

ZONING BOARD OF ADJUSTMENT
268B MAMMOTH ROAD
LONDONDERRY, NH 03053

DATE: MAY 15, 2013

CASE NO.: 5/15/2013-1

APPLICANT: TROY M. AND SARAH K. WARD
28 HAYWOOD ROAD
LONDONDERRY, NH 03053

LOCATION: 28 HAYWOOD ROAD; 18-31-9; AR-I

BOARD MEMBERS PRESENT: JIM SMITH, CHAIR
LARRY O'SULLIVAN, VOTING MEMBER
JAY HOOLEY, VOTING MEMBER
NEIL DUNN, CLERK

REQUEST: VARIANCE TO ALLOW AN ABOVE-GROUND POOL WITHIN THE REAR
PROPERTY LINE SETBACK WHERE A MINIMUM OF 15 FEET IS REQUIRED
BY SECTION 2.3.1.3.3.

PRESENTATION: CASE NO. 5/15/2013-1 WAS READ INTO THE RECORD WITH NO PREVIOUS CASES LISTED.

JAMES SMITH: Okay, before we start, you understand the implication of only having four members here?

SARAH WARD: Yes.

JAMES SMITH: You need to get three positive votes...

SARAH WARD: Yes.

JAMES SMITH: You have the option, if you wish, you could come back next month and hopefully, we would have five, which increases your odds. Then you need three out of five versus three out of four. It's your choice.

SARAH WARD: No, I think we'd rather go.

JAMES SMITH: Okay. You want to identify yourself and...?

SARAH WARD: Sure. My name is Sarah Ward. My husband, Troy Ward, and I live at 28 Haywood Road.

JAMES SMITH: Okay.

SARAH WARD: I'm not exactly sure when I should be...

48 JAMES SMITH: Okay, you have the application where you went over the five points of law.
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50 SARAH WARD: Yes.
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52 JAMES SMITH: You want to give us some background, then go into those five points.
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54 SARAH WARD: Okay. My husband and I are looking to put in 21 foot above ground pool. We have a currently
55 fenced-in area behind the house. When the builder built our house, he put it as far back as he possibly could.
56 We're not sure why, but the lot is very rectangular, as you can see. And it abuts Old Derry Road. So we're
57 looking for a variance to go within our 15 foot rear setback to fit the pool in the existing fenced-in area.
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59 LARRY O'SULLIVAN: Ms. Ward, may I ask a couple of questions?
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61 SARAH WARD: Yes.
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63 LARRY O'SULLIVAN: Okay. What's behind your lot?
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65 SARAH WARD: It's owned by a corporation and it's completely wooded. My understanding is it's a buffer
66 between the two subdivisions.
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68 LARRY O'SULLIVAN: All we see is trees in the picture, so...
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70 SARAH WARD: Yes, that's all trees behind the fenced-in area.
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72 LARRY O'SULLIVAN: We have pictures that show a child on a little scooter-type thing...
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74 SARAH WARD: I'm sorry, he got in the way.
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76 LARRY O'SULLIVAN: But it gives us a better...
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78 SARAH WARD: He's one of the ones we're looking to put the pool in for.
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80 LARRY O'SULLIVAN: Okay. So in that fence that we see in that picture...
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82 SARAH WARD: Mm-hmm.
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84 LARRY O'SULLIVAN: ...would the pool be inside it or outside?
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86 SARAH WARD: No, the pool would be within the currently fenced-in area.
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88 LARRY O'SULLIVAN: Okay. What's on the other side of the fenced-in area? Somebody else's yard?
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90 SARAH WARD: I'm trying to think of which...
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92 LARRY O'SULLIVAN: I see a swing set...

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SARAH WARD: Oh, yes. So if you're...we're looking to put the pool behind our house...

LARRY O'SULLIVAN: Mm-hmm.

SARAH WARD: ...which is where the current fence is. If you look to the left, that's headed towards Old Derry Road and that's where our current playground is. It's completely open. To the right of that is our...the buffer. I guess it's owned by the corporation. That's all completely wooded. So we're looking to kind of contain the pool in our current area. Old Derry's kind of a busy road that goes straight into Manchester. So our concern is that having it in that open area that would not impede on the setback would be completely open to anyone driving in that area.

