

ZONING BOARD OF REVIEW MINUTES
Tuesday, September 27, 2016 Meeting 7:00 pm
Town Council Chambers, Town Hall

Present: Richard Land, Chair; Renu Englehart, Vice-Chair; Ashley Cullion, Jody Sceery, and Christopher Mulhearn.

Absent: Melody Alger (Alternate) and Barry Golden (Alternate).

Staff: Lea Anthony Hitchen, Assistant Town Planner; Wayne Pimental, Building/Zoning Official, and Town Solicitor Peter Clarkin.

Mr. Land, Chair of the Board, called the meeting to order at 7:05 PM and introduced the members and staff present. He then read the Board's procedures into the record. Each person addressing the Board will first state his or her name and address for the record. The applicant and his or her legal representative will present the case and witnesses may be called to testify. Such testimony must be relevant to the application. Expert witnesses will be sworn in and there will be no prejudgment as to the expertise of any witness. Pictures, diagrams and other documents given to the Board as evidence will be appropriately marked as exhibits and will be retained by the Board for the record. Upon completion of the applicant's presentation all other persons wishing to offer evidence in favor of the application may then do so one at a time. Following that all persons wishing to offer evidence against the application may then do so one at a time. It is asked that comments are confined to the zoning matter being heard and that repetitive remarks are avoided. Cross examination or rebuttal may be allowed if the Board feels it would be appropriate and useful. All questions from the floor will be directed through the Chair only. After all relevant facts have been heard the Chair will call for a motion; the Board will then discuss the motion and the Chair will call for a vote. During the discussion among voting Board members, the Board will not accept any new and further testimony unless it is specifically requested by a Board member. The Board will make every attempt this evening to render a decision. The written decision will be recorded in the Town Clerk's Office as soon as possible following the approval of the minutes of the meeting.

Zoning Board of Review Hearings – 7:00 PM

- 1. Steven Thrall & Marilyn Bollengier** for property located at 90 Stone Ridge Drive; Map 61 A.P. 12 Lot 147 (Zoned Farming, F-1). The Applicant seeks a Dimensional Variance from Table 2 of Chapter 260 of the Town Code; Zoning Ordinance, Dimensional Regulations by Zone. The Applicant is requesting to construct an addition to the existing structure which will not comply with the northern side setback requirement.

Mr. Steven Thrall and Ms. Marilyn Bollengier, with a current address of 165 Love Lane, Warwick, RI 02886 represented the application. Mr. Thrall explained that he is in the process of purchasing the subject property and would like to add an addition on the first floor for his mother-in-law, Ms. Bollengier, so she can have one floor living due to a hip injury earlier this year. We needed a living arrangement that would suit her better as our current house has three floors of living space. Mr. Thrall asserted the proposed addition will be about 680 square feet to include a bedroom and bathroom added to the northeast portion of the existing home, behind the double car garage and extend into the northern side setback by 14.7' where a 30' setback is required. Mr. Thrall noted there is a pool in the backyard to which the addition essentially diverts around the northwest side of the pool.

Mr. Thrall explained there were two main reasons the application is simply a dimensional variance for an addition and not a special use permit for an in-law apartment; one being it is a different process and two his mother-in-law did not have the desire for a separate independent living facility such as having a separate kitchen since her inability to cook.

Mr. Thrall described the reasoning for the placement of the proposed addition in that there is an existing pool located in the backyard which created an awkward area to build straight back. Additionally, the south side of the house is where the kitchen is located; more money would have to be put into reworking walls. Furthermore there is a basement door that comes out on the south side which would also have to rerouted; multiple contractors indicated it is a form of egress and has to remain – this created

an additional challenge and reason why the addition was proposed on the north side.

Mr. Thrall testified he talked to the neighbors who are most impacted by the addition, the Rusack's of 110 Stone Ridge Drive, who are in support of the application and submitted a letter of support.

Ms. Hitchen inquired as to whether the proposed new bedroom is in addition to the existing four bedrooms or there will be a reduction to the number of existing bedrooms to keep the number of bedrooms at four for septic purposes.

Mr. Thrall verified that he works from home (works at EMC located in MA) and will be converting one of the upstairs bedrooms to an office. Ms. Hitchen then noted that this will not be a burden on the existing septic system.

With no questions from Board members Mr. Land opened the hearing for public comments.

