



garage for the applicant's vehicles. The applicant will use outdoor bins to store landscape materials, such as mulch, gravel, sand, and firewood. The outdoor storage bins are made of concrete. These bins will be no more than 8 feet high and taper down at the end. Twelve parking spaces will be provided.

The subject property is 2.2 acres located at the intersection of Bullfrog Valley Road and Roush Road. A drainageway bisects the back of the property. The drainageway does not have a regular base flow, but it is considered a watercourse, such that an environmental setback of 50 feet is required. The elevation of the property slopes approximately eight to ten feet. In addition, there is an existing drainage easement. The property is also subject to a right-of-way as well as a required 25 feet landscape buffer. As a result, more than half of the property is not able to be developed. The existing trees will not be removed.

According to Mr. Smith, prior disturbance and improvements on the property have occurred within 50 feet of the drainageway. The applicant requests a variance to allow the applicant's improvements on the flat portion of the property above the drainageway and above the crest of the slope that is already there and has historically been used. In addition, the applicant proposes that the outdoor storage bins be placed 30 feet from the right-of-way, which is consistent with the front yard setback for a principal structure rather than the 50 feet requirement for an accessory structure.

Mr. Smith indicated that the applicant tried different options for using the property to minimize the variances requested but those options did not allow for sufficient space for truck turning. According to Mr. Smith, the applicant's proposal was the tightest site plan the applicant

could make the site. Mr. Smith argued that the requested relief would have no impact on the neighbors because of the required landscape buffer. The applicant has requested that, if granted, the relief be viable for two years to obtain all necessary permits and approvals. For example, the applicant will have to obtain land development approval and a NPDES permit, and possibly a 105 permit, from the Pennsylvania Department of Environmental Protection. The applicant has no control over how fast the permits and approvals are granted.

The Ordinance defines sensitive environmental areas to include, among other things, “areas of quarries, streams, lakes, dams or ponds and all areas within 50 feet of such features.” *See* Ordinance, §225-401.2.1.A.3. These sensitive environmental areas “shall not be physically disturbed or used for any use other than agricultural uses, natural conservation areas and uses for the conservation of open space, water, soil and wildlife resources, except as may be necessary to provide ingress, egress and regress to a property or to enable utility placement.” *See* Ordinance, §225-401.2.1.B. In addition, the Ordinance requires a front yard setback of 50 feet for an accessory structure. *See* Ordinance, §225-304, Table 7. 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 due to the large environmentally sensitive area, existing stormwater easement, and steep slopes. 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 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 variances 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 11<sup>th</sup> day of October, 2023:

1. The applicant's request for a variance from §225-401.2.1.B, regarding sensitive environmental areas is GRANTED. The applicant may construct the proposed garage and office space and outdoor storage area while disturbing nothing below the existing crest of the slope. The relief granted herein is strictly contingent on the following:

A. The applicant receiving a 105 permit, if required, from the Pennsylvania Department of Environmental Protection.

B. The applicant shall not remove or disturb any vegetation below the existing crest of the slope.

2. The applicant's request for a variance from §225-304, Table 7, regarding the front yard setback for an accessory structure is GRANTED. The applicant may encroach to within 30 feet of the road right-of-way for the proposed garage and office space and outdoor storage area.

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.

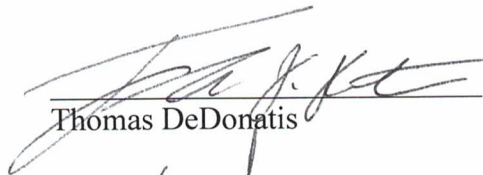
4. Except as extended by applicable law, the relief granted herein shall be valid for two (2) years from the date hereof. In the event the applicant has not, within the time period provided herein, commenced operations, applied for a building permit relative to the improvements where permits are necessary, 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.

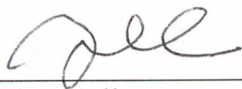
5. Any violation of any condition imposed herein shall be a violation of the Township Zoning Ordinance and shall be enforced as provided in the Ordinance.



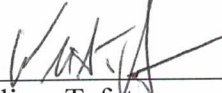
Steven Seidl



Thomas DeDonatis



Michael Angello



William Tafuto