



TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Kara Roy, Selectmen Liaison

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MEETING MINUTES – September 23, 2021 – approved

The Hudson Zoning Board of Adjustment met on Thursday, September 23, 2021 at 7:00 PM in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall.

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

Acting Chairman Brian Etienne called the meeting to order at 7:00 PM, invited everyone to stand for the Pledge of Allegiance and read the procedure for the meeting from the Preamble found in Exhibit A of the Board's Bylaws into the record.

Mr. Etienne took attendance. Members present were Brian Etienne (Regular/Clerk/Acting Chair), Leo Fauvel (Regular) and Marcus Nicolas (Regular). Also present were Bruce Buttrick, Zoning Administrator, Louise Knee, Recorder (remote) and Kara Roy, Selectman Liaison. Excused were Gary Daddario (Regular/Chair) and Jim Pacocha (Regular/Vice Chair).

III. PUBLIC HEARING OF SCHEDULED APPLICATION BEFORE THE BOARD:

1. **Case 126-003 (09-23-21):** Paul & Claudia Decker, **59 Robinson Rd., Hudson, NH** requests an Equitable Waiver of Dimensional Requirement due to a foundation encroachment of 1.6 ft. into the required side yard setback of 15 ft. leaving 13.4 ft. as shown on the Foundation Certification Plan dated July 02, 2021, Rev. A. [Map 126, Lot 003; Zoned General-One (G-1); HZO Article VII, Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements].

Mr. Buttrick read the Case into the record and referenced his Staff Report signed 9/13/2021

Paul Decker stated that he seeks an Equitable Waiver of Dimensional Requirement for the monolithic foundation he poured for his 28'x35' workshop that he is building on weekends and evenings that ended up encroaching 1.6 feet into his setback at one corner. Mr. Decker stated that the encroachment was discovered when he had an as-built survey plan created for the Building Permit and was surprised because he took several measurements to try to ensure that there was no encroachment. Mr. Decker stated the mistake is his and try as he might he does not know where or how he went wrong.

Not Official until reviewed, approved and signed.

Approved 10/28/2021 as edited.

Mr. Decker addressed the criteria for the granting of an Equitable Waiver. In brief, the information shared included:

a) discovered too late

encroachment discovered by the as-built survey - tiny error was made in making the foundation - because it is a monolithic foundation, the footings and slab are one continuous piece consisting over 47 yards of concrete

b) innocent mistake

intent was to be fully compliant and be out of the setback – largely accomplished but the end corner of the foundation encroached into the setback by eighteen inches (18”) – when digging the foundation, he mis-measured from the reference point angle which threw the back corner slightly into the setback

c) no nuisance

structure located at the rear of the property away from most public view and the workshop will resemble the house – when the encroachment was discovered he reached out to his four (4) human abutters and they each submitted signed letters stating they have no objection or concern for the slight encroachment

d) high correction cost

because it is a monolithic footing and foundation, the only way to correct the mistake is to completely remove the concrete and re-excavate the site – material costs to-date exceeds \$8,000 - for the 47 yards of concrete, rebar, insulation and drainage gravel - plus time and labor

Mr. Decker referenced the pictures submitted with his application, held up a paper cut-out of the triangle portion of the slab that encroaches into the setback (adding that if the angle was turned one-eighth (1/8) of a degree, there would have been no encroachment) and stated that when the error was discovered, he contacted his four human neighbors to let them know and learned that none had a problem with it and submitted letters to that effect from his four (4) human abutters: (1) Alex Kalathakis, 2 Kienia Road; (2) Jeff Parker, 60 Robinson Road; (3) Scott and Leanne Roystan, 61 Robinson Road; and (4) Floyd and Antionette Gorveat, 11 Kienia Road. The other two (2) abutters include the State of NH and the Town of Hudson. Mr. Decker concluded his presentation, stating that he does not know how the mistake was made, but he did it, takes responsibility for it and hopes that an Equitable Waiver can be granted.

Public testimony opened at 7:10 PM. The following individuals addressed the Board.

- (1) Alex Kalathakis, 2 Kienia Road, stated that he is a direct abutter behind Mr. Decker's garage and has no problem with the encroachment and added that he is still on his own land.
- (2) Claudia Decker, 59 Robinson Road, stated that she is Paul's wife and a language teacher, that he explained his process and the discovery and is present to support her husband.

Being no one else to speak, public testimony closed at 7:13 PM.

Board reviewed the criteria for the granting of an Equitable Waiver of Dimensional Requirement. Mr. Buttrick explained the process, that a plot plan is required when filing for a foundation-only Building Permit (BP) and a certified as-built survey plan by a Licensed Land Surveyor (LLS) is required at the completion of the project, and that it was the as-built survey that uncovered that the corner of the foundation encroached the setback by less than two feet. Mr. Buttrick noted that it is a monolithic foundation and cannot be “moved” or “cut to fix” the encroachment as it is a single slab with overlap.

Mr. Fauvel complimented the Applicant on the completeness of the application and all the accompanying pictures, noted that the entire foundation is about a thousand square feet (1,000 SF) and the encroachment is less than 5 square feet (<5 SF), and it is evident that it was not done on purpose to save space and only discovered when getting a certified plot plan and was an innocent mistake and none of the abutters have any concern and the cost to correct that mistake is significant. Mr. Fauvel stated that the circumstances and evidence of this Case does not set a precedent.

Mr. Nicolas and Mr. Etienne concurred

Motion made by Mr. Fauvel and seconded by Mr. Nicolas to grant the Equitable Waiver of Dimensional Requirement as requested. Roll call vote was 3:0. Equitable Waiver granted.

Mr. Etienne noted the 30-day Appeal period. Mr. Decker inquired if the Building Permit for the framing had to wait out the Appeal period. Mr. Buttrick stated that the Building Permit for the framing could be issued with the caveat that it is subject to an Appeal for thirty (30) days from this motion and, in response to Mr. Decker’s next question, work could begin within the Appeal period but it would be at his risk.

IV. PUBLIC HEARING OF SCHEDULED APPLICATION BEFORE THE BOARD:

No requests were received for Board consideration.

V. REVIEW OF MINUTES: 08/26/2021 Minutes as edited

Mr. Etienne made the motion to table review of the edited Minutes to the 10/28/2021 meeting for the excused Members to be present. Mr. Nicolas seconded the motion. Vote was 3:0. Review deferred.

VI. OTHER

1. Upcoming Conferences

Mr. Buttrick referenced the book provided by Tracy Goodwyn on the Municipal Law Association at the Land Use Law conference for Saturday September 18, 2021 and noted that it is a good reference and encouraged the reading of it. Mr. Buttrick also noted the other material for the upcoming three-day conference and asked those who are interested in attending to notify Ms. Goodwyn for the purchase order and noted that it is being offered both in-person and remote.

2. October 28, 2021 Meeting & Need for Alternate Members

Mr. Etienne noted that he would be traveling and not able to attend. Need for Alternate Members reiterated. Mr. Fauvel again referenced the possibility of advertising and cost possibility.

Motion made by Mr. Nicolas, seconded by Mr. Fauvel and unanimously voted to adjourn the meeting. The 9/23/2021 ZBA meeting adjourned at 7:23 PM.

Respectfully submitted,

Brian A. Etienne, ZBA Acting Chairman