



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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DECISION

ZBA CASE NO. 13-21

PROPERTY LOCATION: 2 Hawthorne Circle

PETITIONER & PROPERTY OWNER: Robert Wales

RECORDED WITH WORCESTER REGISTRY OF DEEDS: Book 19341, Page 200

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This document is the DECISION of the Northborough Zoning Board of Appeals on the petition Robert Wales for a Special Permit, Groundwater Protection Overlay District, to allow an in-ground pool to be located less than the required distance from a side property line on the property located at 2 Hawthorne Circle, Map 94, Parcel 180.

APPLICATION

1. On October 22, 2013, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining a Special Permit per Section 7-08-020B, Special Permit Required, of the Northborough Zoning Bylaw to allow a proposed non-conforming in-ground pool to be located less than the required distance from a side property line on the property located at 2 Hawthorne Circle in Groundwater Protection Overlay District Area 1.
2. Notice of the public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on November 11, 2013 and November 18, 2013, and mailed to abutters and parties in interest on October 28, 2013.

EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

1. Application for Hearing before the Zoning Board of Appeals, including:
 - a. A Quitclaim Deed for 2 Hawthorne Circle, recorded at the Worcester District Registry of Deeds on November 11, 1997, Bk: 19341 Pg: 200;
 - b. A certified abutters list for parcels 300 feet from 2 Hawthorne Circle, including a cover sheet signed by Susan M. Reagan, for the Town of Northborough Board of Assessors, September 18, 2013; and a Northborough, MA GIS Viewer map for 2 Hawthorne Circle, dated 9/17/13;
 - c. A plan entitled "Certified Plot Plan", Owner: Robert Wales, Town: Northboro, Mass, Street: #2 Hawthorne Circle, dated January 10, 2002, signed and stamped by Robert W. Hart, Registered Land Surveyor;
 - d. A plan entitled "INTERPOOL", stamped and signed by Donald P. Schlachter, Civil Registered Professional Engineer, dated 10/11/13; and
 - e. A completed 2-page form entitled "Calculation Sheet for Increase to Impervious Surface: Groundwater Protection Overlay District" signed by Applicant Sharon A. Wales on 10/22/13 and Building Inspector Frederick J. Lonardo on 10/22/13.
2. A hard copy of an email message from Cheryl Eder, 28 Longfellow Road, to Debbie Grampietro, sent Friday, November 1, 2013 Subject: variance for pool at 2 Hawthorne Circle in opposition to the application;
3. A letter to Town of Northborough Zoning Board of Appeals from David and Joyce Teggart, 41 Longfellow Road, dated November 15, 2013, in opposition to the application;
4. A hard copy of an email message from Pat Faldetta, 32 Longfellow Road, to Debbie Grampietro, sent Sunday, November 24, 2013, Subject: 2 Hawthorne Circle in support of the application;

5. A letter to Town of Northborough Zoning Board of Appeals from David and Catherine Upton, 13 Hawthorne Circle, dated November 24, 2013, in support of the application; and
6. A letter to Town of Northborough Zoning Board of Appeals from Judy Boyle, 10 Hawthorne Circle, dated November 25, 2013, in support of the application;

HEARING

Applicant Robert Wales presented the Application at a duly noticed public hearing of the Board on November 26, 2013 in Conference Room B of the Northborough Town Hall. Voting board members Fran Bakstran, Richard Rand, Richard Kane, Mark Rutan and Robert Berger; and non-voting alternate members Jeffrey Cayer and Brad Blanchette, were present throughout the proceedings.

Mr. Wales explained he is seeking a Special Permit to install an in-ground pool in the back yard of his property at 2 Hawthorne Circle that will be located 9 feet from the side property line shared by 2 Hawthorne Circle and 41 Longfellow Road. In addition, a septic system is located on the other side of the back yard and therefore Mr. Wales is unable to locate the pool in any other area of the yard. The proposed location of the pool will allow it to be a reasonable distance from his garage, and will also allow ample room on all sides for walking around the pool. Mr. Wales noted the pool will be entirely fenced-in. He stated the proposed use of a pool on his property is not going to change the current residential use and will not be detrimental as there are many other people in the neighborhood who have pools.

Abutters Joyce Teggart, 41 Longfellow Road; Paula Moore, 20 Longfellow Road; and Kathleen & Brian Smith, 29 Longfellow Road, were present and expressed opposition to the project.

The Board received correspondence in support of the project from Pat Faldetta, 32 Longfellow Road; David & Catherine Upton, 13 Hawthorne Circle; and Judy Boyle, 10 Hawthorne Circle.

The Board received correspondence in opposition to the project from Cheryl Eder, 28 Longfellow Road and David & Joyce Teggart, 41 Longfellow Road.

The hearing was closed on November 26, 2013.

