



ZONING BOARD of ADJUSTMENT

Town of Hollis

Seven Monument Square

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Minutes August 27, 2026

The Zoning Board of Adjustment meeting was held in the Community Room, Hollis Town Hall, and was called to order by Chairman Brian Major at 7:04 pm.

MEMBERS OF ZONING BOARD OF ADJUSTMENT PRESENT: Brian Major, Chairman; Jim Belanger, Vice Chairman; Regular Members – Rick MacMillan, Drew Mason; Alternate Members – Bill Moseley, Stan Swerchesky.

MEMBERS ABSENT: Regular Member – Cindy Robbins-Tsao; Alternate Members – Kat McGhee, Michael Bishop.

STAFF PRESENT: Donna Setaro, Building and Land Use Coordinator.

J. Belanger led the Pledge of Allegiance.

B. Major explained the policies and procedures.

B. Major said the voting members for the case this evening are as follows: B. Major, J. Belanger, R. MacMillan, D. Mason, and B. Moseley.

Determination of Regional Impact

By unanimous vote, the Zoning Board of Adjustment (ZBA) found no regional impact for case ZBA2026-007.

ZBA2026-007

The application of Michael & Kelly Ferris, for a Variance to Chapter X; paragraph G.5d, Minimum Side Yard Depth, to allow the maintenance of an inground pool “0” feet from the side yard width (required 15’) property owned by Ferris Family 2024 Revoc. Trust, located at 12 Lynne Dr., (Map 004, Lot 050-002) in the Residential Agricultural District.

Applicant: Attorney Carl Toumayan, presented the case on behalf of the property owners, Michael & Kelly Ferris, 12 Lynne Dr. C. Toumayan handed around printouts of the site plan to the Board members. He stated that the property owners, Mr. and Mrs. Ferris, occupy the residence with their two children: their son who is about to turn nine, and their daughter who is six years old. 12 Lynne Drive is located in the RA zone. It consists of 1.34 acres. They are asking the Board for a variance from Chapter X, paragraph G.5d, minimum side yard setback of 15 feet for an accessory structure. The structure they are talking about is a pool. They are asking for a 0-side yard setback, and C. Toumayan stated that he would explain how they find themselves in that position. Historically, in 2025, the homeowners contemplated having an inground pool placed on their property. The kids got all excited about it. Two of the criteria for the inground pool which they discussed with contractors were (1) proximity of the pool to the dwelling, for safety reasons, and (2) preservation of the back yard for a play area. Based on those two criteria, the site that was identified by the contractor dictated that the existing leaching field would have to be

relocated so that the pool could be placed where the existing leaching field was. C. Toumayan's clients spent \$25,000 on relocating that leaching field to accommodate the siting of the pool. The building permit was filed, and on the plan that was filed with the building permit, you can see that the pool was placed over the then-existing leaching field. That leaching field has now been relocated, at the cost of \$25,000 to C. Toumayan's clients. Sometime between the time that that building permit was filed, there was a discussion among the family members and the contractor about changing the configuration of the pool from a rectangle to more of a free-form pool. The decision was to have a free-form pool installed, instead of a rectangle. It was not to be installed in any other area of the lot; it was supposed to be installed where the building permit showed the rectangular pool. After the permit was pulled, the hole for the pool was dug, construction was underway, and everybody was excited – they thought that they were going to be swimming in this pool before the end of summer. On June 19th, Michael Ferris received a phone call from the building inspector, who was out at the property to do a pre-inspection. The next day concrete was to be poured, so he was out there to do an inspection for that concrete pool. He informed M. Ferris during that June 19th phone call that he believed that the pool was either on someone else's property or encroaching into the side yard setback. Upon warning of that, M. Ferris contacted the concrete company and told them not to come out to make the pour. He stopped all construction work on the site, hired a surveyor to do an as-built plan, and that is the plan that they filed with this application before the Board. Unfortunately, as we all know now, the pool was not put where it was supposed to be put. It was placed within the side yard setback.

B. Major asked C. Toumayan to explain that a little bit further. Did the pool contractor apply for the building permit themselves? C. Toumayan confirmed that they did. B. Major asked C. Toumayan to explain how the pool got from where it was supposed to be located to where it is located. C. Toumayan stated that, according to the contractor, he did field measurements based on the septic plan and dug a hole where he thought it was supposed to be.

R. MacMillan asked whether it is C. Toumayan's position that the septic plan measurements are wrong, the boundaries are wrong. C. Toumayan replied that he does not believe they are wrong. He stated that up until June 19th, his client believed that the contractor was placing the pool where the pool was supposed to be. C. Toumayan then passed around photographs to the Board, showing the existing conditions of the site as of June 19th. He stated that substantial hardscape was put around the pool.

