

TOWN OF WELLESLEY



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ZBA 2020-18
Petition of Charles & Jane Ellis
73 Whittier Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, March 5, 2020 at 7:30 pm in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of Charles & Jane Ellis requesting a Variance pursuant to the provisions of Section 14E, Section 19 and Section 24 of the Zoning Bylaw for construction of a pool deck with less than required left side yard setbacks, at 73 Whittier Road, in a 15,000 square foot Single Residence District and a Water Supply Protection District.

On February 6, 2020, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Present at the public hearing were Charles and Jane Ellis, the Petitioner, and Daniel Trainque, Contractor.

Ms. Ellis said that the request is for a variance for a deck in their backyard. She said that to have the edge of the deck in line with the conforming edge of the pool, the side yard setback will be 11.4 feet. She said that there will be a storage shed on the deck with a ridge line height of 10 feet. She said that the neighbors on each side are in support of the project, as are all of the surrounding neighbors. She said that lot coverage for the deck and the shed will be 658 square feet, for total lot coverage of 17.4 percent, which is well under the limit of 20 percent. She said that the hardship is due to the topography of the lot, which drops almost 20 feet from the edge of the pool to where the edge of the deck would be.

Mr. Trainque said that the height of the deck above grade at its worst case will be eight to ten feet. A Board member said that he was troubled with the side view of the underside of the deck. Mr. Trainque said that they will sheath it with fencing.

The Chairman said that the topography drops in an east/west direction but the relief asked for is north/south. He said that the proposed storage shed is approximately 120 square feet, which exceeds the allowable size in the setback. He said that the Petitioner is actually asking for two variances, not one. He asked why the setback of the deck is requested to be 11.4 feet. Ms. Ellis said that the edge of the deck is in line with the edge of the pool. She said that the drop off starts at the edge of the pool. She said that if they were to slide the deck north/south, it would still drop off east/west. She said that they would have a drop as soon as they got out of the pool, which would be dangerous. She said that they could build a patio if the lot was flat.

A Board member asked if the lot was filled to build the pool. Ms. Ellis said that it was not because that part of the lot is relatively flat. The Board member asked why the issues were not considered before

building the pool. Mr. Ellis said that the pool company did not account for the setback. He said that it was an oversight.

A Board member said that the Board will need to see an engineered plan for the deck and architectural views to see exactly what it will look like and make sure that it will be safe.

The Chairman said that the Board cannot tell what the Petitioner plans to do from the plans that were submitted. He said that it is not clear how the whole thing works. Mr. Ellis said that there will be a fence around the pool. A Board member said that the fence is shown around the perimeter of the property. He said that there is nothing protecting the left side of the pool. The Chairman said that the Petitioner is arguing for the deck for safety reasons but around the corner from the deck they will have the same issue. Ms. Ellis said that area is flat. A Board member said that the Board will not grant a variance for something that it does not understand. Mr. Ellis said that it will be a deck off of the back of the pool. He said that because of the drop off, a patio would require a significant retaining wall.

A Board member said that the Board will need to see a topographic plan around the rear and side of the house. He said that the Board will need to see a civil or structural engineer's specifications for a deck that is that high off of the ground.

A Board member said that he is concerned that this is sort of a self-created problem. Mr. Ellis said that this was a mistake made by the pool company when they filed for the permit. He said that they did not know about the setback. He said that the plans that were started in January, 2019, always had a deck. Ms. Ellis said that when they started the plans last year, the end goal was to have the area ready for their daughter's graduation in June of 2020. The Board member said that they chose to put the pool in without finding out about zoning bylaw requirements. Mr. Ellis said that they trusted Environmental Pools, who have built a number of pools in Wellesley.

The Chairman asked about drainage from the shower. Mr. Trainque said that it will tie into existing plumbing. The Chairman asked if there will be any electrical or water services inside the shed. Ms. Ellis said that there will be no water service.

A Board member said that the shed may be better under the deck with a set of stairs down to it. Ms. Ellis said that they thought it would be safer to have it above rather than crawling under. The Chairman said that because the shed is over 100 square feet, it is an accessory structure that should not be located in the setback. Ms. Ellis said that the shed can easily be moved.

A Board member asked about plans for the grill. Mr. Ellis said that it will be a natural gas fired grill. A Board member said that the Fire Department may have an issue with that on a wooden deck. Ms. Ellis said that they had discussed having a composite deck and using a propane tank rather than hard piped. A Board member said that those issues need to be clarified.

The Chairman said that, in addition to the plans discussed at the hearing, it will be important to see the vertical dimensions of all structures for the Board to get an understanding of the implications.

The Board voted unanimously to continue to continue the petition to May 7, 2020.

In accordance with Chapter 53 of the Acts of 2020, the hearing was continued to June 4, 2020.

June 4, 2020

There was no one present at the public hearing representing the Applicant.

The Chairman confirmed that there was no further communication from Ms. Ellis about proceeding with the hearing. He said that all of the Board members had great difficulty with this application.

The Board voted unanimously to dismiss the petition without prejudice, due to failure to appear.