

TOWN OF MANLIUS
ZONING BOARD OF APPEALS
September 18, 2014

The Town of Manlius Zoning Board of Appeals Meeting assembled at the Town Hall, 301 Brooklea Drive, Fayetteville, New York, with Chairman Henry McIntosh presiding and the following Board members present:

Member	KP Kelly
Member	T.R. Schepp
Member	Al Ruthig
Member	Jim Campbell
Absent:	Deborah Demmon, Secretary

Also present were: Michael Jones, Code Enforcement Officer
Steven Primo, Attorney for the ZBA

Other persons attending: Charles White and Joseph Bishop

Chairman McIntosh called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

Approval of Minutes – August 21, 2014.

Member Kelly made a motion, seconded by Member Schepp to approve the minutes of August 21, 2014, and it was carried unanimously.

Chairman McIntosh opened the public hearing and stated that he has confirmed that the required legal notices had been timely published for the applications on the agenda. Member Schepp made a motion, seconded by Member Campbell to waive the reading of the legal notices for the items on the agenda and it was carried unanimously.

Joseph Bishop, 7870 E. Ridge Pointe Dr., Fayetteville NY 13066 PUBLIC HEARING – Area Variance – Construct a 40' X 20' Deck - Requesting a side yard setback of 10' instead of the required 20'.

Chairman McIntosh reviewed the applicants request and confirmed that Mr. Bishop had notified adjacent neighbors per Town Code requirement.

Testimony of Applicant:

Mr. Bishop stated that they wanted to build a deck around their existing above-ground pool, they had wanted to build an in-ground pool but because of the drainage issues it wasn't permitted. He would like to put a deck around their above ground pool so it will look nice, however the proposed plans provide for a side yard setback of 10' rather than the required 20'. He therefore has requested an area variance of 10'.

Board Discussion:

The Board began a brief overview discussion of the application and the balancing test required pursuant to Town Law §267-B (3).

Chairman McIntosh articulated the general balancing test, i.e. the Board must weigh the benefit to the applicant if the variance is granted against the detriment to the health, safety and welfare of the neighborhood or community by such grant. He then proceeded with the applicant through the five (5) criteria questions:

1. Whether the benefit sought by the Applicant can be achieved by some other feasible method? Mr. Bishop stated "no" without any further elaboration.
2. Whether the Variance will result in an undesirable change in the character of the neighborhood or to nearby properties? Mr. Bishop stated "no" without any further elaboration.
3. Whether the requested Variance is substantial? Mr. Bishop stated he did not understand the question. Both Chairman McIntosh Attorney Primo explained the term "substantial" in relation to the requirements, and advised it was ultimately up to the Board to determine if the request is substantial. Mr. Bishop stated "no" without any further elaboration.
4. As to whether the Variance will have an adverse effect on physical or environmental conditions? Mr. Bishop stated "no" without any further elaboration.
5. Whether the alleged difficulty was self-created? Mr. Bishop stated he did not understand the question, and stated he believed he did not cause the difficulty.

Member Schepp stated that the survey indicates that the house is 11' .9" off the boundary line, questioning why Applicant is requesting a 10' variance when it looks like the deck will be flush with the house? Applicant responded that the deck will be flush with the house but the house is not exactly parallel so it will be off a degree or so.

Member Kelly confirmed with Mr. Bishop that he was going to build the deck according to the drawing as opposed to all the way around the pool, i.e. that the drawing supplied represented the construction of the deck such that the new deck will be the same height as the existing deck but just continue to the pool.

Member Schepp asked about the drainage easement. Mr. Bishop applicant advised the Drainage easement was a good 5' back beyond the pool

Attorney Primo inquired whether there would be any undesirable change to the neighborhood or nearby community, and whether there were any other above-ground pools nearby. He indicated yes there was a neighbor across the street and one down the street with above-ground pools. Attorney Primo inquired whether the other pools had decks with them. The applicant advised that one had a partial deck and the other had no deck, but they were not permanent pools that stay up on all year round.