Per a question from B. Moseley about the bricks and concrete work that were shown in the photographs, C. Toumayan stated that the bricks are closer to the home; it's not on the side yard. The concrete that was to be poured is ground, with wire mesh on top of it. The pool itself has not been completed; just the concrete apron around it on that side yard. R. MacMillan added that the pool is not completed – it's poured, and gunite is in there, but it's not tiled, not finished.

B. Major asked whether the pool could have been constructed in conformity with the zoning ordinance, if the pool contractor had done what he was supposed to do. C. Toumayan answered that that is his understanding. B. Major stated that it sounds like we have a big problem with the pool contractor. C. Toumayan agreed.

B. Moseley asked why they don't just tell the pool contractor to do the right job. C. Toumayan stated that litigation is time-consuming. B. Moseley stated that the pool contractor was contracted to do a proper pool, within the proper dimensions of the lot. C. Toumayan stated that they do not disagree with that.

R. MacMillan stated that Kevin Anderson, licensed professional engineer for the Town, states that there were multiple warnings made by the Building Department, requiring a certified plan prior to installing the pool. Multiple warnings.

C. Toumayan stated that unfortunately, his client was not the recipient of those multiple warnings.

B. Major stated that Kevin Anderson, who is the Town Planner, could not be here at this meeting today. B. Major

93 read K. Anderson's memo letter, dated August 26, regarding the Lynne Drive ZBA case, into the record:
94

95 "Donna, I wanted to have a letter for you to read at the meeting tomorrow night, but southern Colorado and the
96 Four Corners area had no service. It was nice to be completely disconnected. What I would like the Board to
97 know is that I recommended the variance option. In this case, the Applicant constructed a pool within the side
98 yard setback. The pool is largely constructed, and moving it would be a significant understanding. The parcel is
99 unique in shape and surrounded by a thin strip of open space. I met with the homeowner and described in detail
100 the parameters of the violation that he was in. A lot line adjustment, while seemingly straightforward, is a very
101 difficult option. Gaining space from an abutting parcel would seemingly solve the problem, but the abutting
102 parcel is open space, fractionally owned by all of the owners of the Lynne Drive subdivision. A majority
103 (covenants specify 10, I believe) would need to agree to this change, and the next-adjacent parcel (Jambard
104 family). In the conversations that I have had, it sounds like this multi-step lot line adjustment is possible. The
105 recommendation that I made to the Applicant was made mostly because the Applicant was willing to put the time
106 and money into adjusting the open space, a process that could take up to a year. The reality is that this mistake
107 could have been avoided, and multiple warnings were made by the Building Department by way of requiring a
108 certified plot plan prior to installing the pool. Unfortunately, a mistake was made, and it is the job of the Planning
109 and Building Departments to recommend ways to resolve the issue, and the Zoning Board to weigh the severity of
110 the relay being requested. Hope all is well. Signing off from Colorado, Kevin."
111

112 C. Toumayan stated that, as he indicated, that history is what brings them here today. The pool is not in
113 compliance with the side yard setback. He stated that he would reiterate that that was due to no fault of his
114 clients'. They were relying on a contractor to do the right thing. As far as the notice goes, about several warnings
115 about an instrument survey, that was never communicated to his client. His client learned of the issue on June
116 19th.
117

118 Per a question from B. Major, C. Toumayan confirmed that the issue is due to no fault of the Building
119 Department. C. Toumayan stated that, as naïve as it might be, his client believed that the contractor was doing
120 what he was supposed to do. He relied on what the contractor was doing, and then out of the blue he gets that
121 phone call on June 19th – and as soon as he learned about the issue, he put a stop on everything.
122

123 B. Major asked whether this is a local pool contractor. C. Toumayan stated that because this meeting is a matter
124 of public record, he would rather not have their name published.
125

126 B. Moseley asked whether the building permit is a public record. D. Setaro answered yes. B. Moseley asked
127 whether the name of the pool contractor is on the building permit. D. Setaro answered yes.
128

129 J. Belanger stated that the copy of the building permit which C. Toumayan passed out to the Board says that it
130 was issued on November 19, 2025, and it includes a plot plan. C. Toumayan confirmed that the plot plan was part
131 of the building permit. J. Belanger asked whether, if the construction was done according to the plan, we would
132 be here. C. Toumayan replied that his understanding is that we would not. J. Belanger stated that, then, it was not
133 built according to the plan that was approved. C. Toumayan stated that that is correct.
134

135 B. Major asked C. Toumayan to go through the variance points.
136

137 C. Toumayan stated that one of the variance requirements is that the granting of the relief will not be adverse to
138 the public good or interest, nor deviate from the intent of the zoning ordinance. The structure that we are talking
139 about here is a subsurface structure, or structure at grade: a swimming pool. From a public health, and public
140 safety, and zoning perspective, it's probably the least intrusive structure that could ever be built. It does not
141 interfere with sight lines, it does not interfere with the flow of air, it does not interfere with light. The location of
142 the pool, in the back yard, in close proximity to the dwelling, is consistent with what most residential properties
143 would do. The site selection was for safety reasons, and to have yard space for their children to play. That is

