

The North Royalton Board of Zoning Appeals met in the North Royalton Council Chambers, 13834 Ridge Road, on Monday, March 22, 2010 to hold a Public Hearing. The meeting was called to order by Chairman Neil Price at 7:30 PM.

Present: Chairman Neil Price, John Ranucci, Diane Mastronicolas, Robert Jankovsky, Prosecutor Donna Vozar, Secretary Julie Broestl, Secretary Lynn Brinkman.

Moved by John Ranucci, seconded by Diane Mastronicolas to **excuse Dan Kasaris for cause.**

Neil Price: Call the roll.

Mr. Ranucci: Yes.  
Mr. Jankovsky: Yes.  
Ms. Mastronicolas: Yes.  
Mr. Price: Yes.

Ayes – all. Nays – none.  
**Motion carried** (4-0).

## **PUBLIC HEARING**

(BZA10-02) **Robert Saunders** requests a variance to **Chapter 1270 “Residential Districts”, Section 1270.05 “Schedule of Area, Yard and Height Regulations”**, of the City of North Royalton Zoning Code, for relief from the **side yard setback** for a **proposed garage and addition** that they wish to construct on this property which is located at **12611 Woodridge Drive, PPN: 481-25-012.**

Public hearing notices were sent to property owners within 500 feet of the property in question and posted for the required period of time.

The Chairman recognized anyone wishing to be heard.

Mr. Saunders, the applicant, approached the microphone.

Mr. Price: Please raise your right hand. Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. Saunders: I do.

Mr. Price: Please state your name and address.

Mr. Saunders: Robert Saunders, 12611 Woodridge Drive. You all have the packet. I am not sure how much explaining I am supposed to do.

Mr. Price: Just tell us what you are after or what you are requesting.

Mr. Saunders: I am requesting a variance for an encroachment in the side yard. There is currently a shed-roof structure off of the side of the house that the previous owner put on. That encroached into the side yard by 4.75 feet. The new structure would reduce that to 2.25 feet, leaving a side yard distance of 7.75 feet instead of the required 10 feet.

Mr. Price: Is there anything else that you would like us to know?

Mr. Saunders: It should be pretty self explanatory from the plans that I had submitted. You all have copies – right?

Mr. Price: Okay. If we have any questions we will ask them during the second part. Anybody else? Can I have a motion to move BZA10-02 to the open meeting.

Moved by Mr. Ranucci, seconded by Ms. Mastronicolas to **move BZA10-02 to the open meeting.**

Mr. Price: Call the roll.

Ms. Mastronicolas: Yes.

Mr. Jankovsky: Yes.

Mr. Price: Yes.

Mr. Ranucci: Yes.

Ayes – all. Nays - none.

**Motion carried** (4-0).

(BZA10-03) **Mr. Pools / Robert Jones and Michael Biegacki** request a variance to **Chapter 1270 “Residential Districts”, Section 1270.27 “Swimming Pools”, paragraph (b)(1)(E)**, of the City of North Royalton Codified Code, for relief from the **side yard setback and the distance from the dwelling** for a **proposed in-ground pool** that they wish to construct on this property which is located at **8850 Abbey Road, PPN: 481-04-044.**

Public hearing notices were sent to property owners within 500 feet of the property in question and posted for the required period of time.

The Chairman recognized anyone wishing to be heard.

Mr. Price: Raise your right hand please. Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. Biegacki: Yes.

Mr. Jones: Yes.

Neil Price: Name and address please.

Mr. Biegacki: Mike Biegacki, 8850 Abbey Road.

Mr. Jones: Mr. Pools, Robert Jones, 12126 York Road.

Mr. Price: You are here because?

Mr. Jones: We are looking for a variance for this in-ground swimming pool that we would like to put in on this property. We are looking to preserve some of the yard so that the children can have a place to play when the pool is not in session. I have some pictures that I would like to submit.

Mr. Price: Okay.

Mr. Jones: I will get into more detail as I speak. On the south side of the property we are looking to get a variance of about 7 feet. On the back part of the property, as originally submitted, where the fence stops, I thought that there was 3 feet extra at the rear but there is actually 9 more feet going toward the Cartwright property which is to the west of this property.

Mr. Price: Excuse me. There is more behind the fence?

Mr. Jones: Yes. There is 9 more feet behind the fence. I had not been aware of that. I was told originally, when we had sat down to talk about it, that there was about 3 feet but Mike looked again and it is actually 9 feet. If need be we could move the pool back a little bit because we would have the room to do so. We may then be asking for only one variance.

(BZA10-03) Mr. Pools / Robert Jones and Michael Biegacki continued...

Mr. Ranucci: Donna, can we ask questions now or should we wait until later?

Ms. Vozar: We usually ask questions during the second session.

Mr. Ranucci: I had just wanted to clarify something. No problem.

Mr. Jones: I think that I said what I needed to say about that. Actually I do have some more to say. The pool will fit behind the home but it will take up most of the yard that way, to be within Code. The reason that we are asking for the variance is to turn the pool in the opposite direction to leave more yard space for the kids to play in.

Mr. Price: Thank you. Julie, would you please mark these as Exhibits 1, 2, 3 and 4 and 5. Do I have a motion to move BZA10-03 to the open meeting.

Moved by Mr. Ranucci, seconded by Ms. Mastronicolas to **move BZA10-03 to the open meeting.**

Mr. Price: Call the roll.

Mr. Price: Yes.

Mr. Ranucci: Yes.

Ms. Mastronicolas: Yes.

Mr. Jankovsky: Yes.

