

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: George and Peggy Polachek

Appeal No. 2021-012

A hearing was held in the above matter on Thursday, December 30, 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. The following individuals requested, and were granted, party status:

<u>Name</u>	<u>Address</u>	<u>Granted/Denied</u>
Sharon Hendricks	14 Spring Hill Lane, Perkasio	Granted
Barry Desko	16 Spring Hill Lane, Perkasio	Granted
Sue & Jim Stauffer	18 Spring Hill Lane, Perkasio	Granted

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 30, 2021 to neighbors from K. Eberle
- B-4 Entries of Appearance from Additional Parties

B-5 Letter to Zoning Hearing Board from James and Susan Stauffer

Applicant's Exhibits

A-1 Application together 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. Applicants are George and Peggy Polachek.
2. Applicants are the owners of the real property located at 1028 Seven Corner Road, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-017-002-6.
3. The Property is located in the RR (Rural Residential) Zoning District in Hilltown Township.
4. The Property is approximately 185 feet wide and 640 feet deep.
5. The Property is presently improved by a single family, detached dwelling together with related improvements including a 1500 square foot storage barn located to the rear of the dwelling.

6. Access to the Property is currently provided via Seven Corner Road.
7. With the creation and development of the Spring Lane Subdivision in the early 1990's, the rear of Applicants' Property now has approximately 12 feet of frontage on Spring Hill Lane.
8. Applicants wish to subdivide the existing lot into two separate, residential lots.
9. As depicted on the Plan, proposed lot 1 will consist of approximately 62,585 square feet ("Lot 1"), and proposed lot 2 will consist of approximately 50,500 square feet ("Lot 2").
10. Lot 1 will retain the existing dwelling and improvements and will continue to be accessed via Seven Corner Road.
11. Lot 2 will have approximately 12 feet of frontage on the cul-de-sac of Spring Hill Lane through which access to Lot 2 will be provided.
12. Applicants did testify that they would be willing to put in an access lane connecting Lots 1 and 2, but that access to Lot 2 would be via Spring Hill Lane.
13. Lot 1 will continue to be served by on-site water and sewer while Lot 2 will be served by on-site sewer and public water.
14. Lot 2 is approximately 185 wide when measured at the building setback line.
15. §160-23.B(1) of the Hilltown Township Zoning Ordinance ("Zoning Ordinance") requires a minimum rear yard setback of 75 feet from the rear property line.

16. As proposed, the existing barn on Lot 1 will be located only 24 feet from the rear property line.

17. Accordingly, Applicants seek a variance from §160-23.B(1) of the Zoning Ordinance to allow for a reduced rear yard setback of approximately 24 feet on Lot 1.

18. Applicants also seek an interpretation that Lot 2 meets the minimum lot width requirement of 150 feet set forth in §160-23.B(1) of the Zoning Ordinance, or in the alternative, Applicants request a variance from §160-23.B(1).

19. The Board notes that in Appeal No. 2006-009 Applicants previously requested, and were granted, an interpretation that Lot 2 complied with the minimum lot width requirements and that no variance was needed.

20. However, due to delays associated with the on-site septic site, the relief granted in Appeal 2006-009 expired before Applicants were able to subdivide the Property.

21. Mr. Desko, Ms. Hendricks, and Ms. Stauffer raised questions and concerns relating to access from Spring Hill Lane, the on-site septic system, and potential drainage and runoff issues.

22. However, these questions were beyond the scope of the relief requested by the Applicants and were not issues before the Board.

23. Objecting neighboring property owners have the right to attend and be heard at planning commission meetings and meetings of the Hilltown Township Board of Supervisors concerning the proposed Polachek subdivision, specifically with regard to their concerns relating drainage and wetland issues.

II. DISCUSSION:

Applicants, George and Peggy Polachek request an interpretation of law, or in the alternative a variance from the minimum lot width requirement under Hilltown Township Zoning Ordinance §160-2.B(1). In addition, Applicants request a variance from Zoning Ordinance §160-2.B(1) in order to permit a rear yard setback of approximately 24 feet on Lot 1 rather than the required 75 feet.

A. *Variance from Zoning Ordinance §160-2.B(1)*

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 Zoning Ordinance §160-2.B(1) in order to permit a rear yard setback of 24 feet on Lot 1 rather than the required 75 feet. The Board finds that the variance as requested 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.

B. Interpretation Pertaining to the Minimum Lot Width Requirement Under Zoning Ordinance §160-2.B(1)

The Hilltown Township Zoning Hearing Board is empowered by the provisions of the Hilltown Township Zoning Ordinance, as well as the Pennsylvania Municipalities Planning Code, to render interpretations of law regarding applicable provisions of the Zoning Ordinance as they may apply to any specific application or unique property. It is clear that Lot 2 meets all minimum dimensional, yard, and setback requirements applicable in the RR Rural Residential Zoning District. The sole issue for interpretation is whether Lot 2 meets the required minimum lot width under the applicable definitional sections of the Zoning Ordinance.

§160-11 of the Zoning Ordinance provides the following definition for lot width:

LOT WIDTH – The distance measured between the side lot lines at the required building setback line. In a case where there is only one side lot line, lot width shall be measured between such lot line and the opposite rear lot line or ultimate right-of-way line.

Accordingly, the Board finds that in order to comply with the minimum lot width, Lot 2 would need to have a minimum lot width of 150 feet at the building setback line. Lot 2,

as proposed, measures approximately 185 feet in width at the building setback line. Accordingly, based upon the unique facts of this case and the 12 feet of access and frontage on the Spring Lane cul-de-sac, the Board renders an interpretation that the Lot 2 is in compliance with the Hilltown Township Zoning Ordinance, and no variance is required.

DECISION AND ORDER

AND NOW, this 4th day of February, 2022 the Hilltown Township Zoning Hearing Board hereby:

1. Renders an interpretation that Lot 2 as shown on the Plan complies with the minimum lot width required in §160-23.B(1); and

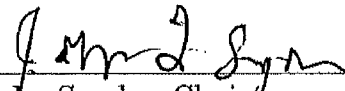
2. Grants the variance from §160-23.B(1) to permit a rear yard setback of approximately 24 feet on Lot 1 conditioned as follows:

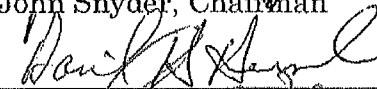
a. The proposed subdivision shall be done in accordance with Application, plans, and testimony presented at the hearing; and

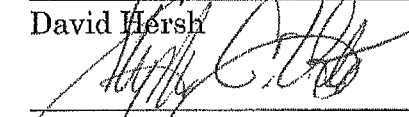
b. Applicants shall comply with all other Township, County, and State laws, regulations with respect to construction and use.

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

Date of Mailing: Feb 4, 2022