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May 24, 2021

Richard T. Neff
2905 Diamond Street
Hatfield, PA 19440

**Re: Hilltown Township Zoning Hearing Board
Richard T. Neff; Appeal No. 2021-005**

Dear Mr. Neff:

Please find enclosed herewith, a copy of the Decision of the Hilltown Township Zoning Hearing Board dated May 24, 2021, 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 the enclosed.

Very truly yours,
Grim, Biehn & Thatcher



KELLY L. EBERLE

KLE/kbs

cc: Hilltown Township Manager
Mr. John L. Snyder
Mr. Stephen Yates
Mr. David Hersh

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: Richard Neff

Appeal No. 2021-005

A hearing was held in the above matter on Thursday April 8, 2021 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 March 17, 2021 to Neighbors from K. Eberle
- A-1 Application with all Attachments
- A-2 Revised Site Plan

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 Neff.
2. Applicant along with his wife, Corrina Neff, are the owners of the real property located at 2905 Diamond Street Drive, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-032-070.
3. The Property is a 2.68-acre flag lot located in the RR (Rural Residential) Zoning District in Hilltown Township.
4. Applicant wishes to build a 900 square foot pole barn in the rear yard for storage of personal property.
5. As proposed, the pole barn would be located approximately 26 feet from the rear property line.
6. §160-23.I(2)(a)(4) of the Hilltown Township Zoning Ordinance requires that all residential accessory structures greater than 250 square feet must meet the setback requirements for the principal dwelling.
7. The rear yard setback requirements for a residential dwelling in the RR Zoning District is 75 feet.

8. Accordingly, Applicant seeks a variance from §160-23.I(2)(a)(4) to permit a rear yard setback of 26 feet rather than the required 75 feet.

9. Applicant chose the proposed location because it is close to the existing dwelling and would provide convenient storage for Applicant's vehicles and other miscellaneous items such as children's toys.

10. The site plan submitted with the Application as well as the revised site plan submitted at A-2 are hand-drawn sketches and fail to include sufficient detail and information as required by the Township.

11. However, A-2 and Applicant's testimony both indicate that the portion of the rear yard on the opposite side of the driveway is approximately 161 feet deep, which would provide ample space for the proposed 30' x 30' pole barn with the 75-foot setback.

12. This portion of the rear yard is largely open and unimproved except for the presence of a sand mound.

13. While the site plans and the aerial photograph submitted with A-1 show the general location of the sand mound, no evidence was submitted regarding its size, exact location, or why Applicant would be unable to locate the proposed pole barn anywhere on that portion of the Property.

14. Applicant did not consider alternate locations on the Property for the pole barn.

15. Applicant has not presented evidence of a hardship that would warrant relief from the Zoning Ordinance.

16. Applicant has failed to present any evidence that the variance requested is necessary to enable reasonable use or development of the Property.

17. Applicant has failed to present any evidence demonstrating that the variance requested is the minimum necessary to afford relief.

18. The Board finds that there is no unique physical circumstance, peculiar to the Property, and not otherwise created by the Zoning Ordinance, which would justify the requested variance.

DISCUSSION:

Applicant is before this Board requesting a variance from §160-23.I(2)(a)(4) to permit a rear yard setback of 26 feet rather than the required 75 feet in connection with the proposed construction of a 900 square foot pole barn in the rear yard.

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.

Applicant has failed to meet its burden of proof necessary to afford it the relief requested from the Zoning Ordinance. First, Applicant failed to present any evidence that the Property has a unique physical circumstance, peculiar to the Property and did not argue that any existed. There is no evidence that the Property has any physical anomaly that would justify the grant of variance. As Applicant has failed to meet this element, he is not entitled to the requested variance.

Because Applicant has not shown the existence of a unique, physical circumstance peculiar to the Property, it follows that Applicant cannot demonstrate that it suffered an “undue hardship” as a result of the unique, physical circumstance and that such hardship was not self-created. In fact, Applicant has not demonstrated a hardship at all. In *Larsen v. Zoning Bd. of Adjustment of City of Pittsburgh*, 672 A.2d 296 (Pa. 1996), the Pennsylvania Supreme Court stated, “[v]ariations are meant to avoid ‘unnecessary’ hardships; the granting of relief cannot be done simply to accommodate the changing needs to a growing family.” While the location chosen may be the best and most convenient for Applicant, that does not constitute an “undue hardship” warranting the grant of the variance.

Finally, Applicant cannot show that the requested variances are necessary to enable reasonable use or development of the Property. In order to satisfy this

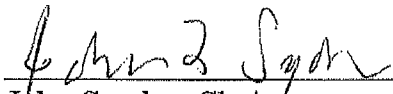
element, Applicant would need to show that without the requested variances, the Property would be rendered practically useless. *Abe Oil Co. v. Zoning Hearing Board of Richmond Twp.*, 649 A.2d 182, 185 (Pa. Cmwlth. 1994). The evidence presented demonstrates that the Property is currently improved by a single-family dwelling, garage, and related improvements. Applicant did not present any evidence or argue that the variance is necessary to enable reasonable use or development of the Property. For these reasons, Applicant has failed to meet this necessary element.

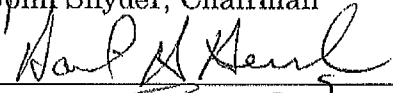
Based on the above, the Board finds that Applicant has failed to meet his burden of proof, and his request for zoning relief in the form of a variance from §160-23.I(2)(a)(4) is denied.

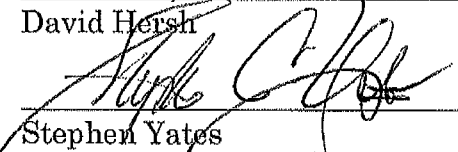
DECISION AND ORDER

AND NOW, this 24th day of May, 2021 the Hilltown Township Zoning Hearing Board hereby denies the zoning relief requested as Applicant, Richard T. Neff, has failed to meet the burden of proof necessary to grant the requested variance for the reasons set forth more fully herein.

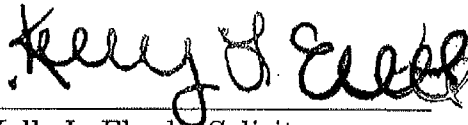
HILLTOWN TOWNSHIP ZONING
HEARING BOARD

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: 5/24/21