

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: Michael J. Arechaga¹

Appeal No. 2021-008

A hearing was held in the above matter on Thursday, July 15, 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, and David Hersh. In addition, Kelly L. Eberle, the Board Solicitor, was in attendance, as was the Board stenographer. Applicant was present and represented by Kimberly Freimuth, Esquire. 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 June 23, 2021 to neighbors from K. Eberle
- B-4 Application

Applicant's Exhibits

- A-1 Deed

¹ The original application listed the Applicant as ML Homes, LLC. However, at the hearing, counsel made an oral motion to amend the name of the Applicant to Michael Arechaga. The amendment is consistent with the equitable owner listed in the agreement of sale (See *Exhibit A-2*) and was approved by the Board.

A-2 First and Last Page of Agreement of Sale for Property

A-3 Curriculum Vitae of Jason Smeland, P.E.

A-4 Aerial Plan of Property

A-5 Plot Plan prepared by Lenape Valley Engineering dated May 28, 2021

A-6 Elevations of Proposed Dwelling

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 Michael J. Arechaga.
2. Applicant is the equitable owner of the vacant parcel located along Fairhill Road 250 feet from the intersection of Fairhill Road and Highview Drive, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-022-114.001-001.
3. The record owner of the Property is Ferdi Alibehaj.
4. The Property is located in the RR (Rural Residential) Zoning District in Hilltown Township.

5. The Property, which was created by subdivision in 1956, is a 1.73-acre vacant lot that is not served by public water and sewer.

6. The minimum size lot in the RR Zoning District is 3 acres for parcels not served by public water and sewer, making the Property an existing, non-conforming lot with regard to size.

7. Applicant wishes to construct a B1-single-family detached dwelling along with related improvements on the Property.

8. A B-1 single family detached dwelling is a permitted use in the RR Zoning District.

9. The proposed dwelling will be approximately 3,100 square feet and will have 4 bedrooms and a detached garage.

10. Instead, the proposed dwelling will be served by an onsite septic system that will be located at the rear of the Property to the right-hand side if looking at it from the street and a well located between the dwelling and Fairhill Road.

11. Zoning Ordinance §160-61(B) permits lawfully existing, non-conforming lots to be developed by special exception.

12. Accordingly, Applicant seeks a special exception pursuant to Zoning Ordinance §160-61(B) *Non-Conforming Uses and Structures*, in order to construct a single-family dwelling on a 1.73 acre-lot with onsite water and sewer rather than public.

13. The special exception as proposed will not create a nuisance and will not have an adverse impact public health or safety.

14. The Property will be used in a manner similar to the lots surrounding it as some of the adjacent lots are smaller, ranging from 1 to 3 acres.

15. Applicant meets all other requirements of the Zoning Ordinance.

II. DISCUSSION:

Applicant is before this Board requesting a special exception pursuant to Zoning Ordinance 160-61(B) *Non-Conforming Uses and Structures* in order to construct a single-family dwelling with on-site water and sewer on a lot less than 3 acres in the RR Zoning District.

A special exception is a use that is expressly permitted in a zoning district as long as certain conditions detailed in the zoning ordinance are found to exist. *Broussard v. Zoning Bd. of Adjustment*, 907 A.2d 494, 499 (Pa. 2006). An applicant seeking a special exception bears the burden of proving that its request complies with the specific, objective requirements contained in the zoning ordinance. *Sheetz, Inc. v. Phoenixville Borough Council*, 804 A.2d 113, 115 (Pa. Cmwlth. 2002). Once the applicant has satisfied this initial burden, the burden then shifts to any objectors to establish the proposed exception would be detrimental to the public health, safety, and welfare. *Id.*

Section 160-61(B) *Non-Conforming Uses and Structures* of the Zoning Ordinance states as follows:

A nonconforming lot which lawfully existed prior to the enactment of this chapter, or in the case of an amendment to this chapter, then at the time of such amendment, may be developed by special exception for uses permitted in the particular district and shall conform to all other requirements specified in this chapter other than lot size, provided that the nonconforming lot is in single and separate

ownership from adjoining properties. For the purposes of this section, single and separate ownership shall be ownership of any property by any person or persons which owner(s) is separate and distinct from the owners of the adjoining properties.

Applicant has demonstrated that the non-conforming lot was created in the 1956, which was well before the change in the required lot size. Applicant conforms to all other requirements of the Zoning Ordinance. Accordingly, Applicant is entitled to a special exception.

The burden then shifts to the objectors to show that the proposed exception would be detrimental to the public health, safety, and welfare. No testimony or other evidence was presented that would demonstrate that Applicant's proposed development of the non-conforming lot would be detrimental to the surrounding community. Therefore, the Board finds that the proposed development of the non-conforming lot will not be detrimental to the health, safety, and welfare of the community.

Based on the foregoing, the Board concludes that Applicant is entitled to a special exception pursuant to Section 160-61(B) *Non-Conforming Uses and Structures* to permit the proposed single-family dwelling and related improvements.

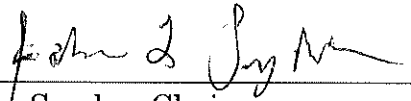
DECISION AND ORDER

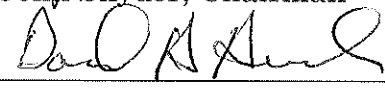
AND NOW, this 30th day of August, 2021 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

1. The proposed construction shall be done in substantial accordance with A-5 and testimony presented at the hearing; and
2. Applicant shall comply with all other Township, County, and State laws, regulations with respect to construction and use.

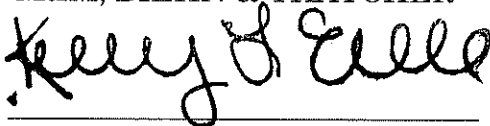
The Hilltown Township Zoning Hearing Board hereby deems the foregoing conditions as necessary and warranted under the terms of the Hilltown Township Zoning Ordinance and the Pennsylvania Municipalities Planning Code.

HILLTOWN TOWNSHIP ZONING
HEARING BOARD

By: 
John Snyder, Chairman

By: 
David Hersh

GRIM, BIEHN & THATCHER

By: 

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

Date of Mailing: 8-30-21