

MINUTES
PEMBROKE ZONING BOARD OF ADJUSTMENT
May 22, 2017

Pending 5-25-2017

MEMBERS PRESENT: Bruce Kudrick, Chair; Tom Hebert, Vice Chair; Dana Carlucci, Mark Simard, Paul Paradis

ALTERNATES PRESENT:

EXCUSED: William Faith, Ann Bond

STAFF PRESENT: Everett Hodge, Code Enforcement Officer; Susan Gifford, Recording Secretary

Chairman Kudrick called the meeting to order at 7:00 p.m. Paul Paradis was designated to vote for William Faith.

Case #17-06-Z

Applicant: John and Clara Hall
5 Hillcrest Avenue
Pembroke, NH 03275

Property Owner(s): John and Clara Hall
5 Hillcrest Avenue
Pembroke, NH 03275

Property Address: 5 Hillcrest Avenue
Pembroke, NH 03275
Tax Map (VE) Lot (42) in the R-1A Medium Density-Residential Zoning District.

Case 17-06-Z A request has been made for a **Variance** under Article V **Dimensional and Density Regulations**, § 143-21 **Table of Dimensional and Density Regulations**. The applicant, Jon and Clara Hall, 5 Hillcrest Avenue, Pembroke, N. H. 03275 is requesting a reduction of the required 40 foot rear setback. This Variance request is to construct a 14 foot x 12 foot deck onto the rear of existing residence 12 feet 9 inches from the rear property boundary. The property is located at 5 Hillcrest Avenue, Map (VE) Lot (42), in the R-1A Medium Density-Residential Zoning District.

The clerk took the roll call and all members were present. Chairman Kudrick opened the public hearing at 7:02 p.m. There were 5 voting members present. Therefore, there was a full five-member board present for this hearing. Chairman Kudrick explained the rules of the hearing. Anyone who wishes to speak will give their name, address and interest in the case. All questions are directed to me, the Chair.

Deck Location, Framing, Decking and Foundation Plan prepared for Jesse Hall on June 6, 2017 for Map VE Lot 42, tax map and assessing card, and a copy of Notice of Decision #77-103 for a Special Exception granted for a 15' x 30' above ground pool at Map VE Lot 42 were included in the agenda packet.

Clara Hall, 5 Hillcrest Avenue, stated that she proposed to attach a 14' x 12' deck to the back of her house to replace existing deck that has rotted away. An above ground pool and small deck were on the property when Clara Hall purchased the house. The original size of the deck that rotted away was 9' x 5' and it was located at the end of the above ground pool approved by Special Exception in 1977. Clara Hall stated that the above ground pool wore out, was removed and was never replaced. The Variance is

requested because the new deck will be approximately 13 feet from the property line where 40' is required.

Clara Hall explained that there were originally four sliding deck doors on the back of the house. Two slider doors were taken out. Clara Hall wants to take out another slider door and replace the fourth with French doors. One insurance company dropped our coverage because we did not have a deck. State Farm Insurance now covers the property but they required that we put locks on the remaining two slider doors and not use them. Jesse Hall, 5 Hillcrest Avenue, spoke in favor of the variance.

Clara Hall addressed the Variance criteria:

Please give a detailed description of your proposal below:

Applicant is proposing the addition of a 14' x 12' deck to replace existing deck that has rotted away.

1. **The variance will not be contrary to the public interest.** The proposed deck is replacing existing deck on the back of the house.
2. **The spirit of the ordinance is observed.** There will still be a setback of 13 feet from the property line.
3. **Substantial justice is done.** We are replacing a deck that has rotted away.
4. **The values of surrounding properties are not diminished.** The replacement deck will improve the value of the property.
5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**
 - i. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:
 - ii. The proposed use is reasonable.

B. If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to make a reasonable use of it.

The house was built before zoning and is close to the property line.

Chairman Kudrick asked if there were Board member questions. There were none.

