

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: James Sensinger

Appeal No. 2020-009

A hearing was held in the above matter on Thursday, October 22, 2020 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 David Hersh and John Snyder.¹ In addition, Kelly L. Eberle, the Board Solicitor, was in attendance, as was the Board stenographer. Applicant was present and was represented by Michael Malloy, Esquire. Wayne Kiefer, P.E., testified on behalf of Applicant. 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 with enclosure dated September 30, 2020 to neighbors from K. Eberle

Applicant's Exhibits

- A-1 Landscape and Lighting Plan prepared by R. L. Showalter & Associates, Inc., dated May 1, 2020

¹ Stephen Yates, member of Hilltown Township Zoning Hearing Board, was present at the start of the hearing, but recused himself from this matter due to a conflict of interest. He was present in the audience for the hearing but did

- A-2 Alternate Landscape Plan prepared by R. L. Showalter & Associates, Inc., dated May 1, 2020
- A-3 Alternate 2 Landscape Plan prepared by R. L. Showalter & Associates, Inc., dated May 1, 2020
- A-4 Application to Zoning Hearing Board dated September 18, 2020 with any attachments

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 renders its Decision on the above Application as more fully set forth below.

I. 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, and a quorum of members present, hereby makes the following Findings of Fact:

1. Applicant is James Sensinger.
2. Applicant is the owner of the real property located at 1411 Route 113, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-029-050.
3. The Property is located in the RR (Rural Residential) Zoning District in Hilltown Township.
4. The Property is an unimproved lot consisting of approximately 11.3 acres gross, 10 acres net when accounting for the right of way.

5. Applicant wishes to subdivide the Property into six residential lots, each of which will be improved by a single-family dwelling and related improvements.

6. Each proposed lot will be approximately 50,000 square feet, which is the minimum lot size permitted for a single-family dwelling lot in the RR Zoning District.

7. The required rear yard setback for a single-family detached dwelling in the RR Zoning District is 75 feet. *See* §160-23.B(1).

8. §160-33 of the Hilltown Township Zoning Ordinance sets forth the requirements for buffer areas.

9. The Zoning Ordinance provides that the purpose of buffers is to separate one land use from another land use, to shield or block lights, noises, or visual impacts, and/or to preserve the natural landscape of the Township. *See* §160-33.A(1).

10. §160-33.D(2)(a) requires Applicant to install a 100-foot wide reverse frontage buffer along Route 113.

11. Furthermore, §160-33.D(2)(b) sets forth the specific numbers, species, and sizes of the required plant material for the buffer area.

12. Applicant argues that the required 100-foot buffer restricts the amount of usable rear yard area for four of the six proposed lots.

13. The four affected lots are located along Route 113.

14. Accordingly, Applicant is seeking a variance from §160-33.D(2)(a) to allow for a reduced buffer area of 40 feet as well as a variance from §160-33.D(2)(d) to reduce the buffer planting of trees by approximately 49% density and of shrubs by approximately 33% density.

15. With regard to his variance request from §160-33.D2(d), Applicant specifically requests the following planting reductions:

- a. A reduction in evergreen trees from 1 per 20 feet of buffer length to 1 per 40 feet of buffer length;
- b. A reduction in medium/large deciduous trees from 1 per 20 feet of buffer length to 1 per 40 feet of buffer length;
- c. A reduction in small deciduous trees from 1 per 20 feet of buffer length to 1 per 40 feet of buffer length; and
- d. A reduction in native shrubs from 1 per 4 ft of buffer length to 1 per 6 ft of buffer length.

16. Overall, Applicant requests a reduction in the required buffer plantings from 458 total plantings, which is approximately 114 plantings per lot, to 278 total plantings, which is approximately 69 plantings per lot.

17. Mr. Wayne Kiefer, an engineer with R. L. Showalter & Associates, Inc., was accepted by the Board as an expert in civil engineering and design and testified on behalf of the Applicant.

