

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

Docket No. 23-07

Applicants: Munz Construction  
201 Buck Road  
Holland, PA 18966

Owner: Kevin and Tracey Wood  
1829 Augusta Drive  
Jamison, PA 18929

Subject Property: Tax Parcel No. 51-011-115 for property known as 1829 Augusta Drive

Requested Relief: The Applicant is seeking the following variance from the Warwick Township Zoning Ordinance (“Ordinance”): §195-16B(9)(c)[3][d] of the Zoning Ordinance to permit an on-lot impervious surface coverage of 38.5% where 35% is permitted.

Hearing History: The Application was filed in Warwick Township on April 27, 2023. The hearing was held on June 6, 2023 at the Warwick Township Administration Building.

Appearances: None.

Parties: None.

Mailing Date: July 11, 2023

## 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 agent of 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 June 6, 2023 hearing:

#### Board Exhibits:

B-1 Application with attachments received by Warwick Township on April 27, 2023

B-2 Proof of Publication from the Intelligencer for advertising notice on May 21, 2023 and May 28, 2023. Public Notice advertising hearing scheduled for June 6, 2023 at 7:00 pm and confirmation from the Intelligencer

B-3 Letter dated May 16, 2023 to Munz Construction with a copy to Kevin and Tracey Wood from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated May 19, 2023 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 May 19, 2023

#### Applicant Exhibits:

A-1 Plans A-1 through A-4 of Deck and Roof Addition

4. The Subject Property is located in the RG Residential Golf Zoning District. The Subject Property consists of approximately 10,014 square feet and contains a single family detached dwelling.

5. On behalf of the Applicant, Steve McGill of Munz Construction summarized the application as follows:

Applicant is proposing a 530 square foot deck with partial covering over 310 square feet of the deck and a paver patio of less than 80 square feet off of the deck and driveway. The Subject Property is undersized and does not meet the current minimum lot size requirement for a

golf course community. The Subject Property backs up to a golf course, specifically fairway 17, which is why the Applicants want coverage over the deck. The uncovered portion of the deck does not violate the setback requirements of the Zoning Ordinance. The hardship in this case is the lot size.

No plan has been made to address stormwater but the Applicant could install a dry well. The dry well would be approximately 4 feet by 8 feet by 8 ¼ feet and will mitigate 103 cubic feet of stormwater. This was not reviewed by the Township Engineer because the area of disturbance is less than 1,000 square feet.

6. Mr. Wood's testimony can be summarized as follows:

The dimensions of the deck are approximately 18 feet by 17 ½ feet. He applied for a zoning permit but it was denied because the coverage over the deck violated the maximum impervious coverage. As a result, the deck was reduced by approximately 72 square feet. He would like for his family to be able to sit in the backyard without fear of being hit by a golf ball. He has planted 14 trees in the rear yard that were green giant arborvitaes.

7. The Board of Supervisors took no position with regard to this Application.

8. Kristen Beach, Township Zoning Officer, confirmed that the current minimum lot size for a golf course community is 20,000 square feet.

9. No other members of the public provided public comment.

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

4. A lesser standard of proof is necessary to establish unnecessary hardship for a dimensional variance rather than a use variance. *Hertzberg v. Zoning Board of Adjustment of City of Pittsburgh*, 554 Pa. 249, 257, 721 A.2d 43, 47 (Pa. Cmwlth. 1998).

6. However, despite this so-called “lesser standard of proof”, the Pennsylvania Commonwealth Court made clear in *Yeager v. Zoning Hearing Board of the City of Allentown*, 779 A.2d 595 (Pa.Cmwlt.2001) that *Hertzberg*:

“...did not alter the principle that a substantial burden must attend *all* dimensionally compliant uses of the property, not just the particular use the owner chooses. This well-established principle, unchanged by *Hertzberg*, bears emphasizing in the present case. A variance, whether labeled dimensional or use, is appropriate "only where the *property*, not the person, is subject to hardship." *Szmigiel v. Kranker*, 6 Pa.Cmwlt. 632, 298 A.2d 629, 631 (1972) ( “[W]hile *Hertzberg* eased the requirements ... it did not make dimensional requirements ... "free-fire zones" for which variances could be granted when the party seeking the variance merely articulated a reason that it would be financially "hurt" if it could not do what it wanted to do with the property, even if the property was already being occupied by another use. If that were the case, dimensional requirements would be meaningless--at best, rules of thumb--and the planning efforts that local governments go through in setting them to have light, area (side yards) and density (area) buffers would be a waste of time.’ *Society Created to Reduce Urban Blight v. Zoning Bd. of Adjustment*, 771 A.2d 874, 878 (Pa.Cmwlt.2001).

7. The use of the Subject Property as a B-1 single family detached dwelling is a permitted use in the RG Residential Golf Zoning District. In addition, a B-12 Accessory Structure is permitted in the RG Residential Golf Zoning District.

8. The partially covered deck on the Subject Property conforms to all requirements of the Zoning Ordinance except for maximum impervious coverage.

9. The Board concludes that the evidence presented establishes a hardship as the Subject Property is undersized.

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, if the conditions are complied with, 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 variance from the Warwick Township Zoning Ordinance: §195-16B(9)(c)[3][d] of the Zoning Ordinance to allow a maximum impervious coverage of 38.5% on the Subject Property subject to the following condition: Applicant shall install a method of stormwater management as appropriate to address the stormwater from the additional impervious coverage.

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

Lorraine Sciuto-Ballasy  
Lorraine Sciuto-Ballasy

Dave Mullen  
Dave Mullen

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.