

# Zoning Board of Appeals Town of Oak Bluffs

Kris Chvatal, Chairman

Members:

Gail Barmakian

Jane Lofgren

George Warren

Michael Underwood

Associate Members:

Joseph Re

Peter Palches

## NOTICE OF DECISION

January 15th, 2009

Re: Application of Robert F. Higgins, 300 Farm Neck Way, Oak Bluffs, Ma.  
Map 33, Lot 5

Applicant is seeking a **Special Permit** under zoning by-law 4.4.5.2 to construct a pool within the 50 foot setbacks for an R3 residence.

Chairman Kris Chvatal opened the 1<sup>st</sup> hearing for the applicant December 18<sup>th</sup>, 2008 at 6:20pm. He read the notice of public hearing, introduced members sitting and offered the floor to the applicant to make a presentation.

Greg Ehrman from Hutker Architects and engineer Chris Alley represented the applicant. They showed Board Members a site plan placing a 20 X 42 foot pool 16.8 feet from the side setback of the property. Greg explained that the pool location is vital to the homeowners to be viewable from the public spaces in the house (kitchen and family room); they have young children who they want to see when they are in the pool. Board members looked at the site plan and noted that other projects were also planned for the property including a new garage with apartment space and a renovation of the house that will increase deck area. Members asked what neighbors abutted the proposed pool area. Greg said the current lot closest to where the pool would be installed is vacant. Other surrounding areas adjacent to the applicants land are held in conservation. Board members discussed the large amount of relief needed for the pool placement. The lot is R3 zoned and would require 33 feet of relief from the side setback. Zoning Administrator Adam Wilson addressed the Board about how the by-law is a recent addition to Oak Bluffs because there were no provisions for building pools right on the property lines. He said that the goal of putting pools beyond setbacks was so that neighbors wouldn't be overburdened with the activity that goes on with a pool. The Board discussed moving the location of the pool to at least 20' from the property line. They thought that in keeping in spirit with the intent of the bylaw to create space for a use that can generate a lot of noisy activity; the location should at least conform to dimensional setbacks for R1 or R2 residences. The consensus from Board members was that the applicant needed to return with a new site plan showing the pool being at least 20 feet from the side setback. The hearing was continued until January 15<sup>th</sup> at 5:20 pm.

On January 15<sup>th</sup> the hearing was continued at the designated time. Greg Ehrman showed a proposed redesign putting the pool 22 feet off the side property line and a change of the dimensions of the pool to 16 X 42 feet. He explained that on the site plan there showed an

existing privet hedge that is 70 feet long and 5 feet tall that they will replant on the neighbor's side of the property line so as to provide additional screening of the pool.

The Chairman opened the floor for public comment. No one spoke either for or against the proposed application. There was no correspondence to be read. The Chairman closed the floor for Board discussion at 5:40pm.

In its findings, the Board agreed that the applicant needed to apply for a special permit because the proposed pool at 300 Farm Neck Way in the R3 residential zone would be placed within the 50 foot setback. By consensus the Board agreed that a special permit does apply under the 4.4.5.2 by-law. In the discussion, Board Members said the only issue is the relief to go closer than 50' and that the applicant made a compromise to go now 20+ feet satisfies the Boards' requirement and that the Farm Neck Association approves it and with no neighbor objection the project does not appear to be more detrimental to the neighborhood than what currently exists.

A motion was made and seconded for a special permit under 4.4.5.2 with a condition that the privet hedge be relocated according to the submitted site plan to allow the applicant to build a pool within the 50 foot setback for an R3 residence. The 5 – 0 vote was unanimous in granting the special permit.

The applicant's representatives were instructed that any further changes, no matter how minor, had to be brought back to the Board for approval.

As the law provides, appeals, if any, shall be made pursuant to Section Seventeen (17) of Chapter 40 – A, The Zoning Act, and shall be filed within twenty (20) days after the filing of this decision in the Office of the Oak Bluffs Town Clerk.

Said Board of Appeals is a legally constructed Appeals Board, exercising the powers granted to it under Section Fourteen (14) of Chapter 40 – A, and under Chapter 831, a 1977 Act further regulating the protection of lands and the waters of the island of Martha's Vineyard.

As required by law, The Board of Appeals certifies that copies of this decision and documents referred to in it, have been filed with the Oak Bluffs Building Inspector, Planning Board and Town Clerk. This decision does not relieve the applicant from obtaining all other necessary permits.

After expiration of the twenty (20) day appeal period, you will receive the original copy of this decision. It will include the original signature page, signed by the members of the Board of Appeals presiding at the hearing. This copy will verify, by the Town Clerk, that no appeals have been filed, and if there were appeals filed those said appeals were dismissed or denied against this decision. At that time, the decision, along with the original signature page must be filed at the Dukes County Registry of Deeds before it is legally recognized.

Recorded Vote

The following members of the Zoning Board of Appeals voted to grant a **Special Permit** to Robert F. Higgins at 300 Farm Neck Way to install a 16 X 42 foot pool twenty two feet from the side setback instead if fifty with the one condition that the 70 foot privet hedge be replanted according to the submitted site plan.

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(Kris Chvatal)

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(Joe Re)

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(Peter Palches)

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(George Warren)

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(Gail Barmakian)

Received and filed in the Office of the Town Clerk:

Date:\_\_\_\_\_