

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

Docket No. 24-05

Applicants: James and Colleen Keiser  
1529 Spruce Street  
Jamison, PA 18929

Owner: Same.

Subject Property: Tax Parcel No. 51-006-125 for property known as 1529 Spruce Street

Requested Relief: The Applicant is seeking the following variances from the Warwick Township Zoning Ordinance (“Ordinance”): §195-16.B(2)(c)[3][a][vi] to allow an 18.1 front yard setback where 30 feet is required; §195-16.B(2)(c)[3][c][i] to allow an impervious coverage of 26.3% where 25% is permitted; and §195-16.B(2)(c)[3][c][iii] to allow 17.1% building coverage where 15% is permissible.

Hearing History: An Application was filed in Warwick Township on April 5, 2024. The hearing was held on May 7, 2024 and continued until June 4, 2024 at the Warwick Township Administration Building.

Appearances: None.

Parties: None

Mailing Date: July 10, 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 May 7, 2024 hearing:

#### Board Exhibits:

B-1 Application with attachments received by Warwick Township on

B-2 Proof of Publication from the Intelligencer for advertising notice on April 21, 2024 and April 28, 2024. Public Notice advertising hearing scheduled for May 7, 2024 at 7:00 pm and confirmation from the Intelligencer

B-3 Letter dated April 17, 2024 to Applicant from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated April 25, 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 April 26, 2024

#### Applicant Exhibits:

A-1 Revised Plans

4. The Subject Property is located in the RA Residential Agricultural Zoning District. The Subject Property consists of approximately 15,725 square feet and currently contains a single family dwelling.

5. Nathan Bigelow of Stoneworks represented the Applicant and provided testimony at the May 7 2024 hearing that can be summarized as follows:

The Application is to remove an existing deck and replace it with a patio. The lot has two frontages and the house is situated on the lot at an odd angle which does not allow a roofed structure to be installed without being in the setbacks. The Subject Property is also subject to a Deed restricted area that cannot be counted for impervious coverage calculations. The current

deck does not have roof but Applicant is proposing a 440 square foot covered area as part of the new patio. The total area of the new patio is 688 square feet. The proposed roof also adds to the building coverage area.

In response to a question from the Board, Mr. Bigelow indicated that if the patio were made smaller there would not be a lot of room for furniture because there is only 10 feet from the house before you reach the setback area. The existing deck is also in the rear yard setback but it can be because it is not covered. He could modify the remaining portion of the patio that is not under the roof but that would not affect the building coverage calculations.

The Plans show several different proposed versions of the patio. Applicant is looking to construct what is labeled as Covered Patio A on Sheet A-2 of the Plans. The other patio options would also require a building coverage variance. The Plans do not contain the same numbers for the patio area, the impervious coverage and the building coverage as testified to by Mr. Bigelow. Mr. Bigelow agreed to a continuance of the hearing until June 4, 2024 so that the Plans could be revised to indicate the correct numbers.

6. On June 4, 2024, Mr. Bigelow provided the following additional testimony:

Mr. Bigelow presented Exhibit A-1 which are revised plans that contain the numbers that are being requested as follows: building coverage of 17.1% and impervious coverage of 26.7%.

7. No members of the public spoke regarding the Application and no one requested party status.

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

### **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 Subject Property has unique physical conditions in that it has two frontages and the house is placed on the lot in an odd orientation.

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.

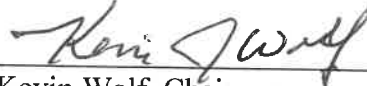
### **ORDER**


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(2)(c)[3][a][vi] of the Zoning Ordinance to allow a rear yard setback of 18.1 feet; §195-16.B(2)(c)[3][c][i] to allow an impervious coverage of 26.7%; and from §195-16.B(2)(c)[3][c][iii] to allow 17.1% building coverage.

The relief 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 Sciuto-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.