

**BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD**

IN THE MATTER OF: : NO. 2023-12  
:   
Carlos Garay and :   
Laure Veet : PREMISES LOCATION:  
: 333 Beech Avenue  
: Hershey, Derry Township, PA

**MEMORANDUM, FINDINGS, OPINION AND ORDER**

This is the application of Carlos Garay and Laure Veet with regard to their property located at 333 Beech Avenue, Hershey, Derry Township. A hearing in this matter was held on September 20, 2023, after proper advertising. At that time, the applicants appeared, Laure Veet was sworn, and testified at the hearing.

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

The applicants plan to tear down the existing home and construct a new single-family residence, which would include an attached garage via a covered breezeway. The proposed accessory dwelling unit will be located above the garage. The proposed accessory dwelling unit will consist of a one bedroom apartment with a kitchen. Laure Veet’s sister, who has a limited income, will occupy the accessory dwelling unit. No more than two individuals will occupy the accessory dwelling unit if domestic services become necessary. Three off-street parking spaces are required. The subject property will have four off-street parking spaces, with one of those spaces being available for the occupant of the accessory dwelling unit. The square footage of the

accessory dwelling is less than the main dwelling. The height of the garage is lower than the main dwelling. The proposed accessory dwelling unit meets all dimensional requirements of the Ordinance. The applicants are willing to enter into the required agreement with the Township to clarify future use of the accessory dwelling unit.

Karen Ocamb, 341 Beech Avenue, testified at the hearing of this matter. She questioned the side yard setback and learned that the proposed home with attached garage would be compliant with the Ordinance.

Kati Lett, 311 Beech Avenue, testified at the hearing of this matter. She indicated that she has grown up in Hershey, and she does not think the Board should set a precedent by granting accessory dwelling units. She admitted she does not know how many accessory dwelling units currently exist in the Township.

The applicants' 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 applicants have 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 applicants' single-family attached 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 proposed floor area of the primary dwelling unit is 3,989 square feet, which is greater than the 1,200 square feet required.

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 approximately 794 square feet, and the proposed primary dwelling unit is 3,989 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 11,250 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. In this matter, the proposed occupant is Ms. Veet's sister.
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 applicants propose compliant parking as there will be four off-street parking spaces available.
10. The accessory dwelling unit will be an accessory structure on the property, which is proposed to comply 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 applicants have 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 applicants can demonstrate compliance with the applicable criteria. In this case, the applicants satisfy all of the requirements set forth in §225-502.9.A. Therefore, the Board specifically authorizes the accessory dwelling unit for occupancy by Laure Veet's sister. 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 there is sufficient off-street parking available.

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**

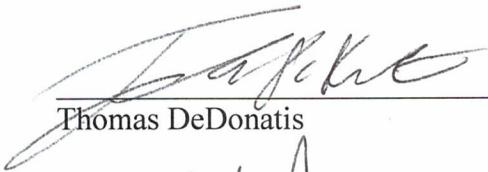
AND NOW, this 11<sup>th</sup> day of October, 2023:

1. The applicants' 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 applicants shall notify the Township if the primary occupant, Laure Veet's sister, of the accessory dwelling unit changes.
3. The property owners shall 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. Such agreement shall be drafted and recorded at the applicants' expense.
4. The applicants 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 applicants have 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 applicants 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.


**THE FOLLOWING BOARD MEMBERS VOTE TO ADOPT THIS DECISION AS WRITTEN AND GRANT THE RELIEF TO THE APPLICANTS:**

  
\_\_\_\_\_  
Thomas DeDonatis

  
\_\_\_\_\_  
Michael Angello

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

**THE FOLLOWING BOARD MEMBER VOTES AGAINST THIS DECISION AS WRITTEN AND WOULD INSTEAD DENY THE RELIEF REQUESTED BY THE APPLICANTS:**

  
\_\_\_\_\_  
Steven Seidl

As a result of a vote of three members in favor of the requested relief, and one member against the requested relief, the relief is **GRANTED**.