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ZONING BOARD OF APPEALS
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ZONING BOARD OF APPEALS
MINUTES

Thursday, January 13, 2022
7:00 p.m.

ROLL CALL:

Chairman Joseph Hanna called the meeting, held via ZOOM, to order at 7:00 p.m. Present by roll call were Rodney Moore, Anthony Rebeiro, Juan Rivas, Michael Sibbitt, and Alternate Peter DeLucia. Richard Roos was absent. Staff present were Zoning Enforcement Officer Sean Hearty and Secretary Mary Larkin.

ACCEPTANCE OF MINUTES: December 9, 2021

Motion to accept the Minutes of December 9, 2021 was made by Peter DeLucia. Seconded by Rod Moore with the comment that regarding the elections, the term for officers is three years. In favor, by those eligible to vote, with AYES from Joseph Hanna, Rod Moore, Anthony Rebeiro, Juan Rivas, and Peter DeLucia.

The next regular meeting is scheduled for **January 27, 2022**

Alternate Peter DeLucia acknowledged there were five regular members present; therefore, he will mute his mic yet remain on the meeting to observe.

PUBLIC HEARINGS:

Motion to open the hearing was made by Peter DeLucia; seconded by Michael Sibbitt. All in favor with AYES from Joseph Hanna, Rod Moore, Anthony Rebeiro, Juan Rivas, Michael Sibbitt, and Peter DeLucia.

#21-39: 25 Cedar Dr., (K04147), Cahill, Christopher & Eileen (owner), Roscoe, Connor, Agent, RA-20 Zone.

Sec. 4.A.3 Reduce minimum side-yard setback from 15' to 12.2' for proposed deck.

Connor Roscoe, agent for Cahill family, said they are proposing a deck buildout in the back yard of a non-conforming lot. The deck will follow the same line as the house. Joseph Hanna asked how large the deck would be and the location of the septic. Mr. Roscoe responded the deck will be 14' x 21' and the septic is 6' away from the nearest beam of the house. Mr. Moore inquired about the hardship. Mr. Roscoe said the house is already in the setback—the house is 12.5' from the property line on the left side, facing north. Mr. Rivas visited the property and asked about the line—does it run through the middle of the driveway? Mr. Roscoe said yes, it is in between the plantings and down the driveway. Mr. Rivas asked the total square footage added to the deck, including stairs. Answer was roughly 35 sq. ft. counting the steps and the landing. Mr. Rivas also noted the survey/plan of the deck indicates 14' x 22'; the application indicates 14' x 21'. Mr. Roscoe said the 21' does not affect the variance. The side-yard setback request remains the same. No further questions. No one in favor or opposed.

Motion to close the public hearing #21-39 was made by Michael Sibbitt; seconded by Rod Moore. All in favor with AYES from Joseph Hanna, Rod Moore, Anthony Rebeiro, Juan Rivas, and Michael Sibbitt.

Motion to open the voting/discussion session was made by Juan Rivas; seconded by Anthony Rebeiro. All in favor with AYES from Joseph Hanna, Rod Moore, Anthony Rebeiro, Juan Rivas, and Michael Sibbitt.

Motion to approve, per plan submitted and to include deck measurement discrepancy, was made by Anthony Rebeiro; seconded by Juan Rivas. All in favor with AYES from Joseph Hanna, Rod Moore, Anthony Rebeiro, Juan Rivas, and Michael Sibbitt.

#21-40: 157 Westville Ave. Ext., (F13031), Galarza, Ligia, RA-40 Zone

Sec. 4.A.3 Reduce minimum side-yard setback from 25' to 3.2' for garage.

Motion to open #21-38 & #21-40 was made by Juan Rivas; seconded by Michael Sibbitt. All in favor with AYES from Joseph Hanna, Rod Moore, Anthony Rebeiro, Juan Rivas, and Michael Sibbitt.

