



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
**JOSEPH A. CURTATONE**  
**MAYOR**

***PLANNING BOARD***

***MEMBERS***

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MICHAEL A. CAPUANO, ESQ.  
JOSEPH FAVALORO  
ELIZABETH MORONEY  
JAMES KIRYLO  
DANA LEWINTER, ALT.

**Case #:** ZBA 2009-19

**Date:** July 15, 2009

**Recommendation:**

Unable to Recommend Variance  
Conditional approval of Special Permit

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**PLANNING BOARD REPORT**

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**Site:** 67-69 Woods Avenue

**Applicant Name:** Beth and Joseph Teves, Mary Risser

**Applicant Address:** 67-69 Woods Ave , Somerville, MA 02144

**Property Owner Name:** Mary Risser

**Alderman:** Trane

Legal Notice: The Applicant seeks a variance from SZO §8.6.17 in order to install an above ground pool at a distance of three feet from the rear and side lot lines; and a special permit under §4.4.1 to reduce the landscaping area and increase the nonconformity.

Zoning District/Ward: Residence A / 7

Zoning Approval Sought: Special Permit under SZO §5.5.3

Date of Application: May 20, 2009

Date(s) of Meetings/Public Hearing: PB: June 25, 2009 / ZBA: July 15, 2009

Date of Decision: N/A

Vote: N/A

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Dear ZBA members:

At its regular meeting on June 25, 2009 the Planning Board heard the above-referenced application. Based on materials submitted by the Applicant and the Staff recommendation, the Board voted (4-0, with Kevin Prior and Michael Capuano absent), to recommend **conditional approval** of the requested **Special Permit** and were **unable to recommend** the requested **Variance**.

In conducting its analysis, the Planning Board found:

**I. PROJECT DESCRIPTION**

1. Subject Property: The subject property is an approximately 3200 sf lot on which sits a two and one-half story, wood frame structure consisting of two dwelling units. The property is approximately 40' wide and 80' deep. There is a 12' by 16' deck in the rear yard.

2. Proposal: The Applicant is proposing to construct a 12' by 18' by 52" above ground pool at a distance of 3' to both the rear and side lot lines. The pool would be connected to the deck. The applicant has stated that this pool would enable the applicant's mother (home owner) to undertake aqua therapy treatment at her home.

3. Nature of Application: SZO §8.6.17 dictates that swimming pools not be located closer than six feet to a side or rear lot line. The applicant is seeking a variance from this requirement in order to locate the pool at a distance of three feet from the side and rear lot lines.

*(While the SZO specifically requires a 6' setback, the newest edition of the Massachusetts Building Code is silent on required pool setbacks from property lines. The City is currently examining a change to the SZO that would reduce or eliminate the required side yard setback for swimming pools.).*

The applicant also needs special permit approval under SZO §4.4.1 in order to reduce the landscaping (increase the nonconformity) on the property from 23% to 17% landscaping coverage. In the RA zone the requirement is 25% landscaping.

4. Surrounding Neighborhood: There are many two- and three-family homes in the surrounding area that feature the same architectural style, size of lot and site layout.

6. Green Building Practices: None

7. Comments:

Ward Alderman: Alderman Trane has been contacted but has yet to provide comments.

Fire Prevention: Steve Keenan has been contacted but has yet to provide comments.

## **II. FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1):**

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §5.1.4 of the SZO. This section of the report goes through §5.1.4 in detail.

1. Information Supplied: The Board finds that the information provided by the Applicant conforms to the requirements of §5.1.2 of the SZO and allows for a comprehensive analysis of the project with respect to the required Special Permits.

2. Compliance with Standards: The Applicant must comply "with such criteria or standards as may be set forth in this Ordinance which refer to the granting of the requested special permit."

The Applicant requires a special permit under §4.4.1 of the SZO. Under §4.4.1, "the SPGA, as a condition of granting a special permit under this Section must find that such extension, enlargement, renovation or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming structure."

The Board finds that the Applicant's proposal would not be substantially more detrimental to the surrounding neighborhood than the existing structure, as required under §4.4.1 of the SZO. The Board finds that any negative impacts associated with the appearance and the reduction in landscaping to be minimal. No trees would be removed to provide space and the pool would be located in an area that is not easily visible from the public way. The pool would be surrounded by a 6' fence that would screen the pool from the rear yards of the neighbors.

3. Consistency with Purposes: The Applicant has to ensure that the project "is consistent with (1) the general purposes of this Ordinance as set forth in Article 1, and (2) the purposes, provisions, and specific objectives applicable to the requested special permit which may be set forth elsewhere in this Ordinance, such as, but not limited to, those purposes at the beginning of the various Articles."

The Board finds that the proposal **is consistent** with the purposes set forth in Article 1 of the Zoning Ordinance, and with, to the extent possible for a lawful pre-existing nonconforming structure, those purposes established for the Residence A (RA) zoning district in which the property is located, namely "(t)o establish and preserve quiet neighborhoods of one- and two-family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts." Additionally, the pool would provide a good recreation and rehabilitation facility for the residents of the home.