Ayes – all. Nays – none.

**Motion carried** (4-0).

Mr. Price: I need a motion to adjourn the Public Hearing.

Moved by Mr. Ranucci, seconded by Ms. Mastronicolas to **adjourn the Public Hearing.**

Mr. Price: Call the roll.

Mr. Ranucci: Yes.

Mr. Price: Yes.

Ms. Mastronicolas: Yes.

Mr. Jankovsky: Yes.

Ayes – all. Nays – none.

**Motion carried** (4-0).

**Public Hearing adjourned at 7:39 p.m.**

The **Board of Zoning Appeals** of the City of North Royalton met on **March 22, 2010** to hold an Open Meeting in the Council Chambers at 13834 Ridge Road. The meeting was called to order by Chairman Neil Price at 7:39 p.m.

Present: Chairman Neil Price, John Ranucci, Robert Jankovsky, Diane Mastronicolas, Prosecutor Donna Vozar, Secretary Julie Broestl, Secretary Lynn Brinkman.

Mr. Price: I need a motion to excuse Dan Kasaris for cause.

Moved by Mr. Ranucci, seconded by Ms. Mastronicolas to **excuse Dan Kasaris from the Open Meeting of March 22, 2010 for cause.**

Mr. Price: Call the roll.

Mr. Ranucci: Yes.  
Mr. Jankovsky: Yes.  
Ms. Mastronicolas: Yes.  
Mr. Price: Yes.

Ayes – all. Nays – none.  
**Motion carried** (4-0).

Mr. Price: I need a motion to excuse Mr. Jankovsky for cause regarding the approval of the Minutes for the January 7, 2010 meeting.

Moved by Mr. Ranucci, seconded by Ms. Mastronicolas to **excuse Mr. Jankovsky for cause regarding the approval of the Minutes for the January 7, 2010 meeting.**

Mr. Price: Call the roll.

Mr. Price: Yes.  
Mr. Ranucci: Yes.  
Ms. Mastronicolas: Yes.

Ayes – all. Nays – none.  
**Motion carried** (3-0).

Mr. Price: I need a motion to approve the Minutes of January 7, 2010.

Moved by Mr. Ranucci, seconded by Ms. Mastronicolas to **approve the Minutes of January 7, 2010.**

Mr. Price: Call the roll.

Ms. Mastronicolas: Yes.  
Mr. Price: Yes.  
Mr. Ranucci: Yes.

Ayes – all. Nays – none.  
**Motion carried** (3-0).  
**Minutes approved.**

## **OPEN MEETING**

(BZA10-02) **Robert Saunders** requests a variance to **Chapter 1270 “Residential Districts”, Section 1270.05 “Schedule of Area, Yard and Height Regulations”**, for relief from the **side yard setback** for a **proposed garage and addition** that they wish to construct on this property which is located at **12611 Woodridge Drive, PPN: 481-25-012.**

Moved by Mr. Ranucci, seconded by Ms. Mastronicolas to **approve a variance of 2.25 feet less than the required side yard setback as prescribed in Section 1270.05 of the Zoning Code with regard to this proposed garage and family room addition that they wish to construct onto the east side of their dwelling.**

Mr. Price: Discussion? Could the applicant please come to the microphone. Just to be clear, is the addition a two-story addition?

Mr. Saunders: Yes, it is.

Mr. Price: Then you will be reducing the variance that the prior occupant assumed to have obtained.

Mr. Saunders: They never obtained a variance to install that structure in the first place.

Ms. Mastronicolas: I was out and visited your property and I think that it would be a nice improvement but I do have a question about the diagram here. Is there any reason why you would not have another return on the top here? I see a return on the one side. I am just curious.

Mr. Saunders: That is a glitch in the program.

Ms. Mastronicolas: So you are planning to have a return there?

Mr. Saunders: No, not really. My builder calls it an "eyebrow". He is fond of them. That may turn out to be – it has not been finalized yet. The structure is going to look largely like that though, I guess. It is ninety five percent there.

Ms. Mastronicolas: It will look nice. The other question that I had, or something that you may want to consider and make provisions for, is that the downspout on the back corner of that structure was not connected.

Mr. Saunders: Correct, it was never tied in.

Ms. Mastronicolas: I am assuming that the new one will be tied in because provisions need to be made for the water to flow.

Mr. Saunders: Yes. You are right.

Mr. Price: For myself, I think that the current addition, reducing the variance, is going to be an improvement to the aesthetics of the neighborhood. The essential character will not be changed and will actually look better. I do not here any objections from any of the neighbors. The spirit and intent of the Zoning Code will be observed and it would probably be a substantial injustice not to grant the variance; therefore, I will be voting "yes".

Mr. Ranucci: Mr. Chairman, in reviewing the property I will also be voting "yes" here. Just to add to your comments here, it will not adversely affect the delivery of government services and it is a minimum request, so I will be voting "yes" for this also.

Ms. Mastronicolas: Mr. Chairman, I will be voting "yes" for this variance request as well.

Mr. Price: Bob, do you have any comments?

Mr. Jankovsky: Mr. Chairman, I also think that the change requested will be a big improvement over what we see now. In fact, when I went out there to look at it I was surprised that the existing situation does not constitute a building violation. I will also be voting "yes".

(BZA10-02) Robert Saunders continued ...

