

ZONING BOARD OF REVIEW

Barrington, Rhode Island

January 21, 2016

APPLICATIONS #3826 & #3830

MINUTES OF THE MEETING:

At the call of the acting Chairman, Thomas Kraig, the Board met with Peter Dennehy, Elizabeth Henderson, Ladd Meyer and David Rizzolo.

Also present were Solicitor Andy Teitz and secretary Mary Ann Rosenlof.

At 7:04 P.M., Mr. Kraig called the meeting to order.

MINUTES OF THE PREVIOUS MEETING:

Mr. Meyers noted that the application numbers at the top of the December 2015 minutes were from the November 2015 meeting and should be changed. The Board agreed.

MOTION: Mr. Rizzolo made a motion to approve the December 17, 2015 minutes with the above noted change. Mr. Dennehy seconded the motion and it carried unanimously (5-0).

Continuation of Application #3826, Samantha Best o/b/o Magma Design Group, Inc., 10 Winthrop St., Rehoboth, MA, applicant, and Tracy Pereira-Baker & Michael Baker, 20 Freemont Ave., Barrington, RI, owners, for permission to construct a swimming pool. Assessor's Plat 7, Lot 94, R-40 District, 20 Freemont Ave., Barrington, RI, requiring dimensional relief for accessory structure setback.

Present: Neil Best, Registered Landscape Architect, Magma Design Group
Samantha Best, Senior Designer, applicant

In the audience: Attorney Peter Skwirz, 450 Veterans Memorial Parkway, E. Providence, RI –
representing abutter Henry Collins, Jr., 35 Watson Avenue, Barrington, RI

Ms. Best explained that they have moved the pool utility pad out of the setback and so they require dimensional relief only for the pool. The pool is 16'x32' and 9'3" to the property line compared to the 18' required for an accessory structure.

The 100' required CRMC construction setback, combined with the placement of the house, leaves only the area east of the house in which to locate a pool. There were two iterations of the deck in the original CO package, but the actual deck does not match either of those plans. The Board noted that the existing deck is elevated and questioned why the pool could not be moved to the footing of the deck. Ms. Best said they followed the Department of Health's safety requirement to have at least a 4'

clear access all around a pool although this requirement does not apply to private pools.

There is a retaining wall - not shown in the original plans - precluding construction of a pool at an angle to the house, as was shown on the original plans. The applicant presented Exhibit A-1, showing a possible pool location that has been shown not to be feasible. The applicant's children are approximately 6, 7 and 13 and to provide extra safety without a fence directly around the pool, it must be rectangular and have an "automatic" pool cover operated by a key system located where the operator can see the pool.

The Board considered whether the hardship was caused by the applicant (in this case, the applicant's predecessor in title) who built a large house on a property constrained by shape and environmental setbacks and thus precluded construction of a pool of the intended size without intruding into zoning setbacks. The Board concluded that while the hardship was in part caused by the applicant, that was one of several factors to weigh in considering the application.

Mr. Skwirz, representing Mr. Collins, owner directly or indirectly, of Lots 92 and 93, asked that the applicant consider slightly rotating the pool clockwise to reduce the amount of relief required. Mr. Skwirz also mentioned that the plans submitted for the November 2015 meeting showed the distance between the pool and the rear lot line as 10' 2" and the revised plans indicates this distance as 9' 3". Ms. Best explained that if the pool were to be rotated; it would encroach into the deck and existing wall, and that based on recent discussions with CRMC, the pool could not be placed any closer to the water.

At 7:53 p.m., the public participation portion of the hearing was closed.

MOTION: Mr. Rizzolo made a motion to approve this application. Mr. Meyers seconded the motion and it carried unanimously (5-0).

REASON FOR DECISION:

It was the judgment of the Board that the standards in § 185-69 have been met: A) that the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area, and is not due to an economic disability of the applicant because the property has some unique constraints - CRMC setbacks, odd angles, odd property lines, location of the house, and there is not a large amount of buildable area ; B) that the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain because the action of the applicant in sizing and siting the house are outweighed by the constraints imposed by the property; C) that the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this chapter or the Comprehensive Plan because it is acceptable to have a pool with a single family residence and this is a standard size pool and not out of character; D) that the relief to be granted is the least relief necessary because this is a standard size pool and the safety aspect of the automatic pool cover necessitates the shape of the pool and outweighs the option of installing a smaller, round pool with a fence around it, as the latter type pool cannot accommodate an automatic pool cover. Also, any suggested change in the orientation of the pool would not appreciably decrease any noise perceived off-site from people using the pool. Additionally, the standards for a dimensional variance set forth in Section § 185-71 have been met because the applicant has proved that the

hardship to be suffered by the owner, absent granting the relief, would amount to more than a mere inconvenience because a pool is an accepted addition to a single family residence, the location is the only place where it can be, and the safety aspect of the pool cover necessitates the shape and configuration of the pool. If the variance were not granted, they could not have this pool on the property.

