

ZONING BOARD OF ADJUSTMENT
268B MAMMOTH ROAD
LONDONDERRY, NH 03053

DATE: SEPTEMBER 19, 2012

CASE NO.: 9/19/2012-2

APPLICANT: JASON AND TARA SPENCER
1 LEELYNN CIRCLE
LONDONDERRY, NH 03053

LOCATION: 1 LEELYNN CIRCLE, 15-110-1; AR-I

BOARD MEMBERS PRESENT: LARRY O'SULLIVAN, ACTING CHAIR
JAY HOOLEY, VOTING MEMBER
JAMES TOTTEN, VOTING ALTERNATE
NEIL DUNN, CLERK

ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/ZONING OFFICER

REQUEST: VARIANCE TO ALLOW A POOL STRUCTURE WITHIN THE 15 FOOT REAR
SETBACK AS REQUIRED BY SECTION 2.3.1.3.3.

PRESENTATION: Case No. 9/19/2012-2 was read into the record with no previous cases listed. The Clerk read Exhibit "A" into the record; a letter in support from an abutter at 479 Mammoth Road.

LARRY O'SULLIVAN: It's an interesting letter. I don't think we've ever seen one like this before. But one of the things that...because of that letter specifically, that I think we ought to add is that the...a variance goes with the property. So if your neighbors moved or for some reason left, the variance would still be there, so while that's very commendable for them to write the letter and thoughtful of them, it's something that we're...we will take into consideration of the current use, current owners. But the first thing that...are the Spencers here? Okay. Now, you have the option, Mr. and Mrs. Spencer, of waiting for a full Board of five (5) voting members, or you can be heard tonight by four (4). You still have to have three (3) out of the five (5) in your favor. Okay? So as long as you understand that, if you're willing to go ahead, fine. If not, next month, we may have five (5) full voting members.

TARA SPENCER: I don't know if there'll be a next month [referring an impending birth].

JASON SPENCER: We're here, so you may as well hear our case.

LARRY O'SULLIVAN: Okay, why don't you...please identify yourselves for us, and let us know what it is you're trying to accomplish here.

45 JASON SPENCER: My name is Jason Spencer. I live at 1 Leelynn Circle in Londonderry.

46

47 TARA SPENCER: I'm Tara Spencer and I live at 1 Leelynn Circle, Londonderry.

48

49 JASON SPENCER: And we are here today to request a variance to allow our above ground pool to be located
50 within fifteen (15) feet of the rear setback. The current location of the pool is actually eleven (11) feet from
51 the property line. So it's inside the setback by four (4) feet. I guess really, before we get started, I'd like to
52 really apologize for the inconvenience that we've caused the Town of Londonderry at the Town Office. You
53 know, that was never our intent. You know, through all the stages of the process, we thought we were
54 following the appropriate rules and regulations, but as soon as we found out that that wasn't the case, we've
55 been doing our best to straighten the situation out. In late June, we had the above ground pool installed and
56 prior to that, when talking to the installer, the impression that I got was that the above ground pool was
57 considered a temporary structure and didn't require a building permit. And it wasn't until later when we
58 contacted an electrician, after the pool was already installed, to get it wired up, that they said they needed a
59 building permit to get their electrical permit, so at that time, we contacted the Town and one of the...I don't
60 think it was...one of the...someone from the building department came out and did some measuring and it
61 turns out what we thought our property line isn't really the property line and we're actually eleven (11) feet
62 away from the actual property line as opposed to the fifteen (15) to sixteen (16) feet we thought we were
63 away from the property line.

64

65 LARRY O'SULLIVAN: Okay, so the pool's in place. It's there.

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67 JASON SPENCER: The pool is in place and...

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69 LARRY O'SULLIVAN: It's not wired yet.

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71 JASON SPENCER: It's been wired.

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73 LARRY O'SULLIVAN: So you got a permit?

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75 JASON SPENCER: No.

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77 TARA SPENCER: The electrician was worried about our safety, so he went and temporarily wired it, but it can
78 be moved.

79

80 JASON SPENCER: I talked to somebody from the Building Department about that. Someone from the Town
81 Office called me. I don't know if it was Richard.

