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

IN RE: : **Docket No.: 2023-006**
: :
BLG CONSTRUCTION, LLC : **Hearing Dates:**
Applicant. : **August 28, 2023, and**
: **September 25, 2023**
: :
: :

FINAL DECISION

AND NOW, this 25th day of September, 2023, after consideration and a hearing upon the application for two (2) variances from § 450-205.E and § 450-604.B.4 of the Zoning Ordinance of Carroll Township filed by BLG Construction, LLC, the Zoning Hearing Board of Carroll Township hereby denies the requested variances in relation to (1) the maximum impervious coverage permitted per single-family attached dwelling lot in the Residential Suburban-3 Zoning District and (2) the requested time extension, as set forth more fully herein:

FINDINGS OF FACT

1. On July 27, 2023, BLG Construction, LLC (“Applicant”) submitted an application (“Application”) to the Zoning Hearing Board of Carroll Township (“Board”) requesting two (2) variances from § 450-205.E and § 450-604.B.4 of the Zoning Ordinance of Carroll Township (“Ordinance”).

2. The Applicant owns and controls the parcel of land located to the north of Hartman Lane and between the eastern and western termini of Pheasant Ridge Road (T-170), Dillsburg, Pennsylvania 17019 (UPI #: 20-000-OC-0100.G0-00000) (“Property”).

3. The Property is located in the Residential Suburban, – 3 (“RS-3”) Zoning District of Carroll Township.

4. Currently, the 10.91-acre Property does not have any improvements located thereon (undeveloped) and is vacant.

5. Applicant intends to develop the Property with a mixture of single-family detached dwellings and single-family attached dwellings (townhomes).

6. A hearing upon Application 2023-006 (“Hearing”) was held before the Zoning Hearing Board of Carroll Township (hereinafter, “Board”) on August 28, 2023, at approximately 6:05 P.M.

7. The Board conducted the Hearing at the Carroll Township Municipal Building located at 555 Chestnut Grove Road, Dillsburg, PA 17019.

8. Present at the hearing was Chairman Reihart and Board Member Setlak, together constituting a quorum of Board members that were able to attend the Hearing, participate in the proceeding, and vote on the Application.

9. During the Board’s preliminary explanation of this proceeding and how the Hearing would be conducted, a number of attendees commented that they did not receive notice regarding this Hearing and potentially had interest in retaining legal counsel.

10. Despite the presence of a quorum, Applicant requested that the Board continue the hearing to a later date, so that a full Board might be present to participate in the proceeding and vote on the Application.

11. Pursuant to 65 Pa.C.S.A. § 708, the Board held an executive session to discuss Applicant’s request for a continuance.

12. Following this executive session, a motion was made by Board Member Setlak, and seconded by Chairman Reihart, to grant Applicant’s request for a continuance due to the absence of a full Board, the notice issues alleged by certain attendees, and the expressed desire to retain legal counsel by certain attendees.

13. The motion passed unanimously 2-0.

14. Board Member Setlak advised that the Hearing would be continued until the next regularly-scheduled Board meeting, which would take place on September 25, 2023, at 6:00 P.M.

15. The Board resumed the continued Hearing at the same location on September 25, 2023, at approximately 6:05 P.M.

16. Present at the hearing was Chairman Reihart, Board Member Setlak, and Board Member Gensler, together constituting a quorum of Board members that were able to attend the Hearing, participate in the proceeding, and vote on the Application.

17. At the Hearing, Applicant was represented in a legal capacity by Attorney Jonathan Andrews, Esquire, of McNees Wallace and Nurick LLC.

18. The following individuals expressed the intention to become a party to this Hearing and/or were sworn in for the purpose of providing testimony:

- (a) Jonathan Andrews, Esq. (on behalf of the Applicant), Attorney at McNees Wallace and Nurick LLC;
- (b) Elliot Shibley (on behalf of the Applicant), Project Manager at Integrated Consulting;
- (c) Brandon Slatt, Zoning Officer and Manager of Carroll Township;
- (d) Dean Pucetti, 515 South Baltimore Street, Dillsburg, PA 17019;
- (e) Harvey Bullard, 167 Quail Drive, Dillsburg, PA 17019;
- (f) Elizabeth Swivel, 1167 Park Avenue, Dillsburg, PA 17019;
- (g) Gregory Taylor, 1165 Park Avenue, Dillsburg, PA 17019;
- (h) Michael Kiesinger, 31 Hartman Lane, Dillsburg, PA 17019;
- (i) Justin Sipe, 40 Hartman Lane, Dillsburg, PA 17019;
- (j) Robert Glynn, 50 Hartman Lane, Dillsburg, PA 17019;
- (k) Shannon Brandt, 161 Quail Drive, Dillsburg, PA 17019;
- (l) Richard Patterson, 165 Quail Drive, Dillsburg, PA 17019; and
- (m) Theresa Antal, 160 Quail Drive, Dillsburg, PA 17019.

