

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

Docket No. 22-12

Applicant: Martin and Sarah Squicciarini  
1505 Brook Lane  
Jamison, PA 18929

Owner: Same

Subject Property: Tax Parcel No. 51-023-138 for property known as 1505 Brook Lane

Requested Relief: The Applicant requests variances from the following Sections of the Warwick Township Zoning Ordinance (“Ordinance”) to permit the construction of an in-ground pool: §195-16.B(12)(g)[1] to permit a rear yard pool setback of 2.4 feet where 25 feet is required; §195-16.B(12)(g)[1] to permit a side yard pool setback of 13 feet where 25 feet is required; and §195-78.G to permit an uncovered patio or deck to be built within 2.2 feet of the rear property line, where a minimum depth of 50% (12.5 feet) of the rear yard setback is required.

Hearing History: The Application was filed in Warwick Township on September 2, 2022. The hearing was held on October 4, 2022 at the Warwick Township Administration Building.

Appearances: None.

Parties: Joseph and Vicki Pantano                      Frank Pinda  
1659 N. Ash Circle                                      1513 Brook Lane  
Jamison, PA 18929                                      Jamison, PA 18929

Mailing Date: November 2, 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 is therefore possessed of the requisite standing to make application to this Board.

3. The following exhibits were marked and admitted during the October 4, 2022 hearing:

#### Board Exhibits:

B-1 Application with attachments received by Warwick Township on September 2, 2022

B-2 Proof of Publication from the Intelligencer for advertising notice on September 18, 2022 and September 25, 2022. Public Notice advertising hearing scheduled for October 4, 2022 at 7:00 pm and confirmation from the Intelligencer

B-3 Letter dated September 12, 2022 to Applicant from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated September 16, 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 September 16, 2022

#### Applicant Exhibits:

A-1 Squicciarini Residence Swimming Pool Site Plan

A-2 3D Rendering of proposed pool and patio

4. The Subject Property is located in the RR Restricted Residential Zoning District. The Subject Property consists of 24,228 square feet and currently contains a single family detached dwelling, shed, deck, driveway and walkways.

5. Joseph and Vicki Pantano own a property directly adjacent to the Subject Property. Mr. and Mrs. Pantano requested and were granted party status.

6. Frank Pinda owns a property directly adjacent to the Subject Property. Mr. Pinda requested and was granted party status.

7. Mr. Squicciarini's testimony can be summarized as follows:

He and his wife purchased the Subject Property in June of 2021. They would like to make this house their forever home. The couple have a two year old child and a dog. Mr. Squicciarini grew up in the area and is very familiar with the area. They would like to install a pool for their kids to play in and a patio to observe the children and entertain in their rear yard. They previously installed a fence after obtaining a survey and applying for the appropriate permits.

Exhibit A-1 shows that the house sits exactly 25 feet from the rear yard so there is no way to install a pool in the rear yard that meets the rear yard setback. There are several other pools in the neighborhood so this pool will not change the neighborhood. The northeast side of the house is burdened by a stormwater easement and deed restricted open space. Previously, when there was a severe storm, water came within 15 feet of the home and filled the stormwater basin.

The request is for the minimum variance based on safety and the stormwater constraints. The Subject Property has physical constraints because the rear yard is only 25 feet and this condition was not caused by the Applicants.

8. Mr. Rob McCubbin on behalf of Anthony Sylvan Pools testified on behalf of the Applicants. Mr. McCubbin's testimony can be summarized as follows:

The proposed pool is 11 ½ feet long and is a smaller pool. The pool has a depth of 3 to 5 feet. It is virtually impossible to do anything in the rear yard of the Subject Property. The Applicants will comply with the Stormwater Ordinance and will mitigate the stormwater from the proposed pool and patio. No stormwater testing has been done yet. The plans include porous pavers over a stormwater BMP that contains a pipe that will drain into the stormwater easement. He doesn't anticipate that the neighbors will experience any water issues. Applicant will have to obtain approval from the Conservation District for stormwater controls during construction.

Mr. McCubbin believes that the pool can be dug within 2.4 feet of the rear property line without affecting the neighbor's property. The pool is currently 9 feet from the foundation of the house. It could be moved so that it is 5 feet from the foundation, that would allow for a little more room from the rear boundary line. The pool could also be moved a little further from the side yard boundary but not much if the pool is pushed back from the rear property line because of the rear steps.

