

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

Docket No. 24-09

Applicants: John and Kathleen Pender
1720 Fairway Drive
Jamison, PA 18929

Owner: Same.

Subject Property: Tax Parcel No. 51-018-025 for property known as 1720 Fairway Drive

Requested Relief: The Applicant is seeking the following variance from the Warwick Township Zoning Ordinance (“Ordinance”): §195-16.B(2)(c)[3][c][i] to allow impervious coverage of 37.5% where 25% is permitted.

Hearing History: An Application was filed in Warwick Township on May 1, 2024. The hearing was held on 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 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 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 Drawing of Existing House and Patio with Extension

A-2 Picture of Existing Porch

4. The Subject Property is located in the RA Residential Agricultural Zoning District. The Subject Property consists of approximately 10,498 square feet and currently contains a single family dwelling.

5. John Pender testified and his testimony can be summarized as follows:

The current patio at the Subject Property was built 22 years ago and replaced a then existing deck. Mr. Pender built the patio himself. Where the grill is located is lower than the patio. The grill area was installed as an after thought. The patio area actually contains 3 levels

and there is no railing. Mr. Pender would like to make the patio safer and handicapped accessible. The new patio will be no more than 6 inches off the ground. Mrs. Pender had an aneurism and he has many friends who are handicapped.

The patio is only being extended by 78.5 square feet. Located behind the Subject Property is PECO property and an office building. The homes on either side of his have bigger patios than he does. He spoke to his neighbors and none had any objections.

The patio will be professionally constructed and will consist of a 3 inch concrete foundation and then Cambridge pavers. There will only be one or 2 steps down to the patio from the house.

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

7. 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
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][c][i] of the Zoning Ordinance to allow a maximum impervious coverage of 37.5% where 25% is permitted.

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.