The Chairman called the meeting to order and stated it was being held in compliance with the “Open Public Meeting Act” and had been duly noticed and published as required by law.

ROLL CALL

Present: Mr. Cohen, Mr. Willard, Mr. Leoncio, Mr. Cupersmith, Mr. Senges

Absent: Mr. Weil, Mr. Daddario, Mr. Patton, Mr. Brocco

Also, present, Mrs. CherylLynn Walters, Board Solicitor, John Keating, Board Engineer, Corrine Tarcelli, Zoning Board Secretary

**APPROVAL OF MINUTES**

Mr. Willard motioned to approve the minutes from September 28, 2017; seconded by Mr. Senges.

Motion carried by the assenting voice vote by all board members. Mr. Cohen, Mr. Cupersmith and Mr. Leoncio abstained.

**NEW BUSINESS**

Samuel Giordano

39 Simsbury Drive

Block 304.02, Lot 99

Case #ZC2017-020

Ms. Kathleen Gaskill, Attorney for the Applicant, stated the Applicant, Samuel Giordano, is seeking Bulk Variance relief from Section 150.13(A)(6) of the ULDO to permit the construction of a pool paver deck with a rear yard setback of 7 feet and 9.9 feet for pool edge where 15 feet is required; Section 152.015(D)(3) to permit the construction of a pool paver deck with a side yard setback of 7 feet and 11 feet for pool edge where 15 feet is required; 150.13(A)(6) to permit the construction of an accessory building with a rear yard setback of 7 feet where 15 feet is required; 150.14(B)(1)(a) to allow for a 6 foot fence in side yard area where only 4 feet is permitted. Seeking any and all other variances, waivers and/or other relief as may be deemed necessary by the Board and/or its professionals. Mrs. Walters noted there are additional variances that were realized after the aforementioned language was constructed for the agenda and those will be addressed by the Applicant.

Ms. Kathleen Gaskill stated the residence is located in a single family residential subdivision of Sturbridge Hills. The home is located in a medium density residential district. The pavilion, cabana structure is a permitted accessory in the zone. Given the particular configuration of the dwelling and in particular the fact that there is a morning room that extends out to the center of the rear yard along with the grade of the back yard necessitates the rear yard setback. The conditions also require the shifting of the swimming pool, not centered in the yard, but slightly to the eastern side of the property. Ms. Gaskill noticed on all the variances. She stated there will be grading within five feet of the property line so that was noticed as a variance or a waiver. She also noticed on the concrete pad that will house the pool heater and the filter. That was noticed as a Variance. The guidelines on the swimming pool do not speak directly to pool equipment so Ms. Gaskill thought it would be safe to notice that as well.

Ms. Gaskill indicated they have premised the application for relief for a C1 and a C2 variance because there are components of this application that fall into both. The C1 Variance hardship is the intrusion into the rear yard setback is warranted on a hardship given the configuration of the existing morning room limits the depth of the back yard. There is a significant grade from the back door that requires the pool to be situated further back away from the house. Ms. Gaskill stated this is the one variance where she feels there is a hardship. The rest of the

variances they are requesting have to do with a C2. In essence the variances are warranted because the purpose or a goal of municipal land use is the benefits outweigh the detriments. The Applicant is proposing to place the pool on the eastern side of the property since he wanted to preserve open space for his growing family. The placement of the pool outside of the morning room would give better visual oversight. The western side of the property has more established shaded trees whereas the other side, the eastern side, there will be more sun exposure. Additionally, the Applicant would like to preserve a tree in the center of the property, preserving open space and vegetation. With regard to the substantial detriment, Mr. Giordano’s testimony will put forth that he is proposing landscaping so there is no impact to the adjoining properties. There is a fifty-five and over community that backs up to the rear of the property where a buffer has been placed.

The Applicant, Samuel Giordano, was sworn in to testify. He stated he has occupied the property with his family for one and a half years. The home is a single-family two-story home, new construction. The neighborhood is comprised of a number of young professionals. Their home is located in phase one of the development with approximately 46 or so lots.

Ms. Gaskill submitted enlarged photos of the proposed pool, fence, patio and gazebo. The photos were marked into the record as Exhibit A1.

Mr. Giordano stated because the morning room extends out to the middle of the yard, the property from side to side is 110 feet. The distance from the end of the morning room to the back property line is the leanest, most narrow point of the property, approximately 46 feet. The distance from the house to the eastern part of the property is 67 feet. Due to the fact the morning room is in the center of the property and they needed a 15 foot setback in between, that would require they bring the pool directly up to the morning room and would only provide 30 feet of space in order to do so. There is a large oak tree in the center of the yard that Mr. Giordano’s wife is fairly fond of, therefore, they decided to place the pool toward one corner or the other. The other corner, the oak tree would be in the way. They pool designer along with the Giordano’s decided on a L-shaped pool which would best maximize the space. Additionally, there are sliding glass doors that exit from the morning room on the eastern side of the property. It’s about six feet off the ground and therefore, requires a deck as opposed to steps. The windows from the kitchen will enable one to see the pool visually. The grade from the house is about 161 whereas the back corner is 157 so there is about a four foot drop in the grade from the house from where one would exit out of the house to the back corner. In order to get that grade down, the Giordano’s either have to build up the back or they have to go down sooner to get down to grade quicker. Therefore, off the deck there will be a two foot retaining wall that will go down to grade more quickly.

