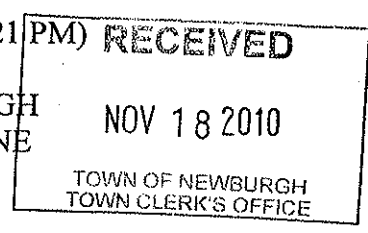


ZBA MEETING – OCTOBER 28, 2010

(Time Noted – 7:21 PM)



MARK & KATHLEEN JUDSON

64 NEW ROAD, NBGH  
(39-1-16.24) R-2 ZONE

Applicant is seeking an area variance to build an above ground pool in a front yard. (has two front yards)

Chairperson Cardone: Our next applicant Mark and Kathleen Judson. Thirteen mailings were sent out, thirteen returned.

Mr. Judson: My name is Mark Judson I live at 64 New Road. I am here tonight to request an area variance to erect an above ground swimming pool in my backyard, which a...by Code is considered a second front yard because of Fostertown Road runs behind the back of my property.

Chairperson Cardone: I have a report from the Orange County Department of Planning, which is Local Determination. Any questions from the Board? Any questions or comments from the public? Yes please step up to the microphone and state your name for the record please.

Ms. Alexander: My name is Sylvia Alexander, Town of Newburgh.

Chairperson Cardone: Could you just spell your last name for the record?

Ms. Alexander: A-L-E-X-A-N-D-E-R.

Chairperson Cardone: Thank you.

Ms. Alexander: I'm the next door neighbor and I'm just curious as to, because this is such a close proximity of our homes I'd like to know how close the pool is going to be because I have a mother who has Alzheimer's that spends time with me and you know, I'd like to know...have an idea. Is it on my side or is it on the other side?

Mr. Hughes: There's a map here. Do you want to see the map?

Ms. Alexander: Oh, yes please.

Chairperson Cardone: If you would point out your home on the map for Mr. Hughes.

Mr. Hughes: I see where it is. This is you over here?

Ms. Alexander: Yes.

Mr. Hughes: This is where intend to...

Ms. Alexander: So it's actually right next-door?

Mr. Hughes: It's twenty-five feet off the property line to the edge of the pool. And I don't know how far over your house is. We were out to look and your house is over here somewhere.

Ms. Alexander: The house is there but there's a driveway that runs through here and our properties connect in here.

Mr. Hughes: That's the property line and the edge of the pool is twenty-four feet something to the edge.

Ms. Alexander: I would like before that's done that my husband take a look at it.

Mr. Hughes: You'll have to address the Chairperson.

Ms. Alexander: Oh, I'm sorry. Before that's done I would like to have someone take a look at this because I wasn't aware of this until I got the mailing.

Chairperson Cardone: The members of the Board have been to the site and they are within the limits from the property line. The reason that they're here is because even that's not their front yard it's counted as a front yard because the property backs up on a highway.

Ms. Alexander: O.K.

Chairperson Cardone: So that's the only reason that they're here. They are here because according to definition the pool is in a front yard although if you look at the house and you go to the property the pool is not in the front yard.

Ms. Alexander: All right so...

Chairperson Cardone: But they're not...they're not asking for any relief from the distance to the property line.

Ms. Alexander: O.K. so its...we're not...they're not in my part of the...of that.

Chairperson Cardone: Right.

Ms. Alexander: All right.

Mr. Hughes: The closest edge of the pool will be twenty-five feet from your property line.

Ms. Alexander: O.K.

Mr. McKelvey: I think ten; it has to be at least ten-feet. Right, Jerry?

Mr. Canfield: Yes, the minimum side yard for an above ground pool is ten-feet.

Chairperson Cardone: And they are well beyond that. Any questions or comments from the public or the Board? Do we have a motion to close the Public Hearing?

Mr. Maher: I'll make a motion to close the Public Hearing.

Ms. Eaton: I'll second.

Chairperson Cardone: Roll call.

John McKelvey: Yes

Ruth Eaton: Yes

Ronald Hughes: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

Mr. Judson: Thank you.

(Time Noted – 7:26 PM)

ZBA MEETING – OCTOBER 28, 2010 (Resumption for decision: 8:51 PM)

MARK & KATHLEEN JUDSON

64 NEW ROAD, NBGH  
(39-1-16.24) R-2 ZONE

Applicant is seeking an area variance to build an above ground pool in a front yard. (has two front yards)

Chairperson Cardone: On the next application Mark and Kathleen Judson seeking an area variance to build an above ground pool in a front yard. (having two front yards) This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. Manley: I think the site visit clearly delineates which is the front yard and back yard even though they do have technically two front yards. I think this is something common that we see a lot. And I would move to approve. I'd make a motion.

Mr. McKelvey: Second.

Chairperson Cardone: Roll call.

