BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF:

: NO. 2021 - 14

Jeffrey Mackneer

: PREMISES LOCATION:

593 Hilltop Road

Hummelstown, Derry Township, PA

MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of Jeffrey Mackneer with regard to his property located at 593 Hilltop Road, Hummelstown, Derry Township. A hearing in this matter was held on November 17, 2021, after proper advertising. Board Member, Lindsay Drew, disclosed that she serves on the Derry Township School Board, and that the applicant is an employee of the School District, but that this association would not pose a conflict of interest. At that time, the applicant appeared, was sworn, and testified at the hearing. No members from the public testified at the hearing.

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 applicant proposes to continue that use. The application seeks a variance from the side yard setback for a pool, an accessory structure.

Mr. Mackneer testified that the subject property is a narrow, oddly shaped, wooded lot. The northwest corner of the lot has a steep grade that is really only usable for sledding. As a result of the lot and the Ordinance setback requirements, there is a constricted building envelope behind the existing house to construct a pool. The applicant proposes to construct the pool so

that it is 38 feet from the side yard property line. Other locations on the property were considered but dismissed as unfeasible. For example, it was recommended that the pool not be any closer to the house or the existing shed and well. Moreover, the applicant anticipates installing a stormwater management system that will have to be a distance from the pool. In addition, the applicant wants to keep the existing trees that line three sides of the property. The property to which the pool would be closest is vacant and wooded. The nearest house is a distance away from the applicant's property because the adjoining properties are very narrow so the houses are set back from the road and applicant's house. The applicant submitted a site plan and photographs, all of which were admitted into the record.

The Ordinance requires a side yard setback of 50 feet. *See* Ordinance, §225-303, Table 5, Item H. 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:

- 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 its narrow, odd shape. 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 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 15th day of December, 2021:

- 1. The applicant's request for a variance from §225-303, Table 5, regarding the side yard setback for an accessory use is GRANTED. The applicant may encroach to within 38 feet of the side yard property line for the proposed pool.
- 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 Mørgan
Lindsay Drew

Michael Angello