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October 6, 2022

POCOPSON TOWNSHIP
RECEIVED

OCT 11 2022

Mr. Jason Antonelli
456 West Creek Road
West Chester, PA 19382

Re: Application of Jason Antonelli seeking a variance from the 40 foot rear yard setback requirements under Section 250-19.C(5) of the zoning ordinance so as to allow a 25 foot rear yard; and seeking a special exception under section 250-87.M(3) from the steep slope disturbance limits under Section 250-87.B(8) and D(1)(a) and (c) so as to allow disturbance of 29.7% of the moderately steep slopes and 15.4% of the very steep slopes; and a special exception under ordinance Section 250-19.C(3) so as to allow impervious cover of 29.33% of the property, and such other relief as may be required to enable construction of an addition to the existing residential dwelling, as well as a barn and in-ground swimming pool, on a 3.56-acre property located at 456 West Creek Road, West Chester, PA (UPI #63-2-9) in the Township's RA - Residential and Agricultural zoning district.

Dear Mr. Antonelli:

Enclosed please find a copy of the Zoning Hearing Board's Decision and Order in the above-referenced matter, which has been issued today.

Thank you for your attention to this matter and for your anticipated compliance with the conditions of the approval.

Good luck to you with your project.

Very truly yours,

Edward M. Foley

EMF:dg

Enclosure

cc: Christopher Schubert, Esq. (w/encl.)
Pocopson Township Zoning Hearing Board Members
Susan Simone, Pocopson Twp., board of Supervisors (w/encl.)
Amanda Sunquist, Esq. (w/encl.)
Craig Kologie, Township Code Enforcement Officer (w/encl.)

**BEFORE THE ZONING HEARING BOARD OF POCOPSON TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA**

In Re: Application of Jason Antonelli seeking a variance from the 40 foot rear yard setback requirements under Section 250-19.C(5) of the zoning ordinance so as to allow a 25 foot rear yard; and seeking a special exception under section 250-87.M(3) from the steep slope disturbance limits under Section 250-87.B(8) and D(1)(a) and (c) so as to allow disturbance of 39.1% of the moderately steep slopes and 12.3% of the very steep slopes; and a special exception under ordinance Section 250-19.C(3) so as to allow impervious cover of 29.33% of the property, and such other relief as may be required to enable construction of an addition to the existing residential dwelling, as well as a barn and in-ground swimming pool, on a 3.56-acre property located at 456 West Creek Road, West Chester, PA (UPI #63-2-9) in the Township's RA - Residential and Agricultural zoning district.

DECISION AND ORDER

I. PROCEDURAL HISTORY

On or about August 25, 2022, the Applicant filed an application to the Pocopson Township Zoning Hearing Board ("ZHB"), seeking a variance and special exceptions. This is a renewed application for the same zoning relief Applicant had sought and obtained in 2021, which approvals (with conditions) had, unfortunately, expired when Applicant was unable to file for permits within six months of the ZHB's order.¹ Applicant again seeks relief from the 40 foot rear yard setback requirements under Section 250-19.C(5) of the zoning ordinance so as to allow a 25 foot rear yard; and a special exception under section 250-87.M(3) from the steep slope disturbance limits under Section 250-87.B(8) and D(1)(a) and (c) so as to allow disturbance of 39.1% of the moderately steep slopes and 12.3% of the very steep slopes; and a special exception under ordinance Section 250-19.C(3) so as to allow impervious cover of 29.33% of the property, and such other relief as may be required to enable construction of an addition to the existing residential dwelling, as well as a barn and in-ground swimming pool, on a 3.56-acre property located at 456 West Creek Road, West Chester, PA (UPI #63-2-9) in the Township's RA - Residential and Agricultural zoning district.

On September 7, 2022 the Township Planning Commission voted to recommend re-approval of the variance and special exceptions granted in 2021. (Exhibit B-7).

On September 26, 2022 the Pocopson Township Board of Supervisors voted unanimously to support the Applicants' application, subject to certain conditions and amended conditions as set forth in the memorandum of that meeting (Exhibit B-8).

