

**BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD**

IN THE MATTER OF: : NO. 2023-01  
:   
U-Haul of Hershey :   
a/k/a U-Haul Co. of Pennsylvania : PREMISES LOCATION:  
: 1000 West Chocolate Avenue  
: Hershey, Derry Township, PA

**MEMORANDUM, FINDINGS, OPINION AND ORDER**

This is the application of U-Haul of Hershey a/k/a U-Haul Co of Pennsylvania<sup>1</sup> with regard to the property owned by Amerco Real Estate Company, an affiliate of U-Haul, located at 1000 West Chocolate Avenue, Hershey, Derry Township. A hearing in this matter was held on February 15, 2023, after proper advertising. At that time, Mike Zemba, a district manager with U-Haul, and Paul Navarro, P.E. with Navarro & Wright, appeared with the applicant’s counsel, Ambrose Heinz, Esquire with Stevens & Lee, were sworn, and testified at the hearing. No other members of the public testified.

The subject property is located in the Industrial Use Zoning District. The property is used as a one-story self-storage facility, and the applicant proposes to construct a new four-story indoor storage facility. The application is an appeal from the Director of Community Development’s determination, in his role as Zoning Officer, that accessory parking areas are not permitted within the yard areas and that the existing gravel/macadam areas are not pre-existing nonconformities. In the alternative, the applicant seeks variances from the yard setback requirements to permit parking areas within the yard areas.

---

<sup>1</sup> At the hearing, the applicant orally amended its application to correct the name of the applicant to reflect the applicant’s name as the lessee for the subject property.

The subject property is currently improved with a one-story masonry building, which has existed for at least 60 years. Previously, the property had been used as an independent U-Haul dealership with truck and trailer rentals and a small retail component. However, in 2021, U-Haul's affiliate, Amerco Real Estate Company, purchased the property, and the property is now a company-operated self-storage facility. In 2022, the applicant submitted a land development plan to redevelop the property by constructing a new 29,152 square feet, four-story building to be used for self-storage with a small retail store to sell boxes and other moving supplies. There would be 1,013 indoor self-storage units. The units would be climate controlled and individually alarmed. The units would be accessed by four load bays. The new facility would be open from 7 a.m. to 7 p.m. on Monday – Thursday, 7 a.m. to 8 p.m. on Friday, and 9 a.m. to 5 p.m. on Saturday. Based on a U-Haul study of its busiest and slowest times of the year, Mr. Zemba estimates that approximately 33 people per day will visit the property. There would be no truck or trailer renting available at the property. Other dealerships in the area would be available for truck sharing.

According to a survey by Gregory Noll of Valley Land Services, Inc., the subject property is covered almost entirely by existing impervious areas consisting of macadam and gravel. Currently, there is generally uncontrolled access to the property. Under the applicant's proposal, there would be controlled access to the property at the western and eastern ends of Old West Chocolate Avenue. The applicant would restore some of the existing impervious coverage to grass to move impervious areas from the property lines, such that the impervious coverage would be reduced from almost 100% to 72.8%.

There are currently 12 parking spaces in front of the building, 26 parking spaces around the building, and 4 parking spaces in the rear of the building, although the majority of the existing parking was established in the last few years in violation of the existing regulations. The applicant is required to have 20 parking spaces. Therefore, the applicant proposes 8 parking spaces in the front of the new building, 4 parking spaces along the eastern side of the building, and 8 parking spaces to the rear. The front yard parking spaces will be 0.91 feet from the dedicated right-of-way, requiring a variance of 39.09 feet. The side yard parking spaces will be 14 feet from the property line, requiring a variance of 26 feet. The rear yard parking spaces will be 6 feet from the property line, requiring a variance of 34 feet. The applicant reviewed with the Board the pertinent sections of the Ordinance. In addition, the applicant submitted exhibits at the hearing, including, plans and photographs, and all of the exhibits and the applicant's memorandum of law were admitted into the record.

The applicant voluntarily withdrew its land development plan and requested a determination regarding of whether the Ordinance's setback requirements apply to parking areas. On January 13, 2023, the Director of Community Development, Charles Emerick, issued a determination that parking areas are not permitted to encroach into the yard areas. Mr. Emerick also determined that the applicant had not established pre-existing nonconformities for the macadam and gravel areas as parking areas. As a result, the applicant filed its application to appeal the January 13, 2023 determination and in the alternative, requested a variance.

The Director of Community Development, Charles Emerick, appeared, was sworn, and testified at the hearing in this matter. Mr. Emerick reviewed the history of ownership,

development of the property, and the relevant portions of the Ordinance. In addition, Mr. Emerick submitted a power point presentation, including photographs of the subject property, which was admitted into the record.

