

**BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
APRIL 19, 2006**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, April 19, 2006, at 7:00pm at McCulloch Building, Whipple Center Conference Room, 182 Green Street, Weymouth, MA for the purpose of passing on the applications of certain persons whose petitions were properly before the Board. Notice of the public hearing had been given by mail to the parties in interest of the subject locus and by publication in the Weymouth News.

Present:	Richard McLeod, Chairman
	Mary McElroy, Clerk
	Donald Holzworth
	Charles Golden
	Martin Joyce
Staff:	Rod Fuqua, Principal Planner
Recording Secretary:	Christine Callbeck

The Chairman called the hearing to order and explained the procedures that would be followed to the people present. A MOTION was made to open the public hearing and waive the reading of the legal advertisement, and was SECONDED and UNANIMOUSLY VOTED.

BZA CASE #2899 55 Priscilla Circle

Application of David and Denise Vallier for property at 55 Priscilla Circle, also shown on the Weymouth Town Atlas Sheet 17, Block 226, Lot 61, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-54 to allow a swimming pool in a front/side yard area.

Mrs. Vallier appeared before the Board. Mrs. Vallier stated that they would like to put a pool in their side/front yard due to the fact that they do not have a back yard.

Mr. McLeod asked if they could bring the pool forward closest to Priscilla Circle.

Mrs. Vallier stated that they are willing to remove more trees in their yard and move the pool up more.

Mr. Holzworth inquired as to the dimensions of the pool and/or an additional walk pad around the pool.

Mrs. Vallier stated that their current plans were to have the pool with a small deck and to fence the entire yard.

Mr. Fuqua stated the application was routed to various Town Departments and received the following comments:

- Fire Department had no concerns.
- Health Department had no objections.
- Police Department had no concerns.

- DPW (Water, Sewer and Highway) had no concerns.
- DPW (Engineering) stated
 - Two existing roadway bounds exist at the interface of the property line for this lot and the road layout line. These bounds must be protected and undisturbed during the construction activities or they must be reset by a MA Professional Land Surveyor who would then need to submit a letter of certification to the Town Engineer.
- School Department had no concerns.
- Tax Department stated that their taxes are up to date.

Mr. Fuqua stated that one abutter had concerns regarding this case. The said abutter is present tonight and will speak his concerns.

Mr. Fuqua further stated that there is an embankment on the northerly side of the house ranging between 6 and 12 feet in height. The Board should review issues of security, access and fencing with regard to the conditions of approval.

Mr. Francis McWade stated that he would like to see the pool put as far away from his house as possible. Mr. McWade further stated that there is a house located on Old Country Way/Academy Avenue with a pool approximately 5 feet from the street.

The Chairman asked what is the requirement for set back.

Mr. Fuqua stated there is an 18 foot set back along the street.

The Chairman further stated that he remembers the application for a pool at Old Country Way coming before the Board. The Chairman's further recollection was that there was no other place on the entire lot to put there pool.

Mrs. Vallier stated that they are willing to do whatever the Board suggests.

Mr. McWade stated that the pool at 55 Priscilla Circle is putting a hardship on him and his home. Mr. McWade further stated that he believes that the pool at 55 Priscilla Circle is going to bring his property value down.

The Chairman stated that the pool would be placed 26 feet from Mr. McWade's home and still in compliance with the 18 feet from the road way.

Mr. Fuqua stated that there was another item that could help the situation, pull the edge of the pool back to the toe of the slope. Mr. Fuqua further stated that this way it moves the pool closer to the house and it moves it further away from Priscilla Circle.

Mr. Fuqua noted that Mrs. Vallier needs to put the pool a minimum of 25 feet from the two property lines, no closer than 10 feet from the right of way, condition with respect to existing roadway bounds, and upon completion of pool ask Engineering Department to come back and check bounds.

Mrs. Vallier stated that they will comply with the Boards requirements. In addition, Mrs. Vallier will be fencing the entire yard.

The Chairman asked if there were any other comments or questions, to which there was no reply.

A MOTION to close the public hearing was made by Mr. Holzworth and was seconded by Ms. McElroy, and was UNANIMOUSLY VOTED.

The Chairman stated that he would accept a MOTION to take action in the application for a VARIANCE. Mr. Chairman further stated that the applicant has shown sufficient hardship and will comply with the following conditions:

1. The pool shall be no closer than 10 feet from the road way, and a minimum of 25 feet from the rear lot line.
2. The applicant shall not interfere with the existing right of way bounds.
3. Upon completion of the pool the applicant shall request Engineering Department to check the bounds.
4. The yard shall be fenced.

Mr. Holzworth made a MOTION to APPROVE the request for a swimming pool at 55 Priscilla Circle. The MOTION was seconded by Ms. McElroy and was UNANIMOUSLY VOTED with the following conditions:

1. The pool shall be no closer than 10 feet from the road way, and a minimum of 25 feet from the rear lot line.
2. The applicant shall not interfere with the existing right of way bounds.
3. Upon completion of the pool the applicant shall request Engineering Department to check the bounds.
4. The yard shall be fenced.

