

**Village of Lansing
Board of Zoning Appeals
March 20, 2012**

1 The meeting of the Village of Lansing Board of Zoning Appeals was convened at 7:35 P.M. by
2 Chairperson Mary Sirois. Present at the meeting were Board members Don Eckrich and John
3 Wisor; Alternate Member Dolores Adler; Code Enforcement Officer Marty Moseley; Village
4 Attorney David Dubow; Applicant: Scott Pedersen; Residents Patrick Zimmer, Arlene Zimmer,
5 and Chris Miller.

6
7 Sirois appointed Adler as an acting member for the Board of Zoning Appeals meeting.
8

9 **Public Hearing to Consider:**

10 Sirois opened the public hearing to consider Appeal No. 2012-01, Scott Pedersen, to
11 construct a 24' diameter above-ground swimming pool, with a deck, in the side yard of
12 their home at 40 Highgate Circle. A variance is required because the proposed pool with
13 a deck would be approximately 15' from the side property line where Section 145-40
14 E5(a)[3] of the Village of Lansing Code requires 25'. The property is located in the
15 Medium Density Residential District, Tax Parcel No. 47.1-5-57.
16

17 Moseley noted that there is an error in the public notice. The side yard setback is 20 feet and not
18 25 feet. Moseley added that the applicant is asking for a maximum of a 15 foot side yard setback.
19

20 Pedersen asked if Moseley could explain why his swimming pool would need a variance for the
21 side property line. Pedersen also asked if Moseley could explain the how he was classified
22 without a rear yard property line.
23

24 Moseley indicated that based on the unique lot configuration Pedersen has approximately 180
25 degrees of front yard, which would leave two side yards as what some might consider the rear
26 yard. Moseley added that the variance is required because once a swimming pool exceeds 200 ft²
27 it is then considered a primary building, and a primary building has a side yard setback of 20 feet
28 which this would exceed.
29

30 Pedersen noted that he would be encroaching on the side yard property line by approximately 5
31 feet. Pederson added that he would like to install some plantings to minimize noise.
32

33 Adler asked where the plantings would be located.
34

35 Pederson noted that he would like to plant them near the driveway side of the property and
36 between his house and one of the adjacent neighbors. Pederson added that there is an existing
37 row of evergreens boarding the two properties. Pederson indicated that the closest pool to his
38 property is about 5 houses away, which is located in the Village of Cayuga Heights. Pederson
39 noted that he has done some extensive re-landscaping of the front yard and the plantings would
40 be in-kind with what was planted in the front yard.
41

42 Wisor asked if there would be any additional lighting in the pool area.

43
44 Pederson noted that he would have the ability to increase the size of the plantings if necessary.
45 Pederson added that he would not be adding any additional lighting at this point in time, but may
46 in the future, which most likely would be low voltage solar lighting.

47
48 Eckrich asked about the height of the railing.

49
50 Pederson noted that the height would comply with the New York State Building Code.

51
52 Moseley indicated that the New York State Residential Code calls for a specific railing height
53 that would be required to be installed.

54
55 Sirois asked for comments from the public.

56
57 Miller noted that 145-75B on restrictions on granting variances. Miller noted that The Board of
58 Zoning Appeals is expressly prohibited from basing its decision on the presence of a
59 nonconforming lot, facility or activity nearby or in the same zoning district, and any condition,
60 lot, facility or activity in another zoning district or another municipality. Miller added that he
61 would appreciate any vegetation to screen from his property. Miller noted that his bedroom
62 windows are only 24 feet from the property line.

63
64 Eckrich asked Miller, in his opinion as neighbors, if there was an absence of plantings would that
65 be enough to put the kibosh on this project, or should there definitely be plantings installed.

66
67 Miller noted that he would prefer to have plantings installed regardless of the size of the pool,
68 but the ultimate concern is the size of the pool. Miller added that his lot is unique because his
69 house is close to the property line.

70
71 Pederson asked if lower plantings would be appropriate due to the large evergreen trees already
72 being in existence.

73
74 Miller indicated that he sis not have a recommendation. Miller added that he has invested a
75 significant amount of money into shade plantings for his landscaping.

76
77 Pederson noted that since the pool and deck would be elevated, the existing evergreen trees
78 would act as buffering.

79
80 Miller noted that they were concerned about the visibility of the pool from his property. Miler
81 responded to the typical questions that are required to be answered by the BZA for an area
82 variance.

