

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: Paul Jonathan Stemler

Appeal No. 2021-016

A hearing was originally scheduled in the above matter on Thursday December 30, 2021 at 7:00 p.m. at the Hilltown Township Municipal Building at which time the matter was opened and continued to January 20, 2022 at the request of the Applicant. 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 Joseph Blackburn, Esquire. The following individuals requested and received party status:

<u>Name</u>	<u>Address</u>	<u>Granted/Denied</u>
Laura Cristol	550 Delaware Drive, Sellersville, PA	Granted
Lindsey & Jonathan Boehmke	621 Hartzel Way, Sellersville, PA	Granted
Elizabeth Gomboz	556 Delaware Drive, Sellersville, PA	Granted
Wendy Kelly	163 Green Street, Sellersville PO Box 626 Silverdale, PA	Granted
David M. Thomas	166 Parkway South, Silverdate, PA	Granted

Hilltown Walk Community Association	c/o Scott A. MacNair, Esq. Clemons Richter & Reiss 2003 S. Easton Road Ste. 300 Doylestown, PA 18901	Granted
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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 November 20, 2021 to Neighbors from K. Eberle
- B-4 Letter dated December 29, 2021 from J. Blackburn requesting hearing continuance
- B-5 Email communication from D. Thomas requesting party status
- B-6 Letter dated December 30, 2021 from S. McNair objecting to hearing continuance request
- B-7 Entries of Appearances from additional parties

Applicant's Exhibits

- A-1 Application with all Attachments
- A-2 Plan dated 2004 by Van Cllef
- A-3 244 Green Street Google Maps picture (northern entrance to Hilltown Walk looking North on Green Street)

Additional Exhibits

- DT-1 24 page packet submitted by Dave Thomas

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.

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:

Background

1. Applicant is Paul Jonathan Stemler ("Applicant").
2. Applicant is the equitable owner of the subject property located at 205 Green Street, Hilltown Township, Pennsylvania ("Property").
3. The Property is otherwise identified as Bucks County Tax Parcel No. 15-028-021-001 and is located in the CR – 2 County Residential 2 Zoning District in Hilltown Township.
4. The Property has been owned by Applicant's family since 1968.
5. The Property was part of a larger parcel that was subdivided and sold to create the Hilltown Walk subdivision.
6. The Property is identified as Lot 21 of the Hilltown Walk plan of subdivision ("Plan"). *See A-2.*
7. The Property presently consists of approximately 16.8 acres with 13.78 of those acres preserved, resulting in a building envelope of approximately 2.5 acres.

8. The building envelope presently contains a pole barn, single-family dwelling, a three-car garage, and other improvements.

9. These individual structures are highlighted and numbered 1 through 5 on the Plan as follows:

a. Building 1 is the existing dwelling.

b. Building 2 is the existing barn, which measures approximately 60 feet by 40 feet.

c. Building 3 was formerly a 5-car garage, but it has since fallen down and is no longer in existence.

d. Building 4 is the existing pole barn (“Pole Barn”), which measures approximately 44 feet by 50 feet.

e. Building 5 is the existing 3-car garage (“Garage”), which has structural issues such that the building needs to undergo significant renovations or be torn down and replaced.

Hilltown Walk Subdivision

10. Hilltown Walk is a 58-home residential subdivision that is adjacent to the Property.

11. The first houses constructed in Hilltown Walk were constructed in or around 2013 through early 2014.

12. Hilltown Walk contains single-family residences, walking trails, wooded areas, and streams.

13. Building 3 was located approximately 950-1000 feet from the property line of Hilltown Walk, and the Pole Barn is located approximately 70 feet from the Hilltown Walk property line.

14. The Pole Barn is located approximately 70 feet from the Hilltown Walk property line.

15. A dense wooded area separates the structures on the Property from Hilltown Walk.

The Machine Shop

16. Applicant has operated a machine shop at 410 East Walnut Street, Perkasio, known as North Penn Machine Works, for more than 20 years.

