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March 29, 2019

Mario and Angelo Santos
504 Concord Place
Perkasie, PA 18944

**Re: Hilltown Township Zoning Hearing Board
Mario and Angelo Santos; Appeal No. 2019-001**

Dear Mr. and Mrs. Santos:

Please find enclosed herewith, a copy of the Decision of the Hilltown Township Zoning Hearing Board dated March 29, 2019, in the above captioned matter. The original of this Decision is being retained by the Township for its file.

Very truly yours,
Grim, Biehn & Thatcher


KELLY L. EBERLE

KLE/kbs
Enclosures

cc: Hilltown Township Manager
Mr. John L. Snyder
Mr. David Hersh
Mr. Joseph Kirschner
Dave Taylor, Zoning Officer
Stephen B. Harris, Solicitor

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: Mario and Angelo Santos

Appeal No. 2019-001

A hearing was held in the above matter on Thursday February 14, 2019 at 7:00 p.m. at the Hilltown Township Municipal Building. Notice of the hearing was published in The Intelligencer advising that all parties in interest might appear and be heard. In addition, the property was posted and written notice was provided to neighboring property owners as required by the Zoning Ordinance.

The matter was heard before John Snyder, Chairman, and David Hersch. In addition, Kelly Eberle, Esquire, the Board Solicitor, was in attendance as was the Board stenographer. Applicant was present and along with his engineer, Scott S. Drumbore. No individuals requested party status.

The following exhibits were admitted and accepted into evidence:

Zoning Hearing Board's Exhibits

- B-1 Proof of Publication
- B-2 Posting Certification
- B-3 Letter of January 21, 2019 to Neighboring Property Owners from Kelly L. Eberle

Applicant's Exhibits

- A-1 Application for Appeal to Zoning Hearing Board filed January 10, 2019
- A-2 Packet dated December 5, 2018 prepared by The H&K Group

No other documentary evidence was submitted or received by the Hilltown Township Zoning Hearing Board. After weighing the credibility of the testimony and documents offered, the Hilltown Township Zoning Hearing Board rendered its Decision in the above Application as more fully set forth below.

FINDINGS OF FACT:

The Hilltown Township Zoning Hearing Board (the “Board”), having considered the sworn testimony and credibility of all witnesses and the documentary evidence received, hereby makes the following Findings of Fact:

1. Applicants are Mario R. and Angela M. Santos, who currently reside at 504 Concord Place, Perkasie, PA 18944 (“Applicant”).
2. Applicant is the owner of the subject property located at 501 Broad Street, Hilltown Township, Pennsylvania more specifically identified as Bucks County Tax Parcel No. 15-034-088-004 (“Property”).
3. The Property is located in the RR-Rural Residential Zoning District in Hilltown Township.
4. The existing net lot area of the Property is 50,094 square feet, which is just 94 square feet over the minimum lot size in the RR Zoning District.
5. The Property is currently an unimproved, vacant lot with overgrown vegetation.
6. Applicant wishes to construct a single-family dwelling on the Property along with an attached garage, a porch, a deck, and a patio.
7. Applicant intends for this home to serve as their retirement home.
8. Section 160-28.C(1) prohibits the disturbance of more than 40% of steep slopes ranging from 8% to 15%.
9. Section 160-28.C(2) prohibits the disturbance of more than 30% of steep slopes ranging from 15% to 25%.

10. Accordingly, Applicant is requesting a variance from Section 160-28.C to allow a disturbance of up to 65% of the slopes ranging from 8% to 15% and a variance to allow a disturbance of up to 72% of the slopes ranging from 15% to 25%.

11. Applicant is proceeding with a formal stormwater management review, but plans to install a low-profile swale to move the stormwater from the front of the Property to the rear.

12. On the side of the Property not containing the swale, Applicant will utilize light grading to address stormwater management.

13. In addition, the Property will also contain a retention basin.

14. Additionally, Applicant requests a variance from §160-29.D, which limits woodland disturbance to maximum of 20%, to allow for a 75% disturbance.