FINDINGS OF FACT

1. The subject property at 2 Hawthorne Circle is located in the Residential C District and Groundwater Protection Overlay District Area 1.
2. The subject property is .48 acres in size. In Groundwater Protection Overlay District Area 1, the required lot size is 80,000 square feet. Therefore, the subject property is non-conforming and the existing single-family home on the property is a non-conforming structure. The in-ground pool as proposed will be an extension of the non-conformity of the single-family home.
3. In the Residential C District, the minimum required distance of a structure to a side property line is 15 feet. The Applicant proposes to locate an in-ground pool 9 feet from the side property line on Longfellow Road. Therefore a Special Permit is required from Section 7-08-02B, Non-Conforming Uses and Structures, Special Permit Required, which states: *"The Zoning Board of Appeals may grant a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing non-conforming structure to the neighborhood, and in making such determination the Zoning Board of Appeals shall consider whether the proposed use is different in character or in its effect on the neighborhood or on property in the vicinity."*
4. The subject property is located on the corner of Hawthorne Circle and Longfellow Road and therefore it has two front yards and two side yards. The side yard that is shared by 2 Hawthorne Circle and 41 Longfellow Road is in the rear of the house on the subject property and that area is used as a back yard by the Applicant.
5. A septic system, located on the opposite side of the subject property from the proposed location of the in-ground pool, limits the Applicant's options for the locations on the lot on which he can install the pool.

6. Currently fencing and bushes run the length of the side property line shared by the subject property and 41 Longfellow Road, and fencing also extends from the rear corner of the house to the same shared property line. In addition, bushes run the length of the other side property line.
7. The subject property is in the Residential C District and includes properties on Hawthorne Circle and Longfellow Road. Currently, an in-ground pool is located in the rear of the property at 41 Longfellow Road, which abuts the subject property at 2 Hawthorne Circle; there is another pool on Longfellow Road; and 4 pools on Hawthorne Circle, all of which are in close proximity to the subject property.
8. The addition of an in-ground pool will not change the existing residential use on the subject property, and therefore the proposed use is in substantial harmony with the purposes of the Northborough Zoning Bylaw.
9. The subject property in a residential neighborhood, with the use of pools on other lots throughout the neighborhood in close proximity to the subject property, and is an appropriate location for the proposed use of an in-ground pool.
10. The Applicant will supplement the existing fencing and bushes on the subject lot with 6-foot cedar fencing to ensure the pool is completely fenced-in. In addition, the pool will be placed in a location that is a safe distance from his garage and house, and that will allow ample space to walk around all sides of the pool safely. Therefore, the use as developed will not adversely affect the neighborhood and there will be no nuisance or serious hazard to vehicles or pedestrians.
11. The proposed non-conforming in-ground pool on the subject property at 2 Hawthorne Circle, located less than the required 15 feet from the side property line shared by 2 Hawthorne Circle and 41 Longfellow Road, will not be substantially more detrimental to the neighborhood than the existing non-conforming single-family home on the subject property.
12. The proposed use of a non-conforming in-ground pool located less than the required 15 feet from the side property line shared by 2 Hawthorne Circle and 41 Longfellow Road, is no different in character than the other residential lots in the surrounding neighborhood, many with in-ground pools, or in its effect on the neighborhood or on property in the vicinity.

DECISION

1. On November 26, 2013, after due consideration of the Application, the Board voted 4 in favor, 1 opposed to **GRANT** a **SPECIAL PERMIT** per Section 7-08-020B, Non-Conforming Structures and Uses, Special Permit Required, of the Northborough Zoning Bylaw, to allow a proposed non-conforming in-ground pool to be located 8 feet from the side property line shared by 2 Hawthorne Circle and 41 Longfellow Road on the property located at 2 Hawthorne Circle.
2. Appeals, if any, from this decision shall be made pursuant to Massachusetts General Laws, Ch. 40A, Sec. 17 and shall be filed within twenty (20) days after the date of filing of this decision in the office of the Town Clerk.
3. The SPECIAL PERMIT shall not take effect until a copy of the decision bearing the certificate of the Town Clerk is recorded with the Worcester District Registry of Deeds in accordance with the provisions of Massachusetts General Laws, Ch. 40A, Sec. 11 and 15 stating that "twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed, or if such appeal has been filed, it has been dismissed or denied."
4. If the rights authorized by the SPECIAL PERMIT are not exercised within two years from the time of granting, it shall lapse in accordance with the provisions of Massachusetts General Laws, Ch. 40A, Sec. 10. lapse in accordance with the provisions of Massachusetts General Laws, Ch. 40A, Sec. 10.

TOWN OF NORTHBOROUGH, MASSACHUSETTS ZONING BOARD OF APPEALS



FRAN BAKSTRAN, CHAIRMAN