



KIMBERLEY DRISCOLL
MAYOR

CITY OF SALEM, MASSACHUSETTS

BOARD OF APPEALS 2019 MAY 29 PM 2:39

98 WASHINGTON STREET ♦ SALEM, MASSACHUSETTS 01970
TEL: 978-745-9595

CITY CLERK
SALEM, MASS

May 29, 2019

Decision

City of Salem Board of Appeals

Petition of MARIA Y. BAEZ-ESPINAL for a special permit per Section 3.2.5 Swimming Pools of the Salem Zoning Ordinance to provide less than six feet of setback between an above ground pool and the side property line at 14 PIEDMONT STREET (Map 33, Lot 237) (R2 Zoning District).

A public hearing on the above Petition was opened on May 15, 2019 pursuant to M.G.L. Ch. 40A, § 11 and closed on that date with the following Salem Board of Appeals members present: Mike Duffy (Chair), Peter A. Copelas, Jimmi Heiserman, Patrick Shea, Jimmy Tsitsinos, and Paul Viccica (Alternate).

The Petitioner seeks a special permit per Section 3.2.5 *Swimming Pools*.

Statements of Fact:

1. In the petition date-stamped April 23, 2019, the Petitioner requested a special permit per Section 3.2.5 *Swimming Pools* to provide less than six feet of setback between an above ground pool and the side property line.
2. Petitioner Maria Y. Baez-Espinal presented the petition.
3. The property is a single-family house in the Residential Two-Family (R2) zoning district.
4. The petitioner received a building permit (permit B-18-283) issued April 10, 2018 to install an 18' round pool in a fenced in yard. This above-ground pool was installed three (3') feet from the side property line.
5. Per Section 3.2.5 of the Zoning Ordinance, "no pool shall be located less than six (6) feet from any rear or side property line, unless a special permit is obtained from the Board of Appeals."
6. In the Statement of Grounds, the petitioner states, "I would like to formally apologize for the location of the swimming pool being 3 feet closer to the property line than required. This was an honest oversight as we were unaware of the special permit requirements by the city of Salem to install the pool less than 6 feet from any property line."
7. The requested relief, if granted, would allow the above-ground pool to remain in its current location on the property.
8. At the May 15, 2019 public hearing, the petitioner noted that she received a (building) permit for the pool; that her neighbor closest to the pool consents to the location of the pool; and that her neighbor on the other side of the property generated a complaint. The petitioner explained that she chose the pool location to avoid conflict or to avoid affecting her neighbor's daily living while the pool is used (seasonally).
9. At the public hearing, Board member Peter Copelas asked if the permit specified where the pool was supposed to be located within the yard. Building Commissioner Tom St. Pierre stated that the

Building Department typically does not require a plot plan; they accept a drawing similar to what was submitted to the Board, and they hand out the dimensional requirements for pools. Peter Copelas asked if petitioner would have submitted the drawing which was submitted to the Board of Appeals to the Building Department; Tom St. Pierre said he could not speak to whether they did, but that is typically what they would get. The petitioner stated that she submitted a plot plan showing the pool six feet from the lot line (in compliance with regulations). Peter Copelas stated that he understands the petitioner's reasoning in wanting to stay farther away from the neighbor whom she did not want to disturb, but it is problematic that the pool was not installed where it was in the application. Mr. Copelas added that the fact that a special permit and not a variance is being requested is positive. The petitioner reiterated that she was not aware that a special permit was required to move the pool closer, and that she would have come before the Board had she known.

10. At the public hearing, Peter Copelas stated that he thought that if the petitioner had requested a special permit prior to building the pool, the Board probably would have looked favorably on it. Board member Paul Viccica stated that the Board should evaluate the application as if for a special permit rather than an error, using the six special permit criteria.
11. At the March 20, 2019 public hearing, one (1) member of the public spoke in favor of the petition and no (0) members of the public spoke in opposition to the petition. Deborah Croxon-Trammell of 10 Piedmont Street (closest to the pool), who spoke in favor, also submitted a letter in support of the petition, which was included in the petition. Staff Planner Brennan Corrison noted that the Board received this letter. Katherine Scott of 18 Piedmont Street did not speak in favor or in opposition; she stated that she did not complain to the City about the pool, and that her concern was about a "pavilion."

The Salem Board of Appeals, after careful consideration of the evidence presented at the public hearing, and after thorough review of the petition, including the application narrative and plans, and the Petitioner's presentation and public testimony, makes the following **findings** that the proposed project meets the provisions of the City of Salem Zoning Ordinance:

Findings for Special Permit:

The Board finds that the proposed nonconforming structure is not substantially more detrimental than the existing nonconforming structure to the neighborhood.

1. It is consistent with the social, economic and community needs to allow these types of amenities to exist.
2. There will be no impacts to traffic flow and safety, including parking and loading.
3. Existing utilities and public services are adequate.
4. There will be no significant change in impacts on the natural environment, including drainage.
5. This amenity fits with the neighborhood character.
6. The potential fiscal impact, including impact on City and tax base and employment: If there is any impact, it is positive, including a potentially slightly higher property value.

On the basis of the above statements of fact, the Salem Board of Appeals voted five (5) in favor (Patrick Shea, Jimmi Heiserman, Mike Duffy (Chair), Peter A. Copelas, and Jimmy Tsitsinos) and none (0) opposed to grant the requested Special Permit per Section 3.2.5 Swimming Pools of the Salem Zoning Ordinance to provide less than six feet of setback between an above ground pool and the side property line at **14 Piedmont Street**, subject to the following **terms, conditions, and safeguards**:

Standard Conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes and regulations.

2. A Certificate of Inspection is to be obtained.
3. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

Mike Duffy / BJC

Mike Duffy, Chair
Board of Appeals

A COPY OF THIS DECISION HAS BEEN FILED WITH THE PLANNING BOARD AND THE CITY CLERK.

Appeal from this decision, if any, shall be made pursuant to Section 17 of the Massachusetts General Laws Chapter 40A, and shall be filed within 20 days of filing of this decision in the office of the City Clerk. Pursuant to the Massachusetts General Laws Chapter 40A, Section 11, the Variance or Special Permit granted herein shall not take effect until a copy of the decision bearing the certificate of the City Clerk has been filed with the Essex South Registry of Deeds.