



TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Kara Roy, Selectmen Liaison

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MEETING MINUTES – August 25, 2022 - approved

The Hudson Zoning Board of Adjustment met on Thursday, August 25, 2022 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

Chairman Gary Daddario called the meeting to order, invited everyone to stand for the Pledge of Allegiance and read the Preamble (Exhibit A in the Bylaws) into the record describing the procedure for the meeting.

Clerk Normand Martin took attendance. Members present were Gary Daddario (Regular/Chair), Brian Etienne (Regular), Normand Martin (Alternate/Clerk), Marcus Nicolas (Regular), Dean Sakati (Alternate) and Edward Thompson (Alternate). Also present were Bruce Buttrick, Zoning Administrator, Louise Knee, Recorder (remote) and Kara Roy, Selectman Liaison. Excused was Jim Pacocha (Regular/Vice Chair). For the record, two (2) Alternates were appointed to vote for the two (2) open Regular seats – Alternate Sakati for Mr. Pacocha and Alternate Thompson for the recently vacated position of Mr. Dearborn.

Appreciation for Mr. Dearborn's years of service to the Board was implied. Ms. Roy confirmed that the Selectmen have recently held an interview for an Alternate and noted that anyone interested in the Regular position would need to apply.

III. PUBLIC HEARING OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

1. **Case 182-036 (08-25-22):** Patrick & Shannon Lacasse, **7 Fulton Street, Hudson, NH** requests two (2) Variances to permit an existing 2nd dwelling unit to remain as an Accessory Dwelling Unit (ADU) within the existing structure also used as a single family dwelling unit, with relief from the following provisions in the Hudson Zoning Ordinance [Map 182, Lot 036-000; Zoned Town Residence (TR)]:
 - a. A Variance for relief from the common interior access requirement between the principal dwelling unit and the ADU. [HZO Article XIII A, Accessory Dwelling Units; §334-73.3 E, Provisions]
 - b. A Variance to allow two (2) driveways to remain where a separate driveway for the ADU is not allowed. [HZO Article XIII A, Accessory Dwelling Units; §334-73.3 G, Provisions]

Mr. Buttrick read the Case and both Variances into the record, referred to his Staff Report initialed 8/17/2022 that outlined the history of the property from records found in the Town's record, noting the Assessor's record that the property was changed from a single family residence to an ADU (Accessory Dwelling Unit) in 2017, without any accompanying Town record or permit for the conversion to an ADU or a two-family, and that from the Assessing record, with a print date of 1/12/1993, that the indicated two-family designation was corrected to a single-family designation. The Town Engineer's review comment dated 8/4/2022 stated that the imagery shows two (2) driveways for this property for the past twenty four (24) years with no Planning Board approval or driveway permit for the second driveway. Mr. Buttrick noted that the Zoning Ordinance changed in 1994 to the TR Zone which allowed the two-family as an "existing non-conforming use" (grandfathered).

Shannon Lacasse introduced herself and her husband Patrick Lacasse, stated that they purchased the property in December 2000 with the existing apartment and second driveway and considering that they have been taxed for an ADU (Accessory Dwelling Unit), they presumed all was legal and were surprised to learn otherwise. Ms. Lacasse stated that they seek to legitimize the ADU and noted that it is the second story of their deck and shares the wall with their master bedroom and bathroom which would be extremely compromised if they have to connect the ADU and hence the need for a variance. Mr. Lacasse stated that has learned that Steve Shumsky built the apartment back in 1984. Ms. Lacasse stated that both driveways are in use, were in use when they bought the property, and they would like to be able to continue using both, hence the need for a variance, and noted that water pools in the second driveway and that the smaller driveway has a drain in it and if they are forced to eliminate it that drain would be in the middle of their yard. When asked if there were others in the neighborhood that have two (2) driveways, the overview map was displayed and Ms. Lacasse noted that 13 Reed Street has an ADU with two (2) driveways that Mr. Lacasse noted was just repaved.

