

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: RB Ashley Customs, LLC

Appeal No. 2024-002

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, Chairman, D. Brooke Rush, and Stephen C. Yates. In addition, Kelly L. Eberle, the Board Solicitor, was in attendance as was the Board stenographer. Brynn Schaeffer, P.E., testified on Applicant’s behalf. The following individuals requested, and were granted, party status: Nancy Barin and John Azzopardi of 2417 Diamond Street; and Darius and Ruth Puzinas of 2416 Diamond Street.

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
- B-4 Entries of Appearance for:
 - Nancy Barin and John Azzopardi – 2417 Diamond Street, Hilltown Township
 - Darius and Ruth Puzinas – 2416 Diamond Street, Hilltown Township

Applicants’ Exhibits

- A-1 Application with all attachments
- A-2 Authorization to Act as Agent

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 RB Ashley Customs, LLC ("Applicant").
2. The subject property is located at 2408 Diamond Street, Hilltown Township, Pennsylvania and is more specifically identified as Bucks County Tax Parcel No. 15-022-140 (the "Property").
3. The Property is located in the RR-Rural Residential Zoning District and is an existing, non-conforming lot with regard to lot size, consisting of approximately 34,090 square feet gross and 20,433 square feet net area rather than the required minimum 50,000 square feet.
4. In addition to being undersized, the Property is an irregular, triangle-shaped lot with the "base" of the triangle located along Diamond Street as shown in Applicant's site plan included with *Exhibit A-1*:



5. It is noted that the plan does not provide for a rear yard.

6. While the Property is currently a vacant lot, there was a single-family ranch-style dwelling on the Property until 2015 when it was consumed by a fire.

7. The Property is presently owned by Edward and Patricia Sztukowski (the “Owners”).

8. The Owners entered into an Agreement of Sale to sell the Property to Scott Schwartz, and Applicant was engaged by Mr. Schwartz to construct a single-family dwelling on the Property.

9. Carta Engineering prepared the plans of survey and engineering plans on behalf of Applicant.

10. Mr. Brynn Schaffer, testifying on behalf of Carta Engineering, presented a letter from the Owners authorizing Applicant to file this Application. *See A-2.*

11. Applicant proposes to construct a 2,090 square foot single-family dwelling with attached garage and related improvements.

12. The proposed square footage of the dwelling includes the proposed porch and patio.

13. The Property will be served by on-site water and sewer and will take access from Diamond Street with a driveway through the southern end of the Property.

14. The septic area will be located on the southwest side of the proposed dwelling.

15. Applicant is before this Board requesting two variances: a variance from Zoning Ordinance §160-23.B(1) in order to permit a front yard setback of 27 feet rather than the required 50 feet; and a variance from Zoning Ordinance Table 160 Attachment 3 to allow an impervious surface coverage of 18.1% rather than the maximum allowable 15%.

16. Originally, the plan was submitted showing the setbacks and building envelope from PennDOT’s legal right of way, which is approximately 33 feet wide; however, per Hilltown

Township Code, the setbacks must be calculated from the ultimate right-of-way, which is 80 feet in width.

17. The ultimate right-of-way line brought the setback line an additional 23.5 feet further into the Property as compared to the legal right-of-way.

18. After accounting for the ultimate right-of-way and the septic area, Applicant is left with a small, triangular building envelope.

19. As a result, the proposed garage encroaches into the front yard setback area.

20. While Mr. Schaeffer was unable to opine on possible options to reconfigure the location of the garage, he indicated that moving the garage to any other location on the Property would increase the length of the driveway and therefore increase the impervious surface coverage.

21. While the proposed setback is 27 feet from the ultimate right-of-way, it is 57 feet from the existing cartway.

22. Accordingly, Applicant seeks a variance to permit a front yard setback of 27 feet rather than the required 50 feet.

23. Applicant proposes a total of 3,683 square feet of impervious surface.

24. In order to minimize the amount of impervious surface coverage on the Property, Applicant turned the proposed structure to face the driveway, which reduced the length of the driveway.

25. Based on the net area of the Property, this equals 18.1% impervious surface coverage.

26. Zoning Ordinance Table 160 Attachment 3 requires a maximum impervious surface coverage of 15%.

27. However, Table 160 Attachment 3 also requires a minimum lot size of 50,000 square feet.

28. The Property's existing net area is less than half of the required minimum lot size.

29. Despite the Property's existing, non-conforming size, Applicant seeks relief for only a 3.1% increase in impervious surface coverage.

30. Neighboring property owners expressed concerns with flooding on the roadway and the location of the proposed structure relative to the actual cartway.

31. Mr. Schaeffer indicated that Applicant would be required to comply with PennDOT regulations as to the size of the swale along, and the piping under, the driveway.

II. DISCUSSION:

Applicant is before this Board requesting two variances: a variance from Zoning Ordinance §160-23.B(1) in order to permit a front yard setback of 27 feet rather than the required 50 feet; and a variance from Zoning Ordinance Table 160 Attachment 3 to allow an impervious surface coverage of 18.1% rather than the maximum allowable 15% in connection with the construction and installation of a single-family dwelling 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 §160-23.B(1) in order to permit a front yard setback of 27 feet rather than the required 50 feet and a variance from Zoning Ordinance Table 160 Attachment 3 to allow an impervious surface coverage of 18.1% rather than the maximum allowable 15% in order to construct a single-family dwelling with 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 Applicant the opportunity to reasonably use the Property.


DECISION AND ORDER

AND NOW, this 10th day of May, 2024 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

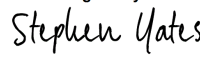
1. Construction and use shall be done in a manner consistent with the testimony and exhibits presented before this Board; and
2. Applicant shall comply with all other Township, County, and State laws, regulations with respect to construction and use.

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.

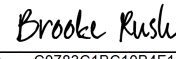
HILLTOWN TOWNSHIP ZONING HEARING BOARD

By: DocuSigned by:


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 David Hersh, Chairman

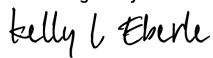
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 D. Brooke Rush

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

Date of Mailing: 05/13/2024