

ZONING BOARD OF APPEALS MEETING MINUTES – FINAL
WEDNESDAY, JUNE 23, 2021

MEMBERS PRESENT:

Phillip Zemke, Chairman
Stephanie Fitzpatrick
Ingrid Kulick
Rocco Mancini

MEMBERS ABSENT:

Travis McHale

ALSO PRESENT:

Debra Blalock, Town Board Liaison

Chairman Zemke opened the meeting at 7:00 p.m.

Public Hearings:

1. **Wisniewski Area Variance** - Joshua Wisniewski appeared for the public hearing for his area variance application to erect an above ground swimming pool 8 feet from the required 35 foot side setback on property located at 165 Saint Paul Road, tax grid number 6472-00-241569. Chair Zemke read the legal notice that was sent to neighboring landowners and published in the paper and opened the public hearing. Mr. Wisniewski said the property is a funny shape and most of it is not usable. Between the house and the front road is a nice flat spot which is where the leech field is which leaves two locations to put the pool – at the side or rear of the house. On the rear side of the house is where the mechanicals are and it would put the pool closest to the nearest neighbor so they thought the side yard is the best place for the pool which puts it 8 to 9 feet from the property line. They are planning on replacing the existing deck and will have the deck go right up to the pool which will bring the house and pool together. The side of the pool needs to be three feet from the deck footers. It's an oval pool so there are support pieces to stabilize the pool so the closest the pool can be to the house is 3 feet from those footers.

Public comment: Stephen Callahan, 145 St. Paul Road, the closest neighbor to the west has some concerns with the short EAF: Page 2, #10 – he is worried about 12,000 gallons of water depleting his well and asked if they can fill the pool with a tanker truck; #12 – is this an archeologically sensitive area as there is a church from 1834 that borders this property; #13 - wetlands is marked no but Mr. Callahan said his property has a designated federal wetlands on it; #15 – how does he know there are not an endangered or threatened species on the property – Mr. Callahan is currently in conversations with the Army Corp. over a pond he's putting in and he had to do extensive research to prove there are no bats on his property; #17 – maybe the action won't create storm water but due to the topography of the property, if that pool were to collapse, Mr. Callahan said his basement would flood. Mr. Wisniewski said he trenched along the side of the house towards Mr. Callahan's property and he put drainage across the back and along the side and there are inlets – two for the gutters, one next to the deck and another one is approximately near the pool. Mr. Wisniewski showed the drainage structures to move the water away from Mr. Callahan's property. Chair Zemke said because there are wetlands on Mr. Callahan's site does not mean they are on Mr. Wisniewski's site. As far as the bats, you can't construct in the spring

because the bats' nesting season is in May and June so construction is prohibited. If you have Blanding's Turtles on your property, you are restricted from ground disturbance for construction purposes. Mr. Wisniewski is not doing any ground disturbance. Mr. Callahan asked how the endangered or threatened species was verified. Mr. Wisniewski said there are no wetlands on his property. Mr. Callahan said another of his concerns is the requested side setback reduction to 8 to 9 feet. The pictures shows, at the top left hand corner, 84 feet to the corner lot. Mr. Wisniewski has a corner lot with two road frontages. Mr. Callahan said it is less than 20 feet to his property line. Chair Zemke said setbacks are determined perpendicular to the property line, not diagonal. Mr. Callahan asked if 35 feet is so important, how is less than 35 feet acceptable? Mr. Callahan said he is requesting consideration for buffers to his property for noise designed by a licensed land architect and brought back to the ZBA for acceptance and review. He showed where he wants the buffer, possibly evergreens. Chair Zemke agreed it would be neighborly to screen with trees. Mr. Callahan said he is looking for buffers established with professional input to minimize the noise. He added that the national standard is that all swimming pools be 10 feet from all house walls. Mr. Wisniewski said the deck is eight feet and the pool is three feet off of the deck. Chair Zemke asked Mr. Wisniewski if he can create a buffer. Mr. Wisniewski said he can put up some sort of evergreen tree. Mr. Callahan said he would be willing to contribute to that. Mr. Callahan and Mr. Wisniewski said they will work together on the screening issue. Mr. Zemke said he felt it was imposing on a neighbor to require a professional landscaper.

