

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. Weil, Mr. Willard, Mr. Daddario, Mr. Cupersmith, Mr. Senges, Mr. Pannu, Ms. Tulman

Absent: Mr. Leoncio

Also, present: Chris Norman, Board Solicitor; Stella Sytnik, Zoning Board Secretary

RESOLUTIONS FOR APPROVAL

Mr. Weil motioned to approve the following **RESOLUTION NO. 21-12**; 801 Mercer Avenue, Block 133 Lot 1.01; seconded by Mr. Willard; none (0) against:

Ayes: Mr. Cohen, Mr. Weil, Mr. Willard, Mr. Daddario, Mr. Cupersmith, Mr. Senges, Mr. Pannu, Ms. Tulman.

Abstentions: None

Nays: None

MINUTES FOR APPROVAL

Mr. Cohen motioned to approve the Minutes from the February 11th meeting; seconded by Mr. Willard; no abstentions; none (0) against.

Ayes: Mr. Cohen, Mr. Weil, Mr. Willard, Mr. Daddario, Mr. Cupersmith, Mr. Senges, Mr. Pannu.

Abstentions: None

Nays: None

NEW BUSINESS

Ms. Tara Gutterman
5 Village Drive
Block 213.16, Lot 10

Mr. Norman summarized the application stating the Applicant seeks relief for a variance or other relief from the ULDO as follows: from Section 150.13(A)(1)(a) to permit the installation of an above-ground swimming pool in a side yard where accessory uses and structures are prohibited from being located in front and side yards; from Section 150.13(A)(6) to permit an unpermitted non-conforming concrete patio to remain at 10.2' from the rear property line where accessory uses and structures must be a minimum of 15' from the rear property line; from Section 152.015(D)(3) to permit an unpermitted non-conforming concrete patio to remain at 13.4' from the side property line where the minimum side yard setback for the MDR R100 zone is 15'; from Section 152.015(D)(3) to permit the installation of an above-ground swimming pool at 10' from a side property line where a minimum side yard setback of 15' is required; and seeking any and all other variances, waivers and/or other relief as may be deemed necessary by the Board and/or its professionals.

Mr. Norman swore in the Applicants, Ms. Gutterman and Mr. Solomonov.

Ms. Gutterman stated they are asking to permit pool construction in the side yard.

Mr. Solomonov added the pool is not fully an above ground pool but rather a semi-inground pool; at 42 inches high and 24 inches or approximately two (2) feet underground.

Mr. Senges asked for the reason Applicant is requesting for the pool to be in the side yard and not the rear yard, as required by the Ordinance.

Ms. Gutterman explained they would need variance regardless, whether they will try to place it in the side or rear yard. In terms of the pool, it would be more feasible to install it in the side yard. Mr. Solomonov added the reason is they purchased the house with the electrical outlet installed there.

Mr. Senges pointed out it is not a big deal and they need explanation as to why it is practical. By law, the Board can only grant relief on a “need to” not a “want to” basis. The Chairman further explained the need is created only if doing something confining with the zoning ordinance would create a hardship.

Mr. Solomonov noted electrical outfit creates a hardship as it will entail much larger additional cost.

Ms. Gutterman added no matter where they place it, they are not able to comply with 15’ setback.

Mr. Norman explained that they would need to prove undue hardship and because it is a big lot, it does not appear like putting the pool in rear yard is a better planning alternative as opposed to eliminating this variance altogether.

Mr. Solomonov noted another burden is the fact that there is a basketball court. When they moved into the house and installed it, the company they used told them they will take care of all permits. As new homeowners, they did not know much about it and trusted the installer. When this came to light, Mr. Solomonov tried to contact the company just to find out that they are no longer in business. As far as space in the back, he feels they would not have enough space. Mr. Solomonov referenced submitted pictures with both pool in the back and pool in the side yard scenarios.

Mr. Senges reviewed the pictures and commented that the backyard looks open and flat.

Ms. Tulman asked if there was an option for a smaller size pool.

