

**Town of Manlius
Zoning Board of Appeals
July 20, 2023
6:30 PM**

The Town of Manlius Zoning Board held a hybrid meeting with in-person attendees and virtual attendees. The meeting was live streamed on the Town Facebook page and the Town YouTube Channel. The recording of the meeting can be viewed here: <https://youtu.be/Ih9BYpklLFE>

Chairman Timothy Kelly presided, and the following Board members present:

Absent	Member	K P Kelly
	Member	Clare Miller
Absent	Member	Karrie Catalino
	Member	Warren Linhart
	Secretary	Debi Witzel
	Attorney	Jamie Sutphen
	Code Officer	Tom Poitras

In Person Attendees that signed in: Daniella & Ryan Ewert, Dirk Oudemool, Attorney. Paula Ellenberg, Manlius. Barbara Emmons, Manlius. Joe Mastroianni, Liverpool. Dr. John Enders, Manlius

Virtual Attendees: Dennis Shields, Josh Solomon, Kyle Elliott, Caroline

The Pledge of Allegiance was recited. The meeting was called to order at 6:30 PM.

Legal Notices

Member Linhart made a motion, seconded by Member Miller, to waive the reading of the public notices and it was carried unanimously.

Approval of Minutes – May 18, 2023, June 1, 2023, and June 15, 2023

Member Linhart made a motion, seconded by Member Miller, to approve the minutes of May 18, 2023, as submitted by Secretary Witzel.

Ayes: Chairperson T. Kelly, Member Linhart, Member Miller

Nays: 0 All in Favor. Motion Carrie

Member Miller made a motion, seconded by Member Linhart, to approve the minutes of June 1, 2023, as submitted by Secretary Witzel.

Ayes: Chairperson T. Kelly, Member Linhart, Member Miller

Nays: 0 All in Favor. Motion Carrie

Member Linhart made a motion, seconded by Member Miller, to approve the minutes of June 15, 2023, as submitted by Secretary Witzel.

Ayes: Chairperson T. Kelly, Member Linhart, Member Miller

Nayes: 0

All in Favor.

Motion Carries.

Nasrat Hafeez, 4648 Ring Necked Path, Manlius NY - Postponed

Member Linhart made a motion, seconded by Member Miller, to wave the reading of the public notices.

Ayes: Chairperson T. Kelly, Member Miller, Member Linhart.

Nayes: 0

All in Favor.

Motion Carries.

Diane Shields, 216 Schepps Lane, Kirkville NY (tax map # 051.-06-12.0) Public Hearing for one rear yard variance for the installation of a 12'X24' shed, with an existing rear yard setback of 32 feet, they will need a variance of 8 feet to meet the 40-foot required rear yard setback.

Mr. Shields stated they would like to put a 12'X24' shed in the middle of the backyard towards the back of the property. Mr. shields stated he has tools, camping equipment and such and there is no other space to store these items. Mr. Shields stated there is a smaller shed on the property which holds various lawn equipment.

Chairman Kelly asked if they have a problem with standing water in the backyard as some of the neighbors due? Mr. Shields stated this property does not have that issue.

Member Linhart made a motion, seconded by Member Miller, to open the public hearing at 6:42 PM and it was carried unanimously.

Chairman Kelly asked what the shed will look like. Mr. Shields stated the shed will be a similar color as the house with green shutters with vinyl siding and placed on a gravel base.

Mr. Shields did talk with some of his neighbors, and no one was opposed to the project.

Member Linhart made a motion, seconded by Member Miller, to close the public hearing at 6:45 PM and it was carried unanimously.

Board Questions

Chairperson T. Kelly proceeded with the board through the five (5) criteria questions:

- 1) Whether the benefit sought by the Applicant can be achieved by some other feasible method? The board answered no.
- 2) Whether the Variance will result in an undesirable change in the character of the neighborhood or to nearby properties? The board answered no as the shed fits the neighborhood as other houses have similar sheds.
- 3) Whether the requested Variance is substantial? The board answered no.
- 4) As to whether the Variance will have an adverse effect on physical or environmental conditions? The board answered no.
- 5) Whether the alleged difficulty was self-created? The board answered yes as they need more storage space.