Ms. Kulick motioned that the Zoning Board of Appeals close the Wisniewski public hearing. Ms. Fitzpatrick seconded.

Phillip Zemke, Chairman	Aye	Rocco Mancini	Aye
Stephanie Fitzpatrick	Aye	Travis McHale	Absent
Ingrid Kulick	Aye		

Motion carried 4-0

Ms. Fitzpatrick left the meeting at 7:25 p.m.

Chair Zemke said this application was declared a Type II action requiring no further environmental review at the May meeting. The board completed the Findings and Decision. 1. Whether an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties? No as this is a residential area and a pool is a normal use in a residential area. The pool will be filled with a tanker truck and screening will be a condition of the variance. Mr. Wisniewski will work with Mr. Callahan on the screening issue. 2. Whether the benefit sought by the applicant can be achieved by a feasible alternative to the variance. No. If the property line were not an issue requiring a variance, this is an ideal spot for the pool at the back of the house, off the deck and the pool will have visibility from the house and it is controlled and contained. Mr. Mancini agreed this is the best spot for the pool. No 3. Whether the requested variance is substantial. No. It is an 8 or 9 foot variance but there is nowhere else to put the pool. In the realm of our area variances and setback variances, Chair Zemke said he does not see this as being substantial. Ms. Kulick agreed and said we have the

precedents of other variances. 4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood? No – It is not impacting the wetlands or any endangered species, there is the issue of storm water discharge but the applicant put in a drainage system to mitigate, and if the pool collapses, it will be a problem for everyone in the neighborhood. People put in pools all the time. Any perceived adverse impacts to the neighborhood can be mitigated by screening and water delivery. 5. Is the alleged difficulty self-created? Yes.

The determination of the ZBA based on the above factors is that the benefit to the applicant does outweigh the detriment to the neighborhood. The following are conditions to this variance: The pool must be filled by a water tanker, not the well to avoid depleting the aquifer and a natural buffer must be installed to screen the pool to minimize any sight and noise issued affecting the abutting property.

Mr. Mancini motioned that the ZBA accept the Findings and Decision for the Wisniewski area variance with the stated conditions. Ms. Kulick seconded.

Phillip Zemke, Chairman	Aye	Rocco Mancini	Aye
Stephanie Fitzpatrick	Absent	Travis McHale	Absent
Ingrid Kulick	Aye		

Motion carried 3-0

- Hughes Area Variance** – Paul Hughes Jr. appeared for his area variance application to reduce the minimum lot width requirement from 400 feet to 198 feet on two proposed lots to enable him to move forward with his subdivision application on property located at 63 Lamoree Road, tax grid number 6470-00-310373. The Planning Board sent a positive recommendation to the ZBA dated May 17, 2021 based on the fact that this lot was previously subdivided and many lots along Lamoree Road are long and narrow in width which has led to other variances being granted in that area for minimum lot width. Chair Zemke read the legal notice that was sent to neighboring landowners and posted in the paper and opened the public hearing. Mr. Hughes said he is planning to recreate two 5 acre lots that were joined together for tax purposes. He submitted the plans showing a proposed house on the site which meets all the required area and bulk regulations so he will not need any additional variances. Glenn Butler, Highway Superintendent, granted preliminary approval to the access. The board members had no questions and there was no public comment.

Ms. Kulick motioned that the Zoning Board of Appeals close the public hearing for the Hughes area variance application. Mr. Mancini seconded.

Phillip Zemke, Chairman	Aye	Rocco Mancini	Aye
Stephanie Fitzpatrick	Absent	Travis McHale	Absent
Ingrid Kulick	Aye		

Motion carried 3-0

The board completed the Findings and Decision. 1. Whether an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties – No. 2. Whether the benefit sought by the applicant can be

achieved by a feasible alternative to the variance. No. 3. Whether the requested variance is substantial. Yes. This is a 50% reduction in the required lot width. 4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood? No. 5. Is the alleged difficulty self-created? Yes.

