

**TOWN OF MANLIUS
ZONING BOARD OF APPEALS
September 21, 2017**

The meeting of the Town of Manlius Zoning Board of Appeals Meeting held on September 21, 2017 in the Town Hall, 301 Brooklea Dr. Fayetteville New York. Those present were:

Absent	Chairman	Henry McIntosh
	Acting Chairman	KP Kelly
	Member	T.R. Schepp
	Member	Al Ruthig
	Member	Jim Campbell
	Secretary	Deborah Witzel
	Code Enforcement Officer	Randy Capriotti
	Doug Miller	Town Engineer
	Tim Frateschi	Town Attorney

Also, Present: George Wilson, Mary Beth Wilson, Stacey Thomas, Keith Thomas, Michael Spont

The Pledge of Allegiance was recited

Minutes and Legal Notices

Member Ruthig made a motion, seconded by Member Campbell to approve the minutes of August 17, 2017, and it was carried unanimously.

Acting Chairman Kelly stated that he has confirmed that the legal notices have been published for the applications on the agenda. Member Schepp made a motion, seconded by Member Campbell to waive the reading of the publication for the items on the agenda and it was carried unanimously.

**Continued from July Meeting – Keith Thomas, 8041 Merrimac Dr. Manlius NY (111.-02-16.0).
Requesting an area variance to construct a 21’ diameter above ground pool, with an existing side
yard setback of 12’3” they will need a variance of 7’.9” to meet the required 20’ side yard setback.**

Acting Chairman Kelly gave a summary of the prior meeting on July 20, 2017 concerning the application of Keith Thomas, 8041 Merrimac Dr. Manlius for an above ground pool. The public hearing was opened and closed and the board began their discussion.

Attorney Frateschi asked that the board to review the 5 criteria questions. Attorney Frateschi mentioned that Mr. Thomas had sent new information to the board and he was asked to go over this information with the board. It had to do with potential screening for the pool.

Mr. Thomas stated that his understanding was that if he and his neighbor agreed on fencing to hide the pool that the variance would be granted. He continued that the paperwork the board received were two options for that fencing that he and his neighbor Mr. Spont had discussed through e-mail. The first option would be three 8’ panels at 6’ high-dog eared fence and stained. The second option of three 4’ panels 4’ high-dog eared fence, stained and placed around the pool mechanicals to screen them. Mr.

Spoont's response to these proposals was as long as the view from his back deck and his first-floor windows are shielded he would be in agreement.

Mr. Spoont was asked if he did agree to the fence proposal. Mr. Spoont stated his first options would still be to have the pool moved, if that is not going to happen he will agree with the fence proposal to screen the mechanicals.

Mr. Thomas felt that if he were to move the pool then he would be under no obligation to screen the mechanicals and that the fence option is a win-win solution for both parties.

Board Discussion

Attorney Frateschi reviewed the criteria questions with the board.

1. Will the variance result in an undesirable change in the character of the neighborhood?
Member Schepp stated through his research he has not seen any other above ground pools in the area, let alone above ground pools this close to the property line. If the pool were placed close to the setback it would make the above ground pool more visible and effect the aesthetics of the neighborhood.
2. Whether the benefit sought by the Applicant can be achieved by some other feasible method?
Member Schepp stated the pool could be placed on the other side of the yard with no impact on the setbacks. Attorney Frateschi asked Mr. Thomas if there is a reason the pool could not be moved so no variance would be needed. Mr. Thomas responded that there is a drainage easement that may need to be accessed and the lay of the land and it is the best fit for the family's needs. Mr. Thomas stated that he was informed that his zoning was R2 when it is R1 and the pool would conform to the R2 zoning. He is concerned if the pool were moved it would hinder any trucks from getting to the drainage easement. Member Schepp noted that the setback would be 20' and he didn't feel that would hinder trucks from getting to the drainage area. Mr. Thomas mentioned he has landscaping on the west side and if the pool were located there it would be difficult to get through.
3. Whether the requested variance was substantial? Member Schepp could not remember if this board had ever granted a side yard setback this close to the property line. He did state that they have granted rear yard setbacks for inground pools because they are less impactful to their neighbors in terms of aesthetics. In terms of allowing an inground pool this close to the property line, he believes the request is substantial.
4. Whether the variance will have an adverse effect on physical or environmental conditions?
Acting Chairman Kelly had asked Town Engineer Miller to take a look at the property and has asked him to give his findings. Mr. Miller explained the history of the property that the direction of the drainage and easement had been changed with the addition of fill that Mr. Thomas had brought in and that the Town paid to have this property surveyed a few years back because of the effect these changes had on the neighbors. The findings showed that the easement on this property no longer functions as it was developed to. Member Schepp asked if the pool is sitting on the natural grade of the yard or on the fill. Mr. Miller responded that it appears the pool is on fill. Member Schepp asked what direction does the waste water from the pool goes. Mr.

