

**ZONING HEARING BOARD OF DOYLESTOWN TOWNSHIP  
BUCKS COUNTY, PENNSYLVANIA**

**Docket No.:** Z-2-2023

**Applicant:** Michael Johnson  
105 N. Pennsylvania Avenue  
North Wales, PA 19454

**Owner:** Same.

**Subject Property:** Tax Parcel Nos. 09-008-014 and 09-008-015, which are identified as Lot Nos. 14 and 15, located S. Shady Retreat Road, Doylestown, PA 18901.

**Requested Relief:** Applicant seeks to develop the subject property by merging two undersized lots and constructing a single-family dwelling thereon, with access by way of a paper street. Applicant requests the following variances: (1) from §175-27.D(5), to disturb greater than 50% of woodlands; (2) from §175-27.D(6), to disturb greater than 40% of steep slopes between 15-24%; and, (3) from §175-38, to permit impervious surface coverage in excess of the 20.0% permitted.

**Hearing History:** The application was filed in Doylestown Township on February 21, 2023. The hearing was held on April 17, 2023 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

**Appearances:** Applicant by: Gavin R. Laboski, Esq.  
314 W. Broad Street, Suite 124  
Quakertown, PA 18951

**Mailing Date:** June 1, 2023

## DECISION

### FINDINGS OF FACT:

1. The Zoning Hearing Board of Doylestown Township met the requirements of the Zoning Ordinance, the Municipalities Planning Code, and other relevant statutes as to legal notice of the hearing held.

2. During the hearing held on April 17, 2023, the Zoning Hearing Board did mark and admit the following exhibits:

ZHB-1: Application dated February 21, 2023 with attachments including the deed, a list of property owners to be notified by mail, and a Plan Set, prepared by Lenape Valley Engineering, dated December 22, 2021, last revised February 13, 2023.

ZHB-2: Legal notice of the April 17, 2023 hearing.

ZHB-3: Doylestown Township Zoning Ordinance.

A-1: Review letters by Gilmore & Associates, Inc. dated April 27, 2022 and Pennoni Associates dated May 2, 2022.

A-2: Deed to the Subject Property.

A-3: Final Plan of Lots for Subdivision known as Edgewood Hills.

A-4: Plan Set, prepared by Lenape Valley Engineering, dated December 22, 2021, last revised February 13, 2023.

A-5: Aerial photographs.

A-6: Proposed Deed of Consolidation and Merger.

3. The Applicant is the Owner of the Subject Property and therefore possessed of the requisite standing to make application to this Board.

4. The Subject Property is located in the R-1, Residential Zoning District of Doylestown Township. The lot area is 1.315 acres. The property is currently unimproved.

5. Applicant seeks to develop the subject property by merging the two undersized lots and constructing a single-family dwelling thereon, with access by way of a paper street. Applicant requests the following variances: (1) from §175-27.D(5), to disturb greater than 50% of woodlands; (2) from §175-27.D(6), to disturb greater than 40% of steep slopes between 15-24%; and, (3) from §175-38, to permit impervious surface coverage in excess of the 20.0% permitted.

6. Property Owner Michael Johnson did testify regarding the proposed development plans. Mr. Johnson proposes to merge two lots and construct a single-family dwelling. The proposed dwelling is a ranch style home with a full basement totaling 4,800 square feet including the basement, with a 2,500 square foot footprint. Applicant intends to construct a swimming pool and detached garage in the future.

7. Applicant presented the testimony of Jason Smeland, PE. Mr. Smeland was offered as an expert in land development and engineering.

