

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

Docket No. 23-06

Applicants: Patrick and Helen Welsh  
2081 Mulberry Lane  
Warrington, PA 18976

Owner: Same

Subject Property: Tax Parcel No. 51-024-059 for property known as 2081 Mulberry Lane

Requested Relief: The Applicant is seeking a variance from Section 195-16B(1)(a)[2] of the Zoning Ordinance to permit an on-lot impervious coverage of 39.1% where 30% is permitted. Applicant's request was revised at the August 1, 2023 hearing to a total impervious coverage of 36.5% where 30% is permitted.

Hearing History: The Application was filed in Warwick Township on April 17, 2023. Hearings were held on June 6, 2023 and August 1, 2023 at the Warwick Township Administration Building.

Appearances: None

Parties: None.

Mailing Date: September 12, 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 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 17, 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 Patrick and Helen Welsh 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:

None

4. The Subject Property is located in the RR Restricted Residential Zoning District. The Subject Property consists of approximately 20,000 square feet and contains a B1 single family detached dwelling, porch, driveway, walkway, rear patio, shed, playhouse and landscaping walls.

5. The RR District permits a maximum impervious coverage of 30%. The Subject Property is 20,000 square feet which would allow for 6,000 square feet of impervious coverage. The Subject Property currently contains 5,540 square feet of impervious coverage or 27.5%.

6. On behalf of the Applicant, Rob McCubbin of Anthony and Sylvan Pools testified at the June 6, 2023 hearing as follows:

The Applicants are proposing to install an inground swimming pool and a deck. The proposal will add the following impervious coverage: 825 square feet for the pool, 125 square feet for the coping, 1,227 square feet for the deck, 32 square feet for the equipment pad and 100 square feet for decorative boulders for a total of 2,309 square feet of additional impervious coverage. The rear yard is higher and slopes down toward the house. The Applicants performed soil testing for the purposes of stormwater mitigation and the soil did not test well for infiltration. Applicants are proposing to install rain gardens that will mitigate stormwater from the proposed improvements.

The size of the pool was designed for the size of the Applicant's family which includes 7 children. There are a number of pools in the surrounding area and the proposed pool is the same as the next-door neighbor.

7. At the June 6, 2023 hearing, Mr. Welsh testified as follows:

In the surrounding neighborhood, 1703 Hampton appears to have 40% impervious coverage, 1753 Foxwood appears to have 50% and 1705 Foxwood received approval from the Board for an additional impervious coverage of 13%. The Township makes it difficult in that it considers the pool to be impervious. All of the improvements are as small as possible. If the size of the pool was decreased, it would not be safe for his family.

8. The Board questioned whether the Applicants had considered removing any other areas of impervious coverage given that the Subject Property already contains 3 patios. The Subject Property is already significantly developed. Applicants requested that the hearing be continued to August 1, 2023 so they could address the issues raised by the Board.

9. At the August 1, 2023 hearing, Mr. McCubbin provided the following testimony:

He reviewed the Plans with the Applicants and they reduced the size of the deck by 440 square foot, they removed the diving board and reduced the boulder walls that were proposed. A total of 512 square feet of impervious coverage was removed, which is a 2.6% reduction. Originally the Applicants were asking for an additional 2,309 square feet of impervious which has been reduced to 1,797 square feet. The percentage of impervious coverage has been reduced from 39.1% to 36.5%. Applicants now believe that they are asking for the least amount of relief necessary. Stormwater would still be addressed through the proposed rain garden which would serve the 39.1% impervious coverage originally proposed.

10. Jerry Desmond of 1705 Foxwood Drive stated his support for the Application. He also stated that he sought relief from the Board and also reduced what he was originally asking for.

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

12. No other members of the public provided public comment and no one requested party status.

### **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.Cmwlth.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.Cmwlth. 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.Cmwlth.2001).

7. The use of the Subject Property as a B-1 single family detached dwelling is a permitted use in the RR Restricted Residential Zoning District.

8. An inground swimming pool and deck are permitted accessory structures in the RR Restricted Residential Zoning District.

9. The Board concludes that the evidence presented establishes that the relief sought by the Applicant is the minimum variance necessary after the Applicant reduced the square footage of the proposed improvements thereby reducing the amount of impervious coverage.

10. 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.

11. The Board concludes that the Applicant has presented evidence of sufficient factors to warrant the grant of the 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 the hearing, the Zoning Hearing Board of Warwick Township hereby GRANTS Applicants' request a variance from Section 195-16B(1)(a)[2] of the Zoning Ordinance to permit an on-lot impervious coverage of 36.5% 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: /s/ Kevin Wolf  
Kevin Wolf, Chairman

/s/ Lorraine Sciuto-Ballasy  
Lorraine Sciuto-Ballasy

/s/ 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.