

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

Docket No. 18-01

Applicant: Warwick TVC-ARC, LP
c/o Thomas Verrichia
329 S. Main Street, Suite B
Doylestown, PA 18901

Owner: Same.

Subject Property: Tax Parcel Nos. 51-003-089-003 and 51-003-090 which are collectively located on York Road and bordered by Meyer Way and Meetinghouse Road.

Requested Relief: The Applicant is proposing the construction of a Tractor Supply retail store on the Subject Property. The proposed use is being considered by the Township Board of Supervisors through a series of conditional use hearings. The Applicant has filed the present zoning appeal asserting that the Warwick Township Zoning Officer has issued a "Final Determination" indicating that a detached display canopy proposed as part of the conditional use application is a non-residential accessory building as defined at §195-16.I.1 of the Warwick Township Zoning Ordinance ("Ordinance") and that the attached display under canopy proposed as part of the retail use being considered as part of the conditional use application constitutes an outdoor storage or display use as defined at §195-16.I.2.

Hearing History: The application was filed in Warwick Township on February 6, 2018. The hearing was held on April 3, 2018 at the Warwick Township Administration Building, 1733 Township Greene, Jamison, PA 18929.

Appearances: Applicant by: Julie L. Von Spreckelsen, Esq.
Eastburn & Gray, P.C.
470 Norristown Road, Suite 302
Blue Bell, PA 19422

Warwick Township by: Peter Nelson, Esq.
Grim Biehn & Thatcher
104 S. 6th Street
P.O. Box 215
Perkasie, PA 18944

Mailing Date: May 17, 2018

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 therefore possessed of the requisite standing to make application to this Board.

3. A hearing was held on April 3, 2018, to consider Applicant's request for relief. During the hearing, counsel for the Township moved to dismiss the application asserting that the memo containing the Township Zoning Officer's opinion was not a "final determination" under the Municipalities Planning Code (MPC), and therefore the Zoning Hearing Board had no jurisdiction to decide the matter. The memo at issue was prepared in the context of Applicant's concurrently pending conditional use application.

4. During the April 3, 2018 hearing, the Zoning Hearing Board took the motion under advisement, but allowed Applicant to proceed with presentation of evidence on the substantive question, with briefs on both issues to follow. The evidentiary hearing was closed and deliberation and decision scheduled for a public hearing to take place on May 1, 2018.

5. Both Applicant and the Township provided timely written legal argument, which the Zoning Hearing Board considered prior to its deliberation during the hearing held on May 1, 2018. A public vote followed.

6. Based upon the evidence and argument of record, the Zoning Hearing Board determines that the opinion offered by Ashley Casey (aka Ashley Thompson) Zoning Officer for Township of Warwick, through a memorandum directed to the Township

Manager, dated January 8, 2018, did not constitute a “final determination” as that term is contemplated by the Municipalities Planning Code.

In support of the Zoning Hearing Board’s Finding and Conclusion, the Board considers §909.1 of the Municipalities Planning Code, which governs jurisdiction of the Zoning Hearing Board. Which, in relevant part reads as follows:

Section 909.1 Jurisdiction.

...

- (3) Appeals from the determination of the zoning officer, including, but not limited to, the granting or denial of any permit, or failure to act on the application therefor, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot.

...

53 P.S. §10909.1(a)(3)

The Board further relies upon §107 of the MPC, which defines the term “Determination”, as follows:

“Determination,” final action by an officer, body or agency charged with the administration of any land use ordinance or applications thereunder, except the following:

- (1) the governing body;
- (2) the zoning hearing board; or
- (3) the planning agency, only if and to the extent the planning agency is charged with final decision on preliminary or final plans under the subdivision and land development ordinance or planned residential development provisions.

Determinations shall be appealable only to the boards designated as having jurisdiction for such appeal.

53 P.S. §10107(b)

The Zoning Hearing Board finds that the January 8, 2018 memo authored by the Zoning Officer, and directed to the Township Manager, in the context of the pending conditional use hearing, does not constitute a “final action” of the Zoning Officer. The

Zoning Hearing Board finds that the Township Board of Supervisors will make the final determination regarding the use as part of the conditional use hearing. Authority for same is found at §909.1 of the MPC at §909.1(b)(3). See also §603(c)(2) of the MPC; 53 P.S. §10603(c)(2).

The Zoning Hearing Board further finds that the Zoning Officer's internal memorandum does not serve to limit or curtail any of Applicant's property rights. Those rights will be determined during the course of the conditional use hearing. The ultimate determination of the substantive interpretation question will not escape appellate review in that Applicant does have the right to appeal the conditional use determination if "aggrieved".

7. The Zoning Hearing Board does not reach the substantive question due to lack of jurisdiction.

CONCLUSIONS OF LAW:

1. The internal opinion of the Zoning Officer, communicated to the Township, is not a final determination. Therefore the Zoning Hearing Board does not have jurisdiction to hear and decide the present zoning matter.

2. Accordingly, the Warwick Township Zoning Hearing Board determined, by a 3-0 vote, to deny entertaining the Applicant's request for relief, on procedural grounds specifically lack of jurisdiction.

ORDER

Upon consideration and after hearing, the Warwick Township Zoning Hearing Board **DISMISSES** the present application citing lack of jurisdiction in that the internal memorandum of the Township Zoning Officer at issue does not represent a “final determination” as that term is used in the Municipalities Planning Code.

**ZONING HEARING BOARD OF
WARWICK TOWNSHIP**

/s/ Kevin J. Wolf _____
Kevin J. Wolf

/s/ Dave Mullen _____
Dave Mullen

/s/ Lorraine Sciuto-Ballasy _____
Lorraine Sciuto-Ballasy

IMPORTANT NOTE: Pursuant to §195-115 and §195-116 of the Warwick Township Zoning Ordinance, variances or special exceptions granted by the Zoning Hearing Board shall expire one (1) year from the date of the Decision, unless the applicant or owner or successor in interest has commenced construction within that time. Construction will be deemed commenced upon the issuance of a building and/or zoning permit for the approved use.