

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: Mark and Theresa Foster

Appeal No. 2021-015

A hearing was held in the above matter on Thursday, December 30, 2021, 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, David Hersh, and Stephen C. Yates. In addition, Kelly L. Eberle, of Grim, Biehn, and Thatcher, Board Solicitor, was in attendance, as was the Board stenographer. Applicants were 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 December 1, 2021, to neighbors from Kelly Eberle, Esq., Board Solicitor
- B-4 Letter from neighbor Roger Mullins dated November 3, 2021 stating no objection to proposal

Applicants' Exhibits

- A-1 Application with Plan and all Attachments
- A-2 Conservation Easement dated June 1, 2012

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 with a quorum of members present hereby makes the following Findings of Fact:

1. Applicants are Mark and Theresa Foster.
2. Applicants are the owners of the real property located at 617 Upper Stump Road, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-034-149-1; a portion of the Property is also located in New Britain Township, Pennsylvania more specifically identified as Bucks County Tax Parcel No. 26-003-63.
3. The Property splits between Hilltown Township and New Britain Township, with the dwelling located in New Britain Township and the detached garage, which is located in front of the dwelling, in Hilltown Township.
4. Applicants propose to construct an in-ground swimming pool in the front yard of the Property next to the detached garage.

5. Accordingly, Applicants request a variance from §160.23.I(11)(b) of the Hilltown Township Zoning Ordinance ("Zoning Ordinance"), which requires non-commercial swimming pools to be located to the side or rear yard of the dwelling.

6. The pool itself will be approximately 25 feet by 15 feet and will measure approximately 38 feet by 25 feet with the surrounding decking included.

7. The pool will be setback 300 feet from the street and will not be visible from the road.

8. The pool will also be located further away from the road than the existing detached garage.

9. In addition to the distance from the road, there are approximately 20 existing orchard trees located between the pool and the road, and Applicants also plan to put in an evergreen buffer.

10. The rear of the Property is wooded and has a significant drop off, making it difficult to build any structure in the rear.

11. In addition, there is a Conservation Easement on the rear of the Property that encumbers all, or substantially all, of the New Britain portion of the Property, which would prevent the installation of the pool.

12. The pool will otherwise comply with all other provisions of the Zoning Ordinance.

II. DISCUSSION:

Applicants are before this Board requesting relief in connection with the construction of an in-ground swimming pool. Applicants seek a variance from Zoning

Ordinance §160-23.I(11)(b), to permit the proposed swimming pool be located in the front yard as opposed to the required side or rear yard location of the dwelling.

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 Applicants have shown the existence of a hardship, not self-created, and unique and peculiar to the Property, which requires the grant of the variance from Zoning Ordinance §160-23.I(11)(b). Additionally, the Board finds that based on the unique circumstances of this Property, the variance as requested, locating the in-ground swimming pool in the front yard as opposed to the

required side or rear yard of the dwelling, 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.

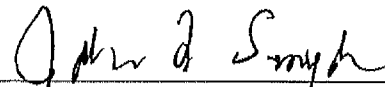
DECISION AND ORDER

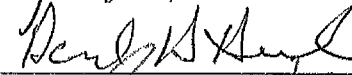
AND NOW, this 4 day of February, 2022 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:


1. The proposed construction shall be done in accordance with the Application, plans, and testimony presented at the hearing;
2. Applicants shall comply with all other Township, County, and State laws and/or 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: Feb 4, 2022