

**IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CIVIL DIVISION**

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|-------------------------------------|----------|------------------------------------|
| APPEAL OF DAVID C. BERNSTEIN | : | No.: 2022-07062 (LEAD CASE) |
| FROM THE WRITTEN DECISION | : | |
| DATED APRIL 20, 2022, OF THE | : | LAND USE APPEAL |
| BOARD OF COMMISSIONERS OF | : | |
| CHELTENHAM TOWNSHIP | : | |
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| APPEAL OF JOAN SLUTZKY FROM | : | No.:2022-07190 |
| THE WRITTEN DECISION | : | |
| DATED APRIL 20, 2022, OF THE | : | LAND USE APPEAL |
| BOARD OF COMMISSIONERS OF | : | |
| CHELTENHAM TOWNSHIP | : | |

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

I. FINDINGS OF FACT

1. Intervenor, 222 Church Road (the “Developer”), is the owner and developer of a 5.05 acre of real property, located on 222 East Church Road, in Cheltenham Township, Montgomery County, Pennsylvania.
2. Appellant David Bernstein is the owner of property located at 216 East Church Road, in Cheltenham Township, Montgomery County, Pennsylvania.
3. Appellant Joan Slutzky is the owner of property located at 218 East Church Road, in Cheltenham Township, Montgomery County, Pennsylvania.
4. Both of Appellants properties are located adjacent to the subject property.
5. In June 2021, Appellant David Bernstein sold the subject property to the Developer.
6. On October 29, 2021, the Developer submitted a land development application to Cheltenham Township (the “Township”) to divide the property into nine (9)

lots, with one lot containing an existing residence, and a cul-de-sac on the undeveloped portion of the Property. (Ex. A).

7. The Plan went through several revisions, however, the ultimate plan that went before the Township Board of Commissioners consisted of twenty-seven (27) sheets,¹ prepared by Robert A. Blue Consulting Engineers, P.C., dated September 30, 2021, and last revised March 4, 2022. (Ex. B).
8. Robert A. Blue Consulting Engineers also prepared an "Erosion & Sedimentation Pollution Control Report," dated November 2, 2021, and updated March 3, 2022. (Ex. C).

¹ Sheet 1: Title Sheet
Sheet 2: Record Plan (1)
Sheet 3: Subdivision Plan
Sheet 4: Existing Features
Sheet 5: Existing Tree Inventory Charts
Sheet 6: Aerial Plan
Sheet 7: Grading Plan
Sheet 8: Utility Plan
Sheet 9: Utility Profiles
Sheet 10: Utility Details
Sheet 11: Landscape Plan
Sheet 12: Landscape Details
Sheet 13: Construction Details (1)
Sheet 14: Construction Details (2)
Sheet 15: Pre-Development Drainage Area Boundary Plan
Sheet 16: Post-Development Drainage Area Boundary Plan
Sheet 17: Record Plan (2)
Sheet 18: Record Plan (3)
Sheet 19: Storm Details (1)
Sheet 20: Storm Details (2)
Sheet 21: Storm Details (3)
Sheet 22: Storm Profiles
Sheet 23: Erosion and Sediment Control Notes
Sheet 24: Erosion and Sediment Control Plan
Sheet 25: Erosion and Sediment Control Details (1)
Sheet 26: Erosion and Sediment Control Details (2)
Sheet 27: Fire Truck Circulation Plain

9. In addition, Robert A. Blue Consulting Engineers prepared a Post-Construction Stormwater Management Report, dated November 2, 2021, and updated March 3, 2022. (Ex. D).
10. On March 4, 2022, the Developer requested a waiver of the Township's Subdivision and Land Development Ordinance (SALDO) 260-15.c, which requires the Plan to document certain features located within 200' radius from the Property boundary, such as drainage or watercourses, wetlands, riparian buffers, and flood plains.
11. On March 25, 2022, the Township Engineer, Roger Phillips of Gannett Fleming, issued a letter detailing his review of the plans. (Ex. E).
12. On April 1, 2022, the Township's Arborist, John Hosbach, issued a memorandum detailing his review of the Plan. (Ex. G).