LARRY O'SULLIVAN: It looks like you have a large area there that's open.

SARAH WARD: It is. The problem with that section, again, is because it's completely open. There's no fence. There's no electrical. I can't see it from the house. There's no way to look at it, for the kids.

LARRY O'SULLIVAN: So the buffer that you would be intruding on is the rear buffer, and the opposite...but beyond that is a buffer area for a corporation?

SARAH WARD: It's just owned by a corporation. What I understood from the...when I pulled my plot plans, was that it's owned by a corporation. Brook Hollow Corporation, I believe. And they own the subdivision behind me and I believe it's non-buildable land. I'm not exactly sure.

JAY HOOLEY: Larry, it looks like it's a 43 acre parcel, from which Hunter Mill Way was subdivided out and that appears to be like a finger between the two neighborhoods that's attached to a really large piece of land that goes out behind Hunter Mill Way and to a great extent, off to the further side of Hunter Mill Way, if you pull it up on the GIS.

LARRY O'SULLIVAN: So how far into that setback were you planning on putting a pool?

SARAH WARD: Into the 15 feet?

LARRY O'SULLIVAN: Mm-hmm.

SARAH WARD: To keep our ten feet from the house with the 21 foot, we would need five feet, which is currently in the fenced-in area.

LARRY O'SULLIVAN: So then there would be a ten foot buffer remaining?

SARAH WARD: Yes.

JAY HOOLEY: But in viewing the house, immediately behind your home is a rock...

NEIL DUNN: Wall.

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JAY HOOLEY: Yeah.

SARAH WARD: Yeah, it's a pile of rocks. I don't know its intent. The builder put that, I'm assuming, as our property line.

JAY HOOLEY: But in other words, the land...

SARAH WARD: Right. Yeah, it's not...

JAY HOOLEY: There's quite a slope. It's not as if another structure, I don't believe, is going to crop up in that...

SARAH WARD: No, I don't think it would be possible unless you...

JAY HOOLEY: ...location.

SARAH WARD: Yeah. It's a big little hill.

JAY HOOLEY: It's basically almost like a berm.

SARAH WARD: Yeah.

LARRY O'SULLIVAN: One of the things I think you may have heard us ask Mr. Parent before you [Case No. 3/20/2013-1] was that had you considered all the alternatives? Because it would be against our policy and probably illegal for us not to have asked about the alternatives.

SARAH WARD: We actually have. I mean, if you look just to the right of that, there's some sort of weeping drainage system that runs off underneath. So if we were to put it towards the...if you're looking at our plot, to the right and forward, we'd impede on that drainage from the basement. Looking left, again, there's an existing playground. It's completely open. It would not be at all aesthetically pleasing to any of my neighbors to see a big old open pool there. I'd be concerned having Old Derry right there and not being able to see it from our house. Not to mention the expense of putting in a new fence and running the electrical under the driveway.

LARRY O'SULLIVAN: Hey, it's not against the conservation district, so, so far, so good.

JAMES SMITH: I think part of what we're looking at is in trying to...in granting a variance, it goes with the land from that point forward.

SARAH WARD: Mm-hmm.

JAMES SMITH: So we have to be careful about just...you know, when we grant a variance, we have to realize it's going to last for quite a...you know, so if there's any other location on the property that could be utilized for this purpose, it's in our purview to look at those issues and try to see if we can come up with something that could work and meet the regulations as they're written.

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SARAH WARD: Mm-hmm.

JAMES SMITH: Granted, you have kind of a long, skinny lot.

SARAH WARD: Right.

JAMES SMITH: Which is good in a way because one of the criteria you have to look at is what is unique about your property versus other pieces of property...

SARAH WARD: Right.

JAMES SMITH: ...to justify this.

SARAH WARD: Yeah.

JAMES SMITH: Because that would play into the hardship part of it.

SARAH WARD: Right.

JAMES SMITH: So...

SARAH WARD: There's a...

LARRY O'SULLIVAN: She hasn't read anything in the way of her...

JAMES SMITH: I know, but I'm just throwing that out as part of what we're looking at.