82

83 RICHARD CANUEL: No, that would have been our Assistant Building Inspector, Dan Kramer.

84

85 JASON SPENCER: Yeah, and I told him at the time that we'd had it temporarily wired up. I mean, it's wired up
86 in a way that if we have to move the pool, it can be moved, but right now, it's bonded and it's properly wired
87 up, but the point that was brought up was that it hasn't been inspected by the Town, so we're kind of at our
88 own risk. But, being the summer, I wasn't going to tell my pregnant wife she couldn't use the pool, so instead
89 of her watching it turn green, we had it wired up by an electrician. Retroactively, when we get our building

90 permit, we'll get the electrical permit and get the inspection and get everything squared away, but at this
91 point, we are working on getting the building permit approved.

92
93 LARRY O'SULLIVAN: Okay.

94
95 NEIL DUNN: Richard, we don't have any requirements, or the State doesn't have any requirements with pool
96 companies to accurately represent what is needed on an installation?

97
98 RICHARD CANUEL: Well, I think that was part of the problem, is that, you know, the pool company didn't go
99 that extra step to actually find out the proper location for that pool. I had a discussion with them, I did a
100 follow up letter to them, and I think a copy of that letter is in the file there. And, you know, the Spencers took
101 it upon themselves to follow through with the permit application and go forward with the inspections, rather
102 than having the pool company do that at this point, so...Yeah, I agree. I think the pool company, as with any
103 contractor, you know, needs to take some sort of responsibility when they do an installation like that. The
104 Spencers are here to correct that problem.

105
106 NEIL DUNN: And any above ground pool would be considered a permanent structure due to the wiring or
107 just...?

108
109 RICHARD CANUEL: Anything like that is a structure by definition of our ordinance.

110
111 NEIL DUNN: How about those soft sided blow-up ones?

112
113 RICHARD CANUEL: That is a temporary pool. Absolutely.

114
115 NEIL DUNN: Even though they can be bigger than one of these...?

116
117 RICHARD CANUEL: That's right.

118
119 NEIL DUNN: Oh, okay. And I'm just...

120
121 RICHARD CANUEL: That is a temporary structure because it can be easily dismantled and relocated...

122
123 NEIL DUNN: With a knife.

124
125 RICHARD CANUEL: ...and so forth.

126
127 NEIL DUNN: Thank you, Richard.

128
129 LARRY O'SULLIVAN: It is above ground, right?

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131 RICHARD CANUEL: Yes. Yes.

132
133 LARRY O'SULLIVAN: And the company that installed it didn't measure from the property line.
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135 JASON SPENCER: No.
136
137 LARRY O'SULLIVAN: Who was that? Do we have a record of who that is?
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139 RICHARD CANUEL: I don't know off the top of my head, but it's in the...
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141 LARRY O'SULLIVAN: The company?
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143 NEIL DUNN: Yes.
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145 RICHARD CANUEL: It's in the letter there.
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147 NEIL DUNN: It was...is it alright to say it, do you think? The Pool Doctor from Hampstead.
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149 LARRY O'SULLIVAN: So the...
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151 NEIL DUNN: Perhaps different zoning over in Hampstead.
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153 LARRY O'SULLIVAN: The irresponsibility of them, as far as I'm concerned, is the reason that you're here
154 tonight. And now it's up to this Board, and this is a...typically...the thing that frustrates me is why should this
155 Board have to provide a lifetime, a forever variance for your property because somebody screwed up. A
156 professional. So, as far as I'm concerned, I hope you hit all those numbers on the...requirements of the...for a
157 variance, because to me, you've got, you know, a big strike as far as I'm concerned by having us have to make
158 up for what that pool installer did.
159
160 JASON SPENCER: We do appreciate that. I mean, it's a situation we're in, though.
161
162 LARRY O'SULLIVAN: It's a tough spot for you guys to be in, for sure. Your expectations when you hire a
163 professional is to do it the way that it's supposed to be done, so it's upsetting for me because we've seen
164 another opportunities where we've made people move structures. Not a pool. Pools, by comparison, is a
165 cake. But at the same time, I don't wanna get too far into it. But it is frustrating for us, too. Do you wanna hit
166 the five points?
167
168 JASON SPENCER: Okay. Number one, the variance will not be contrary to the public interest. We feel there is
169 no adverse affect on the public interest. The current pool location meets all the Town requirements except
170 for the proximity to the property line. We're too close to the property line by four (4) feet. The pool is located
171 more than the appropriate distance from the septic tank, leachfield, well, and foundation of the house.
172 Number two, the spirit of the ordinance is observed. The Town enforces these types of regulations to both
173 ensure the safety of its residents and to make sure residents do not infringe on their neighbor's rights to their
174 own property. When we were determining where to put the pool, we consulted our neighbors, we told them
175 about the pool and where we were going to put it and they have always been supportive of the idea and have
176 never had a problem with the location. And Tracy has actually come here tonight to speak for us. Number
177 three, substantial justice is done. As you can see from Figure 1, I don't know if you've got electric copies of...
178
179 NEIL DUNN: Mm-hmm.