Ms. Lacasse addressed the criteria for the granting of a Variance and the information shared included:

(1) *not contrary to public interest*

- The proposed addition is not contrary to public interest because the house had an ADU with two (2) driveways when the house was purchased in 2000, twenty-one (21) years ago.
- There has been no change to the footprint of the house and the driveways have not been changed.

(2) *will observe the spirit of the Ordinance*

- The structure meets almost all the provisions required for an ADU
- Property is located in the TR Zone which allows for an ADU
- The ADU is six hundred square feet (600 SF), has one (1) bedroom, living room, kitchen and bathroom
- The ADU has two (2) exits including an outside door and a fire escape
- There is only one (1) mailbox, one (1) utility service connection and the outside stairs and deck are on the side and back of the house so that when you look at the front of the house, it looks like a single-family house
- There are four (4) off-street parking spaces available

(3) *substantial justice done*

- Substantial justice would be done to the current property owners because the property was bought with the understanding that the ADU was an approved and legal part of the house and that the two (2) driveways were approved because they were already a functional and used part of the property
- Property has been owned for the past twenty one (21) years and there has been no change to its footprint in that time and both driveways remain in use
- Would like existing ADU to be a legal part of the home

(4) *not diminish surrounding property values*

- The ADU and second driveway have been existing parts of the property for over two (2) decades and has been assessed as such by the Town and is already included in the neighborhood assessment
- The neighborhood has several multi-family properties and even another ADU with two (2) driveways (13 Reed Street)

(5) *hardship*

- The existing layout of the building, which has existed as is since purchase twenty one (21) years ago, is the special condition
- The apartment has all aspects of an ADU except for the common area and that the house has two (2) driveways
- In order to create a common area, the second floor master bedroom and/or bathroom of the main house would be disrupted
- The ADU, master bedroom and bathroom share the same wall
- To create a common area, loss of function to the existing master bedroom or bathroom would result
- The second driveway has always been an existing part of the home and are an intricate part to the flow of the home
- Allowing the ADU, with these two (2) Variances, would allow continued use of the property that was purchased twenty one (21) years ago
- House was built in 1960

Public testimony opened at 7:30 PM. The following individuals addressed the Board:

- (1) Michael Shumsky, 16 Fulton Street, stated that he has been in the neighborhood for seventy-three (73) years and has no objection to either variance.

Ms. Roy asked if it is known when the second driveway was built. Mr. Buttrick stated that they both existed in 1998. Mr. Shumsky stated that those driveways have always been there and added that there once was a garage, but that is now gone but the driveway remained.

- (2) Emily Eastman-Brown, 22 Maple Avenue, asked if the driveways would remain in the same location if there were ever to be replaced. Mr. Lacasse confirmed that his intention is to keep them where they are, perhaps with a slight change to the right side depending on the water concerns. Ms. Eastman-Brown stated that she has no issues with either variance.

- (3) Mary Ellen Bourassa, 16 Fulton Street, stated that ADU's are important, that there are lots of apartments in the neighborhood and this one is not detrimental to the neighborhood.

Public testimony closed at 7:36 PM

Board discussion ensued and existing Town records and Permits were reviewed. General agreement was reached that the record is incomplete and that several documents were illegible and that there existed discrepancies, including Building Permit #2005-501 dated 5/4/2005 for the addition of a first floor screened porch with a second floor addition to a bedroom with accompanying Electric Permit #194-06.

It was noted that it is important that the appropriate relief being sought is identified, and the question answered whether the apartment existed in 1994 before the Zone change to TR thereby having it become a non-conforming 'grandfathered' use, and whether a separate dwelling unit should remain.

Mr. Etienne asked if the tax record in 1994 identified it as a two-family or an ADU. Mr. Buttrick stated that those records only go back to 2014, noted that the construction is a two-family by configuration, and added that ADUs are allowed in the TR Zone and is why the Variances are being sought to legitimize and allow continued use of the second dwelling unit. Mr. Buttrick stated that the "common area" requirement could readily be satisfied by just adding an adjoining door and that Planning Board approval of a second garage, as well as a Driveway Permit, would also be needed. Mr. Lacasse stated that it is their preference not to connect the two dwelling units, not even if the requirement could be satisfied if they insert a "door".

