



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2014-84

Date: September 11, 2014

Recommendation: Unable to Recommend

PLANNING STAFF REPORT

Site: 23 Ames Street

Applicant & Owner Name: Cattello Battinelli II

Applicant Address: 23 Ames Street, Somerville, MA 02145

Alderman: Mark Niedergang

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. RA Zone. Ward 5.

Dates of Public Hearing: **Zoning Board of Appeals – January 7, 2014**

I. PROJECT DESCRIPTION

1. Subject Property: The subject parcel is 2,981 square feet and comprised of a two-family, gable end dwelling. The building is 2 ½ stories in height and contains approximately 3,762 gross square feet. The surrounding neighborhood is predominantly residential with a mix of single, two-, and three-family housing and nearby is Magoun Square.

The subject parcel has not received any prior zoning relief.

2. Proposal: 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.

3. Nature of Application: The Somerville Zoning Ordinance, under §8.6.17, states that swimming pools shall not be located closer than six feet to a side or rear lot line, nor closer than ten feet to a front lot line.

4. Surrounding Neighborhood: This is a residential neighborhood with a mix of single, two- and three-family dwelling units. The subject property is located in a Residence A zoning district and is near Magoun Square, Medford Street, and Winter Hill, which provide a variety of uses and amenities.

5. Impacts of Proposal: The pool has been in existence for more than 15 years. The Applicant has submitted a petition to illustrate the neighborhood is aware of the violation and does not have concern.

Fire Prevention: Has been contacted but has not yet provided comments.

Ward Alderman: Has been contacted but has not yet provided comments.

II. 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.”

Staff 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.”

Staff 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.”

Staff 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.

III. RECOMMENDATION

Variance under SZO §8.6.17

Based on the materials submitted by the Applicant, the above findings and subject to the following conditions, the Planning Staff is **UNABLE TO RECOMMEND** approval of the requested **VARIANCE** at this time.

The recommendation is based upon a technical analysis by Planning Staff of the application material based upon the required findings of the Somerville Zoning Ordinance, and is based only upon information submitted prior to the public hearing. This report may be revised or updated with new recommendations, findings and/or conditions based upon additional information provided to the Planning Staff during the public hearing process.

#	Condition	Timeframe for Compliance	Verified (initial)	Notes								
1	<p>Approval is for a Variance under SZO §8.6.17 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 & 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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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.									

