

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

Docket No. 24-06

Applicants: Deluca Construction at Glengarry, LLC
201 S. State Street, Suite 1C
Newtown, PA 18940

Owner: Same.

Subject Property: Tax Parcel No. 51-003-066-001 for property known as 1520 Meetinghouse Road

Requested Relief: The Applicant is seeking the following variance from the Warwick Township Zoning Ordinance ("Ordinance"): §195-60.I to permit a 50 foot setback for a proposed on-site sewage treatment system where there is a required setback of 300 feet from a water body.

Hearing History: An Application was filed in Warwick Township on April 16, 2024. The hearing was held on June 4, 2024 at the Warwick Township Administration Building.

Appearances: Edward F. Murphy, Esquire
301 N. Sycamore Street
Newtown, PA 18940

Parties: Matthew Roberts Dan Biundo
1488 Meetinghouse Road 1483 Meetinghouse Road
Warminster, PA 18974 Warminster, PA 18974

Jed Rickner Richard Jacalone
1523 Meetinghouse Road 1540 Meetinghouse Road
Warminster, PA 18974 Warminster, PA 18974

Stacey Fitzgibbons Wilfredo Ramos
1610 Meetinghouse Road 1560 Meetinghouse Road
Warminster, PA 18974 Warminster, PA 18974

Stephanie Kennelly
1483 Meetinghouse Road
Warminster, PA 18974

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 June 4, 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 May 19, 2024 and May 26, 2024. Public Notice advertising hearing scheduled for June 4, 2024 at 7:00 pm and confirmation from the Intelligencer

B-3 Letter dated May 16, 2024 to Applicant's attorney, Ed Murphy, Esquire from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated May 23, 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 May 24, 2024

Applicant Exhibits:

A-1 Conceptual Zoning Plan

A-2 Subdivision Sketch Plan Site Layout

4. The Subject Property is located in the RR Restricted Residential Zoning District. The Subject Property consists of approximately 205,846 square feet (approximately 4.73 acres) and currently contains a single family detached dwelling.

5. Pursuant to §195-30 the following uses are permitted in the RR Restricted Residential Zoning District: A1 General Farming; A2 Farm Unit; A3 Agricultural Retail; A5 Commercial Forestry; A6 Nursery; A9 Riding Academy; A10 Kennel – Noncommercial; B1 Single Family Detached Dwelling; B10d Home Crafts; B10h No-Impact Home-Based Business; B11 Bed and Breakfast; B12 Residential Accessory Building Structure; C3 School; C9

Municipal Use; D1 Recreational Facility; I3 Temporary use of structure; I4 Temporary Community Event; I7 Tower/Masts, etc.; I10 Geothermal Energy System; I12 Small Scale Solar Energy System.

6. Applicant is requesting a variance from §195-60.I(2) which states:

Where an existing or proposed on-site sewerage treatment system with either surface discharge or subsurface discharge is proposed adjacent to a stream or water body, including lakes, ponds, and wetlands, it shall be set back not less than 300 feet from the edge or bank of such stream or water body to ensure that the contaminated water moves through the soil a sufficient distance to allow contaminants to be removed by the soil before discharging into a stream or water body.

7. Applicant's attorney Ed Murphy, Esquire presented a summary of the history Application as follows:

Last fall the Applicant met with the Township about this potential development. The main discussion surrounded whether the Township wanted to allow an extension of the public sewer system to the Subject Property. Currently, the public sewer system is approximately 1,000 feet away. Without public sewer, Applicant chose to propose an alternate plan which requires the relief being sought. Exhibit A-1 shows a proposed subdivision with 5 lots and two open space areas which could be built without zoning relief if the public sewers were extended. Exhibit A-2 shows an alternate 4 lot subdivision without public sewers which requires the relief being requested in this Application.

Applicant met with the Township Planning Commission in January and showed members both plans. The Planning Commission preferred the plan depicted as Exhibit A-1. Following the Planning Commission meeting, the Applicant met with the Board of Supervisors which indicated that it would not support extending public water and sewer to the Subject Property. The Board of Supervisors has a policy of not encouraging revisions to the Township Act 537 Plan which would be required if public sewers were extended.

