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December 6, 2021

Louis J. Colagrecro, Jr. Esquire
Gina M. Gerber, Esquire
Riley Riper Hollin & Colagrecro
717 Constitution Drive
P.O. Box 1265
Exton, PA 19341

**Re: Hilltown Township Zoning Hearing Board
Heritage Environmental Services, LLC; Appeal No. 2021-011**

Dear Counsel:

Please find enclosed herewith, a copy of the Decision of the Hilltown Township Zoning Hearing Board dated December 6, 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

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: Heritage Environmental Services, LLC

Appeal No. 2021-011

A hearing was held in the above matter on Thursday, October 21, 2021 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 C. Yates. In addition, Kelly L. Eberle, the Board Solicitor, was in attendance, as was the Board stenographer. Applicant was present and represented by Louis J. Colagreco, Jr., Esquire. 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 September 30, 2021 to neighbors from K. Eberle
- B-4 Letter from Township Solicitor dated September 29, 2021

Applicant's Exhibits

- A-1 Enclosure Letter and Application dated September 14, 2021
- A-2 Hilltown Township Zoning Ordinance of 1995, as amended

- A-3 Deed between JILL Nissen, Executrix of the Estate of Arthur Nissen, Deceased, and 31 Oak Ave Realty, LLC, recorded June 9, 2017, Instrument No. 2017033536
- A-4 Letter of Authorization from Property Owner
- A-5 Record Plan prepared by Urwiler and Walter, Inc. dated October 15, 2018, last revised May 29, 2019 (the "Plan")
- A-6 Conditional Use Decision dated September 27, 2021
- A-7 Photograph of Southeastern Property Line of 330 Progress Drive
- A-8 Letter from Township Solicitor in support of zoning relief, dated September 29, 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. Applicant is Heritage Environmental Services, LLC.
2. Applicant is the lessee of the real property located at 330 Progress Drive, Hilltown Township, Pennsylvania ("Property"), which is owned by 31 Three Oak Ave Realty, LLC.

3. The Property is more specifically identified as Bucks County Tax Parcel No. 15-001-005-007 and is located in the HI (Heavy Industrial) Zoning District in Hilltown Township.

4. The Property consists of approximately 12 acres and is improved by two commercial buildings, which are identified as Building A and Building B on the Plan.

5. Building A is approximately 18,154 square feet, and Building B is approximately 26,950 square feet.

6. Building B is setback approximately 30 feet from the southeastern side property line and approximately 74 feet from the street right-of-way line.

7. The existing parking area is located at the rear of the existing building and approximately 30 feet from the southeastern property line.

8. The Property has an existing dense vegetation and tree buffer on the southeastern property line and fence is proposed, both of which will separate the Property from the neighboring properties.

9. Applicant wishes to lease approximately 13,475 square feet in Building B for use as a 10-Day Transfer Facility, which is classified as an H5 Resource Recovery Facility use.

10. Specifically, Applicant wishes to operate a transfer center wherein Applicant would go to customers' sites to retrieve certain materials, transport the materials back to the Property where they will be sorted and subsequently transferred to the appropriate facility within 10 days.

11. Applicant has obtained conditional use approval from the Hilltown Township Board of Supervisors for the proposed use.

12. In connection with the proposed use, Applicant seeks the following relief:

a. A variance from §160-23.H.5(c)[1], which requires a minimum setback of 100 feet from any property line and ultimate right-of-way of the road in order to permit the building's existing, non-conforming setback of 30 feet from the side property line and 74 feet from the street ultimate right-of-way;

b. A variance from §160-23.H.5(c)[2] to permit the existing non-conforming 30-foot setback from the property line for truck/equipment parking and storage as opposed to the required 100-foot setback; and

c. A variance from §160-23.H.5(c)[16] to forgo the required evergreen buffer on the perimeter of the fenced area and any other applicable buffer requirements found in §160-33 due to the presence of a dense vegetation and tree buffer on the southeastern property line.

13. There will be no land development in connection with the Application or proposed use since Applicant will not be making any improvements to the Property or the existing structures.

14. Furthermore, Applicant does not seek to increase the existing non-conformities.

II. DISCUSSION:

Applicant is before this Board requesting relief in connection with the operation of an H5 Resource Recovery Facility. Applicant seeks a variance from §160-23.H.5(c)[1] to permit the existing, non-conforming setback of 30 feet from the side property line and 74 feet from the street ultimate right-of-way as opposed to required 100 feet, a variance from §160-23.H.5(c)[2] to permit the existing, non-conforming 30 foot setback in the existing parking area as opposed to the required 100 feet; and a variance from §160-23.H.5(c)[16] to forgo the required evergreen buffer and permit the existing dense vegetative and tree buffer.

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 from the Zoning Ordinances. 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 Applicant the opportunity to reasonably use the Property.

DECISION AND ORDER

AND NOW, this 6th day of December 2021 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

1. Applicant shall not increase the existing non-conformities.
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 J. 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: 12-6-21