

**IN RE:
APPLICATION OF
HAROLD MYER, JR**

**BEFORE THE ZONING HEARING BOARD
OF TREDYFFRIN TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA**

APPEAL NO. 2026-03

DECISION

The Zoning Hearing Board of Tredyffrin Township, Chester County, Pennsylvania (the “Board”), after proper advertisement, met on Thursday, January 22, 2026, to hear evidence on the application (the “Application”) of Harold Myer, Jr (the “Applicant”) for the property located at 1338 Le Boutillier Road, Malvern, PA 19355 (UPI No. 43-4-159.1) (the “Property”) in the R-1/2 Residential Zoning District of Tredyffrin Township (the “Township”). The Applicant seeks dimensional variance relief from Section 208-119.C of the Tredyffrin Township Code of Ordinances (the “Code”) to permit the construction of a six foot, six inch high stone wall and rolling gate where a fence or wall with a maximum height of four feet is permitted.

Present at the hearing were Chairperson Daniel McLaughlin, Vice Chairperson Robyn Forbes Drucker, Member Bradford Murphy, and Alternate Member Edward Sweeney. Also present at the hearing were Erin McPherson, Director of Planning and Zoning and Zoning Officer; and Amanda J. Sundquist, Esquire, Solicitor for the Board.

The Applicant was not represented by legal counsel. The Applicant was not present. Kevin Malawski of Carbon Architects working with Studio Agoos Lovera, the Applicant’s architect, testified on behalf of the Application. No one sought party status or provided public comment.

At the conclusion of the hearing, the Board took the matter under advisement until its February 26, 2026 meeting. At the February 26, 2026 meeting by a 2 to 0 vote, the Board denied the requested relief.

I. Findings of Fact

1. The foregoing recitals are incorporated herein as if fully set forth.
2. The Board held a duly convened hearing and provided proper public notice of the same.
3. Kevin Malawski presented testimony and documentary evidence in support of the Application.
4. The Board admitted the following exhibits as evidence at the hearing:

Board's Exhibits:

- Exhibit B-1 Zoning Application, with supporting documentation, dated December 31, 2025;
- Exhibit B-2 Proof of Publication of the notice in the *Daily Local News* on January 8, 2026 and January 15, 2026;
- Exhibit B-3 Affidavit of Mailing Notice to the neighboring property owners on January 8, 2026; and
- Exhibit B-4 Affidavit of Posting, dated January 7, 2026.

Applicant's Exhibit:

- Exhibit A-1 PowerPoint.

The Code and Township Zoning Map are incorporated herein by reference.

5. The Property is located at 1338 Le Boutillier Road, Malvern, PA (UPI No. 43-4-159.1).
6. The Property is located in the R-1/2 Residential Zoning District.
7. The Applicant owns the Property.
8. The Applicant did not appear at the hearing.
9. Rather, Kevin Malawski of Carbon Architects working with Studio Agoos Lovera, the Applicant's architect, testified on behalf of the Application.

10. The Property has frontage on Le Boutillier Road to the north, and is bordered by residential properties on its sides, and Mill Road Park to the rear.
11. The Property currently contains a single-family dwelling, driveway, swimming pool, and walkways.
12. The Applicant proposes to construct a stone wall with a rolling gate in the northwestern portion of the Property.
13. The rolling gate is proposed to extend across the existing driveway.
14. When the rolling gate is open, there will be an approximately 14-foot access for the existing driveway.
15. Collectively, the proposed stone wall and rolling gate will be approximately 47 feet long.
16. The proposed stone wall and rolling gate does not extend across the entire frontage of the Property, rather it is only located in the area of the driveway and across approximately 17% of the front yard.
17. The stone wall is proposed to measure six feet in height, with two piers that will measure six feet and six inches in height.
18. The rolling gate is proposed to be six feet in height.
19. Code Section 208-119.C states: “In all districts, an open or solid fence or a wall of not more than four feet in height may be erected within the required front, side or rear yards. The height of a fence shall be measured from the top of the highest point of the fence panel to the bottom of the fence panel, allowing the fence panel to be no more than three inches above the mean level of the ground surrounding the fence panel, and provided that the height of the supporting fence

post, including finials, shall not exceed eight inches above the maximum permitted height.”
(emphasis added).

20. As a result, the Applicant requires a dimensional variance to permit the proposed height of the stone wall and rolling gate.

21. The Property slopes downward from Le Boutillier Road.

22. Where the Applicant proposes to construct the proposed stone wall and rolling gate, the elevation is two feet less than it is at Le Boutillier Road.

23. As a result, the proposed stone wall and rolling gate would be perceived as two feet shorter from Le Boutillier Road.

24. The Applicant believes a stone wall with rolling gate perceived to be two feet in height shorter from Le Boutillier Road is too short.

25. The proposed stone wall with rolling gate is located outside of sight triangles.

26. The Applicant desires the proposed stone wall with rolling gate for visual privacy.

27. However, Mr. Malawski acknowledged the privacy issue is predominately proposed to be mitigated with vegetative screening.

28. In addition, the Applicant desires the proposed stone wall with rolling gate to prevent delivery drivers, such as Amazon, from utilizing the driveway to drop off packages.

