

**UNIFORM CONSTRUCTION CODE APPEALS BOARD OF WARWICK TOWNSHIP
BUCKS COUNTY, PENNSYLVANIA**

Docket No. 22-01

Applicant: David W. Schenk
Schenk Brothers & Sons
280 Rockledge Avenue
Huntingdon Valley, PA 19006

Owner: Same.

Subject Property: Tax Parcel No. 51-013-065, which is located at 104 Railroad Drive,
Warminster, PA 18929

Requested Relief: The Applicant appeals to the Uniform Construction Code Appeals Board
on the basis that the true intent of the Code or the rules legally adopted
thereunder have been incorrectly interpreted.

Hearing History: The Application was filed in Warwick Township on April 22, 2022. The
hearing was held on May 13, 2022 at the Warwick Township
Administration Building.

Appearances: Andrew Grau, Esquire
911 Easton Road
P.O. Box 209
Willow Grove, PA 19090

Parties: None

Mailing Date: June 8, 2022

DECISION

FINDINGS OF FACT:

1. The Uniform Construction Code Appeals Board of Warwick Township met the requirements of the Pennsylvania Construction Code Act, 35 P.S. §7210.101, et seq (the “Act”), the Uniform Construction Code Regulations, Pa Code Title 34 (the “Regulations”), Warwick Township Resolution 2014-25, 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 the requisite standing to make application to this Board.

3. The following exhibits were marked and admitted during the May 13, 2022 hearing:

Board Exhibits:

B-1 Application with attachments received by Warwick Township on April 22, 2022

B-2 Public Notice advertising hearing scheduled for May 13, 2022 and confirmation from the Intelligencer

B-3 Proof of Publication from the Intelligencer for advertising notice on May 5, 2022

B-4 Letter dated April 27, 2022 to Andrew Grau, Esquire from Vicki L. Kushto, Esquire advising of the hearing date

Applicant Exhibits:

A-1 Section 602 of the 2018 International Existing Building Code

A-2 Section 803.2.2 of the 2018 International Existing Building Code

Township Exhibits

T-1 Packet of Documents including Fire Separation Requirements in the IBC, Chapter 10 of the 2015 International Existing Building Code, Definitions from the 2015 International Existing Building Code, section 403.42 from the Pa Construction Code Act and Chapter 89 of the Warwick Township Codified Ordinances

4. Mr. Grau presented a summary of the Application on behalf of the Applicant as follows:

The building located on the Subject Property was built decades before the Commonwealth adopted the Act. Applicants opened an 8 foot by 10 foot opening in a dividing

wall between Units 102 and 104 of the building. The wall was not a fire wall. There are fire walls in the building and they were not altered. The total square footage of the building has not changed and the use within the building has not changed. In his opinion, Chapter 89 of the Township's Codified Ordinances does not apply. In the alternative, if it does apply, then the Applicant is entitled to a variance because it would be a burden to install a sprinkler system because there is no water service in the immediate vicinity of the building. There would be no harm because there is no reduction in the fire rating.

5. Applicant presented the testimony of their Architect, Matthew Piotrowski. His testimony can be summarized as follows:

The building was permitted in 1986 by the Commonwealth of Pennsylvania and built in the same year. Each building has two 10,000 square foot fire areas and two 8,000 square foot fire areas. Between each area there is a masonry wall. The building is essentially divided into 4 areas. At the time the building was constructed, sprinklers were not required if the area was under 12,000 square feet.

The 2018 International Existing Building Code ("IEBC") is what is applicable. The Township adopted an Ordinance in 1997 that reduced the required square footage for sprinklers. The Ordinance was really written for new buildings and not existing buildings.

Under Section 602 of the IEBC the work that was performed would be considered a Level 1 alteration. Even if this was a Level 2 alteration, the Applicant still would not have to install sprinklers. The wall in question was masonry and runs from the floor to the underside of a beam that runs from the front to the back of the building. There is a gap of approximately two to two and a half inches at the top of the wall. The wall is a non-rated wall and is not meant to be a fire separation wall. Applicant opened an approximately 8 foot by 10 foot area in the wall between Units 102 and 104 so that the Applicant can utilize a fork lift to get product through the entire space. The use has not changed and remains a Use Group S.