17. Applicant fabricates small precision component parts for other equipment.

18. His clientele is mainly comprised of smaller, local companies.

19. Most of the work performed is done via computer-controlled lathes and mills, while some work is done manually.

20. The machine shop has business hours on Monday through Friday from 7:00 a.m. to 5:00 p.m., with no weekend hours.

21. Along with Applicant, there are three other full-time employees at the machine shop.

22. Applicant makes deliveries of the parts to his customers via pickup truck; no customers visit the shop.

23. Approximately once per week, the machine shop will receive a shipment of steel delivered in a short flat-bed truck.

24. In addition, Applicant receives occasional deliveries from UPS.

25. All of the work is performed inside of the shop.

26. The noise from the day-to-day machine shop operations would be minimal.

27. Though the current machine shop is located in a small industrial complex, it is surrounded by residential properties.

28. Applicant has not had any issues with, and has not received any complaints from, any of the neighboring properties.

2013 Decision

29. On July 12, 2013, Applicant filed an appeal to this Board requesting a use variance in order to allow Applicant to relocate the machine shop to the Pole Barn on the Property and to convert the Garage into an office for the machine shop (“2013 Application”).

30. Specifically, Applicant requested a variance from §160-22 of the Hilltown Township Zoning Ordinance (“Zoning Ordinance”) to permit a G8, Industrial Crafts use and an I14 Commercial Accessory Office use in the CR2 Zoning District, where those uses would otherwise be prohibited.

31. By Decision and Order dated October 9, 2013 (“2013 Decision”) this Board granted the requested variances with a number of conditions, including, in relevant part:

1. *All machine shop operations shall be conducted exclusively within the pole barn, and the use shall be limited to a machine shop only;*
2. *The existing three-car garage use shall be limited to storage, an accessory office, and cutting of raw material;*
3. *No other structures shall be used for any industrial, commercial, or business purposes;*

32. Pursuant to §160-106 of the Zoning Ordinance, variances expire if an Applicant fails to obtain any and all necessary permits within 12 months of the date of the Board's Order.

33. Applicant acknowledges that he did not obtain the permits within the required 12-month period, and as such, the variances granted in 2013 have since expired.

Proposed Use and Requested Relief

34. On November 10, 2021, Applicant filed the instant application seeking relief from the Zoning Ordinance in connection with the proposed relocation of the machine shop to the Property.

a. *Variances from §160-17 to Permit a G8 Crafts/Commercial Industrial Machine Shop and an I14 Accessory Business Office Use in the CR-2 Zoning District*

35. Applicant proposes to construct a new 5,000 square foot building in the footprint of Building 3 and relocate his machine shop to the Pole Barn and the newly constructed building.

36. This proposed use would be classified as a G8 Crafts/Commercial Industrial Use pursuant to §160-23.G(8) of the Zoning Ordinance.

37. In addition, Applicant seeks to repurpose or convert the existing Garage into a storage area in support of the machine shop.

38. Applicant's proposed use of the existing Garage is considered an I14 Accessory Business Office Use pursuant to §160-23.I(14) of the Zoning Ordinance.

39. The existing single-family dwelling will continue to be occupied by Applicant's mother, who has resided on the Property for the past 38 years.

40. §160-17 of the Zoning Ordinance provides, in relevant part:

Except as provided by law or by this chapter, in each district no building, structure, or land shall be used or occupied except for the purposes permitted in §160-22 and for the zoning districts so indicated except that any legally existing use B-1, Single Family Dwelling that is not a mobile home located in the MHP Zoning District shall be regulated and allowed to be used and expanded per the dimensional requirements of the CR-2 Zoning District, until such time as the principal use shall cease to be a B-1, Single Family Dwelling.

41. §160-22 of the Zoning Ordinance prohibits a G8-Crafts – Commercial/Industrial (“G8 Use”) use in the CR-2 Zoning District.

42. §160-22 of the Zoning Ordinance prohibits an I14 Accessory Business Office Use (“I14 Use”) in the CR-2 Zoning District.

43. Accordingly, Applicant seeks variances to permit a G8 Use and an I14 Use in the CR-2 Zoning District.

44. Applicant testified, and this Board finds, that the day-to-day operations of the machine shop would be substantially similar to the 2013 operations.

