

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

Docket No. 24-20

Applicants: Schenk Brothers and Sons
280 Rockledge Avenue
Huntingdon Valley, PA 19006

Owner: Same.

Subject Property: Tax Parcel No. 51-013-065 for property known as 138 Railroad Drive

Requested Relief: The Applicant is appealing the decision of the Zoning Officer dated October 16, 2024 denying a use and occupancy permit for the Subject Property to allow an H7 Craft use for an upholstery business and in the alternative is seeking a de minimis use variance from the Warwick Township Zoning Ordinance (“Ordinance”) §195-16.H(16) to allow an H7 Crafts use as part of A H16 Flex Space use. In addition, applicant substantively challenges the following Sections of the Ordinance: Section 195-16.H(16) as being void for vagueness, not authorized by the Municipalities Planning Code and irrational; and section 195-35 as being not authorized by the Municipalities Planning Code.

Hearing History: An Application was filed in Warwick Township on November 14, 2024. The hearing was held on January 7, 2025 at the Warwick Township Administration Building.

Appearances: Joseph Bagley, Esquire
890 Wooded Pond Road
Ambler, PA 19002

Parties: None.

Mailing Date: February 5, 2025

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 January 7, 2025 hearing:

Board Exhibits:

B-1 Application with attachments received by Warwick Township on November 14, 2024

B-2 Proof of Publication from the Intelligencer for advertising notice on December 22, 2024 and December 29, 2024. Public Notice advertising hearing scheduled for January 7, 2025 at 7:00 pm and confirmation from the Intelligencer

B-3 Letter dated December 16, 2024 to Applicants from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated December 19, 2024 sent by Tom Jones, Warwick Township Zoning Officer and copy of list of property owners

B-5 Property Posting Certification by Tom Jones, Zoning Officer dated December 19, 2024

B-6 Letter dated December 19, 2024 from Township Solicitor, Mary Eberle, Esquire¹

Applicant Exhibits:

A-1 Photo of the front of the Subject Property

A-2 Photo of the back of the Subject Property

A-3 Certificate of Occupancy – Rental for Kevin Ryder, Inc., 136 Railroad Drive printed on 2/24/2016

A-4 Front and back of check made payable to the Township for \$900.00

¹ Exhibit B-6 was admitted over the objection of Applicant's attorney, Joseph Bagley, Esquire.

A-5 Page from the Township Fee Schedule regarding Zoning Hearing Board Applications

4. At the beginning of the hearing, Applicant's attorney agreed to present Applicant's case without the need for the Zoning Officer to testify first regarding the denial of the Use and Occupancy Permit.

5. The Subject Property is located in the LI Limited Industrial Zoning District. The Subject Property consists of approximately 0.35 acres, is within the Northampton Industrial Park and is currently being utilized as a H16 Flex Space.

6. Section 195-16.H(7) states as follows:

H7 Crafts. Upholstery, cabinetmaking, furniture making, locksmith, gunsmith, and similar crafts.

7. Section 195-16.H(16) states as follows:

H 16 Flex Space

(a) Building space designated for use as either office, light manufacturing, assembly, warehousing, repair shop or indoor athletic club. Each flex space area shall have no less than 5% of the area devoted to an office use. No outside storage nor retail sales are permitted.

8. Section 195-135 Fees and escrow deposits states as follows:

All applicants for zoning permits, special exceptions, conditional uses and interpretations or variance appeals shall, at the time of making application, pay to the Zoning Officer for use of the municipality a fee in accordance with the Fee Schedule adopted by resolution of the governing body upon the enactment of this chapter or such schedule as may be amended by resolution of the governing body. In addition, an escrow deposit may be required. The escrow deposit requirements shall be set from time to time by resolution of the Board of Supervisors.

9. Mr. Bagley summarized the testimony of Erich Alvarez as follows:

Mr. Alvarez has been doing upholstery work for 8 years. About half of his business is doing upholstery for classic cars and about half is for custom cars. He currently has a location that he works at in Flourtown that is approximately 1,650 square feet. The Subject Property has a space that is approximately 5,000 square feet. The cars to be worked on are either dropped off by the owner or are brought in on a trailer. Cars typically stay at the location for as little as one day and as long as 1 month.

Mr. Alvarez only does upholstery work. He does not perform any other repairs on the cars. His tools include an industrial sewing machine that is approximately the same size as a

typical sewing machine. There will be no fumes, noise or glare from the use. Mr. Alvarez has no other employees and his typical hours of operation are 9 a.m. to 5 p.m. The only deliveries that he receives are from UPS and FedEx. There will be no deliveries by tractor trailers. Leather and headliners are the only materials that he uses.

