
MIRICK O'CONNELL

ATTORNEYS AT LAW

RECEIVED

MAR 13 2023

Zoning Board of Appeals

Brian R. Falk
Mirick O'Connell
100 Front Street
Worcester, MA 01608-1477
bfalk@mirickoconnell.com
t 508.929.1678
f 508.983.6256

March 9, 2023

Zoning Board of Appeals
Town of Grafton
30 Providence Road
Grafton, MA 01519

Re: Variance Application for 3 Bridle Ridge Drive

Dear Board Members:

On behalf of my client Nicholas Capman, I submit the enclosed variance application with respect to the property located at 3 Bridle Ridge Drive.

Mr. Capman's contractor obtained a building permit to construct a pool, gazebo, and patio area at the property. The contractor installed these items based upon site conditions, but the as-built plans obtained post-construction revealed that these accessory structures do not comply with the 15-foot side yard setback in the R-40 Zoning District. As constructed, the pool is 7.5 feet from the property line and the gazebo is 13.1 feet from the property line.

Mr. Capman met with his neighbors at 150 Old Westborough Road, whose rear property line sits near the pool and gazebo. The neighbors are supportive of Mr. Capman's application, evidenced by the enclosed letter of support. Of note, the home at 150 Old Westborough Road is located more than 200 feet from the pool and patio with a substantial wooded area providing natural screening between the home and Mr. Capman's accessory structures.

The unique topography of Mr. Capman's property and the location of his home on the property is such that placement of the pool and gazebo area 15 feet or more from the side property line or to the rear of the home would pose a substantial hardship and diminish the value of these accessory structures. Given the support of the neighbors owning property closest to these structures, the substantial distance and screening separating these structures from the nearest home, and the relatively minor incursions into the 15 foot side yard, the Board may grant the relief requested by Mr. Capman without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

We therefore respectfully request that the Board consider granting Mr. Capman's request for variance relief.

{Client Matter 27223/00001/A8228233.DOCX}

MIRICK, O'CONNELL, DEMALLIE & LOUGHEE, LLP
WORCESTER | WESTBOROUGH | BOSTON
www.mirickoconnell.com

2023 MAR 13 AM 9:47

RECEIVED TOWN CLERK
GRAFTON, MA

MIRICK O'CONNELL

Zoning Board of Appeals, Town of Grafton
March 9, 2023
Page 2

Thank you for your time and attention to this matter.

Sincerely,



Brian R. Falk

BRF/

Encl.

cc: Client

**PETITION TO THE ZONING BOARD OF APPEALS
TOWN OF GRAFTON, MASSACHUSETTS**

DATE: 02/27/2023

I/We hereby petition your Board to conduct a public hearing and consider the granting of relief from under hardship resulting from literal enforcement of the protective Zoning Bylaw, by exercising your power to:

(Mark one)

- Review refusal of Selectman or others to grant a permit
- Grant a **VARIANCE** from the terms of the Zoning Bylaw, SECTION 3.2.3.2.
- Grant a **SPECIAL PERMIT** for a specific use which is subject to the approval of your Board.

FOR LAND/BUILDINGS AT 3 Bridle Ride Drive

TO ALLOW:

Pool/Gazebo/Patio area in 15 foot side yard setback.

Please see cover letter.

Please complete this **entire** section:

Location of property: Tax Plan # 23 Plot # 135

Zoning District in which the property is located: R-140

Title of Property in name of: Nicholas Capman

Whose address is: 3 Bridle Ridge Drive

Deed recorded in Book # 50668, Page # 232

Plan Book # 750, Plan # 55

Signature of Petitioner:  _____

Print Name Nicholas Capman

Address of Petitioner: 3 Bridle Ridge Drive

Phone Number of Petitioner: 508-929-1678 (Attorney Brian Falk)



OFFICE OF THE BUILDING DEPARTMENT

30 Providence Road
Grafton, Massachusetts 01519
Phone: (508) 839-5335 ext 1190 • FAX: (508) 839-4602
Inspector of Buildings: *Robert S. Berger C.B.O.*
bergerr@graffton-ma.gov
www.graffton-ma.gov

March 3, 2023

Nicholas Capman
3 Bridle Ridge Drive
Grafton, Ma 01536
Account # 1100230000001350
Zoning: Low Density Residential (R-40)