Ms. Marie Quattrucci of 85 Stone Ridge Drive, located across from the subject parcel requested to see and review the project as she could not visualize the proposal.

Ms. Chris Donald of 70 Stone Ridge Drive, questioned the need for an additional septic system. Mr. Land advised that septic systems are not dealt with by the Zoning Board but on a separate note septic systems are not dictated by the number of bathrooms but by the number of bedrooms. Ms. Donald commented the land slants toward her property and she did not want any potential water/septic issues.

With no motion before the Board, Mr. Land deferred the application in order for the Applicant to show the interested abutters the proposed design in the hallway.

2. **Leslie Massaro** for property located at 277 Kenyon Avenue; Map 74 A.P. 9 Lot 286 (Zoned Residential, R-30). The Applicant requires Dimensional Variances from Table 2 of Chapter 260 of the Town Code; Zoning Ordinance, Dimensional Regulations by Zone which sets forth the setbacks for the zone and Section 8(F) of the same chapter pertaining to the siting of accessory structures and swimming pools. The Applicant is in process of constructing an in-ground swimming pool within the side setback.

Ms. Leslie Massaro and Mr. John Larson of 277 Kenyon Avenue, represented the application. Ms. Massaro explained she and Mr. Larson proceeded with the installation of a pool without a building permit because they were under the impression they were installing it themselves and did not need a permit because they were not using a contractor. Since they have homeowner's insurance they thought they did not need contractor's insurance; since then Ms. Massaro went on to say that was not the case and in this process they were almost completely done with the pool installation which was when the setback was discovered to be 30 feet, not the 10' they thought it was. Therefore she is requesting a variance because the pool is in a kiddy corner position, meaning one corner of the pool does not fall within the setback and the other side of the pool is in the setback.

Ms. Massaro stated the location to install the pool was chosen due to a number of reasons – those being due to the layout of the land there is a slope beyond the subject area and there is also wetlands. On the other side of the property there is an underground big cement block which also presented a problem. Additionally most of the backyard is landscaped with a large number of trees that would have to be removed in order to accommodate the pool if the pool were to be pushed further back and a substantial amount of fill would have to be brought to the site which would completely change the dynamic of the landscape.

Mr. Land asked for the specific location of the concrete block in relation to the deck. Ms. Massaro explained if one is looking at the home from the front the block is to the left beyond the driveway in the rear. She added that the way the backyard slopes down if they were to move the pool further to

the rear of the property then the water table becomes an issue as the water table is about 4'.

Ms. Englehart questioned if either Ms. Massaro or Mr. Larson are a registered contractor. Ms. Massaro said one does not have to be a contractor to install a pool but noted Mr. Larson is an excavator. She commented that people can buy pool kits and install pools on their own.

Ms. Englehart asked when a survey was done if any underground lines were found. Ms. Massaro confirmed that Dig Safe came to the property.

Ms. Sceery queried if the land survey was done prior to the pool installation. Ms. Massaro asserted the survey was performed afterwards as she had to ascertain where the property line was located; she had based the pool location on the most ideal location due to all the other obstacles.

Ms. Cullion noted that after reviewing the submitted site plan she saw the flood zone located in the front of the house and the wetland buffer in back but aside from possible trees which are not showing up on the survey she did not see anything that would prohibit the Applicant from moving the pool to behind the house and further away from the setback.

Ms. Massaro stressed that the land has an extreme slope and a substantial amount of fill would have to be brought in to raise the pool over the 4' water table.

Mr. Land pointed out the barn located behind the flood/wetland area on the land survey and questioned if that location is all at the bottom of the steep slope. Mr. Larson confirmed the barn is located at the bottom of the slope but it is just a concrete footing which the concrete footing is right at the water table.

Ms. Massaro passed out two pictures to the Zoning Board; marked as Exhibit 1 and Exhibit 2 by Staff.

Ms. Englehart questioned if the Applicant saw the Staff recommendations which state that the pool should be removed. Ms. Massaro said she did see

the recommendation which is why she is explaining that it would be an extreme hardship; the concrete footing has already been poured around the base of the steel wall. She speculated that in order to move what had been started would require jackhammers.

Mr. Land asked if the steel is inlaid to the concrete or if is sitting on top of the concrete. Mr. Larson said the concrete is poured around the outside. Ms. Massaro commented the pool will probably be irreparably damaged upon jackhammering it out.

