

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

Docket No. 23-04

Applicants: Brad Bernhard
1196 Hart Lane
Warminster, PA 18974

Owner: Same.

Subject Property: Tax Parcel No. 51-007-009 for property known as 1196 Hart Lane

Requested Relief: The Applicant is seeking the following variance from the Warwick Township Zoning Ordinance (“Ordinance”): §195-16B(12)(I) of the Zoning Ordinance to permit a detached garage on the Subject Property which is higher than the twenty feet permitted.

Hearing History: The Application was filed in Warwick Township on March 3, 2023. The hearing was originally scheduled for April 4, 2023 but was continued, at the request of the Applicant until May 2, 2023 at the Warwick Township Administration Building.

Appearances: Andrew Stoll, Esquire
Fox Rothschild, LLP
2700 Kelly Road, Suite 300
Warrington, PA 18976

Parties: None.

Mailing Date: June 6, 2023

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 May 2, 2023 hearing:

Board Exhibits:

B-1 Application with attachments received by Warwick Township on March 3, 2023

B-2 Proof of Publication from the Intelligencer for advertising notice on March 21, 2023 and March 28, 2023. Public Notice advertising hearing scheduled for April 4, 2023 at 7:00 pm and confirmation from the Intelligencer

B-3 Letter dated March 14, 2023 to Brad Bernhard from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated March 17, 2023 sent by Kristen Beach, Warwick Township Zoning Officer and copy of list of property owners

B-5 Property Posting Certification by Kristen Beach, Zoning Officer dated March 17, 2023

B-6 Email dated March 6, 2023 to Vicki L. Kushto, Esquire from ASL Interpretator, Nichole Wade, indicating she is available for the hearing

B-7 Proof of Publication from the Intelligencer for advertising notice on April 16, 2023 and April 23, 2023. Public notice advertising hearing scheduled for May 2, 2023 at 7:00 pm and confirmation from the Intelligencer.

B-8 Letter dated April 10, 2023 to Brad Bernhard from Vicki L. Kushto, Esquire advising of hearing date.

B-9 Resident mailing certification dated April 14, 2023 sent by Kristen Beach, Warwick Township Zoning Officer and a copy of list of property owners

B-10 Property Posting Certification by Kristen Beach, Zoning Officer dated April 14, 2023

Applicant Exhibits:

- A-1 Zoning Hearing Board Application
 - A-2 Deed to the Property
 - A-3 March 8, 2021, Zoning Permit Application
 - A-4 March 8, 2021 Building Permit Application
 - A-5 Site Plans for Building Permit Application
 - A-6 Building Specifications for Garage
 - A-7 Correspondence, dated March 30, 2019 from Greenway Environmental Consultants, LLC concerning results of infiltration testing at Property
 - A-8 Correspondence from Warwick Township, dated April 12, 2021, regarding denial of request for Building Permit
 - A-9 1st Review Letter from CKS Engineers dated April 12, 2021
 - A-10 2nd Review Letter from CKS Engineers dated April 27, 2021
 - A-11 "Unilateral Declaration of Covenants, Conditions and Restrictions" for Stormwater Management Facilities at Property dated May 11, 2021, recorded June 3, 2021, with cover letter from Township Solicitor dated June 3, 2021
 - A-12 Letter from Bucks Count Conservation District dated May 20, 2021, confirming adequacy of erosion and sediment control at Property
 - A-13 Permits issued for garage and other improvements
 - A-14 Photos of Property, including detached garage
 - A-15 Letters of support from neighbors
4. The Subject Property is located in the RR Restricted Residential Zoning District. The Subject Property consists of approximately 0.6 acres and contains a single family detached dwelling.
5. On behalf of the Applicant, Mr. Stoll summarized the testimony of Brad Bernhard as follows:

Applicant proposed improvements to his Property in early 2021. Specifically, Applicant desired to improve the Property with a two story garage and a driveway extension to the new garage. All of the improvements have been constructed including the following stormwater improvements: a seepage bed, infiltration trench, deep level spreader and three trees.

Exhibit A-3, which is the March 8, 2021 Zoning Permit Application. On the first page, the height of the garage is listed as 10 feet but the written description of the project indicates that it is 24'-6" by 38'. Exhibit A-4 the March 8, 2021 Building Permit Application contains the same information. Applicant also submitted plans with these applications that were marked as Exhibit A-5. The plans show a height for the garage of approximately 24 feet. Mr. Bernhard believed that the height was measured from the floor to the ceiling. Exhibit A-6 the Building Specifications for the garage show the height at 24 feet 10 1/8 inches. The discrepancy in the height was not picked up by the Township and Mr. Bernhard believed that the permits were issued approving the garage including the height.

