

**HILLTOWN TOWNSHIP ZONING HEARING BOARD**

In Re: Brian and Cheryl Kannengieszer

Appeal No. 2022-001

A hearing was held in the above matter on Thursday February 24, 2022 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. 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 February 8, 2022 to neighboring properties from K. Eberle

Applicants' Exhibits

- A-1 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 with a quorum of members present, hereby makes the following Findings of Fact:

1. Applicants are Brian and Cheryl Kannengieszer.
2. Applicants are the owners of the real property located at 2025 Rickerts Road, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-028-169.
3. The Property is a 1.77-acre lot located in the RR (Rural Residential) Zoning District in Hilltown Township.
4. It is currently improved with a single-family dwelling and related improvements.
5. The dwelling is a single-story ranch style house and was built in the 1960s.
6. §160-23.B(1) of the Hilltown Township Zoning Ordinance ("Zoning Ordinance") requires a minimum front yard setback of 50 feet for a residential property in the RR Zoning District.
7. When the dwelling was constructed, there was no ultimate right of way, and the dwelling was in compliance with the required 50-foot front yard setback.
8. At some point thereafter, the ultimate right of way was established, which left the Property with a non-conforming front yard setback of 42.5 feet.
9. Applicants now wish to construct two additions onto the existing dwelling, one on each end.
10. In addition, Applicants seek to remove the existing front stoop and replace it with a 22-foot by 6-foot covered porch.

11. Though the existing front stoop encroaches farther into the existing 42.5-foot setback, because it is uncovered, it is not included in the setback calculation.

12. The covered front porch will provide protection from the elements when entering the residence.

13. The proposed improvements cannot be located to the rear of the dwelling because of the location of the on-site well.

14. The proposed construction will increase the existing non-conformity by 6 feet resulting in a front yard setback of 36.5 feet.

15. Accordingly, Applicant seeks a variance from §160-23.B(1) in order to permit a front yard setback of 36.5 feet.

16. The proposed improvements are consistent with the character of the existing dwelling and the surrounding properties.

17. The proposed improvements will not have an adverse impact on the neighboring properties.

DISCUSSION:

Applicants are before this Board requesting a variance from §160-23.B(1) in order to increase the existing, non-conforming front yard setback by 6 feet, which will result in an overall front yard setback of 36.5 feet.

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.B(1). Additionally, the Board finds that the variance as requested, a 6-foot encroachment into the existing non-conforming front yard setback, which would result in an overall front yard setback of 36.5 feet, 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 8th day of April, 2022 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. 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: DocuSigned by:  
John Snyder  
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John Snyder, Chairman

By: DocuSigned by:  
David Hersh  
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David Hersh

By: DocuSigned by:  
Stephen Yates  
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Stephen Yates

GRIM, BIEHN & THATCHER

By: DocuSigned by:  
Kelly L. Eberle  
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Date of Mailing: 04/08/2022