Determination of ZBA Based on the Above Factors:

The ZBA, after taking into consideration the above five factors, finds that:

X The benefit to the applicant **DOES** outweigh the Detriment to the Neighborhood or Community.

 The benefit to the applicant **DOES NOT** outweigh the Detriment to the Neighborhood or Community and therefore the variance requested is denied.

The ZBA further finds that a **rear yard variance of 8 feet** is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

The ZBA further **GRANTS** the variance as requested with the following conditions: **None**.

SEQRA Review

Chairperson T. Kelly determined the proposed project and action contemplated is comprised of a Type II Action pursuant to the New York State Environmental Quality Review Act, and as such no further review was required.

Board Action

Member Linhart made a motion, seconded by Member Miller to grant an area variance to Dennis & Diane Shields, 216 Schepps Lane, Kirkville NY (tax map # 051.-06-12.0) for one rear yard variance of 8-feet to meet the 40-foot required rear yard setback for the installation of a 12'X24' shed.

Ayes: Chairperson T. Kelly, Member Miller, Member Linhart.

Nayes: 0

All in Favor.

Motion Carries.

Joshua Solomon, 4714 Anglia St., Manlius NY (tax map # 117.-16-02.1) Public Hearing for one side yard setback to construct a 16'X36' inground pool. With an existing side yard setback of 16' they will need a variance of 4' to meet the required 20'.

Mr. Solomon stated they would like to install an inground pool in their backyard and because of the shape of the yard they will need a variance. Mr. Solomon stated there is no other feasible place to move the pool to in the backyard. Mr. Solomon stated if they were to move the location would cause a significant disruption to existing structures.

Member Linhart made a motion, seconded by Member Miller, to open the public hearing at 6:50 PM and it was carried unanimously.

Member Linhart asked why the pool could not be moved 4-feet toward the driveway. Mr. Solomon stated the pool would cause issues with snow being placed as there are also trees at the end of the driveway. Member Linhart asked if they spoke to their neighbors. Mr. Solomon stated that he has spoken with one neighbor, and she does not have an issue with the project. Mr. Solomon stated that both sides of his yard are lined with mature trees that do block the sightline.

Member Linhart made a motion, seconded by Member Miller, to close the public hearing at 6:55 PM and it was carried unanimously.

Board Questions

Chairperson T. Kelly proceeded with the board through the five (5) criteria questions:

- 1) Whether the benefit sought by the Applicant can be achieved by some other feasible method? The board answered no, as it will cause a significant disruption to existing structures and cause a problem with snow placement.
- 2) Whether the Variance will result in an undesirable change in the character of the neighborhood or to nearby properties? The board answered no.
- 3) Whether the requested Variance is substantial? The board answered no.
- 4) As to whether the Variance will have an adverse effect on physical or environmental conditions? The board answered no.
- 5) Whether the alleged difficulty was self-created? The board answered yes, they want a pool.

Determination of ZBA Based on the Above Factors:

The ZBA, after taking into consideration the above five factors, finds that:

 X The benefit to the applicant **DOES** outweigh the Detriment to the Neighborhood or Community.

 The benefit to the applicant **DOES NOT** outweigh the Detriment to the Neighborhood or Community and therefore the variance requested is denied.

The ZBA further finds that a variance **of 4-feet off the side yard** are the minimum variances that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

The ZBA further **GRANTS** the variance as requested with the following conditions: **None**.

SEQRA Review

Chairperson T. Kelly determined the proposed project and action contemplated is comprised of a Type II Action pursuant to the New York State Environmental Quality Review Act, and as such no further review was required.

Board Action

Member Linhart made a motion, seconded by Member Miller to grant an area variance to Joshua Solomon, 4714 Anglia St., Manlius NY (tax map # 117.-16-02.1) for one side yard of 4-feet setback meet the required 20-foot side yard setback, to construct a 16’X36’ inground pool.

Ayes: Chairperson T. Kelly, Member Miller, Member Linhart.

Nays: 0

All in Favor.

Motion Carries.

Kyle Elliott, 106 N Davis St., E. Syracuse NY (tax map # 065.-04-12.0) Public Hearing for for two variances to construct an 18-foot round above ground Intel Temporary Pool. With an existing front yard setback of 22 feet, they will need a variance of 8 feet to meet the 30-foot required front yard setback. With an existing rear yard setback of 24 feet 5 inches, they will need a variance of 7 inches to meet the 25-foot required rear yard setback.

