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May 24, 2021

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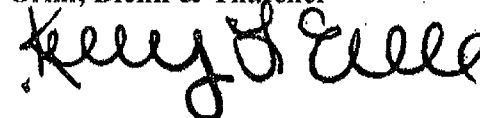
**Re: Hilltown Township Zoning Hearing Board
Francis P. Leahy & Tiffany A. Browning-Leahy; Appeal No. 2021-004**

Dear Ms. Freimuth:

Please find enclosed herewith, a copy of the Decision of the Hilltown Township Zoning Hearing Board dated May 24, 2021, 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

cc: Hilltown Township Manager
Mr. John L. Snyder
Mr. Stephen Yates
Mr. David Hersh
Beverly A. Slifer

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: Francis Leahy and Tiffany Browning-Leahy

Appeal No. 2021-004

A hearing was held in the above matter on Thursday April 8, 2021 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 C. Yates. In addition, Kelly L. Eberle, the Board Solicitor, was in attendance, as was the Board stenographer. Applicant was present and represented by Kimberly Freimuth, Esquire of Fox Rothchild, LLP. Beverly A. Slifer, owner of 4700 Bethlehem Pike, Hilltown, requested and was granted 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 March 10, 2021 to Neighbors from K. Eberle
- B-4 Entry of Appearance of Beverly A. Slifer
- B-5 Application with all Attachments

Applicant's Exhibits

- A-1 Deed dated August 4, 2016

- A-2 Curriculum Vitae of Jason Smeland, P.E.
- A-3 Aerial Plans of Property
- A-4 Sketch Plan prepared by Lenape Valley Engineering dated February 15, 2021

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 Francis Leahy and Tiffany Browning-Leahy.
2. Applicants are the owners of the real property located at 221 Keystone Drive, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-001-111.
3. The Property is located in the LI (Light Industrial) Zoning District in Hilltown Township.
4. The Property is located on Keystone Drive. The surrounding properties are mostly non-residential, including the R&S Diner, but one adjoining parcel is a residential property containing what appears to be an abandoned single-family home with a parking area.

5. Neither Francis Leahy nor Tiffany Browning-Leahy, jointly or individually, is the owner(s) of any of the adjoining parcels.

6. The Property is served by public water and sewer.

7. The Property has an existing non-conformity as to lot area; specifically, the Property contains 1.31 acres rather than the minimum requirement of 2 acres.

8. Applicants wish to construct a 2-unit self-storage facility on the Property.

9. An E20 – Mini Storage use is permitted in the LI Zoning District.

10. Pursuant to §160-61.B, any non-conforming lot must be developed by special exception.

11. The first unit will be 60' x 100' for a total of 6,000 square feet, and the second unit will be 25' x 223' for a total of 5,625 square feet.

12. The 25' x 223' storage unit will contain a caretaker facility, which will occupy a 25' x 25' space at the rear of the unit and will include a loft apartment above.

13. With the exception of the area containing the caretaker facility, both units will be limited to one story. Applicants approximate the height will be 10 feet to the eaves and 15 feet to the peak, but those heights may change slightly.

14. The portion of the unit containing the caretaker facility will be 2 stories and will not exceed the maximum height of 35 feet.

15. Applicants anticipate approximately 110 storage units, a portion of which will be climate controlled.

16. Pursuant to §160-33.C(1), where a non-residential property abuts a residential use or residentially zoned district, a Type 1 buffer is required.

17. A Type 1 buffer must be a minimum of 35 feet wide with a minimum planted area of 25 feet and shall meet the following planting requirements:

- a. 1 evergreen per 20 feet of buffer length;
- b. 1 medium to large deciduous tree per 20 feet of buffer length;
- c. 1 small deciduous tree 50 feet of buffer length;
- d. 5 native shrubs per 20 feet of buffer length; and
- e. 10 ground-covering plants per every 1 shrub.

18. The remainder of the Property will require a Type 4 buffer due to the E20 Mini Storage use.

19. In compliance with the Type 4 buffer requirements, Applicants will install an 8-foot tall black, chain-link privacy fence with slats along with the required plantings around the entirety of the Property.

20. However, while there will be 35 feet between the residential property line and the proposed storage unit, Applicants wish to install a rain garden in Type 1 buffer area and utilize a Type 4 buffer rather than a Type 1 buffer.

21. The rain garden will act as both a visual buffer and stormwater management device.

22. Applicants will comply with all other provisions of the Zoning Ordinance including the types of items being stored, minimum aisle width, and building coverage.

23. The proposed use for the Property does not generate an increase in traffic and emergency vehicles will have access to the Property.

24. There should be low intensity use in terms of noise, light, and actual use.

25. Applicants believe this is the appropriate use of the Property as there is not a lot of self-storage in the Township itself.

26. Accordingly, Applicants request a variance from §160-33.C(1) and D(1) relating to the required residential/non-residential separation buffers and a special exception pursuant to §160-61.B to permit development of a conforming use on a non-conforming sized lot.

DISCUSSION:

Applicants are before this Board requesting relief in connection with the construction of two self-storage units and related improvements in order to develop the Property with an E20 Mini Storage use. Applicants seek a variance from §160-33.C(1) and D(1) relating to the required residential/non-residential separation buffers and a special exception pursuant to §160-61.B to permit development of a conforming use on a non-conforming sized lot.

A. Variance from §160-33.C(1) and §160-33.D(1)

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 variance from §160-33.C(1) and D(1) relating to the required residential/non-residential separation buffers. 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.

B. Special Exception

A special exception is a use that is expressly permitted in a zoning district as long as certain conditions detailed in the zoning ordinance are found to exist. *Broussard v. Zoning Bd. of Adjustment*, 907 A.2d 494, 499 (Pa. 2006). An applicant seeking a special exception bears the burden of proving that its request complies with the specific, objective requirements contained in the zoning ordinance. *Sheetz, Inc. v. Phoenixville Borough Council*, 804 A.2d 113, 115 (Pa. Cmwlth. 2002). Once the applicant has

satisfied this initial burden, the burden then shifts to any objectors to establish that the proposed exception would be detrimental to the public health, safety, and welfare. *Id.*

§160-61.B permits a lawfully nonconforming lot to be developed by special exception for uses permitted in the particular zoning district and shall comply with all other provisions of the Zoning Ordinance, other than lot size, provided that the lot is in single and separate ownership from the adjoining properties.

Based on the above, the Zoning Hearing Board finds the Applicants have presented sufficient evidence to show compliance with the requirements of §160-61.B of the Hilltown Township Zoning Ordinance such that they are entitled to the requested special exception. The Board further finds that the proposed improvements will not be harmful to the health, safety, and welfare of the community.

DECISION AND ORDER

AND NOW, this 24th day of May, 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, plans, Exhibit A-4 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
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: 5/24/21