

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

Docket No. 24-07

Applicants: Warwick Com 1, LLC
1770 Kendarbren Drive, Suite 200
Jamison, PA 18929

Owner: Same.

Subject Property: Tax Parcel No. 51-003-055 for property known as 1770 Kendarbren Drive, Suite 200

Requested Relief: The Applicant is seeking the following variances from the Warwick Township Zoning Ordinance ("Ordinance"): §195-16.G(2) to permit a day care center that does not meet the area and dimensional requirements of this Section to allow a day care center to be located within the Warwick Office Park; §195-16.G(2)(a) and (d) to permit the establishment of a day care center in the Warwick Office Park without the necessity of compliance with the buffer requirements of Article XIX §195-63; §195-16.G(2)-(b) to permit the issuance of a Zoning Permit subject to the condition that no occupancy be permitted until the Applicant demonstrates compliance with applicable Pennsylvania Department of Public Welfare registration, certification and licensing requirements, including all Township building codes; §195-16.G(2)(c) subject to the conditions that the premises be used and occupied for a maximum of 60 students, that 3,000 square feet of non-impervious outdoor play area be provided in accordance with the Zoning Permit granted by the Township and that no more than 15 children will use and occupy the outdoor play area at any one time; and §195-16.G(2)(h) to permit the day care to utilize shared parking rather than establishing separate parking facilities in compliance with §195-16.C(3)(e).

Hearing History: An Application was filed in Warwick Township on April 25, 2024. The hearing was held on June 4, 2024 at the Warwick Township Administration Building.

Appearances: John VanLuvanee, Esquire
P.O. Box 1342
Doylestown, PA 18901

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 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, John A. VanLuvanee, 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 Conditional Use Adjudication

A-2 Preliminary Land Development Approval Letter

A-3 Final Land Development Plan Approval Letter

A-4 Recorded Land Development Plan

A-5 Partial Plan – 700 Building circled in red

A-6 Deed into WarwickCom 1, LLC dated January 14, 2011

A-7 Google Earth aerial photo of overall area

- A-8 Google Earth aerial photo of building
- A-9 Plan with dimensions
- A-10 Zoning Permit Application
- A-11 Letter dated March 26, 2024 denying Zoning Permit
- A-12 Photos of Building showing Fenced Play Area
- A-13 Zoning Permit Application – Play Area Expansion
- A-14 Zoning Permit – Expand Play Area
- A-15 Groups/Ages of Children & DPW regulations re required play space

4. The Subject Property is located in the VC Village Commercial Zoning District. The Subject Property consists of approximately 6.54 acres and currently contains the Warwick Office Park.

5. Applicant previously obtained relief from the Zoning Hearing Board pursuant to a Decision dated October 16, 2020 (“Prior Decision”). The Prior Decision involved the use of the Subject Property as a C-3 School, limited to the facility described during the testimony to provide particular special education services to nearby school districts. The Prior Decision granted the following variances: §195-16.F.(4)(c) to permit a use C-3 School in a F-4 Business Park; §195-16.C.(3) to permit a private school that will be constructed as a private, gainful business; §195-16.C(3)(a) to permit a school that does not take access from an arterial or collector highway; §195-16.C.(3)(b) to permit a school that does not meet the area and dimensional requirements of this Section so as to facilitate the ability of the school to be located within the Warwick Office Park, as proposed; §195-16.C.(3)(d) to permit the establishment of a school in the Warwick Office Park without the necessity of compliance with the buffer requirements of §195-63; and §195-16.C(3)(e) to permit the proposed school to utilize shared parking rather than establishing separate parking facilities in compliance with §195-16.C(3)(e) subject to the following conditions:

- a. The type of school is limited to a school providing educational services for autistic students between the ages of 2 and 14.
- b. Any subsequent operator will require a variance if the use differs.
- c. The special education service is limited to a maximum of 70 students.
- d. The Applicant must place “vehicle proof” bollards protecting the play area.
- e. Owner and tenant are to designate the pick up and drop off areas in addition to the required parking areas.
- f. The play area must be generally consistent with the floor plan presented.
- g. Compliance with all other applicable governmental ordinances and regulations.

