

**BEFORE THE ZONING HEARING BOARD OF WORCESTER TOWNSHIP  
MONTGOMERY COUNTY, PENNSYLVANIA**

**IN RE: APPLICATION OF  
MIKELEN, LLC**

**NO. 2022-04**

**DECISION**

**I. BACKGROUND**

The Applicant/Equitable Owner, MikeLen, LLC, and Owner, John Haganir, propose to subdivide the Owner's adjoining property and use a portion of the Owner's property located at 2961 Artmar Road, Worcester Township, in the R-75 Residential District for the construction of the access road to the subdivision.

A public hearing on the above Application was held on April 26, 2022 at the Worcester Township Community Hall, 1031 Valley Forge Road, Fairview Village, Pennsylvania, pursuant to Notice as required by the Worcester Township Zoning Ordinance, as amended (hereinafter "Zoning Ordinance") and the Pennsylvania Municipalities Planning Code.

The Applicant requested the following relief:

- (1) A Variance from Section 150-77.A of the Zoning Ordinance, so as to permit a front yard setback of 16 feet along the newly created access road.
- (2) A Special Exception under Section 150-163 for a change in the nonconforming conditions on the Property.

A quorum of the Zoning Hearing Board participated in the public hearings and conducted a vote in accordance with law. The Applicant was represented by Michael Clement, Esquire.

A neighboring property owner, Christopher Tomlinson, elected to enter appearance pro se, as an objecting party.

The witnesses were duly sworn or affirmed and Notes of Testimony for the hearings were transcribed and are hereby made a part of this record.

At a public meeting on April 26, 2022, after public discussion, the Board voted to grant the application for the Variance and Special Exception requested. The Board issues Findings of Fact and Conclusions of Law in support of the Decision and Order.

## **II. FINDINGS OF FACT**

1. The Applicant is MikeLen, LLC, equitable owner (“Applicant”) joined by the legal owner, John Hugarir (“Legal Owner”), who propose to subdivide an adjoining property of the Legal Owner and use a portion of the property located at 2961 Artmar Road, Worcester Township (“Property”), in the R-75 Residential District, for the construction of the access road to the subdivision. (N.T. 04/26/22, pp. 5-7, Exhibits A-1, A-2, A-3, A-4)

2. The following Exhibits were marked and duly admitted into evidence:

**BOARD EXHIBITS:**

B-1 Public Notice

B-2 Proof of Publication

**APPLICANT’S EXHIBITS:**

A-1 Application, Narrative and Redacted Agreement of Sale

A-2 Plan

A-3 Plan

A-4 Subdivision Plans

3. The Applicant has a 50 foot wide strip of the Property under agreement for purchase from the Legal Owner. (N.T. 04/26/22, pp. 6-9, 29-30, Exhibit A-1)

4. Zoning Ordinance Section 150-76 requires a 40,000 SF minimum lot size for lots not served by public water and public sewer.

5. The Property measures approximately 37,400 SF, an existing lawful nonconforming lot size in the R-75 Zoning District, (since the Property is only served by public sewer and not public water), with a house on the lot in an existing lawful nonconforming location. (N.T. 04/26/22, pp. 12-20, Exhibit A-1, A-2, A-3)

6. The Applicant proposes to subdivide approximately 9 acres of the Legal Owner's adjoining 18 acre parcel, so as to result in 8 new lots, on which the Applicant plans to construct a single-family residential development, with access to Artmar Road through the subject Property. (N.T. 04/26/22, pp. 12-20, 34, Exhibits A-2, A-3, A-4)

7. The house on the Property is located in a nonconforming location with a front yard setback of only 35.8 feet from Artmar Road, rather than the 50 feet required under Zoning Ordinance Section 150-77. (N.T. 04/26/22, pp. 12-20, Exhibits A-2, A-3)