Ms. Roy asked how the second dwelling unit has been used and whether there have been any caregiver services provided. Mr. Lacasse responded that David Murray was living there when they purchased the property and stayed until his death, then a friend of Ms. Lacasse lived there for four (4) years, then his friend after for another four (4) years and currently their nephew resides there while he is building his own house. Ms. Lacasse confirmed that they have never been 'caretakers' to the tenants.

Ms. Lacasse provided a copy of the 1993 tax record with the property listed in the R-2 (Residential-Two) Zone and identified as "two-family".

Discussion arose. With the new information identifying the structure as a two-family prior to the change in Zone, the "use" became a non-conforming use protected by 'grandfather' status. Mr. Etienne noted that two (2) driveways are allowed for duplexes. Discussion on how to proceed followed

Mr. Etienne made the motion to neither grant nor deny the requested Variances as based on the new evidence submitted find that the two-family use existed prior to the Zone change in 1994 and thereby its two-family use became a non-conforming (grandfathered) use and that the two (2) requested variances are not required. Mr. Sakati seconded the motion. Roll call vote was 5:0 with each Member confirming the same finding.

Mr. Buttrick confirmed that a Notice of Decision regarding the Board's decision would be produced as well as filed in the Town's Land Use Folder and become part of the Town's property file record. Mr. Daddario noted the 30-day Appeal period.

Board recessed for four (4) minutes at 8:01 PM.

2. **Case 167-031 (08-25-22):** Shanna Moreau, **128 Highland Street, Hudson, NH** requests a Variance for a proposed installation of a 15 ft. x 30 ft. above ground residential pool to be located 10 feet into the side yard setback leaving 5 feet where 15 feet is required. [Map 167 Lot 031-000; Zoned Residential-Two (R-2); 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 initialed 8/17/2022 noting that it is an existing non-conforming corner lot based on lot size and front setback to Highland Street with has access/frontage on Bonnie Lane and is encumbered by a significant and unusable easement and an Eversource ROW (Right-of-Way). Town Engineer provided four (4) comments: (1) significant size Liberty Utilities natural gas station with a possible gas main under the structure that required confirmation; (2) significant elevation drop between 128 & 126 Highland Street which will create a challenge during construction; (3) location of pool discharge hose needs to be identified; and (4) applicant should consider relocating proposed pool behind the house

Shanna Moreau introduced herself as the property owner and stated that she seeks a variance to locate an above ground pool into the side yard setback and noted that even though the application states that it will be ten feet (10') into the required fifteen foot (15') setback, that because the pool placement is parallel to the house and not parallel to the property line, the other end of the pool would encroach only seven feet (7').

Ms. Moreau provided a brief history of this project, stated that originally the pool was to be located in the backyard parallel to the existing deck and house, that over the years they have been preparing the land, cutting trees and leveling, that they were aware of the easement line and their original plan had no infringements; however due to issues with the hill, the excavator and the contractor made a field call and took the safest option to correct and the pool excavation traversed into the easement by a few feet. Eversource immediately took action to cease our installation. The pool site has had to be relocated and there were very limited options available. The pool had to be rotated ninety (90) degrees to run parallel to the side of the house and shifted to the side yard. Considering the existing deck, they encroach the side yard setback

Ms. Moreau stated that she has been working with the utilities, received confirmation from Liberty that they do not have a gas line on/under her property and all is now okay with Eversource. Ms. Moreau added that during this process, she also discovered that the fence was not installed at her property line, which had to be corrected and limited the amount of usable area and increased the encroachment.

