

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

Docket No. 16-04

Applicants: Eve Nacinovich and William Sfida
1384 Gabriel Lane
Warwick, PA 18974

Owners: Same.

**Subject
Property:** Tax Parcel No. 51-13-154, which is located at the address of the Applicants set forth above.

**Requested
Relief:** The Applicants request variances from §195-16.B.12.g.1 of the Warwick Township Zoning Ordinance (“Ordinance”) in order to permit the construction of an in-ground swimming pool at rear and side yard setback distances less than the 25 feet required.

**Hearing
History:** The application was filed in Warwick Township on April 5, 2016. The hearing was held on May 3, 2016 at the Warwick Township Administration Building, 1733 Township Greene, Jamison, PA 18929.

Appearances: Applicants by: Carl N. Weiner, Esq.
Hamburg, Rubin, Maxwell & Lupin, P.C.
ACTS Center-Blue Bell
375 Morris Road, P.O. Box 1479
Lansdale, PA 19446-0773

Mailing Date: June 8, 2016

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 Applicants are the Owners of the Subject Property and therefore possessed of the requisite standing to make application to this Board.

3. The Subject Property is located in the RG, Residential Golf Zoning District of Warwick Township. It accommodates the Applicants' single-family detached home with typical residential access walkways and a driveway.

4. The Subject Property is one of several single family residential lots developed, according to the evidence, in Phase II of the "Golf Club Estates" development. This development occurred pursuant to the provisions of Ordinance §195-16.B.17 which allows for a residential/golf course use. It is a cluster development in that the residential lots are clustered in areas preserving open space for the development of the golf course. This has permitted construction and development of large single family homes on small lots.

5. The Subject Property has a lot area of 10,080 square feet.

6. The dwelling on the property is situate, at its closest point, at a rear yard setback distance of 32.2 feet; a north side yard setback distance of 18.1 feet; and a south side yard setback distance of 15.1 feet.

7. The Applicants propose the construction of an in-ground swimming pool with an area of 434 square feet and spa with an area of 56 square feet as well as impervious decking around portions of the pool. The total increase in impervious surface proposed is 1,044 square feet that will result in a 43.6% impervious surface coverage ratio. The applicable impervious surface coverage ratio permitted is 45% pursuant to Exhibit A-3, the "Fourth Amendment to Stipulation for Partial Settlement".

8. The original proposal for the pool was as is depicted on Exhibit B-1.A, a "Proposed Pool Variance Plan" prepared by Site Works Consultants Inc., dated April 4, 2016. That Plan proposed the location of the in-ground swimming pool at a rear yard setback distance of 15 feet and a north side yard setback distance of 17 feet.

9. At the hearing, the Applicants presented Exhibit A-4, a "Proposed Pool Variance Plan" prepared by Site Work Consultants Inc., dated May 2, 2016. This Plan depicted a redesign of the proposed pool that would result in a 18 foot rear yard setback distance and a 18 foot north side yard setback distance.

10. Ordinance §195-16.g sets forth special setback requirements for a swimming pool in the RG District. It requires a side and rear yard setback distance of 25 feet.

11. The Applicants testified that, in order to comply with the special setback distances required by the Ordinance, a compliant pool would have an area of 128 square feet and a spa of 20 square feet.

12. Exhibit A-7, is a plan that shows the 210 residential lots on Gabriel Lane that were developed as the Golf Club Estates. The Subject Property is depicted as Lot No. 176 on Exhibit A-7. This exhibit establishes that the vast majority of the residential lots developed were of the same size, or smaller, as the Subject Property. A small number of the residential lots depicted on Exhibit A-7, are larger.

13. The Subject Property is bordered on three sides by similarly sized residential lots. Accordingly, the proposed rear and side yard setback distances are from residential properties.

14. The evidence establishes that the Subject Property is not substantially different from the vast majority of the other residential lots in the Golf Club Estates.

15. An in-ground swimming pool is a permitted accessory use to a residential structure provided it meets the special setback requirements set forth at §195-16.B.12.g.1.

16. The Board finds that the legislative intent of this section of the Ordinance, which requires a special setback distance for swimming pools, was to eliminate disturbance to residential neighbors and provide privacy to a property owner and surrounding property owners.

17. Development of the residential lots in the Golf Club Estates effectively eliminates the potential for installation of accessory structures due to the limited area remaining after the construction of large homes on small lots, with the exception of the few larger lots in that development.

