

**TOWN OF MANLIUS
ZONING BOARD OF APPEALS
August 15, 2013**

The minutes of the Town of Manlius Zoning Board of Appeals Meeting held on August 15, 2013 in the Town Hall, 301 Brooklea Drive, Fayetteville, New York. Those present were:

Chairman	Henry McIntosh
Member	Marilyn Urciuoli
Member	KP Kelly
Member	T.R. Schepp
Member	Al Ruthig
Secretary	Debi Demmon
Code Enforcement Officer	Michael Jones
Town Attorney	Lauren Seiter

Also Present: Mark Willette, Michael & Paula Lynch

The Pledge of Allegiance was recited.

MINUTES AND LEGAL NOTICES

Member Kelly made a motion, seconded by Member Urciuoli to approve the minutes of July 18, 2013 and it was carried unanimously.

Chairman McIntosh stated that he has confirmed that the legal notice had been published for the application on the agenda. Member Schepp made a motion, seconded by Member Ruthig to waive the reading of the publication for the items on the agenda and it was carried unanimously.

MARK & KELLY WILLETTE, 131 CRYSLER DRIVE, E. SYRACUSE, NY 13057
PUBLIC HEARING - AREA VARIANCE - CONSTRUCT A DECK 6'X 16' AND A 24'X 52"
POOL REPLACEMENT - REQUESTION A 5' SIDE YARD SETBACK INSTEAD OF
THE REQUIRED 20' AND A REAR YARD SETBACK OF 26' INSTEAD OF THE
REQUIRED 40'

Applicant Mark Willette told the board that he had been to the ZBA before when he got the permit for a pool 15 years ago in 1998 and the pool was inspected. Applicant stated the old pool was falling down and he replaced it with a new pool the same size 24' around in the same location. The only difference between the old pool and the new pool is the new pool did not come with a deck. He started to build a new deck out 8' but when his neighbor Paula Lynch objected for safety reasons he agreed to build the deck to 6' as it was before.

Mark Willette stated he didn't understand why he had to come before the ZBA again when the permit was approved in 1998 for the same size pool.

ZBA Attorney Seiter explained that if you change anything as it was constructed under the old variance you are required to obtain a new variance and that's why we're here.

Chairman McIntosh asked the applicant to respond to the 5 criteria to be considered for an area variance.

1. Whether the benefit sought by the Applicant can be achieved by some other feasible method? Mr. Willette answered - No
2. Whether the Variance will result in an undesirable change in the character of the neighborhood or to nearby properties? Mr. Willette answered - No
3. Is the request substantial? Mr. Willette answered - No
4. Will the request cause adverse physical or environmental conditions? Mr. Willette answered - No
5. Is the alleged difficulty self-created? Mr. Willette answered – No

DISCUSSION

Member Ruthig asked what size was the original pool was and what size the new pool is?

Mr. Willette answered that the old and new pools are both 24" around but the old pool had an 18" deck that went all the way around, and the new deck is 6' from the edge of the pool which is the same as the old one.

Member Kelly observed that the old deck was round and asked if the new deck was the same? Mr. Willette answered the new deck is square.

Member Schepp asked how close the edge of the old deck to the property line was. Mr. Willette answered 5' the same as before. The only difference between the old pool and the new pool is the new code requires you have to have the pool be 52" high, so it might be higher because of the railing, the old pool was shorter.

Member Kelly asked was the original deck 18" around the pool with a walk way?

Mr. Willette stated he did not put on a walkway this time.

Member Kelly asked if the original had the 6' by 16 ' plus the 18" around?

Mr. Willette answered yes

Chairman McIntosh stated that right now they are discussing the pool and would return to the deck later.

Member Schepp asked is the pool in the same spot as it was before?

Mr. Willette answered yes

Chairman McIntosh asked the applicant when you asked for a variance of 5' feet where did you measure that to, from the deck to where?

The applicant replied from the deck to the fence line.

Chairman McIntosh asked is the fence the property line?

The applicant said that he believes it is.

Member Kelly stated the survey presented by the applicant is not a current survey.

The applicant stated he did not update the survey.

Member Schepp stated he likes to see a survey that is an accurate representation of the property is today. The survey is showing that the fence line is at least some small amount off the property line and being a photo copy it is hard now the exact distance.

Code Enforcement Officer Jones stated it must be to the property line not the fence.

Member Kelly stated do not scale, putting a ruler on the survey is not accurate.

Member Schepp asked if the entire width of the deck will be 5'.

The applicant replied yes

Chairman McIntosh asked why the applicant put the deck on the side near the fence.

The applicant answered because that was where the old deck was.

Member Urciuoli asked why the bricks had been moved.

The applicant replied that he was going to make the deck bigger and because of the neighbors request he would keep it the same size.

Member Kelly asked at what point did you realize you needed to get a new permit.

The applicant answered when he was told there were complaints about where the pool was and the Town of Manlius told him he needed a new variance.

Member Kelly stated that you completed the job without coming to the Town for a variance.

Chairman McIntosh asked when and how did you become aware?

The applicant answered because of the complaints he received about the pool.

Code Enforcement Officer Jones stated that the compliance Officer went to Mr. Willette's and informed him he needed a permit to install the new pool and Mr. Willette came into the Town Office to fill out the paperwork for a variance in the meantime Mr. Willette completed the project.