Ligia Galarza was present to discuss her application. The new garage is being proposed because the old garage is in disrepair and needs to be demolished. She is working at home since Covid. Mr. Hanna asked the current sq. ft. including the garage and office and mudroom? Ms. Galarza stated, "715.3 sq. ft. for everything according to the surveyor."

Mr. Rivas asked the distance of the corner of the garage to the property line. Ms. Galarza said that it would be 3.2', the same as it is now. The garage will be connected to the house. There was no one in favor or opposed. Discussion among the Board Members continued regarding the building as attached and the difference between an attached structure vs. a detached structure. Anthony Rebeiro stated that either way, the setback request would still be 3.2'. When asked, Sean Hearty said it would have to be attached to accommodate the height for the second floor office space. Mr. Moore said that

Mr. Rivas's thought is valid and spot on in trying to find the least variance. He thinks that in physical distance it does not change and he, Mr. Moore, leans in that direction.

Motion to close #21-40 made by Anthony Rebeiro; seconded by Michael Sibbitt. All in favor with AYES from Joseph Hanna, Rod Moore, Anthony Rebeiro, Juan Rivas, and Michael Sibbitt.

Motion to open voting session was made by Rod Moore; seconded by Michael Sibbitt. All in favor with AYES from Joseph Hanna, Rod Moore, Anthony Rebeiro, Juan Rivas, and Michael Sibbitt.

Motion to approve, per plan submitted, was made by Rod Moore as the actual distance will not change and there is no adverse effect on the health, safety, and welfare of the neighborhood; seconded by Michael Sibbitt. All in favor with AYES from Joseph Hanna, Rod Moore, Anthony Rebeiro, Juan Rivas, and Michael Sibbitt.

CONTINUED PUBLIC HEARINGS:

#21-38: 25 Wintergreen Hill Rd., (B12043), Nejame & Sons, Kelly, James, Agent, RA-80 Zone
Sec. 4.A.3 Reduce side yard setback from 30' to 12' for on-ground pool.

Mr. Sibbitt designated his voting privilege to Mr. DeLucia for this hearing as Mr. DeLucia was in attendance for the initial presentation of this application.

Mr. Kelly, representative from Nejame Pools on behalf of Lourdes Caba, said they were able to reduce the variance to 16' instead of 12' and still maintain 10' from the septic system. He asked the Commissioners if they were able to look at the property. Several acknowledged that they had. Mr. Kelly said a quote from Tree Masters to remove trees was \$22,000 in another area and there would not be another place to put a replacement septic system should one ever be needed. There is ledge that sticks out of the ground, which would require blasting and would change the topography and cause erosion. Mr. Kelly believes the only location for the pool is where they proposed on this non-conforming lot. The property is only 2,000 sq. ft. away from being in an RA-40 zone and their variance request would comply.

Mr. Kelly said tree removal would affect the view of the neighborhood, and he does not think this substantially affects the zoning plan for this neighborhood. Mr. Rebeiro confirmed with Mr. Kelly that it is a shallow pool and said he wouldn't have to blast because it drops off in the back. Mr. Kelly said it drops off substantially in the back and would require excavation. He also said that Tree Masters were not sure they could get equipment back there to remove trees.

Rod Moore asked if Mr. Kelly has a revised site plan. Mr. Kelly said the surveyor got the variance request down to 12' and shared a screen shot from his phone. Screen shot shows 16'. Mr. Kelly expressed their desire to take the neighbors' concerns into consideration. Mr. Kelly said that with an 8' fence, you will not see the pool from the road. Mr. Kelly said he put a 7' high tarp in the area as an experiment and you cannot see over the 7' tarp. Mr. Rivas said he is having a difficult time understanding the conditions when he does not see them as such a hardship. Mr. Rebeiro looked at the property and thinks they would not have to hammer any rock, and he does not think it is a hardship to put the pool behind the septic. Mr. Kelly said they would need to be 20' off the septic in the suggested

location, and they need room for a patio, and a 15” to 18” wall, etc. Mr. Rivas said the Board asked them (the applicant) at the last meeting for the Health Department’s opinion, get the exact measurements, obtain the number of trees to be cut down, and get this paperwork into us so that we could have a better understanding. Mr. Kelly said he misunderstood, stating that he staked the fields and put up markers. Mr. Rebeiro said the onus is on Mr. Kelly to seek a plan without needing a variance. Mr. Moore asked if Mr. Kelly could share a photo of the tarp, staking out the fake fence. Mr. Kelly agreed; however, he was unable to do so. No one in support of this application.

