

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: Hilltown Township Water and Sewer Authority

Appeal No. 2021-001

A hearing was held in the above matter on Thursday, March 18, 2021 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 was represented by Jack D. Wuerstle, Esquire. Diane Kurman of 741 Minsi Trail, 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 February 19, 2021 to neighbors from K. Eberle
- B-4 Party status of Diane Kurman

Applicant's Exhibits

- A-1 Curriculum Vitae of Gary J. Weaver, P.E.
- A-2 Recorded Easement dated July 17, 2019
- A-3 Site Plan and Grading Plan dated November 10, 2020

- A-4 Map of Water System in Hilltown Township
- A-5 Depiction of Proposed Building and Aqua-Store Tank
- A-6 Application with All Attachments

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. Regency at Hilltown Community Association, Inc., is the owner of the real property located along Minsi Trail in Hilltown Township, Pennsylvania ("Property") more specifically identified as Bucks County Tax Parcel No. 15-029-052.
2. The Property is located in the AQRC (Age Qualified Residential Community) Zoning District in Hilltown Township.
3. The Property includes a 2-acre eased area which contains a well owned by Hilltown Township Water and Sewer Authority and an access driveway.
4. Applicant is Hilltown Township Water and Sewer Authority, who holds an easement on the Property.
5. A portion of the eased area is located in the floodplain.

6. As part of the consideration for the easement, Applicant has agreed to pave the existing stone driveway and add stone to the end so that the Homeowner's Association has access to maintain its open space.

7. Applicant wishes to develop the existing well and upgrade the drinking water facility by installing an arsenic treatment system, a small holding tank, and a booster system.

8. The proposed well provides an additional backup water source for those residents.

9. In addition, the new well will improve firefighting capacity with the new well fire protection at 1800 gallons per minute as compared to the current 1500 gallons per minute of the current well.

10. The proposed well will be monitored electronically.

11. In addition, Applicant plans to install a stormwater management basin.

12. As proposed, a portion of the driveway and a majority of the stormwater management basin will be located within the floodplain.

13. The stormwater management basin needs to be located in the floodplain because of the way the Property slopes, and if it were located elsewhere, Applicant would have to regrade the site and would likely end up grading into the floodplain.

14. The stormwater management basin, as proposed, would be able to filter out the current runoff, which filters into the floodplain and therefore, improve the water quality.

15. §160-28A(3) of the Hilltown Township Zoning Ordinance provides as follows:

Floodplain shall be permanently protected and undeveloped, except that utilities, roads, and driveways may cross floodplain where design approval is obtained from the Pennsylvania Department of Environmental Protection and as permitted within Chapter 83, Floodplain Management, of the Hilltown Township Code of Ordinances.

16. Applicant does intend to seek design approval from the PA Department of Environmental Protection, and as such, relief from this Board, as to the driveway only, may not be necessary.

17. Out of an abundance of caution, Applicant has included the driveway encroachment as part of its requested relief.

18. Accordingly Applicant requests a variance from §160-28A(3), to permit a portion of the access driveway, as well as the proposed stormwater management basin, within the floodplain.

II. DISCUSSION:

Applicant is before this Board requesting relief in connection with the construction of a well and related site improvements within a floodplain. Applicant seeks a variance from §160-28A(3) of the Zoning Ordinance, which requires floodplains to remain permanently protected and undeveloped, in order to pave an existing stone driveway and install a stormwater management basin, portions of which encroach into the floodplain.

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 §160-28A(3). Additionally, the Board finds that the variance as requested, the installation of a stormwater management basin and paved driveway within a floodplain, 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

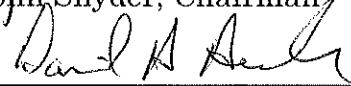
AND NOW, this 30th day of April, 2021 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

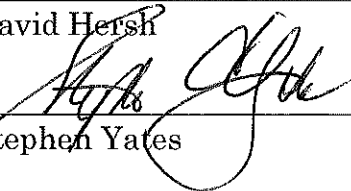
1. The proposed construction shall be done in accordance with Application, plans, and testimony presented at the hearing.
2. Applicant may request that the variance be extended in one-year increments by submitting its request in writing to the Board prior to the expiration.
3. Applicant shall comply 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.

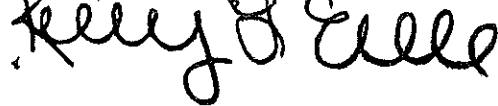
HILLTOWN TOWNSHIP ZONING
HEARING BOARD

By: 
John Snyder, Chairman

By: 
David Hersh

By: 
Stephen Yates

GRIM, BIEHN & THATCHER



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

Date of Mailing: 4/30/21