45. Applicant's hours would still remain 7:00 a.m. until 5:00 p.m. Monday through Friday.

46. Applicant will not require any signage for the machine shop.

47. The frequency of the deliveries to and from the machine shop would not change as a result of the proposed relocation.

48. All work would be performed indoors, and the machine shop would not generate a significant increase in noise to the surrounding properties.

49. Applicant does not plan to increase the scope or size of his current operation.

50. The number of employees is the same as it was in 2013. While Applicant has no plans to increase the number of employees, Applicant acknowledged that it may be something he considered in the future.

51. Applicant testified that the new 5,000 square foot building would allow the existing operation to have more space to comfortably move about and to have space to install additional outfits, such as a clean room, in the future.

52. Applicant wishes to relocate his machine shop to the Property in order to be able to assist his mother with the maintenance of the Property and the buildings.

53. Applicant does not plan to reside at the Property.

54. The location of Applicant's current machine shop is approximately a two-minute drive from the Property.

55. Applicant argues that this Board is bound by its findings in the 2013 Decision, a conclusion with which this Board does not agree as discussed more fully below.

56. However, as discussed more fully below, this Board notes that both the relief requested by Applicant in his present application, and the character of the neighborhood, have substantially changed since the 2013 Application and Decision.

57. The present Application incorrectly asserts that the 2013 Application requested, and 2013 Decision permitted, a “G-8 Crafts Commercial/Industrial shop use in a new 5,000 square foot building” and a “partial variance from the provisions of Section 160-33.B and C.(1)... to reduce the area of buffer plantings...”

58. The 2013 Application did not seek any new construction, and the conditions included in the 2013 Decision specifically prohibited any additional structures.

59. Moreover, the 2013 Application did not seek any relief pertaining to buffering requirements.

60. In addition, the character of the neighborhood has also changed since the 2013 Decision.

61. At the time of the 2013 Application, construction and development of Hilltown Walk was in its infancy.

62. The fourth house constructed in Hilltown Walk, 621 Hartzell Way, was purchased in November 2013 and the purchaser moved in in May 2014.

63. Presently, all 58 homes in Hilltown Walk are built and occupied.

64. Neighbors from Hilltown Walk testified that the neighborhood is made up mostly of families with children and that it is very quiet with a lot of the natural surroundings integrated as part of the community.

65. Neighbors expressed their concerns that a business on the Property would increase traffic and noise and alter the character of the neighborhood.

66. Neighbors also expressed concern about the safety of their children in close proximity to an industrial machine shop.

b. Variance from §160-33.B and C(1) to Reduce the Area of Buffer Plantings Along the Eastern Boundary of the Property.

69. Applicant's final variance request seeks partial relief from §160-33.B and C(1) to reduce the buffer planting requirements.

70. §§160-33.B and C(1) of the Zoning Ordinance require a Type 1 buffer between nonresidential and residential properties.

71. §160-33.D provides that a Type 1 buffer shall be a minimum of 35 feet wide with a minimum planted area of 25 feet. It further requires specific planting types within the buffer including evergreen trees, small, medium, and large deciduous trees, native shrubs, and ground-covering plants.

72. As a result of the preserved land, the subject Property has dense buffering.

73. There is an additional buffer of approximately 60 to 75 feet between the Property and Silverdale Borough.

74. Applicant proposes to maintain the existing 60 to 75 foot buffering and would agree to more plantings within the buffered area, but seeks a variance as to the specific planting requirements in order to allow the existing plantings to remain.

CONCLUSIONS OF LAW:

75. As more fully set forth in the "Discussion" below, the Board finds:

- a. Applicant has not presented evidence of a hardship that would warrant relief from the Zoning Ordinance.
- b. Applicant has failed to present any evidence that the variances requested is necessary to enable reasonable use or development of the Property.
- c. Applicant has failed to present any evidence demonstrating that the variances requested are the minimum necessary to afford relief.
- d. The Board finds that there is no unique physical circumstance, peculiar to the Property, and not otherwise created by the Zoning Ordinance, which would justify the requested variance.
- e. The doctrine of *res judicata* does not apply.