Mirick, O'Connell, DeMallie & Lougee, LLP
100 Front Street
Worcester Ma 01608
Attn: Brian R. Falk

Re: Permits BP-21-516 & PO-21-29

Dear Nicholas Capman:

It has come to the attention of this office that you are in violation of the zoning & building codes with respect to the two open building permits, BP-21-516 & PO-21-29. Specifically, this office has received the as built plans produced by B&R Surveying dated October 17th, 2022, indicating that the two structures identified as pool and gazebo do not meet the minimum required side setback of 15 feet from the property line. It also appears that you did not construct these two structures in accordance with the approved documents that you submitted to receive the building and pool permits.

In light of the above, we have no choice but to order that you come into compliance with all requirements of the zoning & building codes and the permits this office issued. Please notify this office of your corrective action plan as soon as possible.

For the full text of relevant provisions and definitions, please refer to the Grafton Zoning By-Law, available on-line at www.graffton-ma.gov. For your convenience, the following are some relevant provisions:

Under 2015 IRC including Massachusetts amendments section R107.4 Amended Construction Documents. Work shall be installed in accordance with the approved construction documents, and any changes made during construction that are not in compliance with the approved construction documents shall be resubmitted for approval as an amended set of construction documents.

3.2.3.2 – Intensity of Use Schedule

Zoning District	Minimum Area (Sq. Ft.)	Minimum Frontage/ Lot Width (Ft)	Minimum Yards			Maximum Building Coverage (% of Lot)	Maximum Building Height (Ft)
			Front (Feet)	Side (Feet)	Rear (Feet)		
Agricultural (A)	80,000 ¹	200 ³	30	15	15	25	35
	40,000 ²	140 ⁴	30	15	15	30	35
Low Density Residential (R-40)	40,000	140 ⁴	30	15	15	30	35

Should you choose to appeal this Order, you may do so according to the following section of the Grafton Zoning By-Law:

1.4.2 Powers of the Zoning Board of Appeals:

- a. To hear and decide appeals in accordance with Chapter 40A.
- b. To hear and decide petitions for variances in accordance with Chapter 40A in all districts subject to appropriate conditions including but not limited to calendar time period, extent of use, hours of operation, outdoor storage, lighting, parking or similar controls.
- c. To hear and decide applications for expansion of non-conforming uses in accordance with the provisions of Section 3.4.3.5 of this By-law.
- d. To hear and decide applications for special permits upon which the board is empowered to act under this Bylaw.

1 “Whoever is aggrieved by an interpretation, order, requirement, direction or failure to act by any state or local agency or any person or state or local agency charged with the administration or enforcement of the state building code or any of its rules and regulations, except any specialized codes as described in section 96, other than the specialized stretch energy code developed and promulgated by the department of energy resources, may within forty-five days after the service of notice thereof appeal from such interpretation, order, requirement, direction, or failure to act to the appeals board. Appeals hereunder shall be on forms provided by the appeals board and shall be accompanied by such fee as said appeals board may determine.” G. L. c. 143, § 100, second paragraph (effective as of June 24, 2021).

Regards

Robert
Berger

Digitally signed by Robert Berger
DN: CN = Robert Berger, C = US, O = Town of Grafton, OU = Building Department
Date: 2023.03.02 08:44:50 -0400

Robert S. Berger

CC. Falk, Brian R. <bfalk@mirickoconnell.com
Madazus Home Improvement 194 Worcester St N. Grafton MA 01536
Dolphin Pools 97 Main Street Grafton MA 01560
Open-gov attachments PO-21-29
Open-gov attachments BP-21-516

February 1, 2023

Zoning Board of Appeals
Town of Grafton
30 Providence Road
Grafton, MA 01519

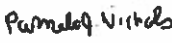
RE: 3 Bridle Ridge Drive

Dear Board Members:

This letter concerns the application by Nicholas Capman for a variance at 3 Bridle Ridge Drive. We own the property located at 150 Old Westborough Road, which directly abuts 3 Bridle Ridge Drive and the pool area that is the subject of the application.