19. Zoning Officer Slatt 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.

20. Following Zoning Officer Slatt's testimony, Applicant's counsel made the following introductory remarks:

- (a) Applicant did not have any objection to the above-referenced individuals being considered a party to this Hearing;
- (b) The Property is surrounded by existing residential development around most sides;
- (c) The Property's western boundary line overlaps with a portion of the municipal boundary separating Carroll Township and Dillsburg Borough;
- (d) To the west of the Property is the Pin Oak Mobile Home Park;
- (e) Applicant is proposing eleven (11) detached single family homes on the eastern portion of the Property;
- (f) Applicant is proposing thirty-four (34) townhomes on the western and southern portion of the Property; and
- (g) The minimum lot coverage variance being requested is only needed for the twenty-two (22) interior townhome lots.

21. Following these introductory remarks, Applicant called its sole witness, Mr. Shibley, who provided the following testimony regarding his qualifications as follows:

- (a) Mr. Shibley is a project manager with Integrated Consulting, whose primary responsibility is to take land development projects through the process of obtaining the requisite approvals from local municipal, county, state, and other government agencies prior to construction;
- (b) Mr. Shibley is a registered landscape architect in the Commonwealth of Pennsylvania, a title he has held for almost 10 years;
- (c) Mr. Shibley has prepared over 100 concept plans and land development plans during his professional career;
- (d) Mr. Shibley has previously been involved in designing approximately 3,000 townhouses and residential units as part of either mixed-use or single-use development; and
- (e) Mr. Shibley has testified as an expert before multiple municipal boards and in prior zoning proceedings prior, and none of these municipal boards have ever refused to accept Mr. Shibley as an expert.

22. Applicant offered Mr. Shibley to the Board as an expert in site design compliance with land use ordinances, to which the Board voiced no objection and took notice of Mr. Shibley's qualifications for the purpose of the testimony being offered.

23. Following Mr. Shibley's testimony regarding his qualifications, Mr. Shibley offered general testimony regarding the relief being requested as follows:

- (a) The Property is irregularly shaped, appearing as either a lightning bolt or tetrimino;
- (b) The Property has very little street frontage other than the access points to Pheasant Ridge Road and the frontage towards the south of the Property along Hartman Lane;
- (c) The Property has some unique existing features, none of which were man-made, such as forest and wooded area, a wetland, and a gas line that runs along the municipal boundary line;
- (d) The Property is vacant, while the majority of the surrounding properties are developed with residential dwellings, including townhomes;
- (e) On Applicant's Exhibit 2, there is a table entitled "Townhome Impervious Coverage" which delineates between townhouse lots that conform with the maximum lot coverage requirement (indicated in green) and those lots which do not (indicated in red);
- (f) As indicated previously by Attorney Andrews, the proposed single-family detached dwellings are located to the east and north

- of the Property, whereas the proposed townhouse lots are located to the south and west of the Property;
- (g) Applicant's rationale for locating the single-family detached dwellings and townhouses where proposed on Applicant's plan was for the purpose of harmonizing with the existing development on the surrounding properties;
 - (h) The proposed townhouses are located on individual lots, which is a use permitted by right in the RS-3 Zoning District;
 - (i) The Ordinance's maximum impervious lot coverage requirement is applicable to both interior and exterior townhouse lots;
 - (j) The Property has numerous unique physical characteristics that impact development, such as (1) the access points to Pheasant Ridge Road; (2) the existing wetland on the Property that Applicant is attempting to preserve and protect; (3) the irregular shape of the Property; and (4) the existing gas line located along the municipal boundary line;
 - (k) Applicant is proposing two different types of townhomes to be developed, one of which has 640 square feet of ground floor area (20' x 32') and the other with 840 square feet (20' x 42');
 - (l) All of the proposed townhomes would have a width of twenty feet, which is the standard for townhouse developments;
 - (m) In addition, the Ordinance requires 200 square feet of private outdoor space, which is typically a patio or deck that constitutes impervious lot coverage;
 - (n) Due to the forty foot setback requirement, driveways are necessary, which will entail an additional 400 square feet in impervious coverage;
 - (o) The primary purpose of impervious lot coverage requirements is to manage stormwater;
 - (p) As part of the land development process, the proposed development will need to comply with the Township's SALDO, as well as other stormwater requirements imposed by various county and state agencies;
 - (q) There is an option to develop all of the proposed townhomes on a single lot, as opposed to individual fee simple lots, which would be subject to the same impervious lot coverage requirement;
 - (r) This regulatory scheme incentivizes construction on one single lot and penalizes construction on individual lots, which actually encourages greater development and earth disturbance;
 - (s) The requested variance, if granted, would not alter the essential character of the neighborhood and surrounding properties;
 - (t) The requested variance would further the objectives of the Township's Comprehensive Plan;

- (u) Applicant is requesting a one-year extension for both the requirement to commence development within one year and two complete development within two years.
- (v) Applicant is requesting this extension of time due to the possibility of unforeseen circumstances with either outside agencies or other construction or design elements that may delay development; and
- (w) Mr. Shibley adopts the representations made in the narrative attached to the Application as his own.