The determination of the ZBA based on the above factors is that the benefit to the applicant does outweigh the detriment to the neighborhood. Weighing in on the board’s decision was the positive recommendation from the Planning Board which stated that this lot was previously subdivided and many lots along Lamoree Road are long and narrow in width which has led to other variances being granted in the area for minimum lot width. There were no conditions.

Ms. Kulick motioned that the ZBA accept the Findings and Decision for the Hughes area variance. Mr. Mancini seconded.

Phillip Zemke, Chairman	Aye	Rocco Mancini	Aye
Stephanie Fitzpatrick	Absent	Travis McHale	Absent
Ingrid Kulick	Aye		

Motion carried 3-0

- 3. **Paynter Special Use Permit** – Harry Paynter appeared for his special use permit application for an existing detached accessory apartment on property located at 172-176 Becker Hill Road, tax grid number 6473-00-593005. Chair Zemke read the legal notice that was posted in the paper and sent to neighboring landowners and opened the public hearing. Chair Zemke said that the ZBA has received a letter from Samuel Harkins, ZEO/Building Inspector, dated June 16, 2021 stating that “Pursuant to a site inspection done on June 8, 2021, the accessory apartment located on the above referenced property was constructed according to the New York State Building Code and passed my final inspection. The apartment will be issued a Certificate of Occupancy upon the granting of the special use permit.” The board had no further comments and there was no public comment.

Ms. Kulick motioned that the Zoning Board of Appeals close the public hearing for the Paynter special use permit application. Mr. Mancini seconded.

Phillip Zemke, Chairman	Aye	Rocco Mancini	Aye
Stephanie Fitzpatrick	Absent	Travis McHale	Absent
Ingrid Kulick	Aye		

Motion carried 3-0

The board completed the Findings. 1. Is this use in harmony with the purposes of this provision? Yes. The Master Plan encourages alternate and affordable types of housing. 2. Will there be a detrimental effect on the surrounding neighborhood and property values? No. The accessory apartment has been existing for many years, predating the current owner, and the current owner has successfully sold the property. 3. Will the use foster the most appropriate use of the land? Yes. 4. Is the lot area adequate, especially with regard to septic and water requirements? Yes. 5. Is the application consistent with the Town Master Plan? Yes. As stated above, the Town’s Master Plan encourages affordable and

alternative housing. There is one condition: Within 60 days after the transfer of title, the ZEO/building inspector shall inspect the premises to determine that the principal structure is occupied in accordance with Subsections B through L of 200-17. If the owner or occupant fails to comply within the time allowed or if the ZEO shall determine that the principal residential structure is not the actual residence of the owner, the ZBA shall revoke the special use permit and direct that the accessory apartment created pursuant to this chapter be vacated and the use of the accessory apartment created pursuant to this subsection shall be discontinued.

Ms. Kulick motioned that the ZBA approve the special use permit for an accessory dwelling unit based on the findings and pursuant to the stated conditions. Mr. Mancini seconded.

Phillip Zemke, Chairman	Aye	Rocco Mancini	Aye
Stephanie Fitzpatrick	Absent	Travis McHale	Absent
Ingrid Kulick	Aye		

Motion carried 3-0

Applications: None

Administrative Items:

Mr. Mancini motioned that the Zoning Board of Appeals accept the minutes of the May 26, 2021 meeting as presented. Ms. Kulick seconded.

Phillip Zemke, Chairman	Aye	Rocco Mancini	Aye
Stephanie Fitzpatrick	Absent	Travis McHale	Absent
Ingrid Kulick	Aye		

Motion carried 3-0

Discussion Items/Correspondence:

Chair Zemke said he is working on a procedural document to be given to applicants that explains the process for an applicant appearing before the ZBA. He will send to the board for review for the next meeting.

A motion was made by Ms. Kulick and seconded by Mr. Mancini to adjourn the meeting at 7:55 p.m.

Phillip Zemke, Chairman	Aye	Rocco Mancini	Aye
Stephanie Fitzpatrick	Absent	Travis McHale	Absent
Ingrid Kulick	Aye		

Motion carried 3-0.

The next regular meeting will be held on Wednesday, July 28, 2021 at 7:00 p.m. at the Town Hall.

Respectfully submitted,

Karen Buechele, Clerk
Planning and Zoning

cc: Catherine Gill, Town Clerk
Town Board