144 what generated the site plan and the placement of the pool. The pool is a residential accessory use, very common
145 to residential neighborhoods, and is a consistent use with the residential district in which the property is located.
146

147 C. Toumayan stated that one of the other criteria is that there be a hardship due to the property. The hardship can
148 be due to topography, or shape. This is a rather uniquely shaped lot. It is different than all the other lots in the
149 zoning district. He referenced the subdivision plan and the assessor's plan, and stated that if you look at those
150 plans you can clearly see that the lot itself is unique in shape and that shape is different in kind than any of the
151 other lots in the subdivision or on the assessor's plan. It is the Applicant's contention that that unique shape
152 causes the hardship of where that pool could be placed. He asked to keep in mind the safety issue of proximity to
153 the home, the existing location of the leaching field and the septic tanks.
154

155 B. Moseley pointed out that the pool could have been placed where it was originally designed to be placed. C.
156 Toumayan concurred; he stated that they are not disputing that – that is part of the hardship. In order for that to
157 be put into conformity, it's going to require substantial financial expenditure yet again. He stated that he
158 understands the Board's position, that you could always sue the contractor and be compensated, but the reality is
159 that lawsuits are expensive. There is no guarantee of success, although he is reasonably confident that this case
160 would succeed – but even if you get a judgment you go into phase two of any lawsuit, and that is collection. Not
161 every judgment gets collected. We're dealing with, he believes, an LLC, and who knows what assets the LLC
162 has, if any. That's all part of the hardship.
163

164 B. Major asked, wouldn't the contractor come back and re-pour the pool like it was supposed to be? Wouldn't
165 they come back and make their work right? C. Toumayan answered that he would hope so – but there have been
166 discussions with them, and he was basically saying "go get a variance". That is what they are trying to do, right
167 now.
168

169 R. MacMillan stated that he doesn't believe it is the recommendation of the Board that the Applicant sue the
170 contractor. B. Major concurred that that is not at all the Board's recommendation.
171

172 R. MacMillan stated that it does say that a certified, as-built plan is required to verify the side setback
173 requirements measured from the end of the pool decking to the property line. It says that on the permit.
174

175 C. Toumayan stated that he would have thought that that would have been done. It sounds to him like what was
176 supposed to happen is that the pool was supposed to be put in, and they were supposed to do an as-built just to
177 show that it did conform. Unfortunately, the pool wasn't put where it was supposed to be – so the as-built that
178 was obtained is showing what it shows. He stated that the hardship would be that to relocate the pool to the front
179 yard, or farther back from the house – you could put the pool 150 feet away from the house, but that's a safety
180 issue.
181

182 B. Major stated, however, that you could put the pool in a perfectly fine location that would comply with the
183 setbacks.
184

185 C. Toumayan replied that that would cause the hardship of safety. A pool 150 feet away from the house is vastly
186 different from a pool that's 30 feet away from the house.
187

188 B. Major stated that you could shift the pool to the south by about 15 feet. There is room to go in there, and it's a
189 perfectly fine location for a pool.
190

191 C. Toumayan stated that that would cause the hardship of having to re-do it all again. Everyone's assuming that
192 the contractor is going to step up and do it. If he doesn't step up and do it, it comes out of his clients' college
193 fund. He stated that, as he hears himself articulating their position, he's beginning to think that an appropriate
194 remedy may have been to file an application for an equitable waiver of dimensional requirements. Hearing what

has transpired, you have a substantially completed structure – and to require it to be removed would cause undue hardship under that statute.

B. Major stated that that is not what we have. The Applicants are free to do that, but the problem with that is that it deals with an honest mistake. The Board is not recommending any particular actions.

C. Toumayan stated that his clients' property abuts an open space common area that is owned by the homeowners' association, of which his client is a beneficial owner. C. Toumayan further stated that he has been exploring – and it was in the Town Planner's memo to the Board – doing a land swap. He has been speaking with the homeowners' association to see if they would agree to convey a strip of the open space, sufficient to give him adequate side yard setbacks, and acquire a similar parcel from an abutter. It is C. Toumayan's understanding that, in those discussions, everybody has been positive – but the prospect of that happening tomorrow is not likely. It's going to be a time-consuming process. What they want to avoid is having to rip up the pool until that gets done.

B. Major stated that he thinks that if they have a land swap pending, he certainly suspects that the Town would work with them on that. R. MacMillan concurred. D. Setaro stated that K. Anderson's memo pointed out that it would most likely take up to a year to do that. No application was received as yet, that she is aware of.

