

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

Applicants: Norman Coryell and Richard McEvoy
21 Pettits Bridge Road
Jamison, PA 18929

Owners: Same.

Subject Property: Tax Parcel No. 51-010-024-011, which is located at the address of the Applicants set forth above.

Requested Relief: Applicants seek to construct a deck to the rear of the subject single-family dwelling. The proposed deck encroaches upon the 50 foot riparian buffer, zone 2, as required by §195-60.K(4)(b)[1] of the Warwick Township Zoning Ordinance (“Ordinance”) Applicants seek a variance accordingly.

Hearing History: The application was filed in Warwick Township on May 27, 2020. The hearing was held on August 4, 2020 at the Warwick Township Building, 1733 Township Greene, Jamison, PA 18929.¹

Appearances: Applicants by: Carl N. Weiner, Esq.
Hamburg, Rubin, Mullin, Maxwell & Lupin
375 Morris Road
PO Box 1479
Lansdale, PA 19446-0773

Mailing Date: September 18, 2020

¹ Applicants executed a waiver of MPC §908(1.2) 60 day hearing timeframes.

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 Applicants are the Owners of the Subject Property and therefore possessed of the requisite standing to make application to this Board.

3. The following exhibits were marked and admitted during the hearing held:

ZHB Exhibits:

ZHB-1: Application dated March 13, 2020 received May 27, 2020 with attached list of property owners within 300 feet; a building permit/site plan, dated April 19, 2018; enlarged version of site plan with proposed deck superimposed; photograph of rear of house; hand drawn construction drawings of deck.

ZHB-2: Legal advertisement (proof of publication; posting; mailing).

ZHB-3: Waiver of MPC §908(1.2) 60 day hearing timeframes.

ZHB-4: Warwick Township Zoning Ordinance.

Applicant Exhibits:

A-1: Deed to the Subject Property in favor of Norman Coryell.

A-2: Building permit plan, dated April 9, 2018, prepared by Van Cleef Engineering (As-Built Plan).

A-3: (a) Photographs of the rear yard.
(b) Photographs of the rear yard.

A-4: Deck drawing.

A-5: Photograph of rear of house.

A-6: Detail of As-Built Plan with proposed deck superimposed, and 50 foot riparian buffer zone highlighted.

4. The Subject Property is located in the O, Office Zoning District of Warwick Township, utilizing a B3 Performance Standard Subdivision (single-family

detached). The lot area is 10,300 square feet, where 7,000 square feet is required. The property and dwelling comply in all respects with regard to the dimensional provisions of the Zoning Ordinance.

5. Applicants seek to construct a deck to the rear of the subject single-family dwelling. Practically the entire proposed deck encroaches upon the 50 foot Riparian Buffer, Zone Two, as required by §195-60.K(4)(b)[1] of the Warwick Township Zoning Ordinance. Applicants seek a variance accordingly.

6. Applicants' Exhibit A-6 reflects that the 50 foot Riparian Buffer essentially extends up to the rear of the Applicants' single-family dwelling, leaving very little of the rear yard, immediately adjacent to the single-family dwelling, outside of the 50 foot Riparian Buffer. There is therefore very little room directly adjacent to the dwelling available for construction and placement of "structures".

7. Applicants presented testimony from Mr. Phil Neas, Licensed Contractor in Pennsylvania and New Jersey for 20 years, and Code Enforcement Officer in Pennsylvania municipalities including Plumstead, Bedminster, and Dublin. Mr. Neas is familiar with the plot plan at issue, the Zoning Ordinance, and the Riparian Buffer provisions thereof.

8. The plans provided illustrate that the Riparian Buffer Zone One, as reflected in §195-59.K, provides for 25 feet of Riparian Buffer as measured from the creek bank. The 50 foot Zone Two Riparian Buffer contemplated by §195-60.K(4)(b)[1] extends 50 feet from that point. The Zone Two buffer allows for use of the rear yard, from the creek bed up to the single-family dwelling, but prohibits structures within the bulk of the rear yard immediately adjacent to the single family dwelling.

9. Applicants propose a first floor deck, to stand on piers, along with a stairway extending from the deck to the ground with appropriate transition from the wood deck to the ground level, including some type of landing pad or stone step at ground level. Applicants propose a 3 foot wide blue stone landing pad.

10. The As-Built Plan contained at Exhibit A-2 illustrates a rear yard sloping from the rear of the existing single-family dwelling down through the Riparian Buffer Zone Two toward the creek. Exhibit A-2, along with Exhibit A-6, reflect that the Zone Two Riparian Buffer extends up to the rear of the single-family dwelling.

11. The photographs submitted as Exhibit A-3(a) and A-3(b) reflect a relatively flat area immediately adjacent to the rear of the dwelling, than a gentle slope leading to a more severe slope in the rear yard toward the creek.

