

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: Angelo Franco

Appeal No. 2022-006

A hearing was held in the above matter on Thursday, June 2, 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. Applicant was present and represented by Alex Shnayder, Esq. Neighboring property owner Henryk Ostasc of 4 Gina Circle, requested and was granted, 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 May 13, 2022 to neighboring properties from K. Eberle
- B-4 Entry of Appearance – Henryk Ostasc

Applicant's Exhibits

- A-1 Application with all Attachments
- A-2 Plot Plan with Propane Tanks Shown
- A-3 Google Ariel View of Property
- A-4 Picture of Existing Fence Line

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. Applicant is Angelo Franco.
2. Applicant is the owner of the real property located at 2 Gina Circle, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-022-205-01.
3. The Property is a 1.25-acre lot located in the RR (Rural Residential) Zoning District in Hilltown Township and is improved by a single-family dwelling, an in-ground swimming pool and surrounding decking, and other related improvements.
4. Applicant has resided at the Property for the last 24 years.
5. In 2008, Applicant, through his contractor, obtained a permit from the Township for the installation of the existing in-ground swimming pool ("2008 Permit").
6. The plans for the in-ground pool and the 2008 Permit were based upon Applicant's and Applicant's contractor's good faith belief as to the location of the existing property lines.
7. The in-ground pool was constructed and installed approximately 15 feet from the location where the side yard property line was believed to be in order to comply with the minimum setback requirement of 10 feet.

8. The pool is a freeform shape and is wider than it is long.
9. Applicant has used the pool for the past 14 years without complaint from the neighbors.
10. Recently, Mr. Ostasc, who owns the adjoining property, obtained a survey in connection with his own proposed improvements.
11. The results of that survey showed that the Applicant's property line was closer to Applicant's dwelling than originally believed.
12. Thereafter, Applicant obtained a new survey to confirm the location of the property line.
13. The results of Applicant's new survey showed that the property line is 9 feet off of the driveway rather than 15 feet.¹
14. Upon receiving the results of his survey, Applicant removed the fencing and landscaping that inadvertently encroached on the neighboring property and reinstalled the fencing exactly on Applicant's side yard property line.
15. As a result of the reduction in the width of the Property, approximately 59 inches of the existing pool decking is located exactly on the side yard property line with no setback.
16. §160-23.I.11[1](b) of the Hilltown Township Zoning Ordinance requires a minimum 10 foot setback for in-ground swimming pools.
17. The term "pool" as used in §160-23.I.11[1](b) includes the actual pool together with any surrounding patio, decking, and associated improvements. *See* §160-23.I.11[1].
18. Applicant requests a variance from §160-23.I.11[1](b) in order to allow the existing 59 inches of decking to remain located exactly on the Property line with no setback.

¹ The Board notes that Mr. Ostasc does not agree with the results of Applicant's survey. However, disputes over property boundaries are beyond the purview of this Board.

19. Mr. Ostasc testified that other than the dispute as to the location of the side yard property line, he has no issue with the existing pool and that in its current location, it has no impact on his property.

II. DISCUSSION:

Applicant is before this Board requesting a variance from §160-23.I.11[1](b) in order to reduce the required 10-foot yard setback for an existing in-ground pool and allow the existing 59 inches of decking to remain located exactly on the Property line with no setback.

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 the 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 §160-23.I.11[1](b). Additionally, the Board finds that the relief requested, a

reduction in the side yard setback to allow 59 inches of the existing pool to be located on the side yard property line, 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 18 day of July, 2022 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

1. 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: DocuSigned by: John Snyder
John Snyder, Chairman

By: DocuSigned by: David Hersh
David Hersh

By: DocuSigned by: Stephen Yates
Stephen Yates

GRIM, BIEHN & THATCHER

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

Date of Mailing: July 18, 2022