

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

Docket No. 21-09

Applicants: Brendan McCreesh of McCreesh Contracting
1513 Stuckert Road
Warrington, PA 18976

Owner: Brian and Illisa Smalls
1869 Sunrise Way
Jamison, PA 18929

Subject Property: Tax Parcel No. 51-023-068 which is located at 1869 Sunrise Way,
Jamison, PA 18929

Requested Relief: The Applicant proposed to construct a 777 square foot in-law suite addition on their existing home on the Subject Property. In order to do so, Applicant is seeking the following relief from the Warwick Township Zoning Ordinance (“Ordinance”): a special exception from Section 195.24.C to permit an accessory family apartment/in law suite; a variance from §195-16.B(1)(A)[2] to allow an aggregate side yard of 38 feet where 40 feet is required; a variance from §195-16.B(1)(A)[2] to allow a building coverage of 22% where 20% is permitted; and a variance from §195-16.B(1)(A)[2] to allow impervious coverage of 35.4% where 35% is permitted.

Hearing History: The Application was filed in Warwick Township on September 2, 2021. The hearing was held on October 5, 2021 at the Warwick Township Administration Building.

Appearances: None.

Parties: None.

Mailing Date: November 16, 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 obtained permission from the Owner of the Subject Property and is therefore possessed of the requisite standing to make application to this Board.

3. The following exhibits were marked and admitted during the October 5, 2021 hearing:

Board Exhibits:

B-1 Application with attachments received by Warwick Township on September 2, 2021

B-2 Proof of Publication from the Intelligencer for advertising notice on September 20, 2021 and September 27, 2021. Public Notice advertising hearing scheduled for October 5, 2021 at 7:30 pm and confirmation from the Intelligencer

B-3 Letter dated September 9, 2021 to McCreesh Contracting and Brian and Illisa Smalls from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated September 20, 2021 sent by Kristen Beach, Warwick Township Deputy Zoning Officer and copy of list of property owners.

B-5 Property Posting Certification by Kristen Beach, Deputy Zoning Officer dated September 20, 2021

Applicant Exhibits:

None.

4. The Subject Property is located in the R1a Residential Zoning District. The Subject Property consists of 12,937 square feet and contains an existing single family dwelling, driveway, pool, shed and patio.

5. Mr. McCreesh testified as follows:

The Smalls would like to install an in-law suite for Mrs. Smalls' parents. Mrs. Smalls' mother will require a wheelchair soon. Mr. McCreesh has built in-law suites in the same neighborhood, several houses down from the Smalls. The prior owners of the Subject Property

also considered constructing an in-law suite and the driveway was already widened to accommodate at least six cars. The in-law suite will include a bedroom, laundry room, kitchen, bathroom, living area and powder room. There is a covered porch that will be relocated to the other side of the house. The total square footage of the interior of the in-law suite will be 777 square feet and the exterior will be 825 square feet.

Mr. McCreesh did not have the total floor area of the primary living area of the principle residence with him. The primary living area includes a living room, dining room, kitchen, one bathroom and the largest bedroom.

6. No members of the public were present and no one requested party status.
7. Warwick Township took no position with regard to the application.

CONCLUSIONS OF LAW:

1. Section 910.2 of the Pennsylvania Municipalities Planning 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. De minimis variances are minimal or minor deviations from the dimensional requirements of the Zoning Ordinance. A de minimis variance does not require proof of unnecessary hardship. *Hawk v. City of Pittsburgh Zoning Bd. Of Adjustment*, 38 A.3d 1061 (Pa Cmwlth. 2012) (citations omitted).

4. To grant a de minimis variance the Board must make the following two findings: only a minor deviation from the dimensional variance of the ordinance is sought; and that rigid compliance with the zoning ordinance is not necessary to protect the public policy concerns inherent in the zoning ordinance. See *id* at 1066 (citations omitted).

