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September 16, 2024

John and Maureen Rouse
618 S. Perkasio Road
Perkasie, PA 18944

**Re: Hilltown Township Zoning Hearing Board
John and Maureen Rouse; Appeal No. 2024-006**

Dear Mr. and Mrs. Rouse:

Please find enclosed herewith a copy of the Decision of the Hilltown Township Zoning Hearing Board dated September 13, 2024 in the above captioned matter. The original of this Decision is being retained by the Township for its file.

Thank you for your attention to this matter.

Very truly yours,
Grim, Biehn & Thatcher



KELLY L. EBERLE

KLE/kbs
Enclosure

cc: Hilltown Township Manager
Mr. David Hersh
Mr. Stephen Yates
Mr. D. Brooke Rush
Gloria Price

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: John and Maureen Rouse

Appeal No. 2024-006

A hearing was held in the above matter on Wednesday, July 31, 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 Board Members Stephen C. Yates and 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. Gloria Price of 600 South Perkasio Road, Perkasio, PA requested, and was granted, 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 3, 2024 to Neighbors from K. Eberle
- B-4 Party Request Forms

Applicant's Exhibits

- A-1 Application with all Attachments
- A-2 Color Photograph of Carport
- A-3 Color Photograph of Carport and Front of Dwelling
- A-4 Statement from Applicant
- A-5 Letter to Applicant from Zoning Officer dated May 11, 2023

A-6 Letter to Applicant from Zoning Officer dated June 2, 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 John and Maureen Rouse ("Applicant").
2. Applicant is the owner of the real property located at 618 S. Perkasio Road, Hilltown Township and more specifically identified as Bucks County Tax Parcel No. 15-011-078-005 ("Property").
3. The Property is located in the CR2 (Country Residential 2) Zoning District in Hilltown Township.
4. The Property is approximately 1.25 acres and is improved with a single-family dwelling and related improvements including a carport and a patio located in the front yard, both of which are the subject of this appeal.
5. The carport is approximately 20'x24' and is enclosed on three sides.
6. The carport is located in the front yard, over the existing driveway and is anchored to the existing blacktop.
7. The carport is not a moveable or temporary structure.

8. Applicant installed the carport to protect their vehicles from waste from neighboring pigeons flying overhead, to provide a shelter for the vehicles during inclement weather, and to block smoke coming from a neighboring property.

9. In addition, Applicant installed a patio off the front of their house, which is approximately 18'x12'.

10. The patio is located in the front yard.

11. Applicant installed the patio so that they could sit outside without having a confrontation with the neighboring property owner.

12. Both the patio and the carport were installed without permits from the Township.

13. Applicant testified that the carport was installed 3 years ago and the patio installed one year later; however, neighboring property owner Gloria Price testified that that the carport was installed in the spring of 2023 and that she complained to the Township the day it was installed.

14. During public comment, Joseph Price stated that the patio was installed first, followed by the carport, both in the spring of 2023.

15. On May 11, 2023, the Township's Zoning Officer issued a letter to Applicant advising that it had come to her attention that Applicant had installed a patio in the front yard without a permit and that if the patio remains in the front yard, a zoning permit for said patio would be denied. Gloria Price is copied on this correspondence. *See A-5.*

16. The Prices' recollection of the timing of the construction and installation of the carport and patio is consistent with the date on the Zoning Officer's letter.

17. As a result of the Zoning Officer's letter, Applicant filed for a permit for the carport and the patio. *See A-1*

18. The sketch plan submitted by Applicant with Applicant's permit application for the carport indicates that the Property is 377' deep and 145' wide. *See A-1.*

19. The sketch plan further indicates that the dwelling is set back approximately 115' from the front property line. *See A-1.*

20. By letter dated June 2, 2023 the Township's Zoning Officer indicated that impervious surface calculations and setback lines for the carport were needed in order for the permit application to be considered complete. In that same letter, Applicant was advised that even once that additional information was received, the permit application would be denied because §160-23.I(2)(a)[4] of the Zoning Ordinance prohibits any portion of a residential accessory structure to be located within the front yard and the carport is located in the front yard and §160-23.I(2)(a)[3] of the Zoning Ordinance prohibits patios in the front yard. *See A-6.*

21. On May 20, 2024, the Township Zoning Officer issued a letter denying Applicant's permit application for the foregoing reasons.

22. §160-23.I(2)(a)[3] of the Zoning Ordinance provides as follows:

Decks and patios are permitted in side and rear yard areas and may be located no closer than 10 feet from any lot line, except for a side party wall lot line of attached dwellings in which case the deck or patio may extend to the side party wall lot line. A fence six feet in height, and extending the length of the deck or patio along the side party wall lot line, and attached to the deck or patio is permitted. No part or portion of any deck or patio is permitted within the front yard.

