

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

Docket No. 23-14

Applicants: Gasper Landscaping Inc.
314 Tanyard Road
Warminster, PA 18974

Owner: Robert and Paula Gasper
501 Camars Drive
Warminster, PA 18974

Subject Property: Tax Parcel No. 51-013-062-004 for property known as Lot #4, Mearns Road Business Campus

Requested Relief: The Applicant is seeking the following variances from the Warwick Township Zoning Ordinance (“Ordinance”): §195-97.B(2)(c) and 195.97.B(2)(c)[3] of the Zoning Ordinance to permit one additional 24 square foot freestanding sign and to permit two walls signs measuring 18 square feet each.

Hearing History: The Application was filed in Warwick Township on November 30, 2023. The hearing was held on February 6, 2024 at the Warwick Township Administration Building.

Appearances: None.

Parties: None.

Mailing Date: March 7, 2024

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 February 6, 2024 hearing:

Board Exhibits:

B-1 Application with attachments received by Warwick Township on November 30, 2023

B-2 Proof of Publication from the Intelligencer for advertising notice on January 23, 2024 and January 30, 2024. Public Notice advertising hearing scheduled for February 6, 2024 at 7:00 pm and confirmation from the Intelligencer

B-3 Letter dated January 16, 2024 to Applicants from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated January 22, 2024 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 January 26, 2024

Applicant Exhibits:

None

4. The Subject Property is located in the LI Limited Industrial Zoning District. The Subject Property consists of approximately 15.1378 acres and is currently being developed with a 29,000 square foot building and associated parking and loading area that will be used for a wholesale and contracting business.

5. Applicant previously received the following variances from the Zoning Hearing Board for the Subject Property pursuant to a Decision dated March 3, 2021 (“Prior Zoning Decision”):

- A. from §195-10 to allow 2 principal uses on the Subject Property;
- B. from §195-16.H(13)(c)[2][a][iii] to allow a building or structure to be within 106 feet of a residential zoning district;
- C. from §195-16.H(13)(c)[2][a][iv] to allow buildings and improvements within 200 feet of any residential district boundary line and parking within 100 feet of a residential district boundary line;
- D. from §195-57.C to allow an industrial building closer than 200 feet to any residential district boundary line and from the 50 foot landscaped buffer; and
- E. from §195-57.D to allow an industrial building closer than 125 feet from any existing residential district or use, and to allow parking closer than 50 feet from any residential district or use subject to the following conditions:

- 1. All lighting on the Subject Property shall be shielded and directed down so as not to produce glare on nearby residential uses;
- 2. The Applicant shall install a buffer against all residential properties sufficient in width and density to serve as a vegetative screen between the Applicants property and adjacent residential uses.

6. Applicant, presented the testimony of John Gleason which can be summarized as follows:

There is currently one freestanding sign along Mearns Road that is shown in the pictures that are attached to the Property Posting Certification prepared by Zoning Officer Tom Jones which are marked as Exhibit B-5. The other freestanding sign will be located approximately a half a mile away. The current freestanding sign has wooden posts but will eventually have stone posts. The lot is irregularly shaped and the additional signs are needed to provide more direction for the business and for emergency crews.

Applicant is also proposing two wall signs, one for each of the two businesses that utilize the building. Both signs are appropriate in size compared to the size of the building. There are large canopies over the entrance to the building and the signs will be underneath the canopies. Pictures of these signs were included with the Application marked as Exhibit B-1.

7. Applicant presented the testimony of Bob Gasper which can be summarized as follows:

The wall signs will be inside the canopy and will be hidden unless you are within close proximity to the building. Also, the signs are made to look like they are part of the building.

- 8. No members of the public requested party status.
- 9. The Board of Supervisors took no position with regard to this Application.
- 10. 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).

5. 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).

6. The use of the Subject Property as a wholesale and contracting business is permitted pursuant to the Prior Zoning Decision.

7. The Subject Property has unique physical conditions in that it is irregularly shaped.
8. The Board concludes that the evidence presented establishes that the relief sought by the Applicant is the minimum variance necessary.
9. 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.
10. The Board concludes that the Applicant has presented evidence of sufficient factors to warrant the grant of the relief requested.
11. 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 variances from the Warwick Township Zoning Ordinance: §195-97.B(2)(c) and 195-97.B(2)(c)[3] of the Zoning Ordinance to allow an additional 24 square foot freestanding sign and to permit two wall signs measuring 18 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:


Kevin Wolf, Chairman


Lorraine Scuto-Ballasy


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.