

**HILLTOWN TOWNSHIP ZONING HEARING BOARD**

In Re: Caitlin Keller

Appeal No. 2020-017

A hearing was held in the above matter on Thursday, December 17, 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 December 2, 2020 to neighbors from K. Eberle

Applicant's Exhibits

- A-1 Application with Deed and statement; Plan and Enlarged Photograph

Township's Exhibits

- T-1 Township Memorandum

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 Caitlin Keller.
2. Applicant, along with Joshua Ziegler, is the owner of the real property located at 97 Tall Oaks Drive, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-001-132-003.
3. The Property is located in the CR-2 (Country Residential 2) Zoning District in Hilltown Township.
4. The Property is a corner lot with frontage on Orchard Road and Tall Oaks Road.
5. Applicant wishes to install a 6-foot high, white vinyl fence along Orchard Road.
6. §160-11 of the Hilltown Township Zoning Ordinance ("Zoning Ordinance") defines a "front yard" as follows:

A required or proposed yard between a structure and a street right-of-way line extending the entire length of the street line. In the case of a

corner lot, the yards extending along all streets are front yards. In the case of a double frontage lot, the front yard shall be required along the street which provides access to the lot. The remaining street frontage shall be considered a rear yard.

7. Accordingly, both the yard along Orchard Road and the yard along Tall Oaks Road are considered "front yards."

8. §160-23.I(2)(a)[2] of the Zoning Ordinance limits residential fences in the front yard to a maximum of four feet in height.

9. Accordingly, Applicant requests a variance from §160-23.I(2)(a)[2] in order to permit a 6-foot high fence in the defined front yard are along Orchard Road, or, in the alternative, a variance from §160-11, which defines the "front yard" area for a corner lot.

10. Applicant wishes to install a 6-foot fence rather than the permitted 4-foot fence for safety and privacy reasons.

11. Applicant's dog can jump over a 4-foot fence, and a 6-foot fence will keep the dog safe and in the yard.

12. In addition, Applicant wishes to install an in-ground pool in the near future and believes a 6-foot fence will be safer and provide more privacy for the pool area.

13. The fence will be located approximately 24 feet from the house and behind the existing 30-foot tree line buffer.

14. As a result of the distance between the fence and the road and as it will be located behind the tree line, the proposed fence will not interfere with the a driver's sightline.

15. The fence will go along the rear of the Property, half-way down the side yards and enclose the rear yard.

## II. DISCUSSION:

Applicant is before this Board requesting relief in connection with the installation of a 6-foot fence on a proposed front yard area. Applicant seeks a variance from §160-23.I(2)(a)[2] of the Zoning Ordinance, which limits residential fences in front yard areas to a maximum of four feet in height, or, in the alternative, a variance from §160-11, which defines the “front yard” area for a corner lot.

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)(a)[2]. Additionally, the Board finds that the variance as requested, the installation of a 6-foot fence rather than the permitted 4-foot, 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**

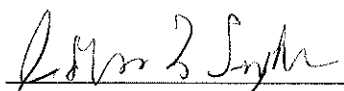
AND NOW, this 29th day of January, 2021 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

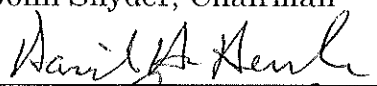
1. The proposed construction shall be done in accordance with Application, plans, and testimony presented at the hearing, except that the fence may be located up to one foot closer to the dwelling than is shown on Applicant's Plan.

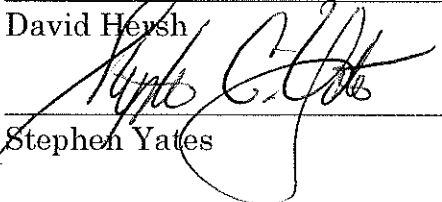
2. Applicant shall comply with all other Township, County, and State laws, regulations with respect to construction and use.

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.

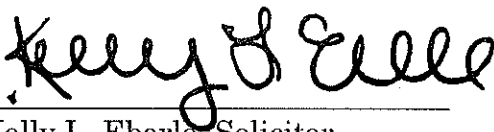
HILLTOWN TOWNSHIP ZONING  
HEARING BOARD

By:   
John Snyder, Chairman

By:   
David Hersh

By:   
Stephen Yates

GRIM, BIEHN & THATCHER

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

Date of Mailing: 1-29-21