

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: Bank of America

Appeal No. 2019-011

A hearing was held in the above matter on Thursday, December 19, 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, Joseph Kirschner, and David Hersh. In addition, Kelly Eberle, the Board Solicitor, was in attendance, as was the Board stenographer. Paul Mutch of Stonefield Engineering & Design LLC addressed the Board on Applicant's behalf. Also present was Scott Hartzel, general partner in 1691 Bethlehem Pike, LP, the owner of the subject property. 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 November 21, 2019 to neighbors from K. Eberle
- B-4 Prior Adjudication from Appeal 2013-005 dated August 15, 2013

Applicant's Exhibits

- A-1 Application with all Attachments dated September 19, 2019
- A-2 Set of Site Plans with a Last Revision Date of October 16, 2019
- A-3 Aerial Rendering
- A-4 Kiosk Rendering

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:

BACKGROUND

1. The property at issue is 1691 Bethlehem Pike, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-032-005.
2. The owner of the Property is 1691 Bethlehem Pike, LP (the "Owner").
3. The Property is located in the PC-1 Planned Commercial Zoning District in Hilltown Township.
4. In the PC-1 Zoning District, the minimum lot area is 20,000 square feet, and the minimum lot width is 100 feet.
5. The Property is approximately 3.1823 acres or 138,619 square feet and is approximately 259 feet wide.
6. The Property is located at the intersection of Swartley Road and Bethlehem Pike with frontage on both roadways.
7. Because it is located on the corner, each portion of the Property with road frontage is considered a front yard, which results in the Property having two front yards.

8. The Property is presently improved by a 16,343 square foot retail building, which is divided up into smaller units for tenants such as an AT&T store, a tattoo shop, and a physical fitness center.

9. The Property also contains a vacant warehouse and an automotive repair shop, both of which are located behind the retail building, and the rear of the Property is used as overflow parking for a nearby camper retailer.

10. The Property currently has 88 parking spaces, which is three less than what is required by Ordinance.

11. In Appeal No. 2013-005, this Board granted a variance to increase the permitted uses on the Property from 8 to 10 uses as the Owner believed it would be able to attract more tenants with smaller retail spaces.

12. As a condition of the variance, Applicant was, and is, not permitted to increase the square footage of the existing building.

PROPOSED CONSTRUCTION AND REQUESTED RELIEF

13. Applicant is Bank of America, a banking corporation with a business address of 1350 Ballantyne Corporate Place, Charlotte, North Carolina 28277 ("Applicant").

14. Applicant is a tenant of the Property.

15. Applicant wishes to construct and install a freestanding, double walkup ATM at the southwest corner of the Property, at which Swartley Road and Bethlehem Pike intersect.

16. The ATM would be available 24 hours per day.

17. The ATM would be located 5.4 feet from the property line abutting Bethlehem Pike and 24.4 feet from the property line abutting Swartley Road.

18. Applicant chose the southwest corner of the Property as the location for the ATM based on the amount of visibility it would receive from passing drivers and patrons of the shopping center.

19. The ATM would be located on an ADA-accessible, elevated island.

20. In order to construct the platform for the ATM in the desired location, Applicant will need to remove three existing parking spaces.

21. The ATM itself will be 10 feet high by 10 feet wide with a small, lighted canopy.

22. The sides of the ATM will be red with the Bank of America name and logo in white, and the front will be white.

23. The name and logo will be illuminated, and the entire ATM will be opaque.

24. The ATM will have an architectural light around the edge.

25. All lighting will be done in accordance with Applicant's nationwide standards for security at ATMs.

26. The lighting utilized is intended to provide maximum illumination at the Property line, but limit spill over into the roadway to minimize the impact on drivers.

27. In accordance with Applicant's safety standards, Applicant proposes adding additional lighting to the area surrounding the ATM.

28. Applicant will utilize 25 foot poles to match the existing light poles on the Property and will install steady state lighting.

29. Applicant's lighting will exceed the allowable 0.5 footcandles at property lines of public roadways or right of ways. While the maintained illuminance level varies, the maximum illuminance level is 4.8 footcandles.