Public Meetings

13. All meetings were held remotely via the video-conferencing software Zoom. The meetings had a 100-participant capacity on Zoom.
14. A neighborhood meeting was held on January 11, 2022. A Planning Commission meeting was held on January 24, 2022. (Ex. I). Two Shade Tree Advisory Committee (STAC) meetings were held on February 10, 2022, and March 10, 2022. (Exs. J and K).
15. The Environmental Advisory Council held a meeting on February 14, 2022. The Planning Commission held a meeting on January 24, 2022, Public Works Committee held a meeting on April 6, 2022, and the Board of Commissioners held a meeting on April 20, 2022. (Exs. L and O).

16. During said meetings, the appellants and several other residents raised numerous objections to the proposed development.

Resolution

17. The Township issued a Resolution granting preliminary approval of the Application on April 20, 2022, with certain conditions. (Ex. N).

18. As part of the Resolution, the Township granted waiver of SALDO § 260-15.c. Id. In addition, the Township imposed conditions to obtain final approval, such as revising the Plan to remediate issues identified in the Township's Engineer March 25, 2022, letter, the Township's Traffic Engineer January 21, 2022, letter, the Township's Director of Planning and Zoning December 9, 2021, letter, obtain approvals from outside agencies, including Pennsylvania Department of Transportation, Pennsylvania Department of Environmental Protection, AQUA, Montgomery County Conversation District, and the Montgomery County Department of Assets and Infrastructure, etc. Id.

Appeal

19. Mr. Bernstein filed this appeal on May 17, 2022, against Cheltenham Township.

Mr. Bernstein requested the Court to reverse the Township's grant of preliminary land development approval.

20. On May 20, 2022, Joan Sluzky, also filed an appeal. These two appeals were consolidated to this appeal.

21. On May 25, 2022, 222 Church Road, LLC filed a Notice of Intervention and joined in on this case as an additional defendant.

22. Judge Haaz ordered parties to file Proposed Findings of Facts and Conclusions of law on February 3, 2023.² However, before argument can be heard, Judge Haaz recused himself.

23. The case was later assigned to the undersigned and oral argument was heard on May 15, 2024. At said hearing, Appellants raised six objections to granting preliminary approval.

Objection 1: Lack of Easement for Sewer Lateral

24. Appellants state that there is no easement to construct a sewer lateral across the Township Property to a sanitary sewer line. Although the Application states there is an "Existing Sewer Easement", the Developer failed to provide supporting documentation showing said easement. Therefore, § 260-15.B (13) is violated, which requires that proof of such easement be attached.³ In addition, the Plan misidentifies the location of an existing sewer line. Defendants' argument that marking easement is a non-substantive issue lacks merit since marking the easement is required under the SALDO and failure to obtain said easement can reconfigure the plan. (N.T. 5/15/24 at 55-59).

25. In turn, the Developer states easement in the title/deed must be addressed in courts, not zoning or land development proceedings. Michener Appeal, 115 A.2d 367 (Pa. 1955) (any consideration of building restrictions placed on a

²Appellants made eight (8) arguments against granting preliminary approval: Lack of Easement for Sewer Lateral, Waiver Granted under ordinance 260-15.c, Vegetation Removal, Stormwater Management, Public Comment Process, Preserving 50% of woodlands, stream bank erosion, and violation of environmental rights.

³ SALDO § 260-15(b)(13) Description of all deed restrictions, including conservation and environmental, easements, or other covenants affecting the property or development of the tract. The following information shall be included: the parties to the agreement, the beneficiary(ies) of the restrictions, easements and covenants, the title of the document or instrument creating the restrictions, easements and/or covenants, and a reference to their deed and page book recording location.

property by private parties has no place in proceedings under the zoning laws). Developers further stated, in their Findings of Fact and Conclusion of Law, that non-substantive issues, such as deficiencies in plan notations and labelling, are not reasons to justify denial of a preliminary plan. (N.T. 5/15/24 at 94-95); Shelbourne Square Assocs., L.P. v. Bd. of Sup'rs, Twp. of Exeter, 794 A.2d 946, 950 (Pa. Commw. 2002).

