

ZONING BOARD OF REVIEW

Barrington, Rhode Island

October 20, 2016

APPLICATIONS #3859, #3860 and #3861,

MINUTES OF THE MEETING:

At the call of the meeting by the Chairman, Thomas Kraig, the Board met with Paul Blasbalg, Peter Dennehy, Mark Freel, Jude Kostas, Ladd Meyer and Dave Rizzolo.

Also present were Assistant Solicitor Amy Goins, Building Official Bob Speaker and Board Secretary Mary Ann Rosenlof.

At 7:05 P.M., Mr. Kraig called the meeting to order.

New Zoning Board member Jude Kostas was sworn in by the Chair.

MINUTES OF THE PREVIOUS MEETING:

MOTION: Mr. Freel made a motion to approve the September 15, 2016 minutes as written. Mr. Meyer seconded the motion and it carried unanimously (5-0).

Application #3859, John & Alyssa Findley, 13 Elm Ln., Barrington, RI, applicants and owners, for permission to install an in-ground pool, pavilion and 6' fence. Assessor's Plat 5, Lot 57, R-40 District, 13 Elm Ln., Barrington, RI, requiring dimensional relief for front yard setback and fence height.

Present: Attorney Bruce H. Cox
Elvio Viera of Elvio & Sons, contractor

Mr. Viera explained that this property is unique in that it has three front yards: it fronts on Elm Lane to the east, on Dexter Street to the west, and on Cedar Avenue to the south. Further complicating the situation is that Dexter Street is not parallel to Elm Street but angles to the east, toward Elm, as it proceeds southerly; as a result, the property becomes narrower as it goes south. Dexter Street – the street closest to the proposed location for the pool - is a 20 foot wide unpaved lane, used by neighbors to walk their dogs and also as a secondary access by the neighbor on the other side of Dexter.

The owner desires that the swimming pool be parallel to the house and have an open pavilion proximate to the pool and ideally in a visual line with the kitchen which overlooks the area proposed for the pool; the 18'x18' "open pavilion" will provide protection from the sun and elements while not being a large intrusive box.. The zoning ordinance requires a five foot fence around a pool, but the ordinance also limits fences within the 50 foot setback to four feet. In order to provide a maximum level of safety, and also to preserve the functionality of the back yard by not dividing it with a fence,

the applicant desires to put a six foot black aluminum fence with styles spaced such that it will approximate a black wrought iron fence around the entirety of the back yard. The proposed fencing will be on the north boundary, the Dexter Street boundary, and the south boundaries of the western portion of the property, and turning at right angles continue to connect to the house. In addition, the applicant will plant “green giants” on the inside of the Dexter Street portion of the fence, so that the fence will disappear into the plantings and become essentially invisible, and also place these plantings around the propane tanks. There are other homes in the immediate vicinity that have pools in their “backyards” and this plan will be consistent with that.

Alternate locations were considered for the pool: moving it to the southern part of the property would still require front yard relief, and the pool would no longer be visible from the kitchen – the kitchen is directly to the east of the proposed pool location, and it is desirable that the pool be visible from it so that the children can use the pool with less supervision as they get older; moving the pool closer to the house would interfere with a large locust tree that they wish to preserve; rotating the pool so that it would be parallel to Dexter Street would produce minimal gain, but would destroy the symmetry of the pool and the house.

The applicants would prefer that the pavilion be in a line with the kitchen and the pool, so as to be in that direct line of sight, and close to Dexter Street. The applicant would not want the pavilion to be to the north of the pool because it would be getting close to the propane tanks and the generator. If required, locating the pavilion to the south of the pool would be acceptable since the pavilion would retain a strong relationship with the pool in that location, although still requiring relief from the setback requirement from Dexter Street.

Mr. Cox said that the application met the standards required of being compatible with the area and keeping with the character of the neighborhood, and is the least relief necessary in order to fully utilize the backyard *as a backyard*. This will not cause any hardship upon the community and is the only logical place for the pool to be placed on the property.

