

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: ESP Investment Group, LLC

Appeal No. 2023-005

A hearing was held on Thursday, March 23, 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 Yates. In addition, Kelly Eberle, Esquire, the Board Solicitor, was in attendance as was the Board stenographer. The applicant was present and was represented by John A. VanLuvanee, Esquire. Larry Lacovara of 435 Fairhill Road requested, and was granted, party status.

The following exhibits were admitted and accepted into evidence:

Board's Exhibits:

- B-1 Proof of Publication
- B-2 Posting Certification
- B-3 Letter to Neighboring Property Owners dated 3/06/23
- B-4 Application with all attachments
- B-5 Amendment to Application
- B-6 Entry of Appearance – L. Lacovara
- B-7 Letter from Township Solicitor to K. Eberle dated 3/20/23

Applicant's Exhibits:

- A-1 Zoning Enforcement Notice dated 7/08/21
- A-2 Letter from Township Solicitor to K. Eberle dated 1/29/23
- A-3 E-mail from J. VanLuvanee to Township Solicitor dated 8/18/22
- A-4 E-mail from Township Solicitor to J. VanLuvanee dated 9/15/22
- A-5 Photograph of the Property from Fairhill Road
- A-6 Photograph Showing Side and Back of the Building
- A-7 Photograph from Road to Building
- A-8 Prior ZHB Adjudication No. 2008-011

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 rendered its Decision in the above Application as more fully set forth below.

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, hereby makes the following Findings of Fact:

1. The applicant is ESP Investment Group, LLC (“Applicant”).
2. Applicant is the owner of the subject property located at 430 Fairhill Road, Hilltown Township, Pennsylvania (“Property”). (*Exhibit A-1*).
3. The Property is otherwise identified as Bucks County Tax Parcel 15-024-056.
4. The subject Property is located in the RR-Rural Residential Zoning District in Hilltown Township.
5. The Property is an existing, non-conforming machine shop with a G-5 Contracting Use, G-8, Industrial Crafts Use, and a residential apartment.
6. The Property is approximately 6 acres with an existing 15,000 square foot commercial building, which is comprised of multiple buildings that are all connected.
7. The existing commercial building contains a hoist mechanical crane as well as industrial heating and cooling units and has been fitted for multiple industrial machines.
8. The rear and side of the Property are heavily wooded.
9. The Property has a macadam parking lot at the end of which is a screen of trees. Behind the tree line is a gravel parking lot.

Prior Adjudications

10. The Property is the subject of the following prior Zoning Hearing Board Adjudications: Appeal No. 1967-0017; Appeal No. 1970-0007; Appeal No. 1994-0005; Appeal No. 1997-08; Appeal No. 2008-011; and Appeal No. 2016-019.

11. In Appeal No. 2008-011, the then-owner, Hefner Machine and Tool, Inc., requested a special exception pursuant to §160-61 in order to construct a 1,166.22 square foot adjoining shop area that would connect the two existing buildings and a 6,300 square foot additional shop and storage area at the rear of the building.

12. In its Decision and Order dated October 6, 2008, the Zoning Hearing Board granted the requested relief with the following relevant conditions:

1. *There shall be no future expansion of commercial building area on the property as it has currently met and exceeded the maximum permissible expansion of a non-conforming use under the Hilltown Township Zoning Ordinance by this application and proposal; and*
2. *No exterior storage of any materials or equipment shall be permitted at any time at the premises[.]*

13. In Appeal 2016-019, Applicant appeared before this Board requesting a Special Exception to alter the existing, non-conforming use of G-8, Industrial Crafts with a residential apartment to Zoning Use G-5, Contracting along with G-8 Industrial Crafts while maintaining the existing, residential apartment.

14. This Board granted the relief with the following relevant conditions:

1. *Applicant shall have no outdoor storage;*
2. *Applicant shall ensure that all construction trucks are parked inside the building;*

Applicant's Business

15. Applicant is a contracting company specializing in residential roofing and siding catering primarily to the large national builder industry. A small portion of its business also involves manufacturing roofing materials for use in its own business as well as for third parties.

16. Applicant has been operating for more than 30 years.

17. Applicant has approximately 22 employees and a fleet of 15 pickup trucks.

18. The trucks are similar style and size as Ford F-150s or F-250s and have ladder racks.

19. Applicant's normal hours of operation are 6:30 a.m. until 4 p.m. or 5 p.m., with most of the activity occurring between 6:30 a.m. through 8:00 a.m.