Ms. Vozar: Mr. Chairman, I would like to present for the Board's review and reflection the following findings of fact and conclusions of law. The applicant is present here tonight and has offered the following testimony. He indicated that the variance requested of 2.25 feet less than the required side yard setback as required under Section 1270.05 of the Zoning Code for this proposed garage and family room addition is actually a decrease in the current nonconforming structure that exists on the property now. The Board finds that it is the minimum necessary variance as proposed. It will not substantially alter the character of the neighborhood and the spirit of the Code will be observed. It will have no affect on governmental services and it is the minimum variance to make reasonable use of the structure. No neighbors were here to object to the granting of the variance and the Board finds that practical difficulties have been established pursuant to North Royalton Ordinance 1264.08 (e)(1). Does the Board have anything else to add to those findings of fact and conclusions of law?

Mr. Price: Anything else? Call the roll.

Mr. Ranucci: Yes.

Mr. Jankovsky: Yes.

Ms. Mastronicolas: Yes.

Mr. Price: Yes.

Ayes – all. Nays – none.

**Variance granted (4 – 0).**

**(BZA10-03) Mr. Pools / Robert Jones and Michael Biegacki** request a variance to **Chapter 1270 “Residential Districts”, Section 1270.27 “Swimming Pools”, paragraph (b)(1)(E)**, for relief from the **side yard setback and distance from the dwelling** for a **proposed in-ground pool** that they wish to construct on this property which is located at **8850 Abbey Road, PPN: 481-04-044**.

Moved by Mr. Ranucci, seconded by Ms. Mastronicolas to **approve a variance of 5 feet less than the required distance from the dwelling as prescribed in Section 1270.27 (b)(1)(E) of the Zoning Code with regard to this proposed in-ground pool.**

Mr. Price: We have a motion and a second. Any discussion?

Mr. Ranucci: I have a question going back to a statement made by Mr. Jones / Mr. Pools in reference to that back property line. What you show there now is that you have 15 feet but the actual property line is how much farther back from that fence line?

Mr. Jones: 9 feet.

Mr. Ranucci: So we have 9 more feet back. So we are actually at 24 feet back from the property line.

Mr. Jones: Correct.

Mr. Ranucci: So if we move that pool back to the actual 15 feet from the property line that would give us 24 feet from the house. Would that be correct?

Mr. Jones: That would be correct but I do not think that that is what he would want. He has some landscaping as you can see and ...

Mr. Price: A retaining wall.

(BZA10-03) Mr. Pools/ Robert Jones and Michael Biegacki continued ...

Mr. Jones: Right. He has spent a lot of time fixing that up. He had asked me if we could keep it a little bit away from that so that we would not have to destroy that so much. Did I submit to you a copy of my layout along with the photos?

Mr. Ranucci: Yes, you did.

Ms. Vozar: There are five exhibits, all photographs.

Ms. Broestl: You are referring to this – right? (Referring to the site diagram.) Everybody received one of these.

Ms. Mastronicolas: Mr. Chairman, if I may. What were you looking for then – the fact that you brought up that there is additional land back there. Are you thinking of moving it back a certain amount of feet?

Mr. Jones: I am thinking of moving it back to adjust it, if need be, if you don't approve of the location where we have it now.

Ms. Mastronicolas: Did you have some thoughts as to how far or how many feet?

Mr. Biegacki: The required off of the house is 20 feet – is that correct? If there is a problem with that variance I would move it the 5 feet. We could move it the 5 feet without interfering with the landscaping or the fence. That is a kind of a “give” then that we would be willing to do in order to move it another 5 feet from the house.

Mr. Price: Then you would not need a variance.

Mr. Jones: We would still need one.

Mr. Price: Yes, but not for that one.

Mr. Jones and Mr. Biegacki: Correct.

Mr. Jones: We could eliminate that variance then.

Ms. Vozar: Mr. Chairman, if I could?

Mr. Price: Go ahead Donna.

Ms. Vozar: Just so that we are clear for the record, are you authorized to speak on behalf of the homeowners so that you can withdraw that application for the first variance?

Mr. Price: The homeowner is here.

Mr. Biegacki: I am the homeowner.

Ms. Vozar: I am sorry – I thought that you were both ... Are you withdrawing your application for the first variance?

Mr. Biegacki: Will my first variance be denied?

Ms. Vozar: If you withdraw it there will be no action taken on it.

Mr. Price: It just goes away.

Mr. Biegacki: I would like to have the 15 feet if we could? It would save the yard a little bit more.

(BZA10-03) Mr. Pools / Robert Jones and Michael Biegacki continued ...

Ms. Broestl: Make sure that the applicant is referring to the correct variance.

Ms. Vozar: We are on the first variance where you are requesting a variance of 5 feet less than required.

Mr. Biegacki: There are two variances.

Ms. Vozar: I understand. The only variance request that is before the Board right now, as we are speaking, is the first request which is a variance of 5 feet less than the prescribed distance from the dwelling. That is where you are requesting a 5 foot variance. It is my understanding, from the conversation, that you are withdrawing that variance request. I do not want to put words in your mouth but we need to be clear. If you don't want to go forward on that we need to withdraw that and then the Board will move on to the second variance request. If you want the Board to make a decision on that variance, as it stands, they will hear testimony, ask questions and then make their determination and then move on to the second request.

Mr. Jones: I think that we can entertain your opinions on that if you do not mind.

Ms. Vozar: We don't give opinions on that. What happens is that you have a variance that is pending before the Board and they will ask you questions regarding the facts and then they will issue their decision. You made a statement previously that you had found out that there is more property than initially thought and based on that you were not sure if you were going to need to go through with that variance request. That is why I am asking you what your decision is.

Mr. Jones: (Speaking to Mr. Biegacki) Do you want to withdraw this request and just move forward?

