

**BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD**

IN THE MATTER OF: : NO. 2024 - 07  
:   
Carlos Paniagua :   
:   
: PREMISES LOCATION:   
: 103 Cocoa Avenue   
: Hershey, Derry Township, PA

**MEMORANDUM, FINDINGS, OPINION AND ORDER**

This is the application of Carlos Paniagua with regard to the property he owns with his wife, Soveyda Paniagua, located at 103 Cocoa Avenue, Hershey, Derry Township, Pennsylvania. A hearing on this matter was held on May 15, 2024, after proper advertising. At that time, the applicant appeared, was sworn, and testified during the hearing.

The application indicates that the subject property is located in the Hershey Mixed Use and Downtown Core O9.3 zoning districts. The property has been used as a single family dwelling with an attached apartment, and the applicant seeks a special exception to operate a bed and breakfast at the property. The applicant is not changing the structure of the existing building. The structure does encroach 6 feet into the required 20 feet front yard setback. The previous owner rented the apartment to long-term tenants, but the applicant does not wish to do that.

Specifically, the applicant plans to use the apartment for the bed and breakfast. He and his wife reside in the residence. The apartment has one bedroom, bathroom, and kitchen. The applicant testified there is no stove in the kitchen, but there is a microwave. Meal service will be limited to breakfast and will be for the guests only. He is agreeable to a condition prohibiting a kitchen facility if his request was approved. No guests will stay more than 14 consecutive

nights. The applicant testified that there is sufficient parking available. There are six available spaces and only three are required, two for the dwelling and one for the bed and breakfast. In addition, the applicant verified he would comply with the Ordinance for any sign he installs. No members of the public testified.

The Derry Township Zoning Ordinance requires a front yard setback of 20 feet for a principal structure. *See* Ordinance, §225-315, Table 29, Item D. 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 applicant is entitled to the requested relief. Initially, the Board finds that the property is unique as the existing building is in the setback and no structural changes are proposed. 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 as the house is already in the setback. 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 surrounding properties. No neighbors testified in opposition to the application. Finally, the Board finds that this represents the minimum relief necessary.

The Ordinance permits the Zoning Hearing Board to issue a special exception to permit a bed and breakfast home in the Hershey Mixed Use zoning district when the applicant can demonstrate compliance with all applicable criteria. In this case, the record reveals that the applicant has demonstrated compliance with the criteria set forth in §225-502.1, addressed below:

- A. All lots to contain a Bed and Breakfast Home shall be compliant with all applicable lot criteria of the Zoning District. Because the structure is existing and no changes or expansion is being made, the Board grants a variance to the existing front yard encroachment. Therefore, the applicant's lot is in compliance.
- B. To maintain consistency between established and proposed development, parking on the lot shall not be located between the front facade and front lot line when use of an

alley for parking is available. The parking area shall retain a residential appearance.

The applicant has sufficient parking to support a bed and breakfast.

C. No more than ten bedrooms may be available or used for such use in any building.

The applicant would have one bedroom available to rent.

D. Not more than one ground sign shall be permitted on the lot and shall meet the dimensional requirements of this Chapter. The applicant will install a compliant sign.

E. Meal service shall be limited to breakfast only to overnight guests of the facility. The applicant intends to limit meal service to breakfast and will not serve meals to the general public.

F. All off-street parking spaces shall be provided on the lot. The number of off-street parking and loading spaces shall be provided as defined by this Chapter. All parking spaces and driveways shall be surfaced with bituminous, brick, concrete or stone block paving material. Three parking spaces are required, and there are six spaces available. There is adequate parking.

G. The owner and/or manager of the facility shall reside therein. The applicant intends to reside at the property.

H. An overnight guest shall not occupy the facility for more than 14 consecutive nights in a 30-day period. The applicant will not permit guests to exceed 14 consecutive nights.

In addition, the applicant must also demonstrate compliance with criteria set forth in §225-502.B, Specific Criteria For Special Exception Uses:



1. The Township Zoning Hearing Board shall find that the use will not adversely affect the health or safety of residents in the neighborhood or district in which the use is located.
2. The Township Zoning Hearing Board shall find that the use will not overburden existing public services, including water, sanitary sewer, public roads, storm drainage or other public improvements.
3. The Township Zoning Hearing Board shall find that the use will not be detrimental to the use or development of, or change the essential character of, the neighborhood or district in which the use is proposed. The Township Board of Supervisors shall consider, at a minimum, the impact of noise, dust, light, odor and adequacy of parking.
4. The use shall meet all other requirements of this Chapter that may apply.
5. The minimum lot area shall be one acre when the use relies on an on-lot septic system.

The Board finds that the applicant is entitled to the requested relief with respect to the use of the subject property. As this Board has often repeated, a special exception is neither special nor an exception. Instead, it is a permitted use provided the applicant can demonstrate compliance with the applicable criteria. In this case, the applicant satisfies all of the requirements set forth in §225-502.1.

Moreover, the Board finds that the relief sought will not adversely affect the health, safety, or welfare of residents of the area or be detrimental to or change the essential character of

the neighborhood. Moreover, the Board finds that the bed and breakfast will not overburden the public services. More importantly, the Board finds that the requested relief will not cause any parking problems because the property has sufficient parking for the guests. In addition, by living at the property, the applicant will be able to limit any noise. Therefore, the Board specifically authorizes the operation of a bed and breakfast at the property.

In granting any relief, 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. *See* Ordinance, §§225-1007.9.B and 1007.10.A. Based on the Board’s findings and conclusions, the Board adopts the following:

**ORDER**

AND NOW, this 18<sup>th</sup> day of June, 2024:

1. The applicant’s request for a variance from §225-315, Table 29, Item D, regarding the front yard setback for a principal structure is GRANTED. The applicant may encroach to within 12 feet of the right-of-way for the bed and breakfast.

2. The applicant’s request for a special exception from §225-502.1, regarding the operation of a bed and breakfast is GRANTED. The applicant may establish a bed and breakfast at the subject property as represented during the hearing of this matter.

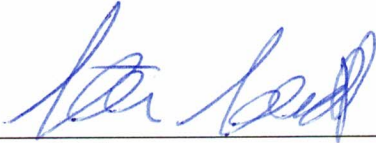
3. The relief granted herein shall be strictly contingent upon:

- A. There shall be no cooking area in any room rented to the guests.
- B. The guests shall not be able to use any cooking area on the property.
- C. The bed and breakfast shall be limited to one bedroom.

D. Any change in use shall require a permit from the Township.

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.

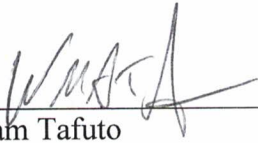
5. Any violation of any condition imposed herein shall be a violation of the Township Zoning Ordinance and shall be enforced as provided in the Ordinance.



Steven Seidl



Michael Angello



William Tafuto

Joseph Nocera