

**VILLAGE OF HARRIMAN ZONING BOARD OF APPEALS**  
**November 4, 2015**  
**7:30pm**

**PUBLIC HEARING**

**Daniel and Bindia Steinman**

**106-1-30.1**

**Water Surface Variance / Swimming Pool**

Present: Mr. Steinman, Property Owner

The Public Hearing mailing receipts are given to the recording secretary for verification.

Chairperson Miller opens the Public Hearing stating that the Notice was published in the Times Herald Record on October 21, 2015. All of the mailings have been verified that everyone was notified. Would you, Mr. Steinman, like to explain what you're requesting? I know that two of our members went to look at your property.

Mr. Steinman replies my family is looking to get a larger pool to make it a safer diving depth. I have two young children and, in my opinion, the smaller depth is too small for an in ground pool. As the two members who came to visit can attest, I have a very large yard which can easily accommodate this size pool, which will bring my family a lot of joy and pleasure in my property. The leveling that they are going to do also makes a lot more of the yard usable when they're done.

Member Daly states that we did go visit the property and there are no issues, there is enough easement on both sides.

Mr. McKay states what the Board needs to do is to address the questions asked on the application regarding an area variance. Granting the variance would create an undesirable change in the neighborhood, or would it cause a detriment in nearby properties.

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Chairperson Miller asks if the County had any problems with the application

Mr. McKay replies that it was referred to the County on October 8, 2015.

Technically the County would have a few more days in which to respond. I would venture a guess that the County is going to say that this is for local determination. I am not suggesting that the Board make a decision tonight. Normally what we do is listen to the Board's comments, prepare a draft decision, which the Board can adopt later on. I assume, Mr. Steinman, you're not planning on putting the pool in December, right?

Mr. Steinman replies it's a possibility depending on the weather. We would prefer to but it is certainly getting close. I do have concerns with any time limits that there may be on a variance or a building permit. If we are doing it in the spring I wouldn't want something to expire over the course of the winter. From what the pool company says November and December are still possible. And for us it would be more desirable because then in the spring the grass will be growing back, etc.

Mr. McKay assures Mr. Steinman that would not be the case. It is really up to the Zoning Board what they want to do tonight. This will not have to go before the Planning Board, there is no need. Any concerns regarding water run off would be the Building Inspector's concern.

Member Crover responds to the area variance criteria. I don't believe that there is an undesirable change that will be produced by granting the area variance of the installation of the larger pool. It's going to be fenced in, it's lower than the road, but it's in the rear of the house, so I don't think it's going to be too visible. I don't think it's going to be an undesirable change. There aren't any neighbors with pools of this size but with the size of that backyard I think it has plenty of space.

Member Daly agrees.

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Member Crover continues whether the benefits sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; not really. He can't put the pool in a different location; it has nothing to do with the location on the property. The only thing that he can do is put a smaller pool which is something that he's not interested in doing. And in doing a little bit of research they do recommend longer pools if you are going to have a diving board at one end and a shallow end at the other end.

Mr. McKay adds this is not a test but a balance to weigh the options. You can see there is a feasible alternative; the applicant can get a smaller pool. That's just a fact but that's not what the Steinman's want.

Member Crover responds the average oblong above ground pool is 25' long, and that exceeds the 505 limit. I see how it would be very difficult to stay within that 505 surface area limit when you can't even meet it with an above ground oblong which is oval so you lose some surface area because of the oval. Number 3 whether the area variance is substantial. I have to say yes, it is substantial. It is more that 50%, going 295' more than the allowable 505. Number 4 is whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood. I don't believe that it will have any adverse effect. It's an in ground pool, it's not like it's above ground pool that could rupture and flood out the neighboring property owner and I do believe that behind you is a swamp so that's where it would go.

Mr. McKay says just a reminder that the Building Inspector did make a comment at the last meeting he didn't have any concerns about the wetlands because he said the pool was up gradient.

