

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
TOWN OF NEW HARTFORD MUNICIPAL BUILDING
MARCH 6, 2023**

The Regular Meeting was called to order by Chairman Randy Bogar at 6:00 P.M. Board Members present Byron Elias, Fred Kiehm, Karen Stanislaus, Lenora Murad, and Daniel McNamara. Board Member absent: Michele Mandia. Also in attendance were Town Attorney Herbert Cully, Councilmen David Reynolds, James Messa, Richard Lenart and Richard Woodland, Highway Superintendent Richard Sherman, Codes Officer Lary Gell and Secretary Dory Shaw. Everyone in attendance recited the Pledge of Allegiance. Chairman Bogar introduced the Board Members and explained the procedures for tonight's meeting, in particular that we are absent one Board Member and it is up to the applicant whether to proceed.

The application of **Ms. Joan Nellenbach, 3697 Cosmo Lane, Sauquoit, New York**. Ms. Nellenbach is requesting an addition to the rear of her home. The existing garage is 7'± off the property line of the required 15' setback. The proposed addition is 20' x 33' (660 ± square feet) that will extend into the rear yard setback 18'±. Therefore, the applicant is seeking an Area Variance for the rear yard setback of 18'± for this addition. Tax Map #349.008-1-8; Zoning: Residential/Agricultural.

Ms. Nellenbach's daughter appeared before the Board. She explained that she will be moving into her mother's home and that is why they would like the addition. Her surrounding neighbors have no objections with this request. They need to replace the roof on the home, and the siding will match as best as possible.

Chairman Bogar asked if there was anyone present to address this application:

- Ms. Sally Townsend, 9346 Sessions Road: she supports this application
- Ms. Sandra Raciti, 9326 Sessions Road: she supports this application

A letter was received from Mr. & Mrs. Donald Greico, 9355 Cosmo Court in support of this application.

There being no further input, the Public Hearing closed at approximately 6:15 P.M.

At this time, the Board Members reviewed the criteria for an Area Variance:

- An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the variance – response: no, all in agreement;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: no, all in agreement
- The requested variance is substantial – response: no, all in agreement;

- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – response: no, all in agreement;
- The alleged difficulty was self-created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – response: yes, all in agreement.

Motion was made by Board Member Fred Kiehm to approve the application as presented and that a Building Permit be obtained within one year of approval date; seconded by Board Member Dan McNamara.

Chairman Randy Bogar – yes
Board Member Dan McNamara – yes
Board Member Karen Stanislaus – yes

Board Member Fred Kiehm – yes
Board Member Lenora Murad – yes
Board Member Byron Elias – yes

Motion **approved** by a vote of 6 – 0.

The reapplication of **Ms. Judy DeFina, 201 Gilbert Road, New Hartford, New York**. Ms. DeFina is seeking Area Variances for an inground pool and fence on her property on the corner of Gilbert Road and Woodstream Court. Corner lots have two front yards and, thus, she will need the following Area Variances. Ms. DeFina, Mr. Phil Cittadino and Michael Arcuri, Esq. appeared before the Board. (THIS APPLICATION IS A CONTINUATION OF THEIR LAST APPEARANCE AT THE JANUARY 23, 2023 ZONING BOARD MEETING). Ms. DeFina, Mr. Phil Cittadino and Michael Arcuri, Esq., appeared before the Board.

- 1) Pursuant to Section 118-23C (1) No accessory structures shall be located in the front yard. The applicant is seeking Area Variances to construct a swimming pool and fence in the front yard on Woodstream Court. The pool will extend approximately 50' to 60'± in front of the residence, thus, requiring a 50'- 60'± front yard variance.
- 2) Pursuant to Section 118-80D Residential fences shall not extend forward beyond the frontmost point of a residential building. Pursuant to Section 118-23(C)(2), a swimming pool shall be set back a minimum of 10' from all side and rear lot lines. The applicant is seeking Area Variances to construct the fence around her pool extending approximately 65' to 75'± into her front yard and extending to and connecting with a neighbor's fence located on the property line. Applicant will need a front yard variance of 65' to 75'± to place the fence in her front yard and a 10' side yard variance to allow the fence to connect to the neighbor's fence.

Attorney Arcuri referred to photographs and application. He explained where the pool will be placed. He further explained the location of the fence – parallel to the next door neighbor. The fence is about 67' from the road on one side and about 58' from the road on the other. Bushes will be placed around it. He further explained why she cannot locate the pool anywhere else due to the unique layout of this property. He doesn't feel this will create a domino effect if this variance is granted.

Chairman Bogar asked if there was anyone present to address this application:

-Mrs. Cindy Gilbert, Woodstream Court. She presented pictures of standing water in and around the area. There are many water issues in this area. Board Member Elias referred to the property and they spoke regarding the setback line, the fence, etc. Mrs. Gilbert explained the layout of this lot and there are no other pools on corner lots in this area. She further explained the work that was done in this area to alleviate water issues. This is a self-created issue – it is a busy corner and this pool does not belong there. She feels this will create a domino effect and will set a precedent.

Attorney Arcuri does not agree and takes offense to some of the statements. This pool will have landscaping and will not obstruct the view of anyone.

