**IN RE:**
**APPLICATION OF**
**MCNALLY LEE**

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

**APPEAL NO. 2026-16**

**DECISION**

The Zoning Hearing Board of Tredyffrin Township, Chester County, Pennsylvania (the "Board"), after proper advertisement, met on Thursday, May 28, 2026, to hear evidence on the application (the "Application") of McNally Lee (the "Applicant") for the property located at 443 Homestead Road, Wayne, Pennsylvania 19087 (UPI No. 43-11G-25.1) (the "Property") in the R-1 Residence Zoning District of Tredyffrin Township (the "Township"). The Applicant seeks a dimensional variance from Sections 208-119.C and D of the Tredyffrin Township Code of Ordinances (the "Code") to permit the installation of a six-foot and eight-foot high fence in the front yard of the Property, where a maximum fence height of four feet is otherwise permitted.

Acting Chairman Bradford Murphy and Alternate Members Erica Diaz and Edward Sweeney appeared on behalf of the Board. Also present at the hearing were Erin McPherson, Director of Planning and Zoning and Zoning Officer; and Robert C. Jefferson, Esquire, Assistant Solicitor for the Board.

The Applicant was not represented by legal counsel and was the sole witness to testify on behalf of the Application. Robert E. Baldwin (162 Old Eagle School Road) requested and was granted party status without objection.

At the conclusion of the hearing, the Board, by a 3 to 0 vote, granted the requested relief, subject to conditions. The Applicant waived the time period for issuance of this written decision under the Pennsylvania Municipalities Planning Code (the "MPC").

## 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. The Applicant 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;

Exhibit B-2 Proof of Publication of the notice in the *Daily Local News* on May 13, 2026 and May 20, 2026;

Exhibit B-3 Affidavit of Mailing Notice to the neighboring property owners on May 14, 2026; and

Exhibit B-4 Affidavit of Posting, dated May 13, 2026.

***Applicant's Exhibit*:**

Exhibit A-1 Report prepared by Integrous Fences and Decks, dated May 8, 2026.[1]

**Baldwin's Exhibit:**

Exhibit P-1 Hearing documents.

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

5. The Applicant and his wife, Emily Lee, own the Property.

6. The Applicant and his wife reside at the Property with their two children, who are two weeks old and 13 months old.

[1] Page six appears to be missing from the report.

7. The Property is located at 443 Homestead Road, Wayne, Pennsylvania 19087 (UPI No. 43-11G-25.1).

8. The Property is located in the R-1 Residence Zoning District of the Township.

9. The Property has a unique shape and contains frontage along Homestead Road, Old Eagle School Road, and West Valley Road.

10. The Property measures approximately 1.4 acres in area.

11. The Property is currently improved with a single-family detached dwelling, garage, swimming pool, driveway, five-foot-high gate across the driveway, fences measuring four and six feet in height, and other related improvements.

12. The front façade of the dwelling is oriented towards Homestead Road.

13. The existing fence on the Property is in disrepair.

14. Sections 208-119.C and D (Fences, walls and security gates) of the Code provide, in relevant part, as follows:

> Fences, walls and security gates shall be permitted within required yard areas in accordance with the following:
>
> C. 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.
> D. In all districts, an open or solid fence or wall of not more than six feet in height may be erected within the required side or rear yards, but not within the required front yard.

15. The Applicant proposes to remove the existing fencing and ultimately install four separate fence segments on the Property; however, only two fence segments are relevant to the Application.

16. The proposed fence to be located on the Property along Homestead Road will be a four-foot-high split rail fence.[2]

17. Based on the evidence presented, Zoning Officer Erin McPherson explained that the proposed four-foot-high split rail fence does not require zoning relief.

18. The proposed fence in the rear yard of the Property would be six feet in height.[3]

19. Based on the evidence presented, Zoning Officer Erin McPherson explained that the proposed six-foot-high fence would not require zoning relief.

20. The Applicant proposes to remove the existing fence located along West Valley Road and Old Eagle School Road to the north of the driveway and replace it with a six-foot-high solid wood fence.[4]

21. Because the portions of the fence along West Valley Road and Old Eagle School Road are located in the front yard, zoning relief is required from Code Sections 208-119.C and D.

22. The Applicant testified that busy roadways and steep grade changes warrant the higher fence.

23. The Applicant proposes to remove the existing fence on the Property located between the driveway and Homestead Road and replace it with an eight-foot-high fence.

