

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: Garlan Properties, LP

Appeal No. 2023-011

A hearing was held in the above matter on Thursday, April 4, 2024 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, D. Brooke Rush, and Stephen C. Yates. In addition, Kelly L. Eberle, the Board Solicitor, was in attendance as was the Board stenographer. Johanna Leah Garlan, President of Garlan Properties GP, LLC was present on behalf of Applicant and was represented by Caroline Edwards, Esq. The following individuals requested, and were granted, party status: Sandra and Chris Engelhart of 808 Blooming Glen Road represented by Zachary Morano, Esq.; and Kevin Walsh of 1277 Route 113.

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 29, 2024 to neighboring property owners from K. Eberle
- B-4 Letter dated July 26, 2023 from C. Edwards, Esq., requesting a continuance
- B-5 E-mail dated September 18, 2023 with attached letter from C. Edwards, Esq., requesting a continuance
- B-6 E-mail dated September 19, 2023 from C. Pionzio, Esq. entering appearance of herself and Z. Morano, Esq., on behalf of Sandra and Chris Engelhart

- B-7 Email dated September 20, 2023 from C. Edwards, Esq., requesting date certain continuance
- B-8 Entry of Appearance of Kevin Walsh – 1277 Route 113

Applicants' Exhibits

- A-1 Application to Zoning Hearing Board with attachments and authorizations
- A-2 Deeds for:
 - TMP 15-019-042 (1283 Route 113 – Parcel A)
 - TMP 15-019-041 (1281 Route 113 – Parcel B)
 - TMP 15-019-040 (1279 Route 113 – Parcel C)
- A-3 Existing Feature Plan
- A-4 Curriculum Vitae of Paul Yaskowski
- A-5 Parking lot reconfiguration Plan dated 3/20/23, last revised 12/12/23
- A-6 Table of Existing and Proposed Conditions
- A-7 Wynn Associates Review letters dated April 13, 2023 and January 16, 2024
- A-8 Township Zoning Officer email dated May 18, 2023
- A-9 Photographs of Property (marked A-Q)

Kevin Walsh's Exhibits

- W1 Photograph of the rear of the property circa 2007
- W2 Photograph of the rear of the property present day
- W3 2006 Adjudication and transmittal letter dated January 23, 2007

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 Garlan Properties, LP (together with the owners listed below as "Applicant").

2. The following parcels (collectively, the "Lots") are the subject of this appeal:

a. 1283 Route 113 more specifically identified as Bucks County Parcel No. 15-019-042 and owned by Garlan Investments, LP ("Lot A");

b. 1281 Route 113 more specifically identified as Bucks County Parcel No. 15-019-041 and owned by Garlan Properties, LP ("Lot B"); and

c. 1279 Route 113 more specifically identified as Bucks County Parcel No. 15-019-040 Joseph R. and Margaret Garlan ("Lot C").

3. During the hearing, Board member Brooke Rush advised that he owns a mixed-use property across the street from the subject Lots, which he uses for commercial purposes. Mr. Rush further advised that he does not have any business or personal dealings with Applicant or the Lots.

4. Though Mr. Rush's ownership does not create a conflict of interest, Mr. Rush wished to ensure that all parties were aware of this to avoid any appearance of impropriety.

5. Johanna Leah Garlan, President of Garlan Properties GP, LLC, which is the general partner of Garlan Properties, LP and Garlan Investments, LP testified on behalf of Applicant.

6. The owners of Lots A and C provided written permission for Garlan Properties, LP to file this instant application on their behalf. *See Exhibit A-1.*

7. The Lots are located in the VC-Village Center Zoning District.

Lot A

8. Lot A is located at the intersection of Blooming Glen Road and Route 113 and was purchased by Garlan Investments, LP in 2015.

9. It is an irregularly shaped parcel, resembling a reverse, tilted “L” with a long, narrow front which extends back and wraps around the rear of Lot B.

10. It is approximately 26,749 square feet (net) in size.

11. Lot A is improved with two-story brick building, which was originally constructed in the 1800s, as well as parking and related improvements.

12. The building on Lot A was converted into a four-unit apartment building (B5-Conversion Use) prior to 2015 and contains three two-bedroom units and one one-bedroom unit.

13. The existing parking and paving are substantially similar in location and dimension to the parking and paving that existed at the time of Applicant’s purchase.

14. The existing impervious surface on Lot A is 7,893 square feet, which is approximately 29% of the net Lot area.

Lot B

15. Lot B is approximately 15,484 square feet (net) in size and is improved with a commercial building constructed in the early 1900s, which was originally used as a factory and commercial garage.

16. Lot B has approximately 13,889 square feet of existing impervious surface coverage, which is about 90% of the net lot area.