9. Joseph Pantano's testimony can be summarized as follows:

He is not sure what the hardship is. The Subject Property is subject to restrictions but the Applicants knew about the restrictions when they purchased it. There are a lot of infiltration issues in the rear of the house and on the northeast side. The area of the stormwater easement is all clay and the drainage there is terrible. The pool and the patio will only be a few feet from the

property line. Permeable pavers often clog up and then are no longer permeable if they are not properly maintained. The Applicant admitted themselves that they have drainage issues.

10. Mr. Pinda's testimony can be summarized as follows:

In the area between his home and the Subject Property, there is a down spout and a sump pump that drain into the east corner of the Subject Property. When it rains the area becomes extremely saturated. There is a French drain that was installed that runs out to the street. Mr. Pinda inquired whether there would be landscaping around the pool equipment.

11. In response to Mr. Pinda, Mr. McCubbin testified that the down spout and sump pump drain will be redirected to the stormwater system being installed. The Applicant testified that the shed on that side could be removed and that he could install landscaping around the pool equipment. Applicant introduced Exhibit A-2, a 3D rendering, to show the landscaping along the rear property line and where they are proposing to install evergreens.

12. Vicki Pantano's testimony can be summarized as follows:

She is concerned about where backwash water from the pool will go, the noise from the pool equipment and the existing trees that will be removed.

13. Mr. McCubbin in response testified that the backwash water will go to the street. The pool pumps are very quiet. There is one tree that will be removed for the proposed pool. Although A-2 shows a table and chairs above the stormwater BMP they will not cause an issue if BMP is designed and built correctly.

14. Warwick Township took no position on the Application.

### **CONCLUSIONS OF LAW:**

1. Applicant's use as a single family detached dwelling (Use B1) is permitted on the Subject Property.

2. 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).

3. 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).

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

5. A lesser standard of proof is necessary to establish unnecessary hardship for a dimensional variance rather than a use variance. *Hertzberg v. Zoning Board of Adjustment of City of Pittsburgh*, 554 Pa. 249, 257, 721 A.2d 43, 47 (Pa. Cmwlth. 1998).

6. However, despite this so-called "lesser standard of proof", the Pennsylvania Commonwealth Court made clear in *Yeager v. Zoning Hearing Board of the City of Allentown*, 779 A.2d 595 (Pa.Cmwlth.2001) that *Hertzberg*:

"...did not alter the principle that a substantial burden must attend *all* dimensionally compliant uses of the property, not just the particular use the owner chooses. This well-established principle, unchanged by *Hertzberg*, bears emphasizing in the present case. A variance, whether labeled dimensional or use, is appropriate "only where the *property*, not the person, is subject to hardship." *Szmigiel v. Kranker*, 6 Pa.Cmwlth. 632, 298 A.2d 629, 631 (1972) ( '[W]hile *Hertzberg* eased the requirements ... it did not make dimensional requirements ... "free-fire zones" for which variances could be granted when the party seeking the variance merely articulated a reason that it would be financially "hurt" if it could not do what it wanted to do with the property, even if the property was already being occupied by another use. If that were the case, dimensional requirements would be meaningless--at best, rules of thumb--and the planning efforts that local governments go through in setting them to have light, area (side yards) and density (area) buffers would be a waste of time.' *Society Created to Reduce Urban Blight v. Zoning Bd. of Adjustment*, 771 A.2d 874, 878 (Pa.Cmwlth.2001).

7. The credible evidence presented by the Applicant and the parties demonstrates that the circumstances of the Subject Property have not changed since the Applicant purchased it.

8. The credible evidence presented by the Applicant and the parties demonstrates that the Subject Property experiences drainage issues and the Applicant has not conducted any infiltration testing to determine if the additional stormwater can be properly infiltrated.

9. The Board finds that Applicants are able to make reasonable use of the Subject Property without the variance requested in that there is already a house, shed, deck and driveway.

10. The credible evidence presented by the Applicant and unrebutted leads, the Board to conclude that, the Applicant has not investigated the ability to minimize the variances being requested.

11. The Board concludes that the Applicant has presented insufficient evidence of the applicable factors to warrant the grant of the relief requested.

12. Accordingly, the Warwick Township Zoning Hearing Board determined, unanimously, to deny the Applicant's request for relief.

**ORDER**

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

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.