- a. Mr. Smeland indicated that he participated in a sketch plan review with Township staff. Mr. Smeland indicated that Applicant will comply with the requests made by staff but also required certain variances for which Applicant has applied herein.
- b. Mr. Smeland described the property as a landlocked parcel platted in 1955 consistent with the Final Plan of Lots for Edgewood Hills, submitted into evidence (Exhibit A-3). Heather Drive was identified as a paper street.
- c. Applicant intends to use Heather Drive as the access, but does not intend to construct a road.
- d. The lots in question, when merged, exceed the minimum lot size for the zoning district, totaling 1.3 acres gross. Net lot size is .74 acres, after subtracting environmental resources, and a drainage easement.
- e. Mr. Smeland performed impervious surface calculations. Mr. Smeland opines that a minimum 27.6% impervious surface ratio is necessary.
- f. Delaware Valley University property is an adjacent neighbor. Other residential lots are in the immediate area.
- g. Improvements for the property include a stormwater management raingarden, and maintenance of an existing stormwater swale.
- h. There are considerable environmentally sensitive features of the property, including woodlands and steep slopes.
- i. While there is open area on the site, the open areas are not suitable for building, therefore construction of the single-family dwelling will require deforesting up to 58.6% of woodlands. Applicant is “reforesting” certain of the woodlands in a different location, which will also provide screening for the adjacent residential parcels. Mr. Smeland’s testimony was consistent with the plans submitted. Mr. Smeland did indicate that the type and location of many of the trees shown to the northwest side of the property would need to be reoriented and retyped due to potential water volumes in the immediate area of the adjacent drainage easement. Most of the plantings are shown within the high water line of the drainage swale shown on the plans.
- j. The drainage swale including the easement area, is an engineered channel, not a natural watercourse. The riparian corridor provisions of the Ordinance do not apply.
- k. Mr. Smeland discussed the steep slopes and the need to disturb same to accommodate the improvements. Mr. Smeland’s testimony was consistent with the plans submitted.

1. Mr. Smeland discussed the need to exceed impervious coverage and justified same given the large amount of property removed from the gross site area as a result of environmental features. Mr. Smeland's testimony was consistent with the plan submitted.

8. Mr. Anthony Williams, adjacent property owner, indicated that homes in the area are on the order of 2,000 square feet (footprint). He emphasized that the swale in question floods. He also expressed concern over the removal of part of the wooded area in that it serves as habitat for wildlife.

9. Mr. Doug McNeil, adjacent property owner, had been opposed to development plans for the Subject Property but is not currently opposed to the current plan. Mr. McNeil expressed concern over the drainage easement area and the heavy flooding that occurs therein. In addition, questions were raised about construction and maintenance of the access upon or through Heather Drive.

10. Doylestown Township took no position with regard to this application.

### **CONCLUSIONS OF LAW:**

1. The Subject Property is an undeveloped parcel, which when merged, will be a 1.3 acre (gross) unimproved lot.

2. Applicant seeks to develop the subject property by merging the two undersized lots and constructing a single-family dwelling thereon, with access by way of a paper street. Applicant requests the following variances: (1) from §175-27.D(5), to disturb greater than 50% of woodlands; (2) from §175-27.D(6), to disturb greater than 40% of steep slopes between 15-24%; and, (3) from §175-38, to permit impervious surface coverage in excess of the 20.0% permitted.

3. §175-27.D speaks to environmental protection standards and natural resources to be protected and the required protection ratios. Applicant seeks a variance from §175-27.D(5) which reads as follows:

- (5) Woodlands.

- a. Woodlands. Areas of mature trees as defined by this chapter and the associated intermediate layers in these areas, including the understory shrubs and smaller trees, the ground layers in these areas, including the understory shrubs and smaller trees, the ground layer of herbaceous plants and the forest floor. Woodlands do not include noxious weeds (as defined by Chapter 62 of the Township Ordinance) or other invasive species (as defined by the Pennsylvania Department of Conservation and Natural Resources). Any such noxious weeds and/or invasive species are permitted to be removed and eradicated within the "protected" portion of a woodland

area under the following conditions: the removal shall be performed in a manner that is not detrimental to the existing woodland area, and that the removal does not include the removal of any existing trees within the woodland.

[Amended 9-21-2010 by Ord. No. 355]

- b. Resource protection ratio for woodlands: 50% of woodlands shall remain totally undisturbed as resource protected land and shall be protected during construction from root compaction by equipment and materials, mechanical damage or change in grade level.

4. Applicant seeks to disturb no greater than 58.6% of the woodlands.

5. Applicant seeks a variance from §175-27.D(6) to disturb greater than 40% of the steep slopes between 15-24%. §175-27.D(6) reads as follows.

