

**BEFORE THE BOARD OF SUPERVISORS OF
HILLTOWN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA**

In re: **Application of Carson Estate Trust**

Property: **4518 Bethlehem Pike
Bucks County TMP #15-1-8**

Last Hearing Date: **May 31, 2023**

Conditional Use Appeal No: **2023-01**

DECISION

The Board of Supervisors of Hilltown Township (the "Board") enters the following Findings of Fact, Conclusions of Law, and Decision with Conditions regarding the public hearing on the Application for Conditional Use (the "Application") of Carson Estate Trust.

FINDINGS OF FACT

Background

1. Applicant is Carson Estate Trust, c/o Carson Companies, 995 Old Eagle School Road, Suite 306, Wayne, PA 19087 ("Carson").
2. On or about March 24, 2023, Carson filed the above-referenced Application with Hilltown Township (the "Township").
3. Carson is equitable owner of property located at 4518 Bethlehem Pike, Hilltown Township, which is subject of the Application (the "Property").
4. The Property is also identified as Bucks County Tax Map Parcel No. 15-1-8.
5. The Property is approximately 19.66 acres in size.
6. The Property is presently vacant.

7. The Property is located in the HI - Heavy Industrial Zoning District.
8. Carson proposes the construct a warehouse facility on the Property.
9. Warehouse facilities are categorized as G-7 uses under the Hilltown Township Zoning Ordinance (the "Zoning Ordinance").
10. The Zoning Ordinance provides that G-7 uses are permitted by conditional use in the HI – Heavy Industrial Zoning District.

Notice – Advertising – Posting

11. A public hearing on the Application was scheduled for May 9, 2023, at the Hilltown Township Building, located at 13 W. Creamery Road, Hilltown, PA 18927, beginning at 6:00 PM.

12. The Property was timely and otherwise properly posted on April 28, 2023.

13. Notice of the public hearing was timely and otherwise properly advertised on April 19, 2023 and April 26, 2023.

14. By mailing dated April 11, 2023, written notice of the public hearing in proper form was provided to those property owners entitled to such notice under the Zoning Ordinance.

15. No objections were raised at the public hearing concerning the legality of the posting, advertising, or mailed notices regarding the public hearing.

Hearing on May 9, 2023

16. The public hearing opened on May 9, 2023.

17. Carson was represented by Steven T. Boell, Esquire, from the law firm of Fitzpatrick, Lentz & Bubba, P.C.

18. The following Township exhibits were entered into the evidentiary record on May 9, 2023 without objection:

<u>Exhibit Number</u>	<u>Description</u>
T-1	Certificate of Posting
T-2	Proof of Publication
T-3	Affidavit of Mailing

19. The following adjacent or nearby neighbors requested and were granted party status without objection:

Mark Geitz	4416 and 4422 Bethlehem Pike
Barbara Geitz	4416 and 4422 Bethlehem Pike
Lauren Geitz	4416 and 4422 Bethlehem Pike
John Frank	4507 Bethlehem Pike
John Klucznik	4529 Bethlehem Pike
Barry Hangey	4351 Bethlehem Pike
Dean Fillman	4422A Bethlehem Pike

20. The following exhibits were offered by Carson and admitted without objection:

<u>Exhibit Number</u>	<u>Description</u>
A-1	Agreement of Sale
A-2	Aerial Photograph
A-3	Conditional Use Site Plan
A-4	Photographs
A-5	Copy of Zoning Hearing Board Decision
A-6	Conditional Use Lighting Plan
A-7	Conditional Use Notes and Details

A-8	Memo dated 2/24/23
A-9	Letter dated 4/13/23
A-10	Distance calculations and associated plan
A-11	Conditional Use Application ¹

21. Carson presented testimony from three (3) witnesses.
22. Carson's first witness was Chris Hermance ("Hermance").
23. Hermance is employed by Carson as a managing director.
24. Hermance testified on direct examination that:
 - a. Carson is a warehouse developer with 20 million square feet of leased space in three (3) market areas that include southern California, Houston and eastern Pennsylvania.
 - b. Carson is under an agreement of sale to purchase the Property, as evidenced by Exhibit A-1.
 - c. Carson proposes a 217,000 square foot warehouse building on the Property, as evidenced by Exhibit A-3.
 - d. The proposed building would include employee and office entrances along the south side, a truck court and loading areas along the north side, and trailer parking or outdoor storage areas along the west side.
 - e. The design of the building is for single-side loading.
 - f. Carson has buildings of similar design in southeast Pennsylvania and they are currently 100% leased.
 - g. The building will utilize two (2) separate vehicle entrances; one for trucks and one for cars.
 - h. Carson tends to build these type facilities and own them long-term, as opposed to building and then immediately selling.

