

**BEFORE THE ZONING HEARING BOARD OF CARROLL TOWNSHIP  
YORK COUNTY, PENNSYLVANIA**

<b>IN RE:</b>	:	
	:	
<b>VARIANCE APPLICATION OF DILLSBURG LAND LLC</b>	:	<b>Docket No.: 2022-007</b>
	:	<b>Hearing Date: June 27, 2022</b>
	:	
<i>Applicant.</i>	:	
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**FINAL DECISION**

**AND NOW**, this 27<sup>th</sup> day of June, 2022, after consideration and a hearing upon the application for variances brought by Dillsburg Land LLC, the Zoning Hearing Board of Carroll Township hereby grants two of Applicant’s requested variances for a proposed townhome development with parking modifications located at the intersection of Ore Bank Road and West Siddonsburg Road, Dillsburg, PA 17019.

**FINDINGS OF FACT**

1. The applicant for the requested variances from § 450-350.N (Multiple-family dwellings or multiple townhouses on a single lot); § 450-402.B(4) (Access drive requirements); and from § 450-604.B(4) (Hearings) of the Zoning Ordinance (“Ordinance”) is Dillsburg Land LLC (“Applicant”).
2. The Applicant is the equitable owner of the real property situate atop 15.77 acres of land (eleven lots) located on the northwest side of the intersection of Ore Bank Road and West Siddonsburg Road (UPI# 20-000-PC-0201.00-00000 – 20-000-PC-0211.00-00000) (“Property”).
3. Applicant’s Property is located in the Mixed-Use 1 (“MU-1”) Zoning District of Carroll Township.
4. A hearing upon Application 2022-007 was held before the Zoning Hearing Board of Carroll Township (“Board”) on June 27, 2022, at approximately 7:00 P.M.

5. The Board conducted this hearing at the Carroll Township Municipal Building located at 555 Chestnut Grove Road.

6. A quorum of Board members (Chairman Gary Reihart, Vice Chairman Rich Gensler, and Secretary Frank Setlak) were present to hear Applicant's request for three variances from § 450-350.N, § 450-402.B(4), and § 450-604.B(4) of the Ordinance (hereinafter, the "Requested Variances").

7. The hearing was also attended by alternates Deana Weaver and Mark Heishman, who participated in the proceeding and discussion of the Board but were not designated voting alternate members for purposes of 2022-007.

8. Brandon Slatt, Zoning Officer of Carroll Township ("Zoning Officer Slatt"), was duly sworn in and provided the following testimony:

- (a) the Property was posted and notice was provided to the appropriate parties in accordance with the law;
- (b) the hearing was advertised in accordance with the Ordinance; and
- (c) the application fee was paid by the Applicant.

9. Attorney Charles Courtney ("Attorney Courtney") appeared on behalf of the Applicant to present Applicant's request for variances, pursuant to § 450-605.C of the Ordinance.

10. The following exhibits were introduced by Applicant and admitted by the Board:

- (a) Exhibit A-1 – Application with accompanying narrative;
- (b) Exhibit A-2 – Preliminary Development Plan
- (c) Exhibit A-3 – Context Plan
- (d) Exhibit A-4 – Conceptual Site Plan; and
- (e) Exhibit A-5 – Conceptual Building Floor Plan and Elevation Exhibit;

11. Kevin McGarvey (“McGarvey”), a senior engineer of BL Companies, being duly sworn in, provided the following testimony on behalf of the Applicant:

- (a) The Applicant purports to develop the Property into a townhouse development (“Development”) *via* a conditional use application with the Township’s Board of Supervisors;
- (b) The Property is triangular in shape, with two of its sides consisting entirely of road frontage, which is approximately sixty percent (60%) of the perimeter of the Property;
- (c) The Development, as proposed, consists of ninety-four (94) townhouse units and two (2) access drives;
- (d) The Ordinance requires three parking spaces per unit;
- (e) Each unit will be able to accommodate two of these parking spaces (188 parking spaces);
- (f) The Applicant is requesting that the ninety-four (94) remaining parking spaces, which will be located along the access drives, be perpendicular to the access drives, as opposed to parallel, as required by the Ordinance;
- (g) Due to the triangular shape of the Property, as well as other compounding factors, the only way to accommodate the Development and provide sufficient, safe parking for its inhabitants is by allowing ninety-four (94) parking spaces that are perpendicular to the access drives;
- (h) This parking layout will provide more convenient access to residents of the Development, will create a more attractive Development, will allow for

more “green space” within the Development, and will result in less impervious coverage and storm-water runoff;