23. §160-23.I(2)(a)[4] of the Zoning Ordinance provides:

A residential accessory structure less than 250 square feet shall have a minimum setback of two feet from the side lot line and five feet from the rear lot line within the CR-1 and VC Zoning Districts. Within all other zoning districts the residential accessory structure shall be a minimum of 12 feet from the side and rear lot line. No part or portion of any residential accessory structure is permitted within the front yard. All residential accessory structure greater than 250 square feet shall be located in accordance with the applicable setback requirements for the principal dwelling. Residential accessory

structures shall not be closer than 15 feet to a principal dwelling on the same lot.

24. Applicant now files this appeal seeking a variance §160-23.I(2)(a)[3] in order to allow the existing patio in the front yard where it otherwise would not be permitted and a variance from §160-23.I(2)(a)[4], which prohibits any portion of a residential accessory structure to be located within the front yard, to allow the existing carport to remain.

II. DISCUSSION AND CONCLUSIONS OF LAW:

Applicant is before this Board requesting a variance from §160-23.I(2)(a)[3] in order to allow the existing patio in the front yard where it otherwise would not be permitted and a variance from §160-23.I(2)(a)[4], which prohibits any portion of a residential accessory structure to be located within the front yard, to allow the existing carport to remain.

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). Variances are meant to avoid 'unnecessary' hardships; the granting of relief cannot be done simply to accommodate changing needs of an applicant. *Larsen v. Zoning Bd. of Adjustment of City of Pittsburgh*, 672 A.2d 296 (Pa. 1996).

In the case of *Hertzberg vs. Zoning Board of Adjustment of the City of Pittsburgh*, 721 A.2d 43 (Pa. 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. *Hertzberg* further allows for a zoning hearing board to consider multiple factors, including the economic detriment to the applicant if the variance was denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood. *Id.* at 50. Consideration of the financial burden to the applicant is limited to the financial burden of bringing the property into compliance with the zoning ordinance in order to use it. *Demko v. City of Pittsburgh Zoning Board of Adjustment*, 155 A.3d 1163, 1169 (Pa.Cmwlth. 2017). Whether it is use or dimensional, a variance is appropriate only where the property, and not the person, is subject to the hardship. *One Meridian Partners, LLP v. Zoning Board of Adjustment of Philadelphia*, 867 A.2d 706 (Pa. Cmwlth. 2005).

The Board finds that Applicant has failed to meet the burden of proof necessary for the variances as requested by Applicant. Applicant has failed to demonstrate that Applicant has suffered an “undue hardship” as a result of a unique, physical circumstance on the Property and that such a hardship was not self-created to warrant the relief requested. Applicant has made no assertion that there is anything unique to the Property that would require the carport and the patio to be located in the front yard. Applicant has not provided any reason as to why the carport could not have been installed next to the house, which would eliminate or lessen the relief requested. Similarly, Applicant testified that the patio is located in the front yard so that Applicant can enjoy the outside while avoid disputes with the neighbor. While the Board is sympathetic to Applicant’s desire to enjoy the

Property, the Board is required to apply the law as set forth in the Municipalities Planning Code, the Hilltown Township Zoning Ordinance, and applicable case law.

Based on the above, the Board finds that Applicant has failed to meet the burden of proof, and the relief requested for zoning relief in the form of a variance from §160-23.I(2)(a)[3] in order to allow the existing patio in the front yard where it otherwise would not be permitted and a variance from §160-23.I(2)(a)[4], which prohibits any portion of a residential accessory structure to be located within the front yard, to allow the existing carport to remain, is denied.

DECISION AND ORDER

AND NOW, this 13th day of September, 2024 the Hilltown Township Zoning Hearing Board hereby denies Applicant's request for a variance from §§160-23.I(2)(a)[3] and 160-23.I(2)(a)[4] of the Hilltown Township Zoning Ordinance as Applicant has failed to meet the burden of proof necessary to warrant the grant of such variances.

HILLTOWN TOWNSHIP ZONING
HEARING BOARD

By: DocuSigned by:
David Hersh
 6134AE2715B48A
 David Hersh, Chairman

By: DocuSigned by:
Stephen Yates
 65D82380D09C404...

By: DocuSigned by:
Brooke Rush
 C0783C1BC10B4F1...

D. Brooke Rush

GRIM, BIEHN & THATCHER

By: DocuSigned by:
Kelly L Eberle
 97A84A3B3DC94E6...

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

Date of Mailing: 9/16/24