

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

Docket No.: Z-4-2024

Applicants: Matthew & Kristine Clark
607 Cover Bridge Lane
Doylestown, PA 18901

Owners: Same.

Subject Property: Tax Parcel No. 09-065-009, which is located at the address of the Applicants set forth above.

Requested Relief: Applicants seek to construct an in-ground swimming pool accessory to the single-family dwelling on site. Post construction impervious surface coverage is proposed to exceed the 15% allowed. Applicants seek a variance from §175-33 of the Doylestown Township Zoning Ordinance (“Ordinance”) to exceed the 15% impervious surface coverage permitted.¹

Hearing History: The application was filed in Doylestown Township on March 1, 2024. The hearings were held on April 25, 2024, May 23, 2024, August 22, 2024, and October 24, 2024 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances: Applicants by: Michael J. Meginniss, Esq.
Begley Carlin & Mandio, LLP
680 Middletown Boulevard
Langhorne, PA 19047

Protestants by: John A. VanLuvanee, Esq.
Eastburn and Gray, PC
60 East Court Street
PO Box 1389
Doylestown, PA 18901

Mailing Date: December 6, 2024

¹ The request was clarified as amended during the hearing held on October 24, 2024 to increase impervious surface coverage to a maximum of 25.9%. The application initially requested a variance for up to 24.4% impervious surface coverage. Recalculating relief necessary led to a request for 25.9%.

DECISION

FINDINGS OF FACT:

1. The Zoning Hearing Board of Doylestown 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 R-1A, Residential Zoning District of Doylestown Township. The lot area is 0.67 acres. The property accommodates the Applicants' single-family dwelling.

4. Applicants seek to construct an in-ground swimming pool accessory to the single-family dwelling on site. Post construction impervious surface coverage is proposed to exceed the 15% allowed. Applicants seek a variance from §175-33 of the Doylestown Township Zoning Ordinance to exceed the 15% impervious surface coverage permitted.

5. Brian and Patricia Price, 650 Iron Hill Road, Doylestown Township, Tax Map Parcel No. 09-001-003-004, requested and were granted party status during the hearing held on October 24, 2024. The Prices are represented by John A. VanLuvanee, Esq.

6. The initial hearing was scheduled for April 25, 2024, following the March 1, 2024 application. The April 25, 2024 hearing was opened and continued when Applicant learned of potential opposition to the plan by nearby property owner Price. The matter was continued to May 23, 2024. The May 23, 2024 was opened and continued to August 22, 2024 as the parties continued to discuss possible solutions to the anticipated opposition. The August 22, 2024 hearing was opened and continued for the first substantive and presumably final hearing. On October 24, 2024, the hearing was opened, parties status was granted to Brian and Patricia Price, and the following Zoning Hearing Board exhibits were marked and admitted:

- ZHB-1: Application filed March 1, 2024 with attachments:
 - (a) List of property owners within 500 feet;
 - (b) Collection of historical land development plans for the previous subdivision creating the Subject Property; and,
 - (c) Zoning Plan prepared by Holmes Cunningham Engineering, dated 10/13/2023, last revised 03/04/2024.
- ZHB-2: Legal advertisement for the April 25, 2024 hearing (proof of publication, mailing and posting).
- ZHB-3: Doylestown Township Zoning Ordinance
- ZHB-4: Continuance requests with waivers for each of the aforementioned hearings.

- ZHB-5: Correspondence, Notice of Intent to Intervene, prepared by John VanLuvanee, Esq. on behalf of Brian and Patricia Price, 650 Iron Hill Road, Tax Map Parcel No. 09-001-003-004.
- ZHB-6: Applicants' amendment, dated 09/09/2024 refining the request for relief to increase impervious surface coverage to 25.9%.

The following Protestant exhibits were marked and admitted:

- A-1: Deed dated 11/18/1983 for 2.113 acres from Robert P. Gallo and Florence R. Gallo to Brian R. Price and Patricia D. Price. (Price Property)
- A-2: Deed dated 11/17/1986 for 5.026 acres from Joseph E. Fulcoly, Jr. and Joanne V. Fulcoly and Babette Trainer Estate to Brian R. Price and Patricia Doyle Price. (Price Property)
- A-3: Deed dated 06/17/1987 from Babette Trainer Estate and Joseph E. Fulcoly, Jr. and Joanne V. Fulcoly to Hagan Development Corp. (Hagan Development Property)
- A-4: Deed dated 10/05/1994 from Hagan Development Corp. to Joseph T. Reichwein and Margaret M. Reichwin. (Clark Property)
- A-5: Deed dated 11/16/1998 from Joseph T. Reichwein and Margaret M. Reichwein to H. Jeffrey Brahin and Carol Brahin. (Clark Property)
- A-6: Deed dated 01/20/2020 from H. Jeffrey Brahin and Carol Brahin to Matthew Clark and Kristine Clark. (Clark Property)
- A-7: Record Plan – Hagan Development Corp. record 06/08/1993.
- A-8: Ordinance No. 178. (Rezoning certain parcels from R-1 to R-1A)
- A-9: Ordinance No. 182. (Providing for single-family cluster development in R-1A District)
- A-10: Google Earth Aerial Image 03/28/1992.
- A-11: Google Earth Aerial Image 05/21/2023.
- A-12: Bucks County Parcel & Floodplain Viewer, Topographic Map.
- A-13: Grading & Drainage Plan (Sheet 2 of 2) – Hagan Development Corp.
- A-14: Chapter 148 – Stormwater Management Ordinance, Appendix D – Map of Peak Rate Control Management Districts.
- A-15: Chapter 148 – Stormwater Management Ordinance, Appendix I – Small Project Stormwater Management (SWM) Site Plan.