Objection 2: Waiver of SALDO § 260-15.C

26. Appellants argued the waiver was improper because it was not in the public's interest or consistent with the intent of the SALDO because there are streams and wetlands within 200 feet of the proposed development. They contend the Plan fails to comply with § 260-15.C because it fails to show all "water resources" within 200 feet of the tract boundaries, such as watershed designations, lakes and ponds, vernal pools and seeps, wetlands, swamps, marches, and riparian buffers.⁴

27. They also argue the Plan also fails to show steep slopes adjacent to the property. Waiver of these § 260-15.C requirements was improper. No hardship was demonstrated, and it is improper to conduct aerial image survey to identify wetlands and other water resources. Instead, an on-site survey for wetlands is necessary. (N.T. 5/15/24 at 26-37, 63-68). The fact that previous waivers were granted in the past is not enough justification for a waiver. Ellzey v. Upper Gwynedd Twp. Bd. of Commissioners, 241 A.3d 694 (Pa. Commw. 2020).

⁴ SALDO § 260-15 (C)(3) & (7) Existing features plan. Within the tract proposed for subdivision and/or land development, and within 200 feet of the tract boundaries, the following information shall be shown on the preliminary plan:...

28. Accordingly, the fact it is the “Township’s common practices” to grant such waiver and this type of waiver is “universally granted” lacks merit. Further, no basis for the waiver was stated in the request. Lake MacLeod Homeowners, Ass'n, Inc. v. Pine Twp. Bd. of Supervisors Cavalier Land Partners, LP, No. 1247 C.D. 2017 (Pa. Commw. 2018).
29. Defendants state waiver is proper if the development offers a substantial equivalent to a subdivision requirement, an additional requirement will offer little or no added benefit, and where literal enforcement of the requirement would frustrate the effect of improvements. (N.T. 5/15/24 at 95-96); Monroe Meadows Housing Partnership, LP v. Municipality of Monroeville, 926 A.2d 548 (Pa. Comwlth. 2007); Telvil Const. Corp. v. Zoning Hearing Bd. of E. Pikeland Twp., 896 A.2d 651, 656 (Pa. Commw. 2006). Here, the Defendants state they created an “Aerial Plan” that depicts everything that is located within 400 feet of the Property, compared to the 200 feet requirement. They also noted at the April 20, 2022, Commissioners meeting, the Township’s attorney stated this type of waiver is universally granted.

Objection 3: Related to Vegetation Removal

30. Appellants argue the Developer failed to submit an alternative analysis document to confirm that vegetation removal will be minimized, which is required under SALDO § 260-34.A.⁵ Specifically, the Application failed to

⁵ SALDO § 260-34 (A) Preservation of existing vegetation (1) All subdivisions and land developments should be laid out in such a manner as to minimize the removal and/or disturbance of healthy trees, shrubs, and other vegetation on the site. Special consideration shall be given to mature specimen trees and ecologically significant vegetation.

inventory existing trees, identify trees to be removed, provide an accurate calculation of required replacement trees, and demonstrate that trees with a diameter greater than 3” will be replaced and/or accounted for in accordance with SALDO § 260-15.C(7)(a) and (b), § 260-34.A-D, § 260-48 and § 260-49 of the SALDO. In addition, the Application fails to satisfy the requirement that 50% of woodlands be preserved. SALDO § 260-31(B).⁶ (N.T. 5/15/24 at 81-82, 87-88). Failure to submit an alternative analysis is not a defect that is correctable by a simple amendment. Shelbourne Square Assocs., L.P. v. Bd. of Sup'rs, Twp. of Exeter, 794 A.2d 946, 950 (Pa. Commw. 2002).