Mr. Solomonov replied they initially were considering a 32’x17’ size pool, but then dropped to 30’x15’, the smallest size available. He mentioned if he gets closer than 10 feet from the fence, he will hit the patio.

Mr. Senges objected they have enough room in rear yard, their only concern it would be close to the patio. However, if they put it 12’ from the property fence, it will give them enough room not to infringe on the patio. This way they will eliminate the variance to put it in the side yard.

Mr. Senges added had they had multiple trees or shrubs it would not be a good planning alternative. From a zoning perspective, it would be a hardship, there would be some value to their request for relief. But based on the survey, this does not appear to be a hardship. The Board cannot justify it from the legal standpoint.

Ms. Gutterman asked if they could amend the application.

Mr. Norman confirmed that the Board does have that flexibility.

Mr. Senges added that on the side yard, the Applicants are going to extreme having more than adequate room in the rear.

Ms. Gutterman said they will amend the Application.

Mr. Senges asked how close to the fence they would like the pool to be located.

Mr. Solomonov stated eight or ten (8 or 10) feet from the fence. He added with 15’ setback, it would hit the patio and he will not be able to put a small deck to have pool equipment.

Mr. Senges acknowledged that seven (7) feet makes sense with 3 feet of concrete patio. Total 10 feet would be a great solution.

Ms. Tulman asked about percentage lot coverage.

Mr. Matlack confirmed there is no concern of the yard coverage, maximum 25% allowed. They currently have 23%, the pool addition will put them to 32. 7% vs. 25% required by the Ordinance. Mr. Matlack added generally speaking, pools are considered pervious as there is no water runoff issue. Therefore, this is not an impervious coverage issue, but percentage of a lot coverage issue. This would be another variance.

Mr. Cupersmith expressed his concern that he would not be able to vote until he sees an actual plan.

Mr. Senges pointed out since they have exact pool size, they are able to control setbacks and lot coverage.

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Ms. Tulman asked about the neighbors on the side and if they had any concerns about the pool.

Mr. Solomonov replied there is a side yard, there is 10-15 feet between their fence and the neighbors' house.

Mr. Norman asked if the fence was designed in a fashion that does not impact the neighbors as it is only 1/5 ft above the ground.

Mr. Solomonov confirmed that is exactly how the fence was designed.

Mr. Cupersmith re-stated he is not comfortable voting on the application until he sees the drawings.

Mr. Norman advised the Board they can approve it with ten (10) ft setback, and if per chance it does not work, they could do a motion for reconsideration. If they are not allowed to do it within 10 ft, the Board did not give them any special rights by voting tonight so there is no legal issues here.

Mr. Senges asked if they should provide a final plan.

Mr. Norman confirmed that it must be a conformance plan approved by the board engineer.

Mr. Cupersmith stated in that case he will feel comfortable voting.

Mr. Norman assured Mr. Solomonov that no additional hearing would be required, a permit will be issued on a condition he would provide a final plan approved by the board engineer and submit to the board secretary.

Mr. Norman advised the Applicants that if the Board goes ahead, they will have to comply with 10 feet.

Both Applicants stated this would be absolutely doable.

Mr. Senges asked Mr. Norman to recap the three (3) variances including 4.5 ft variance for the patio, 32/7% coverage for rear yard, and 10 ft variance for the pool setback where 15 ft is required. The Chairman asked the Applicants if both of them agree to amend their application.

The Applicants confirmed that they did.

Seeing nothing further from the board, Mr. Senges opened the floor to the public.

Mr. David Mealmaker and his wife at 3 Village Drive were sworn in. They stated they are pleased with the results of the Board's decision and have no objection to the pool.

Mr. Gerald Provost residing at 8 Village Drive was sworn in by Mr. Norman. Mr. Provost underscored what the Mealmaker said.

Stating that both neighbors indicated support, Mr. Senges closed public portion of the hearing and brought it back to the Board.