SARAH WARD: Right.

JAMES SMITH: Okay, having gone through that, why don't you go through the five points of law and then we'll go from there.

SARAH WARD: Okay. Should I just kind of read it?

JAMES SMITH: Sure.

SARAH WARD: Okay. The variance will not be contrary to the public interest. We do not feel that putting an above ground pool five feet into the 15 foot rear setback had an adverse effect on the public interest. Our proposed pool placement is the least intrusive placement on our property. The spirit of the ordinance is observed. The purpose, as we understand them, is to prevent infringement onto neighboring property and preserve the character of Londonderry. That is what we are trying to do by placing the pool behind our house. Substantial justice is done. If we are granted this variance, our family's enjoyment, our real estate value, our budget, while still observing all the requirements will reflect substantial justice. We feel moving the pool to another location would be unjust. The values of surrounding properties are not diminished. We are asking for

228 this variance to make sure that the surrounding properties are the least impacted by the pool. Our lot is very
229 long and narrow and putting the pool in the back will result in a more aesthetically pleasing layout for us and
230 our abutters. Number five, the first point, no fair and substantial relationship exists between the general
231 public purposes of the ordinance provision and the specific application of that provision to the property. And
232 in our case, we feel that the long and narrow shape of our lot and the location of our lot to Old Derry Road
233 and the location of the house combine to form a special circumstance that makes our property different from
234 others in the town. The proposed use is reasonable one. We are asking to put a 21 foot above ground pool
235 for our family with three young boys to use safely and enjoy. Part (B), if the criteria of subparagraph (A) are
236 not established, an unnecessary hardship will be deemed to exist if and only if owing to special conditions of
237 the property that distinguish from other properties in the area, the property cannot be reasonably used in
238 strict conformance with the ordinance and a variance is therefore necessary to enable a reasonable use of it.
239 We are a corner lot and putting an above ground pool in the area to the left of the house would not only be
240 prominently visible to Old Derry Road, but also to each of our abutters. It would also put hardship on us to
241 run electrical, build a new fence. If we were to move the pool location to the right of the proposed placement,
242 it would require moving the existing fence, extensive leveling of the sloping areas, as well as relocation of the
243 drain of the basement drainage system, which empties there.

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245 JAMES SMITH: Okay. Questions?

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247 LARRY O'SULLIVAN: Well, she covered everything as far I'm concerned.

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249 JAMES SMITH: Neil?

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251 NEIL DUNN: Richard, if we give a variance and they sell the house and the pool is taken down and a bigger one
252 can be put up without going to you?

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254 LARRY O'SULLIVAN: If we put a restriction on it to five feet...

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256 NEIL DUNN: Well, yeah. Well, that's...

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258 RICHARD CANUEL: No. If they take the pool down and install a new pool, that would still require a permit, so
259 they would have to come to my office.

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261 NEIL DUNN: Let's say it had a tear or something and...I mean, theoretically, they would need to come to you.
262 I'm trying to get my hands around 21 feet and five feet and because they have a variance and we can put the
263 restriction 'no larger than 21 feet, no more than five feet encroachment'...

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265 SARAH WARD: It actually wouldn't be possible to put a bigger pool in because of that rock slide and where the
266 existing fence is. Twenty one feet is all you can do.

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268 JAY HOOLEY: But I think if we limit the...to no more than a five foot intrusion into the rear setback...

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270 LARRY O'SULLIVAN: It accomplishes the same thing.

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272 JAMES SMITH: Yeah.

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JAY HOOLEY: Yeah.

NEIL DUNN: Right. And my bigger concerns was that because now it has a variance for a pool in the setback, so we do the five foot, but they could go bigger and go off to the side. I was trying to get a...if it was a liner replacement, there'd be no permit?

RICHARD CANUEL: Correct.

NEIL DUNN: If it was a "new pool," theoretically, there should be a permit also.

RICHARD CANUEL: That's right.

NEIL DUNN: I'm good.

JAMES SMITH: Anything else? At this point, I'll open it up . Anyone in favor of this? Anyone with questions or in opposition? Okay.

