

BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF: : NO. 2024 - 08
Philip Guarno :
 :
 :
 : PREMISES LOCATION:
 : 108 W. Chocolate Avenue
 : Hershey, Derry Township, PA

MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of Philip Guarno with regard to the property his entity, M. Rae LLC, owns located at 108 W. Chocolate Avenue, Hershey, Derry Township. A hearing in this matter was held on May 15, 2024, after proper advertising. At that time, the applicant, with Brian Boltz of Stuff'd Steaks, appeared, were sworn, and testified at the hearing. Prior to the applicant's testimony, Solicitor Megan Huff disclosed that her firm represented the applicant on unrelated matters, and as such, no conflict exists. No members from the public testified at the hearing.

The application indicates that the subject property is located in the Hershey Mixed Use and Downtown Core O9.2 zoning districts. The property is improved with a restaurant, and the applicant proposes to continue that use. The application seeks a variance from the side yard setback to construct a walk-in freezer.

The applicant testified that he operates the Phillip Arthur's restaurant at the subject property. Because of its small size, the Phillip Arthur restaurant borrows storage from the applicant's adjacent restaurant, Fennici's, located at 102 West Chocolate Avenue. The applicant wants the walk-in freezer to make the Phillip Arthur's restaurant stand-alone and self-sufficient

because the subject property was sold two days before to Brian Boltz, who will operate a restaurant, Stuff'd Steaks, at the property.

The walk-in cooling unit will be 6 feet by 14 feet and will be installed on the southeast corner of the property against the existing building. There are no structural changes being made to the building. The proposed cooling unit will encroach to the side yard property line and will extend over the property line into 102 West Chocolate Avenue by 4 feet. The applicant and Brian Boltz have agreed that the applicant, as the owner of 102 West Chocolate Avenue, will grant an easement for the encroachment into the adjacent property. It will not be visible from Chocolate Avenue because of the existing landscaping. The Design Review Board approved the project. The applicant testified that this is similar to the neighboring Chocolate Avenue Grill's walk-in cooling unit, but the proposed unit is smaller. Brian Boltz confirmed his agreement with the applicant's testimony.

The Ordinance requires side yard setback 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 24 day of ^{May} ~~June~~, 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 0 feet of the side yard property line for the proposed walk-in cooling unit.

2. The relief granted herein is strictly contingent upon:

A. The relief shall be used only for the walk-in cooling unit. If the walk-in cooling unit is removed from use for longer than 12 consecutive months, this relief shall automatically terminate and the unit shall be removed from the property.

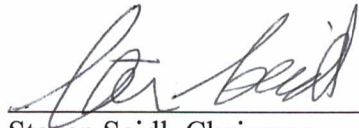
B. The easement shall be recorded before the walk-in cooling unit is installed.

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.

Adopted by 4 – 0 vote as indicated by the Chairman’s signature as authorized by the Zoning Hearing Board.

A handwritten signature in black ink, appearing to read "Steven Seidl", written over a horizontal line.

Steven Seidl, Chairman