5. The use of the Subject Property as a single family home is a permitted use in the R1a Residential Zoning District.

6. The Board finds that the requested dimensional variances are only a minor deviation from the Zoning Ordinance requirements, specifically a side yard aggregate of 38 feet

where 40 feet is required, building coverage of 22% where 20% is permitted, and impervious coverage of 35.4% where 35% is permitted.

7. The credible evidence presented by the Applicant, supports that rigid compliance with the Zoning Ordinance is not necessary in this case to protect the public policy concerns in the Zoning Ordinance.

8. The Board concludes that the Applicant has presented evidence of sufficient factors to warrant the grant of the de minimus relief requested.

9. Section 195.24.C permits a B8 accessory family apartment or dwelling unit as a special exception in the R1a District.

10. B8 contains the following standards for an accessory family apartment:

(a) Such use shall occupy no more than 50% of the total floor area of the primary living area of the principal residence, but in no event shall the accessory use exceed a total floor area of 800 square feet. The primary living area includes a living room, dining room, kitchen, one bathroom and the largest bedroom.

(b) Occupancy of such use shall include only relatives of the family occupying the principal residence.

(c) Such use may contain separate cooking, sleeping, living and bathroom facilities.

(d) Such use may be part of the principal residence or may be contained in an accessory structure or building existing at the date of this chapter. No new separate structures on the same lot with the principal residence shall be permitted to be constructed for this use...

(e) Only one accessory family apartment shall be permitted per single family detached dwelling and there shall be no changes to the exterior of the residence which suggests that the dwelling unit is other than a single family detached dwelling.

(f) This use may be permitted only by special exception to the Zoning Hearing Board.

(g) The owner of the principal residence shall provide to the Township evidence of approval by the Bucks County Board of Health as to the adequacy of water and sewer facilities serving the site.

(h) Parking: two off-street parking spaces shall be provided for the additional use.

(i) The record owner of the property shall grant a deed restriction limiting such use in accordance with the foregoing provisions of this subsection in favor of Warwick

Township. All costs related to the preparation and recording of the forgoing document shall be subject to the approval of the Township at the cost of the applicant.

11. The Board finds that the Applicant has established compliance with B8 subsection (b) as the proposed accessory family apartment will be utilized by the Applicant's mother.

12. The Board finds that the Applicant has established compliance with B8 subsection (c) as the proposed accessory apartment will contain separate cooking, sleeping, living and bathroom facilities.

13. The Board finds that the Applicant has established compliance with B8 subsections (d) and (e) as the plans submitted with the Application, Exhibit B1, show that there will be only 1 accessory family apartment that will be attached to the main dwelling and there will be no exterior changes which will make the dwelling look like something other than a single family dwelling.

14. The Board finds that the Applicant has established compliance with B8 subsection (h) as the driveway can accommodate at least six cars.

15. The Applicant must establish compliance with B8 subsections (a), (g) and (i) by submitting information regarding the same to the Township Zoning Officer.

16. Accordingly, the Warwick Township Zoning Hearing Board determined, unanimously, to grant the Applicant's request for relief.

ORDER

Upon consideration and after the hearing, the Zoning Hearing Board of Warwick Township hereby GRANTS the following relief:

1. a special exception from Section 195.24.C to permit an accessory family apartment/in law suite;
2. a variance from §195-16.B(1)(A)[2] to allow an aggregate side yard of 38 feet where 40 feet is required;
3. a variance from §195-16.B(1)(A)[2] to allow a building coverage of 22% where 20% is permitted; and
4. a variance from §195-16.B(1)(A)[2] to allow impervious coverage of 35.4% where 35% is permitted.

subject to the following condition:

Applicant must demonstrate to the Zoning Officer compliance with Section 195-16.B8(a), specifically that the accessory apartment shall occupy no more than 50% of the total floor area of the primary living area of the principal residence, but in no event shall the accessory use exceed a total floor area of 800 square feet.

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: 
Kevin Wolf, Chairman


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.