BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF:

: NO. 2021 – 07

Joy S. Trout

: PREMISES LOCATION:

2154 Deer Run Drive

Hummelstown, Derry Township, PA

MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of Joy S. Trout with regard to the property located at 2154 Deer Run Drive, Hummelstown, Derry Township, which is owned by the applicant and her husband, Michael Trout. A hearing in this matter was held on September 15, 2021, after proper advertising. At that time, the applicant, appeared, was sworn, and testified at the hearing.

The application indicates that the subject property is located in the R-3 zoning district. The property is improved with a residential townhome, and the applicant proposes to continue that use. The application seeks a variance to construct between townhomes a privacy fence that would be 8 feet high.

The applicant testified that her townhome, located at 2154 Deer Run is an end unit. It is attached to another townhome, located at 2156 Deer Run. The 2156 Deer Run townhome has a raised patio over two feet off the rear of the townhome. The neighbor's raised patio existed when the applicant moved into the property. The applicant proposes to install an eight feet high privacy fence to the end of the 2156 Deer Run townhome patio. Therefore, the fence would be 12 feet in length and 8 feet high. The applicant argued that a six feet fence would not give her adequate privacy because her neighbors at 2156 Deer Run would still be able to see onto her

property because of the raised patio. Further, she felt that the privacy fence would prevent individuals from falling off the neighbor's raised patio onto her property. The applicant noted that the fence would be shorter on her property than if her neighbor installed a compliant six feet high fence on the raised patio. The applicant verified that the proposed fence would not interfere with drainage for her property or the 2156 Deer Run property. She consulted with her neighbor, who agreed the requested relief was the best option. Additionally, the homeowners' association approved the project. No members of the public testified during the hearing of this matter.

The Ordinance restricts the maximum height of a fence to six feet. *See* Ordinance, §225-407.A.1. 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 it is an attached townhome with the adjacent townhome having a raised patio. There is no evidence on the record that the applicant created this hardship. 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, particularly the property owner of the attached townhome, testified in opposition to 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. *See* Ordinance, §225-1007.9.B. Based on the Board's findings and conclusions, the Board adopts the following:

ORDER

AND NOW, this day of October, 2021:

- 1. The applicant's request for a variance from §225-407.A.1. regarding the maximum height of a fence is GRANTED. The applicant may construct a fence that is 8 feet in height.
- 2. 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.
- 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 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.
- 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.

Steven Seidl

Sandra Ballard

F. Dean Morgan