After public notice in accordance with the *Pennsylvania Municipalities Planning Code*, the hearing was conducted on the evening of September 28, 2022. The Zoning Hearing Board was

¹ Zoning Ordinance Section 250-80 provides for the expiration of all variances and special exceptions six months after they are granted, unless an Applicant applies for permits or takes other action to proceed with the project as approved.

comprised members Nathan Wilson and David Ziegler, and alternate member Georgia Brutscher. The Applicant was ably represented by Christopher H. Schubert, Esq. of Riley, Riper, Hollin & Colagreco. The Township, having issued a conditional letter of support for the application, was not represented by counsel at the hearing. No other parties appeared at the hearing, or requested "party" status.

Various exhibits were admitted into the record without objection, as follows:

Zoning Hearing Board Exhibits:

- B-1** Applicant's Application with attachments.
- B-2** Chester County aerial photograph / tax parcel map of the subject property.
- B-3** Copy of official Notice of the September 28, 2022 hearing, as published, posted and mailed to all parties.
- B-4** Proof of publication of the hearing notice on September 7, 2022 and September 14, 2022 in the Chester County Press.
- B-5** Verification of Posting of Notice on the subject property.
- B-6** Verification of Mailing of Notice to neighboring property owners.
- B-7** Copy of Planning Commissions September 12, 2022 position statement in support of the application.
- B-8** Copy of September 27, 2022 Memorandum from Township Board of Supervisors in support of application, with conditions.
- B-9** (In the event of any appeal) Copy of the Pocopson Township Zoning Ordinance in effect on the date of the Application.

Applicant's Exhibits:

- A-1** Application of Jason Antonelli to Pocopson Township Zoning Hearing Board.
- A-2** Copy of Applicant's Deed..
- A-3** Aerial view of subject property.
- A-4** Rendered elevation view of proposed additions.
- A-5** Floor plan of proposed additions.
- A-6** Site plans of proposed property improvements; last revised June 15, 2022, prepared by Commonwealth Engineers.

- A-7** Hydrologic Report dated June 15, 2022, prepared by Commonwealth Engineers, Inc.
- A-8** Review letter dated September 6, 2022, prepared by Gilmore and Associates, Township Engineers.
- A-9** Recommendation of the Pocopson Township Planning Commission dated September 12, 2022.
- A-10** Recommendation of the Pocopson Township Board of Supervisors dated September 27, 2022.

II. FINDINGS OF FACT

1. The Applicant, Jason Antonelli, is the record owner of the subject Property located at 456 West Creek Road, West Chester, Pocopson Township, Chester County, Pennsylvania, being UPI #63-2-9.

2. The subject Property has a gross tract area of 3.56 and is zoned RA – Residential and Agriculture.

3. The Property is presently improved with a small hexagonal house, driveway and septic system.

4. As reflected by the Applicant's plans, prepared by Commonwealth Engineers, the Applicant proposes to construct an addition to the residential dwelling, a barn and an in-ground swimming pool.

5. The subject Property has frontage on a public road, known as West Creek Road.² As depicted on the plan, the area between the house site and the road is very steep slopes (over 20%). The existing driveway runs from the road uphill to the house site, which is located on the most level buildable portion of the lot.

6. Because stormwater from the house site on the southern portion of the Property will accumulate and run downhill to the north and west, Applicant proposes to construct the raingarden for stormwater management at the low point of the buildable area.

7. In addition, the Lot is partially wooded, including the existence of several mature "Heritage Trees." Applicant has located the proposed raingarden so as to avoid removal of any heritage trees. Accordingly, it was not necessary for the ZHB to consider the ordinance requirements for replacement trees when Heritage Trees are to be removed.

² The ZHB takes judicial notice of the original 1979 recorded subdivision plan for the Cannon Hill development (Chester County Plan #2805) which included a shared driveway access from the Cannon Hill cu-de-sac to the Subject Property and the adjacent Lot #22 to its south. The 1981 revised subdivision plan (Chester County Plan #3384) showed Lot #22 being combined with other properties, and the elimination of the driveway from Cannon Hill. The subject Property was described and conveyed according to the 1981 revised plan showing access only from West Creek Road.

8. By reference to the Applicant's Plan, it is clear that the proposed addition to the dwelling and the future barn and pool have been located so as to avoid their intrusion into the very steep slope areas and so as to minimize any intrusion into the moderate steep slope areas.

