

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

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Board of Appeal

Petition of Betty Ann C. Mostertz and Robert A. Mostertz

Pursuant to due notice the Board of Appeal held a public hearing in the hearing room on the second floor of the Town Hall at 8:20 p.m. on September 8, 1977 for the petition of Betty Ann C. Mostertz and Robert A. Mostertz requesting a variance from the terms of Section XIX of the Zoning By-law which would allow the construction of a swimming pool less than the required twenty feet from the property line of the petitioners' dwelling house lot at 138 Lowell Road. Said request was made under the provisions of Section XXIV of the Zoning By-law.

Due notice of the hearing was given by mailing and publication. With their petition the petitioners filed a plan by John J. Regan, Registered Land Surveyor, dated June 29, 1977 which showed the location of the pool and the surrounding six foot high fence. The Mostertzes indicated at the hearing that the pool could be located within the required setback areas if it were placed between their house and the intersection of Hampshire and Lowell Roads. However, they stated that such a location, being on a street corner, would not insure them the same privacy as they would have in the more secluded location shown on the plan.

After the Mostertzes had presented their petition, the following persons expressed opinions in opposition to the granting of the variance:

H. Bradlee Perry of 18 Lehigh Road stated that he was representing Mrs. Henry Reimers, an abutter at No. 19 Hampshire Road. He stated that Mrs. Reimers is elderly and is not well. He said that the location of the pool was right under Mrs. Reimers window. He said that in his experience pools are used at night. He felt that Mrs. Reimers had relied upon the Zoning By-law which would not permit a pool in this location and he felt that the pool, if so built, would depreciate the value of Mrs. Reimers' property. He also stated that the hardship criteria of the Zoning Enabling Act had not been satisfied.

C.J. Lafferty, Jr. of 40 Hampshire Road stated that there was no hardship in this case since the petitioners could place the pool elsewhere. He also said that filter systems make a noise which could constitute a nuisance.

Barbara H. Whitcomb of 260 Grove Street expressed her opposition to this swimming pool and swimming pools in general.

Pauline Elms stated that she was also speaking on behalf of Mrs. Reimers and that she opposed the granting of the variance.

Frederick M. Livezey of 16 Hampshire Road stated that his study was located over the garage and that he would be disturbed by the noise associated with people using the pool.

STATEMENT OF FACTS

The premises in question are within a single residence district in which the setback for a structure from a property line must be at least twenty feet. The petitioners' proposed setback according to their plan would be ten feet. This is clearly not a de minimis variation from the required standard.

Petitioners' land is shown as Lot 193 on Sheet 1 of Land Court Plan No. 17670^E. It appears to be about the same size as the other lots shown on this plan. Also, no evidence was offered at the hearing that there was anything distinctive in the topography of the lot that would distinguish it from other parcels except, possibly, that it was a corner lot. However, even that feature is not distinctive since there are many corner lots shown on the Land Court plan.

Even if it could be shown that the lot was unusual, the petitioners have failed to demonstrate a hardship in that they could install the pool on a portion of their lot which would conform to the Zoning By-law. We do not deem "hardship" to include the location of an ancillary use such as a swimming pool.

DECISION

In view of the foregoing facts, the Board DENIES the requested variance.



William F. Cullinane



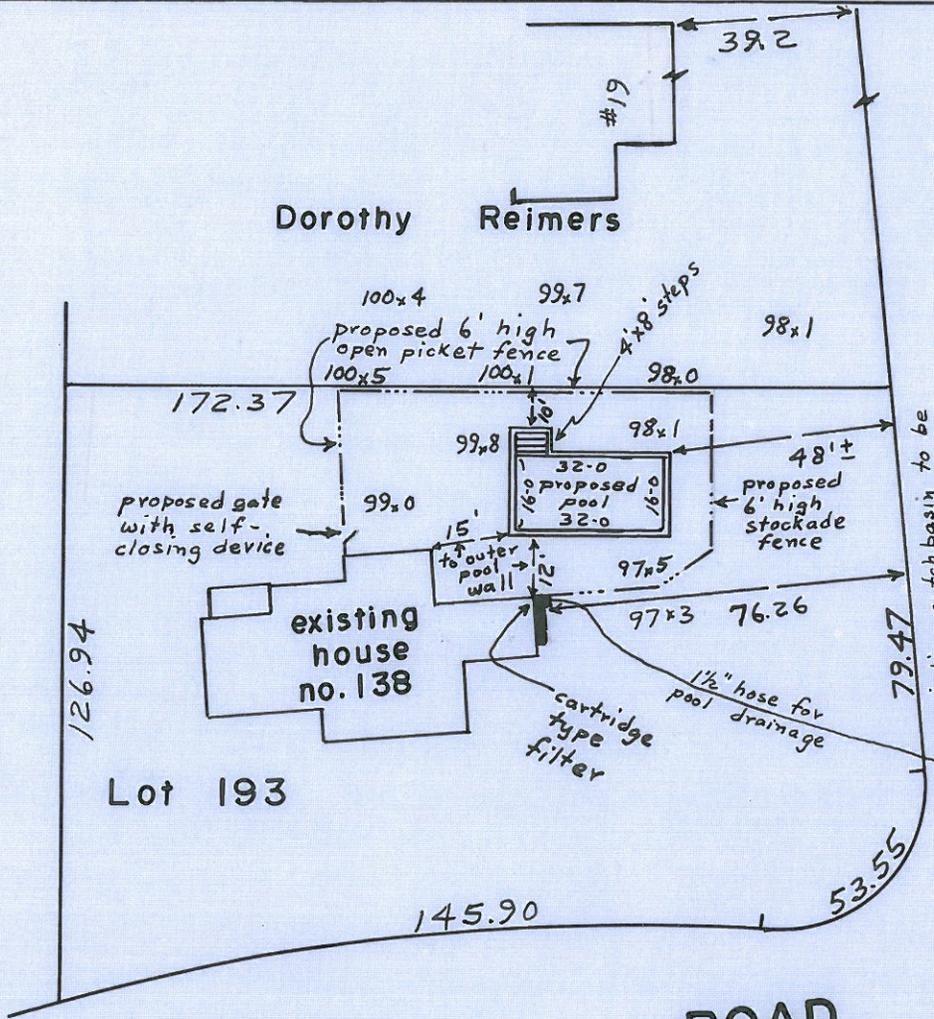
William O. Hewett



Henry H. Thayer

Nancy W. & A. Warren Wilkinson

Dorothy Reimers



HAMPSHIRE ROAD

LOWELL ROAD

PLAN OF LAND
IN
WELLESLEY MASS.

TO ACCOMPANY THE PETITION OF
ROBERT A. & BETTY ANN C. MOSTERTZ
138 LOWELL ROAD
WELLESLEY



John J. Regan

SCALE 1 IN = 40 FT
APEX ASSOCIATES
NEWTON HIGHLANDS

JUNE 29, 1977
LAND SURVEYORS
MASS.