

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

Docket No. 18-06

Applicants: Marinel and Ana Ardeljan
2004 Cedar Drive
Warrington, PA 18976

Owners: Same.

Subject Property: Tax Parcel No. 51-024-018, which is located at the address of the Applicants set forth above.

Requested Relief: Applicants seek to construct an in-ground swimming pool with pool decking, coping and an equipment pad within the rear yard of the Subject Property. As proposed, the project would create 38.8% impervious surface coverage which exceeds the maximum permitted impervious coverage of 30% percent. Applicants seek a variance from Article III, §195-16.B(1)(a)[2] of the Warwick Township Zoning Ordinance (“Ordinance”) to exceed the maximum allowable impervious coverage. The pool is proposed to be constructed 15' (fifteen feet) from the rear property line and 17.1' (seventeen point one feet) from the side property line. The Ordinance requires a 25' (twenty-five foot) pool setback from the rear and side lot lines. Applicant seeks a variance from Article III, §195-16.B.12(g)[1] of the Ordinance to encroach into each of the two required setbacks.

Hearing History: The application was filed in Warwick Township on July 23, 2018. The initial hearing was held on September 4, 2018. A subsequent hearing was held and concluded on November 13, 2018 at the Warwick Township Administration Building, 1733 Township Greene, Jamison, PA 18929.

Appearances: Applicants, Pro Se'

Mr. John Kelly, Pro Se'
1407 Windsor Drive
Warwick, PA 18976

Mr. Jim Corley, Pro Se'
1504 Huntly Drive
Warwick, PA 18976

Mr. Joseph Grimley, Pro Se'
1411 Windsor Drive
Warwick, PA 18976

Ms. Mary Jane Schmalz, Pro Se'
1506 Huntly Drive
Warwick, PA 18976

Mailing Date: December 28, 2018

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 following evidence was presented during the two hearings held.

ZHB-1 The application filed July 11, 2018, with attached list of property owners within 300 feet and the site plan dated June 28, 2018, prepared by TLC Surveying Inc.

ZHB-2 Proof of Publication of the Notice of Hearing.

ZHB-3 Proof of Posting the Premises with Notice of Hearing.

ZHB-4 Proof of Mailing the hearing notice to those required to be notified by mail.

ZHB-5 The Warwick Township Zoning Ordinance.

ZHB-6 Waiver of forty-five (45) day hearing timeframes (in anticipation of second hearing held on November 13, 2018), signed by Applicant.

- ZHB-7 Site Plan prepared by TLC Surveying Inc., dated June 28, 2018, last revised October 5, 2018.
- ZHB-8 November 7, 2018 Review Letter prepared by CKS Engineering (township consulting engineer), commenting upon the Site Plan (Exhibit ZHB-7).
- Exhibit A-1 Series of six (6) photographs marked 1/6 through 6/6, respectively, illustrating various views of the retaining wall to the rear of the property as well as the rear yard and patios on the subject property.
- Corley-1 Google Earth Image. 1427 Marielle Drive, Warrington, PA 18976, with surrounding properties.
- Corley-2 Google Earth Image. Close-up view of 1427 Marielle Drive.
- Corley-3 Collection of eight (8) photographs, marked 1/8 through 8/8, respectively.

4. The Subject Property is located in the RR, Restricted Residential Zoning District of Warwick Township.

- a. §195-16.B(1)(a)[2] allows up to 30% of impervious surface coverage on a lot within the RR District.
- b. §195-16.B.12(g)[1] provides that a swimming pool for use by family and guests only is allowable, but the private swimming pool, and any such deck, patio, or sidewalk, shall not be located further forward than the front of the building, and a side and rear yard setback shall be maintained at a minimum of 25 feet from the edge of the pool's coping.

5. Applicant seeks to construct an in-ground swimming pool for private use, with decking, coping, and an equipment pad. The swimming pool is a permitted use within the RR District subject to dimensional requirements.

