

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

Docket No. 23-10

Applicants: Jean Paul Gulle  
2546 Candytuft Drive  
Jamison, PA 18929

Owner: Same.

Subject Property: Tax Parcel No. 51-026-005 for property known as 2546 Candytuft Drive

Requested Relief: The Applicant is seeking the following variance from the Warwick Township Zoning Ordinance (“Ordinance”): §195-16B(2)(e)[3][c][i] of the Zoning Ordinance to permit a maximum impervious coverage of 41.5% where 25% is permitted.

Hearing History: The Application was filed in Warwick Township on September 28, 2023. The hearing was held on November 14, 2023 at the Warwick Township Administration Building.

Appearances: Stephen Zaffuto, Esquire  
Obermayer Rebmann Maxwell & Hippel LLP  
2003 S. Easton Road, Suite 304  
Doylestown, PA 18901

Parties: Vladimir Parkhomchuk  
2565 Mill Road  
Jamison, PA 18929

Mailing Date: December 5, 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 November 14, 2023 hearing:

#### Board Exhibits:

B-1 Application with attachments received by Warwick Township on September 28, 2023

B-2 Proof of Publication from the Intelligencer for advertising notice on October 29, 2023 and November 5, 2023. Public Notice advertising hearing scheduled for November 14, 2023 at 7:00 pm and confirmation from the Intelligencer

B-3 Letter dated October 23, 2023 to Kellie McGowan, Esquire from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated October 27, 2023 sent by Tom Jones, Warwick Township Zoning Officer and copy of list of property owners

B-5 Property Posting Certification by Tom Jones, Zoning Officer dated November 2, 2023

#### Applicant Exhibits:

A-1 1991 Approved Amended Final Plans

A-2 Photos of Patio and Back Yard Area

A-3 Aerial Image of Neighborhood

4. The Subject Property is located in the RA Residential Agricultural Zoning District. The Subject Property consists of approximately 13,383 square feet and contains a single family detached dwelling.

5. Mr. Zaffuto summarized the Application as follows:

The Subject Property contains a gross lot area of 13,383 square feet. The Subject Property contains an area of Deed Restricted Open Space that is 2,007 square feet which results in a Base Site Area of 11,376 square feet. Impervious coverage is not permitted within the Deed Restricted Open Space. The Subject Property was developed as part of a cluster subdivision, which is no longer permitted by the Zoning Ordinance. Under the Zoning Ordinance, the current minimum lot area is 30,000 square feet meaning this lot is 38% of the current minimum lot size.

Prior owners of the Subject Property obtained permits for additions made to the Subject Property, including a deck. Those permits contained the wrong impervious surface calculations and indicated that the Subject Property was in compliance with the impervious coverage requirement. A recent survey of the Subject Property revealed that the prior permit applications were wrong and the amount of impervious coverage already exceeded what was permitted.

Applicant did remove a delapidated deck and replace it with a paver patio without obtaining the proper permits. Applicant has not received any Notices of Violation from the Township and is looking to legalize what is currently on the Subject Property. Applicant has already removed an above ground swimming pool and will remove a shed both of which were located in the Deed Restricted Open Space. With these items removed, the impervious coverage will be 4,722 square feet. If this amount of impervious coverage were placed on the current minimum lot size of 30,000 square feet, the impervious coverage would only be 15% of the lot area.

Applicant will agree to construct a seepage pit that will address the impervious coverage created by the paver patio that was installed. The hardship is the small lot area and the Deed Restricted Open Space that can't be counted as part of the lot area for impervious coverage purposes. The granting of the variance will not have a negative impact on public health, safety or welfare and it will not alter the essential character of the neighborhood. Exhibit A-3 shows that many other homes in the community have inground swimming pools and have impervious coverage that clearly exceeds that permitted in the Zoning District.

6. Mr. Zaffuto summarized Applicant's testimony as follows:

Applicant purchased the Subject Property in 2018. Applicant repaved a portion of the driveway not long after it was purchased. Applicant obtained a permit and Township staff helped him complete the impervious coverage information on the application. At that time, the impervious coverage listed on the permit application was 24.8%. Applicant also replaced a deck that was in poor condition with a paver patio. This work was done without a permit. The prior deck was 12 feet by 15 feet or 180 square feet. The paver patio is 733 square feet so it was not a replacement in kind. An additional area was added to connect the deck that remained with the new paver patio. Applicant did not believe that the paver patio was impervious coverage so he did not think a permit was needed. The pavers are set on gravel on top of sand. There is sand between the pavers that allow for some water penetration.

Applicant confirms that Mr. Zaffuto's summary of his testimony is accurate.

Applicant further testified that this issue began after he installed an above ground pool in the Deed Restricted Open Space. He was constructing a deck on the pool when he was notified that he could not proceed. Applicant did not know the pool and the deck were in the Deed Restricted Open Space. He has since removed the pool and the deck. The pool was meant to be temporary for the summer.

