**ZONING BOARD OF APPEALS**

**MINUTES FOR December 9, 2021, 6:00 PM**

Board Members Present: Suzanne Jafferian, Clerk Ethan Stiles, Chair Colleen Thompson  
Alternate Members Present: Dave Alberti, Carolyn Decristofano  
Members of the Public Present: Applicants Donna and Richard Fratus (herein called the applicant or applicants), Fratus guest (name not acquired)

NOTES:

* This meeting was conducted in-person in the Town House Deborah Sampson room. Board members and guests will be referred to by their initials in the minutes.
* ACTION ITEMS: **In bold print**

**OPENING:** Due to a member’s unforeseen delay, CT opened the business portion of the meeting at 6:20 PM by introducing the Board members and alternates.

**GENERAL BUSINESS:** CT confirmed that for the sake of continuity, ES would remain as Chair for the continuance of the Fratus Hearing.

**RICHARD AND DONNA FRATUS** - HEARING TO ACQUIRE A VARIANCE OF THE SETBACK BYLAW FOR A RETREAT LOT, Case 21-1026. At 6:25PM, Acting Chair ET continued the Fratus hearing and noted the voting members of the Board and the attending alternates.

ES reported that he checked the Fratus property records at the Plymouth County Registry of Deeds, both recorded and registered, and in the Plympton Building Department. No restrictions or variances were found on the property. There is nothing from the past to impact the present work. The house was built in conformance with the appropriate setbacks.

The applicants were asked if they had the requested letter from the children’s doctor to support the medical necessity of the pool. DF stated that the letter had been requested but that the time was too limited for that to be provided for this meeting.

The applicants provided five plans, numbered 1-5, (see pages 4-8). ES asked them to explain the different options.

1. Original design supplied with the application.
2. Moved garage/shed out of the setback area.
3. Incorporated #2 plus moved pool and pump house closer to the garage/shed
4. Incorporated #2 and #3 but with pump house moved to other end of pool
5. Incorporated #2 and #3 but also moved pool closer to the residence

The Board accepted Drawing #2 and acknowledged that the structure no longer requires a variance.

Focusing primarily on Plan #5, the applicants were asked:

1. If the 20’x40’ “pool” included the cement skirt surrounding the actual pool. Answer: It does not. The Board noted that this area should also be considered as a structure infringing on the setback area. This area will be considered in the discussion and decision. It was decided that the skirt on the south and west sides could not be any wider than 5’.
2. Would they consider withdrawing the application since it is possible that the setback distance may be considered for amendment by the Bylaw Review Committee. Answer: The applicants prefer to go forward now since they hope to install the pool for use in the coming summer.
3. About the limited number of months during which the children could benefit from the pool. Answer: Both the applicants and some committee members felt that the pool could likely be used for a minimum of four months which would provide significant benefits to the children.
4. Whether the pool could be made smaller. Answer: Both children are nearly adult size at age 10, so the applicants believe that a smaller pool would constrain comfortable and amicable use by the children.
5. Whether the pool could be placed closer to the residence. Answer: The pool could not be moved closer without infringing on the entrance stairs. Any location on this side of the residence would be in violation of the setback.
6. Whether the pool could be moved elsewhere on the property with security cameras installed to allow for supervision of the children. Answer: The only other feasible location would necessitate the removal of many trees and cutting into the hill to create an area suitable for installation.
7. Whether the applicants had considered an above-ground pool. This would allow the variance to be subject to the removal of the pool if/when the property is sold. Answer: An above ground pool was not considered. The same issues would be in effect for this type of pool except for the Boards ability to tie the variance to these particular owners.

CT moved to close the evidence portion of the hearing and move to deliberation. ES seconded. Motion passed 3:0

The Board clarified that we are considering Amended Plan #5 with the following conditions:

1. The skirt on the south and west sides of the pool shall be no greater than 5’.
2. The building identified as a garage (but referred to as a shed by the applicants) must be at a location complying with the existing bylaw’s 100’ setback requirement.

The applicant was asked to sign Plan #5, as conditioned by the above, to acknowledge that this is the design that must be used if/when the project moves forward. Mr. Fratus signed.

Points of Deliberation:

1. A discussion about what constitutes “hardship”. Concluded that the decision should include a clear definition of our understanding of hardship as it pertains to this case.
2. It was noted that in a previous similar hearing, Town Counsel advised the Board that there is legal precedence for the granting of a variance in a case that involves the potential safety of a child. Outside of legal precedence, the Board affirmed that it considers each application separately without reliance on any perceived precedence from similar variance hearings.
3. The medical necessity of the pool was again discussed. Applicant will provide the letter of support from the children’s doctor.

CT moved to that the Board vote on the three findings required for the granting of a variance. ES seconded. Motion passed 3:0

VOTE:

On #1 Finding – Soil, Shape or Topography: Roll call vote: SJ yes, CT yes, ES yes

On #2 Finding – Hardship: Roll call vote: SJ yes, CT yes, ES yes

On #3 Finding – Public Good: Roll call vote: SJ yes, CT yes, ES yes

**By the unanimous positive vote on all three findings, the Board hereby grants the variance as conditioned on plan #5 and subject to the receipt of the medical letter of support.**

Acting Chair ES closed the hearing. The process for the decision and waiting period was explained to the applicant.

**ES will write the Decision. The Board agreed to meet on December 16 to review/amend/approve the Decision.**

The applicants left the meeting at approximately 8:05.

CD suggested that it may be a good idea to have some sort of public information campaign or articles in the local newspaper to explain the different aspects of the work of the ZBA and the requirements for acquiring a variance, special permit, etc.

CD also suggested that we should look into a way to make the house lot drawings for any property on the market show the current setbacks. This would help people know that even though it looks like they have space for various structures, the location of those things must in accordance with the setback bylaws. The Board agreed that this is a good idea, but we are not sure if it could legally be required and who would need to provide this drawing. It would seem that the realtor would need to be involved and possibly the Assessors’ office. This will take more thought, research, and action.

At some point the Board wondered if CT’s bound paper copy of the bylaws and the file on the Town’s website are the most up to date. **CT will contact the Clerk to research this.**

CT moved to adjourn the meeting at 8:15. ES seconded. Motion passed 3:0

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