

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: BSA, LLC

Appeal No. 2020-011

A hearing was held in the above matter on Thursday, December 17, 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 John Snyder, Chairman, David Hersh, and Stephen C. Yates. In addition, Kelly L. Eberle, the Board Solicitor, was in attendance, as was the Board stenographer. Applicant was present and was represented by Kimberly Freimuth, Esquire. The following individuals requested, and were granted, party status:

<u>Name</u>	<u>Address</u>
Joseph and Nicole Medeiros	679 Bennett Lane, Perkasio, PA
Steve Kearns	680 Bennett Lane, Perkasio, PA
Eric Phillips, Esq., on behalf of the Tice Estates Homeowner's Association	298 Wissahickon Ave, North Wales, PA

The following exhibits were admitted and accepted into evidence:

Zoning Hearing Board's Exhibits

- B-1 Proof of Publication
- B-2 Letter with enclosure dated November 16, 2020 to neighbors from K. Eberle
- B-3 Letter with enclosure dated December 9, 2020 to additional neighbors from K. Eberle
- B-4 Delivery Certification dated December 10, 2020

- B-5 Posting Certification
- B-6 Entry of Appearances – Party Status Requests
- B-7 Agreement between Applicant and Tice Estates Homeowner’s Association

Applicant’s Exhibits

- A-1 Resume of Jason T. Smeland, P.E., President of Lenape Valley Engineering
- A-2 Deed dated July 14, 2020
- A-3 Aerial Photograph of Property and Surrounding Area
- A-4 Sketch Plan with a Revision Date of December 17, 2020
- A-5 Elevation Sketch of Proposed Dwelling

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 BSA, LLC.
2. Applicant is the owner of the real property located at 717 Route 152, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-028-001.
3. The Property is located in the RR – Rural Residential Zoning District in Hilltown Township.

4. The Property is comprised of approximately 2.34 acres and is improved with a single-family dwelling, which has frontage on Route 152.

5. The Property has been vacant for approximately two years.

6. Though the dwelling has been winterized to prevent the pipes from freezing and bursting, the Property has not otherwise been maintained.

7. A shed, which is located at the rear of the Property towards Bennett Lane, is in deteriorating condition, and the rear yard is overgrown with shrubs and thistle.

8. The Property is adjacent to, but not a part of, the recently developed Tice Estates subdivision.

9. The Tice Estates subdivision consists of 36 detached single-family dwellings built by Pulte Homes.

10. As part of the development and construction of Tice Estates, the Property was also given frontage on Bennett Lane.

11. Applicant wishes to subdivide the Property into two separate lots (hereinafter "Lot 1" and Lot 2," respectively, and collectively as the "Lots").

12. The proposed subdivision will result in a total net area of 47,982 square feet for each of the Lots.

13. Both Lots will have access to public water and sewer.

14. Lot 1 will retain the existing single-family dwelling with frontage on Route 152.

15. Lot 2 will have frontage on Bennett Lane, and the existing shed will be removed and replaced with a new single-family dwelling, garage, and related improvements.

16. Applicant will retain the existing vegetative buffer between Lot 2 and the existing dwelling on Lot 1 and will add seven new evergreens to the buffer area.

17. In addition, Applicant will be responsible for the installation of the street trees required by the Township Ordinance.

18. Applicant's revised sketch plan shows the location of the trees that Applicant will be preserving and the location of the trees that Applicant will be adding. See Exhibit A-4.

19. Per an agreement reached between Applicant and the Tice Estates Homeowners' Association (the "HOA"), the new dwelling on Lot 2 will be part of the HOA and therefore subject to the rules and regulations of the HOA.

20. Eric Phillips, Esq., appeared on behalf of the HOA and represented that the matter had been put to a vote, and the majority of homeowners voted in favor of having the new dwelling on Lot 2 become part of the HOA.

21. The details of the agreement were made part of the record as *Exhibit B-7*.

22. Accordingly, the dwelling and the garage on Lot 2 will be constructed in accordance with the HOA rules and regulations and will be similar in color, size, and materials used as the existing homes in Tice Estates.

