

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: Gordon Builders, LLC

Appeal No. 2020-012

A hearing was held in the above matter on Thursday, December 10, 2020 at 7:00 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, 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 no individuals requested party status.

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, 2020 to neighbors from K. Eberle

Applicant's Exhibits

- A-1 Application
- A-2 Plan dated November 2, 2020

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.

I. 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:

1. Applicant is Gordon Builders, LLC.
2. Applicant is the owner of the real property located at 721 Blooming Glen Road, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-017-059-001.
3. The Property is located in the RR (Rural Residential) Zoning District in Hilltown Township.
4. Applicant wishes to subdivide the existing 6-acre Property into two separate lots.
5. Lot 2 is the proposed lot and will be developed some time in the future as a building lot with a new home.
6. Lot 1 will be 4 acres and will retain the existing circa-1830 dwelling and 2-car garage.
7. The garage is a 20'x22' masonry structure totaling approximately 440 square feet and is located in the proposed side-yard of Lot 1.

8. While the exact age of the garage is not known, it is believed to be built prior to 1930.

9. §160-23.I(2)(4) of the Zoning Ordinance requires a setback of 12 feet for accessory structures less than 250 square feet and requires accessory structures greater than 250 square feet to meet the principal setback requirements.

10. In the RR-Zoning District, the principal setback requirement for the side yard is 25 feet.

11. In order to meet the minimum lot size for Lot 2, the proposed lot line will result in a side-yard setback of 21.18 feet from the lot line to the garage.

12. Applicant considered moving the garage; however, due to its age and weight, that is not feasible.

13. Due to its historical nature, Applicant does not want to remove the garage.

14. Accordingly, Applicant requests a variance from §160-23.I(2)(4), which requires a 25 foot side yard setback for detached accessory structures greater than 250 square feet, in order to permit a 21.18 foot side yard setback on proposed Lot 1.

II. DISCUSSION:

Applicant is before this Board requesting relief in connection with a proposed subdivision of the Property, which would result in two separate lots with a new lot line being placed approximately 21.18 feet from the existing detached garage located on Lot 1. Applicant seeks a variance from §160-23.I(2)(4), which requires a 25 foot side yard setback for detached accessory structures greater than 250 square feet, in order to permit a 21.18 foot side yard setback on proposed Lot 1.

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 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 the variance from §160-23.I(2)(4). Additionally, the Board finds that the variance as requested, the decrease in side yard setback from 25 feet to 21.18 feet, 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 22 day of Jan, 2021 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

1. The proposed subdivision shall be done in accordance with Application, plans, and testimony presented at the hearing.
2. Applicant shall comply with all other Township, County, and State 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: David Hersh
David Hersh

By: Stephen Yates
Stephen Yates

GRIM, BIEHN & THATCHER

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

Date of Mailing: 1/22/21