

MARY C. EBERLE
JOHN B. RICE
DIANNE C. MAGEE *
DALE EDWARD CAYA
DAVID P. CARO ◊
DANIEL J. PACI †
JONATHAN J. REISS ◊
GREGORY E. GRIM †
PETER NELSON *
PATRICK M. ARMSTRONG
SEAN M. GRESH
KELLY L. EBERLE *
JOEL STEINMAN
MATTHEW E. HOOVER
COLBY S. GRIM
MICHAEL K. MARTIN
MITCHELL H. BAYLARIAN
IAN W. PELTZMAN
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www.grimlaw.com

Kelly L. Eberle
e-mail: keberle@grimlaw.com

J. LAWRENCE GRIM, JR., OF COUNSEL
JOHN FREDERIC GRIM, OF COUNSEL

104 S. SIXTH STREET
P.O. BOX 215
PERKASIE, PA. 18944-0215
(215) 257-6811
FAX (215) 257-5374

(215) 536-1200
FAX (215) 538-9588

(215) 348-2199
FAX (215) 348-2520

* ALSO ADMITTED IN NEW JERSEY
◊ ALSO ADMITTED IN NEW YORK
† MASTERS IN TAXATION
◊ ALSO A CERTIFIED PUBLIC ACCOUNTANT

December 10, 2019

Michael and Michelle Bongiovanni
150 Sterling Drive
Perkasie, PA 18944

**Re: Hilltown Township Zoning Hearing Board
Michael and Michelle Bongiovanni; Appeal No. 2019-009**

Dear Mr. and Mrs. Bongiovanni:

Please find enclosed herewith, a copy of the Decision of the Hilltown Township Zoning Hearing Board dated December 10, 2019, in the above captioned matter. The original of this Decision is being retained by the Township for its file.

Very truly yours,
Grim, Biehn & Thatcher


KELLY L. EBERLE

KLE/kbs

Enclosures

cc: Hilltown Township Manager
Mr. John L. Snyder
Mr. David Hersh
Mr. Joseph Kirschner
Dave Taylor, Zoning Officer
Stephen B. Harris, Solicitor

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: Michael and Michelle Bongiovanni

Appeal No. 2019-009

A hearing was held in the above matter on Thursday, November 14, 2019, at 7:15 p.m. at the Hilltown Township Municipal Building. 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, Joseph Kirschner, and David Hersh. In addition, Kelly Eberle, the Board Solicitor, was in attendance, as was the Board stenographer. The applicant was present and was not represented by counsel. Hilltown Township did not oppose the application. No individuals requested party status.

The following exhibits were admitted and accepted into evidence:

Board's Exhibits

- B-1 Proof of Publication
- B-2 Posting Certification
- B-3 Letter dated October 28, 2019 to neighbors from K. Eberle
- B-4 Letter dated November 1, 2019 to K. Eberle from J. Finno¹

Applicant's Exhibits

- A-1 Application for Appeal to Zoning Hearing Board filed October 17, 2019 with all Attachments
- A-2 Rendering depicting porch with roof
- A-3 Overhead dimensional sketch of porch with roof
- A-4 Three page plot plan with hand-drawn sketch

¹ Exhibit B-4 was entered into evidence for the purpose of acknowledging its receipt only. Since Ms. Finno was not present at the hearing, the substance of the letter was not considered by the Board.

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 rendered 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, hereby makes the following Findings of Fact:

1. The applicant is Michael and Michelle Bongiovanni (“Applicant”).
2. Applicant is the owner of the subject property located at 150 Sterling Drive, Hilltown Township, Pennsylvania (“Property”).
3. The Property is otherwise identified as Bucks County Tax Parcel No. 15-044-065.
4. The subject Property is located in the CR-1-Country Residential 1 Zoning District in Hilltown Township.
5. The adjoining property to the rear of Applicant’s Property is residential, and the two parcels are separated by a fence.
6. The Property was developed as a B4, Performance subdivision and therefore has a minimum rear-yard setback of 40 feet pursuant to §160-23.B(4)(d)[1][b][iv] of the Zoning Ordinance.
7. However, §160-23.I(2)(a)[3] permits an uncovered deck or patio in the rear yard to be located within five feet of the property line.
8. 25 years ago, Applicant installed an uncovered deck off the rear of the dwelling, which is located 30 feet from the rear property line, which is permitted under §160-23.I(2)(a)[3].

9. Applicant now wishes to cover the deck with a roof so that it can be utilized in inclement weather and more frequently throughout the year.

10. The roof will be approximately 15 feet by 30 feet, covering only the footprint of existing deck, plus a one foot overhang, resulting in a 10 foot encroachment into the rear yard setback.

11. The roof will have three footers, 6 inch by 6 inch posts set in concrete, at the front of the roof with the sides of the roof tying into the house.

12. Accordingly, Applicant requests a variance from §160-23.B(4)(d)[1][b][iv], to permit a rear yard setback of 30 feet rather than the required 40 feet.

DISCUSSION:

Applicant wishes to construct a 15 foot by 30 foot roof over the existing deck in the rear yard. While the deck is permitted to extend within five feet of the rear property line, the roof must conform with the principal setback requirements, which requires a minimum rear yard setback of 40 feet. As proposed, the rear yard setback from the end of the roof to the Property line would be 30 feet. Accordingly, Applicant is before the Board requesting a variance from §160-23.B(4)(d)[1][b][iv] in order to permit a rear yard setback of 30 feet.

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.

Based on the above, the Zoning Hearing Board finds that Applicant has shown the existence of a hardship, not self-created, and unique and peculiar to the Property, which requires the grant of a variance from §160-23.B(4)(d)[1][b][iv] of the Hilltown Township Zoning Ordinance. The Board concludes that the relief requested, a reduction in the rear yard setback from 40 feet to 30 feet, is the minimum variance necessary to afford relief to the Applicant and is in keeping with the spirit of the Zoning Ordinance. Additionally, the Board finds that the variance, as requested, would not be injurious to the health, safety, and welfare of the surrounding community and constitutes the minimum relief necessary to afford Applicant the opportunity to reasonably use the Property.

DECISION AND ORDER

AND NOW, this 10 day of December, 2019 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

1. Construction shall be done in conformity with A-1 through A-4 and testimony presented before the Board; and
2. Applicant shall otherwise comply with all other applicable Township, state, and/or county laws, regulations, with respect to construction and use.

The Hilltown Township Zoning Hearing Board hereby deems the foregoing conditions as necessary and warranted under the terms of the Hilltown Township Zoning Ordinance and the Pennsylvania Municipalities Planning Code.

HILLTOWN TOWNSHIP ZONING
HEARING BOARD

By: John Snyder
John Snyder, Chairman

By: Joseph Kinscliner
Joseph Kinscliner

By: David Hersh
David Hersh

GRIM, BIEHN & THATCHER

By: Kelly L. Eberle
Kelly L. Eberle, Solicitor
104 South Sixth Street, Perkasie, PA 18944

Date of Mailing: 12/10/19