8. Connecting the Property to public water and sewer, as planned by the Applicant, and using a 50 foot strip of the Property for access to the proposed subdivision, actually has the effect of eliminating two (2) existing nonconformities on the Property. (N.T. 04/26/22, pp. 12-20, Exhibits A-2, A-3)

9. Since the Property will now be connected to public water and public sewer, Zoning Ordinance Section 150-76 requires only a 20,000 SF lot size and the resulting lot size will be approximately 25,500 SF. (N.T. 04/26/22, pp. 12-20, Exhibits A-2, A-3)

10. Since the Property will now be considered a corner lot, Zoning Ordinance Section 150-77 requires two (2) front yard setbacks, 35 feet and 50 feet respectively; with the house

currently 35.8 feet from Artmar Road, the Property will now be conforming with reference to the 35 foot setback on Artmar Road. (N.T. 04/26/22, pp. 12-20, 58-59, Exhibits A-2, A-3)

11. Therefore, the only relief required is that by reducing the one side of the lot and bringing in the road, the 10 foot minimum side yard setback will not apply, and the Applicant therefore requires relief from the 50 foot front yard setback so that the house may remain in its current location, but approximately 16 feet from the Ultimate Right-of-Way, and approximately 25 feet from the cartway of the new road. (N.T. 04/26/22, pp. 12-20, Exhibits A-2, A-3)

12. Through the uncontroverted and credible testimony of an expert in civil engineering, the Applicant established that there are no other viable accesses to the adjoining lot for the by-right subdivision planned; access from Trooper Road is impossible from an engineering standpoint due to slope, ravines, dense woodlands, and other environmental conditions, and access to Windy Hill Road, for other than an emergency access, is impossible as the Owner does not have clear title to all of the land needed for such access. (N.T. 04/26/22, pp. 12-15, 18, 25-28, 42-43, 47-53, 57-58, Exhibit A-4)

13. Public water and public sewer are only available by the new road accessing Artmar Road, which new road will be offered for dedication to the Township. (N.T. 04/26/22, pp. 28-34)

14. The only other alternative would be to demolish the occupied house on the Property, which would create an undue burden upon the Legal Owner and the Applicant. (N.T. 04/26/22, p. 19)

15. Furthermore, the relief from one of the front yard setbacks on the corner lot affects no other landowner, other than the Legal Owner, who joins in the Application. (N.T. 04/26/22, pp. 19-20)

16. The Objector stated no opposition to the actual front yard relief requested, but rather focused on the fact that variance relief was being requested, which requires a showing of hardship, and that this relief will enable the subdivision and development of the Legal Owner's land, which subdivision and development are permitted by right. (N.T. 04/26/22, pp. 37-38, 41, 54-55)

17. The Objector presented no evidence, exhibits or testimony that the relief would be contrary to the health, safety and welfare of the community, or detrimental to the use and development of his own property, or other neighboring properties, but rather that the relief would allow a by-right subdivision on the Legal Owner's property, without requiring the Legal Owner to demolish the house on the Property. (N.T. 04/26/22, pp. 37-38, 41, 54-55)

18. The law surely permits, if not requires, the Board to grant the minor Dimensional Variance and Special Exception requested, as to avoid the needless demolition of the existing house on the Property.

19. Either theory of relief, the minor Dimensional Variance from the front yard setback or the Special Exception to change the nonconformity on the Property, would permit the Applicant to achieve its goal; the fact that the Applicant qualifies for the relief on both grounds requires the Board to grant the Application.

20. With reference to the application for a Special Exception under Section 150-163, the Applicant complied with the initial duty to present evidence, and presented evidence and testimony sufficient to carry the burden of persuasion that the proposed changes reducing the nonconformities on the Property to comply with more restrictive zoning requirements, are authorized by Special Exception, and that the Applicant's proposal complies with specific criteria and generally applicable requirements of the Ordinance.

