

BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF:	: NO. 2020 – 16
	:
Krupal Desai and	:
Neelam Desai	:
	: PREMISES LOCATION:
	: 285 Dunham Drive
	: Hummelstown, Derry Township, PA

MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of Krupal Desai and Neelam Desai with regard to their property located at 285 Dunham Drive, Hummelstown, Derry Township. A hearing in this matter was held on January 20, 2021, by video conference due to the COVID-19 emergency, after proper advertising and after proper notice to allow for public participation. At that time, the applicants, appeared, were sworn, and testified at the hearing. No other members of the public testified.

The subject property is located in the Conservation Zoning District. The property is used as a residential single family dwelling, and the applicants propose to continue that use with an attached accessory dwelling unit. The application seeks a special exception to permit the accessory dwelling unit.

Mr. Desai testified that he and his wife, along with their three children and two dogs, reside at the subject property. His parents are retiring and moving from Ohio to live with the applicants. They propose to build an addition to their home to accommodate his parents. The addition will be attached to the existing home. There will be no main entrance to the addition. Due to his parents’ health issues, which limit their ability to use stairs, the proposed addition will not have any additional stairs but will also have an elevator. There will be an additional kitchen

in the basement to accommodate his parents. The applicants submitted site plans and floor plans of the proposed addition, which were admitted into the record.

The applicants' proposal must meet all of the 12 specific criteria, to the extent relevant, in order to qualify for the special exception. *See* Ordinance, §225-502.9.A. The record reveals that the applicant has demonstrated compliance with the criteria set forth in §225-502.9.A, addressed below:

1. The proposed accessory dwelling unit will be accessory to the applicants' single-family detached dwelling.
2. The primary dwelling unit will consist of more than 1,200 square feet of floor area, excluding the accessory dwelling unit's floor area. The existing floor area of the primary dwelling unit is over 1,200 square feet.
3. The accessory dwelling unit will not contain more than 50% of floor area of the primary dwelling unit to which the accessory dwelling unit is attached. The proposed accessory dwelling unit will contain approximately 2,300 square feet, and the primary dwelling unit contains at least 5,600 square feet.
4. The lot area of the primary residence is approximately 3.5 acres, or approximately 152,460 square feet.
5. The accessory dwelling unit will not be occupied by more than two persons.
6. The occupants of the accessory dwelling unit will be related to the owners of the primary dwelling unit by blood or marriage and therefore is in conformance with §225-502.9.A.6.

7. The factor relating to resident of the accessory dwelling unit being compensated for services is not relevant in this matter.
8. The accessory dwelling unit will comply with all applicable building codes and any other applicable regulations.
9. The applicant proposes compliant parking and will be adding two garage spaces.
10. The accessory dwelling unit will be attached to the primary dwelling unit, which complies with current building code requirements for habitable structures.
11. The applicants propose to enlarge the existing on-lot sewage system to accommodate the additional sewage flow from the accessory dwelling unit.
12. The applicant has indicated a willingness to execute a recordable agreement with the Township, assignable to the property owners' heirs and successors, which shall be recorded in the Dauphin County Courthouse. This agreement shall clarify that the future use of the accessory dwelling unit shall not be for any nonconforming use, residential or otherwise, if the use specifically authorized by the Township Zoning Hearing Board ceases to exist, and that the property owners and the Township agree that no variance will be granted by the Township Zoning Hearing Board to allow the use of the accessory dwelling unit for other nonconforming purposes in the future.

As this Board has often repeated, a special exception is neither special nor an exception. Instead, it is a permitted use provided the applicant can demonstrate compliance with the applicable criteria. In this case, the applicant satisfies all of the requirements set forth in §225-

502.9.A. Therefore, the Board specifically authorizes the accessory dwelling unit for occupancy by Mr. Desai's parents.

In granting 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. *See* Ordinance, §1007.10.A. Based on the Board's findings and conclusions, the Board adopts the following:

ORDER

AND NOW, this 17th day of February, 2021:

1. The applicants' request for a special exception pursuant to §225-502.9.A regarding an accessory dwelling unit is GRANTED.
2. The occupancy of the accessory dwelling unit shall be limited in accordance §225-502.9.A.5 and 6 of the Ordinance.
3. The property owners shall be required to modify the existing on-site sewage disposal system, or to install a new on-site sewage disposal system, to accommodate additional sewage flow from the accessory dwelling unit, unless the applicants can demonstrate that the existing on-site sewage disposal system is adequate to accommodate the additional flows from the accessory dwelling unit.
4. The property owners shall execute a recordable agreement with the Township, assignable to the property owners' heirs and successors, which shall be recorded in the Dauphin County Courthouse. This agreement shall clarify that the future use of the accessory dwelling unit shall not be for any nonconforming use, residential or otherwise, if the use specifically

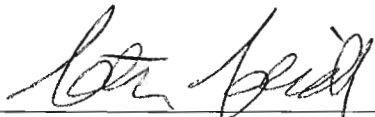
authorized by the Township Zoning Hearing Board ceases to exist, and that the property owners and the Township agree that no variance will be granted by the Township Zoning Hearing Board to allow the use of the accessory dwelling unit for other nonconforming purposes in the future. Such agreement shall be drafted and recorded at the applicants' expense.

5. The applicant 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.

6. 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 applicant has 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 applicant shall be required to comply with the then existing terms of the Zoning Ordinance.

7. 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