9. Along the southern property line, where Applicant is requesting a variance to allow a 25' rear yard setback in lieu of the 40' required by the ordinance, Applicant is proposing heavy evergreen screening to create a visual buffer from, and for the benefit of, the neighbor to the south.

10. Additional evergreen screening is proposed along the eastern property line where the future pool is proposed, and along the southwestern property line.

11. With the proposed screening in place, there will be no adverse effect on the use or development of the adjacent properties. Applicant had previously testified that the neighbors to the south, east and west were supportive of his project.

12. Houses on neighboring properties in the area are generally twice the size of Applicant's existing dwelling, and the proposed enlargement will be consistent with, and not adversely affect, the character of the neighborhood or surrounding area.

13. Applicant's Plan appears to constitute the minimum intrusion upon the environmental resources of the Property sought to be protected by the ordinance, and the resource protection purposes of Ordinance Section 250-87 are being adhered to, to the maximum extent practicable.

14. The ZHB concludes that there would be no negative impacts on any of the surrounding properties.

15. Applicant submitted a copy of the Township engineer's review letter dated September 6, 2022 (Exhibit A-8), and will be required to comply with all the requirements contained therein.

16. As previously noted, both the Township's Planning Commission and Board of Supervisors voted to support the application, conditioned upon the Applicant's compliance with the Township engineer's review letter.

17. The Zoning Hearing Board concludes, as a factual matter, that the steep slopes have been avoided to the maximum extent practicable, and that the allowance of the requested variance from the rear yard setback requirements is necessary so as to enable the reasonable use of the Property.

18. The Board was satisfied that the approval of the requested special exceptions will not result in any unduly or unusually negative impacts beyond those normally associated with the proposed uses and activities.

19. The Board was satisfied that the Property is suitable for the proposed use in terms of highway access, means of sewage disposal and water supply.

20. Likewise, the Board was satisfied that the proposed use and development will not unduly alter the character of the existing neighborhood or adjacent tracts, and that the proposed mitigation measures will be effective.

III. DISCUSSION

The ZHB was satisfied that all criteria for the requested special exceptions and variance are being met. The requested relief will be granted subject to the conditions that were discussed with, and accepted by, the Applicant on the record, as set forth below.

IV. CONCLUSIONS OF LAW

1. The Applicant is properly before the Zoning Hearing Board, which has jurisdiction to consider this application in accordance with the *Pennsylvania Municipalities Planning Code*.

2. The Zoning Hearing Board has complied with all "public notice" requirements for the hearing pursuant to the *Pennsylvania Municipalities Planning Code* and the Township's Ordinances.

3. The Applicant met his burdens of proof in establishing his entitlement to special exceptions under Ordinance Section 250-87.M.(3)(c) so as to entitle him to relief from the requirements of Ordinance Sections 250-87.D.(1)(a) and (c); 250-87.B.(8); and a special exception under Ordinance Section 250-19-.C(3).

4. The Applicant met his burdens of proof in establishing his entitlement to a variance from the 40' rear yard setback requirement. In particular:

(a) There are unique physical circumstances or conditions, including 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.

(b) Because of such physical circumstances or conditions, there is no possibility that the property can be further 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.

(c) Such unnecessary hardship has not been created by the Applicant.

(d) 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.

(e) 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.

5. Both the Ordinance and the *MPC* permit the Zoning Hearing Board to attach reasonable conditions to the grant of any zoning relief so as to effectuate the intent of the Ordinance. Accordingly, the Zoning Hearing Board will attach conditions as discussed with, and accepted by, the Applicant on the record.

