

MARY C. EBERLE  
JOHN B. RICE  
DIANNE C. MAGEE \*  
DALE EDWARD CAYA  
DAVID P. CARO ◊  
DANIEL J. PACI ◊ †  
JONATHAN J. REISS ◊  
GREGORY E. GRIM †  
PETER NELSON \*  
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KELLY L. EBERLE \*  
JOEL STEINMAN  
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COLBY S. GRIM  
MICHAEL K. MARTIN  
MITCHELL H. BAYLARIAN  
IAN W. PELTZMAN  
WILLIAM D. OETINGER

\* ALSO ADMITTED IN NEW JERSEY  
◊ ALSO ADMITTED IN NEW YORK  
† MASTERS IN TAXATION  
◊ ALSO A CERTIFIED PUBLIC ACCOUNTANT

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Kelly L. Eberle  
e-mail: [keberle@grimlaw.com](mailto:keberle@grimlaw.com)

J. LAWRENCE GRIM, JR., OF COUNSEL  
JOHN FREDERIC GRIM, OF COUNSEL

104 S. SIXTH STREET  
P.O. BOX 215  
PERKASIE, PA. 18944-0215  
(215) 257-6811  
FAX (215) 257-5374  
  
(215) 536-1200  
FAX (215) 538-9588  
  
(215) 348-2199  
FAX (215) 348-2520

September 6, 2019


Nicole Romano  
113 Carlton Place  
Sellersville, PA 18960

**Re: Hilltown Township Zoning Hearing Board  
Nicole Romano; Appeal No. 2019-006**

Dear Ms. Romano:

Please find enclosed herewith, a copy of the Decision of the Hilltown Township Zoning Hearing Board dated September 6, 2019, in the above captioned matter. The original of this Decision is being retained by the Township for its file.

Very truly yours,  
**Grim, Biehn & Thatcher**

  
**KELLY L. EBERLE**

KLE/kbs  
Enclosures

cc: Hilltown Township Manager  
Mr. John L. Snyder  
Mr. David Hersh  
Mr. Joseph Kirschner  
Dave Taylor, Zoning Officer  
Stephen B. Harris, Solicitor

**HILLTOWN TOWNSHIP ZONING HEARING BOARD**

In Re: Nicole Romano

Appeal No. 2019-006

A hearing was held in the above matter on Thursday, August 15, 2019, 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 John Snyder, Chairman, and David Hersh. In addition, Kelly Eberle, the Board Solicitor, was in attendance, as was the Board stenographer. The applicant was present and was not represented by counsel. Hilltown Township, represented by its solicitor, Stephen Harris, Esq., appeared in opposition to the Application. No individuals requested party status.

The following exhibits were admitted and accepted into evidence:

Board's Exhibits

- B-1 Proof of Publication
- B-2 Posting Certification
- B-3 Letter dated July 9, 2019 to neighbors from K. Eberle
- B-4 2016-11 ZHB Adjudication

Applicant's Exhibits

- A-1 Application for Appeal to Zoning Hearing Board filed June 26, 2016 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

**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, hereby makes the following Findings of Fact:

1. The applicant is Nicole Romano (“Applicant”).
2. Applicant is the owner of the subject property located at 113 Carlton Place, Hilltown Township, Pennsylvania (“Property”).
3. The Property is otherwise identified as Bucks County Tax Parcel No. 15-001-139-019.
4. The subject Property is located in the CR-2-Country Residential 2 Zoning District in Hilltown Township.
5. The Property is 1.16 acres and is served by public water and sewer.
6. In 2016, Applicant applied for, and this Board granted, a variance from §160-20 of the Hilltown Township Zoning Ordinance to permit an impervious coverage of 15.1% rather than the maximum 14% set forth therein.
7. Presently, Applicant wishes to construction a 20’ by 12’ shed in the rear yard next to the in-ground pool which would be located 5’ from the existing fence line.
8. The shed will be used to house pool and other yard accessories and will keep the yard free from clutter.
9. The proposed shed will increase the Property’s impervious surface coverage from 15.1% to 15.5%.

10. Accordingly, Applicant is before this Board seeking a further increase from the maximum 14% impervious surface as set forth in §160-26, to permit a total impervious surface coverage of 15.5% on the Property.

11. In addition, Applicant requests a variance from §160-23.I(2)(a)[4], which requires a 12' minimum side-yard setback to permit a 5' side-yard setback.

12. The Township appeared in opposition only to the request for a reduced side-yard setback and did not oppose the further increase in impervious surface coverage.

13. In making her request for the side-yard variance, Applicant believed that the existing fence on the Property demarcated the boundary between Applicant's Property and the neighbor's Property.

14. However, upon review of the Zoning Permit Plan dated May 27, 2016 ("Plan") submitted with the Application, Applicant appears to have approximately 10' between the fence and the adjoining parcel, Lot 20, which would provide a side-yard setback of approximately 15' and would therefore not require a variance.

15. Upon review, both the Township Solicitor and the Zoning Officer agreed that based on the Plan, Applicant would be in compliance with §160-23.I(2)(a)[4] and no variance would be required.

**DISCUSSION:**

Applicant wishes to construct a 20' by 12' shed in the rear yard of the Property in close proximity to the pool. The proposed shed will increase the impervious surface on the Property from the 15.1%, which was previously permitted by variance, to 15.5%. Applicant is before the Board requesting a further increase from the maximum impervious surface requirement of 14% for a single-family lot within the CR-2 Zoning District. The Board finds that Applicant's second

variance request, for a reduction in the side-yard setback from 12' as required by §160-23.I(2)(a)[4] to 5' is moot. According to the Plan, the proposed location of the shed complies with the setback requirements in §160-23.I(2)(a)[4].

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 Zoning Hearing Board finds that Applicant has shown the existence of a hardship, not self-created, and unique and peculiar to the Property, which requires the grant of a variance from §160-26 of the Hilltown Township Zoning Ordinance. The Board concludes that the relief requested, a further increase in the maximum impervious surface area from 15.1% to 15.5%, is the minimum variance necessary to afford relief to the Applicant and is in keeping with the spirit of the Zoning Ordinance. Additionally, the Board finds that the variance, as

requested, 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 6 day of September 2019, the Hilltown Township Zoning Hearing Board hereby issues the following Order:

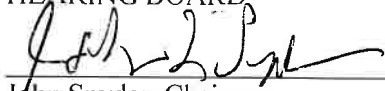
1. Applicant's request for a variance from §160-23.1(2)(a)[4] of the Zoning Ordinance is denied as moot.

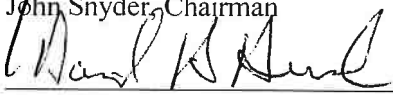
2. Applicant's request for a further increase in impervious surface coverage from 15.1% to 15.5% is granted, subject to the following conditions:

- a. Applicant shall not exceed a total impervious surface area of 15.5% on the Property;
- b. Construction and location of the shed shall be in conformity with A-1, the Plan, and the testimony presented before the Board; and
- c. Applicant shall otherwise comply with all other applicable Township, state, and/or county laws, regulations, with respect to construction and use of the Property.

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:   
John Snyder, Chairman

By:   
David Hersh

GRIM, BIEHN & THATCHER

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

Date of Mailing: 9-6-19