

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

Docket No: 21-04

Applicants: Kampus Klothes, Inc.
164 Railroad Drive
Ivyland, PA 18974

Owner: Cornell Industrial Construction, L.P.
P.O. Box 311
Jamison, PA 18929

Subject Property: Tax Parcel Nos. 51-13-10-16 and 51-13-10-17, which are known as Lots 15 and 16, Campus Drive, Warminster, PA 18974

Requested Relief: The Applicant intends to combine the two lots and construct a 42,000 square feet warehouse building. The Applicant is seeking relief from §195-16.H(13)(c)[2][a][iii] of the Warwick Township Zoning Ordinance (“Ordinance”) to permit a building setback from a residential zoning district boundary of 232 feet where 500 feet is required.

Hearing History: The application was filed in Warwick Township on March 1, 2021. The hearing was held on April 6, 2021 virtually via the Go To Meeting Application.

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

Parties: Michael Repecky
205 Oaktree Court
Warminster, PA 18974

Mailing Date: May 6, 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 April 6, 2021 hearing:

Board Exhibits:

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

B-2 Proof of Publication from the Intelligencer for advertising notice on March 15, 2021 and March 22, 2021. Public Notice advertising hearing scheduled for April 6, 2021 at 7:30 pm and confirmation from the Intelligencer

B-3 Letter dated March 8, 2021 to Daniel Lyons, Esquire from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated March 22, 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 March 22, 2021

B-6 Letter from Mary Eberle, Esquire dated March 17, 2021

Applicant Exhibits:

A-1 Original Subdivision and Land Development Plan for the Warwick Business Industrial Campus

A-2 Site Plan dated 1/1/2021 revised March 12, 2021

A-3 Site Plan with Aerial dated April 5, 2021

A-4 Site Photographs

A-5 Aerial Photograph

4. The Subject Property is located in the LI Limited Industrial Zoning District. The Subject Property consists of 7.447 acres combined and is currently vacant.

5. Michael Repeckyj is a resident and a member of the Board of Directors of the Country Crossing Homeowners Association which abuts the Subject Property on the west. Mr. Repeckyj requested and was granted party status.

6. On behalf of the Applicant, Dan Lyons, Esquire provided a history of the Subject Property leading up to the Zoning Hearing Board Application.

The Subject Property consists of Lots 15 and 16 in the Warwick Business Campus. The Applicant is the equitable owner, is proposing to consolidate the 2 lots and utilize the Subject Property as its corporate headquarters and for screen printing and clothing embroidery. The Applicant needs a single variance to develop the Subject Property as intended. The Applicant made a presentation to the Planning Commission which recommended approval of the variance. The Applicant is proceeding through the land development process with the Board of Supervisors.

The Applicant is aware of the letter from the Township Solicitor, Mary Eberle, Esquire which was marked as Exhibit B-6 and the Applicant is agreeable with and will comply with the proposed conditions therein.

When the Warwick Business Campus was approved, the Ordinance required a setback of 200 feet from a residential zoning district boundary. Since the approval, the Ordinance has been changed to increase the setback to 500 feet from a residential zoning district boundary. If the current setback were applied to the Subject Property there would be no building envelope. The Subject Property also has other unique constraints including required open space and the fact that it is a corner lot. The location of the proposed building is as far from the residential district boundary line as possible and is consistent with neighboring properties within the Warwick Business Campus.

7. Tom Gansiewski the Secretary/Treasurer for Kampus Klothes, Inc. testified on behalf of the Applicant. He confirmed the history and summary of the Application provided by Mr. Lyons. He also testified that he has been employed by the Applicant for 35 years. The Applicant is a screen printing and embroidery company. Their customers include local stores, colleges, big corporations, little leagues and walk-a-thons. The Applicant currently operates in Northampton Township where there is a 22,000 square foot facility that has no availability to expand.

The Applicant chose this location because it is close to the facility in Northampton Township and it is located within an industrial park. There is very little property available for sale that can be built on. The other properties they did locate were all close to residential areas and the Applicant didn't want that. The property to the north of the Subject Property contains a baseball academy and the property to the east is a landscape company. There are two sides of the Subject Property that abut residential districts. Both property lines that abut the residential districts have trees.

At the Subject Property, the Applicant will store materials and process garments until they are picked up or distributed. The proposed building is actually smaller than what the Ordinance would allow. The Applicant has 50 full time employees and 25 part time or seasonal employees depending on the time of year. There will be approximately 60 cars at the Subject Property on a daily basis. The Applicant receives apparel and equipment and decorates them with custom screen printing and embroidery. The hours of operation are from 7 am to 5 pm with no overnight work. The Applicant owns 2 cargo vans that are used for deliveries every day. Deliveries from UPS and Fedex occur every day but in regular size trucks. Deliveries from tractor trailers are made once or twice a week.

The machinery used cannot be heard from outside of the building. There will be no smoke coming from the facility and there are no outdoor operations. There will be solvents present on the site for cleaning purposes but they are no more toxic than normal household products.

The Applicant needs the requested variance because if the 500 foot setback were applied to this property then nothing could be built on it. In his opinion, the use will not effect the neighboring properties. It is the minimum variance needed and will be consistent with neighboring properties.

