

BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF: : NO. 2022 - 02
:
Dialysis Care Center :
(a/k/a Home Dialysis Center) LLC : PREMISES LOCATION:
: 555 E. Chocolate Avenue, Suite 100
: Hershey, Derry Township, PA 17033

MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of Dialysis Care Center (a/k/a Home Dialysis Center) LLC with regard to the property owned by 555 East Chocolate Ave LP, located at 555 E. Chocolate Avenue, Suite 100, Hershey, Derry Township, Pennsylvania. A hearing in this matter was held on February 16, 2022, after proper advertising. At that time, Brittany Jones, an employee of the applicant, Babajide Salako, M.D., and the applicant’s attorney, David Getz, with Wix, Wenger & Weidner, appeared, were sworn, and testified during the hearing. No members of the public testified during the hearing.

The application indicates that the subject property is located in the Hershey Mixed Use zoning district. The property is serviced by public water and sewer. The property has been used as a multi-use building with the applicant operating a dialysis center in a first floor suite with additional floor space on the second floor. The applicant seeks a special exception to expand into the remaining, vacant first floor space for additional treatment area.

The building in which the applicant operates is located next to a Courtyard Marriot and has a golf course behind it. Since approximately 2015 – 2106, the applicant has operated a dialysis treatment center at the property in a first floor suite and a portion of the second floor. When the applicant moved into the space, the dialysis treatment center was a permitted use under

the prior Ordinance. The other adjacent suite on the first floor had been used as a dentist's office but is now vacant. The applicant proposes to expand into the former dentist's office. The applicant currently uses 3,033 square feet on the first floor for the dialysis treatment and uses 693 square feet on the second floor for storage. Under the proposed expansion, the applicant would increase its floor area on the first floor by 1,714 square feet for a total of 4,747 square feet and would relinquish its storage on the second floor. This results in an expansion of 46%¹ of the building's existing floor area.

The applicant operates Monday through Friday, with hemodialysis patients being seen on Monday, Wednesday, and Friday, for 3 to 5 ½ hours. Currently, there are 6 chairs available for the 3 shifts so 18 patients are seen per day. Other patients are treated with home dialysis programs and must be seen in-person at the facility twice a month, on Tuesdays and Thursdays. Under the proposed expansions, the number of chairs would double to 12.

The majority of the applicant's patients live in the Hershey/Hummelstown area. The patient load is growing as the population ages. The applicant previously shared a lobby with the dentist's office. As a result, Ms. Jones asserted that the applicant's increase in patients because of the expansion would result in less patients to the facility than when the dentist's office was operating. Therefore, there would be less strain on the roads and parking than if the dentist office was still operating. Similarly, the use of water and lights at the facility would be similar to the use when the dentist was using the space. There would be no changes to the outside of the

¹ The applicant initially testified that the expansion constituted a 36% expansion of the building's existing floor area, but the Township calculates it, in accordance with the Ordinance, as a 46% expansion.

building as a result of the proposed expansion. According to the applicant, no one passing the building would know about the expansion. David Habig, the Assistant Director of Community Development for the Township confirmed that there is sufficient parking at the property for the proposed expansion. The applicant submitted a revised floor plan sketch, which was admitted into the record.

The Derry Township Zoning Ordinance permits the Zoning Hearing Board to grant a special exception to expand a nonconforming use of land, a nonconforming building, and/or a nonconforming structure in excess of 25%, but not more than 50%, of the floor area that existed on January 26, 1993, if the Board finds that the proposed expansion:

1. Is limited to a distance of 250 feet from the existing nonconformity as it existed on January 26, 1993;
2. Is limited to an increase of floor area or land use of not more than 50% of the floor area which existed on January 26, 1993;
3. Is confined to the lot on which it was located on January 26, 1993;
4. Does not violate any parking, loading, minimum area, height, vegetative cover, impervious cover, floodplain and/or buffer requirements set forth in this Chapter, unless additional relief in the form of a variance is requested and approved by the Zoning Hearing Board;
5. Existing nonconforming uses of land, buildings or structures that encroach upon current minimum front, rear or side yard areas may be expanded, provided the expansion is attached to the existing nonconforming use of land, building or structure.

6. The proposal includes adequate landscaping, buffering and is of such architectural design that nearby properties will not be adversely affected than they were prior to the expansion of the nonconformity.

Ordinance, §225-602.B.

In addition, the applicant must also demonstrate compliance with criteria set forth in §225-502.B, Specific Criteria For Special Exception Uses:

1. The Township Zoning Hearing Board shall find that the use will not adversely affect the health or safety of residents in the neighborhood or district in which the use is located.
2. The Township Zoning Hearing Board shall find that the use will not overburden existing public services, including water, sanitary sewer, public roads, storm drainage or other public improvements.
3. The Township Zoning Hearing Board shall find that the use will not be detrimental to the use or development of, or change the essential character of, the neighborhood or district in which the use is proposed. The Township Board of Supervisors shall consider, at a minimum, the impact of noise, dust, light, odor and adequacy of parking.
4. The use shall meet all other requirements of this Chapter that may apply.
5. The minimum lot area shall be one acre when the use relies on an on-lot septic system.

Ordinance, §225-502.B.

The Board finds that the applicant is entitled to the requested relief with respect to the use of the subject property. 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 §225-602.B.

The proposed expansion into the vacant first floor suite will be approximately five feet from existing dialysis treatment center. The increase in floor space will be 46%. The proposed expansion is confined to the lot containing the existing dialysis center. In addition, the proposed expansion does not violate any other Ordinance requirements. In this case, there is no expansion of uses of land, buildings, or structures as the proposed expansion is limited to expanding within the existing building. Because there is no expansion of the existing building, there is adequate landscaping and buffering. The Board finds that the proposed expansion will not adversely affect the nearby properties.

Moreover, the Board finds that the relief sought will not adversely affect the health, safety, or welfare of residents of the area or be detrimental to or change the essential character of the neighborhood. Moreover, the Board finds that expansion of the dialysis treatment center will not overburden the public services. More importantly, the Board finds that the requested relief will not cause any parking problems because the property has sufficient parking for the patients. Lastly, the Board finds that there will no impact of increased light or noise as a result of the proposed expansion. Because the Board finds that the applicant has complied with each of the requirements set forth in §225-602.B and §225-502.B, applicant is entitled to the special

exception to increase the floor area by 1,714 square feet, or 46% of the building's existing floor area.

In granting a special exception, 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 16th day of March, 2022:

1. The applicant's request for a special exception from §225-602.B regarding expansion of nonconforming use of land by between 25% and 50% of the nonconforming of the floor area or land use area is GRANTED. The applicant may construct the proposed expansion, containing 1,714 square feet, or 46% of the building's existing floor area.

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



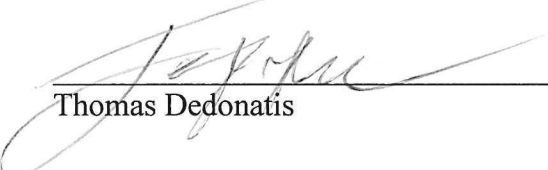
Sandra Ballard



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