

ZONING BOARD OF APPEALS

April 21, 2009

Present: Michael Dudick, Chairman, Dale Gleason, Robert Ritter, Christopher Lemire, Douglas Strother, James Whalen, Deborah Ferro (alternate member)

Also Present: Joel Peller, ZBA Counsel
Steve Myers, Director, Building & Zoning

Absent: Brian Telesh

Mr. Dudick called the meeting at 7:08 p.m.

Mr. Dudick explained that Ms. Ferro is voting in place of Brian Telesh.

PLEDGE OF ALLEGIANCE

NEW BUSINESS:

1. An application from **Belmonte Properties, LLC**, requesting a use variance from Section 208-69(2) to construct a single family home in an LC zone of a previously approved subdivision, Oakwood Estates. If use variance is granted, three area variances will be required as follows: (1) from Section 208-70(A), which requires a minimum lot size of 100,000 sq. ft., the proposed lot is 20,504 sq. ft., variance required = 79,496 sq. ft.; (2) from Section 208-70(B), which requires a minimum front setback of 80 feet, 50 feet is proposed, variance required = 30 feet; and (3) from Section 208-70(D), which requires a side setback of 20 feet, 12 feet is proposed, variance required = 8 feet. The property is located at 16 Bonneau Road, Clifton Park, New York. (Permit #80730)

Mr. Dudick explained that this item has been taken off of the agenda. Mr. Myers explained that he inadvertently did not realize that because this is a use variance request in an LC zone that it has to go to planning before the Zoning Board can hear the application. He knew it had to go to ECC, which it has, but planning has to review it and transmit in writing to the Zoning Board its approval or modification. This is procedural. As a result, the item is being pulled in order to send to planning. There is a chance that it will not go any further than planning because there are a couple of things they have to rule on. If they rule against them, the application will not go further.

- 2. An application from Philip and Lisa Zanella, requesting a variance from accessory structure setback requirements (Section 208-12A) to construct a deck - 80' required. Previous variance 80669 granted 9-4-07 for pool setback ,44 ' variance granted (pool setback = 36'). Addition of deck requires modification to variance, another 17' of variance required resulting in deck setback of 19' from property line. The property is located at 450 Miller Road, Rexford, New York. (Permit #80731)**

The secretary read the legal notice as it appeared in the Daily Gazette on April 16, 2009.

Philip and Lisa Zanella presented this application. They are asking for an addendum to their previously approved variance for a pool to construct a pool deck. They would like to construct it to the east toward Miller Road so that it overlooks their backyard. There are some obstructions. Their well is 15 ½ feet to the north of the pool. The pool pump is to the south toward Sandpiper Lane.

Mr. Dudick referred to the diagram provided by the applicant and asked if the deck would encircle the entire pool; Mr. Zanella replied that it would not. He would like it to be 15 feet x 17 feet. Mr. Dudick asked if there is a reason why the deck has to go closer to Sandpiper instead of going to the east or west side of the pool, which would not require a variance. Mr. Zanella replied that to the east there is an apple tree. To the west there is the pool pump. The reason for the proposed placement is so they can look into the backyard.

Mr. Dudick suggested putting the deck directly over the pool pump so that the pump would be hidden. Mr. Zanella stated that there is a hill and there would not be much room. Mr. Dudick asked Mr. Zanella if the pool pump is higher than the pool and Mr. Zanella replied no. Mr. Dudick stated that he looked at the lot and feels that placing the deck over the pool pump would be more desirable. Mr. Zanella stated that the proposed location of the deck is the place he would prefer to put it.

Mr. Ritter asked how close the well is to the existing filter. Mr. Zanella replied about 30 feet. The well is on the northwest corner of the pool. The pool pump is on the southwest.

Mr. Dudick asked Mr. Zanella what he would do if this Board did not approve his application. Mr. Zanella replied that he would still build it but not as large.

Mr. Ritter referred to a picture provided by the applicant and asked if the patio and stairs comes off the house toward the pool. Mr. Zanella replied yes. Mr. Ritter asked what the distance is from the patio to the pool and Mr. Zanella replied about 20 feet.

Mr. Strother asked Mr. Zanella if there was a provision when his initial variance was granted regarding whether the variance would still stand if the pool was removed. Mr. Dudick answered that the variance runs with the property. Mr. Strother asked for clarification and if there can be conditions on the variance. Mr. Peller replied yes, but in this instance there was not originally. Mr. Strother stated that the original variance was substantial and now the board is being asked to increase the variance. He feels that if the variance stays with the property, a pool and a deck is one thing, what is to prohibit a future owner from putting in another structure that may not be as friendly as a pool or a deck. Mr. Dudick stated that this is a valid point. He stated that there are several members of the Board who were not members when the original application was presented. Mr. Dudick stated that he was a member at that time. He feels that the applicant made a reasonable argument at that time which is why he was granted the variance. As Mr. Dudick recalls, Sandpiper was not there when the property was purchased so a corner lot was created for him which he would not have had if Sandpiper had not been created. Had the property not been turned into a corner lot then he believes the variance would not have been needed. Even though the original variance was substantial, there is the recognition that things have changed and it was a corner lot

Mr. Dudick also feels that other options should be considered which would minimize or negate the need for a variance. He believes that Mr. Zanella has other options regarding the location of the deck which would not require a variance. Mr. Dudick again referred to the option of placing the deck over the pool pump. Mr. Zanella stated that this would pose the same problem for him. The pump is on the other side. Mr. Dudick asked for clarification. Mr. Lemire stated that it is on the southwest corner of the pool so it would still be closer to Sandpiper. Mr. Dudick asked if it can be placed either east of the pool closer to the front to the property and Miller Road or on the west side of the pool, farthest away from Miller Road. Both of these options would not put them closer to a road. Mr. Zanella replied that there is a fence, a mature tree and stairs. There is room to the north but the well is there and they would have to work around that.