There will be standard parking lot and building mounted lights. A small amount of light will spill over onto Campus Drive but not onto any residential properties. The Applicant will comply with the Ordinance requirements governing lighting.

8. Rob Cunningham testified in support of the Application. Mr. Cunningham is a licensed engineer and was recognized as an expert. The proposed building contains 37,000 square feet of floor area and 5,000 square feet in the mezzanine area that includes office and support areas. The Subject Property is 7.5 acres when combined and 4 acres is deed restricted open space. There will be 2 loading docks on the eastern side of the building as required by the Ordinance. The proposed parking will comply with the Ordinance.

When the Warwick Business Campus was approved the required setback from residential zoning districts was 200 feet which was subsequently changed to 500 feet. The Subject Property varies between 400 to 500 feet in depth. Exhibit A2 contains 2 red lines that show where the 500 foot setback would be. When the 500 foot setback is applied, there is no building envelope. This condition was not caused by the Applicant. There are a few other lots within the Warwick Business Campus that will be affected by the change to the Ordinance. The building will be set back 232 feet on the south side and 345 feet on the west side from the residential zoning district.

The baseball academy to the north is located 219 feet from the boundary line with the Country Crossing development. Applicant's proposed building will be located an additional 126 feet from the same boundary line. The proposed building is set close to Campus Drive and is as far away from the residential districts as possible. The proposed building cannot be shifted any more because of drainage easements on both sides of the property.

The Township's ordinances require a vegetated buffer along the residential zoning district. There are existing areas that are well screened and others that are sparse. The Applicant will be required to add additional plantings and screening as part of the land development process.

The proposed building will not impair the neighbors use of their property, it will not be detrimental to the public welfare, it is the minimum variance necessary and will comply with all other provisions of the Ordinance.

9. Mr. Repeckyj asked questions of the Applicant and provided comment. He thought the Subject Property would remain open space. The proposed building will change his neighborhood. The traffic and parking will impact his community. He is not in favor of the variance being granted.

10. Elina Goldboard commented that the setback was increased to protect the residential property owners. The proposed building is large and will cause dust and noise at least during the construction process. The proposed building will be detrimental to her community and she is not in favor of the variance being granted.

11. Bob and Kathy Bunting commented that the proposed building will be impactful on their community. The existing setback should be applied. Additionally, they have concerns about the size of the building, the traffic, the parking area and the deliveries.

12. A few other residents of Country Crossing expressed similar concerns about traffic, noise and lighting. In addition, many residents thought it would remain as open space.

13. Andrew Norelli owns the landscaping business adjacent to the Subject Property and also owns a residence along Bristol Road that backs up to the landscaping business. He believes the variance should be approved. He understands the concerns of the residents but the Subject Property is within an industrial park.

14. Warwick Township through its Solicitor, Mary Eberle, Esquire, indicated a neutral position on the Application but recommended the following conditions if the variance is granted: Lots 15 and 16 must be consolidated; and the Applicant must include a note on the land development plan which prohibits further development of the consolidated property.

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 setbacks for the H13 use were changed after the Warwick Business Campus was approved and the setback from a residential zoning district boundary was increased from 200 feet to 500 feet. Applicant has established that if the current setback is applied there would be no building envelope on the Subject Property.

7. Unnecessary hardship is established where the evidence establishes that compliance with the zoning ordinance would render the property practically useless. *Rittenhouse Row v. Aspite*, 917 A.2d 880 (Pa. Cmwlth. 2006).

8. The credible evidence presented by the Applicant, and unrebutted supports the conclusion that the variance requested is necessary to allow any use of the Subject Property.

9. The competent evidence presented leads the Board to conclude that, should the requested variance be granted, there will be no negative impacts upon surrounding properties or uses.

10. The Board concludes that the evidence presented establishes that the relief sought by the Applicant is the minimum variance necessary with regard to the proposed building.

11. The Board concludes that granting the variance, 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.

12. The Board concludes that the Applicant has presented evidence of sufficient factors to warrant the grant of the dimensional relief requested.

13. Although Mr. Repeckyj and other members of the Country Crossing community raised general concerns with regard to traffic, dust, noise, lighting and other alleged detrimental impacts to the community these concerns do not meet the burden of demonstrating a high degree of probability that granting the variance will substantially impact the health and safety of the

community. *Rural Area Concerned Citizens, Inc. v. Fayette County Zoning Hearing Board*, 646 A.2d 717 (Pa. Cmwlth. 1994); *Pennsy Supply, Inc. v. Zoning Hearing Board of Dorrance Township*, 987 A.2d 1243 (Pa. Cmwlth. 2009).

14. 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 a variance from §195-16.H(13)(c)[2][a][iii] of the Warwick Township Zoning Ordinance to allow the proposed building to be constructed 232 feet from the southern residential district boundary and 345 feet from the western residential district boundary subject to the following conditions:

1. Lots 15 and 16 of the Warwick Business Campus must be consolidated; and
2. Applicant must include a note on the land development plan that prohibits further development of the consolidated property.

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.