With no further comments from the Board Mr. Land opened the hearing for public comments.

Attorney John Brunero, Jr. with law offices located at 1070 Main Street, Coventry, represented Mr. Ronald Raimbeault of 255 Kenyon Avenue, the abutter directly to the north of the subject property. Atty. Brunero stated that the Applicant testified that the co-applicant was an excavator. He questioned what an excavator typically does before they start digging. He answered his own question by saying they call Dig Safe; Dig Safe would have picked up the phone, called the Building Office and asked if a permit had been requested and the answer would have been no in this situation, and we would not be here this evening.

Atty. Brunero introduced to the Board a picture of a large-sized excavator on the subject property with the company name D'Libro Excavating inscribed on it (Staff marked picture as Exhibit #3). Atty. Brunero said by showing this picture of a large-sized excavator is that no one called the Town. He added that if someone is an excavator, operating that large of a piece of equipment he/she should know better that one would need a permit in this day in age – this was midnight construction and they tried to get away with something and they got caught speeding and now is the time to pay for the speeding ticket.

Atty. Brunero indicated the pool is only 12.4 feet from his client's property. He then mentioned there will most likely be at least a 3 foot apron surrounding the pool which will then be 9 feet from the property line. Atty. Brunero asked the Board to take into consideration the noise of children

playing in the pool noting this is a quiet area with large house lots. He noted the subject property was conducive to install the pool in numerous other locations.

Atty. Brunero realized the Board was already familiar with R.I.G.L. 45-24-41 and the Zoning Board's Standards of Review but he reiterated the standards – that the hardship is not the result of any prior action of the Applicant. Atty. Brunero asserted that is exactly prior action of the Applicant and primarily the desire to realize greater financial gain – they did not want to spend the money for fill and move the pool to where it should be. Next, that it will not alter the general character of the surrounding area or impair the intent or purpose of the Zoning Ordinance. He stated there is a reason why the Zoning Ordinance calls for a 30 foot setback – to have peace and quiet from your neighbor. And the third standard – that the relief to be granted is the least relief necessary; Atty. Brunero commented there are numerous other locations on the parcel for the pool; if there is a cement block or underground foundation an excavator can rip it out in about 10 minutes and relocate the pool to a proper place within the building envelope.

Mr. Francis C. Welch of 5390 Post Road, Unit 3, East Greenwich of RI Real Estate Services testified his realty firm reviewed the entire area, active sales, pending sales, sold data relative to the property for the prior 12 months. He noted he has walked the property and observed the pool installed at the subject property – it is our opinion that the location of the neighbor's (Massaro) pool as it stands now will have a negative impact on the marketability and value of the Raimbeault property at the present time.

Atty. Brunero asked in Mr. Welch's professional opinion if the Raimbeault property would be worth less. Mr. Welch confirmed absolutely.

Atty. Brunero stated the Applicant was concerned about cutting trees; in his opinion cutting trees is a minor inconvenience to relocate the pool versus a major deviation. He also noted that the request is not the least relief necessary – this is someone who has to pay for the speeding ticket for violating the Town ordinance and the Board should consider the local standards but also state law and deny the application simply because it does not meet the standards. Atty. Brunero added that no evidence has been

submitted about the water table or any other issue; there is nothing in the record before the Board that is legally competent evidence other than testimony of the real estate expert testifying about the devaluation of the Raimbeault's property. He also asked the Board to review the Planning Department's recommendation.

Mr. Scott Thatcher of 303 Kenyon Avenue, the direct southerly abutter, stated he does not necessarily object to the pool as it is located on the opposite side of the yard. Mr. Thatcher indicated his concern is there a pool with a body of water placed on the property with a steep slope of land which the Applicant testified to that basically drains across his property; in fact it drains through a wetland across his property which is noted on the submitted site plan and his concern is about the drainage from the pool could disturb the wetland and come across his property running into the Maskurchugg River causing environmental problems with pool water. Mr. Thatcher also pointed out the Applicant has hand dug a trench through the wetland to aid in the drainage of that wetland area which flows onto his property and into the Maskerchugg River which concerns him. He wanted to put that information before the Board and let the Board know whether or not it was a matter of the Zoning Board.

