

**Rochester Zoning Board of Appeals
Business Meeting Minutes
November 9, 2023**

Board Members Present:

David Arancio, Richard Cutler, Davis Sullivan, Donald Spirlet, Jeffrey Costa

7:15 PM Meeting Called to Order by Chairman Arancio

Due to the large public presence at this meeting, Chairman Arancio stated that a continuance of public hearing #1199 in a location large enough to accommodate public attendance and maintain accessibility would be needed. He advised the public of the capacity limits of the room and that they could decide who would stay during a short recess. Richard Cutler made a motion to take a recess until 7:25 PM which was seconded by Davis Sullivan. Motion passed unanimously 5-0.

7:25 PM Meeting Called Back to Order by Chairman Arancio

Chairman Arancio stated that there were still too many people in the room for it to be safe and accessible. Discussion with the Board and the applicant's attorney on the best date for rescheduling concluded November 30th at 7:15 PM at the Rochester Council on Aging. Chairman Arancio requested a short recess to allow people to write down their contact info and clear the room. Richard Cutler made a motion to recess until 7:35 PM, seconded by Donald Spirlet. Motion passed unanimously 5-0.

7:35 PM Meeting Called Back to Order by Chairman Arancio

Minutes:

- Motion to approve Business Meeting Minutes of September 28, 2023, made by Mr. Cutler and seconded by Mr. Spirlet. Motion passed 4-0 with 1 (one) abstention (Costa).
- Motion to approve Public Hearing Minutes for #1197 of September 28, 2023, made by Mr. Cutler and seconded by Mr. Spirlet. Motion passed 4-0 with 1 (one) abstention (Costa).
- Motion to approve Public Hearing Minutes for #1198 of September 28, 2023, made by Mr. Cutler and seconded by Mr. Spirlet. Motion passed 4-0 with 1 (one) abstention (Costa).

New Business:

- Discussion regarding appointing members to the new By-Law Review Committee. Interested ZBA members were Richard Cutler, Davis Sullivan, Jeffrey Costa, and Donald Spirlet. Mr. Spirlet advised that he wanted to withdraw his interest as there were already 3 (three) interested in the 3 (three) available seats. Mr. Cutler made a motion to appoint himself, Davis Sullivan, and Jeffrey Costa onto the By-Law Review Committee. Davis Sullivan seconded the motion and it passed 5-0. There were then discussions on the future appointment positions for the committee, such as chair and vice chair. This would be done at the first meeting of the By-Law Review Committee.
- Flowers given to ZBA Administrative Assistant, Andreia Lacerda, for her recent marriage in October on behalf of the Zoning Board of Appeals.

Old Business:

- Discussion on reciting the Pledge of Allegiance at the beginning of each ZBA Meeting. Mr. Costa, who had requested this item be placed on the agenda, stated that he had read earlier this year that the Select Board had discussed and voted to implement the Pledge of Allegiance at their meetings. There was a brief discussion by the ZBA, and it was agreed that the Pledge of Allegiance would be recited at the beginning of each meeting, after the opening statements by the Chair. Mr. Spirlet made a motion to recite the Pledge of Allegiance and was seconded by Davis Sullivan. Motion passed 5-0.

Vouchers

- Richard Culter made a motion to approve voucher for Order #S13846386 in the amount of \$13.88 to W.B. Mason; seconded by Davis Sullivan. Motion passed unanimously 5-0.
- Richard Culter made a motion to approve voucher for Order #S138482699 in the amount of \$55.29 to W. B. Mason; seconded by Davis Sullivan. Motion passed unanimously 5-0.
- Richard Culter made a motion to approve voucher for Invoice #8650 in the amount of \$30.00 to The Wanderer; seconded by Davis Sullivan. Motion passed unanimously 5-0.
- Richard Culter made a motion to approve voucher for Order #6939083441 in the amount of \$19.11 to Staples; seconded by Davis Sullivan. Motion passed unanimously 5-0.

ZBA Administrators Report:

- No ZBA meeting on November 23, 2023, due to Thanksgiving Day. Petition #1199 now continued to a new meeting date of November 30, 2023 at 7:15 at the COA on Dexter Lane. The last two meetings of the year are December 14th and December 28th. No

petitions to go forth thus far but December 14th will remain open for possible continuance.

Rochester Zoning Board of Appeals
Public Hearing Minutes
November 9, 2023

Board Members Present:

David Arancio, Richard Cutler, Davis Sullivan, Donald Spirlet, Jeffrey Costa

7:50 PM Meeting Called to Order by Chairman Arancio

#1200 Luis and Kerri Rivera, for property located at 142 Sarah Sherman Rd, identified on Assessor's Map 29, Lot 16, who is seeking a Variance from the minimum required 40-foot rear setback on an above-ground pool, under Chapter 20.40, § E.2., of the Rochester Zoning By-Laws.

Chairman Arancio began by reading aloud the public hearing notice, the application and narrative and then proceeded to read the abutter's list. Abutters present were:

- James and Linda Ruell of 119 Alley Road, Rochester, MA 02770.

