

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
TOWN OF NEW HARTFORD MUNICIPAL BUILDING
OCTOBER 23, 2023**

The Regular Meeting was called to order by Chairman Randy Bogar at 6:00 P.M. Board Members present Byron Elias, Tim Tallman, Karen Stanislaus, Lenora Murad, Michele Mandia, and Daniel McNamara. Also in attendance were Town Attorney Herbert Cully, Councilman David Reynolds, 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.

The application of **Mr. Steven Wadsworth, 6 Gerry Avenue, New Hartford, New York**. The applicant is proposing to remove and replace an existing shed/pavilion on a lot that has a street on each side of the property. He is seeking an Area Variance to allow the replacement of the 288± sf structure and placement into the front yard. Tax Map #329.010-2-18; Zoning: Medium Density Residential. Mr. & Mrs. Wadsworth appeared before the Board.

They stated that their existing shed will be replaced with this new one – same footprint. They explained exactly where their house and shed are located. There is a pool that has been here at least 25 years. They want the old, eyesore shed to be replaced.

Chairman Bogar asked if there was anyone present to address this application – no response. Mr. Brian Roller called and stated he had no opposition to this request. The Public Hearing closed at approximately 6:10 P.M. NYSDOT and Oneida County Planning 239 had no recommendation.

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: no, all in agreement.

Motion was made by Board Member Byron Elias to approve the application as presented, and that a Building Permit be obtained within one year of approval date; seconded by Board Member Michele Mandia. Vote taken:

Chairman Randy Bogar – yes
Board Member Tim Tallman – yes
Board Member Dan McNamara – yes
Board Member Michele Mandia - yes

Board Member Byron Elias – yes
Board Member Karen Stanislaus - yes
Board Member Lenora Murad - yes

Motion was **approved** by a vote of 7 – 0.

The status of the application for **Ms. Judith DeFina, 201 Gilbert Road, New Hartford, New York. Corner of Gilbert Road and Woodstream Court, New Hartford, New York.** Tax Map #339.001-1-6; Zoning: Low Density Residential. Michael Arcuri, Esq., and Ms. Judy DeFina appeared before the Board.

Town Attorney Cully stated we had hearings on this matter previously and at the last hearing in May a motion was made by Board Member Elias that the applicant provide an engineering report and the application tabled subject to that report – passed by a vote of 5 – 1. At that time the applicant was proposing placing the inground pool in one of the two front yards and thereby needed a variance because it was going to be in front of the house. Several discussions subsequent to that between the applicant and Codes Officer Gell took place and Mr. Gell has now presented a modified plan that has been submitted by the applicant and the pool is no longer in the front of the house. It is being put in a back corner, 12 x 26, and setbacks of 10' on the side and 13' in the rear, which conforms with our setback requirements. The applicant has indicated she no longer was going to put it on the side of the house but in the back yard and maintain the distances from the neighboring properties. Mr. Gell indicated even though a variance was not needed for the side and rear yard, he rejected the permit as all the information isn't in yet. He mentioned that Highway Superintendent Rick Sherman still thought some type of engineering was needed relevant to the storm water issues in this area. Mr. Gell did not issue the permit. Mrs. DeFina has appealed to this Board and they presented a breakdown of why this Board should override Mr. Gell in their appeal. They don't want selective enforcement and they provided this Board with a number of applications where pool permits were granted without the requirement of an engineering report – 49 pools.

Board Member Elias mentioned that there is nothing on the table now that we have to get anything further from this Board. He feels there are no requirements for an engineering study. A new application that actually doesn't belong here. It is an application that fits within the side and front yard setbacks as required by the law and no longer needs a report.

Chairman Bogar explained that this has to come to this Board as this is the only area where they can get relief.

Codes Officer Gell said he hasn't gotten all the information he needs to approve this. Highway Superintendent Sherman wanted an engineering report to show that the installation of the pool doesn't impact the surrounding properties – discussion ensued regarding this issue and also a new pool at the neighbor's property who didn't have to submit an engineering report.