¹ Exhibit A-10 and A-11 were offered and admitted at the May 31, 2023 public hearing.

- i. The building will not be designed for high throughput users, nor is it anticipated that such a user will lease this facility.
 - j. Carson anticipates 20 to 50 employees at the facility during its largest shift.
 - k. Carson proposes 145 parking spaces for the Property, which is well in excess of the 82 required spaces for a G-7 use.
 - l. The end user of the proposed facility could include other uses or the building could be multi-tenanted.
 - m. The facility will be built with 10-inch concrete walls to help minimize noise impact to the surrounding community, and Carson will abide by all noise provisions of the Zoning Ordinance.
 - n. No emissions of smoke, liquid or solid particles, including dust, dirt, fly ash or other harmful substances are anticipated to adversely impact surrounding properties.
 - o. The facility will not house flammable or explosive material in bulk, including gasoline pumps, nor will materials constituting a fire hazard be stored outside.
25. On cross-examination, Hermance further testified that:
- a. No outdoor loud-speakers will be deployed to communicate with truck drivers.
 - b. The facility could house a manufacturing component.
 - c. Carson will comply with any local regulations regarding work hours.
 - d. The average stay for an emptied trailer on site would be 2-3 days.
 - e. A property manager visits these type facilities weekly, on average.
 - f. Truckers will be encouraged not to idle once in docking position.
 - g. There will be no company vehicles stored on the Property.
 - h. Property managers must have site access within 48 hours of receiving notice, at which time the property manager walks the entire building with the facility manager.
 - i. None of Carson's other Bucks County properties have received any complaints from the local municipality.
 - j. Carson has pre-leased all but one (1) of their ten buildings in eastern Pennsylvania, and it takes, on average, 2-3 months to find a tenant.

26. The Board found Hermance's testimony to be credible, substantive and material, and hereby incorporates such testimony as factual findings.

27. Carson's second witness was Shaun Haas, P.E. ("Haas").

28. Haas is a Senior Project Engineer at Langan Engineering.

29. Haas is a licensed professional engineer in Pennsylvania and New Jersey.

30. Haas is also a certified professional in soil and erosion control.

31. Haas has worked on 12 different buildings for Carson.

32. Haas was accepted, without objection, as an expert in civil engineering.

33. Haas testified on direct examination that:

- a. The Property is zoned HI – Heavy Industrial.
- b. The Property is traversed by a PP&L easement, an AT&T easement, and a sanitary easement.
- c. There are no abutting or immediately adjacent properties that are zoned residential.
- d. There are no hospitals, schools, nurseries, rehabilitation centers, sanitariums, nursing homes, convalescent homes or homes for the aged adjacent to the Property.
- e. Variances were obtained from the Hilltown Township Zoning Hearing Board ("ZHB") for impervious coverage, building height and woodlands disturbance, as detailed in the ZHB decision (Exhibit A-5).
- f. Other than the aforementioned variances, the use will comply with all dimensional criteria of the Zoning Ordinance.
- g. There are no floodplains, ponds or lakes on the Property.
- h. There are wetlands, steep slopes and a creek on the Property, but Carson intends to comply with all Zoning Ordinance requirements regarding the same.
- i. Carson intends to "balance" the site in terms of fills and cuts, and was advised of Township regulations concerning the removal of topsoil.

- j. The Telford Borough Authority will provide public water and public sewer to the site, and Carson is willing to provide Will-Serve letters.
- k. Carson will comply will all buffer yard requirements of the Zoning Ordinance.
- l. The location of street trees may be impacted by overhead utility lines.
- m. Carson will comply with all Zoning Ordinance regulations regarding sound.
- n. Carson will comply with all Zoning Ordinance criteria regarding lighting.
- o. The proposed use will not disrupt or destroy the character of residential neighborhoods, and is otherwise compatible with the surrounding existing uses.

34. On cross-examination, Haas further testified that:

- a. Lighting will be provided by wall packs and no floodlights will be installed.
- b. Carson is amenable to enhanced landscaping in certain areas to compensate for the loss of area where traditional placement of street trees would otherwise occur.
- c. Carson will repair any property of others that is damaged or disturbed because of public water or public sewer connections.

35. The Board found Haas's testimony to be credible, substantive and material, and incorporates such testimony as factual findings.

36. Carson's final witness was Annmarie Vigilante ("Vigilante").

37. Vigilante is a principal and vice-president at Langan Engineering.

38. Vigilante is a professional engineer licensed in four (4) states and has been working in

traffic-related civil engineering for 25 years.

