

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

Docket No. 22-02

Applicants: Gail and Steven Ostroff
3745 Midvale Lane
Huntingdon Valley, PA 19006

Owner: Knoll Family Real Estate Partnership¹
1754 Costner Drive
Warrington, PA 18976

Subject Property: Tax Parcel No. 51-003-088-010 which is located at 1908 York Road,
Jamison, PA 18929

Requested Relief: The Applicant proposes to subdivide the Subject Property into five (5) lots
and develop Lot 1 with a G2 Day Care Center. In order to do so,
Applicant is seeking a special exception from §195-53.C of the Warwick
Township Zoning Ordinance (“Ordinance”) to permit a G2 Day Care use
on Lot 1.

Hearing History: The Application was filed in Warwick Township on November 18, 2022.
The hearing was held on March 1, 2022 at the Warwick Township
Administration Building.

Appearances: Julie Von Spreckelsen, Esquire
Eastburn and Gray, PC
470 Norristown Road, Suite 302
Blue Bell, PA 19422

Parties: Kenrick Meyer Nina Mazer
2059 Land Road 1492 Sweetbriar Drive
Jamison, PA 18929 Jamison, PA 18929

Susan Bilker Alexander Gamarnik
1514 Sweetbriar Drive 1537 Sweetbriar Drive
Jamison, PA 18929 Jamison, PA 18929

Mailing Date: March 24, 2022

¹ Knoll Family Real Estate Partnership is listed as the Owner of the Subject Property on the Application. Prior to the hearing the Subject Property was actually purchased by the Applicant.

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. Following the filing of the Application, Applicant purchased the Subject Property and a Deed transferring title to the same was recorded on January 12, 2022. The Applicant is therefore possessed of the requisite standing to make application to this Board.

3. The following exhibits were marked and admitted during the March 1, 2022 hearing:

Board Exhibits:

B-1 Application with attachments received by Warwick Township on November 18, 2021

B-1A Letter dated December 10, 2021 from Julie Von Spreckelsen, Esquire requesting an extension through February 2, 2022

B-1B Letter dated January 5, 2022 from Julie Von Spreckelsen, Esquire requesting an extension through March 2, 2022

B-1C Letter dated January 24, 2022 from Julie Von Spreckelsen, Esquire with revised Zoning Plan

B-2 Proof of Publication from the Intelligencer for advertising notice on February 14, 2022 and February 21, 2022. Public Notice advertising hearing scheduled for March 1, 2021 at 7:00 pm and confirmation from the Intelligencer

B-3 Letter dated February 7, 2022 to Julie Von Spreckelsen from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated February 14, 2021 sent by Kristen Beach, Warwick Township Zoning Officer and copy of list of property owners.

B-5 Property Posting Certification by Kristen Beach, Zoning Officer dated February 14, 2021

B-6 Letter dated January 3, 2022 from William Oetinger, Esquire on behalf of the Warwick Township Board of Supervisors

Applicant Exhibits:

A-1 Deed

A-2 Floor Plan and Building Elevations prepared by RAD Architecture dated November 12, 2020, consisting of 4 sheets

A-3 C.V. of Kristin Holmes, PE

A-4 Bucks County Parcel Identification Map

A-5 Zoning Plan prepared by Holmes Cunningham LLC dated November 11, 2021, last revised January 14, 2022

A-6 Rendered Plan prepared by Holmes Cunningham LLC

4. The Subject Property is located in the O Office Zoning District. The Subject Property consists of 6.99 acres and contains an existing single-family dwelling and accessory structures. Applicant proposes to subdivide the Subject Property into five (5) lots and to develop Lot 1 with a G2 Day Care Center use.

5. A large number of individuals were present for this Application. The following individuals requested party status:

a. Kenrick Meyer of 2059 Land Road. Mr. Meyer's mother owns the property directly across the street from the Subject Property which is subject to a lease for the Goddard School. His mother received notice of the hearing. He has a Power of Attorney for his mother and takes care of her affairs. Mr. Meyer has concerns about competition and the potential effect of the Application on property values. Ms. Von Spreckelsen objected to Mr. Meyer being granted party status. The Board overruled this objection and granted Mr. Meyer party status.

b. Geo Bowers is one of the Vice-Presidents of the Windrush at Woodfield Homeowner's Association. He does not have permission to appear on behalf of the Association. He resides ¼ to ½ a mile from the Subject Property. Ms. Von Spreckelsen objected to Mr. Bowers being granted party status. The Board sustained the objection and denied Mr. Bowers party status.

