

HILLTOWN TOWNSHIP ZONING HEARING BOARD

In Re: Carson Estate Trust

Appeal No. 2022-010

A hearing was held on the above matter on Thursday, October 13, 2022 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 Board members David Hersh and Stephen C. Yates. In addition, Kelly L. Eberle, the Board Solicitor, was in attendance, as was the Board stenographer. Applicant was present and was represented by Christopher M. McLean, Esquire and Steven T. Boell, Esquire. Mark and Barbara Geitz of 4422 & 4416 Bethlehem Pike, Hilltown Township requested, and were 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 September 23, 2022 to neighboring properties from K. Eberle
- B-4 Application with all Attachments
- B-5 Entry of Appearances – Mark Geitz and Barbara Geitz

Applicant's Exhibits

- A-1 Agreement of Sale and Purchase dated April 25, 2022
- A-2 Google map image of Property

- A-3 Zoning Plan – Proposed New Building
- A-4 Design/Build Industrial Plan of Property Elevations
- A-5 Photos of the interior of the building
- A-6 Aerial Map of Woodland Disturbance

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 with a quorum of members present, hereby makes the following Findings of Fact:

1. Applicant is Carson Estate Trust.
2. Applicant is the equitable owner of the real property located at 4518 Bethlehem Pike, Hilltown Township, Pennsylvania ("Property"), more specifically identified as Bucks County Tax Parcel No. 15-001-008, which is owned by Suburban Equities, III, LLC.
3. The Property is located in the HI – Heavy Industrial Zoning District in Hilltown Township.
4. Applicant is the leading owner of buildings that are suited for the logistics, distribution, and supply chain management business, with its parent company having been in business for over 100 years.

5. Applicant wishes to develop the Property with a single 217,000 square foot warehouse facility with a related truck court, parking, and stormwater system on the currently vacant lot.

6. The building will be a single story with a proposed height between 46-50 feet.

7. The proposed warehouse will be used as a distribution hub and is designed for one tenant, although multiple tenants could be possible.

8. In Applicant's experience, this type of prospective tenant is looking for 200,000 to 250,000 square foot building.

9. The proposed building also includes 5,000 square feet of office space.

10. The walls of the building will be made of concrete, and a fire suppression system will be installed within the joists.

11. There will be two driveways off of Bethlehem Pike, with one-way in and one-way out.

12. The north side of the building will be for truck loading, the west side for truck parking, and the south side for car parking.

Building Height

13. Applicant requests an interpretation that a building height of 50 feet is permitted under Table 160 Attachment 3:2, or in the alternative, a variance from the height requirements in Table 160 Attachment 3:2 to permit a building height of 50 feet.

14. Table 160 Attachment 3:2 of the Hilltown Township Zoning Ordinance ("Zoning Ordinance") sets a maximum building height of 35 feet in the HI Zoning District.

15. §160-55 of the Zoning Ordinance provides that no building, other than the specific exceptions enumerated therein, shall exceed a height of 35 feet in order to prevent loss of life or

excessive property damages through the inability of Township fire equipment to reach upper floors or roofs.

16. §160-55 permits an exception for “church spires, belfries, silos, water towers, or smokestacks” since those are not used for human occupancy, and it further allows for portion of a building to exceed 35 feet in height where “all dwelling units and work spaces can be reached, evacuated through adequate windows or balconies within the 35ft limit or existing equipment and where roofs can also be reached along 50% of the building perimeter.”

17. The 15-foot area between the allowed height of 35 feet and the maximum proposed height of 50 feet will be used only for warehousing purposes and will not contain any dwelling units or workspaces.

18. However, the entire building, not just a specific portion, will exceed 35 feet in height.

19. It is unknown to Applicant whether roofs along 50% of the building perimeter will be able to be reached.

20. While the Fire Marshall will have the opportunity to review the proposed plan, such review has not yet been completed, and it is not known whether the Township’s fire equipment is able to reach the proposed 50-foot height.