39. Vigilante was offered and accepted as an expert in traffic engineering without objection.

40. Vigilante testified on direct examination that:

- a. There will be two (2) unsignalized, low volume driveways unto the Property from Bethlehem Pike.
- b. The northern driveway will provide direct access for truck loading and unloading on the docks and access to trailer parking.

- c. The southern driveway will provide direct access to employee and visitor car traffic.
- d. Radii for vehicle turning will be designed to accommodate the vehicle usage.
- e. A swing-gate will be utilized to prevent the co-mingling of car and truck traffic on the Property.
- f. Carson will need to obtain a Highway Occupancy Permit (“HOP”) from PennDOT for each driveway, as Bethlehem Pike is a state road.
- g. Carson will perform and thereafter present a formal traffic study to the Township as part of the plan review process.
- h. Carson has provided a preliminary traffic study (Exhibit A-8).
- i. The preliminary traffic study utilizes the land use code ITE 150, which is the code for a standard warehouse.
- j. The preliminary traffic study concluded that the proposed facility would not produce significant impacts on the study area during peak hours.
- k. The Township Engineer reviewed the preliminary traffic study and issued a review letter (Exhibit A-9) with minor comments.
- l. Access to the site will be safe and not create any hazardous traffic conditions off site nor create undue congestion.

41. Following direct examination of Vigilante, the hearing was adjourned by agreement of the parties until May 31, 2023, at 6:00 PM.

Hearing on May 31, 2023

42. Upon cross-examination of Vigilante on May 31, 2023, Vigilante further testified that trip generation calculations are produced by a well-established methodology that is based on actual studies of traffic generated by different use types, and not something that the witness herself determined.

43. The Board found Vigilante’s testimony to be credible, substantive and material, and incorporates such testimony as factual findings.

44. Upon being recalled to the witness stand, Haas further testified that, based upon Exhibit A-10, the distances from the proposed warehouse to the nearby residences are as follows:

- a. From the warehouse loading dock to the Frank residence 322 feet
- b. From the warehouse loading dock to the Geitz residence 467 feet

45. The objecting parties did not present any expert witnesses to challenge the testimony, evidence or conclusions of Carson's witnesses.

46. The objecting parties presented minimal lay testimony and no exhibits, reports, written analysis or other empirical evidence.

47. The Board found the objecting parties' testimony, while credible and sincere, wholly without substantive value in terms of addressing their burden of proof.

48. The proposed use is appropriate to the tract in question and will not disrupt or destroy the character of stable residential neighborhoods, particularly given the fact that other industrial uses are adjacent to or nearby the Property.

49. The proposed use will provide adequate access to public roads, without creating hazardous conditions at intersections or areas of poor road alignment, and without creating undue congestion.

50. With the variance relief previously attained by Carson, the use will comply with all other applicable provisions of the Zoning Ordinance.

Analysis

A conditional use is a use specifically recognized by the legislature as consistent with the zoning plan. Aldridge v. Jackson Twp., 983 A.2d 247 (Pa. Cmwlth. 2009). Thus, it is presumed that the particular type of conditional use does not, in and of itself, adversely affect the public interest. Id.

In addressing an application for a conditional use, the local governing body must employ a shifting burden of persuasion. Initially, the applicant seeking conditional use approval must demonstrate compliance with both the use-specific and general conditional use standards and criteria explicitly set forth in the zoning ordinance. In re AMA/Mercian Marketing Association, Inc., 142 A.3d 923 (Pa. Cmwlth. 2016). If the applicant is able to satisfy this burden, then the application must be granted unless the protestors to the application present evidence that such a use would pose a substantial threat to the community. Id. It is not enough to show some negative impact to the community, but rather the proposed use must be shown to be of such a degree that it would adversely affect the public welfare in a way not normally expected from that type of use. Aldridge, supra.

In deciding conditional use applications, municipalities are not bound by technical rules of evidence, but rather they are empowered to consider all relevant evidence of reasonably probative value. Such flexibility in matters of evidentiary admissibility exists in the conditional use context because local municipalities have the paramount duty to protect their residents from harm to their person and property, and such land uses may present the possibility that property rights of neighboring landowners will be negatively affected. See EQT Production v. Borough of Jefferson Hills, 208 A.3d 1010 (Pa. 2019); see also Luke v. Cataldi, 932 A.2d 45 (Pa. 2007).

