

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

Applicants: Gasper Landscapes LLC
316 Tanyard Road
Richboro, PA 18954

Owner: Same.

Subject Property: Tax Parcel No. 51-013-062-004, which is known as Lot 4, Mearns Road
Business Campus

Requested Relief: The Applicant is seeking relief from the Warwick Township Zoning Ordinance (“Ordinance”), including the following:

1. a variance from §195-10 to permit two principal uses on the Subject Property;
2. a variance from §195-16.H.(13)(c)[2][a][iii] to allow a building or structure within 106 feet of a residential zoning district;
3. a variance from §195-16.H.(13)(c)[2][a][iv] to allow buildings and improvements within 200 feet of any residential district boundary line and parking within 100 feet of a residential district boundary line;
4. a variance from §195-57.C to allow an industrial building closer than 200 feet to any residential district boundary line, and from the 50 foot landscaped buffer requirement; and
5. a variance from §195-57.D to allow an industrial building closer than 125 feet from any existing residential district or use, and to allow parking closer than 50 feet from any residential district or use.

Hearing History: The application was filed in Warwick Township on January 4, 2021. The hearing was held on February 2, 2021 virtually via the Go To Meeting Application.

Appearances: Applicant by: Nate Fox, Esquire
Obermayer Rebmann Maxwell & Hippel LLP
10 S. Clinton Street, Suite 300
Doylestown, PA 18901

Parties: None

Mailing Date: March 3 ___, 2021

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 Equitable Owner of the Subject Property and therefore possessed of the requisite standing to make application to this Board.

3. The following exhibits were marked and admitted during the February 2, 2021 hearing:

Board Exhibits:

B-1 Application with attachments received by Warwick Township on January 4, 2021

B-2 Proof of Publication from the Intelligencer for advertising notice on January 18, 2021 and January 25, 2021. Public Notice advertising hearing scheduled for February 2, 2021 at 7:00 pm and confirmation from the Intelligencer

B-3 Letter dated January 11, 2021 to Nathan D. Fox, Esquire from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated January 15, 2021 sent by Ashley Casey, Warwick Township Zoning Officer and copy of list of property owners.

B-5 Property Posting Certification by Ashley Casey, Zoning Officer dated January 15, 2021

B-6 Letter from Mary Eberle, Esquire, Township Solicitor, dated January 22, 2021

Applicant Exhibits:

A-1 Aerial Photo

A-2 Plan titled Sketch Plan of Development Area prepared by Eastern/Chadrow Associates, Inc. dated December 22, 2020 Sheet 1 of 2

A-3 Plan titled Sketch Plan of Development Area prepared by Eastern/Chadrow Associates, Inc. dated December 22, 2020 Sheet 2 of 2

4. The Subject Property is located in the LI Limited Industrial Zoning District. The Subject Property consists of 15.1378 acres and is currently vacant.

5. On behalf of the Applicant, Nathan Fox, Esquire provided a summary of the Subject Property and the requested relief as follows:

The Applicant is the equitable owner of the Subject Property. The Subject Property is currently vacant and is burdened by areas of steep slopes and easements which leaves a small building envelope. If all of the setbacks required by the Zoning Ordinance were applied to the Subject Property, there would be no available building envelope.

The Applicant is proposing to operate a wholesale business and a contracting business from the Subject Property. Both operations function as one business but the Zoning Ordinance does not contain a use that incorporates both operations. The Application meets the legal requirements for the variances that are being requested.

The Board of Supervisors decided to remain neutral on the application but recommended conditions if the Board approved the Application.

6. Bob Gasper testified in support of the Application. Mr. Gasper is the owner and founder of the Applicant.

The Applicant currently operates its business in Richboro. The retail and wholesale garden center operates from this location as well as the landscape business. If this application is approved, the design and professional staff will remain in Richboro and the wholesale and contracting business would move to the Subject Property. There would be approximately 10-15 employees at the Subject Property with a number of these employees there in the morning before leaving to go to their respective job sites. The Subject Property is set back behind the existing flex space buildings and is pretty isolated.

The Applicant is proposing to construct a 29,000 square foot building with associated parking and loading area. The Applicant will need to seek land development approval if the variances are granted. The Applicant has reviewed the conditions requested by the Board of Supervisors and has agreed to them.

A variety of materials will be stored at the Subject Property including stone, sand, mulch and 20 different bulk materials. There will be machinery operated at the site including loaders and fork lifts. Applicant owns 10 large pieces of equipment that will be stored at the Subject Property if they are not at a job site. All material storage, equipment parking, loading and unloading will be done as far away from the property lines as possible.

7. Lawrence Byrne, licensed civil engineer of Eastern/Chadrow Associates, Inc. also testified on behalf of the Applicant. Mr. Byrne was accepted as an expert in the field of civil engineering.

Mr. Byrne is familiar with the Subject Property as he worked on it for the prior owner. The Subject Property is part of a 5 lot industrial development. Lot 1 contains an ice-skating rink, Lot 2 and Lot 3 contain flex space and Lots 4 and 5 are currently vacant.

The area of the Subject Property that extends out to Mearns Road contains wetlands, a watercourse and is part of the common open space for the development. If all of the setbacks and buffers required by the Zoning Ordinance were applied to the Subject Property, there would be no available building envelope.