83 a. *Whether an undesirable change will be produced in the character of the*
84 *neighborhood or detriment to nearby properties will be created by granting the*
85 *area variance.*

86 Miller noted that there are approximately 57 homes in the Highgate
87 neighborhood, within the Village of Lansing, and none of them have a
88 pool.

89 *b. Whether the benefit sought by the applicant can be achieved by some method*
90 *feasible for the applicant to pursue other than an area variance.*

91 Miller added that pools do come in smaller sizes and generally the Board
92 is supposed to grant the minimum variance necessary.

93 *c. Whether the requested area variance is substantial.*

94 Miller indicated that this variance would be substantial since it is a request
95 for approximately 16% -18% changes to the current setback

96 *d. Whether the proposed area variance will have an adverse effect or impact on the*
97 *physical or environmental conditions in the neighborhood or district.*

98 Miller felt that the pool would decrease their property value in turn would
99 have an adverse effect.

100 *e. Whether the alleged difficulty was self-created.*

101 Miller noted that he felt that this variance request was self-created by the
102 applicant and would negatively impact the use and enjoyment of his
103 property.

104
105 P. Zimmer indicated that he was the other adjoining neighbor and noted that he had similar types
106 of concerns as Miller. Zimmer pointed out that he was happy that Pederson was wanted to invest
107 money to try to improve their property and would like to support their request in any way
108 possible. Zimmer noted that he did not fully understand why a variance would be required to
109 build a pool. Zimmer felt that there were too many alternatives for pool sizes and shapes that
110 would allow Pederson to install a pool without the need of a variance. Zimmer noted that he also
111 did not understand why this property, was conveniently, described as a side yard setback rather
112 than a rear yard setback. Zimmer noted that as the property currently is established, it seems that
113 the pool would be located in the rear yard of the property. Zimmer added that the size of the
114 structure (pool) is slightly large.

115
116 A. Zimmer requested that some plantings be installed to buffer their view of the bottom of the
117 pool.

118
119 Pederson indicated that a different shape pool would require different bracing and could interfere
120 with the deck surrounding the pool. Pederson noted that he could decrease the size of the deck by
121 about 3 feet.

122
123 P. Zimmer noted that possibly locating the pool in a different area on the property would be more
124 appropriate. P. Zimmer added that he had concerns with the overall height of the fence and
125 drainage and runoff from the deck. P. Zimmer suggested to stay within the Village Code
126 requirements.

127
128 Miller noted that any plantings that would be installed should be fast growing as to provide for
129 buffering from the neighboring parcels. Miller added that decreasing the deck size would help
130 but if the pool size was decreased to 20 feet and decreasing the deck size there would be no need

131 to request a variance.

132

133 Sirois asked for any additional comments from the public.

134

135 Eckrich noted that the issue of the strange configuration of the lot is unique and the Village
136 designations of the lots in the Village, as it may be, are not arbitrary in anyway. Eckrich added
137 that there are other alternatives for the applicant to seek which would not require a variance.

138

139 Wisor noted that he agreed with Eckrich. Wisor added that, when he visited the site, due to the
140 shape of the lot he wondered what the neighbor's thoughts on the proposed project were.

141

142 Adler noted that the size of the pool could be decreased and thus would not require a variance.

143

144 Dubow reminded the Board that there is a balancing approach to the variance where the Board
145 would need to weigh the benefits, as requested from the applicant, to the impacts on the
146 community. Dubow added that any variance approved is required to be the minimum needed
147 with appropriate conditions if needed.

148

149 Eckrich asked if the Board could table this item thus providing the applicant and neighbor's time
150 to come to reasonable solutions, or even the possibility of not even needing the variance.

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152 Dubow explained that the applicant would need to make that request.

153

154 Sirois noted that if a solution was accomplished between the applicant and the neighbors, if a
155 variance was still needed the variance request would not be the same as what has been requested
156 for this particular meeting.

157

158 Dubow indicated that the Board could grant the variance as requested, the Board could grant a
159 lesser variance, and the Board has the right to deny the variance request.