6. Robert McCubbin, design consultant for Anthony & Sylvan Pools, provided technical details and background with regard to the application. Mr. McCubbin did rely upon and reference the June 28, 2018, Site Plan for the subject property.

- a. Mr. McCubbin described the project as an in-ground swimming pool to the rear of the existing dwelling, to be placed over an area for the most part, containing an existing impervious paver patio.

- b. The existing impervious surface on site, before the pool project, is 36.9%, which exceeds the 30% allowance.
- c. The pool, pool decking, coping, and equipment pad add 982 square feet of impervious surface, but Applicant then proposes to remove a portion of an existing paver patio (being replaced by the swimming pool) at 739 square feet and remove a portion of the existing driveway (250 square feet), for a total reduction of 989 square feet, leaving an overall reduction of 7 square feet of impervious surface.
- d. The resulting impervious surface, as reflected on the June 28, 2018 Site Plan, last revised October 5, 2018 is 4,665 square feet. Total site area is 12,673 square feet.
- e. Percent of total impervious surface existing is $4,672/12,673$ (36.9%). Percent of total impervious surface existing and proposed is $4,665/12,673$ (36.8%).
- f. While the proposed impervious surface remains in excess of the 30% allowable, the construction of the swimming pool as proposed, and modified, results in a reduction in the impervious surface ratio onsite.
- g. The pool is to be placed to the rear of the house. The pool dimensions are 27 x 13 (water) and 29 x 15 (including the coping).
- h. The setback to the rear lot line from the edge of the coping is 15 feet. The setback from the side lot line to the coping is 17.1 feet. Both setbacks are required to be 25 feet. Mr. McCubbin explained the placement of the swimming pool in relation to other features onsite and layout constraints.
- i. The existing dwelling is 15 feet from the side lot line and 34 feet from the rear lot line. The side yard dimensions reflect a preexisting nonconformity. §195-16.B(1)(a)[2] requires a twenty (20) foot side yard and a twenty-five (25) foot rear yard.
- j. The original site plan submitted with the application did not address storm water management, but the Applicant and applicant's design consultant acknowledged that storm water management is a necessary component of the pool permitting process, to be addressed upon submission of the pool permit.

7. Multiple adjacent and nearby property owners (as identified at the beginning of the present Decision), testified regarding the application. The general tenor of the

comments by the neighboring property owners spoke to existing storm water issues and problems.

- a. The parties consistently emphasized that a storm water problem exists, especially in the southeast corner of the subject property.
- b. Concern was raised with regard to a retaining wall to the rear of the subject property. The parties questioned whether the retaining wall was actually upon Applicant's property, or an adjacent property.
- c. Mr. McCubbin confirmed, following the revised plan (10/5/18), that the 30 inch retaining wall to the rear of the subject property is, in fact, located upon the subject property, and not located upon an adjacent or neighboring property.
- d. The adjacent property owners offered photographs demonstrating a swale on the other side of the retaining wall which showed standing water. The adjacent property owners expressed concern whether the Applicant's property was discharging water from downspouts and a sump pump through the retaining wall onto the other property to the rear.

8. The first hearing was continued to allow Applicant to address the storm water issues raised by the neighboring property owners. The result of that continuance was the revised plan (October 5, 2018 revision) and a November 7, 2018 review letter by the Warwick Township consulting engineer, CKS Engineers Inc. (ZHB-8). The review letter underscores the need for the Applicant to comply with the Storm Water Management Ordinance in a number of areas and further underscores the need for additional approvals prior to issuance of the permit. The review letter does indicate that the revised plan presented (October 5, 2018) is not recommended for approval, as presented.

9. Applicants assert that the property at issue carries a hardship due to its shape and the existing features, limiting placement of the swimming pool to the location reflected on the plans. Applicant further asserts the preexisting dimensional non-conformities represent a hardship.

10. Applicants confirmed their understanding that the storm water issues must be addressed to the satisfaction of Warwick Township, in order to receive an approved pool permit plan.

