



TOWN OF NORTHBOROUGH Zoning Board of Appeals
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NORTHBOROUGH TOWN CLERK
RCUD 2021 NOV 5 AM 10:56

DECISION

ZBA CASE NO. 21-11

PROPERTY LOCATION: 313 Brigham Street

PETITIONERS: David and Christina Mofford

PROPERTY OWNERS: David and Christina Mofford

Recorded with the Worcester District Registry of Deeds: Bk: 60526 Pg 252

This document is the **DECISION** of the Northborough Zoning Board of Appeals to consider the petition of David and Christina Mofford for a Variance for installation of an in-ground pool on the property located at 313 Brigham Street, Map 93, Parcel 29, in the Residential C Zoning District and Groundwater Overlay Protection District Area 1.

Pursuant to Chapter 20 of the Acts of 2021, An Act Relative to Extending Certain COVID-19 Measures Adopted During the State of Emergency, signed into law on June 16, 2021, this meeting of the Northborough Board of Appeals was conducted via remote participation.

APPLICATION

1. On August 2, 2021, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for a Variance for installation of an in-ground pool on the property located at 313 Brigham Street, Map 93, Parcel 29, in the Residential C Zoning District and Groundwater Overlay District Area 1.
2. Notice of the public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on September 3 and September 10, 2021; and was mailed to abutters and other parties of interest on September 1, 2021.

EXHIBITS

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

1. Application for Hearing before the Zoning Board of Appeals, including:
 - a. A Zoning Interpretation Request Form for 313 Brigham Street, submitted by Christina and David Mofford, signed by Robert J. Frederico, Inspector of Buildings/Zoning Enforcement Officer, dated June 10, 2021;
 - b. A certified abutters list for parcels 300 feet from 313 Brigham Street, Northborough, MA prepared by the Northborough Board of Assessors, and a GIS Viewer Map of the site, titled 313 Brigham Street-300ft abutters, both dated July 13, 2021;
 - c. A Deed for 313 Brigham Street Road, Northborough, Worcester County, Massachusetts, recorded at the Worcester District Registry of Deeds on June 10, 2019, Bk: 60526, Page: 252;

- d. An 8.5" x 11" black and white sheet entitled 'Impervious As-Built & Drainage Plan, 313 Brigham Street' prepared by Connorstone Engineering, dated June 7, 2019 and showing an approximate location of the proposed pool;
- e. An 8.5" x 11" black and white map of the property at 313 Brigham Street enlarged to show the approximate location of the proposed pool;
- f. An 8.5" x 11" black and white sheet portraying the dimensions of the proposed pool, pavilion and shed;
- g. An 8.5" x 11" color sheet entitled 'Figure 2-6 Zoning Districts';
- h. An 8.5" x 11" color sheet entitled 'Town of Northborough Groundwater Protection Overlay District Map';
- i. A document comprised of five 8.5" x 11" black and white sheets entitled 'Decision, ZBA Case No. 16-13, 313 Brigham Street', dated November 4, 2016;
- j. An 8.5" x 11" black and white sheet entitled 'Zoning Board of Appeals Certificate of No Appeal for ZBA Case No. 16-13, 313 Brigham Street', dated November 25, 2016;
- k. An 8.5" x 11" black and white letter of support from Mr. and Mrs. Kement, residents at 305 Brigham Street, dated August 23, 2021;
- l. An 8.5" x 11" black and white letter of support from Dr. Chintan Patel and Dr. Anita Krishnarao, residents at 307 Brigham Street, dated August 8, 2021;
- m. An 8.5" x 11" black and white letter of support from Mr. Robert Fleming, Ms. Marjorie Fleming, Ms. Elaine Russo and Ms. Paula Fleming-Boule, residents at 102 Sunset Drive, August 8, 2021;
- n. An 8.5" x 11" set of four black and white sheets entitled 'Summary Statement for 313 Brigham Street';
- o. An 8.5" x 11" set of two black and white sheets entitled 'Prior ZBA Decisions Which Support Our Request for Relief';
- p. An 8.5" x 11" set of three black and white sheets showing an email thread entitled 'Swimming Pool Installation' with communications between Ms. Mofford, Mia McDonald (Conservation Agent) and Robert Frederico (Zoning Enforcement Officer, from August 2019 to June 2021);
- q. An 8.5" x 11" set of three black and white sheets entitled 'Decision, ZBA Case No. 13-21, 2 Hathorne Circle, dated December 17, 2013;
- r. An 8.5" x 11" set of three black and white sheets entitled 'Decision, ZBA Case No. 16-09, 2 Harris Avenue, dated August 2016;
- s. An 8.5" x 11" set of four black and white sheets entitled 'Decision, ZBA Case No. 04-07, 71 Pleasant Street, dated July 13, 2004;
- t. An 8.5" x 11" black and white sheet entitled 'Notice of Conditional or Limited Variance or Special Permit by Exception' for the property located at 71 Pleasant Street, dated June 14, 2004.