Mr. Rivera was asked by Chairman Arancio to explain what his project was. Mr. Rivera began by explaining that he would like to put a pool in for his two children to enjoy. He stated that the location, the back yard, where he would like to place the pool is the only feasible place for it, due to the small size and odd shape of his lot. He elaborated by explaining that to put it on the left side of the property (if facing his home) it would be visible from the street and be eye sore as there is no buffer. He stated that it could not go on the other side of the property as there is a bulkhead and that it would also be an even shorter setback towards his other neighbor's property. Mr. Rivera explained that for several years that have purchased "disposable" pools that discarded after only a couple of years. He continued by stating that doing this over time will be a financial burden and he'd rather install a pool that will last approximately 10 years or until his boys are off to college. He stated that at the location where he would like the pool there is already a wooded buffer but that he intended to plant more Leyland Cypress trees to fill in the gaps where other trees had fallen due to inclement weather. He hoped that this would help with the view and possibly muffle the sound.

Chairman Arancio asked the members of the Board if they had any question. Mr. Cutler requested clarification on the setback distance as there was a discrepancy between the application and the plot plan provided. Mr. Rivera confirmed it would be 23.3 ft from the setback. With no further questions from the Board, Chairman Arancio opened the floor to public comment. Mr. Ruell of 119 Alley Rd stated he had not yet received any plans. Mr. Rivera

passed him the certified plot plan. Mr. Ruell asked if any trees would be cut down. He was advised by Mr. Rivera that there would be no trees cut down but in fact, he intended to plant more trees. Mr. Ruell stated he has issues with the noise levels. He stated that the lots in the neighborhood are small and that he himself couldn't put in a garage due to the setbacks. He continued by stating that they can hear everything. He also asked about stakes being put down. Mr. Rivera explained that the stakes were just put down to indicate to the engineer where the pool would go. He added that an oval was painted which also indicated the pool's proposed location. Mr. Ruell asked if there was an option to put the pool in the front of the house. Mr. Rivera gave a few reasons why this couldn't be the case, such as the pool would be obvious from the road, which is aesthetically unattractive for the neighborhood, there was a well located at the front of the house and if placed on the other side, but in front, there would be virtually no setback and the pool would be right near the road. He stated that as of right now, the proposed location is the most appropriate. He went on to say that he knows kids can scream sometimes, but they are kids. Mr. Ruell reiterated having it on the front lawn. Mr. Cutler explained that there is also a by-law prohibiting any structures from being erected in the front of the home.

Mr. Ruell stated that there is a noise problem there. The children are loud, and he and his wife cannot sit out on their front porch. Chairman Arancio clarified that the town does not have a noise ordinance.

Mr. Costa requested to see the buffer between the two properties since the applicant stated he would plant more. It was determined there are trees buffering the two properties. Mr. Costa also asked how much larger this proposed pool would be compared to the previous temporary pools. Mrs. Rivera stated that both are oval in shape and the previous was about 12' x 20' and the proposed is approximately 15' x 30'. Mr. Ruell asked if the pool required a fence as he read in the Town Ordinance. Mr. Sullivan stated that for above ground pools, if it is 4' or higher, it does not require a fence so long as the entry into the pool is secure. Mrs. Rivera stated that the ladder they have locks. Mr. Rivera confirmed the pool is 52" tall. Chairman Arancio stated that the Zoning Enforcement Officer is keen on the town by-laws and, since the applicant must apply for a building permit, that would fall under the ZEO's purview and not the Board's.

Mr. Costa wanted clarification on the buffer zone and where the applicant intended to plant new greenery. Mr. Rivera explained that they were open to suggestions but planned on planting quite a few cypresses to fill in the gaps. Mr. Ruell stated the issue wasn't visual, it was the noise.

Mr. Cutler made a motion to close public comment which was seconded by Mr. Spirlet. Motion carried 5-0 and public comment was then closed.

Mr. Spirlet began deliberations by stating that the applicant satisfied the three criteria for a variance. The lot is oddly shaped and small. It is a financial burden to the applicant to continue to replace the temporary pools and there would not be any extra detriment as the noise will still exist. He also reiterated that kids will be kids and are going to be loud sometimes and he had no problem with the application. Mr. Costa agreed and stated he would like to make sure there are conditions by way of new plantings to add to the buffer zone. Mr. Sullivan stated that kids will play outside and there is no by-law against it. He stated he lives near and is familiar with the

neighborhood. He continued by saying that there are a lot of young families who've moved into the neighborhood and that's the way it goes. Mr. Culter reiterated what other Board members said about the three criteria and also, that although the noise is valid, there is no noise ordinance and kids do scream. He stated he had no issues with this application. Chairman Arancio stated that one cannot choose their neighbors, but that communication is key. He also stated that the applicant is not unreasonable.

MOTION: Grant a request for a Variance to Luis and Kerri Rivera, for the property located at 142 Sarah Sherman Rd, identified on Assessor's Map 29, Lot 16, who are seeking a Variance from the minimum required 40-foot rear setback on an above-ground swimming pool, pursuant to Chapter 20.40, Section E.2., of the Rochester Zoning By-Laws with the following conditions:

1. The setback from the pool to the rear property line shall be no less than 23.3 ft.
2. The petitioner shall plant Leyland Cypress trees; eight (8) in total with a minimum height of 4 ft.

This Variance is to be in accordance with a site plan entitled, "Exhibit Plan Showing Proposed Swimming Pool," drawn by Prime Engineering on November 1, 2023.

Motion made by Mr. Sullivan and seconded by Mr. Spirlet.

Voting Members:

David Arancio, Richard Cutler, Davis Sullivan, Donald Spirlet, Jeffrey Costa

VOTE: 5 in Favor 0 Opposed

Motion passed unanimously 5-0. ***The Variance is thereby deemed granted***

Richard Cutler made a motion to adjourn the meeting. Motion seconded by Donald Spirlet and passed unanimously 5-0. The meeting adjourned at 8:44 PM.