Member Crover states that I don't think that's our concern in this Board. That's something that the Building Inspector should look at. You're not allowed to build in wetlands so if there is NY or Federal classified wetlands, they have to make sure that they're not building the pool in to the wetlands. And that's not this Board's decision. Where it looks like wetlands and where it actually is on a map

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are two different things. Hopefully they look at a map because I would hate for you to put a pool in there and have the DEC come in and say to take it out. And they will say to take it out. Number 5 is 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. I would consider this self-created because he wants a pool. I'm learning this through a personal experience, if it's New York wetland you cannot put a pool or anything within 100' off the boundary. They require a 100' buffer. That is not this Board to determine that but I don't want you to get in trouble. Those are my comments on the area variance checklist.

Member Daly says I agree, I see no issues at all.

Chairperson Miller states at the last meeting I had mentioned about the wetlands and I would hope that the people who are going to put in your pool would have checked to make sure that there is not going to be a problem.

Member Crover states that it's supposed to be the Building Inspector's job too though. The pool people want to sell a pool, they don't care about that. It's up to the Building Inspector when the permit is issued.

Mr. McKay states we don't want to tell the applicant where the pool is going to go but the applicant has indicated the pool is going to be adjacent to the dwelling. Is there any likelihood that that might change? The point being if the pool is adjacent to the dwelling, the dwelling is at least 100' from the wetlands

Mr. Steinman replies I'm pretty sure that the wetlands are Federal wetlands. Actually from some of the maps that I saw some of the part of the wetlands that are close to the house aren't in the map of the where wetlands was. We actually looked in to this because of flooding concerns when we were buying and insuring the property. Our backyard borders up to it.

Member Crover states Federal wetlands you can build right up to the boundary of the wetland.

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Mr. Steinman replies that's what it is and we are still another 20' from the edge of it and another 10-12' above it. The yard has, where the driveway is, the platform and then drop down to the wetlands.

Member Crover states if we want to protect this Board from a legal standpoint, should anything arise or a mistake happen, we could put a condition in there to grant the variance, if the Board members want to do that. We grant the variance as long as the pool is not being built within the wetlands or the wetland buffer if required. That protects this Board and everyone else has to do due diligence, the Building Inspector, home owner, pool company, to make sure everything is done right.

Discussion broke our regarding the map of the wetlands that was provided by Mr. McKay.

Mr. Steinman states it is my belief that it is Federal wetlands. The pool company has looked into it as well because they can be stopped in the middle of construction. We could have gone over even more but we decided to leave the space. The fence will be on the edge of the wetlands. There is standing water in some parts so the fence adds more safety for my kids. At different times there is quite a bit of standing water in there.

Member Crover states if there are no other questions and nobody else has any comments on those five issues, I think we can close the Public Hearing.

**Motion** made by Member Crover to close the Public Hearing, seconded by Member Schneider. *All in favor.*

**Opened the ZBA Meeting with the Pledge of Allegiance**

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### Roll Call

The following persons were present:

- Laurine Miller – Chairperson
- Darrin Sainato - Member
- Chuck Crover - Member
- Carol Schneider – Member
- Sandra Daly - Member
- Barbara Singer – Deputy Clerk/Secretary

### Also Present

- Joseph McKay, Esq

### Adoption of Minutes

- **Motion** to approve the minutes from the August 5, 2015 Regular Meeting was made by Member Schneider and seconded by Member Daly. *All in favor.*
- **Motion** to approve the minutes from the October 7, 2015 Regular Meeting was made by Chairperson Miller and seconded by Member Daly. *All in favor.*

**Daniel and Bindia Steinman**

**106-1-30.1**

**Water Surface Variance / Swimming Pool**

**Present:** Mr. Steinman, owner.

Member Daly states I say that we give Mr. Steinman his pool for his family.