7. Applicant presented the testimony of Jason Korczak, PE, from Holmes Cunningham (expert testimony) and testimony from property owner Matthew Clark.

8. Property Owner Clark testified that he and his wife purchased the Subject Property in 2020. He moved to the Property with his wife and three children. The Clarks have performed no site work on the Subject Property since purchasing. In late 2021, or

early 2022, the Clarks initiated the process of obtaining a permit for an in-ground swimming pool for the rear yard of the Subject Property.

9. The permitting process was delayed because the property exceeds the impervious surface limitation in the Ordinance.

10. Mr. Clark observed that the dwelling does presently have a basement and the Clarks have not experienced any “substantial” flooding in the basement.

11. Mr. Clark engaged the services of Jason Korczak, PE, to address concerns raised by nearby property owners Brian and Patricia Price, regarding stormwater management and impervious surface coverage.

12. Mr. Clark is aware of one other swimming pool in the cul-de-sac of his subdivision.

13. Mr. Clark is not aware of complaints or concerns raised by any property owner other than the Prices.

14. Jason Korczak, PE, offered expert testimony with regard to the site, impervious surface calculations, and proposed improvements.

15. Mr. Korczak testified regarding the October 13, 2023 Permit Plan, last revised August 22, 2024. Mr. Korczak emphasized that the Subject Property is not within any flood zone.

16. Mr. Korczak conceded that the existing impervious surface coverage on site is 18.5%, and therefore exceeds the 15% permitted by §175-33.

17. The impervious surface coverage has been characterized as a preexisting nonconformity.

18. The lot area does represent a preexisting nonconformity in that the lot area is 29,848 square feet (gross), where the present Ordinance requires a 1 acre minimum. See §175-33 lot area and dimensional requirements (single-family detached cluster: Use B7), 1 acre minimum. See also §175-33 open space, impervious surface and area requirements, single-family detached cluster: Use B7, 15% maximum, 1 acre minimum.

19. Both the single-family detached cluster (Use B7) and the accessory swimming pool (Use H6) are permitted uses within the R-1a Residential Zoning District. See §175-32 Permitted Uses.

20. Mr. Korczak indicated that when originally designing the Swimming Pool Impervious Plan to address the increased impervious surface coverage derived from the proposed swimming pool, he first designed back to the 18.5% existing conditions. Since then, Mr. Korczak has designed the basin to address stormwater management from the

25.9% requested back to the 15% permitted. Mr. Korczak indicated that the seepage bed that supports the Stormwater Management BMP is the largest seepage bed he has designed during his career. The seepage bed is approximately 62 feet long, 6 feet wide, 3 ½ feet deep, and has greater than 40 linear feet of perforated pipe incorporated into the design.

21. Mr. Korczak indicated that, as a practical matter, use of the seepage bed as designed, will reduce the rate and volume of stormwater management leaving the Subject Property.

22. Mr. Korczak further emphasized that to the rear of the site is dense brush which does reduce runoff and discharge. The dense brush is followed by 50 feet of Township property which then buffers the Price property from the Clark property.

23. The proposed swimming pool measures approximately 500 feet from the closest structure on the Price property, which is a barn.

24. In Mr. Korczak's opinion, the improvements will not increase flooding on any adjacent lot and the improvements will have no negative impact on any subject lot.

25. The Zoning Hearing Board finds Mr. Korczak's testimony competent and credible.

26. On cross-examination, Mr. Korczak did concede that no borings have been taken and no test pits have yet been dug.

27. The Price property is downhill from the Clark property. The Clark property, when developed, was developed to bypass stormwater management controls for the subdivision which included the Clark property. Accordingly, the existing 18.5% impervious surface coverage on the Clark property is "uncontrolled". Mr. Korczak further conceded that the water table is somewhere on the order of 16"-18" below grade with shallow soils atop bedrock. The seepage bed is designed at a depth of 3 - 3 ½ feet.