C. Toumayan stated that it is still in the discussion stages. The parties to which his client have spoken have been positive. A number of the neighbors are here at this meeting to speak in favor – but what he is trying to do is to avoid not being able to maintain that pool, should the variance get denied, having to file an appeal to stay the removal of the pool pending the land swap proposal. He doesn't know if the Board would entertain that a conditional variance might be warranted, granting the variance for a two-year period.

B. Major stated that he doesn't think the Board can do that; they can only either grant the variance or not grant the variance. They have to deal with what is before them. He does not think that they have the power to grant a conditional variance. R. MacMillan agreed.

S. Swerchesky stated that a conditional variance like that could fall apart, and make conditions worse if the Applicant went ahead with construction. C. Toumayan replied that he doesn't think the Applicant would be proceeding; he has ceased all progress, pending a resolution. He doesn't think the Applicant would be proceeding during that period.

B. Major stated that he can't speak for the Building Department, but his experience is that, if the Applicant is trying to resolve the problem, the Town would be more than willing to work with them, time-wise, to allow them to solve the problem – whether that is a land swap, or having the pool contractor step forward and do what he should do. B. Major further stated that the problem the Board has is that sometimes they have to do things that they don't want to do. They have to be cognizant that we have an ordinance. Generally, enforcement of the ordinance does not favor people taking construction efforts that are not in conformity with permits, or unpermitted. The Board also has to keep in mind that they want to be consistent with everyone, treating everyone the same.

R. MacMillan stated that protecting other homeowners is the Board's responsibility, also.

S. Swerchesky stated that the voters have voted for the ordinance; we have to support the ordinance.

Per a question from B. Major, it was stated that the intrusion in this case is into the open space common land.

B. Major stated that if the homeowners' association deeded to the Applicant the part of the common land between the Jambards' land and the Applicant's land, that would solve the problem. C. Toumayan stated that that is correct. They would not need a variance in that case.

C. Toumayan stated that because it's open space, and is governed by the State law and the covenants that were signed, it cannot just be conveyed without being replaced. That creates the second step, of having to buy a mirror-image plot of land.

R. MacMillan asked whether the back of the Applicant's lot could be traded for open space. C. Toumayan stated that that would be a possibility, as well.

S. Swerchesky stated that he is nervous about that; this is a 15-foot strip, that is a buffer all the way around. That is part of the intent of the approval of the subdivision.

R. MacMillan stated that he was simply trying to determine a remedy – which isn't really the Board's job.

C. Toumayan stated that he found it odd that the definition of "structure" excluded tennis courts and basketball courts, but didn't exclude a pool, or patio.

C. Toumayan stated that he thinks that the solution, insofar as a lot line adjustment goes, is going to include some additional land from the abutter because there is not enough open space area that adjoins where the pool is.

It was stated that the strip of common land under discussion is 15' feet wide.

Applicant: Michael Ferris. Stated that he thinks everyone knows his neighbors, Nancy and Tom Jambard. He believes that the point of this was the variance to allow the pool to remain where it is. The pool itself is on their property. The question is on the setback, and he found this out on June 19th. They have been working with the Jambards to buy that land.

B. Major asked C. Toumayan to comment on the variance provision that "no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property".

C. Toumayan replied that the general purpose of a setback is to preserve light, air, and a fire break between abutting properties. Here, because the structure is subsurface or at grade, it doesn't interfere with anybody's light, air, or sightline. The abutter is open space, and there is no consequence if the setback were to be reduced.

Spoke In Favor of the Application

Tom & Nancy Jambard, 40 Twiss Ln. T. Jambard stated that they first met the Ferrises about a month ago, when his son had cut some trees to clear land for their swimming pool. He went up there when M. Ferris called him because he was aware that the pool had a problem with its location. It's certainly a beautiful looking pool, and it does encroach on the walkway. It doesn't even bother with any Town land, except access to the conservation land that is there. It abuts the Jambards' land. He thinks that there have been a lot of mistakes made in this application, and it is easy to place blame. Unfortunately, this has all been done – and it doesn't affect anybody, really, except for the Ferrises and the Jambards. They have to look out almost 1,000 feet from the back of their house to see the Ferrises' house, which they can't see very well because there is a tree border: and that tree border is going to stay, or else he would not be in favor of the application. He stated that usually when there is a variance, it really affects the abutters; in this case, it doesn't really affect them. He thinks that there are many applications, whether you're building a house, an addition, or doing something with your yard, in which you can misinterpret or make mistakes according to the various laws. In this case, this does not bother them at all – and if an abutter can come forward and say that, he would think that that would have a lot of gravity in the Board's decision.

R. MacMillan asked whether T. Jambard was still amicable to making a lot line adjustment, if that were necessary – swap some of his land for other land, or sell a small portion, in order to get the structure into compliance.

