



DURNEY
WORTHINGTON
& MADDEN LLC
ATTORNEYS AT LAW

2937 ROUTE 611
SUITE 8, MERCHANTS PLAZA
P.O. Box 536
TANNERSVILLE, PA 18372-0536

TEL: (570) 620-0320
FAX: (570) 620-0390
www.dwlawllc.com

JEFFREY A. DURNEY
GEOFFREY S. WORTHINGTON
HILLARY A. MADDEN

July 18, 2024

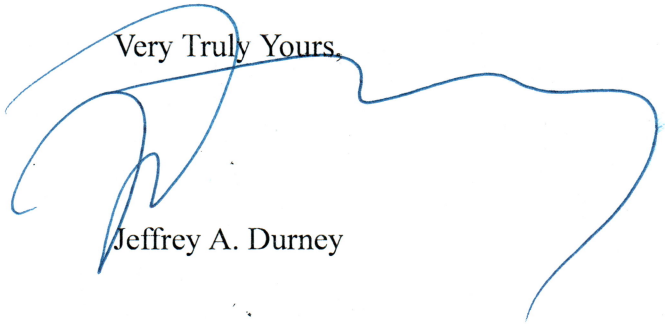
Mr. Joseph L. Widmer
158 Smithfield Trailer Court
East Stroudsburg, PA 18301

RE: Smithfield Township Zoning Hearing Board- Widmer Variance Application

Dear Mr. Widmer:

Enclosed please find a copy of the Zoning Hearing Board's Decision in the above-referenced matter. Thank you.

Very Truly Yours,



Jeffrey A. Durney

Cc: Robert Kidwell, Esq. (via electronic mail)
Kenneth Wolfe, Zoning Hearing Officer (via electronic mail)
Julia Heliakka, Township Manager (via electronic mail)

BEFORE THE ZONING HEARING BOARD
OF SMITHFIELD TOWNSHIP
MONROE COUNTY, PENNSYLVANIA

**IN RE: APPLICATION OF JOSEPH L. WIDMER FOR VARIANCES FROM
THE PROVISIONS OF THE ZONING ORDINANCE TO PERMIT
CONSTRUCTION OF A 1,088 SQUARE FOOT BUILDING AND ASSOCIATED
IMPROVEMENTS**

DECISION

By application dated May 3, 2024, Joseph L. Widmer requested variances in connection with the construction of a building on the property located at Route 209, northwest of the intersection with Joel Street, East Stroudsburg, PA 18301 (PIN 16731200867511)(the "Property") to (i) permit proposed off-street loading space in front of the property, (ii) allow a proposed parking lot to be constructed in front of the proposed building and within the lot line setbacks, and (iii) reduce the minimum buffer yard required from 25 feet to 13 feet. The property is owned by Joseph L. Widmer and is located in the ED Economic Development District of the Township.

The Zoning Hearing Board (the "Board") held a public hearing on June 4, 2024. The Board heard the testimony of Russ Scott, Project Engineer from RKR Hess; Joseph L. Widmer, property owner; Ken Wolfe, Township Zoning Officer; and Lori Frazetta, a nearby property owner, who was granted party status.

The following exhibits were received into evidence at the hearing:

ZHB Exhibit 1 – Application to the Zoning Hearing Board
ZHB Exhibit 2 – Proof of Publication
ZHB Exhibit 3 – Affidavit of Posting

Applicant Exhibit 1 – Variance Plan prepared by RKR Hess
Applicant Exhibit 2 – Photographs of property and nearby properties
Applicant Exhibit 3 – County GIS map

Mr. Scott described the project, which consists of Mr. Widmer constructing a 1,008 square foot building on the approximately a 0.5 acre parcel Mr. Widmer owns just west of Joel Street and Route 209. The project consists of the proposed building, parking area, stormwater management area, landscaping, utilities and other improvements. The Property is located in the ED Economic Development District. Mr. Widmer intends to use the building and Property in connection with his tree service business.

Because of the unique site layout, Mr. Widmer needs variances to enable the construction of the building and use of the Property. The Property is approximately one-half acre in size, triangular in shape and is bordered by property in the R-1 Low Density Residential District. The Property is located within a narrow portion of the ED Economic Development District. In order to construct the building and associated improvements, Mr. Widmer requested the following variances:

1. Variance from Section 403.1B(4), which requires all off-street loading spaces to be located at the side or rear of the property and be screened by fencing or landscaped buffers. Given the unique shape and size of the Property, Mr. Widmer requested a variance that would permit the off-street loading space in front of the Property instead of the rear or side of the Property.
2. Variance from Section 403.1.L, which requires that parking areas be located a minimum of 15 feet from a side or rear lot line. Given the unique shape and layout of the Property, Mr. Widmer requested a variance that would permit the parking area to be constructed in front of the proposed building and within the setbacks.

3. Variance from Section 403.1.M, which requires parking areas to be located a minimum of 50 feet from a front lot line in the ED Economic Development District. Given the unique shape and size of the Property, Mr. Widmer requested a variance to permit the parking lot to be within the setback.
4. Variance from Section 502.7.C, which requires that all nonresidential parking lots for off-street parking or for the storage or movement of motor vehicles located in front of the building be separated from the ultimate right-of-way by a buffer yard not less than 25 feet in width. Given the unique shape and size of the Property, Mr. Widmer requested a variance to provide a buffer that is 13 feet in width instead of 25 feet in width along Route 209, consistent with other existing properties that have buffers that are less than 25 feet.

