

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

MINUTES FROM 07/18/18 MEETING

The meeting was called to order at 7:00 p.m. Members introduced themselves. The following members were present: Jacqueline Benard, Vice Chair; Jim Tirabassi, Clerk; Suzanne Brunelle, member; and Alison Deptula, alternate member. Also, in attendance were Laura Gandia, Associate Planner; and Beth Morrison, Recording Secretary. Vice Chair Benard reviewed the hearing procedures and appointed A. Deptula as a voting member tonight.

I. APPROVAL OF MINUTES

J. Tirabassi made a motion to accept the June 20, 2018 minutes as presented.

Motion was seconded by S. Brunelle.

Motion was granted, 5-0-0.

II. REPORT BY TOWN COUNCIL – N/A

III. PUBLIC HEARING OF CASES

A. CASE NO. 7/18/18-1: Request for variance from LZO 2.3.1.3.C.2 to encroach six feet into the 15 feet side setback for the installation of an above ground pool, 60 Hunter Mill Way, Map 18 Lot 13-37, Zoned AR-I, Phillip & Holly Boorda (Owners & Applicants)

Vice Chair Benard informed the applicants that there are only 4 voting members this evening and they would need 3 votes to grant this variance. She explained that they can have the case continued until next month when there will be more voting members present. The applicant decided to proceed tonight.

J. Tirabassi read the case into the record, noting no previous zoning cases. Peter DeBernado, from Gibraltar Pools Cooperation, Topsfield, MA and Holly Boorda, owner of the residence introduced themselves to the Board. P. DeBernado stated that the owner is looking to install an above ground pool in her backyard and has a 150 foot setback rule with the heron rookery abutting her property. He stated that therefore the owner is looking to encroach five feet into the 15 foot side setback. He

stated that there are four other pools like this in the neighborhood already. Vice Chair asked if the applicant had any pictures to go along with the application. P. DeBernado stated they did not.

H. Boorda then reviewed the five criteria for the granting of the variance as follows:

- (1) The granting of the variance would not be contrary to the public interest: because all the setbacks will be met, except the side setback.
- (2) The spirit of the ordinance would be observed: because no restriction of air or light will result and the variance is requested due to the 150 foot setback requirement for the heron rookery.
- (3) Substantial justice is done: because the loss to the applicant is greater than the loss to the general public.
- (4) Values of surrounding properties are not diminished: because the pool will increase property value and will be well maintained.
- (5) There is no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of the provision to the property: because the request is a reasonable one due to the 150 foot setback requirement of the heron rookery. She stated that the proposed use is reasonable as are the other pools in the neighborhood.

Vice Chair Benard asked for public input.

Marc Borgatti, 58 Hunter Mill Way, addressed the Board in opposition of granting the variance. He stated that he is the direct abutter to the applicant's property. He stated that the rear corner of where the proposed pool would be is 15 feet from his property line. He asked for clarification regarding the edge of water measurement, 16 x 24, versus the building permit measurements, 20 x 32. He also asked if the pool would have an eight foot wall around it. He stated that he thought there were only two pools like this in the neighborhood. He explained how the neighborhood was created, where the first built houses have a one acre lot, and the second half of houses, where he lives, have a half an acre lot. He stated that the whole neighborhood was built around the conservation area. He noted that there is an HOA for the neighborhood and he is concerned about the applicant removing a piece of driveway for the pool. He read from the HOA, section 5.9, regarding drainage and it specifically states "that the lot grades cannot be changed by homeowners if they affect the drainage between the houses." He noted that he has had a section of his property washed out twice since living here. He stated that to his best knowledge, no side setback variances have been granted in the neighborhood to date and he does not want a domino effect if this variance is granted, which would cause overcrowding in his opinion. He stated that he did some research and there are other size pools that would fit in the applicant's backyard, for example a 16 x 24 foot pool, with no variance needed.

Vice Chair Benard asked the Board if they had any questions. Vice Chair asked the applicant to clarify the measurement of the pool and if there were any pictures. P. DeBernado stated he did not have any

pictures with him, but could go out and look in his car. S. Brunelle asked where the applicant is specifically looking to put the pool. H. Boorda explained where the pool would go on the map presented to the Board. S. Brunelle asked if the pool could possibly go anywhere else. P. DeBernado stated that the pool could not go anywhere else, due to a propane tank and an existing tank. He stated that round and oval pools collapse. He stated that the railing around the pool is three feet and there is a see through mesh on top of that, which in total is about seven feet tall. He reiterated that there are at least three of these pools in the neighborhood. H. Boorda stated that the reason they picked this specific pool design was for safety features and they are a family of five, and thought a smaller pool would be too crowded. P. DeBernado stated that the home owner would plant a row of arborvitaes next to the pool for privacy to the abutter. J. Tirabassi asked if the pool could be shifted back. H. Boorda stated that there is a steep slope in the back and it would probably cross the heron rookery line. Vice Chair Benard asked if the Board got involved with HOA regulations. L. Gandia stated that would be a separate private action between home owners. Vice Chair asked if the applicant would be interested in moving the pool and making it smaller. H. Boorda stated that she would need to speak with her husband regarding this decision. She stated that she would also have to redo her calculations to make sure a smaller sized pool would meet all the requirements. P. DeBernado asked to speak privately with the home owner at this time. He stated that he had one idea to avoid a variance, which was to have a two foot cantilever on all four sides with a six foot patio, and the setback will not be affected. Vice Chair asked if the applicant would like to withdraw the application as submitted. H. Boorda stated that she would like to formally withdraw her application as this time. Vice Chair Benard stated for the record that the application has been withdrawn.

II. Communications and miscellaneous: N/A


III. Other business: N/A

Adjournment:

A. Deptula made a motion to adjourn at 7:40 p.m. S. Brunelle seconded the motion.

The motion was granted, 4-0-0. The meeting adjourned at 7:40 p.m.

RESPECTFULLY SUBMITTED,



James Tirabassi
CLERK

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.

APPROVED (X) WITH A MOTION MADE BY J.T., SECONDED BY SB, - - - - .