Dana Carlucci summarized the case. This is **Case 17-06-Z**, a request for a **Variance** under Article V **Dimensional and Density Regulations**, § 143-21 **Table of Dimensional and Density Regulations**. The applicant, Jon and Clara Hall, 5 Hillcrest Avenue, Pembroke, N. H. 03275 is requesting a reduction of the required 40 foot rear setback. This Variance request is to replace a rotted deck with a new 14 foot x 12 foot deck on the rear of existing residence approximately 13 feet from the rear property line. The property is located at 5 Hillcrest Avenue, Map (VE) Lot (42), in the R-1A Medium Density-Residential Zoning District. Clara Hall stated that the previous owner had an above ground pool and a 9' x 5' deck. The Hall's removed the pool and the rotted deck. The Halls cannot open the slider doors per their insurance company because the rotted deck was removed.

There being no further comment, Chairman Kudrick closed the public hearing at 7:10 p.m.

Deliberations: ZBA members discussed the Variance criteria. Chairman Kudrick noted that the previous pool and deck was closer to the Kimball property than the proposed replacement deck. Also, the Halls are unable to use the slider doors due to problems with their insurance company.

Chairman Kudrick noted that there is a proposed law moving through NH legislation regarding variances. Some lawyers said that Zoning Board of Adjustment members must read each criterion and take a roll call vote. Other lawyers said that the board must discuss each criterion and decide if the variance is approved. Despite differing opinions, that law is not yet in effect so general discussion will occur on each criteria.

- 1) The variance will not be contrary to the public interest. Tom Hebert noted that most of the area lots are quarter-acre. There will still be 13 feet rear setback after the deck is constructed.
- 2) The spirit of the ordinance is observed. The house was built before 40 foot rear setbacks were enacted in zoning.
- 3) Substantial justice is done. The property does not have land to meet the setback.
- 4) Property values are not diminished. No testimony that property values would be diminished was provided. If anything, property values should rise because of addition. Dana Carlucci noted that there was no opposition by abutters.
- 5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. The applicant's hardship is the ordinance that was put in effect after the home was built.

MOTION: Tom Hebert moved to APPROVE **Case 17-06-Z**, a request for a **Variance** under Article V **Dimensional and Density Regulations**, § 143-21 **Table of Dimensional and Density Regulations**. The applicant, Jon and Clara Hall, 5 Hillcrest Avenue, Pembroke, N. H. 03275 is requesting a reduction of the required 40 foot rear setback. This Variance request is to construct a 14 foot x 12 foot deck onto the rear of existing residence 12 feet 9 inches from the rear property boundary. The property is located at 5 Hillcrest Avenue, Map (VE) Lot (42), in the R-1A Medium Density-Residential Zoning District. with the following conditions:

1. Must follow the submitted plot plan.
2. Must follow all state and local regulations

Dana Carlucci seconded.

VOTE: PAUL - YES TOM - YES BRUCE - YES
 DANA- YES MARK - YES

MOTION TO APPROVE VARIANCE WITH CONDITIONS PASSED ON A 5-0 VOTE.

Next steps are to stake out the area for the deck and have the Code Enforcement Officer view the site.

OTHER

Sign for Jesus – Everett Hodge reported that a 53 page brief was received today from the opposition. Approximately \$15,000 was spent on research to produce that brief.

MINUTES OF PREVIOUS MEETINGS

MOTION: Tom Hebert moved to approve the minutes of May 8, 2017 as amended. Mark Simard seconded.

VOTE: PAUL - YES TOM - YES BRUCE - YES
 DANA- YES MARK - YES

MINUTES OF MAY 8, 2017 APPROVED AS AMENDED ON A 5-0 VOTE.

NEXT MEETING

Date of next ZBA meeting – Chairman Kudrick noted the next ZBA meeting would be on **Monday, June 12, 2017 at 7:00 p.m.** This meeting is a continuation of Case #17-02-Z.

ADJOURN **Motion:** Tom Hebert moved to adjourn. Mark Simard seconded. Vote was unanimous in favor of motion. Meeting adjourned at 7:20 p.m.

Respectfully submitted,
Susan P. Gifford
Recording Secretary