

BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF: : NO. 2020 – 15
: :
Bryan M. Wehler : :
: :
: :
: : PREMISES LOCATION:
: : 1130 Wood Road (Lot #1210)
: : Hummelstown, Derry Township, PA

MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of Bryan M. Wehler with regard to the property located at 1130 Wood Road (Lot #1210), Hummelstown, Derry Township, which is owned by Ned Wehler and Mary Wehler. A hearing in this matter was held on December 16, 2020, by video conference due to the COVID-19 emergency, after proper advertising and after proper notice to allow for public participation. At that time, Bryan M. Wehler and his engineer, Jared Hockenberry of Honor Engineer Co., appeared, were sworn, and testified at the hearing. Prior to the applicant’s testimony, Solicitor, Megan Huff, disclosed that she represented the applicant and Honor Engineer Co. on unrelated matters, and as such, no conflict exists. No other members of the public testified.

The application indicates that the subject property is located in the R-1 and Environmental Overlay zoning districts. The property is an unimproved wooded 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%.

The subject property is part of the residential Roseland Subdivision, which was approved in 1985, and comprises 4 lots. It is near the intersection of Wood Road and Bullfrog Valley

Road. It is adjacent to Bullfrog Valley Park & Pond. The access to the property is via Roseland Drive to Wood Road.

A 1990 subdivision added to the property. The property is now 3.831 acres and 2.526 acres has slopes in excess of 20% within the buildable area, which is approximately 84.9% of the buildable area. The applicant proposes to disturb .406 acres that has slopes in excess of 20%. In order to reduce the area that needs to be disturbed to construct the residence, the applicant proposes to use mechanically stabilized earth (“MSE”) berms. These MSE berms are similar to retaining walls, and they help to level and terrace the site so that less fill is needed for the construction. The MSE berms are a maximum of 13 feet in height and will be designed by a professional engineer. In addition, they can have vegetation grow on them so that they have a more natural appearance.

According to the applicant, a residence cannot be constructed on the property in strict compliance with the Ordinance. The applicant considered different locations for the residence on the property, but those options were not feasible. For instance, if the residence was constructed at the base of the slope, it would be subject to flooding. Instead, the applicant suggested this should be where the stormwater basin is located so that stormwater would discharge into the stream rather than the Bullfrog Valley pond. Alternatively, if the residence was constructed closer to Wood Road to make the driveway shorter, it would be adjacent to the walking path/bike trail of the Jonathan Eshenour Memorial Trail. Further, these locations would have the driveway connecting with Wood Road, which is already congested, and the Roseland Subdivision contemplates the properties using Roseland Drive. Moreover, these locations would

be visible from Bullfrog Valley Park & Pond and the Jonathan Eshenour Memorial Trial, which would diminish the existing natural-looking, scenic, wooded character of the neighborhood. The proposed location, on the other hand, minimizes the disturbance necessary because it is a flatter area of the lot. It has the added benefit of allowing the applicant to maintain the wooded buffer of approximately 120 feet to the Bullfrog Valley Park & Pond and the Jonathan Eshenour Memorial Trial. The Jonathan Eshenour Memorial Trial crosses the southeast corner of the property as a result of an easement that was conveyed by the prior owner to the Township. The construction will incorporate modern erosion and stormwater management controls. No relief is requested for ingress or egress or stormwater controls.

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.” *See* 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 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 because of the existing topography with approximately 84.9% of the buildable area of the property having slopes in excess of 20%.

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 variances would negatively impact surrounding properties. No neighbors testified in opposition to the application. 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 20th day of January, 2021:

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 .406 acres of the property with slopes in excess of 20% except as otherwise permitted by the Ordinance.
2. The relief granted herein is strictly contingent on the property's other 3.425 acres with slopes in excess of 20% remaining undisturbed or wooded.
3. In addition, the relief granted herein is strictly contingent upon the applicant maintaining the 120 feet wooded buffer from the Jonathan Eshenour Memorial Trail in a natural state.
4. 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.
5. 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.

6. 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