T. Jambard stated that they talked about that; they haven't talked about it in great detail, but he thinks that they will be able to come to an agreeable situation.

Seth Soos, 6 Lynne Dr. Stated that he is an immediate abutter to the Applicant along a different property line. He would be another co-owner of the 15-foot sliver of common land. As mentioned previously, the Applicant's lot is very oddly shaped. It's very hard to build and construct in that area. It is all wooded, so it is protected visually. He really doesn't have a concern with a structure being there and a variance being given for that. His back yard faces directly to where the pool is; he doesn't see it now, and he wouldn't see it if a variance were granted. It doesn't interfere with the rest of the neighborhood, or with him as a direct abutter.

R. MacMillan asked whether S. Soos, along with other members of the homeowners' association, would be willing to give up some land in order for the pool to be compliant.

S. Soos replied that he would have a positive attitude toward it.

D. Mason asked whether S. Soos has any information as to why that 15-foot strip was there in the first place. S. Soos answered that he does not.

Katie Shay, 27 Lynne Dr. Stated that she is also part of the homeowners' association. She has zero concerns. She thinks that this is an unfortunate case of trusting a contractor. She heard a lot of discussion around hardship. Unfortunately, her family also trusted a contractor in terms of things inside their house, and, due to unnecessary litigation, they are out tens of thousands of dollars – and the work will never be finished. We anticipate that people will do the right things, but it is 2026 and times are hard. Contractors have to choose between feeding children and finishing jobs. In terms of the pool, they will see none of it on the street. There is no concern that she has about any of the property line. Her family also has zero concern about the communal land that could be used in this instance – but if there is a solution that could happen before it got to that point, she thinks that that would make sense in this case.

Richard Garrity, 18 Lynne Dr. Stated that he is two houses down from the Ferrises. He supports their application, and has no concerns. The shared 15-foot plot of land is of no impact to him whatsoever. He wasn't even aware of it, and he has owned his house since 2011. They are a tight-knit neighborhood, and it is only going to bring them closer together to have another pool for the kids to swim in.

Matthew Gallagher, 15 Lynne Dr. Stated that he lives directly across from the Ferrises. He supports this application, and has no objection to it. He has children the same age, and they look forward to having more pools on the street. He also thinks that hearing from the direct abutters that they have no objection, either, says a lot.

R. MacMillan asked whether it is M. Gallagher's opinion that the most of the homeowners in the development feel the same way. M. Gallagher answered that the majority of them have gotten together and talked about it in street gatherings, and everyone was fully supportive. They have heard the hardship that the Ferrises have gone through during this process.

R. MacMillan asked whether M. Gallagher would be amicable to making a lot adjustment, and M. Gallagher answered yes, 100%.

D. Mason pointed out that M. Gallagher's lot also has a little strip that goes all the way around Lynne Drive, and asked why. M. Gallagher did not know, and stated that he thinks such things pre-date many of the homeowners present.

S. Swerchesky stated that it seems to be a buffer to other ownerships.

D. Mason wondered whether the land developer was trying to add small strips here and there, to come up with the minimum requirement for open space. R. MacMillan concurred, stating that it was gerrymandered to make it fit.

Michael Ferris, 12 Lynne Dr. (property owner). Thanked the Board, and thanked those who came out in support at this meeting. They moved to Hollis four years ago, in October, and they intend to be here for the rest of their lives. The message that he wants to convey to the Board is that they thought they were doing all the right things, the entire time. It wasn't until June 19th, which was about 7 months after the pool was dug, that Jeff Blackwell came to their house to do the inspection. The concrete was to be poured the following Monday, June 22nd. J. Blackwell advised them to check, and get a survey done on their property, as he thought that the pool company may have placed it in the wrong spot. As soon as that happened, they stopped all construction. They missed an entire summer. They are trying to follow all the rules that Hollis has in place, all the ordinances and covenants. They are hoping that if they show the effort to do a lot line adjustment and purchase land from the Jambards, they can come to some sort of solution and leave the pool where it is currently located, in the back yard. They know that they are before the Board for a reason, and hope that the Board can see where they are coming from. They have been between a rock and a hard place for the last 7, 8, 9 months.

S. Swerchesky asked whether, if the Board approves the variance, the Ferrises will still go ahead with the land transfer. Other members of the Board replied no, they do not believe that that is what is being said. There would be no need to.

Per a question from B. Major, C. Toumayan confirmed that this subdivision is a HOSPD, an open space planned development. B. Major stated that in the HOSPD, we have a provision that allows for the cut-down of setbacks. The front yard setback is 50 feet for a HOSPD; the side yard setback is 17.5 feet; the rear yard setback is 17.5 feet – so the intent of the HOSPD ordinance was to recognize tighter communities, and cut down the setbacks. They did not do that with respect to accessory structures, or with respect to pools.