Mr. Biegacki: That is fine.

Mr. Jones: He is giving me permission to withdraw the application for Variance #1.

Ms. Vozar: Okay. So the Board does not need to take any action on that end so that this variance request is withdrawn from the Board's consideration.

Mr. Jones: Okay.

Ms. Vozar: (To the applicant) If you could just so state for the record that you are withdrawing the first variance request.

Mr. Biegacki: I am withdrawing.

Ms. Vozar: Thank you.

**Variance #1 is withdrawn.**

Mr. Price: We need to have a motion for Variance #2.

Moved by Mr. Ranucci, seconded by Ms. Mastronicolas to **approve a variance of 7 feet less than the required side yard setback as prescribed in Section 1270.27 (b)(1)(E) of the Zoning Code with regard to this in-ground pool.**

Mr. Price: We have a motion and a second. Any discussion? With regard to this in-ground pool being located 8 feet from the side yard and moving the pool more toward the rear, you are now gaining the appropriate distance from the patio roof.

(BZA10-03) Mr. Pools / Robert Jones and Michael Biegacki continued ...

Mr. Jones: Right.

Mr. Price: So the only thing that we are worrying about is the 8 feet from the neighbor's yard.

Mr. Jones: What is the appropriate distance?

Ms. Broestl: It is 15 feet.

Ms. Vozar: Mr. Chairman, if I may add something. If you look at the Code under Section 1270.27 (b)(1)(E) it states that **“all pools must be at least fifteen feet away from the residence, in the rear yard, and be fifteen feet away from the property lines”**. The next provision states that **“a deck attached to a pool must meet the side and rear yard setback requirements of this Zoning Code for that zoning area”**. So assuming that these dimensions show the edge of the pool, and I am assuming any deck or any other additions, that that is the true area that you are requesting a variance for. There is not going to be anything added on to that whether it be structures, equipment – nothing else will protrude beyond that line where the pool is. Is that correct?

Mr. Jones: Do you mean more decking?

Ms. Vozar: Yes.

Mr. Jones: No. More decking is wood decking from the original porch?

Mr. Price: That is one of the questions that I started to ask earlier. You have the pool, which is like a bathtub, and then you have some sort of sidewalk or walkway around the pool.

Mr. Jones: That is correct.

Mr. Price: To your knowledge, does that constitute the outer limits of the pool size or is that where the water begins.

Mr. Jones: What is drawn in there is just pool only. The concrete that will follow around that pool will be roughly about 4 feet.

Mr. Price: 4 feet on each side?

Mr. Jones: Yes.

Mr. Price: So you have the book out there Donna – does the distance then include the 4 feet of concrete or just the water holding tub.

Ms. Vozar: If you look at the language it is with regard to the pool – it does not talk about the concrete but then it does go on to say that a deck attached to the pool must meet the side yard setback. So if you treat a deck the same as you would treat the cement walkway that goes around it, then I would think that that is where you would start the line to determine the distance from the side yard line. So, unfortunately, it looks like their variance is actually more. I guess that the reason that the side yard is set up is so that no structures or encroachments can exist. The deck is going to be an encroachment even closer to the property line than the pool is. Again, if it is 4 feet then I guess that the variance is going to be 12 feet that they would be requesting.

Ms. Mastronicolas: Mr. Chairman, just to clarify, there would be 4 feet between the fence at the property line and the concrete of the pool. Is that what we are saying?

Mr. Jones: Yes.

(BZA10-03) Mr. Pools / Robert Jones and Michael Biegacki continued ...

Ms. Mastronicolas: I have a couple of other questions too. I notice that there is some water there on that side so my concern would be the runoff. What kind of chemicals would you be using, salt water or chlorine?

Mr. Jones: It is a salt generation system so there are hardly any chemicals in the pool at all.

Ms. Mastronicolas: Does that salt water affect vegetation at all?

Mr. Jones: Not at all. It is the same as what we put on our eggs every day. It does not affect us.

Ms. Mastronicolas: Okay. Thank you.

Mr. Price: Where do you locate the pump house?

Mr. Jones: We typically put it by the air conditioning unit or where the power meter is.

Mr. Price: So I would assume that it would be closer to the house.

Mr. Jones: Yes.

Mr. Biegacki: I believe that in one of the pictures it shows the air conditioning unit behind the house and by the fence.

Mr. Price: How big of a unit is this?

Mr. Jones: It takes up about 3 feet by 6 feet of space. That is the filter, the pump and a heating device.

Mr. Price: I assume that the round area on the ground (referring to the photographs) is from an above ground pool that was previously there.

Mr. Biegacki: That is correct.

Mr. Price: Due to the fact that there are no neighbors here and no one is objecting, I would be inclined to vote in favor of the variance with the stipulation that the front to back distance, the long distance of the pool, is moved to the rear far enough, with the concrete around the pool, to come into the requirements of the Code which deal with the distance from the house and the deck. If you can stay away from the house and the deck, and the deck is a problem because it has a roof over it, you would then have the 15 feet there, which would meet the requirement. That would mean moving the pool more toward the back.

Mr. Jones: So that I am clear on this you are asking if we can accommodate the movement of the pool, including the decking, ...

Mr. Price: So that you do not need a variance – the pool would be back far enough from the house.

Mr. Ranucci: So the closest edge from the deck to the pool has to be 15 feet.

Mr. Jones: To the water line – is that right? Sorry Mr. Price but I do not think that I am following this.

Mr. Price: I was under the impression that the pool includes the walkway around it, for dimensional purposes.