21. Several neighboring property owners expressed concern with the building height, including whether the on-site fire suppression system would be adequate and whether the Township has sufficient equipment to extinguish a fire in a building of that height.

Impervious Surface

22. Next, Applicant requests a variance from Table 160 Attachment 3:2 Table of Performance Standards to allow for an impervious surface coverage of 61.86% as opposed to the permitted 60% maximum.

23. Pursuant to §160-25.B(1) of the Zoning Ordinance, when performing the site area calculations, Applicant is required to reduce the true base-site area of the Property, which is 19.66 acres, by any easements or right-of-way.

24. Public utility and sanitary easements located on the northern side of the Property total approximately 3.1 acres, all of which is pervious surface.

25. Those easements, together with the right-of-way, reduce the base-site area to approximately 15.68 acres.

26. If the impervious surface calculations included the easements and right-of-way, Applicant's impervious surface coverage would be approximately 51% and well within the permitted impervious surface coverage.

27. Because the excluded areas are primarily pervious in nature and based on the stormwater management control being installed by Applicant, the requested increase of 1.86% is not likely to have a negative impact on the Property or surrounding properties.

Woodland Disturbance

28. Lastly, Applicant requests a variance from §160.28.C to allow for woodland disturbance of 84% as opposed to the permitted 60% maximum.

29. The proposed woodland disturbance was done via aerial mapping and represents the "worst case scenario" or maximum amount of disturbance.

30. Although an in-depth site review has not been completed, a walk through was done, and Applicant's engineer observed numerous dead or dying trees within the proposed disturbance area.

31. Therefore, Applicant anticipates that actual woodland disturbance may be less than 80%.

32. Applicant will work with the Township to determine whether trees could be replaced elsewhere.

33. Applicant will comply with all buffer yard requirements.

34. Neighboring property owners expressed concerns about the amount of the woodland disturbance not only on the Property itself but also on the surrounding properties as the woodlands could act as a buffer between the surrounding properties and the proposed warehouse.

II. DISCUSSION:

Applicant is before this Board requesting an interpretation that a building height of 50 feet is permitted under Table 160 Attachment 3:2, or in the alternative, a variance from the height requirements in Table 160 Attachment 3:2 to permit a building height of 50 feet. In addition, Applicant requests a variance from Table 160 Attachment 3:2 to allow impervious surface coverage of 61.86% and a variance from §160.28.C to allow woodland disturbance of 84%.

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 denies Applicant's request for a favorable interpretation. Applicant's proposed warehouse is distinguishable from the specific enumerated exceptions set forth in §160-55. First, Applicant's entire proposed building will be greater than 35 feet, not just portions of it. This factor becomes more significant when considering that proposed warehouse creates, essentially, one very large 50-foot room, and although the space above 35 feet will not be used for human occupancy or office space, the open, undivided space below 35 feet will. With the Township's fire equipment capabilities and the roof accessibility unknown, this Board is not able to grant a favorable interpretation that the 50-foot building is permitted under the Zoning Ordinance. However, the Board grants Applicant a variance from the height requirements in Table 160 Attachment 3:2 to permit a maximum building height of 45 feet rather than 35 feet, conditioned upon the Fire Marshall's review and approval of the building plans.

The Board also 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 the variances from as to the impervious surface coverage of 61.86% and the woodland disturbance of 84%.

Additionally, the Board finds that the variances, as requested and conditioned, 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. The relief requested will not alter the essential character of the neighborhood, which is industrial in nature, or substantially impair the use or development of adjacent properties.

DECISION AND ORDER

AND NOW, this 25th day of November, 2022 the Hilltown Township Zoning Hearing Board hereby denies Applicant's request for a favorable interpretation under Table 160 Attachment 3:2 of the Zoning Ordinance, but grants the remainder of the zoning relief requested conditioned as follows:

1. The maximum building height shall not exceed 45 feet;
2. The Township's Fire Marshall shall review and approve the building plans prior to construction;
3. Applicant shall comply with all buffer yard requirements; and
4. 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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Date of Mailing: November 28, 2022