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## ZONING BOARD OF APPEALS

KATHARINE E. TOY  
 Administrative Secretary  
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Petition of Denis J. Briand  
 Aggrieved by decision  
 Kerry Lyne, 131 Glen Road

Pursuant to due notice the Permit Granting Authority held a public hearing in the hearing room on the second floor of the Town Hall at 8:55 p.m. on September 14, 1978, on the appeal of Denis J. Briand, aggrieved by the decision of the Inspector of Buildings to issue a permit for the installation of a swimming pool to Kerry Lyne at 131 Glen Rod. Said appeal was taken under the provisions of Section XXIV-C of the Zoning By-law.

The Inspector of Building, upon the application of Kerry Lyne, issued said permit on July 17, 1978, there being no apparent violation of the Zoning By-law or the Building Code. On August 15, 1978, the appellant filed his appeal with the Town Clerk who transmitted a copy to this Authority the same date. Said appeal alleged that the installation of the proposed swimming pool would violate Section XVI, as it would lower the value of his property; in said appeal the appellant also questioned the inconsistency of Section XXIIB - Part D. 1-B with Section XIX, side yard requirements, as he felt that a swimming pool is a structure and therefore, should be a minimum of twenty feet from the lot line; he also felt that the proposed pool would be harmful to his property as it would have a negative impact on drainage, cause noise and the lighting would be disturbing.

Due notice of the hearing was given by mailing and publication.

Denis J. Briand explained in detail the reasons for his appeal.

Kerry Lyne, 131 Glen Road, explained that he had suggested to the appellant that he would move the swimming pool location back so that it would be about twelve feet from the house and fifteen feet from the property line. He further stated that the lights should not be disturbing as they would be in the pool and further that the drainage had been approved. He also stated that he had three teen-age sons who would be using the pool, but felt that there would not be excessive noise.

#### Statement of Facts

The property involved is located within a Single Residence District requiring a minimum lot area of 20,000 square feet. There is a dwelling on the lot as well as a detached garage, and the Inspector of Buildings has issued a permit for the construction of a swimming pool 20' x 40', to be located at the northeast corner of the lot, 11' from the property line, at the rear and side and 17' from the house. The lot contains 22,694 square feet.

At the hearing the appellant explained in detail his objections to the installation of the proposed swimming pool as outlined in his appeal.

He felt that if installed in the location proposed, the pool will be harmful to his property for the reasons stated and that it will lower the value of his property.

The plot plan submitted on the building application, drawn by John J. Began, Land Surveyor, showed the location of the existing house and garage as well as the proposed swimming pool.

Decision

The Authority has made a careful study of the evidence submitted and has taken a view of the locus.

In its opinion, Section XVI of the Zoning By-law is intended to prohibit the construction of any building or structure or use of land which in and of itself would be obnoxious, offensive, dangerous or injurious to the public health, morals, safety or welfare of the community or harmful to property therein. It is not intended to restrict the erection of buildings or structures or uses of land, which by their nature are neither injurious nor harmful to the community or property therein, even though conceivably they may be used improperly or abused in an improper and unlawful manner. There is no prohibition in the Zoning By-law of the installation of structures to be used for the purpose of swimming, providing they are installed in accordance with the Zoning By-law and Building Code. The Authority, therefore, is of the opinion that in the absence of special circumstances, which are not present here, the swimming pool is not in violation in this instance and the anticipatory manner of its use is not properly cognizable under Section XVI of the Zoning By-law.

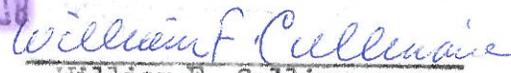
The Authority has given consideration to all of the other issues stated in the appellant's appeal, and feels that the only issue which may be questioned is that of drainage, however, no evidence was submitted to support the statement that a negative impact would result from the installation of the pool and the Authority feels that this is an anticipatory issue which will have to be proven at a later time. It appears that adequate provision has been made to drain the pool as an 1½" hose is shown on the plot plan submitted which will empty into an existing catchbasin on Glen Road.

The Authority, therefore, is of the opinion that the appeal should be dismissed on its merits and that the permit shall be regarded as effective as of this date pursuant to the plans submitted and approved by the Inspector of Buildings.

