

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: Todd and Jennifer Huber

Appeal No. 2023-007

A hearing was held in the above matter on Thursday, April 13, 2023 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 Stephen C. Yates. In addition, Kelly L. Eberle, the Board Solicitor, was in attendance, as was the Board stenographer. Applicants were present and represented by J. Braun Taylor Esq. 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 27, 2023 to Neighbors from K. Eberle

Applicants' Exhibits

- A-1 Application with all Attachments
- A-2 Zoning Plan dated January 25, 2023 last revised April 6, 2023
- A-3 Proposed Condition Letter dated April 12, 2023
- A-4 Letter from K. Cope dated April 7, 2023
- A-5 Aerial View of Property
- A-6 Board of Assessment Printout
- A-7 Zoning Hearing Board Decision dated January 12, 2007

A-8 C.V. of Thomas Borghetti, P.E.

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 Todd and Jennifer Huber ("Applicants").
2. Applicants are the owners of the real property located at 309 Maron Road, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-026-006.
3. The Property is located in the RR (Rural Residential) Zoning District in Hilltown Township.
4. The Property is dimensionally non-conforming in that it is 33,552 square feet rather than the required 50,000 square feet and 135 feet wide rather than the required 150 feet.
5. Pursuant to §160-23.B(1), the maximum impervious surface coverage permitted in the RR Zoning District is 15%.
6. In 2016, this Board granted a variance from the impervious surface requirements in order to permit the construction of a 2,800 square foot single-family dwelling together with related improvements on the Property. The total proposed impervious surface coverage was 16.88%.
7. Since 2006, improvements have been made to the Property and the dwelling itself.

8. As shown on A-2, the existing single-family dwelling is approximately 3,475 square feet and the total impervious surface coverage is 7,484 square feet or 22.3%.

9. One of the improvements made on the Property was the installation of a deck; however, Applicants did not secure a permit from the Township prior to its construction.

10. The Property is served by on-site water and sewer.

11. The septic system is located in the front yard along with the existing stormwater management facility, and the well is located in the rear yard.

12. The Property slopes from the rear to the front.

13. Applicants wish to install an in-ground swimming pool with surrounding decking and an equipment pad.

14. The proposed pool will be located in the rear yard between the existing well and the rear property line.

15. The proposed site was also chosen because it is the flattest portion of the rear yard and will require the least amount of disturbance.

16. Applicants are before this Board requesting two variances in connection with the installation of the in-ground swimming pool.

17. First, Applicants request a variance from §160-23.B(1) of the Zoning Ordinance, which permits a maximum impervious surface coverage of 15% in the RR Zoning District.

18. The proposed improvements will add 2,045 square feet of impervious surface coverage and will result in an overall impervious surface coverage of 28.4%.

19. The Property has no existing stormwater issues and has an on-site stormwater management facility.

20. Accordingly, Applicants request a variance from §160-23.B(1) to permit a total impervious surface area of 28.4% as opposed to the maximum allowable of 15%.

21. Next, Applicants seek a variance from §160-23.I(11)(b), which requires a rear yard setback of 10 feet in the RR Zoning District, to permit a rear yard setback of 7.7 feet.

22. As shown on A-2, the edge of the decking surrounding the pool will be located approximately 7.7 feet from the rear yard property line.

23. Due to the slopes of the Property and the location of the well, Applicants cannot move the location of the pool.

24. In addition to the Property being undersized, the size of Applicants' rear yard is reduced as a result of the shape of the adjacent parcel located at 311 Maron Road.

25. 311 Maron Road is in the shape of a "T" with the top of the "T" running parallel to Maron Road and behind approximately half the subject Property and almost all of 315 Maron Road, which adjoins 311 Maron Road on its opposite side.

26. The portion of the 311 Maron Road running behind the Property is undeveloped.

27. The remaining half of the rear yard of the Property abuts the rear yard of 316 Fairhill Road and is buffered by an existing tree line.

28. Applicants have agreed to the imposition of the following conditions of any relief granted:

a. Applicants shall provide, and have provided in A-4, an Affidavit from the contractor, Scott Payne Custom Pools, LLC, stating that the pool will be constructed as depicted on the Plan prepared by Holmes Cunningham LLC with a last revision date of April 6, 2023 and that the contractor will be responsible for bringing any construction deviations into compliance with said Plan;

b. Applicants will pay all fees and any penalties, plus 10% interest, to secure a permit for the un-permitted deck; and

c. Applicants agree that the maximum permissible impervious coverage on the Property shall be 28.4% and this shall be binding on subsequent owners, successors, heirs, and assigns.

II. DISCUSSION:

Applicants are before this Board requesting the following two variances in connection with the installation of an in-ground swimming pool and related improvements: a) a variance from §160-23.B(1) to permit 28.4% of impervious area as opposed to the maximum allowable of 15%; and b) a variance from §160-23.I.(11)(b) to permit a setback of 7.7 feet from the rear property line as opposed to the minimum required 10 feet.

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 the Applicants have shown the existence of a hardship, not self-created, and unique and peculiar to the Property that requires the grant of the variance from §160-23.B(1) to permit maximum impervious surface area of 28.4% and from §160-23.I.(11)(b) to permit a setback of 7.7 feet from the rear property line, subject to the conditions set forth in the Decision and Order. Additionally, the Board finds that the variances 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 25th day of May, 2023 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

1. The construction and installation of the in-ground swimming pool and related improvements shall be done in conformity with the Plan and the testimony presented before this Board;

2. Applicants shall provide, and have provided as part of A-4, an Affidavit from the contractor, Scott Payne Custom Pools, LLC, stating that the pool will be constructed as depicted on the Plan prepared by Holmes Cunningham LLC with a last revision date of April 6, 2023 and that the contractor will be responsible for bringing any construction deviations into compliance with said Plan;

3. Applicants will pay all fees and any penalties, plus 10% interest, to secure a permit for the un-permitted deck. Applicants shall confer with the Township to determine the total amount due and the due date of the payment;

4. Applicants agree that the maximum permissible impervious coverage on the Property shall be 28.4% and this shall be binding on subsequent owners, successors, heirs, and assigns; and

5. Applicants 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: DocuSigned by:
David Hersh
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David Hersh, Chairman

By: DocuSigned by:
Stephen Yates
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Stephen Yates

GRIM, BIEHN & THATCHER

By: DocuSigned by:
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Date of Mailing: 05/25/23