We are in full support of Mr. Capman's application. The proximity of the pool area to our rear boundary line has not been detrimental to the use and enjoyment of our property, and we believe it would pose a substantial hardship for our neighbor to remove the pool area.

Sincerely,

DocuSigned by:

F166E96927864C8
Pamela Nichols

DocuSigned by:

D638E86933834A
Stacy Cahill

DocuSigned by:

C095C8FE22AB4DF
Toby Nichols



TOWN OF GRAFTON
 GRAFTON MEMORIAL MUNICIPAL CENTER
 30 PROVIDENCE ROAD
 GRAFTON, MASSACHUSETTS 01519
 (508) 839-5335 x1190 • FAX (508) 839-4602
 www.grafton-ma.gov

ZONING DETERMINATION

Zoning Board of Appeals _____

Grafton MA 01519 _____

Attn: Chair Brian Waller _____

SITE INFORMATION

STREET AND NUMBER 3 BRIDLE RIDGE DRIVE

ASSESSOR'S MAP(S) 023.0-0000-0135.0

LOT SIZE 1.21 AC FRONTAGE 376.21

CURRENT USE SINGLE FAMILY DWELLING

PROPOSED USE ACCESSORY STRUCTURES (POOL AND POOL HOUSE)

TO BE COMPLETED BY THE ZONING ENFORCEMENT OFFICER

The project is zoned (check all that apply)

- | | | | |
|---|--|--|--|
| <input type="checkbox"/> A- Agriculture | <input type="checkbox"/> R-MF Multi-Family Residential | <input type="checkbox"/> OLI Office/Light Industry | <input type="checkbox"/> VMU Village and Neighborhood Mixed Use District VMU |
| <input type="checkbox"/> R-20 Low Density Residential | <input type="checkbox"/> NB Neighborhood Business | <input type="checkbox"/> I Industrial | <input type="checkbox"/> NGTVOD North Grafton Transit Village Overlay District |
| <input checked="" type="checkbox"/> R-40 Medium Density Residential | <input type="checkbox"/> CB Community Business | <input type="checkbox"/> FP Flood Plain | |

Overlay Districts

- | | |
|--|--|
| <input type="checkbox"/> WSPO – Water Supply Protection Overlay District | <input type="checkbox"/> FSGOD – Fisherville Smart Growth Overlay District |
| <input type="checkbox"/> CDO – Campus Development Overlay District | <input type="checkbox"/> PDSOD – 43D Priority Development Overlay District |

The proposed use is:

- Permitted in the zone(s)
- Conditionally permitted in the zone(s)
- Not permitted in the zone(s)

1. As per the assessors record property card the structure was built in 2003.
2. The property is in a medium-density residential district R-40 Zoning District.

This office has notified the owner about the violations of the zoning & building codes with respect to the two open building permits, BP-21-516 & PO-21-29. Specifically, this office has received the as built plans produced by B&R SURVEYING dated October 17th, 2022, indicating that the two structures identified as pool and gazebo do not meet the minimum required side setback of 15 feet from the property line. It also appears that they did not construct these two structures in accordance with the approved documents that the contractor submitted for review to receive the building and pool permits.

The proposal must be heard by the following Board:

- Planning Board
 - _____ Special Permit
 - _____ Site Plan Approval Only
 - _____ Other _____

Considering the above, we have no choice but to order that the owner come into compliance with all requirements of the zoning & building codes and the permits this office issued.

Zoning Board of Appeals

Zoning Enforcement Officer _____
 Robert Berger

Digitally signed by: Robert Berger
 DN: CN = Robert Berger, C = AD O = Inspector of Buildings
 Grafton, MA
 Date: 2023.03.12 19:00:44 -0400

Grafton Zoning By-Law Section 1.3.6.2 Any person aggrieved by reason of his inability to obtain a permit or enforcement action from the Inspector of Buildings or other administrative officer under the provisions of this By-Law, or any person including an officer or board of the Town, aggrieved by an order of decision of the Inspector of Buildings, or other administrative officer, in violation of the provisions of Chapter 40A of the General Laws or any provision of this By-Law, may file an appeal in accordance with the provisions of Chapter 40A of the General Laws.