180
181 LARRY O'SULLIVAN: Mm-hmm.
182

183 JASON SPENCER: ...what we've got going on here. Figure 1; the pool location is not in a place that crowds our
184 neighbor's property. Their house is actually on the other side of the lot and the pool is well away from their
185 garden and the line that we treat as our property boundary. Our neighbors understand that the pool is closer
186 than fifteen (15) feet from the actual property line registered with the Town. However, they do not want us to
187 move the pool. They wrote the enclosed letter that was read before we came up here [see Exhibit "A"] stating
188 their support for our application. They approve of the current location. You know, so since the guidelines that
189 we do not comply with are not related to safety, but instead is proximity to the property line, we hope that
190 their support is actually given significant weight. Number four, the values of surrounding properties are not
191 diminished. The installation of an above ground pool does not diminish the property values of surrounding
192 properties and the proposed location of the pool shouldn't change that fact. Number five, literal enforcement
193 of the provisions of the ordinance would result in unnecessary hardship. In our case, we feel that the long and
194 narrow shape of our lot and the location of our house and the location of Mammoth Road combine to form a
195 special circumstance that makes our property different from the others around it. These factors limited our
196 options in placement of the pool. If it's determined by the Board that we do need to move the pool four (4)
197 feet closer to the house as proposed by the Inspector, we feel that our deck would become a potential safety
198 issue. You see Figure 2, which shows the height of our deck to what would be the base of the pool and right
199 now, the distance of the pool away from the deck being thirteen (13) feet, right now, no one would attempt to
200 make that jump, but four (4) feet closer and it's very tempting. Even standing up on the deck now, thirteen
201 (13) feet looks like it's doable. And I don't have any intention to do it and Tara doesn't look like she's in any
202 shape to do it, but given enough time, somebody at some point would give it a shot.
203

204 LARRY O'SULLIVAN: Had you thought about moving the deck?
205

206 TARA SPENCER: [Laughing] Yeah.
207

208 JASON SPENCER: Yeah. So right now, I mean...I went back through some of the old boarding...the Zoning
209 Board decisions, read through some of the minutes, and this case actually has a little bit of precedence. In
210 case 4/15/2009-9, James and Tara Furlong applied for and received an area variance for their inground pool.
211 In that particular case, if the pool was installed right up next to their deck, then they would have met the
212 fifteen (15) foot setback requirement, however, the pool company advised them to "put it as far back from the
213 porch as possible to eliminate any people from jumping off the porch into the pool." Their request for a
214 variance to allow the pool to be five (5) feet from the property line, ten (10) feet inside of the setback, was
215 granted by a vote of five (5) to zero (0) by the Board. That would be the five points that I have. So, I think you
216 for your consideration. I think Tara wants to say something.
217

218 TARA SPENCER: Yes. Jason and I'd like to thank all of the employees at the Londonderry Town Office that we
219 worked with in the process of filing for a building permit and this variance. Jaye, you've been great. Thank
220 you so much for your help.
221

222 JAYE TROTTIER: Sure.
223

224 TARA SPENCER: Everyone we had contact with has been extremely professional, kind, courteous, and helpful
225 and we'd also like to thank the variance Board for their time. Thank you.
226

227 LARRY O'SULLIVAN: Questions from the Board?
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229 NEIL DUNN: Not at this time.
230

