

Brentwood Board of Adjustment Minutes May 22, 2023

Members Present: Chairman Doug Cowie, Vice Chair Ken Christiansen, Frank Albert, ~~Regan Elliot~~, Russ Kelly – Selectboard Rep

Cowie opened the meeting at 7:00 pm and explained the procedures to those present.

Christiansen motioned to give Benedix voting rights this evening, Albert seconds, all in favor, motion carries. Kelly will not be voting this evening.

Public Hearing: 7:00 pm: Variance Application: Applicant/Owner: Timothy and Melody Santos. Applicant requests a variance from Article III, Section 300.002.006.006 of the zoning ordinance to allow the installation of an in-ground pool, associated patio, and equipment to be within 47' of the centerline of Gove Road and pool equipment within 63'11" of the centerline of Ole Gordon Road where 75' is the required setback. The property is located at 7 Ole Gordon Rd, 214.109.000.

Applicants Timothy and Melody Santos are present this evening to speak to the Board.

Abutters present include Doug Finan of Gove Road.

Santos spoke to Board regarding the installation of a pool on his diamond shaped, corner lot that is subject to 2 setbacks, 75' from the centerline of the roads. Santos states that the pool will be at grade and therefor will not obstruct any roadway activity. There are no public services or utilities that would be negatively impacted by the installation of a pool. The Santos Family worked with Rye Beach Landscaping to find the best and safest location for this pool.

Cowie asked if any abutters present had any comments or concerns. Finan stated that he had no issues with this plan.

Cowie asked if the Board had any questions.

Santos went through the 5 criteria they have provided to support granting the variance.

1. ***Granting the variance would not be contrary to the public interest:*** Santos states that the pool is a common and desirable feature for many residential properties and is not harmful or disruptive to the public. He also states the proposed location would not be visible from the road with corresponding fencing and landscaping, and therefore would not disrupt roadway activity.
2. ***If the variance were granted, the spirit of the ordinance would be observed because:*** The setback variance is not being sought for the purpose of circumventing the public safety or welfare requirements of the ordinance but to allow for the reasonable use of the property.
3. ***Granting the variance would do substantial justice because:*** The proposed use of the property would enhance the enjoyment of the property for the owners and their family. The proposed use will allow the homeowner to make use of the entirety of a uniquely situated property in a manner that is consistent with the existing residential nature of the area.
4. ***If the variance were granted, the values of the surrounding properties would not be diminished:*** Santos states that a well maintained pool can add value to a property and be a desirable feature for future homeowners. Santos further states that the pool will not cause any noise, odor or other nuisances that would negatively impact the surrounding properties. The full proposed plan will increase the overall curb appeal of the home and therefore the positive perception of the neighborhood.
5. ***Unnecessary Hardship: A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:***

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- i. *No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:* The property is a corner lot and as such is uniquely being asked to assume a cumbersome 75' setback from two road frontages on the northern and eastern side of the property. Furthermore, the more eastward position of the house and western location of the septic system on the diamond shape lot further limits the available land on the 1.2 acre plot for the proposed purpose. Finally, when the two points above are considered along side the slope/grade of the land, safety for existing and future occupants, the existing/convenient land uses, sight lines from the house, and sun exposure without further tree removal, the proposed pool location is the only reasonable option left to the homeowner.

And

- ii. *The proposed use is a reasonable one because:* The proposed use is consistent with the residential nature of the neighborhood and the property, which includes other homes with pools. The installation of a pool will provide recreational amenity for the property owner and their family, which is a common and desirable feature in many residential properties. The proposed pool and plan will have no unique impact on the streetscape and neighboring properties.

B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. The variance is being sought due to unique circumstances of the property (two frontages, shape, topology, location of septic system, etc.) that distinguish it from other properties in the area. Those circumstances make strict conformance with the setback requirements unreasonable. Denial of the variance would result in a financial burden, loss of enjoyment of the property for the homeowner, and discourage a reasonable use of the land without providing any significant benefit to the public or surrounding properties. Resulting in unnecessary hardship.

