

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: Joe Cuciniello

Appeal No. 2024-001

A hearing was held in the above matter on Thursday, March 28, 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 David Hersh, D. Brooke Rush, and Stephen C. Yates. In addition, Kelly L. Eberle, the Board Solicitor, was in attendance as was the Board stenographer. Applicant was present along with Brian Stover, the project designer. 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 February 29, 2024 to neighboring property owners from K. Eberle

Applicants' Exhibits

- A-1 Application with all attachments and exhibits

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 applicant is Joseph Cuciniello ("Applicant").
2. Applicant is the owner of the real property located at 204 Pasquale Way, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-022-179-007.
3. The Property is located in the RR-Rural Residential Zoning District and is improved with a single-family dwelling and related improvements including a large rear patio off of the main part of the dwelling and a second smaller patio that serves the walkout basement.
4. The Property is served by onsite sewer with a septic tank located to the side of the dwelling opposite the driveway (plan left) and an elevated sand mound in the rear yard behind the driveway (plan right) and connected by an effluent line running across the rear of the Property, although the exact location is listed as "unknown" on the Plan.
5. Applicant wishes to install an in-ground pool with surrounding decking and patio, an accessory structure for shade and storage purposes, and related improvements in the rear yard (the "Pool Improvements").
6. In connection with the proposed Pool Improvements, Applicant seeks two variances:
 - 1) a variance from Zoning Ordinance Table 160 Attachment 3 to allow 20% impervious surface coverage rather than the maximum permitted 15%; and 2) a variance from Zoning Ordinance §160-23.B(1) in order to permit a rear yard setback of 41.5 feet rather than the required 75 feet.

Impervious Surface

7. The Property has an existing impervious surface coverage of 14.9%.
8. Hilltown Township Zoning Ordinance Table 160 Attachment 3 permits a maximum of 15% impervious surface coverage for a B1 – Single-Family Detached Dwelling in the RR Zoning District.
9. The proposed pool and coping are approximately 943 square feet with an additional 1,855 square feet in pool decking and patio area.
10. Together with the proposed shade structure, equipment pad, and other improvements, the Pool Improvements will add an additional 2,615 square feet of impervious surface to the Property bringing the percentage of impervious coverage on the Property to 20%.
11. A seepage pit will be located on the downhill side of the proposed pool patio (Plan left) to capture and slow water runoff of the new additional square footage that will be added.

Rear Yard Setback

12. As part of the Pool Improvements, Applicant seeks to install a 352 square foot accessory structure at the rear of the pool.
13. The proposed structure is rectangular in shape and will be open in the front and contain a storage area in the back.
14. §160-23.I(2)(a)[4] requires that residential accessory structures greater than 250 square feet shall be located in accordance with the setback requirements for the principal dwelling.
15. §160-23.B(1) requires a minimum rear yard setback of 75 feet for all single-family detached dwellings in the RR Zoning District.
16. Applicant proposes a 41.5 foot rear yard setback.

17. When questioned as to whether the size of the accessory structure could be reduced to make it less than 250 square feet, Mr. Stover indicated that it would not be possible as Applicant would be left with minimal storage and “definitely no shade” or a “little tiny piece.”

18. When asked if the structure could be located between the pool and the sand mound, Mr. Stover indicated that it would not be able to provide shade no matter how it was turned.

19. The Board does not find Mr. Stover’s testimony credible in this regard.

20. Applicant indicated that it was a challenge to create shade since the rear yard was consistently in the sun.

21. When asked if the structure could be turned and moved up, Mr. Stover indicated that he had shown Applicant a proposal with something similar and that it reduced the encroachment but did not completely eliminate it.

II. DISCUSSION:

Applicant is before this Board requesting a variance from Zoning Ordinance Table 160 Attachment 3 to increase the impervious surface coverage from the maximum allowable 15% to 20%, and a variance from Zoning Ordinance §160-23.B(1) in order to permit a rear yard setback of 41.5 feet rather than the required 75 feet, in connection with the construction and installation of an in-ground pool and accessory shade and storage 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 Zoning Ordinance Table 160 Attachment 3

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 15% to 20% in order to install an in-ground pool and related improvements. 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 Zoning Ordinance §160-23.B(1)

The Board, however, does not find 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 §160-23.B(1) in order to permit a rear yard setback of 41.5 feet rather than the required 75 feet nor does the requested relief constitute the minimum relief necessary to afford Applicant the opportunity to reasonably use the Property. 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 Applicant that does not constitute an “undue hardship” warranting the grant of the variance. Furthermore, the testimony demonstrates that the proposed structure could be located in a manner that would reduce the encroachment into the rear yard setback.

Based on the above, the Board finds that Applicant has failed to meet his burden of proof, and the request for zoning relief in the form of a variance from §160-23.B(1) is denied.

DECISION AND ORDER

AND NOW, this 10th day of May, 2024 the Hilltown Township Zoning Hearing Board hereby:

1. Grants a variance from Zoning Ordinance Table 160 Attachment 3 to allow a 20% impervious surface coverage rather than the maximum allowable 15%, conditioned as follows:

- a. Construction and use shall be done in a manner consistent with the testimony and exhibits presented before this Board; and
- b. Applicants shall comply with all other Township, County, and State laws, regulations with respect to construction and use.

2. Denies Applicant’s request for a variance from §160-23.B(1) as Defendant has failed to meet his burden of proof.

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

DocuSigned by:
By: David Hersh

6134AFF2715B48A
David Hersh, Chairman

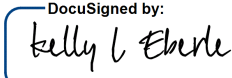
DocuSigned by:
By: Stephen Yates

65D82380D09C404...
Stephen Yates

DocuSigned by:
By: Brooke Rush

C0783C1BC10B4F1...
D. Brooke Rush

GRIM, BIEHN & THATCHER

By: 
97A84A3B3DC94E6...
Kelly L. Eberle, Solicitor
104 South Sixth Street
Perkasie, PA 18944

Date of Mailing: 05/13/2024