

WESTFIELD TOWNSHIP BOARD OF ZONING APPEALS

June 19, 2006 @ 7:30 p.m.

Public Hearing

Application for Side Yard Variance

Submitted by Anthony S. DiSalvo – 9346 Daniels Road

Chairman Michael Schmidt called the meeting to order at 7:30 p.m. Roll call indicated five members of the Board of Zoning Appeals were present: Michael Schmidt, Larry Bensinger, Kevin Daugherty, Robert Gecking and Ron Oiler.

MINUTES

Upon motion by Robert Gecking, duly seconded by Larry Bensinger, the May 1, 2006, meeting minutes was unanimously approved.

The following is a condensed summary of tonight's meeting, which was recorded on audiotape.

PUBLIC HEARING – Anthony DiSalvo

Chairman Mike Schmidt opened the public hearing in regard to the application submitted by Anthony S. DiSalvo. The application is for side yard variance on his property at 9346 Daniels Road (parcel #041-15D-08-003/4).

For the record Kevin Daugherty announced that he will participate in the discussion but will abstain from voting.

Anthony DiSalvo was sworn in by the secretary. The applicant indicated he wanted to put in an above ground pool and he initially wanted a 14 1/2' variance but now believes a 10' side yard variance off the 25' setback would work. He had the property surveyed after he purchased it. There is drain tile between the porch and where the pool would be. He plans to put the pool in yet this year or next year. The pool would be 27' diameter and 52" high. There is a walkout basement off the side of the house. He would put in wood decking to hide the filter/equipment. There are two parcels with the house and driveway both on parcel #041-15D-08-003.

Chairman Schmidt indicated he had received an e-mail from Sue Blashford (9360 Daniels Road) indicating they have no objection to the pool but would like some screening with trees/bushes in order to help shield their view when they come in their driveway, which is to the South of the applicant's property.

The applicant's drawing, aerial map and tax maps were reviewed by the Board members. There was considerable discussion relative to the maps, the proposed location of the pool, where his house is located, how much variance would be needed, the location of the Blashford driveway (which is real close to the property line) and that the Blashford house is at the back of their property.

The applicant inquired about fencing and if he could have a fence along the top of the pool until he gets a yard fence put up. He stated that one of the neighbors has an above ground pool that is not fenced in (that property is level). He also questioned if he puts in bushes would they be considered part of the fence. He further asked if a permit was needed for a fence.

There was Board discussion relative to whether above ground pools require fencing or just in ground pools because of more safety concerns and questioned whether this difference should be addressed in the zoning code. The code section on swimming pools was reviewed.

Article II, Section 205 C. Swimming Pools.

- 1) Swimming pools shall require a zoning certificate.
- 2) A private residential pool shall only be established as accessory to and on the same lot as a dwelling.
- 3) Swimming pools shall not be located closer to any street than the dwelling and shall conform to all required side and rear yard minimum building setback lines.
- 4) No swimming pool shall be filled with water unless a fence is installed complying with the following:
 - a) The pool and the land, decking, and other areas providing immediate access to the pool shall be completely fenced or otherwise constructed to prevent uncontrolled access by children. The fence shall be designed, constructed, and maintained in a manner which restricts unauthorized entry.
 - b) The fence shall comply with all provisions of this Zoning Resolution relating to fences and shall be at least four (4) feet in height above the natural grade.
 - c) The fence shall be equipped with a lockable, self-closing and self-latching gate.

The code section on fences (Article II, Section 205 B.) was reviewed. The code indicates in Rural Residential the maximum height is 4' front yard and 6' side yard/rear yard. Section 205 B. 2. Fence Height - The height of a fence shall be measured from the top elevation of the top board, rail, or wire to the natural grade of the bound or, in the case of a wall, from the top surface to the ground. Section 205 B. 5. – Fences may be installed abutting the property line. Section 205 B. 8. – Where the design of a fence results in a different appearance on each side, the fence shall be constructed with the finished side facing toward the abutting property.

There was considerable discussion among the Board members and the applicant relative to the fence, where fencing would be needed, the type of fence and if a 2' variance would be needed in the front. Fences are considered structures so the applicant will need a zoning permit (unless agricultural use). It's the applicant's choice as to the type of fence, where he puts the fence and whether he just fences in the pool or some greater area. The interpretation is that a fence is a matter of safety – if there is a spot where, depending on how the grade is - if it's going to be less than 4' from top rail going around the pool, a

fence will be needed. According to the zoning code, a fence is a necessity and the applicant needs to follow the code as to fences.

The applicant and the Board members also discussed the type of screening that might be used since it was a concern of the Blashford's. It was suggested that pine trees, lilac bushes or some similar type of bush could be used for screening. The fence would be for safety and the screening would be to help shield the view from the Blashford property when they are using their driveway.

A motion was made by Ron Oiler to grant a variance with respect to Article III, Section 303 D.1., side yard width – a 10' variance permitting the pool to be built no closer than 15' from the South property line, with the provision that he complies with Section 205 B. (Fences) and Section 205 C. (Swimming Pools) and provided that the South and West exposures are adequately screened with vegetation of a density that would not allow a normal person to see through it and of a 6' minimum height or a screening fence with a minimum height equal to the maximum height allowed by code.

Robert Gecking seconded the motion.

Roll Call Vote:	Oiler	- yes
	Gecking	- yes
	Daugherty	- abstain
	Bensinger	- yes
	Schmidt	- yes

MOTION CARRIED.

The applicant then inquired about putting in an oval pool instead of the round pool and not needing the variance or the screening. There was discussion about the option of an oval pool (size of which and location may not need a variance) or a smaller pool (22' or 24' with less distance between the pool and the house – and which may not need a variance). The Board advised the applicant that as long as the pool is not within that 25' setback, he would not need to use the variance but he would still need to have a fence and the pool and fence regulations would need to be followed.

This concludes the public hearing for the DiSalvo variance request.

OTHER BUSINESS/ANNOUNCEMENTS

There is an informational meeting by ODOT scheduled for Tuesday, June 27, 2006, at 7:00 p.m. to discuss the status of the interchange/intersection upgrades.

Upon motion by Robert Gecking and seconded by Larry Bensinger, it was unanimous that the meeting be adjourned. Adjourned at 9:00 p.m.

Marlene L. Oiler, Certified PP, PLS
Westfield Township Board of Zoning Appeals Secretary

(Minutes approved 9/12/06)