

Zoning Board of Appeals Meeting
February 27, 2023

Present: Chairman Bill Nickal, Robert Doss, Dan Welker, Dan Newton, Code Officer Jeff Geer, Counsel Nadine Bell, Peter Terzella, Kasey Terzella, Sidney Grant, Attorney Devon Conroy, Courtney Barnard, Scott Barnard, Karl Anderson, Marilyn Anderson, Matthew Hood, Mrs. Matthew Hood, Jill Doss

Absent: John Ceresoli, Paul Adams

Chairman Nickal called the public hearing to order at 7:02 p.m. for Terzella re-hearing, 528 Tuscarora Road

Attorney for Terzella's Devon Conroy spoke to the Board. He commented that the original building application showed an 11 foot side yard setback (10 feet is required), when measured in three locations the side yard setback after the pool installation was 8.9 feet, 8.10 feet, and 9.2 feet. When the issue was discovered, the Terzella's applied for a variance, the hearing was held and the requested variance was denied. A re-hearing was requested by the Terzella's and Counsel for the Terzella's., thus the reason for this re-hearing this evening. Attorney Conroy reviewed the five criteria to be considered when reviewing for a request for an area variance; economic injury (financial), intended objective, neighborhood character, minimum relief, and problem was not self-created. He reviewed the criteria as they apply to his client; economic injury - if the Terzella's were made to move the pool the cost would be astronomical the cost to install the pool was approximately \$50,000.00, the pool was in compliance at time of application and site visits from Codes were done, permits were issued, and a certificate of compliance was also issued. Their objective was to comply with Code and they believed they had. Neighborhood character - the pool is not an eyesore. He noted that the Barnard's had commented during the original hearing that they weren't opposed to granting a variance; the landscape and run-off issues are unrelated to the pool wall setback issue; one foot installation out of compliance would not change the character of the neighborhood. Minimum relief - the request is minimal in relation to the Code requirements. Self-created - the Terzella's went through the steps required for Codes. A certificate of compliance was issued. They did not know they were out of compliance. Plans showed the pool was in compliance, the pool company installed between 1 and 1 1/2 feet out of compliance. Attorney Conroy commented that he didn't believe that all issues were considered at the original hearing for the Terzella's request. It appeared that some factors that were focused on during the original hearing by the Board shouldn't play into the issue of the variance request. Attorney Conroy further noted that the neighbors have a problem which is not disputed. The area variance request should have been reviewed primarily on those factors relating to the setback and not some issues that were outside the scope of consideration. Attorney Conroy saw no reason why the Board should not grant the area variance requested by the Terzella's. The one foot request is not unreasonable and the Terzella's didn't do this on purpose; all permitting was in place.

Chairman Nickal then opened the floor to questions from the audience. Courtney Barnard of 530 Tuscarora Road spoke. She reviewed a letter from Appel Osborne landscape architecture firm dated February 21,2023 (which she requested be made a

part of the record (attached). The landscape-architect did a site visit and had pictures from the start of the pool project to current. Mrs. Barnard noted in her comments that the issues are due to placement of landscaping and location of the pool at 528 Tuscarora Road. She noted that this was an unfortunate situation and she and her husband didn't sign on for all the issues. They retained an attorney to have the Terzella's remove a boulder from the Barnard property. Such removal took 58 days to comply. They've had to clean up many messes and this will be the third summer of issues. They have tried to be good neighbors and accommodated; they've lost their fence, have a damaged shed, their fire pit is sinking, and the yard has water running through it. They were willing to work with the Terzella's and they don't feel the project is complete. She submitted several photographs for the record for the Board members to review that show their yard before the pool and during the construction up to current. Scott Barnard of 530 Tuscarora Road spoke of the visit by the architectural design firm. He commented that they've lost their fence (from dirt from pool excavation being piled against it and used as a retaining wall), he commented they would agreed to a variance with conditions outlined in Architecture's report of February 23, 2023. Their backyard is flooded. He further encouraged Attorney Conroy to do a site visit of his property to see firsthand the issues. He encouraged the Code Officer to do a site visit as well. He asked why it took the Code Officer to review the pool installation nine (9) months after the permit expired. He commented on the issue of the setback problem when he took a string line that the Village had placed for another reason and it was clear to Mr. Barnard that the pool was not in the correct location. He is asking for a simple fix of the problem that the Terzella's install a dirt berm on their property. He commented again that he lost his fence, a tree, the fire pit is sinking and water is running across his property. The solutions suggested by the Architecture firm is 1. a lot line adjustment, 2. a French drain installed on the Terzella's property. 3. install a low modular block retaining wall along the property line on the Terzella's property. He commented that this issue was completely self-created - the Terzella's have an 80-foot wide back yard, the pool could have dug down further (as it is an in ground pool) and the pool could have been moved more into the center of their yard, away from the side yard. With no further comments, the public re-hearing was closed at 7:29 p.m.