Although the proposed building will be located 106 feet from the residential zoning district it will be located over 600 feet from the nearest home as shown on Exhibit A1. The perimeter of the Subject Property is wooded and there is a natural stream between this property and the residential properties. The use is similar to others in the area and the Zoning District, the relief is needed because of conditions that relate to the Subject Property, the relief will not alter the character of the neighborhood, the relief is the minimum variance needed to develop the Subject Property and the development will comply in all other respects with the Zoning Ordinance. All of these opinions have been given as an expert.

8. No one spoke in opposition to the application.

9. Warwick Township took no position with regard to the application but submitted a letter marked as Exhibit B6 which contains the following suggested conditions:

a. All lighting on the site shall be shielded and directed down so as not to produce glare on nearby residential uses.

b. The Applicant shall install a buffer against all residential properties sufficient in width and density to serve as a vegetative screen between the Applicants property and adjacent residential uses.

CONCLUSIONS OF LAW:

1. Section 910.2 of the Pennsylvania Municipalities Code requires that an applicant demonstrate all of the following in order to be entitled to a variance: (1) there are unique physical circumstances or conditions peculiar to the Property that impose an unnecessary hardship; (2) because of such unique physical circumstances or conditions, there is no possibility that the Property can be developed in strict conformity with the Zoning Ordinance and that the variance is therefore necessary to enable the reasonable use of the Property; (3) such unnecessary hardship has not been created by applicant; (4) the variance will not alter the essential character of the neighborhood; and (5) the variance represents the minimum variance that will afford relief. (53 P.S. §10910.2).

2. The burden on the applicant seeking a variance is a heavy one, and the reasons for granting the variance must be substantial, serious, and compelling. *Pequea Township v. ZHB of Pequea Township*, 180 A.3d 500 (Pa. Cmwlth. 2018) (citations and internal quotations omitted).

3. A Board is not required to grant a dimensional or use variance just to avoid financial hardship or to permit a property owner to use his property exactly as he wishes. *Id.* (Citations and internal quotations omitted.)

4. The hardship must relate to the property and not the person. *Id.*
5. The Subject Property is part of an H13 Industrial Park in the LI Limited Industrial Zoning District.
6. The uses proposed to be conducted by the Applicant, H3 Wholesale and H5 Contracting Uses, when combined as proposed by the Applicant operate as 1 cohesive use.
7. The credible evidence presented by the Applicant, and un rebutted supports the conclusion that the variances requested are necessary to allow the Subject Property to be developed as proposed.
8. The competent evidence presented leads the Board to conclude that the Subject Property contains unique physical conditions that impose a hardship on the Subject Property.
9. The competent evidence presented leads the Board to conclude that because of the unique physical conditions the Subject Property cannot be developed in strict conformity with the Zoning Ordinance and variances are necessary to enable the reasonable use of the Subject Property.
10. The competent evidence presented leads the Board to conclude that the hardship was not created by the Applicant.
11. The competent evidence presented leads the Board to conclude that should the requested variances be granted there will be no negative impacts upon surrounding properties or uses.
12. The Board concludes that granting the requested variances, subject to the conditions set forth below, will not alter the essential character of the neighborhood or district in which the Subject Property is located.
13. The Board concludes that the evidence presented establishes that the relief sought by the Applicant are the minimum variances necessary with regard to development of the Subject Property as proposed.
14. The Board concludes that the Applicant has presented evidence of sufficient factors to warrant the grant of the variances requested.
15. Accordingly, the Warwick Township Zoning Hearing Board determined, unanimously, to grant the Applicant's request for relief subject to the conditions set forth below.

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Warwick Township hereby GRANTS the following variances from the Warwick Township Zoning Ordinance in order to allow the development of the Subject Property:

- A. from §195-10 to allow 2 principal uses on the Subject Property;
- B. from §195-16.H(13)(c)[2][a][iii] to allow a building or structure to be within 106 feet of a residential zoning district;
- C. from §195-16.H(13)(c)[2][a][iv] to allow buildings and improvements within 200 feet of any residential district boundary line and parking within 100 feet of a residential district boundary line;
- D. from §195-57.C to allow an industrial building closer than 200 feet to any residential district boundary line and from the 50 foot landscaped buffer; and
- E. from §195-57.D to allow an industrial building closer than 125 feet from any existing residential district or use, and to allow parking closer than 50 feet from any residential district or use subject to the following conditions:

1. All lighting on the Subject Property shall be shielded and directed down so as not to produce glare on nearby residential uses;

2. The Applicant shall install a buffer against all residential properties sufficient in width and density to serve as a vegetative screen between the Applicants property and adjacent residential uses.

The relief contained herein granted is subject to compliance with all other applicable governmental ordinances and regulations, including obtaining the proper permits.

ZONING HEARING BOARD OF
WARWICK TOWNSHIP

By: /s/ Kevin Wolf
Kevin Wolf, Chairman

/s/ David Mullen
David Mullen

/s/ Lorraine Sciuto-Ballasy
Lorraine Sciuto-Ballasy

NOTICE TO APPLICANT

You have the right to appeal this Decision to the Court of Common Pleas of Bucks County. Such an appeal must be taken within thirty (30) days of the date the Decision was issued and mailed to you as stated above.