B. Major stated that the Board should consider the fact that this is a HOSPD in rendering a decision on the variance. He asked C. Toumayan whether that is correct. The intent of the HOSPD was to recognize that setbacks could be reduced. Even though the ordinance does not contain a reduction in the requirements for accessory structures or pools, in terms of the setback, the Board should look at that in determining what the broader intent of the statute is.

C. Toumayan stated that he would agree with that.

B. Major asked to go over the timeline for the inspection process. He stated that the Applicant had the pool company apply for a building permit to construct the pool, and asked what date that was.

C. Toumayan stated that he would go off of the permit itself, and that was issued on November 19th, 2025.

M. Ferris stated that the permit was approved by the Town of Hollis on November 19, 2025. The pool was dug right then, so there has been a hole in their back yard since November 2025. They have not had any use of their back yard, whatsoever.

B. Major asked when they started construction of the actual pool, putting in the rebar, etc. M. Ferris stated that that was in April.

B. Major asked when the first inspection was done by the Town of Hollis, to which M. Ferris responded that the only inspection of which he knows that was done by the Town of Hollis was done when he spoke to J. Blackwell

on June 19th.

B. Major asked what the state of the construction was, in June. M. Ferris stated that the state of construction was exactly what you see today, and which is in the pictures that the Board members have. It has been dormant since June 19.

B. Major stated that M. Ferris is not aware of any inspection that was conducted until the pool itself was poured. M. Ferris confirmed that he is not aware of any. He was also not aware of any of those letters from J. Blackwell. M. Ferris stated that when he talked to J. Blackwell on June 19th, it was a Friday, and J. Blackwell told M. Ferris that he went out there to do an inspection because they bonded where the concrete was going to be poured the following Monday, the 22nd. After speaking with J. Blackwell, they halted all operations.

M. Ferris stated that the concrete in the pool has been poured since December of last year. All they did inside the pool was the tiling of the top of it, but the pool is not complete and they have to do the plastering. The pool company has about 90% of his money.

D. Mason asked whether the plumbing is all there; M. Ferris answered yes. They were set to open the pool on July 10, but they found out that there was an issue on June 19th. He stated that, again, he has been working closely with K. Anderson and the Town to make sure that they are following all the right steps.

M. Ferris added that his understanding is that the open space is to make sure that every lot on Lynne Drive has two acres of land, per the Hollis ordinance.

B. Major asked for any observations from the Board prior to closing the case. D. Mason stated that his observation is that the contractor screwed up big time.

No one spoke against the application.

No further questions from the Board and none from the floor. The hearing portion of the case was closed.

The ZBA recessed at 8:05pm.

Reconvened at 8:10pm.

DELIBERATION AND DECISION

ZBA2026-007

The application of Michael & Kelly Ferris, for a Variance to Chapter X; paragraph G.5d, Minimum Side Yard Depth, to allow the maintenance of an inground pool “0” feet from the side yard width (required 15’) property owned by Ferris Family 2024 Revoc. Trust, located at 12 Lynne Dr., (Map 004, Lot 050-002) in the Residential Agricultural District.

J. Belanger stated that when he first read this case, he thought that a pool is not a structure. He went through the ordinance, and found a definition on page 9 of a structure and/or building. The description does not include a swimming pool. On page 12 he found swimming pools, outdoor storage tanks, commercial fishing ponds. They call that an accessory structure, so he then went to find the definition of an accessory structure and there is none – or none that he could find. However, accessory structures shall have a minimum of 15 feet from the side and rear lot lines, which is different from the regular structures that we deal with. He then looked at “Planned Unit Development (PUD) Setback Requirements” on page 17, found those descriptions, and looked at “Building Setbacks” on page 89, which is what this application is concerned with. That section states “The following setbacks shall apply to all principal structures ...” – but what is under discussion is not a principal structure. If anything, it is an accessory structure.

J. Belanger further stated that he went to view the site; the pool is a lot deeper than his own. He saw where the property line stops, right on the edge of the pool. The only infringement into the open area is the side where they are going to pour concrete to walk around the pool. His question is whether they can put in concrete around the open space. He is not sure they can do that, and he is not even sure that the Board can grant a variance to allow them to do that. He thinks that the Board should grant approval of the variance, with some conditions. In his opinion, the land which is open space is owned by the Applicant. At least some of it is, because he is an owner along with other owners. That doesn't mean that he can build a house on it, but as far as J. Belanger is concerned, when they talk about setbacks from the property line, the property line does not include open space. Therefore, the open space is to be governed by the association.