John McKelvey: Yes

Ruth Eaton: Yes

Ronald Hughes: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

Mr. Judson: I have a question. Do you refer this back to the Building Department now and they issue the Building Permit or do I have to reapply?

Chairperson Cardone: And...Mr. Canfield is not here. If you already submitted a Building Permit (application)...?

Mr. Judson: Yes.

Chairperson Cardone: Then I believe you would not have to submit another one but we can verify that.

Mr. Hughes: It should catch up with itself through that Department.

Chairperson Cardone: Right.

Mr. Judson: Right, thank you.

PRESENT ARE:

GRACE CARDONE  
JOHN MC KELVEY  
RUTH EATON  
RONALD HUGHES  
MICHAEL MAHER  
JAMES MANLEY

DAVID A. DONOVAN, ESQ.

ABSENT - BRENDA DRAKE

ALSO PRESENT:

GERALD CANFIELD, CODE COMPLIANCE DEPT.

(Time Noted – 8:54 PM)

*AS*  
11/18/10

NOV 30 2010  
TOWN OF NEWBURGH  
TOWN CLERK'S OFFICE

Section 39, Block 1, Lot 16.24

TOWN OF NEWBURGH: COUNTY OF ORANGE  
ZONING BOARD OF APPEALS

-----X

*In the Matter of the Application of*

MARK JUDSON AND KATHLEEN JUDSON

**DECISION**

*For area variances as follows:*

- *Grant of a variance allowing a pool to be installed in a front yard.*

-----X

**Introduction**

Mark Judson and Kathleen Judson own property that is bordered by two (2) existing public thoroughfares (New Road and Fostertown Road) and thus have two front yards.<sup>1</sup> They now seek permission to construct an above ground pool in the front yard between the house and Fostertown Road. In order to accomplish this objective they will require an area variance as follows: (1) An area variance to allow a pool to be installed in a front yard.

The property is located at 64 New Road in the R-2 Zoning District and is identified on the Town of Newburgh tax maps as Section 39, Block 1, Lot 16.24.

A public hearing was held on October 28, 2010, notice of which was published in *The Mid-Hudson Times* and *The Sentinel* and mailed to adjoining property owners as required by Code.

<sup>1</sup> See Town Code section 185-17.

## Law

Section 185-11 of the Code of Ordinances of the Town of Newburgh [Zoning], entitled "Utilization of Bulk Table," requires compliance with the bulk regulations set forth in the bulk and use schedules set forth within the zoning ordinance.

Section 185-17(A) provides that front yard setbacks are required on both street frontages.

Section 185-43 [Garden houses, toolsheds, wading and swimming pools and tennis courts] (F) of the Code of Ordinances of the Town of Newburgh provides that "[n]o garden house, toolshed, pool or tennis court shall be located in a front yard."

## Background

After receiving all the materials presented by the applicant and the testimony of Mr. Judson at the public hearing held before the Zoning Board of Appeals on October 28, 2010, the Board makes the following findings of fact:

1. The applicants are the owners of a 1.1+/- acre lot (tax parcel 39-1-16.24) located at 64 New Road. The property also has frontage on Fostertown Road. In this configuration, the existing house located on the lot has two front yards within the meaning of the Code.
2. The lot is improved by a single-family dwelling. The applicants now propose to erect and maintain a pool in the front yard between the house and Fostertown Road. Pools are prohibited in front yards under Section 185-43 of the Code.

3. Physically, it is apparent that the pool is proposed to be in the back of the house and in what would normally be considered as the rear yard. This location is, however, between the house and Fostertown Road.
4. The applicants' proposal is set forth on a series of photographs and survey map prepared by Vincent J. Doce Associates. Those photographs and survey are hereby incorporated into this decision and a set shall remain in the zoning board's file in this matter.

The Building Inspector denied a building permit application by letter dated August 24, 2010.

The applicants have appealed the Building Inspector's determination seeking a variance to construct a pool in the front yard.

After hearing the testimony at the public hearing and considering the materials received by the Board and after viewing the subject site, the Board decides as follows:

#### SEQRA

This matter constitutes a Type II action under the State Environmental Quality Review Act inasmuch as it involves the granting of an area variance(s) for a single-family, two-family or three-family residence [6 NYCRR §617.5(c)( 13)]. As such, this project is not subject to review under the State Environmental Quality Review Act.

#### GML 239 Referral

This application has been referred to the Orange County Planning Department for review and report. The Planning Department has reported that



this matter is one for local determination, there being no significant inter-municipal or countywide considerations found to exist.

### **Findings**

In reviewing the facts presented for the requested area variances, the Board considered the five standards for determining whether the applicant has sustained its burden of proof as required by Town Law Section 267-b (3). Each factor has been considered relevant to the decision of the board of appeals, but no single one is viewed as precluding the granting of the variances.