17. Lot B was granted previous zoning relief in Hilltown Zoning Hearing Board in Appeal No. 2006-014 of S&H Properties (Amended to Jack and Polly James) (“2006 Adjudication”). *See* W-3.

18. In the 2006 Adjudication, the then-owners of Lot B proposed the uses presently existing on the parcel, specifically the conversion of the 2nd floor of the building into two apartment buildings and to utilize the first floor of the building as a medical office.

19. Mr. James sought acknowledgement of certain existing non-conformities, including an existing impervious surface coverage of 88.2%, and sought relief in connection with the proposed uses including 16 parking spaces. *See* W-3 ¶43; pg 6.

20. The Board granted Mr. James' requested relief and stated the following:

The Hilltown Township Zoning Hearing Board finds that the Applicant is entitled to a special exception acknowledging the property as non-conforming with respect to minimum lot area, minimum lot width, and maximum impervious surface ratio. The property is also non-conforming with respect to the minimum front yard and side yard setback requirements under the Zoning Ordinance. **Accordingly, the Applicant is permitted to maintain these existing dimensional non-conformities which predated the Zoning Ordinance with respect to the construction and use of this 100 year old three-story brick structure.**

The Applicant also requests a variance from Section 160-11 Right-of-Way (ultimate) and Section 160-25B Site Capacity Calculations as well as Section 160-33 – Buffer Yards. Based upon the unique physical characteristics of this property and the testimony of the Applicant and his engineer, the Zoning Hearing Board determines that the Applicant has demonstrated entitlement to a traditional variance from these sections of the Zoning Ordinance...

See W-3 p. 8 (emphasis added).

21. In 2008, Ms. Garlan began renting the first floor of the building for her chiropractic practice, and Lot B was subsequently purchased by Garlan Properties, LP in 2010.

22. The chiropractic practice consists of Ms. Garlan, one full-time associate, and five additional employees.

23. Due to an injury, Ms. Garlan is presently practicing less than eight hours per week, so a coverage doctor comes in for an additional eight hours per week, but their hours do not overlap.

24. While the inside of the building would allow for more doctors, Ms. Garlan does not anticipate adding any additional doctors.

25. Lot B's present uses are a B5-Conversion Use with two two-bedroom apartments and a D1-Medical Office Use.

Lot C

26. Joseph R. Garlan and Margaret Garlan purchased Lot C in 2015.

27. Lot C is approximately 15,635 square feet (net) in size and is improved with a single-family detached dwelling dating back to the late 1800s with an accessory building at the rear.

28. Lot C has approximately 6,897 square feet of impervious surface coverage, which is approximately 44% of the net Lot area.

Access and Parking

29. Lots A and B are accessed from Route 113 via a shared driveway located in the middle of the two buildings. There is no access from Blooming Glen Road.

30. The shared driveway is the sole means of ingress and egress across Lots A and B.

31. There is no access to Lot A without crossing over Lot B.

32. Lot C is accessed via its own driveway off of Route 113.

33. Ms. Garlan testified that for as long as she can recall, parking across the three Lots has been shared.

34. The Board finds Ms. Garlan's testimony credible in this regard.

35. Ms. Garlan described the current parking situation as “narrow and hard to navigate.”

36. Tenants and patients currently park wherever a spot is available regardless of which Lot it is on.

37. Mr. Kevin Walsh testified that the Lots have not always had shared parking, specifically Lot C.

38. In addition, Mr. Walsh and the Engelhartts contend that Applicant added gravel to the Lots to create additional parking and reference a Notice of Enforcement issued by the Township in or around 2017.

39. A small strip of stone at the rear of the paved area on Lot C is shown on Applicant’s existing feature plan. *See A-3.*

40. Mr. Walsh presented two photographs, one taken in 2007 (Ex. W-1) and one taken present day (Ex. W-2) showing the differences between Lot C now and then as seen from his property.

41. Exhibit W-1 does not show any portion of the driveway on Lot C, paved or otherwise, and therefore, it is difficult to ascertain what existed at the time of 2007 photograph.

42. While it seems that vegetation between Mr. Walsh’s property and the Lots was removed, that is not an issue before the Board.

43. Furthermore, the 2017 Notice of Enforcement was resolved by agreement between Applicant and the Township in December 2017 as noted by Attorney Morano.

44. The circumstances surrounding the Notice of Violation and whether or not Applicant has complied with the terms of that agreement is not before the Board, and neither the Township nor any other party indicated that there are current, outstanding Notices of Violation.

45. Stormwater management in and around the Lots has been a persistent issue for neighboring property owners.

46. The existing parking area is deteriorating as a result of water runoff and has a number of potholes, which present safety concerns for patients, staff, and tenants.

47. There is currently insufficient space for defined driving aisles and parking in the existing parking area, and there are no lines to delineate the individual parking spaces.

