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September 6, 2019

Denise R. Yarnoff, Esq.
717 Constitution Drive
Exton, PA 19341

**Re: Hilltown Township Zoning Hearing Board
AZ Souderton; Appeal No. 2019-007**

Dear Ms. Yarnoff:

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: AZ Souderton, LLC

Appeal No. 2019-007

A hearing was held in the above matter on Thursday, August 15, 2019 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, and David Hersh. In addition, Kelly Eberle, the Board Solicitor, was in attendance, as was the Board stenographer. Applicant was present and represented by its attorney, Denise R. Yarnoff, Esq. No individuals requested party status.

The following exhibits were admitted and accepted into evidence:

Zoning Hearing Board's Exhibits

- B-1 Posting Certification
- B-2 Proof of Publication
- B-3 Letter dated July 17, 2019 to neighbors from K. Eberle

Applicant's Exhibits

- A-1 Application with Attachment, Plan, and Cover Letter dated July 1, 2019
- A-2 Hilltown Township Zoning Ordinance of 2005, 2013 edition, as amended (incorporated by reference)
- A-3 Deed between Mei Sze Chan and Jeff Greene recorded April 29, 2008
- A-4 Real Estate Purchase Agreement dated May 28, 2019
- A-5 Photographs of Existing Site

- A-6 Photograph of typical AutoZone
- A-7 Curriculum Vitae of John Kornick, P.E.
- A-8 Existing Conditions Plan (Aerial)
- A-9 Plan of Survey and Topography
- A-10 Site Rendering 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.

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 AZ Souderton, LLC, a limited liability company with a mailing address of P.O. Box 1908, Media, PA 19063 ("Applicant").
2. Applicant is the equitable owner of the real property located at 701 Route 113, Hilltown Township, Pennsylvania ("Property").
3. The title owner of the Property is Jeff Greene.
4. The Property is otherwise identified as Bucks County Tax Parcel No. 15-008-001.
5. The subject Property is located in the PC-1 Planned Commercial Zoning District in Hilltown Township.
6. The Property is approximately 26,983 square feet or 0.62 acres.

7. The Property is located at the intersection of County Line Road and Route 113 (Souderton- Silverdale Pike).

8. The Property is a corner lot and therefore has two front yards, one facing Route 113 and one facing County Line Road.

9. The Property is bordered by commercial properties, including a bank to the east, a shopping center to the rear, a pharmacy across Route 113, and a gas station across County Line Road.

10. The Property was previously used as a Pizza Hut (Restaurant Use); however, the existing building is vacant and in deteriorating condition.

11. The existing building is located in the center of the Property with parking spaces located in the front, sides, and rear of the Property with little to no landscaping.

12. Applicant proposes to demolish the existing building and related improvements and re-develop the Property with a 7,300 square foot AutoZone store, a new paved parking area, sidewalks, landscaping, and signage. *See Exhibits A-1, A-10.*

13. The AutoZone will be an E1-Retail Use.

14. The consumer retail portion of the store will be 3,270 square feet with the remainder of the store dedicated to storage.

15. The proposed configuration places the new building in the southeast corner of the Property with parking located primarily on west side of the Property and a loading area to the south, or rear, of the Property.

16. Per PennDOT's recommendation, the Property will have ADA compliant sidewalks along Route 113 and County Line Road.

17. The proposed development includes entrances and exits on both Route 113 and County Line Road. The exit onto Route 113 will be a “right out only” exit.

18. In connection with the proposed development, Applicant is before this Board seeking several variances.

19. First, Applicant seeks three variances from §160-27 of the Hilltown Township Zoning Ordinance (“Zoning Ordinance”) relating to the setback requirements for the side yard, front yard, and rear yard.

20. §160-27 requires a 50’ minimum front yard, a 15’ minimum side yard, and a 50’ minimum rear yard in the PC-1 Zoning District.

21. Applicant requests a variance to permit a front yard along Route 113 of 27.4’, a side yard on the east side of the Property (between the Property the bank) of 6’, and a rear yard of 26.7’.

22. Given the size and layout of the Property, adherence to the required setbacks would result in a limited building envelope and would severely restrict, if not prohibit, development.

23. Further, if Applicant were to construct a building that complied with the setback requirements, there would only be space for 6 parking spaces, all of which would be violate the setback requirements discussed above.

24. Next, Applicant seeks a variance from §160-23.E(1)(b), of the Zoning Ordinance, which requires one off-street parking space for each 100 square feet of customer-accessed retail area plus one off-street parking space for every two employees for an E1- Retail Store Use.

25. As is customary with AutoZone stores, on average, three to five employees will be working during business hours.

26. With a customer-accessed retail area of 3,270 square feet, plus three parking spaces for staff, Applicant would need a total of 36 parking spaces.

27. Applicant requests a variance from §160-23.E(1)(b) to reduce the number of parking spaces on the Property from a total of 36 to 22 parking spaces.