12. Applicants referenced a storm swale, and indicated that the proposed deck would not be placed in or near the swale.

13. The photograph of the rear of the house shows a 2" x 10" ledger board, already installed, presumably to serve as the initial support for the proposed deck.

14. Exhibit A-4 represents a rough construction drawing of the proposed deck. The proposed deck measures 20' in width x 14' in depth plus L-shaped stairs with a landing to grade. Applicants emphasize that since the deck is on the order of 8 feet above grade, only the piers, posts, stair stringers and landing at ground level would be physically within the ground level of the Riparian Buffer. The rest of the deck would be above the ground level of that buffer.

15. Applicants asserted their opinion that there would be no significant impact to the Riparian Buffer or vegetation as a result of the minimal physical impact to the buffer.

16. Applicants assert that the hardship driving the need for the variance is the topography of the rear yard and the proximity of the house to the creek.

17. Nearby property owner Joseph Hemberger testified in opposition to the application. Mr. Hemberger requested that the Zoning Hearing Board deny the variance on the basis of potential environmental harm, and respect for the Riparian Buffer provisions of the Warwick Township Zoning Ordinance.

18. Warwick Township took no position with regard to this application.

CONCLUSIONS OF LAW:

1. The Subject Property has been developed and used consistent with the requirements of the Ordinance. Applicants have illustrated the dimensional compliance consistent with the As-Built Plan marked as Exhibit A-2 (April 9, 2018 building permit plan for Warwick Mill Lot 11 TMP 51-010-024-011).

2. Applicants seek to place a structure within the Zone Two Riparian Buffer. The structure is a proposed residential deck, approximately 8 feet above grade.

3. The deck structure would be affixed to the ground level, within the Riparian Buffer, at 3 points where a 12 inch pier footer would support a 6" x 6" post; where the stairs would be affixed to the ground; and Applicant intends to place the 3 foot bluestone landing area.

4. §195-60.K(4)(b)[1] provides as follows:

The following uses are permitted, either by right or as a conditional use, in the RCCD. Within any corridor, however, no construction, development, use, activity, or encroachment shall be permitted unless the activity is described in the corridor management plan.

(a) Zone One

...

(b) Zone Two

[1] Uses permitted by right. The following uses, which are primarily passive in character, shall be permitted by right to extend into the area defined as Zone Two:

[a] Open space uses including wildlife sanctuaries, nature preserves, forest preserves, passive areas of public and private parklands, and recreational trails conducted in compliance with methods prescribed by Chapter 102 of Title 25 of the Pennsylvania Administrative Code.

[b] Reforestation in compliance with the guidelines of the corridor management plan.

[c] Minimum required front, side, and rear yards on private lots, provided that no yard may extend into Zone Two more than half the distance between the outer boundaries of Zone One and Zone Two.

[d] Agricultural uses existing at the time of adoption of this chapter, so long as they are conducted in compliance with methods prescribed by Chapter

[e] Corridor crossings by livestock.

...

5. Decks are not permitted within the Zone Two Riparian Buffer.

6. The Zoning Hearing Board concludes that the applicant has failed to establish the legal basis for granting a variance.

7. To the extent that the Applicants argue that the single-family dwelling being built at the edge of the Zone Two Riparian Buffer represents a hardship in that it prohibits the property owner from placing structures in a portion of the rear yard, the Zoning Hearing Board rejects the argument. The Zoning Hearing Board considers the hardship to be self imposed, in that the Applicants purchased the property with knowledge that the Riparian Buffer extended to the rear of the existing dwelling. This conclusion is evident from Exhibit A-2 (the April 9, 2018 As-Built Plan) and Exhibit A-6 the additional detail for that plan in conjunction with the Applicants' deed to the Subject Property recorded on October 23, 2018. The Zoning Hearing Board considers this conclusion consistent with a string of cases including Andress v. Zoning Board of Adjustment, 410 Pa. 77, 188 A.2.d 709 (1963).

8. The Zoning Hearing Board is aware that the Andress rule is not universal or without exception. However, the Zoning Hearing Board concludes that under the present circumstances, the Applicants have further failed to demonstrate that the request for relief is the minimum relief necessary. First, the property is not rendered "useless" by virtue of Applicants being unable to construct a rear residential deck. The property appears to function adequately as an existing single-family dwelling with a reasonably flat rear yard. In addition, if the deck were a necessary component of residential life, the Applicants have not established that a deck 14 feet in depth is the minimum depth required to adequately utilize the deck.

9. Accordingly, the Warwick Township Zoning Hearing Board determined, unanimously, to deny the Applicants' request for relief, as is set forth hereafter.

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Warwick Township hereby DENIES the variance requested by the Applicants.

**ZONING HEARING BOARD OF
WARWICK TOWNSHIP**

By: /s/ Kevin J. Wolf
Kevin J. Wolf

/s/ Dave Mullen
Dave Mullen

/s/ Lorraine Sciuto-Ballasy
Lorraine Sciuto-Ballasy