

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: M. Gold Building Group, LLC

Appeal No. 2022-009

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 and was represented by Darin Steinberg, Esq. Wally Rosenthal of 530 Rosie Lane, Hilltown Township 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 August 30, 2022 to neighboring properties from K. Eberle
- B-4 Application with all Attachments
- B-5 Entry of Appearance – Wally Rosenthal

Applicant's Exhibits

- A-1 Deed to Property
- A-2 Consent from Owner
- A-3 C.V. for Kris J. Reiss, P.E.

- A-4 Existing Features and Demolition Plan
- A-5 Zoning Plan -- Proposed New Home
- A-6 Aerial Photo of Neighborhood
- A-7 Demolition Permit
- A-8 Photo Showing Existing Structures and New Home

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 M Gold Building Group, LLC.
2. Applicant is the owner of the real property located at 2214 Keystone Drive, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-022-204.
3. The Application was presented by Prestige Property Partners, LLC with permission from the Applicant.
4. The Property is located in the RR – Rural Residential Zoning District in Hilltown Township.
5. The Property is approximately 38,000 square feet rather than the minimum required 50,000 square feet making it a legally non-conforming lot.

6. The Property was previously improved by a single-family dwelling and shed, both of which were vacant and had fallen into a state of disrepair.

7. Because of their dilapidated state, the structures were demolished.

8. Demolition occurred in the month(s) leading up to the hearing before this Board.

9. Prior to its demolition, the dwelling encroached into the required front yard setback area, leaving a front yard setback of only 31 feet.

10. Applicant wishes to construct a new single-family dwelling with 3-car garage and related improvements.

11. The proposed dwelling will be 2 stories and approximately 3,000 square feet.

12. Because the lot is undersized, the size of the building envelope is reduced.

13. As a result, the proposed dwelling will encroach 11 feet into the front yard setback, resulting in a 39-foot front yard setback.

14. §160-23B.(1) of the Hilltown Township Zoning Ordinance requires a minimum front yard setback of 50 feet.

15. Accordingly, Applicant seeks a variance from §160-23B.(1) to permit a front yard setback of 39 feet rather than 50 feet.

16. Though the proposed front yard setback is less than required by §160-23B.(1), it increases the existing front yard setback by approximately 8 feet.

17. In order to develop a nonconforming lot, which lawfully existed prior to the enactment of Zoning Ordinance, §160-61B of the Zoning Ordinance requires the applicant to obtain a special exception.

18. Accordingly, Applicant is seeking a special exception in order to construct a single-family dwelling with garage and related improvements on the Property.

II. DISCUSSION:

Applicant is before this Board requesting a variance from §160-23B.(1) of the Zoning Ordinance in order to allow a front yard setback of 39 feet and a special exception pursuant to §160-61B in order to develop an existing non-conforming lot.

A. *Variance from §160-23B.(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 §160.23.B(1). Additionally, the Board finds that the variance as requested, a reduction in the front yard setback from the required 50 feet to 39 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.

B. Special Exception

Section 160-62B of the Zoning Ordinance allows for the development of an existing, non-conforming lot by special exception.

A special exception is a use that is expressly permitted in a zoning district as long as certain conditions detailed in the zoning ordinance are found to exist. *Broussard v. Zoning Bd. of Adjustment*, 907 A.2d 494, 499 (Pa. 2006). An applicant seeking a special exception bears the burden of proving that its request complies with the specific, objective requirements contained in the zoning ordinance. *Sheetz, Inc. v. Phoenixville Borough Council*, 804 A.2d 113, 115 (Pa. Cmwlth. 2002). Once the applicant has satisfied this initial burden, the burden then shifts to any objectors to establish that the proposed exception would be detrimental to the public health, safety, and welfare. *Id.*

Based on the above, the Zoning Hearing Board finds that Applicant has presented sufficient evidence to show compliance with the requirements for Sections 160-62 of the Hilltown Township Zoning Ordinance such that it is entitled to the requested special exception.

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