

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: Carole Anthony

Appeal No. 2020-013

A hearing was held in the above matter on Thursday, December 10, 2020 at 7:30 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
- B-4 Letter from Stephen Harris dated November 25, 2020

Applicant's Exhibits

- A-1 Application with all attachments
- A-2 Sketch Plans (5 pages)
- A-3 Photograph of property

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 Carole Anthony.
2. Applicant, along with James Kinee, is the owner of the real property located at 319 Victoria Lane, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-048-004.
3. The Property is located in the CR-1 (Country Residential 1) Zoning District in Hilltown Township.
4. In addition to the single-family dwelling, which was constructed in 2001, the Property is improved with a three-tiered paver patio off the rear of the dwelling.
5. The patio, which was installed by the prior owners, is deteriorating, and the stairs from the dwelling to the patio are no longer safe.
6. Applicant wishes to install a 42' by 19' deck over the existing patio area.
7. However, the proposed deck will be wider than the existing patio.
8. A portion of the proposed deck will be covered by 20' by 20' roof.

9. The proposed deck will be built of composite material with steps down to the third layer of the patio and will come flush out of the house.

10. §160-23.B(4)(d)[1][b][iv] of the Hilltown Township Zoning Ordinance requires a minimum rear yard setback of 40 feet for properties in the CR-1 Zoning District.

11. As proposed, the deck will encroach in the required rear yard setback area, resulting in a setback of 31 feet rather than the required 40 feet.

12. Accordingly, Applicant requests a variance from §160-23.B(4)(d)[1][b][iv] to allow for a 31-foot rear yard setback as opposed to the required 40-foot rear yard setback.

II. DISCUSSION:

Applicant is before this Board requesting relief in connection with the construction of a 42' by 19' deck with a 20' by 20' roof. Applicant seeks a variance from §160-23.B(4)(d)[1][b][iv] of the Hilltown Township Zoning Ordinance to allow for a 31-foot rear yard setback as opposed to the required 40-foot rear yard setback.

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.B(4)(d)[1][b][iv]. Additionally, the Board finds that the variance as requested, the decrease in rear yard setback from 40 feet to 31 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

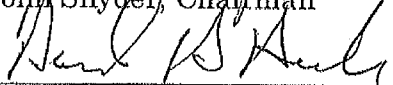
AND NOW, this 22 day of Jan, 2021 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

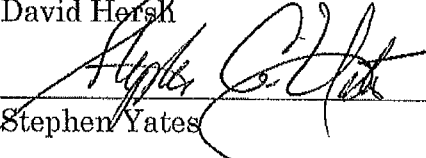
1. The proposed construction shall be done in accordance with Exhibits A1-A3 and testimony presented at the hearing;
2. Applicant shall submit a stormwater management plan satisfactory to the Township; and
3. Applicant shall comply with all other Township, County, and State laws, regulations with respect 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, Chairman

By: 
David Hersh

By: 
Stephen Yates

GRIM, BIEHN & THATCHER

By: 
Kelly L. Eberle, Solicitor

Date of Mailing: 1/22/01