

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

Docket No. 24-01

Applicants: Jessica and Michael Lloyd
1332 Memorial Drive
Warwick, PA 18974

Owner: Same.

Subject Property: Tax Parcel No. 51-003-162 for property known as 1332 Memorial Drive

Requested Relief: The Applicant is seeking the following variance from the Warwick Township Zoning Ordinance (“Ordinance”): §195-16.B(12)(g)[1] of the Zoning Ordinance to allow a rear yard setback of 15 feet where 25 feet is required.

Hearing History: An Application was filed in Warwick Township on February 8, 2024. The hearing was held on April 2, 2024 at the Warwick Township Administration Building.

Appearances: None.

Parties: Caitlin Akers, on behalf of Heritage Creek Golf LLC
1150 Meetinghouse Road
Jamison, PA 18929

Mailing Date: May 8, 2024

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 April 2, 2024 hearing:

Board Exhibits:

B-1 Application with attachments received by Warwick Township on February 8, 2024

B-2 Proof of Publication from the Intelligencer for advertising notice on March 21, 2024 and March 26, 2024. Public Notice advertising hearing scheduled for April 2, 2024 at 7:00 pm and confirmation from the Intelligencer

B-3 Letter dated March 18, 2024 to Applicants from Vicki L. Kushto, Esquire advising of the hearing date

B-4 Resident mailing certification dated March 22, 2024 sent by Tom Jones, Warwick Township Zoning Officer and copy of list of property owners

B-5 Property Posting Certification by Tom Jones, Zoning Officer dated March 22, 2024

Applicant Exhibits:

None.

4. At the beginning of the hearing, Applicant was advised that only two Zoning Hearing Board members were present to hear the Application and there was a possibility that the hearing could result in a tie vote which would be a denial of the Application. Applicant was given the opportunity to proceed with the hearing or to continue the hearing for a future date at which all of the members could be present. Applicant chose to proceed with the hearing before the two Zoning Hearing Board members who were present.

5. The Subject Property is located in the RG Residential-Golf Zoning District. The Subject Property consists of approximately 11,782 square feet and contains a single family detached dwelling.

6. Applicant, Mr. Lloyd's testimony can be summarized as follows:

The Applicant is proposing to install an in-ground swimming pool that will have a rear yard setback of 15 feet where 25 feet is required. The proposed in-ground swimming pool is smaller than the average size. The existing house contains a deck and a room that extend into the backyard as shown on the Plan attached to the Application. The Subject Property is encumbered by a 20 foot wide storm drainage easement that runs along the eastern boundary line. The easement is a swale with a buried stormwater pipe and nothing can be installed on it. Applicant worked with his neighbor to the East, who is also the head of the Homeowners' Association, to ensure that the easement is not affected. Currently stormwater drains from the easement into a stormwater basin on the golf course property.

As part of the installation of the in-ground swimming pool, a retaining wall is required which will also help to direct the stormwater flow. Applicant will also be installing some landscaping which will also help with stormwater management. Applicant is not required to install stormwater management facilities but is attempting to address the current issues.

Applicant testified that there are many other pools in the community including the neighbor directly next door to the West.

7. Caitlin Akers appeared on behalf of the Heritage Creek Golf LLC which owns the golf course which abuts the rear of the Subject Property. The Board granted Ms. Akers party status. Ms. Akers expressed concern about potential damage to the headwall and the swale which convey stormwater onto the golf course property. The headwall is near the southeast corner of the Subject Property in the center of the stormwater easement. The golf course still has an open NPDES permit with DEP for these stormwater facilities. The golf course would like the Applicant to enter into an Indemnity Agreement for the protection of the headwall and the swale. Applicant is agreeable to that being a condition of approval.

8. The Board of Supervisors took no position with regard to this Application.

9. No members of the public provided public comment.

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. 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 use of the Subject Property as a B-1 single family detached dwelling is a permitted use in the RG Residential-Golf Zoning District and an in-ground swimming pool is a permitted accessory use.

8. The Subject Property has unique physical conditions in that it is subject to a 20 foot wide storm water easement.

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

10. 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.

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

12. Accordingly, the Warwick Township Zoning Hearing Board determined, by a majority vote, 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 variances from the Warwick Township Zoning Ordinance: §195-16.B(12)(g)[1] of the Zoning Ordinance to allow a rear yard setback of 15 feet where 25 feet is required subject to the Applicant entering into a formal agreement, to the satisfaction of both parties, with Heritage Creek Golf LLC and providing a copy of that agreement to the Zoning Officer

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: Kevin J Wolf
Kevin Wolf, Chairman

Dave Mullen
Dave 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.