2. A memo to the Groundwater Advisory Committee from Fred Litchfield, Town Engineer, regarding the property at 313 Brigham Street, dated September 13, 2021;
3. A memo to Fran Bakstran, Chairman of the Zoning Board of Appeals, from Fred Litchfield, Town Engineer, regarding the property at 313 Brigham Street, dated September 27, 2021.

HEARING

Christina and David Mofford presented an application at a duly noticed public hearing of the Board on September 28, 2021. Participating Board members were Chair Fran Bakstran, Dick Rand, Paul Tagliaferri, Brad Blanchette, Mark Rutan, and Alternate Suzy Cieslica.

Ms. Mofford explained that she and her husband purchased their property in 2019 as new construction. The lot had been created in 2016 through a Zoning Board of Appeals dimensional variance which divided a larger lot into two, resulting in one conforming lot and one non-conforming lot; theirs is the latter. The original lot encompassed a total of 136,367 sq ft, and per Town bylaws, 15% of the property could be impervious surface without needing any recharge; however, when that property was split into two lots, their property lost the 15% allowance and now must be 100% recharged, while the other lot still has that allowance. They are seeking relief from that condition, as the proposed pool, a body of water, cannot be recharged.

Ms. Mofford that their only option to meet these requirements would be to enclose the pool or have a roof overhead, which would be in significant disharmony with the other homes in their neighborhood. She does not believe the pool would have a negative impact on their neighbors or the public good at large, and there will be no nuisance or serious hazard to vehicles or pedestrians. She noted that they had provided letters of support from three of their neighbors.

Mr. Tagliaferri asked Mr. Litchfield what the Groundwater Advisory Committee's reasoning was for requesting 100% recharge for the property.

Mr. Litchfield stated the lot being created was 30% smaller than the 80,000 sq feet required in Groundwater Area 1 for residential development. He was not aware of any variances granted in Groundwater Overlay District Area 1 since 1986 when that bylaw was adopted, and the Zoning Board of Appeals has, to the best of his knowledge, not often granted variances in the groundwater area in terms of impervious cover, particularly in this zone, so the Committee's decision at that time was to maintain the 100% recharge as part of the condition of approval of the variance since that lot is smaller than required by the bylaw.

Mr. Tagliaferri estimated that there was a difference of about 3,600 sq feet of space between the two lots; rather than making up for that difference, it was decided that 100% recharge would be required for the smaller lot. An added 3,000 sq feet of patio or stamped concrete area can be recharged into a dry well or similar, but because of this 100% recharge stipulation, it's not possible. In his opinion, it's not a full variance, it is more of a request for an adjustment to a variance from 2016.

Mr. Rutan asked about the purpose of recharge. Mr. Litchfield said the goal is to recharge the water on the site where impervious cover is being created.

Mr. Rutan commented that in the case of a pool, the water would accumulate in the pool and not run down the street. Mr. Litchfield said that there are other risks associated with the water other than it just going into the pool, how is it discharged, where does it go, it is now chlorinated and an illicit discharge.

Mr. Litchfield said that a few things would have to go into consideration if the board were to grant a variance. He said he had encouraged the Moffords to apply for what they wanted and the best they could do was to recharge everything but the pool, but because they weren't sure if the variance would be granted, they didn't feel the need to spend a lot of money on the design and the plan, so none of that was submitted and would need to be factored into an approval.

Mr. Litchfield noted that although the Groundwater Advisory Committee members were sympathetic, they did not recommend approval of the variance since a second variance on the same property was not warranted.

Jason Perreault, member of the Board of Selectmen and that board's liaison on the Groundwater Advisory Committee, said that by and large the committee was sympathetic, when the prior variance was granted to subdivide and create the smaller lot, they had imposed the 100% recharge condition and the Groundwater Advisory Committee was reluctant to recommend approval given that circumstance.

Mr. Tagliaferri asked how typical a 100% recharge is. Mr. Litchfield said that it was not typical, but neither are variances on area requirements in a groundwater area, specifically area 1. In this case, the well that the Town is trying to protect is directly across the street from the Mofford's property.

Mr. Tagliaferri asked if there was any remediation that could be accomplished by someone who owns a pool to limit the exposure to the groundwater from pool chemicals. Mr. Litchfield said that the stormwater bylaw states a chlorine discharge into a town way, recharge system or drainage system is illicit discharge, unless there are zero parts per million of chlorine detected in that water.

Mr. Litchfield said the previous condition of 100% recharge carries with it a swale along the driveway so that any water discharged in the driveway ultimately goes into that swale and then into a recharge system on their property. Unless they took the hose all the way out to the street and connected it onto the surface water on Brigham, it shouldn't leave the property.

