

**BOROUGH OF NEWTOWN
ZONING BOARD OF APPEALS
NEWTOWN, CONNECTICUT**

**THESE MINUTES ARE SUBJECT TO APPROVAL BY THE BOROUGH OF
NEWTOWN ZONING BOARD OF APPEALS**

Minutes of the special meeting of the Borough of Newtown Zoning Board of Appeals on November 14, 2019 at the Old Court Room, Edmond Town Hall, 45 Main Street, Newtown. Chairman Madzula called the meeting to order at 7:00 p.m.

Present: John Madzula, Mary Thomas, Jane Maher, John Fletcher & Patricia Antal
Absent: Kathy Geckle
Staff: Rob Sibley, Borough Zoning Enforcement Officer

Docket B19-01: Application of NeJame & Sons of Danbury on behalf of Elizabeth Myer and Paul Robinson for a variance to Section 5.04 of the Borough zoning regulations so as to permit a 7' setback from the side yard and an 11' setback from the rear of the property for the construction of an in-ground swimming pool. The property is located at 6 Elizabeth Street in an R-1 Zone in the Borough of Newtown. (continuation)

The Board began by stating that they each had an opportunity to look at the A-2 survey that was submitted to the record since last meeting. Mr. Madzula asked if the applicant had anything further to add.

Thomas Nejame of 91 South Street, Danbury spoke on behalf of the application. He demonstrated on the A-2 survey where the mechanical equipment would be located and where the survey states the gallon capacity of the pool. Ms. Antal asked if the shed could be relocated and the pool shifted further from the setback to be less intrusive on the neighbor. Mr. Nejame explained that even if it were moved, there would still be an encroachment on the setback. Ms. Myer said that the Pirone property has a shed one foot from their property line, and the Pirone's house is on the other side of the lot. Furthermore the shed has an underground electric line going to it, which makes it difficult to move. Ms. Antal pointed out that the proposed pool's location would be 7 feet from the property line, whereas swapping with the shed would make it 17 feet from the property line, thereby decreasing the nonconformity. Ms. Myer shared that the shed was built by her daughter's now-deceased father and they consider it "an extremely important part of our property."

Ms. Myer pointed out her neighbors have a pool ten feet from the property line. She and Mr. Robinson didn't understand why those neighbors were evidently able to receive a variance for that while the Board was struggling with this case.

Rob Sibley reminded everyone that the Board can only consider granting a variance based on a hardship, and cannot try to predict the reactions of the neighbors. He pointed out that it had already been established last meeting that the hardship was pre-existing non-conforming lot acreage. Mr. Madzula responded that he is not completely in agreement with that, to which Mr. Sibley replied he would need to feel comfortable defending his position if there were an appeal.

Mr. Sibley quoted Robert Fuller's Connecticut Land Use Law and Practice: "Where the property is a valid nonconforming lot, and a building could not conform to the setback requirements, denial of a variance which prevented all use of the lot was a practical confiscation."

With no further questions from the Board, Mr. Madzula closed the public hearing at 7:15 p.m.

Mr. Madzula explained that while he did not want to deny anyone use of their property, there were many questions surrounding the application. He shared his worries about the future, about kids being loud at the pool, and about if there would be any fencing. Mr. Sibley replied that the applicants are not requesting screening at this time, and there is no zoning regulation about screening/buffering between residential properties.

Mr. Sibley reminded the Board that a variance should uphold the regulations and that the applicant must demonstrate a hardship that is not self-created.

Mr. Madzula wondered if there would be a pool deck, and Ms. Maher stated that last time Mr. Nejame said there would be three foot concrete patio surrounding the pool. Mr. Fletcher pointed out that stairs to the pool would be coming off the existing patio.

In response to some comments among Board members about fear of setting a precedent, Mr. Sibley shared that the Board does not create precedent and cannot create a zoning regulation. He underscored that the interpretation of granting variances "in harmony with the neighborhood" is up to the discretion of the Board and is worth discussion for each unique application. Ms. Maher asked if they Board doesn't set precedent, why does a shed built five feet from a property line create a new setback? Mr. Sibley replied that the shed was not a variance that was granted, but a sign-off by the zoning officer at the time.

Mr. Sibley discussed with the Board the research he did in the Building Department and with aerial photography to establish the existence of other structures encroaching upon the setbacks on this property.

Mr. Madzula cited a case, "Ignatius vs. Zoning Board of Appeals in Guilford," where the plaintiff contended that there was no unusual hardship allowing the building of a swimming pool, because a swimming pool is considered a luxury that would enhance the value of the property. Mr. Sibley explained that in the case Mr. Madzula was citing, the applicant did not have a hardship whereas in this situation the applicant has a pre-existing non-conforming lot as a hardship.

Ms. Maher expressed that although Mr. Sibley said the Board could not set a precedent, the reality is that people would hold them to this ruling; Mr. Sibley asked the Board if they thought that argument would hold up in front of a judge. Ms. Maher also pointed out that the lot seems overbuilt as is. Mr. Sibley said that this was not a valid consideration of the Board.

Ms. Antal asked that if the shed is five feet from the property line, and therefore the whole setback became five feet, why the Board can't make the applicant move the pool to the side of the yard with the five foot setback. Mr. Sibley responded that the Board is able to do so, but must consider the reasons Ms. Myer gave why that wouldn't work (because it would require moving the shed, which has electrical running to it and has sentimental value). Mr. Sibley reiterated that the Board should feel confident defending their decision in front of a judge.

Ms. Thomas asked if there was electrical going to the shed, how it was possible for the pool to be installed nearby. Mr. Sibley said that it is the responsibility of the Building Department to enforce that code and is not a consideration for the Board.

Ms. Maher and Ms. Antal stated that they were not comfortable asking the applicant to move a shed, risking damage, when the family had such a strong sentimental attachment to it. Ms. Thomas said that if the neighbors know about this proposed pool, and have not come forward with complaints, she is inclined to let the pool be built.

The Board came to the conclusion that by providing the A-2 survey, the applicant proved the lot has a pre-existing non-conforming size of .388 acres, which constitutes a hardship.

Ms. Thomas made a motion to approve the application due to the hardship of a pre-existing non-conforming lot size. Mr. Fletcher seconded. The Board voted as follows:

John Madzula – AYE

Mary Thomas – AYE

Jane Maher – AYE

John Fletcher – AYE

Patricia Antal – AYE

The motion to approve B19-01 carried unanimously.

Ms. Maher made a motion to approve the minutes from 10/23/19. Ms. Thomas pointed out that the minutes say the lot is .6 acres, while the A-2 survey lists the lot size as .388. Mr. Sibley said that the minutes may be correct if .6 acres is what was actually said at the meeting. Ms. Antal seconded. All were in favor and the minutes were approved.

Ms. Maher moved to adjourn. Mr. Madzula seconded. All were in favor and the meeting was adjourned at 7:50 p.m.

*Respectfully submitted,
Christine O'Neill
Substitute Clerk*