21. Unlike Section 150-215 of the Zoning Ordinance governing Conditional Use Applications, the Worcester Township Zoning Ordinance does not specifically place the burden of proof on the Applicant in Special Exception cases to show that the use will have no detrimental effect on the health, safety and welfare of the community.

22. As a result, in a Special Exception case, the Objector would have the duty to present evidence, as well as carry the burden of persuasion that, to a high degree of probability, the proposed use will substantially adversely affect, and in fact be contrary to, the health, safety and welfare of the community, which evidence the Objector did not present.

23. Even if it could be argued that the Zoning Ordinance impliedly requires the Applicant to carry the burden of persuasion to demonstrate that the proposed use will not be contrary to the health, safety and welfare of the community, such shifting of the burden of proof only occurs in a Special Exception case if the Objector had met his initial duty to present evidence that the proposed use would be contrary to the health, safety and welfare of the community, which again, did not occur in this case.

24. The Objector presented no expert opinion testimony or evidence, and, in fact, other than a very brief statement of opposition on the record, the Objector presented no evidence, and no other testimony, whatsoever in the case. (N.T. 04/26/22, pp. 37-38, 41, 54-55)

25. The Objector presented only comment in opposition to the Application, making only the point that the relief, if granted, would allow development of the adjoining property of the Legal Owner, without addressing the fact that the subdivision of the adjacent property is permitted by right. (N.T. 04/26/22, pp. 37-38, 41, 54-55)

26. What often occurs in cases such as this, is that the objectors offer only speculation and conjecture regarding the adverse effect that this particular use will have on their respective properties, and the health, safety and welfare of the community, but, in this case, not even that testimony was offered. (N.T. 04/26/22, pp. 37-38, 41, 54-55)

27. The Objector was granted the opportunity to present credible evidence or testimony to carry the burden of persuasion that the use will be contrary to the health, safety and welfare of the community, but that did not happen, and, in fact, the Applicant rather introduced sufficient evidence to carry the burden of persuasion that the use will not be contrary to the health, safety and welfare of the community in order to be entitled to the Special Exception. (N.T. 04/26/22, pp. 37-38, 41, 54-55)

28. In a Special Exception case, Zoning Ordinance Section 150-217.B requires the Zoning Hearing Board to determine if the proposed use is in harmony with the general intent of the Zoning Ordinance, but also accords to the Board the ability to impose reasonable conditions and safeguards.

29. With reference to the request for the Special Exception, the Board determines that the Applicant presented sufficient evidence to conclude that the Applicant's proposal complies with the specific and general criteria of the Ordinance, and that the proposed use will not be contrary to the health, safety and welfare of the community, and therefore, the requested Special Exception should be granted.

30. With reference to the one (1) minor Dimensional Variance requested, upon consideration of Section 910.2 of the Pennsylvania Municipalities Planning Code, and Section 150-219 of the Worcester Township Zoning Ordinance, the Board determines the following:

- (A) The unique nonconforming lot size, the existing nonconforming location of the house on the Property, and the fact that demolition of the existing house would otherwise be required, create an unnecessary hardship only with respect to this lot, which justifies granting the Variance requested on the basis of hardship.
- (B) The authorization of the minor front yard setback Variance is necessary to enable the reasonable use of the Property.
- (C) Since there is no other viable access option with respect to the proposed subdivision, the Applicant has not created its own hardship.
- (D) The granting of the Variance will not alter the essential character of the neighborhood, nor would the relief granted substantially impair the use or development of adjacent property, or be detrimental to public welfare.
- (E) The Variance requested is the minimum Variance to afford relief under the circumstances; in fact the Applicant has no other option for access to the basically landlocked land proposed for subdivision.

31. Under Section 150-217.C of the Zoning Ordinance, the Board determines that granting the minor setback Variance would not be contrary to the public interest, and owing to the special conditions regarding this particular Property, the literal enforcement of the provisions of the Ordinance would result in unnecessary hardship, and the granting of relief would observe the spirit of the Zoning Ordinance and provide for substantial justice to be done.



