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January 13, 2023

POCOPSON TOWNSHIP  
RECEIVED

JAN 17 2023

Mr. James Guinan  
Ms Meghan Guinan  
3 Taylor Chase Lane  
West Chester, PA 19382

RE: Application of James Guinan and Meghan Guinan seeking a variance from the 100 foot setback requirement for swimming pools under Zoning Ordinance Section 250-94.A(3) so as to allow a 40 foot setback; and seeking a special exception from the 15% maximum impervious coverage limit under Zoning Ordinance Section 250-19.C(3), so as to allow 20.4% coverage, both so as to allow for the construction of a residential swimming pool, spa, pool deck, pool equipment pad and stormwater infiltration facilities on property located at 3 Taylor Chase Lane, West Chester, PA (UPI #63-4-167.2A) in the Township's RA - Residential and Agricultural zoning district.

Dear Mr. and Mrs. Guinan:

Enclosed please find a copy of the Zoning Hearing Board's Decision and Order in the above-referenced matter.

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

Good luck to you with your project, and with your Conditional Use application.

Very truly yours,

  
Edward M. Foley

EMF:khd

Enclosure

cc: Pocopson Township Zoning Hearing Board Members  
Susan Simone, Pocopson Twp. Board of Supervisors (w/encl.)  
Amanda Sundquist, Esq. (w/encl.)  
Craig Kologie, Township Code Enforcement Officer (w/encl.)  
Kristin Camp, Esq. (w/encls.)

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

**IN RE:** Application of James Guinan and Meghan Guinan seeking a variance from the 100 foot setback requirement for swimming pools under Zoning Ordinance Section 250-94.A(3) so as to allow a 40 foot setback; and seeking a special exception from the 15% maximum impervious coverage limit under Zoning Ordinance Section 250-19.C(3), so as to allow 20.4% coverage, both so as to allow for the construction of a residential swimming pool, spa, pool deck, pool equipment pad and stormwater infiltration facilities on property located at 3 Taylor Chase Lane, West Chester, PA (UPI #63-4-167.2A) in the Township's RA - Residential and Agricultural zoning district.

**DECISION AND ORDER**

**I. PROCEDURAL HISTORY:**

On or about November 17, 2022, the Applicants filed an application to the Pocopson Township Zoning Hearing Board (the "Board" or "ZHB"), seeking a variance from the 100 foot setback requirement for swimming pools under Zoning Ordinance Section 250-94.A(3) so as to allow a 40 foot setback; and seeking a special exception from the 15% maximum impervious coverage limit under Zoning Ordinance Section 250-19.C(3), so as to allow 20.4% coverage, both so as to allow for the construction of a residential swimming pool, spa, pool deck, pool equipment pad and stormwater infiltration facilities on property located at 3 Taylor Chase Lane, West Chester, PA (UPI #63-4-167.2A) in the Township's RA - Residential and Agricultural zoning district.

On December 7, 2022 the Township Planning Commission voted to remain neutral on the application but did recommend that the existing privacy fence remain in place. (See Exhibit B-8).

On December 19, 2022 the Township Board of Supervisors had voted to recommend approval of this application, subject to conditions. (See Exhibit B-9).

After public notice in accordance with the Pennsylvania Municipalities Planning Code (the "MPC")<sup>1</sup>, the hearing was convened on the evening of January 9, 2023 at 7:00 p.m.<sup>2</sup>

At the hearing, Applicants were (unfortunately) not represented by an attorney. Neighboring property owners appeared but did not request "party" status.

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

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<sup>1</sup> 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.

<sup>2</sup> The Zoning Hearing Board was comprised of James H. Noon, Jr., Chairman, Nathan Wilson, member, and Georgia Brutscher, alternate member.

