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July 21, 2020

County Line Plaza Realty Associates, LP  
c/o S. Graham Simmons, III, Esquire  
Norris McLaughlin  
515 W. Hamilton Street  
Allentown, PA 18101

**Re: Hilltown Township Zoning Hearing Board  
County Line Plaza Realty Associates, LP; Appeal No. 2020-002**

Dear Mr. Simmons:

Please find enclosed herewith, a copy of the Decision of the Hilltown Township Zoning Hearing Board dated July 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

Encls.

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: County Line Plaza Realty Associates, LP

Appeal No. 2020-002

A hearing was held in the above matter on Thursday, June 11, 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. The Applicant was represented by S. Graham Simmons, III, Esq., who presented the testimony of Bill Greimel and Matthew Chartrand, PE 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 with enclosure dated May 26, 2020 to neighbors from K. Eberle
- B-4 Application filed on February 6, 2020 with all attachments
- B-5 Letter dated February 27, 2020 from G. Simmons to K. Eberle
- B-6 Letter dated March 17, 2020 from G. Simmons to K. Eberle
- B-7 Act 15 Notice to Applicant
- B-8 Decisions on appeal number 2012-006 and 2014-013

Applicant's Exhibits

A-1 Deed to Property

A-2 Curriculum Vitae of Matthew Chartrand, PE

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. Applicant is County Line Plaza Realty Associates, LP.
2. Applicant is the owner of the real property located at 731 Route 113, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-008-032.
3. The Property is located in the PC-1 Planned Commercial Zoning District in Hilltown Township.
4. The Property is part of a 16 acre shopping center known as County Line Plaza.
5. The portion of the Property subject to this appeal is approximately 1.6 acres.

6. The Property is surrounded by other commercial properties on all sides, including a McDonald's, a Burger King, a Dunkin' Donuts, and a car wash.

7. The Property formerly housed a Blockbuster video store, which was demolished in or around 2012.

8. The Property now consists of parking spaces, landscaping, and vacant space.

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

a. 2012-006 – variances associated with proposed construction of TD Bank; and

b. 2014-013– variance associated with proposed sign.

10. Applicant wishes to construct a 5,730 square foot building of which 3,200 square feet will be medical offices.

11. The remaining 2,550 square feet will be a coffee shop with a drive-thru.

12. The drive-thru will come from the southerly side of the building to the easterly side of the building with ingress and egress remaining in its current location.

13. The drive-thru allows for stacking of up to ten cars from the point of pickup.

14. In the event that stacking was to exceed ten cars, it would wrap around into the parking lot and would not overflow onto Route 113.

15. Applicant anticipates that drive-thru traffic will continue to increase and that the majority of the store's customer base will utilize the drive-thru services rather than entering the facility.

16. Applicant also notes that there are a number of businesses with a drive-thru in the immediate surrounding area.

17. The medical offices and coffee shop are permitted uses by right in the PC-1 zoning district; however, a drive-thru is not a permitted use.

18. Section 160-23.E.5 permits the following:

Eating place for the sale and consumption of food and beverages without drive-in service and primarily without takeout service. All food and beverages may be served by waiters or waitresses and are primarily consumed inside the building while patrons are seated at counters or tables. The sale of alcoholic beverages must be incidental to the sale and consumption of food.

19. Accordingly, Applicant seeks a variance from Section 160-23.E.5 in order to permit an eating place with drive-thru service as a principal use.

20. In connection with the construction of the proposed drive-thru, Applicant will need to remove a portion of the existing grass.

21. By doing so, the impervious surface coverage on the Property will increase from 83.2% to 83.8%.

22. Water runoff will be mitigated by an underground water basin, which will allow runoff flow to be slowed down. The runoff will then drain into an existing swale and pipe network, which runs along the frontage of the Property.

23. Applicant is not able to situate the drive-thru anywhere else on the Property without impeding the flow of traffic.

24. Accordingly, Applicant has requested a Special Exception pursuant to Section 160-61, or in the alternative, a variance from Section 160-26 to a .6% increase in the existing impervious surface coverage for a total of 83.8% rather than the required 70%.

25. Finally, Applicant requests a variance from Section 160-33.D.(1)(e) to allow fewer than the required quantity of trees around the parking lot perimeter.

26. The area that would serve as the parking lot buffer to the west of the Property contains overhead utility wires and underground gas, electric, and phone wires.

27. Planting the required shrubs and shade trees would interfere with the overhead and underground utilities.

28. Applicant is not removing any existing trees on the Property and proposes to install additional plants throughout the Property.

## II. DISCUSSION:

Applicant is before this Board requesting relief in connection with the proposed constructions of a 5,730 square foot building that will be used for medical offices and a coffee shop with a drive-thru. Specifically, Applicant seeks relief from §160-23.E.5 in order to permit and permit a drive-thru on an E5-Eating Place use, a Special Exception pursuant to 160-61, or in the alternative, a variance from §160-26 to permit a .6% increase in impervious surface to 83.8%, and a variance from §160-33.D(1)(e) to permit fewer buffer plantings than 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.

