

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: Alex Nagy and Anthony Colon

Appeal No. 2023-008

A hearing was held in the above matter on Thursday, May 11, 2023 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 David Hersh, Chairman and Board Members Stephen C. Yates and Brooke Rush. 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 April 20, 2023 to neighbors 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 a quorum of members present, hereby makes the following Findings of Fact:

1. The applicants are Alex Nagy and Anthony Colon ("Applicants").
2. Applicants are the owners of the real property located at 1128 Callowhill Road, Hilltown Township, Pennsylvania ("Property") and more specifically identified as Bucks County Tax Parcel No. 15-034-111-003.
3. The Property is located in the RR (Rural Residential) Zoning District in Hilltown Township.
4. The Property is improved with a 1,100 square-foot two-story, single-family dwelling with related improvements including a small garage.
5. Access to the Property is taken via a driveway on the western side of the Property.
6. The Property is served by on-site sewer and water.
7. When looking at the Property from Callowhill Road, the well is located in the front yard just off the right side of the dwelling and the septic system is located in the rear yard to the left of the dwelling.
8. The rear yard of the Property is fully fenced in.
9. The Property contains various trees, shrubbery, and landscaping, which Applicants seek to preserve.
10. Applicants wish to install a 26'x 35' detached accessory building on the eastern side of the Property.

11. It is Applicants' intention to use the building as a garage; however, there is not currently vehicular access to that side of the Property. In the event that Applicants are unable to access the accessory building by vehicle, it would serve as storage and a workshop.

12. The proposed structure would have electricity and would not be used for commercial purposes.

13. Applicants seek to have 13 feet of the structure protrude into the front yard in order to avoid removing a portion of the split rail fence and disturbing the existing plantings.

14. §160-23I.(2)(a)[4] of the Hilltown Township Zoning Ordinance ("Zoning Ordinance") prohibits accessory buildings in the front yard.

15. Accordingly, Applicants have requested a variance from §160-23I.(2)(a)[4] to permit a 13-foot encroachment into the front yard.

16. Applicants are also seeking a variance from §160-23B.(1) of the Zoning Ordinance to permit a side yard setback of 10 feet rather than the required 25 feet.

17. While the proposed structure will be located 68 feet from the existing dwelling, moving it 15 feet closer to the existing dwelling to comply with the Zoning Ordinance is not possible as it will interfere with the existing well.

18. Additionally, moving the location of the proposed structure to the opposite side of the Property would interfere with the existing well.

II. DISCUSSION:

Applicants are before this Board requesting a variance from §160-23I.(2)(a)[4] of the Zoning Ordinance to permit an accessory building in the front yard and a variance from §160-23B.(1) of the Zoning Ordinance to permit a side yard setback of 10 feet rather than the required 25 feet. Both variance requests pertain to the construction of a 26' x 35' detached accessory structure.

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.

Variance from §160-23B.(1)

Based on the above, the Board finds that the Applicants have shown the existence of a hardship, not self-created, and unique and peculiar to the Property that requires the grant of the variance from §160-23.B(1) to permit a reduced side yard setback of 10 feet rather than the required 25 feet. Additionally, the Board finds that the variance 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.

Variance from §160-23I.(2)(a)[4]

However, Applicant has failed to meet its burden of proof necessary for a variance from §160-23I.(2)(a)[4] of the Zoning Ordinance. Applicants have failed to demonstrate that they have suffered

an “undue hardship” as a result of a unique, physical circumstance on the Property and that such a hardship was not self-created. In *Larsen v. Zoning Bd. of Adjustment of City of Pittsburgh*, 672 A.2d 296 (Pa. 1996), the Pennsylvania Supreme Court stated, “[v]ariations are meant to avoid ‘unnecessary’ hardships; the granting of relief cannot be done simply to accommodate the changing needs to a growing family.” While the location chosen may be the best and most convenient for Applicants, in that Applicants would not have to disturb their plantings or remove a portion of the fence, that does not constitute an “undue hardship” warranting the grant of the variance. Applicants could move the garage back 13 feet and out of the rear yard by removing a portion of the fence. Applicants could still fence to either side of the proposed structure to ensure that the rear yard remains fully enclosed.

Based on the above, the Board finds that Applicants have failed to meet their burden of proof, and their request for zoning relief in the form of a variance from §160-23I.(2)(a)[4] is denied.

DECISION AND ORDER

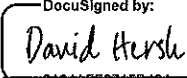
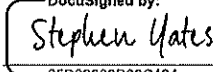

AND NOW, this 14 day of June, 2023 the Hilltown Township Zoning Hearing Board hereby denies Applicants' request for a variance from §160-23I.(2)(a)[4] as Defendants have failed to meet their burden of proof and grants the requested variance from §160-23.B(1) conditioned as follows:

1. As it relates to the side-yard setback, construction shall be done in conformity with B-4 and the testimony presented at the hearing. However, this condition shall not prevent Applicants from amending their Plan included as part of B-4 in order to move the proposed structure out of the front yard provided that the side yard setback remains a minimum of 10 feet.

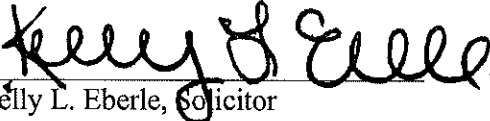
2. Applicants shall comply with all other Township, County, and State laws, regulations with respect to construction and use.

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: 
David Hersh, Chairman
By: 
Stephen Yates
By: 
D. Brooke Rush

GRIM, BIEHN & THATCHER

By:  Date of Mailing: 6/14/2023
Kelly L. Eberle, Solicitor
104 South Sixth Street
Perkasie, PA 18944