

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: Kyle Defelice

Appeal No. 2022-008

A hearing was held in the above matter on Thursday, September 15, 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. 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 August 24, 2022 to neighboring properties from K. Eberle

Applicant's Exhibits

- A-1 Application with all Attachments
- A-2 Revised Plot Plan

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 Kyle Defelice.
2. Applicant is the owner of the real property located at 1017 Callowhill Road, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-034-041.
3. The Property is located in the RR – Rural Residential Zoning District in Hilltown Township.
4. The Property is improved by a single-family dwelling, a patio, and related improvements.
5. Applicant wishes to remove the existing patio, as well as a portion of the asphalt driveway and the stone driveway in order to construct and/or install a pole barn.
6. The pole barn will be approximately 40'x 36' and will be 27 feet in height.
7. The pole barn will be used as a garage and for personal storage.
8. Due to the shallowness of the Property, the pole barn will encroach into the required rear yard setback area.
9. Accordingly, Applicant is requesting a variance from §160-23B.(1) of the Hilltown Township Zoning Ordinance in order to allow for a rear yard setback of 68 feet rather than the required 75 feet.

II. DISCUSSION:

Applicant is before this Board requesting a variance from §160-23B.(1) of the Zoning Ordinance in order to allow a rear yard setback of 68 feet rather than the required 75 feet in connection with the constructions and installation of a pole barn.

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 §160.23.B(1). Additionally, the Board finds that the variance as requested, a reduction in the rear yard setback from the required 75 feet to 68 feet, 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 28th day of October, 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. 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: 10/31/2022