

BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF: : NO. 2023 – 19
: :
Hockersville, LLC : :
: :
: :
: PREMISES LOCATION:
: 228 & 238 Hockersville Road
: Hershey, Derry Township, PA

MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of Hockersville, LLC with regard to property owned by Screaming Eagles, LLC, located at 228 & 238 Hockersville Road, Hummelstown, Derry Township. A hearing in this matter was held on January 17, 2024, after proper advertising. At that time, Michael Bruce, PE and Manager of the applicant, appeared, was sworn, and testified on behalf of the applicant at the hearing. No members from the public testified at the hearing.

The application indicates that the subject property is located in the Hershey Mixed Use and Compact Development (O8) zoning districts. The property is vacant, and the applicant proposes to construct a four-unit townhouse building. The application seeks variances from (i) the minimum lot depth; (ii) driveway access provided to a rear alley; and (iii) the front yard setback for a principal structure. If the variance for the driveway access is not granted, the application, in the alternative, seeks variances from (i) the minimum width of an access drive, and (ii) the front yard setback for egress doors.

The applicant is under contract to purchase the subject property. The two tracts are separate but contained on one deed. The two adjoining tracts are at the corner of Third Avenue and Hockersville Road. The combined lots are 0.521 acres, and the lots’ depth is 70.1 feet. According

to Mr. Bruce, the subject property is uniquely shaped as it has a jog in the southwest corner along Third Avenue. Mr. Bruce argued that the tract closest to Third Avenue would always be non-conforming because its depth would never exceed 70.1 feet because of the jog. Previously, there was a single-family residence on each tract. There is a private alley off West Areba Avenue to the rear of the property that is 16 feet wide.

The applicant proposes two concepts. The first concept has the four-unit townhouse building facing Third Avenue and the occupants' driveways accessing Third Avenue. Under the second concept, the townhouse building will be accessed from a common driveway that connects to the private alley. In that case, the townhouse building will be turned so the driveways front the common driveway, and the rear of the townhouse building will front Third Avenue. As a result, the applicant seeks relief under this concept because the egress doors at the rear of the townhouse building will encroach into the front yard. In addition, the applicant seeks relief because the existing alley is only 16 feet wide and cannot be widened to the required width of 24 feet for a common driveway. Under this concept, the applicant proposes to have the common driveway match the width of the existing alley, particularly because only three units will use the common driveway. The fourth unit's driveway will connect directly to the alley. Under either concept, the townhouse building will be 7 feet from the dedicated right-of-way from Hockersville Road.

The applicant prefers the first concept. Under this concept, it is easier for the occupants to access the building, take out the trash, and get the mail. In addition, there is less impervious coverage and less stormwater management. Mr. Bruce argued that the townhouse building will

not alter the neighborhood because there is a mix of residential and commercial properties in the neighborhood.

The Ordinance requires a minimum lot depth of 100 feet. *See* Derry Township Zoning Ordinance, §225-315, Table 29, Item B. The Ordinance requires driveway access to be provided to a rear alley unless the property has no rear alley. *See* Ordinance, §225-501.3.C. In addition, the Ordinance requires a front yard setback of 20 feet for a principal structure. *See* Ordinance, §225-315, Table 29, Item D. Moreover, the Ordinance requires access drives to have a minimum width of 24 feet. *See* Ordinance, §225-402.2.E. Lastly, the Ordinance limits encroachments into the yard area for egress doors. *See* Ordinance, §225-206.H.16. 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.

The Board finds that the property is unique, creating an unnecessary hardship because the property is a corner lot that has an irregular shape consisting of an unusual jog in the tract. There is no evidence on the record that the applicant created the hardship as the applicant is not yet the owner of the property. 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 variances would negatively impact surrounding properties.

Finally, with respect to the request for variances from the minimum lot depth and the driveway access to a rear alley, the Board finds that the applicant has sought the minimum relief necessary. Therefore, the Board grants these requested variances. As a result, the request for variances from the minimum width of an access drive and encroachment into the front yard for egress doors is moot.

However, with respect to the request for a variance from the front yard setback for the principal structure, the Board finds that the applicant has not sought the minimum relief necessary. Therefore, the Board denies the requested variance from the front yard setback for the principal structure.

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 21st day of February, 2024:

1. The applicant’s request for a variance from §225-315, Table 29, Item B, regarding the minimum lot width is GRANTED. The applicant may maintain a lot depth of 70.1 feet.
2. The applicant’s request for a variance from §225-501.3.C., regarding driveway access to a rear alley is GRANTED. The driveway access to Third Street is permitted instead of the private alley.
3. The applicant’s request for a variance from §225-315, Table 29, Item D, regarding the front yard setback for a principal structure is DENIED.
4. The applicant’s request for a variance from §225-402.2.E., regarding the minimum width of an access drive is MOOT as a result of the granting of a variance under paragraph 2 of this Order.
5. The applicant’s request for a variance from §225-206.H.16., regarding encroachment into the front yard for egress doors is MOOT as a result of the granting of a variance under paragraph 2 of this Order.
6. 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,

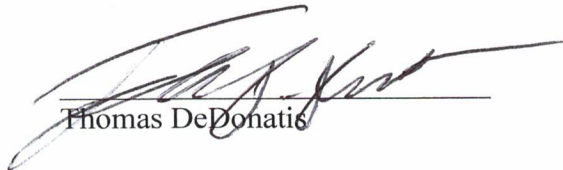
that if the improvements that are the subject of this hearing, as finally constructed, require less relief than granted by the Board herein, no additional relief from this Board shall be required.

7. 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.

8. 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



Joseph Nocera