160

161 After further discussion Eckrich moved the following resolution, seconded by Adler:

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163 **VILLAGE OF LANSING BOARD OF ZONING APPEALS RESOLUTION ADOPTED**
164 **ON MARCH 20, 2012 FOR APPEAL NO. 2012-1**

165

166

167 Motion made by: Don Eckrich

168

169 Motion seconded by: Dolores Adler

170

171 **WHEREAS:**

172

173 A. This matter involves consideration of the following proposed action: Appeal No.
174 2012-01, Scott Pedersen, to construct a 24' diameter above-ground swimming pool,
175 with a deck, in the side yard of their home at 40 Highgate Circle. A variance is

176 required because the proposed pool with a deck would be approximately 15' from the
177 side property line where Section 145-40 E5(a)[3] of the Village of Lansing Code
178 requires 25'. The property is located in the Medium Density Residential District, Tax
179 Parcel No. 47.1-5-57.; and
180

181 B. On March 20, 2012, the Village of Lansing Board of Zoning Appeals held a public
182 hearing regarding such action, and thereafter thoroughly reviewed and analyzed (i)
183 the materials and information presented by and on behalf of the applicant(s) in
184 support of this appeal, (ii) all other information and materials rightfully before the
185 Board, and (iii) all issues raised during the public hearing and/or otherwise raised in
186 the course of the Board's deliberations; and
187

188 C. On March 20, 2012, in accordance with Article 8 of the New York State
189 Environmental Conservation Law - the State Environmental Quality Review Act
190 ("SEQR), and 6 NYCRR Section 617.5, the Village of Lansing Board of Zoning
191 Appeals determined that the proposed action is a Type II action, and thus may be
192 processed without further regard to SEQR; and
193

194 D. On March 20, 2012, in accordance with Section 712-b of the Village Law of the State
195 of New York and Village of Lansing Code Section 145-74 A(1), the Village of
196 Lansing Board of Zoning Appeals, in the course of its deliberations, took into
197 consideration the benefit to the applicant if the area variance is granted as weighed
198 against the detriment to the health, safety and welfare of the neighborhood or
199 community by such grant;
200

201 NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:
202

203 1. The Village of Lansing Board of Zoning Appeals hereby makes the following
204 findings with respect to the specific criteria for such area variance as set forth in
205 Section 712-b of the Village Law of the State of New York and Village of Lansing
206 Code Section 145-74 A(1):
207

208 *Whether an undesirable change will be produced in the character of the*
209 *neighborhood or detriment to nearby properties will be created by granting the*
210 *area variance.*
211

212 Finding: Yes. The visual impact of the above ground swimming pool would
213 require screening, there would be drainage issues for when the pool is drained,
214 and there is an encroachment factor for a side yard variance.
215

216
217
218 *Whether the benefit sought by the applicant can be achieved by some method*
219 *feasible for the applicant to pursue other than an area variance.*
220

221 Finding: Yes. There could possibly be adjustments made to the proposed plan
222 to decrease either the deck size and or the pool size to not need a variance.
223

224
225
226 *Whether the requested area variance is substantial.*
227

228 Finding: Yes. The variance would impact the immediately adjoining
229 neighbors and would adversely affect the use and enjoyment of their
230 properties. Both neighbors expressed their concerns as to the proximity of the
231 proposed pool and the inability to create reasonable and effective sight
232 buffers, even with the plantings proposed.
233

234
235
236 *Whether the proposed area variance will have an adverse effect or impact on the*
237 *physical or environmental conditions in the neighborhood or district.*
238

239 Finding: No
240

241
242
243 *Whether the alleged difficulty was self-created.*
244

245 Finding: Yes it was self-created.
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- 247
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250
251 2. It is hereby determined by the Village of Lansing Board of Zoning Appeals that the
252 proposed variance is **DENIED**.
253

254
255 The vote on the foregoing motion was as follows:

256
257 AYES: Mary Sirois, Dolores Adler, John Wisor, and Don Eckrich.
258

259 NAYS: None
260

261 The motion was declared to be carried.
262

263 **Approval of the Minutes**

264 Eckrich moved the minutes of June 21, 2011 be approved as corrected, seconded by Wisor. Ayes
265 by Sirois, Eckrich, Wisor, and Adler.

266 Wisor moved the minutes of August 16, 2011 be approved as corrected, seconded by Adler.
267 Ayes by Sirois, Wisor, and Adler. Abstention by Eckrich

268

269 **Adjournment:**

270 There being no other business, Wisor moved to adjourn the meeting at 8:25 P.M. Seconded by
271 Eckrich. Ayes by Sirois, Eckrich, Wisor, and Adler.