28. There was some discussion about certain improvements on the Clark property which encroach onto adjacent Township property. A paver driveway on the northwestern aspect of the Clark property is shown on the plan as so encroaching. The propriety of that encroachment is not addressed through the present Decision. The impervious surface calculations do not include those impervious surfaces which are not on the Subject Property.

29. Brian & Patricia Price testified to the historical aspects leading to the creation of the Clark property as part of a subdivision known as the Hagan Subdivision (Exhibit A-7 Record Plan, recorded 06/08/1993 also marked and admitted as ZHB-1(b)). The Prices characterize the Hagan Subdivision as a 41 house proposal, clearcutting heavily treed properties, and piping a creek as a means of managing stormwater. Ultimately the Record Plan establishes that 29 homes were built. The stormwater controls at the time did not address the Clark lot, although the Clark lot was part of the subdivision.

30. The Prices testified that following the construction of the subdivision, pine trees, cherry trees, and apple trees downslope from the development died in great numbers.

31. Following development, the Price's pasture, where they pasture their horses, became wet. The Prices are concerned that adding to the impervious surface coverage on the Clark property will exacerbate what they consider an existing stormwater problem on their property.

32. Doylestown Township took no position with regard to this application.

CONCLUSIONS OF LAW:

1. The Subject Property has been developed and used consistent with the requirements of the Ordinance, but for an encroachment onto the adjacent Township property to support a paver driveway, and a preexisting lawful 18.5% impervious surface coverage, where a maximum 15% is permitted, and without any stormwater management control.

2. The Applicants have reasonable use of their property as a single-family dwelling, and have so used the property for that purpose since they purchased the property in 2020.

3. Applicants seek to further improve the property by constructing an in-ground swimming pool which will result in impervious surface coverage of 25.9%, where 15% is permitted pursuant to §175-33 of the Ordinance with regard to impervious surface coverage for a single-family detached cluster (Use B7).

4. While Applicants have offered considerable testimony to demonstrate that the additional impervious surface coverage may be managed by an exceptionally large stormwater management BMP, the Zoning Hearing Board finds that Applicants have failed to meet the fundamental burdens of establishing a hardship to justify the relief necessary.

5. In order to successfully prove the basis for a variance from the Doylestown Township Zoning Ordinance, Applicant must establish the following:

§ 175-136 Variances.

The Board shall hear requests for variances where it is alleged that the provisions of this chapter inflict unnecessary hardship on the applicant. The Board may by rule prescribe the form of application and may require preliminary application to the Zoning Officer.

A. The Board may grant a variance, provided that the following findings are made where relevant in a given case:

- (1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.
- (2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- (3) That such unnecessary hardship has not been created by the applicant.
- (4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
- (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

See also, Municipalities Planning Code §910.2, 53 P.S. §10910.2.

6. The Courts have long indicated that the burden on an applicant seeking a variance is a heavy one. In some cases, the burden is lessened where a dimensional variance is requested. See, *Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh*, 554 Pa. 249, 721 A.2d. 43 (1998). However, the Courts of have emphasized that the relaxed standard is still a substantial, serious and compelling standard. See, *Singer v. Philadelphia Board of Adjustment*, 29 A.3d 144, 149 (Pa. Cmwlth 2011).

7. The Zoning Hearing Board concludes that the Applicants have not established a hardship to justify the variance requested. The Applicants have reasonable use of the property by way of the existing single-family dwelling use. While a swimming pool is a reasonable residential amenity, the amenity does not justify deviation from a Zoning Ordinance, under the present circumstances.

8. The Applicant has failed to present evidence of sufficient factors to warrant the grant of the dimensional variances requested, even under the relaxed variance standard applicable to dimensional variance cases, as articulated by the Pennsylvania Supreme

Court, in Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d. 43 (1998).

9. Applicants' desire or preference to construct an in-ground swimming pool is insufficient to justify the relief required. See, Kneebone v. Zoning Hearing Bd. of the Twp of Plainfield, 2022 Pa. Lexis 504 (Pa. 2022).

10. The competent evidence presented leads the Board to conclude that, if the variance relief is granted, there will be negative impacts upon surrounding properties or uses.

11. The evidence establishes that the relief sought by the Applicant is not the minimum variance necessary.

12. The variance sought may alter the essential character of the area or district in which the Subject Property is located.

13. Accordingly, the Doylestown Township Zoning Hearing Board determined, unanimously, to DENY the Applicants' request for relief, as is set forth hereafter.

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township hereby DENIES the variance requested by the Applicants from §175-33 of the Doylestown Township Zoning Ordinance to construct an in-ground swimming pool accessory to the single-family dwelling on site resulting in impervious surface coverage greater than the 15% permitted (or the 18.5% existing).

**ZONING HEARING BOARD
OF DOYLESTOWN TOWNSHIP**

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