

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: Penn View Farm, LLC

Appeal No. 2023-010

A hearing was held in the above matter on Thursday, July 20, 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 David Hersh, Chairman, Stephen C. Yates, and D. Brooke Rush. In addition, Kelly L. Eberle, the Board Solicitor, was in attendance, as was the Board stenographer. The Applicant and the property owner were present. 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 June 27, 2023 to Neighbors from K. Eberle
- B-4 Application with all Attachments

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 Penn View Farm, LLC ("Applicant").
2. Applicant operates a milk processing plant and retail store on the real property located at 1500 Broad Street, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-035-012.
3. The Property is owned by H. John Hockman and Norma W. Hockman and is located in the RR (Rural Residential) Zoning District in Hilltown Township.
4. Mr. Hockman appeared at the hearing and gave his consent for the application.
5. The Property is located at the corner of Broad Street and Middle Road with the entrance to the retail store facing Broad Street.
6. The Property is improved by a commercial building consisting of approximately 3,450 square feet with an entrance facing Broad Street.
7. When viewing the building from Broad Street, the portion to the lefthand side is used as a milk processing plant, and the portion on the righthand side is used as retail space.
8. The retail space is used to sell milk, beef, eggs, and seasonal produce produced by Applicant or from other local farms.
9. Applicant seeks to construct an addition onto the existing retail space and will allow Applicant to expand its retail space and will provide additional storage.
10. As proposed, the addition is approximately 16' by 30' with a 12' porch and will extend from the end of the existing building towards Middle Road.

11. The new porch will be used to provide additional seating and to display additional items for sale.

12. The existing entrance will remain the same, with a new façade, and a second entrance at the rear of the retail area will be added.

13. The proposed addition cannot be located on the north/northwesterly side of the building due to the location of the existing well and cannot be located at the lefthand side/rear of the building due to the location of the existing milk processing equipment.

14. Because the Property is a corner lot, both the yard fronting Broad Street and the yard fronting Middle Road are considered front yards.

15. §160-27 of the Hilltown Township Zoning Ordinance requires a 50' front yard setback for all nonresidential buildings.

16. The proposed addition will encroach 9' into the setback area, resulting in a front yard setback from Middle Road of 41'.

17. Accordingly, Applicant seeks a variance from §160-27 to permit a front yard setback of 41' from Middle Road rather than the required 50'.

II. DISCUSSION:

Applicant is before this Board requesting a variance from §160-27 to permit a front yard setback of 41 feet from Middle Road rather than the required 50 feet in connection with the construction of a proposed addition on the existing commercial building.

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 §160-27 to permit a front yard setback of 41 feet from Middle Road rather than the required 50 feet. 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.

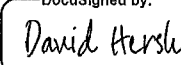
DECISION AND ORDER

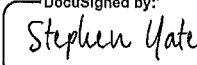
AND NOW, this 31 day of August, 2023 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

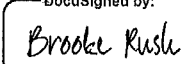
1. Construction shall be done in conformity with Exhibit B-4 and the testimony presented before this Board; and
2. Applicant shall comply with all other Township, County, and State laws, regulations with respect to construction and use.

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.

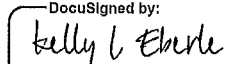
HILLTOWN TOWNSHIP ZONING HEARING BOARD

By: DocuSigned by:

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 David Hersh, Chairman

By: DocuSigned by:

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 Stephen Yates

By: DocuSigned by:

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 D. Brooke Rush

GRIM, BIEHN & THATCHER

By: DocuSigned by:

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 Kelly L. Eberle, Solicitor
 104 South Sixth Street
 Perkasic, PA 18944

Date of Mailing: 8/31/23