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March 5, 2025

Sent Via Regular Mail and Email: Joseph@bagleylawllc.com

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

Re: Warwick Township Zoning Hearing Board - Decision
Application of Schenk Brothers and Sons – TMP No. 51-013-065

Dear Mr. Bagley

Enclosed please find a copy of the Decision issued by the Warwick Township Zoning Hearing Board for the above-referenced application.

If you have any questions, please feel free to contact me.

Very truly yours,

Vicki L. Kushto
Solicitor, Warwick Township
Zoning Hearing Board

/de

Enclosure: Decision

cc: Tom Jones (via email)

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

Docket No. 25-01

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 104 Railroad Drive

Requested Relief: The Applicant is appealing the decision of the Zoning Officer dated November 13, 2024 denying a use and occupancy permit for the Subject Property to allow an H3 Wholesale Business, Storage Business, Warehousing use for the storage of automobiles within the Subject Property and in the alternative is seeking a variance from the Warwick Township Zoning Ordinance ("Ordinance") §195-16.H(3) to allow the storage of automobiles within the Subject Property and a variance from §195-10 to allow more than one principal use on a lot if deemed necessary by the Zoning Hearing Board. In addition, applicant substantively challenges the following Section of the Ordinance: 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 February 5, 2025 at the Warwick Township Administration Building.

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

Parties: None.

Mailing Date: March 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 February 4, 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 January 21, 2025 and January 28, 2025. Public Notice advertising hearing scheduled for February 4, 2025 at 7:00 pm and confirmation from the Intelligencer

B-3 Letter dated January 14, 2025 to Applicants from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated January 15, 2025 sent by Tom Jones, Warwick Township Zoning Officer and copy of list of property owners notified

B-5 Property Posting Certification by Tom Jones, Zoning Officer dated January 15, 2025

B-6 Letter dated January 28, 2025 from Township Solicitor, Mary Eberle, Esquire

Applicant Exhibits:

A-1 Photo of the interior of a unit similar to the Subject Property

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

A-3 Front of check made payable to the Township for \$900.00

A-4 Back of check to the Township

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

A-6 Section 195-135 of the Zoning Ordinance

A-7 Advertisement for Car Storage in Warminster and New Britain

4. The Subject Property is located in the LI Limited Industrial Zoning District. The Subject Property consists of approximately 18.5 acres, is within the Northampton Industrial Park and is currently being utilized as a H16 Flex Space.

5. Section 195-16.H(3) states as follows:

H3 Wholesale Business, Wholesale Storage, Warehousing. Wholesale business, wholesale storage, or warehousing with no sales to the public.

- (a) No explosive, toxic, radioactive, or highly flammable materials shall be stored on the premises.
- (b) The buffer requirements of §195-63 of this chapter shall be met.
- (c) Parking: one off-street parking space for every 500 square feet of total floor area, plus one space for each company vehicle normally stored on the premises.

6. 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.

7. Mr. Bagley presented 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. Meynard's business. The Subject Property is 5,000 square feet.

Mr. Schenk confirmed that Exhibit A-1 is an interior photo of Unit 138 which has the same dimensions and layout as the Subject Property. The brick wall in the picture is the office which is 500 square feet and contains a bathroom. There are garage doors at the front and rear of the Subject Property.

The proposed tenant, Grant Meynard, is a detailer who works on cars extensively. He rents another unit in Northampton Township. He stores exotic cars to keep them out of the elements. He will not perform any repair or renovation work on the cars within the Subject Property. If the cars are in need of repair they are removed to another location. The space must be kept very clean so that no dirt or dust gets on the cars. No one will work at the Subject Property full time and the less the doors to the Subject Property are opened the better. The prior tenant at the Subject Property was in the construction business and stored material and equipment within the building.

Mr. Schenk identified Exhibit A-2 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 so that vehicles are not broken into or stolen.

In the units owned by Schenk Brothers and Sons, there are lawn mowers that are stored in a unit in Northampton Township. Each lawn mower holds approximately 12-15 gallons of gasoline.