29. The Applicant also desires the proposed stone wall with rolling gate for security.

30. However, a fence or other structure will not be connected to the proposed stone wall or otherwise enclose the Property.

31. Rather, the Applicant intends to keep the existing landscaping along the front yard of the Property and potentially install additional plantings.

32. Mr. Malawski was not familiar with any additional plantings the Applicant intends to install along the front of the Property.

33. Mr. Malawski advised that if someone was intent on taking a vehicle to the Property they could do so through the planting area.

34. The Applicant proposes to light the proposed stone wall and rolling gate with LED strips.

35. Mr. Malawski advised that the lighting was a decorative feature and not necessary.

36. The Applicant does not intend to direct the lighting toward the street.

37. Kevin Malawski represented that the property to the east has a gate which exceeds four feet in height.

38. Mr. Malawski was not aware of any other properties in the immediate vicinity of the Property with similar gates and a six-foot-high wall in the front yard.

39. No one appeared to seek party status.

40. No one appeared to provide public comment.

II. Discussion

Code Section 208-150 empowers the Board to grant variances from the terms of the Code. To be entitled to a variance, an applicant must meet the requirements of Section 910.2 of the MPC (53 P.S. § 10910.2) and Section 208-150.B of the Township Code, which contains the following standards for the grant of a variance:

1. unique physical circumstances peculiar to the subject property, which create an unnecessary hardship to the property;
2. such physical circumstances prevent development of the property in strict conformity with the provisions of the zoning ordinance;
3. the hardship is not self-created;

4. the variance, if authorized, will not alter the essential character of the neighborhood, substantially impair neighboring properties, or otherwise detract from the public welfare; and
5. the variance is the minimum to afford relief.

“The reasons for granting a variance must be substantial, serious and compelling,” and “[t]he party seeking the variance bears the burden of proving that (1) unnecessary hardship will result if the variance is denied, and (2) the proposed use will not be contrary to the public interest.” Valley View Civic Ass'n v. Zoning Bd. of Adjustment, 462 A.2d 637, 640 (Pa. 1983) (internal citations omitted; alteration added). Further, “[t]he test for entitlement to a variance . . . is not whether the property use sought is the ‘best’ use for that property, but rather whether the property can reasonably be used in a manner consistent with the ordinance.” Appeal of Dinu, 452 A.2d 95, 97 (Pa. Cmwlth. Ct. 1982) (citing Borough of Emmaus v. Schuler, 409 A.2d 444 (Pa. Cmwlth. Ct. 1979) (alteration and omission added)).

The Property is a fully developed property which is utilized as a single-family dwelling, and the Applicant’s purported need for the proposed stone wall and rolling gate does not preclude the continued use of the Property for its current purpose. The Applicant’s asserted need for the proposed wall is that the proposed stone wall with rolling gate is necessary for visual privacy, but Kevin Malawski acknowledged that the visual privacy needs are primarily being addressed through existing and proposed landscaping. The Applicant also claims the need is for security, but the proposed stone wall only runs approximately 17% of the length of the front yard. It does not enclose the Property or connect to another structure which does so. Kevin Malawski acknowledged that, as proposed, the proposed stone wall with rolling gate would not exclude an individual from accessing the Property. Finally, the Applicant desires the proposed stone wall

with a rolling gate to preclude delivery drivers from utilizing the driveway to drop off packages by the home; this does not constitute a hardship.

The Applicant asserts that the hardship for the proposed stone wall with rolling gate arises from the two-foot drop from Le Boutillier Road to the proposed location for the proposed stone wall with rolling gate. As a result, the perceived height of the proposed stone wall with rolling gate is two feet less in height when observed from the road. The Applicant does not allege that a compliant wall cannot be constructed on the Property. Rather, Applicant asserts that a compliant wall would not be attractive as it would be perceived to be two feet shorter from the road. This is not an unnecessary hardship that prevents use and development of the Property.

Further, the proposed stone wall with rolling gate is not in keeping with the character of the neighborhood. While the adjacent property has a gate that appears to exceed four feet in height, Kevin Malawski acknowledged that there are no other properties in the vicinity of the Property that have a wall in excess of the permitted height within the front yard. Given the foregoing, the Board does not find that the Applicant met his burden of proof.

III. Conclusions of Law

1. The hearing was duly advertised; all required notices were given; and the hearing was duly convened.
2. The Board has jurisdiction over this matter.
3. The Applicant has not established entitlement to the requested dimensional variance from Code Section 208-119.C to permit a proposed stone wall with a height of six feet, six inches with a proposed rolling gate of six feet in the front yard of the Property.

The Board, therefore, enters the following:

ORDER

AND NOW, this 26th day of ~~March~~ ^{February}, 2026, upon consideration of the Application of Harold Myer, Jr. for a dimensional variance from Code Section 208-119.C to install a six-foot, six-inch high stone wall with rolling gate in the front yard of the Property located at 1338 Le Boutillier Road, Malvern, PA (UPI No. 43-4-159.1), IT IS HEREBY ORDERED that the following relief is DENIED.

**ZONING HEARING BOARD OF
TREDYFFRIN TOWNSHIP**



DANIEL MCLAUGHLIN, Chairperson



ROBYN FORBES DRUCKER, Vice Chairperson

Absent

EDWARD SWEENEY, Alternate Member