

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, September 19, 2011

The Board consisted of:

Elizabeth T. Quirk, Chair; Benjamin D. Stevenson, Clerk; Jonathan G. Gossels; Jeffrey P. Klofft; and Jonathan F.X. O'Brien.

Notice was published in the *Sudbury Town Crier* on September 1 and September 8, 2011, posted, mailed and read at this hearing.

Ms. Quirk, as Chair, explained the requirements necessary to substantiate the granting of a Variance. She also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or Land Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Denise Rizzo, applicant and property owner, and Glenn Odone, surveyor, were present to discuss plans to install a swimming pool at 8 Trevor Way that measures approximately 20x43 feet and which will result in a rear yard setback deficiency of no greater than nine feet.

Mr. Odone explained that the proposed location behind the house was chosen because if the pool were to be located in the only other available space to the east side of the house, although within the required setbacks, it would be situated in a woody area surrounded by tall pine trees. Not only would the trees pose a problem with needles and branches dropping into the pool, but the area is comprised of a large depression where ground water runoff currently collects. There would have to be an enormous amount of site work done to clear several trees and bring in fill to raise the land to prepare the pool. Mr. Odone contended that this would cause financial hardship for the clients. The septic system is to the west of the house. The area behind the house is the most level area on the lot. The setback deficiency would only be nine feet and a buffer zone of white pines and a mulch bed would be maintained along the north property line to screen the pool from the neighbors.

A letter of support was given to the Board with signatures from neighbors Kathy Lyons, 12 Trevor Way; Ofelia Collins, 11 Trevor Way; and Cynthia Frene, 31 Horse Pond Road.

Mr. Stevenson asked whether there were any interactions with residents at 40 Horse Pond Road.

Ms. Rizzo said that she had spoken with some of the neighbors who lived there, however the tenants are renters and so could not sign the letter of support.

Mr. Gossels noted that the pool would be approximately 92 feet back from Horse Pond Road and would be hidden behind a privacy fence. Mr. Klofft asked whether the fence would be a stockade fence. As of yet a decision has not been made as to the style of the fence, however Ms. Rizzo said that she would like the pool to be as private as possible.

Mr. Stevenson asked whether the area with the trees to the east of the house was considered a wetland. Mr. Odone said it was not, but it frequently does collect water.

Mr. O'Brien asked what was located beyond the trees. Mr. Odone said that there were woods and another home about forty feet back. He said that given that the trees are large white pines they do provide screening between the properties so the owners do not want to take them down if they do not have to. He also noted that the groundwater that collects in the area could have the potential to ruin the pool, which is created with a concrete liner that can become cracked as the groundwater collects under it and makes the pool floor swell. Fixing the pool would also cause financial hardship for the homeowners.

The Board then walked through the criteria for a variance as outlined in the Sudbury Zoning Bylaws and determined that all conditions were met.

In regard to Section 6131, there are special conditions relating to topography of the land that determined the siting of the pool at the back of the house. The pool cannot be located to the west side of the property because the septic system is there. It cannot be located to the east because there are several mature trees in that area that would have to be cut down and a depression in the land that would require an excessive amount of fill to raise the area to accommodate the pool. Mr. Odone estimated that the area was about six feet lower than the nearby driveway.

Removing trees and filling the land would also be extremely costly for the homeowners. Plus, as stated earlier, the risk of damage to the pool floor from any groundwater collecting in that area was too great and could costs would be significant if damage were to occur. Therefore these reasons support the substantial hardship as mentioned in Section 6132.

Under Section 6133 the Board felt that there was no substantial detriment to the public good because the pool would be installed behind the house and far back from Horse Pond Road. It would not impact the neighbors due to screening with trees and vegetation and the privacy fencing.

Likewise, under Section 6134 the Board did not feel that the granting of the variance would nullify or substantially derogate from the intent of the Bylaw.

The Board did discuss, however, adding a condition that the screening along the northern lot line in the vicinity of the pool, that was shown on the application for the variance dated August 11, 2011, be maintained or replaced as needed to shield the pool from the abutting neighbor's property. Ms. Rizzo was amenable to this condition.

No neighbors were present to comment on the proposal.

There were no further comments from the Board or audience. The hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Denise Rizzo and Louis Ranieri, applicants and owners of property, a Variance from the provisions of Section 2600, Appendix B of the Zoning Bylaws, to install an approximately 20x43 foot swimming pool, which will result in a rear yard setback deficiency of no greater than nine feet, property located at 8 Trevor Way, Residential Zone A-1," as follows:

1. Screening along the northern lot line in the vicinity of the pool, as shown in the application for the Variance dated August 11, 2011, shall be maintained or replaced as needed.

If the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse; provided, however, that the Board of appeals may in its discretion and upon written application, extend the time for exercise of such rights for a period not to exceed 6 months; and provided further that the application for such extension is filed with the Board of Appeals prior to the expiration of the one-year period.”

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The petitioners require a Variance to construct a swimming pool in a location that will require a waiver of the rear yard setback requirements. The Board reviewed the criteria which must be satisfied in order to grant a Variance and found the following:

1. The Board finds there to be special conditions relating to the shape of the lot in that the lot has frontage on three sides rendering it essentially a peninsula with one direct abutter. To locate the pool at the side of the house, albeit within the setbacks, would result in the necessity for tree cutting and major land fill.
2. With regard to hardship, the Board finds that construction of the pool in a conforming location, in this case at the side of the house, would entail significant costs due to the removal of mature pine trees and filling of the land to make it level to accommodate the pool, and as such the hardship would be of a financial nature. Additionally since there is significant pooling of groundwater in that area the water could impact the pool structure adding additional financial burdens should repairs be needed.
3. There will be no substantial detriment to the public good if the variance is granted. The pool will be in an appropriate location where it will not have any effect on the neighbors.
4. Granting the variance will not nullify or substantially derogate from the intent or purpose of the Bylaw which is to promote the general welfare of the town and to encourage the most appropriate use of the land.

Taking into account the fact that the pool could be constructed in a location which would not require a Variance, the Board weighed the merits of the proposed location which would encroach on the rear yard setback requirement. Due to the lot’s topography, the Board found the only logical choice was to grant a waiver of the rear yard setback. Further, the variance is supported by the neighbors as evidence by the letter of support for the proposed location submitted to the ZBA. Therefore, the Board finds that the petitioners have satisfied the criteria for granting a Variance.

Elizabeth T. Quirk, Chair

Jeffrey P. Klofft

Benjamin D. Stevenson, Clerk

Jonathan F.X. O’Brien

Jonathan G. Gossels
