

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: Heather and Vincent Burns

Appeal No. 2023-012

A hearing was held in the above matter on Thursday, August 24, 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, Stephen C. Yates, and D. Brooke Rush. In addition, Kelly L. Eberle, the Board Solicitor, was in attendance, as was the Board stenographer. Applicants were present and testified on their own behalf. 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 July 26, 2023 to neighboring property owners 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 Heather and Vincent Burns ("Applicants").
2. Applicants are the owners of the real property located at 728 Hilltown Pike, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-032-054.
3. The Property is located in the RR (Rural Residential) Zoning District in Hilltown Township and is comprised of approximately 1.87 acres.
4. At their prior residence, Applicants had hens that they kept as pets.
5. Applicants wish to keep the hens, which they have had for the past six years, on the Property.
6. Applicants have converted a garden shed into a 4'x10' coop with an automatic door and have installed a flexible, moveable electric fence which will allow the hens to free range while being protected.
7. Applicants have also installed a sail shade on the coop to keep out predators such as eagles and foxes.
8. The coop is located approximately 350 feet from the rear property line, 80 feet from each side property line, and approximately 150 feet from the front property line.
9. In addition, the neighboring residential dwellings are more than 100 feet from the chicken coop.
10. Hilltown Township Zoning Ordinance §160-23.I(17) defines an I17 Residential Agricultural Use as follows:

Residential agricultural use involves farming as an accessory use occurring on the same lot as a single-family dwelling, and includes tilling of the soil and raising of livestock, horses, fur-bearing animals (animals raised for the sale of their fur) or poultry.

11. §160-23.I(17) requires a minimum of three acres for the keeping or raising of livestock, horses, fur-bearing animals or poultry and places an additional limit on the number of fowl with a maximum of 50 on a three acre lot.

12. Accordingly, Applicants request a variance from §160-23.I(17) in order to permit a maximum of 10 hens on the Property.

13. Applicants do not own a rooster and are willing to agree to a condition prohibiting any roosters on the Property in connection with any relief granted.

II. DISCUSSION:

Applicants are before this Board requesting a variance from §160-23.I(17) in order to permit a maximum of 10 hens on their 1.87 acre lot where a minimum of three acres is otherwise required.

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 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.I(17) in order to permit a maximum of 10 hens on their 1.87 acre lot where a minimum of three acres is otherwise required subject to the conditions set forth in the Decision and Order. 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.

DECISION AND ORDER

AND NOW, this 4th day of October, 2023 the Hilltown Township Zoning

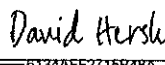
Hearing Board hereby grants the zoning relief requested conditioned as follows:


1. Applicants shall be limited to a maximum of ten (10) hens on the Property;
2. The keeping or raising of a rooster(s) on the Property is prohibited; and
3. 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.

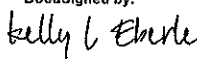
HILLTOWN TOWNSHIP ZONING
HEARING BOARD

By: DocuSigned by:

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 David Hersh, Chairman

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 Stephen Yates

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 D. Brooke Rush

GRIM, BIEHN & THATCHER

By: DocuSigned by:

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 Kelly L. Eberle, Solicitor
 104 South Sixth Street
 Perkasie, PA 18944

Date of Mailing: October 4, 2023