(BZA10-03) Mr. Pools / Robert Jones and Michael Biegacki continued ...

Mr. Jones: Right. The way that I read it, and maybe I am wrong ...

Mr. Price: We do not have the Building Commissioner here tonight.

Ms. Vozar: Right. That is the problem.

Mr. Jones: The way that I read the Ordinance, and the way that it was interpreted to me, is that it went off of the water line of the pool

Ms. Vozar: It does read "pool", so I guess that if you just had grass there then you would not have a structure or anything but the grass. Now again, since the Building Commissioner is not here, his interpretation would be key on this.

Mr. Jones: I had him review this before I came. I presented it to him and he said it did not seem to be a problem except for the variance off of the property line.

Ms. Vozar: Sure. I guess that I am looking at this and I am not exactly sure, looking at your drawing, where you are showing the decking, or the concrete, going around the pool.

Mr. Jones: I apologize that I did not put it on there.

Ms. Vozar: That is why I am not sure if he actually saw it and had he seen that, and that was on it, perhaps I would not be as concerned. I am trying to find in the Code where this issue is actually dealt with and I guess that we could ...

Mr. Price: I just do not want you to get blind sided by something.

Mr. Jones: You are right about that. I would like to have this as clear as possible. The way that I read it, and I have been doing pools in the City for a long time, it has always been measured off of the pool itself. I went to a variance meeting just last year and I got approved for less than was allowed and it was off of the pool and not the concrete.

Mr. Price: You got the variance here?

Mr. Jones: Yes.

Mr. Ranucci: I think that I remember that.

Mr. Jones: There was a woman who was complaining, and we are talking about 70 plus feet from her home, who was stating that it was going to cause her some issues.

Mr. Price: I remember that.

Mr. Jones: The variance was granted. It was within reason. It was a very irregular-shaped property with missing pins and everything else.

Mr. Ranucci: I was just going to mention that I think that I had asked that question....

Mr. Jones: I hope that helps to kind of answer that a little better – that was approved on the pool only and not the concrete.

Mr. Ranucci: I remember asking that question to, I believe, Rito (the Building Commissioner) at that time – if the distance should be measured from the pool line or from the concrete line. Donna, reading (E) here, it refers to a "deck" attached to a pool. To me, a deck would be a wooden structure above ground whereas a concrete pad - I would not interpret that as a deck.

(BZA10-03) Mr. Pools / Robert Jones and Michael Biegacki continued...

Mr. Price: When I was a lifeguard that was considered a deck.

Ms. Vozar: I understand.

Mr. Jones: The concrete walkway can also be referred to as decking.

Ms. Vozar: One of the reasons, obviously, that we like to have the Building Commissioner here at these meetings is to address these issues but he was not able to attend tonight because he was away at a required seminar. My only thing is, should the Board wish to approve it the way that it is, that it be submitted contingent upon the Building Commissioner's review and approval of the distance. You are appealing his determination. The Building Commissioner has determined that a 7 foot variance is required. He put together the variances. Assuming that, we will take that to be the case. If it is not, then you will need to come back again. My recommendation would be that the variance would be contingent upon review by the Building Commissioner that, in fact, it is a 7 foot rather than a 12 foot variance because the plan is not specific enough and does not actually state what is going to be next to the pool. If I can actually find before then the Code that deals with the definition of a "structure" we can take it from there.

Mr. Price: Then I would like to add to the variance the condition as just mentioned by Donna Vozar. I would like to make that in the form of a motion. Can I have a second?

Ms. Mastronicolas: So moved – seconded.

Mr. Price: The variance is amended. Call the roll.

Mr. Jankovsky: Yes.

Ms. Mastronicolas: Yes.

Mr. Price: Yes.

Mr. Ranucci: Yes.

Ayes – all. Nays – none.

**Motion amended** (4-0).

Mr. Jankovsky: Mr. Chairman, I had another question but I do not know if it is appropriate or not. I am just a bit confused. This is not a suggestion but merely a question. If you are going to move the pool back 5 feet to conform and eliminate the first variance request, according to your drawing here, would that not then give you enough clearance from the edge of that stairway off of the deck to then be able to move the pool over a little bit to allow a bigger clearance from the side yard.

Mr. Jones: As long as we are just talking about the roof line itself. We are not talking about the steps or the actual platform itself. That should give us, and this is an estimate at this point because of the angle, I did not factor ...

Mr. Jankovsky: I understand his need to preserve as much yard as possible but you would only be talking about a couple of feet here which would give you more room on that neighbor's side. This was just a question. I do not know if it is possible or not.

Mr. Jones: I think that the placement of the pool is probably about the best spot that it possibly could be. We did some different layouts. If we were to move it back that way it would throw off every idea that Mike (the homeowner) had as far as how he is going to finish off the yard and how he is going to keep the children out of the area when the pool is not open.

(BZA10-03) Mr. Pools / Robert Jones and Michael Biegacki continued...