Chairman Cowie opened the meeting up for public comment. There were no other questions or comments from abutters or board members.

Christiansen motions to grant the variance, Albert seconds, Kelly abstains, all others in favor, motion carries.

Public Hearing: Variance Application: Applicant/Owner: James M. Lavelle Associates/George Sanborn and Linda Scarfogliero. Applicant requests a variance from Article III, Section 300.002.006.005 of the zoning ordinance to allow 60' of frontage where 200' of frontage is required for a 5 acre lot. Property is located at 59 Deer Hill Rd, 206.090.001A.

Applicants George Sanborn and Linda Scarfogliero were present with their land surveyor, James Lavelle, to speak to the Board.

Lavelle spoke to the Board regarding Sanborn and Scarfogliero's property. Lot 206.090.001 is a 7.58 acre lot with approximately 260 feet of frontage. Sanborn and Scarfogliero would like to subdivide this lot into 2 parcels, one with 200' of frontage and 2.47 acres and the other would be 5.11 acres with 60' of frontage. The Sanborn family has owned this property for quite some time, at one point there was a large barn there but that burned down years ago, the foundation still remains. The existing roadway to the back portion of the lot where Sanborn's shop is located has been there since 1932.

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Lavelle went through the 5 criteria they have provided to support granting the variance.

1. *Granting the variance would not be contrary to the public interest:* It would allow for the continued use of the 7.58 acres as originally intended. By allowing a subdivision creating 2 lots, the “front lot” having the required 200 feet and the “back lot” with 60 feet of frontage, continuing the existing driveway to the existing barn and shop for a proposed dwelling of the proposed lot containing 5.11 acres. This would not be contrary to the public interest as it presents no change to the area.
2. *If the variance were granted, the spirit of the ordinance would be observed because:* If the variance were granted the spirit of the ordinance would be observed as the frontage requirement is in place to prevent overcrowding, in this special case there is none.
3. *Granting the variance would do substantial justice because:* Granting the variance would do substantial justice because it allows for a reasonable use of the property.
4. *If the variance were granted, the values of the surrounding properties would not be diminished:* If the variance were granted there would be no diminution of the surrounding property values, as the value of this property will be increased, which would benefit the value of the area.
5. *Unnecessary Hardship: A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because.*
 - i. *No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:* Mr. Sanborn has used this building on the proposed 5+ acre lot for years and would like to continue its use and would like to construct his home now in this area and these existing conditions are distinguished from others in the area.
 - ii. *The proposed use is a reasonable one because: B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.* It is a reasonable continued use of the property.

Christiansen asked if each lot would have their own driveways, Sanborn stated they would. Seth from Deer Hill was the only abutter present; he is in support of this proposal as he believes it will enhance the value of this property and of those around it. The Board discussed the maintenance of the driveway to the back lot as it will be/is a long driveway, it was suggested the Board include this in the conditions as well as the need for 1 driveway/lot. The Board also discussed the future development of this property and asked if Sanborn intended to subdivide the property further, Sanborn and Scarfogliero agreed that they do not intend to subdivide or develop the land for any use other than a single family home.

Motion made by Albert to grant the variance with three (3) conditions, these lots are intended for single family homes, 1 per lot, the Town does not bear any responsibility of maintaining the driveway, there will be 1 driveway per lot, (no shared driveways), Christiansen seconds, Kelly abstains, all others in favor, motion carries.

Board Business.

Motion made by Christiansen, 2nd by Albert to approve the minutes of February 27, 2023, Kelly abstains, all others in favor, motion carried.

Christiansen motions to appoint Cowie as Chairman, Albert seconds, Kelly abstains, all others in favor, motion carries.

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Benedix motions to appoint Christiansen as Vice Chairman, Albert seconds, Kelly abstains, all others in favor, motion carries.

Motion made by Christiansen, 2nd by Benedix to adjourn all were in favor.

Respectfully Submitted,

Jillian Benedix
Administrative Assistant