30. All lighting will be located within the paved parking area.

31. Drivers will be able to see the white front of the ATM and the illuminated name and logo from the roadways.

32. To further advertise its ATM, Applicant may elect to install a sign on the existing pylon.

33. Any sign installed on the existing pylon by Applicant would be similar in size and scale to the existing signs on the pylon, but Applicant has not yet decided what, if any, sign will be utilized.

34. In connection with the proposed development, Applicant is before this Board seeking the following variances from the Hilltown Township Zoning Ordinance (“Zoning Ordinance”):

a. from §160-27, which requires a minimum front yard setback of 50 feet, to permit a front yard setback of 5.4 feet along Bethlehem Pike and 24.4 feet along Swartley Road;

b. from §160-77.B which provides that no sign shall be erected or maintained within a distance of 50 feet from an intersection, in order to permit a sign within 25.7 feet of the intersection of Bethlehem Pike and Swartley Road;

c. from §160-80.G(1) to permit a sign 6.5 feet above finished grade rather than the required 10 foot minimum;

d. from §160-23.E.2 which requires an E2 Large Retail Store to have 5.5 spaces per 1,000 square feet to reduce the existing 88 parking spaces to 85 parking spaces;

e. from §160-41.D(4) to permit lighting fixtures meeting IESNA full cutoff criteria to be mounted 25 feet above finished grade rather than the maximum permitted 20 feet;

f. from §160-41.D(6) to permit steady state lighting rather than the required automatic switching devices;

g. from §160-41.D(11) to permit lighting standards within parking area less than the required 5 feet outside paved areas and;

h. from §160-41.D(11) to permit lighting standards to be placed on 36 inch concrete pedestals rather than 30 inches; and

i. from §160.41.E(3) which requires a maximum maintained illuminance level of 0.5 footcandles for outdoor area lighting located on a property whose property line adjoins a public roadway or public right-of-way to permit a maintained illuminance level of 4.8 footcandles.

35. There are other areas on the Property at which the ATM could have been located which could have reduced the amount of variances needed by Applicant.

36. Applicant did not explore and/or select a different location for the ATM because the ATM would not have been as visible to passing drivers thus reducing the advertising/marketing aspect of the ATM.

37. Applicant did not, and would not, consider installing an ATM on the existing retail building.

38. The Board finds that Mr. Mutch was not credible when he testified that the ATM would not impede drivers' lines of sight when turning from Swartley Road northbound onto Bethlehem Pike.

39. The Board finds that Mr. Mutch and/or Mr. Hartzel were not credible when they testified that the loss of three parking spaces would not have a negative impact on the Property.

40. There is no unique physical circumstance, peculiar to the Property, and not otherwise created by the Zoning Ordinance, which would justify the requested variances.

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

42. The requested variances are not necessary to enable reasonable use or development of the Property.

43. The variances requested are not the minimum necessary to afford relief.

DISCUSSION:

Applicant is before this Board seeking multiple variances in connection with its proposal to construct and install a freestanding, walkup ATM and related improvements such as lighting and signage. Specifically, Applicant requests variances from the following sections of the Hilltown Township Zoning Ordinance:

a. §160-27, which requires a minimum front yard setback of 50', to permit a front yard setback of 5.4 feet along Bethlehem Pike and 24.4 feet along Swartley Road;

b. §160-77.B, which provides that no sign shall be erected or maintained within a distance of 50' from an intersection, in order to permit a sign within 25.7 feet of the intersection of Bethlehem Pike and Swartley Road;

c. §160-80.G(1) to permit a sign 6.5 feet above finished grade rather than the required 10 foot minimum;

d. §160-23.E.2 which requires an E2 Large Retail Store to have 5.5 spaces per 1,000 square feet to reduce the existing 88 parking spaces to 85 parking spaces;

e. §160-41.D(4) to permit lighting fixtures meeting IESNA full cutoff criteria to be mounted 25 feet above finished grade rather than the maximum permitted 20 feet;

f. §160-41.D(6) to permit steady state lighting rather than the required automatic switching devices;

g. §160-41.D(11) to permit lighting standards within parking area less than the required 5 feet outside paved areas;

h. §160-41.D(11) to permit lighting standards to be placed on 36 inch concrete pedestals rather than 30 inches; and

i. §160.41.E(3) which requires a maximum maintained illuminance level of 0.5 footcandles for outdoor area lighting located on a property whose property line adjoins a public roadway or public right-of-way to permit a maintained illuminance level of 4.8 footcandles.