6. Applicant submitted a Zoning Permit Application for the use of the Subject Property as a G-2 Day-Care-Center. The Zoning Permit Application contains the following language:

“Applicant acknowledges and agrees that the Zoning Permit will be granted subject to the condition that no occupancy of the premises shall be permitted until Applicant demonstrates compliance with applicable Pennsylvania Department of Public Welfare (registration, certification and licensing requirements and all Township building codes).”

7. Tom Jones, the Warwick Township Zoning Officer issued a letter dated March 26, 2024 denying the Zoning Permit Application for the following reasons: Compliance with the Pennsylvania Department of Public Welfare requirements shall be demonstrated; and a minimum of 100 square feet of nonimpervious surface for each child shall be provided and the recreation area shall be located to the side or rear of the lot.

8. Applicant’s attorney John VanLuvanee, Esquire presented a summary of the Application as follows:

Mr. VanLuvanee provided a summary of the Prior Decision. The reason for this Application is that the proposed use is permitted in the Office Park but it doesn’t exempt the use from other standalone Ordinance provisions. It doesn’t make sense to have separate requirements apply. The only reasonable interpretation is to say that they will not be applicable.

The Application appeals the denial of the Zoning Officer and in the alternative requests variance relief. The Zoning Officer should have issued the permit conditioned upon receiving DPW approval. DPW will not accept the day care application until zoning approval is obtained.

With regard to the play area, the current available area is 1,200 square feet and the Applicant has obtained a permit to expand this area to 1,800 square feet. This will support Applicant’s proposal to allow 15 children in the outside area at one time.

9. Mr. VanLuvanee provided the testimony of Matthew Scanlon which can be summarized as follows:

Mr. Scanlon is a member of WarwickCom 1, LLC, the owner of the Subject Property. Applicant Exhibits A-1 through A-4 are self explanatory. A-6 is a Deed conveying the Subject Property to the Applicant. When Applicant purchased the Subject Property, buildings 100, 200, 600 and 700 were already in existence. Building 4 had not yet been built. The Subject Property is subject to a Condo Declaration. Kendarbren Drive is a private road and a common element of the condo. Currently the Office Park contains professional offices that provide accounting, legal, marketing, counseling and physical therapy services. In addition, this is where the local District Court is located. The day care is compatible with the already existing uses.

There was a Prior Decision that allowed for a School at the Subject Property but the School lost its contract with the School District. The proposed day care would occupy the entire building. Applicant has entered into a Lease with Ani Mkrtyan for the day care.

Exhibit A-5 is a copy of the Land Development Plan with the Subject Property circled in red. Exhibit A-7 is an aerial photo of the overall area. Exhibit A-8 is an aerial photo of the building. Kendarbren Drive is in front of the building and leads to the parking area on one side of the building. The other side of the building is another office building. Exhibit A-10 is the Zoning Permit Application that he signed. Exhibit A-11 is the Zoning Officer denial letter. Exhibit A-12 are 3 photos of the existing conditions of the Subject Property. Exhibit A-13 is a copy of the Zoning Permit Application for the expansion of the outdoor play area. Exhibit A-14 is the permit that was issued for the play area extension. When the new play area is installed, there is a light pole that will have to be removed as well as a tree that will have to be relocated.

There are 65 parking spaces for the Subject Property and the adjacent building. The adjacent building uses approximately 15 parking spaces. The proposed use will use 11 parking spaces. A drop off location was previously established in the rear of the building when it was being used for a school. The drop off area meets the requirements of the Ordinance. The parking lot is paved and striped and in his opinion will be adequate for both buildings.

The requested variances are necessary because of the use being within the Office Park.

10. Mr. VanLuvanee presented the testimony of Ani Mkrtychyan which can be summarized as follows:

She was previously a day care director and before that spent 5 years teaching and 5 years as a program director at Kinder College. She has a Masters in English. She is familiar with the requirements and regulations for the operation of a day care. She entered into a Lease with the Applicant.

