

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: Waste Management of Pennsylvania, Inc.

Appeal No. 2023-004

A hearing was held in the above matter on Thursday, March 2, 2023 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 and Stephen C. Yates. In addition, Kelly L. Eberle, the Board Solicitor, was in attendance, as was the Board stenographer. Applicant was present. Beverly A. Slifer of 1019 Orchard Road, Sellersville, Hilltown Township, 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 February 10, 2023 to Neighboring Property Owners from K. Eberle
- B-4 Letter from Township Solicitor dated March 1, 2023
- B-5 Entry of Appearance – Beverly A. Slifer

Applicant's Exhibits

- A-1 Application with all Exhibits

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 applicant is Waste Management of Pennsylvania, Inc., ("Applicant").
2. Applicant is the owner of the real property located at 4622 Bethlehem Pike, Hilltown Township, Pennsylvania more specifically identified as Bucks County Tax Parcel No. 15-001-007-001 and the adjacent parcel located at 300 Progress Drive, Hilltown Township, Pennsylvania more specifically identified as Bucks County Tax Parcel No. 15-001-007 (collectively with 4622 Bethlehem Pike as the "Property").
3. The Property is located in the HI (Heavy Industrial) Zoning District in Hilltown Township.
4. 300 Progress Drive is approximately 10.89 acres and currently is utilized by Applicant as a truck storage facility, which is considered an H9 Outdoor/Wholesale Storage use.
5. 4622 Bethlehem Pike is approximately 2.19 acres and is presently improved by a non-conforming single-family dwelling with accessory structures.
6. The northern portion of 4622 Bethlehem Pike contains wetlands, which cannot be developed.
7. Applicant seeks to consolidate the 4622 Bethlehem Pike and 300 Progress Drive and expand its current H9 use to 4622 Bethlehem Pike by constructing an additional 48 parking spaces for trucks and new driveway access to Bethlehem Pike.

8. As part of the consolidation, the existing dwelling and related improvements on 4622 Bethlehem Pike would be removed.

9. In its Application, Applicant requested a special exception pursuant to §160-62.B(3) to permit the expansion of “existing non-conforming storage use” to 4622 Bethlehem Pike.

10. An H9 use is permitted in the HI Zoning District by conditional use.

11. Conditional use hearings are held before the Board of Supervisors not the Zoning Hearing Board. *See* Hilltown Township Zoning Ordinance §160-94.

12. Accordingly, at the outset of the hearing, Applicant withdrew its request for a special exception and noted its intention to proceed via conditional use hearing.

13. The remaining relief requested by Applicant is a variance from §160-33.D(1)(a) to permit a Type 1 buffer that is 20 feet wide rather than the required 35 feet wide along the southern side of the 4622 Bethlehem Pike.

14. Applicant’s proposed development of 4622 Bethlehem Pike takes into consideration the presence of the wetlands and modified its plans accordingly.

15. The connecting aisle between 300 Progress Drive and 4622 Bethlehem Pike have been located in a manner such as to minimize the impact on the wetlands.

16. As a result of the presence of the wetlands, the location of the proposed fleet storage areas have shifted to the southern portion of 4622 Bethlehem Pike.

17. The property adjacent to the southern boundary of 4622 Bethlehem Pike is a 7.7 acres mixed-use property containing 5.5 acres of open industrial storage, a residential single-family dwelling on approximately 1 acre in the northeastern corner of the property, and undeveloped green space on the remainder of the property.

18. This adjoining property is zoned HI; however, because of the presence of the non-conforming single-family dwelling, a Type 1 buffer is required.

19. The total impacted buffer area is approximately 240 linear feet.

20. Applicant redesigned the fleet storage area to change to angled parking to minimize the amount of the impacted buffer area.

21. Applicant will not be reducing the amount of required plantings, only the width of the buffer area.

22. In addition, Applicant will be installing fencing to serve as a screen.

DISCUSSION:

Applicant is before this Board requesting a variance from §160-33.D(1)(a) to permit a Type 1 buffer that is 20 feet wide rather than the required 35 feet wide along the southern side of the 4622 Bethlehem Pike.

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 the Applicant has shown the existence of a hardship, not self-created, and unique and peculiar to the Property that requires the grant of the variance from §160-33.D(1)(a), to permit a Type 1 buffer that is 20 feet wide rather than the required 35 feet wide along the southern side of the 4622 Bethlehem Pike as show on the Plan. Additionally, the Board finds that the variance 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 13th day of April, 2023 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: DocuSigned by:
Stephen Yates _____
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Stephen Yates

GRIM, BIEHN & THATCHER

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

Date of Mailing: 4/14/23