



TOWN OF HUDSON

Zoning Board of Adjustment

Charlie Brackett, Chairman

David Morin, Selectmen Liaison

12 School Street • Hudson, New Hampshire 03051 • Tel: 603-886-6008 • Fax: 603-594-1142

MEETING MINUTES – AUGUST 23, 2018 - Approved

The Hudson Zoning Board of Adjustment met on August 23, 2018 in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall at 7:00 PM.

Chair Brackett called the meeting to order at 7:00 PM; welcomed the public in attendance; noted that there are copies of the Agenda and Appeal forms on the shelf by the entry door; explained that the Zoning Board is a quasi-judicial board to enforce and uphold State and Town Laws; outlined the process of the meeting that would be to solicit input from the Applicant and Abutters, seek a second set of input if warranted, deliberate and make a motion; asked that anyone wishing to address the Board to please come to the table or the lectern and provide their name, with spelling, and address; and made housekeeping announcements that included no smoking and, with the sensitivity of the microphones, to please turn off cell phones and refrain from talking and that there is an 11 PM curfew..

Members present were: Charlie Brackett (Chair), Gary Dearborn (Regular), and Maryellen Davis (Regular/Acting Clerk) and James Pacocha (Vice Chair). Also present were Bruce Buttrick, Zoning Administrator and Louise Knee, Recorder. Excused were Kevin Houle (Alternate/Clerk), Michael Pitre (Alternate) and Selectmen Liaison David Morin.

Chair Brackett noted that only four Members were present where normally there would be five, that three Members constitute a quorum, and added that regardless of the number of Members present, three votes are required for a motion to pass. Chair Brackett stated that an applicant has the right to ask for deferment to next month when five Members could be present.

I. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. Case 190-156 (08-23-18): Lesley A. MacMillan, 10 Cross Street, Hudson, NH, requests a Variance to continue the use of an above ground pool located in the front setbacks on a corner lot. [Map 190, Lot 156, Zoned TR; HZO Article VII §334-27, Table of Minimum Dimensional Requirements].

Not official until reviewed, approved and signed.

Approved 9/27/2018 as edited and amended.

Acting Clerk Davis read the Case into the record. Mr. Buttrick referenced his Zoning Determination dated 6/27/2018 noting that the variance is for a 32' x 16' oblong above ground swimming pool in the 30' required front setback of a legal non-conforming lot on the corner of Cross Street and Riverside Drive and noted that the house is 30' from Riverside Drive and only 20' from Cross Street. The pool is in the front setback of Riverside Drive.

Lesley MacMillan introduced herself as the property owner and applicant, stated that she bought her home two years ago, wanted a pool for her daughter's graduation and knowing nothing about pools contracted with a professional, ASAP Pools who told her she did not need a permit for an above ground pool. The pool does not fit into the back of her house with the bump-out and would face the bedroom of her neighbor. There was a chain link fence surrounding an area along Riverside Drive that would fit the pool and that is where they installed it. Before beginning the process, Ms. MacMillan stated that she contacted all her direct abutters who expressed no objections and even confirmed their support in letters that she submitted with the application. Ms. MacMillan stated that since the pool has been installed, she has replaced the chain link fence with a 6' stockade fence with a locked entrance to the pool. Ms. MacMillan noted that there is grass that is maintained between the fence and the road and referred to the pictures showing the stockade fence and the grass along Riverside Drive and also a picture of the backyard with the bump-out and neighbor's bedroom window.

With regard to the variance criteria Ms. MacMillan stated that it is not contrary to the public interest, it is behind a 6' blockade fence and blind to the public and there is grass between the fence and the road and with a 10' buffer to her backyard there is no room for a pool; that the spirit of the Ordinance is observed and is not causing any issues; that justice would be done in the granting of the variance, that she spoke with all her neighbors before installing the pool and received no objections, that she started the project in May through a professional and thought they would handle any permit requirement; that the pool does not impact the surrounding property values and that she would agree to a condition of approval that the pool be removed if she sold her home; and that the hardship is due to her lot being on a corner needing to satisfy two frontage setbacks and the fact that a pool would not fit into her backyard. Mr. Buttrick stated that there is approximately 27' in the backyard and with a 15' setback, the 16' pool with braces located there would also require a variance.

Ms. Davis confirmed that all the direct abutters had submitted a letter that came attached with the application and read one of the letters into the record.

Mr. Brackett opened the hearing for public testimony at 7:18 PM. Liz Gavlak, 4 Cross Street, stated that she has no problem with the pool at all but is

concerned with the fence as it blocks the view (sightline) when taking a right turn onto Riverside Drive and she nearly missed seeing children in the road twice already coming from Riverside taking a right onto Cross Street. Ms. Gavlak stated that the corner of the fence creates a safety hazard and perhaps the corner can be adjusted or rounded or something. Being no one else to speak, Mr. Brackett closed public testimony at 7:20 PM and asked Ms. MacMillan to address the concern raised.

