

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

Docket No. 21-03

Applicants: Stephen and Cheryl Pietrzykowski
2101 Ashton Drive
Jamison, PA 18929

Owner: Same.

Subject Property: Tax Parcel No. 51-020-149, which is located at 2101 Ashton Drive,
Jamison, PA 18929

Requested Relief: The Applicant intends to install an in-ground swimming pool. In order to do so, Applicant is seeking: an interpretation that the proposed location of the swimming pool does not violate the applicable setback requirements or in the alternative a variance from §195-16.B(12)(g)[1] of the Warwick Township Zoning Ordinance (“Ordinance”) to locate the swimming pool further forward than the front of the residence on Guinea Lane.

Hearing History: The Application was filed in Warwick Township on February 24, 2021. The hearing was held on April 6, 2021 virtually via the Go To Meeting Application.

Appearances: John A. VanLuvanee, Esquire
Eastburn and Gray
60 East Court Street
P.O. Box 1389
Doylestown, PA 18901

Parties: None

Mailing Date: May 6, 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 April 6, 2021 hearing:

Board Exhibits:

B-1 Application with attachments received by Warwick Township on February 24, 2021

B-2 Proof of Publication from the Intelligencer for advertising notice on March 15, 2021 and March 22, 2021. Public Notice advertising hearing scheduled for April 6, 2021 at 7:00 pm and confirmation from the Intelligencer

B-3 Letter dated March 8, 2021 to John A. VanLuvanee, Esquire from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated March 22, 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 March 22, 2021

Applicant Exhibits:

A-1 Deed – Ilene L. Kane to Stephen Pietrzykowski and Cheryl Pietrzykowski dated July 6, 2016

A-2 Google Earth aerial photo # 1 – 2101 Ashton Drive

A-3 Google Earth aerial photo # 2 – 2101 Ashton Drive

A-4 Google Earth street view photo # 3 – 2101 Ashton Drive

A-5 Google Earth street view photo # 4 – 2101 Ashton Drive

A-6 Zoning Variance Plan prepared by Crews Surveying, Inc.

- A-7 Existing Features Plan (blow up from A-6)
- A-8 Proposed Features Plan (blow up from A-6)
- A-9 Zoning Information (blow up from A-6)
- A-10 Impervious Site Calculations (blow up from A-6)
- A-11 Email dated January 25, 2021 from Mary Eberle, Esquire
- A-12 Photo – covered back deck

4. The Subject Property is located in the RR Restricted Residential Zoning District. The Subject Property consists of 28,682 square feet and contains a single family home, driveway, detached garage and covered deck. The current impervious surface coverage is 21.5% which will be increased to 30% with the installation of the pool and associated improvements. The maximum permitted impervious is 30%.

5. The Subject Property has frontage on Guinea Lane and Ashton Drive. Under the Ordinance, the Subject Property is defined as a Corner Lot which has two front yards, two side yards and no rear yard.

6. At issue in this case is §195-16.B(12)(g)[1] of the Ordinance which provides, in part:

The following minimum setback requirements shall govern the location of private swimming pools ... provided that such pools, including appurtenances such as decks, patios, sidewalks, etc., shall not be located further forward than the front of the building and shall not be located within the front yard setback.

7. John VanLuvanee introduced the Application and indicated that the Applicants would like to install a swimming pool with a patio, walkways, pool coping and equipment pad on the Subject Property. The proposed coping around the swimming pool will be located 40 feet from Guinea Lane which complies with the minimum setback requirement. However, the pool and related appurtenances will be located closer to Guinea Lane than the current home. Mr. VanLuvanee made the argument that the front of the existing home is on Ashton Drive. There are no doors or windows on the Guinea Lane side of the home. Therefore, §195-16.B(12)(g)[1] of the Ordinance is not applicable because the Guinea Lane side of the house is not the front of the house so the swimming pool and related appurtenances cannot be located further forward than the front of the building. However, if a variance is required, the Subject Property suffers from unique circumstances that justify the need for a variance.

8. Stephen Pietrzykowski testified in support of the Application and confirmed the summary of the Application provided by Mr. VanLuvanee. Mr. Pietrzykowski testified that he has resided in the home for 5 years with his wife and children. There are other swimming pools within his subdivision including the house directly across the street which has a swimming pool on the Ashton Drive side of their home as shown on Exhibit A-2. His house is parallel to Ashton

Drive and that is what they consider to be the front of the house. The swimming pool will be installed on the side of the house that faces Guinea Lane. There is existing vegetation between the proposed pool and Guinea Lane that includes two rows of trees, brush and bamboo.

Mr. Pietrzykowski testified that Exhibit A-6 is a copy of the Plan that he had Crews Surveing, LLC prepared and it contains the existing and proposed conditions at the Subject Property. The swimming pool will meet all of the other applicable zoning requirements. The Subject Property contains a 25 foot wide conservation area in the rear yard and the swimming pool cannot be located there. The proposed location is the only place on the Subject Property that a pool can be located. The Subject Property also contains a large deck, shown in Exhibit A-12, that is located off the rear of the home. If the pool were required to be located between the deck and the conservation area, the pool would have to be very narrow and the deck would prevent individuals in the home from observing children in the swimming pool.

Mr. Pietrzykowski testified that there is no sidewalk along Guinea Lane and with the existing screening the swimming pool will be difficult to see from Guinea Lane. In his opinion, the swimming pool will not change the character of the neighborhood.

9. Jana Eliav of 2103 Ashton Drive spoke in support of the application.
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.*

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

6. The Board declines the Applicant's invitation to interpret the Ordinance to indicate that the location of the proposed swimming pool does not violate the applicable setback requirements.

7. The credible evidence presented by the Applicant, and unrebutted supports that the variance is necessary for the reasonable use of the Subject Property.

8. 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.

9. Specific to this conclusion, the Board considers the statement of Jana Eliav as the closest resident to the proposed pool.

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

11. 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.

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

13. 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 declines the Applicant's request for an interpretation that the location of the proposed swimming pool does not violate the applicable setback requirements but 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 in the location shown on Exhibit A-6 with a setback from Guinea Lane of 40 feet which is closer to Guinea Lane than the existing structure subject to the following condition: An as-built survey shall be submitted to the Zoning Officer after construction is complete to confirm that the swimming pool does not encroach into the front yard setback on Guinea Lane and to verify that the maximum impervious coverage of 30% has not been exceed.

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.