Application #3830, Neil and Deborah Greenspan, 12 Nathaniel Rd., Barrington, RI, applicants and owners, for permission to demolish existing house and detached garage and rebuild a new single family home with attached garage. Assessor's Plat 35, Lot 150, R-25 District, 10 George W. Finnerty Rd., Barrington, RI, requiring dimensional relief for construction within 100' setback from wetlands/water bodies and a special use permit for proposed construction within 100' of Wetlands Overlay District.

Present: Attorney Peter Skwirz, 450 Veterans Memorial Parkway, E. Providence, RI – representing the applicants
John Carter, landscape architect, 960 Boston Neck Rd., Narragansett, RI
Neil and Deborah Greenspan, applicants

In the audience: Cyndee Fuller, Conservation Commission
Steven Delsesto, 8 George Finnerty Rd., Barrington, RI – abutter to south
Kathleen Henry, 394 New Meadow Rd., Barrington, RI - neighbor

Mr. Skwirz explained that the entire building envelope on this property is within 100' of the coast. They wish to demolish the existing residence on the property and build a new home that would comply with all of dimensional regulations except for distance from the wetlands/water body. The new home would be further from the coast than the existing structure. According to zoning ordinance §185-175, any proposed construction which is no closer to the wetland than existing construction on the lot may be exempted from the 100' setback requirement stated in §185-174 if the Zoning Board determines that there is no potential for significant environmental impact.

In accordance with the condition of approval imposed by the Conservation Commission, the applicant has prepared new plans shifting the proposed residence northward to the edge of the building envelope; none of the construction will be within the CRMC 50' setback. *Exhibit A* was distributed to the Board – a one page revised site plan based on the Conservation Commission's recommendations.. There would be appropriate drainage structures in place as recommended by the Conservation Commission and required by the CRMC, as well as requested erosion control features.

In response to a question from the Board as it relates to §185-175, Mr. Carter said that in his professional opinion, there will be no potential for significant environmental impact but, rather, less of an impact because the residence is being moved further back from the coastal feature and wetland, and the runoff is going to be infiltrated into the ground rather than over the ground.

Mr. Delsesto, an abutter, said that there had been erosion and runoff is worse since vegetation had been removed by the prior owner. Mr. Carter assured him that the CRMC requires that the erosion issue be taken care of and drywells will be installed.

Ms. Henry, an abutter, stated that she is in favor of this application.

Mr. Skwirz stated that the hardship is due to the unique characteristics of the land because the entire building envelope is within 100' of the water body. It is not the result of any prior action of the applicant but due to the existing location of the property in relation to the coast. This request is not due primarily for the applicant to seek financial gain but will be used as a home and not being done for the purposes of flipping or to sell. The granting of this application will not alter the general characteristics of the surrounding area or impair the intent or purpose of the zoning ordinance because this is a use allowed within this zone and meets all of the general dimensional regulations of the R-25 zone. This is the least relief necessary because there is no other place to build on this lot if relief were not granted. The hardship, if not granted, is more than an inconvenience because of the inadequacies of the existing home that need to be addressed with the construction of the new home. The public convenience and welfare will be substantially served and there will be no negative impact on the public; in fact, the new home will be further away from the water body and an improvement upon the existing house. It will be in harmony with the zoning ordinance and the Comprehensive Plan because this is a permitted use within the zone and meets all of the general requirements for this zone. It will not result or create conditions that will be inimical to the public health, safety, morals and general welfare of the community because an older structure would be replaced with a new structure that is further away from the coast. This will not substantially or permanently injure the appropriate use of the property in the surrounding area or district because this is the appropriate use for this property. Also, in accordance with §185-175; the proposed construction is no closer to the wetland than the existing construction, there is no potential for significant environmental impact, and they are relying on the positive findings and recommendations of the Conservation Commission.

At 8:53 p.m., the public participation portion of the hearing was closed.

MOTION: Mr. Rizzolo made a motion to approve the special use permit portion of this application subject to the conditions set forth in the Conservation Commission's report:

1. Proposed exterior front patio is reconfigured to fit within 50-foot setback line
2. Patio to be constructed of permeable material with no underlying impermeable fabric (e.g., plastic)
3. Dry wells or other appropriate drainage structures to be placed at suitable locations to manage structure run-off
4. Appropriate erosion control features (e.g., silt fence/hay bales) must surround all areas where soil disturbance will occur prior to and during all soil disturbance
5. All construction materials and equipment must be stored street-side and away from water features

Ms. Henderson seconded the motion and it carried unanimously (5-0).