FINDINGS:

Due to the hardship created, the Board finds that the VARIANCE would not derogate from the intent and purpose of the Zoning Ordinance, and the requested relief could be granted without substantial detriment to the public good nullifying or substantially derogating from the intent and purpose of the Ordinance. The Board finds that, in its judgment, all of the following criteria are met:

1. The specific site is an appropriate location for such a use.
2. The use involved will not be detrimental to the established or future character of the neighborhood or town.
3. There will be no nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
5. The public convenience and welfare will be substantially served.

DECISION OF THE BOARD:

The Board was familiar with the site and had the benefit of a plan. The majority of the members had viewed the site in question. Due to the above findings and the hardship created, it was

UNANIMOUSLY VOTED to APPROVE the request for a VARIANCE for a swimming pool at 55 Priscilla Circle with the following conditions:

1. The pool shall be no closer than 10 feet from the road way, and a minimum of 25 feet from the rear lot line.
2. The applicant shall not interfere with the existing right of way bounds.
3. Upon completion of the pool the applicant shall request Engineering Department to check the bounds.
4. The yard shall be fenced.

The Board finds that, in its judgment, all of the following criteria are met:

1. The specific site is an appropriate location for such a use.
2. The use involved will not be detrimental to the established or future character of the neighborhood or town.
3. There will be no nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
5. The public convenience and welfare will be substantially served.

BZA CASE #2898 317 Libbey Parkway, Unit #400

Application of Linda T. Gioscia for property at 317 Libbey Parkway, Unit #400, also shown on the Weymouth Town Atlas Sheet 38, Block 472, Lot 2, located in a POP zoning district seeking a special permit and/or variance under Chapter 120-35.2.2(H) to create a dance studio consisting of 2800 sq. ft.

The Chairman called the hearing to order and explained the procedures that would be followed to the people present. A MOTION was made to open the public hearing and waive the reading of the legal advertisement, and was seconded and UNANIMOUSLY VOTED.

The applicant, Linda T. Gioscia of 6 Pine Brook Drive, Halifax, Ma appeared before the Board.

The applicant would like to move her dance studio from Route 18/300 Main Street, South Weymouth, MA to 317 Libbey Parkway, Unit #400.

The Chairman asked the Board if they had any questions regarding this application.

Mr. Golden asked is Mrs. Gioscia's dance studio would be half of the existing rug store.

Mrs. Gioscia stated yes. Mrs. Gioscia further stated that Child's Play had to get a similar permit.

Mr. Fuqua stated the application was routed to various Town Departments and received the following comments:

- Fire Department had no issues.
- Health Department had no issues.
- Police Department had no issues.
- DPW had no comments.

- School Department had no special concerns.
- Tax Department noted that the taxes are up-to-date.

The Chairman asked if the public had any comments, to which there was no reply.

A MOTION to close the public hearing was made by Ms. McElroy and was seconded by Mr. Holzworth, and was UNANIMOUSLY VOTED.

The Chairman stated that he would accept a MOTION to take action in the application for special permit.

A MOTION was made by Mrs. McElroy to APPROVE the request for a SPECIAL PERMIT to allow Mrs. Gioscia to create a dance studio at 317 Libbey Parkway, Unit # 400. The Board finds that, in its judgment; all of the following conditions are met:

1. The specific site is an appropriate location for such a use.
2. The use involved will not be detrimental to the established or future character of the neighborhood or town.
3. There will be no nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
5. The public convenience and welfare will be substantially served.

The MOTION was seconded by Mr. Holzworth and was UNANIMOUSLY VOTED.

FINDINGS:

The Board finds that the SPECIAL PERMIT would not derogate from the intent and purpose of the Zoning Ordinance, and the requested relief could be granted without substantial detriment to the public good nullifying or substantially derogating from the intent and purpose of the Ordinance. The Board finds that, in its judgment, all of the following criteria are met:

1. The specific site is an appropriate location for such a use.
2. The use involved will not be detrimental to the established or future character of the neighborhood or town.
3. There will be no nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
5. The public convenience and welfare will be substantially served.

DECISION OF THE BOARD:

The Board was familiar with the site and had the benefit of a plan. The majority of the members had viewed the site in question. Due to the above findings, it was UNANIMOUSLY VOTED to APPROVE the request for a SPECIAL PERMIT to allow Mrs. Gioscia to create a dance studio at 317 Libbey Parkway, Unit #400. The Board finds that, in its judgment, all of the following conditions are met:

1. The specific site is an appropriate location for such a use.

2. The use involved will not be detrimental to the established or future character of the neighborhood or town.
3. There will be no nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
5. The public convenience and welfare will be substantially served

MINUTES 3-16-06, 3-30-06, and 4-05-06

A MOTION was made and seconded to authorize the Clerk to sign the Minutes of the March 16, 2006, March 30, 2006, and April 5, 2006 meetings.

Mary McElroy, Clerk

Date