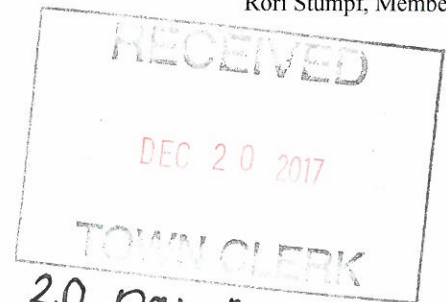




Town of Medway
ZONING BOARD OF APPEALS
155 Village Street, Medway, MA 02053

Eric Arbeene, Chair
Brian White, Vice Chair
Carol Gould, Clerk
Bridgette Kelly, Member
Rori Stumpf, Member

**DECISION
VARIANCE
7 LEGION AVENUE**



*20 Day Appeal
January 9, 2018*

Date Application Filed: September 25, 2017

Applicant(s): Ambassador Pool (the "Applicant")
1030 Turnpike Street
Canton, MA 02021

Owner(s): Julie L'Esperance (the "Owner")
7 Legion Avenue
Medway, MA 02053

Location of Property: The Project is located on a parcel of land in Medway located at 7 Legion Avenue (Assessor Parcel ID: 60-126).

Approval Requested: Variance from Section 6.1 of the Zoning Bylaw to accommodate a pool that was installed 4 feet from the property line where the required setback is 10 feet.

Members Participating: Eric Arbeene (Chair), Brian White (Vice Chair), Carol Gould (Clerk), Bridgette Kelly, and Rori Stumpf

Members Voting: Eric Arbeene (Chair), Brian White (Vice Chair), Bridgette Kelly, and Rori Stumpf

Hearing Opened: October 18, 2017

Hearing Closed: December 6, 2017

Date of Decision: December 6, 2017

Decision: Denied



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I. PROCEDURAL HISTORY

1. On September 25, 2017, the Applicant filed a Variance Application, pursuant to G.L. c. 40A, as amended, and the Medway Zoning Bylaw, to accommodate a pool that was installed 4 feet from the property line where the required setback is 10 feet.
2. Notice of the public hearing was published in the Milford Daily News on October 4, 2017 and October 11, 2017, and notice sent by mail to all interested parties and posted in Town Hall as required by G.L. c. 40A §11.
3. The public hearing was opened on October 18, 2017. The Hearing was continued to November 1, 2017; the Applicant was not present and therefore the hearing was continued to December 6, 2017. The Board closed the hearing December 6, 2017.
4. The Property is located in the Village Residential District. The frontage requirement is 150 feet and the minimum lot area requirement is 22,500 sq. ft. The front setback requirement is 20 feet and the side and rear setback requirements are 10 feet.
5. The Owner was also in attendance at the hearings.
6. The Board notified Town departments, boards and committees of this application. The Board received written comments from the Zoning Enforcement Officer.
7. All documents and exhibits received during the public hearing are contained in the Zoning Board of Appeal's files and listed in Section V. of this Decision.

II. TESTIMONY

At the October 18, 2017 meeting, the hearing was opened by the Board. The Applicant provided an overview of the application. He gave a background of Ambassador Pools, of which he is a co-owner. Mr. Johnston had offered to assist the owner of 7 Legion Ave with the permitting and not knowing that the property was a condo, they applied to the Building Department showing the pool in a location that was part of 5 Legion Ave's back yard. When the installers went to install the pool, there was some confusion about the correct location for the pool and it ended up within the setback.

The deck for the pool is about 4 feet from the rear property line, but the actual water wall is about 6 ½ feet from the rear property line. The pool is an above ground partially recessed pool. The pool is 12 feet by 20 feet not including the "L" shaped deck surrounding it. The 12x20 pool is the smallest above-ground pool that the business carries.

The pool was for a handicapped child. The direction that it was installed is the only way for there to be access to the pool for the child. In addition, had the installers put the pool in a

different location, the pool might have blocked access to the shed. Mr. Johnston also stated that there was personal hardship regarding the money involved.

Mr. Johnston referred to section 6.1 of the Bylaw and stated that prior to application, Ms. Leahy referred him to review the requirements of section 6.1 and the footnotes to see if any of them applied to his situation.

Ms. Leahy explained that the property is one lot, but for assessing purposes, it is considered two. It is a condo with a shared property. The yard is split in the rear for 5 Legion Ave and 7 Legion Ave.

Ms. Leahy also explained that there is some allowance in the bylaw for consideration prior to applying for a variance regarding a note to the table for the Village Residential district regarding the setback requirements. Mr. Johnston provided a letter to the Zoning Enforcement Officer who determined that he couldn't make a determination on that portion of the bylaw.

Mr. Johnston explained that he had not applied for the permit, but one of his installers did.

Ms. Kelly summarized that where the pool was shown on the building permit is not where it was installed.

A number of abutters were present for the hearing.