Thomas explained that the waste water goes through a 4” pipe and percolates into the ground. He also stated that the variance will not have an adverse effect on the physical or environmental conditions. Member Ruthig asked about the stone drainage between the two properties, Mr. Spoons stated he had put the stone there and it takes the water to the back of the property. Concerns were raised about the failure of the above ground pool and its effect on the most immediate neighbor.

5. Whether the alleged difficulty was self-created? Mr. Thomas answered yes, based on the zoning map on the Town website he believed he only needed a 10’ setback stating that the map was difficult to read. Acting Chairman Kelly stated that he would expect Mr. Thomas to double check information that doesn’t look right being that he is an engineer. Acting Chairman Kelly did remind Mr. Thomas that he built the pool before getting a permit. Attorney Frateschi explained to Mr. Thomas if he had come to obtain a building permit then the codes office could have told him his setbacks and all of this could have been avoided.

Member Schepps response to the 5 criteria questions:

1. Yes, the pool can be placed in many different spots in the yard that do not require a variance.
2. There are no other above ground pools in the neighborhood and he is not comfortable setting a precedent with the 1st above ground pool in the area by granting a variance this close to the property line.
3. The pool is encroaching on the neighbor’s property and is sitting on a substantial amount of fill in the drainage easement. Yes, this is a substantial variance.
4. It does have an adverse effect – because the pool is sitting on fill that was added to the drainage easement.
5. This pool was constructed without obtaining a building permit and without checking the current code and setbacks for the property.

Member Schepp concluded that the board should deny the variance.

Member Ruthig stated the pool could have been put in another place in the yard. He also noted that in his opinion the pool had been placed in the most difficult place in the yard.

Member Campbell agreed that there were many other locations for the pool with no need for a variance.

Attorney Frateschi stated he had drafted a denial resolution during the board discussion. Attorney Frateschi read aloud the draft denial resolution to the board for their consideration. The board agreed that the resolution did cover all the boards concerns.

Member Schepp made a motion to deny the variance requested by Keith Thomas, 8041 Merrimac Dr. Manlius, NY as set forth in the resolution prepared by Attorney Frateschi motion seconded by Member Ruthig.

Board Action

The Board voted as follows:

Acting Chairman Kelly	aye
Member Campbell	aye

Member Ruthig aye
Member Schepp aye

The motion was carried to deny the area variance.

IN THE MATTER

of

**The Application of Keith Thomas for a side
yard setback variance**

**RESOLUTION DENYING
VARIANCE**

The **ZONING BOARD OF THE TOWN OF MANLIUS (the “Board”)**, in the County of Onondaga, State of New York, met in regular session at the Town Hall in the Village of Fayetteville, located at 301 Brooklea Drive, County of Onondaga, State of New York, on the 21st day of September 2017, at 7:00 p.m.

The meeting was called to order by KP Kelly, Acting Chairman, and the following were present, namely:

Henry McIntosh	Absent
KP Kelly	Acting Chairman
T.R. Schepp	Member
Al Ruthig	Member
Jim Campbell	Member

The following resolution was moved, seconded and adopted.

WHEREAS, Keith Thomas (the “**Applicant**”), the owner of property located at 8041 Merrimac Dr. the (“**Premises**”) came before the Zoning Board of Appeals on September 21, 2017 seeking an area variance to situate an above ground pool within 13’ of the side yard property line instead of the required 20’ setback;

WHEREAS, there is sufficient room on the Premises to situate the pool so that it would meet all required setbacks;

WHEREAS, there has been a history of drainage problems between the neighboring properties in this area;

WHEREAS, above ground pools are not prevalent or common in this neighborhood;

WHEREAS, the applicant constructed the pool in the summer of 2017 without obtaining all necessary Town approvals and/or permits;

WHEREAS, the Board has reviewed the Applicant's request and believes that it is not in the best interest of the Town to grant the variance requested by the Applicant because the detriment to the community outweighs the benefit to the Applicant; and

WHEREAS, the Board's rationale in denying the variance include the testimony given by the Applicant at all public meetings, the answers to the questions posed by the Board at said meetings, the responses to those answers, all as set forth in the minutes of said meetings

WHEREAS, the Board makes the following **FINDINGS AND DETERMINATIONS**:

- (i) granting the area variance will result in an undesirable change in the character of the neighborhood and a detriment to nearby properties because: (a) an above ground pool is highly visible and will have an aesthetic impact upon the neighbor to the west, who has publicly opposed the issuance of this variance, as opposed to inground pools which are not visible to neighbors; (b) failing to place above ground pools in the proper setback may create a precedent the Board does not want to set;
- (ii) the benefit sought by the Applicant can be achieved by a feasible alternative to the variance, including, moving the above ground pool to meet the setback requirements (there is nothing unique about the Premises that would make moving the pool to meet the setback requirements an undue hardship and there are alternative areas on the Premises as observed by ZBA members who visited the site);
- (iii) the variance being requested is substantial because the Board does not want to set a precedent allowing above ground pools to violate setback requirements because of their visual impact;
- (iv) granting the area variance may have an adverse physical or environmental impact on the neighborhood for all of the reasons set forth above, and because the possibility exists that the pool may fail and direct water into an area that has already had drainage issues, thus affecting the neighboring properties, also, the Engineer for the Town visited the property and determined that the property near the pool was wet even though there has been no rain recently in our area and there is some evidence that the pool was constructed on fill brought into the property;
- (v) the alleged difficulty was self-created because the Applicant constructed the pool without obtaining all necessary Town approvals and/or permits.

