

**HILLTOWN TOWNSHIP ZONING HEARING BOARD**

In Re: County Central, LLC

Appeal No. 2022-013

A hearing was held in the above matter on Thursday, February 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 represented by Oliver Gingrich, Esq., and Applicant's engineer, Jason Smeland P.E., testified on behalf of Applicant. Richard Joyce of 116 E. Central Avenue, Telford, PA 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 January 16, 2023 to Neighbors from K. Eberle
- B-4 Letter from Loan Tran dated February 1, 2023
- B-5 Authorization of Agent Letter from Nathan Clemmer dated January 30, 2023
- B-6 Entry of Appearance – Richard Joyce
- B-7 Application with all Exhibits

Applicant's Exhibits

A-1 Packet consisting of 8 Sheets

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 County Central, LLC.
2. Applicant is the owner of the real property located at 707 South County Line Road, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-004-021.
3. The Property is located in the PC-1 (Planned Commercial-1) Zoning District in Hilltown Township and is bordered by the CR-1 (Country Residential-1) Zoning District.
4. The Property is long and narrow, measuring 146 feet wide by 1,333 feet deep, with buildings all clustered at one end abutting County Line Road.
5. The Property is currently improved with a triplex residential apartment building, an outbuilding, and related improvements.
6. The surrounding properties consist of residential homes, a doctor's office, a ball field, and Landis Block, which is an industrial use.

7. However, given the narrowness and shape of the Property, these uses are not suitable for the Property due to the amount of traffic generated.

8. The biggest factor in determining how to develop the Property was finding a use of that is compatible with the residential use and industrial type use of Landis Block.

9. The size of the Property further constrains its development; putting a retail facility on the property with the required parking and buffers makes it nearly impossible to have a reasonably sized building with access points that can handle heavier traffic.

10. The PC-2 mostly permits retail stores, personal services, restaurants, hotels, gas stations, car washes, and printing and industrial crafts.

11. Applicant wishes to construct a E20 mini self-storage facility on the Property.

12. Applicant chose mini storage because it is lower traffic generation compared to other permitted commercial uses.

13. An E20 – Mini Storage use is permitted in the PC-1 Zoning District.

14. The proposed building height is 9 feet 4 inches to the eaves with flatter roofs resulting in a peak of approximately 10 feet.

15. Two sides of the building will have garage door access.

16. Parking will only be proposed at the entrance and drive aisles will be wide enough to accommodate emergency vehicle access.

17. The existing house and outbuilding will remain on the Property.

18. In connection with the proposed construction, Applicant seeks the following variances: a) from §160-23.E(20), which requires an 8-foot fence around the entire facility, to allow for the combination of an 8-foot fence and the utilization of the outer building wall to suffice the 8-foot high fencing requirement; b) from §160-28.C in order to exceed the maximum permitted forest

disturbance of 60%; c) from §160-33.A(2) to permit a stormwater basin in the required buffer area; and d) from the planting requirements for the Type 1 and Type 4 buffer areas set forth in §160-33.C&D.

#### Fencing Variance

19. §160-23.E(20)(c) of the Zoning Ordinance requires that a storage facility complex shall be surrounded by a fence at least eight feet in height.

20. Strict interpretation of the Zoning Ordinance would require the entire Property to be surrounded by an 8-foot fence.

21. Unlike normal storage facilities, which provide access on sides of the buildings, the proposed storage facility would only have doors and access on three sides of the storage units with the outer walls having no doors, windows, or any other access points.

22. The narrowness of the lot, together with the required stormwater management, leaves a very limited area in which the fence could be located.

23. Installing a fence a few feet off of the building would create a gap between the building and the fence, making maintenance of both the fence and the area between the fence and the building difficult.

24. Furthermore, such a gap could present safety concerns as it would create a corridor between the fence and the building where individuals could potentially hide.

25. Applicant proposes to use the exterior walls of the storage buildings as a screening barrier in lieu of portions of the required 8-foot fence.

26. Applicant will fence in the remainder of the storage facility complex with the required 8-foot metal fencing and connect the fencing to the building so that the building and the fencing will create a continuous screening barrier.