76. Further finds that Applicant's request for a partial variance from §160-33.B and C(1) is moot since the Property will not have a nonresidential use.

DISCUSSION:

Applicant is before this Board requesting a variance(s) from §160-17 to permit a G-8 Crafts/Commercial Industrial machine shop use in a new 5,000 square foot building, the adaptive reuse of the existing 3 car garage on the Property as and for an I-14 Accessory Business Office Use. In addition, Applicant seeks a partial variance from §§160-33.B and C(1) to reduce the area of buffer plantings along the eastern boundary of the Property.

VARIANCE

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.

Applicant has failed to meet its burden of proof necessary to afford it the relief requested from the Zoning Ordinance. In order to satisfy the first prong necessary to show he is entitled to a variance, Applicant must prove that: (1) that the variance is needed to avoid an “unnecessary hardship;” (2) that the “unnecessary hardship” was not created by the applicant; and (3) that the “unnecessary hardship” was caused by unique physical circumstances of the property for which the variance is sought

There is no evidence of the existence of a unique, physical circumstance peculiar to the Property. The Property is approximately 16.8 acres with 13.78 of those acres preserved, leaving a resulting building envelopment of approximately 2.5

acres. Even just considering the building envelope, the Property is almost double the minimum lot size of 50,000 square feet in the CR-2 Zoning District. It is currently improved with a single-family dwelling and numerous outbuildings. The Property exhibits no unique physical circumstances that would prevent the Property from being developed in conformity with the Zoning Ordinance. To the contrary, the Property is developed in accordance with the Zoning Ordinance for its existing residential use.

Because Applicant has not shown the existence of a unique, physical circumstance peculiar to the Property, it follows that Applicant cannot demonstrate that it suffered an “undue hardship” as a result of the unique, physical circumstance and that such hardship was not self-created. In fact, Applicant has not demonstrated a hardship at all. In *Larsen v. Zoning Bd. of Adjustment of City of Pittsburgh*, 672 A.2d 296 (Pa. 1996), the Pennsylvania Supreme Court stated, “[v]ariations are meant to avoid ‘unnecessary’ hardships; the granting of relief cannot be done simply to accommodate the changing needs to a growing family.” Applicant testified that the reason he is requesting the use variances is so that he can be on site in order to help his mother maintain the Property and the structures so that they do not continue to fall into further disrepair and because he was raised on the Property was wants to preserve the continued stewardship of the Property. Unfortunately, this does not constitute an undue hardship.

Applicant further argues that the conservation easement and the failing conditions of the existing structures create a hardship. This Board disagrees.

Applicant presented to evidence to show how the conservation easement affected his ability to sufficiently utilize the Property. Applicant's variance requests are for use variance. The conservation easement has no impact on what uses are permitted in the CR-2 Zoning District. Furthermore, the conservation easement, to the extent that it would even be considered a hardship, would be a self-created hardship, created by his predecessor-in-title. It was also of record at the time Applicant purchased the Property, and Applicant had full knowledge of its existence. Similarly, at the time he purchased the Property, Applicant was aware that a G8 Use and an I14 Use were not permitted in the CR-2 Zoning District. He was so aware of this, that before he purchased the Property, he applied for a variance for those two uses in 2013, was granted the relief requested, and then let the relief expire.

Finally, Applicant cannot show that the requested variances are necessary to enable reasonable use or development of the Property. In order to satisfy this element, Applicant would need to show that without the requested variances, the Property would be rendered practically useless. *Abe Oil Co. v. Zoning Hearing Board of Richmond Twp.*, 649 A.2d 182, 185 (Pa. Cmwlth. 1994). Even with the conservation easement, the Property still has a building envelope of 2.5 acres and already contains a single-family dwelling, three car garage, pole barn, and other outbuildings. Applicant is able to make reasonable use of the Property as a residential property.

For these reasons, Applicant has failed to meet the elements necessary to entitle him to a variance from §160-117 in order to permit a G8 Use and an I14 use in the CR-2 zoning district.

