

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

Docket No. 25-02

Applicants: Brian and Kelly Lawrence  
1407 Bayberry Drive  
Jamison, PA 18929

Owner: Same.

Subject Property: Tax Parcel No. 51-006-052 for property known as 1407 Bayberry Drive

Requested Relief: The Applicant is seeking the following variances from the Warwick Township Zoning Ordinance (“Ordinance”): §195-16.B(2)(e)[3][c][i] of the Zoning Ordinance to allow 33.7% impervious coverage where 30% is permitted; and from §195-9 and §195-14.1 to permit a 54 inch black aluminum fence in Deed Restricted Open Space.

Hearing History: An Application was filed in Warwick Township on January 28, 2025. The hearing was held on March 4, 2025 at the Warwick Township Administration Building.

Appearances: None.

Parties: None.

Mailing Date: April 2, 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 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 March 4, 2025 hearing:

#### Board Exhibits:

B-1 Application with attachments received by Warwick Township on January 28, 2025

B-2 Proof of Publication from the Intelligencer for advertising notice on February 18, 2025 and February 25, 2025. Public Notice advertising hearing scheduled for March 4, 2025 at 7:00 pm and confirmation from the Intelligencer

B-3 Letter dated February 18, 2025 to Applicants from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated February 19, 2025 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 February 19, 2025

#### Applicant Exhibits:

A-1 Revised Plan

#### Township Exhibits:

T-1 Warwick Township Zoning Hearing Board Decision Docket No. 13-08

4. At the beginning of the hearing, Applicant was advised that the Zoning Hearing Board does not have jurisdiction to grant a variance from a Deed Restriction in accordance with Exhibit T-1.

5. Applicant withdrew their request for a variance from §195-9 and §195-14.1 to permit a 54 inch black aluminum fence in Deed Restricted Open Space.

6. The Subject Property is located in the RA Residential-Agricultural Zoning District. The Subject Property consists of approximately 0.487 acres and contains a single family detached dwelling.

7. Rob McCubbin, PE from Woodrow & Associates, Inc. was present on behalf of the Applicant and his testimony can be summarized as follows:

Applicant would like to install an inground swimming pool in their backyard. Currently, the Subject Property contains a dwelling, driveway, walkway and shed.

Mr. McCubbin prepared a revised plan for the Subject Property which was marked as Exhibit A-1 ("Plan"). The prior plan had an error in the impervious calculations. This correction reduces the amount of impervious coverage requested from 33.7% to 33.5%. The Plan provides for the installation of a pool, patio, retaining wall and mechanical pad. The total lot area is 21,264 square feet but the net lot area is only 15,825 square feet after the Deed Restricted Open Space is deducted. The Deed Restricted Open Space is approximately 6,000 square feet.

The Subject Property currently has 3,659 square feet of impervious coverage which is equivalent to 23.12%. Applicant is requesting an additional 1,643 square feet of impervious coverage for a total of 33.5%. The hardship is the Deed Restricted Open Space. If the Applicant could count this area, the impervious coverage after the additional improvements would only be 24.93%. The Applicant did try to reduce the amount of impervious coverage by only having concrete in some areas.

Applicant will install stormwater management facilities to address the additional impervious area. The stormwater facilities will be designed to the satisfaction of the Township Engineer. A seepage bed, as shown on the Plan, is not a structure so it is permitted in the Deed Restricted Open Space.

8. In response to a question, Zoning Officer Tom Jones testified that the area in the Deed Restricted Open Space can't be used for the impervious coverage calculation.

9. No individuals requested or were granted party status.

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

11. John and Kathryn Eby of 1406 W. Rockspray Road provided public comment. The Eby property backs up to the Subject Property. They are worried about water runoff and indicated that their backyard is a swamp. They showed the Board some pictures of the water conditions in their backyard.

12. In response to their concern, Mr. McCubbin indicated that Applicant will need to install stormwater management facilities that will not make the conditions worse and if anything should slow the water down.

### 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 and an inground swimming pool is a permitted accessory structure.

8. The Subject Property has unique physical conditions in that it has Deed Restricted Open Space of approximately 6,000 square feet.

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 variance 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)(e)[3][c][i] of the Zoning Ordinance to allow an impervious coverage on the Subject Property of 33.5% where 30% is permitted subject to the condition that the Township Engineer approve Applicant's stormwater management plan.

The relief contained 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: /s/ Kevin Wolf  
Kevin Wolf, Chairman

/s/ Dave Mullen  
Dave Mullen

/s/ Edward Thompson  
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.