

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: Richard E. Leone, Jr.

Appeal No. 2020-008

A hearing was held in the above matter on Thursday, October 8, 2020 at 7:30 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, David Hersh, and Stephen C. Yates. In addition, Kelly L. Eberle, the Board Solicitor, was in attendance, as was the Board stenographer. Applicant was present and no 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 September 17, 2020 to neighbors from K. Eberle

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. Applicant is Richard E. Leone, Jr.
2. Applicant, along with Theresa E. Leone, is the owner of the real property located at 601 Edwin Lane, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-060-010.
3. The Property is located in the RR (Rural Residential) Zoning District in Hilltown Township.
4. Applicant recently installed an in-ground pool and pool decking and replaced his existing concrete patio with a new paver patio.
5. At that time, Applicant's contractor advised him that there were no issues with impervious surface coverage.
6. However, when Applicant applied for a permit to install a shed in the rear yard, he was advised that the proposed shed, together with the improvements related to the in-ground pool, would bring the total impervious surface coverage on the Property to approximately 22.3% rather than the permitted 20%.
7. Accordingly, Applicant requests a variance from §160-26 to permit a total impervious surface area of 22.3% rather than the permitted 20% in connection with the installation of shed and the completion of the in-ground pool project.
8. The proposed shed is 8' x 10' and will serve as storage for the pool.

9. The proposed shed will be located in the rear yard just inside of the fenced-in portion of Applicant's yard.

10. In addition, Applicant is planting a series of arborvitae trees in his rear yard to act as a buffer between the adjacent property.

II. DISCUSSION:

Applicant is before this Board requesting relief in connection with the installation of an 8' by 10' shed and related in-ground pool improvements. Applicant seeks a variance from §160-26 of the Hilltown Township Zoning Ordinance to permit a total impervious surface area of 22.3% on the Property rather than the permitted 20%. The proposed shed will serve as storage for the existing in-ground swimming pool.

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 Applicant has shown the existence of a hardship, not self-created, and unique and peculiar to the Property, which requires the grant of the variance from §160-26. Additionally, the Board finds that the variance as requested, the increase in impervious surface coverage from the permitted 20% to 22.3%, 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.

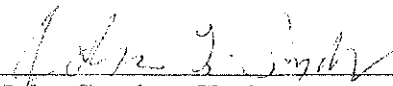
DECISION AND ORDER

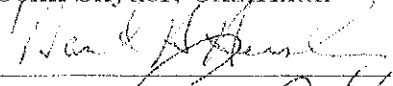
AND NOW, this 20 day of NOV, 2020 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

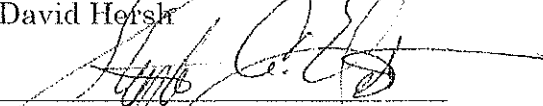
1. The proposed construction shall be done in accordance with Application, plans, and testimony presented at the hearing.
2. Applicant shall comply with all other Township, County, and State laws, regulations with respect to construction and use.

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: 
John Snyder, Chairman

By: 
David Hersh

By: 
Stephen Yates

GRIM, BIEHN & THATCHER

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

Date of Mailing: 11-20-2020