Mr. Alvarez does not plan to make any alterations to the space. Mr. Alvarez identified Exhibit A-1 as a photo of the front of the building. His pickup truck is in the picture in front of the garage door. Mr. Alvarez identified Exhibit A-2 as a photo of the rear loading dock at the Subject Property. The car trailer in the picture belongs to him.

Mr. Alvarez typically gets referrals from other businesses within the Industrial Park. This cuts down on the traffic within the Industrial Park. There could be as many as 5 cars stored within the Subject Property at any one time. There will be no cars stored outside. The only parking needed is for Mr. Alvarez's personal pickup truck.

Mr. Alvarez verified the truth and accuracy of the summary provided by Mr. Bagley.

10. Mr. Bagley provided the testimony of David Schenk which can be summarized as follows:

Mr. Schenk is the general partner of Schenk Brothers and Sons, the owner of the Subject Property. The Northampton Industrial Park was constructed in the 1980s. The total Industrial Park is approximately 150-170 acres. There are 4 buildings which contain Flex Space. Schenk Brothers and Sons owns 4 buildings which contain 30 units that have either 4,000 or 5,000 square feet. There will be no changes to the footprint of this unit for Mr. Alvarez's business.

Mr. Schenk confirmed that Exhibits A-1 and A-2 are the front and back of the building, respectively. No changes have been made to the building since it was initially constructed. When the Industrial Park first opened, typical uses included machine shops and tool and dye shops. In the 2000s, the uses switched to contractors, warehouses and different types of car repair businesses.

Both entrances to the Industrial Park are in Northampton Township. In this area, there are 4 Industrial Parks in a row. In a Flex Space, the Ordinance allows light manufacturing, warehousing, repair shops and indoor athletic clubs. There are currently no light manufacturing or assembly uses in the Industrial Park. There are some repair shops and athletic facilities. Athletic type uses bring more traffic and he tries to space them throughout the Industrial Park so there are no parking issues.

Mr. Schenk identified Exhibit A-3 as an Occupancy Permit for 136 Railroad Drive from 2016. The Occupancy Permit specifically states that all trucks and equipment must be stored inside. This is consistent with the units being constructed with garage doors. There is a good deal of indoor parking throughout the Industrial Park.

In the units owned by Schenk Brothers and Sons, there are contractors, service facilities, warehousing, auto repair and a construction contractor. It is Mr. Schenk's opinion that this

proposed use will have the least impact. There will be no problem with parking, no loud machinery and no impact to neighbors. All of the units have automatic fire and smoke alarms that are monitored.

The parking for the unit is adequate for the proposed use. There is an athletic facility across the street from this unit and sometimes people will park in the street in front of the athletic facility in order to get in and out quicker.

In filing his Application, Mr. Schenk was charged an escrow fee. Exhibit A-4 is a copy of the check to pay for the escrow fee, which was paid under protest. Exhibit A-4 is a section from the Township's Fee Schedule.

Mr. Schenk is proposing the following two conditions, if the Board grants a variance: no automotive mechanical repair except automobile and motor vehicle upholstery as testified to at the hearing; no outside storage of motor vehicles, equipment or materials.

11. Mr. Bagley presented legal argument regarding a de minimis use variance. This case will be low impact and will only have 1 employee. In addition, the H7 Craft use is allowed in a Limited Industrial District just not in the H16 Flex Space use within the Limited Industrial District.

Mr. Bagley also argued that Section 195-16.H(16) is vague and contains no criteria for how space within a Flex Space is designated.

Mr. Bagley also presented a Memorandum of Law with regard to the substantive challenge to Section 195-135.

12. No individuals requested or were granted party status.

13. The Board of Supervisors took the following positions with regard to this Application: the Board remained neutral on the variance request; and is opposed to the appeal of the Zoning Officer's Determination, the validity challenge to Section 195-16.H(16).

14. No 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. The Pennsylvania Commonwealth Court recently recognized a de minimis use variance in the case of *Soland v. Zoning Hearing Board of East Bradford Township*, 311 A.3d 1208 (Pa. Cmwlth. 2024). The Court specifically stated:

Contrary to the trial court, we hold that a use variance can be de minimis. Zoning hearing boards have discretion to grant or deny a de minimis variance where the variation requested is ‘minor and rigid compliance with the zoning ordinance is not necessary to protect public policy concerns.’ (Citation omitted). De minimis variance relief depends upon the circumstances in each case. (Citation omitted).

...

