



TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Kara Roy, Selectmen Liaison

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MEETING MINUTES – May 11, 2023 - approved

The Hudson Zoning Board of Adjustment met on Thursday, **May 11, 2023 at 7:00 PM** in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall, 12 School St., Hudson, NH

- I. CALL TO ORDER**
- II. PLEDGE OF ALLEGIANCE**
- III. ATTENDANCE**

Acting Chairman Normand Martin called the meeting to order at 7:00 PM, invited everyone to stand for the Pledge of Allegiance and read the Preamble (Exhibit A in the Board's Bylaws) regarding the procedure and process of the meeting.

Members present were Tristan Dion (Alternate), Tim Lanphear (Alternate), Normand Martin (Regular/Vice Chair), Marcus Nicolas (Regular), Jim Pacocha (Regular), Dean Sakati (Regular) and Edward Thompson (Alternate/Clerk). Also present were Bruce Buttrick, Zoning Administrator, Louise Knee, Recorder (remote) and Dillon Dumont, Selectman Liaison. Excused was Gary Daddario (Regular/Chair). Alternate Dion was appointed to vote.

Mr. Martin directed the Board's attention to the New Hearing Case first as notice of withdrawal was received.

IV. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

NEW HEARING:

1. **Case 198-147 (05-11-23):** Roderick LeFort, Manager, DBA Proscapes, LLC, 126 Talent Rd., Litchfield, NH requests a Variance **for 100 Lowell Rd., Hudson, NH** to allow the operation of a landscaping business on the lot with a proposed development as shown on ZBA Exhibit Plan dated 3/16/2023. The proposed use: Contractor's yard, landscaping business (E-15) is not permitted in the Business Zone. [Map 198, Lot 147-000, Zoned Business (B); HZO Article V: Permitted Uses; §334-21, Table of Permitted Principal Uses.]

Mr. Martin read the Case into the record and stated that an email dated 5/9/2023 was received from Atty. Carroll to withdraw the application without prejudice. Motion made by Mr. Pacocha and seconded by Mr. Dion to accept requested withdrawal without prejudice. Roll call vote was 5:0. Case withdrawn without prejudice.

NEW & DEFERRED HEARING:

2. **Case 165-139 (05-11-23):** Kevin A. & Lucie Y. Jeffery, **99 Webster St., Hudson, NH [Map 165, Lot 139-000, Zoned Business (B)]** requests two (2) Variances as follows:

Mr. Buttrick read both Cases into the record noting that this Case has two variance requests – one (dimensional relief) haven been previously noticed, and a new one (Zone/Use relief), referenced his Staff Report initialed 4/28/23, noted that the site has been surveyed by Gregg R. Jeffrey, LLS, depicting nearly half of the existing dwelling to be in the front setback and the plan prepared identifying the proposed expansion of the existing deck further into both the front and side setback and a proposed new 14' x 32' structure within the building envelope. Mr. Buttrick also noted that In-House comments have been received from the Fire Department, the Town Engineer and the Town Planner. The Fire Marshall noted that Building Permits will be required prior to construction. The Town Engineer made three (3) comments: (1) proposed work related to the deck is within the 50' wetland buffer; (2) the proposed plan does not show access from the road to the proposed new structure/garage; and (3) based on the 2022 flyover it appears that the Applicant is trespassing on private property and on Town easement. The Town Planner's comment noted that if the Variance is granted, the proposal will also require a Wetland Conservation District Conditional Use Permit from the Planning Board.

- a. **(New):** To allow a proposed 805 sq. ft. deck on an existing non-conforming use (residential) within the Business District. [HZO Article VIII: Nonconforming Uses, Structures and Lots; §334-29, Extension or enlargement of nonconforming uses and HZO Article V: Permitted Uses; §334-21, Table of Permitted Principal Uses.]

Lucie Jeffery of 99 Webster Street introduced herself and addressed the criteria necessary for the granting of a Variance. The information shared included:

- (1) *not contrary to public interest*
 - the neighborhood is currently used as Residential
 - the proposed deck expansion is with the same use, just a larger footprint
- (2) *will observe the spirit of the Ordinance*
 - the deck expansion is still keeping the residential use which is an existing non-conforming use
 - the neighborhood is residential
- (3) *substantial justice done*
 - the current use has always been residential and the deck expansion is allowing us and others the ability to use/enjoy our property as we intended when we purchased, for residential use
- (4) *not diminish surrounding property values*
 - the deck expansion is an improvement with new construction and more safety, which adds value to all properties in the neighborhood
- (5) *hardship*
 - the Town created this hardship on this existing property that has been used as a residential to a Business District, hence making any continued residential use of this property “non-conforming”
 - this property has been a residential use since 1931, before Zoning

Not Official until reviewed, approved and signed.

