

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

Docket No. 21-02

Applicants: Robert and Colleen Marchand  
1390 Memorial Drive  
Warwick, PA 18974

Owner: Same.

Subject Property: Tax Parcel No. 51-003-191, which is located at 1390 Memorial Drive,  
Warwick, PA 18974

Requested Relief: The Applicant intends to install an in-ground swimming pool. In order to do so, Applicant is seeking a variance from §195-16.B(12)(g)[1] of the Warwick Township Zoning Ordinance (“Ordinance”) to allow a rear yard setback of 21.4 feet where 25 feet is required.

Hearing History: The Application was filed in Warwick Township on February 3, 2021. The hearing was held on March 2, 2021 virtually via the Go To Meeting Application.

Appearances: None

Parties: None

Mailing Date: March 30, 2021

## 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 March 2, 2021 hearing:

#### Board Exhibits:

B-1 Application with attachments received by Warwick Township on February 3, 2021

B-2 Proof of Publication from the Intelligencer for advertising notice on February 15, 2021 and February 22, 2021. Public Notice advertising hearing scheduled for March 2, 2021 at 7:30 pm and confirmation from the Intelligencer

B-3 Letter dated February 9, 2021 to Colleen and Robert Marchand from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated February 12, 2021 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 February 12, 2021

#### Applicant Exhibits:

None.

4. The Subject Property is located in the RG Residential-Agricultural Zoning District. The Subject Property consists of 12,134 square feet and contains a single family home, driveway, and porch. The current impervious surface coverage is 28% which will be increased to 36.7% with the installation of the pool and associated improvements. The maximum permitted impervious is 45%.

5. Robert and Colleen Marchand testified in support of the Application. Mr. Marchand testified that they are proposing to install an inground swimming pool in their rear yard. The pool needs to be placed a safe distance from the house and the rear stairs.

On the Plan, the stairs noted as “To be removed” are wooden stairs that were installed by the builder. As shown on the plan, after the stairs are removed there will be approximately 5 to 6 feet from the new steps to the pool. A gate will be installed at the top of the stairs for safety.

The property behind them is part of the golf course.

6. Nancy and Chris Kelly of 1388 Memorial Drive spoke in support of the application.
7. Brittany and Pat Trauger of 1392 Memorial Drive spoke in support of the application.
8. No one spoke in opposition to the application.
9. 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 RG Residential-Agricultural Zoning District and an in-ground swimming pool is a permitted accessory use.

5. The credible evidence presented by the Applicant, and un rebutted supports the variance necessary to use the small and previously developed property.

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

Specific to this conclusion, the Board considers the statements of Nancy and Chris Kelly and Brittany and Pat Trauger as the closest residents to the proposed pool.

7. The Board concludes that the evidence presented establishes that the relief sought by the Applicant is the minimum variance necessary.

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.

### **ORDER**

Upon consideration and after hearing, the Zoning Hearing Board of Warwick Township hereby GRANTS a variance from §195-16.B(12)(g)[1] of the Warwick Township Zoning Ordinance in order to install an in-ground swimming pool at the Subject Property with a rear yard setback of 21.4 feet where 25 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/ Lorraine Sciuto-Ballasy  
Lorraine Sciuto-Ballasy

**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.