

The applicants own a plumbing business they wish to relocate to the subject property. They have executed an agreement of sale to purchase the property, but the agreement of sale is contingent upon the applicants obtaining the requested zoning relief.

The property is 0.794 acres and has a depth of 100 feet. The property fronts Old Chocolate Avenue, the railroad is to the rear of the property, a vacant parcel is to the west, and a single-family residence owned by Sandra O'Connell is to the east. Although the applicants' plumbing business is a permitted use, according to Mr. Mayeski, the existing building envelope is too small to comply with the Ordinance. Mr. Mayeski testified that the existing residence and garages do not comply with the Ordinance.

The proposed building with office space and warehouse space will be 20 feet from the property lines. The proposed shed in the rear of the property line will be 4 feet from the rear property line. There will be four parallel parking spaces in the front of the new building. The proposed parking will be 3 feet from the right-of-way in the front yard and 4 feet from the property line in the rear yard. The loading space will be 23 feet from the right-of-way in the front yard.

Mr. Mayeski explained that the neighboring properties also have buildings or parking that encroach into the setbacks. For example, storage units on a neighboring property are within 40 feet of the right-of-way. In addition, in 2023, U-Haul, a neighbor, received a variance to allow parking in the front setback. Mr. Mayeski argued that applicants' proposed use of the property is similar to the uses of the neighboring properties and the applicants' business is the type that should be located in the Industrial zoning district.

Mr. Leonard testified that the opportunity to purchase this property was an ideal time to relocate the business. He explained that the Township would be taking 25 feet of the front of his existing property behind Rite Aid for roadway improvements. He thought this property would be an ideal location. In addition, he thought the new building would allow his business to be more efficient. He proposes to relocate his existing, pre-fabricated shed to the rear of the new building. As a volunteer firefighter, he did not want the shed to be tight against the building.

The Ordinance requires a minimum lot depth of 175 feet. *See* Derry Township Zoning Ordinance, §225-317, Table 33, Item B. The Ordinance also requires a minimum non-residential lot area of 1 acre. *See* Ordinance, §225-317, Table 33, Item C. In addition, the Ordinance requires a yard setback of 40 feet. *See* Ordinance, §225-317, Table 33. 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, creating an unnecessary hardship, because the lot is shallow and narrow. There is no evidence on the record that the applicants created the hardship because they do not yet own 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. 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 20 day of March, 2024:

1. The applicants' request for a variance from §225-317, Table 33, Item B, regarding the minimum lot depth is GRANTED. The applicants may maintain a lot depth of 100 feet.
2. The applicants' request for a variance from §225-317, Table 33, Item C, regarding the minimum non-residential lot area is GRANTED. The applicants may maintain a lot area of

0.794 acres.

3. The applicants' request for a variance from §225-317, regarding the yard setback for a principal structure is GRANTED. The applicants may encroach to within 20 feet of the front, rear, and side yard right-of-way and property lines for the proposed new principal building.

4. The applicants' request for a variance from §225-317, regarding the rear yard setback for an accessory structure is GRANTED. The applicants may encroach to within 4 feet of the rear yard property line for the proposed shed.

5. The applicants' request for a variance from §225-317, Table 33, to permit parking areas within the setbacks is GRANTED. The applicants may encroach as follows for the proposed parking areas:

A. Front yard setback: The applicants may encroach to within 3 feet of the right-of way.

B. Rear yard setback: The applicants may encroach to within 4 feet of the rear yard property line.

6. The applicants' request for a variance from §225-317, Table 33, to permit a loading space within the setbacks is GRANTED. The applicants may encroach in the front yard setback to within 23 feet of the right-of-way for the proposed loading space.

7. 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.

8. 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.

9. 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.

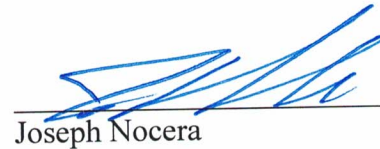


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