24. Shannon Brandt, of 161 Quail Drive, cross-examined the Applicant and inquired whether any unnecessary hardship existed that would prevent the Applicant from developing the Property with single-family detached dwellings (as opposed to the proposed townhomes) and comply with the maximum lot coverage requirement. Mr. Shibley testified that it was possible to develop the Property in this manner. Mr. Brandt then asked why the Applicant would not do this. Mr. Shibley responded that, based on the Property's characteristics, the nature of development on the surrounding properties, and the higher-density use of the RS-3 Zoning District, Applicant is inclined to develop the Property in the manner proposed.

25. Mr. Brandt testified regarding his concerns with water intrusion onto his property and the stormwater effects of Applicant's failure to comply with maximum impervious lot coverage requirement.

26. Robert Glynn, of 50 Hartman Lane, testified that the Applicant does not meet the hardship requirement for a variance and inquired why the Applicant would not propose a lower density development that meets the maximum impervious lot coverage requirement.

27. Harvey Bullard, 167 Quail Drive, cross-examined the Applicant and inquired why the Applicant is proposing a connection of Pheasant Ridge Road to the Windy Heights community. Applicant testified that this connection is the only area where the road could be connected.

28. Elizabeth Swivel, 1167 Park Avenue, cross-examined the Applicant and inquired whether a traffic study would be done in conjunction with the proposed Pheasant Ridge Road connection. Applicant indicated that a traffic study would be done if the same was required by the Ordinance. Ms. Swivel also inquired regarding the different cartway widths of Pheasant Ridge Road.

29. Gregory Taylor, 1165 Park Avenue, cross-examined the Applicant and inquired regarding the applicable stormwater regulations to be complied with for the proposed development. Applicant testified regarding various applicable stormwater regulations that the proposed development would be subject to. Mr. Taylor also asked

whether there had been any formal delineation of the existing wetland on the Property. Applicant responded that the wetland had, in fact, already been delineated and that there is no proposed disturbance of the existing wetland area.

30. Michael Kiesinger, 31 Hartman Lane, cross-examined the Applicant regarding the nature of development along Hartman Lane. Applicant indicated that Hartman Lane has several single-family detached dwellings. Mr. Kiesinger testified that all of the properties along Hartman Lane were single-family detached dwellings. In relation to the location of the proposed townhomes, Mr. Kiesinger inquired why the single-family detached dwellings on Hartman Lane were not treated the same as those within the Windy Heights community. Applicant testified that there are still 100 foot setback requirement from existing residential dwellings that the proposed townhouses would be subject to. Mr. Kiesinger inquired regarding the existence of a man-made characteristic, a well, upon the Property. Applicant confirmed that a well would be a man-made characteristic. Mr. Kiesinger proceeded to testify regarding the existence of a well, a frost-free valve, and a concrete pad on the Property that affects impervious lot coverage.

31. Justine Sipe, 40 Hartman Lane, asked the Board how the Board could determine whether to grant a variance from the impervious lot coverage requirement if the Board does not know the intent behind the maximum impervious lot coverage requirement.

32. Richard Patterson, 165 Quail Drive, cross-examined the Applicant and inquired regarding the Applicant's satisfaction of the hardship requirement. In response, Applicant reiterated its prior testimony regarding the unique physical characteristics of the Property.

33. Theresa Antal, 160 Quail Drive, provided general testimony in opposition to the Application.

34. Following the testimony from the above-referenced parties, Applicant was permitted the opportunity to redirect Mr. Shibley, who testified as follows:

- (a) The proposed townhouses are permitted by right in this Zoning District;
- (b) The Property could be developed entirely with townhomes; and
- (c) Applicant's proposed development would comply with the relevant minimum lot size, minimum open space, and maximum density requirements of the Ordinance.

35. Following Applicant's redirect, the Board provided an opportunity for public comments regarding the Application.

36. The following exhibits were admitted by the Board into the record at the conclusion of the Hearing:

- (a) Applicant's Exhibit 1 – Aerial Exhibit;
- (b) Applicant's Exhibit 2 – Site Plan; and
- (c) Glynn Exhibit 1 – Copy of 53 P.S. § 10910.2.

37. Pursuant to 65 Pa.C.S.A. § 708, the Board recessed the Hearing and held an executive session for purposes of quasi-judicial deliberations.

38. Following this executive session, the Board reconvened the Hearing and rendered its decision on the Application as follows.

