

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

Docket No. 21-08

Applicants: Tyler Olson
479 Stockham Avenue
Morrisville, PA 19067

Owner: Joseph J. Solana, Jr.
2171 Warwick Road
Warrington, PA 18976

Subject Property: Tax Parcel No. 51-003-079 which is located at 1700 Almshouse Road,
Jamison, PA 18929

Requested Relief: The Applicant proposed to operate a G5 Service Business on the Subject
Property. In order to do so, Applicant is seeking a variance from §195-
16.G(5)(d) of the Warwick Township Zoning Ordinance (“Ordinance”) to
allow 9 parking spaces where 15 spaces are requires.

Hearing History: The Application was filed in Warwick Township on September 2, 2021.
The hearing was held on October 5, 2021 at the Warwick Township
Administration Building.

Appearances: J. Todd Savarese, Esquire
80 N. Second Street Pike
Churchville, PA 18966

Parties: Brian Wallace
12 E. Butler Pike
Chalfont, PA 18914

Mailing Date: November 16, 2021

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 obtained permission in the form of a letter dated August 30, 2021 from the Owner of the Subject Property, which is included in Exhibit B-1, and is therefore possessed of the requisite standing to make application to this Board.

3. The following exhibits were marked and admitted during the October 5, 2021 hearing:

Board Exhibits:

B-1 Application with attachments received by Warwick Township on September 2, 2021

B-2 Proof of Publication from the Intelligencer for advertising notice on September 20, 2021 and September 27, 2021. Public Notice advertising hearing scheduled for October 5, 2021 at 7:00 pm and confirmation from the Intelligencer

B-3 Letter dated September 9, 2021 to Todd Savarese, Esquire and Tyler Olson from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated September 20, 2021 sent by Kristen Beach, Warwick Township Deputy Zoning Officer and copy of list of property owners

B-5 Property Posting Certification by Kristen Beach, Deputy Zoning Officer dated September 20, 2021

B-6 Letter from Mary Eberle, Esquire dated September 29, 2021

Applicant Exhibits:

A-1 Land Development Plan dated 2/26/2019, last revised 9/17/2020

A-1(b) Floor Plan excerpt from A-1 above

A-1(c) Wayne Kiefer, P.E. email dated 9/29/2021

A-2 Daily Appointment Book (Bates No. 0001 to 0092)

4. The Subject Property is located in the C1 Local Commercial Zoning District. The Subject Property consists of 39,204 square feet and contains an office building and nine parking spaces.

5. Mr. Savarese provided the following summary of the Application:

The Subject Property is owned by Mr. Joseph Solana and is just shy of one acre. There was a prior zoning hearing board proceeding that resulted in a Stipulation and Agreement that was approved by the Bucks County Court of Common Pleas. The prior case involved an appeal by Mr. Solana to change the use from a F1 medical office use to a F3 office use, to allow 9 parking spaces where 10 were required, to allow 5 parking spaces in the required buffer yard and to allow disturbance of steep slopes.

Mr. Olson now proposes to use the Subject Property for a G5 Service Business and specifically a tattoo parlor. The G5 Service Business use incorporates a number of uses that include a retail component. Mr. Olson will not have a retail business and therefore his use is more similar to a F3 office use. Mr. Olson will testify that he typically schedules 2 appointments per day. He intends to hire 3 other artists who will maintain a similar number of appointments and a receptionist. Based on the square footage of the building and the number of employees, the Zoning Ordinance would require 15 parking spaces. Based on the number of artists and customers, the actual parking usage will be 9 parking spaces.

There was some confusion surrounding the number of parking spaces that are required based on the square footage of the building. A certificate of occupancy was applied for that listed the square footage of the building as 1,500 which would have required 7 parking spaces plus one for each employee. However, Mr. Wayne Kiefer, P.E. the engineer that prepared the plans from Mr. Solana, indicated the actual square footage is 1,919 square feet which would require 10 parking spaces plus one for each employee for a total of 15 parking spaces. Mr. Kiefer's parking calculation is contained in Exhibit A-1(c).