32. Under Section 150-218 of the Zoning Ordinance, the Board has considered the following criteria and standards for Zoning Hearing Board action, and determines the following facts:

- (A) The Property is suitable for the use, which use would not be contrary to the spirit, purpose and intent of the Zoning Ordinance, and therefore the Special Exception and Variance granted are consistent with the spirit, purpose and intent of the Zoning Ordinance.
- (B) The relief will not substantially injure or detract from the use of neighboring property, or from the character of the neighborhood, and the neighboring properties will be adequately safeguarded.
- (C) The proposal will serve the best interest of the Township, the convenience of the community, and the public welfare.
- (D) There will not be an adverse impact upon the public services or facilities such as public water, sewers, police and fire protection, or public schools by the proposed use, provided the Applicant complies with the conditions imposed herein.
- (E) The conditions imposed by the Board will require the Applicant to provide for proper disposal of sewage and waste.
- (F) Since the Applicant will be proceeding through a subdivision and land development process, and subject to approval by the Township Engineer, this use will not cause runoff water or drainage problems injurious to adjacent or nearby properties.

- (G) This use will not cause congestion or hazard on any streets in the Township; in fact, requiring traffic to access onto Artmar Road, rather than the extremely busy Trooper Road.
- (H) If relief were completely denied, the application of the provisions of the Zoning Ordinance would deprive the Applicant of the reasonable use and development of such Property, by requiring the demolition of the existing house.
- (I) The circumstances for which the Variance is sought do not result from general conditions in the zoning district in which the Property is located.

33. To deny relief would cause an unnecessary hardship, and, therefore the relief requested should be granted as set forth in this Decision, subject to the conditions imposed.

### III. DISCUSSION

There are two types of Variances, a "dimensional" Variance and a "use" Variance. Differing standards apply to use and dimensional Variances. One who advances a Dimensional Variance seeks to adjust zoning regulations so that the property may be used in a manner consistent with the zoning regulations. In contrast, a Use Variance seeks to use the property in a way that is inconsistent with the zoning regulations. In Hertzberg v. Zoning Bd. of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998), the Supreme Court of Pennsylvania determined that, in evaluating a hardship for a Dimensional Variance, the Zoning Hearing Board should consider various factors, including economics, and the characteristics of the surrounding neighborhood, in determining whether a Variance would be appropriate. The Court also held that, when considering

a Dimensional Variance, a Zoning Hearing Board should adopt a somewhat more relaxed standard of scrutiny than when the Board is considering a Use Variance.

In Marshall v. City of Philadelphia and Zoning Board of Adjustment, 626 Pa. 385, 97 A.3d 323 (2014), the Supreme Court recognized that a property does not have to be valueless in order to obtain a Use Variance. The Court further indicated that economic considerations may be considered in a Use Variance case, if the property can only be brought into conformance at a prohibitive expense. The Supreme Court reiterated in the Hertzberg and Marshall cases, that an Applicant need not prove that the property cannot be used for any other permitted use in order to be entitled to a Variance.

An applicant seeking a Variance must prove that unnecessary hardship will result if the Variance is denied, and must also prove that the proposed use is not contrary to the public interest. Valley View Civic Association v. Zoning Board of Adjustment, 501 Pa. 550, 462 A.2d 637 (1983). “The burden on an applicant seeking a variance is a heavy one, and the reasons for granting the variance must be substantial, serious and compelling.” Singer v. Zoning Board of Adjustment, 29 A.3d 144, 149 (Pa. Cmwlth. 2011). However, economic impact on the Applicant is now an appropriate consideration for variance cases under Hertzberg and Marshall. Furthermore, the PA Supreme Court in Marshall stated as follows:

*...a zoning board's discretion is “not so circumscribed as to require a property owner to reconstruct a building to a conforming use regardless of the financial burden that would be incident thereto. Especially is this true where the change sought is from one nonconforming use to another more desirable nonconforming use that will not adversely affect but better the neighborhood.”* citing O’Neill v. Philadelphia Zoning Board of Adj. 384 Pa. 379, 120 A.2d 901, 904 (1956)

