

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

Docket No. 22-10

Applicants: Igor Andrusca
423 Regina Street
Philadelphia, PA 19116

Owner: Same.

Subject Property: Tax Parcel No. 51-011-055, which is located at 1994 Maple Avenue,
Jamison, PA 18929

Requested Relief: The Applicant intends to remove an existing single family dwelling and construct a new 1,580 square foot single family dwelling with a deck, porch and driveway. In order to do so, Applicant is seeking the following variances from the Warwick Township Zoning Ordinance (“Ordinance”): from §195-16.B(1)(a)[2] to allow a lot size of 16,000 square feet where 40,000 square feet is required; from §195-76.A(4) to allow a front yard setback of 2.33 feet where 40 feet is required.

Hearing History: The Application was filed in Warwick Township on June 27, 2022. The hearing was held on August 2, 2022 at the Warwick Township Administration Building.

Appearances: None.

Parties: None

Mailing Date: September 6, 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 August 2, 2022 hearing:

Board Exhibits:

B-1 Application with attachments received by Warwick Township on June 27, 2022

B-2 Proof of Publication from the Intelligencer for advertising notice on July 19, 2022 and July 26, 2022. Public Notice advertising hearing scheduled for August 2, 2022 at 7:30 pm and confirmation from the Intelligencer

B-3 Letter dated July 12, 2022 to Igor Andrusca from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated July 18, 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 July 18, 2022

B-6 Assessment Record from the Bucks County Board of Assessment

B-7 Deed for the Subject Property

Applicant Exhibits:

A-1 Plans for 1994 Maple Avenue prepared by Carroll Engineering Corporation consisting of 3 sheets

4. Only two members of the Zoning Hearing Board were present for the hearing. Applicant was provided the option of proceeding with a two member board or with one of the members serving as a hearing officer. Applicant agreed to proceed with a two member board.

5. The Subject Property is located in the RR Restricted Residential Zoning District. The Subject Property consists of 16,000 square feet and contains a single family home and driveway. The minimum lot area required in this Zoning District is 40,000 square feet.

6. John Koutsouras of Carroll Engineering Corporation testified in support of the Application. His testimony can be summarized as follows:

Mr. Koutsouras testified that there is an existing dwelling on the Subject Property and a portion of the dwelling encroaches on the neighboring property pursuant to an easement. This encroachment will not be present when the new home is constructed. Along the same side of the existing house there is also a paper street known as Highland Avenue. The current house is located 2.33 feet from the right of way and that nonconformity will continue with the new home.

The house cannot be moved to avoid the need for this variance because of the location of the septic system and the required setbacks therefrom. The County Health Department has approved the septic system as proposed.

Sheet 3 of Exhibit A-1 shows that there are about 12 neighboring properties that have a lot size less than 20,000 square feet. These properties all have the same issue. The lot size is an existing non-conformity. The proposed house is almost completely on the footprint of the existing house. Moving the proposed home would require that the driveway be extended which would increase the amount of impervious coverage.

The proposed house will comply with the other requirements of the Zoning Ordinance including the impervious and building coverages. Applicant will be required to obtain building permits which will include a plot plan and grading plans.

7. Mr. Fran McLaughlin from 2027 Oak Avenue provided the following testimony:

The existing building does not contain any plumbing. It was used to store coal but was made to look like a home. His property is burdened by the easement for the portion of the existing building that goes over the property line. As far as he knows, it has not been used as a residence since at least 1998.

8. Mr. Andrusca testified that the existing house has a concrete floor, a kitchen sink and another sink. There is currently no running water in the house.

9. Mr. Koutsouras testified that the Subject Property is currently being taxed as a residential property. This is also shown on Exhibit B-6.

10. A letter was submitted by James Carey at 2020 Maple Avenue. Mr. Carey is located across the paper street from the Subject Property. The letter raises concerns about trees that were removed and stormwater management.

11. No one spoke in opposition to the application.

12. 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 Pennsylvania Supreme Court has recognized that the requirement to demonstrate unnecessary hardship can be shown with a lesser quantum of proof in a dimensional variance case. *Hertzberg v. Zoning Hearing Board of Adjustment of the City of Pittsburgh*, 721 A.2d 43 (Pa. 1998).

6. The use of the Subject Property as a single family home is a permitted use in the RR Restricted Residential Zoning District.

7. 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 required septic area to service the Subject Property.

8. The credible evidence presented by the Applicants, supports that the variance is necessary for the reasonable use of the Subject Property.

9. The competent evidence presented leads the Board to conclude that, should the requested variance be granted with the conditions set forth below, 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 is the minimum variance necessary.

11. 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.

12. The Board concludes that the Applicant has presented evidence of sufficient factors to warrant the grant of the dimensional 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 hearing, the Zoning Hearing Board of Warwick Township hereby GRANTS variances from the following Sections of the Warwick Township Zoning Ordinance: §195-16.B(1)(a)[2] to allow a lot size of 16,000 square feet where 40,000 square feet is required; §195-76.A(4) to allow a front yard of 2.33 feet where 40 feet is required compliance with all other applicable Township ordinances including, but not limited to the stormwater ordinance, and the plans will be reviewed and approved by the Township Engineer.

ZONING HEARING BOARD OF WARWICK TOWNSHIP

By: /s/ Kevin Wolf
Kevin Wolf, Chairman

/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.