31. Defendants state there is no tree survey/inventory requirement in SALDO § 260-34. However, there is an inventory of the trees on Sheet 5 of the Plan and a “Landscaping Plan” that shows all existing trees and vegetation of the property. Lastly, Defendants noted this is just a preliminary approval and the Defendants would have to revise the Plan to demonstrate compliance with all

⁶ SALDO § 260-31(B) Natural resource preservation. To the maximum extent possible, the following environmentally sensitive features shall be preserved based on the natural tolerances to encroachment and development as follows, and in accordance with the appropriate provisions of Chapter 295, Zoning, of the Township Code:

| Natural Feature | Minimum % to be Preserved |
|----------------------------------|---------------------------|
| Floodplains and watercourses | 100% |
| Wetlands | 100% |
| Ponds, both natural and man-made | 100% |
| Steep slopes of 15-25% | 70% |
| Steep slopes of over 25% | 80% |
| Woodlands | 50% |

of the Township's ordinances, including those regarding trees and other vegetation.

32. Lastly, the Developer obtained a report from an arborist who wrote a report stating the vegetation loss would be minimized. (N.T. 5/15/24 at 98-99). The Township Resolution also requires that 222 Church Rd resolve all issues stated in the Township Engineer Review Letter and First Arborist Memorandum, both of which address vegetation removal.

Objection 4: Stormwater Management

33. Appellants argue the Application does not comply with Pennsylvania's Stormwater Best Management Practices Manual (BMP Manual), which is required under the Stormwater Management Ordinance (SMO), SALDO § 290-18.D, § 290-18.H (3), and § 290-18.M. Appellants' allege that the storm runoff is close to a steep slope heading down towards the spillway, that may cause flooding.
34. Instead, a much larger facility is required to satisfy the requirements of the BMP Manual. The Plan assumes frequency storm is 100-year. Appellants argue this is unrealistic and the facility soil will quickly become saturated and not function for rate control for storms equal to or over 5-years in frequency. Nearby residents allege that stormwater regularly flows onto the Property. (N.T. 5/15/24 at 18-21, 78, 82-83).
35. Defendants noted that, during the Commissioner's meeting, the Commissioner noted that they need to address outstanding items on the plan prior to final approval. In addition, the Plan still needs to be approved by Township Engineer,

Roger A. Phillips and engineer Gannett Fleming. In other words, the Developer's preliminary approval is conditioned on fulfilling all requirements to obtain final approval, which is in compliance with the preliminary approval process, set forth in Section § 260-16k(3)(a).⁷ (Id. at 100-101); CACO Three, Inc. v. Board of Supervisors of Huntington Township, 845 A.2d 991 (Pa. Cmwlth. 2004); Graham v. Zoning Hearing Board of Upper Allen Township, 514 A.2d 236 (Pa. Cmwlth. 1986).

Objection 5: Public Comment Process

36. Appellants allege that the Township did not allow for reasonable public comment during the April 6, 2022, and April 20, 2022, Board meeting as required under 65 Pa.C.S § 710.1(a).⁸ The Appellants allege the Board should have held a public hearing due to the volume of public comments. The public had ample opportunity to address the Commissioners during the two-hour

⁷SALDO § 260-16 (K)(3)(a): If the Board of Commissioners finds a preliminary plan to be deficient or defective, but would approve the plan with certain remedies, conditioned upon the performance of any act or the obtaining of any other approval or permit by the applicant, the applicant shall be given the opportunity to accept or reject the conditions within a ten-day period. Conditional approval of the plan shall be rescinded automatically, without action of Cheltenham Board of Commissioners, upon the applicant's written rejection of such conditions, or upon the applicant's failure to accept or reject such conditions within 10 days of the written notice being issued by the Board of Commissioners, or written notice of the approval subject to conditions shall be provided to the applicant, which includes the following information:....

