

**HILLTOWN TOWNSHIP ZONING HEARING BOARD**

In Re: Francis Leahy and Tiffany Browning-Leahy

Appeal No. 2022-011

A hearing was held in the above matter on Thursday, December 15, 2022 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's engineer, Jason Smeland P.E., testified 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 Proof of Publication
- B-2 Posting Certification
- B-3 Letter with enclosure dated November 29, 2022 to Neighbors from K. Eberle

Applicant's Exhibits

- A-1 Application with all Attachments
- A-2 Land Development Plan prepared by Lenape Valley Engineering with a last revision date of August 15, 2022
- A-3 Deed dated October 29, 2022 between Francis P. Leahy and Tiffany A. Browning-Leahy and GP Investment Properties, LLC

A-4 Operating Agreement of GP Investment Properties, LLC

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. The original applicants are Francis Leahy and Tiffany Browning-Leahy.
2. The real property that is the subject of this Appeal is located at 221 Keystone Drive, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-001-111.
3. Applicants are the sole members of GP Investment Properties, LLC.
4. At or around the time of this Appeal, Applicants transferred the Property into GP Investment Properties, LLC.
5. The Property is located in the LI (Light Industrial) Zoning District in Hilltown Township.
6. 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.

7. The Property is served by public water and sewer.
8. 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.
9. Applicants wish to construct a 2-unit self-storage facility on the Property.
10. An E20 – Mini Storage use is permitted in the LI Zoning District.
11. Applicants previously appeared before this Board in connection with this project on Application 2021-004 wherein they requested, and were granted, a variance from Zoning Ordinance §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.
12. Applicants have proceeded through land development and secured all necessary approvals to begin construction.
13. §160-23.E(20)(c) of the Zoning Ordinance requires that a storage facilities complex shall be surrounded by a fence at least eight feet in height.
14. The narrowness of the lot, together with the required stormwater management, leaves a very limited area in which the fence could be located on the portion of the Property in which the rain garden will be located.
15. Applicant originally intended to install the required fencing four feet away from the building.

16. However, the 4-foot gap between the building and the fencing would be difficult to maintain.

17. Furthermore, the 4-foot gap could present safety concerns as it would create a corridor between the fence and the building where individuals could potentially hide.

18. The fence cannot be located closer to the building as it will interfere with buffer plantings.

19. The topography on this portion of the Property also makes it difficult to install the required fencing.

20. Applicant proposes to use the 200-foot exterior wall of the storage building located adjacent to the rain garden as screening barrier in lieu of the required 8-foot fence.

21. The applicable portion of the building will be a flat, windowless, doorless, metal wall measuring approximately 9'6" tall.

22. Applicant will fence in the remainder of the storage facility complex with the required fencing and connect the fencing to the building so that the building and the fencing will create a continuous screening barrier.

23. Accordingly, Applicant seeks a variance from §160-23.E(20)(c) of the Zoning Ordinance to allow a portion of one of the storage building's exterior walls to act as the screening barrier in lieu of the required 8-foot fence.

## DISCUSSION:

Applicants are before this Board requesting a variance §160-23.E(20)(c) of the Zoning Ordinance to allow a portion of one of the existing storage building's exterior walls to act as the screening barrier in lieu of the required 8-foot fence.

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 §160-23.E(20)(c) to allow a portion of one of the existing

storage building's exterior walls to act as the screening barrier in lieu of the required 8-foot fence. 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.

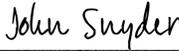
**DECISION AND ORDER**

AND NOW, this 30<sup>th</sup> day of January, 2023 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

1. The portion of the fence to be constructed shall be located as shown on Exhibit A-2; and
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:   
DocuSigned by: E9398DE729A647B...  
 John Snyder, Chairman

By:   
DocuSigned by: 6134AEF2715B48A...  
 David Hersh

By:   
DocuSigned by: 65D82380D09C404...  
 Stephen Yates

GRIM, BIEHN & THATCHER

By:   
DocuSigned by: 97A84A3B3DC94E6...  
 Kelly L. Eberle, Solicitor  
 104 South Sixth Street  
 Perkasie, PA 18944

Date of Mailing: January 30, 2023