Mr. Norman summarized the Motion for the Amended Application stating the Applicants are asking for a relocated from the side yard to rear yard pool with a 10 ft setback where 15 ft is required: some patio setback variances, as well as additional backyard coverage. All of the afore-mentioned variances shall be granted subject to submission of the conformance plan which would have been reviewed and approved by the board engineer.

Mr. Solomonov asked if there are setback requirements for a distance between pool and concrete patio distance.

Mr. Matlack advised there is none. No setback requirements, it can be put upright against it.

Motioned by Mr. Willard and seconded by Mr. Cupersmith, the Motion carried.

Ayes: Cohen, Weil, Willard, Daddario, Cupersmith, Pannu, Senges

Nays: None

Abstentions: None

Mr. Norman advised the Applicants the Board will memorialize the Resolution in the next meeting, anyone can appeal within 45 days of publication of Notice of Decision. It is applicant's prerogative to wait or start the job prior to the 45 days period.

The Applicants acknowledged they understand the appeal process and thanked the Board.

Mr. John Nyarkoh
103 Long Lane
Block 87, Lot 5

Mr. Norman summarized the application stating the Applicant seeks relief for a variance or other relief from the ULDO as follows: from Section 150.13(A)(7)(d) to allow a 12' x 16' x 9' shed to remain as constructed at 2.3' from the side property line where a minimum of 10' is required and 1.6' from the rear property line where a minimum of 10' is required for all sheds exceeding 150 SF in the MDR(R75) zone; from Section 150.12(B)(1), where no grading, construction or alteration of a lot shall be permitted within 5' of a property line, and the shed is 1.6' from the rear property line and 2.3' from the side property line and the pavers are 0' from both the side and rear property lines; and seeking any and all other variances, waivers and/or other relief as may be deemed necessary by the Board and/or its professionals.

Mr. Norman swore in the applicant Mr. Nyarkoh.

Mr. Nyarkoh stated he is requesting a shed that is currently on his property. He bought the house in June of 2020. On the closing day it came to his attention he needs a variance for the shed. The sellers are the ones who have put the shed. They said they will take care of the permit, unfortunately they did not.

Mr. Senges asked if the escrow money were submitted.

Ms. Sytnik confirmed there was \$500 put in the escrow account for this applicant. There are no other open permits.

Mr. Senges asked about lot coverage.

Mr. Matlack advised the Board that the backyard coverage is 52.9%; total impervious coverage is 47% where 45% is allowed.

The board members deliberated on how old the pool and the patio are and if the permits were obtained.

Ms. Sytnik stated the records show they were constructed 14 years ago and there are no open permits.

Mr. Senges stated unfortunately that is not a rare occurrence and that they can only assume the variances were granted in the past.

Mr. Norman added they do not see often inground pools without permits; it is safe to presume that improvement is legal. There is a lot of decking area, and there is 6 feet fence around the pool.

Mr. Matlack confirmed based on google earth the pool was already there in 2006; the rest is hard to tell.

Mr. Senges stated they have to go with the assumption it all has been approved, otherwise the Zoning Officer would have detected it at closing.

Mr. Norman asked the Applicant if the shed color and structure were compatible with the entire building and the neighborhood.

Mr. Nyarkoh confirmed that they were.

Mr. Senges asked the Applicant to provide reasons for having the shed.

Mr. Nyarkoh stated he will need it for storage and for his children's safety. Because of the pool he will need to buy some pool equipment and chemicals. With kids in the house, he has to keep chemicals outside for their safety.

Mr. Senges asked if the Applicant had a garage.

Mr. Nyarkoh confirmed he does not have garage.

Mr. Senges asked whether the shed could be moved further from the fence.

Mr. Nyarkoh indicated that was the only place, the pool is quite wide, that is the only portion they can have a shed.

Mr. Senges agreed and stated the Applicant has pavers right up to the edge of the fence.

Mr. Cupersmith added there is no place for him to move it.

Mr. Norman confirmed the only place he can move it would be to the next lot which would be against the ordinance anyway.