Approved 6/22/2023 as edited and amended.

- this is a correct and reasonable request for a residential use

Public testimony opened at 7:20 PM. No one addressed the Board.

Mr. Nicolas asked and received confirmation that this is the Applicant's primary residence. Mr. Sakati asked about the detached building on the plan and Ms. Jeffrey responded that it would be a sunroom, perhaps a music room, and in her mind that is Phase II as the deck expansion is Phase I.

Mr. Sakati noted that the deck appears to be quite large. Ms. Jeffrey stated that it is not that large and distributed several pictures taken from the deck in every direction to show how remote it is and added that the deck today is approximately 760 SF and the plan is to add 3' to the width and 7' to the back.

Mr. Pacocha questioned the picture with the pavers and whether the wall at the end of the driveway was part of a foundation or just a retaining wall and to address the car that appears on Town property in the aerial picture. Ms. Jeffrey stated that the picture with the pavers is approximately seven, that the wall at the end of the driveway is just a retaining wall and that they do not access the abutting Town property or have an illegal driveway onto it, that the car in the picture actually died there and was there for about seven months.

Mr. Thompson questioned the expansion of the deck and stairs into the front setback and wetland buffer. Ms. Jeffrey stated that approximately 48% of her home is in the front setback, that the expansion of the stairs and deck was a safety and beautification consideration and that they have learned will need to pursue a Conditional Use Permit (CUP) with the Planning Board. Kevin Jeffrey, 99 Webster Street, asked and received confirmation that they can replace existing non-conformities but cannot expand without first obtaining a Variance or a CUP. Ms. Jeffrey stated that they are willing to give up the idea of expanding in the front. Mr. Buttrick noted that a revised plan will need to be submitted.

Mr. Dion expressed concern with the slope in the front of the house and only twenty eight inches (28") available to the side property line when the deck is expanded to get construction materials and work trucks to construct the detached structure and noted that there is to be no trespassing onto the drainage easement as that is on private property. Mr. Buttrick suggested allowing at least four feet (4') from the edge of the expanded deck to the property line. Ms. Jeffrey stated that she understood but foresees no difficulty with bringing materials and tools over the retaining wall.

Mr. Dion made the motion to grant the Use Variance with the stipulation that the plan be revised so that there is no additional encroachment into the front setback and wetland buffer than what currently exists. Mr. Pacocha seconded the motion.

Mr. Dion spoke to his motion noting that it has been a residence since construction in 1931, that it was once in the residential zone but Zoning changed and is now in the Business Zone and construction of a deck will not impede public rights and does not alter a mostly residential neighborhood and will not diminish property values and would normally be allowed if Zoned

Residential as a deck is a reasonable Use. Mr. Pacocha spoke to his second noting that the proposal does not conflict with the purpose of the Ordinance because it is a residence that was once in a Residential Zone and later changed to Business Zone, that the proposed Use is a residential use causing no harm to the general public or diminish any property values.

Roll call vote was 5:0. Variance granted with one (1) stipulation. The 30-day Appeal period was noted along with the need for a revised plan.

- b. **(Deferred from 04-27-23):** To allow the proposed deck expansion to encroach 12.7 feet into the side yard setback leaving 2.3 feet where 15 feet is required and 30.8 feet into the front yard setback leaving 19.2 feet where 50 feet is required. [HZO Article VII: Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements.]

Both Lucie Jeffrey and Kevin Jeffrey sat at the Applicant's table. Lucie Jeffrey addressed the criteria for the granting of a Variance. The information shared included:

(1) *not contrary to public interest*

- granting the request will not be contrary to public interest because it will become more beautiful, safer and ensure that no injuries comes or threatens public health
- the deck cannot be seen by passers by, overlooks a wooded lot and will better suit the home
- the public, such as delivery people and emergency people will benefit more

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

- the request does not conflict with the "spirit of the ordinance"
- it will add character and beauty to the home and therefore the public and neighborhood
- it will be safer to all that may use it or approach it

