

**HILLTOWN TOWNSHIP ZONING HEARING BOARD**

In Re: Michael and Kerry Tedesco

Appeal No. 2023-016

A hearing was held in the above matter on Thursday, January 25, 2024 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 D. Brooke Rush, Vice Chairman and Stephen C. Yates. 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. Rob McCubbin of Anthony & Sylvan Pools also testified on behalf of the Applicants. No other 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 December 28, 2023 to neighboring property owners from K. Eberle
- B-4 Stipulation of Settlement filed September 23, 2002

Applicants' Exhibits

- A-1 Application with all attachments
- A-2 Township Engineer review letter dated November 10, 2023

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 Michael and Kerry Tedesco ("Applicants").
2. Applicants are the owners of the real property located at 213 Casey Way, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-060-044.
3. The Property is a corner lot consisting of 31,581 square and is located in the RR (Rural Residential) Zoning District in Hilltown Township with frontage on both Rosie Lane and Casey Way.
4. The Property is a B3 (Single-Family Detached Cluster) use and is improved with a single-family dwelling with related improvements including front and side walkways, a rear patio area, and a shed.
5. The Property currently has 6,218 square feet of impervious surface coverage which equates to 19.69%.
6. The Property is part of a 185-lot subdivision created in or around 2002.
7. At that time, the then-owner(s) and/or developer entered into a stipulation ("Stipulation") with the Board of the Supervisors of Hilltown Township wherein it was agreed, in relevant part, that certain lots, including the subject Property, would have a minimum lot size of 30,000 square feet and a maximum impervious surface ratio of 20%.

8. This is consistent with the existing Zoning Ordinance requirements for B3 use in the RR Zoning District.

9. The Stipulation also allowed a portion of lots to have a minimum lot size of 15,000 square feet and a maximum impervious surface ratio of 35%; however, the maximum impervious surface area for the entire site could not exceed 20%.

10. Applicants wish to install an in-ground pool and patio accessory to the single-family dwelling.

11. The proposed pool is a free-form pool consisting of approximately 812 square feet with 978 square feet of surrounding decking.

12. The pool will measure approximately 26 feet four inches wide and 40 feet long.

13. The patio that will surround the proposed pool will work in conjunction with the existing patio.

14. In total, the proposed pool will add 1,814 square feet of impervious surface area, which will bring the total impervious surface coverage to 8,032 square feet or approximately 25.43%.

15. The Township Engineer has already reviewed the plans as they relate to stormwater management and did not identify any issues.

16. Zoning Ordinance Table 160 Attachment 3 limits the maximum impervious surface coverage in the RR Zoning District to 20%.

17. Accordingly, Applicants request a variance from Zoning Ordinance Table 160 Attachment 3 to increase the impervious surface from the maximum allowable 20% to 25.43%.

18. While the Board of Supervisors of Hilltown Township did not take a position on this Application, they did note their concern about the impervious surface coverage on the subdivision site as a whole.

II. DISCUSSION:

Applicants are before this Board requesting a variance from Zoning Ordinance Table 160 Attachment 3 to increase the impervious surface from the maximum allowable 20% to 25.43% in connection with the construction and installation of an in-ground pool, surrounding patio, and related improvements.

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 Zoning Ordinance Table 160 Attachment 3 to increase the impervious surface from the maximum allowable 20% to 25.43% in order to install an in-ground pool and patio. 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 8th day of March, 2024 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

1. Construction and use shall be done in a manner consistent with the testimony and exhibits presented before this Board; and
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

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*Stephen Yates*  
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By: DocuSigned by:  
*Brooke Rush*  
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D. Brooke Rush

GRIM, BIEHN & THATCHER

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

Date of Mailing: March 11, 2024