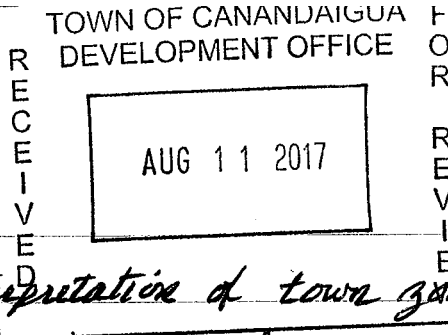


1
TO: Town of Cdga ZBA
FROM: BOB + PATRICIA RICH



8/9/17

Dear board members,

I would like an interpretation of town zoning laws concerning the setback requirements for a swimming pool deck. This swimming pool deck shall be used as an accessory to a swimming pool to enhance the operation and maintenance of a private swimming pool.

Code enforcement officer Chris Jensen has denied the application for permit based upon his belief that a swimming pool deck is an accessory bldg requiring a 20' setback from the side parcel line. He has referenced attachment 220 1:3.

I submit that a swimming pool deck is an accessory structure to a swimming pool and is more specifically addressed in Chapter 220 § 9-W line C and e, which requires a 15' setback.

I also reference Town Zoning Laws § 1-14, 1-15, 1-17. In addition I offer a current copy of the Town of Cdga Swimming Pool application which clearly requires a 15' setback. I also reference Town of Cdga ZBA approved minutes for a mtng. held on 4/19/16. Specifically an applicant requesting a variance for a swimming pool deck at 4947 Co Rd 16 which required a 15' setback. And I reserve the opportunity to offer more support references as needed.

I am requesting that the ZBA overturn Mr Jensen's denial of application that I may build my deck in accordance with the laws. Thank you.

Respectfully
Bob Rich

SWIMMING POOL / HOT TUB PERMIT APPLICATION (Chapter 220 Section 220-9-W)

- Maximum Dimensions of Outdoor Pool: no outdoor pool shall exceed 40 feet in length and 20 feet in width, or 30 feet in diameter in the case of a round or curved pool, nor shall the total perimeter of any pool exceed 125 feet*

Above Ground Swimming Pools with a water depth of 24-inches or greater, and a side wall height of 48 inches or less and all In-Ground Swimming Pools **SHALL** be surrounded by a fence at least 48 inches in height.

DIMENSIONAL DESCRIPTIONS	Applicant to Complete	Development Office Staff to Complete	
		Required By Code	Variance Required
Distances To Property Lines From The:			
Swimming Pool/Hot Tub to Rear Property Line		15 ft	
Swimming Pool/Hot Tub to Right Side Property Line		15 ft	
Swimming Pool/Hot Tub to Left Side Property Line		15 ft	
Pool to On-Site Wastewater Components		20 ft	NOT PERMITTED
Pool to On-Site Wastewater Absorption Field Base		35 ft	NOT PERMITTED
Square Footage of New Deck / Patio			
Deck / Patio to Rear Property Line		15 ft	
Deck/ Patio to Right Side Property Line		15 ft	
Deck / Patio to Left Side Property Line		15 ft	
Square footage of Pool House			
Pool house to Rear Property Line		15 ft	
Pool house to Right Side Property Line		15 ft	
Pool house to Left Side Property Line		15 ft	
Pool House Height		16 ft	
Height of Fence Enclosure		minimum 48" tall	
Length of Fence Enclosure			
Type of Fence to be Installed (<i>please circle one</i>): Stockade Chain Link Vinyl Other _____			
Total square footage of new structures			
Total square footage of existing structures			
Percentage Building Coverage (All existing & proposed structures)			
Percentage Lot Coverage RLD Zoning District Only (All existing impervious/pervious structures & surfaces)			

employee(s) as well as the nature and extent of such relationship:

_____.

***Property Owner is responsible for any consultant fees
(Town Engineer, Town Attorney, etc.) incurred during the application process.***

Please note that the **Property Owner** is responsible for all consultant fees during the review of this application including legal, engineering, or other outside consultants. Applications submitted to the Town of Canandaigua Planning Board will normally receive chargeback fees of at least five hours to ten hours for planning services including intake, project review, resolution preparation, SEQ, and findings of fact. PLEASE NOTE that the number of hours will be SIGNIFICANTLY INCREASED due to incomplete applications, plans lacking detail, or repeated continuations. Subdivision applications and larger commercial or industrial projects traditionally require more hours of engineering, legal, and other consultant review and preparation and will incur higher costs. Applications for new construction may be referred to the Town Engineer for engineering review which may include at least an additional eight to twelve hours of review time. The **Property Owner** will also be responsible for legal fees for applications submitted to the Town of Canandaigua Planning Board, Zoning Board of Appeals, or the Town of Canandaigua Development Office. Fees for engineering and legal expenses traditionally range between one hundred and one hundred fifty dollars per hour. A copy of the Town's annual fee schedule is available upon request from the Development Office or the Town Clerk's Office. The **Property Owner's** signature below indicates that the **Property Owner** understands that the **Property Owner** will be responsible for all outside consultant fees incurred as a result of the submitted application, and consents to these charges. Additionally projects approved by the Town of Canandaigua Planning Board may be required to pay a parks and recreation fee as established by the Town Board (currently \$ 1,000 per unit) if required as part of the conditions of approval.