Section 803.2.2 of the IEBC contains an exception from the sprinkler requirements if the building does not have sufficient municipal water supply without the installation of a new fire pump but work areas must be protected by an automatic smoke detection system throughout all occupiable spaces. Mr. Piotrowski testified that the owners did install an automatic detection system in the building that is active and will remain active. There is no public water to the building and none in the street. In addition, this section only applies if the alteration is a Level 2 alteration. The building contains the same fire separation areas as before and therefore even if it is a Level 2 alteration, the exception applies.

6. Glen Guadalupe, Building Inspector testified on behalf of Warwick Township. His testimony can be summarized as follows:

The Applicant must adhere to the requirements of Chapter 89 of the Township's Codified Ordinances. The Applicant did not apply for any permits to remove the portion of the wall. The work was caught only because of a routine fire inspection. An alteration or a change in

occupancy requires permits. If a permit had been applied for, this issue would have been caught when the plans were reviewed.

He agrees that the IEBC applies. There are alternatives to providing sprinklers in the building. There are concerns that the Applicant could break through additional walls that could lead to additional issues. No permit has been issued to date but plans were submitted after the fact. There are actually two buildings that the Applicant owns that this work was completed in but the Application only applies to one building. Chapter 89 is meant to apply to both new construction and existing buildings.

7. Robert Pratto, Fire Inspector and Code Enforcement Officer testified on behalf of the Township. His testimony can be summarized as follows:

The opening in the wall was discovered during an unscheduled fire inspection. The opening in the wall provides a bigger space for one occupancy. The space is now double in size for the business which stores cardboard, food containers and packing material. The original occupancy for this business was 5,000 square feet of which 1,000 square feet was for office space. This leaves approximately 3,000 square feet for storage. Unit 102 is now expanding into Unit 104. The total space has now doubled to 10,000 square feet with approximately 8,000 square feet outside of the offices and has increased the fire load approximately four times.

His concern is for safety. If the building caught on fire, it would not take long for the fire to get out of control and it is likely that the building would be lost. Carbon monoxide and other gases from the material stored would cause harm to the occupants. Now that alterations have been made, the building has to comply with current conditions. The opening that was created has to be protected to keep that portion of the building intact.

The Applicant does not necessarily need to install sprinklers. Although there is water available on Railroad Drive. There is a fire hydrant across the street from Unit 150. Installation of sprinklers could be cost prohibitive. An available alternative would be a smoke detection system. The building has heat detectors but not smoke detectors. There is a lot of space between the products that would be burning and the heat detectors. This will cause a delay in response from the heat detectors. Other alternatives include a fire curtain, fire door and sealing the gap at the top of the wall.

At this point, Mr. Piotrowski admitted that if the building does not have smoke detectors it would not be in compliance with code requirements. The Applicant is willing to install a smoke detection system. The Applicant cannot install a door because the fork truck would likely hit it and take down part of the wall.

Mr. Pratto testified that a fire detection system would be a step in the right direction. Applicant could install a roll up overhead door which would come down automatically if there was a fire. There are fire separation walls in the building that extend above the roof line.

8. No members of the public were present and no one spoke in opposition to the application.

CONCLUSIONS OF LAW:

1. Section 501(c)(2) of the Act provides: “An application for appeal shall be based on a claim that the true intent of this act or regulations legally adopted under this act has been incorrectly interpreted, the provisions of this act do not fully apply or an equivalent form of construction is to be used.”

2. Section 403.122(g) of the Regulations provide: “A board of appeals may consider the following factors when ruling upon a request for extension of time or the request for a variance:

(1) The reasonableness of the Uniform Construction Code’s application in a particular case;

(2) The extent to which the granting of a variance or extension of time will pose a violation of the Uniform Construction Code or an unsafe condition.

(3) The availability of professional or technical personnel needed to come into compliance.

(4) The availability of materials and equipment needed to come into compliance.

(5) The efforts being made to come into compliance as quickly as possible.

