

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

Docket No. 23-02

Applicants: Daniel and Jillian Bonelli
2115 Ashton Drive
Jamison, PA 18929

Owner: Same.

Subject Property: Tax Parcel No. 51-019-199 for property known as 2115 Ashton Drive

Requested Relief: The Applicant is seeking the following variances from the Warwick Township Zoning Ordinance (“Ordinance”): §195-60K(7) of the Zoning Ordinance to construct an inground pool within the Riparian Corridor located on the property without the implementation of a Corridor Management Plan.

Hearing History: The Application was filed in Warwick Township on January 4, 2023. The hearings were held on February 7, 2023 and March 7, 2023 at the Warwick Township Administration Building.

Appearances: None.

Parties: None.

Mailing Date: April 3, 2023

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 February 7, 2023 hearing:

Board Exhibits:

B-1 Application with attachments received by Warwick Township on January 4, 2023

B-2 Proof of Publication from the Intelligencer for advertising notice on January 22, 2023 and January 29, 2023. Public Notice advertising hearing scheduled for February 7, 2023 at 7:00 pm and confirmation from the Intelligencer

B-3 Letter dated January 17, 2023 to Applicants from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated January 20, 2023 sent by Kristen Beach, Warwick Township Zoning Officer and copy of list of property owners

B-5 Property Posting Certification by Kristen Beach, Zoning Officer dated January 20, 2023

Applicant Exhibits:

None.

4. The following exhibit was marked and admitted during the March 7, 2023 hearing:

Applicant Exhibit:

A-1 Revised Permit Plan prepared by Fioravanti, Inc.

5. The Subject Property is located in the RR Restricted Residential Zoning District. The Subject Property consists of approximately 39,285 square feet and contains a single family home and driveway.

6. Mr. Bonelli provided the following testimony at the February 7, 2023 hearing in support of his Application:

Mr. Bonelli would like to construct an inground swimming pool that will be approximately 38 feet by 24 feet. As originally proposed, the majority of the swimming pool was located within Zone 2 of the Riparian Corridor and a portion was located within Zone 1. After discussions with the Township, Applicant is willing to move the pool closer to the house and further away from the existing drainage ditch and out of Zone 1. The proposed pool will not interfere with the drainage ditch. The drainage ditch has intermittent water that flows through it from a pond that is a few properties away. There are a number of other properties within the development that have swimming pools.

Applicant will plant 9 shrubs along the drainage ditch and will be installing an oversized seepage bed to control stormwater on the Subject Property. The stormwater will flow around the swimming pool.

Applicant thought he was complying with the Ordinance requirement because his Engineer produced a Plan sheet that is titled "Corridor Management Plan."

Applicant obtained approval from the County Conservation District for the project.

Applicant's hardship is the drainage ditch and the resulting Riparian Corridor.

7. Zoning Officer Kristen Beach's testimony can be summarized as follows:

Sheet 3 of the Plans that were provided with the Application is not a true Corridor Management Plan. Under the Ordinance, a Corridor Management Plan should be a narrative report that includes an in depth study of what the riparian corridor is today, what affect the proposed work will have on the riparian corridor and provides for the mitigation of any issues that are caused.

Applicant did submit a Stormwater Management Report and it will be reviewed by the Township Engineer.

8. The Board indicated to the Applicant that they did not have enough information to reach a decision on his Application. To address this, Applicant requested a continuance of the hearing.

9. At the continued hearing on March 7, 2023, Applicant presented the testimony of Vince Fioravanti which can be summarized as follows:

Mr. Fioravanti revised the Plans to include information based on stormwater flow. In addition, the swimming pool was moved into Zone 1 in the location shown on Exhibit A-1. It is his opinion that the proposed swimming pool will have no impact on the surrounding properties and will match the community. Applicant's hardship is the uniqueness of the lot. It is the largest

lot in this development which was approved in 2003. In addition, the Ordinance establishing the Riparian Corridor was not adopted until 2010. The Riparian Corridor extends all the way to the rear of the house so nothing can be installed in the rear yard without it being in the Riparian Corridor. The area of the Riparian Corridor is more than an acre.

The drainage ditch is typically dry but when water does flow through it, it does not overflow. The seepage bed has been sized to handle what is being proposed and there are notes on the Plan that require maintenance of the seepage bed. In addition, the Applicant will be required to comply with the Township's Stormwater Code.

10. At the hearing on February 7, 2023, a letter was submitted and read during the public comment period from Anthony Gutierrez of 2152 Buckingham Drive. Mr. Gutierrez expressed concerns about stormwater runoff onto his property which is at a lower grade than the Subject Property. He noted that if a plan to mitigate flooding of other properties could be achieved he would have no objection.

11. No other members of the public provided public comment.

12. Warwick Township took no position regarding 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. The hardship must relate to the property and not the person. *Id.*

4. The use of the Subject Property as a B1 single-family dwelling and for a B-12 Residential Accessory Building, Structure or Use are permitted uses in the RR Restricted Residential Zoning District.

5. The credible evidence presented by the Applicant supports the conclusion that the variance is necessary for the reasonable use of the Subject Property.

6. The competent evidence presented by the Applicant and unrebutted leads, the Board to conclude that the Subject Property suffers from a hardship in that the Riparian Corridor extends to the rear of the dwelling and nothing would be permitted in the rear yard without encroaching on the Riparian Corridor.

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

8. The Board concludes that the evidence presented establishes that the relief sought by the Applicant are the minimum variances necessary.

9. The Board concludes that the granting of the variances will not alter the essential character of the neighborhood or district in which the Subject Property is located.

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

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

ORDER

Upon consideration and after the hearing, the Zoning Hearing Board of Warwick Township hereby GRANTS the following variance from the Warwick Township Zoning Ordinance: §195-60K(7) of the Zoning Ordinance to construct an inground swimming pool within the Riparian Corridor located on the Subject Property in the location shown on Exhibit A-1 without the implementation of a Corridor Management Plan. 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/ Lorraine Sciuto-Ballasy
Lorraine Sciuto-Ballasy

/s/ Kiel Sigafos
Kiel Sigafos

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.