

**HARVARD ZONING BOARD OF APPEALS  
MEETING MINUTES  
FEBRUARY 24, 2016  
APPROVED: JULY 13, 2016**

Chairman Chris Tracey opened the meeting at 7:33pm on the Mezzanine at 7 Fairbank Street under the Zoning Act Chapter 40A and the Code of the Town of Harvard Chapter 125

**Members Present:** Chris Tracey, Steve Moeser, Robert Capobianco (by Skype), Orville Dodson and Mike Lawton

**Others Present:** Liz Allard (LUB Admin), Norman Hill (Land Planning, Inc), Brian Sundeen, Jason Ward (Ferrari Pools), Dan Wolfe (Ross Assoc.) and John Finn

**Variance Hearing – Brian Sundeen, 35 Scott Road.** Opened at 7:33pm (for detailed minutes see page 2)

**Request for a *De Minimus* Change to the Special Permit – John Finn, 44 Peninsula Road**  
Dan Wolfe, President of Ross Associates, was present to represent the applicant, John Finn. Mr. Wolfe was seeking a *De Minimus* change to the Special Permit previously issued by the ZBA for the demolition and reconstruction of the single-family dwelling at 44 Peninsula Road. Mr. Wolfe stated the structure has changed to a smaller footprint than previously approved, however the square footage has increased because there will now be a walk out basement and a second level on the garage. The area above garage will be storage only and accessed from the garage. Chris Tracey asked if the Board of Health had any issues with the change. Mr. Wolfe stated the house is serviced by a tight tank, so the increase will not affect septic capacity. Steve Moeser noted the structure as now proposed will require less fill being brought on to the site than the previously approved structure.

With no additional comments or questions Steve Moeser made a motion to allow the modification as a *De Minimus* change and accept the Site Plan prepared by David E. Ross Associates, Plan L-12643, Job No. 30122, final revision date 2/15/16 and Timberpeg Plan T-01903, dated 1.25.16. Robert Capobianco seconded the motion. A roll call vote was taken, Chris Tracy, aye, Robert Capobianco, aye; Steve Moeser, aye.

**Approve Minutes**

Robert Capobianco made a motion to approve the minutes of January 13, 2016 as amended. Steve Moeser seconded the motion. A roll call vote was taken, Chris Tracy, aye, Robert Capobianco, aye; Steve Moeser, aye.

**Adjournment**

At 9:10pm Robert Capobianco made a motion to adjourn the meeting. Steve Moeser seconded the motion. A roll call vote was taken, Chris Tracy, aye, Robert Capobianco, aye; Steve Moeser, aye.

Signed: \_\_\_\_\_  
Liz Allard, Clerk

## **Zoning Board of Appeals**

### **Continuation of a Variance Hearing Meeting Minutes**

**Brian Sundeen, 35 Scott Road**

**February 24, 2016**

The hearing was opened at 7:33pm by Chairman Chris Tracey on the Mezzanine at 7 Fairbank Street under the Zoning Act, MGL Chapter 40A and the Code of the Town of Harvard, the Protective Bylaw, Chapter 125

**Members Present:** Christopher Tracey, Robert Capobianco (by Skype), Orville Dodson and Mike Lawton

**Others Present:** Liz Allard (LUB Admin), Norman Hill (Land Planning, Inc), Brian Sundeen and Jason Ward (Ferrari Pools)

This hearing was continued from January 13, 2016 for a variance filed on behalf of Brian Sundeen to allow for a reduced side setback for a newly installed swimming pool at 35 Scott Road, Harvard.

Chris Tracey reviewed list of items requested at the January 13, 2016 hearing.

Norman Hill, of Land Planning, was present to represent the applicant, Brian Sundeen, who was also present. Mr. Hill stated at the January 13<sup>th</sup> hearing it was stated the topography and the wetlands were the contributing facts to this Variance. Mr. Hill has prepared the appropriate plans as requested by the ZBA to support this fact. Additional photo showing the area of the violation were provided. The pictures detail an installation of not only the pool, but other landscape features, such as a gazebo, retaining walls and fencing. Mr. Hill stated it would cost in excess of \$40,000 to re-locate the pool to the proper setback; however no information detailing this amount was provided to the ZBA.

Jason Ward, owner of Ferrari Pools, explained how they got to a point of the pool being located to close to the property line. Mr. Ward believed Ferrari Pool did everything right; applied for a building permit, obtained all of the appropriate inspections under that building permit, an as-built plan was prepared for the certificate of occupancy and that is when the mistake was discovered. Ferrari Pools was under the impression the side set back was 20'. All inspections were completed by the Building Commissioner, Gabe Vellante. Mr. Ward stated he has owned company for 20 years and has never had a situation like this. Mr. Ward explained the process Ferrari Pools takes when preparing to build in a community, which includes verifying the setbacks under the towns zoning. Notes taken by the individual at Ferrari Pools indicated the setback was 25'. When the application was submitted it showed the pool had a set back of 56' from the property line. Mr. Ward further explained that once the land is surveyed 9 out of 10 the pools are moved from its permitted location.

Mr. Tracey asked how the setback was determined for this location. Mr. Ward stated he has nothing in writing, so he is unable to determine how that side set back was obtained, but stated Ferrari Pools did not do their due dalliance. Mr. Tracey noted that the building permit requirement number 4 states "This construction project must be laid-out by a Mass. Licensed Land Surveyor, or a Mass. Registered Professional Engineer, to establish zoning compliance". Mr. Ward confirmed that requirement was not complied with. He further explained it is not typically done unless there is an issue. Mr. Ward noted the Building Commissioner signed off on the excavation. Mr. Tracey would like to see the signed off inspections. None were produced by the

applicant. Mr. Tracey asked if Ferrari Pools had received building permits in Harvard previously. Mr. Ward stated not within the last ten years.