In 1991, the previous owner of the Property was granted a variance to construct a 1,008 square foot building that encroached upon the building setback lines. In its decision, the Zoning Hearing Board recognized the unique shape of the Property. The Board specifically held that, “[B]ecause of the unique shape of the lot, it is impossible for a building to be constructed on the parcel in compliance with the Smithfield Township Zoning Ordinance setback requirements.” The Board concluded that it was “obvious to members of the Board that unless the variance is granted, this parcel will forever be useless for any type of development.” The prior owner did not develop the parcel. Mr. Widmer now seeks to develop it in a manner that is consistent with the Board’s previously granted variance.

3. Mr. Widmer submitted an Application for Public Hearing to Smithfield Township seeking certain variances to permit the construction of a 1,008 square foot building and associated improvements on the Property. [ZHB Exhibit 1]

4. A public hearing was held on June 4, 2024.

5. Notice of the hearing was given by publication in *The Pocono Record* on May 14, 2024 and May 21, 2024. [ZHB Exhibit 2]

6. Notice of the hearing was duly posted on the Property. [ZHB Exhibit 3]

7. Mr. Widmer purchased the property in August 2023.

8. The Property is approximately a one-half acre parcel, triangular in shape.

9. Mr. Widmer proposes to build a 20 x 24 foot building on the Property that will support his existing tree services business.

10. The Property is unique in both its size and shape, presenting severe challenges to development.

11. The requested variances seek to allow for the reasonable development and use of the Property while minimizing any impact on the neighboring properties and the public.

12. The use of the Property will not alter the character of the neighborhood, nor will it be detrimental to the adjoining properties or the public welfare.

13. The requested variance relief required to construct the building and associated improvements represent the minimum variance relief necessary.

14. The Board, in a decision in 1991, previously granted similar variance relief, acknowledging that variance relief was necessary in order to reasonably develop the Property.

DISCUSSION

The Board finds that Mr. Widmer established his entitlement to variance relief. In order to establish entitlement to a variance, an applicant must prove that the provisions of the Zoning Ordinance inflict unnecessary hardship upon them. The factors that must be established in order for a variance to be granted are:

- (1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.
- (2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- (3) That such unnecessary hardship has not been created by the appellant.
- (4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
- (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

53 P.S. §10910.2; *see also* Smithfield Township Zoning Ordinance Section 27-803.

Mr. Widmer presented sufficient evidence to support his requests for variances to enable the construction of the 1,008 square foot building and associated improvements on the Property. The Property's unique shape and size present clear obstacles to its

reasonable development. These challenges are unique to the Property and were not created by Mr. Widmer. As this Board has previously determined, there is virtually no possibility that the Property can be developed in strict conformity with the provisions of the Zoning Ordinance. The Board believes that Mr. Widmer's proposed variance relief is reasonable, will not alter the essential character of the neighborhood, and will have not impair the use or development of the adjoining properties, nor will it be detrimental to the public welfare. The proposed plan represents the minimum variance relief necessary to support the development of the Property consistent with the plan presented.

CONCLUSION OF LAW

1. Mr. Widmer established entitlement to the requested variance relief with respect to the construction of the proposed 1,008 square foot building and associated improvements on the Property.

ORDER OF THE ZONING HEARING BOARD

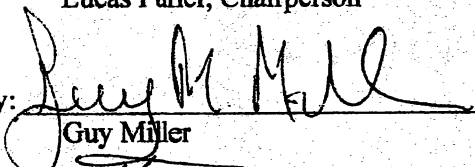
The Zoning Hearing Board hereby grants the following variances consistent with the Variance Plan dated May 3, 2024 and submitted by RKR Hess (Applicant Exhibit 1):


1. Variance from Section 403.1B(4): The proposed off-street parking shall be permitted in the front of the Property.
2. Variance from Section 403.1.L: The proposed parking lot may be constructed in front of the building, a minimum of 13 feet from the front lot line, a minimum of 4 feet from the rear lot line and a minimum of 40 feet from the side lot line adjacent to the residential district.
3. Variance from Section 403.1.M: The proposed parking lot may be constructed in front of the proposed building within the parking setback lines shown on the RKR Hess Variance Plan (Applicant's Exhibit 1).
4. Variance from Section 502.7.C: The minimum buffer yard to be provided along Business Route 209 shall be 13 feet.

Order by the undersigned, the members of the Zoning Hearing Board of Smithfield Township as of this 18th day of July, 2024.

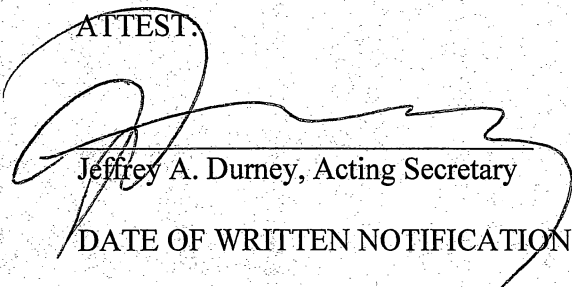
SMITHFIELD TOWNSHIP
ZONING HEARING BOARD

By: _____
Lucas Fuller, Chairperson

By: 
Guy Miller

By: 
Marianne Cannell

ATTEST.



Jeffrey A. Durney, Acting Secretary

DATE OF WRITTEN NOTIFICATION: July 18, 2024

THIS CONSTITUTES THE FINAL WRITTEN DECISION OF THE BOARD. ANY AGGRIEVED PARTY MAY APPEAL THIS DECISION TO THE COURT OF COMMON PLEAS OF MONROE COUNTY NO LATER THAN THIRTY (30) DAYS FROM THE DATE OF THIS WRITTEN NOTIFICATION. THE BOARD RESERVES THE RIGHT TO SUPPLEMENT THIS DECISION AS NECESSARY.