

**Wallingford Zoning Board of Appeals**

**Monday, July 17, 2023**

**7:00 p.m.**

**Robert F. Parisi Council Chambers  
Town Hall – 45 South Main Street**

**Minutes**

**Present:** Chairman Joseph Rusczeck; Board Members: Raymond Rys, Vice Chair; Bruce Conroy (via phone); Thomas Wolfer; Karen Harris; Alternates: Robert Gross; Robert Prentice; and Kevin Pagini, Town Planner.

Chairman Rusczeck called the meeting to order at approximately 7:00 p.m. The Pledge of Allegiance was recited.

Voting members tonight are Conroy, Wolfer, Harris, Rys, and Rusczeck.

Chairman Rusczeck noted that tonight's decisions will be published in the Record-Journal on Friday, July 21, 2023. The effective date of your variance will be Friday, July 21, 2023; the date a certified copy is recorded on the land records. The statutory 15-day appeal period will expire on Sunday, August 6, 2023. If you commence operations and/or construction during the appeal period, you do so at your own risk.

**PUBLIC HEARINGS**

**1. #23-017/Variance Requests/Pattison/325 Harrison Road**

Ms. Harris read the staff notes into the record. This application requests variances for a front yard of 53.6 ft. where 75 ft. is required and to construct an in-ground pool in a required front yard. A variance was granted in 1997 in the same front yard, for a detached garage. The lot is a corner lot and therefore has two required front yards. The applicant received a building permit back in 2009 for the in-ground pool and received a zoning sign-off at that time. Zoning sign-off by Town staff does not supersede the need for the approval of a variance for this request as the regulation regarding pools in required front yards (Section 4.1.F.1.a) has been in effect since June 17, 2004. Although construction has commenced, the applicant was unaware that a variance was required as he was given building permit approval in 2009. The Zoning Board of Appeals is the only entity that can grant approval for a pool in a required front yard. The Dwelling is oriented on the lot such that the front yard the variance is requested for serves as a side yard. Side yard setbacks for this zone (RU-80) are 30 ft. Though the request is for a 53.6 ft. front yard, a 21.4 ft. reduction would still require a variance for the front yard, in this case, but at least meet the side yard setback requirement if it were not located on a corner parcel. It should also be noted that this office has never processed an application for this type of request (any type of pool in a setback). Correspondence included a Zoning Board of Appeals Application Review by Mike Hughes, Chief Sanitarian, dated July 5, 2023; a timeline of events provided by Richard Pattison covering the beginning of the project back in 2009, received June 16, 2023; and the Notice of Violation from the Zoning Enforcement Officer and Town Planner, dated May 30, 2023.

Richard and Dawn Pattison, 325 Harrison Road presented their application. Mr. Pattison explained that he brought all his info to the Town back in 2009 to pull a building permit for a pool and subsequently was issued the permit. He spoke to Rich Boyne, the former official, and was assured that the procedure was followed and he signed off on it. Mr. Pattison verified that the Board members had a copy of the

permit. Chairman Rusczek confirmed. Mr. Pattison stated that he is not sure where the miscommunication was. He was never aware that it is a front yard or being considered a front yard that there was a zoning regulation against the pool there. He offered to show the A2 survey. Chairman Rusczek confirmed that the Board has a smaller version. Mr. Pattison stated that it is dated June 2023 and that he had never had one done before. This survey found that his property extends into the road, which is a major concern due to the liability. He did a lot of research and has tried to go through all the regulations to see what pertains to us and this was one of the things. If that's the case, his question would be whether Section 52E would come into play if the town has some of his property.

Chairman Rusczek stated that he has read a little bit about that and we are not here to talk about whether the road is that. Mr. Pattison stated that he's not looking to take back a road or anything like that. Chairman Rusczek stated that we are just here to discuss the pool issue. He continued that Mr. Pattison can explain that and everything but as far as me or I think anybody here making a judgment on something about that, sounds like a legal matter between you and the Town. That's not going to come into effect of what we think.

Mr. Pattison stated that originally the house was set up, it faces the opposite direction from the road. He asked if any of the Board had driven by. Chairman Rusczek replied that he had done so a couple of times and it's hard to see. Mr. Pattison agreed. Chairman Rusczek stated that he checked the maps and verified that the front is facing west. He drove by again just to see that he had an idea. Mr. Pattison stated that originally when the house was set up, it faces that direction and there was no road back there. It was actually a driveway to the lot next door. So he guesses that's why it was set up that way. The man that built the house, one of the Tomlinsons, owned all the land down below the dairy farms. He built it overlooking his property so it's always been our backyard. He never even thought of it as being a front yard. You couldn't access the house from, if you saw, the hill is pretty steep in the back. The other issue was the topography of the lot. He reported that he talked to Mike Hughes, the Sanitarian, who came out to do soil testing. Mr. Hughes said that realistically it's the only spot you could put a pool.