4. Site and Area Compatibility: The Applicant has to ensure that the project "(i)s designed in a manner that is compatible with the characteristics of the built and unbuilt surrounding area, including land uses."

The Board finds that the proposal **is compatible** with the site and area. The Board finds that the low profile of the pool would minimize any visual impacts to the surrounding neighborhood.

### **III. FINDINGS FOR VARIANCE (SZO §8.6.17):**

In order to grant a variance the Board must make certain findings and determinations as outlined in §5.5.3 of the SZO.

1. There are "special circumstances relating to soil conditions, shape or topography of land or structures which especially affect such land or structures but not affecting generally the zoning district in which it is located, causing substantial hardship, financial or otherwise."

The applicant stated, "There are a few special circumstances that affect our land and structures on our building. Our backyard is small about 17.5' x 40'. We have a deck that is 12' x 16' and the remaining space is a grassy area. This grassy area is where we would like to put our pool, as noted on the plans. After speaking to many pool dealers and a few installers, the pool selected is the smallest size available without buttresses that would fit in our grassy area.

If we try to meet the required setbacks on the right side property line, the deck would have to be removed and built back. In addition, the pool would then be up against the house/back porch and in front of the first floor's back door/porch allowing easy access. This would in turn become a safety issue and be hazardous to anyone who rented the 1st floor apartment.

If we try to meet the required setbacks on the rear property line, the pool would end up in the driveway and set the pool right up against the two story dwelling. This would impair the passageway from the driveway to the back porches and entrances to the apartments. It would not be aesthetically pleasing to the eye and from a pool installer's point of view, not give us enough room around the pool for proper drainage.

For these reasons/special circumstances we are requesting a variance that will allow shorter setbacks on the rear and right side property lines."

The Board finds that there are **not** any special circumstances related to this lot with regards to soil, shape or topography that are unusual or would cause hardship.

2. "The variance requested is the minimum variance that will grant reasonable relief to the owner, and is necessary for a reasonable use of the building or land."

The Applicant stated, "The variance will allow shorter setbacks (3 ft) on the rear property line and (3.1 ft) side property line so that a swimming pool may be put in the owner's backyard. As you can see from the site plan this is the minimum amount needed because of the reasons described above (in the special circumstances section).

The approval of the variance will allow the owner to install a pool and proceed with recommended prescription ordered therapy by her doctor. In the end, the variance will allow good use of the owner's backyard and provide the owner with necessary medical treatment and relief."

According to the applicant the pool size is the smallest that is available. Given the layout of the rear yard, safety concerns and egress issues, the Board find that the variance is the minimum necessary for reasonable relief as the pool could not easily be relocated.

3. "The granting of the variance would be in harmony with the general purpose and intent of this Ordinance and would not be injurious to the neighborhood or otherwise detrimental to the public welfare."

The Applicant stated, "The variance will still provide a good amount of setback between the property line and pool. With a 6ft fence lining the property line, the pool will be completely fenced in and help deter children or unwanted individuals from entering the pool area. In addition, the pool will have added protection, a pool alarm to warn if someone is trying to enter the pool without our knowledge. Both of these safety measures will help insure the safety of our neighbors/neighborhood.

The variance will not be injurious to the neighborhood. The surrounding neighbors have granted their approval of the project and have all signed a letter stating they are fine with installation of the pool with shorter setbacks on the rear and side property lines."

The Board finds that the granting of the variance would not be injurious to the neighborhood or detrimental to the public welfare. The purpose of the Ordinance is to promote the health, safety, and welfare of the inhabitants of the City and the construction of a pool would not have a negative effect on the surrounding neighborhood. While the SZO specifically requires a 6' setback, the newest edition of the Massachusetts Building Code is silent on required pool setbacks from property lines. The City is

currently examining a change to the SZO that would reduce or eliminate the required side yard setback for swimming pools.

#### IV. RECOMMENDATION

##### Variance from swimming pool setback requirements (SZO §8.6.17)

Based upon the application materials, site visits, submitted information and the above findings, the Planning Board is **UNABLE TO RECOMMEND APPROVAL** of the requested **VARIANCE** for a reduction in the required side and rear yard setbacks for swimming pools. The Board finds that the site does not meet all of the requirements for a variance as set forth under §5.5.3 of the SZO, namely that there are no special circumstances relating to soil conditions, shape or topography of the lot, or structures which affect the land and cause hardship.

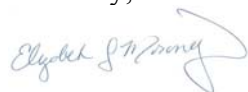
##### Special Permit for reduction in required landscaping (§4.4.1)

Based on the above findings, the Planning Board recommends **CONDITIONAL APPROVAL** of the requested **SPECIAL PERMIT**.

