

**BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD**

IN THE MATTER OF:                                 : NO. 2023 - 16  
   :  
Raphael Peters   :  
   :  
   :  
   : PREMISES LOCATION:  
   : 1110 Middletown Road  
   : Hummelstown, Derry Township, PA

**MEMORANDUM, FINDINGS, OPINION AND ORDER**

This is the application of Raphael Peters with regard to his property located at 1110 Middletown Road, Hummelstown, Derry Township. A hearing in this matter was held on November 15, 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 Conservation zoning district. The property is vacant, but the applicant is constructing a single family detached dwelling with detached garage. The application seeks a variance from the maximum height of the detached garage, an accessory structure.

The grade of the property slopes significantly. The applicant wishes to construct the detached garage, designed as a pseudo bank barn, with a height of 24'9" for his toys and extra storage. The proposed garage would be built into the side of the hill. As a result, the back of the barn would be less than 20' in height. The applicant noted that if the proposed detached garage was attached to the house, no variance would be needed. Similarly, according to the applicant, if the lot was flat, the proposed garage would meet the height requirements.

The applicant owns the two lots in front of the subject property so the proposed garage would not be seen from the road. The applicant submitted three letters in support of his application signed by neighbors: (i) Daniel Moyer, who resides at 2074 Joanne Avenue; (ii) Margaret Auvdel, who resides at 1104 Middletown Road; and (iii) Barry Cover, who resides at 1120 Middletown Road. All of the letters were admitted into the record with the applicant's plans.

The Ordinance limits the maximum height of an accessory structure to 20 feet. *See* Ordinance, §225-303, Table 5, Item H. 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 sloping topography of the property. 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. In fact, the applicant submitted three letters from neighbors in support of the application. Finally, the Board finds that this represents 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 20<sup>th</sup> day of December, 2023:

1. The applicant’s request for a variance from §225-30, Table 5, Item H, regarding the maximum height of an accessory structure is GRANTED. The applicant may construct the proposed garage to a maximum height of 24’9”.
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

  
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William Tafuto