231 JAY HOOLEY: May I pose a question to Richard? Have you seen...have you viewed this one personally?
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233 RICHARD CANUEL: Yeah, I did...I just did a ride-by to the property because it was Dan that actually went out
234 and did the inspection of the pool and verified the location, but it is very deceiving, because that's a very
235 narrow lot. I mean, looking from the Mammoth Road side as you drive by because the lot is on the corner, the
236 location of the pool looks appropriate but when you look at it by site plan, like I say, the lot is very narrow, so
237 there's not much space to play around with to locate that pool.
238

239 LARRY O'SULLIVAN: I drove by it myself and I couldn't tell where the property line was, so I didn't know where
240 exactly...
241

242 RICHARD CANUEL: Yeah. Yeah, it's very deceiving.
243

244 LARRY O'SULLIVAN: James, do you have any questions?
245

246 JAMES TOTTEN: I do not, no.
247

248 JAY HOOLEY: Based on the topography, there was a...it looks like a reasonable amount of excavation done to
249 this, at what I'm gonna call the left rear of the house, to get the pool level. Richard, if this were moved the
250 four (4) feet forward, would that put one...there is no corner, I guess it's round, but one edge of this pool
251 deeper into...without excavating the entire rear yard, you'd be moving it into what I'm gonna "the berm." One
252 wall of the pool into the berm, thereby, I guess, functionally eliminating the height of the wall.
253

254 RICHARD CANUEL: Yes...yeah, once you do that, you get any less than four (4) feet, then you're constructing
255 barriers to protect the pool...
256

257 JAY HOOLEY: Right, that's...
258

259 RICHARD CANUEL: ...with fences, enclosures, and so forth.
260

261 JAY HOOLEY: I mean, I'm only going by the...I haven't been in the backyard, but viewing the photograph, it
262 looks as if that pool were to move in, it would move well into the slope of the land as well.
263

264 RICHARD CANUEL: Sure would.
265

266 JASON SPENCER: There would be a lot of...it would be a couple of more feet of...it would be a lot.
267

268 LARRY O'SULLIVAN: So it's a long, thin, narrow lot you're saying.

269
270 TARA SPENCER: Mm-hmm.
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272 LARRY O'SULLIVAN: And you're putting the pool within the fifteen (15) foot setback from the rear of the lot...
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274 TARA SPENCER: Mm-hmm.
275
276 LARRY O'SULLIVAN: ...which is the wide side, although it's the thinnest part of your property, it's the widest
277 part. You couldn't go further to the right? 'Cause it looks like you have hundreds of feet to go to the right.
278
279 NEIL DUNN: The leach...
280
281 JASON SPENCER: If you look at the picture that I put, though, you'll see that to the...while we do have a lot of
282 area to the right, it's all wooded. There's...
283
284 TARA SPENCER: There's a shed there...
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286 JASON SPENCER: There's a shed there...
287
288 TARA SPENCER: ...there's part of the driveway.
289
290 JASON SPENCER: Yeah.
291
292 TARA SPENCER: There's the well. It's...
293
294 LARRY O'SULLIVAN: Yeah, we have the overheads of the lot.
295
296 TARA SPENCER: Yeah.
297
298 LARRY O'SULLIVAN: It's hard for us to see [indistinct].
299
300 JASON SPENCER: Yeah, there's...it's obscured a little bit, but there's actually, there's a two (2) story shed just
301 to the left, so you'd have to go back further and there are, I mean, there's...I don't even know. You'd have to
302 cut down forty (40), fifty (50) trees. There's a fair amount in there.
303
304 NEIL DUNN: Mr. Chairman, if I may ask Richard? Richard, do we have a setback off a deck like that in that
305 situation?
306
307 RICHARD CANUEL: No, there's no requirement as far setback from the...
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309 NEIL DUNN: As far as permanent platform diving board?
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311 [Laughter]
312
313 RICHARD CANUEL: Yeah, unfortunately, there isn't.

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LARRY O'SULLIVAN: And it really is a potential for you just to move the deck or to have the deck reduced in size in order to move it. But that's, again, not what you're requesting, so...We'll take it to the audience. Is anybody speaking in favor or have any questions of the application? Would you kindly take a microphone?

