



## DEPARTMENT OF PLANNING SERVICES

### NOTICE OF DECISION

**APPLICATION:** A-24-15

**APPLICANT:** Adam Swinick  
3395 S. Dupont Hwy.  
Camden, DE 19934

**OWNER:** Karen R. Pollard  
6236 Mud Mill Rd.  
Camden, DE 19934

**DATE OF PUBLIC HEARING  
& DECISION:** March 20, 2025

**MEMBERS PRESENT:** Brian Cusick, Chairperson  
Morgan Hudson, Vice-Chairperson  
Joan Denney  
Temple Carter  
Brauncy Jenkins  
George Gallo, Jr.

### NATURE OF REQUEST:

**A-24-15 Adam Swinick (Owner: Karen R. Pollard)** seeks a variance from the maximum impervious coverage limit of 25% to install an inground pool with concrete surround (**§205-82.A. of the Kent County Code**). The property is located on the south side of Mud Mill Rd., approximately 0.47 miles west of Willow Tree Cir., west of Camden. Levy Court District: 6<sup>th</sup>. Zoning District: AR. **Tax Map No. 7-00-109.00-02-31.00-000**

The applicant is requesting a variance from the maximum impervious coverage limit of 25% to install an inground swimming pool with concrete surround and legalize the existing coverage. The current impervious coverage is 35.9% (15,655 sq. ft.). The improvements will add an additional 291 sq. ft. of coverage, which will result in a total impervious coverage of 36.6% (15,946 sq. ft.).

### SUMMARY OF EVIDENCE

1. The subject site is 1.0± acres and is currently improved with a single-family home, multiple accessory structures, a driveway, and additional paved areas.
2. Mr. Ralph Figueroa, the pool contractor, spoke in favor of the application.

3. Mr. Figueroa stated that Mrs. Pollard is in the process of retiring and is looking to install a pool. He added that she purchased the pool about a year and a half ago, but there were a few obstacles to go through because of improvements on the property that were not legal.
4. Mr. Figueroa explained that the pool would be adding 291 sq. ft. (0.7%) impervious coverage. He stated that there were other options, such as installing pavers, though they had decided to remove a 291 sq. ft. portion of the existing driveway to offset the proposed coverage from the pool. He added that the variance would then be needed only for the existing coverage of 35.9%.
5. Mr. Figueroa stated that there are no drainage issues on the property and that Mrs. Pollard owns the adjacent property to the rear, which is wooded. He explained that the driveway is sloped and that all the water drains towards these woods. He added that the wooded area is not wetlands and that it is pretty dry, even with all of the recent rain.
6. Mr. Figueroa explained that Mrs. Pollard had a construction business on the property and that, about a year and a half ago, she had started the process of moving the business off the property. He stated that she is resolving the improvements that were not legal. He explained that she had to remove one of the solar panels on the house and that the accessory structures that the business was being run from have been brought up to code.
7. Mr. Figueroa added that the business has been moved to another spot of land. He stated that resolving these issues over the past year and a half has been a hardship.

### **FINDINGS OF FACT & CONCLUSIONS OF LAW**

Analysis of the four factors set forth in Board of Adjustment of New Castle County v. Kwik-Check Realty, Inc., 389 A.2d 1289, 1291 (Del. 1978), supports the **MODIFIED APPROVAL** of the requested variance.

- (1) **The nature of the zone where the property lies:** As shown on Exhibit A, the subject site is zoned AR (Agricultural Residential). Surrounding adjacent properties to the west, east, and south are similarly zoned AR. One property to the north is zoned AC (Agricultural Conservation), and another is split zoned AC and AR. There are also two properties zoned BG (General Business) further to the east. Accessory improvements, such as inground pools, paved patios, and accessory structures, are permitted in the AR zoning district.
- (2) **The character and uses of the immediate vicinity:** The character of the surrounding area is residential, agricultural, and wooded. The adjacent properties to the east, west, and south are improved with single-family homes and accessory structures. To the north, across Mud Mill Rd., are several single-family residences and farmland. Inground pools, paved driveways, and residential accessory structures are within the character of the area.
- (3) **Whether removal of the restriction on the applicant's property would seriously affect the neighboring properties:** The removal of this requirement will not seriously affect neighboring properties. Most of the impervious coverage already exists on the property and no complaints about drainage have been received. The applicant has also agreed to remove 291 sq. ft. of existing coverage to offset the 291 sq. ft. of additional impervious

proposed for the pool surround. The property is well drained, and no comments were received regarding the proposed variance prior to or during the hearing.

- (4) **Whether failure to remove the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in relation to the owner's efforts to make normal improvements to the property:** Failure to partially remove the restriction would create an unnecessary hardship for the owner in relation to making a normal improvement to the property. The existing improvements are within the character of the area and although the property has exceeded the impervious coverage limit, there have been no issues with drainage or complaints from neighboring properties. As such, removal of the existing coverage would be an unnecessary hardship for the owner.

However, there is no unnecessary hardship or exceptional practical difficulty that warrants a further increase of impervious coverage to install a pool. Although a pool is a normal improvement for the property, the applicant has other options to install a pool. One option is to remove some of the existing coverage to offset the proposed 291 sq. ft. of concrete for the pool, which they have agreed to do.

**DECISION:** On a motion made by Mrs. Denney and seconded by Mr. Carter, the Board of Adjustment voted 5 in favor, 1 opposed of the motion to grant a **MODIFIED APPROVAL** of application A-25-15, thus granting a variance from the maximum impervious coverage limit of 25% to permit a total impervious coverage of 35.9% (15,655 sq. ft.) to allow the installation of a pool with the condition that 291 sq. ft. of existing coverage is removed, as shown on Exhibit B - Modified, attached hereto. The support of this motion was based on the public testimony, that the property drains well, that the impervious coverage will not negatively impact the neighboring properties, and that a pool and other improvements are a normal for the property.

**NOTES:**

1. The applicant is advised that any persons jointly or severally aggrieved by any decision of the Board of Adjustment may present to the Superior Court in and for Kent County a petition setting forth that such decision is illegal in whole or in part, specifying the grounds for the illegality. The petition shall be presented to the Court within 30 days after the filing of the decision in the office of the Board (9 Del. C. § 4918).
2. The applicant is advised that, should the request be granted, a Building Permit shall be obtained prior to the commencement of construction. For more information, contact the Planning Department at (302)744-2471 and/or Permitting Department at (302)744-2451 between 8:00a.m. and 5:00p.m.
3. This variance will expire after **ONE YEAR** if a permit has not been issued by the Division of Planning.

**KENT COUNTY BOARD OF ADJUSTMENT**

  
Brian Cusick, Chairperson

DECISION FILED: 4/21, 2025