

**BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD**

IN THE MATTER OF: : NO. 2023 – 06  
Clay Tully :  
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 : PREMISES LOCATION:  
 : 938 Carter Cove  
 : Hummelstown, Derry Township, PA

**MEMORANDUM, FINDINGS, OPINION AND ORDER**

This is the application of Clay Tully with regard to the property he owns with his wife, Linda Tully, located at 938 Carter Cove, Hummelstown, 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.

The application indicates that the subject property is located in the R-2 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 maximum impervious coverage to expand the first floor of the house to construct a first floor bedroom and bathroom to allow the owners to age in place.

The applicant and his wife moved into the property in 1991 and raised their four children. They are now retired and have faced health issues that make it difficult to use their stairs. As a result, the applicant proposes to construct the proposed addition to include a first floor bedroom and bathroom. This would allow the owners to stay in their home and not be forced to move. The proposed addition would add 357 square feet of impervious coverage, which would increase impervious coverage from 27% to 31.25%. The addition would be constructed behind the

existing garage and would not extend beyond the width of the existing garage. Similarly, the addition would not extend beyond the existing deck, which is 25'10" from the rear yard property line. The addition would be compliant with all setback requirements.

According to the applicant, the subject property is pie shaped. In addition, the property is the second smallest lot in his phase of the subdivision for South Point of Hershey. The average lot in the subdivision is 9,500 square feet, and this property is 8,423 square feet.

Chris Matteson, who resides at 912 Bruton Cove, testified at the hearing in this matter. He asked how far the addition would be from the rear property line and if the addition would affect the stormwater easement.

The Ordinance limits the maximum impervious coverage to 30%. *See* Ordinance, §225-305, Table 9. 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 its pie shape and small lot size. 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. The proposed first floor expansion will be in the rear of the property behind the garage and will not expand past the existing deck. 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 neighbors testified in opposition to the application. Finally, the Board finds that this represents the 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**

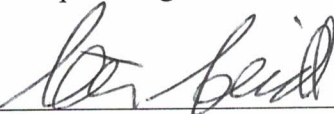
AND NOW, this 19<sup>th</sup> day of July, 2023:

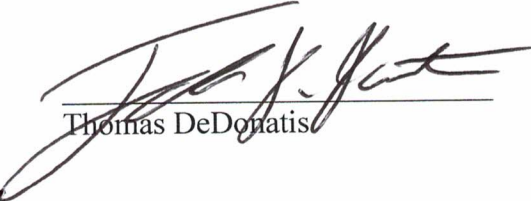
1. The applicant's request for a variance from §225-305, Table 9 regarding increased impervious coverage on the property is GRANTED. The applicant may increase impervious coverage to 31.25%.

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, 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.

  
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Steven Seidl

  
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Thomas DeDonatis

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Michael Angello