

**BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD**

IN THE MATTER OF:	: NO. 2024 - 20
	:
David A. Macrina	:
	:
	: PREMISES LOCATION:
	: Sandhill Road (Parcel 24-052-048-000-0000)
	: Hershey, Derry Township, PA

**MEMORANDUM, FINDINGS, OPINION AND ORDER**

This is the application of David A. Macrina with regard to the property he owns, located at an unaddressed parcel on Sandhill Road, Hershey, Derry Township, known as Parcel #24-052-048-000-0000. A hearing in this matter was held on September 18, 2024, after proper advertising. At that time, the applicant's son, Anthony Macrina, and the applicant's engineer, Timothy Nolt of Nolt Engineering, appeared with the applicant's attorney, Elizabeth Vanasse, were sworn, and testified at the hearing.

The application indicates that the subject property is located in the Conservation and Sensitive Environmental Resources Overlay zoning districts. The property is an unimproved lot, and the applicant proposes to construct a single-family residence. The application seeks a variance to permit construction on areas with slopes in excess of 20%.

According to Mr. Macrina, his father, the applicant, purchased the subject property in March 2024. The applicant intends to construct a 1,500 square feet single family dwelling on the property with retaining walls in the front yard, back yard, and by the driveway. The existing driveway will be removed and a new one constructed in a different location. There will be a

subsurface infiltration bed that will be installed in the northwest corner of the lot to collect runoff. Mr. Macrina plans to purchase the property from his father after the construction of the residence.

The subject property is east of Sand Hill Road. It is a vacant, wooded lot that has not been given an address yet. The property is 1.5094 acres and has steep slopes in excess of 20%, particularly along the road frontage. Mr. Macrina testified that the relief sought would not alter the character of the neighborhood because there are other single family residences in the neighborhood. Further, he argued that the steep slopes were not unique to the subject property. He suggested, however, that the existing houses may have been constructed prior to the Ordinance prohibiting disturbance of the steep slopes in excess of 20%.

The applicant submitted a sketch of the property that depicted the slopes in excess of 20% in yellow. The witnesses argued that there was nowhere on the property that was flat or had slopes less than 20% to be able to construct the proposed residence. They explained that in order to develop the property, the steep slopes of 20% comprising the road frontage would have to be disturbed to access the property. They asserted that if the residence was constructed toward the back of the lot, there would be more disturbance of the steep slopes in excess of 20% and more impervious coverage. In addition, Mr. Nolt testified that constructing the residence in the back of the lot would require removal of more trees from the heavily wooded lot. Mr. Nolt conceded he did not consider wrapping the existing driveway to build at the top of the lot. The applicant's exhibits were admitted into the record.

Amy Backenstose, 731 Sand Hill Road, testified at the hearing of this matter. She asserted that the Ordinance was enacted for a reason so why would the applicant not have to comply. She

has concerns about the stability of the mountain as a result of the proposed construction and water runoff. She testified that there is water runoff on Sand Hill Road already.

The Ordinance defines sensitive environmental areas to include, among other things, “land areas having slopes in excess of 20% which are not the result of man-made changes to the natural terrain when such area exceeds 200 contiguous square feet.” *See* Derry Township Zoning Ordinance, §225-401.2.1.A.1. These sensitive environmental areas “shall not be physically disturbed or used for any use other than agricultural uses, natural conservation areas and uses for the conservation of open space, water, soil and wildlife resources, except as may be necessary to provide ingress, egress and regress to a property or to enable utility placement.” *See* Ordinance, §225-401.2.1.B. The criteria for issuing zoning variances are set forth in §225-1007.9.A of the 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 because of the existing topography with significant steep slopes, particularly the road frontage. There is no evidence on the record that the applicant 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. 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. Finally, the Board finds that this represents 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 15<sup>th</sup> day of October, 2024:

1. The applicant's request for a variance from §225-401.2.1.B, regarding construction on areas with slopes in excess of 20% is GRANTED. The applicant may construct the single-



family residence while disturbing no more than the area depicted in yellow in the applicant's sketch plan submitted to the Board at the hearing of this matter, except as otherwise permitted by the Ordinance.

2. The relief granted herein is strictly contingent on the applicant submitting to the Zoning Office prior to issuance of a zoning permit or building permit, the following documents, which support the feasibility of the proposed construction:

A. A topographical site plan, with minimum contour intervals of two feet, indicating the raw data (spot elevations) or other source of contours, depicting the slopes of all non-man-made slopes and the proposed improvements and disturbance, and providing a calculation of the percentage of such slopes that are to be disturbed for such structure(s). The plan shall also identify all trees having a caliber of 18 inches or more that will be removed as a result of the activity and shall propose 1:1 replacement trees of which shade trees shall have a minimum trunk diameter of 2 inches as measured 6" above the root collar and evergreen trees shall be at least 8 feet tall. Such plans shall be sealed by a professional engineer, a professional land surveyor, or a landscape architect.

B. A geotechnical report prepared by a registered professional geologist in Pennsylvania with geotechnical training and experience clarifying the proposed disturbance will not create or exacerbate unsafe conditions.

C. An Erosion and Sedimentation Control Plan prepared and proposed by a registered Professional Engineer in Pennsylvania providing for means and measures necessary to stabilize the disturbed slope during construction and thereafter in perpetuity.

D. A registered Professional Engineer shall evaluate the proposed change in landcover (i.e. forest to lawn – regardless if there is any proposed impervious surface added), identify any potential negative stormwater impacts, adequately mitigate such impacts and demonstrate compliance with §14-12A, B and C of Chapter 14, Stormwater Management, to the satisfaction of the Township Engineer.

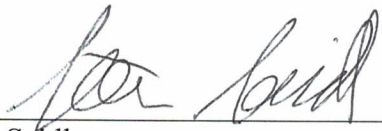
E. A documented history of any and all improvements and/or alterations to the subject property in a manner and form acceptable to the Township.

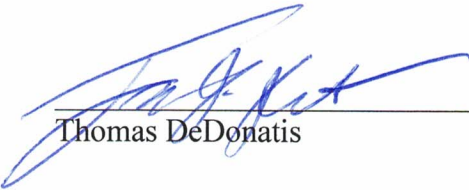
F. The applicant shall reimburse the Township for any and all professional services including those by the Township Engineer and Township Solicitor relating to the review of information provided prior to the issuance of a zoning permit or building permit for such activity and enter into a professional services contract related thereto if deemed necessary by the Township.

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.

  
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Steven Seidl

  
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Thomas DeDonatis

  
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Michael Angello

  
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William Tafuto

  
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Joseph Nocera