⁸ 65 Pa.C.S.A. § 710.1 (a) General rule.--Except as provided in subsection (d), the board or council of a political subdivision or of an authority created by a political subdivision shall provide a reasonable opportunity at each advertised regular meeting and advertised special meeting for residents of the political subdivision or of the authority created by a political subdivision or for taxpayers of the political subdivision or of the authority created by a political subdivision or for both to comment on matters of concern, official action or deliberation which are or may be before the board or council prior to taking official action. The board or council has the option to accept all public comment at the beginning of the meeting. If the board or council determines that there is not sufficient time at a meeting for residents of the political subdivision or of the authority created by a political subdivision or for taxpayers of the political subdivision or of the authority created by a political subdivision or for both to comment, the board or council may defer the comment period to the next regular meeting or to a special meeting occurring in advance of the next regular meeting.

- hearing. The Appellants even alleged that the public did not have ample time to comment at the April 6, 2022, meeting. (N.T. 5/15/24 at 40-42, 68-77).
37. Defendants point out that six members of the public were given time to comment, and the hearing was four hours long. In fact, the meeting was available to 100 participants, but only six showed up.
38. As for the hearing argument, the MPC states that hearings are not required when a governing body considers subdivision and land development proposals. Whitehall Manor, Inc. v. Planning Commission of the City of Allentown, 79 A.3d 720 (Pa. Cmwlth. 2013). Lastly, the April 6, 2022, Public Works meeting was one of five meetings where the Project was discussed. (N.T. 5/15/24 at 103-108).

Objection 6: Preserving 50% of Woodlands

39. Appellants argue the Developers failed to preserve 50% of the pre-development woodlands, required by SALDO § 260-31. B
40. Defendants noted that § 260-31.B requires 50% of the woodlands to be preserved to the maximum extent possible. In addition, the Arborist Memorandum states what trees are to be preserved and the Township Arborist determined that the Plan complied with said Memorandum. (N.T. 5/15/24 at 110).
41. Upon conclusion of the hearing, the Court took this matter under advisement, ordered transcripts of the hearing, and ordered parties to file supplemental findings of fact and conclusions of law.

Objection 7: Stream Bank Erosion

42. Although not argued during the hearing, this issue was raised in the briefs.

Appellants argued the Township failed to consider whether the development would cause erosion to nearby stream bank.

43. In response, Defendants argue the Township carefully reviewed the Project and Plan for compliance with SALDO § 290-22.A (1) and granted conditional preliminary approval with the condition that § 290-22.A (1) will be met.

Objection 8: Violation of Environmental Rights

44. Appellants also argued in their briefs that the Board granting preliminary approval violated Article I, Section 27 of the Pennsylvania constitution (the “Environmental Rights Amendment”). When the government acts, it must account for the environmental features of the affected locale. Robinson Twp., Washington Cnty. v. Com., 83 A.3d 901, 953 (Pa. 2013). The Board failed to reasonably account for the environmental features of the affected locale.

45. In turn, Defendants argue Robinson Twp., Washington Cnty. v. Com. does not place an express duty on the local government to take particular action, rather the government must **merely consider the environmental impact**. Protect PT v. Penn Twp. Zoning Hearing Bd., 220 A.3d 1174, 1198 (Pa. Commw. 2019). The Township considered the environmental impact of the Project when it received comments from the Township Engineer, Director of Planning and Zoning, and the Township Arborist.

II. CONCLUSIONS OF LAW

1. Preliminary plans are governed by SALDO § 260-16(k), which states as follows:

K. Procedure following the Cheltenham Board of Commissioners Decision. When the Cheltenham Board of Commissioners makes a decision on a preliminary plan, one of the following procedures shall be followed, depending on the type of decision:

(3) Approval subject to conditions.

