

DATE OF DECISION:

6/30/22

DATE OF MAILING:

6/30/22

**BEFORE THE DURHAM TOWNSHIP
ZONING HEARING BOARD**

**RE: APPLICATION OF DENNIS AND REBECCA CURRY FOR A VARIANCE FOR
THE PROPERTY LOCATED AT 849 SHERERS HILL ROAD, RIEGELSVILLE,
DURHAM TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA, FURTHER IDENTIFIED
AS TAX MAP PARCEL NO. 11-005-104-002**

FINDINGS OF FACT

1. On Monday, June 6, 2022, at 7:00 p.m. at the Durham Township Building, 215 Old Furnace Road, Durham Township, the Durham Township Zoning Hearing Board (“Board”) opened a duly noticed hearing on the application of Dennis and Rebecca Curry (the “Applicants”).
2. The Applicants are the record owners of the property located at 849 Sherers Hill Road, Riegelsville, Durham Township, also known as Bucks County Tax Map Parcel No. 11-005-104-002 (the “Property”).
3. As owners of the Property, the Applicants possess the requisite standing to pursue this application.
4. Notice of the June 6, 2022 hearing was published in advance of the hearing in the Sunday, May 15, 2022 and Sunday, May 22, 2022 editions of The Intelligencer, a newspaper publication of general circulation in Durham Township.
5. Notice of the hearing was sent by first class mail to all property owners of record within 500 feet of the Property on May 12, 2022 by Donna Lee Eller, Administrative Assistant at Clemons Richter & Reiss, PC.
6. Notice of the hearing was posted on the Property on May 26, 2022 at 10:20 a.m. by Edward A. Child, Zoning Officer for Durham Township.
7. The Property is located in the RP, Resource Protection zoning district under the Durham Township Zoning Ordinance (the “Zoning Ordinance”).
8. The Applicants seek a variance from Section 602.B.2 of the Durham Township Zoning Ordinance to exceed the maximum impervious surface limits on a residential property in the RP zoning district. Specifically, the Applicant is seeking to install an inground swimming pool that will result in 22.08% impervious surface where 15% is permitted.
9. Introduced as exhibits at the zoning hearing are the documents identified on Schedule A attached to this decision. Schedule A is incorporated by reference as though fully set forth herein at length.

10. The Applicants were not represented by counsel.
11. Dennis and Rebecca Curry testified in support of the application at the hearing.
12. No individuals requested party status.
13. The Applicants purchased the Property in 2010. At the time of purchase, the Property contained a 1,000 square foot house and a shed. They added an addition in 2017 and the square footage of the house is now approximately 2,981 square feet.
14. The Property is approximately 0.95 acres in size. The minimum lot size for the RP zoning district is three (3) acres.
15. The Applicants are proposing to install a 648 square foot inground swimming pool, coping and decking in the rear yard. Their original plan proposed 1,440 square feet of impervious surface for the pool coping and decking. At the hearing, the Applicants proposed a reduction of the size of the pool coping and decking from 1,440 square feet to 628 square feet, constituting a 772 square foot reduction.
16. The Applicants are also proposing to remove a portion of their concrete walkway and the entire existing concrete pad in the rear yard.
17. The existing impervious surface percentage on the Property is 16.84% and the Applicants, with the reduced pool coping and decking are proposing a total impervious surface percentage of 19.89%.
18. There are no existing stormwater management problems or issues on the Property. The Property is relatively flat with a gradual slope from the back to the front of the Property.
19. The surrounding neighborhood is primarily residential.
20. There is an agricultural field behind the Property.
21. The Applicants contacted their immediate neighbors, and the neighbors are not opposed to the Application.
22. Two of the Applicants' neighbors provided public comment at the hearing and advised that they support the application.
23. The Applicants' proposal will not result in negative impacts on the surrounding neighborhood, so long as the Applicants comply with the conditions imposed herein.

CONCLUSIONS OF LAW

1. Required public notice of the hearing was made by sufficient publication, posting and mailing to affected property owners.

2. Section 1009 of the Durham Township Zoning Ordinance provides that the Board shall consider the following with respect to a variance request:

Variances: The Board shall hear requests for variances where it is alleged that the provisions of the Zoning Ordinance inflict unnecessary hardship on the applicant. An ability to increase a financial return or reduce a financial liability shall not be a reason for a variance. The board may by rule prescribe the form of application and may require preliminary application to the zoning officer. The board may grant a variance provided 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 appellant;
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; and
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.

