

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

Docket No. 23-11

Applicants: Ronald and Susan Martin  
1753 Old York Road  
Hartsville, PA 18974

Owner: Same.

Subject Property: Tax Parcel No. 51-003-127 for property known as 1753 Old York Road

Requested Relief: The Applicant is seeking the following variance from the Warwick Township Zoning Ordinance (“Ordinance”): §195-86B of the Zoning Ordinance to permit the extension of an existing nonconforming structure beyond the allowable 25%.

Hearing History: The Application was filed in Warwick Township on October 3, 2023. The hearing was held on November 14, 2023 at the Warwick Township Administration Building.

Appearances: None.

Parties: None.

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 October 3, 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 Applicants 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 Zoning Board Notes and Photos of the Subject Property

4. The Subject Property is located in the RA Residential Agricultural Zoning District. The Subject Property consists of approximately 6 acres and contains a single family detached dwelling.

5. Applicant, Ronald Martin testified as follows:

The Subject Property is approximately 6 acres. The Subject Property has frontage on Old York Road and York Road. The orientation of the dwelling on the Subject Property is such that the side of the dwelling faces Old York Road. The current dwelling extends into the required front yard along Old York Road almost to the ultimate right of way. Applicant is proposing to

install a concrete patio that will also be within the required front yard. This is the only practical location for the patio as that is where the exit doors from the dwelling are. The proposed patio will not extend any further into the front yard than the dwelling and it will not extend past the existing covered porch.

The closest neighbor is approximately 400 feet away. The proposed patio will not be detrimental to the health, safety or welfare of the public.

Exhibit A-1 are Zoning Hearing Board Notes prepared by the Applicant and two pictures showing the existing dwelling and the view of the dwelling from Old York Road. The proposed patio is 540 square feet but the non-conforming building can only be expanded by 230 square feet.

6. The plan prepared by ProTract Engineering, Inc. attached to the Application (Exhibit B-1) indicates that a portion of the proposed patio will include a step which is approximately 8 square feet.

7. No members of the public requested party status.

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

9. No 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 RA Residential Agricultural Zoning District.

8. The Subject Property has unique physical conditions in that it has two street frontages and the orientation of the home is such that the side of the dwelling is along Old York Road.

9. The Board concludes that the proposed patio will not increase the front yard encroachment.

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 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: §195-86.B of the Zoning Ordinance to allow an extension of the existing nonconforming structure a total of 302 square feet on the Subject Property.

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.