Member Schepp inquired whether it was possible to move the deck to reduce the setback encroachment. The applicant said the deck railing would land in the middle of the windows if moved in at all.

Member Kelly inquired whether the applicant was extending the existing deck out or going a bit closer to the fence line. Chairman McIntosh inquired whether the applicant was merely extending the existing deck or as Member Schepp inquired tearing down and rebuilding with the pool. Mr. Bishop confirmed he was extending the existing deck.

Public Comment:

Chairman McIntosh asked if any other members of the public wanted to speak, there being no response the public comment session was closed.

Member Campbell stated he believed it would not impact the neighborhood and is in character with the neighborhood. Member Kelly agreed stating that the house backs up to Duguid Road with a treed area and there is fencing on either side of the property so the deck would not be a major change in the neighborhood character, and that there should not be any adverse environmental effects as result of the small scale construction. Member Ruthig stated that the deck follows the line of the house, and there seem to be no viable alternatives and what is proposed would in fact be the minimum possible. As such, he did not believe on relative terms this should be deemed substantial, but the hardship however was self-imposed but was not an absolute bar to the relief sought.

SEQRA Review:

The Board determined the proposed project and action contemplated comprised of a Type II Action pursuant to the New York State Environmental Quality Review Act, and as such no further review was required.

Board Action:

Member Schepp made a motion to grant the an area variance of 10' with respect to the Town Code's side yard setback requirement of 20' to construct a 40' X 20' deck 7870 E. Ridge Pointe Drive, as shown on plans requesting. The Motion was seconded by Member Ruthig.

The Board voted as follows:

Chairman McIntosh	aye
Member Kelly	aye
Member Campbell	aye
Member Schepp	aye
Member Ruthig	aye

The motion was carried.

Charles A. White, 5121 Shiraz Lane, Fayetteville NY 13066 Public Hearing – Area Variance – Construct a 10' X 16' Storage Shed - Requesting a Side yard setback of 14' instead of the required 20' and a rear yard setback of 26' instead of the required 40'.

Chairman McIntosh reviewed the applicants request and confirmed that Mr. Bishop had notified adjacent neighbors per Town Code requirement.

Testimony of Applicant:

Mr. White stated he would like to build a 10' X 16' Storage Shed on the rear corner of his lot as it is shown on the submitted sketches, and same would require two (2) area variances: (1) an area variance of 6' to permit a side yard setback of 14' instead of the required 20'; and (2) an area variance of 14' to permit a rear yard setback of 26' instead of the required 40'.

Chairman McIntosh confirmed with the applicant the proposed shed would be one story, possibly with electric service, and the applicant would not be taking any trees down.

Board Discussion:

The Board began a brief overview discussion of the application and the balancing test required pursuant to Town Law §267-B (3).

Chairman McIntosh articulated the general balancing test, i.e. the Board must weigh the benefit to the applicant if the variance is granted against the detriment to the health, safety and welfare of the neighborhood or community by such grant. He then proceeded with the applicant through the five (5) criteria questions:

1. Whether the benefit sought by the Applicant can be achieved by some other feasible method?
2. Whether the Variance will result in an undesirable change in the character of the neighborhood or to nearby properties?
3. Whether the requested Variance is substantial?
4. Whether the Variance will have an adverse effect on physical or environmental conditions?
5. Whether the alleged difficulty was self-created?

The applicant responded no to each of the foregoing, except as to the last criteria which after some explanation he advised he believed the alleged difficulty was self-created.

Chairman McIntosh asked if any Board members had questions.

Member Schepp asked what would be stored in the shed. Mr. White advised typical yard tools, a lawn mower, and wheel barrow would be stored in the shed.

Member Kelly asked if the shed will look like the photo provided. Mr. White responded for the most part it would, but would: (a) not have shutters, (b) have a slightly different but similar door, and (c) the color would match the house. He indicated the roof, building shape, and the location of the windows and the doors would be as shown.