Accordingly, the Zoning Hearing Board will enter an appropriate Order as follows:

V. ORDER

In view of the Zoning Hearing Board's Findings of Fact, Discussion and Conclusions of Law, the Applicant's request for a variance and special exceptions are hereby GRANTED as follows:

A. A variance from the 40 foot rear yard setback requirements under Section 250-19.C(5) of the zoning ordinance so as to allow a 25 foot rear yard;

B. A special exception under section 250-87.M(3) from the steep slope disturbance limits under Section 250-87.B(8) and D(1)(a) and (c) so as to allow disturbance of 39.1% of the moderately steep slopes and 12.3% of the very steep slopes; and

C. A special exception under ordinance Section 250-19.C(3) so as to allow impervious cover of 29.33% of the property.

All of the foregoing relief is granted **under and subject to the following conditions**, each of which was accepted and agreed to by the Applicants on the record:

(1) The proposed barn shall be utilized for storage and workshop and shall, not be used for the keeping or husbandry of animals, or for the storage of commercial construction equipment or commercial vehicles, without further application to, and approval by, the Township. Applicant's plans shall be revised to refer to the structure as a "Proposed Storage Structure" in lieu of the "proposed barn".

(2) Applicant shall comply with all requirements of the September 6, 2022 review letter of Gilmore & Associates, Inc., Township Engineer, including submission of a Grading and Erosion and Sediment Control Plan, and including making any required changes to the stormwater management design following the Township Engineer's

review and obtaining any necessary zoning relief should the required update to the resource protection area table require such relief.

(3) The Applicant shall install heavy evergreen screening along the southern property line to create a visual buffer from, and for the benefit of, the neighbor to the south. The Applicant shall also install heavy evergreen screening along the eastern property line where the future pool is proposed, and along the southwestern property line.

(4) Except as the Stormwater Management design may be modified in accordance with the foregoing condition, the project shall be constructed substantially in accordance with the plans and testimony presented to the Zoning Hearing Board at the original December 6, 2021 hearing, and at the September 28, 2022 hearing.

(5) Except for the items of relief granted herein, Applicant shall comply with all other Township ordinances, and with all applicable county, state and federal statutes, ordinances, rules and regulations.

(6) Applicant shall promptly apply for, and obtain, all other required permits and approvals for the project.

POCOPSON TOWNSHIP ZONING
HEARING BOARD



Nathan Wilson, Member



David H. Ziegler, Sr., Member


Georgia Brutscher, Alternate Member

**BEFORE THE ZONING HEARING BOARD OF POCOPSON TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA**

Application of Jason Antonelli seeking a variance from the 40 foot rear yard setback requirements under Section 250-19.C(5) of the zoning ordinance so as to allow a 25 foot rear yard; and seeking a special exception under section 250-87.M(3) from the steep slope disturbance limits under Section 250-87.B(8) and D(1)(a) and (c) so as to allow disturbance of 29.7% of the moderately steep slopes and 15.4% of the very steep slopes; and a special exception under ordinance Section 250-19.C(3) so as to allow impervious cover of 29.33% of the property, and such other relief as may be required to enable construction of an addition to the existing residential dwelling, as well as a barn and in-ground swimming pool, on a 3.56-acre property located at 456 West Creek Road, West Chester, PA (UPI #63-2-9) in the Township's RA - Residential and Agricultural zoning district.

CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing Decision and Order has been served upon the following individuals in the manner indicated below this 6th day of October, 2022.

Service by First Class Mail, addressed as follows:

Jason Antonelli
456 West Creek Road
West Chester, PA 19382

Christopher Shubert, Esq.
Riley, Riper, Hollin & Colagreco
312 W. State Street
Kennett Square, PA 19348

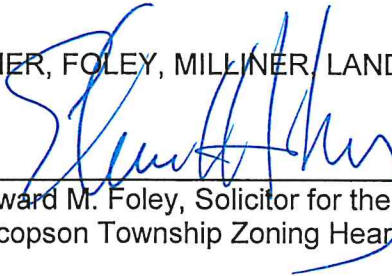
Pocopson Township
Board of Supervisors
ATTN: Susan Simone
740 Denton Hollow Rd
P.O. Box 1
Pocopson, PA 19366

Amanda J. Sundquist, Esq.
Unruh, Turner, Burke & Frees, PC
17 West Gay Street, Suite 200
P.O. Box 515
West Chester, PA 19380

Craig Kologie
Code Enforcement Officer
Castle Valley Consultants
1011 Daisy Point Rd
Pottstown, PA 19465
Email only: craig@casval.com

BRUTSCHER, FOLEY, MILLINER, LAND & KELLY, LLP

BY: _____


Edward M. Foley, Solicitor for the
Pocopson Township Zoning Hearing Board