

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: Michael and Kerry Tedesco

Appeal No. 2024-003

A hearing was held in the above matter on Thursday, April 18, 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 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 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 March 28, 2024 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 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 located in the RR (Rural Residential) Zoning District in Hilltown Township and is improved with a single-family dwelling with related improvements including front and side walkways, a rear patio area, and a shed.
4. The Property is a corner lot with frontage on both Rosie Lane and Casey Way.
5. Applicants were before this Board in January 2024 at which time this Board granted zoning relief in order to increase the impervious surface coverage on the Property to 25.43% in connection with the installation of an in-ground swimming pool and patio in the rear yard of the Property. *See Hilltown Township Zoning Hearing Board Appeal No. 2023-016.*
6. Applicants have installed, or are in the process of installing, the swimming pool and patio.
7. §160-23.I(11) of the Hilltown Township Zoning Ordinance ("Zoning Ordinance") requires all non-commercial swimming pools to be enclosed with a fence measuring no less than 48 inches in height.
8. Applicants wish to install a 54-inch aluminum fence abutting the rear of the dwelling and extending along the side yard, rear yard, and the yard with frontage along Casey Way.
9. The proposed fence will enclose the rear yard area including the pool.

10. The fence will be located 1 foot off of the property line on all 3 sides.
11. The proposed fence is not a stockade or privacy fence.
12. Because the Property is a corner lot, the yards extending along both Rosie Lane and Casey Way are considered front yards. *See Zoning Ordinance §160-11.*
13. §160-23.I(2)(a)[2] of the Zoning Ordinance restricts residential fences located in the front yard to a maximum height of 48 inches.
14. This would result in one side of the fence being 6 inches shorter than the other sides.
15. Accordingly, Applicants request a variance from Zoning Ordinance §160-23.I(2)(a)[2] to allow a 54-inch fence in the front yard.
16. Applicants testified that they spoke with the neighboring property owners and none voiced an objection, and no neighbors were present at the hearing.

II. DISCUSSION:

Applicants are before this Board requesting a variance from Zoning Ordinance §160-23.I(2)(a)[2] in order to permit a 54-inch fence in the front yard as opposed to the maximum permitted height of 48 inches.

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.I(2)(a)[2] to permit a 54-inch fence in the front yard rather than the maximum permitted height of 48 inches. 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 31 day of May, 2024 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

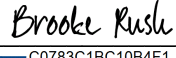
1. The fence shall be installed in a manner consistent with the testimony and exhibits presented before this Board; and
2. Applicants shall comply with all other Township, County, and State laws, regulations with respect to construction and use.

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

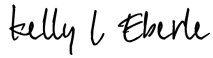
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 David Hersh, Chairman
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 D. Brooke Rush

GRIM, BIEHN & THATCHER

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

Date of Mailing: May 31, 2024