



TOWN OF SALISBURY  
*Office of the BOARD OF APPEALS*  
5 BEACH ROAD  
SALISBURY, MASSACHUSETTS 01952  
978-462-7839

August 25<sup>th</sup>, 2015

7:00 P.M.

**MINUTES**

**Members Present:**

Susan Pawlisheck, Derek DePetrillo, Linda Tremblay, Joseph Stucker, Kevin Henderson

Old Business

**Case No. 15-13**

**Jamie Webster**

**4 Meaders Lane (Map 4 Lot 51)**

Request for a Variance to place an in ground pool in the size of 16'x34'.

Hector Montanez and Jamie Webster are living in a commercial zone. They require more setbacks than a residential zone. They have a side setback of 30' and a rear of 20'. The side would be at most 28.5', so they need a Variance for 1.5' on a side setback.

**NO ABUTTERS PRESENT.**

**QUESTIONS FROM THE BOARD**

Susan has trouble with establishing hardships for this Variance because it is for an in ground pool, not a garage or an addition.

The house is in the middle of the lot, so they are restricted in their use of property. The above ground pool was destroyed by the winter. They are replacing this with an in ground pool to avoid damage again. The pool must be 10 feet from the house, so they cannot move it in 1.5". This is for safety reasons. Could they angle the pool? She is unsure.

Scott explains that because they fall in a commercial zone, they require a 30' setback on the side for commercial to residential buildings. The pool is parallel to the house but not the property line. The 30' is the worst case scenario. They are 3.2' into the 30' setback.

Kevin asks if this is not a previously non-conforming lot and thus a Finding. They are creating a new nonconformity, not extending an old one. So it is a Variance. The house is conforming without a pool involved.

Linda asks if a pool is a permanent structure. It is. Susan asks if the previous pool was nonconforming. We don't know because the pool has not existed for several months.

Susan explains that a hardship has something to do with topography, geography, soil, and such. Jamie Webster explains the size and shape of the lot is the hardship. The placement of the house limits the use of their property. This is the only place to put the pool. A fence will surround the property to enclose the pool.

Derek questions about angling the pool. They cannot angle it more towards the left without entering the 10'. They worked with Millennium, the pool company, to set the pool, and this was the best location.

**Kevin makes a motion to grant the Variance due to the shape of the lot and the restrictions placed by the town on the placement of the pool. Linda seconds. Susan, Joseph, Derek vote to approve the motion. 5 in favor, 0 opposed. Motion passes.**

**Case No. 15-14      Paula Lee Zitzow & Daniel James Silva  
15 Gardner Street (Map 6 Lot 55)**

Request for a Special Permit to have a home occupancy for a personal kennel after the fact.

Paula Zitzow-Silva and Daniel Silva have lived at this residence for over 30 years. This is her second complaint in that time about noise from dogs. They did not receive a report from the dog officer. The dog officer recommended citronella collars, which keep the dogs quiet now. She is retired and home frequently which helps to prevent further noise. They were inspected by the American Kennel Club last week for any further potential issues. She does not ship puppies or board dogs. The town has a gray area in terms of the defining factors for a personal kennel. A personal kennel is more than 4 dogs kept for personal reasons, including breeding, showing and sportsmanship. They donate litters to other families.

**NO ABUTTERS PRESENT.**

### **QUESTIONS FROM THE BOARD**

Susan explains that this could be a personal kennel, not a commercial one. A commercial kennel is overseen by the Planning Board, not the Zoning Board of Appeals. She would have to get a license from the Animal control Office and a Special Permit for the kennel from the Planning board. The Zoning Board must decide if this is commercial or residential. Paula already received a kennel license from the Town Clerk. They sell puppies. Though they do not make money because it is offset by the cost of the puppies, they are considered commercial. They need to go to the Planning Board. The Zoning Board cannot make this decision because of their lack of jurisdiction and the applicants' residential zoning.

**Derek makes a motion that the applicant apply to the Planning Board for a Special Permit as it does not fall under the purview of the ZBA because this is a commercial use not allowed in that particular district. Joseph seconds. Susan, Linda, Kevin vote to accept the motion. 5 in favor, 0 opposed. Motion passes.**

## **Minutes**

July 14<sup>th</sup>, 2015

**The minutes of July 28<sup>th</sup>, 2015 were continued to September 22<sup>nd</sup>, 2015.**

## **Correspondence**

RE: 6 18<sup>th</sup> Street West, Salisbury, Massachusetts Appeal of Notice of Violation/Order to Correct

Scott gave the Board information about the nature of conflicts of interest in their work as a Board. There is also a rule of necessity. The Board may not have a full quorum should two members need to recuse, so the members simply need to state the nature of their conflict of interest and decide if that conflict of interest would impact their ability to make a decision. Susan asks about signing a document to avoid recusing one's self. She called the State Ethics hotline because she was an abutter to a previous case. She had recused herself because she was told she could have a major financial interest. The Board Members need to make an impartial decision. Susan asks them about recusing themselves and if they have the information they need to make such a decision. Scott explains that concerned members can qualify their opinions by stating their opinions at the start of the meeting. Joseph would like to avoid the appearance of impropriety. Susan recommends calling the State Ethics line or talking to Scott about the nature of the case.

## **Adjourn**

**Derek makes a motion to adjourn. Kevin seconds. Susan, Linda, Joseph vote to approve the motion. 5 in favor, 0 opposed. Meeting is adjourned.**

Date: \_\_\_\_\_

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Susan Pawlisheck—Chairperson

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Derek DePetrillo – Clerk

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Kevin Henderson

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Beth Gandelman

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Linda Tremblay

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Joseph Stucker

Respectfully submitted by Catherine Scott

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Catherine Scott

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Date