

BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF: : NO. 2023 – 05
: :
Dave Kern : :
: :
: :
: PREMISES LOCATION:
: 147 Elm Avenue
: Hershey, Derry Township, PA

MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of Dave Kern with regard to the property he owns with his wife, Teresa Kern, located at 147 Elm Avenue, Hershey, Derry Township. A hearing in this matter was held on June 20, 2023, after proper advertising. At that time, the applicant appeared, was sworn, and testified at the hearing. No members from the public testified at the hearing.

The application indicates that the subject property is located in the Hershey Mixed Use zoning district. The property is improved with a single family residence with a detached garage, and the applicant proposes to continue that use. The application seeks a variance from the side yard setback for a swim spa, an accessory structure.

The applicant describes the proposed swim spa as a large hot tub. The swim spa is 8’x15’x5’. The concrete pad for the swim spa will be 8’6” wide to maintain the swim spa’s warranty. According to the Statewide Building Code, there must be at least 5 feet between the swim spa and any standard windows. There is 16’3” from the house to the side yard property line. In order to maintain the warranty and avoid replacing any windows and tearing up the existing walkway, the applicant proposes installing the swim spa in the side yard, a distance of 2.5’ from the side yard property line. There would be 5’3” from the house to the concrete pad.

The deck around the swim spa would be more than 5 feet from the side property line. There are existing evergreen trees on the side yard property line, and the applicant does not intend to remove any of the evergreen trees although one of the trees would be moved slightly. The applicant intends to install a 6 feet high privacy fence to screen the swim spa from the neighbors.

The applicant considered installing the swim spa in the back yard but decided the back yard was not an appropriate location because of the mature trees in the back yard, which have wide canopies. There is also a buried sewer line in the back yard. The applicant thought locating the swim spa in the back yard would create more of a presence for the neighbors than the side yard, which would have the least noticeable impact on the neighbors.

The applicant submitted letters from Steve Hetrick, who resides at 153 Elm Avenue, and Bruce and Sally McKinney, who reside at 139 Elm Avenue, the neighbors on each side of his property. These neighbors support the requested relief. The letters were admitted into the record.

The Ordinance requires a side yard setback of 5 feet. *See* Ordinance, §225-315, Table 29. 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 not entitled to the requested relief. Initially, the Board finds that the property's mature trees and sewer line in the back yard do not create an unnecessary hardship such that the property cannot be developed in strict conformity with the provisions of the Ordinance. In other words, there is adequate space in the back yard to install the proposed swim spa that do not require a variance from the required 5 feet side yard setback requirement. Moreover, the Board finds that the swim spa could be installed in the side yard closer to the house, albeit with greater expense to the applicant, that would not require a variance. While the Board recognizes that the adjacent neighbors on both sides of the subject property consented to the proposed placement of the swim spa in the side yard, their consent is not a determinative factor. Therefore, the Board finds that the requested variance is not the minimum variance that would afford relief or the least modification possible.

Based on the Board's findings and conclusions, the Board adopts the following:

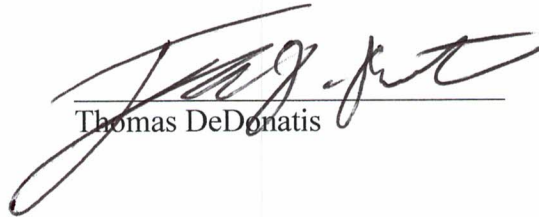
ORDER

AND NOW, this 19th day of July, 2023:

1. The applicant's request for a variance from §225-315, Table 29, regarding the encroachment into the side yard setback for an accessory use is DENIED.



Steven Seidl



Thomas DeDonatis

Michael Angello