

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

Docket No. 21-10

Applicants: CNKA, LP, Mike Whalen
5 Cooper Leaf Court
Ivyland, PA 18974

Owner: Same as Applicant.

Subject Property: Tax Parcel Nos. 51-013-010-023 and 51-013-010-024 which are known as Lot 22 and Lot 23 of the Warwick Business Campus and are located on Campus Drive.

Requested Relief: The Applicant proposes to operate an H16 Flex Space use on the Subject Property. In order to do so, Applicant is seeking the following variances from the Warwick Township Zoning Ordinance (“Ordinance”): §195-16.H(16)(c) to allow 68 parking spaces where 80 parking spaces are required; §195-16.H(13)(c)(2)[a][iii] to allow parking in the front of the building or in the alternative an interpretation that this section prohibits parking in the front yard rather than in front of a building; §195-71.F to allow a trash enclosure to be located within the parking area; and §195-70.A(1)(m) to allow a minimal amount of light from the proposed parking area to extend onto the adjacent property.

Hearing History: The Application was filed in Warwick Township on October 14, 2021. The hearing was held on December 7, 2021 at the Warwick Township Administration Building.

Appearances: Carrie Nase-Poust, Esquire
Fox Rothschild, LLP
2700 Kelly Road, Suite 300
Warrington, PA 18976

Parties: None.

Mailing Date: January 5, 2022

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 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 December 7, 2021 hearing:

Board Exhibits:

B-1 Application with attachments received by Warwick Township on October 14, 2021

B-2 Proof of Publication from the Intelligencer for advertising notice on November 22, 2021 and November 29, 2021. Public Notice advertising hearing scheduled for December 7, 2021 at 7:00 pm and confirmation from the Intelligencer

B-3 Letter dated November 12, 2021 to Carrie Nase-Poust, Esquire from Vicki L. Kushto, Esquire advising of the hearing date

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

Applicant Exhibits:

A-1 CV of Lawrence J. Byrne, P.E.

A-2 Aerial of Property

A-3 Zoning Site Plan prepared by Eastern/Chadrow Associates, Inc. dated September 30, 2021

4. The Subject Property is located in the LI Limited Industrial Zoning District. The Subject Property consists of 2.0426 acres and is currently vacant.

5. Ms. Nase-Poust represented that the Applicant worked with its lighting consultant to revise the plans for the Subject Property so that the lighting complies with Ordinance requirements. Therefore, the Applicant is withdrawing its request for a variance from §195.70.A(1)(m).

6. Ms. Nase-Poust then provided the following summary of the Application:

The Subject Property consists of Lots 22 and 23 within the Warwick Business Campus on Campus Drive. Applicant is proposing to consolidate the two lots which will consist of approximately 2.0426 acres. Applicant is proposing to construct a 21,600 square feet building to be used as Flex Space. The building will include 8 units and there will be 68 parking spaces.

7. Ms Nase-Poust then presented the testimony of Lawrence J. Byrne, P.E. The Board accepted Mr. Byrne as an expert in civil engineering. Mr. Byrne's testimony is summarized as follows:

Mr. Byrne is a professional civil engineer who works for Eastern/Chadrow Associates, Inc. Mr. Byrne is familiar with the property and the surrounding area and was involved in the preparation of the plans. The proposed building will be 21,600 square feet and will have two access points from Campus Drive. There will be 8 individual units each of which will have an overhead door and a small office.

For Flex Space, the Ordinance requires one parking space for every 300 square feet of total floor area plus one space for each vehicle stored on the premises. This would require a total of 80 parking spaces. The Applicant is proposing 68 parking spaces which does not count the ability to park a car within the unit. No vehicles will be stored on the Subject Property. The plans show the use of all of the available space on the lot. There is no ability to put any more parking on the Subject Property. Mr. Byrne is not a traffic engineer, but in his opinion the proposed use only requires approximately 5 parking spaces per unit or 40 parking spaces in total. These types of uses usually only have a few employees.

With regard to the trash enclosure, the Ordinance does not allow the trash enclosure to be in parking areas. It needs to be located adjacent to the building and in an area where it can be accessed by the trash company. The trash enclosure will be split faced block similar to the main building. There is nowhere that it can be located and be in compliance with the Ordinance without losing additional parking spaces.

In his opinion, the property has unique physical features including the 3 frontages. In addition, the property can't be used reasonably in strict compliance with the Ordinance. The proposed development will have no impact on adjacent properties.

Buffering is not required because the Subject Property is surrounded by like uses. There will be street trees and plantings installed in the parking area.

9. No members of the public were present and no one requested party status.

10. 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. 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 use of the Subject Property as a H16 Flex Space is a permitted use in the LI Limited Industrial Zoning District.

6. The Board declines the Applicant's invitation to interpret §195-160H(13)(c)[2][a](iii) of the Ordinance to prohibit parking within the front yard rather than in front of a building.

7. The Board finds that the Subject Property is subject to physical conditions that burden the Subject Property including 3 street frontages.

8. The credible evidence presented by the Applicant supports the conclusion that the variances are necessary for the reasonable use of the Subject Property.

9. The competent evidence presented by the Applicant and unrebutted leads, the Board to conclude that, should the requested variances 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 are the minimum variances necessary.

11. The Board concludes that the granting of the variances 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 relief requested.

13. 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 variances from the Warwick Township Zoning Ordinance: §195-16.H(16)(c) to allow 68 parking spaces where 80 parking spaces are required; §195-16.H(13)(c)(2)[a][iii] to allow parking in the front of the building; and §195-71.F to allow a trash enclosure to be located within the parking area.

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


Lorraine Sciuto-Ballas

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.