c. Lisa Franckowiak is the owner of the Goddard School which operates across the street from the Subject Property. Ms. Franckowiak is not a Pennsylvania resident. She is present on behalf of families whose children attend her school. She is concerned about traffic. Ms. Von Spreckelsen objected to Ms. Franckowiak being granted party status. The Board sustained the objection and denied Ms. Franckowiak's party status on the basis that the owner of the property where her facility is located is already a party.

d. Nina Mazer resides at 1492 Sweetbriar Drive. Her property backs up to the Subject Property. She received notice of the hearing and is concerned about the proposed plans

for the Subject Property. Ms. Von Spreckelsen objected to Ms. Mazer being granted party status. The Board overruled the objection and granted Ms. Mazer party status.

e. Susan Bilker resides at 1514 Sweetbriar Drive. Her property also backs up to the Subject Property. She received notice of the hearing. Ms. Von Spreckelsen objected to Ms. Bilker being granted party status. The Board overruled the objection and granted Ms. Bilker party status.

f. Alexander Gamarnik resides at 1537 Sweetbriar Drive. He is approximately 50 yards from the Subject Property. He received notice of the hearing. Ms. Von Spreckelsen objected to Mr. Gamarnik being granted party status. The Board overruled the objection and granted Mr. Gamarnik party status.

g. Randy Fry resides at 1502 Sweetbriar Drive. His property backs up to the Subject Property. He received notice of the hearing. Ms. Von Spreckelsen objected to Mr. Fry being granted party status. The Board sustained the objection and denied Mr. Fry party status on the basis that his interests are adequately represented by other parties.

6. Ms. Von Spreckelsen summarized the Application as follows:

Gail and Steven Ostroff are the legal owners of the Subject Property. The Subject Property consists of approximately 7.27 acres, including the applicable rights-of-ways, and is located in the O Office Zoning District. The Subject Property currently contains a single-family dwelling, barn, shed and detached garages. Applicant is proposing to subdivide the Subject Property into five (5) lots. Proposed Lot 2 will contain the existing buildings.

Access from Stony Road and Meyer Way will remain. The Applicants intend to reside in the existing single-family dwelling on proposed Lot 2. There is a proposed 25 feet wide and 25 feet long addition to the existing single-family dwelling. Lots 3-5 are proposed to be developed with single family dwellings. Applicant will be installing a stormwater management facility on proposed Lot 2.

Proposed Lot 1 is located at the corner of Meyer Way and York Road. Applicant is proposing to construct a 6,770 square foot building to be utilized as a Day Care Center. The Day Care Center will be owned and operated by the Applicant.

The Application meets all of the requirements for a G2 Day Care Center use and all of the general criteria in §195-118.B of the Ordinance. Once the Applicant meets these burdens, the burden then shifts to the objectors to show adverse impacts not normally generated by this use.

The Applicant met with Township consultants and discussed the Application as a whole. The Application was presented to the Board of Supervisors who voted to stay neutral on the Application. The Board of Supervisors requested a condition that Lot 2 not be further subdivided or developed. The Application has an issue with the use of the word “developed”.

The Applicant would just like to make clear that they are still able to add an addition to the existing home, a pool or other similar items if they comply with the Ordinance.

7. Ms. Von Spreckelsen presented the testimony of Gail Ostroff. Mrs. Ostroff's testimony can be summarized as follows:

Mrs. Ostroff purchased the Subject Property in January with her husband. Mrs. Ostroff is a franchise owner of the Ivybrook Academy and was looking for a location to build it. The Subject Property was selected because it is in a good school district, there is a sense of community and the location allows them to build a nice-looking building that fits with the aesthetics of the community.

Mrs. Ostroff is a pediatric audiologist. She has a master's degree from Temple University in audiology and previously worked for Children's Hospital of Philadelphia. She was drawn to Ivybrook Academy because she felt connected to the owners and they are passionate about children.

Her operations will be a half day preschool program and daycare. The operating hours will generally be from 8:00 am to 4:30 pm. There are two preschool sessions with staggered pick up and drop off times. The facility will not operate on the weekends. Parents can pick up and drop off their children at any time. The facility will not serve lunch only a snack to the children in the program. The maximum number of children is 99 with approximately 40-45 children in each session. They will also offer a summer camp that is only available in the morning. The children allowed to participate in the program will be from 18 months to a maximum of 5 years old and do not include infants.

