

MARY C. EBERLE
JOHN B. RICE
DIANNE C. MAGEE *
DALE EDWARD CAYA
DAVID P. CARO ◊
DANIEL J. PACI ◊ †
JONATHAN J. REISS ◊
GREGORY E. GRIM †
PETER NELSON *
PATRICK M. ARMSTRONG
SEAN M. GRESH
KELLY L. EBERLE *
JOEL STEINMAN
MATTHEW E. HOOVER
COLBY S. GRIM
MICHAEL K. MARTIN
MITCHELL H. BAYLARIAN
IAN W. PELTZMAN
WILLIAM D. OETINGER
ROBERT D. CARO

LAW OFFICES
GRIM, BIEHN & THATCHER

A PROFESSIONAL CORPORATION

SUCCESSOR TO
GRIM & GRIM AND BIEHN & THATCHER
ESTABLISHED 1895 AND 1956,
RESPECTIVELY
124TH ANNIVERSARY 1895-2019

www.grimlaw.com

Kelly L. Eberle
e-mail: keberle@grimlaw.com

J. LAWRENCE GRIM, JR., OF COUNSEL
JOHN FREDERIC GRIM, OF COUNSEL

104 S. SIXTH STREET
P.O. BOX 215
PERKASIE, PA. 18944-0215
(215) 257-6811
FAX (215) 257-5374

(215) 536-1200
FAX (215) 538-9588

(215) 348-2199
FAX (215) 348-2520

* ALSO ADMITTED IN NEW JERSEY
◊ ALSO ADMITTED IN NEW YORK
† MASTERS IN TAXATION
◊ ALSO A CERTIFIED PUBLIC ACCOUNTANT

February 21, 2020

FWC Properties
c/o Kellie McGowan, Esquire
Obermayer, Rebmann, Maxwell & Hippel, LLP
10 S. Clinton Street
Doylestown, PA 18901

**Re: Hilltown Township Zoning Hearing Board
FWC Properties; Appeal No. 2019-013**

Dear Kellie:

Please find enclosed herewith, a copy of the Decision of the Hilltown Township Zoning Hearing Board dated February 21, 2020, in the above captioned matter. The original of this Decision is being retained by the Township for its file.

Thank you for your attention to the enclosed.

Very truly yours,
Grim, Biehn & Thatcher



KELLY L. EBERLE

KLE/kbs

Enclosures

cc: Hilltown Township Manager
Mr. John L. Snyder
Mr. David Hersh
Mr. Stephen C. Yates
Dave Taylor, Zoning Officer
Stephen B. Harris, Solicitor

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: F.W.C. Properties, LLC
Appeal No. 2019-013

A hearing was held in the above matter on Thursday, January 9, 2020 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, David Hersh, and Stephen Yates. In addition, Kelly Eberle, Esquire, the Board Solicitor, was in attendance as was the Board stenographer. Applicant was present and was represented by Daniel S. Lyons, Esquire. No individuals appeared in opposition to the application, 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 of December 2, 2019 to Neighboring Property Owners from Kelly L. Eberle
B-4	Correspondence from Arthur Schmell
B-5	Application for Appeal to Zoning Hearing Board filed on November 19, 2019 with all attachments

Applicant's Exhibits

A-A	Zoning Plan
A-B	Aerial Plan
A-C(1-6)	Photographs of the Property

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 rendered its Decision in 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, hereby makes the following Findings of Fact:

1. Applicant is F.W.C. Properties, LLC, a Pennsylvania Limited Liability Company ("Applicant").

2. Applicant's business, Amazing Decks, has been in business for 29 years, with the majority of its customers located in Bucks County.

3. In 2019, Applicant purchased the real property located at 31 Church Road, Hilltown Township, Pennsylvania ("Property").