Member Sainato states I went to see it and the backyard is at a gradual incline. The builder that left it that way didn't do a very good job. I think that the pool being there, and after they leave, would improve the backyard, not just for the pool but with the landscape. It will all be straightened out. He's going to put a

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retaining wall up by the house. I think it will improve the property in more than one way. Because when they leave it's going to be much more level than it is now.

Member Crover states my only concern is the County approval. If we approve it, will the County come back with a comment?

Mr. McKay replies no that is not going to happen. We will know shortly if the County has any questions or concerns. And I agree with you, they're not going to.

Member Crover asks on that matter, can we approve this tonight. By the time you do the paperwork, get it back to Barbara, she passes it on to Laurine for her signature, the 7<sup>th</sup> will be here. Or are we supposed to wait until the 8<sup>th</sup> to make a decision?

Mr. McKay agrees. I would prefer to wait until the County has had the application for thirty days before you make a final decision. That's the best practice. I am going to go ahead and draft a decision, I have your comments and I will craft them into the decision. I don't know if the Board has another application that will be heard in December, but we can meet and finalize it then. I will draft the decision with a grid and the Board can do their final vote on December 2<sup>nd</sup>.

- **Motion** was made by Member Crover to postpone making the final decision until December 2<sup>nd</sup> meeting based on the fact the we need to wait for the 239M to be approved by the County, seconded by Member Schneider. *All in favor.*

Mr. Steinman asks that when November 8<sup>th</sup> arrives, if you haven't heard from the County, does that mean that they don't have a concern. That the approval is implied?

Mr. McKay replies normally we do get a response. Normally any pool variance would be deemed by the County to be a local determination. Because generally it

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would not affect anybody else's property but yours. They deem it a matter of local determination, and leave it to this Board to decide. That being said they have thirty days in which to review it. And they could make a comment regarding the wetlands. And if they don't respond by the 8<sup>th</sup>, we can act.

Mr. Steinman states my concern, even less than getting the pool in for the winter, is signing a contract with the pool company, which I haven't done yet. I have a good price from them right now, I told them November 4<sup>th</sup>, and now I'm concerned with possibly losing that price. And at the least lock in a date for the spring.

Mr. McKay replies if the Board wishes to accommodate you tonight and vote, and then their vote is illegal, and you signed your contract, and then we have to revoke. Then the Board hasn't helped you at all. The County has a minimum of thirty days to act from the time of receipt. This was referred on October 8<sup>th</sup>, but I can tell you that there are cases that say the zoning changes have been stricken if they haven't complied with 239M. We know that we're not rezoning the Village of Harriman but it requires the same referral process. There are cases that say you have to wait the thirty days, and if you don't wait the thirty days, the Board action can be nullified. It's not going to help you if something unexpected comes from the County, and the Board was to give approval, and the Building Inspector gave you the permit, you sign that contract with the pool company, nobody is really any further ahead.

Member Crover asks if Mr. Steinman checks in about a week, and the County didn't have anything favorable, could he take his own risks?

Mr. McKay replies Mr. Steinman could always act on his own risk, that wouldn't be this Board to advise him.

Mr. Steinman replies I certainly wouldn't want to complicate anything. My question really was if come the 8<sup>th</sup> and we haven't heard from the County, now

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that those thirty days have passed can the Board act on it before December and how would that be done?

Mr. McKay replies yes and then you'd be asking the Board to come in for a special meeting to vote on your application.

Member Crover states the problem may be getting the Hall on the 9<sup>th</sup> or the 10<sup>th</sup> with other meetings held here. We're scheduled for the first Wed of the month. As inconvenient as it is, we may need to wait for the December 2<sup>nd</sup> meeting.

- **Motion** was made by Member Crover to continue this decision on December 2<sup>nd</sup>, seconded by Member Schneider. *All in favor.*
- **Motion** was made by Chairperson Miller to close the regular Zoning Board of Appeals meeting of November 4<sup>th</sup> at 8:23, seconded by Member Schneider. *All in favor.*

Minutes Respectively Submitted,

Barbara Singer  
Recording Secretary