TRACY TAYLOR: Sure.

LARRY O'SULLIVAN: Thank you. Name and address?

TRACY TAYLOR: Yes. Tracy Taylor, 479 Mammoth Road. I am the property abutter. I'm the one that wrote the letter. I understand the variance consideration that is within the fifteen (15) foot property line. I have no conditional issues with this and I believe the variance should be accepted. I have no issues. I'm the main abutter. It really affects my property line. I understand that the variance, as I wrote in my letter, there's no term limit. Above ground pool, I know it's a permanent structure, but, you know, I understand those considerations.

LARRY O'SULLIVAN: They're not forever either, though. [Indistinct].

TRACY TAYLOR: Exactly. Yeah, so...So that's all I have to say. Thank you.

LARRY O'SULLIVAN: Thank you, Tracy.

BETSEY MCKINNEY: Hi. Betsey McKinney of 3 Leelynn Circle. I'm the abutter on the other side. And when you talked about moving it to the right, that's also very wet. It's trees and brush because it's wet. You know where you saw the trees? Anyway, I'm here to say that I feel sorry for the Spencers because they moved in this year and it's a lovely pool and it certainly doesn't bother me at all. Of course, it doesn't infringe on my property, either, but I would hope that you'd give them a favorable vote because it's really a hardship of the land. That's all I have to say.

LARRY O'SULLIVAN: Anybody else speaking for or any questions? Anybody speaking against? Seeing no, we'll bring it back to the Board. Any questions from the Board?

NEIL DUNN: If I may, one to Richard again. If we give a variance, it's for an above ground pool, so if twenty years, fifteen years, ten years, the thing gets a hole and they need a... they wouldn't be able to throw an inground in, would they? Is there a line there or no?

RICHARD CANUEL: Well, it depends how the Board states their approval. If you wanna condition your approval specifically to an above ground pool, you can certainly do so. At some point in the future, if an inground pool wanted to go in the same location, it would require reapplication to the Board.

NEIL DUNN: And as far as...also we could do it in regards to the life of this pool?

RICHARD CANUEL: Yeah...

358 NEIL DUNN: 'Cause I'm not...calling it a structure, I mean, a lot of above ground pools, and I have no idea what
359 the quality is or anything of that, they vary all over the place...
360
361 RICHARD CANUEL: Sure.
362
363 NEIL DUNN: ...and in ten years, it might not be an issue, but at that time, maybe it would be easier to address
364 location. I guess I'm just trying to get a sense of that. So if we put...does that sound unrealistic or no? I
365 mean...
366
367 RICHARD CANUEL: Yeah, I know what you're getting at but I think that would be a little more difficult from an
368 enforcement standpoint, of course, and certainly to make a determination as to, you know, is this a
369 replacement pool or...yeah, that would be very difficult, but at the very least, I think it's certainly appropriate
370 for the Board to address the variance to an above ground pool specific.
371
372 NEIL DUNN: Thank you, Richard.
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374 RICHARD CANUEL: You're welcome.
375
376 LARRY O'SULLIVAN: So, in other words, when somebody makes a motion, the motion should include, if they
377 so choose, we would suggest that you choose "above ground swimming pool." And just as a side comment,
378 we've had professionals install stuff that was more solid, more structure oriented, and it always seems to me
379 that, you know, we have the ordinances in town that everyone has to go by. If your contractor didn't do that,
380 and if this Board said, "Sorry. Move It," your contractor would have to eat that because it doesn't seem to me
381 to be the flavor of the Board, the Town, and all the other residents are the ones that are gonna take a little bit
382 of a hit. With that said, I certainly would like the name of that contractor posted someplace because it is
383 another screw up that, as far as I'm concerned, just is bad business. So, that said, I would have said that in any
384 seat tonight. Any other questions? Comments? We're ready to take a motion.
385
386 NEIL DUNN: Did you close it yet? Oh, I'm sorry. I didn't know...
387
388 LARRY O'SULLIVAN: Did I?
389
390 NEIL DUNN: I'm not sure that you did.
391
392 LARRY O'SULLIVAN: Okay, well, in that case, I'll close it to the public and we'll bring it back to the Board.
393
394 NEIL DUNN: Thank you.
395
396 LARRY O'SULLIVAN: A step in the right direction, Neil. I'm ready for a motion for an above ground swimming
397 pool.
398
399 NEIL DUNN: Well, going through the five points of law, we do run into the fact that it...the uniqueness of
400 almost the abutting property, the long piece that Tracy has behind her...behind them and with the septic and
401 the layout, it obviously...I don't think it's gonna diminish property values. I think the applicant makes a very
402 good case with regards to safety and the spirit of the ordinance being the safety and any closer, I think there's