Mr. Land stated the information is not a matter technically before the Zoning Board in terms of propriety of a pool but there may be other state or local agencies that are implicated here and certainly when it comes to wetlands the RIDEM has oversight and that would potentially be an issue that they may have.

Ms. Massaro explained that where the pool is currently situated it is really not much of a slope, it is a mostly flat area – it is just the back corner where she would have a small retention wall and did not feel as there would be a drainage problem per se to flow down. She also talked to a realtor that indicated that the pool itself will not affect the property value it is more the current piles of dirt or lack of landscaping and needed fencing. Ms. Massaro said she informed the Raimbeault's that she would install whatever fence and landscaping they chose and she would be negotiable to that. She explained that where the pool is positioned now it can be seen from the Raimbeault's driveway but it cannot be viewed from their house. Ms. Massaro pointed

out the Raimbeault's have three sheds in the side setback which act as a buffer; if the pool is moved they will see the pool directly from their house as trees would have to be removed and there would be less of a buffer.

Ms. Massaro believed the Raimbeault's were mistaken; she advised that where the pool is located now it is planned to be landscaped beautifully and an aesthetic fence will be installed which will only be seen by those driving up the Raimbeault's property. She verified that she and Mr. Larson do not have little kids and there will not be splashing and screaming in the pool as was suggested.

Ms. Sceery questioned if there was any way the pool can be moved and stay in the building envelope and not remove any trees. Ms. Massaro firmly said no.

Mr. Land advised that as long as the Applicant is not within the setbacks and the proper approvals/permits to construct the pool have been granted the sight lines are not the Applicant's problem. If the neighbors objected on the basis that a variance which they are objecting to they are entitled to do just that; if they end up with something worse off because the Applicant had to put it somewhere else that is the unfortunate consequence of the decision – the abutters are certainly entitled to make the objection.

Ms. Englehart asked again as to whether Dig Safe was called prior to the start of pool construction and if it was the Applicant's knowledge of the underground concrete block location. Ms. Massaro said if she were to locate the pool more southerly it would be in the flood zone and yes Dig Safe was called before digging started.

Mr. Land questioned Mr. Pimental if and when Dig Safe goes to a property if they call the Building Department ahead of time. Mr. Pimental said not necessarily.

Ms. Sceery followed up by asking if Dig Safe was calling the Building Department specifically to install a pool does Dig Safe have to call at that point. Again, Mr. Pimental said no.

Ms. Englehart commented that her major concern was a major project was started without having a land survey performed and she did not agree with that logic; from her perspective if the proper work had been done prior the Applicant would not be before the Board.

Ms. Massaro noted she and Mr. Larson did have an informal discussion with the neighbor (Mr. Ron Raimbeault) when Mr. Larson was marking the area for the pool.

Ms. Hitchen asked how the Applicant knew to construct the barn at least 30 feet from the side setback line just a couple of years ago. Ms. Massaro verified that at that time she hired a contractor who said building permits were required. Ms. Hitchen queried that it did not occur to the Applicant that a couple of years ago the barn had to be 30 feet from that side setback so the pool, another accessory structure, had to be 30 feet from the other side setback. Ms. Massaro said she thought the pool and barn were two different things. She explained she tried to research the information but it was all ambiguous – she saw a 10 foot setback so that was what she based the pool setback on.

Atty. Brunero called attention to the submitted land survey as it shows the pool where it should be at 30' and also addresses a length of 69.5 feet from the pool to the rear located wetlands. It was his understanding that there is a jurisdictional limit of 50' so there is actually 19.5' in which the pool can be kiddy cornered around and would provide over 30 feet from the property line and no issues with the RIDEM jurisdictional 50 feet boundary.

Ms. Massaro explained there is a Town sewer line that loops around so if the pool were to be moved as Atty. Brunero suggests it would come in contact with the sewer line.

Mr. Land stated he saw no such sewer line indicated on the survey.

Ms. Massaro and Mr. Lawson explained to the best of their ability the location of the sewer line. For all intents and purposes Mr. Larson drew the sewer line on the survey for the Board to understand an approximate location of the sewer line, marked as Exhibit #4 by Staff. Mr. Land

described the drawing aloud that the sewer line comes in from Kenyon Avenue, goes across the front yard toward the pool area around the north part of the house, in between the pool and house structure and curves around and ends at the longer section of the back deck.

Ms. Englehart said it was her understanding that a sewer line on private property can be moved and made the suggestion that it be moved.