\*\*\*\*

*...we have never required demolition of a legally non-conforming structure to afford the opportunity to bring the property into compliance with the relevant zoning code.*

Marshall, supra @ 330-332

Section 150-76 of the Zoning Ordinance governing area regulations in the R-75 Residential Zoning District provides as follows:

**§ 150-76 Lot area and width regulations.**

**A.**

*Minimum lot area with public sewer and water. Twenty thousand square feet shall be the minimum lot area that shall be provided for every building or use, provided that the lot is served by public water and sewers.*

**B.**

*Minimum lot area with on-site water or on-site sewers. Forty thousand square feet shall be the minimum lot area that shall be provided for every building or use, provided that either on-site water or on-site sewer is proposed.*

**C.**

*Minimum lot width. One hundred feet shall be the minimum lot width provided for every building or use.*

The pertinent portions of Section 150-77 of the Zoning Ordinance governing dimensional regulations in the R-75 Residential Zoning District provide as follows:

**§ 150-77 Yard regulations.**

**A.**

*Front yard. Fifty feet shall be the minimum size of the front yard on each lot. A corner lot shall have one front yard of 50 feet and the second of 35 feet.*

**B.**

*Rear yard.*

**(1)**

*Thirty-five feet shall be the minimum size of the rear yard on each lot.*

*\*\*\*\*(foot note redacted as not relevant)*

**C.**

*Side yards. An aggregate total of 35 feet shall be provided for the two side yards with a minimum of 10 feet for any one side.*

The Applicant in this case is requesting only a Dimensional Variance, not a Use Variance which would have otherwise required the Board to engage in a heightened level of scrutiny. Society Hill Civic Association v. Philadelphia Zoning Board of Adjustment, 42 A.3d 1178 (Pa. Cmwlth. 2012). Rather, as noted in the caselaw above, a relaxed level of scrutiny is required, and the Board is required to grant relief, if the only alternative to the Applicant is to demolish an existing building.

With reference to the application for a Special Exception under Section 150-163, the Applicant complied with the initial duty to present evidence, and presented evidence and testimony sufficient to carry the burden of persuasion that the proposed changes reducing the nonconformities on the Property to comply with more restrictive zoning requirements, are authorized by Special Exception, and that the Applicant's proposal complies with specific criteria and generally applicable requirements of the Ordinance. Unlike Section 150-215 of the Zoning Ordinance governing Conditional Use Applications, the Worcester Township Zoning Ordinance does not specifically place the burden of proof on the Applicant in Special Exceptions cases to show that the use will have no detrimental effect on the health, safety and welfare of the community.

As a result, objectors have the duty to present evidence, as well as carry the burden of persuasion that, to a high degree of probability, the proposed use will substantially affect, and will, in fact, be contrary health, safety and welfare of the community, which evidence the Objector in this case simply did not present. Even if it could be argued that the Zoning Ordinance impliedly requires the Applicant to carry the burden of persuasion to demonstrate that the proposed use will not be contrary to the health, safety and welfare of the community, such shifting of the burden of proof only occurs if the objectors had met their initial duty to present evidence that the proposed

use would be contrary to the health, safety and welfare of the community, which again, did not occur in this case. Bray v Zoning Hearing Board of Adjustment, 410 A.2d 909 (Pa. Cmwlth. 1980).