Mr. Senges stated based on the testimony and based on the synopsis there is no exception this is C1 variance. All of the issues and variances Mr. Giordano is applying for are based on a hardship. A hardship created by topography, hardship created by the placement of the home and the morning room, the depth of the lot, as well as the fact the Township is rather averse to removing large mature trees. Based on the hardships that exist, this a very simple application. The only thing that doesn’t fall under hardship is the fence. Mr. Senges requested Mr. Giordano explain why the fence needs to come up so far and why it needs to be six feet. Mr. Giordano explained that his wife is very safety oriented. They have about 25 kids under the age of five currently in the neighborhood. A number of children live on either side. As the children grow and become teenagers, a six foot fence is a lot more difficult to climb over as opposed to a four foot fence. Mr. Senges questioned why the fence has to come all the way up to the corner of the home on the eastern side. Mr. Giordano stated it was due to the fact that the pool equipment is going to be in that area. Mr. Senges further stated the only time the Board will approve a 6 foot fence coming up that far is if there is a sliding glass door so the entrance of the glass doors will enter into the back yard or an air-conditioning unit that should be enclosed so that it’s not visible from the street. Mr. Senges inquired as to whether or not the fence can be scaled? Mr. Giordano stated the pool equipment is approximately 28 feet to the front corner of the house. Also there are two air conditioners. Mr. Senges requested if Mr. Giordano would consider ending the fence just past where the pool equipment and air-conditioners are as opposed to bringing it to the front corner of the home. He further stated the Board

likes to remain consistent and secondly the Board does not want set precedence and have numerous homeowners in Sturbridge Hills requesting their fence be placed at the front edge of the property.

Mr. Senges stated Mr. Giordano can bring the fence forward of the rear corner up to and including the air-conditioning units and the pool equipment. Mr. Giordano stated Michelle Nocito lives a few doors down from him and her fence comes all the way up on both sides of the property and it’s not a four-foot fence. Mr. Giordano further stated esthetically he would rather reduce it to five foot if the Board is willing to allow it to come up both sides of the property.

Mrs. Walters stated from a variance perspective the Chairman is indicating there is no hardship associated with the variance request for the fence. Mr. Giordano has to demonstrate that it satisfies or promotes one of the purposes of the MLUL and all the purposes Ms. Gaskill indicated earlier were related to the back yard. Mr. Giordano has to satisfy the C2 criteria for the fence. Mrs. Walters further stated Mr. Giordano is having difficulty providing proof for the variance for the fence. Mr. Giordano stated a four foot fence is a lot easier to traverse. They are also planning to place vegetation in front of the fence so no one will be able to see the pool equipment.

Mr. Senges stated in order for Mr. Giordano to make his proofs unless there is a hardship, it has to be a need, not a want, not esthetics, not a personal preference. The people who make the ordinances believe it is not esthetically pleasing to bring the fences up forward of the rear corner which is why a variance is required to do so. Therefore, there must be a reason and a justification. The Board has consistently allowed people to do so in the past when there was some sort of a hardship by not doing so in other words one may have a patio door that opens to nowhere if it’s not part of the back yard, or there’s a noisy air-conditioner which usually is enclosed with a solid fence not the type Mr. Giordano is proposing. The other option would be to put the pool equipment in the back yard. The law states the Board needs justification to grant a variance.

Mrs. Walters suggested the language on the Resolution should state the six foot fence can be forward of the rear corner only so far as necessary to enclose the equipment on that side of the house which would be the pad, existing air-conditioning units, the electrical box and pool equipment. Mrs. Walters inquired whether or not there was going to be a gate or access where the side yard to the front corner of the house as shown on the plan parallels Simsbury. Mr. Giordano stated “No”. Mrs. Walters requested Mr. Giordano clarify where the plantings were going to be placed.

Mr. Giordano stated they do not have specific plans as of yet. Their thoughts are to plant in particular the area where the pool is, they would like to shield that with as many privacy trees as possible. They plan to plant leyland cypress or green giant arborvitae along the back corner and going forward as well. They would like to have privacy trees up to where the house corner is. Up past the pool it will sparse out a little bit more and sort of stagger. They plan to also plant five foot arborvitae across where the fence will be.

Mr. Senges stated the Township ordinance is very specific as to what type of vegetation has to be planted in the front. Ms. Gaskill stated with front fences parallel to the front property line, the plantings have to be at least a minimum of three feet high and six feet apart. Mr. Giordano agreed to comply with that.

Mrs. Walters questioned as to the fence on the driveway side of the house, the front facing part, as to whether or not that’s going to be six feet all the way around. Mr. Giordano stated there is a fireplace bump out there. In order to have that part of the house behind the fence the fence has to be placed to the rear corner.