Member Linhart made a motion, seconded by Member Miller, to open the public hearing at 7:00 PM and it was carried unanimously.

Mr. Elliott stated the pool is already up and running. Mr. Elliott stated he has been purchasing temporary pools for a few years and he was unaware that a permit was needed. He did state that the current pool is larger than previous pools they have had. He did place the pool as close to the center of the yard as he could. He stated if he did move the pool, he would have to remove a tree or the wood playground structure. He stated he did install a pool alarm and a latching gate, and the yard is fenced in.

Code Officer Poitras stated the pool was brought to the Town's attention as it was observed by a code officer.

Chairman T. Kelly asked how long the temporary pool should last? Mr. Elliott stated he didn't have a definite number but does not believe he will have his any longer than ten years.

Member Linhart made a motion, seconded by Member Miller, to close the public hearing at 7:05 PM and it was carried unanimously.

Board Questions

Chairperson T. Kelly proceeded with the board through the five (5) criteria questions:

- 1) Whether the benefit sought by the Applicant can be achieved by some other feasible method? The board answered no.
- 2) Whether the Variance will result in an undesirable change in the character of the neighborhood or to nearby properties? The board answered no.
- 3) Whether the requested Variance is substantial? The board answered no as it is centrally located in the yard.
- 4) As to whether the Variance will have an adverse effect on physical or environmental conditions? The board answered no.
- 5) Whether the alleged difficulty was self-created? The board answered yes, they wish to have a pool.

Determination of ZBA Based on the Above Factors:

The ZBA, after taking into consideration the above five factors, finds that:

 X The benefit to the applicant **DOES** outweigh the Detriment to the Neighborhood or Community.

 The benefit to the applicant **DOES NOT** outweigh the Detriment to the Neighborhood or Community and therefore the variance requested is denied.

The ZBA further finds that a **front yard variance of 8-feet and a rear yard variance of 7-feet** are the minimum variances that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

The ZBA further **GRANTS** the variance as requested with the following conditions: **None**.

SEORA Review

Chairperson T. Kelly determined the proposed project and action contemplated is comprised of a Type II Action pursuant to the New York State Environmental Quality Review Act, and as such no further review was required.

Board Action

Member Linhart made a motion, seconded by Member Miller to grant an area variance to Kyle Elliott, 106 N Davis St., E. Syracuse NY (tax map # 065.-04-12.0) for two variances to construct an 18-foot round above ground Intel Temporary Pool. With an existing front yard setback of 22 feet, they will need a variance of 8 feet to meet the 30-foot required front yard setback. With an existing rear yard setback of 24 feet 5 inches, they will need a variance of 7 inches to meet the 25-foot required rear yard setback.

Ayes: Chairperson T. Kelly, Member Miller, Member Linhart.

Nays: 0

All in Favor.

Motion Carries.

Telsa, 5427 N Burdick St., Fayetteville NY (tax map # 086.-01-04.2.) Contactor/Applicant Allied Sign Company, 720 Erie Blvd. West, Syracuse NY. They will need two variances for a free-standing sign, 1. Code allows for 16 square feet per face, requesting 173.33 square feet per face, variance of 157.33 square feet needed. 2. Code allows for 6 feet, requesting 20 feet, variance of 14 feet needed. They will need one variance for a wall mounted sign 3. Code allows 100 square feet, requesting 123.5 square feet, variance of 23.5 square feet needed.

Member Miller made a motion, seconded by Member Linhart, to open the public hearing at 7:09 PM and it was carried unanimously.

Chairman T. Kelly stated the board would start with the sign to be mounted on the building.

Greg Fishel, Allied Sign Company stated the variance for the LED internally illuminated Channel Letter building sign would be 23.5 square feet. Mr. Fishel stated the mockup monument sign they put up showed this location was not going to work for this sign. He stated there are multiple water pipes, the proposed foundation would not be possible in this location. He stated after talking to the principal they are willing to move the sign to where the existing pylon is.

Discussion continued about the location and size of the sign.

The Board would like to see the Telsa sign no bigger than the neighboring Mercedes sign and to use the existing foundation.