18. Nothing about the Subject Property distinguishes it from the many small lots in its neighborhood. On the basis of the revised pool plan and Exhibit A-7, the Board finds that, because the lot is so small, there is no room on the Subject Property to effectively accommodate an in-ground swimming pool, of the size and at the setback distances proposed without disturbing the privacy of neighbors and creating noise impacts that inevitably result.

19. No evidence was presented that would indicate that the Subject Property has any sort of unique condition or situation, as distinguished from all of the other residential lots within the development of the same or similar size, that would create a hardship. The property is developed as zoned and planned as a large single family home on a small lot.

20. As a result, the property owners within this development, with lot sizes similar to the Subject Property, have, this Board finds, given up any possibility of construction of in-ground pools on those properties due to the overcrowding that would result.

21. In Docket No. 10-14 (Exhibit B-6) this Board considered a similar request for installation of an in-ground swimming pool on a small lot with a large home. That home was located at 1355 Gabriel Lane. That request was denied based upon similar Findings and Conclusions.

22. The evidence indicates that the Subject Property is served by the stormwater management facilities designed for the construction of the entire development.

23. One residential neighbor, Kelly McGarrity, of 1377 Gabriel Lane, appeared at the hearing in opposition to the request. Her house is located across the street from the Subject Property. She testified that there are at least 110 large homes on small lots with lots sizes of approximately 10,000 square feet in the development. She further testified that these small lots were not designed to accommodate in-ground swimming pools and she was concerned about her privacy if these lots received variances for in-ground swimming pools.

24. Warwick Township took no position with regard to this application.

CONCLUSIONS OF LAW:

1. The Subject Property has been developed and is used as a single family detached dwelling which is permitted by right in the RG Zoning District.
2. The development of the Golf Club Estates has resulted in the creation of several small residential lots accommodating large homes.
3. On the basis of the competent and credible testimony and evidence received, the Board concludes that none of that evidence establishes any unique feature or condition of the Subject Property that distinguishes it from the many small residential lots in its neighborhood.
4. The Board concludes and accepts the legislative wisdom of establishing special setback distances for swimming pools so that properties that are too small to accommodate them cannot do so.
5. It is the development of this residential subdivision that precludes the construction of accessory structures due to the small lot sizes.
6. Installation of the swimming pool on the Subject Property, as proposed, this Board concludes, would adversely impact residential neighbors due to the proximity of the swimming pool to the shared property lines.
7. There are no unique physical circumstances or conditions, or exceptional topographic features of the Subject Property that create a hardship.
8. The creation of the residential development on small lots is the sole cause of the Applicants' request for relief.
9. The property has been developed in conformity with the provision of the Ordinance and Settlement Agreement. A variance is not necessary to enable the reasonable use of the property.
10. The construction of an in-ground swimming pool at the location and of the size proposed is a self-created condition.
11. Were this property and others of similar size in the neighborhood permitted the variance requested, this Board concludes that the essential character of the neighborhood will be permanently impaired due to the sight, sound and privacy impacts of swimming pools in a dense neighborhood.
12. The variance sought does not represent the minimum variance that would afford relief.

13. Even though the variances sought are dimensional in nature, the Applicants have not established sufficient factors to warrant a finding of hardship.

14. Accordingly, the Warwick Township Zoning Hearing Board determined, unanimously, to deny the Applicants' request for variances from §195-16.B.12.g.1.

ORDER

Upon consideration and after hearing, the Warwick Township Zoning Hearing Board hereby DENIES variances from §195-16.B.12.g.1 of the Warwick Township Zoning Ordinance.

**ZONING HEARING BOARD OF
WARWICK TOWNSHIP**

/s/ Kevin J. Wolf

Kevin J. Wolf

/s/ Dave Mullen

Dave Mullen

/s/ Lorraine Sciuto-Ballasy

Lorraine Sciuto-Ballasy

IMPORTANT NOTE: Pursuant to §195-115 and §195-116 of the Warwick Township Zoning Ordinance, variances or special exceptions granted by the Zoning Hearing Board shall expire one (1) year from the date of the Decision, unless the applicant or owner or successor in interest has commenced construction within that time. Construction will be deemed commenced upon the issuance of a building and/or zoning permit for the approved use.