(a) If the Board of Commissioners finds a preliminary plan to be deficient or defective, but would approve the plan with certain remedies, conditioned upon the performance of any act or the obtaining of any other approval or permit by the applicant, the applicant shall be given the opportunity to accept or reject the conditions within a ten-day period. Conditional approval of the plan shall be rescinded automatically, without action of Cheltenham Board of Commissioners, upon the applicant's written rejection of such conditions, or upon the applicant's failure to accept or reject such conditions within 10 days of the written notice being issued by the Board of Commissioners, or written notice of the approval subject to conditions shall be provided to the applicant, which includes the following information:

[1] Specify the defects found in the application and describe the requirements which have not been met, and shall cite the provisions of the statute or ordinance relied upon, the conditions of approval, and a request for the applicant's written agreement to the conditions.

[2] State that the application has been conditionally approved subject to the remedying of defects and satisfaction of the requirements not yet met, if the applicant agrees to the conditions within the ten-day period, and if such conditions are not agreed to within the ten-day period, then the application is automatically denied.

2. "A preliminary plan must be approved if it meets all specific, objective requirements under a subdivision and land development ordinance. The preliminary plan is essentially conditional in nature in that after its approval, the developer must still fulfill all the requirements to obtain final approval. Consequently, even where the preliminary plan fails to comply with the objective, substantive requirements, the governing body may in its discretion either reject the plan outright or grant conditional approval." CACO Three, Inc. v. Bd. of Sup'rs of Huntington Twp., 845 A.2d 991, 993-94 (Pa. Commw. 2004).

3. “[T]he purpose of a preliminary plan is essentially conditional in that the developer must fulfill all requirements before he can receive final approval of the plan. Therefore, by the very nature of a preliminary subdivision plan, the zoning hearing board does not exceed its power by attaching conditions to its approval of a preliminary plan in order to bring the plan into conformity with the zoning ordinance. That is what the zoning hearing board did here.” Graham v. Zoning Hearing Bd. of Upper Allen Twp., 514 A.2d 236, 239 (1986).

Sewer Lateral Easement

4. Defendants contend that failure to mark easements is non-substantive and more similar to plan notations and mislabeling. Thus, failure to provide documentation of the easement is not a reason to justify denying the preliminary plan. This argument lacks merit. Defendants cite Shelbourne Square Assocs., L.P. v. Bd. of Sup'rs, Twp. of Exeter, 794 A.2d 946, 950 (Pa. Commw. 2002).
5. The mislabeling at issue there consisted of labeling the plan ‘preliminary/final’ rather than ‘preliminary’, failure to use the proper wording/format for the land survey, failure to describe the material and size of the water and sewer mains, and failure to submit a letter documenting adequate capacity from the water utility.” Id. The court held that said deficiencies were correctable by making a simple amendment to the plan. Id. Here, this error cannot be corrected by a simple amendment.
6. A similar argument was raised in In re AMA/Am. Mktg. Ass'n, Inc., 142 A.3d 923, 939 (Pa. Commw. 2016). In that case, the objector argued the preliminary and final

- land development plan failed to comply with sections of the SALDO because it omitted an easement. (Id. at 937).
7. Specifically, “[s]ection 22–305(4)(B)(13) requires that a preliminary plan show: ‘Areas subject to deed restrictions or *easements*, including land to be dedicated or reserved for future road widening *or other public or common use.*’ Section 22–306(A)(2) incorporates this requirement for a final plan. Further, Section 22–202 defines an ‘Easement’ as ‘a right-of-way or other right granted by a property owner for the use of a designated part of his property *for certain public or quasi-public purposes.*” (Id. at 939) (emphasis in original) (citation omitted). The court held that the subject easement was not public but private. (Id. at 939-40).
 8. Even if it was public, there was testimony from an engineer that it was impossible to plot the easement on the plan due to the lack of metes and bounds. Id. It stands to reason that had the easement been created for public purposes and it was possible to plot the easement on the plan, then the plan would have violated the SALDO and preliminary approval should not have been granted.
 9. Here, § 260-9 of the SALDO defines an “easement” as a “vested or acquired legal right to use land other than as a tenant, for a specific purpose, such right being held by someone other than the owner who holds title to the land.” Id.
 10. The easement at issue falls squarely within this definition. The Court heard no testimony that it would otherwise be impossible to obtain the legal document to establish an easement. This is a substantive issue as proof of said easement is required in SALDO § 260-15. D (8)(b); § 260-15.C (1); and § 260-15.C(11)(c)[1]. This alone supports denial of the preliminary plan. In re AMA/Am. Mktg. Ass'n, Inc.,