The Objector presented no expert opinion testimony or evidence, and, in fact, other than a statement on the record voicing opposition, the Objector presented no evidence, and no testimony, whatsoever in the case. The Objector presented only comment in opposition to the Application, making only the point that the relief, if granted, would allow development of the adjoining property of the Legal Owner, without addressing the fact that the subdivision of the adjacent property is permitted by right. What often occurs in cases such as this, is that the objectors offer only speculation and conjecture regarding the adverse effect that this particular use will have on their respective properties, and the health, safety and welfare of the community, but, in this case, not even that testimony was offered. The Objector presented no credible evidence or testimony to carry the burden of persuasion that the use will be contrary to the health, safety and welfare of the community, and, in fact, the Applicant rather introduced sufficient evidence to carry the burden of persuasion that the use will not be contrary to the health, safety and welfare of the community.

In a Special Exception case, Section 150-217.B directs the Board to determine if the proposed use will be in harmony with the general intent of the Zoning Ordinance, but also accords to the Zoning Hearing Board the ability to impose reasonable conditions and safeguards. The Board determined that the Applicant presented sufficient evidence to conclude that the Applicant's proposal complies with the specific and general criteria of the Ordinance, and that the proposed use will not be contrary to the health, safety and welfare of the community, and therefore, the requested Special Exception should be granted.

A Zoning Hearing Board is the sole determiner of the credibility of witnesses. Taliaferro v. Darby Township Zoning Hearing Board, 873 A.2d 807 (Pa. Cmwlth. 2005), Tri-County

Landfill, Inc. v. Pike Township Zoning Hearing Board, 83 A.3d 488 (Pa. Cmwlth. 2014). The Zoning Hearing Board has discretionary power to determine whether a party has met its burden of proof. Broussard v. Zoning Board of Adjustment, 831 A.2d 764 (Pa. Cmwlth. 2003), affirmed on appeal @ 589 Pa. 71, 907 A.2d 494 (2006), Cohen v. Zoning Board of Adjustment of the City of Philadelphia, 276 A.2d 352 (Pa. Cmwlth. 1971) The Board determines that the Applicant met its burden of proof to the extent determined by the Board, and such determination is surely within the discretion of the Board.

#### **IV. CONCLUSIONS OF LAW**

1. The Zoning Hearing Board has jurisdiction over the subject matter of the application.
2. The Applicant is the equitable owner of the Property, joined in the Application by the Legal Owner.
3. The Applicant and the subject matter are properly before the Board. The Applicant has standing to submit the Application. The Objector has standing to oppose the Application
4. Hearing notices were duly published and posted in accordance with law, by advertisement in the newspaper and posting on the Property.
5. The law surely permits, if not requires, the Board to grant the minor Dimensional Variance and Special Exception requested, as to avoid the needless demolition of the existing house on the Property.
6. Either theory of relief, the minor Dimensional Variance from the front yard setback or the Special Exception to change the nonconformity on the Property, would permit the Applicant

to achieve its goal; the fact that the Applicant qualifies for the relief on both grounds requires the Board to grant the Application.

7. With reference to the application for a Special Exception under Section 150-163, the Applicant complied with the initial duty to present evidence, and presented evidence and testimony sufficient to carry the burden of persuasion that the proposed changes reducing the nonconformities on the Property to comply with more restrictive zoning requirements, are authorized by Special Exception, and that the Applicant's proposal complies with specific criteria and generally applicable requirements of the Ordinance.

8. Unlike Section 150-215 of the Zoning Ordinance governing Conditional Use Applications, the Worcester Township Zoning Ordinance does not specifically place the burden of proof on the Applicant in Special Exception cases to show that the use will have no detrimental effect on the health, safety and welfare of the community.

9. As a result, in a Special Exception case, the Objector would have the duty to present evidence, as well as carry the burden of persuasion that, to a high degree of probability, the proposed use will substantially adversely affect, and in fact be contrary to, the health, safety and welfare of the community, which evidence the Objector did not present.

10. Even if it could be argued that the Zoning Ordinance impliedly requires the Applicant to carry the burden of persuasion to demonstrate that the proposed use will not be contrary to the health, safety and welfare of the community, such shifting of the burden of proof only occurs in a Special Exception case if the Objector had met his initial duty to present evidence that the proposed use would be contrary to the health, safety and welfare of the community, which again, did not occur in this case.