Chairman T. Kelly stated the board will separate the building sign and asked Mr. Fishel to talk with the principal about the size and location of the monument sign and submit a revised ZBA application. The board will submit a review to the County, and we will put this on the August 17th agenda.

The Board returned to the building signage.

Member Linhart made a motion, seconded by Member Miller, to close the public hearing for the building sign, at 7:35 PM and it was carried unanimously.

Board Questions

Chairperson T. Kelly proceeded with the board through the five (5) criteria questions:

- 1) Whether the benefit sought by the Applicant can be achieved by some other feasible method? The board answered no.
- 2) Whether the Variance will result in an undesirable change in the character of the neighborhood or to nearby properties? The board answered no as it is in line with what the neighbors have.
- 3) Whether the requested Variance is substantial? The board answered no and the neighboring business is okay with this sign.
- 4) As to whether the Variance will have an adverse effect on physical or environmental conditions? The board answered no.
- 5) Whether the alleged difficulty was self-created? The board answered yes, they want a sign on their business.

Determination of ZBA Based on the Above Factors:

The ZBA, after taking into consideration the above five factors, finds that:

 X The benefit to the applicant **DOES** outweigh the Detriment to the Neighborhood or Community.

 The benefit to the applicant **DOES NOT** outweigh the Detriment to the Neighborhood or Community and therefore the variance requested is denied.

The ZBA further finds that a **variance of 23.5 square feet is** the minimum variances that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

The ZBA further **GRANTS** the variance as requested with the following conditions: **None**.

SEORA Review

Chairperson T. Kelly determined the proposed project and action contemplated is comprised of a Type II Action pursuant to the New York State Environmental Quality Review Act, and as such no further review was required.

Board Action

Member Linhart made a motion, seconded by Member Miller to grant an area variance to KPD LLC, to construct a front faced five letter sign that reads (TELSA) on the front of the building located at 5427 N Burdick St., Fayetteville NY (tax map # 086.-01-04.2.) contractor to Allied Sign Company. Granting a surface width of 23.5 square feet, will be front lit.

Ayes: Chairperson T. Kelly, Member Miller, Member Linhart.

Nays: 0

All in Favor.

Motion Carries.

Danielle & Ryan Ewert, 8291 E. Seneca Turnpike, Manlius NY, (tax map # 099.-01-27.4)
Public Hearing for a variance of 13.76 feet to provide relief from the required 200 feet of frontage.

Continuation of public hearing.

Joe Mastroianni, Engineer reviewed the estimate from Syracuse Utilities for putting a sewer line underneath the road of a total of \$80,000 dollars. He was told by Jeffrey Till from Onondaga County Health that they do not have a problem with a septic system but ultimately it's a Town decision. He stated that the NYS DOT has no problem with a new driveway cut.

Chairman T. Kelly did make note of a letter that was submitted to the board earlier in the day.

Dr. John Enders, Manlius neighbor to Mr. & Mrs. Ewert stated when they built their Veterinary Business 15 years ago, they were told they had to tap into the public sewer system. Why is that not a consideration for businesses now?

Dirk Oudemool, Attorney stated the board is required to honor precedent of court cases. Mr. Oudemool gave the definition of "feasible" as not affordability it is merely possible to do or achieve, not an issue of affordability. Mr. Oudemool asked the board if they ever received a written referral from the Planning Board on this issue.

Ryan Ewert stated they are just asking for a variance of 13.76-feet and does not believe what their plans are shouldn't have anything to do with this request.

Member Linhart made a motion, seconded by Member Miller, to close the public hearing for the building sign, at 7:56 PM and it was carried unanimously.

Board Questions

Chairperson T. Kelly proceeded with the board through the five (5) criteria questions:

I. Factors Considered:

1. Whether benefit sought by applicant can be achieved by a feasible alternative to the variance:
Yes X No _____

For purposes of consideration of this criterion, Section 155-12 A.1 of the Town of Manlius Zoning Code relevantly states, "...A minimum of 150 feet of frontage and a minimum of 40,000 square feet of area are required where public sanitary sewers are provided. A minimum of 200 feet of frontage and a minimum of 100,000 square feet of area are required where a septic system is proposed."