The Board finds that the determination of the Director of Community Development that the parking areas shall not be in the yard areas must be sustained and the appeal denied. The applicant argues that the Ordinance's dimensional requirements applicable to the subject property establish a minimum front, side, and rear setbacks for principal structures. *See* Ordinance, §225-317, Table 33. "Principal building or structure" is defined as "the building(s) on a lot in which the principal use(s) are conducted. Ordinance, §225-1103. Therefore, the applicant argues that there are no setbacks for accessory structures, including parking areas. The applicant references other zoning districts that similarly do not have minimum setback requirements for accessory structures. *See* Ordinance, §225-307, Table 13 and Figure 4.

The Ordinance defines "Yard Area (a.k.a required yard area, setback, and minimum yard)" as "a regulatory open space area on a lot which is unoccupied and unobstructed from the ground up, except for such intrusions as are expressly permitted by this Chapter. *See* §225-206.H." Ordinance, §225-1103. The Board finds that there is no distinction between principal and accessory structures in this definition. The parking spaces that are permitted encroachments in the required yard areas are for single-family homes, two-family detached dwellings, and multifamily apartment dwellings having less than four dwelling units per building as well as parking spaces and parking lots in zoning districts other than Industrial Use Zoning District. *See* Ordinance, §225-206.H.13 – 15. Moreover, the Ordinance's design and construction standards

for parking lots require compliance with §225-206.H (Permitted Encroachments in Required Yard Areas), which, as noted above, do not permit encroachments into the yard area in the Industrial Use Zoning District. As a result, the Board finds that parking areas are not permitted in the yard areas a.k.a setbacks in the Industrial Use Zoning District. Therefore, the Director of Community Development's determination is sustained, and the applicant's appeal is denied.

Alternatively, the applicant appeals the determination of the Director of Community Development's determination that the existing impervious areas of macadam and gravel were not parking areas subject to the nonconformity regulations of the Ordinance. Similarly, the Board finds that the determination of the Director of Community Development must be sustained and the appeal denied. While the applicant and the Director of Community Development submitted many photographs of the subject property over the years to establish its use, the Board finds that the photographs do not establish that the existing macadam and gravel were used as parking areas within the required yard area.

The Ordinance defines "Parking Lot" as "a space other than a truck loading dock, area for car/camper sales, street, alley or access drive used for the temporary parking of vehicles, including the maneuvering aisles and all interior areas containing required parking landscaping." Ordinance, §225-1103. "Loading Space" is defined as "an off-street space on the same lot as a building or use which is to be used for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials and which abuts a street or other appropriate means of access." Ordinance, §225-1103.

The Ordinance makes a distinction between a parking lot and a loading space. *Compare* Ordinance, §225-402.1 (Vehicular Off-street Parking Standards) and §225-402.6 (Off-Street Loading and Unloading Space). At the most, the Board finds that the applicant established that the subject property's yard area was used previously as a loading space. Because it will now be used as a parking lot, it cannot be deemed to be a pre-existing nonconformity. Therefore, the applicant's appeal is denied, and the determination of the Director of Community Development is sustained.

In the alternative, the applicant seeks dimensional variances from the yard area a.k.a setbacks for parking areas. The Ordinance requires a yard setback of 40 feet. *See* Ordinance, §225-317, Table 33. 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 is unique because of the property's small lot depth and building envelope with almost entire impervious coverage. Because of the dedicated right-of-way under the applicant's proposal, the size is reduced even further. 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 to the public welfare. There are other neighboring properties with parking within the setbacks. 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 neighboring property owners 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. *Ordinance*, §225-1007.9.B. Based on the Board's findings and conclusions, the Board adopts the following:

**ORDER**

AND NOW, this 15<sup>th</sup> day of March, 2023:

1. For all of the foregoing reasons, the determination of the Director of Community Development that parking areas are not permitted within the setbacks is SUSTAINED, and the appeal of the applicant is DENIED.

2. For all of the foregoing reasons, the determination of the Director of Community Development that the existing gravel/macadam area is not a pre-existing non-conformity is SUSTAINED, and the appeal of the applicant is DENIED.

3. The applicant's request for a variance from §225-317, Table 33, to permit parking areas within the setbacks is GRANTED. The applicant may encroach as follows for the proposed parking areas:

A. Front yard setback: The applicant may encroach to within .91 feet of the right-of way.

B. Side yard setback: The applicant may encroach to within 14 feet of the side yard setback.

C. Rear yard setback: The applicant may encroach to within 6 feet of the rear yard setback.


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,

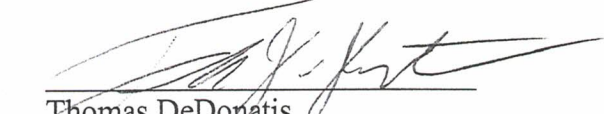


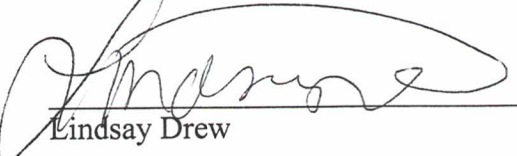
that if the improvements that are the subject of this hearing, as finally constructed, require less relief than granted by the Board herein, no additional relief from this Board shall be required.

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

  
\_\_\_\_\_  
William Tafuto