Applicant seeks conditional use approval for a G-7 Warehouse Use. G-7 Warehouse Uses are permitted by conditional use in the HI – Heavy Industrial Zoning District. There was no evidence presented to challenge classification of the proposed use.²

In this case, Carson presented sufficient evidence to meet its initial burden and demonstrate compliance with the Zoning Ordinance criteria for the proposed use. The Property is located in the HI - Heavy Industrial Zoning District, the facility, as proposed, would constitute a G-7 Use, and G-7 uses are permitted by conditional use in the HI – Heavy Industrial Zoning District. The facility will have sufficient parking for the proposed use, safe access, adequate lighting, and

² It is noted that this Decision pertains exclusively to a G-7 Warehouse Use. Carson has suggested that the tenant(s) may include other use types (such as manufacturing). If such additional/alternative use types require additional approvals (such as conditional use approval for that particular use), such authorizations must be retained prior to issuance of a zoning permit.

sufficient noise controls, with public water and public sewer available to service the site. In fact, Carson's expert witnesses provided ample testimony and evidence to demonstrate not only compliance for conditional use purposes, but also evidence that the proposed facility is likely, following the plan review process, to meet all relevant criteria for land development. Conversely, no evidence was presented by those in opposition to suggest that this proposed warehouse would have any greater negative impact on the community than any other G-7 use.

The opposition expressed concerns as to traffic, stormwater, noise, lighting, and other potential negative impacts. The Board acknowledges these concerns and has given them weight in deciding this matter, even though some of these issues will be further discussed during the land development phase. However, and as discussed on the record, the Board is bound by the legal standards laid down by the Zoning Ordinance, the Municipalities Planning Code ("MPC"), and well-established case law, dating back decades, as to how conditional use applications *must* be analyzed and decided. The Board cannot simply decide the outcome depending on whether a proposed conditional use is attractive or otherwise beneficial to the Township. The Board cannot simply determine the fate of any given application based on opposition or the lack thereof.

Conditional uses are a type of permitted use. The zoning district is HI – Heavy Industrial. Warehouse uses appropriately fit with the zoning scheme. The Board recognizes that it needs to review and decide the application with these established facts in mind.

However, the Board also recognizes that, in granting conditional use approval, it has the authority, pursuant to MPC Section 603(c)(2), to attach such reasonable conditions and safeguards, in addition to those expressed in the Zoning Ordinance, as it may deem necessary to implement the purposes of the MPC and the Zoning Ordinance. Clinton County Solid Waste v. Wayne Twp., 643 A.2d 1162 (Pa. Cmwlth, 1994); Hill v. Zoning Hearing Board of Maxatawny Township, 597 A.2d 1245 (Pa. Cmwlth. 1991). Given the broad and diverse concerns of the nearby property owners, the Board hereby seeks to ensure, through the imposition of appropriate and targeted conditions, that any negative impacts to the area are mitigated to the full extent allowed by law, while at the same time protecting the integrity of the Zoning Ordinance and the property rights of all involved.

Conclusions of Law

1. The Board has exclusive jurisdiction to hear and decide the Application pursuant to the MPC and the Zoning Ordinance.
2. All of the Findings of Fact set forth above that can be interpreted or construed to be Conclusions of Law are incorporated herein as Conclusions of Law.
3. Carson has standing to file and prosecute the Application.
4. Party status was appropriately granted to those persons identified in Finding of Fact #19 above.
5. The public hearing was properly advertised, the Property was properly posted, and all required direct notices were properly provided prior to the public hearing.
6. Access to the Property is safe as proposed, will not create hazardous conditions, and will not create undue congestion.
7. The proposed lighting will not disrupt residential areas, disrupt motorists, or intrude in the background near traffic lights.
8. The proposed use will be made compatible with the surrounding existing uses provided that the conditions set forth below are met.
9. Therefore, subject to compliance with the below imposed conditions and pursuant to the above Findings of Fact, Carson satisfies the requirements of the Zoning Ordinance to obtain conditional use approval for a G-7 Warehouse Use.
10. Although some evidence and commentary was offered by the opposition concerning potential negative impacts to the community, such evidence did not rise to the level of substantial adverse impact, which is the degree necessary to justify denial of the Application.

11. Imposition of the below listed conditions is reasonable, appropriate and necessary to effectuate and implement the objectives of the MPC and the Zoning Ordinance.

Approval

AND NOW, this 26th day of June, 2023, in consideration of the Application of Carson Estate Trust, and all the evidence and testimony adduced at the public hearing related thereto, and subject to those conditions set forth below, the Board hereby **GRANTS** the Application for a G-7 Warehouse Use. In granting this approval, the Board finds that the proposal is appropriate to the tract in question and will not disrupt or destroy the character of the neighborhood, provided that the following conditions of approval are met.