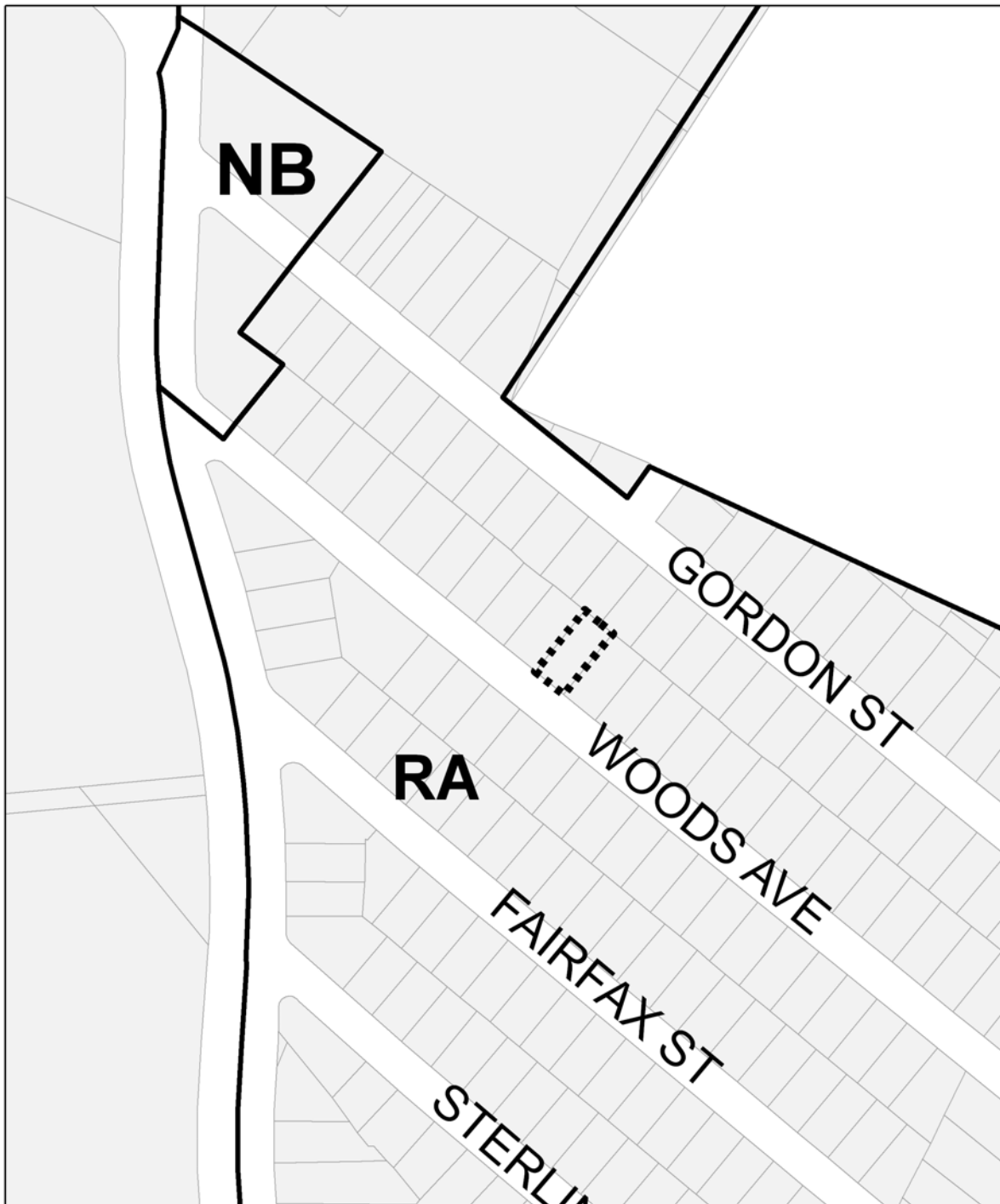
**Although the Planning Board is recommending approval of the requested Special Permit, the following conditions should be added to the permits:**

#	Condition	Timeframe for Compliance	Verified (initial)	Notes				
1	<p>Approval is for the installation of a 12' by 18' foot pool. This approval is based upon the following application materials and the plans submitted by the Applicant and/or the Agent:</p> <table><tr><th>Date(OSPCD stamp)</th><th>Submission</th></tr><tr><td>5/20/09 (6/9/09)</td><td>Initial application and "proposed pool plan" submitted to the City Clerk's Office</td></tr></table> <p>Any changes to the approved site plan that are not <i>de minimis</i> must receive ZBA approval.</p>	Date(OSPCD stamp)	Submission	5/20/09 (6/9/09)	Initial application and "proposed pool plan" submitted to the City Clerk's Office	Building Permit	Plng.	
Date(OSPCD stamp)	Submission							
5/20/09 (6/9/09)	Initial application and "proposed pool plan" submitted to the City Clerk's Office							
2	Reduction in size, or changes to the location, of the pool in order for the applicant to not require a variance may be approved by Planning Staff.	CO	ISD					
3	Fencing around the property shall not be chain link.	CO	Plng					
4	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final sign-off on the building permit to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	CO	Plng/ ISD					

Sincerely,



Elizabeth Moroney  
Acting Chair



## 67-69 WOODS AVE