J. Belanger stated that a land swap has been discussed; he is not agreeing with that. Lot line change is a possibility, but he does not support that. The Applicant is an owner of the open space. He is part owner of where he wants to build a concrete walkway. J. Belanger thinks that the Applicant needs approval from the association to encroach on that open space with a walkway: not a pool, not a house, not a garage, but a walkway. If he gets that approval, then he can continue with his project.

Per a question from B. Major, J. Belanger stated that he is not ignoring the fact that the pool structure is encroaching on the setback; he is saying that he would grant a variance so that that would not be a problem.

D. Mason asked whether the homeowners' association could vote to let the Applicant put their walkway on that property.

B. Major stated that there is some confusion in the ordinance as to whether the walkway is part of the pool. You can put a walkway right up to your boundary line. You can put a fence up to your boundary line.

D. Mason stated that he is not looking at boundary lines; he is simply saying that this is not uniquely the Applicant's property – it is shared property. So, could the homeowners' association vote to allow this?

J. Belanger stated that he agrees with that question; his point is that if the Board grants this variance with the provision that the Applicant gets approval from the association, and they can't do that, then it's done. It is not up to the Board to decide whether they can do that or not.

B. Major stated that this is similar to a case that the Board heard in which that applicant wanted to put in a three-car garage; the subdivision rules provided that it had to be a three-car garage, but the Board denied the variance because they said that our zoning ordinance takes precedence over association rules.

J. Belanger stated that the setback in that case was abutting the neighbor's property. This is abutting open space, and to him that makes all the difference.

R. MacMillan stated that the building permit clearly says that you have to have a site plan before you can construct.

B. Moseley stated that it seems like the Applicant is trying to take the easy way out by getting the variance via the Board, when there are other options open to him. He could go after the contractor, though, granted, that is a long and arduous process of litigation – and it seems that the contractor has most of the money at this stage, anyway. Alternatively, as K. Anderson mentioned in his letter, the Applicant could follow the multi-step lot line adjustment process. It sounds as if, from public comment, that the neighbors are all on the Applicant's side to do something like that. If all things were possible or equal, B. Moseley would like to table the variance and let the Applicant go through the lot line adjustment process. If that process fails, then let them come to the Board for a variance. Why should the Board be the easy way out?

501
502 J. Belanger stated that he wishes the Applicant had applied for an equitable waiver.
503

504 S. Swerchesky stated that this case involves an egregious violation of the setback. D. Mason concurred.
505

506 B. Moseley stated that the Applicant doesn't want to hold the contractor accountable. D. Mason stated that, as
507 was pointed out, going after the contractor would be a multi-year process.
508

509 B. Moseley replied that they should go down the road of the multi-step lot line adjustment. The abutters all
510 sounded in favor of the project.
511

512 R. MacMillan concurred with B. Moseley.
513

514 D. Mason stated that his understanding is that the Board has to vote on the variance as presented, up or down. We
515 don't have a way to postpone it.
516

517 B. Major stated that the Board could table it, but the problem with that is that it would come up at the next
518 meeting and be tabled again, etc.
519

520 B. Major stated that his overwhelming thought on this, at first, and particularly after hearing the testimony, is that
521 this isn't anything that, if it was done as proposed, if it was finished, anyone would ever notice. It would not
522 diminish the value of surrounding properties, and it wouldn't be anything that anyone would notice. It's abutted
523 by 15 feet of, basically, common area. The Board has used an over-wide public right of way on a street in Town,
524 before, as a factor in granting a variance. He does not think that anyone would care about this.
525

526 B. Major stated that, secondly, the ordinance is guiding, here. We have an ordinance, and the ordinance says that
527 you have to establish the requirements for a variance, including a hardship. The Town warned the Applicant's
528 representative, repeatedly, about problems with it. When you have a tight window in terms of setback, your kind-
529 of on notice that you have to take extra care. He stated that the thing that really concerns him is that this could
530 have been done within the setback. In looking at the ordinance, it is hard for him to support the finding of a
531 hardship where, (1), the Applicant's representative got them into this. It was a self-produced hardship, by doing
532 construction without measuring. If the Building Department had gone to the site and done an interim inspection,
533 said that this is ok, and then it was constructed, the consideration now would be an appeal of an administrative
534 decision. He is looking at this in terms of the fact that it's not really anything that is going to harm anyone – but
535 he does have to look to the ordinance. Unless there is an unavoidability to the problem, he looks at this as being
536 something created. He cannot believe, in this day and age, that pool contractors don't know about setbacks.
537

538 B. Major added that in some circumstances, having a pool in the setback could aggravate it. Pools generate noise
539 in the summertime.
540

541 R. MacMillan pointed out, too, that ownerships change. B. Major concurred.
542

543 R. MacMillan added that the plan lays out quite clearly where the bounds are.
544

545 B. Major continued that, secondly, in this instance there are alternatives. To him, if there is an alternative to the
546 variance, which is plain and open, then the alternatives have to be explored. An alternative is to obtain property
547 from the association, basically allowing them fee interest in this 15-foot strip. That might get rid of most of the
548 problem. R. MacMillan agreed.
549

550 B. Major stated that we cannot give a variance to construct anything over the property line. He doesn't see how
551 they could grant a variance for part of that pool deck. The Board can't grant them a variance for the roughly 20%

of the pool deck that is north of the existing property line. R. MacMillan stated that that would be the taking of someone else's land.

