

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

Docket No. 22-06

Applicants: Dr. Stuart Pollack and Maria Casta-Pollack  
1820 Augusta Drive  
Jamison, PA 18929

Owner: Same.

Subject Property: Tax Parcel No. 51-011-132, which is located at 1820 Augusta Drive,  
Jamison, PA 18929

Requested Relief: The Applicant intends to install an electric generator on the side of the  
existing home. In order to do so, Applicant is seeking a variance from  
§195-16.B.12(m) of the Warwick Township Zoning Ordinance  
("Ordinance") to allow the electric generator to be 4.8 feet from the side  
property line where 7 feet is required.

Hearing History: The Application was filed in Warwick Township on March 14, 2022. The  
hearing was held on May 3, 2022 at the Warwick Township  
Administration Building.

Appearances: John VanLuvanee, Esquire  
P.O. Box 1389  
Doylestown, PA 18901

Parties: None

Mailing Date: May 27, 2022

## 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 May 3, 2022 hearing:

#### Board Exhibits:

B-1 Application with attachments received by Warwick Township on March 14, 2022

B-2 Proof of Publication from the Intelligencer for advertising notice on April 19, 2022 and April 26, 2022. Public Notice advertising hearing scheduled for May 3, 2022 at 7:00 pm and confirmation from the Intelligencer

B-3 Letter dated April 11, 2022 to John VanLuvanee, Esquire from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated April 18, 2022 sent by Kristen Beach, Warwick Township Deputy Zoning Officer and copy of list of property owners.

B-5 Property Posting Certification by Kristen Beach, Deputy Zoning Officer dated April 18, 2022

#### Applicant Exhibits:

A-1 Deed into Pollack dated November 20, 2002

A-2 Record Plan recorded at Plan Book 300, Page 26

A-3 As Built Plan of Lot 142

A-4 Aerial Photo

A-5 Aerial Photo – Rear View

A-6 Aerial Photo showing proposed location of generator

- A-7 Side Yard Photo 1
- A-8 Side Yard Photo 2
- A-9 Sketch Plan of Proposed Generator Site – Top View
- A-10 Sketch Plan of Proposed Generator Site – East Side View
- A-11 Rear Yard Photo
- A-12 Aerial Photo showing side of 1818 Augusta Drive
- A-13 Aerial Photo showing rear yards
- A-14 Street View Photo – Front of 1820 Augusta Drive
- A-15 Street View Photo – Front of 1818 August Drive

4. Only two members of the Zoning Hearing Board were present for the hearing. Applicant was provided the option of proceeding with a two member board or with one of the members serving as a hearing officer. Applicant agreed to proceed with a two member board.

5. The Subject Property is located in the RG Residential Golf Zoning District. The Subject Property consists of 11,880 square feet and contains a single family home, deck, walkway and driveway. The minimum lot area required in this Zoning District is 1 acre.

6. Dr. Stuart Pollack testified in support of the Application. His testimony can be summarized as follows:

Dr. Pollack is Radiologist at St. Luke’s University Health Network. Dr. Pollack owns the Subject Property with his wife. The house is not centered on the lot and has a side yard setback on the west side of the house of 26.84 feet and a setback on the east side of the house of 8.42 feet. See Exhibit A-3 which is an as built plan for the Property. Exhibit A-4 is an aerial photo on which the Subject Property is noted with an X. The generator is proposed to be located on the east side of the house. The closest neighbor to this side is 1818 Augusta Drive.

Dr. Pollack provides telemedicine services from the Property. The need for these types of services has increased since the beginning of the COVID-19 pandemic. It is necessary for the Subject Property to have the backup electric generator so that Dr. Pollack can continue to provide these services even if there is a power outage.

Dr. Pollack hired a contractor to install the electric generator and asked the contractor the best location for the electric generator. The area selected is shown on Exhibit A-6 as a green box. This is the best location because of the proximity to the gas and electric service that are shown on Exhibit A-7 and the topography of the remaining Subject Property. Exhibit A-8 shows the entire side of the home where the generator will be located between the gas and electric

service and the air conditioning unit. The air conditioning unit is located approximately 5 feet from the side property line which was permitted by the Zoning Ordinance at the time of installation. The electric generator must be located at least 18 inches from the house and once installed it will be located 4 feet 8 inches from the side property line.

The west side of the Subject Property contains the driveway and a walkway around to the rear of the house. The Subject Property slopes from the road down to the rear property line and the east side of the property slopes toward the center of the Property. The only other possible location for the electric generator is the rear of the house on the east side which is shown in Exhibit A-11. In order to place the generator there, the contractor would have to utilize a level mounting platform as there is an approximately 44% grade in that area. In addition, this location is approximately 36 feet from the gas and electric service which would require the installation of piping to achieve a connection to the utilities. There is also stormwater runoff in this area and an irrigation line that would have to be re-routed. In addition, the generator would be more visible to the neighbor at 1818 Augusta Drive than it would be if located on the side of the house. On the side of the house, the generator will be located where the neighbor's garage is, not a living space. Dr. Pollack spoke to his neighbor at 1818 Augusta Drive who had no objection to the proposed location of the generator.

Exhibit A-14 shows the Subject Property from the street and you cannot see the gas and electric service from the street. It is unlikely that you will be able to see the generator either. In addition, there is a significant amount of landscaping on that side of the house. Dr. Pollack opined that he has requested the minimum variance possible and that the variance won't alter the character of the neighborhood. There are several other neighbors in the community that have similar generators. Dr. Pollack does not believe that the variance will impact the health, safety or welfare of the community.

7. Mr. VanLuvanee presented a summary argument on behalf of the Applicant. The setback requirement was changed after the house was built and that is enough to justify the dimensional variance. In addition, the topography of the Subject Property presents a hardship. Also, as this is a dimensional variance, there is a lesser standard for relief. In addition, the generator will be beneficial to the health, safety and welfare of the community by allowing Dr. Pollack to continue providing telemedicine services.

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 Planning 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 Pennsylvania Supreme Court has recognized that the requirement to demonstrate unnecessary hardship can be shown with a lesser quantum of proof in a dimensional variance case. *Hertzberg v. Zoning Hearing Board of Adjustment of the City of Pittsburgh*, 721 A.2d 43 (Pa. 1998).

6. The use of the Subject Property as a single family home is a permitted use in the RG Residential Golf Zoning District and a generator is a permitted accessory amenity.

7. The Board finds that the Subject Property is subject to physical conditions that burden the Subject Property including that the lot does not meet the minimum lot size requirement and the topography of the Property.

8. The credible evidence presented by the Applicants, supports that the variance is necessary for the reasonable use of the Subject Property.

9. 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.

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 granting of the variance 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 GRANTS a variance from §195-16.B.12(m) of the Warwick Township Zoning Ordinance in order to allow the generator on the Subject Property to have a setback from the side yard of 4.8 feet where 7 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

**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.