Thus, the variance requested is more technical than substantial. Indeed, in finding the variance to be essentially de minimis, the ZHB found that the proposed use fell within the intent of the Ordinance even though it was technically barred.

...

Application of the de minimis doctrine to use variance requests would, and should, be rare and limited to extraordinary situations like the one are bar.

5. With regard to substantive validity challenges, the MPC in Section 916.1 states:

In reaching its decision, the zoning hearing board shall consider the amendments, plans and explanatory material submitted by the landowner and shall also consider:

- (i) the impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities;
- (ii) if the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise lawfully exclude by the challenged provisions of the ordinance or map;
- (iii) the suitability of the site for the intensity of use proposed by the site’s soils, slopes, woodlands, wetlands, flood plains, aquifers, natural resources and other natural features;
- (iv) the impact of the proposed use on the site’s soils, slopes, woodlands, wetlands, flood plains, natural resources and natural features, the degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts; and
- (v) the impact of the proposal on the preservation of agriculture and other land uses which are essential to the public health and welfare.

6. With regard to application fees, Section 10908 of the MPC provides:

The governing body may prescribe reasonable fees with respect to hearings before the zoning hearing board. Fees for said hearings may include compensation for the secretary and members of the zoning hearing board, notice and advertising costs and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses of the zoning hearing board, expenses for engineering, architectural or other technical consultants or expert witness costs.

7. The Subject Property is within the Limited Industrial Zoning District. The current use of the Subject Property is as H16 Flex Space.

8. An H7 Crafts use is a permitted use within the Limited Industrial Zoning District but not within the H16 Flex Space use.

9. The H16 Flex Space only permits the following uses: office, light manufacturing, assembly, warehousing, repair shop or indoor athletic club.

10. The Zoning Officer correctly interpreted the provisions of Section 195-16.H(16) and his Decision dated October 16, 2024 denying a use and occupancy permit for an H7 Craft use within the H16 Flex Space use will be upheld.

11. The Board concludes that the granting of the variance will not alter the essential character of the neighborhood or district in which the Subject Property is located.

12. The Board concludes that the proposed use will have a very low impact on the surrounding uses and neighbors.

13. The Board concludes that because an H7 Craft use is otherwise permitted within the Limited Industrial District, that allowing it within this H16 Flex Space use is consistent with the spirit and intent of the Limited Industrial District.

14. The Board concludes that the variance requested is therefore more technical than substantial and falls within an extraordinary situation for which a de minimis use variance is justified.

15. The Board concludes that the Applicant has presented evidence of sufficient factors to warrant the grant of a de minimis use variance subject to the conditions suggested by the Applicant and the further condition that no more than three total employees shall be utilized for the H7 Craft use.

16. With regard to the substantive validity challenge to Section 195-16.H(16), the Board finds that insufficient evidence was presented to indicate that the Section is vague, not authorized by the MPC and/or irrational.

17. With regard to the substantive validity challenge to Section 195-135, the Board finds that insufficient evidence was presented to indicate that the MPC does not authorize escrows for zoning hearing board cases. The term “fees” as utilized in Section 10908(1.1) of the MPC is not defined. In addition, no evidence was presented that the Township utilizes the money provided for the escrow in a way that is not authorized by MPC Section 10908(1.1).

18. Accordingly, the Warwick Township Zoning Hearing Board determined, by a majority vote, to grant the Applicant’s request for a de minimis use variance and denied Applicant’s appeal of the Zoning Officer’s Decision and substantive validity challenges to Sections 195-16.H(16) and 195-135.

ORDER

Upon consideration and after the hearing, the Zoning Hearing Board of Warwick Township hereby GRANTS the following variances from the Warwick Township Zoning Ordinance: use variance from §195-16.H(16) of the Zoning Ordinance to allow an H7 Craft use within a H(16) Flex Space at the Subject Property subject to the following conditions, which were agreed to by the Applicant: no automotive mechanical repair except automobile and motor vehicle upholstery as testified to at the hearing held on January 7, 2025 is permitted; no outside storage of motor vehicles, equipment or materials is permitted; and no more than three total employees for the H7 use is permitted.

Upon consideration and after the hearing, the Zoning Hearing Board of Warwick Township hereby DENIES the following: the appeal from the Zoning Officer’s decision of October 16, 2024 denying a Use and Occupancy permit for 138 Railroad Drive for a H7 use within a H16 Flex Space; the substantive validity challenge to Section 195.16.H(16); and the substantive validity challenge to Section 195-135.

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


Dave Mullen


Edward Thompson, Jr.

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.