18. Mr. Kiefer testified that if the 100-foot buffer was installed, Applicant could still build the proposed single-family dwellings on each lot; however the 100-foot buffer would significantly cut into the rear yard of each lot, in some instances very nearly abutting the building envelope.

19. Mr. Kiefer testified that reducing the buffer area will increase the usable rear yard area for each affected lot, which will allow future owners to construct possible additions, including decks and/or pools.

20. Though A-2 shows the buffer plantings planted in a straight line, Applicant's proposed plantings will be placed in a serpentine style per the Zoning Ordinance and as shown on A-3.

21. The Board finds that a 100-foot buffer would have a detrimental impact on the rear yard of the affected lots.

22. However, the Board finds Applicant was not credible when he testified that the proposed reduction, from 100 feet to 40 feet, is the minimum relief necessary to afford Applicant reasonable use of the Property.

23. Further, the Board finds that a buffer area of 40 feet as opposed to 100 feet would not provide the affected lots with sufficient protection from the lights, noises and/or visual impacts of the adjacent Route 113.

II. DISCUSSION:

Applicant is before this Board requesting relief in connection with the construction of a 6-lot residential subdivision. Applicant requests a variance from §160-33.D(2)(a) to allow for a reduced buffer area of 40 feet as well as a variance from §160-33.D(2)(d) to reduce the buffer planting of trees by approximately 49% density and of shrubs by approximately 33% density as set forth in detail above. In support of his request, Applicant argues that the required 100-foot buffer severely restricts the amount of usable rear yard area for the four proposed lots located along Route 113, and by reducing the buffer area, future owners will have a considerable amount of additional rear yard area in which they may construct additions such as decks and/or pools.

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 the 100-foot required buffer does present a hardship to Applicant in that it significantly reduces the size of the rear yards of the four affected lots, but the relief requested by Applicant, specifically a 40-foot buffer area and the reductions for the specific types of plantings, is not the minimum relief necessary to afford Applicant reasonable use of the Property.

The minimum rear yard setback for each affected lot is 75 feet, as delineated on *Exhibit A-2* and *Exhibit A-3*. A 100-foot buffer area would go over and beyond the 75-

foot setback area, thereby eliminating 25 feet of what would otherwise be usable rear yard area. Given that each lot is approximately 50,000 square feet, which is the minimum lot size permitted, 25 feet is not insignificant. However, Applicant's requested relief is too much of an overcorrection. The requested 60% reduction in buffer size unnecessarily diminishes the protections the buffer area affords to the affected lots without conferring the benefit of additional, usable rear-yard area. A 40-foot area leaves 35 feet of required rear yard setback area, which an owner would not be permitted to encroach upon without a variance.

While the Board finds that Applicant has demonstrated a hardship, Applicant's requested relief is not the minimum necessary to afford it reasonable use of the Property and would be detrimental to the health, safety, and welfare of the surrounding community. Therefore, the Board grants a variance to §160-33.D(2)(a) to reduce the required 100-foot wide reverse frontage buffer; however, the reduction shall be limited to 40%, which shall result in a buffer area of 60 feet and shall be subject to the conditions set forth in the Order.

With respect to Applicant's request for a variance from §160-33.D(2)(d) as to a reduction in the density and the types of plantings, Applicant's request is granted only insofar as its proposed plantings are approved by the Township during the land development process.

All relief granted is subject to the conditions set forth in the accompanying Order, all of which this Board deems reasonable and necessary.

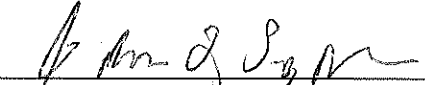
DECISION AND ORDER

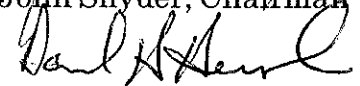
AND NOW, this 7th day of December, 2020 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

1. The minimum permitted buffer yard shall be 60 feet rather than the requested 40 feet.
2. The number and types of trees shall be as determined by the Township during the land development process.
3. Applicant shall comply with all other Township, County, and State 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: 12/7/20