4. The Property is otherwise identified as Bucks County Tax Parcel No. 15-022-064.

5. The Property is located in the LI-Light Industrial Zoning District in Hilltown Township.

6. The Property is approximately 1.55 acres with a lot width of 183.4 feet and an approximate lot length of 368 feet.

7. The northeast side of the Property abuts the RR-Rural Residential Zoning District ("RR Parcel") while the remaining adjacent lots are in the LI Zoning District.

8. The RR Parcel consists of 1.36 acres of unimproved, preserved open space.

9. The Property is improved by a dilapidated farmhouse, which contains four separate apartment units and is currently uninhabitable, an existing wholesale building, and an existing warehouse.

10. The roof on the existing warehouse is damaged and contains multiple holes.

11. The Property has two separate well pumps: one behind the farmhouse and one behind the existing warehouse.

12. The Property currently has three separate uses: a B5 Conversion Use; a G3 Wholesale Use; and a G7 Warehouse Use.

13. The Property has the following existing non-conformities¹:

a. a lot size of 1.55 acres rather than the required 2 acres minimum;

b. a reduced side yard setback of 24.3 feet from the existing warehouse to the property line and 41 feet from the existing farmhouse to the property line rather than the required 100 feet on the side of the Property abutting a residential district;

c. a reduced front yard setback of 17.5 feet rather than the required 50 feet;

d. the existing lot width is 183.4 feet where the minimum lot width in the LI Zoning District is 200 feet;

¹ This is not an exhaustive list and includes only those which are relevant to this Application.

e. the Property has three separate uses on a 1.55 acres parcel where two acres are required for each use;

f. the Property is served by onsite water and sewer rather than public water and sewer; and

g. there are 10 parking spaces where presently 19 are required.

14. Given the unique shape of the Property, in that it is narrow and deep, and that it is undersized for a lot in the LI Zoning District, Applicant is left with an extremely limited building envelope.

15. Applicant wishes to renovate the existing farmhouse and remove the existing wholesale building and warehouse and construct a pole barn at the rear of the existing farmhouse where the wholesale building is currently located.

16. The Property will still maintain its onsite wells, but Applicant will look into connecting to public water and sewer.

Pole Barn

17. Applicant wishes to remove the existing wholesale building and warehouse building on the Property and construct a 6,000 square foot pole barn on the Property, which would be used as a staging area for Applicant's business.

18. In doing so, Applicant will eliminate the G5 Wholesale Use and reduce the existing nonconformity from three uses to two uses.

19. The pole barn will be used for extra storage materials and equipment and will contain a restroom connected to onsite sewer.

20. The pole barn will not be used for retail sales or as a storefront and will not be open to customers or the general public.

21. The pole barn will be approximately 50 feet wide by 120 feet long and approximately 12 feet high.

22. The pole barn will be located towards the middle of the Property, to the rear of the farmhouse where the existing wholesale building and a portion of the existing warehouse building are located.

23. The pole barn will comply with the front and rear yard setback requirements as well as the side yard setback requirements for the side yard of the Property abutting the LI Zoning District.

24. The side yard abutting the RR Parcel will have a setback of 56.8 feet, which more than doubles that existing side yard setback of 24.3 feet.

25. Access will be provided via the existing stone driveway.

26. The pole barn will have 6 overhead garage doors facing the driveway with 6 interior parking spaces.

27. In addition to the interior parking spaces, the pole barn will have one exterior parking space with a handicap access aisle.

28. By adding these additional parking spaces, Applicant will provide adequate parking for the Property and eliminate the existing parking nonconformity.

29. Applicant estimates that there will be approximately one delivery per month on a 45-foot flatbed truck, but otherwise vehicle traffic will be limited to employees' cars and pickup trucks.

30. The extra parking spaces will provide sufficient space for the delivery trucks to access the pole barn and turn around.

31. In addition to the warehouse space and interior parking areas, the pole barn will also contain a climate-controlled office area.

32. The remainder of the pole barn will not be climate-controlled.

33. One employee will remain at the Property during the hours of operation, while others may stop in and out to pick up supplies as needed.