REASON FOR DECISION:

It was the judgment of the Board that the standards in §185-73 have been met: A) that the public convenience and welfare will be substantially served; there will be no negative impact on the public because the new construction meets all setbacks other than distance from the wetland/waterbody, and is further from the coast than the current structure, and modern day storm water management will be

used; B) that it will be in harmony with the general purpose of this chapter, and with the Comprehensive Community Plan because this project is going to meet all setbacks (other than distance from the wetland/waterbody) and height limitations in the R-25 zone; C) that it will not result in or create conditions that will be inimical to the public health, safety, morals and general welfare of the community because it is going further to reduce any potential impact on the environment; D) that it will not substantially or permanently injure the appropriate use of the property in the surrounding area or district because this is a single family residence being proposed in a location where they are approved by zoning.

The Board also found that it meets the standards in §185-175; exemption for development standards - that any proposed construction which is no closer to the wetland than the existing construction on the lot in question may be exempted from the 100' setback requirement in 185-174 because they are actually further away from the existing structure and, therefore, there is no potential for significant environmental impact. The Board is adopting the recommendations of the Conservation Commission for the proposed plan.

MOTION: Mr. Rizzolo made a motion to approve the dimensional variance portion of this application subject to the conditions set forth in the Conservation Commission's report. Ms. Henderson seconded the motion and it carried unanimously (5-0).

REASON FOR DECISION:

It was the judgment of the Board that the standards in § 185-69 have been met: A) that the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area, and is not due to an economic disability of the applicant because the entire site is located within the 100' coastal setback and without the granting of some relief, the structure would be unbuildable; B) that the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain because this is a reasonable and beneficial use of the property and the hardship is due to the entire site being within the 100' coastal setback; C) that the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this chapter or the Comprehensive Plan because the project will meet all of the other zoning requirements; D) that the relief to be granted is the least relief necessary because the applicant has already changed its plans to reflect a condition of the Conservation Commission to move the location of the proposed house further away from the wetlands and coastal feature. Additionally, the standards for a dimensional variance set forth in Section § 185-71 have been met because the applicant has proved that the hardship to be suffered by the owner, absent granting the relief, would amount to more than a mere inconvenience because if the variance was not granted, they could not build on this property.

OTHER BUSINESS:

- Review the format of the official record of the Zoning meetings to include the discussion, written, and recorded portions of the meeting. Implement changes if applicable.

Mr. Teitz said that the reason for this discussion is to consider issues and questions relating to the zoning minutes and final decisions responsive to a court decision last year. In addition, consideration

is being given to hiring a stenographer with the cost offset by an increase in the zoning application fee.

In addition, it may make sense to offer the motion on applications during the public participation portion of the meeting in order to permit obtaining more information from the applicant. If there is not a clear feel as to how the Board might vote, then the Chairman can ask each member how they plan to vote in case further discussion is needed prior to making a motion.

Mr. Teitz suggested that applications be rejected unless they are complete with all of the plan information and details. In order to allow adequate time to review the applications, it would make sense to change the due date for applications to the 2nd Thursday of each month rather than the 3rd Thursday, giving applicants sufficient time to revise plans if necessary. Also, each "plan" page of the application should include a page number to insure that everyone at the hearing is looking at the same page during the discussion. The Board agreed that these two items will be implemented over the next few months in order to give applicants sufficient time to adjust to the changes. Ms. Rosenlof will begin the revision to the Zoning Application form which will include the on-line form. Mr. Rizzolo will assist Ms. Rosenlof with the revision going forward, which will include, but not be limited to, the changes discussed at the hearing as well as other suggestions that may be discussed as this topic continues to the February and/or March meeting(s).

Mr. Teitz also discussed the need for complete Zoning Board records to be brought up to date by creating a database/Excel spreadsheet of all zoning applications. Information should include the plat/lot, street address, applicant name, date of hearing and type of request. This information should subsequently be scanned by plat/lot so it is available for any future hearings, appeals, dispute, etc. Mr. Teitz will discuss with the town manager the possibility of hiring a temporary person to work on the project and that this person would not have to have any prior experience other than some knowledge of Excel software. Mr. Teitz will keep the Board informed of the progress on this request.

ADJOURN:

There being no other business, Mr. Dennehy moved to adjourn at 9:30 p.m. and the meeting was adjourned.

Respectfully submitted,

Mary Ann Rosenlof, secretary
Thomas Kraig, Acting Chairman

cc: Andrew Teitz, Solicitor, Amy Goins, Assistant Solicitor