James Harrington of 5 Legion Ave stated that he had no knowledge that his condo neighbor had planned to install a pool until his wife told him to look out his window and it was already installed. The pool is somewhere around 4 feet from the condo's windows. Mr. Harrington stated that they could have installed a smaller pool. Rosemary Harrington of 5 Legion Ave had submitted a letter to the Board regarding the property.

Adam Kaufman of 15 Cassidy Lane stated that if the permit wasn't approved for that location, they shouldn't have installed the pool. Mr. Kaufman also stated that it would have been courtesy to talk to the owners neighbor at 5 Legion Ave prior to installing the pool and should have found a smaller pool.

Judy Armstrong and her sister Peggy Armstrong of 5 Cole Ave, also speaking on behalf of their mother at 3 Cole Ave, stated that luckily there is vegetation and fence between 7 Legion Ave and 3 Cole Ave, but they are concerned about the impact on the potential sale of 3 Cole Ave if and when they try to sell the home.

Mike Dickson of 4 Cole Ave stated that the pool shouldn't have been put in if it didn't meet the requirements.

Julie Lesperance of 7 Legion Ave spoke to the Board and stated that there was a major miscommunication of location and if she knew that she would need to apply for a variance, she wouldn't have had the pool installed at all. Mr. White asked where Ms. Lesperance would ideally

like to see the pool. Ms. Lesperance stated that she would like to have her son have access but also provide the greatest distance between the pool and the condo for 5 Legion Ave as possible.

The hearing was continued to November 1, 2017 at 7:35 p.m.

At the November 1, 2017 meeting, the Applicant was not in attendance. The Board continued the hearing to December 6, 2017 at 7:35 p.m.

At the December 6, 2017 hearing, the Applicant provided the Board with information regarding the internal location and layout of the condos for 5 and 7 Legion Ave and the affects that the layout had on the privacy of the homeowners. The Applicant explained that it is a nonconforming lot and use.

Mr. Arbeene concurred that the condos are unique to the neighborhood and do have a unique layout that makes it difficult to have backyard privacy.

Mr. Stumpf noted that the plans submitted to the building department had shown the pool in a different location than where the pool was installed. He questioned why the installers would still move forward installing the pool in a different location that what was shown on the plans without modifying the building permit or contacting the Applicant.

The Applicant provided the Board with additional information about the owner's son and why they wanted a pool for him. The son is in a wheelchair and disabled. The pool provides happiness to the son and the family.

The Applicant stated that other towns grant variances so long as no abutters provide comments or show up to the hearings in opposition and questioned, "At what point does local government become too stringent?" Mr. Arbeene stated that wasn't a question for the Board, but as far as the Variance goes, all applicants must meet the same criteria.

The Applicant said that this wasn't the first time that he had issues with the Town. Mr. Stumpf stated that this was not an issue and that the Town does not like to see people not complying with the Town Bylaws and then asking for forgiveness. Ms. Kelly stated that there was a history of improper installations with the Town. The Applicant didn't agree and said that was not related to the application at hand.

Abutter Rosemary Harrington, 5 Legion Avenue, stated that there was no privacy for their condo, you could see into the windows from the pool. Ms. Harrington stated that ideally she would have liked to see a smaller pool, but at the least she would like to see more room between the house and the pool. However, if that was done, the setback would be reduced even more for the neighbors at 3 and 5 Cole Avenue.

The Board began deliberations.

Ms. Kelly stated that although she sympathizes with the homeowners, the Applicant has not provided any information which met the variance criteria.

Mr. White agreed with Ms. Kelly.

Mr. Stumpf stated that he sympathized with both the homeowner and the applicant and the cost and time invested in the pool, but felt that it did not meet the criteria.

Mr. Arbeene stated that the layout of the condominium was such that it should not have been created in the first place, there were unique circumstances related to the use and layout of the home (condos), but that does not related to the fact that the pool was installed in the wrong place. The yard was small and relocation of the pool was impossible. He did not see any circumstances related to shape, topography, or soil conditions that met the variance criteria.

The Board closed the hearing.

III. FINDINGS

In making its findings and reaching the decision described herein, the Board is guided by G.L. c. 40A, as amended, and by the Medway Zoning Bylaw. The Board also considered evidence and testimony presented at the public hearings and comments submitted by Town departments, boards and committees placed in the public record during the course of the hearings.

A. Variance Criteria

1. *Circumstances relating to the shape, topography, or soil conditions of the subject property, which do not generally affect other land in the zoning district:*
 - a. The Applicant has not provided evidence relating to topography or soil conditions relevant to the requested variance.
2. *Substantial hardship caused by the circumstances from Criteria A.1 when the Zoning Bylaw is literally enforced:*
 - a. The Applicant has not provided evidence of substantial hardship, as defined by MGL 40A Section 10, due to the shape of, or other circumstances of, the subject property.
3. *Why/how the grant of relief would not nullify or derogate from the intent of the Zoning Bylaw:*
 - a. The grant of relief would derogate from the Zoning Bylaw as the pool was installed which did not meet the Setback Requirements of Section 6.1 of the Zoning Bylaw and the applicant did not properly apply for a variance in accordance with the Zoning Bylaw and MGL 40A Section 10 prior to installation.