Relief Requested and Proposed Improvements

48. Applicant proposes to reconfigure the parking area and drive aisles in order to create safer access to and from Route 113 and to make parking easier and more accessible for the tenants, the patients, and handicapped patients and seeks to do so with a shared parking agreement.

49. In connection with the proposed improvements, Applicant requests variances from §160-62.A and Table 160 *Attachment 3* in order to expand the existing nonconforming impervious coverages on each Lot.

50. §160.62.A provides as follows:

A structure which does not conform to the dimensional, area, parking, buffer, environmental and all other requirements of the district and this chapter may be extended only if the extension meets all the requirements of this chapter. Such a structure may be extended by right along the building lines of the existing nonconformity in keeping with all applicable requirements of this chapter.

51. Table 160 *Attachment 3* is the Table of Performance Standards and includes the maximum impervious surface coverages for all zoning districts including the VC Zoning District.

52. Applicant first filed the instant application on June 15, 2023, which sought the following increases: on Lot A, an increase from the existing 29.5% to 60.3%; on Lot B, a decrease from the existing 89.7% to 80.6%; and on Lot C, an increase from the existing 44.1% to 54%.

53. A hearing was originally scheduled for August 3, 2023 and was continued to September 21, 2023, then to February 22, 2024, and finally until April 4, 2024 at Applicant's request.

54. During that time, Applicant met with Township staff and the Hilltown Township Board of Supervisors.

55. At the April 4, 2024 hearing, Applicant amended its application.

56. While the relief sought has not changed, the amounts of impervious surface coverage on each Lot have been revised.

57. The following table summarizes the minimum and existing lot size, the existing, required, and proposed (as amended) impervious surface ratios, and the required parking spaces.

	Minimum Lot Size	Existing Lot Size	Max Impervious Surface Ratio	Existing. Impervious Surface Ratio	Proposed Impervious Surface Ratio	Req'd # parking spaces	Proposed # parking spaces ¹
Lot A	20,000 sf	26,749 sf	.26	.295	.416	10	14
Lot B	20,000 sf	15,484 sf	.65	.897	.862	18	18
Lot C	20,000 sf	15,635 sf	.26	.441	.501	4	4

58. Applicant's amended relief seeks less of an increase in impervious surface on Lots A and C while also still reducing, albeit by a lesser amount, the impervious surface coverage on Lot B.

59. In addition to increasing the number of parking spaces, the proposed improvements include repaving the parking area, installing stormwater management controls, and installing a Type 5 buffer adjacent to the parking lot.

¹ Assumes a shared parking agreement across all three Lots.

60. The proposed parking area would provide for 24-foot drive aisles and 9.5' by 19.5' parking spaces.

61. §160-23.B(5)(c) of the Hilltown Township Zoning Ordinance (“Zoning Ordinance”) requires 2 parking spaces per dwelling unit for a B5 Conversion use in the VC Zoning District.

62. In addition, §160-46 requires 1.5 additional spaces for spillover parking for a single-family dwelling and .5 spillover spaces per dwelling unit for apartments.

63. Therefore, a total of 10 parking spaces would be required for Lot A, and 4 parking spaces would be required for Lot C.

64. §160-23.D(1) requires four off-street parking spaces per doctor, plus one additional space per each additional employee.

65. Accordingly, Lot B would require 13 spaces for the medical practice and 5 spaces for the apartment building for a total of 18 parking spaces.

66. Applicant’s plan utilizes several parallel parking spaces in order to widen drive aisles and create a better flow of traffic.

67. Applicant will also add a new grass area to the parking lot.

68. Paul Yaskowski, a professional land surveyor with Urwiler & Walter was accepted as an expert witness by the Board.

69. Mr. Yaskowski testified, and this Board finds, 10 parking spaces cannot fit on the existing paved area on Lot A.

70. Mr. Yaskowski did not calculate how many parking spaces could fit on Lot B alone, but did opine that the required 18 parking spaces could not fit solely on Lot B.

71. Though Applicant's plan shows assigned parking spaces, that delineation is only conceptual.

72. Reconfiguring the parking area will increase the number of spots and the efficiency of parking.

73. The proposed improvements will meet the current ordinance requirements regarding parking stall size, number of parking spaces, curbing, grass areas, and buffering.

74. The Township engineer issued a review letter which did not identify any additional zoning issues.

75. While Applicant has not yet performed any stormwater management testing, Applicant acknowledges and agrees that it will have to install appropriate stormwater management controls in accordance with the applicable provisions of the Township ordinances and comply any other applicable regulations and requirements.

76. All of the owners are willing to enter into a shared parking agreement that would be recorded and binding on future owners.

77. Applicant does not propose any changes or expansions to the existing uses on the Lots.

78. Because the existing uses are not changing or expanding, an increase in traffic to the Lots is not anticipated.

79. If Ms. Garlan chooses to expand her chiropractic practice in the future by adding an additional doctor(s) or employee(s), parking would need to comply with the Zoning Ordinance or she would need to seek additional relief.