Member Kelly asked if the neighbors had been notified. Chairman McIntosh stated yes, and the Board had not received any objections.

Attorney Primo asked if the applicant would put a gutter on one side to help with drainage. Mr. White stated he would prefer not to put a gutter on because he has a drainage easement there and everything does slope to the drainage easement and there is a catch basin at the corner of the lot.

Attorney Primo indicated the applicant had advised on the Town's application form the action would result in an undesirable change in the character of the neighborhood or to nearby properties. Mr. White requested that the answer be amended to state "will not".

Mr. White brought up one more item – the section he provided of the structure showed Y2 inch plywood siding with t-111 for the exterior walls. He explained he would eliminate the Y2 inch plywood siding as it would save on the cost.

Public Comment:

Chairman McIntosh asked if any other members of the public wanted to speak, there being no response the public comment session was closed.

Continued Board Discussion:

Member Schepp stated he believed the project was in character with the neighborhood the requested setbacks variances were not excessive. He did not see a problem with the proposed project, noting any roof runoff would flow naturally within two existing easement areas, the shed's finishes would be consistent with that of the home and the requested setbacks seem reasonably minimal given the intention and from review of the Plan.

SEQRA Review.

The Board determined the proposed project and action contemplated comprised of a Type II Action pursuant to the New York State Environmental Quality Review Act, and as such no further review was required.

Board Action:

Member Ruthig made a motion to grant an area variance of 6' with respect to the Town Code's side yard setback requirement of 20' and an area variance of 14' with respect to the Town Code's rear yard setback requirement of 40' to construct a 10' X 16' storage at 5121 Shiraz Lane, Fayetteville NY, as shown on the plans submitted, conditioned on the changes therefrom the applicant testified to with respect to the exterior. The motion was seconded by Member Schepp.

The Board voted as follows:

Chairman McIntosh	aye
Member Kelly	aye
Member Campbell	aye
Member Schepp	aye
Member Ruthig	aye

The motion was carried unanimously.

Other Business:

Chairman McIntosh stated Attorney Primo wanted to make a few comments about the joint Town Board and ZBA Board meeting previously held September 11, 2014 with respect to the Village of Manlius proposed fire station project to be located within the Town, outside the boundary lines of the Village.

Attorney Primo thanked the Board for their participation and stated that he believed both sides are reaching out to one another to try to resolve the issues surrounding the Village's election to act as Lead Agency and declaration of sovereignty. Attorney Primo asked the Board to reserve decision and if the time comes when the Board has to make a decision then they could talk about what the Board might want content wise in the form of a proposed resolution. Attorney Primo stated he had spoken with Mayor Whorral and the Village Attorney following the joint meeting and it was his impression that the Village and Town would try to resolve things.

Chairman McIntosh asked if this Board had any more involvement in this. Attorney Primo stated that this Board was still involved on the jurisdictional determination.

Member Schepp asked attorney Primo to explain what the role of the ZBA is in this project? Attorney Primo advised the procedure has never been set forth by the courts for this, and the only other procedural determination the court set forth was that there is almost a presumption in these kind of cases that the jurisdiction where the project to be developed is located has authority for zoning and planning - other than setting forth the criteria the cases don't really tell you how to get there. So a Department of State publication (James Coon legal series publication) suggests that it would be a Town Board legislative decision or in some cases a Zoning Board decision almost like an interpretation, which led him to take sort of a "belt and suspenders approach" by having both boards involved.

Conversation ensued and the Zoning Board of Appeals determined they would table the issue and make a determination if and when the Town Board sends them a resolution asking for assistance.

Adjournment:

With there being no other business, Member Schepp made a motion, seconded by Member Kelly, and carried unanimously, to end the meeting at 7:56 p.m.

Zoning Board of Appeals Minutes – noted and recorded by
Steven Primo, Town Attorney

Minutes transcribed by
Deborah Demmon, Secretary
Town of Manlius Zoning Board of Appeals