27. Applicant further intends to install security cameras throughout the Property.

28. 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.

#### Forrest Disturbance

29. Next, Applicant requests a variance from §160-28(C) in order to exceed the maximum permitted forest disturbance of 60%.

30. The defined woodlands area consists of approximately 2.87 acres all of which are located in the middle of the Property.

31. While there are no woodland areas in the front or rear of the Property, in order to use the rear of the Property, you need to go through the woodland area.

32. This was not an intended woodland area. Rather, it is an unmaintained field that has become overgrown.

33. The majority of the trees within the woodlands area are "scrub trees."

34. Sheet 4 of *Exhibit A-1* shows the current woodland area as it was in 2000.

35. Mr. Smeland opined that the woodland area circa 2000 would not have met the definition of "woodlands."

36. Applicant proposes to remove 122 trees from the Property, but it also intends to replant a total of 316 new trees in the proposed buffer areas.

37. In addition, Applicant owns the property located at 126 Central Avenue, which is located at the rear of the subject Property and could replant replacement trees on 126 Central Avenue. Whether Applicant will be required to plant offsite replacements trees or pay a fee-in-lieu is left to the discretion of the Board of Supervisors.

Buffer Areas

38. Applicant next requests a variance from the planting requirements for the Type 1 and Type 4 buffer areas set forth in §160-33(C)&(D).

39. The Zoning Ordinance requires that two unlike uses be separated by buffer areas.

40. Buffers typically have two aspects: planting requirements and width requirements.

41. Because the Property will have a non-residential use and is located next to residential properties, a Type 1 buffer is required.

42. In addition, an E20 Mini Storage use requires a Type 4 buffer.

43. A Type 1 buffer is 35 feet wide and is intended to “soften” rather than to act as a screen.

44. A Type 4 buffer is a screening buffer, but only requires that the buffer area be large enough to accommodate the required fencing and plantings.

45. While the width is more stringent in a Type 1 buffer, the plantings requirements are more stringent in a Type 4 buffer.

46. Applicant proposes to install a 35-foot-wide buffer area, but with Type 4 plantings rather than Type 1 plantings.

47. The proposed buffer will meet the hardest elements of both the Type 1 and Type 4 buffer requirements.

Stormwater Basins

48. Finally, Applicant requests relief from §160-33(A)(2) to permit a stormwater basin in the required buffer area.

49. The Zoning Ordinance permits stormwater management basins in the buffer areas upon the permission of the Board of Supervisors.

50. There is a small stream running through the Property and since the proposed construction would interfere with the flow of water, Applicant intends to direct it to the basin by using swales.

51. Extra amended soils, plantings, and underdrains would be located in the buffer area.

52. There is no negative impact to the Property or adjacent properties by having stormwater management in the buffer area.

DISCUSSION:

Applicant is before this Board requesting the following variances in connection with the construction of mini self-storage facility: a) §160-23©(20), which requires an 8-foot fence around the entire facility, to allow for the combination of an 8-foot fence and the utilization of the outer building wall to suffice the 8-foot high fencing requirement; b) §160-28(c) in order to exceed the maximum permitted forest disturbance of 60%; c) §160-33(A)(2) to permit a stormwater basin in the required buffer area; and d) the planting requirements for the Type 1 and Type 4 buffer areas set forth in §160-33(C)&(D) to allow a Type 1 buffer width of 35 feet with Type 4 plantings in lieu of a Type 1 and Type 4 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 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 variances as requested. 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 Applicant the opportunity to reasonably use the Property.



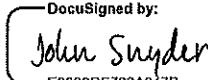
**DECISION AND ORDER**

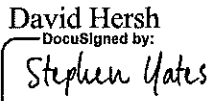
AND NOW, this 20 day of March, 2023 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

1. Construction shall be done in accordance with B-7, A-1, and the testimony presented before this Board;
2. With respect to the variance from §160-28.C, Applicant agrees to be bound by any decision of the Board of Supervisors pertaining to offsite replacement plantings or a fee-in-lieu of the same.
3. 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:   
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: 3/21/23