Chairman Rusczek stated that was going to be one of his questions. It's hard to see because of the way it's wooded and everything else, but on the southern end of your property, is there no place to put it?

Ms. Pattison asked if he could share the A2 survey and show what Mike indicated. Ms. Pattison stated in the yard, which I guess you would consider our backyard, which is where our front door is. You would see looking at our front yard, our front door is what you would consider our back yard. Chairman Rusczek agreed. Ms. Pattison stated that our good system is in the front. Chairman Rusczek verified that it is to the South. If you are looking out the front door what is to the left of the house? Ms. Pattison replied that's all septic there. Mr. Pattison stated that it actually goes up as you go back towards the back road. It gets steeper. Chairman Rusczek agreed but headed south towards the house that's south of you on Harrison. Mr. Pattison stated that's the way he can see Geremia. Chairman Rusczek asked if there's no place there? He stated that looking up your driveway, there are houses down on Powers Road that have an unbelievable view. I looked at your house and I was like wow. If they put the pool over there was a view you'd have being in your pool. Ms. Pattison stated that that was her first thing. She would rather have it over there as well, but because of the leaching fields of the septic, it's not possible. Mr. Pattison stated that it's not possible and that he will be replacing the septic system within the next few months but there also has to be a backup area if that fails. So Mike said that the whole area down the hill, I think the southern corner that you are talking about, that would be a reserve area. That's what he stated.

Chairman Rusczek noted that in reading all this, you, not knowing, but you started digging and that's how this all evolved. Ms. Pattison stated we thought we had the permit. We purchased the pool based on having the permit and we've had it and now we're ready to finally get going with it. We started building and we received a message and we were very confused so we did stop as you see. We haven't done anything. We have mounds of dirt everywhere and are ready to move on with this project.

Chairman Rusczek asked Mr. Pagini for an explanation from the Town's perspective of how we got here so everybody up here can have a history of the whole thing.

Mr. Pagini replied that his department was notified by, he thinks, the Building Department that a pool was being constructed in a front yard. He stated that they had a valid building permit according to the Building Department but did not have a variance, so even if somebody had signed off zoning-wise back in 2009, that doesn't supersede the need for a variance. If someone walks into my office and wanted an addition and a setback, I can't sign off on that and even if I did so mistakenly, it's still a Zoning Violation. So that's the issue at hand here. There may have been confusion. Someone may have inadvertently signed off on it but it still does not supersede the need from this Board to grant the variance for the request. So they are here now. He added that he does not believe it was intentional. He believes that the applicant went in thinking that he had all the proper sign-offs. He doesn't think anything was intentionally done from the applicant's perspective. The Applicants have been very cooperative in the entire process.

Chairman Rusczek noted that that is just for everyone to understand how we got here. He asked if anyone had any questions for the applicant.

Mr. Rys stated that he too drove by the property and he noticed that the applicant did dig the pool already. He asked if the pile of dirt laying on the right side of the driveway is from the pool. Mr. Pattison replied yes. Mr. Rys asked what they are planning to do with the dirt. Mr. Pattison stated that they will use it as a backfill. The rest of the dirt is in the back because the hill is so steep, he didn't have room to pile it there. Ms. Pattison added that they are going to be leveling off that area where the dirt is and they also have a couple of trees on the property that they are planning to take down and level off a hill. Mr. Pattison added that there are a couple of stumps that have to come out right where the pool is, so most of that dirt is all going to go right back into that same area. He stated that the Board is welcome to walk around the backyard or front yard, if you like and take a look. Mr. Rys stated that he was wondering how long that dirt has been laying there. Mr. Pattison replied since he started, which was around the weekend of May 17<sup>th</sup> or 18<sup>th</sup>. Mr. Rys asked of this year? Ms. Pattison added it maybe even before that. We had the microbursts come through and we lost a lot of trees. In trying to clean all of that up, some dirt was kind of in that section. Mr. Pattison noted that there used to be about 20 hemlock trees that were taken out by the microburst storm, so I had pulled all the stumps out and there's actually a hole in the middle of that. The little bit of dirt that was left over was going to fill that in. Mr. Rys if there was construction equipment there. Mr. Pattison replied that it is for the pool. Mr. Rys asked if it is his. Mr. Pattison replied yes. It's just a skid steer.

