

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: James and Kathleen Trucksess

Appeal No. 2020-015

A hearing was held in the above matter on Thursday, December 10, 2020 at 8:00 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 C. Yates. In addition, Kelly L. Eberle, the Board Solicitor, was in attendance, as was the Board stenographer. Applicant was present 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 with enclosure dated November 24, 2020 to neighbors from K. Eberle

Applicant's Exhibits

- A-1 Resume of Scott P. McMackin, P.E., LEED AP, Vice President of Cowman Associates, Inc.
- A-2 Google Map Satellite Photo 200 feet above the Property
- A-3 Google Map Satellite Photo 20 feet above the Property
- A-4 Google Map Photo Street view of the Property

- A-5 Photo of the front of the bay wash
- A-6 Photo of the back of the bay wash
- A-7 Letter dated October 2, 2020 from Timothy Fulmer, P.E.
- A-8 Application
- A-9 Plan dated September 9, 2020

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. Applicants are James and Kathleen Trucksess.
2. Applicants are the owners of the real property located at 784 Route 113, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-001-036-006.
3. The Property is located in the PC-1 (Planned Community 1) Zoning District in Hilltown Township.
4. The Property is currently improved by a self-service car wash facility that is designated as a permitted E12 use.

5. The Property is just under a half-acre in size and has an existing, non-conforming impervious surface coverage of 78.83% rather than the maximum 70% required by §160-26 of the Zoning Ordinance.

6. Applicants propose to relocate the existing vacuum islands to the east side of the building, construct an additional wash bay, and provide an interconnection from the rear of the Property to the adjacent shopping center.

7. As proposed, the Property will have 2 automatic wash bays and 2 self-service wash bays, for a total proposed addition of 650 square feet.

8. Vehicles will enter the wash bays from the rear of the building and exit at the front of the building.

9. In order to accommodate the proposed improvements, Applicants will need to widen the paved area to the east of the wash bays and at the rear of the Property, all of which will increase the impervious surface coverage on the Property.

10. To mitigate the added impervious surface coverage, Applicant will convert the existing concrete area on the west side of building to a grass area.

11. Even with Applicants' mitigation efforts, the proposed improvements will result in an additional 253 square feet of impervious surface, bringing the total impervious surface coverage from 78.83% to 80.86%.

12. Accordingly, Applicant requests a variance from §160-26 of the Zoning Ordinance to allow for an increase in the existing, non-conforming impervious surface area from 78.83% to 80.86%.

13. Next, Applicants request a variance from §160.23.E.12(c) of the Zoning Ordinance.

14. The proposed building square footage would require the facility to have 24 parking spaces onsite; however, Applicants propose one onsite parking space.

15. Presently, Applicants have no onsite parking.

16. Applicants believe there has never been, and will not be, a need for parking as the wash bays are strictly a drive-thru service.

17. Applicants do not have a retail space on the Property or any attendant area that a customer or employee would utilize.

18. Due to the automatic and/or self-service nature of the wash bays, Applicants do not typically have an employee present.

19. Customers may temporarily park to vacuum their vehicles at the vacuum islands, but this would occur in a designated area and would not require a customer to leave their vehicle unattended.

20. Accordingly, Applicants request a variance from §160.23.E.12(c) in order to provide one parking space rather than the required 24 parking spaces.

II. DISCUSSION:

Applicants are before this Board requesting relief in connection with the construction of additional of wash bay(s) and related improvements, including the installation of an interconnection between the Property and the adjacent shopping center. Applicants seek a variance from §160-26 of the Hilltown Township Zoning Ordinance to allow for an increase in the existing, non-conforming impervious surface

area from 78.83% to 80.86%, as opposed to the maximum impervious surface area of 70%, as well as, a variance from §160.23.E.12(c) in order to provide one parking space rather than the required 24 parking spaces.

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 Applicants have shown the existence of a hardship, not self-created, and unique and peculiar to the Property, which requires the grant of the variances from §160-26 and §160.23.E.12(c). Additionally, the Board finds that the variances as requested would not be injurious to the health, safety, and

welfare of the surrounding community and constitutes the minimum relief necessary to afford Applicants the opportunity to reasonably use the Property.

DECISION AND ORDER

AND NOW, this 22 day of January, 2021 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 and the exhibits 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 D. Snyder
John Snyder, Chairman

By: David Hersh
David Hersh

By: Stephen Yates
Stephen Yates

GRIM, BIEHN & THATCHER

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

Date of Mailing: 1/22/21