



**TOWN OF ASHLAND, MASSACHUSETTS**  
101 MAIN STREET, ASHLAND, MA 01721  
OFFICE OF THE  
**ZONING BOARD OF APPEALS**

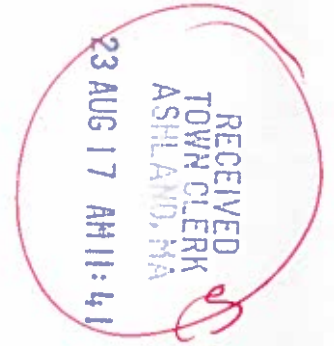
John Trefethen, ZBA Chairman

Peter Matchak, Town Planner  
Alvaro Esparza, Assistant Town Planner

**ZONING BOARD OF APPEALS DECISION**  
**CASE Variance 8-23**

**MAP 15, LOT 130-HH**  
**BOOK: 441000, PAGE: 163**

**LOCUS: 17 Loring Drive**  
**PETITIONER: Patrick and Jill McKelvey**  
**PROPERTY OWNER: Patrick and Jill McKelvey**



At the Public Hearing on July 11, 2023, the Zoning Board of Appeals (the “Board”) voted 0-3 to deny a variance at 17 Loring Drive (the “Locus”).

Patrick McKelvey, owner, applied for a Variance per Chapter 40A, Section 10 of the Massachusetts Zoning Act and Chapter 282, Sections 4 (Dimensional Required), and 9.2 (Board of Appeals) of the Ashland Bylaws to allow for the installation of an inground pool not meeting the setback requirements of the Residential “A” zoning district. The property in question is located at 17 Loring Drive, Assessors Map 15, Block A, Lot 130-HH.

**BACKGROUND AND PROCESS**

1. The Zoning Board of Appeals (the “Board”) received an Application for a Variance on June 07, 2023.
2. The application packet for a Variance, stamped in by the Town Clerk on June 07, 2023 contained the following:
  - a. Completed Application case I.D. VA8-23
  - b. Property Card for 17 Loring Drive.
  - c. Pictures and diagram of potential pool location and conditions through seasons.
  - d. One (1) page Plot Plan titled “Loring Drive”
  - e. Proposed Plot Plan
  - f. Swimming Pool Application
3. Other documents submitted:
  - a. Building Commissioner Denial Letter dated June 7, 2023.

The foregoing memoranda and letters were read into the record and are incorporated in this decision by reference and made a part hereof.

### **FACTS & EVIDENCE**

This request was received on June 7, 2023 and a public hearing was scheduled for July 11, 2023 at 7:15 PM. Notice of the public hearing was published in the MetroWest Daily News on Tuesday, June 27, 2023 and Monday, July 3, 2023.

The public hearing was posted in the Ashland Town Hall and on the Town of Ashland website and provided to all “parties of interest,” including all abutters, as required by MGL Chapter 40A, Section 11.

The public hearing commenced as scheduled on July 11, 2023. The following ZBA members were seated on the public hearing:

- Mr. John Trefethen, Chair
- Mr. Nathan Band, Member
- Mr. Brian Forestal, Member
- Mr. Stu Siegel, Associate Member
- Mr. Ryan Sullivan, Associate Member
- Mr. Anton Tikhomirov, Associate Member

Voting ZBA members on hearing are:

- Mr. John Trefethen, Chair
- Mr. Nathan Band, Member
- Mr. Brian Forestal, Member

At the public hearing on July 11, 2023, the applicant presented testimony citing the need for a variance in order to build an inground pool that was denied by the building inspector, because it does not meet the setback requirements of its zoning location. Two members of the public spoke. Mr. Dassoni resident of Ashland, asked questions about the size, shape and materials that would be used if the pool was constructed. These questions were answered promptly by the applicant. Mr. Chamorro resident of 10 Loring drive, an abutting property to the applicant spoke in support of the proposed project.

After listening to the public comment, the Board voted to close the public hearing and enter into deliberations.

## **FINDINGS BY THE BOARD**

The Board, after review of the facts, plans, and evidence presented at this hearing, and after deliberations reviewing all submitted material, makes the following findings for the Variance application of Patrick McKelvey, zoning case VA8-23 at 17 Loring Drive. The Zoning Board concludes the following:

- A. Massachusetts General Law requires that in order to grant a variance the Board must specifically find that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.
- B. The Applicant requested a variance to the Ashland Bylaw's Chapter 282 Zoning, Section 4, Dimensional Requirement – Minimum Rear Yard District, to build an inground pool in the backyard of 17 Loring Drive which is within Residential "A" zoning district. Ashland's Residential A zoning district require a setback of thirty (30') feet from the rear property line from any structure. The proposed pool if allowed would be 10 feet from the rear property thus twenty (20') into the rear setback.
- C. The Building Commissioner's denial letter stated that the application of the inground does not meet the dimensional requirements of Ashland Bylaws.
- D. The Board finds that this application does not meet the requirement of substantial hardship. The soil conditions, shape and topography of the lot do not create a hardship that would allow a variance, as the applicant was aware of an alternative location that would be compliant but not preferred.

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**TOWN OF ASHLAND – ZONING BOARD OF APPEALS DECISION**

The Board voted as follows:


John Trefethen, Chair            N


Nathan Band, Member            N

Brian Forestal, Member        N

By a 0-3 vote, the ZBA denies the Applicant's request for a Variance. Pursuant to Section 9.2.2.2 of the Ashland Zoning Bylaws, any appeal to this decision shall be made in accordance with M.G.L. c. 40A, § 17 and shall be filed within 20 days of the date this decision was stamped by the Town Clerk's Office.

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

  
\_\_\_\_\_  
John Trefethen, Board Chair

  
\_\_\_\_\_  
Nathan Band, Member

  
\_\_\_\_\_  
Brian Forestal, Member

Filed with the Town Clerk on:

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

\_\_\_\_\_  
Cynthia T. Livingstone, Town Clerk

I HEREBY CERTIFY THAT TWENTY DAYS HAVE ELAPSED FROM THE DATE THIS DECISION WAS FILED IN THE TOWN CLERK'S OFFICE AND THAT NO APPEAL HAS BEEN FILED.

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

\_\_\_\_\_  
Cynthia T. Livingstone, Town Clerk