B. Major stated that he is not convinced that the requirements for a variance have been met. He cannot see tabling the case, though if the Applicant came back with information that was different, i.e., that they could not do one of the alternatives, then that might be a factor which would allow the Board to take another consideration. It would be a substantially different application at that point.

B. Moseley stated that he would be much more comfortable talking about a variance if the Applicant had already gone down the path of the alternatives and had failed.

J. Belanger stated that if the Board approved this variance, it would not be giving the Applicant permission to build the walkway around the pool onto the open land. It would only be giving them the variance to have the pool at the property line. D. Mason agreed.

B. Major stated that the Applicant did a good job of presenting the case; the Board got all the information they needed. There is no subterfuge here; it is all above board – but one thing that was said is that the pool company told the Applicant to go and get a variance. Therefore, if they don't get a variance, they will have that much more compelling leverage with the pool company. R. MacMillan added that it would be more standing to proceed legally. B. Major stated that no one wants to go in that direction. He feels great sympathy for the Applicant – but at the end of the day, the voters have told us via the ordinance what they expect us to do. He can't in good conscience vote for a variance here.

B. Moseley stated that the sad part is that by pursuing a variance, they are letting the contractor off the hook. It is sanctioning his screwing up in his job. S. Swerchesky concurred.

R. MacMillan stated that we can't rectify every mistake that is made, by turning aside the ordinance – especially egregious mistakes. This is not de minimis.

D. Mason stated that contractors screwing up, no matter how badly, is not a hardship. He does not see a hardship in this case.

J. Belanger stated that the hardship is the way the property is laid out. D. Mason stated that that is a special condition.

B. Major moved for the following Finding-of-Fact;

1. *The Board finds that the hardship in this matter was produced by the inattentiveness and errors of the Applicant's contractor.*

Seconded by B. Moseley.

Motion unanimously approved.

D. Mason moved for the following Finding-of-Fact;

2. *The Board finds that the pool was not constructed in accordance with the requirements of the building permit.*

Seconded by B. Moseley.

Motion unanimously approved.

B. Major moved for the following Finding-of-Fact;

3. *The Board finds that the Applicant has not exhausted other options that would negate the need for a variance.*

Seconded by B. Moseley.

Motion unanimously approved.

Questions – Variance

- Question 1. The variance will not be contrary to the public interest.
 Question 2. The spirit of the ordinance is observed.
 Question 3. Substantial justice is done.
 Question 4. The values of surrounding properties are not diminished.
 Question 5a(1). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.
 Question 5a(2). The proposed use is a reasonable one.
 Question 5b. The property cannot be reasonably used in strict conformance with the ordinance, and a variance is, therefore, necessary to enable a reasonable use of it.

Board Member	Question #1	Question #2	Question #3	Question #4	Question #5a (1)	Question #5a (2)	Total Yes	Total No
B. Major	Yes	No	No	Yes	No	Yes	3	3
J. Belanger	Yes	Yes	Yes	Yes	Yes	Yes	6	0
R. MacMillan	Yes	No	No	Yes	No	Yes	3	3
D. Mason	Yes	Yes	No	Yes	No	Yes	4	1
B. Moseley	No	No	No	Yes	No	No	1	5

THEREFORE, THE VARIANCE WAS DENIED BY A 5 TO 1 VOTE WITH THE FOLLOWING FINDING-OF-FACT;

FINDINGS-OF-FACT:

- The Board finds that the hardship in this matter was produced by the inattentiveness and errors of the Applicant's contractor.**
- The Board finds that the pool was not constructed in accordance with the requirements of the building permit.**
- The Board finds that the Applicant has not exhausted other options that would negate the need for a variance.**

Other Business

The ZBA discussed having a meeting on September 24, 2026 regardless of receiving applications to discuss potential zoning changes. The zoning changes, if any, should be sent to D. Setaro prior to the meeting for distribution to the members.

Review of Minutes

*B. Moseley moved to approve the minutes of July 23, 2026 as amended.
 Seconded by B. Major.
 Motion unanimously approved.*

Meeting Adjourned

The ZBA meeting adjourned at 8:45 pm.

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644

645

646 Respectfully submitted by:

647

648 Donna Lee Setaro, Building and Land Use Coordinator,

649 and Aurelia Perry, Recording Secretary.