- (i) The unique physical circumstances of the Property severely limits the locations where access drives may be placed, and accordingly, the number of parallel parking spaces that can be provided within the Development;
- (j) It is not possible to provide sufficient parking for the proposed Development in a manner that complies with the Ordinance;
- (k) Therefore, the Property possesses unique physical circumstances that cause the Applicant unnecessary hardship in developing the Property in strict conformity with the Ordinance;
- (l) The Applicant did not create the unnecessary hardship;
- (m) The Requested Variances will not alter the essential character of the neighborhood, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare;
- (n) In fact, the Requested Variances will improve the essential character of the neighborhood by decreasing the amount of storm-water runoff of the Development, decreasing the amount of impervious surfaces within the Development, increasing the amount of “green space” within the Development, and create a more attractive townhome development overall;
- (o) The Requested Variances represent the minimum variance that will afford the relief necessary and will represent the least modification possible of the regulations in issue;

- (p) The Ordinance requires an applicant to obtain the necessary permits and begin the authorized work within one year, and requires an applicant to complete the approved work within two years;
- (q) Two years is not a sufficient amount of time for Applicant to (1) advance through the conditional use process, (2) to advance through the land development phase, (3) to obtain a highway occupancy permit from PennDOT, and (4) to secure the necessary NPDES permit;
- (r) The Applicant is requesting an extension of the timeframes set forth in the Ordinance for obtaining the necessary permits and beginning the authorized work from one year to two years, and the time period to complete the approved work from two years to three years;
- (s) The Ordinance permits the Board, for good cause shown, to extend these timeframes; and
- (t) The Applicant will not be able to fulfill all of these obligations within the timeframes required in the Ordinance.

12. Following McGarvey's testimony, McGarvey adopted the information contained in the narrative portion of Exhibit A as his own and testified that all of his statements were made with a reasonable degree of certainty as a qualified civil engineer.

13. Following Applicant's testimony, Mr. James Richwine, Jr. ("Mr. Richwine"), who resides at 370 Chestnut Grove Road, asked the Applicant how the unnecessary hardship was not self-created.

14. McGarvey responded to Mr. Richwine’s question by observing that the Applicant did not cause the roads surrounding the Property to be located where they currently are, nor the overall triangular shape of the Property.

15. Mr. Gregory Hlatky (“Mr. Hlatky”), who resides at 306 Meadow Trail, asked the Applicant whether there had been any coordination between the Applicant and the school district regarding a future bus stop location.

16. Applicant responded to Mr. Hlatky’s question by stating that no such communications have transpired, that Applicant intends to work with the school district on this issue at a later stage of development, and that the topic of a future bus stop was outside the scope of 2022-007, which the Board affirmed.

17. The Board asked the Applicant whether the Development actually needed to consist of ninety-four (94) units, and whether the Applicant had considered the possibility of complying with the Ordinance by developing fewer units, which would free up additional space for parallel parking.

18. The Applicant responded that the Ordinance does not require parallel parking, just parallel parking along access drives. Therefore, instead of developing fewer units, the Applicant would have additional satellite parking at the expense of “green area,” due to “economic realities.” The Applicant further stated that this would be a suboptimal situation and would let “parking dictate design.”

19. Following questions from the Board, Mr. Richwine testified as follows:

- (a) The Applicant knew, or should have known, when purchasing the Property, that the hardship existed;
- (b) Accordingly, the hardship is self-inflicted;

(c) There are other ways of developing the Property; and

(d) The Board should deny the Applicant's variance requests on this basis.

20. Attorney Courtney responded to Mr. Richwine's testimony, stating that Mr. Richwine's position was incorrect and that the Municipalities Planning Code is clear that purchasing property with an existing hardship does not mean the hardship was self-created.