11. The Objector presented no expert opinion testimony or evidence, and, in fact, other than a very brief statement of opposition on the record, the Objector presented no evidence, and no other testimony, whatsoever in the case.

12. The Objector presented only comment in opposition to the Application, making only the point that the relief, if granted, would allow development of the adjoining property of the Legal Owner, without addressing the fact that the subdivision of the adjacent property is permitted by right.

13. The Objector was granted the opportunity to present credible evidence or testimony to carry the burden of persuasion that the use will be contrary to the health, safety and welfare of the community, but that did not happen, and, in fact, the Applicant rather introduced sufficient evidence to carry the burden of persuasion that the use will not be contrary to the health, safety and welfare of the community in order to be entitled to the Special Exception.

14. In a Special Exception case, Zoning Ordinance Section 150-217.B requires the Zoning Hearing Board to determine if the proposed use is in harmony with the general intent of the Zoning Ordinance, but also accords to the Board the ability to impose reasonable conditions and safeguards.

15. With reference to the request for the Special Exception, the Board determines that the Applicant presented sufficient evidence to conclude that the Applicant's proposal complies with the specific and general criteria of the Ordinance, and that the proposed use will not be contrary to the health, safety and welfare of the community, and therefore, the requested Special Exception should be granted.

16. With reference to the one (1) minor Dimensional Variance requested, upon consideration of Section 910.2 of the Pennsylvania Municipalities Planning Code, and Section 150-219 of the Worcester Township Zoning Ordinance, the Board determines the following as a matter of law:

- (A) The unique nonconforming lot size, the existing nonconforming location of the house on the Property, and the fact that demolition of the existing house would otherwise be required, create an unnecessary hardship only with respect to this lot, which justifies granting the Variance requested on the basis of hardship.
- (B) The authorization of the minor front yard setback Variance is necessary to enable the reasonable use of the Property.
- (C) Since there is no other viable access option with respect to the proposed subdivision, the Applicant has not created its own hardship.
- (D) The granting of the Variance will not alter the essential character of the neighborhood, nor would the relief granted substantially impair the use or development of adjacent property, or be detrimental to public welfare.
- (E) The Variance requested is the minimum Variance to afford relief under the circumstances; in fact the Applicant has no other option for access to the basically landlocked land proposed for subdivision.

17. Under Section 150-217.C of the Zoning Ordinance, the Board determines, as a matter of law, that granting the minor setback Variance would not be contrary to the public interest, and owing to the special conditions regarding this particular Property, the literal enforcement of

the provisions of the Ordinance would result in unnecessary hardship, and the granting of relief would observe the spirit of the Zoning Ordinance and provide for substantial justice to be done.

18. Under Section 150-218 of the Zoning Ordinance, the Board has considered the following criteria and standards for Zoning Hearing Board action, and determines the following as a matter of law:

- (A) The Property is suitable for the use, which use would not be contrary to the spirit, purpose and intent of the Zoning Ordinance, and therefore the Special Exception and Variance granted are consistent with the spirit, purpose and intent of the Zoning Ordinance.
- (B) The relief will not substantially injure or detract from the use of neighboring property, or from the character of the neighborhood, and the neighboring properties will be adequately safeguarded.
- (C) The proposal will serve the best interest of the Township, the convenience of the community, and the public welfare.
- (D) There will not be an adverse impact upon the public services or facilities such as public water, sewers, police and fire protection, or public schools by the proposed use, provided the Applicant complies with the conditions imposed herein.
- (E) The conditions imposed by the Board will require the Applicant to provide for proper disposal of sewage and waste.