80. Neighboring property owner, Christopher Engelhart of 808 Blooming Glen Road, testified in opposition to the application.

81. Mr. Engelhart testified he could not recall issues with parking and circulation prior to Ms. Garlan's ownership and that traffic on the Lots increased after Applicant purchased Lot B.

82. Mr. Engelhart opined that the parking lot and proposed improvements would decrease his property value; however he did admit that the impervious surface, specifically, may not impact his property.

83. Mr. Walsh also expressed his concerns regarding traffic on the Lots and a potential decrease in his property value.

84. Neither Mr. Walsh nor the Engelharts submitted any evidence to support their contention that this may impact their property values.

85. During public comment, individuals expressed concerns regarding the deteriorating state of the driveway and parking areas and the safety concerns that it presents, the lack of lighting, and the water runoff.

II. DISCUSSION:

Applicant seeks to reconfigure the parking area on all three parcels and drive aisles in order to create safer access to and from Route 113 and requests variances from §160-62.A and Table 160 *Attachment 3* in order to expand the existing nonconforming impervious coverage on each Lot as set forth more fully above.

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.

III. CONCLUSIONS OF LAW

1. B1- Single-Family Dwelling, B5-Conversion, and D1-Medical Office uses are all permitted uses in the VC Zoning District.

2. Lot A's present impervious surface coverage of 29.5% is an existing nonconformity.

3. Lot B's present impervious surface coverage of 89.7% is an existing nonconformity.

4. Lot C's present impervious surface coverage of 44.1% is an existing nonconformity.

5. Lots B and C have an existing nonconformity in lot size.

6. In order to comply with the current requirements of the Zoning Ordinance, the following number of parking spaces are required:

- a. Lot A – 10 spaces
- b. Lot B – 18 spaces
- c. Lot C – 4 spaces

7. Applicant has shown the existence of a hardship, not self-created, and unique and peculiar to the Lots including the nonconformity in lot size on Lots B and C, the existing nonconformity in impervious surface coverage on all three Lots, the irregular shape of Lots A and C, and the shared driveway on Lots A and B.

8. Applicant is entitled to a variance from §§160-62.A and 160-26 and Table of Performance Standards to permit the expansion of the current nonconforming impervious surface coverages on the Lots.

9. The requested relief on Lot B, an impervious surface coverage of 86% is less than the nonconforming amount of 88% that this Board specifically stated Lot B was entitled to maintain in the 2006 Adjudication.

10. The proposed impervious surface coverage of 50% on Lot C is the minimum relief necessary to afford Applicant relief under the Zoning Ordinance.

11. An impervious surface coverage of 39%, not the 42% requested by Applicant, is the minimum relief necessary to afford Applicant relief.

12. The variances would not be injurious to the health, safety, and welfare of the surrounding community.

13. The requested variances are in keeping the character of the surrounding community.

14. The following conditions are necessary and warranted under the terms of the Hilltown Township Zoning Ordinance and the Pennsylvania Municipalities Planning Code:

a. Prior to the start of construction, the owners of Lots A, B, and C shall enter into and record in the Office of the Recorder of Deeds for Bucks County, a shared parking agreement, which shall permit parking across the three Lots. The shared parking agreement shall be binding on all future owners, successors, and assigns;

b. The improvements shall be done in substantial conformity with Plan submitted by Applicant, as may be amended to comply with this Board's Decision and Order, and the testimony presented before the Board; and

c. Applicant shall comply with all other Township, County, and State laws and/or regulations with respect to construction and use.

DECISION AND ORDER

AND NOW, this 20th day of May, 2024 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

1. The impervious surface coverage on Lot A shall not exceed 39%;
2. Prior to the start of construction, the owners of Lots A, B, and C shall enter into and record in the Office of the Recorder of Deeds for Bucks County, a shared parking agreement which shall permit parking across the three Lots. The shared parking agreement shall be binding on all future owners, successors, and assigns;
3. The improvements shall be done in substantial conformity with Plan submitted by Applicant, as may be amended to comply with this Board’s Decision and Order, and the testimony presented before the Board; and
4. Applicant shall comply with all other Township, County, and State laws and/or 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.

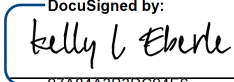
HILLTOWN TOWNSHIP ZONING
HEARING BOARD

By: DocuSigned by:
David Hersh
 6134AEF2715E48A
 David Hersh, Chairman

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

By: DocuSigned by:
Brooke Rush
 C0783C1BC10B4F1
 D. Brooke Rush

GRIM, BIEHN & THATCHER

By: 
97A84A3B3DC94E6...

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

Date of Mailing: 05/21/2024