



# TOWN OF LITCHFIELD

## LITCHFIELD ZONING BOARD OF ADJUSTMENT

Litchfield, New Hampshire June 9, 2021

### DRAFT

Regular meetings are held at the Town Hall at 7:00 pm on the 2<sup>nd</sup> Wednesday of each month.

#### **ZBA Members in Attendance (indented if absent):**

Laura Gandia, Vice Chairman

Albert Guilbeault

John Devereaux

Thomas Cooney (alternate)

Eric Cushing (alternate)

Greg Lepine (alternate)

Mark Falardeau (alternate)

Kyle D'Urso (alternate)

#### **I. CALL TO ORDER AND ROLL CALL**

Laura Gandia called the meeting to order at 7:00 pm.

Laura Gandia appointed Kyle D'Urso to the Board, resulting in a four member Board.

#### **II. CHAIRPERSON OPENING REMARKS**

Laura Gandia reviewed the schedule for hearings.

#### **Case Number: 2021-07**

**Name of applicant:** Daryl George

**Owner of property:** Daryl George and Page Cook

**Location of Property:** 2 Underwood Dr, Litchfield, NH 03052, Map 9 Lot 54

#### **Appeal Requested**

The Applicant seeks a Variance from LZO Section 310 to allow a residence, which would encroach 6 ft into the side setback where a 20 ft setback is required.

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#### **Case Number: 2021-08**

**Name of Applicant:** Roger Soulard

**Address:** 1 Grove Ct, Litchfield, NH 03052

**Owner of Property:** Roger Soulard

**Location of Property:** 457 Charles Bancroft Highway, Litchfield, NH 03052, Map 18, Lot 73

#### **Appeal Requested**

The Applicant seeks a variance from LZO Section 310 to allow the installation of an in ground swimming pool measuring 35 ft. x 15 ft. which would encroach approximately 15 ft. into the rear setback where a 20 ft. setback is required.

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### III. PUBLIC HEARING AND DELIBERATION

Notices of the Public Hearings were posted and published in the Union Leader. Notice of the meeting and agenda were posted at the town hall and public library.

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**Appeal Requested**

The Applicant seeks a Variance from LZO Section 310 to allow a residence, which would encroach 6 ft into the side setback where a 20 ft setback is required.

Greg Jeffrey, of Jeffrey Land Survey, indicated he would be presenting Case 2021-07.

Laura Gandia noted that there is a four member board and the applicant is entitled to a five member board. She asked if the applicant would like to proceed with a four member board or request to continue the case.

Mr. Jeffrey indicated that the applicant would like to proceed with a four member board.

Mr. Jeffrey indicated that he surveyed the properties and what is being proposed is an equal area lot line adjustment between #2 and #4 Underwood Drive. The applicants have an equal area lot line agreement. The lot line in question is parallel to the northerly face of the garage located on 2 Underwood Drive. The history of this case is that the Litchfield Building Department approved a permit for the addition of the garage for 2 Underwood Drive in 1977, which placed the existing dwelling 6 feet over the existing lot line between the properties. In 2019, he was contacted by Mr. Guay, 4 Underwood Drive, and staked out the lot line of the property at 4 Underwood Drive. That when it became evident that the lot line went through a good portion of 2 Underwood Drive. Earlier this year the owners of both properties agreed to a lot line adjustment that would result in minimal impact to both properties. The owners agreed to a line 6 feet off the existing dwelling of 2 Underwood Drive. The transfer of property will be equal area resulting in no net change of either lot. Mr. Jeffrey noted the 6 feet was understood to be a decent area to maintain the garage. He indicated that it is acknowledged that a 6 foot setback is short of the 20 foot requirement according to current zoning regulation, and the applicant is asking for a variance of 14 feet.

Al Guilbeault commented that it appears the lot is non-compliant and has less than 0 feet of setback on that particular side of the property. He clarified that the neighbor at 4 Underwood Drive is willing to give 6 feet of his property to Mr. George at 2 Underwood Drive for the lot to be compliant.

Mr. Jeffrey commented it will be more compliant to have the home on its own property than to have an existing home on the aggrieved owner's property. He handed out copies of the site plan to board members depicting the lot line adjustment. He indicated that the applicant will go before the Planning Board to have the lot line approved.

Laura Gandia asked about an eliminated playground that was mentioned during the presentation.

Jeff Guay, 4 Underwood Drive, indicated that a playground existed on his property and it was taken down to make a garden.

Laura Gandia commented she wanted clarification that the playground had nothing to do with the lot line adjustment. She asked if the 6 foot lot line could be increased.

Mr. Jeffrey indicated the larger you make the triangle, each triangle will expand in size. He noted there is a septic system right behind 2 Underwood Drive behind the deck and extends to approximately where the pool would start. He commented if the lot line area is increased in size it will encroach on the septic system.

Laura Gandia asked what is on the part of the house near the lot line. Mr. Jeffrey indicated it is the attached garage.

Laura Gandia asked if there is an exit, windows or vegetation on the side of the garage facing the other property. Mr. Jeffrey indicated there are no exits, windows or vegetation on the side of the garage.

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### **Public Input**

Hearing no questions from the Board, Laura Gandia opened public input.

Jeff Guay, 4 Underwood Drive, indicated he came to express support for the lot line adjustment. He noted that this was identified before Mr. George bought his property and the sellers were not honest about it. He commented that Mr. George just wants to resolve this and this is a good resolution.