Mrs. Walters stated she would like to discuss the proposed deck. Since the deck is not being constructed now, the Board does not have the dimensions. She does not know whether or not the deck would require any type of variance relief until it is under consideration and presented to the Board and Mr. Giordano applies for the permit. Therefore, there will be no relief granted for the

deck at this meeting. Mr. Giordano indicated they plan on installing the deck at the same time of the pool. However, they have not finalized the details and have not finalized the specifics of the retaining wall or the details. The specifics of the deck are still under design. Mr. Senges stated if it’s a deck it’s not an impervious coverage issue. If it becomes pavers or stamped concrete then it becomes an impervious issue and Mr. Giordano may need a variance if the impervious coverage is exceeded. Ms. Gaskill stated the imperious coverage was already calculated. Maximum impervious coverage is 45% of the property. The bottom of the plan shows the impervious coverage including the proposed deck is 36.7. Mrs. Walters reiterated the deck is not being considered tonight.

Mr. Keating, Board Engineer, requested should the fence enclose all of the equipment, air conditioning units, he would like Mr. Giordano’s engineer show the other pieces of equipment to demonstrate the fence will only enclose all the equipment either existing or proposed.

Mr. Giordano inquired as to whether or not he could reduce the height of the fence to five feet. Mr. Senges stated anything over four feet requites a variance and would require proof. Mr. Giordano stated as to whether or not there was a precedence set with other houses in the neighborhood having five foot fences. Mr. Cupersmith stated they may not have applied for a variance. Each individual has to apply separately for a bulk variance.

Mr. Giordano indicated he would like to leave the application the way it is with the six foot fence up to the area where the equipment is located with an area sufficient enough for walking around the equipment. Ms. Gaskill stated they will have that reflected on the revised drawings. The engineer will demonstrate that the fence is enclosing the area of the equipment. She further stated regarding the site lighting on the gazebo there will be a ceiling fan with a light in it. However, there will not be any additional lighting. The proposed height of the gazebo is 11.8 and landscaping is reflected on the plan. Regarding the retaining wall, the maximum height will be 26 inches.

Mr. Giordano stated the pool supplies and pool chemicals will be stored under the deck. The deck will function as a shed structure. The deck will have a rain escape system. There is no room for a shed on the property.

Regarding storm water management of the property, Mr. Keating stated per the plans, the Applicant’s engineer is directing the storm water to run into the middle of the back yard to thereby allow it to recharge into the ground prior to going into the property line. This is the more desirable thing to do and it is more advantageous for the neighbors since the east side of the patio is going to be higher than the west side of the yard.

The meeting was opened to the public. Seeing no one, the public portion was closed.

Mr. Willard requested a summary from Mrs. Walters. Mrs. Walters summarized this is a residential bulk application to permit a pool with a paver patio to be constructed 7 feet from the rear yard property line where 15 feet is required and with a pool edge of 9.9 feet from the rear property line where 15 feet is required, a side yard setback to permit the patio to be 7 feet from the side yard where 15 feet is required and the pool to be 11 feet from the edge of the side yard where 15 feet is required. Variance to allow grading and construction within 5 feet of the rear property line where that is not permitted. To permit accessory buildings and uses to occupy 33.5% of the rear yard where a maximum of 25% is permitted. To permit a six foot tall fence to be forward of the rear corner of the dwelling on the westerly side as shown on the plan and to permit on that side the same six foot fence to run parallel to the road where four feet is permitted in that location. On the eastern side of the dwelling to permit a 6 foot fence to extend forward of the rear corner of the dwelling only to the extent necessary to fully enclose all of the equipment that services the house on that side and space to allow for maintenance and for that 6 foot fence to also run parallel to the side yard to the edge of the house that parallels to the road where four foot is permitted on that side as well.

The only two conditions noted, the Applicant’s engineer will demonstrate the other equipment on the easterly side of the property on the plan and will also show the proposed landscaping on the plan as well as the grading.

Mr. Cohen made a motion to approve relief from Section 150.13(A)(6) of the ULDO to permit the construction of a pool paver deck with a rear yard setback of 7 feet and 9.9 feet for pool edge where 15 feet is required; Section 152.015(D)(3) to permit the construction of a pool paver deck with a side yard setback of 7 feet and 11 feet for pool edge where 15 feet is required; 150.13(A)(6) to permit the construction of an accessory building with a rear yard setback of 7 feet where 15 feet is required; 150.14(B)(1)(a) to allow for a 6 foot fence in side yard area where only 4 feet is permitted. Seeking any and all other variances, waivers and/or other relief as may be deemed necessary by the Board and/or its professionals; seconded by Mr. Willard.

Ayes: Mr. Cohen, Mr. Willard, Mr. Leoncio, Mr. Cupersmith, Mr. Senges

Nays: None

Seeing no further business Mr. Senges makes a motion to adjourn, seconded by Mr. Cohen.

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Corrine Tarcelli

Zoning Board Secretary