24. The Applicant testified that the busy roadway and steep grade change warrant the proposed eight-foot-high fence.

25. During the hearing, the Applicant agreed to move the portion of the fence located between Homestead Road and the driveway approximately two or three feet farther from Old Eagle School Road.

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[2] The split rail fence proposed along Homestead Road is not part of the Application; the information was provided for reference only.
[3] The fence proposed in the rear yard is not part of the Application; the information was provided for reference only.
[4] This section of fencing is shown in green on page 2 of Exhibit A-1.

26. The Applicant testified that no trees will be removed in connection with the installation of the fence, although shrubs will be removed.

27. Mr. Baldwin (162 Old Eagle School Road) testified at the hearing and expressed concerns regarding sightlines, sight distance, and traffic safety.

28. However, Mr. Baldwin stated that he did not believe that the fences would further obstruct his sightlines and sight distances.

29. The Applicant presented credible evidence that other properties in the vicinity have six-foot-high fences.

30. Granting the requested variance will not alter the essential character of the neighborhood or be injurious to the neighborhood or otherwise be detrimental to the public health, safety, and welfare of the community.

31. Granting the requested variance will not substantially or permanently impair the use or development of adjacent properties.

32. The Township did not take a position on the subject application.

## II. Discussion

Code Section 208-150 (Standards for review of proposed special exception or variance) 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 summarized 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). The Pennsylvania Supreme Court in Hertzberg v. Zoning Bd. of Adjustment of City of Pittsburgh established a more "relaxed standard" when addressing the "unnecessary hardship" criterion in regard to dimensional variances. 721 A.2d 43, 47 (Pa. 1998).

The Applicant seeks to remove existing fence segments and replace them with new fence segments. The Board appreciates that Old Eagle School Road is a busy roadway and that the Property contains grade changes. However, the Applicant did not carry his burden to justify the installation of an eight-foot-high fence. The Applicant did carry his burden to justify the installation of a six-foot-high fence. The Applicant presented credible evidence that other properties in vicinity have six-foot-high fences. Thus, the proposed fence height will be in conformance with the community. The requested dimensional variance will not alter the essential character of the neighborhood or be injurious to the neighborhood or otherwise be detrimental to the public health, safety, and welfare of the community. Further, the requested dimensional variance will not substantially or permanently impair the use or development of adjacent properties. Mr. Baldwin stated that he did not believe that the fences would obstruct his line of

sight. The Township did not take a position on the Application. As a result, the Board finds the Applicant has 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 established entitlement to the requested variance from Code Sections 208-119.C and D to permit the installation of a six-foot-high fence in the front yard of the Property, where a maximum fence height of four feet is otherwise permitted.

4. The Applicant has not established entitlement the requested variance from Code Sections 208-119.C and D to permit the installation of an eight-foot-high fence in the front yard of the Property, where a maximum fence height of four feet is otherwise permitted.

5. The Board, therefore, enters the following:

## ORDER

AND NOW, this 6th day of July, 2026, confirming its oral decision of May 28, 2026, upon consideration of the Application of McNally Lee for the Property located at 443 Homestead Road, Wayne, Pennsylvania 19087 (UPI No. 43-11G-25.1), IT IS HEREBY ORDERED that the following relief is GRANTED:

1. A variance from Code Sections 208-119.C and D to permit only the installation of a six-foot-high fence, and not an eight-foot-high fence, in the front yard of the Property, where a maximum fence height of four feet is otherwise permitted.

Subject to the following conditions:

1. The portion of the fence on the Property between the driveway and Homestead Road shall be set back an additional three feet from Old Eagle School Road compared to the existing fence to be removed.
2. The proposed use and construction shall be in substantial conformity with the evidence and testimony presented to the Board.
3. The Applicant shall obtain all required permits and approvals.
4. The Applicant shall comply with all other federal, state, county, and Township laws, regulations and ordinances.

**ZONING HEARING BOARD OF TREDYFFRIN TOWNSHIP**

BRADFORD MURPHY, Acting Chairperson

ERICA DIAZ, Alternate Member

EDWARD SWEENEY, Alternate Member

Please be advised that Code Section 208-148 (Expiration of special exceptions and variances) states: "Unless otherwise specified by the Zoning Hearing Board, a special exception or variance shall expire if the applicant fails to obtain a building or occupancy permit within 12 months from the date of the decision of the Zoning Hearing Board."