Ms. Cieslica asked if there was a temporary structure that could be put in place to capture the rain. Mr. Litchfield said the only way that could be done is if the water is captured and put back into the drainage system that could then be recharged into the ground. He believed the Applicants had researched a retractable cover for the pool, but that having a pool cover over the pool defeats the purpose of having a pool or it becomes quite an undesirable and additional expense, as well as becoming a possible enforcement issue. He thinks it comes down to a simple yes or no from the board on a variance.

Ms. Mofford said they had looked into a retractable cover but, being in New England, it would have to be engineered as such to withstand snow and ice and was very expensive.

Mr. Rutan is comfortable granting 800 square feet of non-rechargeable area with the idea that the surrounding pool deck will be part of the recharge. He doesn't see a reason to penalize the Applicants because of their slightly smaller property.

Mr. Litchfield stated the Groundwater Advisory Committee didn't recommend approving the application, so therefore he hadn't provided any technical assistance to the contrary. He said that the Applicant offered recharging everything else except for the pool, but no design was received and he would need to see that and approve it before they obtained a building permit. He suggested adding a condition stating if you want to limit it to the pool not being recharged but everything else, that way the 100% recharge of the rest of their lot still carries forward so if they ever want to build a shed or tennis court, they'd need to find a way to recharge that.

Chair Bakstran asked, in the event the variance is granted, if it could be done with a condition of a percentage of impervious cover so that they are limited still, it should have a square footage or a percentage.

Mr. Litchfield said that the application indicated that the surface area around the pool was about 700 sq. His suggestion to the board was to allow some relief from the original variance to include an in-ground pool to be installed without recharging the specific area allotted to the pool itself and to have some reasonable flexibility on the size and shape of the pool, since they offered to recharge the patio area, and in addition, they offered to recharge any other future impervious cover on the property.

Mr. Rutan said that he would go by whatever Mr. Frederico found was more enforceable, 800 sq feet or 1.5%.

Mr. Rutan made a motion to close the hearing. Mr. Tagliaferri seconded the motion. All were in favor.

The hearing was closed on September 28, 2021.

Mr. Rutan made a motion to grant a variance to an earlier decision for a non-rechargeable area of no more than 800 square feet for the purpose of building a swimming pool on the property at 313 Brigham Street. Mr. Rand seconded the motion.

Roll call vote was as follows:

Mr. Rutan	"aye"
Mr. Rand	"aye"
Mr. Blanchette	"aye"
Mr. Tagliaferri	"aye"
Chair Bakstran	"aye"

FINDINGS OF FACT


1. The subject property is located at 313 Brigham Street, Map 93, Parcel 29, in the Residential C Zoning District and Groundwater Overlay District Area 1.
2. The Applicant is seeking a Variance for installation of an in-ground pool on the property located at 313 Brigham Street, Map 93, Parcel 29, in the Residential C Zoning District and Groundwater Overlay District Area 1.
3. The property at 313 Brigham Street is 56,367 square feet; in Groundwater Protection Overlay District Area 1, the minimum of 80,000 sq ft is required for residential development.

4. In 2016, the lot at 313 Brigham Street was created through a ZBA variance (ZBA Case # 16-08) which divided a larger existing property into two smaller lots with the condition that any impervious surfaces would be 100% recharged.
5. The Applicant is proposing a pool with a patio, accessory structure and pavilion, and without installing some sort of roof over the area, recharge cannot be accommodated.
6. A literal enforcement of the applicable provision of the Zoning Bylaw would involve substantial hardship, financial or otherwise, but not of a personal nature, to the petitioner or appellant.
7. The relief sought may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Bylaw.

DECISION

1. On September 28, 2021, after due consideration of the Application, the Board unanimously voted to Grant a **VARIANCE** from ZBA Case #16-08 for a non-rechargeable area of no more than 800 square feet for the purpose of building a swimming pool on the property at 313 Brigham Street with the following conditions as listed in Mr. Litchfield's September 13, 2021 memo to the Groundwater Advisory Committee:
 - a. All impervious cover beyond the pool is required and a plan for the recharge is to be prepared by a registered professional engineer and submitted for review and approval prior to the issuance of an occupancy permit in order to verify all construction was installed as approved.
 - b. An as-built plan must be submitted for review and approval prior to the issuance of an occupancy permit in order to verify all construction was installed as approved.
 - c. The condition listed in the Decision from ZBA Case No. 16-13 stating that all impervious cover on this lot is to be recharged remains in effect.
2. 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."
3. If the rights authorized by the **VARIANCE** are 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.
4. **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.

TOWN OF NORTHBOROUGH, MASSACHUSETTS
ZONING BOARD OF APPEALS



Richard Rand, Chair