1. Applicant shall promptly pursue and secure all required land development approvals and authorizations including, but not limited to, preliminary and final land development approval, NPDES permit approval, and PennDOT highway occupancy authorization.
2. Applicant shall comply with all applicable parking requirements of Hilltown Township. In addition, when a tenant or tenants are determined, the number of employees for the tenant(s) shall be reported to the Township so that a parking calculation can be made to determine whether sufficient parking exists on site for the tenant(s) in question. The same process shall follow whenever Applicant brings a new tenant(s) to the Property.
3. Applicant shall comply with all applicable noise regulations of Hilltown Township. In addition, all noise generated on site, apart from noise generated by vehicles, lawn care and maintenance machinery, HVAC equipment, the loading and unloading of vehicles and similar noises that necessarily emanate from outside the building, shall be contained within the building. To prevent internal noise from escaping, the building shall be constructed with ten-inch concrete walls.

4. Applicant shall comply with all applicable lighting regulations of Hilltown Township. Except for emergency lighting, all lighting shall be turned off between the hours of 11:00 PM and 7:00 AM, unless subsequently approved otherwise by the Board. In addition, the lighting design shall comply with IESNA full cutoff criteria. Consistent with Applicant's testimony, all lighting shall be wall-mounted, there shall be no floodlights or spotlights installed, and all electrical feeds for the lighting standards shall be underground.
5. Any signage proposed shall comply with all applicable signage regulations of Hilltown Township.
6. Consistent with Applicant's testimony, the building shall not be utilized for "high throughput traffic", and should otherwise be designed in a manner substantially consistent with the testimony and evidence presented at the Conditional Use hearing.
7. Applicant shall not emit or allow for the emission of any smoke, liquid or solid particles from any chimney, or emit or allow for the emission of dust, dirt, fly ash, fumes, vapors or gases that would cause substantial harm to humans, animals or vegetation.
8. Applicant shall not emit or allow for the emission of heat from onsite operations perceptible beyond the property line.
9. Applicant shall not store or allow tenants to store hazardous waste on the property, or store any materials that are considered to be highly flammable or explosive (including gasoline pumps).
10. Consistent with Applicant's testimony, no outside audio or loud-speaker system shall be utilized on the Property.
11. Applicant shall receive approval from the fire marshal prior to construction.

12. The Property shall be served by public water and public sewer.

13. The property manager shall visit the property at least two (2) times per month and promptly report to the Township any zoning or building code infractions observed during inspection. The Township shall be provided the name and contact information for the property manager. If the Township receives a signed written complaint from a Township resident regarding operations on the Property, the property manager will be notified and thereafter expected to immediately schedule a site visit and investigate the complained of matter. Applicant shall maintain a log of visits by the property manager, which log shall be made available to the Township upon request.

14. The only outdoor storage allowed on the Property shall be dumpsters for waste disposal and the temporary storage of vehicles and trailers.

15. Consistent with Applicant's testimony, there shall be no projections (other than the driveways) into any of the required setbacks.

16. No topsoil shall be removed from the property during construction, except as provided by the Zoning Ordinance.

17. Applicant shall install enhanced landscaping along Bethlehem Pike (outside of the PP&L Easement), as approved by the Township.

18. Any private property disturbed by the installation of utilities to the Property shall be restore substantially to its original condition at the sole cost of Applicant.

19. Consistent with Applicant's testimony, the record plan for land development shall include a note requiring Applicant to maintain the buffer areas and replace dead plant material.

20. There shall be two (2) driveways to the Property – one dedicated exclusively to automobile traffic and the other dedicated solely to truck traffic. Applicant shall obtain Highway Occupancy Permits from PennDOT as part of its land development approval. Applicant shall also comply with all recommendations made by the Township Traffic Engineer.
21. Applicant and all its tenants shall remain subject to all terms, conditions, limitations and restrictions set forth in the Hilltown Township Zoning Hearing Board decision dated November 25, 2022 (Appeal No. 2022-010).
22. Applicant shall provide all tenants (and any future owner of the property) with a copy of this Conditional Use Decision, and all tenants (and any future owner of the property) shall be subject to the terms and conditions of this Conditional Use Decision.
23. Applicant shall otherwise comply with all federal, state and local laws, regulations and ordinance, unless waived by the governing body with jurisdiction and as authorized by the statute.


[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

This Decision and Conditions of Approval above are binding upon the Applicant, its successors and assigns, and failure to timely comply with the above Conditions of Approval shall render this Decision null and void, and the Application shall be deemed denied.

**HILLTOWN TOWNSHIP
BOARD OF SUPERVISORS**



James C. Groff, Chairman



Caleb Torrice, Vice-Chairman



John B. McIlhinney