142 A.3d 923, 939 (Pa. Commw. 2016) (if legitimate, a single reason may support denial of a land development plan).

11. Lastly, Defendants' reliance on Michener Appeal, 115 A.2d 367, 370 (Pa. 1955) is misplaced. The court held that "building restrictions placed upon the property by private contract has no place in proceedings under the zoning laws for a building permit or a variance." Id. However, in this case, the issue is whether the Developer met the requirement of SALDO § 260-15.B (13), which required title of the document creating the easement be attached to the plan. This is not a dispute over the rights of an established easement.

12. In fact, there is no evidence that the easements have yet been created. Accordingly, the Preliminary plan should have been denied for failing to comply with SALDO § 260-15.B (13) or, in the alternative, it should have been made as a condition that Developer will obtain the legal documents creating the easements to obtain final approval. On this issue, the Court finds in favor of Appellants.

Waiver Granted under SALDO § 260-15.C

13. "The Board of Commissioners of the Township of Cheltenham may grant modifications of the requirements of this chapter through a waiver where, owing to unusual and specific conditions, the applicant demonstrates to the satisfaction of the Cheltenham Board of Commissioners that literal compliance with mandatory requirements of this chapter would be unreasonable or cause undue hardship, or where an alternative standard can be demonstrated to provide equal or better results, subject to such conditions and safeguards as the Cheltenham Board of Commissioners may impose, provided that such waiver will not be contrary to the

public interest and that the purpose and intent of this chapter is observed. All requests for modifications shall be provided in accordance with § 260-24 of this chapter.” SALDO § 260-7(emphasis added).

14. Here, it is not necessary to demonstrate a hardship, like Appellants argue. Instead, a waiver can be granted if there is an alternative that provides equal or better results. That was done here. The “Aerial Plan” covers 400 feet of the property, compared to 200. Appellants cited Ellzey v. Upper Gwynedd Twp. Bd. of Commissioners, 241 A.3d 694 (Pa. Commw. 2020). In that case, the court held that waiver of SALDO was an abuse of discretion because there was “[n]o discussion, correspondence, or other evidence in the record explains a legally sufficient reason for that preference, whether founded on undue hardship, substantial equivalence to SALDO compliance, or any other permissible basis.” (Id. at 10).

15. Here, waiver was clearly based on a substantial equivalence to SALDO compliance because the aerial plan within 400 feet of the site compared to 200 that is required in the SALDO. In addition, during the April 6, 2022, public works meeting, Director of Planning and Zoning, Roger Philips, explained that to conduct survey of the property would be difficult because they “will need permission from seven to eight neighboring property owners.” (Ex. L).

16. Counsel for Intervener, Christen Pionzio, was present at the meeting and noted that “ground surveys are expensive, unreasonable, unnecessary, and that it is peculiar to require one in this instance when the same information can be found

on an aerial plan.” Id. Therefore, there were other considerations in granting the waiver other than it being “common practice.”

17. Lastly, Appellants argument that an on-site survey is necessary lacks merit. The Township’s Engineers and Arborist conducted an on-site survey of the property to make their necessary reports. Accordingly, the Court rules in favor of Defendants.

Related to Vegetation Removal

18. Appellants argue the plan failed to include a tree inventory list. This argument lacks merit as an inventory list was attached to the plan. (Ex. B). The list states the location, size, species, and whether the tree will be removed. Id. In regard to the minimized tree removal, the March 25, 2022, Township Engineer Review letter stated the Developer must satisfy the requirement of SALDO § 260-34.A (3), which requires vegetation removal be minimized. (Ex. E).