11. Warwick Township took no formal position with regard to this application, but the Township Engineer review letter (ZHB-8) has been considered, as has the comments of Ashley Casey, Zoning Officer. Ms. Casey explained the pool permit review process including engineering review of the ultimate storm water plan, to manage any storm water in excess of the 30% allowable onsite. The Board observes that management of impervious surface in excess of 30% will represent an improvement to existing conditions.

CONCLUSIONS OF LAW:

1. The use of the property as a single-family detached home is permitted by right within the RR, Restricted Residential Zoning District in which it is located. §195-30

2. A swimming pool for use by family and guests is a permitted use within the RR, Restricted Residential Zoning District, subject to dimensional requirements. §195-16.B(12)(g)[1]

3. Applicant seeks a variance from three of the dimensional requirements.

a. Applicant seeks a variance from §195-16.B(1)(a)[2] of the Warwick Township Zoning Ordinance to exceed the maximum allowable impervious surface coverage, by allowing impervious surface coverage of up to 36.8%, to accommodate the in-ground swimming pool and accessory decking and equipment.

b. A variance from the setback provisions of §195-16.B.12(g)[1] of the Ordinance to allow the rear yard setback at 15 feet, as measured from the edge of the coping to the rear lot line, instead of the 25 feet required; and

c. A variance from §195-16.B.12(g)[1] of the Ordinance to allow a 17.1 foot setback from the side lot line, where 25 feet is required.

4. The competent evidence presented leads the Board to conclude that, if the variance relief is granted, subject to conditions, there will be no negative impacts upon surrounding properties or uses. The Board is mindful that the neighbors have raised significant storm water management concerns. The Board considers the pool permitting process as an opportunity for the Applicant to address those concerns and mitigate storm water issues on, and in the vicinity of, the subject site.

5. The evidence establishes that the relief sought by the Applicant is the minimum variance necessary. The Board is mindful that the Applicant has reduced the amount of impervious surface requested between the initial site plan (June 28, 2018; ZHB-1) which reflected 4,915 existing and proposed square feet of impervious surface (38.8 %) compared to the revised site plan (October 5, 2018; ZHB-7) reflecting 4,665 square feet of existing and proposed impervious surface (36.8%). The Applicant has actually reduced the amount of impervious surface in conjunction with the application, as revised.

6. The variance sought will not alter the essential character of the neighborhood or district in which the Subject Property is located. The Board is mindful that there are multiple in-ground swimming pools within the existing neighborhood.

7. The Applicant has presented evidence of sufficient factors to warrant the grant of the dimensional variances requested. The Board is mindful that the Applicant has shown site constraints limiting the placement of the swimming pool. The Board finds the placement of the swimming pool reasonable and logical in conjunction with the placement of the dwelling on the subject property. The Board is also mindful that the Applicant is actually replacing existing impervious surface with the swimming pool at issue, for the most part.

8. Accordingly, the Warwick Township Zoning Hearing Board determined, unanimously, to grant the Applicant's request for relief, with conditions, as is set forth hereafter.

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Warwick Township hereby GRANTS variances from the Warwick Township Zoning Ordinance in order to construct an in-ground swimming pool with pool decking, coping and an equipment pad within the rear yard of the Subject Property:

1. from §195-16.B(1)(a)[2], to allow impervious surface coverage to increase beyond the allowable 30% to a maximum of 36.8%; and
2. from §195-16.B.12(g)[1], to allow the swimming pool to encroach into the 25 foot rear and side yard setback, for swimming pools, leaving a 15 foot rear yard setback and a 17.1 foot side yard setback.

The relief herein granted is subject to compliance with the following conditions:

1. Applicant shall manage all storm water resulting from impervious surface greater than the thirty percent (30%) impervious surface allowable, consistent with Warwick Township Ordinances.
2. Applicant shall in all other respects, comply with all other Township Ordinances including, but not limited to, the pool permitting process.

**ZONING HEARING BOARD OF
WARWICK TOWNSHIP**

/s/ Kevin J. Wolf
Kevin J. Wolf

/s/ Joe Thiroway
Joe Thiroway

/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.