- B-1 Applicant's Application with all attachments.
- B-2 Copy of Deed to Subject Property.
- B-3 Chester County tax parcel map/aerial photograph of the subject Property.
- B-4 Copy of official Notice of Hearing, as published, posted and mailed to parties.
- B-5 Proof of Publication showing publication in the Chester County Press on December 21, 2022 and December 28, 2022.
- B-6 Verification of Posting the Notice on the subject property.
- B-7 Verification of Mailing the Notice to neighboring property owners.
- B-8 Copy of Township Planning Commission position statement.
- B-9 Copy of Township Supervisor's position statement.
- B-10 (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 exhibits:

- A-1 Copy of the original 1998 Application for On-Lot Sewage Disposal Permit for the subject Property.
- A-2 Copy of a December 28, 2022 Septic System Inspection report from "ALL4HIM Septic Inspections"; and
- A-3 Copy of a December 28, 2022 Water Well Inspection Report from Thomas B. Keyes, Inc.

At the conclusion of the hearing on January 9, 2023, the Board deliberated in private session in accordance with the Pennsylvania "Sunshine Law."<sup>3</sup> The Board reconvened in public and, after discussion, unanimously voted to approve the Applicants' request for the set-back variance, under and subject to agreed conditions. Unfortunately, the Board was forced to dismiss the Applicant's special exception application for the lack of jurisdiction, as explained below.

## **II. FINDINGS OF FACT:**

1. Applicants are the owners of the subject Property, located at 3 Taylor Chase Lane in the Township's R-A Residential Agricultural zoning district, being UPI #63-4-167.2.A.

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<sup>3</sup> 65 Pa.C.S.A. Section 701 et seq.

2. The Property is a rectangular shaped flag lot containing 1.2 acres with an existing tree line and six foot tall stockade fence along the side (northern) property line facing Street Road (Pa Route 926).

3. By reference to Exhibit A-1, and to the plans included with Applicants' application, the septic system is located entirely in the front yard, which slopes away from the house and towards the street.

4. By reference to the plans submitted, and to the original septic permit application, it is unclear whether there is adequate space in the front yard for a replacement septic drain field, if one was ever required.

5. There are no features or constraints that would preclude the installation of a swimming pool in the rear yard.

6. By reference to the Deed to the Property (Exhibit B-2) the lot was created by a subdivision plan of Hillhurst Farm (the Darlington Property) dated 1996 and last revised in 1998 (Recorded Plan No. 14484).

7. By reference to that plan, which shows designated open space related to the subdivision, it appears that the subject Property is a "Cluster Development Lot," created pursuant to Section 250-24 of the zoning ordinance of 1957, as amended through 1994.

8. Accordingly, the Applicants' Property is not "a parcel or lot existing prior to the adoption of these provisions" within the meaning of ordinance section 250-19.C.

9. The maximum impervious coverage for cluster development lots under ordinance section 250-24.D(5) is twenty percent (20%).

10. Applicants are requesting relief so as to allow 20.4% impervious coverage – a deviation of only 0.4%, which might be considered *de minimums* relief.

11. However, the ordinance section which authorizes the granting of that relief for cluster development lots is section 250-24.D(5), by which the Board of Supervisors reserved that authority unto themselves, to be granted only by Conditional Use approval, and not via Special Exception from the zoning hearing board.

12. As to the 100-foot swimming pool set-back requirement under ordinance section 250-94.A(3), the Applicants are requesting a reduction to forty feet (40') measured from the Street Road (Pa Route 926) right-of-way.

13. Because the Applicants' Property is elevated above Street Road, and because of the existing natural vegetative screen and the existing 6' tall stockade fence, motorists on Street Road would not be able to see the proposed swimming pool, or the area around it, or any structures associated with it.

14. Despite prior notice, no neighbors appeared to object to the proposed pool, or to the requested reduction in the 100' set-back requirement from Street Road.

15. The requested reduction to a 40-foot set-back, consistent with the set-back of the house from Street Road, constitutes the minimum variance that would afford relief and still permit the reasonable use of the Property.

16. The requested reduction to a 40-foot set-back from Street Road would not adversely affect the use or development of any neighboring property, nor otherwise be detrimental to the public health, safety or welfare.