- (F) Since the Applicant will be proceeding through a subdivision and land development process, and subject to approval by the Township Engineer, this use will not cause runoff water or drainage problems injurious to adjacent or nearby properties.
- (G) This use will not cause congestion or hazard on any streets in the Township; in fact, requiring traffic to access onto Artmar Road, rather than the extremely busy Trooper Road.
- (H) If relief were completely denied, the application of the provisions of the Zoning Ordinance would deprive the Applicant of the reasonable use and development of such Property, by requiring the demolition of the existing house.
- (I) The circumstances for which the Variance is sought do not result from general conditions in the zoning district in which the Property is located.

19. To deny relief would cause an unnecessary hardship, and, therefore the relief requested should be granted as set forth in this Decision, subject to the conditions imposed.

#### **V. OPINION**

Upon consideration of the evidence and testimony presented regarding the Application, the Zoning Hearing Board of Worcester Township determines that the Application should be granted, subject to conditions. The Board therefore enters the following Order.

**BEFORE THE ZONING HEARING BOARD OF WORCESTER TOWNSHIP  
MONTGOMERY COUNTY, PENNSYLVANIA**

**IN RE: APPLICATION OF  
MIKELEN, LLC**

**NO. 2022-04**

**ORDER**

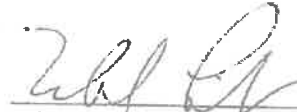
Upon consideration of the above Findings of Fact and Conclusions of Law, the following relief is **GRANTED**:

- (1) A Variance from Section 150-77.A of the Zoning Ordinance, so as to permit a front yard setback of 16 feet along the newly created access road.
- (2) A Special Exception under Section 150-163 for a change in the nonconforming conditions on the Property.

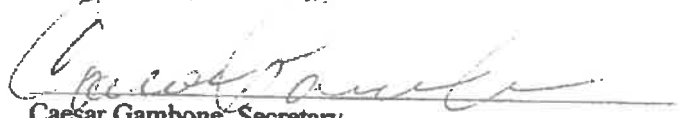
Subject to the following conditions:

1. The relief granted is conditioned upon the Applicant obtaining subdivision and land development approval as anticipated by the plans submitted, and shall install the access road as shown on Exhibits A-2, A-3 and A-4.
2. The Property shall be connected to public water and sewer.
3. The Applicant shall apply for and obtain all applicable Township, County and State permits and approvals relative to the construction and use in a timely manner.
4. All use and development permitted by this Decision shall conform to the exhibits and testimony presented by the Applicant, unless inconsistent with any specific conditions imposed by this Board, in which case these specific conditions shall take precedence.
5. Except as permitted by prior Decisions of this Board, the use of the subject property shall otherwise comply with the Worcester Township Code, including, but not limited to, all storm water management, fencing, setback, parking, lighting, sign and noise regulations, and all other codes, regulations and ordinances of Worcester Township.
6. Pursuant to Section 150-225 of the Worcester Township Zoning Ordinance, a special exception or variance shall expire if the Applicant fails to obtain a permit in connection therewith within one (1) year of the date of authorization thereof. When land development/subdivision approval is required, the special exception or variance shall expire if the Applicant fails to make a diligent effort to obtain such approval within six (6) months following the date of the Zoning Hearing Board's Order. Upon receipt of land development/subdivision approval, the special exception or variance shall expire if a building permit is not obtained within six (6) months of the date of the land development/subdivision approval. The expiration date for obtaining the building permit as set forth herein may be extended by the Township for two (2) successive six (6) month periods, if, in the opinion of the Zoning Officer, the applicant is diligently pursuing the building permit.

WORCESTER TOWNSHIP ZONING HEARING BOARD

  
Michael Libor, Chair

  
John D'Lauro, Vice Chair

  
Caesar Gambone, Secretary

(Alternate)  
Bradford Smith

Order Entered: 5/24/22

Circulation Date: 5/25/22

This Decision and Order of the Board is final and any appeal of it must be filed with the Court of Common Pleas of Montgomery County within thirty (30) days following the Circulation Date set forth above. The Board reserves the right to supplement these Findings of Fact and Conclusions of Law in support of this Decision if an appeal is filed.