A variance can be completely avoided for this property if it is served by public sanitary sewer and not private septic/holding tank. This applicant seeks a variance because they desire the property to be served by a private sewage disposal system, and that requires 200 feet of road frontage per the Town Code. But, the applicant does, in fact, have sufficient road frontage of a minimum of 150 feet for its newly created subdivided lot.

The question presented by this variance criterion is whether there is a “feasible” alternative to a variance. Feasibility does not necessarily mean affordability, as affordability is very subjective dependent upon the financial situation of the party. Particularly where a newly subdivided parcel can be readied for commercial development, the affordability issue becomes even more subjective. However, it is known from evidence presented by the applicant through its quotes, that installing the infrastructure necessary for a public sewer access is feasible, notwithstanding cost; in other words, it can be done.

This property, when subdivided, can be ready for any number of commercial uses which are allowed by the Code in an RA zone. This Board does not look at any one use, or the use proposed by the applicant currently. Rather, in general, where the potentially commercial lot can feasibly be served by public sewer and avoid the variance, that is a significantly weighted factor by this Board. It bears noting that a similarly situated commercial enterprise located at 8275 East Seneca Turnpike was required to “hook up” to public sewer to serve its commercial use as a veterinary practice. This provides further proof of the feasibility of the same, and accordingly, this Board is not persuaded that the financial numbers presented render the hookup to public sewer unfeasible. The County Health Department, by email dated June 27, 2023, was, apparently, somewhat persuaded by the financial differential presented by the applicant in noting that they would have “no objection to a private sewage disposal system.” This is a sharp departure from the County Referral of April 26, 2023, wherein the County Planning Board stated as a modification, “It appears the public sewerage is available and accessible to this parcel. As such, the Onondaga County Sanitary Code requires connection to the public utility, versus installation of a septic system. Plans must be modified to reflect a connection to the public sanitary sewer system, and a sewage disposal plan must be approved by the Onondaga County Health Department, prior to, or as a condition of, municipal plan approval.” And, in any event, as stated by Jeffrey Till of the County Health Department in his June 27th email: “...the final decision to require connection to the public system lies with the Town of Manlius” Because the need for the variance can be eliminated, this Board adopts the requirement of connection to the public sanitary sewer system as a feasible alternative to the variance.

2. Whether undesirable change would be produced in character of neighborhood or a detriment to nearby properties: Yes X No _____

This particular area has a significant residential component, and the newly subdivided lot will be surrounded by residential uses. An unnecessarily reduced road frontage as requested herein creates an undesirable change in the neighborhood in that the reduced road frontage provides for less opportunity to locate a curb cut at a reasonable distance from the residential neighbor to the east. This could potentially create an undesirable change in the neighborhood, to the detriment of adjacent and nearby residential neighbors.

3. Whether the request variance is substantial: Yes X No _____

The 13.76 variance requested is substantial considering the location of adjacent parcels and the frontage in comparison to the proposed lot configuration, which becomes very narrow just shortly beyond the substandard road frontage.

4. Would the variance have an adverse impact on the physical or environmental conditions of the neighborhood: Yes _____ No X

5. Whether the alleged difficulty was self-created: Yes X No _____

This difficulty is self-created in that the applicant seeks to subdivide a parcel off of their current residential-use parcel to pursue a separate commercial use on a newly created lot. The applicant pursued a zone change on their entire parcel, which could potentially allow certain commercial uses provided all zoning criterion are met. So, the applicant was aware that a zone change alone would not be sufficient to potentially develop a commercial use, rather, site plan approval and/or Special permit approval would be necessary in order to pursue an approved commercial use, and bulk regulations would also have to be met – such as setbacks, lot size, etc.

Determination of ZBA Based on the Above Factors:

Chairman T. Kelly made a motion, seconded by Member Linhart, finds the ZBA, after taking into consideration the above five factors, finds that: X The benefit to the applicant **DOES NOT** outweigh the Detriment to the Neighborhood or Community and therefore the variance requested is **denied**.

Ayes: Chairperson T. Kelly, Member Linhart, Member Miller

Nayes: 0

All in Favor.

Motion Carries.

Other Business

None

Adjournment

With there being no other business, Member Linhart made a motion, seconded by Member Miller, and carried unanimously, to end the meeting at 8:15 PM

Respectfully submitted,
Debi Witzel, Secretary
Zoning Board of Appeals