Mr. Schenk reviewed Exhibit B-6 and indicated that the Subject Property already has an automatic fire alarm that is connected to a central monitoring system. The fire detection heads that are part of the automatic fire alarm were changed to be acceptable to the Fire Marshal. There are also fire extinguishers inside the Subject Property. The cost to install an automatic fire suppression system would be approximately \$80,000 to \$100,000. When the industrial park was constructed, public water was not available so the buildings are not configured for sprinklers. It is hard to retrofit a building for sprinklers as the contractor would have to break up the concrete floors of the units and that becomes expensive. In addition, sprinkler lines cannot be run on the outside of the building because they could freeze.

It is Mr. Schenk's opinion that this proposed use will not have any impact on the neighbors and that it is a low impact use since no work will be performed at the Subject Property and there will not be employees there every day.

In filing his Application, Mr. Schenk was charged an escrow fee. Exhibit A-3 is a copy of the front of the check and Exhibit A-4 is the back of the check used to pay for the escrow fee, which was paid under protest. Exhibit A-5 is a section from the Township's Fee Schedule. Exhibit A-6 is a copy of Section 195-135 of the Zoning Ordinance.

8. Mr. Bagley presented the testimony of Grant Meynard which can be summarized as follows:

Mr. Menard's occupation is car detailing. The use at the Subject Property will be car storage. Exhibit A-7 is a picture of his location in New Britain. He also has another location in Warminster. A-7 shows a rack system where cars are stored on top of each other. The Subject Property will not have the rack system. Any detailing will be done at another location. There

are battery tenders that will be connected to the cars to make sure the battery does not go dead. If the cars are being stored for a long period of time, the cars are run every two weeks to also make sure that the batteries do not die. Mr. Menard does not have any employees other than himself.

All customers make an appointment to either pickup or drop off their car. The only gas within the Subject Property will be what is inside the cars. There will not be any storage of extra gas. No equipment is used except for the battery tenders and a small electric pump to put air in the tires. The battery tender uses a very small amount of electricity. It takes 24 hours to charge the car completely and when complete the battery tender just sends a pulse. No repairs are made to the cars at this location.

Mr. Menard believes that 24 cars will be able to be stored within the Subject Property. The only car parked outside the Subject Property will be Mr. Menards'. Customers get dropped off to pick up their cars or have someone pick them up when they are dropping off.

9. Mr. Bagley indicated that the variance request regarding §195-10 relating to more than one principal use on a lot was precautionary in case the Zoning Hearing Board thought it was necessary.

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

11. No individuals requested or were granted party status.

12. 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 validity challenge to Section 195-135. The Board of Supervisors requested that if the variance was granted it be conditioned upon the installation of a fire suppression system and code compliant fire alarm.

13. 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. 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 excluded 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.

5. 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.

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

7. An H3 Wholesale Business, Wholesale Storage, Warehousing use is a permitted use within the Limited Industrial Zoning District.

8. The Zoning Officer correctly interpreted the provisions of Section 195-16.H(3) and his Decision dated November 13, 2024 denying a use and occupancy permit for an H3 Wholesale Business, Wholesale Storage, Warehousing use will be upheld.

9. 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.

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

11. The Board concludes that the storage of automobiles with gasoline is similar to other storage uses within the Northampton Industrial Park and is consistent with the spirit and intent of the Limited Industrial District.

12. The Board concludes that the Applicant has presented evidence of sufficient factors to warrant the grant of a variance subject to the condition that the Applicant have a code compliance fire alarm system within the Subject Property.

13. The Board concludes that a variance from §195-10 is not necessary as only one use will be conducted within the Subject Property.

14. 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).

14. Accordingly, the Warwick Township Zoning Hearing Board determined, by a majority vote, to grant the Applicant’s request for a variance and denied Applicant’s appeal of the Zoning Officer’s Decision and substantive validity challenges to Section 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: variance from §195-16.H(3) of the Zoning Ordinance to allow an H3 Wholesale Business, Wholesale Storage, Warehousing use at the Subject Property in order to allow for the storage of cars subject to the following conditions, which were agreed to by the Applicant: that the Applicant have a code compliant fire alarm system within the Unit.


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 November 13, 2024 denying a Use and Occupancy permit for 104 Railroad Drive for a H3 use; 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.