Ms. Vozar: Mr. Chairman, I did find what I was looking for and it is as I anticipated. If you look at Section 1270.27, paragraph (b), it states as follows. **“Swimming pools may be permitted and located in accordance with the following: Private pools may be located in a Residential District as an accessory use to a dwelling. The pool and any accessory buildings or structures or equipment shall not be located in a front or side yard and shall be not less than fifteen feet from any lot line.”** So you would include structures besides the pool. When you look at the definition of **“structure”**, which is under Section 1260.07, paragraph (f)(8), it reads as follows. **“Structure means that which is constructed on or under the ground or attached or connected thereto, including, but not limited to, buildings, barriers, bridges, ... platforms, pools, poles, streets, tanks, tents, towers, sheds, signs, walls and walks, but excluding trailers and other vehicles, whether on wheels or other supports.”** Taking into consideration that the term **“walk”** would include a walkway around a pool – it is concrete, it is not the same as a drive which can abut the property line. I think that, taking that into consideration, I would respectfully request that it be amended to increase the variance, if this is the place that they want it to be located, or if the applicant wishes to table it to have an opportunity to speak with the Building Commissioner to perhaps look at another possible placement of the pool, or whatever the Board so chooses. Taking into consideration that definition of **“structure”** and the Code regarding pools, I think that it does need to be 15 feet from the edge of the walkway.

Mr. Price: Go back to the beginning of your discussion where you said something about accessory buildings and other structures. Would that include the filtering system?

Ms. Vozar: It says “or equipment”, so yes. The equipment would also be a part of that.

Mr. Price: It could not be located where?

Ms. Vozar: It would have to be at least 15 feet from the side yard and not to be located in the front.

Mr. Jones: I understand what that says but every pool that I have ever put in is not within that.

Ms. Vozar: I am just reading to you the Code.

Mr. Jones: I understand. As I stated earlier, the pool that I got the variance for last year was much less than what we are asking for this time. With respect to Mike (the homeowner) and his family, we moved it a couple of feet to appease the Board with the first requested variance so what is a couple of feet the opposite way.

Ms. Vozar: I just want to make sure that the variance requested is correct. That is my concern.

Mr. Jones: It is correct as far as it is concerned with me or are you talking about your part.

Ms. Vozar: On the City’s part. When we grant a variance I want the wording of the variance to be correct, so in my opinion, it is not a 7 foot variance, with no disrespect to the Building Commissioner. Looking at the Code, and since he is not here and I do not have an opportunity to hear from him, I believe that you would need to have a variance greater than what you are requesting.

Mr. Jones: So we can go ahead and have this reviewed by the Commissioner? Can we leave it at that?

Mr. Price: If you would like you can request to have it tabled until the next meeting which would then give you time to iron out the details with the Building Commissioner.

(BZA10-03) Mr. Pools / Robert Jones and Michael Biegacki continued ...

Mr. Jones: The problem is that that would be too far into our schedule. We have limited days to put these in.

Mr. Price: It is going to snow next month.

Mr. Jones: That would not work at all. Is it possible that you could rule on this contingent upon the Building Commissioner's approval? No one would have to come back after he makes his determination. If he says "no" then it is "no".

Ms. Vozar: He does not necessarily make the legal determination as to what the variance is. That was prior to me trying to figure out where we were at. Now that I actually have the Code... again, my interpretation is that the variance that was requested is insufficient. That is my legal opinion. The Board can choose to table this or consult with the Building Commissioner as to what his view is. If I look at this application the way that it is submitted, I do not know that the Building Commissioner knew that there was going to be concrete around it. I am not clear of that because it is not shown on here that there is a 4 foot concrete walkway. I do not know if it is anywhere in your application. If it is and I am missing it by all means point it out. As it looks right now he may have just looked and saw the edge of the pool and the property line, not knowing that you were going to be requesting to put 4 foot of concrete around it.

Mr. Ranucci: Could the applicant amend this variance to go from 7 feet to 12 feet?

Ms. Vozar: Yes.

Mr. Ranucci: We could then rule on that amended motion.

Ms. Vozar: Absolutely.

Mr. Price: What if the Building Commissioner said that it did not have to be that far?

Ms. Vozar: Once you have issued the variance you have issued it. The location is going to be the same for the pool. Nothing is going to change. The question is if you are granting the variance ...

Mr. Price: It is going to change. It is going to move further back into the rear yard.

Ms. Vozar: It is going to move back farther only from the standpoint that they have withdrawn that application. They could amend their application to 11 feet.

Mr. Ranucci: Donna, one more item. By changing this application the applicant then amends this application from 8 feet to 12 feet. The pool would still remain in the same location. The question is with regard to the notification that went out to the neighbors.

Ms. Vozar: It is actually a 7 foot variance that is being requested. It does not detract from the fact that a variance went out. Variances are often times modified. It is a side yard variance that they are being notified of and certainly, if they would have been here, they would have had an opportunity to contest it. More importantly, they would have also had the opportunity to see that it is still the same distance from the side yard to the pool. It is just a question of semantics. I would certainly recommend, should the variance be granted, that it would actually be granting a 7 foot variance as required from the pool line and from the cement it is an additional 4 feet. The total variance would then be 11 feet. You could phrase it in such a way that, in the future, should the Building Commissioner wish to make a ruling, we would be clear on this as to where we would have to go from this point forward. We certainly want to get more detailed drawings in these applications because, had the drawing of the concrete been explicit in the drawing, it would have been clear that the Building Commissioner had reviewed it as such and was of the opinion that it had complied.

(BZA10-03) Mr. Pools / Robert Jones and Michael Biegacki continued...

Ms. Vozar: Mr. Chairman, if I could address the applicant. Is the applicant willing to amend their variance to request an additional 4 foot to include the concrete pad around the pool so that the variance from the side yard to any structure, including the walkway, would be an 11 foot variance?

Mr. Biegacki: Your definition of "structure" includes concrete, is that correct?

Ms. Vozar: The walkway.

Mr. Biegacki: What if we went with pavers or a small gravel stone?

Mr. Jones: Something that is not a permanent structure?

Mr. Biegacki: That would allow the pool to be located there but it would not be a permanent structure around it.