HISSEY BRITTANY A
SULLIVAN MATTHEW
9 BRIDLE RIDGE DRIVE
GRAFTON, MA 01519

MORICO NOMINEE TRUST
MORICO PETERD, YOLANA L TRUSTEES
154 OLD WESTBOROR ROAD
N GRAFTON, MA 01536

ROBINSON, JOHN
ROBINSON, MELANIE
5 BRIDLE RIDGE DRIVE
N GRAFTON, MA 01536

CORRADO, PETER C
CORRADO , MEGAN E
144 OLD WESTBORO ROAD
N GRAFTON, MA 01536

JENSEN, KEITH R
JENSEN, TAMSON T
11 BRIDLE RIDGE DRIVE
N GRAFTON, MA 01536

TRAN, HONG
MAI, LE T
2 BRIDLE RIDGE DRIVE
N GRAFTON, MA 01536

PERRY CHELSEA
10 BRIDLE RIDGE DRIVE
N GRAFTON, MA 01536

WANG YU
ZHENG SU
8 BRIDLE RIDGE DRIVE
N GRAFTON, MA 01536

CHOATE KAROLYN M
156 OLD WESTBORO ROAD
N GRAFTON, MA 01536

SANTOS ADRIAN ANTHONY
106 RENAISSANCE DRIVE
NORTH PALM BEACH, FL 33410

NICHOLS PAMELA J LIFE ESTATE
CAHILL STACY N & NICHOLS TOBY F
150 OLD WESTBORO ROAD
N GRAFTON, MA 01536

MCLAUGHLIN GEORGE DAVID
158 OLD WESTBORO ROAD
N GRAFTON, MA 01536

CHIKOMO TECKLER K
153 OLD WESTBORO ROAD
N GRAFTON, MA 01536

KUZMAK DANIEL M
KUZMAK DARLENE A
7 BRIDLE RIDGE DRIVE
N GRAFTON, MA 01536

ALLMON RANDY L
LAPRADE SANDRA L
4 BRIDLE RIDGE DRIVE
N GRAFTON, MA 01536

GIRARD NICHOLAS D
LORI L HOULDEN & DAVID R GIRARD
151 OLD WESTBORO ROAD
N GRAFTON, MA 01536

HOULDEN HOWARD F TRUSTEE
SANDRA L FOYE TRUSTEE
139 OLD WESTBORO ROAD
N GRAFTON, MA 01536

CASEY DONALD J
CASEY ELAINE J
149 OLD WESTBORO ROAD
N GRAFTON, MA 01536

BRADFORD DAVID
BRADFORD JEAN
146 OLD WESTBORO ROAD
N GRAFTON, MA 01536

CAPMAN NICHOLAS
3 BRIDLE RIDGE DRIVE
N GRAFTON, MA 01536



TOWN OF GRAFTON
 GRAFTON MEMORIAL MUNICIPAL CENTER
 30 PROVIDENCE ROAD
 GRAFTON, MASSACHUSETTS 01519
 (508) 839-5335 ext 170 • FAX: (508) 839-4602
 www.town.grafton.ma.us

TREASURER / COLLECTOR

Certificate of Good Standing

Applicants seeking permits with the Town of Grafton must submit this completed form at the time of application. When all obligations are paid to date, you must attach this "Certificate of Good Standing" with your application. Delinquent bills must be paid in full before the appropriate department accepts your application. Please make arrangements to pay these outstanding bills at the Collector's Office.

Please note: it can take up to three (3) business days to process each request.

Please check all that apply and indicate if permit(s) have been issued.

	Permit Issued?			Permit Issued?	
	Yes	No		Yes	No
<input type="checkbox"/> Building - Inspection(s)	_____	_____	<input type="checkbox"/> Septic System	_____	_____
<input type="checkbox"/> Building - Electric	_____	_____	<input type="checkbox"/> Conservation	_____	_____
<input type="checkbox"/> Building - Plumbing	_____	_____	<input type="checkbox"/> Planning	_____	_____
<input type="checkbox"/> Board of Health	_____	_____	<input type="checkbox"/> Other	_____	_____

