husband, Stanley Bell was unable to testify due to his health condition, he did not have any objection to the garage.

Steven Allen, the previous owner of the property, testified that he and his wife sold the property to the applicants in August 2019. While he owned the property, the garage was built in 2017 by Loysville Structures, which is no longer in business. In fact, according to Dr. Allen's research, the Better Business Bureau indicates that the contractor filed for bankruptcy protection. Although he cannot locate a copy of his contract with the contractor, it was the contractor's responsibility to obtain all necessary permits. He was unaware of the non-compliant location of the garage until the applicants contacted him. Dr. Allen confirmed that the garage was placed in the only available location due to the unevenness of the property.

The Ordinance requires a side yard setback of 12 feet. *See* Ordinance, §225-206.F.2.b.iii. 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 narrowing of the lot and steep decrease in grade. 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' neighbor, Dorothy Bell, whose property is closest to the garage, testified in support of 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 18th day of November, 2020:

1. The applicants' request for a variance from §225-206.F.2.b.iii, regarding the side yard setback for an accessory use is **GRANTED**. The applicants may encroach to within 10.93 feet of the side yard property line for the detached garage.

2. The relief granted herein is strictly contingent upon the applicants obtaining approval of their storm water management plan.

3. The applicants shall maintain the improvements in strict compliance with the plans and specifications submitted to the Board during the hearing of this matter

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



Steven Seidl, Chairman