LARRY O'SULLIVAN: Anything to add, Ms. Ward?

SARAH WARD: I'm sorry?

LARRY O'SULLIVAN: Anything to add?

SARAH WARD: Please?

[Laughter]

JAMES SMITH: "Please," okay.

SARAH WARD: Pretty please? No, our intent is not to do anything to the integrity. Our intent is to put a pool on a very oddly shaped lot without financial burden.

JAMES SMITH: Okay.

SARAH WARD: And people jumping in.

JAMES SMITH: If we have no other input, we'll close the public hearing at this point and we'll take it under deliberation.

DELIBERATIONS:

LARRY O'SULLIVAN: I think we found that it would be, and agree with her finding that it would be expensive to do something to the side where there's an open area, that it wouldn't fit well, that there would be the intrusion of the traffic on Old Derry Road, which, again, is a busy road, and that where it is would be less

318 visible, would have next to no impact on any neighbors, I can't see how they can even build on the lot next
319 door. I don't see how that's, in this circumstance...I think that's sufficient to cover all of the substantial
320 justice...
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322 JAMES SMITH: Yeah. I think the unusual shape of the lot, too.
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324 LARRY O'SULLIVAN: All of those things add to it, right.
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326 JAMES SMITH: Yeah.
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328 LARRY O'SULLIVAN: And that makes it kind of unique.
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330 NEIL DUNN: Well, I will say, when I drove by there, I said, "Oh my gosh, look at all that land they could put it
331 in." But then as I got lost and had to get back out on Derry Road, I turned around a couple times because it's a
332 U-shape and Derry Road is quite busy and it would be very visible there. So I think the applicant did a good job
333 of hitting the five points and that's really what we're legally supposed to follow.
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335 JAMES SMITH: Right.
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337 NEIL DUNN: The public interest, you know, that putting it there keeps it out of the visual thing. The spirit is to
338 prevent infringement into neighbors. You know, according to number two, the spirit of the ordinance and
339 again, with that sloping hill in the back, there's no way they're going to be impacted by it. I guess I shouldn't
340 say no way, but they're not going to be able to build that close to it so that it, you know, it is a kind of unique
341 property in that way.
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343 LARRY O'SULLIVAN: It's a natural restriction on that other lot, so...
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345 NEIL DUNN: Exactly. So that kind of takes it out. It won't diminish surrounding property values. I think the
346 applicant made a good argument that maybe being less visible would actually even help in that case, so I guess
347 just the only thing would be the limitation to five foot within the setback...
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349 LARRY O'SULLIVAN: Or we can just limit it to a 16 foot pool. Just teasing.
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351 NEIL DUNN: The five foot setback and...
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353 LARRY O'SULLIVAN: As a limitation?
354 NEIL DUNN: Yeah.
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356 LARRY O'SULLIVAN: I agree with the limitation. Restriction, that is.
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358 JAMES SMITH: No more encroachment than five feet into the...
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360 NEIL DUNN: Rear setback.
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362 JAMES SMITH: Rear setback.

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364 NEIL DUNN: I thought they did a good job of...

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366 JAMES SMITH: Who wants to make the motion?

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368 LARRY O'SULLIVAN: Well, did you want...Jay, are you all set with it?

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370 JAY HOOLEY: I'm fine with it. You more than covered it.

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372 LARRY O'SULLIVAN: I make a motion to approve case 5/15/2013-1 as presented, with the restriction that
373 there be no more than five foot of an intrusion into the rear buffer.

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375 NEIL DUNN: I'll second that.

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377 JAMES SMITH: All those in favor?

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379 NEIL DUNN: Aye.

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381 LARRY O'SULLIVAN: Aye.

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383 JAMES SMITH: Aye.

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385 JAY HOOLEY: Aye.

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387 RESULT: THE MOTION TO GRANT CASE NO. 5/15/2013-1 WITH RESTRICTIONS WAS APPROVED, 4-0-0.

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392 NEIL DUNN, CLERK

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394 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

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396 **APPROVED JUNE 19, 2013** WITH A MOTION MADE BY LARRY O'SULLIVAN SECONDED BY JAY HOOLEY AND
397 APPROVED 5-0-0.