*A. Variance from §160-23.E.5 to permit an E5-Eating Place with drive-thru as primary use in PC-1 Zoning District.*

Applicant wishes to construct a 5,730 square foot building, of which 3,200 square feet will be medical offices. The remaining 2,550 square feet will be a coffee shop with a drive-thru. The drive-thru will come from the southerly side of the building to the easterly side of the building with ingress and egress remaining in its current location. The drive-thru allows for stacking of up to ten cars from the point

of pickup. In the event that stacking exceeded ten cars, it would wrap around into the parking lot and would not overflow onto Route 113. Applicant anticipates that drive-thru traffic will continue to increase and that the majority of the store's customer base will utilize the drive-thru services rather than entering the facility. Applicant also notes that there are a number of businesses with a drive-thru in the immediate surrounding area. While both the medical offices and the coffee house are permitted by right in the PC-1 Zoning District, an eating place with a drive-thru is not. Accordingly, Applicant seeks a variance from §160-23.E(5) in order to permit the coffee house with a drive-thru.

*B. Special Exception pursuant to 160-61, or in the alternative, a variance from §160-26 to permit a .6% increase in impervious surface to 83.8%.*

The Property presently has approximately 581,328 square feet of impervious coverage, which is equal to approximately 83.2% and is therefore nonconforming as to impervious surface. Applicant PC-1 Zones to increase the impervious surface to a total of 585,103 square feet, which is equal to 83.8% and would thereby increase the nonconforming area by 0.6%. This increase is to accommodate the proposed drive-thru. The proposed drive-thru will be located to the rear of the building in what is currently a grass area. Applicant is not able to situate the drive-thru anywhere else on the Property without impeding the flow of traffic. Applicant has indicated that it is treating for storm water management and will be using an underground basin to ensure that the increase does not cause a run-off problem. Accordingly, Applicant requests a variance from §160-26 in order to increase the impervious surface on the Property from 83.2% to 83.8%.



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 §160-26 of the Zoning Ordinance. The Board concludes that the relief requested, an increase in the current nonconforming impervious surface by .6% to a total of 585,103 square feet, is *de minimis* in nature, 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 constitute the minimum relief necessary to afford Applicant the opportunity to reasonably use the Property.

*C. Variance from §160-33.D(1)(e) to permit fewer buffer plantings than required.*

Applicant has requested a variance from §160-33.D(1)(e) in order to permit fewer buffer plantings than required. §160-33.D(1)(e) requires the following plantings:

<b>Type 1 Buffer Planting Requirements</b>		
<b>Plant Types</b>	<b>Minimum Size</b>	<b>Plant Quantities Required</b>
Evergreen trees	6 feet in height	1 evergreen per 20 feet of buffer length
Medium to large deciduous trees	3-inch caliper	1 medium to large deciduous tree per 20 feet of buffer length
Small deciduous trees	8 feet in height; 2 1/2 inch caliper	1 small deciduous tree per 50 feet of buffer length
Native shrubs	3 feet in height	5 native shrubs per 20 feet of buffer length;

### Type 1 Buffer Planting Requirements

Plant Types	Minimum Size	Plant Quantities Required
Ground-covering plants	18-inch maximum height at maturity*	planted in naturalistic groupings of mixed plant varieties and sizes in masses within mulched planting beds; not more than 75% being deciduous varieties and not less than 50% being ornamental flowering varieties 10 plants per every 1 shrub; planted in masses with shrub beds at a rate of 1 per square foot of shrub bed area with a minimum of 10 plants for each shrub

The area that would serve as the buffer area to the west of the Property contains overhead utility wires and underground gas, electric, and phone wires. Planting the required shrubs and shade trees would interfere with the overhead wires and underground utilities. Applicant will not be removing any existing plantings on the Property and proposes to install additional plantings throughout the Property.

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 §160-33.D(1)(e) of the Zoning Ordinance. The Board concludes that the relief requested in the nature of a variance from §160-33.D(1)(e) in order to permit less than the required amount of plantings on the westerly side of the Property, 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 constitute the minimum relief necessary to afford Applicant the opportunity to reasonably use the Property.


**DECISION AND ORDER**

AND NOW, this 21<sup>st</sup> day of July, 2020 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

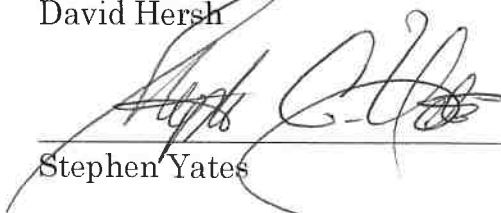
1. The proposed construction shall be done in accordance with Application, plans, and testimony presented at the hearing.
2. Applicant shall comply with all other Township, County, and State laws, regulations with respect to construction and use.

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:   
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: 7-21-20