

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

Docket No. 24-19

Applicants: Eastern States, Inc.  
48 Sunset Avenue  
Chalfont, PA 18914

Owner: Joe and Lori Hiznay  
2568 Candytuft Drive  
Jamison, PA 18929

Subject Property: Tax Parcel No. 51-026-012 for property known as 2568 Candytuft Drive

Requested Relief: The Applicant is seeking the following variance from the Warwick Township Zoning Ordinance (“Ordinance”): §195-16.B(2)(e)[3][c][iii] to allow a building coverage of 16.2% where the maximum permitted is 15%.

Hearing History: An Application was filed in Warwick Township on October 30, 2024. The hearing was hold on December 3, 2024 at the Warwick Township Administration Building.

Appearances: None.

Parties: None

Mailing Date: January 8, 2025

## 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 contractor for the owner of the Subject Property and possessed of the requisite standing to make application to this Board.

3. The following exhibits were marked and admitted during the December 3, 2024 hearing:

#### Board Exhibits:

B-1 Application with attachments received by Warwick Township on October 30, 2024

B-2 Proof of Publication from the Intelligencer for advertising notice on November 17, 2024 and November 24, 2024. Public Notice advertising hearing scheduled for December 3, 2024 at 7:00 pm and confirmation from the Intelligencer

B-3 Letter dated November 11, 2024 to Applicants from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated November 22, 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 November 22, 2024

#### Applicant Exhibits:

None

4. The Subject Property is located in the RA Residential-Agricultural Zoning District. The Subject Property consists of approximately 0.35 acres and currently contains an existing single-family dwelling, driveway, walkway and patio.

5. Brian Wolfgang of Eastern States, Inc. provided testimony which can be summarized as follows:

The Owners have lived in the home for thirty years and would like to add an 18 foot by 20 foot sunroom addition to the rear of the house. The proposed addition will be fully enclosed

with a roof. The proposed addition meets the setback and impervious coverage requirements. The only relief needed is for the maximum building coverage.

Owners are not proposing any other improvements to the outside of the home. No additional walkways are proposed. There is an existing deck that will be removed. There is also a small deck off the laundry room that does not have a roof over it.

6. No members of the public requested party status.
7. 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.

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

8. 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.

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

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

### ORDER

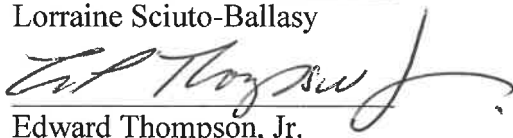
Upon consideration and after the hearing, the Zoning Hearing Board of Warwick Township hereby GRANTS the following variances from the Warwick Township Zoning Ordinance: §195-16.B(2)(e)[3][c][iii] of the Zoning Ordinance to allow for a maximum building coverage of 16.2% where 15% is permitted.

ZONING HEARING BOARD OF  
WARWICK TOWNSHIP

By:

  
Kevin Wolf, Chairman

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Lorraine Sciuto-Ballasy

  
Edward Thompson, Jr.

**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.