

BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF: : NO. 2022 – 09
:
David Wertley :
:
:
: PREMISES LOCATION:
: 1358 E. Caracas Avenue
: Hershey, Derry Township, PA

MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of David Wertley with regard to his property located at 1358 E. Caracas Avenue, Hershey, Derry Township. A hearing in this matter was held on June 15, 2022, after proper advertising. At that time, the applicant appeared, was sworn, and testified at the hearing. No other members of the public testified.

The application indicates that the subject property is located in the Palmdale Mixed Use zoning district. The property is improved with a single family detached dwelling and a trailer that was last used as a primary single family dwelling in October 2020. The applicant proposes to remove the trailer and replace it with a new single family detached dwelling such that there will be two dwelling units on the property. The application seeks a special exception to reestablish a discontinued nonconforming use.

The property contains a single family detached dwelling in which the applicant and his wife reside. The property also contains a 1961 trailer that was last used as a primary dwelling by the applicant's son in October 2020. The applicant and his wife occupied the trailer from September 10, 2021, until November 4, 2021, while their residence on the property was being

renovated. The property has two addresses with the trailer's address being designated at rear or trailer. The applicant pays separate utilities for each residence.

Mr. Wertley wishes to remove the three bedroom trailer from the property and replace it with a single family dwelling with an attached garage. The new single family dwelling would contain no more than three bedrooms. The garage would be beneath the top floor living area of the proposed single family dwelling. He argued that the new single family dwelling would be no more intense than the trailer because there would be no more bedrooms than already exists in the trailer. The new single family dwelling would operate under similar conditions to the trailer. The proposed new single family dwelling will comply with all other zoning requirements, and no further zoning relief would be necessary. He anticipates that his son, a disabled veteran, will reside at the second dwelling. Mr. Wertley said that the neighbors are planning a party for when the trailer is removed. He agreed with his neighbors that the second single family dwelling will look better than the existing trailer and will not alter the neighborhood, which is essentially residential. According to Mr. Wertley, he has taken no action to remove or replace the trailer, and he has not taken any action to cause the use to be conforming. No other zoning violations exist on the property, including with respect to the trailer.

Where a nonconforming use has been discontinued for a period of more than one year, the Zoning Ordinance allows the Zoning Hearing Board to grant a special exception:

“to allow a nonconforming use to be reestablished when the applicant can demonstrate the following:

1. No action was taken to remove or replace the nonconforming use with a conforming one.
2. No action was taken that would have caused the use to be conforming or to otherwise modify or change the existing conditions of the nonconformity as it originally existed.
3. No zoning violations exist on the subject property.
4. The reestablished nonconforming use will be no more intense than what had originally existed.
5. The reestablished nonconforming use will operate under the same conditions and hours as the original nonconforming use.”

See Ordinance, §225-502.12.

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.

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 §225-502.12. According to the evidence presented, there has been no attempt to remove, replace, or modify the trailer. There are no zoning violations existing on the property. More importantly, because the second single family dwelling will have no more than three bedrooms than currently exists in the trailer, the Board finds that the second dwelling unit will be no more intense. Further, the second single family dwelling will operate similarly to the trailer.

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. There is no evidence that there will be any impact of increased light or noise. In addition, the Board finds that second dwelling unit will not overburden the public services because the trailer already exists. More importantly, the Board finds that the requested relief will not cause any parking problems because second dwelling unit will have its own garage. Because

the Board finds that the applicant has complied with each of the requirements set forth in §225-502.12 and §225-502.B, the applicant is entitled to the special exception to reestablish a discontinued nonconforming use by removing the trailer and constructing a second single family dwelling with attached garage on the property.

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 20th day of July, 2022:

1. The applicant's request for a special exception from §225-502.12 regarding reestablishing a discontinued nonconforming use is **GRANTED**. The applicant may reestablish a second dwelling unit with an attached garage on the property as represented during the hearing of this matter.

2. The relief granted herein shall be strictly contingent upon the following:

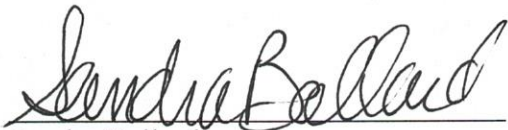
A. The second dwelling unit shall contain no more than three bedrooms.

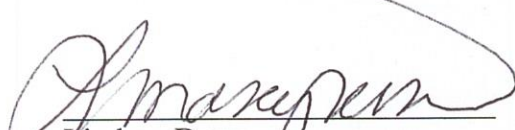
B. The garage of the second dwelling unit shall be underneath the living area.

3. 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.

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 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.

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.


Sandra Ballard


Lindsay Drew

Thomas Dedonatis