Mr. Jones: Like grass.

Ms. Vozar: I am sorry, what would it be?

Mr. Biegacki: It would be like gravel or grass or pavers – something that could come out.

Mr. Jones: Something that would not be a permanent structure.

Ms. Vozar: The way that your application has been presented ... if what you are telling us is that right now there is going to be no structure next to that pool, on that side, you could then leave the variance the way that it is. Indicate that to the Board and the variance would then read that way. If you would later decide to place the concrete you would then have to come back before this Board.

Mr. Biegacki: Then on that one side what we would do is put down some type of removable pavers or something that would not be considered a structure. I would still need a variance from that one side though.

Ms. Vozar: You would need a variance of 7 foot if you put your pool there. The Board is not going to make a determination as to what is not a "structure". If what you are requesting is for this Board to grant you a 7 foot variance from your pool line - the Board could move forward with that tonight. The Board cannot make a determination for the Building Commissioner as to what a "structure" is. So whatever you put next to that has to comply with the Code.

Mr. Jones: I have a question. This meeting was set up for us to come and present our case. I understand that we did not have a "structure" that was shown on the application. It was actually unclear as to who would be doing the cement at the time that this was drawn up. At that time I believed that I was just installing the pool and that does happen quite a bit, where someone else does the fencing and cement work. As the Commissioner is not here and I was not aware that he had to be here at this meeting to approve these type of plans – where does that leave us besides waiting another month from now to resubmit plans and waiting to see if his wife agrees with this temporary type of structure at the side of the pool. It does not make sense to me that you are going to make this poor man and his family have an ugly looking deck.

Ms. Brinkman: I am only speaking as the person who is going to be taking over as Secretary to the Board of Zoning Appeals and as the person who will then be transcribing the Minutes for this meeting. If I understand you correctly Donna, if they wish to amend the motion tonight they would actually be allowed the same thing as what they are

(BZA10-03) Mr. Pools / Robert Jones and Michael Biegacki continued...

Ms. Brinkman continued...

requesting here but the motion would read just 4 foot over to include the decking because it is included as a structure; therefore, making the variance, rather than 7 feet less than the required, it would be 11 feet less than the required side yard setback. Do I understand that correctly? You could vote on that tonight?

Ms. Vozar: Yes, that was what the applicant was advised.

Ms. Brinkman: I hope that the applicant understands that that would be what he is actually proposing right now and that it is just the wording that would be different. That is all that would be different. The proposition would be the same. The pool wall would still be 8 foot from the property line and the decking would be another 4 foot over.

Ms. Vozar: Yes.

Ms. Brinkman: You would then be allowed to place the pool in the area that you are requesting. I did not think that the applicants had understood that.

Mr. Jones: I did not understand that. I had thought that you wanted us to move the pool to accommodate ... then we would be way too close to the porch again. I stand corrected. I did not understand.

Ms. Vozar: The Chairman indicated that, if you wanted to, you could amend your application to extend your variance so that you would have the exact drawing that you submitted with your 4 foot of concrete. Again, the Board will take that into consideration. I am not saying that the Board will be granting it. We are asking if you would want to amend your application from a 7 to an 11 foot variance. What they are taking into consideration is that the concrete, which is not in the drawing, is now testified to and will increase the variance. Is that what you are submitting to this Board tonight?

Mr. Jones: I am still not clear so I have a question for that. So you are stating that from the property line to the concrete it will be 11 feet?

Mr. Price: No.

Ms. Vozar: The variance that you would be requesting is 11 foot.

Mr. Jones: From where?

Ms. Vozar: The property line. You are getting confused. The setback from the property line must be at least 15 feet per the Code.

Mr. Jones: Correct.

Ms. Vozar: You are requesting a 7 foot variance today as it stands right now. You are saying that you need an additional 4 feet of concrete. Is that correct?

Mr. Jones: Yes.

Ms. Vozar: The 7 foot variance that you are currently requesting and the extra 4 foot of concrete makes it 11 foot. So you would now be asking for an 11 foot variance. It is the same thing that you submitted.

Mr. Jones: Which is what she said earlier. Nothing is changing except the way that you say it.

(BZA10-03) Mr. Pools / Robert Jones and Michael Biegacki continued...

Ms. Vozar: The variance is now 11 foot from the property line rather than the 7 foot. If you just look at the walkway - that is where you get the 4 feet. It is where you are measuring it from.

Mr. Jones: (After brief discussion with the homeowner) We are willing to amend the application.

Ms. Vozar: You do understand that should the Board vote this down you would have to come back for a reconsideration should you want to change your plan.

Mr. Jones: Yes.

Ms. Vozar: The variance is now 11 foot from the property line rather than the 7 foot. If you just look at the walkway - that is how you get the 4 feet. It has to do with where you are measuring it from.

Mr. Jones: So we would be leaving everything as was submitted.

Ms. Vozar: You do understand that if the Board votes it down you would need to come back for reconsideration if you would want to change your plan.

Mr. Jones: I understand.

Mr. Jankovsky: Mr. Jones, does that 4 foot walkway have anything to do with the structural integrity of the pool?

Mr. Jones: No. The pool has a free standing structure and an A-frame and deck supports which support the pool itself and the cement.

Ms. Mastronicolas: So I think that we have established that outside of the pool there will be 4 foot of concrete, which would leave 4 feet of grass outside of that and then the property line. The concern would be runoff from the pool. Will that 4 foot of grassy land be able to handle that?

