

Minutes of ZBA

Wednesday, June 10, 2020 – 6:30 PM

Present: Sharon Monahan, Loretta Laurenitis, Peter LaRoche, Peggy Leedberg, Don Selby, Applicants Michelle & Kerry Rourke

Staff: Danica Melone, Planning & Building Office; Tim Herlihy, Code Officer and ZBA Liaison

Chair Monahan called the meeting to order at 6:30 PM. She read a checklist to ensure meetings are compliant with the Right-to-Know Law during the State of Emergency declared by Governor Sununu (Emergency Order #12, pursuant to Executive Order 2020-04) “which authorizes this public body to meet electronically.” It was noted the “Zoom” platform was being used for the meeting which would allow all individuals to communicate contemporaneously throughout the meeting by using the assigned meeting identification.

Chair Monahan first introduced staff present; Ms. Melone indicated that she would be taking meeting minutes for Laura Norton and that the meeting was being recorded. Chair Monahan then requested a roll call of members present to identify themselves and if they were a full member or alternate. Chair Monahan then indicated that she would like to move Mr. Selby to be a seated member for the hearing in order to have a full board.

Case No. 1262 Kerry and Michelle Rourke: Request for a Variance for construction of an inground therapy swimming pool within side property line setbacks as regulated by zoning ordinance in Article II, Section 245-7.C.3. The property is located at 28 Granite Street, Parcel No. U018-047-000, in the General Residence District. Chair Monahan added that this meeting was a continuation.

Michelle Rourke summarized their application and explained they are looking to build a therapy pool and that, when they bought the property, they assumed the property line was in a different location. Once Mr. Herlihy came in and confirmed that they would need an official plat plan, they realized their property line is closer than expected. Michelle Rourke explained the placement of the therapy pool is setback from the side property line between 10-12 feet instead of the required 25 feet. She noted that the plat plan also indicates their shed and propane tanks are not on their property. Chair Monahan clarified that the applicants are seeking a variance from the 25 feet setback requirement for it to be 10 feet in order to accommodate the therapy pool.

Mr. Selby asked is there would be an installation of a fence around the pool and if so, how it might further encroach on the setback. Michelle Rourke explained that it would not encroach, and it would be attached on both sides of the house via gates.

Ms. Laurenitis asked if the therapy pool side-setback was greater than that of the house. Michelle Rourke confirmed that the house encroaches more on the side-setback.

Chair Monahan asked if there was any additional questions; there was none. She then asked if there was any public comment or inquiry on the project. Ms. Laurenitis noted that the Board has a received a letter from the Rourke’s abutter, the Congregational Church. Chair Monahan read the letter aloud,

which indicated that the church was in favor of the Rourke's application for a setback variance being accepted.

Chair Monahan asked if there were any further questions before moving to deliberative session; there was none. Chair Monahan then motion to move to a deliberative session; Ms. Leedberg approved, Mr. LaRoche approved, Ms. Laurenitis approved, Mr. Selby approved, and the Board agreed unanimously to move to deliberations.

Chair Monahan opened the deliberative session and summarized the application for review from the Rourke's. Chair Monahan began going through the five findings of a variance:

1. Granting the variance will not be contrary to public interest because...

Ms. Leedberg explained she agreed it would not be contrary to public interest; Ms. Laurenitis agreed and added that the statement on the application explaining that the variance would not alter the neighborhood or endanger the general welfare of the public; Mr. LaRoche agreed; Mr. Selby agreed; and, Chair Monahan also agreed.

2. Spirit of the ordinance is observed because...

Ms. Leedberg agreed; Ms. Laurenitis agreed that the spirit of the ordinance is observed and believes there is no injury to the public for the pool being there; Mr. LaRoche agreed; Mr. Selby agreed; and, Chair Monahan agreed.