Exhibit A-7 is a letter confirming the infiltrations testing that was done at the Property. Exhibit A-8 is a denial letter from the Township for the Zoning and Building Permit Applications and referring to the CKS review letter dated April 12, 2021, which is Exhibit A-9. Changes were made to the Application and the plans to address these comments. CKS issued a second review letter dated April 27, 2012 which is Exhibit A-10. The Township required that the Applicant agree to maintain the stormwater improvements through a Unilateral Declaration of Covenants, Conditions and Restrictions which is Exhibit A-11.

The Bucks County Conservation District approved the proposed erosion and sediment pollution control measures by letter dated May 20, 2021 and marked as Exhibit A-12. Exhibit A-13 are the Zoning, Building and Grading Permits that were issued for the garage. The Zoning and Building Permits both indicate that the garage will be 10 feet high.

The garage was constructed in accordance with the plans that were submitted. Exhibit A-14 contains photos of the garage as constructed. Mr. Bernhard refinanced his home to pay for the garage which is an investment of approximately \$100,000. The code inspector realized that the garage exceeded the permitted height when he was in the neighborhood for another inspection. The garage will be utilized for cars and storage and not for a commercial business. Exhibit A-15 contains letters of support from 4 neighbors.

Mr. Bernhard confirmed that his testimony would have been consistent with this summary.

6. The Board of Supervisors took no position with regard to this Application.
7. John Martin who resides at 1489 Graeme Way. He knows Mr. Bernhard and is a contractor himself. He believes that Mr. Bernhard performed all of this work and should be entitled to the relief that is requested. It was a mistake that the Township did not catch.
8. Susan Rottschaefter resides at 1195 Hart Lane which is directly across the street from Mr. Bernhard. She is trying to understand how something like this got missed by the

Township. Mr. Bernhard did a good job of putting together all of the information and submitting it to the Township. She does not have a problem with the garage but is worried about making exceptions to the requirements. She is concerned this will open the door for people to do this on purpose. She would like both sides to pay better attention in these situations so there is a level playing field for everyone.

9. Jared Benbow resides as 1530 Graeme Way. He is in favor of the garage. He believes it is a good structure and is the nicest looking property in the neighborhood.

10. Joe Meehan resides at 1207 Bristol Road which is behind Mr. Bernhard. He believes that Mr. Bernhard did a good job with the garage and it will only be used for residential purposes. He has no objection to it. He also questioned why it was not caught.

11. Judy Carfrey lives next door at 1204 Hart Lane. She described the construction as having been a nightmare. It has affected her health. When it was being constructed there were 2 crews working 12 hour shifts. She wants to know where the Township was when this was going on. The top of the garage went up very fast. She believes the garage makes the neighborhood look industrial. The size of the garage is almost like another home and it was built almost on top of her property. She can hear everything from Mr. Bernhard's property in her home. She is afraid this will set precedence for the future. She urged members not to vote until they had seen what it looked like.

12. No other members of the public provided public comment.

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.Cmwlt.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.Cmwlt. 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.Cmwlt.2001).

7. The use of the Subject Property as a B-1 single family detached dwelling is a permitted use in the RR Restricted Residential Zoning District. In addition, a B-12 Accessory Structure is permitted in the RR Restricted Residential Zoning District.

8. The detached garage on the Subject Property conforms to all requirements of the Zoning Ordinance except for height.

9. The competent evidence presented by the Applicant and un rebutted leads, the Board to conclude that a mistake occurred during the Township’s review of the building and zoning permit applications. Although the applications indicate in one place that the height of the detached garage would be 10 feet the plans attached thereto show a greater height of approximately 24 feet 10 and 1/8 inches.

10. As construction of the garage has been completed, the Board concludes that the evidence presented establishes that the relief sought by the Applicant is the minimum variance necessary.

11. The Board concludes, if the conditions are complied with, that the granting of the variances will not alter the essential character of the neighborhood or district in which the Subject Property is located.

12. The Board concludes that the Applicant has presented evidence of sufficient factors to warrant the grant of the relief requested.

13. 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 the following variance from the Warwick Township Zoning Ordinance: §195-16B(12)(1) of the Zoning Ordinance to allow the detached garage on the Subject Property to remain at a height of 24 feet 10 and 1/8 inches which is greater than twenty feet (20) permitted by Ordinance subject to the following condition: the detached garage cannot be utilized for commercial uses or as a dwelling unit.

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 J. Wolf
Kevin Wolf, Chairman

Lorraine Sciuto-Ballasy
Lorraine Sciuto-Ballasy

Dave Mullen
Dave Mullen

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.