



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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DECISION

ZBA CASE NO. 20-03

PROPERTY LOCATION: 121 Hudson Street

PETITIONER and PROPERTY OWNER: Scot Dunnet & Norene V. Cooley

Recorded with the Worcester District Registry of Deeds: Bk: 40254 Pg: 384

This document is the **DECISION** of the Northborough Zoning Board of Appeals to consider the petition of Scot Dunnet for a Variance to allow a replacement above-ground pool to be located less than the required 15-feet (4-feet) from a side-yard setback. The pool was installed, but the property was split via an "Approval Not Required" plan at a later date and the setback discrepancy was not flagged as an issue to address. The subject property is located at 121 Hudson Street, Map 46, Parcel 1, in the Residential C District and Groundwater Protection Overlay District Area 2.

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 20A, S18, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, this meeting of the Northborough Zoning Board of Appeals was conducted via remote participation.

APPLICATION

1. On January 17, 2020, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals to consider the petition of Scot Dunnet for a Variance to allow a replacement above-ground pool to be located less than the required 15-feet (4-feet) from a side-yard setback, from Section 7-06-030. Table 2, of the Northborough Zoning Bylaw. The pool was installed, but the property was split via an "Approval Not Required" plan afterwards. The subject property is located at 121 Hudson Street, Map 46, Parcel 1, in the Residential C District and Groundwater Protection Overlay District Area 2.
2. Notice of the public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on February 10, 2020; and February 17, 2020; and was mailed to abutters and other parties in interest on February 6, 2020. Because the agenda for the meeting was not posted, the February 25th, 2020 meeting was cancelled and the meeting was changed to the March 24, 2020 scheduled meeting.
3. Notice of the public hearing for the March 24, 2020 meeting was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on March 9, 2020 and March 16, 2020; and was mailed to abutters and other parties on March 2, 2020.
4. The meeting scheduled on March 24, 2020 was cancelled due to the coronavirus.

5. Notice of the public hearing for the July 1, 2020 meeting was published in the "THE WORCESTER TELEGRAM & GAZETTE" on June 16, 2020, and June 23, 2020; and was mailed to abutters and other parties on June 11, 2020.

EXHIBITS

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

Application for Hearing before the Zoning Board of Appeals, including:

- a. A Zoning Interpretation Request Form for 121 Hudson Street, submitted by Applicant Scot Dunnet, signed by Robert J. Frederico, Inspector of Building/Zoning Enforcement Officer, on 8/30/19;
- b. A certified abutters list for parcels 300 feet from 121 Hudson Street, Northborough, MA signed by Julie Brownlee for the Town of Northborough Board of Assessors, and a GIS Viewer Map of the site, titled 121 Hudson Street-300ft abutters, both dated September 3, 2019;
- c. A Deed for 121 Hudson Street, Northborough, Worcester County, Massachusetts, recorded at the Worcester District Register of Deeds on 11/30/2006, Bk: 40254, Pg: 384; and
- d. A 24"x 36" black and white sheet entitled "A Plan in Northborough MA"; Owner: Norene Cooley & Scot Dunnet; Prepared for: Norene Cooley & Scot Dunnet; Dated: October 23, 2019; Prepared By: Guerard Survey Co. & Assoc. Inc.; Signed and Stamped by Paul B. Baptist, Registered Professional Land Surveyor on 10-24-19.

HEARING

Applicants Scot Dunnet and Norene Cooley; and Presenter, Peter Stone, presented the Application at a duly noticed public hearing of the Board on July 1, 2020. Participating Board members were Brad Blanchette, Chairman; Fran Bakstran, Richard Rand, Mark Rutan, Paul Tagliaferri; and Alternate members Leslie Harrison, and Jeffery Leland, and voting members were Brad Blanchette, Chairman; Fran Bakstran, Richard Rand, Mark Rutan, Paul Tagliaferri.

The Applicants and Mr. Stone explained a pool existed in the subject location on the property prior to the lot being sub-divided. After the subject pool failed, a replacement was installed not realizing the location of the property line and the required setback.

The replacement pool was installed, but the property was split via an "Approval Not Required" plan.

Mr. Stone noted he is an abutter to 121 Hudson Street and was the original owner of the house.

No person spoke in opposition of the proposed project; and the board received no letters in opposition of the project.

The hearing was closed on July 1, 2020.

FINDINGS OF FACT

1. The subject property at 121 Hudson Street is in the Residential C District and Groundwater Protection Overlay District Area 2.

2. In the Residential C District, the required maximum distance of a structure (a pool) to a side yard setback is 15 feet.
3. The Applicant is seeking a Variance to allow a replacement above-ground pool to be located less than the required 15-foot (4-foot) from a side-yard setback, per Section 7-06-030, Table 2., Density and Dimensional Regulations, Table 2., Table of Density and Dimensional Regulations, in the Residential C District, of the Northborough Zoning Bylaw; on the property located at 121 Hudson Street, Map 46, Parcel 1.
4. A pool existed in the subject location on the property before the property was sub-divided via an "Approval Not Required" plan. A replacement pool was installed not realizing the location of the property line and the required setback.
5. The soil is sandy gravel and flat for the replacement above-ground 54-inch in height 18-foot round pool.
6. The foundation of a barn is on one side of the property and on the other side of the property is a former septic system.
7. The subject above-ground pool is not a permanent structure.
8. Due to circumstances relating to the existed pool in the subject location on the property prior to the lot being sub-divided; the soil that is sandy gravel and flat for the 54" in height 18-foot round pool; and the foundation of a barn and a former septic on the site; affecting the subject property but not necessarily property in the same zoning district, a literal interpretation of the Zoning Bylaw would involve substantial hardship.
9. The relief sought will not constitute substantial detriment to the public good.
10. The relief sought may be given without nullifying or substantially derogating from the intent or purpose of the Northborough Zoning Bylaw, as the above-ground pool is not a permanent structure.

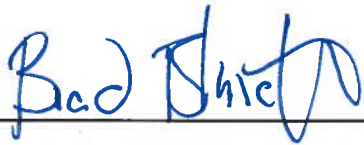
DECISION

1. **On July 1, 2020**, after due consideration of the Application, the Board unanimously voted to **Grant a Variance**, by a roll call vote, to allow a replacement above-ground pool to be no less than 12-feet from the side-yard setback per Section 7-06-030, Table 2., Density and Dimensional Regulations, Table 2., Table of Density and Dimensional Regulations, in the Residential C District, of the Northborough Zoning Bylaw; on the property located at 121 Hudson Street, Map 46, Parcel 1, due to the shape of the lot.
2. The Roll Call vote was taken by the members, as follows:

Brad Blanchette	"aye"
Fran Bakstran	"aye"
Mark Rutan	"aye"
Paul Tagliaferri	"aye"
Richard Rand	"aye"
3. 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.

4. The **VARIANCE** 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."
5. If the rights authorized by the **VARIANCE** is not exercised within one year from the time of granting, they shall lapse in accordance with the provisions of Massachusetts General Laws, Ch. 40A, Sec. 9.

**TOWN OF NORTHBOROUGH, MASSACHUSETTS
ZONING BOARD OF APPEALS**



BRAD BLANCHETTE, CHAIRMAN