403 a valid point on the deck jumpers. And the point that there are other cases there that have more infringement
404 on the...in the setback. At this point, I don't have any issues with it. I don't know if anybody wants to talk
405 more or do a motion.

406
407 LARRY O'SULLIVAN: I think the uniqueness of the lot is a stretch because of the narrowness 'cause there's
408 room to the left, there's room to the right, there's room closer to the house. So as far as I'm concerned, the
409 reasons for a variance should be that there's something uniquely different about it and I don't see it, so on
410 that basis, I have an issue. I don't have an issue overall about the safety of the porch being as close. I don't
411 have an issue there, so I do think that...well, you could drag that pool fourteen...or, I'm sorry, four (4) feet
412 closer and be outside the fifteen (15) foot setback. At the same time, the unnecessary hardship finance part
413 of that, I wouldn't want first time homebuyers to have to bite the bullet and rebuild either, so the expense
414 involved in that is something that we have to consider. So, that said, again, I'm unhappy about the contractor,
415 but at the same time, understand the plight of the homeowner, being one myself. Input on that, James?

416
417 JAMES TOTTEN: I'm struggling with the same thing. I mean, there are options here. The lot, to me, is not
418 unique. It stays with the home. The abutters are here are agreeable to it, but that might not always be the
419 case.

420
421 JAY HOOLEY: If we look at the...apparently an aerial photograph marked "Figure 1," in order to move the pool
422 closer to the road, moving it left, if you look carefully, that's the two story shed, so it would have to go a good
423 distance beyond that shed into the wooded area in order to move it forward. Can you see that shed in there?

424
425 LARRY O'SULLIVAN: Barely, yeah.

426
427 JAY HOOLEY: Right. But that's...I'm just gonna reach over here...that's the shed. So it's not just a matter of
428 moving it over a little and forward, you'd have to come clear over to the other side here in the wooded area.

429
430 LARRY O'SULLIVAN: Or you move the shed.

431
432 JAY HOOLEY: Or you move the...well you, yeah.

433
434 LARRY O'SULLIVAN: Moving a shed is...I don't know about this particular two story one, but a typical shed is
435 not that difficult to move.

436
437 TARA SPENCER: It's wired electrically.

438
439 NEIL DUNN: I guess my bigger concern is you have the leachfield, looking at the picture we're looking at from
440 the backyard, so going to the right, I mean you're pretty much gonna run into the hazard of the deck jumpers,
441 which I think is valid and I don't mean to laugh at it, but you know, we don't have a setback requirement...

442
443 LARRY O'SULLIVAN: From a deck.

444
445 NEIL DUNN: ...from a deck. So in order to get that additional five (5) feet or whatever we're after, you're
446 gonna have to go either far right of the deck or far left of the deck. To the right, you're running into leachfield,
447 to the left it was mentioned that it's wetland or it's wet, so I...you know, it's...we always can say, you know...so

448 you really, you know, if you went straight back to the deck, yes, you could qualify, but do we create a different
449 hazard or a different public interest, if you will. And that's always the hard part and that's why every case is
450 unique and even though other cases were referenced, you know, there's really no precedent in any case being
451 allowed or not allowed, although it does give perspective. But I see, really, you have to clear that deck that
452 runs the whole side of the house. So you're either in the leachfield or possibly a wet spot, so that's where I'm
453 looking at the uniqueness. I know it might seem like a stretch, but based on what we're hearing and based on
454 my bigger concern over a safety issue of the deck jumpers, I, you know, I don't have any issue with it. I think it
455 kind of meets it. Narrowly, but...