### **III. DISCUSSION:**

Applicants initially applied for a special exception under ordinance section 250-19.C so as to allow an increase in the maximum impervious coverage on their property from the existing coverage to a maximum of 20.4%, where only 15% is permitted by right. During their discussions with the ZHB, Applicants pointed out that the Property is actually a cluster development lot, with 20% impervious coverage allowed under ordinance section 250-24.D(5). While that is true, and while additional relief from that maximum is available under ordinance section 250-24.D(5) is clear that such relief can only be obtained via Conditional Use approval from the Township Board of Supervisors.

Accordingly, because it lacks jurisdiction to grant the requested relief, the ZHB is constrained to dismiss the Applicants' application for Special Exception relief under section 250-19.C(3) and direct Applicants to apply for the necessary Conditional Use approval.

As to the Applicants' variance request, the ZHB was satisfied, under the unique circumstances of this case, including the unique topography of the Property, that enforcing a 100-foot swimming pool set-back from Street Road would serve no legitimate public purpose. Neither the Township nor any neighbors were opposed, and the Applicants readily agreed to the Board's requested conditions on approval.

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 variance application, but does not have the authority to grant the request for special exception relief from the maximum coverage limit applicable to the subject Property.

2. The Applicants' request for a Special Exception will be dismissed, and the Applicants urged to apply for Conditional Use approval from the Board of Supervisors.

3. Applicants met their burden of proof to establish the conditions necessary for the grant of the requested set-back variance under the Ordinance and the MPC.

4. 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 James Guinan IV and Meghan Guinan, seeking a special exception from the 15% maximum impervious cover limit under zoning ordinance section 250-19.C(3) so as to enable the construction of a residential swimming pool, coping, concrete patio and pool equipment resulting in 20.4% impervious cover, and seeking a variance from the 100' swimming pool set-back requirement under ordinance section 250-94.A.(3), it is hereby ORDERED as follows:

Applicants' request for a special exception allowing for an increase in the percentage of impervious cover is hereby **DISMISSED** for lack of jurisdiction of the Zoning Hearing Board.

Applicants' request for a variance from the 100' swimming pool set-back from Street Road, to allow a 40' set-back is hereby **GRANTED**, under and subject to the following conditions, each of which was agreed to by Applicants at the hearing and on the record:

1. 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 ISPCS.

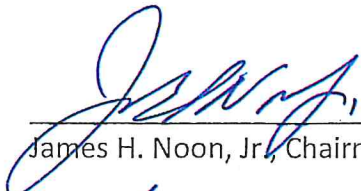
2 Applicants shall maintain the existing vegetative screen and the existing 6' tall stockade fence along their northern side property line so long as the pool exists.

3. Except as may be directed by the Township Board of Supervisors in conjunction with any Conditional Use approval, Applicants shall construct the project substantially as described by the plans and testimony presented to the zoning hearing board on January 9, 2023.

4. Except for the variance relief granted herein, Applicants shall comply with all Township ordinances, and with all applicable County, state and federal ordinances, 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

  
Georgia Brutscher, Alternate Member

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

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**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 13<sup>th</sup> day of January, 2023.

Service by First Class Mail, address as follows:

Mr. and Mrs. James Guinan  
3 Taylor Chase Lane  
West Chester, PA 19382

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

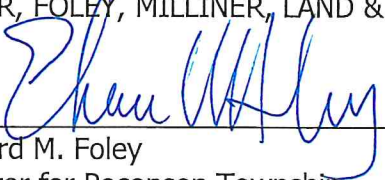
Pocopson Township  
Board of Supervisors  
ATTN: Susan Simone  
740 Denton Hollow Road  
PO Box 1  
Pocopson, PA 19366

Craig Kologie  
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BRUTSCHER, FOLEY, MILLINER, LAND & KELLY, LLP

BY: \_\_\_\_\_

  
Edward M. Foley  
Solicitor for Pocopson Township  
Zoning Hearing Board