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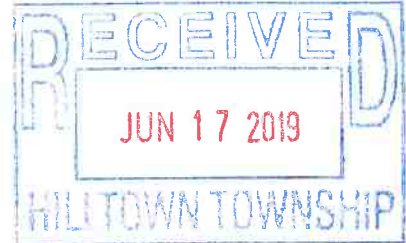
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June 13, 2019



Lisa Faust
Hilltown Township
Administrative Assistant
13 West Creamery Road
P.O. Box 260
Hilltown, Pa 18927

**Re: Hilltown Township Zoning Hearing Board
North Penn Water Authority; Appeal No. 2019-003**

Dear Lisa:

Enclosed please find the original decision regarding the above captioned matter to be retained by Hilltown Township Zoning Board of Adjustment.

Thank you for your attention to the enclosed.

Very truly yours,
Grim, Biehn & Thatcher

KELLY L. EBERLE

KLE/kbs
Enclosures

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: North Penn Water Authority

Appeal No. 2019-003

A hearing was held in the above matter on Thursday May 9, 2019 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 David Hersh. In addition, Kelly Eberle, Esquire, the Board Solicitor, was in attendance as was the Board stenographer. Applicant was present and was represented by Carl N. Weiner, Esquire. 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 of April 9, 2019 to Neighboring Property Owners from Kelly L. Eberle
- B-4 Email of May 9, 2019 to David Taylor from Christian Haberle¹

Applicant's Exhibits

- A-1 Daniel C. Preston, PE – Curriculum Vitae
- A-2 Aerial Photograph
- A-3 Site Plan
- A-4 Conceptual Rendering
- A-5 Area of Improved Pressure Aerial
- A-6 Application for Appeal to Zoning Hearing Board filed March 29, 2019

¹ Exhibit B-4 was admitted to acknowledge its receipt only.

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. Applicant is North Penn Water Authority (“Applicant”).
2. Applicant is the owner of the subject property located at 1993 Clearview Road a/k/a 2009 Clearview Road, Hilltown Township, Pennsylvania (“Property”).
3. The Property is otherwise identified as Bucks County Tax Parcel No. 15-001-058-003.
4. The Property is located in the LI (Light Industrial) Zoning District in Hilltown Township, and is surrounded, on all sides, by industrial properties.
5. The Property is a 25,140 square feet (.058 acres) lot with no road frontage.
6. LI Zoning District requires a minimum lot size of two acres; as such, the lot is significantly undersized and non-conforming.
7. The Property is utilized as a municipal water system, which provides public water to surrounding residents.
8. The Property is improved by two 1.5 million gallon water tanks and a telecommunication facility, all of which are unmanned.

9. Applicant conducts 2-3 site visits per week to inspect the Property, but otherwise all monitoring is done remotely.

10. The current average water pressure for customers in the surrounding area is approximately 25 pounds per square inch, which has resulted in complaints from the customers.

11. To address these complaints and improve water pressure, Applicant wishes to construct a water booster station (“Station”) on the Property, along with a pad for emergency generator (“Generator Pad”).

12. The Station will be approximately 15 feet by 20 feet and approximately 10 feet high.

13. The Generator Pad will be approximately 4 feet by 10 feet, with the emergency generator itself measuring no more than 5 feet high.

14. Section 160-27 of the Hilltown Township Zoning Ordinance requires a minimum 30 foot side yard setback and a minimum 50 foot front and rear yard setback.

15. Accordingly, Applicant is requesting a variance to permit the construction of the Station and Generator Pad 10 feet from adjacent lot lines.

16. There is no other location on the Property on which Applicant could construct the proposed improvements that meets the setback requirements.

17. The location was chosen as the least impactful to the surrounding area and cannot be seen from Clearview Road.

18. The Station will increase day to day pressure for customers in the immediate area from the current 25 pounds per square inch to approximately 50-75 pounds per square inch.

19. The physical location of the Station and Generator Pad will have virtually no impact to surrounding properties.

DISCUSSION:

Applicant is before the Zoning Hearing Board requesting a variance from Section 160-27 of the Hilltown Township Zoning Ordinance, which requires a minimum thirty foot side yard setback and a minimum fifty foot front and rear yard setback from lot lines.

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 Applicant has shown the existence of a hardship, not self-created, and unique and peculiar to the Property, which requires the grant of a variance from Section 160-27 of the Hilltown Township Zoning Ordinance. The Board concludes that the relief requested, a reduction in the front, rear, and side yard setbacks to permit the construction of a water booster station and a pad for an emergency generator located ten feet from the adjacent property lines in the Light Industrial Zoning District, is the minimum variance

necessary to afford relief to the Applicant and is in keeping with the spirit of the Zoning Ordinance. Additionally, the Board finds that the variance, as requested, 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 13 day of June, 2019 the Hilltown Township Zoning Hearing Board hereby grants the zoning relief requested conditioned as follows:

1. The proposed water booster station and emergency generator pad shall be designed and constructed in substantial conformity with Exhibit A-3 and the testimony presented before the Board.
2. Applicant shall otherwise comply with all other applicable Township, state, and/or county 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: 
David Hersh

GRIM, BIEHN & THATCHER

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

Date of Mailing: 6/13/19