456
457 LARRY O'SULLIVAN: Do we know how big the pool is?

458
459 NEIL DUNN: No. But it's already in, so that gets back to the point of...yeah. If they can make it a "D" shape.

460
461 LARRY O'SULLIVAN: So if the pool is four (4) feet shorter, it wouldn't be in there either, then, right?

462
463 NEIL DUNN: They can make it "D" shaped.

464
465 [Laughter]

466
467 JAY HOOLEY: I guess that's an interesting thought. Would a rectangular pool have been an option and fit? Do
468 you have the diameter of this pool, Richard?

469
470 RICHARD CANUEL: I think it's twenty two (22) foot round? Is that what it is?

471
472 JASON SPENCER: It's twenty four (24).

473
474 RICHARD CANUEL: Twenty four (24).

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476 JAY HOOLEY: So a sixteen (16), just to pick a number, but a sixteen (16) by twenty four (24) or so rectangular
477 pool sideways would fit in the space.

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479 NEIL DUNN: Yeah, but if there...I guess my point is if they...oh, okay. I was gonna say, if they can go through
480 that, they'd just push the round one over, but then we get into the deck jumpers.

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482 JAY HOOLEY: Yeah.

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484 JAMES TOTTEN: There is [indistinct]...

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486 NEIL DUNN: I see where you're going with that. I guess I was trying to look at, you know, where we're at,
487 but...

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489 JAMES TOTTEN: Yeah. I mean, you're going from thirteen (13) foot from the deck to nine (9) foot from the
490 deck.

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492 LARRY O'SULLIVAN: If you move it four (4) feet closer.

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JAMES TOTTEN: Yeah. Four (4) feet's not that big.

LARRY O'SULLIVAN: Well, he's talking about, though, if he makes it a rectangle instead, though...

JAMES TOTTEN: Yeah, but in terms of deck jumpers, right. I mean, is it a safety issue now?

NEIL DUNN: At thirteen (13) feet? I wouldn't think so, no, but...

JAMES TOTTEN: Yeah.

NEIL DUNN: ...I'm...

LARRY O'SULLIVAN: I wouldn't go for it.

JAMES TOTTEN: Thirteen...

NEIL DUNN: I'll tell ya, though, looking at that picture, you know...

JAMES TOTTEN: You look at that...

NEIL DUNN: If it's a little boy in the belly....

LARRY O'SULLIVAN: I would have. I'm sure I would have.

NEIL DUNN: Exactly.

LARRY O'SULLIVAN: Okay, do we have anything else? No?

JAMES TOTTEN: No.

LARRY O'SULLIVAN: Okay, this is...

NEIL DUNN: Mr. Chairman, I'd like to make a motion to grant case 9/19/2012-2 with the exception that the variance be limited to an above ground pool based on the features of the land and the point in the process of where it's at. I think the safety interest is most tantamount in my concern.

LARRY O'SULLIVAN: And the cost of deconstruction to move it or what have you is exorbitant or would be or impossible to place.

NEIL DUNN: That wasn't all part of my motion, but...

LARRY O'SULLIVAN: I just wanted to, you know, fill it out a little bit for you there. Do we have a second?

JAY HOOLEY: I'll second.

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LARRY O'SULLIVAN: Okay, we have a motion and a second. No we understand that you have to have three (3) positive votes out of the four (4) that are available. Okay? All those in favor of the motion, please signify by saying 'aye.'

NEIL DUNN: Aye.

JAY HOOLEY: Aye.

LARRY O'SULLIVAN: Aye. Opposed?

JAMES TOTTEN: Aye.

LARRY O'SULLIVAN: Motion carries.

RESULT: THE MOTION TO GRANT CASE NO. 9/19/2012-2 WITH RESTRICTIONS WAS APPROVED, 3-1-0.

RESPECTFULLY SUBMITTED,



NEIL DUNN, CLERK
TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED OCTOBER 17, 2012 WITH A MOTION MADE BY LARRY O'SULLIVAN SECONDED BY JAY HOOLEY AND APPROVED 3-0-2 WITH MATT NEUMAN AND JIM SMITH ABSTAINING AS THEY HAD NOT ATTENDED THE MEETING.