20. Since 2017, Applicant's business has grown exponentially.

21. During 2020 and 2021, Applicant faced significant supply chain issues as a result of the COVID-19 pandemic.

22. The supply chain issues made it extremely difficult for Applicant to get the materials it needed.

23. As a result, Applicant would attempt to secure tractor trailer loads of the materials, but the trailers did not always come as scheduled. Sometimes the trailers would not show up at all and other times multiple trailers would show up at the same time.

24. When Applicant received an excess of materials, it would easily exceed the indoor storage available, and Applicant began storing materials outside as needed.

25. On July 8, 2021, Applicant received a Notice of Violation from Hilltown Township.

26. Citing the conditions found in the 2016 Appeal, the Notice of Violation stated that material storage and construction trucks were not permitted to be located outdoors on the Property.

27. Since the Notice of Violation, the supply chain issues have resolved, and the indoor storage on the Property is sufficient to house all of the materials.

28. Applicant previously filed an appeal from the Notice of Violation, but Applicant was able to resolve the matter with the Township without the need for a hearing before this Board.

Requested Relief

29. Though Applicant does not store supplies or materials used in the fabrication process outside, Applicant does store fabricated orders outside once they are completed for crews to come and pick them up.

30. The fabricated orders are only stored outside for short periods of time, typically a day or so.

31. The completed orders are difficult to store inside because each job varies in size and length and the amount of completed projects can vary from day to day.

32. The completed orders are carried by hand from the warehouse to the tree line to await pickup by the crews.

33. Placing the orders by the tree line provides the most screening for the adjacent property owners.

34. Since receiving the Notice of Violation, Applicant has planted an additional 15 arborvitaes for screening.

35. Applicant testified that it has engaged in this practice of leaving orders outdoors for pickup since it began operating the business at the Property.

36. Applicant wishes to install a temporary outdoor structure measuring approximately 12'x20'x12'.

37. The structure would be located on the gravel portion of the parking lot behind the tree line. Completed projects will be placed under the structure until they are retrieved by crews.

38. The projects would only be stored outdoor for short periods of time, not more than a few days, until they are picked up.

39. Applicant seeks a variance from a variance §160-22, Table of Use Regulations (Table 160, Attachment 2) to permit a non-residential accessory storage building, and if it determined by the Board that the temporary structure violates the conditions of the 2016 Adjudication, Applicant seeks relief from said conditions to allow for a temporary outdoor storage structure.

40. In addition, Applicant seeks an interpretation from this Board that the pickup trucks utilized by Applicant do not constitute construction vehicles.

DISCUSSION:

Applicant is before this Board seeking a variance from the conditions of the 2016 Adjudication to allow for a temporary outdoor storage structure and an interpretation that the pickup trucks utilized by Applicant do not constitute “construction vehicles” and can therefore be parked outside on the Property.

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 permits the grant of a variance from §160-22, Table of Use Regulations (Table 160, Attachment 2) to allow Applicant to install a temporary outdoor structure measuring approximately 12'x20'x12' to be located on the gravel portion of the parking lot behind the tree line and used only for short-term, temporary storage of finished projects for pickup by construction crews. Additionally, the Board finds that the variances 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. Further, the proposed temporary storage structure as shown in the Application and as testified to by Applicant does not violate the conditions set forth in the prior Decisions & Orders in Zoning Appeal Nos. 2008-011 and 2016-019.

In addition, the Board finds that pickup trucks similar in size and style to Ford F-150s or F-250s do not constitute construction vehicles as contemplated by the Board in the 2016 adjudication and therefore may be parked outside on the Property.

DECISION AND ORDER

AND NOW, this 8th day of May, 2023 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

1. The temporary storage structure shall be approximately 12’x20’x12’ and shall be located on the gravel portion of the parking lot behind the tree line;
2. The temporary storage structure shall only be used for short term storage and in conformity with the evidence presented before the Board; and
3. Applicant shall otherwise comply with all other applicable Township, state, and/or county laws, regulations, with respect to construction and use of the Property.

The Hilltown Township Zoning Hearing Board hereby deems the foregoing determinations 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
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By: _____
Stephen Yates
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 Stephen Yates

GRIM, BIEHN & THATCHER
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By: _____
Kelly L. Eberle
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 Kelly L. Eberle, Solicitor
 104 South Sixth Street, Perkasie, PA 18944

Date of Mailing: 5/9/2023