

**MINUTES OF ZBA SITE WALK  
OF OCTOBER 27, 2009  
APPROVED FEBRUARY 22, 2010**

**PRESENT:** S. Bogert, **Chairman;** P. Lambert, S. Perley, D. Greski, O. Gibbs (Alternate), J. Tivnan (Alternate)

**ABSENT:** R. Tautkus

**STAFF:** S. Saunders, Planning Director

S. Bogert called the meeting to order at 4 pm. O. Gibbs was seated as a full board member for the meeting in the absence of R. Tautkus.

**HEARINGS:**

**Application # 2009-00042  
M. & D. Dragon**

**MSL # 364-404-39  
1261 Old No Main St**

**RS Zone  
Area Variance**

The applicant is requesting an Area Variance from 235-35 (A) in order to install a swimming pool that would infringe upon the front setback of 25'. The property has two frontages.

**Board/Applicant:** The City went out and marked the Right of Way with stakes with pink ties so the ZBA members would know where the area is. Discussion ensued on which trees are located in the ROW and which are on the applicant's property. Those trees were determined.

The applicants staked the proposed pool area and discussed the location of the pool and the layout. They stated that they will plant some evergreens along the Old N. Main Frontage and the area was clarified. The pool will be 15 feet from the property line but will have a 3 foot concrete skirting so it will be located 12 feet from the property line.

S. Perley asked to see the rest of the applicant's property as a pool in a setback does not fit in the character of the neighborhood. After seeing the property, discussed was held on placement of the pool in the back yard. The property owner spoke to the fact that by putting the pool in the back yard, they would be placing it in the shade. The trees on the neighbor's property shade the back yard from 10 am – 4 pm. D. Dragon said she could cut her own trees but not the neighbors. Even if the neighbors agreed to cut them it would be very expensive. The applicant stated they will not build the pool in a shaded area – not in New Hampshire with such a short season anyway.

S. Bogert opened the hearing to the public.

**Abutter:** A. Kaligian spoke to the noise factor. She stated that the existing hot tub in the yard is already a concern in the neighborhood because of noise.

The board had a discussion on moving the pool closer to the house and D. Dragon said there is no sun in the area.

S. Bogert closed the hearing to the public.

**Board:** P. Lambert stated there is too much property here for the applicant to request a variance. This is a large lot and a pool could be situated elsewhere. S. Perley agreed, stating criteria # 2, which states that the benefit sought cannot be achieved by another reasonable method; they can achieve this.

**Motion:** P. Lambert moved to deny application # 2009-00042 for an Area Variance. He stated that there are no special conditions existing on the property. The benefit sought can be achieved by another reasonable method. Placing the pool in the side setback would be contrary to the public interest and the granting of the variance would not be consistent with the spirit of the ordinance. Substantial justice would not be done by granting this variance. Values of properties in the neighborhood would not be diminished by placing the pool in the side area.

S. Perley seconded and all voted in favor of denial, -0, for the following reasons:

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- a) **Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship.** No special conditions exist here as there is ample room on the property for a pool.
- i. **An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property;** Special conditions do not exist here as there is room on the property for a pool to be placed elsewhere and the ZBA cannot consider the amount of sunlight that the pool would get as a special condition; **AND**
- ii. **The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance;** The board disagrees with this statement as the pool could be placed elsewhere on the property without the granting of a variance; **AND**
- (b) The variance will not be contrary to the public interest;** Placing the pool at the side of the residence will have an impact to the public as it could be a noise factor and is not consistent with the rest of the neighborhood; **AND**
- (c) The variance is consistent with the spirit of the ordinance;** The granting of the variance will not be consistent with the ordinance; **AND**
- (d) Substantial justice is done;** No substantial justice would be done by granting this variance; **AND**
- (e) The value of surrounding properties will not be diminished;** The board determined that placing the pool on the side of the property would not diminish values of surrounding properties.

**ADJOURNMENT:** The motion to adjourn was made by P. Lambert with O. Gibbs seconding. All voted in favor and the meeting adjourned at 4:45 pm.

Submitted by:

Kristine Y. Snow, Zoning Technician