Mr. Ritter understands the applicant's logic in that he chose the placement of the proposed project so that the backyard can be viewed instead of the street. Mr. Zanella agreed and stated that because of Miller Road they do not play much in front of the house. The proposed location would provide a better view of what is going on in the backyard.

Mr. Whalen asked if relocating the proposed deck would create an added cost due to the removal of stumps / trees. Mr. Zanella replied that they did have a large tree to the north of the pool removed which may cause some issue.

Mr. Dudick asked for public comment and there was none. Mr. Dudick made a motion to close the public hearing. Mr. Ritter seconded. Approval unanimous.

Mr. Dudick asked Mr. Myers for his comments. Mr. Myers stated that he does not have an issue with the application. He thinks it would be best for the applicant to keep the deck away from his well. There are conflicts in other places that would cause problems.

Mr. Lemire referred to Section 208-12, which discusses accessory buildings. He is not sure that a deck would be considered an accessory building as he understands the definition. Mr. Peller believes that a deck is not an accessory building. Mr. Myers stated that the pool is an accessory structure. Mr. Lemire understood that the deck is an addition to the pool.

Mrs. Gleason asked the Zanella's if they feel that the proposed location of the deck would make it safer in that you could see the pool and activity in the yard. Mrs. Zanella replied yes. If a child is in the pool with the deck in the proposed location you could see that child as well as another child playing in the yard. If they move the deck as suggested and have their back to the yard facing Sandpiper, they would not be able to see children in the yard behind them.

Mr. Lemire asked what is to the west of the pool between the pool and back of the property. Mr. Zanella stated that there is a garden and mature tree line. Mr. Lemire asked if the children would be playing behind the pool. Mr. Zanella replied that they would be playing more to the north. Mr. Lemire asked why he could not place the deck to the west of the pool. Mr. Zanella stated because the kids play behind the house. Mr. Lemire stated that if you put it to the west you are looking at the back of the house and into the yard. Mr. Zanella replied that if you put in to the west you are either looking into the yard or looking in the pool; if you put it to the east you can do both. Mr. Dudick asked if the deck were placed to the west of the pool, in order to see the children playing in the backyard you would have to turn your head to the left. Mr. Zanella replied that this is correct. The majority of the playing area is behind the house.

Mr. Lemire asked what Sandpiper was before it was a street. Mr. Myers replied that it was vacant land. Mr. Lemire commented that if this was not a road he would only have to be 10 feet from his property line. Mr. Lemire asked Mr. Zanella if he owned the property before Sandpiper was there and Mr. Zanella replied yes.

Mr. Strother asked about making a motion for the deck, limited to a deck for the pool, in order to protect future citizens from having accessory structures too close to the road. Mr. Dudick asked Mr. Peller if a motion can be made with restrictions. Mr. Peller replied yes. There was discussion about how to make the motion.

Mr. Strother made a motion to approve the application with the amendment that is for the sole purpose of the construction of a deck for the pool. Mrs. Gleason seconded. Ayes: Gleason, Ritter, Whalen, Strother. Noes: Dudick, Lemire, Ferro.

Mr. Myers stated that if they or the next owners came to him for a garage and they want to use the setbacks granted for the pool and deck he would say no. They would have to come back.

Mr. Lemire asked the applicant why they did not ask for the deck when they were before the Board in September of 2007. Mr. Zanella replied that they were not at that point.

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Ms. Ferro asked if a fence would be placed around the deck in the near future. Mr. Zanella replied that instead of putting up a rail on the deck they are considering putting up a fence on the deck itself. There was discussion about the type of fence. Mr. Myers stated that he believes the pool meets the pool enclosure law because the distance the ground is from the pool right now and the height of the pool. When they put the deck on they will be required to do things to the deck to meet the pool enclosure law because they will have different access to the pool from what they have now.

Mr. Ritter made a motion to approve the minutes of March 17, 2009. Mr. Whalen seconded. Ayes: Gleason, Ritter, Dudick, Lemire, Strother, Whalen. Noes: None. Abstentions: Ferro.

Mr. Dudick made a motion to adjourn the meeting at 7:40 p.m. Mr. Strother seconded. Approval unanimous.

Respectfully Submitted,

Jessica McCarthy
Secretary

cc: Town Clerk, Town Board, Town Attorney, Zoning Board Members, Joel Peller, Counsel, Steve Myers, Department of Building and Development, Planning Board, ECC, Assessor, Highway