Member Kelly asked when the code had changed.

Code Enforcement Officer Jones stated in 2001.

Chairman McIntosh stated that for the record neighbor notifications were sent out.

Paula Lynch asked if all the Board members got the letter she had sent.

The Members replied yes

Paula Lynch stated her main issue is with the deck that is there and the request for the 5' setback as opposed to the 20'. She said that her property is enclosed by a privacy fence that is 72" high and she is concerned if the fence were to come down, it would damage the pool and deck and she does not want any issues like that. Ms. Lynch requested that the Board hold the meeting open pending an accurate survey.

Attorney Seiter stated the Town isn't so concerned with whatever property line issues you might have, that is a private matter between neighbors. If they do grant or deny the variance the Board can just say its 5' from the property line, where the property line is to be decided by the neighbors it is not really the Towns consideration.

Paula Lynch respectfully requested that the Board deny the setback for 131 Chrysler.

Ms. Lynch requested to go over the 5 questions.

1. Whether undesirable changes would be produced in the character and a detriment to the neighboring property?

Ms. Lynch answered yes - because in 1998 there was only the pool, now there's a new driveway, additions to the front and side of the house. In whole the pool and the deck weren't a problem but now in its entirety it will be a detriment and it seems to be getting worse and worse.

2. Whether the benefit sought by the applicant can be achieved by some other feasible method?

Ms. Lynch answered yes - move the deck to the west side or in front of the pool as opposed to having it on the side near the fence.

3. Whether the requested variance is substantial?

Ms. Lynch answered - absolutely 20'

4. Whether the variance will have an adverse effect on physical or environmental conditions?

Ms. Lynch answered - yes the deck covers a greater area than before and the height is above the height of her privacy fence.

5. Whether the alleged difficulty was self-created?

Ms. Lynch answered - yes by replacing the pool and building the deck without a permit after two verbal stop work orders were issued on June 20th and July 15th by

the Code Enforcement Officer. And Mr. Willette commenting that if it is already build the Town will not make me take it down.

The benefit does not out way the detriment to the neighborhood the setback variance is so substantial that it interferes with the enjoyment of our yard, with the maintenance of our fence, and with our privacy as the deck exceeds the height of the privacy fence.

Ms. Lynch stated she is requesting that the Board deny the request for the side and rear yard variance

Member Schepp asked Ms. Lynch if she was there before the original pool went in.

Ms. Lynch answered - yes since 1978.

Member Schepp asked was there a deck on the old pool?

Ms. Lynch answered - yes and when the 6' fence went down it did not hit the deck.

Member Schepp asked do you recall how far the old deck was from the property line.

Ms. Lynch answered - No I just know that it was more than the height of the fence.

Chairman McIntosh asked Ms. Lynch have you measured the distant from the new deck to the property line.

Ms. Lynch answered - as best we can without trespassing, it's about 57".

Member Schepp asked how high the old deck is relative to the new deck.

Ms. Lynch answered - she didn't know.

Mr. Willette stated the old pool was 4' the new pool is 52" so the fence would be higher by 6".

Close Public Hearing 7:40PM

BOARD DISCUSSION

Member Schepp stated the pool is higher by 4" the railing is higher by 6" and it is an intrusion on the neighbors. The privacy fence was a privacy fence before and now you can clearly see over the fence and that concerns him.

Member Kelly stated he had visited the property and his guess is that the deck is less than 5' off the property line. He states where the pool is, is okay but the problem is with the deck if it had been put on one of the other three sides it would not have been a problem. He stated he could agree to the rear set back at 25' but not to the side line set back of 5'.

Attorney Seiter reviewed what she had mentioned earlier, if you grant or deny a variance you can say that it would be from the property line and whether the property line is here or

here is an issue for the parties to work out for them self's. So if you say 5' and it is later determined that it is less than that and he would not be compliant and he would have to move his deck.

Member Kelly said that at this time he would vote against the 5' side set back.

Member Schepp said he would like to pass the pool and table the deck issue for now.

Member Urciuoli said she agrees with Member Kelly that the deck could have been put in a different location and the height of the deck is a concern.

Chairman McIntosh said he has no problem with the pool, but the deck is a problem.

Attorney Seiter suggested that if the Board is hesitant about the deck issue that the Board leave both variances open because the numbers may change.

Member Schepp made a motion, seconded by Member Urciuoli to table the request to allow the applicant to develop a new plan in line with our concerns about the placement of the deck, the height of the project and to consider other alternatives which would give a better understanding of the project.

The motion was carried unanimously.

Mr. Willette asked the Board what they want him to do; a discussion of different options for the deck ensued

Member Urciuoli asked if they should be requesting a current survey.

Attorney Seiter stated if they got one it would make things a lot easier in one respect but in the same respect as long as this Board decides a number that is appropriate you just have to make sure it's compliant.

OTHER BUSINESS

ADJOURNMENT

With there being no other business, Member Kelly made a motion, seconded by Member Urciuoli, and carried unanimously, to end the meeting at 7:57pm.

Respectfully submitted,
Debi Demmon, Secretary
Town of Manlius Zoning Board of Appeals