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April 14, 2022
POCOPSON TOWNSHIP
RECEIVED

APR 22 2022

Mr. and Mrs. Robert J. Pavese, Jr.
Mr. Andrew D. Dillon
1550 Brandywine Drive
West Chester, PA 19382

Re: Application of Denee W. Pavese, Robert J. Pavese, Jr. and Andrew D. Dillon, seeking a special exception from the 15% maximum impervious cover limit under zoning ordinance section 250-19.C(3) or other zoning relief so as to enable the construction of a residential swimming pool, coping, concrete patio, and pool equipment resulting in 22.8% impervious cover on property located at 1550 Brandywine Drive, West Chester, Pennsylvania (UPI #63-4-36) in the Township's RA – Residential Agricultural zoning district.

Dear Mr. and Mrs. Pavese and Mr. Dillon:

Enclosed please find a copy of the Pocopson Twp. Zoning Hearing Board's Decision and Order in the above-referenced case, which is issued as of today's date.

Thank you for your attention to this matter.

Very truly yours,


Edward M. Foley

EMF:dg
Enclosure

cc: ✓ Susan Simone, Pocopson Twp. Board of Supervisors
Amanda Sundquist, Esq.
Kristin S. Camp, Esq.
Craig Kologie, Township Code Enforcement Officer (via email)

**BEFORE THE ZONING HEARING BOARD OF POCOPSONTOWNSHIP
CHESTER COUNTY, PENNSYLVANIA**

IN RE: Application of Denee W. Pavese, Robert J. Pavese, Jr. and Andrew D. Dillon, seeking a special exception from the 15% maximum impervious cover limit under zoning ordinance section 250-19.C(3) or other zoning relief so as to enable the construction of a residential swimming pool, coping, concrete patio and pool equipment resulting in 19.9% impervious cover on property located at 1550 Brandywine Drive, West Chester, Pennsylvania (UPI #63-4-36) in the Township's RA – Residential Agricultural zoning district.

DECISION AND ORDER

I. PROCEDURAL HISTORY:

On or about February 16, 2022, the Applicants filed an application to the Pocopson Township Zoning Hearing Board (the "Board" or "ZHB"), seeking a special exception from the 15% maximum impervious cover limit under zoning ordinance section 250-19.C(3) or other zoning relief so as to enable the construction of a residential swimming pool, coping, concrete patio and pool equipment resulting in 19.9% impervious cover on property located at 1550 Brandywine Drive, West Chester, Pennsylvania (UPI #63-4-36) (herein referred to as the "Property"), located in the Township's RA – Residential Agricultural zoning district.

On March 2, 2022 the Township Planning Commission voted to recommend that the Township support the Applicant's request, subject to conditions (see Exhibit B-7).

On March 28, 2022 the Township Board of Supervisors had voted to recommend approval of this application. (see Exhibit B-8).

After public notice in accordance with the Pennsylvania Municipalities Planning Code (the "MPC")¹, the hearing was convened on the evening of April 5, 2022 at 7:00 p.m.²

At the hearing, Applicants were not represented by an attorney. No neighboring property owners appeared or requested "party" status.

The Board placed exhibits into the Record to document compliance with all appropriate advertising and notice requirements as follows:

¹ Act of 1968, P.L. 805, No. 247; reenacted and amended December 21, 1988, P.L. ____, No. 170, 53 P.S. §10101 et seq. as amended.

² The Zoning Hearing Board was comprised of James H. Noon, Jr., Chairman, Nathan Wilson, and David H. Ziegler, Sr., members.

- B-1 Applicant's Application with all attachments.
- B-2 Chester County tax parcel map/aerial photographs of the subject property.
- B-3 Copy of the official Notice of Hearing, as published, posted and mailed to all parties.
- B-4 Proof of Publication Showing newspaper publication on March 22, 2022 and March 29, 2022.
- B-5 Verification of Posting of Notice.
- B-6 Verification of Mailing of Notice.
- B-7 Copy of the March 7, 2022 position statement of the Township Planning Commission, including copy of the February 15, 2022 review letter from Township engineers Gilmore & Associates, Inc.
- B-8 Copy of the March 29, 2022 position statement of the Township Board of Supervisors in favor of the Application.
- B-9 (In the event of any appeal) Copy of the Pocopson Township Zoning Ordinance in effect on the date of the Application.

