

**HILLTOWN TOWNSHIP ZONING HEARING BOARD**

In Re: Calvary Church, Souderton PA

Appeal No. 2020-001

A hearing was held in the above matter on Thursday, January 30, 2020 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 Yates. In addition, Kelly Eberle, the Board Solicitor, was in attendance, as was the Board stenographer. Erik Scardino and Justin Stoudt spoke on behalf of Applicant. 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 January 14, 2020 to neighbors from K. Eberle
- B-4 Letter dated January 28, 2020 to K. Eberle from S. Harris

Applicant's Exhibits

- A-1 Application with all Attachments dated December 24, 2019

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 property at issue is 820 Route 113, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-001-091.

2. The owner of the Property is Calvary Church, Souderton, PA (the "Applicant").

3. The Property is located in the CR-2 Country Residential 2 Zoning District in Hilltown Township.

4. The Property is approximately 39.5 acres and is primarily used as a place of worship with a coffeehouse as an accessory use pursuant to §160-23.I(20).

5. The Property is the subject of the following prior adjudications by this Zoning Hearing Board:

- a. 1991-1 – Special Exception for Cemetery;
- b. 1995-15 – Variances associated with proposed building expansion;
- c. 2000-6 – Unknown;

d. 2003-10 – Variance to allow a sign to be placed along Bethlehem Pike;

e. 2004-11 – Variances associated with proposed building expansion;

f. 2014-8 – Special Exception; and

g. 2015-2 – Variance related to signage.

6. The coffeehouse, which is known as Mr. B’s Coffeehouse (the “Coffeehouse”), has been owned and operated by Applicant since it opened 13 years ago; it is approximately 4,000 square feet with seating for 168 people.

7. Currently, the Coffeehouse is open Tuesday-Saturday 9:00 a.m. to 6:00 p.m. and Sunday approximately 8:30 a.m. until 1:00 p.m. and serves coffee, snacks, and some baked goods, which are made onsite.

8. The Coffeehouse serves approximately 100-120 customers per day and is staffed by 10-12 paid employees who are mostly members of the church.

9. Applicant was previously serving breakfast and lunch, but stopped doing so in an attempt to reduce expenses.

10. The Coffeehouse is located in close proximity to their children’s play area.

11. The atmosphere in the Coffeehouse is similar to that of a Starbucks or other local coffee shop where people can come in, order coffee and some lighter foods, and stay to do work.

12. The Coffeehouse has become a significant expense for Applicant, which Applicant cannot continue to bear.

13. Accordingly, Applicant would like to lease the Coffeehouse, including the attached kitchen area, to Liberty Hall Coffee, LLC d/b/a Broad Street Grind (“Liberty”).

14. Applicant seeks a variance from §160-23.I(20)(a) of the Zoning Ordinance, which requires that any accessory use to a place of worship must be owned and operated exclusively by the place of worship, and private ownership or operation shall not be permitted.

15. Liberty would assume all food and beverage services, but there would be no other significant change in operations.

16. Liberty may want to serve lunch items, which would primarily be prepared offsite and reheated on a panini press or in the oven onsite.

17. Applicant would still maintain the remainder of the community space, including the play area.

18. Applicant believes that Liberty could do a better job with marketing and productions related to the Coffeehouse.

19. Liberty would bring in its own coffee equipment, but would be permitted to utilize Applicant’s existing ovens.

20. Without outside ownership, Applicant does not believe it will be able to continue to operate the Coffeehouse.

21. Because the Coffeehouse is not visible from either Bethlehem Pike or Route 113, Applicant seeks to add an additional sign to advertise the Coffeehouse.

22. Applicant also requests a variance from §160-23.I(20)(d)-(f) of the Zoning Ordinance, which permits one sign, no larger than four square feet, bearing the name of the accessory use and its hours. It further requires that the sign be affixed to the place of worship and not freestanding.

23. §160-23.I(20)(d)-(f) further limits promotion of the accessory use to promotion of the general mission of the principal use and requires that the accessory use be limited to individuals who are church members or those who are in attendance at the place of worship for activities and programs offered or sponsored by said place of worship.

24. Applicant testified that the purpose of the sign would help attract people from the community who may not be members of Applicant currently and bring them into the space.

25. The purpose of the sign is runs contra to the provisions of §160-23.I(20)(e) and (f) and is, in fact, exactly what the Zoning Ordinance seeks to prevent.

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

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

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

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

DISCUSSION:

Applicant is before this Board seeking a variance from §160-23.I(20)(a) to permit its accessory use Coffeehouse to be owned and/or operated by a third party and a variance from §160-23.I(d)-(f) to permit a second sign located near the roadway to advertise the Coffeehouse to members of surrounding community and passing drivers.

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. The Property is approximately 39.5 acres and, in addition to a place of worship, a community area, and a children's play area, it contains a 4,000 square foot coffee shop. 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, it is not entitled to the requested variances.

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. Instead, Applicant's hardship is that the Zoning Ordinance prohibits the exact conduct for which Applicant seeks relief. 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. Our review indicates that Applicant is presently making reasonable use of its Property. In addition to the large worship area, the Property contains multiple kitchens, meeting rooms, storage areas, the community center, the children's play area, and a 4,000 square foot coffeehouse with seating for 168 people. Applicant's testimony establishes that Applicant wants the Coffeehouse to operate like a local coffeehouse, operated by an experienced entity and marketed and open to all individuals, regardless of whether they are Applicant's members. For these reasons, Applicant has failed to meet this necessary element.

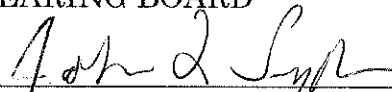
Based on the above, the Board finds that Applicant has failed to meet its burden of proof, and its request for zoning relief in the form of a variance from §160-23.I(20)(a) and a variance from §160-23.I(20)(d)-(f) is denied.

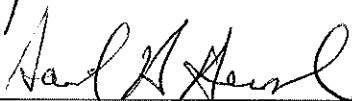


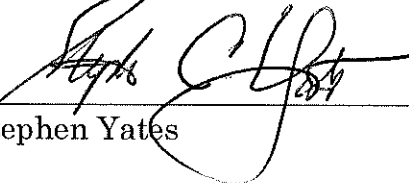
**DECISION AND ORDER**

AND NOW, this 13 day of March, 2020 the Hilltown Township Zoning Hearing Board hereby denies the zoning relief requested as Applicant, Calvary Church Souderton PA, 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

By:   
Stephen Yates

GRIM, BIEHN & THATCHER

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

Date of Mailing: March 13, 2020