28. Because of the configuration of the Property, with access points on both County Line Road and Route 113, Applicant is not able to develop the Property with the required number of parking spaces.

29. Moreover, with the configuration of the Property and location of the building, parking will not possible to the east of the building or at the rear of the building.

30. Carl Wright, manager of AZ Souderton, LLC, has developed AutoZone retail stores for nine years and testified that 22 parking spaces is more than sufficient based to typical customer demand.

31. Next, Applicant requests relief from §160-33.D(5), which requires a 15' buffer yard, consisting of shrubs and shade trees, to be installed adjacent to the exterior boundary of the parking lot.

32. Applicant seeks to be relieved of the buffer yard requirement in its entirety.

33. Due to the Property's location, in that it is situated at the corner to two major thoroughfares, and the configuration and size of the Property, the inclusion of a buffer yard would reduce the already limited space available for parking.

34. The Property is surrounded by commercial properties, and therefore, a reduction in the buffering requirements would not cause a disturbance to any residential areas.

35. Though Applicant does not propose the installation of a buffer yard, Applicant does intend to increase and improve the existing landscaping on the Property.

36. The current landscaping on the Property consists of sporadically placed trees, many of which are entangled in overheads wires.

37. Moreover, Applicant intends to plant trees along the frontage of the Property with shrubs along the side of the Property.

38. While Applicant's proposed development does not include a buffer yard, Applicant plans will add to the amount of green space and aesthetic appeal of the Property.

39. Next, Applicant requests a variance from §160-77.B, which provides that no sign shall be erected or maintained within a distance of 50' from an intersection.

40. The existing sign on the Property is located on the northwest corner of the Property, at the intersection of Route 113 and County Line Road.

41. Applicant wishes to keep the sign in the northwest corner as it provides the best notice to drivers, but will move the new sign further within the Property's boundaries.

42. Nevertheless, the proposed sign will be located 27' from the intersection rather than the required 50'.

43. Finally, Applicant seeks either a determination that the Property has an existing non-conformity as to impervious surface, or, in the alternative, a variance from §160-26 to permit an impervious surface ratio of 91% where the existing impervious surface ratio is 92% and the maximum permitted in §160-26 is 70%.

44. As noted above, the Property is almost all asphalt with limited trees and/or shrubs.

45. The existing impervious surface ratio exceeds that which is permissible by 22%.

46. Despite the installation of sidewalks along County Line Road and Route 113, Applicant proposes to decrease the existing impervious surface ratio by 1%.

47. Applicant proposes to improve the existing water runoff on the Property by grading the Property to create inlets that will collect the runoff and funnel it into the existing stormwater management system.

48. The Board finds that no variance to §160-26 is required since the Property's existing impervious surface coverage is 92% rather than the maximum 70% permitted in the Zoning Ordinance. Accordingly, the Property has an existing non-conformity with respect to impervious surface coverage.

DISCUSSION:

Applicant is before this Board seeking multiple variances in connection with its proposal to redevelop the Property with a 7,300 square foot AutoZone store, a new paved parking area, sidewalks, landscaping, and signage as shown on Exhibits A-1 and A-10. Specifically, Applicant requests variances from the following sections of the Hilltown Township Zoning Ordinance:

1. §160-26 to allow for an impervious surface ratio of 91% or, in the alternative, a determination that the Property has an existing non-conformity as to impervious surface ratio and 91% is a permissible reduction in impervious surface coverage;
2. §160-23.E(1)(b) to allow for 22 parking spaces where 36 are required;
3. §160-27 to permit the following:
 - a. a front yard of 27.4 feet where 50 feet is required;
 - b. a side yard of 6 feet where 16 feet is required; and
 - c. a rear yard of 26.7 feet where 50 feet is required;
4. §160-33.D(5) to eliminate the required buffer yard(s); and

5. §160-77.B to permit the construction of a freestanding sign 27' from an intersection where a minimum of 50' is required.

Initially, the Board finds that the Property has an existing non-conformity with regard to impervious surface in that the current impervious surface ratio on the Property is 92%, and the Zoning Ordinance limits the maximum impervious surface ratio to 70%. Applicant seeks to reduce the existing impervious surface from 92% to 91.1%. Since Applicant will be reducing the existing non-conformity, no variance is required.

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 a

variance from §§160-23.E(1)(b), 160-27, 160-33.D(5), and 160-77.B of the Hilltown Township Zoning Ordinance as more fully described above. The Board concludes that the relief requested, constitutes the minimum relief necessary to afford Applicant the opportunity to reasonably use the Property 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.

DECISION AND ORDER

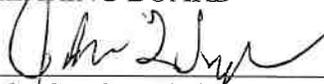
AND NOW, this 6 day of September, 2019 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

1. Construction shall be done in accordance with Exhibits A-1 and A-10 and the testimony presented to the Board.
2. Applicant shall otherwise comply with all other applicable Township, state, and/or county 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

GRIM, BIEHN & THATCHER

By:


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

Date of Mailing:

9-6-19