Ms. MacMillan stated that Kevin Burns, Road Agent from the Highway Department, and Elvis Dhima, the Town's Engineer, came to check out the intersection and all they did was move the stop sign closer to the intersection. Ms. MacMillan noted that there are also bushes across the street. Mr. Buttrick confirmed that there had been discussion about "the intersection" between the Highway dept and Engineering dept.

Mr. Brackett opened public testimony for the second time at 7:22 PM. Luz Gavlak, 4 Cross Street, confirmed that the stop sign was moved but added that one still needs to move up beyond the stop line to see because there is a 6" to 12" blind spot. Being no one else to speak, Mr. Brackett closed public testimony at 7:24 PM.

Mr. Brackett asked if the stockade fence was placed on the property line. Ms. MacMillan stated that the fence is within her property, that it was placed in the exact location of the chain link fence. Mr. Brackett asked if there was a signed contract with ASAP Pools to which Ms. MacMillan confirmed but could not recall the details and did not have a copy at the meeting. William Colby, 10 Cross Street, boyfriend of Ms. MacMillan and an electrician, stated that he saw the contract, that it contained skewed wording and a list of exclusions that included items like landscaping, electrical, bonding, water etc. Discussion arose on the permitting. Mr. Bolve stated that the installer eventually told them they had not pulled a permit.

When asked about the Notice of Violation, Mr. Buttrick stated that it was first noticed when he drove by the property and not based on a complaint received. Mr. Pacocha asked and received confirmation that there is no stop sign on Riverside Drive at this intersection. Ms. Davis asked when the pool project began and Mr. Colby stated that they began in mid May, had the water delivered within two weeks and submitted an application with the Town on 5/17/2016 when the pool project was 98% complete.

Ms. Davis stated that she has a problem with this being an "after-the-fact" application. Ms. MacMillan stated that she went to the local professionals because she knew nothing and thought they would know what is needed. Mr. Brackett expressed similar concern because a variance "goes with the land" but would give consideration to Ms. MacMillan's offer to have a condition that the pool be removed upon sale of her property and noted that there is a life-

expectancy to above-ground pools. Ms. Davis countered that such a condition would be difficult to regulate even with the recordation of the Notice of Decision.

Board discussed the hardship criteria. There are many corner lots in residential areas in Town. There is good reason for wider frontage setback, like avoiding costs for any future street widening ventures. Setting precedent is also a concern regardless of the applicant's intention or lack of knowledge. Ms. Davis stated that, in her opinion, the hardship criteria has not been met.

Mr. Dearborn referenced Zoning Ordinance Article 334-12.H ("No fence ... shall obstruct or interfere with roadway and/or driveway sight distances as determined by the office of the Town Engineer,") and stated that a written statement from either the Town Engineer and/or Road Agent regarding this intersection should be obtained.

Motion made by Ms. Davis and seconded by Mr. Dearborn to defer this Case to the September 27, 2018 meeting with two conditions: (1) the applicant obtain a written statement from Town Engineer regarding sight distance and any recommendation pertaining to the fence necessary for safety and sight distance; (2) the applicant provide a complete copy of their pool contract. Vote was 4:0. Motion passed.

Board took a five minute break at 8:02 PM.

2. Case 200-030 (08-23-18): Gary & Barbara Daddario, 148 Wason Road, Hudson, NH, requests a Variance to construct a 14' x 18' shed within the side-yard setback, leaving 6.5 ft to 8.0 ft of required setback. [Map 200, Lot 030, Zoned G; HZO Article VII §334-27, Table of Minimum Dimensional Requirements].

Ms. Davis read the Case into the record. Mr. Buttrick referenced his Staff Report dated 8/14/2018, stated that the intended 14' x 18' shed would encroach the required 15' side-yard setback leaving a range from 6.5' to 8.0' to the property line and noted that the range is due to the slant of the property line.