(6) Steep slopes.

a. Areas of land where the slope is equal to or exceeds 15%.

b. Resource protection ratio for steep slopes:  
[Amended 10-27-2000 by Ord. No. 294]

[1] Slope of 15% to 24%: 60% shall remain as resource-protected land. No more than 40% of the total of all such areas shall be developed and/or regraded; provided, however, that areas of less than 2,000 square feet of contiguous area shall not be subject to this restriction.

[2] Slope of 25% plus: 85% shall remain as resource-protected land. No more than 15% of the total of all such areas shall be developed and/or regraded; provided, however, that areas of less than 1,000 square feet of contiguous area shall not be subject to this restriction.

6. Applicant seeks to disturb no greater than 52% of the steep slopes.

7. §175-38 permits a maximum impervious surface ratio of 20%.

8. Applicant seeks a variance to exceed the 20% limitation not to exceed 27.6%.

9. The standard for a variance is as follows:

- (1) That 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 particular property and that the unnecessary hardship is due to such

conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.

- (2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- (3) That such unnecessary hardship has not been created by the appellant.
- (4) That the variance, if authorized, will not alter the essential character of the neighborhood or district 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.
- (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

53 P.S. §10910.2.

10. The Applicant has presented evidence of sufficient factors to warrant the grant of the dimensional variance requested under the relaxed variance standard applicable to dimensional variance cases, as articulated by the Pennsylvania Supreme Court, in Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d. 43 (1998).

11. The Zoning Hearing Board finds that there are unique physical features to the Subject Property which frustrate the ability of Applicant to comply with the Zoning Ordinance in constructing and using the site for a permitted use, to wit, a single-family residential dwelling.

12. The competent evidence presented leads the Board to conclude that, if the variance relief is granted, there will be no negative impacts upon surrounding properties or uses.

13. The evidence establishes that the relief sought by the Applicant is the minimum variance necessary.

14. The variance sought will not alter the essential character of the neighborhood or district in which the Subject Property is located.

15. Accordingly, the Doylestown Township Zoning Hearing Board determined, by a 2-1 vote, to GRANT, the Applicant's request for relief, as is set forth hereafter.

## **ORDER**

Upon consideration, and after hearing, the Zoning Hearing Board of Doylestown Township hereby GRANTS the relief requested by Applicant for variances from §175-27.D(5), §175-27.D(6), and §175-38 of the Doylestown Township Zoning Ordinance to permit Applicant to develop the Subject Property by merging two undersized lots and constructing a single-family dwelling thereon, with access by way of a paper street. The Board grants the following variances:

1. from §175-27.D(5), to disturb greater than 50% of woodlands, not to exceed 58.6%;
2. from §175-27.D(6), to disturb greater than 40% of steep slopes between 15-24%, not to exceed 52%; and,
3. from §175-38, to permit impervious surface coverage in excess of the 20.0% permitted, not to exceed 27.6%.

There relief granted is subject to the following conditions:

1. The lots must be consolidated; a deed prepared at Applicant's expense, in a format approved by the Township, then recorded at Applicant's expense.
2. Applicant must plant trees in a quantity generally consistent with the Plan submitted, understanding that the Tree Plan has been modified by way of the testimony of Applicant's expert, Jason Smeland, PE.
3. A Stormwater Management Plan must be prepared to be reviewed by the Township Engineer for compliance with the Township standards.
4. Relief granted is based upon the plans presented (i.e., the dwelling, patios, pool and drive as shown). If material changes to the plan are made, Applicant is required to return to the Zoning Hearing Board to amend this condition.
5. Applicant must provide an As-Built Plan as a condition of a Certificate of Occupancy.
6. Applicant must otherwise comply with all rules and regulations of those entities having jurisdiction.

### **ZONING HEARING BOARD OF DOYLESTOWN TOWNSHIP**

By: /s/ William J. Lahr  
William J. Lahr, Chairman

/s/ Mitchell Aglow  
Mitchell Aglow, Vice Chairman

/s/ Samuel Costanzo  
Samuel Costanzo, Secretary