15. The Zoning Ordinance defines “woodlands” as follows:

Areas, groves, or stands of mature or largely mature trees the majority of which are greater than six inches caliper measured four feet above grade covering an area greater than ¼ acre; or groves of mature trees without regard to minimum area consisting of more than 10 individual specimens which are greater than 12 inches caliper measured four feet above grade.

16. The requested 75% disturbance accounts for a full amount of disturbance to all vegetation on the Property, not just meeting the definition of “woodlands.”

17. Scott S. Drumbore testified that while the Property contains some larger, more mature trees, most of the vegetation on the Property consists of smaller trees, which may not meet the definition of “woodlands.”

18. Mr. Drumbore testified that the largest tree on the Property is approximately 12 inches in diameter, but that most of the trees are approximately six inches in diameter.

19. Applicant wishes to keep as many trees as possible to serve as a buffer for the sides and rear of the Property.

20. Applicant plans to employ the services of a landscape architect to help with aesthetics of the Property.

DISCUSSION:

Applicant is before the Zoning Hearing Board requesting a variance from §160-28.C of the Hilltown Township Zoning Ordinance, which sets various limitations for the disturbance of steep slopes on a property and a variance from §160-28.D, which limits woodland disturbance to maximum of 20%.

In considering applications for a variance, this Board is required to apply the provisions of Section 10910.2 of the Municipalities Planning Code. The Board has the authority to grant a variance if it finds that an applicant has met its burden of proof for the following five elements: first, that the Property has unique physical circumstances, peculiar to the Property, and not generally created by the Zoning Ordinance; second, that an unnecessary hardship exists, due to the uniqueness of the Property, resulting in an applicant's inability to develop or have any reasonable use of the Property; third, that the applicant did not create the hardship; fourth, that the grant of a variance will not alter the character of the neighborhood or be a detriment to the public welfare; and fifth, that the variance is the minimum necessary to afford relief. 53 P.S. § 10910.2(a). In the case of Hertzberg vs. Zoning Board of Adjustment of the City of Pittsburgh, 721 A. 2d 43 (S. Ct. – 1998), the Supreme Court of Pennsylvania held that the grant of a dimensional variance is of lesser moment than the grant of a use variance, and the proof required to establish unnecessary hardship is lesser when a dimensional, as opposed to a use variance, is sought.

Based on the above, the Board finds that Applicant has shown the existence of a hardship, not self-created, and unique and peculiar to the Property, which requires the grant of a variance

from §§160-28.C and 160-28.D of the Hilltown Township Zoning Ordinance. The Board concludes that the relief requested, disturbance of up to 65% of the slopes ranging from 8% to 15%, a variance to allow a disturbance of up to 72% of the slopes ranging from 15% to 25%, and a variance to allow a disturbance of up to 75% of the woodland area on the Property, constitutes the minimum relief necessary to afford Applicant the opportunity to reasonably use the Property and is in keeping with the spirit of the Zoning Ordinance. Additionally, the Board finds that the variance, as requested, would not be injurious to the health, safety, and welfare of the surrounding community.

DECISION AND ORDER


AND NOW, this 29 day of March, 2019 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

1. Clearing, grading, and construction shall be done in accordance with Exhibit A2 and testimony presented before the Board.
2. Applicant shall otherwise comply with all other applicable Township, state, and/or county laws, regulations, with respect to construction and use.

The Hilltown Township Zoning Hearing Board hereby deems the foregoing conditions as necessary and warranted under the terms of the Hilltown Township Zoning Ordinance and the Pennsylvania Municipalities Planning Code.

HILLTOWN TOWNSHIP ZONING
HEARING BOARD

By:



John Snyder, Chairman

By:


David Hersh

GRIM, BIEHN & THATCHER

By:


Kelly L. Eberle, Solicitor
104 South Sixth Street, Perkasie, PA 18944

Date of Mailing:

3-29-19