Farmhouse

34. Though uninhabitable in its present state, the farmhouse has 4 existing apartment units: two one-bedroom units on the top floor, one unit on the bottom floor, and one unit in the basement.

35. Applicant wishes to renovate the inside of the farmhouse, keeping 3 of the 4 apartment units, but eliminating the one in the basement.

36. The renovated farmhouse will have two one-bedroom units on the top floor and one two-bedroom unit on the bottom floor.

37. The farmhouse will have eight parallel parking spaces, which will run along the driveway.

38. By removing one unit in the farmhouse Applicant cancels out the addition of the bathroom facilities in the warehouse.

39. The renovation of the farmhouse will enhance the aesthetics of the Property.

Relief Requested

40. In connection with the proposed construction and renovations, Applicant seeks several variances from the Board.

41. First, Applicant seeks a variance from §160-27, in order to permit a minimum side yard setback of 56.8 feet, rather than the required 100 feet.

42. Next, Applicant seeks a variance from §§160-26 and 160-49, to permit the existing, non-conforming B5 Conversion Use and a new permitted G7 Warehouse Use on the 1.55 acre Property, where a 2 acre lot for each use is required.

DISCUSSION:

Applicant wishes to renovate an existing farmhouse, which is currently uninhabitable, and the existing warehouse and wholesale buildings and replace those with a pole barn. In connection with Applicant's proposed renovations and construction, Applicant is before the Zoning Hearing Board requesting a variance from §160-27 of the Hilltown Township Zoning Ordinance, in order to permit a minimum side yard setback of 56.8 feet, rather than the required 100 feet and §§160-26 and 160-49, to permit the existing, non-conforming B5 Conversion Use and a new permitted G7 Warehouse Use on the 1.55 acre Property, where a 2 acre lot for each use 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 the variances requested by Applicant. Moreover, the Board finds that Applicant's plans for the Property will reduce the amount of existing nonconformities by either eliminating some altogether or minimizing remaining non-conformities. The Board concludes that the relief requested, a reduction of the side yard setback, the allowance of the existing non-conforming B5 Conversion Use and the allowance of a new, permitted G7 Warehousing Use to be developed on the undersized 1.55 acre lot, is the minimum variance necessary to afford relief to the Applicant 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 and constitutes the minimum relief necessary to afford Applicant the opportunity to reasonably use the Property.

DECISION AND ORDER

AND NOW, this 20 day of Feb., 2020 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

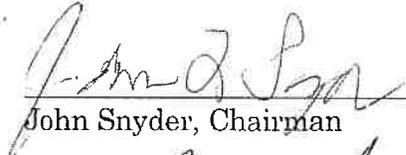
1. The proposed demolition, construction, and renovations shall be done in substantial conformity with Applicant's Exhibit A (Zoning Plan) and the testimony presented before the Board.

2. Applicant shall otherwise comply with all other applicable Township, state, and/or county laws, regulations, with respect to construction and use.

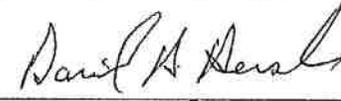
The Hilltown Township Zoning Hearing Board hereby deems the foregoing conditions as necessary and warranted under the terms of the Hilltown Township Zoning Ordinance and the Pennsylvania Municipalities Planning Code.

HILLTOWN TOWNSHIP ZONING
HEARING BOARD

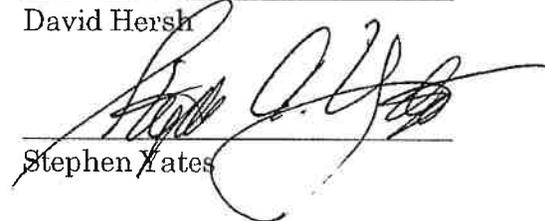
By:


John Snyder, Chairman

By:


David Hersh

By:


Stephen Yates

GRIM, BIEHN & THATCHER

By:


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

Date of Mailing:

2-21-20