Chairman Nickal opened the regular business meeting at 7:30 p.m.

Minutes

The Board members reviewed the minutes of January 16, 2023. Upon the motion made by Dan Welker and seconded by Robert Doss, the Board members unanimously approved the minutes as presented for January 16, 2023.

New Business

Matt Hood -133 Pebblestone Drive

Matthew Hood appeared before the Board to discuss his request for a Special Permit for Home Occupation at 133 Pebblestone Drive. Mr. Hood explained he needs permission from the Village in order for him to apply for his FFL license through the ATF. A public hearing was scheduled for March 20, 2023 at 7 p.m.

CNY Flooring 204 Tuscarora Road

Sidney Grant appeared before the Board to discuss his request for signage that exceeds the size requirement in the Village Code. The sign will be an interior lit sign and will be hung from the front of the building. This requested sign will require a public hearing for an area variance. A public hearing was scheduled for March 20, 2023 immediately following the Hood hearing. This request will need to be sent to the Madison County Planning Board.

Upon the motion made by Dan Welker and seconded by Dan Newton, the Board entered a meeting for advice of Counsel at 7:40 p.m. The Board members re-convened to the regular meeting at 8:00 p.m.

Terzella - Re-hearing 528 Tuscarora Road

Upon the motion made by Dan Welker and seconded by Dan Newton based upon the foregoing, the Board resolves as follows:

1. This matter is a Type II action under the State Environmental Quality Review Act as it involves the granting of an area variance related to a single-family residential use.
2. It is determined that the requested variance relief will not produce any undesirable change in the residential character of the neighborhood if a low block retaining wall is installed to address drainage concerns and will not be detriment to nearby properties. Variance relief for the proposed pool will not have an adverse effect or impact on the physical environmental conditions in the neighborhood or district if the retaining wall is installed. Neighbors were present and voiced concern with the variance. There is no apparent method to achieve the benefit the Applicants wish to obtain, other than a variance and the benefit to the Applicants does outweigh any detriment to the neighborhood or community because of granting the variance relief, due to the proposed condition.
3. An area variance is hereby granted permitting the placement of an in ground pool approximately 1.2 feet less than ten (10) feet off the side yard setback on property located at 528 Tuscarora Road, Tax Map No. 41.17-2-3 subject to the following conditions: the installation of a low modular block retaining wall along the property line on the Applicant's property, with fill material removed, to be completed on or before July 1, 2023. Plans for the retaining wall shall be submitted to the CEO for review and approval.

A roll call vote was taken, as follows:

Daniel Newton	yes
Daniel Welker	yes
Robert Doss	yes
William Nickal	yes

Motion carried.

Code Officer Geer will work with Village Engineer in regard to the low modular brick retaining wall application process.

Next meeting
March 20, 2023

Training

If the Board has a light schedule, training will be provided for Board by the Attorney to help attain the four (4) hours needed annually. There are also on-line training opportunities available. The Secretary will advise if any opportunities arise for training.

With no further business, meeting adjourned at 8:30 p.m.

Respectfully submitted,

Jill A. Doss
Secretary to ZBA