

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: Bernadette and Daniel Attinger

Appeal No. 2021-014

A hearing was held in the above matter on Thursday, December 9, 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, Frank N. D'Amore, of Grim, Biehn, and Thatcher, Board Solicitor, was in attendance, as was the Board stenographer. Jack Wuerstle, Esq., Hilltown Township Solicitor, appeared on behalf of the Township. Applicants were 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 23, 2021, to neighbors from Kelly Eberle, Esq., Board Solicitor
- B-4 Application with Exhibits

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 with a quorum of members present hereby makes the following Findings of Fact:

1. Applicants are Bernadette & Daniel Attinger.
2. Applicants are the owners of the real property located at 214, Rt. 152, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-028-025.
3. The Property is located in the CR-2 (Country Residential-2) Zoning District in Hilltown Township.
4. The Property contains an existing single-family dwelling, garage, deck, covered patio, and related improvements.
5. Applicants also own the vacant lot adjacent to the Property identified as Bucks County Tax Parcel No. 15-028-26-1 ("Adjacent Parcel").
6. Applicants wish to construct an in-ground pool, coping, and equipment with accompanying patio and fencing.
7. The newly constructed coping, equipment, and patio will increase the total impervious surface coverage on the Property from approximately 17.2% to approximately 22.8%.

8. §160-26 (Attachment 3:1 *Table of Performance Standards*) of the Hilltown Township Zoning Ordinance limits the maximum impervious surface coverage in the CR-2 Zoning District to 15%.

9. The Property has an existing non-conforming impervious surface coverage of approximately 17.2%.

10. Accordingly, Applicants request a variance to permit an impervious surface coverage of approximately 22.8%.

## II. DISCUSSION:

Applicants are before this Board requesting relief in connection with the construction of an in-ground pool. Applicants seek a variance from Zoning Ordinance §160-26, Attachment 3:1 *Table of Performance Standards*, to permit an impervious surface coverage of 22.8% rather than the maximum permitted 15%.

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 Applicants have shown the existence of a hardship, not self-created, and unique and peculiar to the Property, which requires the grant of the variance from Zoning Ordinance §160-26 subject to the conditions set forth in the Decision and Order. Additionally, the Board finds that the variance as requested, an increase in impervious surface coverage from approximately 17.2% to approximately 22.8%, would not be injurious to the health, safety, and welfare of the surrounding community and constitutes the minimum relief necessary to afford Applicants the opportunity to reasonably use the Property.

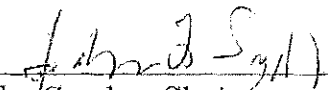
**DECISION AND ORDER**

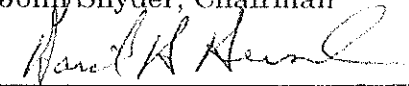
AND NOW, this 3rd day of January, 202~~1~~<sup>2</sup> the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

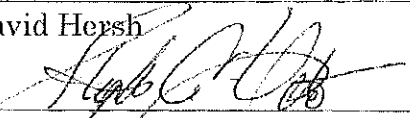
1. The proposed construction shall be done in accordance with the Application, plans, and testimony presented at the hearing;
2. Applicants shall take all steps necessary, including preparing and filing any necessary documents, to merge the Property and the Adjacent Parcel, identified as Bucks County Tax Map Parcel Nos. 15-028-025 and 15-028-26-1, respectively, into one single parcel; and
3. Applicants shall comply with all other Township, County, and State laws and/or 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

Date of Mailing: January 3, 2022

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