Mr. Jones: Let's talk about that. It is always misunderstood at this point - the yard now handles the water flow that it has. Whatever comes from the sky now will be trapped in the pool so there will be a lot less water flow. Whatever is on the deck that runs off will go into the immediate planting of grass or vegetation which will absorb that water.

Ms. Mastronicolas: The only reason that I asked this is because I do recall that there was a low spot where there was water standing.

Mr. Jones: There had been a pool there.

Ms. Mastronicolas: That would be a concern with that walkway being so close to the property line - we would not want this runoff to affect the neighbor.

Mr. Jones: The amount of water that will come off of that 4 foot deck, seeing that the 512 sq. ft. will be absorbing whatever falls out of the sky at this point because it will be in the pool, you will no longer have that traveling of water onto the ground. There will actually be less runoff into the yard.

Ms. Mastronicolas: Okay. Thank you.

Mr. Price: If we could just summarize all of this here. You wanted the pool to be placed in a location that would have been 8 feet from the property line.

Mr. Jones: Correct.

(BZA10-03) Mr. Pools / Robert Jones and Michael Biegacki continued...

Mr. Price: That did not include a 4 foot concrete walkway as it is now understood.

Mr. Jones: Correct.

Mr. Price: So that is going to move that walkway 4 feet closer to the property line.

Mr. Jones: Correct.

Mr. Price: So that makes the variance 11 feet - the 7 feet originally requested and an additional 4 feet due to the walkway which needs to be viewed as a part of the pool. Is that correct Donna?

Ms. Vozar: Yes, according to our Code it is. It is a pool structure.

Mr. Price: So you would be leaving the pool in the location that you had anticipated from the beginning except for the fact that you will be the proper distance back from the deck and you would still be the same distance from the side yard.

Mr. Jones: The pool will be 20 feet from the house and 10 feet off of the existing fence which would be 19 feet from the rear line. The concrete decking will be 4 foot from the side lot line.

Mr. Price: Okay. So we want to change the original 7 foot variance requested to 11 foot. Donna, how do we withdraw the original motion that was made?

Ms. Vozar: Whoever made the original motion can withdraw it.

Moved by Mr. Ranucci, seconded by Ms. Mastronicolas to **withdraw the previous motion regarding the required side yard setback.**

Ms. Vozar: We then need to make a motion to amend the variance to 11 feet less than the required side yard setback.

Mr. Price: Would that be agreeable with the applicant?

Mr. Biegacki: Yes.

Mr. Jones: Yes.

Mr. Price: May I have a motion.

Moved by Mr. Ranucci, seconded by Ms. Mastronicolas to **amend the second variance request and approve a variance of 11-feet less than the required side yard setback as prescribed in Section 1270.27 (b)(1)(E) of the Zoning Code with regard to this in-ground pool.**

Mr. Price: Is there any further discussion?

Mr. Ranucci: When I came in tonight it was my recommendation that we move the pool back since there was more room in the back yard. We accomplished that by the applicants agreeing to meet the setback requirement relating to the distance of the pool from the dwelling. With regard to the side yard location of the pool and the interpretation of the concrete as a structure – the pool will remain as it was originally requested. The essential character of the neighborhood will not change. It will not affect governmental services. It will allow the applicant to have beneficial use of his property; therefore, I will be approving this variance of 11 feet.

Ms. Mastronicolas: Mr. Chairman, I too will be approving this request for a variance.

(BZA10-03) Mr. Pools / Robert Jones and Michael Biegacki continued...

Mr. Jankovsky: I have no problem with this. I will be voting “yes”.

Mr. Price: I am of the same opinion. None of the neighbors have raised any objections. The pool is, as far as location and from a realistic standpoint, in the same place as the original application except for the fact that the pool has been moved further back toward the rear to eliminate the other variance. I do not think that it will affect any governmental services. The aesthetics of the neighborhood will not be impaired.

Ms. Vozar: Mr. Chairman, if I may state the findings of fact and conclusions of law for the Board’s consideration. The applicant was present here tonight, along with his representative, who testified regarding the need to preserve the yard for other uses. They presented evidence, including photographs, Exhibits 1-5, which were presented. There was considerable testimony regarding the location of the pool and the reason for its placement. After consideration of the testimony, including the applicant’s withdrawal of Variance #1, the Board has determined that a practical difficulty has been established. They have now established that an 11 foot variance with regard to the side yard setback would be required as prescribed under Section 1270.27 (b)(1)(E). It does establish practical difficulty for the following reasons. It is the minimum variance that will make possible use of the land. There is no substantial detriment to the neighborhood. The character of the neighborhood will remain intact. No governmental services will be affected. The property owner cannot correct this situation without the granting of the variance. As such, the Board finds practical difficulties. Is there anything else the Board wants to add to that?

Mr. Price: Any additions? Call the roll.

Mr. Jankovsky: Yes.

Mr. Ranucci: Yes.

Mr. Price: Yes.

Ms. Mastronicolas: Yes.

Ayes – all. Nays – none.

**Variance granted (4-0).**

Mr. Price: Anything under “miscellaneous”? I would like to say that we are sorry to be losing our secretary. We are going to miss her. Good luck on your new venture with the Planning Commission. Lynn, welcome aboard. May I have a motion to adjourn.

Moved by Mr. Ranucci, seconded by Ms. Mastronicolas to **adjourn the B.Z.A. meeting of March 22, 2010.**

Ayes – all. Nays – none.

**Motion carried.**

The Board of Zoning Appeals Meeting adjourned at 8:32 p.m.

Approved: \_\_\_\_\_  
Chairman

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

Attest: \_\_\_\_\_