Other Permit: ZBA Variance Application

<u>Nicholas Capman</u>	<u>Nicholas Capman</u>
<small>Petitioner Name</small>	<small>Property Owner / Applicant</small>
<u>3 Bridle Ridge Drive</u>	<u>3 Bridle Ridge Drive</u>
<small>Petitioner Address</small>	<small>Property Address</small>
<u>Grafton, MA</u>	<u>Grafton, MA</u>
<small>City, State, Zip</small>	<small>City, State, Zip</small>
<u>508-929-1678 (Attorney Brian Falk)</u>	
<small>Phone</small>	

Date:	Current	Delinquent	N/A
Real Estate	✓		
Personal Property			/
Motor Vehicle Excise	✓		
Disposal	✓		
General Billing			/

[Signature] 2/28/23
 Treasurer / Collector Signature Date

RESTRICTED AREA
(PART OF LOT 28)

N/F
STACY N. CAHILL
& TOBY F. NICHOLS
BK. 49174 PG. 351
PL. BK. 337 PL. 36
PL. BK. 659 PL. 122

N/F
MORICO NOMINEE TRUST
BK. 61196 PG. 209
PL. BK. 659 PL. 122
PL. BK. 678 PL. 4

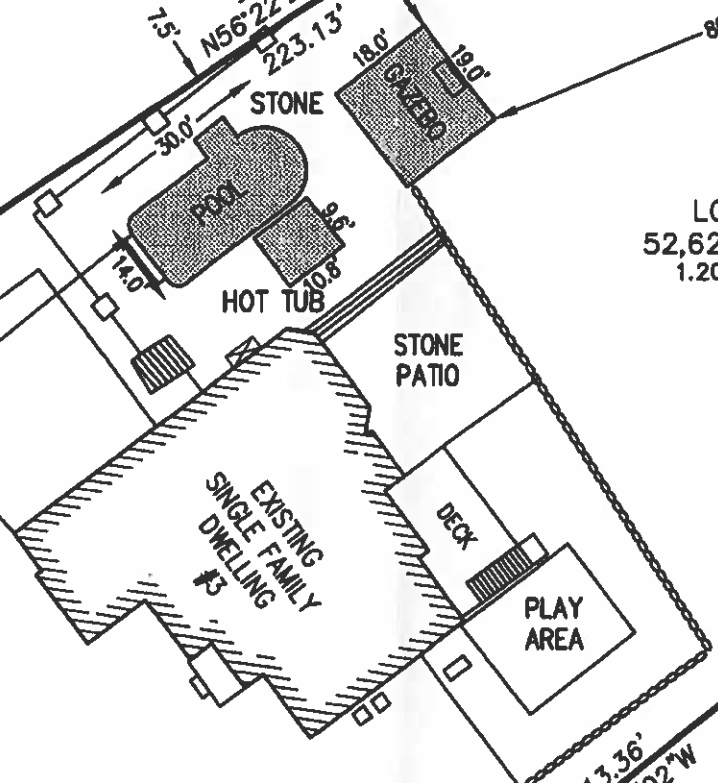
DEED REF: 50668/232
PLAN REF: 750/55
ZONED: R-40
ASSESSORS REF: 110/023.0000-135.0



LOT 28
52,627 sq. ft.
1.208 acres

BRIDLE RIDGE DRIVE
(PUBLIC USE ~ 50.0' WIDE)

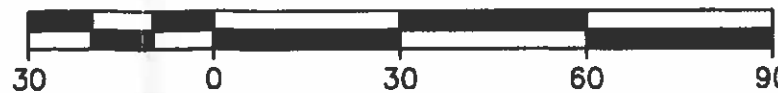
RE-ROD
(FOUND)



ROBERT J. SMITH
3683B
PROFESSIONAL LAND SURVEYOR
NOV 15 2022
DATE

N/F
CHUN CAO
BK. 26999 PG. 394
PL. BK. 750 PL. 55

GRAPHIC SCALE
1"=30'



AS-BUILT PLAN

PREPARED FOR:
NICHOLAS CAPMAN
3 BRIDLE RIDGE DRIVE
GRAFTON, MASSACHUSETTS

SCALE: 1"=30' DATE: NOVEMBER 15, 2022

B&R SURVEY, INC.

PROFESSIONAL LAND SURVEYORS
100 GROVE STREET
WORCESTER, MA 01806
TEL. 508.756.8579
FAX. 508.421.4797

DRAWN BY: RPB PROJECT NO. 20-340