MOTION: Mr. Freel made a motion to approve this application subject to the following conditions:

1. The fence will be as described by the applicant - a wrought iron-style black picket fence constructed of aluminum with approximately 4 inch spacing.
2. The pavilion must be located in an alternative location not to be any closer than 18 feet from the south property line, and no closer than 30 feet to the Dexter Street property line.
3. The propane tanks must be screened.

Mr. Blasbalg seconded the motion and it was unanimously approved (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 this is a unique lot with 3 frontages, and the frontage on Dexter is unique in that it is an undeveloped alley that does not operate as a real street and more as a right of way; 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 there is no basis to conclude that either of these is the case; 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 there is no indication that this alters the character of the surrounding area – pools are common in the area; given the landscaping proposed for the fence, the impact of the fence - combined with its color - will be greatly diminished as one would view it from Dexter Street; D) that the relief to be granted is the least relief necessary because, based on the location of the house, siting the pool where the applicant proposes makes sense due to the desirability of having the pool visible from the kitchen for safety reasons, and preserving a mature shade tree is rational; the revised location for the pavilion reduces the relief requested and having it proximate to the pool is reasonable. A six foot fence makes sense since it will provide an additional level of protection for safety and will abut Dexter, which feels more like an alley than a street. 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 otherwise, the configuration of the structure on the property will be undesirable and not as safe as the configuration proposed.

Application #3860, Sol Pittenger, 542 Maple Ave., Barrington, RI, applicant and owner, for permission to add a gabled roof to existing flat roofed entryway. Assessor's Plat 19, Lot 53, R-10 District, 540 Maple Ave., Barrington, RI, requiring dimensional relief for front yard setback.

Present: Sol Pittenger, applicant

Mr. Pittenger explained that this was originally a one story, flat-roofed structure with a flat roof entryway. They have added a 2nd floor to the house with a hip roof and would now like to replace the existing flat entryway roof with a gabled roof. The entryway is already too close to the front yard line, but the new roof will be no closer than the existing entryway. The proposed overhang would be about 6", exactly the same as the existing flat entryway roof overhang. There is no change to the footprint.

MOTION: Mr. Rizzolo made a motion to approve this application. Mr. Dennehy 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 existing entryway is within the front yard setback and the applicant is proposing to change its roof configuration better to match the look of the addition at the 2nd floor and match more to the residential feel of the neighborhood, but going no closer to the front; 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 there is no evidence to that effect; 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 proposed work will make the existing front entry better match the character of the house and the neighborhood ; D) that the relief to be granted is the least relief necessary because the applicant is not proposing to go any closer

to the front property line but merely to change the roofline within the existing setback. 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 without relief the front entry wouldn't be in harmony with the new look of the house with its pitched roof, and would feel more commercial than residential in tone.

Application #3861, Zen Associates, 10 Micro Dr., Woburn, MA, applicant and Dean Eldridge, 3 Donald Ross Rd., owner, for permission to install a pool and deck. Assessor's Plat 6, Lot 24, R-10 District, 3 Donald Ross Rd., Barrington, RI, requiring dimensional relief for rear yard setback and exceeding lot coverage.

Present: Carl Saccone, Zen Associates, landscape architect & contractor

In the audience: Abby Klieman, 1 Donald Ross Road, Barrington, RI
Dr. Gary L'Europa, President, RI Country Club

Mr. Saccone explained that the owners recently purchased this house and would like to install a pool and wood deck to the rear of their house. The property is unique in that it has two front yards, and therefore, two rear yard setbacks. They would like to be able to step out of their house onto the deck and have enough flat space to safely enter the pool from there. The grey tone on the plan indicates the proposed deck, and in the western and southern areas of the deck are the two small portions that encroach on the 20' setback. The pool does comply with the 9' setback. There will be plantings along the concrete wall to the west and south to provide a green buffer.

Mr. Speaker advised that the rear yard is parallel to the front yard, which has an L-shape. Thus, the recorded plat showed a 20' rear yard on the west side of the lot, and also shows the south side of the lot as a rear yard. The pool must meet the 9' setback because it is an accessory structure. However, the deck must meet the 20' setback because it is attached to the house. The pool does not count towards lot coverage.