19. The letter also required the Plan satisfy SALDO § 260-34.D and § 260-48. Id. Moreover, the first report of the arborist indicates that they will assist the Developer in ensuring compliance with § 260-34.D and vegetation removal is minimized. (Ex. G). Lastly, these were made as a condition for final approval in Resolution. (Ex. N). In addition, SALDO § 260-31(B) states 50% of Woodlands are to be preserved “to the maximum extent possible” Id.

20. Accordingly, there is no hard requirement that 50% of the woodlands be preserved and compliance with the arborist and engineering report will ensure that 50% of the woods will be preserved to the maximum extent possible. Therefore, the Court finds in favor of Defendants.

Stormwater Management

21. The Engineer reviewed the Plan and made recommendations for the Plan to comply with the Township's Stormwater Ordinance. In addition, preliminary approval was conditioned upon Defendant's compliance with the Engineer's recommendations. According to the Erosion & Sedimentation Pollution Control Report, it is proposed that the project site will collect stormwater from the construction under a combination of best management practices (BMPs). (Ex. D).
22. The site was designed to minimize the impervious area of the site and will maximize the protection of the existing drainage features and vegetation by implementing a defined limit of disturbance and providing a detailed sequence of construction. Id. This will reduce the rate of runoff from the site and minimize the increase in the volume of runoff. Id.
23. The report also indicated that several non-discharge and ABACY BMPs would be implemented, pre- and post-construction, to control stormwater runoff, such as rock construction entrance, temporary topsoil stockpile, slop stabilization matting, compost filter socks, inlet protection, and a surface detention basin (WQ/Rate). Id.
24. Further, the Engineer report required that stream back erosion requirement be met, under § 290-22.A (1), and the Plan be revised to show certain calculations of the infiltration facility. (Ex. E). The Developers and the Township have been working together and taken several steps to ensure the SALDO and BMPs are complied with in terms of stormwater management. The Court rules in favor of Defendants.

Public Comment Process

25. Based on the record, it appears there were several public meetings where members of the public came and voiced their opinion. The specific meeting at issue here is the April 6, 2022 meeting, which was held via Zoom. Despite the meeting being at full capacity, six members of the public were able to voice their opinions at said meeting. Looking at the public comment process as a whole, the Township provided reasonable opportunity for residents to voice their concerns.
26. The fact that the April 6, 2022 meeting was at full capacity is out of the Townships control and it they worked around this difficulty because six residents were able to voice their concerns. In addition, this is just one of several public meetings that took place where several residents voiced their opinions and concerns. According to Defendants, four additional meetings took place following the April 6, 2022, meeting. Appellants' argument lacks merit and the Court rules in favor of Defendants.

Preserving 50% of Woodlands

27. See objection three.

Stream Bank Erosion

28. Appellant's argument lacks merit. The Engineering report and resolution both require SALDO § 290-22.A (1) be met.

Violation of Environmental Rights

29. It is clear from the record that the Developer and Township took several steps and measures to limit the environmental impact of the project. As Defendants noted, the Township considered the environmental impact of the Project when it received

comments from the Township Engineer, Director of Planning and Zoning, and the Township Arborist. Lastly, the Resolution required the Developer to obtain approval letters from several agencies, including the Pennsylvania Department of Environmental Protection. (Ex. N).

th **ORDER**

AND NOW, on this *13* day of January 2025, for the reasons aforementioned, it is hereby **ORDERED AND DECREED** as follows:

- 1) Objection 1 is **SUSTAINED**. The Resolution **SHALL** be modified to require the Plan to attach a description of all easements, including a description of "the parties to the agreement, the beneficiary(ies) of the restrictions, easements and covenants, the title of the document or instrument creating the restrictions, easements and/or covenants, and a reference to their deed and page book recording location."
SALDO § 260-15.B (13).
- 2) Objections 2-9 are **OVERRULED**.

BY THE COURT:


GARRETT D. PAGE,

This Order has been E-Filed on January *13*, 2025
Copies via Prothonotary to:
All Parties of Record
Copies via Chambers to:
Court Administration – Civil Division

A.L. Judicial Secretary