7. Applicant presented the testimony of Jason Corsak, PE which can be summarized as follows:

Mr. Corsak is employed by Holmes Cunningham. Because the cluster development is no longer available, the Township is trying to apply new zoning requirements to an existing development. This development could not be built today. If the Subject Property had a lot size that conformed with the current requirements, all of the impervious coverage would be permitted. The impervious coverage on the Subject Property is in character with other houses in the neighborhood. Applicant is removing an above ground pool and shed that will reduce the impervious coverage from 44.9% to 41.5%. The approved plan for the development does not show a maximum impervious coverage and he is not sure what it was. Looking at other properties in the neighborhood, they appear to be closer to 50% impervious coverage.

The Subject Property is relatively flat and there are no floodplain areas. Applicant will install a rain garden or a seepage pit that will address the stormwater from the patio. Nothing can be built over the stormwater facility. There is adequate space to install the stormwater facility and Applicant will follow all Township requirements. Infiltration testing was not completed but the roof drains on the rear of the house have pop tops that are currently infiltrating so he does not see an issue with the rain garden or seepage pit.

8. Brandi McKeever, Director of Planning and Zoning's testimony can be summarized as follows:

Now when a certificate of occupancy is issued, the Township reviews things such as the impervious coverage. When the Applicant purchased the Subject Property, this was not reviewed. Uncovered decks do not count as impervious coverage.

9. Prior to the hearing, Mr. Zaffuto and the Applicant had an off the record discussion with Vladimir Parkhomchuk, who requested and was granted party status. Mr. Parkhomchuk is the rear neighbor of the Applicant. Mr. Zaffuto confirmed that Mr. Parkhomchuk was concerned with stormwater. There were trees at or near the property line that Applicant removed. Applicant agreed to install trees in the area where they were removed. Mr. Parkhomchuk agreed that this adequately summarized their discussions and satisfied his concerns.

10. Kevin Wilcox of 2501 Mill Road provided public comment indicating that when he constructed improvements to his lot, he had to apply for and obtain permits that required information regarding the impervious coverage on his lot. He doesn't understand how it is the Township's fault that Applicant was not aware of the size of his lot and the amount of impervious coverage that was already on the Subject Property.

11. The mistakes in the impervious coverage calculations in the prior permit applications do not excuse the Applicant's failure to apply for the appropriate permits for the paver patio. Applicant knew, after obtaining the driveway permit, that the impervious coverage for the Subject Property was close to the maximum permitted.

12. The Board notes that the failure of Applicant to follow proper procedure has made its evaluation of the variance application more difficult. This decision must not be viewed as permitting property owners to do what they want and then come to the Zoning Hearing Board after their illegal conduct is discovered and be automatically granted relief.

13. While the Board could have elected to punish the Applicant for his failure to apply for a variance before installing the paver patio, it has decided to apply variance standards to these circumstances in order to determine whether to approve the variance requested.

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

15. 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.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 RA Residential Agricultural Zoning District.

8. The Board concludes that Applicant was made aware of the impervious coverage already existing on the Subject Property when he repaved his driveway, which was before he removed the deck and installed the paver patio. At that time, even though the calculations were wrong, Applicant was made aware that the existing impervious coverage was 24.8%. With only 0.2% impervious coverage left, Applicant still went ahead and installed an above ground pool and a paver patio that was bigger than the deck that was removed and attempted to install a deck around the above ground pool.

9. The Board concludes that the Subject Property is undersized and does not meet the current minimum lot size requirements which could be seen as a hardship associated with the Subject Property.

10. The Board concludes that the only justification for the granting of the variance is a review of Exhibit A3 which shows that a number of properties in the development have impervious coverage which exceeds the permitted 25%. Therefore, the variance will not alter the essential character of the neighborhood.

11. The Board notes that the failure of the Applicant to follow proper procedure has made its evaluation of the variance application more difficult. This decision must not be viewed as permitting property owners to do what they want and then come to the Zoning Hearing Board after their illegal conduct is discovered and be automatically granted relief.

12. Accordingly, the Warwick Township Zoning Hearing Board determined to grant the Applicant's request for relief subject to the conditions outlined in the Order below.

## 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: §195-16.B(2)(e)[3][c][i] of the Zoning Ordinance to allow a maximum impervious coverage on the Subject Property of 41.5% subject to the following conditions: Applicant shall install stormwater management improvements as approved by the Township Engineer; Applicant shall memorialize his agreement with Mr. Parkhomchuk to install trees along the property boundary to replace removed trees in a written agreement signed by the parties and provide a copy of the signed Agreement to the Township Zoning Officer; Applicant shall apply for all required permits for the paver patio.

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/ Lorraine Sciuto-Ballasy  
Lorraine Sciuto-Ballasy

/s/ Dave Mullen  
Dave Mullen

Voting No

/s/ Kevin Wolf  
Kevin Wolf, Chairman

## 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.