(6) Compensatory features that will provide an equivalent degree of protection to the Uniform Construction Code.

3. Section 303(b)(1) of the Act provides:

(1) Municipal building code ordinances in effect on July 1, 1999, or reenactments of provisions of simultaneously repealed ordinances which were originally adopted prior to July 1, 1999, which contain provisions which equal or exceed the specific requirements of the regulations promulgated under this act shall remain in effect until such time as any such provisions fail to equal or exceed the minimum requirements of the regulations promulgated under this act, at which time the provisions of such ordinance shall be amended to provide for the minimum requirements of the regulations promulgated under this act.

4. Warwick Township adopted Chapter 89 of the Codified Ordinances prior to July 1, 1999 and therefore the provisions of this Chapter remain in effect and supersede the requirements under the Act.

5. Section 89-2.B of the Codified Ordinances provides:

Fire Suppression. In addition to the requirements of fire detection, automatic fire suppression systems shall be installed and equipped in all buildings in the following BOCA use group classifications (Article 3, Section 301.0) except as noted. All fire suppression systems shall have a low-level water electrical switch hard-wired into the automatic fire detection systems. This provision shall apply to all new construction or an existing building in its entirety if there is any increase of net square footage to permit the establishment or continuance of any of the following use groups except as provided in Subsection E:

(9) Use Group S: storage (over 5,000 square foot aggregate). (See Section 310.0.).

6. Section 89-2.E of the Codified Ordinances provides:

The requirements of this article may be waived upon application to the Building Code Board of Appeals showing that the new construction, reconstruction or any increase of net square footage can be safely made without installing fire detection or suppression equipment and that no significant risk of injury or damage from the fire is imposed on potential occupants or users of the structure or on adjacent property or persons, due to the absence of fire detection or suppression equipment.

7. The Board finds that Chapter 89 is applicable contrary to the Applicant's arguments. Units 102 and 104 were separated by a masonry wall. The individual square footage of each Unit was 5,000 square feet. When the Applicant opened up the wall between Units 102 and 104, the net square footage was increased from 5,000 square feet to 10,000 square feet in the aggregate. This provision applies to both new construction and existing buildings.

8. In order to obtain a waiver from the provisions of Section 89-2, the Applicant must meet the requirements of Section 89-2.E.

9. Applicant admitted that the building is already in violation of applicable codes because it does not have a smoke detection system.

10. Although Applicant agreed to install a smoke detection system, the Board is unable to determine whether that system alone renders the building safe and that there will be no significant risk of injury or damage from any fire that could occur.

11. The Board is unable to find that the true intent of the Act or Regulations legally adopted have been incorrectly interpreted, the provisions of the Act do not fully apply or an equivalent form of construction is to be used.

12. Applicant failed to provide any evidence to justify the granting of a variance pursuant to Section 403.122(g) of the Regulations.

13. Section 602.1 of the IEBC says "Level 1 alterations include the removal and replacement or the covering of existing materials, elements, equipment or fixtures using new materials, elements, equipment, or fixtures that serve the same purpose."

14. Section 603.1 of the IEBC says "Level 2 alterations include the reconfiguration of space, the addition or elimination of any door or window, the reconfiguration or extension of any system, of the installation of any additional equipment."

15. The Board rejects the testimony of Mr. Piotrowski that the work done was a Level 1 alteration. Based on his testimony, if a Level 2 alteration was performed, a sprinkler system would be required to be installed unless there is no sufficient municipal water supply without the installation of a new fire pump. Mr. Prato testified that municipal water is available on Railroad Drive including a fire hydrant in front of Unit 150.

ORDER

Upon consideration and after hearing, the Uniform Construction Code Appeals Board of Warwick Township hereby DENIES Applicant's Appeal for the reasons stated above.

UNIFORM CONSTRUCTION CODE
APPEALS BOARD OF
WARWICK TOWNSHIP

By: /s/ Paul Alviggi
Paul Alviggi, Chairman

/s/ Christopher Walker
Christopher Walker

/s/ Robert Pierce
Robert Pierce

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.