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October 30, 2018

Rich & Tracy Kovaleski
69 Franklin Drive
Mechanicsburg, PA 17055

Re: Application for Variance
Monroe Township Zoning Hearing Board – Case No. 2018-02-ZHB

Dear Mr. and Mrs. Kovaleski:

Enclosed kindly find the Written Decision of the Monroe Township Zoning Hearing Board in the above-referenced matter.

Very truly yours,

Philip J. Murren

Philip J. Murren

cc: Ms. Holly Wood (via electronic mail)
Michael Pykosh, Esq. (via electronic mail)

MONROE TOWNSHIP ZONING HEARING BOARD

IN RE: :
 :
 :
 Application of : APPEAL NO. 2018-02 ZHB
 Rich and Tracy Kovaleski :
 Premises: 69 Franklin Drive :
 Mechanicsburg, PA 17055 :

DECISION

This case comes before the Monroe Township Zoning Hearing Board (“Board”) pursuant to the provisions of §604.4 of the Monroe Township Zoning Ordinance (hereinafter referred to as the “Ordinance”), the same being an application for a variance by Rich and Tracy Kovaleski (“Applicants”) from the provisions of §301.2.3 of the Ordinance, relating to the minimum rear yard setback required for a swimming pool on a lot within the R-1 Zone. The variance is sought to permit the construction of a swimming pool whose water’s edge will be 5 feet, 9 inches from the rear property line, in apparent violation of the foregoing Section of the Monroe Township Zoning Ordinance, which requires that all pools be set back a minimum of 10 feet from all lot lines, measured from the property line to the edge of the water.

Pursuant to notice duly given, as required by the provisions of the Ordinance, a hearing was held before the Board at the Monroe Township Municipal Offices, 1220 Boiling Springs Road, Mechanicsburg, Pennsylvania, on Monday, October 22, 2018, beginning at 5:30 p.m. The matter was heard by Richard Moore, Chair of the Board, member Greg Sheffer and member Paul Rast.

In accordance with the provisions of the Ordinance, notice of said hearing was given to the Applicants and to adjoining property owners. A Proof of Publication of public notice is also made a part of the Record.

Testimony at the hearing was offered by Applicants’ representative, Ed McGroarty of Goodall Pools. Testimony on behalf of the Township was offered by Gregory R. Rogalski, the Township

Zoning Officer. The Application with attached drawings filed by the Applicants was admitted into evidence as Board Exhibit 1.

No objectors appeared at the hearing to register any opposition to the requested variance.

At the conclusion of the evidentiary hearing of October 22, 2018, the Board in open meeting conducted a formal discussion of the matter and took formal action.

The Record consists of the aforesaid Notice of Public Hearing, Proof of Publication, and letters of notification of neighboring property owners, together with the original Application filed by the Applicants (Board Exhibit 1).

FINDINGS OF FACT

After a review of the testimony and the documents included in the Record of this case, the Board makes the following Findings of Fact:

1. On September 19, 2018, Rich and Tracy Kovaleski (“Applicants”), the owners of the property located at 69 Franklin Drive, Mechanicsburg, Cumberland County, Pennsylvania, filed a Zoning Hearing Board Application, seeking a variance that would allow for a new swimming pool to be constructed in the rear yard of their home in the R-1 Zone. The Application included drawings depicting the dimensions relating to the requested variance, which have been received into evidence.

2. Applicants sought a variance from the applicable minimum lot setback requirement of 10 feet from the water’s edge to the rear property line, so that the new swimming pool could be constructed far enough away from their home so as not to compromise or endanger the home’s foundation.

3. The edge of the water of the new swimming pool would be located 5 feet, 9 inches from the rear property line, and a variance of 4 feet, 3 inches from the required 10-foot setback requirement is therefore being sought.

4. According to the undisputed testimony of the Township Zoning Officer, the rear property line of the subject premises is adjacent to a 40-foot wide strip of undeveloped common area within the cluster development of which the property is a part, and that undeveloped common area is in turn adjacent to an additional 193-foot wide strip of undeveloped common area that is part of an adjacent development.

ADDITIONAL FINDINGS OF FACT
AND CONCLUSIONS OF LAW

When determining whether or not to grant a variance in any given case, this Board must take into consideration the provisions of the Ordinance setting forth the criteria for the granting of variances. Accordingly, this Board must be guided by the provisions of Section 604.4 of the Ordinance, which provides in pertinent part as follows:

604.4. Variances - The Zoning Hearing Board shall hear requests for variances where it is alleged that the provisions of this Ordinance inflict unnecessary hardship upon the applicant. The Zoning Hearing Board may, by rule, prescribe the form of application to the Zoning Officer. The Zoning Hearing Board may grant a variance, provided that all of 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 this Ordinance in the neighborhood or zoning district in which the property is located;
2. That because of such physical circumstances or conditions, there is not a possibility that the property can be developed in strict conformity with the provisions of this 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 zone or neighborhood 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.

In considering the dimensional variance which has been requested, the Board is guided by the decision of the Pennsylvania Supreme Court in *Hertzberg v. Zoning Board of Pittsburgh*, 721 A.2d 43 (Pa. 1998). In that case, as in the present case, the Applicant was seeking a dimensional variance within a permitted use, asking only for a reasonable adjustment of the zoning regulations in order to utilize a property in a manner consistent with the applicable regulations. The grant of a dimensional variance is of a lesser moment than the grant of a use variance, since the grant of a use variance involves the use of the property in a manner which is wholly outside the zoning ordinance's regulation.

To justify the granting of a dimensional variance, courts and zoning boards may consider multiple factors, including the economic detriment to the applicant if the variance is denied, the financial hardship created by any work necessary to bring the structure into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood. *Hertzberg, id.* at 50.

In the instant case, the Applicants have made a sufficient showing to satisfy each of the 5 above-enumerated criteria for the granting of a variance, as those criteria have been authoritatively construed by the Supreme Court of Pennsylvania in its decision in the *Hertzberg* case.

In reaching this conclusion, the Board notes specifically that cluster developments are characterized by the compact sizes of the individual lots and that most individual lots have very limited areas available for even the most common types of accessory uses that are characteristic of single-family detached residential structures. The Board also notes that the impact of the requested variance on the immediate neighborhood of the subject premises is substantially mitigated by the extensive amount of undeveloped common area space to the rear of the premises.

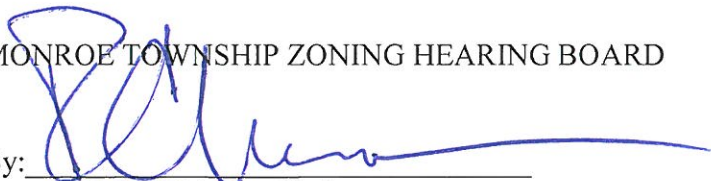
The Board therefore specifically finds that the granting of the requested variance would promote the declared purposes of the Zone in which the property is situated.

Therefore, based on the foregoing discussion and analysis, the Board grants the Applicants' request for a variance with respect to the construction of the proposed swimming pool within the area of the minimum required rear yard of the property.

The Board also notes, and has so admonished the Applicants, that all other requirements of applicable Township Ordinances are to be complied with by the Applicants in the construction of the proposed swimming pool.

ALL MEMBERS CONCUR.

MONROE TOWNSHIP ZONING HEARING BOARD

By: 
Richard Moore, Chair

Dated: October 29, 2018