

BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF: : NO. 2020 – 18
 :
The McNaughton Company :
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 : PREMISES LOCATION:
 : Lucy Avenue, Tax Parcel #24-031-031
 : Hummelstown, Derry Township, PA

MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of The McNaughton Company with regard to the property located at Lucy Avenue, Tax Parcel #24-031-031, Hummelstown, Derry Township, which is owned by Scott V. McCann and Ashlee N. Rishell McCann. 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. Following the January hearing, the applicant requested a continuance, which was granted by the Board, and the continued hearing was held on March 17, 2021. The applicant waived all deadlines with respect to the Ordinance and the Municipalities Planning Code. At the March 17, 2021 hearing, Joel McNaughton, the attorney for the applicant, appeared, was sworn, and testified at the hearing. No other members of the public testified. However, prior to both hearings, S. Keith Hoover submitted e-mails objecting to the proposed relief because of the impact on the traffic in the area.

The application indicates that the subject property is located in the General Commercial zoning district. The property is now vacant but had been previously improved. Those improvements were removed sometime between February 2004 and October 2008 when the house was demolished. The demolished house had been 46 feet wide with narrow side yard

setbacks. The applicant proposes to construct a single-family residence. The application seeks a variance regarding the minimum lot width and side yard setbacks.

The applicant is the equitable owner of the subject property, having signed an agreement of sale with the owners, which agreement is contingent on obtaining the relief requested from the Zoning Hearing Board. According to a field survey, the subject property is 50 feet wide by 150 feet long. The lot was created in 1952 by an unrecorded plan of lots known as Sipe City. This property has been maintained on a separate deed since its creation in 1952. The applicant submitted the deeds in the chain of title, a site plan, proposed floor plans, and an analysis of the constructed widths of the existing dwellings in the Sipe City neighborhood, which were all admitted into the record. The lot is currently vacant, and the applicant proposes to construct a two-story single family detached dwelling, measuring 28 feet wide by 50.83 feet deep, with a 2 car garage. This would result in an encroachment of 4 feet into the side yard setback. Previously, at the January 20 hearing, the applicant had proposed constructing a 40 feet wide house. It will be a two story residence with 3 bedrooms and 2 ½ baths. The lot is serviced by public water and public sewer.

The surrounding neighborhood contains other single family detached residences, which is a permitted use in the General Commercial zoning district. Mr. McNaughton argued that the requested relief would not alter the essential character of the neighborhood or be detrimental to the public welfare because other single family dwellings in the neighborhood have similar lot dimensions. In addition, Mr. McNaughton argued that the 28 feet width of the proposed dwelling was on the narrow end of the spectrum as the dwelling widths in the Sipe City

neighborhood range from 26 feet to 70 feet, with the average width being 41.14 feet. According to Mr. McNaughton, the dwelling could not be constructed any narrower and still be able to provide a 2 car garage and 2 car driveway for off-street parking. He indicated that a lot of the homes in the neighborhood did not have a 2 car garage and driveway that could accommodate 2 cars.

The Ordinance requires a minimum lot width of 100 feet in the General Commercial zoning district. *See* Ordinance, §225-307, Table 13, Item A. In addition, the Ordinance requires a side yard setback of 15 feet. *See* Ordinance, §225-307, Table 13, Item E. 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 property is unique creating an unnecessary hardship because of its narrowness. There is no evidence on the record that the applicant created the hardship because the applicant does not own the property. 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 considered Mr. Hoover's e-mails, but the applicant addressed his concerns about the traffic. The property will have sufficient off-street parking with a 2 car garage and 2 car driveway that is not available with many of the neighboring lots. As such, the Board finds that the requested variance would not negatively impact surrounding properties. In addition, the proposed relief will not alter the essential character of the neighborhood as the lot size is similar to other lots in the neighborhood and the dwelling's width is on the narrow end of the spectrum in the neighborhood. Finally, the Board finds that this request represents the 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*, §225-1007.9.B. Based on the Board's findings and conclusions, the Board adopts the following:

ORDER

AND NOW, this 21st day of April, 2021:

1. The applicant's request for a variance from §225-307, Table 13, Item A, regarding minimum lot width, is GRANTED. The minimum lot width for the subject property may be a minimum width of 50 feet.

2. The applicant's request for a variance from §225-307, Table 13, Item E, regarding side yard setback, is GRANTED. The applicant may encroach to within 11 feet of each side yard property line for the single family detached dwelling.

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 a 5 – 0 vote as indicated by the Chairman’s signature as authorized by the Zoning Hearing Board.

A handwritten signature in cursive script, appearing to read "Steven Seidl", written in black ink.

Steven Seidl, Chairman