CONCLUSIONS OF LAW

39. Pursuant to § 450-205.E of the Ordinance, the maximum impervious coverage permitted for single-family attached dwellings (townhouses) within the RS-3 Zoning District is 40%.

40. Under the Ordinance, each of the 34 townhouses proposed by Applicant on the Property would be subject to this 40% maximum impervious lot coverage requirement.

41. According to Applicant's Site Plan, twenty-two (22) of the thirty-four (34) proposed townhomes do not comply with the 40% maximum impervious lot coverage requirement under the Ordinance.

42. Applicant requires a variance from § 450-205.E of the Ordinance in order to develop the Property with townhouses on individual lots as proposed on the Applicant's Site Plan (Applicant's Exhibit 2).

43. Under Pennsylvania land use law, when a property owner is seeking a "dimensional variance," the property owner is asking only for a reasonable adjustment of the zoning regulations in order to utilize property in manner consistent with the applicable regulations; thus, the granting of a dimensional variance is of lesser moment than the grant of a "use variance," since the latter involves a proposal to use the property in a manner that is wholly outside of the zoning regulations. *Hertzberg v. Zoning Bd. of Adjustment of City of Pittsburgh*, 554 Pa. 249, 257, 721 A.2d 43, 47 (1998).

44. Under the relaxed, *Hertzberg* standard for granting a dimensional variance from a zoning ordinance, when addressing the element of unnecessary hardship, the quantum of proof needed to establish an unnecessary hardship as would support an application for a variance is lower for dimensional variances, and courts may consider multiple factors, including the economic detriment to the

applicant if the variance was denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements, and the characteristics of the surrounding neighborhood. *Pequea Twp. v. Zoning Hearing Bd. of Pequea Twp.*, 180 A.3d 500 (Pa. Commw. Ct. 2018); *McCarry v. Haverford Twp. Zoning Hearing Bd.*, 113 A.3d 381, 385 (Pa. Commw. Ct. 2015).

45. The variance being requested of § 450-205.E is dimensional in nature, and thus, subject to the relaxed, *Hertzberg* mode of analysis.

46. In order to warrant the grant of a dimensional variance in this case, Applicant was required to demonstrate that each of the criteria as set forth in § 450-605.C of the Ordinance were met, including the following:

- (a) There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the Property, and that the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the Ordinance, in the neighborhood or zone in which the Property is located;
- (b) Because of such physical circumstances or conditions, there is not possibility that the Property can be developed in strict conformity with the provisions of the Ordinance and that the authorization of a variance is therefore necessary to enable reasonable use of the Property;
- (c) Such unnecessary hardship has not been created by the Applicant;
- (d) The variance, if authorized, will not alter the essential character of the zone or neighborhood in which the Property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and
- (e) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulations in issue.

47. The Board finds that the Applicant has not offered sufficient evidence and testimony to warrant the grant of a variance in this case.

48. The Board finds that, while the Property may have unique physical characteristics (*e.g.*, irregular shape, shared municipal boundary line, existing wetland region and gas line, limited street frontage, designated access points, *etc.*), these characteristics do not create an unnecessary hardship with respect to satisfying the maximum lot coverage requirement.

49. The Board finds that, while the unique physical characteristics of the Property likely impact where the proposed townhomes can be located on the Property, they do not create an unnecessary hardship in satisfying the Ordinance's maximum impervious lot coverage requirement for the individual townhouse lots.

50. Rather, the Board finds that the failure of Applicant's proposed development to comply with § 450-205.E is caused, at least in part, by the number and density of townhomes being proposed on the Property.

51. Since the variance from § 450-205.E is not granted in this case, the requested variance from § 450-604.B.4 is determined to be moot and the Board denies the same.

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A motion was made by Board Member Gensler, and seconded by Board Member Setlak, to deny the Applicant's request for variance of Article II, § 450-205.E, which sets the maximum impervious coverage of single family attached dwelling lots at 40% in the RS-3 Zoning District. Chairman Reihart called for a roll call vote, which proceeded as follows: Board Member Gensler and Board Member Setlak voted in favor of the motion to deny, and Chairman Reihart voted in opposition to the motion to deny. The motion to deny was therefore passed by the Board with a vote of 2-1.

A motion was made by Board Member Setlak, and seconded by Board Member Gensler, to deny the Applicant's request for variance of Article II, § 450-604.B.4, to extend the timeframe for commencing and completing the proposed development. Board Members Setlak and Gensler voted in favor of the motion to deny, and Chairman Reihart voted in opposition to the motion to deny. The motion to deny was therefore passed by the Board with a vote of 2-1.

BOARD SIGNATURES:



Gary Reihart, Chairman



Richard Gensler, Vice-Chairman



Frank Setlak, Secretary

Dated: 10-25-23

Date of Mailing: 10-26-23

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.