The proposed building will have a 2-tiered entry system and individuals will only be able to access administration officials at the first entrance. If granted access, individuals would then be allowed into the rest of the building. There will be a gym that contains a sensory area and six classrooms. There will also be a discovery/art room. All of the classrooms will have direct access to get outdoors and to the outside recreation area.

The proposed building will have a neutral design and muted colors. It will comply with the requirements of the Corridor Overlay District and will be compatible with the surrounding neighborhood. The operations are different from that of the Goddard School in that they will only offer half day programs. Typical consumers will be households where one of the parents is working from home and is only looking for care for a few hours a day. In addition, the operating hours and the total enrollment is less. Mrs. Ostroff is familiar with the licensing regulations of the Pennsylvania Department of Welfare and will comply with all of their requirements.

8. Ms. Von Spreckelsen presented the testimony of Kristin Holmes, PE. Ms. Holmes' testimony can be summarized as follows:

Ms. Holmes has previously testified before the Board and was accepted as an expert in the field of civil engineering. Ms. Holmes has visited the Subject Property and the surrounding area. Ms. Holmes also meet with Township staff and consultants to discuss the Application. Ms.

Holmes prepared the Zoning Plan marked as Exhibit A-5. The Subject Property is located at the corner of Meyer Way and York Road. Currently there is an access to York Road that is gated and closed off. The main driveway is off of Stony Road. The Subject Property is located in the O Office District and the Corridor Overlay District.

The trees shown on Exhibit A-6 will remain as much as possible. The proposed stormwater facilities are located on Lot 2 at the lowest point of the Subject Property. As shown on Exhibit A-5, Lot 1 will consist of 117,981 square feet or 2.5 acres after deduction of the applicable rights-of-way. The proposed building is 6,770 square feet. There is an outdoor recreation area that is 9,900 square feet that is located approximately 280 feet from the closest existing home. The outdoor recreation area will be completely enclosed by a 4-foot-high fence. No children will be in the outdoor area after 4:30 pm. The Application is compliant with the area and bulk standards for the Zoning District and the use.

There are 32 proposed parking spaces that consist of 3 loading spaces and 29 regular spaces. The Ordinance requires 2 parking spaces per classroom plus one for each teacher, administrator and maintenance employee plus 3 safe passenger unloading spaces. It is expected that there will be 2 teachers per classrooms, 6 classrooms, 2 administration employees and a maintenance employee. The total required parking spaces would be 31.

The Application meets all of the requirements of the G2 Day Care Center use. The Application also complies with all of the requirements in §195-118 in that it complies with the Ordinance and the Comprehensive Plan. With regard to traffic, the Subject Property is located at a signalized intersection and the proposed driveway was aligned with the driveway across Meyer Way. There is adequate sight distance from the proposed driveway. The access to York Road will be an emergency access only. The access from Lot 2 to York Road will be removed. The proposed use is suitable for the Subject Property as the Goddard School is located across Meyer Way and the Township had previously approved a day care across York Road on a property that has since been developed with a Tractor Supply store. The Subject Property has adequate access for fire trucks and other emergency vehicles to turn around and navigate the site.

9. Mr. Fry inquired about the row of evergreens at the rear of the Subject Property and was informed that they will remain.

10. Mr. Bowers had a question about access to the Subject Property and was informed that it would be discussed in greater detail when the Application was considered by the Planning Commission.

11. Ms. Franckowiak expressed concerns about traffic and stated that the population of the surrounding area is aging and will continue to do so. There is a decline in the number of children in the area.

12. All individuals who were present at the hearing were given the opportunity to provide public comment. Additional comments were received from Alex Gamarnik, Dee Ann McGlone and Kimberly Walker.

13. Warwick Township submitted a letter marked as Exhibit B-6 indicating a neutral position on the Application but requested the following condition if approved: no further subdivision or development of Lot 2.

CONCLUSIONS OF LAW:

1. “A special exception is not an exception to a zoning ordinance, but rather a use which is expressly permitted, absent a showing of a detrimental effect on the community.” Siya Real Estate LLC v. Allentown City Zoning Hearing Board, 210 A.3d 1152 (Pa. Cmwlth. 2019) (citations omitted).