Ms. Moreau next addressed the criteria for the granting of a Variance and the information shared included:

- (1) *not contrary to public interest*

- Not contrary to public as there is only one (1) direct neighbor on that side of the house
 - Pool will not be visible as a six foot (6') high fence will be installed
- (2) *will observe the spirit of the Ordinance*
- Not asking to disregard the Ordinance but rather leniency to be able to place the pool ten feet (10') closer to the property line
- (3) *substantial justice done*
- Eversource shut down the pool installation in backyard after the yard had been excavated.
 - Pool installer moved the plan a few feet to accommodate the hill and inadvertently made the new location encroach over the easement line by a few feet
 - Over \$10,000 has been spent on this project so far and the variance would allow this not to be a total loss
- (4) *not diminish surrounding property values*
- Pool will not be visible with the installation of a six foot (6') vinyl fence
 - This project will add value to my property which, in turn, should add value to the neighborhood
- (5) *hardship*
- With almost one (1) acre of land, there is only about ten percent (10%) that can be used with the easements and hill slope in the backyard
 - Have spent seven (7) years and upward to \$15K to remove trees and fix yard in preparation for this project
 - The easement on the property cuts off 90% of the backyard leaving a very small area available for recreational use
 - The location selected is the only possible remaining option for the pool placement
 - We recently learned that the side fence line is not on our actual property line and had to be moved in, leaving us even less usable space in our backyard
 - The terrain makes much of the open available space in the backyard unusable with its downward slope
 - The 15' setback requirement leaves what useable space there is much smaller
 - The easement was incorrectly explained when the property was purchased
 - The only option left is to place the pool at the side of my house and that encroaches into the Town's established side yard setback and needs this variance

Mr. Sakati noted the Town Engineer's comments regarding the elevation drop and concern for the location of the pool discharge hose. Ms. Moreau stated that the discharge hose will now be on the left side of the pool.

Public testimony opened at 8:27 PM. No one addressed the Board.

Mr. Thompson inquired about the fence. Ms. Moreau stated that it was already there but during this whole process discovered that it was placed on her neighbor's land and had to be moved to her property line.

Mr. Etienne asked if a smaller pool could be considered to reduce some of the side yard impacts. Ms. Moreau responded that it could but it is not what they want and added that it is already half built.

Board discussed and reviewed the additional information submitted.

Mr. Etienne made the motion to grant the Variance as requested as it is not contrary to the public interest, is a common accessory use for a home so justice is done, observes the spirit of the Ordinance, is a temporary structure, should not affect surrounding property values and that hardship is met by the utility easements and slope of the land leaving very little land to place the pool. Mr. Sakati seconded the motion for the same reasons. Roll call vote was 5:0. Variance granted. The Applicant was informed of the 30-day Appeal period and requested to submit a revised Building Permit with new pool placement and dimensions (numbers).

IV. REQUEST FOR REHEARING: No requests received for Board consideration.

V. REVIEW OF MINUTES: 07/28/22 edited Draft Minutes

Board reviewed the edited draft Minutes presented. Mr. Martin questioned the “(sp?)” in Line 209 for the individual that spoke when Public Testimony was opened. Mr. Buttrick confirmed that the individual was not an abutter and a review of the recording offered no further insight. Two (2) other typographical errors were noted as needed – the un-capitulation of “rezone” (Line 212) and capitulation of “Public” (Line 214). Motion made by Mr. Etienne, seconded by Mr. Nicolas and unanimously voted 5:0 to approve the 7/28/2022 Minutes as edited and amended

VI. OTHER:

1) Resignation of Regular Member Gary Dearborn

Mr. Dearborn resigned after the last meeting. Ms. Roy noted that if any Alternate Member is interested that they would need to apply through the Board of Selectmen (BoS) and added that BoS have interviewed one candidate for an Alternate position.

2) ZBA Training/Workshop- Member availability and tentative dates

Mr. Buttrick sent three (3) possible dates to the Municipal Assoc for a two-hour training workshop beginning with Decisions/Motions – September 8, October 6 or October 13 – and asked the Members to reserve those dates pending confirmation.

3) Notice of Hearing date from Superior Court – 8 Washington Dr. appeal.

Mr. Buttrick referenced the email from Town Counsel with its invite to attend.

Motion made by Mr. Etienne, seconded by Mr. Nicolas and unanimously voted to adjourn the meeting. The 8/25/2022 ZBA meeting adjourned at 8:57 PM

Respectfully submitted,

Gary M. Daddario, ZBA Chairman