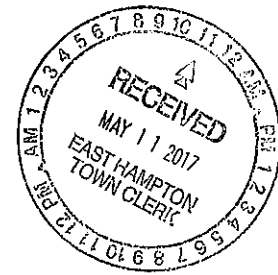


ZONING BOARD OF APPEALS
TOWN OF EAST HAMPTON



In the Matter of the Application

of

DETERMINATION

LISA & ROBERT GERBINO
SCTM #300-172-3-38.7

HEARING DATE: February 28, 2017

PRESENT: JOHN WHELAN, *Chair*
CATE ROGERS, *Vice Chair*
DAVID LYS, *Member*
ROY DALENE, *Member*
THERESA BERGER, *Member*

ALSO PRESENT: ELIZABETH L. BALDWIN, ESQ., *Counsel to the Board*
DENISE A. SAVARESE, *Legislative Secretary*
TYLER BORSACK, *Planning Department*
ANDREW E. GOLDSTEIN, ESQ., *Attorney for Applicant*
ROBERT GERBINO, *Property owner and Applicant*
BRITTON BISTRIAN, *Agent for Neighbor*

FINDINGS OF FACT AND DETERMINATION OF THE BOARD

The findings of fact and determination made herein are based upon the application, the evidence received at the public hearing before the Board, all documents contained in the Board's files and which were received prior to the close of the hearing, and the inspection and field report made by Member Lys of this Board.

A. PROJECT DESCRIPTION

1. **PURPOSE OF APPLICATION:** To allow an existing slate pool patio to remain within rear yard lot line setbacks.
2. **RELIEF OR APPROVAL SOUGHT:** One variance of 9.8' is required from §255-11-10 of the Town Code to allow the slate pool patio to remain 10.2' from the southern rear yard lot line where a 20' setback is required.

B. PROPERTY SIZE & LOCATION

1. LOT SIZE: 21,018 sq. ft. (total)
2. STREET LOCATION: 3 Old Station Place
3. CONTIGUOUS WATER BODIES: N/A
4. HAMLET OR GEOGRAPHIC AREA: Amagansett
5. FILED MAP NAME: Old Station Place
6. FILED MAP NUMBER: 9605
7. DATE OF MAP FILING: November 28, 1994
8. BLOCK NUMBER IN FILED MAP: N/A
9. LOT NUMBER IN FILED MAP: 6
10. SUFFOLK COUNTY TAX MAP DESIGNATION: #300-172-3-38.7

C. ZONING INFORMATION

- 1. ZONING DISTRICT: B Residence
- 2. ZONING OVERLAY DISTRICT: N/A

D. SEQRA DETERMINATION

- 1. SEQRA CLASSIFICATION: Type II
- 2. LEAD AGENCY: N/A
- 3. DETERMINATION OF SIGNIFICANCE: N/A
- 4. DATE OF DETERMINATION: N/A

E. STANDARDS FOR BOARD REVIEW

- 1. In order for this Board to grant applicant the requested area variances, applicant must demonstrate that the requirements of Town Law § 267-b 3 have been met. The Board is to "take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the grant of an area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance." The Town Law also directs the Board, in granting area variances, to "grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community."
- 2. The standards set forth in Town Code § 255-8-50 (D) paraphrase the requirements language of Town Law § 267-b 3:
 - a) the benefit to applicant from grant of the requested variance outweighs any detriment which grant of the variance will cause to the general health, safety, and welfare of the neighborhood or the Town as a whole; and
 - b) the variance sought is the minimum variance necessary and adequate to alleviate the difficulty causing applicant to request area variance, while at the same time preserving and protecting the character of the neighborhood and the general health, safety, and welfare of the Town as a whole.
- 3. The Board finds that granting the instant application will be consistent with the requirements of both Town Law § 267-b and Town Code § 255-8-50.

F. ADDITIONAL FINDINGS AND CONCLUSIONS:

1. The subject property is located on located on Old Station Place off of Atlantic Avenue, in Amagansett. The property is improved with a 4,122 sq. ft. two story residence with porches, patios, decking, swimming pool with associated pool house and patio, and a 522 sq. ft. detached garage. The most recent C.O. was issued on the property in 2014 for a "2,273 sq. ft. first floor, 1,849 sq. ft. second floor, frame, two-story, one family residence having one kitchen only and containing six bedrooms total with 1,793 sq. ft. low level with one of the bedrooms, 387 sq. ft. covered front porch, 274 sq. ft. covered rear porch, 654 sq. ft. rear patio, 215 sq. ft. second floor deck and 165 sq. ft. side patio, 800 sq. ft. gunite swimming pool with spa, drywell and 552 sq. ft. one story detached garage". This property has not appeared before the Zoning Board previously.
2. The applicant is proposing to allow an existing slate swimming pool patio to remain within the southern rear yard lot line setbacks. The patio is associated with a swimming pool which was constructed in conjunction with a building permit issued in January of 2014 and was issued a certificate of occupancy in August of 2014.
3. According to the attached memorandum in support of the application, the previous owner (the builder) installed the pool patio which is before the Zoning Board after closing on the sale of the residence to the current owners. The applicant then obtained a building permit in order to construct the pool house that is located on the property. It was not until they went to obtain an updated Certificate of Occupancy when it was discovered that the previously constructed patio was within the required setbacks. The Board has received a letter from the neighboring property to the east, 52 Atlantic Avenue, in support of the application. An agent for the neighbor to the south (Lot 5), who would be most affected by the grant of the variance, spoke out against the granting of the variance at the public hearing.
4. The Board finds that granting the requested variance will create a detriment to nearby properties. The reason setbacks are doubled for pool patios are to mitigate the noise impact to neighbors caused by the use of the pool and patio. Applicant is requesting a 51% variance along the entire length of the patio. Moreover, the applicants have not presented the Board with any unique circumstances explaining why they cannot comply with the Town Code. There is area along the north side of the pool that can accommodate the same amount of pool patio without requiring a variance from the Board. The Board notes that the neighbor most affected by the patio spoke out against granting the variance.
5. The Board finds that the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than the requested area variance. Applicant can relocate the same square footage of pool patio to the north side of the pool. There are no wetlands or other environmental features on this property that limit the location of a pool patio.
6. The Board finds that the requested variance is substantial. The applicant is requesting a 51% variance for the entire length of the pool. The applicant has not provided the Board with a persuasive explanation for requiring such a large

variance. The pool patio can be relocated to the north side of the pool and would not require a variance.

- 7. The Board finds that the need for the variance is self-created. While the Board is sympathetic to the how the patio was installed, this is a new house that can and should comply with all dimensional setbacks.
- 8. The Board finds that the benefit to the applicant does not outweigh the detriment which grant of the variance will cause to the general health, safety, and welfare of the neighborhood or the Town as a whole.

G. DISPOSITION OF APPLICATION

For the reasons set forth herein, the Board makes the following determination with respect to the application:

- 1. RELIEF OR APPROVAL DENIED: One variance of 9.8' is required from §255-11-10 of the Town Code to allow the slate pool patio to remain 10.2' from the southern rear yard lot line where a 20' setback is required.
- 2. DESCRIPTION OF WORK DENIED: To allow an existing slate pool patio to remain within rear yard lot line setbacks.

ALL CONCUR

JOHN WHELAN, Chairman
 CATE ROGERS, Vice Chair
 DAVID LYS, Member
 ROY DALENE, Member
 THERESA BERGER, Member

cc: Building Department
 Planning Department
 Andrew Goldstein, Esq.