Seeing no further questions from the Board, Mr. Senges opened floor to the public.

With nobody from the public to speak on behalf of the Applicant, Mr. Senges brought it back to the Board for further discussion or a motion.

Mr. Weil motioned to approve the Application as outlined by Mr. Norman, seconded by Cupersmith.

Ayes: Mr. Cohen, Weil, Willard, Daddario, Cupersmith, Pannu, Senges.

Nays: None

Abstentions: None

Mr. Norman advised the Applicants the Board will memorialize the Resolution in the next meeting, anyone can appeal within 45 days of publication of Notice of Decision. It is applicant's prerogative to wait or start the job prior to the 45 days period.

Mr. Nyarkoh acknowledged he understands and thanked the Board.

Lucas Volosyn
59 Dutchtown Road
Block 227, Lot 21

Mr. Norman summarized the application stating the Applicant seeks relief for a variance or other relief from the ULDO as follows: from Section 150.13(A)(6), where the minimum rear setback for all accessory buildings and uses is 15' and the existing patio was installed at approximately 10' from the rear property line; and seeking any and all other variances, waivers and/or other relief as may be deemed necessary by the Board and/or its professionals.

Mr. Norman swore in the applicant Mr. Volosyn.

Mr. Volosyn stated he needs the variance because the previous owner installed the patio too close to the site. He inherited the problem when he bought the house in 2020. He found out during closing when he was told he could not get Certificate of Conformance.

Mr. Senges asked about the escrow.

Mr. Volosyn confirmed that he is the one who had to put in escrow money. The responsibility fell on him, not the seller.

Mr. Senges stated this should not have happened and that it has been happening way too much. Anyone who lists the property should be able to get a survey at the time they list the property, not much later.

Mr. Senges asked how big the property was and if the structure could be seen from outside.

Following board members discussion and establishing nobody can see it as this is a patio, not a structure and the property owners has not disturbed soil in the area, Mr. Senges asked if there were any other questions or comments from the Board or professionals.

Mr. Matlack noted the Applicant needs DEP approval since the property is in wetlands.

Mr. Volosyn advised he did submit the application and never heard back from DEP.

Mr. Matlack stated it will be condition of approval.

Mr. Norman confirmed this would be an outside agency approval. He thanked Mr. Matlack for bringing the issue up.

Mr. Senges asked if there was any more testimony from or on behalf of the Applicant.

Mr. Volosyn asked for suggested action plan should he not have heard from DEP since he tried multiple times with no success.

Mr. Norman advised Mr. Volosyn to keep record of his attempts; he made the application, that is the best he could do.

Mr. Senges added Mr. Volosyn should make a formal application, not limited to phone calls.

Mr. Matlack confirmed DEP are backed up all over the state. Their hours are cut short. It may take some time, but they will get to Mr. Volosyn eventually.

Mr. Norman stated that Mr. Volosyn will need to submit a copy of the approval from DEP to the Zoning Officer, otherwise his approval will not be validated.

Seeing no one in the public to speak on behalf of the Applicant, Mr. Cupersmith motioned to approve the Application as outlined by the Solicitor; seconded by Mr. Willard.

Ayes: Mr. Cohen, Weil, Willard, Daddario, Cupersmith, Pannu, Senges.

Nays: None

Abstentions: None

Mr. Senges asked if board members had any questions or other topics of discussion.

Mr. Willard brought up the issue of escrow amount and that it has to commensurate with risk and the extent of unapproved structures.

Mr. Senges commented the realtor should be able to get a survey in advance, it should be a common practice. This way realtors can compare current property with what the survey shows and advise the seller about open permits as soon as possible. In previous years, it used to be easy but nowadays, the agent needs to submit OPRA request online. Things got even more complicated with pandemic and as a result limited personnel and some staff working remotely.

With no further business to discuss, Mr. Cupersmith motioned to adjourn the meeting seconded by Mr. Weil.

Stella R. Sytnik
Zoning Board Secretary