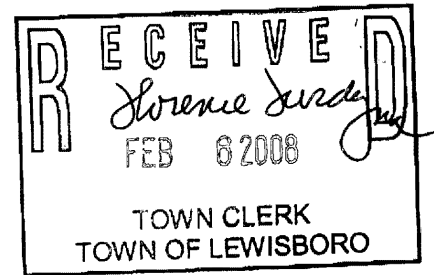


**ZONING BOARD OF APPEALS**  
**TOWN OF LEWISBORO**



**In the matter of:**  
**CAL. NO. 01-08-BZ**

Application of Lynne and Douglas Barasch, 18 Bayberry Lane, South Salem, NY 10590 for a variance of Article IV § 220-23E of the Zoning Ordinance in the matter of the proposed construction of a 20' by 40' swimming pool that will be closer to the side lot line (proposed 30' where 40' is required) in an R-2A, Two Acre Residential District.

The public hearing was held on Wednesday, January 23, 2008 at the Town House, 11 Main Street, South Salem, New York at 8:15 P.M.

Board Members: Present: Geoffrey Egginton  
Chairman  
Carolyn Mandelker  
Thomas Casper  
Robin Price, Jr.

Absent: None

The Property: The property is located on the west side of Bayberry Lane, designated on the Tax Map as Sheet 31, Block 10805, Lot 55 in an R-2A, Two-Acre Residential District.

Appearances: For Applicant: Ken Thompson  
[Agent]

In Opposition: None

References: Minutes of the Public Hearing;  
Swimming Pool Plan, dated 12/07;  
Survey revised date, 3/9/06;

Action of the Board: THE APPLICATION IS  
APPROVED AS PRESENTED.

The Vote: To Approve: January 23, 2008

Affirmative: Egginton, Price, Mandelker

Negative: None  
Absent: None  
Abstain: Casper

**NATURE OF APPLICATION  
AND  
SUMMARY OF EVIDENCE PRESENTED**

Application for a variance of Article IV § 220-23E of the Zoning Ordinance in the matter of the proposed construction of a 20' by 40' swimming pool that will be closer to the side lot line (proposed 30' where 40' is required) in an R-2A, Two Acre Residential District.

The property is located on the west side of Bayberry Lane, designated on the Tax Map as Sheet 31, Block 10805, Lot 55 in an R-2A, Two-Acre Residential District.

Chairman Egginton asked if anyone objected to the notice as it appeared in the Lewisboro Ledger. No one responded.

Mr. Ken Thompson, of Bedford Poolscales was present at the January 23<sup>rd</sup> meeting to represent the applicant.

Chairman Egginton stated that a site walk was conducted on the morning of Saturday, January 19<sup>th</sup> 2008. He asked if anyone wished to comment on the site walk.

Mr. Thompson stated that the property at first blush seemed to be a relatively simple pool location. He stated that the applicant did not have a feel for the location of the septic system. Mr. Thompson stated that the way that the house is sited on the property is very misleading. He stated that he walked the rear of the property and found some typical wetland plants as well as wetland environs. Mr. Thompson stated that they hired a soil scientist to stake the wetlands. He stated that they retained the firm of H. Stanley Johnson to locate the flagged wetland on the property in relation to the 150' wetland setback. Mr. Thompson stated that they had the wetland delineation as well as the location of the septic system. He stated that the homeowner had assumed for years that the fence located on the far line represented the property line. Mr. Thompson stated that the fence did not represent the property line at all, in reality the property line is 10' towards the house away from the fence. He stated that taking into consideration all of those issues, they proceeded to site the location in the appropriate spot. Mr. Thompson stated that they submitted it to the Building Department for a permit which was granted. He stated that one end of the pool was only 17' off the house and because of the wetland issues that would prevent the removal of trees. Mr. Thompson stated that the only daylight is a little further out from the house. He stated that is the reason they staked it and withdrew their original building permit application. Mr. Thompson stated that is why they are before the ZBA to seek relief. He stated that in essence they are requesting moving the far end of

the pool 10' closer to the setback line making it 30' from the property line. Mr. Thompson stated that the north east corner would be on the setback line. He stated that it is all the other factors that have brought them before the ZBA.

Mr. Casper asked if the Building Permit was approved.

Mr. Thompson stated that they had the permit to locate it by right. He stated that they withdrew the permit after they staked the pool and the Barasch's had an opportunity to look at the location.

