

LEGAL REASONS NOT TO GRANT VARIANCES

1. THERE WOULD BE INNUMERABLE PROBLEMS IN COMPLYING WITH ARTICLE 317 CONCERNING FLOODWAY AND FLOOD FRINGED DISTRICTS. Exhibit "B" is the most current National Flood Hazard Layer FIRMette map by FEMA which clearly demonstrates that the entire tract is composed of floodway and actual BFE land areas. The entire tract is located within a special flood hazard area (SFHA) as determined by FEMA.
2. THE ENVIRONMENTAL IMPACT cannot be overstated. Saucon Creek is considered a high-quality cold-water fishery (HQ-CWF) according to the standards established by the Commonwealth of Pennsylvania through the Fish and Boat Commission. Attached hereto and made a part hereof is a 2006 report entitled "Cold Water Heritage Partnership Plan". Exhibit "D"
3. GRANTING OF THE ZONING REQUEST WILL LIKELY CREATE UNSAFE TRAFFIC CONDITIONS ON CREEK ROAD.
4. THE ADJOURNING MUNICIPALITIES, THE BOROUGH OF HELLERTOWN AND LOWER SAUCON TOWNSHIP ARE NOT IN FAVOR OF THIS DEVELOPMENT.

Before turning to the request for use variance in addition to the above, we note that within the last weeks there was extreme flooding on both parcels that applicant now desires to build 10 two story dwellings with driveways and parking access on. There are excellent pictures and videos depicting this flooding that I believe are submitted into the record by savecreekroad.org and can be viewed on that website. The Petition of savecreekroad.org now contains 700+ signatures of citizens of Bethlehem, Lower Saucon and Hellertown who are all opposed to the grant of this zoning variance and any rezoning of the parcels.

The proposed variance if granted would require five driveway access cuts across the mill race which runs adjacent to Creek Rd. This Mill Race currently helps divert flood waters from the surface of Creek Rd. With the water flow impeded in any manner the flooding on Creek Rd. will be increased in amount and likely duration. The development of this property will create more diversion of storm waters and runoff onto Creek Rd and Saucon Creek. One should also consider the thermal effect of placing more impervious surfaces within this flood zone.

Turning to the actual entitlement to a variance this applicant does not meet the legal standards for a use variance.

To establish entitlement to a variance, an applicant must show: an unnecessary hardship resulting from the property's unique physical conditions or circumstances; that such hardship is not self-imposed; that granting the variance would not adversely affect the public health, safety or welfare; and that the variance, if granted, would represent the minimum necessary to afford relief. *Alpine, Inc. v. Abington Twp. Zoning Hearing Bd.*, 654 A.2d 186 (Pa. Cmwlth. 1995). These standards have been confirmed consistently by the Courts.

POINT ONE

- There is no hardship if the variance is denied since when this applicant bought the property there was already an existing conforming use on the property. The house that currently is on the property is an allowed use within the zone. An applicant seeking a variance must prove that unnecessary hardship will result if the variance is denied and that the proposed use is not contrary to the public interest. *Valley View Civic Ass'n v. Zoning Bd. of Adjustment*, 501 Pa. 550, 462 A.2d 637 (1983).

POINT TWO

- The variance is contrary to the public interest as set forth in the attached exhibit.

POINT THREE

The property was purchased as it exist with a conforming use [single family home] already in place. It is assumed the purchasers knew this when it was purchased on January 8, 2018 for \$215,000. Approximately one year later this property was listed for sale at \$799,000 On 12/19/19. Part of that sales listing contained a sketch of these proposed twin homes.

Although a property owner is not required to show that his or her property is valueless unless a variance is granted, mere economic hardship will not of itself justify a grant of a variance.... Particularly where a variance is sought in order to make a change from an existing use consistent with the zoning code to an inconsistent use, the mere fact that the property would increase in value ... if a variance were granted, is not of itself a sufficient basis upon which to find unnecessary hardship.

Liberties Lofts LLC v. Zoning Board of Adjustment, 182 A.3d 513 @531

POINT FOUR

In order to make a finding of unnecessary hardship in the case of a use variance, the Zoning Board must make all of the following findings:

(.a) That there are unique physical circumstances or conditions (such as 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 to circumstances or conditions generally created by the provisions of this Zoning Code in the area or zoning district where the property is located;

(.b) That because of those physical circumstances or conditions, there is no possibility that the property can be used in strict conformity with the provisions of this Zoning Code and that the authorization of a variance is therefore necessary to enable the viable economic use of the property;

(.c) That the use 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; and

(.d) That the hardship cannot be cured by the grant of a dimensional variance.

Marshall v. Phila. Zoning Bd. of Adjustment, 626 Pa. 385, 97 A.3d 323, 333 (2014)

CONCLUSION

This variance request should be denied. Not only does applicant fail on all the requirements for grant of such relief, it is apparent that he purchased the property knowing that he would have to seek rezoning or variances from its conforming use in order to make the \$500,000 profit he apparently could make if one ignores the current zoning use. This is truly a self-created hardship in every sense of the word. Moreover, the threats to public safety, the environment, and contribution to already overburdened surface and flood water problems cannot and should not be allowed. There must be other land, other than a FEMA designated SFHA where these applicants can build twin homes. We urge this Board to deny this variance