The Applicants introduced the following exhibit:

- A-1 A sketch of their property, showing the approximate location of their existing septic drain field and ball valve for diversion of sewage effluent to their existing back-up seepage bed, all of which are located in their front yard.

At the conclusion of the hearing on April 5, 2022, the Board deliberated in open session in accordance with the Pennsylvania "Sunshine Law." The Board reconvened in public and, after discussion, unanimously voted to approve the Applicant's request, under and subject to conditions.

II. FINDINGS OF FACT:

1. Applicants are the owners of the subject Property, located at 1550 Brandywine Drive in the Township's R-A Residential Agricultural zoning district, being UPI #63-4-36.
2. The Property is a rectangular shaped flag lot containing 0.69 acres with an existing tree line along the rear (southeastern) property line.
3. By reference to Exhibit A-1, the septic system is located entirely in the front yard, which slopes away from the house and towards the street.

4. There are no features or constraints that would preclude the installation of a swimming pool in the rear yard.
5. Calculated by reference to the net lot area, as required by the ordinance, Applicants' property is non-conforming as to impervious lot cover, having 17.7% at the time of this application.
6. Applicants seek a special exception to allow a total of 22.8% impervious cover, including the pool, coping, concrete patio, and pool equipment.
7. The rear yard slopes from the rear property line down towards the house. Any stormwater run-off generated by the new pool, coping and concrete area would flow towards the house.
8. By reference to Applicants' engineered plans, they propose to install two new yard drains to collect and pipe stormwater from the rear of their house into a new infiltration trench, 3 feet deep by 6.5 feet wide and 14.5 feet long.
9. The plan depicts a 4 foot tall wood and wire fence surrounding the rear yard and pool area.
10. No new lighting is depicted on the plan.

III. DISCUSSION:

Applicants initially applied for a special exception so as to allow an increase in the maximum impervious coverage on their property from the existing coverage to a maximum of 19.9%, where only 15% is permitted by right. During their discussions with the Township, Applicants realized that coverage calculations are to be based on the net tract area, not the gross. This resulted in an amendment of their application to request an increase to 22.8%. At the hearing, the ZHB approved the requested amendment. Section 250-19.C of the Pocopson Township's zoning ordinance sets forth the 15% limit on impervious coverage.

However, ordinance section 250-19.C(3) permits the zoning hearing board to relax that limit by special exception, provided that the criteria for special exceptions are met, including the requirements at ordinance section 250-19(C)(3) (a) through (c) requiring an adequate sewage system, proof that adequate stormwater recharge or storage facilities exist or are being proposed, and precluding such increase on lots served by a sand mound or other nonconventional sewage system.

Here, the ZHB was satisfied that all criteria had been or will be met prior to the issuance of construction permits, including that the Applicants are proposing new stormwater recharge facilities in the rear of the property to collect any additional stormwater run-off generated by the new impervious surfaces. Both the Township planning commission and the Board of Supervisors were in favor of the requested special exception, subject to conditions which will be imposed.

Accordingly, an order will be issued granting the requested relief, subject to the conditions.

IV. CONCLUSIONS OF LAW:

1. The parties are properly before the ZHB, which has jurisdiction to hear and decide the matter.
2. Applicants met their burden of proof to establish the conditions necessary for the grant of the requested special exception under the Ordinance and the MPC.
3. Applicants, and their successors and assigns, shall be, and remain bound by the agreed conditions of approval as set forth in the Board's Order, below.

