BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF:

: NO. 2024 - 03

John Fugate

: PREMISES LOCATION:

86 Rear East Derry Road

Hershey, Derry Township, PA

MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of John Fugate with regard to the property he owns with his wife, Anita Fugate, located at 86 Rear East Derry Road, Hershey, Derry Township. A hearing in this matter was initially scheduled for March 20, 2024, but was continued at the applicant's request and was held on April 17, 2024, after proper advertising. At that time, the applicant appeared, was sworn, and testified 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 zoning districts. The property is improved with a single-family residence, and the applicant proposes to continue that use. The application seeks a variance from the side and rear yard setbacks to construct a two-car detached garage.

Mr. Fugate testified that he tore down an old shed when he bought the subject property several years ago. He kept the concrete pad that was used for the shed and a parking space. He always intended to construct a building, but it has taken longer than he intended. Eventually, he re-poured the concrete pad because the concrete was in bad shape. The concrete pad is four feet from the property line. The proposed garage will be constructed on the existing concrete pad so the footprint will not change. The proposed garage is 22 feet by 18 ½ feet with a garage door of

16 feet. The walls will be 8 feet with a roof height of 12 feet. There will be electrical service only to the proposed garage. The applicant submitted pictures of the concrete pad and a neighbor's garage, which the applicant argued was close to the property line. Both pictures were admitted into the record.

The Ordinance requires side and rear yard setbacks of 5 feet for an accessory structure. *See* Derry Township Zoning Ordinance, §225-315, Table 29. 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, creating an unnecessary hardship, because of the small

lot size with existing footprint. There is no evidence on the record that the applicant created the hardship. 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 the 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 <u>15</u> day of May, 2024:

- 1. The applicant's request for a variance from §225-315, Table 29, regarding the side yard setback for an accessory structure is GRANTED. The applicant may encroach to within 4 feet of the side yard property line for the proposed garage.
- 2. The applicant's request for a variance from §225-315, Table 29, regarding the rear yard setback for an accessory structure is GRANTED. The applicant may encroach to within 4 feet of the rear yard property line for the proposed garage.
- 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 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.
- 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

Michael Angello

Thomas DeDonatis

William Tafuto