23. Applicant seeks a variance from §160-26 and §160-23.B(1) of the Hilltown, which require a minimum lot size of 50,000 square feet for a detached, single-family dwelling in the RR Zoning District in order to permit a lot size of 47,982 square feet for Lot 1 and Lot 2.

24. Due to the existing frontage on Route 152, the ultimate right of way rather than just the legal right of way must be included in determining the area of the Property.

25. This significantly impacts the net area of the Property and therefore the net area of the Lots.

26. Despite the Property having a gross area of more than 100,000 square feet, each of the proposed Lots will be approximately 2,018 square feet less than the required minimum lot size.

27. If Applicant was only required to account for the legal right of way, both Lots would be greater than 50,000 square feet.

28. Both Lots will meet all other requirements of the Zoning Ordinance including side yard, front yard, and rear yard setbacks.

29. Applicant did review other possible ways to subdivide the Property, but each of those attempts resulted in additional variance requests.

30. As a condition of any relief granted by the Board, Applicant has agreed to abide by provisions of the HOA agreement set forth in *Exhibit B-7*.

31. Several homeowners appeared at the hearing to express their concerns with the proposed subdivision.

32. Joseph and Nicole Medeiros of 679 Bennett Lane stated that they thought the introduction of a non-Pulte Home residence into the HOA would alter the essential character of the community and opined that the proposed Lot 2 is smaller than those lots directly around it.

33. Mrs. Medeiros further stated that the HOA bylaws provide for a planned community of not more than 36 homes and permitting Lot 2 to be part of the HOA would be taking advantage of the capital contributions made by the original 36 homeowners.

34. The Board finds that the relief requested is *de minimis* in nature.

35. The Board finds that the relief requested will not alter the characteristics of the Property.

II. DISCUSSION:

Applicant is before this Board requesting relief in connection with a minor two-lot subdivision of the Property. In connection therewith, Applicant seeks a variance from §160-26 and §160-23.B(1) of the Zoning Ordinance to permit a reduction in minimum lot size from the required 50,000 square feet to 47,982 square feet for each of the proposed Lots.

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 the variance from §160-26 and §160-23.B(1) of the Zoning Ordinance. Additionally, the Board finds the variance as requested, a 2,018 square foot reduction in minimum lot size for each of the proposed Lots, is *di minimis* in nature, is not injurious to the health, safety, and welfare of the surrounding community, and constitutes the minimum relief necessary to afford Applicant the opportunity to make reasonable use of the Property.

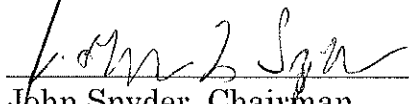
DECISION AND ORDER

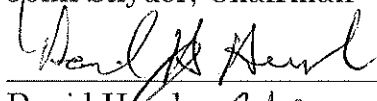
AND NOW, this 29th day of January, 2021 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

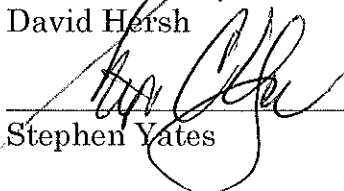
1. The proposed construction shall be done in accordance with the exhibits and testimony presented at the hearing.
2. Applicant shall abide by the conditions agreed to with the Tice Estates Homeowner's Association as set forth in B-7.
3. Applicant shall comply with all other Township, County, and State 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.

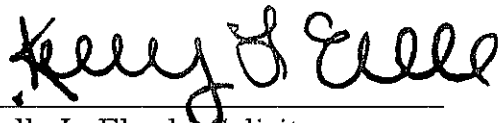
HILLTOWN TOWNSHIP ZONING
HEARING BOARD

By: 
John Snyder, Chairman

By: 
David Hersh

By: 
Stephen Yates

GRIM, BIEHN & THATCHER

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

Date of Mailing: 1-29-21