

**ZONING HEARING BOARD OF WARWICK TOWNSHIP
BUCKS COUNTY, PENNSYLVANIA**

Docket No. 19-05

Applicant: Laboratory Corporation of America Holdings
69 First Avenue
Raritan, NJ 08869

Owner: DG Warwick, LLC
P.O. Box 479
Ambler, PA 19002

Subject Property: Tax Parcel No. 51-002-099-004, which is located at 2319 York Road, Warwick Township.

Requested Relief: The Applicant proposes the construction of an approximately 342 square foot Patient Service Center in an existing 14,458 square foot Walgreens store on the Subject Property and requests variances from §195-10 and §195-15 of the Warwick Township Zoning Ordinance (“Ordinance”) in order to permit a second principal use on the Property, namely a LabCorp Patient Service Center for the collection and distribution of clinical laboratory specimens (a Medical Office use (F1)) in addition to the existing Drug Store with a drive-thru use (G31).¹

Hearing History: The application was filed in Warwick Township on September 17, 2019. The hearing was held on November 4, 2019 at the Warwick Township Administration Building, 1733 Township Greene, Jamison, PA 18929.

Appearances: Applicant by: Dean J. Donatelli, Esq.
Lisa D. Taylor, Esq.
Inglesino Webster Wyciskala & Taylor, LLC
600 Parsippany Road, Suite, 204
Parsippany, NJ 07054

Mailing Date: December 19, 2019

¹ The Zoning Officer had determined that the Warwick Township Zoning Ordinance allows for only one principal use per parcel, and that the combination of a Use G31 Drug Store, and a use F1 Medical Office violates the Ordinance. Applicant had appealed the determination of the Zoning Officer. During the course of the hearing held, Applicant withdrew the appeal from the Zoning Officer determination.

DECISION

FINDINGS OF FACT:

1. The Zoning Hearing Board of Warwick Township met the requirements of the Zoning Ordinance, the Municipalities Planning Code, and other relevant statutes as to legal notice of the hearing held.

2. The Applicant is the subtenant of the Subject Property, and is therefore possessed of the requisite standing to make application to this Board.

3. The Subject Property is located in the C-2, Commercial District, and the Corridor Overlay District of Warwick Township. It presently accommodates an existing approximately 14,458 square foot Walgreens store with a drive-through. The Subject Property is approximately 2.06 acres in size fronting on York Road

4. The Applicant proposes the interior construction of an approximately 342 square foot LabCorp Patient Service Center (“PSC”) in an existing 14,458 square foot Walgreens store on the Subject Property for the collection and distribution of clinical laboratory specimens. It is designed, according to the evidence received from the Applicant, to comply with all of the relevant and applicable standards of the Zoning Ordinance. The proposed use is permitted within the C-2 Zoning District and the Corridor Overlay District, however the addition of the PSC represents a second principal use (a Medical Office use (F1)) on the Subject Property in addition to the existing Walgreens use (a Drug Store with a drive-thru use (G31)), and the Warwick Township Zoning Ordinance permits only one principal use on the Subject Property.

5. As set forth in the Application, the Applicant had originally sought an appeal of the zoning officer’s determination that the personal service center use is a second use on the lot; and in the alternative, sought a use variance to permit a second principal use on the lot where the town’s zoning ordinance permits one use under §195-10 and §195-15 of the Warwick Township Zoning Ordinance. The appeal from the zoning officer’s determination was *withdrawn* at the outset of the hearing as the Applicant informed the Board that the Township Board of Supervisors agreed to remain neutral regarding the application with the following conditions, which the Applicant agreed to:

- a. That the Applicant withdraw its appeal of the zoning officer’s determination and submit a written statement withdrawing the appeal (which the Applicant has done).
- b. That the proposed PSC will not have a separate entrance and will operate under the same hours as the Walgreens hours.
- c. No outside specimen drop boxes will be permitted.

6. The Subject Property is located in a commercial area of Warwick Township along one of its major thoroughfares and in the vicinity of a shopping center and other commercial uses.

7. The Applicant's professional engineer David Shropshire, P.E., who was qualified by the Board as an expert in the field of professional engineering, presented competent and credible evidence that Applicant proposes to replace approximately 342 SF of internal storage within the existing Walgreens with a PSC for phlebotomy including collection and distribution only with no testing or treatment. The proposed PSC is part of the "LabCorp at Walgreens" partnership aimed to enable consumers to access a broad range of health care services at one convenient location. The goal is to provide a "neighborhood health destination" where the community can receive services related to the collection and distribution of clinical laboratory specimens in addition to Walgreens' existing retail pharmaceutical-related services, such as retail health products, prescribed health products, health consultations and flu shots in the consult room.

8. Mr. Shropshire stated that hours of the proposed PSC will be 7 a.m. to 3 p.m., and that no signage modifications are proposed at this time.

