

**BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD**

IN THE MATTER OF: : NO. 2023 – 09  
:   
Kevin Pauza :   
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:   
: PREMISES LOCATION:  
: 790 Stauffers’ Church Road  
: Palmyra, Derry Township, PA

**MEMORANDUM, FINDINGS, OPINION AND ORDER**

This is the application of Kevin Pauza with regard to his property located at 790 Stauffers’ Church Road, Palmyra, Derry Township. A hearing in this matter was held on August 16, 2023, after proper advertising. At that time, Justin Kuhn, with Integrated Consulting, appeared with the applicant’s attorney, David Getz, 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 Conservation zoning district. The property is agricultural, and the applicant obtained conditional use approval from the Derry Township Board of Supervisors in the summer to construct a Residential Cluster Development use on the property. The applicant has obtained an extension for the conditional use approval. The application seeks a variance from the maximum number of dwelling units that can be served by a common driveway.<sup>1</sup>

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<sup>1</sup> The applicant previously sought and obtained the identical relief sought in this application in 2021 (No. 2021 – 15), but the relief expired.

The subject property is 37 acres. As a result of the approved Residential Cluster Development, seven lots are permitted, with each being approximately two acres. A common, private driveway, approximately 1,300 feet long, will be constructed from Stauffers' Church Road to serve the lots.

Lot 1 as depicted on the applicant's site plan is in the northwest corner of the property. This lot had a house and two driveway access points directly to Stauffers' Church Road. The house and an agricultural outbuilding have been removed, and a new residence will be constructed. It has not yet been determined whether the barn will be removed. One driveway is macadam and has already been removed by the applicant. The other driveway is gravel, and the applicant intends to remove that driveway as well. Therefore, the driveways will be reduced from three to one.

Instead of using the existing driveways to access Stauffers' Church Road, the applicant proposes that Lot 1 also be served by the common, private driveway. This proposed plan would minimize the connectors to Stauffers' Church Road. The sight distance from the gravel driveway is 260 feet, whereas the sight distance from the common, private driveway is 500 feet. Mr. Kuhn argued the sight distances from the existing driveway of Lot 1 is less safe than the sight distances that would exist from the proposed common, private driveway. If the requested relief is not granted, the applicant will access Lot 1 directly from Stauffers' Church Road, but there will be continued safety issues. The applicant requested that the expiration of the relief, if granted, be tied to the approval of the applicant's pending subdivision plan. The applicant reasoned that the timeframe to obtain necessary approvals from outside agencies was unknown

because the applicant has no control over the approval process. By tying any relief granted to the subdivision process, the applicant could avoid having to seek an extension for the Board's relief.

The Ordinance limits the maximum number of dwelling units that can be served by a common driveway to six dwelling units. *See* Ordinance, §225-501.43.B.4. 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 slope of Stauffers' Church

Road that makes the sight distances from the existing driveway less safe. 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. 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. *See Ordinance, §225-1007.9.B.* Based on the Board's findings and conclusions, the Board adopts the following:

## ORDER

AND NOW, this 20<sup>th</sup> day of September, 2023:

1. The applicant's request for a variance from §225-501.43.B.4, regarding the maximum number of dwelling units served by a common, private driveway is GRANTED. The applicant may construct a common, private driveway that serves no more than seven dwelling units.

2. The relief granted herein shall be strictly contingent upon the following:

A. The common, private driveway shall be used solely for residential and related residential purposes only.

B. All proposed lots shall be single-family residences.


C. The applicant shall remove all other access to Stauffers' Church Road, particularly the gravel driveway of Lot 1 on the applicant's site plan, except for the common, private driveway. No future access from the property to Stauffers' Church Road, other than the access from the common, private driveway, shall be permitted.

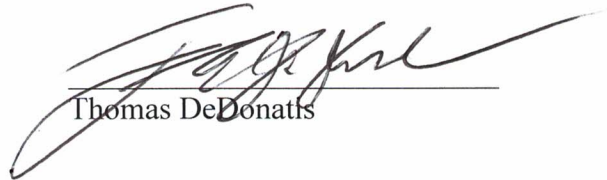
D. The applicant shall remove the gravel from Lot 1 on the applicant's site plan.

3. 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.

4. Except as extended by applicable law, the relief granted herein shall be valid for one (1) year from the date hereof or from the date of subdivision plan approval, whichever occurs last. 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.

5. 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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Lindsay Drew