Mr. Saccone said that the proposed lot coverage is 30.5%, the existing coverage is 24.6%, and the maximum permitted in the R-10 zone is 25%. The golf course provides open space to the west and the south of the property. There are neighbors to the north and east. Mr. Saccone distributed Exhibit A, showing 2 images of the existing patio and back yard. There are 2 sets of sliding doors and also a single entry door to the east of the rear deck, both of which are utilized by the family. The proposed configuration of the deck was to provide the best circulation and allow enough room for people to stand and sit on the deck - couple of chairs and a round table with 4 to 6 chairs - and go in and out of the house. They also want to provide access to the side patio area where they have a stationary grill. There is no other place on the property to put a deck or pool that is not within a setback because of the unique aspect of the two front yards and a resulting two backyards.

The 11' x 22' pool is mostly underground – it extends 2' above the ground. The fence will be 5' but the type has not yet been determined. It will most likely be constructed of some type of wood or aluminum black fencing. There is an existing cement retaining wall along the portions of the western and southern property lines.

The Board agreed that although the proposed location of the pool and deck is the most logical place, they did not feel that the size of the deck was the least relief necessary and that it could be made smaller in order to decrease the amount of lot coverage. They believe that 815 square feet of deck is very large. The eastern portion of the deck makes sense but the other portion of the deck labeled "99.67" could be trimmed back. This would still leave a reasonably sized deck. Mr. Saccone said that they had considered a different layout but felt that other options would not satisfy a 4 to 6 person seating arrangement as well as provide circulation.

Ms. Klieman, a neighbor to the direct east of the applicant, said that she does not have an objection to the design, plan or setbacks, but believes that approximately 2608 square feet that is shown as part of the applicant's property is actually her property. Ms. Goins advised that neither the Zoning Board, the Tax Assessor, nor the Building Official can determine where lot lines are - a survey would be required for that. Mr. Rizzolo noted that the lot line potentially in question is not involved in the relief requested, and there does not appear to be a question as to the actual area of the lot. Ms. Goins added that if the Board were to approve lot coverage relief by specifying a percentage for maximum lot coverage, the applicant would have to conform to that percentage based on whatever the actual lot area was.

Dr. Gary L'Europa, president of Rhode Island Country Club, said that he is in favor of this application and that it has no impact on the Country Club.

The Board suggested that the applicant ask for a continuation and come back with alternative deck proposal and plans in order to reduce the lot coverage. The plans should show an example of a seating arrangement on the deck. A survey would not be necessary.

MOTION: Mr. Freel moved to continue this application to the November 17, 2016 meeting on the condition that the applicant provide revised plans, reducing lot coverage, to the Building Official's office by November 10, 2016. Mr. Blasbalg seconded the motion and it carried unanimously (5-0).

Other Business:

Ms. Goins discussed the Decision filed by the Superior Court on October 19, 2016 regarding the zoning decision granting relief to applicant Linda Burton. The Board members were provided with copies of the Court's Decision just prior to the meeting. The application was appealed by abutters represented by attorney Bob Healy. The Court upheld the Board's decision to grant the relief that was requested for this small property with a detached garage. However, the Court found that the Board erred in taking into consideration in its decision a letter from the applicant's doctor stating that the applicant suffered from a medical condition. The Court found that for the Board to take a medical condition into consideration in granting relief due to hardship, in accordance with the Americans with Disabilities Act, there must be evidence that the medical condition at issue amounts to a disability protected under that Act; the Court found that that test had not been met in this case.

However, the Court further found that when the matter had been previously remanded to the Board, and a revised Decision prepared by the Board's solicitors, there was also a finding that relief was

warranted based on the small lot and small existing structure, and that this finding was adequate to support the decision.

In the future, should a medical condition come into the consideration of an application, there must be evidence to the effect that that condition amounts to a disability protected under the Americans with Disabilities Act.

ADJOURN:

There being no other business, Mr. Freel moved to adjourn at 9:08 p.m. and the meeting was adjourned.

Respectfully submitted,

Mary Ann Rosenlof, secretary

Thomas Kraig, Chairman

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