6. Mr. Savarese then presented the testimony of Applicant Tyler Olson. Mr. Olson's testimony can be summarized as follows:

Mr. Olson confirmed that Mr. Savarese's summary was accurate. Mr. Olson has been tattooing for 11 years. He has been at his current shop for 8 years and would now like to open his own shop. As is customary in the industry, Mr. Olson served as an apprentice under another artist prior to working on his own. He submitted a copy of his appointment book from January 2021 through December 2021 which was marked as Exhibit A-2. His clients typically request large tattoos which require several hours of work and often are completed over multiple appointments. As a result, he typically only schedules two appointments per day. Based on this model, only the 9 parking spaces that exist would be needed but one of the spaces is a handicapped parking space.

There is typically no overlap of clients. In addition, after the first appointment, time is built in for Mr. Olson to have a lunch break and to properly sanitize his equipment before the next appointment arrives. Walk ins may occur but the individual will be given an appointment

for a future time. A receptionist is necessary to handle any walk ins and to answer the phones. The business will be open Tuesday through Saturday from 11 am to 7 pm. Mr. Olson will be present at all times when the shop is open. Mr. Olson agrees to the conditions contained in the letter from Mary Eberle, Esquire, Exhibit B-6.

The building does contain a garage but it currently has French doors instead of a garage door. The Subject Property contains numerous trees and steep slopes and there is no area available for additional parking.

7. Mr. Kyle Sigafos of 1804 Heritage Drive spoke regarding the Application. He recalled that when the Subject Property was operated as a chiropractic office cars would park on the shoulder of Almshouse Road which created a safety hazard. Mr. Sigafos acknowledged that if the business is operated as Mr. Olson testified then parking should not be an issue.

8. Warwick Township took no position with regard to the application but requested that the Zoning Hearing Board consider imposing the following conditions if relief were granted:

a. The Applicant shall comply with all requirements of the Zoning Ordinance regarding signage on the property; and

b. The Applicant shall not use electronic message centers, neon, flashing, video, automated, electronic, video, graphic, changing, scrolling text or pictures as signage or part of the signage on the property.

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. A Board is not required to grant a dimensional or use variance just to avoid financial hardship or to permit a property owner to use his property exactly as he wishes. *Id.* (Citations and internal quotations omitted.)

4. The hardship must relate to the property and not the person. *Id.*

5. The use of the Subject Property as a G5 service business is a permitted use in the C1 Local Commercial Zoning District.

6. The Board finds that the Subject Property is subject to physical conditions that burden the Subject Property including trees and steep slopes.

7. The credible evidence presented by the Applicant, supports that the variance is necessary for the reasonable use of the Subject Property.

8. The competent evidence presented by the Applicant, and unrebutted leads the Board to conclude that, should the requested variance be granted, there will be no negative impacts upon surrounding properties or uses.

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, subject to the conditions set forth below, 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 dimensional relief requested.

12. Accordingly, the Warwick Township Zoning Hearing Board determined, unanimously, to grant the Applicant's request for relief.

ORDER

Upon consideration and after the hearing, the Zoning Hearing Board of Warwick Township hereby GRANTS a variance from §195-16.G(5)(d) of the Warwick Township Zoning Ordinance in order to allow nine parking spaces where fifteen spaces would be required subject to the following conditions:

1. Applicant shall convert the garage into a usable parking space;
2. The Applicant shall comply with all requirements of the Zoning Ordinance regarding signage on the property; and
3. The Applicant shall not use electronic message centers, neon, flashing, video, automated, electronic, video, graphic, changing, scrolling text or pictures as signage or part of the signage on the property.

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: 
Kevin Wolf, Chairman


David Mullen

/s/Lorraine Sciuto-Ballasy
Lorraine Sciuto-Ballasy

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.