

DENIED

Town of Charlotte
Zoning Board of Adjustment

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

I. Introduction and Procedural History

On April 1, 2019, Joe and Kathleen Carrara submitted an application for conditional use approval for a 336-square-foot swimming pool, patio, and hot tub, using materials previously presented in application ZBA-18-207-VA.

While no site visit occurred for the conditional use application, Zoning Board chair Frank Tenney and Zoning Administrator Aaron Brown conducted one December 8, 2018 for ZBA-18-207-VA.

The question before the Board in this case is whether the pool represents an extension of the non-conforming house and attached deck and can therefore be considered under conditional use standards. A hearing for the conditional use application was held April 24, 2019. In attendance were Joe and Kathleen Carrara, David Desmet (neighbor), Zoning Administrator Aaron Brown, Lane Morrison, and ZBA members Frank Tenney, Stuart Bennett (by phone), Andrew Swayze, and Matt Zucker. The hearing was closed April 24, and members voted on the decision May 8.

II. Exhibits

The following exhibits were considered for the decision:

1. Planning and Zoning Permit Application
2. Conditional Use Questionnaire
3. Performance Standards Questionnaire
4. Lighting Plan
5. Site Plan and Elevations
6. Site Survey
7. Carrara Site Slopes (prepared by Town Staff)
8. Letter of Support from Neighbor Kate Lampton

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

“Minimum Setback/Side: 50 feet.”

2. Chapter II, Section 3.6 (A)(2) – Lot, Yard, and Setback Requirements: Principle and Accessory Structures

“An accessory structure or use must conform to all lot, setback, coverage, and other dimensional requirements for the district in which it is located, unless specifically exempted from such requirements under Section 9.2.”

3. Chapter III, Section 3.6 (C) – Development Review

“For development subject to...conditional use review, the Planning Commission or Board of Adjustment may require increased minimum setback distances, buffers, and landscaping and/or screening within designated setback areas, or limit the use of setback (yard) areas for parking and storage, to protect public health, safety, and welfare, and adjoining properties.”

4. Chapter III, Section 3.8 (B)(2) – Nonconforming Use of Land & Structures

“A nonconforming structure may only be structurally modified or moved in a manner that will not increase the degree of noncompliance, unless approved by the Board of Adjustment in association with conditional use review under Section 5.4”

5. Chapter III, Section 3.12 (A) – Performance Standards

6. Chapter V, Section 5.4 (C) – Conditional Use Review: General Standards

7. Chapter IX, Section 9.2 (A)(5) – Exemptions

“Landscaping. For example: installation of plants, soils, arbors, terraces, and patios.”

8. Chapter IX, Section 9.2 (A)(7) – Exemptions

“Up to two (2) detached accessory structures per lot provided that the combined area of both structures does not exceed 250 square feet in floor area, and neither structure is taller than twelve (12) feet in height. Structures housing or sheltering animals must meet all setback distances for the district in which they are located ; otherwise structures must be at least 10 feet from property lines.”

9. Chapter X – Definitions – Nonconforming Structure

“A structure or part thereof lawfully in existence as of the effective date of these regulations which does not conform to the requirements of these regulations including, but not limited to, building bulk, dimensions, height, setbacks, area, density or off-street parking or loading requirements.”

10. Chapter X – Definitions – Principal Structure

“A structure or building in which the main, primary, or principal use of the property is conducted. Attached accessory dwellings, garages, porches or carports, or other structures which share a common wall and/or roof, or are connected by a breezeway, are considered to be part of the principal structure.”

11. Chapter X – Definitions – Accessory Structure:

"A structure on a lot which is clearly and customarily related to the principal structure or use on that lot. For residential uses these include...garages, garden and tool sheds, children's playhouses, boat houses for the storage of three (3) or fewer boats, and permanent swimming pools" (emphasis added).

IV. Findings

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

1. The applicants' house is a "nonconforming structure."
2. The proposed pool is not an extension of the nonconforming structure. Therefore, conditional use is not the appropriate standard of review.
3. There are no known performance standards concerns.

V. Conclusions of Law

1. The board finds this application cannot be considered under conditional use because the pool is not an extension of the non-conforming residence.
2. A variance is required to build a non-conforming accessory structure within a setback per 24 V.S.A. 4469 and Town Land Use Regulations Section 3.8(B).

VI. Decision and Conditions

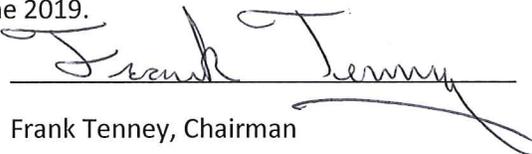
1. Swimming pools are defined as stand-alone accessory structures in the Regulations, Chapter X - Definitions. Accessory structures that exceed 250 square feet and are located in the rural district must meet 50-foot sideyard setbacks or receive a variance.
2. The application for conditional use approval of an extension of a nonconforming structure as presented is denied.
3. The proposed stone patio with a hot tub represents landscaping that does not require a permit.

Frank Tenney made a motion to approve the Carrara application as presented in ZBA-19-47-CU.

Vote: 0 Ayes. 5 Nays. 0 Absent.

Application 19-47-CU is hereby DENIED.

Dated at Charlotte, Vermont this 4th day of June 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).*