Town Attorney Cully explained that Mr. Gell is a Codes Officer and he has the authority to issue or deny a permit. If he makes a decision not to issue a permit, it is before this Board for relief.

Mr. Gell said he is missing the exact placement of this pool and a written response from Mohawk Valley Water Authority regarding their easement. Ms. DeFina has a written statement from MVWA stating they have no objection and this meets their criteria, and she read it for the Board – she will forward a copy to secretary Dory Shaw.

Attorney Arcuri said he will withdraw their last variance request that was submitted in May 2023 as the pool will now be in the back of the house as long as any approval is extended into next summer because of the time of year, and they won't take an Article 78. He was advised that Building Permits are good for one year from issuance. He referred again to the number of inground pool permits where engineering reports weren't needed. Attorney Arcuri wants this Board to make a decision on a revised plan. Town Attorney Cully stated we modified it as part of the Public Hearing as to the status of the reapplication. He stated that Mrs. DeFina as reference in Attorney Arcuri's letter on or about September 1, 2023, she made a Building Permit application for the inground pool. This is the one she submitted and that is her writing. Technically what this is a rehearing on the reapplication which Attorney Arcuri may be withdrawing and an interpretation made – we have the right to interpret. We need to interpret of whether or not the requirement of a storm water study is needed in this case.

Chairman Bogar asked the Board Members if they would like to open the meeting up to the public or go forward with the Interpretation. It was the consensus of the Board Members not to open this meeting up to the public. It is not because we don't want to hear from the public, it is about whether or not a Building Permit gets issued based on the new facts.

It was mentioned about selective enforcement. Does the Highway Superintendent ask for an engineering report for every pool – no. But he can ask for it.

Chairman Bogar said we have the comment from the Water Authority but still needs our permission from the applicant showing placement of the pool far enough off the property line, the easement and elevation.

Attorney Arcuri said if the Board could grant the permit subject to producing the two items and the survey showing exactly where the pool is located it is good with him. They will identify with Codes Officer Gell as what he needs. Mr. Gell said he will show this to Mr. John Dunkle, Contract Engineer for the Town, so make sure it doesn't impact the neighborhood.

As long as we can make the approval subject to those two items, survey and diagram of where it is and an elevation, they will be satisfied. They don't want to submit this to the Town Engineer – they produced 49 inground pool applications granted and none of them required engineering reports.

Attorney Arcuri said Highway Superintendent Richard Sherman and Codes Officer Lary Gell have been very helpful throughout this procedure. He also stated the applicant can't make storm water runoff any worse and felt there are no water issues. The pool will be behind the house; they want the same rights as others with pools. A question was raised about dealing with any drainage problems, i.e. drain, the applicant is not an engineer. However, any issues can be addressed if needed.

Motion was made by Board Member Michele Mandia to grant the pool in the back yard and have Codes Officer Gell issue the Building Permit and they give the elevation, and where the pool is going to be placed (survey) so that Mr. Gell can issue the permit for this 12' x 26' inground pool in the

rear of the property subject to the survey and elevation; seconded by Board Member Byron Elias. Vote taken:

Chairman Randy Bogar – yes
Board Member Michele Mandia – yes
Board Member Dan McNamara – yes
Chairman Randy Bogar – yes.

Board Member Byron Elias – yes
Board Member Lenora Murad – yes
Board Member Tim Tallman – yes

Motion **approved** by a vote of 7 – 0.

(The Board Members did not address the criteria as this is an Interpretation).

Motion was made by Board Member Byron Elias to approve the minutes of the August 21, 2023 Zoning Board meeting; seconded by Chairman Randy Bogar. All in favor.

There being no further business, the meeting adjourned at approximately 6:50 P.M.

Respectfully submitted,

Dolores Shaw, Secretary
Zoning Board of Appeals

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