2. “An applicant for a special exception has both the duty of presenting evidence and the burden of persuading the [board] that his proposed use satisfied the objective requirements of the zoning ordinance for the grant of a special exception. Once the applicant meets his burden of proof and persuasion, a presumption arises that [the proposed use] is consistent with the health, safety and general welfare of the community.” Id at 1157 (citations omitted.)

3. “The burden then normally shifts to the objectors to the application to present evidence and persuade the [board] that the proposed use will have a generally detrimental effect on health, safety and welfare. The evidence presented by the objectors must show to a high degree of probability that the use will generate adverse impacts not normally generated by this type of use and that these impacts will pose a substantial threat to the health and safety of the community.” Id at 1157 (citations omitted).

4. “[M]ere lay testimony of concerns regarding increased traffic or fire safety is insufficient to support the denial of a special exception.” Dunbar v. Zoning Hearing Board of City of Bethlehem, 144 A.3d 219 (Pa. Cmwlth. 2016) (citations omitted).

5. Section 195-53.C permits a G2 Day Care Center as a special exception.

6. Section 195.16.G(2) contains the following standards for a Day Care Center:

(a) Minimum lot area shall be 60,000 square feet.

(b) All day-care uses shall comply with the Pennsylvania Department of Public Welfare registration, certification and licensing requirements, including all Township building codes.

(c) For all day-care uses, an outdoor recreation area shall be provided at a minimum of 100 square feet of non-impervious surface for each child. All day-care center recreation areas shall be fully enclosed by a four-foot-high fence and shall be located to the side or rear of the lot. Outside play or recreation areas shall be limited to the hours of 8:00 a.m. to 7:00 p.m.

(d) The minimum yard, setback and lot width requirements for other permitted uses in the applicable zoning district shall be met.

- (e) The buffer requirements of §195-63 of this chapter shall be met.
- (f) When used in combination with another nonresidential use, a permit is required for each use.
- (g) An existing residential building may be used and occupied as a single-family residence for the owner or an employee of the owner of the day-care center.
- (h) Parking: at least one off-street parking space for each teacher, administrator and maintenance employee plus two additional spaces per classroom and three safe passenger unloading spaces, measuring 10 feet by 20 feet. Parking shall be adequately screened when situated within 50 feet of land zoned for or in residential use.

7. The Board finds that the Applicant has established compliance with G2 subsection (a) as the proposed Lot 1 will have 117,981 square feet.

8. The Board finds that the Applicant has established compliance with G2 subsection (b) as Mrs. Ostroff testified that she is aware of the requirements of the Department of Public Welfare and will comply with them.

9. The Board finds that the Applicant has established compliance with G2 subsection (c) as the Applicant is providing an outdoor recreation area of 9,900 square feet that will be fully enclosed, that is in the rear of the lot and will not be utilized after 4:30 pm.

10. The Board finds that the Applicant has established compliance with G2 subsection (d) as the proposed building meets the minimum yard, setback and lot width requirements. Exhibit A-5.

11. The Board finds that the Applicant has established compliance with G2 subsection (e) through the testimony of Ms. Holmes and Exhibit A-5.

12. The Board finds that G2 subsections (f) and (g) are not applicable to this Application.

13. The Board finds that the Applicant has established compliance with G2 subsection (h) by providing 29 regular parking spaces and 3 loading spaces.

14. §195-118 requires the Board in considering a special exception to require that any proposed use and location be:

- (1) In accordance with the Township Comprehensive Plan and consistent with the spirit, purpose and intent of this Chapter.
- (2) In the best interests of the Township and the public welfare.

(3) Suitable for the property in question and designed, constructed, operated and maintained so as to be in harmony with and appropriate in appearance to the existing or intended character of the general vicinity.

(4) In conformance with all other applicable requirements of this chapter and other Township Ordinances.

(5) Suitable in terms of effects on highway traffic and safety with adequate access arrangements to protect streets from undue congestion and hazard.

(6) In accordance with sound standards of subdivision and land development practice where applicable.

(7) Suitable in terms of impact on surrounding residential properties and compatible with adjacent uses.

15. The Board finds that the Applicant established compliance with the requirements of §195-118 through the testimony presented and the Exhibits introduced.

16. The Board finds that no objectors established a high probability that the proposed use will generate a harm greater than normally generated by the type of use.

17. 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 a special exception from Section 195.52.C to permit a G2 Day-Care Center on proposed Lot 1 subject to the following condition: Lot 2 cannot be further subdivided and only uses associated with or accessory to a B1 single family detached dwelling shall be 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: /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.