

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

Applicants: Shawn and Lindsay Gallagher
1704 Fairway Drive
Jamison, PA 18929

Owner: Same.

Subject Property: Tax Parcel No. 51-18-23, which is located at 1704 Fairway Drive,
Jamison, PA 18929

Requested Relief: The Applicant intends to install an in-ground swimming pool. In order to do so, Applicant is seeking several variances from the Warwick Township Zoning Ordinance (“Ordinance”), including the following:

1. from §195-16.B(2)(e)[3][c](i) to permit 41.2% impervious surface where a maximum of 25% is permitted;
2. from §195-16.B(12)(g)[1] to permit a rear yard setback of 10.7 feet where 15 feet is required and a side yard setback of 10 feet where 15 feet is required.

Hearing History: The Application was filed in Warwick Township on October 5, 2020. The hearing was held on November 30, 2020 virtually via the Go To Meeting Application.

Appearances: None

Parties: None

Mailing Date: December 21, 2020

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 therefore possessed of the requisite standing to make application to this Board.

3. The following exhibits were marked and admitted during the November 30, 2020 hearing:

Board Exhibits:

B-1 Application with attachments received by Warwick Township on October 5, 2020

B-2 Proof of Publication from the Intelligencer for advertising notice on November 16, 2020 and November 23, 2020. Public Notice advertising hearing scheduled for November 30, 2020 at 7:00 pm and confirmation from the Intelligencer

B-3 Letter dated November 9, 2020 to Shawn P. and Lindsay Gallagher from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated November 5, 2020 sent by Ashley Casey, Warwick Township Zoning Officer and copy of list of property owners.

B-5 Property Posting Certification by Ashley Casey, Zoning Officer dated November 6, 2020

Applicant Exhibits:

None.

4. The Subject Property is located in the RA Residential-Agricultural Zoning District. The Subject Property consists of 10,500 square feet and contains a single family home, driveway, patio and deck. The current impervious surface coverage is 34.8%.

5. Shawn and Lindsay Gallagher testified in support of the Application. Mr. Gallagher testified that they are proposing to install a small inground pool in their rear yard. Given the current COVID-19 pandemic it is difficult to belong to a public pool.

When the Gallaghers' purchased the Subject Property the existing improvements already exceeded the impervious coverage. The Gallagher's are requesting an additional 6.4% of impervious coverage.

The proposed pad for the pool equipment is 7 feet by 3 feet. The Gallaghers would consider moving the pool equipment and potentially removing some of the existing patio.

A neighboring property at 1752 Fairway Drive also contains a pool with concrete all around it.

6. Dominick Dicesare of Blue Haven Pools testified in support of the application. Existing constraints on the Subject Property will allow the in-ground swimming pool in only the proposed location. The pool is not very large and the equipment will be located on the opposite side of the house. There will be a fence around the pool area only.

An in-ground swimming pool cannot be located on the Subject Property without the requested variances. The proposed pool is an irregular shape that equates to 547 square feet. In the industry any pool smaller than 600 square feet is considered small.

An infiltration trench is being installed around the pool which will include a 4 inch underdrain pipe with coarse aggregate and 6 inches of river stone surrounding the top of the pool. The area surrounding the pool will be grass and landscaping.

7. Jeff Daniels was present at the hearing. Mr. Daniels lives directly next door closest to where the proposed pool will be located. He stated he has no objection to the proposed pool.

8. The Board finds that it is feasible to reduce the amount of impervious surface area to 39% instead of 41.2% as requested.

9. No one spoke in opposition to the application.

10. Warwick Township took no position with regard to the application.

CONCLUSIONS OF LAW:

1. Section 910.2 of the Pennsylvania Municipalities 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. A Board is not required to grant a dimensional or use variance just to avoid financial hardship or to permit a property owner to use his property exactly as he wishes. *Id.* (Citations and internal quotations omitted.)

4. The hardship must relate to the property and not the person. *Id.*

The use of the Subject Property as a single family home is a permitted use in the RA Residential-Agricultural Zoning District and an in-ground swimming pool is a permitted accessory use.

5. The credible evidence presented by the Applicant, and unrebutted supports the variances necessary to use the small and previously developed property.

6. The competent evidence presented leads the Board to conclude that, should the requested variances be granted, there will be no negative impacts upon surrounding properties or uses.

Specific to this conclusion, the Board considers the statement of Jeff Daniels as the closest resident to the proposed pool.

7. The Board concludes that the evidence presented does not establish that the relief sought by the Applicant is the minimum variance necessary. The Board has concluded that granting an impervious coverage that is less than what the Applicants' have requested and thereby requiring them to remove some of the existing impervious coverage is the minimum variance necessary to allow the Applicants to install an in-ground swimming pool.

8. The Board concludes that the installation of an in-ground pool will not alter the essential character of the neighborhood or district in which the Subject Property is located.

9. The Board concludes that the Applicant has presented evidence of sufficient factors to warrant the grant of the dimensional relief requested.

10. Accordingly, the Warwick Township Zoning Hearing Board determined, unanimously, to grant the Applicant's request for relief subject to the conditions set forth below.

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Warwick Township hereby GRANTS the following variances from the Warwick Township Zoning Ordinance in order to install an in-ground swimming pool at the Subject Property:

1. from §195-16.B(2)(e)[3][c](i) to permit 39% impervious surface where a maximum of 25% is permitted;
2. from §195-16.B(12)(g)[1] to permit a rear yard setback of 10.7 feet where 15 feet is required and a side yard setback of 10 feet where 15 feet is required.

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: /s/ Kevin Wolf
Kevin Wolf, Chairman

 /s/ David Mullen
David Mullen

 /s/ Joseph Thiroway
Joseph Thiroway

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.