In opposition was Mr. Richard Schmitt, 29 Wintergreen Hill. Mr. Schmitt said they bought their house 33 years ago. They are on an acre of land and are very close to their neighbor. He can relate to Mr. Cech’s concerns about being close to a pool on an adjacent property. He understands, what if their (applicant’s) house is sold and it becomes a party house? He wholeheartedly opposes this variance request. The real issue is encroachment.

In opposition was Mr. Dominick Del Biondo. Mr. Del Biondo said he has been listening and taking notes. He is bothered by the fact that there are options here and they are not being considered, including a smaller pool. A smaller pool might not require a variance. He said that every business and everyone is experiencing supply-chain issues. Because his entire extended family is in construction he said the applicant could put down a platform deck with a pool without having to go into the ground. He said you can do beautiful pools. There are ways to get stumps out or grind them out. He thinks Mr. Kelly can explore more options.

In opposition is Mr. Michael Cech. Mr. Cech said from looking at the minutes of the December 9, 2021 meeting and agenda for tonight he expected an accurate number of trees, a map with septic located, and an opinion from the Health Department. Mr. Cech said that he has a photo showing there is not a drop off, but there is ledge, which is not unique to this neighborhood. Mr. Cech reminded Mr. Kelly that this is an RA-80 Zone. Mr. Cech introduced his attorney, Mr. Neil Marcus, Cohen & Wolf, PC, 158 Deer Hill Avenue in Danbury. Mr. Cech and Mr. Marcus discussed a legal hardship. Mr. Marcus said that so far he has not heard anything that would that would allow him to opine if there is a hardship. He has heard conflicting statements. Mr. Marcus is unsure of what they are talking about. They have about 139’ behind the house to the rear property line. It’s a lot of space to put a swimming pool. It is hard from the scale of the drawing to tell exactly where they are working around the septic. Rather than probing/staking the property, this must be reduced to a map with dimensions on it so that the ZBA can see if there is any inclination if there is a hardship due to distance from a septic system. His question is why isn’t the pool behind the driveway? The septic system is near the driveway, but how close? The fact is they are asking to impose their pool on the Cech property and they should have a solid set of data to rely on to see if a hardship can be determined. Attorney Marcus does not think Mr. Kelly has the data. The information given seems to be scant and at odds and insufficient to find a legitimate hardship. At the moment there is no hardship on the drawings submitted. Mr. Marcus said that it is really back to the drawing board for better information. Attorney Marcus thinks they may not need a variance because of the size of the property.

Lourdes Caba, homeowner, disagrees with Mr. Schmitt, as he is far away from their property and this will not affect him. She disagrees that Mr. Cech’s privacy will be compromised. Mrs. Caba said

she is a hard-working nurse, and they are not a loud family. They have been there for four years without any issues. She thinks the pool option will not work for them. She thanked the Board for listening.

Motion to table until February 10, 2022 was made by Juan Rivas; seconded by Anthony Rebeiro. All in favor with AYES from Joseph Hanna, Rod Moore, Anthony Rebeiro, Juan Rivas, and Peter DeLucia.

ADJOURNMENT:

Motion to adjourn was made by Anthony Rebeiro; seconded by Rod Moore. All in favor with AYES from Joseph Hanna, Rod Moore, Anthony Rebeiro, Juan Rivas, and Michael Sibbitt.

Meeting adjourned at 8:30 p.m.

Respectfully submitted,

Mary S. Larkin
Recording Secretary