Accordingly, the appeal is dismissed.

  
Francis L. Swift

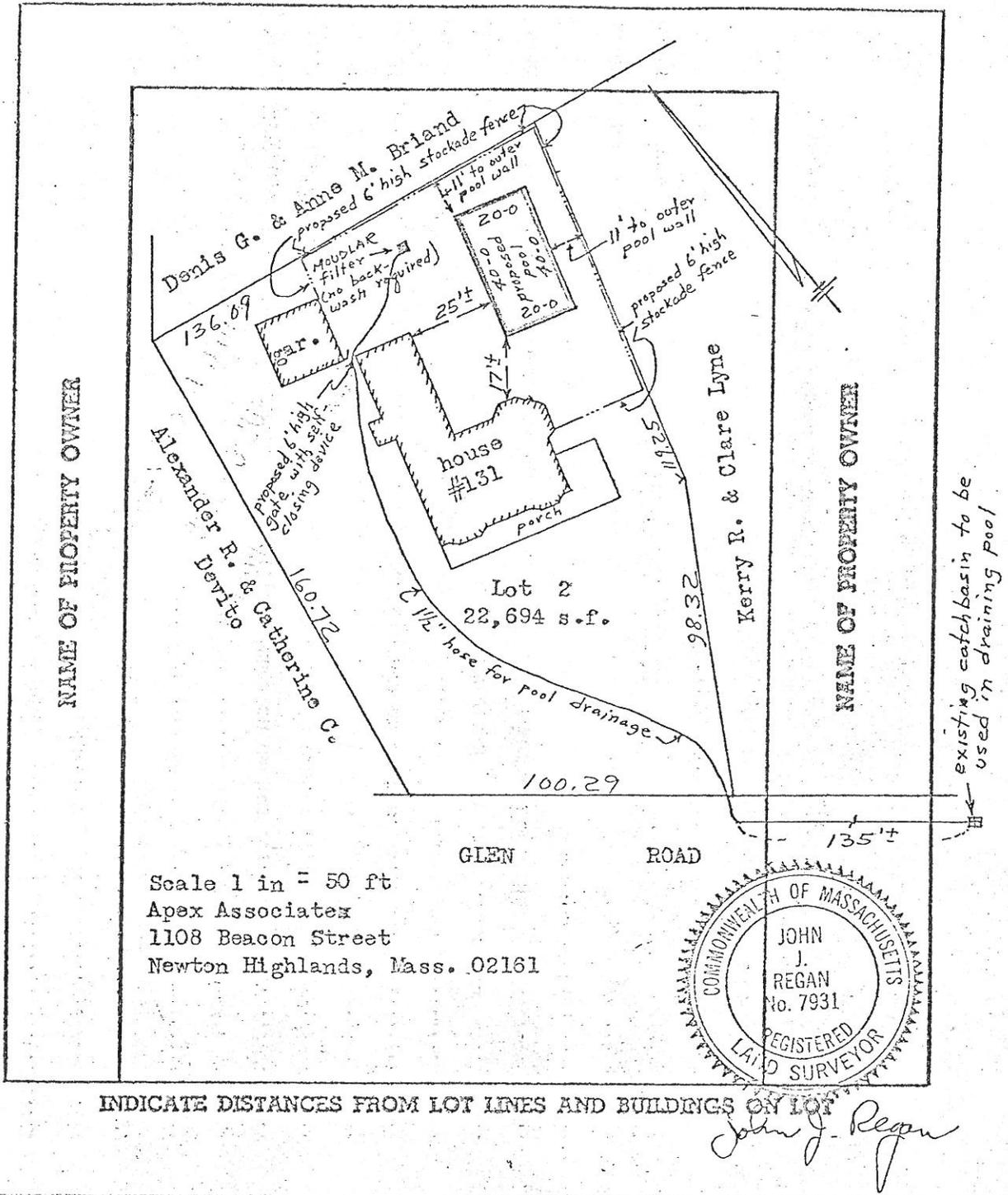
  
William E. Polletta

  
William F. Cullinane

Filed with Town Clerk \_\_\_\_\_

DEC 2 8 32 AM '38  
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*Alice L. Mann*  
 Town Clerk.

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