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. With a lot area of approximately 138,619 square feet, the Property is almost 700% larger than the minimum required lot size in the PC-1 Zoning District. Similarly, the Property has a width of 259 feet, which is 250% larger than the minimum required lot width. Therefore, the Property is neither undersized, nor is it uncharacteristically narrow or lacking in road frontage. There is no evidence that any Property has any physical anomaly that would justify the grant of variance. As Applicant has failed to meet this element, it is not entitled to the requested variances.

Logic dictates then that if Applicant could not show the existence of a unique, physical circumstance peculiar to the Property, 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. Applicant did not consider other locations on the Property, which may have significantly reduced, or even eliminated, the relief requested because any other location would reduce the visibility of the ATM and thus reduce the advertising/marketing that the ATM provides for Applicant. It is noted that the majority of the variances requested by Applicant reflect a certain apathy towards the requirements of the Zoning Ordinance. For instance, Applicant’s request for variances from §160-41.D(6) (requiring automatic switching devices for lighting), §160-41.D(11) (requiring lighting standards to be 5 feet outside of the paved parking area), and §160.41.E(3) (pertaining to maximum maintained illuminance levels) are all a direct result of Applicant’s adherence to its own self-mandated lighting safety standards. Applicant also suggested that the reduction in

parking spaces should be permitted because the Institute of Transportation Engineers Parking Generation manual would only require 54 parking spaces rather than the 91 spaces required by the Zoning Ordinance. In *Larsen v. Zoning Bd. of Adjustment of City of Pittsburgh*, 672 A.2d 296 (Pa. 1996), the Pennsylvania Supreme Court stated, “Variances are meant to avoid ‘unnecessary’ hardships; the granting of relief cannot be done simply to accommodate the changing needs to a growing family.” That same sentiment can be applied here.

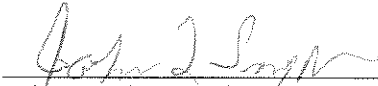
Finally Applicant cannot show that the requested variances are necessary to enable reasonable use or development of the Property. In order to satisfy this element, Applicant would need to show that without the requested variances, the Property would be rendered practically useless. *Abe Oil Co. v. Zoning Hearing Board of Richmond Twp.*, 649 A.2d 182, 185 (Pa. Cmwlth. 1994). It is noted that Applicant did not argue that the variances are necessary to enable reasonable use or development of the Property at all. When reviewing the current uses of the Property, it is evident that reasonable use of the Property is being made absent installment of Applicant’s ATM. The Property currently has a 16,000 square foot retail building, a vacant warehouse, and an automobile repair shop. In addition, the very rear of the Property is being used as overflow parking for a local camper retailer. In Appeal No. 2013-005, this Board even granted a variance to increase the amount of uses in the retail building from 8 to 10. For these reasons, Applicant has failed to meet this necessary element.

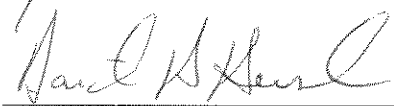
Based on the above, the Board finds that Applicant has failed to meet its burden of proof, and its request for zoning relief in the form of multiple variances is denied.

DECISION AND ORDER

AND NOW, this 3 day of February, 2020 the Hilltown Township Zoning Hearing Board hereby denies the zoning relief requested as Applicant, Bank of America, has failed to meet its burden of proof necessary to grant the requested variances as more fully set forth herein.

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: Feb. 3, 2020