V. ORDER

AND NOW, upon consideration of the application of Denee W. Pavese, Robert J. Pavese, Jr. and Andrew D. Dillon, seeking a special exception from the 15% maximum impervious cover limit under zoning ordinance section 250-19.C(3) or other zoning relief so as to enable the construction of a residential swimming pool, coping, concrete patio and pool equipment resulting in 22.8% impervious cover, it is hereby ORDERED as follows:

Applicants' request for a special exception allowing for an increase in the percentage of impervious cover is hereby GRANTED, under and subject to the following conditions:

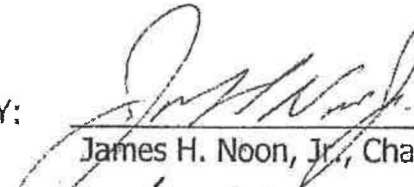
1. Prior to issuance of any Township permits, Applicants shall comply with all the comments of the Township Engineers, Gilmore & Associates, Inc. as contained in their February 15, 2022 review letter.
2. Prior to filling the pool with water, Applicants shall install a non-climbable safety fence complying with all applicable ordinance and code requirements, including ordinance section 250-94.E(5), and including the 2015 International Swimming Pool and Spa Code. Any dwelling door or window leading to the pool area shall be equipped with an audible alarm, or the pool shall be equipped with a powered safety cover. Both methods shall meet the requirements of the 2015 ISPSC.
3. Applicants shall maintain the existing vegetative screen along their rear property line so long as the pool exists, replacing any dead trees and shrubbery with new evergreen trees as needed to maintain a continuous visual screen.
4. All exterior lighting fixtures in or around the pool area shall be downward shielded so that no light sources are visible from any surrounding properties or from the street right-of-way. Applicants shall fully comply with the lighting standards of ordinance section 250-95.
5. Applicants shall construct the project substantially as described by the plans and testimony presented to the zoning hearing board on April 5, 2022.

6. Except for the special exception relief granted herein, Applicants shall comply with all Township ordinances, and with all county, state and federal laws, rules and regulations.

These conditions shall be, and remain, binding upon the Applicants and their successors and assigns so long as the pool remains in existence.

POCOPSON TOWNSHIP
ZONING HEARING BOARD

BY:



James H. Noon, Jr., Chairman



Nathan Wilson, Member



David H. Ziegler, Sr., Member

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

IN RE: Application of Denee W. Pavese, Robert J. Pavese, Jr. and Andrew D. Dillon, seeking a special exception from the 15% maximum impervious cover limit under zoning ordinance section 250-19.C(3) or other zoning relief so as to enable the construction of a residential swimming pool, coping, concrete patio, and pool equipment resulting in 22.8% impervious cover on property located at 1550 Brandywine Drive, West Chester, Pennsylvania (UPI #63-4-36) in the Township's RA – Residential 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 14th day of April, 2022.

Service by First Class Mail, address as follows:

Mr. and Mrs. Robert J. Pavese, Jr.
Mr. Andrew D. Dillon
1550 Brandywine Drive
West Chester, PA 19382

Kristin S. Camp, Esq.
Buckley Brion McGuire & Morris, LLP
118 W. Market Street, Suite 300
West Chester, PA 19382

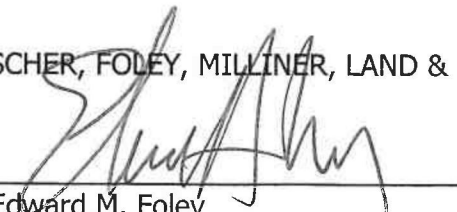
Pocopson Township
Board of Supervisors
ATTN: Susan Simone
740 Denton Hollow Road
PO Box 1
Pocopson, PA 19366

Craig Kologie
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Castle Valley Consultants
1011 Daisy Point Road
Pottstown, PA 19465
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Amanda J. Sundquist, Esq.
Unruh, Turner, Burke & Frees, PC
17 West Gay Street, Suite 200
PO Box 515
West Chester, PA 19380

BRUTSCHER, FOLEY, MILLINER, LAND & KELLY, LLP

BY: _____


Edward M. Foley
Solicitor for Pocopson Township
Zoning Hearing Board