

**BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD**

IN THE MATTER OF: : NO. 2023 - 17  
:   
Richard H. Wilhelm II and :   
Krishna C. Pulgar :   
:   
:   
: PREMISES LOCATION:   
: 565 Hilltop Road   
: Hummelstown, Derry Township, PA

**MEMORANDUM, FINDINGS, OPINION AND ORDER**

This is the application of Richard H. Wilhelm II and Krishna C. Pulgar with regard to their property located at 565 Hilltop Road, Hummelstown, Derry Township. A hearing in this matter was held on November 15, 2023, after proper advertising. At that time, the applicants appeared, were sworn, and testified at the hearing.

The application indicates that the subject property is located in the Conservation zoning district. The property is improved with a single family residence, and the applicants propose to continue that use. The application seeks a variance from the side yard setback to construct a 24' x 38' detached garage to store the applicants' tractor.

The applicants' property is irregularly shaped. It is deep and narrow, and has a steep grade in the front of the property. The garage cannot be constructed in the back yard because the geothermal system is located there. Instead, the applicants propose to construct the garage within 5 feet of the side yard property line. The proposed garage will be constructed at the end of the existing macadam drive. According to the applicants, this is the best placement for the proposed garage. The applicants will remove the existing shed and reduce some of the existing macadam.

The applicants own the lot in front of the subject property. The neighbor behind the subject property would not be able to see the proposed garage. The property located at 210 Hillside Road has been vacant for at least five years. The only neighbors who could see the proposed garage reside at 621 Hillside Road. The applicants submitted photographs of the subject property, which were admitted into the record.

Tom Rogalli, who resides at 621 Hillside Road, testified at the hearing of this matter. His property is adjacent to the subject property and shares the property line from which the proposed garage will be 5 feet. He has no issue with the requested variance.

The Ordinance requires a side yard setback of 50 feet. *See* Ordinance, §225-303, Table 5. 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 applicants are entitled to the requested relief. Initially, the Board finds that the property is unique as an irregularly shaped lot that is deep, narrow, and has a steep grade in the front of the house. There is no evidence on the record that the applicants 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. The applicants own the lot in front of the subject property, lessening the impact of the proposed garage. 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 neighbor whose property is closest to the proposed garage testified that he has no issue with the requested relief. 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

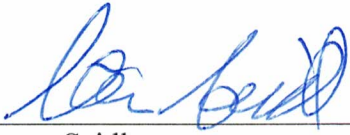
AND NOW, this 20<sup>th</sup> day of December, 2023:

1. The applicants' request for a variance from §225-303, Table 5, regarding the side yard setback for an accessory structure is GRANTED. The applicants may encroach to within 5 feet of the side yard property line for the proposed garage.

2. 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.

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 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.

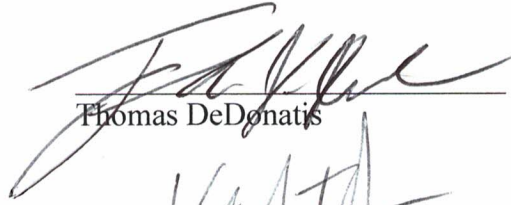
4. Any violation of any condition imposed herein shall be a violation of the Township Zoning Ordinance and shall be enforced as provided in the Ordinance.



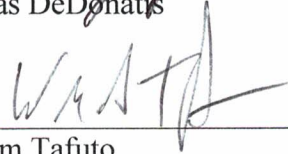
Steven Seidl



Michael Angello



Thomas DeDonatis



William Tafuto