3. “Our courts have synthesized the necessary factors into a three-part test in which the variance applicant must show: 1) unique circumstances or conditions of a property that would result in an unnecessary hardship; 2) no adverse effect on the public welfare; and 3) the requested variance would afford relief with the least modification possible.” Lawrenceville Stakeholders v. City of Pittsburgh Zoning Bd. of Adjustment, 247 A.3d 465, 473 (Pa. Commw. Ct. 2021).

4. In a dimensional variance case, as opposed to a use variance case, a more relaxed standard for granting a variance is to be utilized. Hertzberg v. Zoning Hearing Board of Adjustment of City of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998).

5. Under *Hertzberg*, courts may consider multiple factors in determining whether an applicant established unnecessary hardship for a dimensional variance. These factors include: “the economic detriment to the applicant if the variance was denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood.” Dunn v. Middletown Twp. Zoning Hearing Bd., 143 A.3d 494, 501 (Pa. Commw. Ct. 2016).

6. [I]t is . . . important for a board to consider whether rigid compliance [with the zoning ordinance] is necessary to preserve the public interests sought to be protected by the ordinance.” Township of Middletown v. Zoning Hrg. Bd. of Middletown Township, 682 A.2d 900, 902 (Pa. Commw. Ct. 1996).

7. The Zoning Hearing Board finds that the Property is an undersized nonconforming lot. The minimum lot size in the RP zoning district is three acres and the Applicants’ property is only .95 acres.

8. The Board finds that the undersized nature of the Property results in a hardship to the Applicants, as the size of the lot substantially reduces the amount of impervious surface permitted on the Property.

9. If the Applicants lot were of a conforming size, they would not need a variance for the impervious surface percentage concerning their proposal.

10. The Applicants did not create the hardship, as the lot was .95 acres when they purchased it in 2010.

11. The Applicants have minimized the amount of zoning relief being sought by reducing the amount of pool coping and decking by 772 square feet.

12. The variance 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.

DECISION

AND NOW, this ^{4th} 30 day of June, 2022, upon consideration of the foregoing Findings of Fact and Conclusions of Law, the Durham Township Zoning Hearing Board hereby **APPROVES** the Applicant’s request for a variance from Section 602.B.2 of the Durham Township Zoning Ordinance to allow for an impervious surface percentage of 19.89% where 15% is permitted, conditioned upon the following:

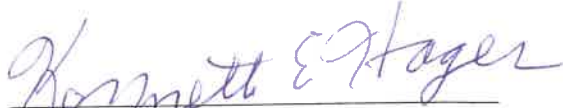
1. The Applicants shall reduce the amount of pool coping and decking originally proposed in their application to 628 square feet, which constitutes a 772 square foot reduction;
2. The Applicants shall utilize pervious pavers in the project to the greatest extent possible, subject to approval by the Township Engineer;
3. The Applicants shall comply with the Durham Township Stormwater Management Ordinance; and
4. The Applicants shall comply with all testimony and exhibits introduced at the zoning hearing board hearing.

DURHAM TOWNSHIP
ZONING HEARING BOARD

DATE: 6/30/22


David Oleksa, Chair

DATE: 6-30-22


Kenneth Hager, Member

DATE: 6/30/22


E. Wayne Krager, Member

Scott A. MacNair, Esquire
Clemons Richter & Reiss, P. C.
Solicitor, Durham Township Zoning Hearing Board
2003 S. Easton Road, Ste. 300
Doylestown, Pennsylvania 18901
215.348.1776

SCHEDULE A – TABLE OF EXHIBITS

Exhibit	Description
ZHB-1	Zoning Hearing Application as submitted April 11, 2022 with Deed and Plan
ZHB-2	Letter to Applicants dated May 12, 2022 with Notice of Hearing
ZHB-3	Letter to The Intelligencer dated May 12, 2022 to advertise Public Notice of hearing
ZHB-4	Public Notice
ZHB-5	Proof of Publication
ZHB-6	Affidavit of Mailing to property owners and sample letter sent to each
ZHB-7	List of property owners within 500' and Map
ZHB-8	Affidavit of Posting Notice at property
A-1	Grading Plan prepared by Cowan Associates, Inc. dated January 31, 2022