Steve Moeser asked questions about the area and the filled material used. Mr. Ward stated there is a difference of suitability of soil depending on the structure being constructed over the fill. Typically Ferrari Pools prefers to locate a pool on virgin soil and not fill. In this case in order to do so the pool was moved due to the topography of the site and did not want to encroach on the wetland on the site. Mr. Ward again stated the topography was the biggest factor in this installation. Mr. Moeser asked if they had done the stone work as well. Mr. Ward stated they had.

The ZBA has requested a plan that showed the topography of the area prior to the installation of the pool. Mr. Hill explained the contours are as shown on a 1978 Board of Health plan. Mr. Moeser noted those contour lines are from before the house was put on plan, so the plan does not reflect what the contours were after the house was built. Mr. Hill stated there was about a two foot cut into slope for pool, and probably six feet of fill under the location of the gazebo. Mr. Hill stated the pre-construction conditions of the area were a steep slope in back of house down to the existing wetlands. The wetlands have been surveyed and added to the plan. There is a 12% pitch below pool. Mr. Hill stated if Ferrari Pools moved the pool to be compliant with the 40' setback then the pool would have been within the 100' buffer zone of the wetland. If the applicant needed to file with the Conservation Commission it would have delayed the project for up to four months, according to Mr. Hill. Mr. Hill noted there is currently fill within the 100' buffer zone. A plan was submitted that detailed a hypothetical slope prior to pool installation and the existing grade after the installation of the pool.

A discussion on the potential of moving the pool 10 feet closer to the location of the gazebo was had. Mr. Hill stated that if you moved the pool in that direction then the depth of the pool would have been shallower than it is now and located further down the slope. Mike Lawton stated if that was the case then why not locate the deep end of the pool towards the property line. Mr. Hill stated those factors would have required more steps down to the pool. Mr. Moeser asked when construction started. Mr. Ward stated July.

Mr. Hill stated the pool is a residential use in a residential area and will not deter from the value of the area.

Robert Capobianco stated he looked at the matter as if the pool had not been built; would he grant a variance based on what has been presented thus far?

Mr. Moeser asked for more details under provision 125-45B(1)(b) of the Protective Bylaw. Mr. Hill stated what makes this house unique is the house was already built and the property has a wetland. Liz Allard, the Land Use Administrator and Conservation Agent for the Town stated an application to the Conservation Commission (ConCom) would have been approved in a timely manner. In her experience with the ConCom, the process typically takes no more than thirty days to complete. In addition, this lot is not unique to Harvard in the fact that it slopes downward to a wetland area, a large number of the properties on Bare Hill Pond slope down to the pond. It was Mr. Hill's belief that the ConCom would prefer the pool be 100' away from the wetland rather than 90' or 80'. Ms. Allard stated that was correct, but it would not make the pool unpermissible by the ConCom.

Robert Capobianco recuse himself from voting on this application, as new information was brought forward this evening that he was unable to review, his Skype connection was faulty and he could not hear all of the meeting clearly.

With no further questions or comments, Orville Dodson made a motion to close the evidentiary portion of the hearing. Mike Lawton seconded the motion. The vote was unanimously in favor of the motion.

Mr. Moeser thinks there is nothing unique about this lot or the district. If the project was smaller it would be less problematic. To minimize the expense to have the pool on virgin soil can be circumvented by preparing the site properly. Mr. Moeser stated there was no true evidence on the hardship financially.

Mr. Lawton stated the applicant has to prove there was no other way the goal of the project could have been done without a variance; he does not see that to be true here.

Orville Dodson asked if the ZBA should judge it as if the applicant was asking for a variance before constructed the pool. Mr. Tracey stated the ZBA should make a decision as best as they can with the information provided. Mr. Dodson would be in favor of granting the variance as it is only a ten foot difference. Both Mr. Tracey and Mr. Lawton would not be in favor of granting the variance.

With no further discussion, Mike Lawton made a motion to deny the variance as requested based on the lack of findings as detailed in Chapter 125-45B of the Code of the Town of Harvard. Orville Dodson seconded the motion. The vote was 2-1 to deny the variance.

Signed: \_\_\_\_\_  
Liz Allard, Clerk

## DOCUMENTS & OTHER EXHIBITS

### **Variance Hearing – Brian Sundeen, 35 Scott Road**

- As-built Pool Plot Plan located at 35 Scott Road Harvard, Massachusetts, owned by Brian & Jennifer Sundeen, dated February 17, 2016, prepared by Land Planning, Inc.
- Letter from Land Planning, Inc. Subject: Topography plans in support of Variance Request, dated February 23, 2016
- Two color photos, 8 ½ x 11, of the pool in winter and summer, received February 24, 2016
- B&W Google map of 35 Scott Road, received February 24, 2016

### **Request for a *De Minimis* Change to the Special Permit – John Finn, 44 Peninsula Road**

- Site Plan, prepared for John Finn, 44 Peninsula Road, Harvard, MA, prepared by David E. Ross Associates, Inc., Job No. 30122, Plan No. L-12643, dated 2/15/2016
- Architectural Drawings, prepared by Helmut & Renate Schmidt, Project No. T-00989, dated 03.20.15
- Letter from Daniel B. Wolfe, President, David E. Ross Associates, Inc., Re: Request for De Minimis Finding, John Finn, 44 Peninsula Road, Harvard, Special Permit: Case#03-SP-15, Project No. 30122, dated February 16, 2016