3. Substantial justice is done because...

Ms. Leedberg explained that the setback is already infringed upon by the house and the pool is further away from that side setback than the pool is so it's a bit more conforming; Ms. Laurenitis agreed that substantial justice is done and reiterated that no harm to the general public; Mr. LaRoche agreed; Mr. Selby agreed; and, Chair Monahan agreed.

4. Values of the surrounding properties are not diminished because...

Ms. Leedsberg stated that she believed it makes the area "a little bit more family friendly"; Ms. Laurenitis agreed with Ms. Leedsburg's statement and added that the variance would not diminish values of surrounding properties and noted that the abutting lot is an undeveloped lot; Mr. LaRoche agreed with Ms. Laurenitis and added that the pool would not be able to be seen from the public right-of-way; Mr. Selby agreed and added that he felt the pool seemed to be well positioned and well thought out; Chair Monahan also agreed.

5. Literal enforcement of the ordinance would result in unnecessary hardship...

Chair Monahan asked members to identify the special conditions of this property to substantiate the application. Ms. Leedsberg explained that the slope in the back of the property is extremely steep and therefore the position of the pool is ideal; Ms. Laurenitis added that this ia nonconforming lot dating back to 1895 and that she finds the applicants have done the best they can with the placement of the pool, and even agreed to move the placement when they discovered a buried aqueduct; Mr. LaRoche agreed with Ms. Laurenitis and reiterated how

steep and unbuildable the rear slope of the lot is; Mr. Selby agreed with the characteristics identified by the other members; and, Chair Monahan also agreed with other members.

Chair Monahan then asked the Board to review the issue of hardship. Ms. Leedsburg explained that the piece of property is pre-existing nonconforming; Ms. Laurenitis agreed with Ms. Leedsburg and reiterated that the lot being encroached upon is undeveloped; Mr. LaRoche agreed with those statements; Mr. Selby agreed with the groups statements; and, Chair Monahan agreed with the statements and added that the pool would not be a recreation pool but would be a therapy pool which the applicant has a disability need for.

Ms. Monahan motioned for the Board to **approve** the Variance for an in-ground therapy pool to exist within the side-property setback, no less than 10 feet, located in the General Residence District, as submitted May 28, 2020. Ms. Laurenitis seconded the motion, and the Board approved unanimously by roll-call vote.

Other Business.

The Board then discussed other business. Chair Monahan asked about the upcoming Site Walk for the Hough application at Cranberry Meadow Farm. Mr. Herlihy indicated that due to RSA requirements for site walks plus current COVID-19 requirements, the site walk would be limited to one single group of no more than ten (10) participants to walk the property. He noted that there should be very limited discussion during the site walk and that he would be taking minutes during the site walk.

Adjourn.

With no other business, Chair Monahan motioned to adjourn the meeting, Ms. Laurenitis seconded, and the Board agreed to adjourn at 7:04 PM.

Submitted by Danica Melone

NOTICE OF DECISION

Case Number 1262

June 10, 2020

You are hereby notified that the request of Kerry and Michelle Rourke, for a **Variance** for construction of an inground swimming pool within side property line setbacks as regulated by zoning ordinance in Article II, Section 245-7.C.3, is hereby **GRANTED**.

The property is located at 28 Granite Street, Parcel No. U018-047-000, in the General Residence District.

In granting this variance, the Board imposes the following conditions:

- This variance is approved for an inground therapy pool no less than 10 feet from the side setback as submitted on the plot plan dated 5-28-20.

Signed,

Sharon Monahan, Chair

Note: An application for rehearing on any question of the above determination may be taken within 30 days of said determination by any party to the action or person directly affected thereby according to the provisions of New Hampshire Revised Statutes Annotated, Chapter 677. Decisions for Variances and Special Exceptions shall become null and void in two years if substantial compliance with said decision or substantial completion of the improvements allowed by said decision has not been undertaken after the date of approval. If this decision becomes null and void, the owner must reapply to the Board of Adjustment for a Variance or Special Exception as provided for in §245-42 of the Peterborough Zoning Ordinance.