Mr. Conroy asked what the hardship is. Mr. Pattison replied that the lot size, number one, is 56,000 sq. ft in an 80,000 sq. ft. zone, the corner lot, and the topography. He added that he put all these things on the application. Ms. Pattison noted that there is no other place to put the pool. This is the only location it could possibly go. Mr. Conroy asked if the Sanitarian said this was the only spot and did he inform us. Mr. Pattison replied yes and that he also said it would not be a suitable area for septic. Mr. Conroy

asked if he put that in writing to the Board. Mr. Pattison stated that he has a copy of the sign-off from the Sanitarian. It just says that the pool meets the setbacks as proposed. Mr. Conroy stated that he has that and the Sanitarian didn't say what the applicant said he said. He would like to hear that for real from the Sanitarian. So he doesn't know if there's another spot that's good enough for the pool. Mr. Pattison added that being as it's a corner lot, on the driveway side, there's obviously no place there. On the lower side of the drive, on the right where the dirt piles are would be too close to the road or the neighbor's property line. The top corner of the driveway would be too close to the road on both sides. On the far side, towards Geremia's, there's a steep hill up top and then the rest of it from the hill down is all septic area. Mr. Conroy stated if there is another area, he can't say for certain because he doesn't know the extent of the leaching field and septic system. He added that the Sanitarian only said that where you put it would be okay, he didn't say it was the only spot.

Mr. Prentice asked if the pool is already dug out and how deep is it. Mr. Pattison replied it's down the walls, which are about three-quarters set. It's down to the four-foot level, just the deep end needs to be dug out. Mr. Prentice asked if it is more than six feet deep right now as it is a safety issue. Mr. Pattison replied no, it is 3 – 3.5 ft. deep now.

#### **PUBLIC COMMENT**

Ms. Pattison offered a letter from their neighbor at 317 Harrison Road as they are out of town. Chairman Rusczek stated that the Board does not have it. Mr. Pattison gave the letter to Chairman Rusczek who will add it to the record.

Wayne Barneschi, 40 Henry Street, stated that he has known Rick forever and was in the beginning stages of him getting the letter to cease the pool. The Pattisons received advice to continue work, but Rick said no, it's not the right way to go. Mr. Pattison did his homework and Mr. Barneschi stated that he went to the meetings with Mr. Pattison had up at the Town Hall to act as another set of eyes in case he missed something. Being at his house and seeing where it would go, Mr. Barneschi didn't think it is really affecting anybody. This is not really a front yard. His driveway is on the side and the fronts facing the West. There's nothing really in that back corner. It won't affect many people. They did everything right. We've talked to quite a few people just to get their opinion and they can't believe what is going on. Mr. Barneschi stated that this is the only place to put the pool on the lot.

Hearing no further public comment, Chairman Rusczek closed the public hearing and asked for discussion or possible action.

Mr. Wolfer noted that when they went to the Building Department and were issued the building permit, nothing was said about a variance that was needed for a pool. He noted that we don't condone people starting projects that we have not approved. A pool is not a hardship, once and for all. He noted the comment in the staff notes that this office has never processed an application for this type of request, any type of pool in a setback.

Ms. Harris asked if that means that the office has never received one. Mr. Pagini confirmed that we have never had a formal request for a pool and a setback.

**Mr. Rys: Motion to approve #23-016/Pattison/325 Harrison Road, for Variance Requests for a front yard of 53.6 ft. and to construct an 18' x 36' in-ground pool in a required front yard at**

325 Harrison Road as shown on Zoning Location Survey, prepared for Richard J. & Dawn L. Pattison, 325 Harrison Road dated June 16, 2023, subject to:

1. Comments from Mike Hughes, Health Department, dated July 5, 2023, and
2. After pool construction is completed, topsoil stockpiles in front of this house must be removed and construction equipment must either be removed from the property or stored indoors.

Ms. Harris: Second

**Vote: Conroy – no to approve; Wolfer – no to approve; Harris – yes to approve; Rys - yes to approve; and Chairman Rusczek – no to approve.**

The application is denied

#### **CONSIDERATION OF MINUTES**

##### **2. June 19, 2023, Regular Meeting**

Mr. Wolfer noted two corrections. On pages 1 and 3, the minutes refer to Acting Chair Rys and he was not present at that meeting.

**Mr. Wolfer: Motion to accept the June 19, 2023, Zoning Board of Appeals Minutes as corrected.**

Ms. Harris: Second

**Vote: Unanimous**

#### **ADJOURNMENT**

**Chairman Rusczek: Motion to adjourn the July 17, 2023, regular meeting of the Zoning Board of Appeals at 7:30 pm.**

Mr. Wolfer: Second

**Vote: Unanimous**

Respectfully submitted,  
Cheryl-Ann Tubby  
Recording Secretary