9. The PSC has been determined to be a medical office use (land use F-1) which is also permitted in the C-2 Zoning District and the Corridor Overlay District. As a medical office use, the PSC will create a second principal use on the property.

10. Under Chapter 195-117A[4] of the Warwick Township Zoning Ordinance, the Applicant must demonstrate to the Board "[t]hat the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare." Mr. Shropshire offered the following proofs in this regard:

- a. The PSC as a medical office is a permitted use. Therefore it will not alter the essential character of the neighborhood or district.
- b. As a permitted use, the PSC will not substantially or permanently impair the appropriate use or development of adjacent property.
- c. The PSC use will be contained within the existing building resulting in no physical changes to the building exterior except for sign revisions.
- d. The second principal use will create no changes to the "bulk" zoning requirements for the site.

- e. The PSC, as a second principal use, is a benefit to the public welfare by providing a permitted service and thus enhancing an existing Neighborhood Health Destination within the community.

11. Under Chapter 195-117A.[5], the Applicant must demonstrate to the Board “That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.” Mr. Shropshire offered the following additional proofs:

- a. The PSC will only occupy approximately 2.5% of the building within a former storage area.
- b. The function of the existing Walgreens land use will remain unchanged with a possible expansion of operating hours.
- c. The PSC use will be contained within the existing building resulting in no physical changes to the building exterior except for sign revisions.
- d. There are no changes to area and dimensional requirements including lot area, minimum lot width, maximum building coverage, maximum impervious surface, minimum front/side/rear yards and buffer yard.

12. Stephen Devine, LabCorp’s Associate Vice President of Leasing/Facilities, Northeast, further testified on behalf of the Applicant and stated that there will be a maximum of approximately three (3) phlebotomists/staff in the proposed PSC at any given time.

13. Michael Kindelberger, Walgreens’ Regional Manager of Implementation, also testified on behalf of the Applicant and stated that the current hours of the existing Walgreens are 8 a.m. to 10 p.m. The hours of the existing Walgreens will be changed to 7 a.m. to 10 p.m. to align with the opening hours of the proposed PSC.

14. Mr. Kindelberger also stated in response to the Board’s inquiry that the proposed PSC will not result in insufficient storage space within the existing Walgreens store so as to require the use of outside storage containers or “pods”. He also agreed as a condition of approval that no “pods” or outdoor storage containers would be used for storage purposes on the property other than as required to build out the PSC.

15. No neighboring property owners spoke in opposition.

16. Warwick Township remained neutral regarding the application

CONCLUSIONS OF LAW:

1. The Board concludes, on the basis of the competent and credible evidence presented by the Applicant and its expert witness and other testimony provided, that under the unique circumstances presented, compliance with the limitation of one principal use on the Subject Property as contained within the Zoning Ordinance results in a hardship.

2. The grant of the variances requested will have no negative impact upon surrounding properties or uses, which are essentially commercial in nature.

3. By modification of its requests, the Applicant has evidenced its good faith attempts to minimize the variances necessary to afford it relief.

4. The Board further concludes that the conditions requested by the Township and agreed to by the Applicant minimize and soften the impact of the requested variances.

5. The Board concludes that the Applicant has met its burden of establishing the requisite factors necessary to obtain a variance from the use provisions of the Zoning Ordinance as set forth herein.

6. Accordingly, the Warwick Township Zoning Hearing Board determined, unanimously, to grant the Applicant's request for relief as set forth and conditioned hereafter.

ORDER

Upon consideration and after hearing, the Warwick Township Zoning Hearing Board hereby GRANTS variances from §195-10 and §195-15 of the Warwick Township Zoning Ordinance to allow the following on the Subject Property:

1. Construction and operation of an approximately 342 square foot Patient Service Center for the collection and distribution of clinical laboratory specimens (a Medical Office use (F1)) as a second principal use within the existing 14,458 square foot Walgreens store (use G31) as more particularly described herein.
2. The grant of this variance is conditioned as follows:
 - a. That the proposed PSC will not have a separate entrance and will operate under the same hours as the Walgreens hours.
 - b. No outside specimen drop boxes will be permitted.
 - c. No “pods” or outdoor storage containers will be used for storage purposes on the property other than as temporarily required during build out of the PSC approved herein.
 - d. Compliance with all other applicable governmental ordinances and regulations.

**ZONING HEARING BOARD OF
WARWICK TOWNSHIP**

/s/ Kevin J. Wolf
Kevin J. Wolf

/s/ Dave Mullen
Dave Mullen

/s/ Lorraine Sciuto-Ballasy
Lorraine Sciuto-Ballasy

IMPORTANT NOTE: Pursuant to §195-115 and §195-116 of the Warwick Township Zoning Ordinance, variances or special exceptions granted by the Zoning Hearing Board shall expire one (1) year from the date of the Decision, unless the applicant or owner or successor in interest has commenced construction within that time. Construction will be deemed commenced upon the issuance of a building and/or zoning permit for the approved use.