NOW, THEREFORE, BE IT RESOLVED BY THE ZONING BOARD OF APPEALS as follows:

Section 1. The Board hereby denies the requested variance for the reasons set forth above in the Findings and Determinations.

Section 2. The Applicant shall remove the pool within sixty (60) days of the date of this denial.

Section 3. The Resolution is hereupon declared duly adopted.

I **DEBORAH WITZEL**, Clerk of the Manlius Zoning Board of Appeals, **DO HEREBY CERTIFY** that the preceding Resolution was duly adopted by the Town Zoning Board of Appeals of the Town of Manlius at a regular meeting of the Board duly called and held on the 21st day of September, 2017; that said Resolution was entered in the minutes of said meeting; that I have compared the foregoing copy with the original thereof now on file in my office; and that the same is a true and correct transcript of said Resolution and of the whole thereof.

I **HEREBY CERTIFY** that all members of said Board had due notice of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Manlius, this 21st day of September 2017.

DATED: September 21, 2017
Fayetteville, New York

Deborah Witzel
Clerk
Manlius Zoning Board of Appeals
Onondaga County, New York

Harold Wilson, 102 Stillwell Terrace, E. Syracuse NY (067.-03-01.0)

PUBLIC HEARING for an area variance to construct a 14' X 40' garage with an existing rear yard setback of 20' they will need a variance of 5' to meet the required 25', with an existing side yard setback of 5' they will need a variance of 10' to meet the required 15' side yard setback.

Mr. & Mrs. Wilson explained that they own 3 older cars that they need storage for so they are asking to construct a 14' X 40' unattached garage. In the past years the cars have been parked in the driveway with covers over them. Mrs. Wilson explained that they look at different placement in the yard and feel this is the best location.

Acting Chairman Kelly asked if any of the neighbors are unhappy with the project. Mrs. Wilson answered no.

Acting Chairman Kelly 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?
Mrs. Wilson stated – no, that the only other option would be to have the garage in the middle of the yard and then they would have no yard.
- 2) Whether the Variance will result in an undesirable change in the character of the neighborhood or to nearby properties? Mrs. Wilson stated – no that the garage will be made to look like the house.
- 3) Whether the requested Variance is substantial? Mrs. Wilson stated – no
- 4) As to whether the Variance will have an adverse effect on physical or environmental conditions?
Mrs. Wilson stated - no

5) Whether the alleged difficulty was self-created? Mrs. Wilson stated – yes

Board Questions

Member Ruthig remarked that the garage will be a very big structure in the neighborhood and very visible on the corner lot.

Member Schepp clarified that the building would only have garage doors and not person door and there would be 2 windows facing the neighbor's house.

Member Campbell brought up that this building would be unique to the neighborhood in that there are no other similar size accessory type structures.

Acting Chairman Kelly questioned not attaching the garage to the house. Mrs. Wilson responded that they would have to change the roof line and they would lose the patio
Discussion continued with the pros and cons of attaching the garage verse unattached.

Member Schepp asked if there were any limitations on the number of accessory structures. Attorney Frateschi answered no.

Acting Chairman Kelly asked how tall the building would be. Mrs. Wilson didn't know for sure.

Member Campbell asked if the foundation would be cement. Mrs. Wilson answered yes.

Acting Chairman Kelly opened the public hearing at 8:15PM

Acting Chairman Kelly closed the public hearing at 8:16PM

SEQRA Review

Acting Chairman Kelly 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 Discussion

Acting Member Kelly feels this building is large for this neighborhood, Member Schepp agreed. Member Ruthig would prefer it be attached to the house. Member Campbell asked if they could do 3 bays across extending off the current garage and pushed back a bit.

Attorney Frateschi asked if the applicant would like more time to see if there might be a better option.

Discussion ensued about options for the building and the size of the property.

Attorney Frateschi suggested a 5' side yard setback and a 5' rear yard setback and let the applicant come up with a building plan to fit. Mrs. Wilson agreed to take the variance as proposed by the Attorney.

Board Action

Member Ruthig made a motion to grant a variance to Harold Wilson, 102 Stillwell Terrace, East Syracuse for the purpose of constructing a 14' X 40' garage. Granting a variance of 5' to meet the requirement of a rear yard setback of 20' and a second variance of 5' to meet the requirement of a side yard setback of 15', motion seconded by Member Schepp.

Board Action

The Board voted as follows:

Acting Chairman Kelly	aye
Member Campbell	aye
Member Ruthig	aye
Member Schepp	aye

Adjournment

With there being no other business, Member Schepp made a motion, seconded by Member Ruthig, and carried unanimously, to end the meeting at 8:35PM

Respectfully submitted,
Deborah Witzel, Secretary
Town of Manlius Zoning Board of Appeals