21. Attorney Courtney asked Mr. Richwine how the Requested Variances impacted him, and after hearing Mr. Richwine's response, Attorney Courtney objected to Mr. Richwine being given standing.

22. The Board, in its sound discretion, granted Mr. Richwine standing in this case.

23. Solicitor John Wilson ("Solicitor Wilson") asked the Applicant whether the Requested Variances were dimensional or use variances, and whether the relaxed *Hertzberg* standards for variances would govern in this application.

24. Applicant responded by stating that the Requested Variances were not "use" variances, that the relaxed *Hertzberg* standard would be applicable, that economic consideration could therefore be taken into account, that an expected increase of \$50,000.00 would result if the variances were not granted, and that the Requested Variances were permissible regardless of the relaxed *Hertzberg* standard.

25. Zoning Officer Slatt asked the Applicant whether (1) the Applicant has determined what the speed limit would be on the access drives; (2) whether the Applicant foresaw any concerns regarding vertical sight distances for vehicle operators backing onto the access drives; and (3) whether all the parking spaces were to be at least 10 feet by 20 feet in size.

26. The Applicant responded to Zoning Officer Slatt's questions, stating that (1) the speed limit of the access drives would be twenty-five miles per hour (25 mph) or less; (2) Applicant

has no concerns regarding vertical sight distances; and (3) that all parking spaces would meet Ordinance requirements for dimensions.

27. The Board gave those in attendance at the hearing an opportunity to provide public comment in relation to 2022-007.

28. The Board asked Zoning Officer Slatt whether parking lots were a permitted accessory use in the MU-1 Zoning District, and Zoning Officer Slatt confirmed that parking lots were, in fact, a permitted accessory use in the MU-1 Zoning District.

29. For purposes of engaging in quasi-judicial deliberations, the Board held a brief executive session prior to rendering a decision on the Applicant's Requested Variances.

#### **CONCLUSIONS OF LAW**

30. The Board finds that the Applicant has offered sufficient evidence and testimony to warrant the grant of the requested variance for § 450-350.N and § 450-402.B(4) of the Ordinance.

31. The Board finds that the Applicant has offered sufficient evidence and testimony to establish that there are unique physical circumstances or conditions peculiar to the Property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the Ordinance.

32. The Board finds that the Applicant has offered sufficient evidence and testimony to establish that because of these unique physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the Ordinance and that the authorization of variance is necessary to enable the reasonable use of the Property.

33. The Board finds that the Applicant has offered sufficient evidence and testimony to establish that the unnecessary hardship was not created by the Applicant.



34. The Board finds that the Applicant has offered sufficient evidence and testimony to establish that these variances, if authorized, will not alter the essential character of the neighborhood, nor substantially impair the appropriate use of adjacent property, no be detrimental to the public welfare.

35. The Board finds that the Applicant has offered sufficient evidence and testimony to establish that these variances, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulations at issue.


36. The Board does not find that the Applicant has offered sufficient evidence and testimony, nor shown the "good cause" necessary, to warrant the grant of the requested time extension under § 450-604.B(4).

**A first motion was made and seconded to approve the variance of § 450-350.N to allow perpendicular parking along the access drives, as proposed in Exhibits A-3, A-4, and A-5 without substantial design changes. This first motion passed unanimously with a vote of 3-0.**

**A second motion was made and seconded to approve the variance of § 450-402.B(4) to permit direct access to parking spaces from the access drive. This second motion passed unanimously with a vote of 3-0.**

**A third motion was made and seconded to deny the time extension requested as per § 450-604.B(4) to obtain the required permits remains as stated in the zoning ordinance. This third motion passed unanimously with a vote of 3-0.**

**BOARD SIGNATURES:**

  
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Gary Reihart, Chairman

  
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Richard Gensler, Vice-Chairman

  
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Frank Setlak, Secretary

Dated: 8-1-22

Date of Mailing: 8-1-22

**Note: Any party aggrieved by this decision may appeal to the Court of Common Pleas of York County within thirty (30) days of the date of this written decision.**