



CITY OF SOMERVILLE, MASSACHUSETTS  
ZONING BOARD OF APPEALS  
JOSEPH A. CURTATONE, MAYOR

**MEMBERS**

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T. F. SCOTT DARLING, III, ESQ.  
DANIELLE FILLIS  
ELAINE SEVERINO (ALT.)  
JOSH SAFDIE (ALT.)

**Case #: ZBA #2009-19**  
**Site: 67-69 Woods Avenue**  
**Date of Decision: August 5, 2009**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: August 6, 2009**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Beth & Joseph Teves
<b>Applicant Address:</b>	67-69 Woods Avenue, Somerville, MA 02144
<b>Property Owner Name:</b>	Mary Risser
<b>Property Owner Address:</b>	67-69 Woods Avenue, Somerville, MA 02144
<b>Agent Name:</b>	N/A

<u>Legal Notice:</u>	Applicants Beth & Joseph Teves & Owner Mary Risser seek 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 increase an existing nonconformity by reducing the landscaping area. RA zone. Ward 7.
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<u>Zoning District/Ward:</u>	RA zone/Ward 7
<u>Zoning Approval Sought:</u>	§8.6.17 & §4.4.1
<u>Date of Application:</u>	May 20, 2009
<u>Date(s) of Public Hearing:</u>	7/15 & 8/5/09
<u>Date of Decision:</u>	August 5, 2009
<u>Vote:</u>	5-0

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Appeal #ZBA 2009-19 was opened before the Zoning Board of Appeals at Somerville City Hall on July 15, 2009. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L. c. 40A, sec. 11 and the Somerville Zoning Ordinance. After two hearings of deliberation, the Zoning Board of Appeals took a vote.

**DESCRIPTION:**

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.

### **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.

**DECISION:**

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Fillis and Josh Safdie with Scott Darling absent. Upon making the above findings, Susan Fontano made a motion to approve the request for a special permit. Josh Safdie seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes				
1	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:	Building Permit	Plng.					
	<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>				Date(OSPCD stamp)	Submission	5/20/09 (6/9/09)	Initial application and "proposed pool plan" submitted to the City Clerk's Office
	Date(OSPCD stamp)				Submission			
5/20/09 (6/9/09)	Initial application and "proposed pool plan" submitted to the City Clerk's Office							
Any changes to the approved site plan that are not <i>de minimis</i> must receive ZBA approval.								
2	The applicant shall submit a revised site plan (proposed pool plan) for Planning Staff approval reducing the deck by 3 ft from the right side yard and providing a 6 ft separation between the pool and the right side lot line.	Building Permit	Plng					
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					

Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*  
Orsola Susan Fontano, *Clerk*  
Richard Rossetti  
T.F. Scott Darling, III, Esq.  
Danielle Fillis  
Josh Safdie (Alt.)

Attest, by the Administrative Assistant:

\_\_\_\_\_  
Dawn M. Pereira

Copies of this decision are filed in the Somerville City Clerk's office.  
Copies of all plans referred to in this decision and a detailed record of the  
SPGA proceedings are filed in the Somerville Planning Dept.

**CLERK'S CERTIFICATE**

Any appeal of this decision must be filed within twenty days after the date this notice is filed in the Office of the City Clerk, and must be filed in accordance with M.G.L. c. 40A, sec. 17 and SZO sec. 3.2.10.

In accordance with M.G.L. c. 40 A, sec. 11, no variance shall take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

Also in accordance with M.G.L. c. 40 A, sec. 11, a special permit shall not take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and either that no appeal has been filed or the appeal has been filed within such time, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed Special Permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services shall be required in order to proceed with any project favorably decided upon by this decision, and upon request, the Applicant shall present evidence to the Building Official that this decision is properly recorded.

This is a true and correct copy of the decision filed on \_\_\_\_\_ in the Office of the City Clerk, and twenty days have elapsed, and

FOR VARIANCE(S) WITHIN

\_\_\_\_\_ there have been no appeals filed in the Office of the City Clerk, or  
\_\_\_\_\_ any appeals that were filed have been finally dismissed or denied.

FOR SPECIAL PERMIT(S) WITHIN

\_\_\_\_\_ there have been no appeals filed in the Office of the City Clerk, or  
\_\_\_\_\_ there has been an appeal filed.

Signed \_\_\_\_\_ City Clerk Date \_\_\_\_\_