(3) *substantial justice done*

- substantial justice would be done to the homeowners who would be so grateful
- the property value would increase and bring great joy
- the public will not, however, lose any benefits already in existence or have any harm in any way come to them if granted

(4) *not diminish surrounding property values*

- there will not be a diminution of value to any surrounding property if granted
- it will add curb appeal and value to the home and neighborhood

(5) *hardship*

- if the ordinance is enforced and enlarging the deck is not permitted, it would not serve the purpose of the restriction fairly and reasonably
- we will cause no harm to any neighbor, public passerby or alter the character of the neighborhood
- we will not inflict any injury to public rights not threaten the health, safety or welfare of public rights
- we, as homeowners who are faithful tax payers and want the best for ourselves and the community would be safer and happier
- we have elderly family and sickness that include wheelchairs and walkers and it is a hardship to accommodate these health mechanisms of the existing deck

- the special conditions of the property would “allow” the use to be reasonable by giving by having ourselves and many of our family the use of wheelchairs and walkers and safer accommodations
- what makes this property characteristically different from others is that it is adjacent to a vacant and unbuildable piece of property with a thirty foot drop
- the lot is secluded on almost three sides. Except the back abutters, Kelly and Norm Nantel, 16 Summer Ave.
- the home was built in 1931 and on a hill that is private
- Zoning was nonexistent back then as were setbacks
- House is actually sitting on a strange property zoned as business, not residential

Both Mr. and Ms. Jeffrey stated that they could consider increasing the distance from 2.3’ to 4’ from the property line.

Public testimony opened at 8:04 PM. No one addressed the Board.

Mr. Nicolas expressed concern for emergency access and asked if increasing the distance to five feet (5’) should be considered. Mr. Martin stated that with the slope, foot access only is possible. Mr. Dumont stated that it is a preexisting house and a deck is not asking for much and stated that he does not see the benefit to increasing the distance to four feet (4’) from the property line. Mr. Buttrick stated that with the conditional granting of the previous Use Variance, the Applicant can now rebuild and expand the current deck if the Dimensional Variance is granted, whether it is to be 2.3’ as per the Plan prepared or to another number of feet per condition of this approval. Mr. Lanphear asked and received confirmation that the setback in a residential zone, per the Ordinance, is fifteen feet (15’). Mr. Dion expressed concern that if a fence is ever installed at the property line, that 2.3’ would be quite tight to grant access to the backyard. Mr. Lanphear asked if electricity was planned for the new structure and Mrs. Jeffrey responded that she was hopeful that it would be provided.

Mr. Nicolas made the motion to grant the Variance with the stipulation that the deck be placed a minimum of four feet (4’) from the property line as indicated on Exhibit A (created tonight) on the modified plan stamped by Gregg R. Jeffrey, LLS of Jeffrey Land Survey, LLC changing the distance of 2.3’ to 4’ from the deck to the property line and eliminating the expansion of the deck and staircase into the front yard setback / wetland buffer. Mr. Sakati seconded the motion.

Mr. Nicolas spoke to his motion noting that the granting will not be contrary to public interest, that the proposed use will not alter the character of the neighborhood or diminish property values, that there is no threat to public health, safety or welfare, that the benefit to the property owner does not outweigh any harm to the general public, that the hardship is caused by the layout of the land and the Zone change to the Business District and that the proposed use is reasonable. Mr. Sakati spoke to his second noting that a residential deck is keeping with the character of the neighborhood, that it is consistent with the spirit of a residential property and allows for outdoor recreation, that justice is done by approving with no harm to the neighborhood, that the new deck will enhance surrounding property values in the neighborhood, that there was no public opposition presented and that hardship

is present because the property was rezoned to Business and the layout of the land and lastly, a deck is reasonable and consistent with residential properties.

Roll call vote was 5:0. Variance granted with one (1) stipulation.

The 30-day Appeal period was noted. Ms. Jeffrey inquired when Permits could be obtained and Mr. Buttrick responded that it could be conditionally granted at any point, however, if pulled before the Appeal period has expires, there is a risk of an appeal even though no one spoke at the meeting.

V. REQUEST FOR REHEARING:

There were no requests presented for Board consideration.

VI. OTHER:

No other business was presented for Board consideration.

Motion made by Mr. Nicolas, seconded by Mr. Sakati and unanimously voted to adjourn the meeting. The 5/11/2023 ZBA meeting adjourned at 8:19 PM.

Respectfully submitted,



Normand G. Martin, Acting ZBA Chairman