

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

Docket No. 24-02

Applicants: William and Kristen Campbell
1803 Sunrise Way
Jamison, PA 18929

Owner: Same.

Subject Property: Tax Parcel No. 51-023-007 for property known as 1803 Sunrise Way

Requested Relief: The Applicant is seeking the following variance from the Warwick Township Zoning Ordinance (“Ordinance”): §195-16.B(12)(j) of the Zoning Ordinance to allow a residential accessory structure further forward than the front building line.

Hearing History: An Application was filed in Warwick Township on March 1, 2024. The hearing was held on April 2, 2024 at the Warwick Township Administration Building.

Appearances: None.

Parties: None.

Mailing Date: May 8, 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 April 2, 2024 hearing:

Board Exhibits:

B-1 Application with attachments received by Warwick Township on March 1, 2024

B-2 Proof of Publication from the Intelligencer for advertising notice on March 21, 2024 and March 26, 2024. Public Notice advertising hearing scheduled for April 2, 2024 at 7:00 pm and confirmation from the Intelligencer

B-3 Letter dated March 18, 2024 to Applicants from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated March 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 March 22, 2024

Applicant Exhibits:

None.

4. At the beginning of the hearing, Applicant was advised that only two Zoning Hearing Board members were present to hear the Application and there was a possibility that the hearing could result in a tie vote which would be a denial of the Application. Applicant was given the opportunity to proceed with the hearing or to continue the hearing for a future date at which all of the members could be present. Applicant chose to proceed with the hearing before the two Zoning Hearing Board members who were present.

5. The Subject Property is located in the R-1a Residential Zoning District. The Subject Property consists of approximately 18,469 square feet and contains a single family detached dwelling.

6. Applicant, Mr. Campbell's testimony can be summarized as follows:

Applicant hired a contractor to install a patio in the backyard. While the contractor was there, he also installed the pad for the shed. Applicant thought that the contractor was taking care of the permits but the contractor was not. By the time the permits were applied for, the pad for the shed had already been installed. In addition, the Township's denial of the permit application was not received by the Applicant. Before the Applicant was aware of the permit denial, the shed was installed. Applicant testified it would be a hardship to remove the shed.

The Subject Property has frontage on both Sunrise Way and Turkey Trot Road. The shed is in the front yard along Turkey Trot Road. There is 45 feet from Turkey Trot Road to the shed. In addition, Applicant fenced in only a portion of the rear yard because it was too expensive to fence in the whole yard. The shed is within the fence area. The fence is a vinyl privacy fence that you cannot see through but you can see the peak of the shed above the fence.

7. In response to a question, Zoning Officer Tom Jones testified that the only zoning issues with regard to the shed was its location in the front yard and the fact that it was installed without permits. If the Board grants the variance then it will be considered permitted and no fines will be imposed.

8. No individuals requested or were granted 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).

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 R-1a Residential Zoning District and a shed is a permitted accessory structure.

8. The Subject Property has unique physical conditions in that it has two front yards.

9. The Board concludes that the evidence presented establishes that the relief sought by the Applicant is the minimum variance necessary.

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, by a majority vote, 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: §195-16.B(12)(j) of the Zoning Ordinance to allow the shed further forward than the front building line along Turkey Trot Road.

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


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.