

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

Docket No. 22-04

Applicant: Quality Landscapes
242 Snapdragon Street
Warrington, PA 18976

Owner: Katherine Peoples
363 W. Bristol Road
Warminster, PA 18974

Subject Property: Tax Parcel No. 51-013-057 for property known as 363 W. Bristol Road

Requested Relief: The Applicant appeals the determination of the Zoning Officer dated November 3, 2021 denying a commercial use and occupancy certificate for the operation of a single family detached dwelling (Use B1) and a contracting use (Use H5) on the Subject Property and in the alternative requests a variance from §195-10 the Warwick Township Zoning Ordinance (“Ordinance”) to permit more than one principal use on the property including a single family detached dwelling (Use B1) and a contracting use (Use H5).

Hearing History: The Application was filed in Warwick Township on January 5, 2022. The hearing was held on March 1, 2022 at the Warwick Township Administration Building.

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

Parties: None

Mailing Date: March 24, 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 equitable owner of the Subject Property pursuant to an Agreement of Sale and 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 January 5, 2022

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, 2022 at 7:30 pm and confirmation from the Intelligencer

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

B-4 Resident mailing certification dated February 14, 2022 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 February 14, 2022

Applicant Exhibits:

A-1 Redacted portion of Agreement of Sale

A-2 Aerial Plan

A-3 Prior Zoning Hearing Board Decisions
(i) 1990
(ii) 2003

A-4 Denial Letter from Township Zoning Officer, dated November 3, 2021

4. The Subject Property is located in the LI Limited Industrial Zoning District. The Subject Property consists of 3.657 acres and currently contains a single family detached dwelling with attached garage, an additional 2 car detached garage, gazebo, a 42 foot by 90 foot pole building and asphalt paving. The dwelling and the pole barn each have their own separate paved access drives off of Bristol Road. See Exhibit B-1.

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

The Applicant is the equitable owner of the Subject Property. Philip McCusker is the principal of Quality Landscaping. Mr. McCusker will continue to use the single family detached dwelling as a home and will use the barn for storage of vehicles for his landscaping business.

In the 1990s, a prior owner obtained relief for two uses on the Subject Property including the single family home and for the limited industrial use of storage of construction vehicles. In 2003, the prior relief was amended to allow the single family detached dwelling (Use B1), the use of 50% of the barn for a photography studio (Use G6) and 50% of the barn for a construction equipment storage facility (H3).

Applicant is actually proposing to decrease the number of uses on the Subject Property from 3 to 2. The Zoning Officer denied the application for an H5 Contracting Use finding that this would be 4 uses on the Subject Property because the current storage use is classified as an H3 Construction Equipment Storage Facility. Applicant is appealing this decision and in the alternative requesting a variance to allow the 2 uses on the Subject Property.

6. Ms. Nase-Poust then presented the testimony of Phillip McCusker. Mr. McCusker's testimony can be summarized as follows:

Mr. McCusker is the owner and operator of Quality Landscaping. The business is a small family operation with business hours of 7 or 8 am to approximately 4 pm. Employees meet at the site in the morning and then come back at the end of the day to put the equipment away and retrieve their personal vehicles. Employees do not go back and forth to the Subject Property during the day. During the high season, Mr. McCusker has 5 employees. Mr. McCusker is not proposing any changes to the layout of the Subject Property.

The photo studio will no longer operate in the barn. The business that previously stored construction equipment in the barn is now defunct. Mr. McCusker's business will take over the entire barn and it will be used for the storage of vehicles used for his landscaping business. Mr. McCusker's plan is to move into the single family home and operate the business.

7. Linda Koenig who resides at 1297 Twin Stream Drive provided public comment regarding the Application. The entrance to her community is directly opposite one of the driveways for the Subject Property. Ms. Koenig is concerned about traffic on Bristol Road. Ms. Koenig also had questions about storage of materials on the Subject Property, chemicals getting into the creek and stormwater issues.

8. Mr. McCusker responded to Ms. Koenig's concerns by testifying that mulch is not stored on the Subject Property so there will be no associated odors emanating from the Subject Property. There will be no storage of bulk materials on the Subject Property. The only storage will be of the equipment. The trucks pickup any materials that they need off site and take them directly to the customer's premises. Mr. McCusker also does not use any chemicals so there will not be any chemicals stored on the Subject Property. He does not provide lawn treatment services.

With regard to traffic, Mr. McCusker has 4 or 5 trucks that will be in and out of the Subject Property for the business. The Subject Property has a U shaped driveway with two entrances/exits onto Bristol Road. The two driveways were previously approved by Penn Dot.

9. Warwick Township took no position on the Application.

CONCLUSIONS OF LAW:

1. The 2003 Decision of the Zoning Hearing Board permitted the Subject Property to have three principal uses including a single family detached dwelling (Use B1), a construction equipment storage facility (Use H3) and a photographic studio (Use G6).

2. Applicant's proposed use as a contracting use (Use H5) is a use not previously approved for the Subject Property.

3. The Zoning Officer's denial of the Application for a commercial use and occupancy certificate for the operation of an H5 contracting use was appropriate.

4. 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).

5. 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).

6. The hardship must relate to the property and not the person. *Id.*

7. The use of the Subject Property as a single family detached dwelling (Use B1) and contracting use (Use H5) are both permitted uses in the LI Limited Industrial Zoning District.

8. The credible evidence presented by the Applicant supports the conclusion that the variances are necessary for the reasonable use of the Subject Property and will be an improvement as there will now only be 2 uses on 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 DENIES the appeal from the Zoning Officer's decision dated November 3, 2021 and GRANTS a variance from §195-10 of the Warwick Township Zoning Ordinance to permit a single family detached dwelling (Use B1) and a contracting use (Use H5) on the Subject Property subject to the Applicant complying with the underlying Zoning Ordinance requirements for both of these uses.

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.