Applicant has also requested a partial variance from §§160-33.B and C(1) to reduce the area of buffer plantings along the eastern boundary of the Property. This buffer is required between a nonresidential and a residential use. Because Applicant's request for a variance to permit a nonresidential use has been denied and the Property's use will remain solely residential, Applicant's request for a partial variance from §§160-33.B and C(1) is moot.

DOCTRINE OF RES JUDICATA

Applicant argues that this Board is bound by its findings in its 2013 Decision under a theory of *res judicata*. Specifically, Applicant argues that the following findings from the 2013 Decision are binding on this Board:

- a. That the relief requested will not alter the essential character of the neighborhood or substantially or permanently impair the appropriate use or development of adjacent property, or be detrimental to the public welfare; and
- b. That the relief requested was the minimum variances which will afford relief to the Applicant.

The doctrine of *res judicata* requires four elements to be met: (1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of persons and parties to the action; (4) identity of the quality in the persons for or against whom the claim is made. *Schubach v. Silver*, 336 A.2d 328 (Pa. 1975). *Res judicata* should be applied sparingly in zoning matters. *Id.* Application of *res judicata* in expired variance cases is contrary to the rule that *res judicata* be applied sparingly in zoning matters. *City of Pittsburgh v. Zoning Board of Adjustment*, 559 A.2d 896 (Pa. 1989). This is because

each variance application is typically “dealt with anew and apart.” *Heller v. Zoning Board of Adjustment*, 171 A.2d 44, 46 (Pa. 1961).

The court in *Omnivest v. Stewartstown Borough Zoning Hearing Board*, 641 A.2d 648 (Pa. Cmwlth. Ct. 1994) addressed this very issue. In its opinion, the Court found that the zoning hearing board did not abuse its discretion when it denied a second variance after the expiration of an earlier variance:

Here, the grant of the 1980 variance was conditioned upon the applicant acquiring a building or use permit within six months. When the applicant failed to exercise its rights by acquiring a building permit, the variance expired. Therefore, any subsequent variance application, even one seeking the same variance for the same parcel of land, is a new application and the applicant must prove all elements necessary to the variance. To hold otherwise would negate the ordinance provisions limiting the duration of the variance authorization and would create confusion in zoning matters involving expired variances.

In the present case, §160-106 of the Zoning Ordinance provides:

Unless otherwise specified by the Board, a special exception or variance shall expire if the applicant fails to obtain any and all permits within 12 months of the date of the Board's order, unless extended for good cause by the Zoning Hearing Board.

Applicant acknowledges that he did not obtain permits within 12 months of the date of the Board’s 2013 Decision and that the variances expired. Because the prior variances expired, Applicant’s current application is reviewed “apart and anew,” and *res judicata* is not applicable.

Even if absent the expiration of the prior variances, Applicant cannot meet the four elements necessary for *res judicata*. The 2013 Application did not include the construction of any new structures whereas, in his present application, Applicant

seeks to construct a new 5,000 square foot building. In addition, the character of the neighborhood has significantly changed since 2013 with the construction of the Hilltown Walk subdivision. Finally, the 2013 Application did not seek a variance from the buffer requirements of §§160-33.B and C(1). These changes to both the substance of the relief sought and the circumstances and character of the surrounding neighborhood preclude the application of *res judicata*.

CONCLUSION

Based on the above, the Board finds that Applicant has failed to meet his burden of proof, and his request for zoning relief in the form of a variances from §160-17 and §160-33.B and C(1) is denied.

DECISION AND ORDER

AND NOW, this 4th day of March, 2022 the Hilltown Township Zoning Hearing Board hereby denies the zoning relief requested as Applicant, Paul Jonathan Stemler, has failed to meet the burden of proof necessary to grant the requested variances for the reasons set forth more fully herein.

HILLTOWN TOWNSHIP ZONING HEARING BOARD

By: DocuSigned by:
John Snyder
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John Snyder, Chairman

By: DocuSigned by:
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GRIM, BIEHN & THATCHER

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Date of Mailing: 3/4/2022