The Board finds that the Applicant did not meet the variance criteria, as defined by MGL 40A Section 10. (Vote 4-0)

IV. DENIAL

Based upon the findings of the Board and testimony and information received into the record during the public hearing process, the Board ***DENIES*** the Applicant, Ambassador Pools, a ***VARIANCE*** from Section 6.1 of the Zoning Bylaw to accommodate a pool at 7 Legion Avenue.

1. Recording. This denial shall be recorded with the Registry of Deeds. However, failure to record this Decision shall not invalidate any finding or vote of the Board.
2. Any pool installed on the premises which does not meet the setback requirements of Section 6.1 of the Zoning Bylaw shall be a violation of the *Medway Zoning Bylaw* and this Decision. Any other work or use that deviates from this Decision shall be a violation of the *Medway Zoning Bylaw*.
3. The Applicants shall work with the Zoning Enforcement Officer and Building Department to take immediate measures to remediate violations of the Zoning Bylaw or this Decision.
4. Failure to cooperate in remediating violations of the Zoning Bylaw may result in Enforcement and/or Penalties under Section 3.1 Enforcement, Violations, and Penalties, of the Zoning Bylaw.

V. INDEX OF DOCUMENTS

A. The Special Permit application for the proposed HBB included the following plans and information that were provided to the Board at the time the application was filed:

1. Email dated September 8, 2017, from Daniel Johnston

B. During the course of the review, the following materials were submitted to the Board by Town Departments/Boards:

1. Correspondence: Community & Economic Development, Mackenzie Leahy, Applicant, dated October 12 and 16, 2017
2. Comments: Zoning Enforcement Officer, Jack Mee, received October 16, 2017
3. Plot Plan of 5 and 7 Legion Avenue, as provided to building department, prepared by Gloral Associates of 9 Broadway, Wakefield, MA 01880, not to scale
4. Staff Photos: from Site Visit dated October 26, 2017: Community & Economic Development, Mackenzie Leahy
5. Staff Report: Community & Economic Development, Mackenzie Leahy, dated October 27, 2017
6. Comments: Zoning Enforcement Officer, Jack Mee, received October 30, 2017
7. Information from Zoning Enforcement Officer, Jack Mee, regarding Ambassador Pool previous installations, received December 5, 2017

D. During the course of the review, the following materials were submitted to the Board by the Applicant and Representatives:

1. Additional Information, five pages, regarding Variance Criteria submitted by Applicant, received October 17 2017

E. During the course of the review, the following materials were submitted to the Board by Residents:

1. Comments: James and Rosemary Harrington, 5 Legion Ave, received October 17, 2017

VI. VOTE OF THE BOARD

By a vote of 4 to 0, on a motion made by Brian White and seconded by Rori Stumpf, the Zoning Board of Appeals hereby **DENIES** the Applicant, Ambassador Pools, a **VARIANCE** from Section 6.1 of the Zoning Bylaw ~~to Bylaw~~ to accommodate a pool at 7 Legion Avenue.

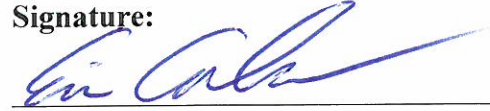
Member:

Vote:

Signature:

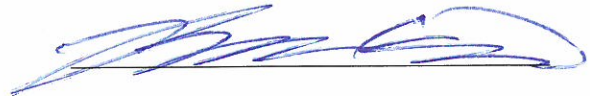
Eric Arbeene

yes



Brian White

yes

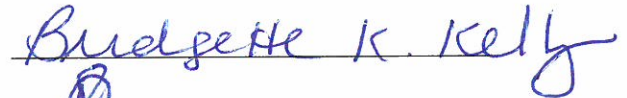


Carol Gould

-

Bridgette Kelly

yes



Rori Stumpf

yes



The Board and the Applicant have complied with all statutory requirements for the issuance of this Variance on the terms hereinafter set forth. A copy of this Decision will be filed with the Medway Town Clerk and mailed to the Applicant, and notice will be mailed to all parties in interest as provided in G.L. c. 40A §15.

Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, Chapter 40A, §17, and shall be filed within twenty days (20) after the filing of this notice in the Office of the Medway Town Clerk.

In accordance with MGL c. 40A, Section 11, no variance or special permit shall take effect until a copy of the Decision is recorded in the Norfolk County Registry of Deeds, and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title, bearing the certification of the Town Clerk that twenty days have elapsed after the Decision has been filed in the Office of the Town Clerk and no appeal has been filed within said twenty day period or that any duly filed appeal has been dismissed or denied. The fee for recording or registering shall be paid by the Applicant. A copy of the recorded Decision certified by the Registry, and notification by the Applicant of the recording, shall be furnished to the Board.