The maximum number of children that the day care will be able to accommodate is 60 students and she would agree to this restriction as a condition of approval. The ages of the children to be served are 8 weeks old to 12 years old. Some children will be there all day and some will be part time. The longest that a child can be at the facility is 8 hours. The day care will provide childcare, after school services and Pre-K services. Exhibit A-15 provides a breakdown of the age groups to be served and the number of kids to be enrolled as follows: infants (8 weeks to 12 months) 8 kids; Young Toddlers (12 -24 months) 10 kids; Older Toddlers (2-3 years old) 12 kids; Preschoolers (3-4 years old) 10 kids; Pre-K (4-5 years old) 12 kids; and Afterschool/School Age (5-12 years old) 8 kids. She can't obtain approval from DHS until she obtains a Certificate of Occupancy from the Township. She also needs to fully furnish the Subject Property. Approval from DHS is the last step.

The maximum number of children who will use the outdoor play area is 12. No more than 2 groups of kids will be out there at the same time. DHS has a separate requirement for outdoor play areas. They will inspect the Subject Property and tell her how many children can utilize the area. She believes she will meet the state requirement with what is being proposed.

The hours of operation will be 7:00 a.m. to 7:00 p.m. Monday through Friday. These hours will be compatible with other uses in the Office Park. Children are transported to the Subject Property by their parents who park and drop off their child. The process takes anywhere

from 7-10 minutes. Not all parents arrive at the same time. She has viewed the drop off and loading area and believes they are sufficient for the proposed use.

There will be 10 staff members when the day care is at full capacity. Cleaning and maintenance occurs after hours because of the clearances required for all employees. The maximum number of rooms will be 8 with 9 teachers. At most, the day care will require 26 parking spaces based on the number of employees.

11. No one requested party status.
12. Greg Mester of 1776 Fairway Drive expressed concerns about who monitors the number of children permitted at the day care and in the play area.
13. John Pender of 1720 Fairway Drive expressed concerns because there is a drug rehab center on his street and he didn't think a day care center could be located that close.

Ms. Mkrtchyan stated that the day care facility is secure and unauthorized people cannot gain access. All individuals must be buzzed into the building. In addition, the children do not go for walks or otherwise leave the facility.

14. 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.Cmwth.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.Cmwth. 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.Cmwth.2001).

7. The use of the Subject Property as a C-3 day care center is a permitted use in the VC Village Commercial Zoning District.

8. The Subject Property was previously utilized as a school with no known issues and the Board concludes that the use as a day care center is a similar use.

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

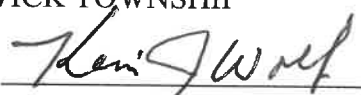
Upon consideration and after the hearing, the Zoning Hearing Board of Warwick Township hereby DENIES the appeal of the Zoning Officer's Denial and GRANTS the following variances from the Warwick Township Zoning Ordinance: §195-16.G(2) to permit a day care center that does not meet the area and dimensional requirements of this Section to allow a day care center to be located within the Warwick Office Park; §195-16.G(2)(a) and (d) to permit the establishment of a day care center in the Warwick Office Park without the necessity of compliance with the


buffer requirements of Article XIX §195-63; §195-16.G(2)-(b) to permit the issuance of a Zoning Permit subject to the condition that no occupancy be permitted until the Applicant demonstrates compliance with applicable Pennsylvania Department of Public Welfare registration, certification and licensing requirements, including all Township building codes; §195-16.G(2)(c) subject to the conditions that the premises be used and occupied for a maximum of 60 students, that 3,000 square feet of non-impervious outdoor play area be provided in accordance with the Zoning Permit granted by the Township and that no more than 15 children will use and occupy the outdoor play area at any one time; and §195-16.G(2)(h) to permit the day care to utilize shared parking rather than establishing separate parking facilities in compliance with §195-16.C(3)(e) subject to the following conditions: there shall be a maximum of 60 students permitted at the day care and a maximum of 15 kids that utilize the outdoor play area at any one time.

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.