

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

**Applicant:** Hewitt Contractors, Inc.  
1724 Mill Road  
Perkasie, PA 18944

**Owner:** Same.

**Subject  
Property:** Tax Parcel No. 15-039-001, which is a vacant parcel located  
along Green Street 400 feet from Mill Road a/k/a 1105 Green St.

**Requested  
Relief:** Applicant seeks to construct a single-family dwelling, served by  
on lot well, on an undersized lot. Applicant seeks a special  
exception under §160-61(B) of the Hilltown Township Zoning  
Ordinance (“Ordinance”) to construct the single-family dwelling  
asserting that the lot is legally nonconforming. Applicant further  
seeks a variance from §160-28(C) & §160-28(D) to disturb steep  
slopes and woodlands greater than as permitted by Ordinance in  
order to accommodate the project.

**Hearing  
History:** The application was filed in Hilltown Township on March 4,  
2022. The hearing was held on April 28, 2022 at the Hilltown  
Township Building, 13 West Creamery Road, Hilltown  
Township, Pennsylvania,

**Appearances:** Applicant by: Kimberly Freimuth, Esq.  
Spruce Law Group, LLC  
1622 Spruce Street  
Philadelphia, PA 19103

John Hoffacker & Katrina Ettwein, *Pro Se*  
1610 Mill Road  
Perkasie, PA 18944

Rhonda & Vanessa Reed, *Pro Se*  
1222 Green Street  
Perkasie, PA 18944

**Mailing Date:**

## DECISION

### FINDINGS OF FACT:

1. The Zoning Hearing Board of Hilltown 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. The Applicant is the Owner of the Subject Property and therefore possessed of the requisite standing to make application to this Board.

3. The Subject Property is located in the RR, Rural Residential Zoning District of Hilltown Township. The lot area is 1.02 acres. The property is currently a vacant lot without improvements.

4. Required lot area in the RR – Rural Residential Zoning District of Hilltown Township is 3.0 acres. §160-61(B) of the Ordinance.

5. Applicant seeks to construct a single-family dwelling, served by on lot well, on the undersized lot. Applicant seeks a special exception under §160-61(B) of the Hilltown Township Zoning Ordinance to construct the single-family dwelling asserting that the lot is legally nonconforming. Applicant further seeks a variance from §160-28(C) & §160-28(D) to disturb steep slopes and woodlands greater than as permitted by Ordinance in order to accommodate the project.

6. Applicant offered the credible expert testimony of Jason Smeland, PE. Mr. Smeland testified to the following:

- a. The lot is a preexisting legally nonconforming lot (lot size and lot width).
- b. Single-Family Dwellings are constructed on lots of similar size in the vicinity. (Exh. A-3)
- c. The lot was created pursuant to a Plan of Subdivision from 1961. All lots except for this lot have previously been sold. (Exh. A-4)
- d. Mr. Smeland prepared a Construction Improvement Plan, dated 02/28/2022, which reflects the proposed 2,500 square foot single-family dwelling, with driveway access to Green Street, served by a septic system and well water. (Exh. A-5)
- e. The plan complies with the Hilltown Township Zoning Ordinance, but for the two legal nonconformities (lot area and lot width). (Exh. A-5)
- f. The single-family dwelling proposed is specifically designed to fit on this particular parcel.
- g. There are steep slopes on the lot. Regrettably, the soils most conducive to an effective septic system are slopes greater than 25%.
- h. Applicant is proposing removal of 55% of the “woodlands” on the lot. Area is needed for the dwelling, septic system and laterals.

Further, a considerable portion of the “woodlands” are ash trees, dead ash trees, walnut trees, and undergrowth.

- i. None of the construction or construction activities will negatively affect the spring fed stream on the property.

7. The parties Protestant asked questions regarding the process and inquired into the potential impact of adding a single-family dwelling to the immediate area. The parties Protestant prefer that the lot remain vacant.

8. Hilltown Township took no position with regard to this application.

### **CONCLUSIONS OF LAW:**

1. The Subject Property is a vacant lot, located within the RR Rural Residential District, with no public improvements.

2. A single-family dwelling is a permitted use within the RR district. §160-122 & -123 and §160-122 Table of Use Regulations.

3. Construction of a single-family dwelling is permitted on an undersized lot, by special exception, if the lot is legally nonconforming. §160-61(B) of the Hilltown Township Zoning Ordinance

4. The lot at issue is legally nonconforming as to lot size and lot width. The lot width nonconformity is *de minimis* (148.08 feet where 150 feet is required). §160-23.B(1).

5. In addition to the provisions of Article IV of the Ordinance, the Board must consider the factors listed at §160-104.C(1) of the Ordinance when passing on the question of whether to grant a variance or a special exception.

6. The Applicant has presented evidence of sufficient factors to warrant the grant of the variances 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).

7. 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.

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

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

10. The grant of the requested variances satisfies Appellant's burden to meet the objective criteria set forth in the Ordinance for a special exception. New Bethlehem Borough Council v. McVay, 78 Pa. Commw. 167, 467 A.2d 395 (Pa. Cmwlth. 1983). A use permitted by special exception is presumptively consistent with the public health, safety and welfare; the denial of a special exception can be based only on proof that the use would create an adverse effect on the public welfare in a way not normally associated with proposed use. Kern v. Zoning Hearing Board of Tredyffrin Township, 68 Pa. Commw. 396, 449 A.2d 781 (1982). Here, the objecting witnesses failed to present proof that the proposed use would present a substantial threat of harm to the health, safety and welfare of the community. Abbey v. Zoning Hearing Board of the Borough of East Stroudsburg, 126 Pa. Commw. 235, 559 A.2d 107 (PA. Cmwlth. 1989).

11. Accordingly, the Hilltown Township Zoning Hearing Board determined, unanimously, to grant the Applicant's request for relief, as is set forth hereafter.

**ORDER**

Upon consideration and after hearing, the Zoning Hearing Board of Hilltown Township hereby GRANTS the following relief in conjunction with Applicant’s intent to construct a single-family dwelling, served by on lot well, on an undersized lot.

The Zoning Hearing Board GRANTS a special exception under §160-61(B) of the Hilltown Township Zoning Ordinance to construct the single-family dwelling on a legally nonconforming lot; and, GRANTS a variance from §160-28(C) & §160-28(D) to allow Applicant to disturb steep slopes and woodlands greater than as permitted by Ordinance in order to accommodate the project.

All relief is subject to the following specific conditions:

1. the project must be implemented generally consistent with the plans submitted as Exh. A-5 and the corresponding testimony offered, and
2. Applicant must otherwise comply with all other applicable governmental ordinances and regulations.

**ZONING HEARING BOARD OF  
HILLTOWN TOWNSHIP**

By: DocuSigned by:  
*John Snyder*  
E9398DE729A647B...  
DocuSigned by:  
*John Snyder*  
6134AFF2715B48A... John Snyder, Chair Person  
DocuSigned by:  
*David Hersh*  
6134AFF2715B48A...  
DocuSigned by:  
*David Hersh*  
6134AFF2715B48A... David Hersh, Vice Chair Person  
DocuSigned by:  
*Stephen Yates*  
65D82380D09C404...  
DocuSigned by:  
*Stephen Yates*  
65D82380D09C404... Stephen Yates