

BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF: : NO. 2022 – 14
Justin C. Newkam :
: :
: :
: PREMISES LOCATION:
: 1676 Sand Hill Road
: Hershey, Derry Township, PA

MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of Justin C. Newkam with regard to his property located at 1676 Sand Hill Road, Hershey, Derry Township. A hearing in this matter was held on November 16, 2022, after proper advertising. At that time, the applicant appeared with Steve Hines, both of whom were sworn, and the applicant testified at the hearing. No other members of the public testified.

The application indicates that the subject property is located in the R-1 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 expansion of nonconforming buildings to construct an addition to the existing home.

Mr. Newkam testified that his residence, built in approximately 1900, was constructed 12 – 15 feet from Sand Hill Road before there was any zoning ordinance. The current Ordinance requires a setback of 30 feet. According to the application, the residence originally consisted of 1,262 square feet. In 2006, prior owners obtained relief from the Zoning Hearing Board to construct an addition consisting of 618 square feet, representing a total increase of 48.97% of the

structure's square feet. The applicant proposes to construct an addition consisting of 1,017.9 square feet, which would represent a total increase of 129.63% of the structure's original square feet.

Mr. Newkam explained that the first floor of the home consists of a kitchen, full bath, living room, and stairway and is only 700 square feet. The proposed addition would expand the kitchen and living room to allow his family to make this their forever home. The proposed addition will be constructed directly behind the existing structure so as to block most of the neighbors from even seeing the addition. The property is 4 acres so the proposed addition represents less than 1% of the entire lot area. The proposed addition will be constructed outside of the 30 feet setback. The applicant proposes to construct a roof over the side door, which is the main access to the residence, and the new roof will be within the setback.

The applicant submitted a letter from his adjacent neighbor, Cord Kisthardt, who resides at 1646 Sand Hill Road. According to his letter, Mr. Kisthardt has no objection to the proposed addition. According to the applicant, his mother lives across the street, and she has no objection to the proposed addition. Mr. Kisthardt's letter as well as the plans and specifications of the proposed addition were entered into the record.

The Ordinance prohibits the expansion of an existing nonconforming building by more than 50% of the floor area which existed on January 26, 1993. *See* Ordinance, §225-602.B.2. 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 imposes a unique hardship because the residence was constructed 12 – 15 feet from the road. Because the residence was built in about 1900, 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. The proposed addition will be directly behind the existing residence. There is no testimony in the record to indicate that the requested variance would negatively impact surrounding properties. In fact, an adjacent neighbor submitted a letter in

support of the proposed addition. 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. *Ordinance*, §225-1007.9.B. Based on the Board's findings and conclusions, the Board adopts the following:

ORDER

AND NOW, this 5th day of December, 2022:

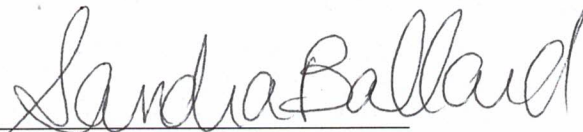
1. The applicant's request for a variance from §225-602.B.2, regarding the expansion in the floor area of a nonconforming structure is **GRANTED**. The applicant may expand the floor area an additional 1,017.9 square feet to a total of 2,897.9 square feet, representing a total increase of 129.63% of the structure's square feet as of January 26, 1993.
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 and as provided herein, 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.

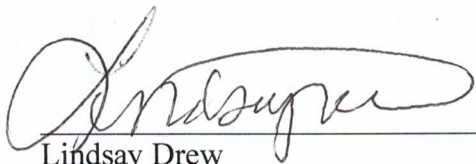
4. Any violation of any condition imposed herein shall be a violation of the Township Zoning Ordinance and shall be enforced as provided in the Ordinance.



Steven Seidl



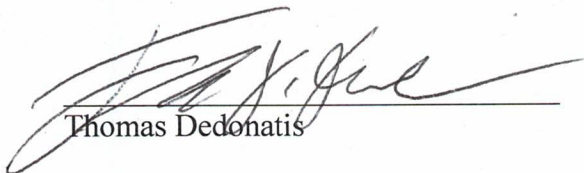
Sandra Ballard



Lindsay Drew



Michael Angello



Thomas Dedonatis