In response to a question, Mr. Murphy confirmed that percolation testing has been done on the Subject Property which was witnessed by DEP and the County Department of Health. It was later clarified that soils testing has been done but not full percolation testing. The testing consisted of deep hole testing in which a backhoe digs holes in each of the proposed septic areas to determine the type of soils present and to determine if any water is detected. The deep soils testing was favorable.

8. Ed Murphy, Esquire presented the testimony of Robert Snyder, which can be summarized as follows:

Mr. Snyder is a land surveyor with Kelly Engineers. He has worked over 35 years as a professional land surveyor. Exhibit A-1 proposes 5 lots with a single egress and two areas of open space. Exhibit A-1 could be built if public sewer were extended to the Subject Property.

Each lot would contain a stormwater infiltration facility that would be based on the results of soil testing.

Exhibit A-2 is an annotated version of the plan that was submitted with the Application. The green shading on Exhibit A-2 shows the Pennsylvania Department of Environmental Protection (“DEP”) required setback of 50 feet from the noted wetlands while the purple shading shows the Township’s required setback of 300 feet. Exhibit A-2 depicts 4 lots with a single access point for all of the lots. Each lot would contain an individual driveway, infiltration area for stormwater and a primary and secondary replacement area for the on-lot septic systems.

The Zoning Ordinance requires that septic systems be setback 300 feet from the wetlands that are located on the Subject Property. Exhibit A-2 shows the area that is outside of both the DEP and the Township setbacks. In his opinion, the Township’s setback requirement makes the Subject Property essentially unbuildable. In his opinion, not even a single family home could be built on the portion of the Subject Property that is outside the required setbacks. Exhibit A-2 does not require any additional zoning relief.

9. The following individuals requested and were granted party status:

Matt Roberts, 1488 Meetinghouse Road; Dan Biundo, 1483 Meetinghouse Road; Jed Rickner, 1523 Meetinghouse Road; Richard Jacalone, 1540 Meetinghouse Road; Stacey Fitzgibbons, 1610 Meetinghouse Road; Wilfredo Ramos, 1560 Meetinghouse Road; Stephanie Kennelly, 1483 Meetinghouse Road.

10. In response to questions from the parties, the Applicant provided the following additional testimony:

There is a current house on the Subject Property that is vacant. The current house is in bad condition. Applicant does not believe that there is enough room to build anything outside of the required setback area. The current septic system is unpermitted and the area where it is located will not pass percolation testing. Applicant is not aware of whether the current septic system has been tested but it is within the Township’s required buffer. All 4 of the proposed homes would have individual wells and the Applicant would be required to do draw down testing during the subdivision process to ensure that there were no negative effects on surrounding wells. The stormwater facilities for the Subject Property have not yet been designed but Applicant would be required to maintain stormwater on the site and not allow runoff onto adjacent properties.

11. In response to questions from the parties, Tom Jones, Zoning Officer testified that he is not sure whether the current septic system is permitted. The current home might be non-conforming and it is possible the footprint of the current home could be used to rebuild it.

12. Mr. Roberts testified that he has concerns regarding stormwater runoff.

13. Mr. Biundo testified that a lot of stormwater runs onto his property, specifically into his garage, and it is getting worse and he has to pump it out. He believes the Delucas do

good work but is not sure whether improvements to the Subject Property will improve his property or make it worse.

14. Ms. Kennelly testified that her concerns are also about stormwater.

15. Mr. Richner testified that he is also concerned about stormwater. Meetinghouse Road floods and his property gets the runoff. His property is generally underwater about twice a year.

16. Mr. Jacalone testified that the Subject Property is over the aquifer. All well water for the surrounding area goes through the Subject Property. It is his opinion that the septic systems will pollute the area and he would be surprised if the Applicant could get health department approval. He could not get an additional sound mound approved for his own property. Other builders have passed on this site because of this issue. In his opinion, the variance should not be granted.