Gary Daddario introduced himself and his wife Barbara and addressed the Board. The information shared included:

- A storage shed is a reasonable and extremely common use at a residential property

- The shed is needed for storage of lawn maintenance and snow removal equipment – they have a riding lawnmower – and placement by the driveway provides a safe path for the needed equipment
- The proposed location of the shed will not impact the public and would not be seen with the existing trees and shrubs by his abutting neighbor
- The proposed location will also be shielded from road view by their camper and basketball hoop
- The proposed shed location does not present an intrusion, obstacle or even a visual problem to the public
- There should be no impact on surrounding property or property values
- It is substantial justice to allow reasonable use of their property in a manner that does not harm others
- Locating a shed in the front yard would also require a variance and would substantially increase public view of it
- Locating the shed on the other side of the house would also require a variance and with no vegetation between their home and their neighbors would be visible and would also be impractical to access snow removal equipment
- Locating the shed in the rear yard is prevented by several characteristics and topography of the land. A Licensed Land Surveyor (LLS) from Jeffrey Land Survey, LLC, prepared a plan that shows house, driveway, well in the front yard and the underground propane tank in the backyard. The septic system is also in the backyard. There is a stone wall at the head of the driveway where the land elevates and just beyond the septic system, the land drops off.

Mr. Daddario described each of the twelve (12) pictures submitted with the application to substantiate the above statements. They included:

Exhibit A: Advertising from the shed company. Eastern Shed Company

Exhibit B: Picture of the proposed shed – the Delmar model with an overhead door as well as a person door

Exhibit C: Picture from the left of the driveway showing the shielding from existing vegetation

Exhibit D: Picture from the right side of the driveway that shows part of the camper, the basketball hoop and the new shed location

Exhibit E: picture taken from the top of the driveway from the proposed shed location looking at the house, garage doors and back deck built out over the boulders

Exhibit F: picture of the camper, basketball hoop, grill and chairs that would aid in shielding the shed from view at the road

Exhibit G: Picture showing the density of the vegetation and how it would totally shield the shed from view of the neighbor

Exhibit H: Broader view of Exhibit G showing how the proposed shed would be placed with the camper and basketball hoop

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Exhibit I: picture showing the other side of the house in close proximity to the neighbor's house with just grass between the two structures.

Exhibit J: Septic plan that depicts the downward elevation slopes to the rear of the property

Exhibit K: picture of the backyard from the top of the driveway showing the stone wall, elevation difference and location of the underground propane tank

Exhibit L: Picture taken from the rear of the property that shows the upward elevation and just the roof of the garage.

Mr. Brackett opened the public testimony at 8:23 PM. No one present to address the Board.

Mr. Dearborn complimented Mr. Daddario on his preparation and presentation and noted for the record that there were no abutters present. Mr. Daddario stated that he received a lot of guidance from Mr. Buttrick and thanked him.

Ms. Davis stated that in her opinion the hardship criteria has been met and is due to the topography of the land as well as placement of the shed for its usefulness. Mr. Brackett stated that he went to the site and agrees with the proposed placement of the shed.

Motion made by Ms. Davis and seconded by Mr. Dearborn to grant the variance for the placement of the shed into the side-yard setback with no conditions. Ms. Davis noted that the request satisfies all the criteria for the granting of a variance, Mr. Dearborn concurred noting that there were no abutters present and again complimented Mr. Daddario on his detailed presentation. Vote was 4:0. Motion passed.

Mr. Brackett noted the thirty-day appeal period. Mr. Daddario confirmed his awareness that the next step would be to obtain a Building Permit and the potential risk should he proceed before the appeal period ends. Ms. Davis asked Mr. Daddario to consider becoming a Member of the Zoning Board due to several vacancies, as witnessed tonight.

II. REVIEW OF MINUTES

1. 07-26-18 Minutes

Board reviewed the edited version presented and corrected a misspelling on page 3. Motion made by Ms. Davis, seconded by Mr. Dearborn to approve- the 7/26/2018 Minutes as edited and amended. Motion was 4:0. Motion passed.

III. REQUEST FOR REHEARING

There were no requests submitted for Board consideration.

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IV. OTHER

Discussion of new ZBA legislation

- **HB 1215** – Voting on Variances

Amends methodology on voting. Letter dated 8/10/2018 from Town Counsel David LeFevre addressed both HB 1215 and SB 339. Consensus reached to have item addressed in the next Zoning Workshop scheduled for Thursday, 8/30/2018 and to continue to utilize the worksheet until further notice.

- **SB 339** – Voting by Zoning Boards of Adjustment – 3 votes required

New Law clarifies that “any” three Members are required to vote, not necessarily the same three Members, per Town Counsel’s 8/10/2018 letter.

- **HB 1533** – termination of unexercised variances and special exceptions

Board discussed and determined that no action is required as the Hudson Zoning Ordinance clearly states when an approved variance and special exception becomes moot if not exercised.

Motion made by Mr. Dearborn and seconded by Mr. Pacocha to adjourn the meeting. Vote was 4:0. The 8/23/2018 ZBA meeting adjourned at 8:55 PM.

Respectfully submitted,

Charles J. Brackett
ZBA Chairman