#### ***(1) Undesirable Change—Detriment to Nearby Properties***

The applicants testified at the hearing that the proposed swimming pool would be in harmony with the existing neighborhood and would not in any way result in any undesirable changes to the neighborhood nor cause any detriment to any nearby properties.

The Board notes that while the pool is technically proposed to be located in a front yard, it is in reality *behind* the house.

Absent any testimony or evidence indicating such, the Board cannot conclude that any undesirable change in the character of the neighborhood or detriment to the neighbors in that neighborhood will result from the construction of the proposed pool.

Accordingly, based upon the evidence and testimony submitted to the Board, the Board finds that the request of the area variance will not result in any serious, undesirable, detriment to surrounding property owners.

***(2) Need for Variance***

Because the property has 2 front yards, it is impossible to locate a swimming pool that complies with the ordinance.

Based upon the foregoing, as well as the testimony and evidence submitted at the hearing, the Board finds that it is not feasible for the applicants to construct a swimming pool on the property without the requested area variance.

Accordingly, the Board finds that the benefit sought to be achieved by the applicants cannot be achieved by any other method other than the issuance of the requested variance.

Therefore, if the applicant is to have a swimming pool at all, a variance is required.

***(3) Substantial Nature of Variances Requested***

The variance is clearly substantial because the restriction in question is an absolute prohibition. Nevertheless, because the prohibition relates to location and yard dimension, the variance requested is an area variance and not a use variance. Further, the unique circumstances referenced above are clearly a mitigating factor when evaluating the substantial nature of the variance requested.

Moreover, because the focus of the inquiry by the Zoning Board of Appeals is upon the character of the neighborhood in question, we believe, under the circumstances presented here, that the substantial nature of the variance requested does not prohibit us from granting the application.

#### ***(4) Adverse Physical & Environmental Effects***

No testimony was given, nor was any evidence provided, that would indicate that issuance of the requested variance would result in any adverse physical and/or environmental effects.

Based upon the evidence and testimony submitted, the Board finds that issuance of the requested variance will not adversely impact the physical and environmental conditions in this neighborhood.

#### ***(5) Self-Created Difficulty***

The need for this variance is clearly self-created in the sense that the applicant purchased this property charged with the knowledge of the existing Zoning Code and while aware of the need to obtain a variance in order to construct a swimming pool in the front yard of the property.


However, because of the configuration of the lot and further because of the circumstances recited hereinabove, it is not feasible to construct a swimming pool without a variance of some kind, the board believes, under the circumstances presented, that the self-created nature of the need for the variances requested does not preclude granting the application. Moreover, as noted earlier, no undesirable change in the character of the neighborhood will occur as the result of the granting of the variance.

#### **Decision**

In employing the balancing tests set forth in Town Law Section 267-b (3), the Board hereby determines that the applicant has satisfied the requisites of Section 267-b and grants the variance as requested to permit a swimming pool in a front yard upon the following conditions:

1. The variance hereby granted is granted for the purpose of authorizing construction of what is shown on the plans, i.e., the swimming pool, as described and set forth within the application materials only. No construction other than as shown or described (architectural refinements aside) is authorized by this decision.
2. Section 185-55 [Procedure; construal of provisions; conflict with state law] of the Code of Ordinances of the Town of Newburgh provides, in subdivision "D," that this grant of variance shall become null and void at the expiration of six months from issuance, unless extended by this board for one additional six-month period.

Dated: October 28, 2010

  
Grace Cardone, Chair  
Town of Newburgh ZBA

*By roll call a motion to adopt the decision was voted as follows:*

AYES: Chair Grace Cardone  
Member Ruth Eaton  
Member Ronald Hughes  
Member Michael Maher  
Member John McKelvey  
Member James Manley

NAYS: None

ABSENT: Member Brenda Drake

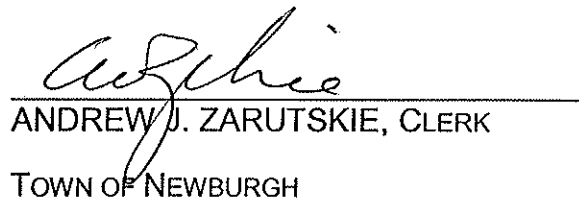
STATE OF NEW YORK )  
 )ss:  
COUNTY OF ORANGE )

I, BETTY GENNARELLI, Secretary to the Zoning Board of Appeals of the Town of Newburgh, do hereby certify that the foregoing is a true and exact copy of a Decision rendered by the Zoning Board at a meeting of said Board held on October 28, 2010

  
BETTY GENNARELLI, SECRETARY

TOWN OF NEWBURGH ZONING BOARD OF APPEALS

I, ANDREW J. ZARUTSKIE, Clerk of the Town of Newburgh, do hereby certify that the foregoing Decision was filed in the Office of the Town Clerk on NOV 30 2010.

  
ANDREW J. ZARUTSKIE, CLERK  
TOWN OF NEWBURGH