17. Ms. Fitzgibbons testified that runoff in the area has gotten worse in the last couple of years. The Applicant is requesting a reduction to the setback of nearly 85% and that is too much. She is concerned about the impact to the neighborhood, wildlife and the surrounding area.

18. Mr. Ramos testified that he is directly adjacent to the Subject Property. There are grading issues and problems with flooding. His sump pumps run a lot and has been replaced several times because of the flooding in his basement. He has videos and pictures of the water on his property.¹ He has a concern about the riparian wall that is pictured on proposed Lot 4 which he assumes is to address stormwater. He indicated that the wetland area is submerged during large storms. He is concerned about the effects of the proposed development on drinking water. He believes one house is enough.

19. In summation, Ed Murphy argued that Exhibit A-2 complies with all of the Township Ordinances except for this buffer requirement. The buffer requirement is bigger than what DEP requires. The stormwater issues discussed by the other parties will be addressed during the land development stage. The buffer requirement is confiscatory and the hardship is there.

20. Mr. Augustine of 1575 provided public comment and indicated that he was concerned about stormwater on Meetinghouse Road.

21. Mr. Simon of 1489 Turkey Trot Road provided public comment and indicated that he is sympathetic to the dilemma of the conflicting requirements. The Applicant did not do their homework with regard to this site and their application is premature until the other issues relating to the site, ie stormwater, are addressed.

22. Ms. Primavera of 1621 Meetinghouse Road provided public comment and indicated she is a licensed architect. She disagrees with replacing the single family home and is

¹ The Board denied Mr. Ramos's attempt to enter photos showing the flooding into the record as stormwater is not an issue before the Zoning Hearing Board.

opposed to the variance. She believes 50 feet is insufficient to filter contaminants from human waste.

23. Mr. Stevens of 1410 Turkey Trot Road provided public comment regarding other attempts to develop within the Township.

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

25. Regarding the facts that must be established to entitle the Applicant to the variance requested, the Board finds as follows:

a. The Subject Property is not burdened by unique physical conditions peculiar to the Property that impose an unnecessary hardship such that there is no possibility that the Property can be used in conformity with the provisions of the Zoning Ordinance.

b. The Applicant is not denied all reasonable use of the Subject Property if its variance request is denied. The Property can be used as a single family detached residence and in fact one currently exists on the Subject Property.

c. The Applicant has not established that the approval of the variance will represent the minimum variance that will afford relief.

d. Any hardship suffered by the Applicant is self-imposed.

e. Applicant has failed to establish any facts or circumstances to justify the grant of a variance from the requirements of §195-60.1(2).

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 single family detached dwelling is a permitted use in the RR Restricted Residential Zoning District.

8. No variance is needed for the Applicant to make reasonable use of the Subject Property for a single family detached dwelling, a use that already exists on the Subject Property. The Applicant has failed to show that although the current home is not in good condition that another single family detached home could not be built on the Subject Property.

9. There are areas of the Subject Property that are not included in the DEP and Township required buffer area and Applicant failed to demonstrate that a septic system for a single family detached dwelling could not be constructed within this area.

10. The Board concludes that the Applicant has not demonstrated that a substantial burden attends all dimensionally complaint uses of the Subject Property and therefore there is no hardship.

11. The Board concludes that the evidence presented fails to establish that the relief sought by the Applicant is the minimum variance necessary.

12. The Applicant can make reasonable use of the Subject Property without the zoning relief requested.

13. Applicant has failed to establish entitled to the variance requested under the requirements of §195-117 of the Zoning Ordinance and Section 910.2 of the Pennsylvania Municipalities Planning Code.

14. Accordingly, the Warwick Township Zoning Hearing Board determined, by a majority vote, to deny the Applicant's request for relief.

ORDER

Upon consideration and after the hearing, the Zoning Hearing Board of Warwick Township hereby DENIES the Applicant's request for a variance from §195-60.I(2).

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.