

Town of Charlotte
Zoning Board of Adjustment

In Re: Variance Request to Construct a 14' by 24' Swimming Pool, Porch, and Hot Tub Area Within 50' Setback at 265 Inn Road (M09B03L27)

I. Introduction and Procedural History

On November 27, 2018, Kathleen Carrara completed a variance application to construct a 14' by 24' swimming pool, porch, and hot tub area 13' and 8" from the southerly boundary of 265 Inn Road.¹

The existing use of the Carrara property is a single-family home and accessory dwelling located in the Rural District. The lot features some sloping and is an irregular horseshoe shape. The

A site visit took place on December 8 and a public hearing took place December 19, 2018. Public notification was accomplished via the following: electronic posting of the notice on the Town website; publication in *The Citizen* newspaper November 29, 2018; and by posting hardcopies of the notice at the Town Office, the Brick Store, and Spear's Corner Store on November 26, 2018. Further notification was issued to the adjoining property owners regarding the public hearing by direct correspondence November 26, 2018. Present at the December 8 site visit were ZBA chair Frank Tenney and Zoning Administrator Aaron Brown. ZBA members Frank Tenney (chair), Jonathan Fisher, and Matt Zucker attended the public hearing. Also present were ZBA staff Aaron Brown and neighbors David and Lisa Desmet. After the public hearing, ZBA members Stuart Bennett and Andrew Swayze read the meeting minutes and listened to the meeting transcript in order to participate in deliberative session.

II. Exhibits

The following exhibits were considered for the decision:

1. Planning and Zoning Permit Application
2. Variance Questionnaire
3. Performance Standards Questionnaire
4. Lighting Plan
5. Site Plan and Elevations
6. Site Survey
7. Carrara Site Slopes (prepared by Town Staff)

III. Standard of Review

The application requires review under the following sections of the Land Use Regulations for the Town of Charlotte (approved March 1, 2016), hereafter referred to as the Regulations:

1. Chapter II, Section 2.5, Table 2.5(E) – Application of District Standards; Rural District (RUR): Dimensional Standards
2. Chapter III, Section 3.12 (A) – Performance Standards
3. Chapter V, Section 5.4 (C) – Conditional Use Review: General Standards
4. Chapter IX, Section 9.7 – Variances

¹ Carrara started and paid for her application before November 27, but some forms were not turned in until then.

IV. Findings

Based on the application, testimony, exhibits, and other evidence, the Zoning Board of Adjustment makes the following findings:

- A. The applicants seek to build a 336-square-foot swimming pool, porch, and hot tub area 13 feet and 8 inches from the boundary line of 265 Inn Road in Charlotte, which requires the granting of a variance.
 1. **Chapter II, Section 2.5, Table 2.5(E) – Dimensional Standards** requires minimum front, rear, and side setbacks of 50 feet. The applicants request a variance of 36 feet and 4 inches.
 2. **Chapter II, Section 2.5, Table 2.5(E) – Dimensional Standards** limits maximum building coverage to 20% and maximum lot coverage to 30%. The lot is 4.74 acres. If permitted, the pool will increase the lot coverage to 1.8%.
 3. **Chapter II, Section 2.5, Table 2.5(E) – Dimensional Standards** requires a minimum density of five acres per unit. The parcel is a pre-existing non-conforming lot of 4.74 acres.
 4. **Chapter IX, Section 9.7 – Variances:** stipulates that the Board may grant a variance, and render a decision in favor of the appellant, only if *all* of the following facts are found, and the findings are specified in its written decision:
 1. There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located.
 - The Board finds that the lot, despite its irregular shape and placement of the septic system, has adequate space to accommodate a 336-square foot pool elsewhere on the property to meet setback requirements.
 2. Because of these physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is necessary to enable the reasonable use of the property.
 - The Board finds that a variance is not required to enable reasonable use of the property.
 3. The unnecessary hardship has not been created by the appellant.
 - The Board finds that the appellants did not create the lot or its topography and therefore meet criterion three.
 4. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.
 - The Board finds that the variance will not alter the essential character of the neighborhood or district, impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare. The applicants therefore meet criterion four.

5. The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.
 - The Board finds that the variance request does not represent the minimum that will afford relief or represent the least deviation possible from these regulations and from the plan.

V. Conclusions of Law

Chapter III, Section 3.12 (A) – Performance Standards

The Board finds no known performance standard concerns.

Chapter V, Section 5.4 (C) – Conditional Use Review; General Standards: stipulates that a proposed conditional use shall not result in an undue adverse effect on any of the following:

1. The capacity of existing or planned community facilities and services
 - The Board finds no known adverse impacts with planned facilities or services.
2. Character of the area affected
 - The Board finds no known adverse impacts on the character of the area.
3. Traffic on roads and highways in the vicinity
 - The Board finds no known adverse traffic impacts.
4. Bylaws in effect
 - The Board finds no known by-laws in effect.
5. The use of renewable energy resources
 - The Board finds no known adverse impacts on renewable energy resources.

Chapter IX, Section 9.7 – Variances: stipulates that the Board may grant a variance, and render a decision in favor of the appellant, only if *all* of the following facts are found, and the findings are specified in its written decision:

6. There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located.
 - The Board finds that the lot, despite its irregular shape and placement of the septic system, has adequate space to accommodate a 336-square foot pool elsewhere on the property to meet setback requirements.
7. Because of these physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is necessary to enable the reasonable use of the property.
 - The Board finds that a variance is not required to enable reasonable use of the property.
8. The unnecessary hardship has not been created by the appellant.
 - The Board finds that the appellants did not create the lot or its topography and therefore meet criterion three.

9. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.
 - The Board finds that the variance will not alter the essential character of the neighborhood or district, impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare. The applicants therefore meet criterion four.
10. The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.
 - The Board finds that the variance request does not represent the minimum that will afford relief or represent the least deviation possible from these regulations and from the plan.

VI. Decision and Conditions

Motion to approve the Carrara application as presented in ZBA-18-207-VA.

Vote: 1 Ayes. 4 Nays. 0 Absent.

Application 18-207-VA is hereby DENIED.

Dated at Charlotte, Vermont this 14th day of January 2019.



Frank Tenney, Chairman

This decision may be appealed to the Vermont Environmental Court by the applicant or an interested person who participated in the proceeding. Such appeal must be taken within 30 days of the latest date of signature below, pursuant to 24 V.S.A. Section 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.

Reconsideration: *At the request of the applicant or interested parties, or on its own motion, the Board of Adjustment or Planning Commission may reopen a public hearing for reconsideration of findings, conclusions, or conditions of the decision. A request by the applicant or interested parties must be submitted to the Planning and Zoning Office within the 30-day appeal period in accordance with Section 9.6(B).*