

The applicants are the equitable owners of the subject property, having signed an agreement of sale with the owner, which agreement is contingent on obtaining the relief requested from the Zoning Hearing Board. The property is a long and narrow lot, measuring approximately 118 feet wide and 1,000 feet long, consisting of 2.7 acres. Approximately 69,265 square feet, or approximately 60% of the lot, has slopes in excess of 20%. The property is heavily wooded with on-lot water and public sewer, which sewer service is located on the top elevation of the lot. The northwest corner is encumbered with a power line easement. The property is even steeper at the front of the lot.

The applicants propose to construct a single-family, one-story residence on the top elevation of the property. The residence will measure 60 feet wide and 60 feet long with 2,200 square feet of living space, with the driveway access to Church Road. This would result in an encroachment of 35 feet into the northeast side yard setback and a 12 feet encroachment into the southwest side yard setback. The applicants propose to disturb 2,296 square feet of the approximately 69,265 square feet that have slopes in excess of 20% to construct the residence. The applicants considered other locations on the lot but those locations were not feasible with the utility easement and accessing the sewer system, which would have resulted in a longer driveway and pumping sewage. According to the applicants, the proposed location is the best location to minimize the slope disturbance. The applicants argued that the character of the neighborhood would not change because other lots in the area are steep and wooded.

John Minken, 2030 Church Road, owns the property adjacent to the northeast of the subject property. He submitted an e-mail prior to the hearing and testified at the hearing. He is

concerned about water runoff because his property is downhill from the proposed location of the applicants' residence. Given the steep topography of the property, he questioned whether the rainwater would be routed away from his property. To date, he has not had water in his basement.

While the stormwater management plan will be addressed in the next step of the construction project, the applicants intend to direct the stormwater from the residence toward Church Road to minimize the runoff to Mr. Minken's property. In addition, the applicants intend to pipe the gutters to a large retention pond to lessen or eliminate the surface discharge.

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. In addition, the Ordinance requires a side yard setback of 50 feet for a principal structure. *See* Ordinance, §225-303, Table 5, Item E. 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 applicants are entitled to the requested relief.

Initially, the Board finds that the property is unique because of its narrowness and the existing topography with approximately 60% of the property having slopes in excess of 20%. There is no evidence on the record that the applicants created this hardship because the applicants do not own the property. 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 considered Mr. Minken's e-mail and testimony regarding his concern about water runoff, which the applicants addressed at the hearing and will be addressed further with the applicants' stormwater management plan. As such, the Board finds that the proposed relief will not alter the essential character of the neighborhood or that the requested variances 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 21st day of April, 2021:

1. The applicants' request for a variance from §225-401.2.1.B, regarding construction on areas with slopes in excess of 20% is GRANTED. The applicants may construct the single-family residence while disturbing no more than 2,296 square feet of the property with slopes in excess of 20% except as otherwise permitted by the Ordinance.

2. In addition, the relief granted herein is strictly contingent upon the following:

A. The property's other 66,989 square feet with slopes in excess of 20% remaining undisturbed or wooded except as otherwise permitted by the Ordinance.

B. The applicants obtaining approval of their storm water management plan.

C. The applicants identifying all trees having a caliber of 18 inches or more that will be removed as a result of the construction of the single-family residence and replacing each such tree with shade trees having a minimum trunk diameter of 2 inches as measured 6" above the root collar or evergreen trees being at least eight feet tall.

D. The applicants obtaining approval of an erosion and sedimentation control plan prepared and proposed by a registered Professional Engineer in Pennsylvania, which plan

provides for the means and measures necessary to stabilize the disturbed slope during construction and thereafter in perpetuity.

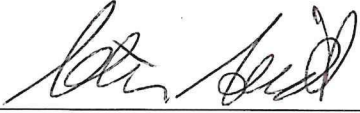
3. The applicants' request for a variance from §225-303, Table 5, Item E, regarding the side yard setback for a principal use is GRANTED. The applicants may encroach to within 15 feet of the northeast side yard property line and 38 feet of the southwest side yard property line for the single-family detached dwelling.

4. The applicants 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 applicants have 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 applicants 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 3 - 1 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". The signature is written in a cursive style with a large, stylized "S" at the beginning.

Steven Seidl, Chairman