



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
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EXECUTIVE DIRECTOR

PLANNING DIVISION

**ZONING BOARD OF APPEALS MEMBERS**

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RICHARD ROSSETTI  
DANIELLE EVANS  
ELAINE SEVERINO  
JOSH SAFDIE (ALT.)

**Case #: ZBA 2014-114**  
**Site: 23 Ames Street**  
**Date of Decision: February 4, 2015**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: February 18, 2015**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Cattello Battinelli, II
<b>Applicant Address:</b>	23 Ames Street, Somerville, MA 02143
<b>Property Owner Name:</b>	Cattello Battinelli, II
<b>Property Owner Address:</b>	23 Ames Street, Somerville, MA 02143
<b>Agent Name:</b>	Richard G. DiGirolamo, Esq.

Legal Notice: Applicant and Owner, Cattello Battinelli II, seeks a Variance under SZO §8.6.17 to construct a pool less than 6' from the side property line.

<u>Zoning District/Ward:</u>	RA zone/Ward 5
<u>Date of Application:</u>	November 6, 2014
<u>Date(s) of Public Hearing:</u>	1/7, 1/21, 1/29 & 2/4/15
<u>Date of Decision:</u>	February 4, 2015
<u>Vote:</u>	5-0

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Appeal #ZBA 2014-114 was opened before the Zoning Board of Appeals at the Visiting Nurse Association on January 7, 2015. 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 one hearing of deliberation, the Zoning Board of Appeals took a vote.

**DESCRIPTION:**



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The Applicant applied in 1998 for a building permit to construct a circular pool that is 13' in diameter, 3' in height, and located approximately 6" from the right side property line. The permit was denied due to the requirement that pools be erected not closer than 6' to a side or rear lot line, nor closer than 10' from a front lot line. The pool was constructed. In September 2014, Inspectional Services received a complaint that the pool is too close to the building. Since the Applicant was denied a building permit in 1998, the existing pool is not grandfathered.

### **FINDINGS FOR VARIANCE:**

In order to grant a Variance, the Board must make certain findings and determinations.

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."

**Board's Response:** Relocating the pool to be compliant in maintaining 6' from the side property line presents a hardship to the applicant. Due to the shape of the lot and location of the existing structure, the pool cannot be located 6' from a side or rear lot line. The applicant has presented a petition to illustrate the neighborhood is aware of the pool and does not have concern.

**Applicant Response:** Due to the shape of the yard, it would be an undue hardship to be in compliance with side setback requirements.

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."

**Board's Response:** Retaining the existing location of the pool is the minimum variance required that will grant reasonable relief. Above ground pools typically last 10-15 years; therefore, the pool may not be able to be relocated at this time and cannot be located on this site to be 6' from a side or rear lot line.

**Applicant Response:** The shape of the yard and the smallest side of the pool.

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."

**Board's Response:** The location of the pool would not be injurious to the neighborhood, as illustrated by the submitted petition and 15 year old pool. Further, the pool is not able to be located on-site so as to be compliant with the Ordinance.

**Applicant Response:** The pool has been up since 2000 without any complaints or problems. Also, we have a petition signed by the neighborhood property owners accepting this pool location.



**DECISION:**

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Elaine Severino with Josh Safdie absent. Upon making the above findings, Susan Fontano made a motion to approve the request for a Variance. Richard Rossetti 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	<p>Approval is for a Variance to construct a pool within the side yard. This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>(November 6, 2014)</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>(December 18, 2014)</td> <td>Petition submitted to OSPCD</td> </tr> <tr> <td>(December 18, 2014)</td> <td>Plans submitted to OSPCD (plot &amp; site plans, photos)</td> </tr> </tbody> </table> <p>Any changes to the approved site plan that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	(November 6, 2014)	Initial application submitted to the City Clerk's Office	(December 18, 2014)	Petition submitted to OSPCD	(December 18, 2014)	Plans submitted to OSPCD (plot & site plans, photos)	BP/CO	ISD/PIng	
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(December 18, 2014)	Plans submitted to OSPCD (plot & site plans, photos)											
2	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP									
3	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final Sign Off	PIng.									



Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*  
Orsola Susan Fontano, *Clerk*  
Richard Rossetti  
Danielle Evans  
Elaine Severino

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 \_\_\_\_\_