(property owner)

(property owner)

The undersigned represents and agrees as a condition to the issuance of these permits that the development will be accomplished in accordance with the Town Zoning Law, the New York State Uniform Fire Prevention and Building Code, approvals/conditions described on the ZBA / PB decision sheet, and the plans and specifications annexed hereto.

Owner's Signature: _____ **Date:** _____

PERMIT CANNOT BE ISSUED WITHOUT PROPERTY OWNER SIGNATURE

Please **DO NOT** send payment with this application.
Payment shall not be made until the fee is determined & the permit is issued.

6. **Site Information:** A site plan shall be submitted showing the entire property, all existing and proposed structures, including the swimming pool/hot tub dimensions and depths; distance of swimming pool/hot tub and other proposed structures from all boundary lines; location of the on-site wastewater treatment system, if applicable; well location, if applicable; proposed lighting; and easements and any other additional information as may be required by the Town to demonstrate compliance with Town Code and other applicable laws.

Will the swimming pool/hot tub structure be installed within 100 ft of the bed of a stream carrying water on an average 6 months of the year?

Yes

No

The hot tub will be placed on a(n): Existing Deck New Deck Patio Inside Home
(please circle one) Other: _____

Per Article 145 of NYS Education Law - To alterations to any building or structure costing more than ten thousand dollars or to projects which involve changes affecting the structural safety or public safety - No official of NY state, or of any city, county, town or village therein, charged with the enforcement of laws, ordinances or regulations shall accept or approve any plans, specifications, or geologic drawings or reports that are not stamped.

Project Cost (Including Labor) exceeds \$10,000? YES NO

7. General Contractor: _____

Address: _____

Telephone / E-mail: _____

Contractor Insurance Certificates Required:

(C-105.2 or U-26.3) Worker Compensation and DB-120.1 Disability or CE-200 / BP-1

IDENTIFICATION OF POTENTIAL CONFLICTS OF INTEREST

(Required by NYS General Municipal Law § 809)

1. **If the Applicant is an Individual:** Is the applicant or any of the immediate family members of the applicant (including spouse, brothers, sisters, parents, children, grandchildren, or any of their spouses) related to any officer or employee of the Town of Canandaigua? YES NO
2. **If the Applicant is a Corporate Entity:** Are any of the officers, employees, partners, or directors, or any of their immediate family members (including spouse, brothers, sisters, parents, children, grandchildren, or any of their spouses) of the company on whose behalf this application is being made related to any officer or employee of the Town of Canandaigua? YES NO
3. **If the Applicant is a corporate entity:** Are any of the stockholders or partnership members (holding 5% or more of the outstanding shares), or any of their immediate family members (including spouse, brothers, sisters, parents, children, grandchildren, or any of their spouses) of the company on whose behalf this application is being made related to any officer or employee of the Town of Canandaigua? YES NO
4. **If the Applicant has made any agreements contingent upon the outcome of this application:** If the applicant has made any agreements, express or implied, whereby said applicant may receive any payment or other benefit, whether or not for services rendered, dependent or contingent upon the favorable approval of this application, petition, or request, are any of the parties to said agreement officers or employees of the Town of Canandaigua? YES NO

If the answer to any of the above questions is YES, please state the name and address of the related officer(s) or

TYPE OF APPLICATION:

- ☒ Area Variance ☐ Use Variance ☐ Interpretation
☐ Rehearing

Variance/Interpretation Requested: Shall the applicant be granted an area variance to build an accessory structure to an in-ground pool with a 16.9' height when only 10' is allowed? Applicant is requesting a 6.9' area variance in the RLD zoning district. _____

SEQR:

- ☐ Type I ☒ Type II
☐ Unlisted
☐ See Attached resolution(s)

Negative Declaration Date:

Positive Declaration Date:

APPLICANT REQUEST:

- ☐ Granted ☐ Denied ☒ Continued to: April 19, 2016
☐ See attached resolution(s)

VOTING:

Bob Hilliard	<input type="checkbox"/> AYE	<input type="checkbox"/> NAY	<input type="checkbox"/> Abstained
Dave Emery	<input type="checkbox"/> AYE	<input type="checkbox"/> NAY	<input checked="" type="checkbox"/> Abstained
Kelly LaVoie	<input type="checkbox"/> AYE	<input type="checkbox"/> NAY	<input type="checkbox"/> Abstained
Chip Sahler	<input type="checkbox"/> AYE	<input type="checkbox"/> NAY	<input type="checkbox"/> Abstained
Terence Robinson	<input type="checkbox"/> AYE	<input type="checkbox"/> NAY	<input checked="" type="checkbox"/> Abstained

Public Hearing Opened: 3/15/2016

Meeting Date: 3/15/2016

Public Hearing Closed:

Project: 008-16

Applicant	Owner	Project Type	Project Location	Tax Map #
Mark Bayer	Richard Sands	Construct in-	4947 County Road	154.06-1-7.1
Bayer Landscape	207 High Point Drive	ground pool	16	
Architecture LLC	Bldg. 100	and		
	Victor, NY 14564	associated		
		structures		

TYPE OF APPLICATION:

- ☒ Area Variance ☐ Use Variance ☐ Interpretation
☐ Rehearing

Variance/Interpretation Requested: Shall the applicant be granted an area variance to construct an accessory structure to an in-ground pool with a side setback of 12.25' when 15' is required? Applicant is requesting a 2.75' area variance to the side setback in the RLD zoning district. _____

SEQR:

- ☐ Type I ☒ Type II
☐ Unlisted
☐ See Attached resolution(s)

Negative Declaration Date:

Positive Declaration Date:

APPLICANT REQUEST:

- ☐ Granted ☐ Denied ☒ Continued to: April 19, 2016
☐ See attached resolution(s)

VOTING:

Bob Hilliard	<input type="checkbox"/> AYE	<input type="checkbox"/> NAY	<input type="checkbox"/> Abstained
Dave Emery	<input type="checkbox"/> AYE	<input type="checkbox"/> NAY	<input checked="" type="checkbox"/> Abstained

Chapter 1. General Provisions

Article II. Definitions and Word Usage

[Adopted 12-18-1989 by L.L. No. 3-1989]

§ 1-14. Purpose.

This article is hereby adopted to provide the Town of Canandaigua with uniform definitions applicable to the chapters within the Town of Canandaigua Code, thereby eliminating unnecessary or conflicting definitions in the various chapters. There are some chapters within the Town of Canandaigua Code that contain definitions which apply specifically to those chapters. Unless otherwise indicated, this article will apply to all chapters within the Town of Canandaigua Code.

§ 1-15. Word usage.

- A. All words used in the present tense include the future tense.
- B. All words in the plural number include the singular number and all words in the singular number include the plural number, except as to the number of permitted structures or unless the natural construction of the wording indicates otherwise.^[1]
 - [1] *Editor's Note: Original Subsection 3, which provided a definition of "person," which immediately followed this subsection, was deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. I).*
- C. Unless otherwise specified, all distances shall be measured horizontally.
- D. The word "building" includes the word "structure."
- E. "Lot" includes the words "plot," "parcel," or "tract."
- F. The word "premises" includes a lot and all buildings or structures thereon.
- G. To "erect," "to construct" and "to build" a building or structure each have the same meaning.
- H. "Used" shall be deemed also to include "designated, intended or arranged to be used or occupied."
- I. "Shall" is mandatory and not discretionary; "may" is permissive.

§ 1-17. Definitions.

Except as otherwise provided herein, words and terms used in the Town Code shall have their usual and customary meanings. As used in this Code, the following terms shall have the meanings indicated:

ABANDONED VEHICLE

A vehicle whose owner does not intend to use it on the public highways or as a conveyance in the manner for which said vehicle was originally designed shall be known as an abandoned vehicle. The intent of the owner shall be determined by the physical condition of the vehicle, any statements as to its abandonment, the length of time since the vehicle was last used or insured, whether the vehicle is currently licensed and other relevant factors as determined by the Zoning Officer. With respect to any vehicle not required to be licensed or not usually used on the public highways, the fact that such vehicle has remained unused for more than six months and is not in condition to be removed under its own power shall be presumptive evidence that such vehicle is an abandoned, junked and/or inoperative vehicle.

[Added 7-25-2005 by L.L. No. 8-2005]

ACCESS

A way or means of approach to provide vehicular or pedestrian entrance or exit to a property.

[Added 7-17-1998 by L.L. No. 7-1998]

ACCESS MANAGEMENT

The process of providing and managing access to and from public streets while preserving the flow of traffic in terms of safety, capacity, and speed.

[Added 7-17-1998 by L.L. No. 7-1998]

ACCESSORY BUILDING

A detached building, as defined in this section, that is subordinate and incidental to the principal building or structure on the same lot, contributes to the comfort, convenience, or necessity of the occupants of the principal building or structure, and is used for a purpose incidental to the use of the principal building or structure. Accessory buildings include but are not limited to storage sheds, nonagricultural barns, and detached private garages.

[Amended 7-25-2005 by L.L. No. 7-2005; 9-1-2009 by L.L. No. 2-2009; 4-8-2013 by L.L. No. 2-2013]

ACCESSORY STRUCTURE

A detached structure, but not including buildings, subordinate and incidental to the principal building or structure on the same lot, that contributes to the comfort, convenience, or necessity of the occupants of the principal building or structure and that is used for a purpose incidental to the use of the principal building or structure. Accessory structures include but are not limited to swimming pools, tennis courts, basketball courts, paddleball courts, patios, decks, and generators. Accessory structures shall not include fences for setback purposes.

[Added 4-8-2013 by L.L. No. 2-2013; amended 3-16-2015 by L.L. No. 3-2015; 10-17-2016 by L.L. No. 9-2016]

BUILDING

Any structure having a roof supported by columns or by walls and intended for the shelter, housing or enclosure of persons, animals, property or business activity. See also "dwelling" and "structure."