Mr. Land commented that it appears conceivably the pool could be moved and not interfere with the sewer line as it would have to slide down toward the wetland area.

With no further questions from the public or the Board Mr. Land asked for a motion.

Ms. Massaro requested a continuance of the hearing.

Atty. Brunero questioned what the Board would hear in the future.

Ms. Massaro said she would like to get legal representation. Atty. Brunero responded that attaining legal representation happens before this process starts – the evidence has been submitted, there is no more evidence.

Mr. Land stated the Board generally continues matters on a regular course when an applicant requests it; it is not uncommon for an applicant to seek a continuance even after a hearing has commenced. At this point having reviewed the relevant standards he asked the Board for a motion to continue the hearing.

Mr. Mulhearn motioned to continue the hearing. Seconded by Ms. Sceery.

Mr. Land asked for a discussion on the motion.

Ms. Englehart stated she objected to a continuance due to the application being a hardship the Applicant brought upon herself by starting a project that she probably should have consulted with the Town prior to starting.

Mr. Land commented that he felt this is a difficult application as the Board has an applicant who has invested a considerable amount of money but did so under circumstances that has raised serious questions for Board members. His view is weighing the relative burden of the two parties (the Applicant and the neighbor objecting); the relative burdens of a denial of a continuance versus asking the neighbor to appear at another hearing which they are not obligated to do as the record is what it is at this point. To afford the Applicant the opportunity to further consult with counsel versus denying the continuance which then results in a vote on the application which may ultimately appears to be a no motion in favor which would then require the Applicant to remove the pool or relocate it – the relative burdens are significantly in favor of a continuance.

Ms. Sceery said she would not object to a continuance as it is part of the legal process.

VOTE: 4 – 1 (Ms. Englehart voted to deny the continuance.)

Mr. Land reminded the Applicant of the standards the application must comply with. He noted his intention of the continuance is to allow the Applicant to have counsel present a more adequate testimony however he believes adequate evidence has already been presented. Mr. Land Added the abutter will have the opportunity to present additional evidence if more evidence is presented.

Ms. Hitchen stated the hearing has been continued to Tuesday, October 25th and abutters will not be re-notified.

- 1. Steven Thrall & Marilyn Bollengier** for property located at 90 Stone Ridge Drive; Map 61 A.P. 12 Lot 147 (Zoned Farming, F-1). The Applicant seeks a Dimensional Variance from Table 2 of Chapter 260 of the Town Code; Zoning Ordinance, Dimensional Regulations by Zone. The Applicant is requesting to construct an addition to the existing structure which will not comply with the northern side setback requirement.

Moving back to Mr. Thrall's and Ms. Bollengier's application located at 90 Stone Ridge Drive, Mr. Land asked if there was any new information and/or comments from the Applicant or public.

No comments from Applicant or abutters.

Mr. Land asserted that by having no further concerns that were previously expressed they have since been addressed in the hallway and there is no opposition.

Motion by Ms. Sceery to approve the application as submitted. Seconded by Ms. Cullion.

Mr. Land read into the record the standards the Applicant must comply with, those being:

The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land and not the general characteristics of the surrounding area.

The hardship is not the result of any prior action by the applicant and does not result primarily from the desire for greater financial gain.

Granting the request will not alter the general character of the surrounding area or impair the purpose or intent of the Zoning Ordinance or Comprehensive Plan.

The relief to be granted is the least relief necessary.

The hardship suffered by the owner if the variance is not granted shall amount to more than a mere inconvenience.

Considering there is no opposition to the application, Mr. Land stated he is comfortable that the standards have been satisfied.

VOTE: 5 – 0.

Zoning Board of Review Business

1. Minutes: Review/action on the minutes of the April 26, 2016, May 24, 2016 and June 28, 2016 meetings.

Motion by Mr. Mulhearn to approve the April 26, 2016, May 24, 2016, and June 28, 2016 minutes as written. Seconded by Ms. Sceery. Approved 5 – 0.

Mr. Land asked for a motion to adjourn.

Ms. Englehart motioned to adjourn. Seconded by Ms. Sceery. Approved 5 – 0. Zoning Board of Review meeting adjourned.

Minutes respectfully submitted by:

Lea Anthony Hitchen,
Assistant Town Planner

For more information, please refer to the recording available in the Planning Department.