Chairman Egginton stated that they had some concerns regarding the extent of the variance request; it is a 25% encroachment of a corner of the pool into the 40' setback which would be 10'. He stated that they consider the degree of the variance that is requested particularly if they feel there are some adjustments that can be made. Chairman Egginton asked if the pool could be realigned so that it lines up with the setback line. He stated that another suggestion was to shift the pool back so that the requested variance is 5'. Chairman Egginton stated that the third suggestion is to reduce the size of the pool from 20' by 40' to 36' by 18' and therefore the impact of the pool on the setback would be less.

Mr. Thompson stated that width might be a consideration, reducing the length would not have much of an impact because of the way the angle of the 2 lines intersects.

Chairman Egginton stated that if they narrow it by 2' he would also suggest shifting the pool by 2-3' so that the overall encroachment in the setback is less than 10'.

Ms. Adrian Meredith, 9 Scott's Lane stated that she was curious and they could see the property diagonally from their house.

Chairman Egginton reviewed the tax map and stated that there is a property in between.

Ms. Mandelker stated that based on the site walk, she did not see an impact at all. She stated that the biggest impact is on the property itself because in fact they are putting a swimming pool in their front yard.

Mr. Thompson stated that it is actually a side yard location and the closest point of the pool would be over 100' back from the road.

Ms. Meredith stated that she has no major objection; she just moved into the neighborhood and was concerned.

Mr. Price referring to the survey asked what the wetland seed mix area was.

Mr. Thompson responded that it is an area that was seeded with wetland vegetation plants as per the surveyor.

Mr. Price asked if the pool could be moved back.

Mr. Thompson stated that they have met with the Wetland Inspector, Bruce Barber on four occasions. He stated that Mr. Barber had been out to the property twice. Mr. Thompson stated that even Jay Fain was aware of it.

Ms. Mandelker asked if you are standing poolside, will you notice that the pool is parallel to the house.

Mr. Thompson responded yes you would notice it poolside because the house and pool make such a strong linear statement.

Chairman Egginton stated that he is sympathetic to that.

### **FINDINGS AND CONCLUSIONS**

Mr. Thompson stated that they had gone to a great effort to site the pool so that it would be pleasing to the homeowner as well as acceptable to the town.

Chairman Egginton stated that he proposes that they reduce the width of the pool from 20' to 18', reduce the dimension so that it totals 5 feet and shift the pool 2 feet from the side yard setback. He stated that the angle will remain the same but a net of 5 feet in the setback. Chairman Egginton asked if anyone wished to be heard either in favor or opposed. No one responded.

Chairman Egginton moved that the application be approved as presented for the following reasons:

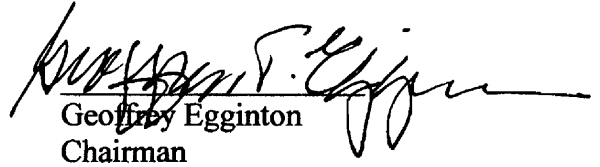
- That there will be no undesirable change in the character of the nearby property;
- That there is no practical alternative to the requested variance;
- That the area variance is substantial, but is mitigated by the positioning of the pool and screening;
- That there will be no adverse environmental impact;
- That the difficulty is not self-created;

Subject to the following conditions:

- The width of the pool be reduced from 20 feet to 18 feet;
- The proposed site of the pool is to be shifted 2 feet away from the side yard setback;
- The entire pool be shifted an additional 3 feet so that the proposed variance is 5 feet rather than 10 feet;
- Screening of the pool;
- Obtaining a Wetland Permit;

The motion was seconded by Ms. Mandelker; In favor: Ms. Mandelker, Mr. Price and Chairman Egginton. Deny: None; Abstain: Mr. Casper; Absent: None;

Prior to commencement of any work done under this approval, the Applicant is directed to contact the Building Department to obtain such permits as may be necessary and to pay such fees as may be required.

  
Geoffrey Egginton  
Chairman

Dated in South Salem, New York  
This 2 day of February 2008

Expiration: The variance shall be deemed to authorize only the particular use of uses specified in the decision, and unless other provisions are set forth by the Zoning Board of Appeals in connection with its decision, shall expire if work is not initiated pursuant thereto within one (1) year of the date said decision is filed with the Office of the Town Clerk or if said use of uses shall cease for more than one (1) year.