

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

Docket No. 25-04

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)(l) 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 May 29, 2025. The hearing was originally scheduled for July 1, 2025 but was continued, at the request of the Applicant until August 5, 2025 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: September 10, 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 August 5, 2025 hearing:

Board Exhibits:

B-1 Application with attachments received by Warwick Township on May 29, 2025

B-2 Proof of Publication from the Intelligencer for advertising notice on June 17, 2025 and June 24, 2025. Public Notice advertising hearing scheduled for July 1, 2025 at 7:00 pm and confirmation from the Intelligencer

B-3 Letter dated June 10, 2025 to Andrew Stoll, Esquire from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated June 16, 2025 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 June 16, 2025

B-6 Letter dated June 30, 2025 to Vicki L. Kushto, Esquire from Andrew Stoll, Esquire requesting continuance of hearing until August 5, 2025

Applicant Exhibits:

A-1 Zoning Hearing Board Application with Deed to the property

A-2 Zoning Decision from 2023

A-3 Photos of garage from 2023 hearing

A-4 Current photos of garage

A-5 Survey plan of property

A-6 Letters of Support

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. Applicant applied to the Board in 2023 for a variance from the maximum height limitation for the same garage that is the subject of the current application ("2023 Application"). By Decision dated June 6, 2023, the Board granted a variance to allow the height of the garage to be 24 feet 10 and 1/8 inches subject to the condition that the detached garage could not be utilized for commercial uses or as a dwelling unit.

6. On behalf of the Applicant, Mr. Stoll summarized the history and the Application and Applicant's testimony as follows:

Applicant came before the Board in 2023 because the garage he constructed exceeded the maximum permitted height. There was a discrepancy between the plans that were submitted and the permit application. The excess height was discovered after the construction was complete. Applicant spent between \$100,000 to \$120,000 for the construction. Applicant installed the necessary stormwater facilities and executed a Declaration for the continued maintenance of the facilities.

The Township performed a final inspection of the garage in 2025. As a result of the inspection, Applicant was required to install a handrail on a set of steps in the garage and to plant some trees.

At the time of the 2023 Application, Applicant did not measure the height of the garage after construction. Applicant has now measured the height of the garage all the way around. The actual height of the garage is 29 feet 7 inches in the front and 27 feet 2 inches in the rear.

The Application is A-1 and the prior Board Decision is A-2. A-3 are photos of the garage from the hearing in 2023 and Exhibit A-4 are current photos of the garage. The garage has not changed since the 2023 application. Exhibit A-5 is a survey plan of the Subject Property. Exhibit A-6 are letters of support from the 2023 hearing and current letters of support. Applicant agrees to the imposition of the same conditions that the garage not be used for commercial purposes or as a dwelling unit.

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

7. In response to questions from the Board, Mr. Bernhard testified that the grade change of the Subject Property is what led to some of the confusion regarding the height of the garage. There is a large drop from the front of the Subject Property to the back.

8. The Board of Supervisors took no position with regard to this Application.

9. No members of the public provided public comment and no one requested party status.

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.Cmwlth.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.Cmwlth. 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.Cmwlth.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 unrebutted leads, the Board to conclude that a mistake occurred when the garage was constructed because of the grade changes on the Subject Property.

10. As construction of the garage has been complete since 2023, 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

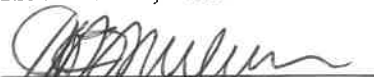
Upon consideration and after the hearing, the Zoning Hearing Board of Warwick Township hereby GRANTS the following variance from the Warwick Township Zoning Ordinance: §195-16B(12)(l) of the Zoning Ordinance to allow the detached garage on the Subject Property to remain at a height of 29 feet 7 inches in the front and 27 feet 2 inches in the rear which is greater than twenty feet (20) permitted by Ordinance subject to the following conditions: the second floor of the detached garage can only be used for storage and 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 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.