-Mrs. Christine Nigro, 17 Rollingwood Drive. Drainage is a big concern in this area. Lawns are always wet. She does not agree with Attorney Arcuri that people are in support as this is a wet area. She has spoken with people who are against this application but who do not want to appear before this Board. There are no other homes on corner lots with pools in this area – it will be an eyesore and not aesthetically pleasing.

-Mr. Richard Sherman, Highway Superintendent/Town of New Hartford: He has asked for an engineering report from the applicant as there are many water issues in this area. There is a detention pond in that area. His concern is the ground water and that is why he wants to see an engineering report from the applicant done by an engineer and to have the Town's contract engineer review it. Something that will show where the ground water goes. This is a swampy area. He hasn't seen any engineering report yet. Mr. Sherman also referred to a dry well installation. Discussion ensued regarding this dry well with Mr. Sherman and Mr. Cittadino. Mr. Cittadino said he would install this. However, Mr. Sherman still wants to have an independent engineering report submitted by the applicant and done by an engineer to pass along to the Town's contract engineer to review this.

Board Member McNamara would like to see a report on this also, especially if the Highway Superintendent is concerned.

Ms. DeFina addressed the Board stating she wasn't aware of an engineering request. She explained how she has lived in New Hartford and raised her children here. She takes good care of her property. The adjoining neighbor is in support of her application. Water issues have been there in the past, and she is working with a pool company that has been in business over 50 years. She feels this issue has become personal.

Reference was made again about the fence. It will be 4' in height and exactly match the neighbor's (which is 6').

The Board Members discussed the request from the Highway Superintendent and the water issues in this area. Chairman Bogar suggested voting on this tonight as the applicant has been before this Board several times as well as the residents. An independent engineering report can be a condition if this application is approved.

Ms. DeFina asked what if the report says there is a water issue, Codes Officer Gell stated then they will have to make it better. She questioned whether everyone in this area needs an engineering report – Board

Member Elias explained why this Board, at times, have requested engineering reports on different projects.

Secretary Dory Shaw read for the record letters of support recently received for this application:

- Ryan & Kerry Calogero, 26 Woodstream Court, New Hartford, NY
- Ms. Jennifer Ward, 116 Gilbert Road, New Hartford, NY
- Natalie & Steve Nerber, 25 Woodberry Road, New Hartford, NY

Town Attorney Cully stated the applicant had to appear before this Board because of the layout of the lot. Town Attorney Cully stated that this Board has one Board Member not in attendance this evening and perhaps the applicant would like to wait until a full Board is present. Chairman Bogar stated that the applicant and residents have been before this Board several times and he addressed the vacancy tonight at the beginning of the meeting.

The Public Hearing closed at approximately 6:52 P.M.

At this time, the Board Members reviewed the criteria for an Area Variance

- An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the variance – response: no, all members in agreement;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: Board Member Fred Kiehm no, Board Member Dan McNamara yes, Board Member Karen Stanislaus no, Board Member Lenora Murad no; Board Member Byron Elias no (it is a unique lot), Chairman Randy Bogar yes;
- The requested variance is substantial – response: Board Member Byron Elias no, Board Member Lenora Murad no, Board Member Karen Stanislaus no, Board Member Fred Kiehm no, Board Member Dan McNamara yes; Chairman Randy Bogar yes.
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – response: Board Member Fred Kiehm would like more information on water issue/not sure, Board Member Dan McNamara concerned about water issue as well, possible dry well will help, doesn't know if engineering report will guarantee anything, Board Member Karen Stanislaus would like to have engineering report to see what it says, Board Member Lenora Murad yes but needs engineering report to review and make it a condition, Board Member Byron Elias yes, agrees with an engineering report to be submitted, Chairman Randy Bogar yes, agrees with Board Member McNamara.
- The alleged difficulty was self-created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – response: Board Member Byron Elias yes, Board Member Lenora Murad yes, Board Member Karen Stanislaus no because of the shape of the lot, Board Member Dan McNamara yes; Board Member Fred Kiehm yes; Chairman Randy Bogar stated corner lots require variances, lot recently bought and applicant needed to check what is allowed.

Motion was made by Board Member Byron Elias to grant the variance with a 4' fence, include landscaping, and provided to the Codes Officer as it relates to the submitted diagram and ask for an independent engineer's report from the applicant with the plan to provide storm water return for whatever this pool will create, and have it reviewed by the Town's contract engineer; seconded by Board Member Lenora Murad. Vote taken:

Chairman Randy Bogar – no
Board Member Lenora Murad – yes
Board Member Fred Kiehm – no

Board Member Byron Elias – yes
Board Member Dan McNamara – no
Board Member Karen Stanislaus – yes

Motion is 3 – 3. **Application did not pass – not granted.**

Minutes of the January 23, 2023 Zoning Board meeting were approved by motion of Board Member Byron Elias; seconded by Chairman Randy Bogar. All in favor.

There being no further business, the meeting adjourned at approximately 7:20 P.M.

Respectfully submitted,

Dolores Shaw, Secretary
Zoning Board of Appeals

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