

**MINUTES OF THE REGULAR MEETING
AUGUST 27, 2007**

The Regular Meeting was called to order by Chairman Randy Bogar at 6:30 P.M. Board Members present were Tim Tallman, Fred Kiehm, Kristen Shaheen, John Montrose and Bob Schulman. Board Member absent: Steve Welty. Also in attendance were Councilman David Reynolds, Codes Enforcement Officer Jerry Back, and Secretary Dory Shaw. Everyone in attendance recited the Pledge of Allegiance. Chairman Bogar introduced the Board Members and explained the procedures for tonight's meeting.

Chairman Bogar also mentioned that one (1) Board Member was not in attendance and it is up to the applicants if they want to proceed.

The application of **Charlene Vehoski, 3332 Church Street, Chadwicks, New York and Heather Payne, 3334 Church Street, Chadwicks, New York**, who are each requesting a 5' side yard setback Area Variance for an aboveground pool. Zoning in this area is Medium Density Residential, which requires a 5' side yard setback from the property line, thus, necessitating a 5' side yard setback Area Variance for each applicant. Tax Map #'s Vehoski: 350.017-1-32; Payne: 350.017-1-33; Lot Size: Vehoski: 69' x 113'; Payne: 34' x 124'. Zoning: Medium Density Residential.

Mr. & Mrs. Vehoski and Ms. Payne appeared before the Board stating that they would proceed with their application. Mr. Vehoski presented pictures of their property and the location of the pool on the lot. They also presented a petition with thirty-nine (39) signatures of neighbors who support their application. Mrs. Vehoski said they ventured into this pool placement together as they are good neighbors and friends. Each of their properties are narrow and this was the best solution to accommodate what they each wanted. They said that Gulla's installed the pool.

Chairman Bogar asked if they had enough property for the placement of a pool. Mrs. Vehoski's property is a corner lot and it would not accommodate a pool and Ms. Payne's property is too narrow. They tried to place it the best way they could.

Board Member Shaheen asked why they didn't get a smaller pool. She also wanted to know what they have done regarding liability insurance in the event something happened. She is concerned that the Town could be held liable. Firstly, Mrs. Vehoski said Gulla's told them even a smaller pool wouldn't fit on either of their properties, and that is why

they decided to do it together. They didn't know it would be a problem. Secondly, Mrs. Vehoski has homeowners insurance but Ms. Payne does not.

Mention was made by Mrs. Vehoski that Attorney Mark Levitt could put in a condition that they wouldn't hold the Town liable. Board Member Shaheen gave a few examples of what could happen and feels it is very problematic. She explained to the applicants that they are asking the Town to change the law and that is why they are here. She feels the Town could be put in a difficult position. Board Member Shaheen appreciates the friendship they have and agreements are great, but she feels this could cause problems.

Mr. Vehoski said they have an alarm on the pool.

Board Member Schulman wanted to know what would happen to the pool if one of them moved. Mrs. Vehoski said they have an agreement that the pool would come down if either one moved. They talked to Attorney Mark Levitt about this.

Board Member Kiehm asked Codes Enforcement Officer Jerry Back how this application came before this Board. Mr. Back explained he received a call that a pool was going up without a Building Permit and he checked it – he saw the pool in the middle of both properties and got in touch with them.

Board Members Tallman, Shaheen and Schulman suggested contacting the Town Attorney and get an opinion from him, especially about precedent setting and the liability issue. Also, possibly getting their attorney together with the Town Attorney to address this together.

Chairman Bogar said he would contact the Town Attorney first requesting him to review the application and minutes and advise accordingly. If the Town Attorney feels this should not be approved based on his review, then at least the applicants know.

Therefore, this application has been tabled based on contacting the Town Attorney and once that is done, we will be in touch with Attorney Levitt and the applicants.

The Board Members wanted the applicants to know that they understand this was an honest mistake they'll proceed accordingly once the information from the Town Attorney is received.

The reapplication of **Mr. Ralph Humphreys, 8705 Tibbitts Road, New Hartford, New York** who is requesting to subdivide his parcel into two (2) lots – proposed building lot would have approximately ten (10) acres of land with 135' of frontage. The remaining

lot will have approximately 63 acres of land. Zoning in this area is Agricultural, which requires 200' of frontage. Therefore, the lot to be subdivided requires a 65' frontage Area Variance. (Mr. Humphreys has additional information to present to the Board regarding his application). Tax Map #339.000-1-18.1; Lot Size: Approximately 10 Acres; Zoning: Agricultural.

(This application has been postponed for another time pending further information).

INTERPRETATION: Mr. James Becker, 12 Allman Place, New Hartford, New York, who is requesting an interpretation from the Zoning Board of Appeals as to whether an all purpose sport net for basketball is considered a fence or not as erected on his property at 12 Allman Place. Tax Map #328.012-3-17; Lot Size: 50' x 166'; Zoning: Medium Density Residential.

Board Member Kristen Shaheen abstained from this application.

Mr. Becker appeared before the Board and presented pictures of the net he has in place between his home and the neighbors. He explained the problems between him and his neighbors to the Board. He is before this Board because of the net, and if it's allowed as a net or fence. His children play basketball, as well as some other children in the neighborhood, and he put this net up to keep the ball from hitting his neighbor's home. He had placed a tarp between the properties previously, but had to take it down.

He presented the Board with a section of the Code of the Town of New Hartford addressing his net/screen/fence.

Board Member Kiehm recommended lowering the net when not in use – Mr. Becker said he was told to keep the net as is until he came to the meeting. It is not a permanent structure because he can raise and lower it. The posts are in cement, but are not high.

Board Member Tallman asked if the net is being raised or lowered now – Mr. Becker said no, but he can do so.

Board Member Montrose asked how many children play basketball and how late they are outside – Mr. Becker said with his children and some from the neighborhood– about 3 or 4 and they are inside by 8:00 PM. He has a light on the outside of his home, but the children are in by 8:00 or 9:00 the latest.

Town of New Hartford
Zoning Board of Appeals
August 27, 2007
Page 4

Chairman Bogar referred to a fence in our Zoning. He also referred to Mr. Richard Pratt's letter and his concern about this structure (Mr. Pratt lives at 14 Allman Place). Discussion ensued regarding what constitutes a fence.

Codes Enforcement Officer Back said he has gone to this site many times and the neighbors don't get along. He does not want to place the Codes Department in a bad position because of the quarrels the neighbors have between themselves. If the Zoning Board determines this is a fence, then Mr. Becker will have to apply for a variance and a Public Hearing held for people to voice their opinions.

Board Member Schulman feels it is not this Board's position to mediate disputes between neighbors.

Mr. Becker said he would do what the Zoning Board wants him to do. He explained that he is trying to keep the basketball away from the neighbor's house.

Codes Enforcement Officer Back said he recently received a call from the Yahnundasis regarding a 100' net that they want to place on their property to keep the golf balls from going into the neighbors' yards. Mr. Back suggested they talk to their neighbors first before applying to the Zoning Board of Appeals regarding this net/structure.

Further discussion was held regarding enforcement of this issue by the Codes Office.

It was determined that this is a fence and Mr. Becker will have thirty (30) days to apply to the Zoning Board for a variance. The Board Members felt this is the best way to handle the situation and the Public Hearing will give everyone a chance to address any issues.

Their being no further business, the meeting adjourned at 8:00 P.M.

Respectfully submitted,

Dolores Shaw, Secretary
Zoning Board of Appeals

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