

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

Docket No. 24-15

Applicants: Richard and Patricia Cianni
1291 Arrowood Circle
Jamison, PA 18929

Owner: Same

Subject Property: Tax Parcel No. 51-009-147 for property known as 1291 Arrowood Circle

Requested Relief: The Applicant is seeking the following variance from the Warwick Township Zoning Ordinance (“Ordinance”): §195-16.B(2)(e)[3][c][i] to allow an impervious coverage of 34% where the maximum permitted is 25% and from §195-16.B(2)(e)[3][c][iii] to permit 16.6% building coverage where the maximum permitted is 15%.

Hearing History: An Application was filed in Warwick Township on July 23, 2024. The hearing was hold on September 10, 2024 at the Warwick Township Administration Building.

Appearances: None.

Parties: None

Mailing Date: October 2, 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 September 10, 2024 hearing:

Board Exhibits:

B-1 Application with attachments received by Warwick Township on July 23, 2024

B-2 Proof of Publication from the Intelligencer for advertising notice on August 25, 2024 and September 1, 2024. Public Notice advertising hearing scheduled for September 10, 2024 at 7:00 pm and confirmation from the Intelligencer

B-3 Letter dated August 21, 2024 to Applicants from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated August 29, 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 August 29, 2024

Applicant Exhibits:

None

4. The Subject Property is located in the RA Residential Agricultural Zoning District. The Subject Property consists of approximately 0.350 acres and currently contains an existing single-family dwelling, driveway, shed and covered patio.

5. Applicants' testimony can be summarized as follows:

The Subject Property is an odd shaped lot as shown on the Plan attached to the Application. It is located on a cul de sac and is pie shaped with an area of Deed Restricted Open Space added to the rear that is narrow at one corner of the property and wide at the opposite corner. Applicants installed the covered patio in 2004 and would like to install an additional

patio area around it. The new patio is 450 square feet, would be uncovered and would be constructed with pavers.

Applicants spoke with their neighbors and the neighbors did not express concerns regarding the proposal. Applicants are not aware of any issues with stormwater running off of their property and affecting their neighbors. There is a swale located behind the house that conveys stormwater.

6. No members of the public requested party status.

7. In response to a question from the Board, Tom Jones, Zoning Officer, testified that the lot area listed on the impervious coverage breakdown in the Application did not include the Deed Restricted Area.

8. The Board of Supervisors took no position with regard to the 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).

5. 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).

6. The use of the Subject Property as a single-family dwelling is a permitted use in the RA Residential Agricultural Zoning District and a patio is a permitted accessory use.

7. The Subject Property has unique physical conditions in that it is irregular in shape.

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

9. 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.

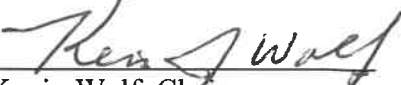
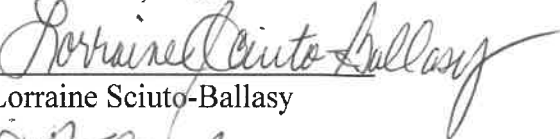

10. The Board concludes that the Applicant has presented evidence of sufficient factors to warrant the grant of the relief requested.

11. 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)(e)[3][c][i] of the Zoning Ordinance to allow for a maximum impervious coverage of 34% where 25% is permitted and from §195-16.B(2)(e)[3][c][iii] to permit 16.6% building coverage where 15% is permitted.

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.