

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

Docket No. 22-03

Applicants: Tod and Sharon Simons
1654 S. Ash Circle
Jamison, PA 18929

Owner: Same.

Subject Property: Tax Parcel No. 51-023-095, which is located at 1654 S. Ash Circle,
Jamison, PA 18929

Requested Relief: The Applicant intends to remove an existing deck on the rear of the house and replace it with a stone patio. In order to do so, Applicant is seeking a variance from §195-16.B(1)(a)[2] of the Warwick Township Zoning Ordinance (“Ordinance”) to allow impervious coverage on the Subject Property of 36.4% where 30% is permitted.

Hearing History: The Application was filed in Warwick Township on December 23, 2021. The hearing was held on February 1, 2022 at the Warwick Township Administration Building.

Appearances: None.

Parties: None

Mailing Date: March 1, 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 therefore possessed of the requisite standing to make application to this Board.

3. The following exhibits were marked and admitted during the February 2, 2022 hearing:

Board Exhibits:

T-1 Application with attachments received by Warwick Township on December 23, 2021

T-2 Proof of Publication from the Intelligencer for advertising notice on January 17, 2022 and January 24, 2022. Public Notice advertising hearing scheduled for February 1, 2022 at 7:00 pm and confirmation from the Intelligencer

T-3 Letter dated January 10, 2022 to Tod and Sharon Simons from Vicki L. Kushto, Esquire advising of the hearing date

T-4 Resident mailing certification dated January 14, 2022 sent by Kristen Beach, Warwick Township Deputy Zoning Officer and copy of list of property owners.

T-5 Property Posting Certification by Kristen Beach, Deputy Zoning Officer dated January 14, 2022

Applicant Exhibits:

None.

4. The Subject Property is located in the RR Residential-Agricultural Zoning District. The Subject Property consists of 10,962 square feet and contains a single family home, deck, walkway and driveway. The minimum lot area required in this Zoning District is 1 acre. The current impervious surface coverage is 32.3% which will be increased to 36.4% with the installation of the new paver patio. The maximum permitted impervious surface coverage is 30%. See Exhibit B-1.

5. Mrs. and Mr. Simons testified in support of the Application. Their testimony can be summarized as follows:

The Applicants are proposing to remove an existing 450 square foot deck and replace it with a 450 square foot stone patio. Applicants have been spending more time at home and the current deck is in declining condition. Applicants volunteer for WAGS and sometimes foster dogs that have special needs. It will be easier for these dogs to utilize a level patio rather than a deck. In addition, the patio is more cost effective than putting in another deck.

The Applicants are proposing to utilize rain barrels to help control stormwater on the Property. In the winter when the rain barrels are not in place, stormwater will be managed through normal infiltration.

At the time that the house was constructed, the required setbacks were different and there was no maximum impervious coverage. Applicants have not changed or added anything to the Property. All of the current improvements were installed by the Developer but now that they are proposing changes, they must comply with current zoning requirements.

The property directly behind their home has an in-ground swimming pool and patio while the properties on both sides have decks.

6. Ms. Beach, Warwick Township Zoning Officer was sworn and testified that under the Township Zoning Ordinance, decks in this Zoning District that are not covered are not included in impervious surface calculations.

7. No one spoke in opposition to the application.

8. 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 single family home is a permitted use in the RR Residential-Agricultural Zoning District and a patio is a permitted accessory amenity.
6. The Board finds that the Subject Property is subject to physical conditions that burden the Subject Property including that the lot does not meet the minimum lot size requirement and the Developer installed improvements exceed the maximum impervious coverage permitted.
7. The credible evidence presented by the Applicants, supports that the variance is necessary for the reasonable use of the Subject Property.
8. 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.
9. The Board concludes that the evidence presented establishes that the relief sought by the Applicant is the minimum variance necessary as the Applicants are removing the existing deck and replacing it with a patio of the exact same size.
10. The Board concludes that the granting of the variance will not alter the essential character of the neighborhood or district in which the Subject Property is located.
11. The Board concludes that the Applicant has presented evidence of sufficient factors to warrant the grant of the dimensional relief requested.
12. Accordingly, the Warwick Township Zoning Hearing Board determined, unanimously, to grant the Applicant's request for relief.

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Warwick Township hereby GRANTS a variance from §195-16.B(1)(a)[2] of the Warwick Township Zoning Ordinance in order to allow the maximum impervious surface coverage on the Subject Property to be 36.4% where 30% is permitted.

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 J. Wolf*
Kevin Wolf, Chairman

David Mullen
David Mullen

Lorraine Scjuto-Ballasy
Lorraine Scjuto-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.