

**BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD**

IN THE MATTER OF:

: NO. 2022-17

:

Dwayne Morris

:

: PREMISES LOCATION:

: 117 West Governor Road

: Hershey, Derry Township, PA

**MEMORANDUM, FINDINGS, OPINION AND ORDER**

This is the application of Dwayne Morris with regard to his property located at 117 West Governor Road, Hershey, Derry Township. A hearing in this matter was held on January 18, 2023, after proper advertising. At that time, the applicant, appeared, was sworn, and testified at the hearing. No other members of the public testified.

The subject property is located in the Hershey Mixed Use Zoning District. The property is used as a residential single family dwelling, and the applicant proposes to continue that use with a detached accessory dwelling unit. The application seeks a special exception to permit the accessory dwelling unit.

The applicant testified that he wishes to install a manufactured home in his back yard. He has raised his granddaughter since birth. Now that his granddaughter is an adult, he wants her to have her own space but still have his support. The subject property is approximately 16,500 square feet with the primary dwelling unit having 2,250 square feet so the applicant argued he has sufficient room to install the proposed accessory dwelling unit. The property has an existing 6 feet high fence, and the proposed accessory dwelling unit would be installed inside the fence. The back yard already has a gazebo, garage, and pool. The proposed accessory dwelling unit would be no higher than the existing garage. The proposed accessory dwelling unit

will be 13'4" x 44', or 587 square feet, consisting of one bedroom, one bathroom, a kitchen, dining area, and living room. There is an existing three car parking area, which the applicant's granddaughter already uses so the proposed accessory dwelling unit would not affect the parking. The property meets all of the dimensional requirements for an accessory dwelling unit, and no other zoning relief is required. The applicant agreed to either comply with installing a new pool barrier fence between the accessory dwelling unit and pool or alarm all doors and windows to be compliant with the Township's pool and spa code. The applicant is exploring compliant alarms. The applicant submitted site plans, floor plans, and foundation specifications for the proposed accessory dwelling unit, which were admitted into the record.

The applicant's proposal must meet all of the 12 specific criteria, to the extent relevant, in order to qualify for the special exception. *See* Ordinance, §225-502.9.A. The record reveals that the applicant has demonstrated compliance with the criteria set forth in §225-502.9.A, addressed below:

1. The proposed accessory dwelling unit will be accessory to the applicant's single-family detached dwelling.
2. The primary dwelling unit will consist of more than 1,200 square feet of floor area, excluding the accessory dwelling unit's floor area. The existing floor area of the primary dwelling unit is over 1,200 square feet.
3. The accessory dwelling unit will not contain more than 50% of floor area of the primary dwelling unit to which the accessory dwelling unit is attached. The proposed

accessory dwelling unit is 587 square feet, and the primary dwelling unit is 2,250 square feet.

4. The minimum gross lot area to establish an accessory dwelling unit should be 9,000 square feet. The lot area of the subject property is approximately 16,500 square feet.
5. The accessory dwelling unit will not be occupied by more than two persons.
6. The occupants of the accessory dwelling unit will be related to the owners of the primary dwelling unit by blood or marriage and therefore is in conformance with §225-502.9.A.6.
7. The factor relating to resident of the accessory dwelling unit being compensated for services is not relevant in this matter.
8. The accessory dwelling unit will comply with all applicable building codes and any other applicable regulations.
9. The applicant proposes compliant parking as there are already three existing parking spaces.
10. The accessory dwelling unit will be an accessory structure on the property, which complies with current building code requirements for habitable structures.
11. The factor relating to the reliance on an on-site sewage disposal system is not relevant to this matter.
12. The applicant has indicated a willingness to execute a recordable agreement with the Township, assignable to the property owners' heirs and successors, which shall be recorded in the Dauphin County Courthouse. This agreement shall clarify that the

future use of the accessory dwelling unit shall not be for any nonconforming use, residential or otherwise, if the use specifically authorized by the Township Zoning Hearing Board ceases to exist, and that the property owners and the Township agree that no variance will be granted by the Township Zoning Hearing Board to allow the use of the accessory dwelling unit for other nonconforming purposes in the future.

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 §225-502.9.A. Therefore, the Board specifically authorizes the accessory dwelling unit for occupancy by the applicant's granddaughter. The Board further finds that the special exception will not adversely affect the health or safety of the residents in the neighborhood, will not be detrimental to the use or development of the neighborhood, or change the essential character of the neighborhood because the applicant's granddaughter already resides 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 15<sup>th</sup> day of February, 2023:

1. The applicant's request for a special exception pursuant to §225-502.9.A regarding an accessory dwelling unit is GRANTED.

2. The occupancy of the accessory dwelling unit shall be limited in accordance with §225-502.9.A.5 and 6 of the Ordinance. The applicant shall notify the Township if the primary occupant, the applicant's granddaughter, of the accessory dwelling unit changes.

3. The property owner shall execute a recordable agreement with the Township, assignable to the property owner's heirs and successors, which shall be recorded in the Dauphin County Courthouse. This agreement shall clarify that the future use of the accessory dwelling unit shall not be for any nonconforming use, residential or otherwise, if the use specifically authorized by the Township Zoning Hearing Board ceases to exist, and that the property owner and the Township agree that no variance will be granted by the Township Zoning Hearing Board to allow the use of the accessory dwelling unit for other nonconforming purposes in the future. Such agreement shall be drafted and recorded at the applicant's expense.


4. 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.

5. 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.

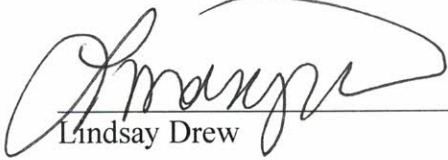
6. Any violation of any condition imposed herein shall be a violation of the Township Zoning Ordinance and shall be enforced as provided in the Ordinance.



Steven Seidl



Thomas DeDonatis



Lindsay Drew

Michael Angello



William Tafuto