Daryl George, 2 Underwood Drive, commented the further back the lot line is extended will result in impact on the pools on both properties.

Mr. Jeffrey commented that we would not want the setback to encroach on the septic system or leach field.

Al Guilbeault asked if this is the best resolution.

Mr. Guay commented that the problem was inherited and they are just trying to make it right.

Laura Gandia indicated that the applicant did not go through five criteria and she will pause public input in order to hear the applicant's justification and then resume public input.

**Public Input was paused.**

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Mr. Jeffrey spoke to the five criteria for a variance:

- 1) The variance will not be contrary to the public interest because it will make non-conforming lot more conforming.
  - 2) The spirit of the ordinance is observed because the dwelling is situated on the neighbor's deeded property and the lot line adjustment will make it so that each property is within own property lines.
  - 3) Substantial justice will be done because, through no fault of the owner, the garage addition was built over the lot line in 1977 by the previous owners. Granting the variance would make the dwelling more conforming.
  - 4) The values of surrounding properties are not diminished because the lot line adjustment will result in no net change in area for either lot and will make the subject property more conforming.
  - 5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because a building permit was issued by the building department in 1977, but a pre-construction proposed plot plan was not recorded the situation would not have occurred.
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Public Input Resumed.

Hearing no further public input, Laura Gandia asked for a motion to close public input.

***John Devereaux made a motion to close public input. Kyle D'Urso seconded. The motion carried by roll call vote: Laura Gandia, yes; Al Guilbeault, yes; John Devereaux, yes; Kyle D'Urso, yes.***

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Board Deliberation

Laura Gandia asked if the Board agreed with the applicant's responses to the five criteria for the variance.

- 1) The variance will not be contrary to the public interest because it will make non-conforming lot more conforming.

The Board agreed.

- 2) The spirit of the ordinance is observed because the dwelling is situated on the neighbor's deeded property and the lot line adjustment will make it so that each property is within own property lines.

The Board agreed.

- 3) Substantial justice will be done because, through no fault of the owner, the garage addition was built over the lot line in 1977 by the previous owners. Granting the variance would make the dwelling more conforming.

The Board agreed.

Laura Gandia clarified that substantial justice is the balancing between if the loss to the applicant is greater than the gain to the public. She indicated under this analysis, not allowing them to correct the issue makes the loss greater than any gain to the public.

Referring to Criteria #2, Laura Gandia pointed out that the property is obviously encroaching into the setback and the applicant is trying to make the situation better than it was before.

Mr. Jeffrey commented the owners are trying to maintain a similar alignment with the lot line. He agreed that the lot line could be extended farther to a conforming setback, but the properties will have a very uncharacteristic lot line.

- 4) The values of surrounding properties are not diminished because the lot line adjustment will result in no net change in area for either lot and will make the subject property more conforming.

Laura Gandia commented the lot line as proposed is such that it would be an uncharacteristic lot line and would result in a loss to a buyer's property values.

- 5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because a building permit was issued by the building department in 1977, but a pre-construction proposed plot plan was not recorded the situation would not have occurred.

Laura Gandia commented that the hardship as stated by the applicant is not the correct rationale; rather, the better rationale is the hardship would be having a home that exists on someone else's property.

John Devereaux indicated this solution is based on the best solution possible with existing conditions and special circumstances (i.e. impact to the septic and pools).

Laura Gandia indicated that if a motion is made to grant the variance, the motion should include that it is contingent on the Planning Board approving the lot line adjustment with a notation of the variance noted on that plan. She pointed out the hearing notice states '6 ft encroachment into the side setback', but it is actually encroaching 14 feet.

***Al Guilbeault made a motion to grant a variance for Case 2021-07 from LZO Section 310 to allow a residence, which would encroach 14 ft into the side setback where a 20 ft setback is required, contingent upon approval of the lot line by the Planning Board with a notation of the variance noted on that plan. John Devereaux seconded. The motion carried by roll call vote: Laura Gandia, yes; Al Guilbeault, yes; John Devereaux, yes; Kyle D'Urso, yes.***

**The variance for Case 2021-07 was granted.**

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Laura Gandia spoke to the board about meeting dates. She indicated she has been acting as Chair at the meetings, but it would be easier for her to officially Chair the meetings if the Board could meet on the third Monday of each month instead of the second Wednesday.

The Board agreed.

Laura Gandia indicated the change would warrant a temporary waive of the provision in Section 4.0 of the Bylaws.

***Laura Gandia made a motion to temporarily waive Section 4.0 of the Litchfield Zoning Board Bylaws to allow board meetings to occur the third Monday of each month starting in July and until further notice. Al Guilbeault seconded. The motion carried by roll call vote: : Laura Gandia, yes; Al Guilbeault, yes; John Devereaux, yes; Kyle D'Urso, yes.***

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**Case Number: 2021-08**

**Name of Applicant: Roger Soulard**

**Address: 1 Grove Ct, Litchfield, NH 03052**

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Laura Gandia reported that a letter was submitted by Mr. Soulard to request a continuance of Case 2021-08 to the next available meeting date.

***Laura Gandia made a motion to grant the request to continue Case 2021-08 to July 19, 2021. John Devereaux seconded. The motion carried by roll call vote: : Laura Gandia, yes; Al Guilbeault, yes; John Devereaux, yes; Kyle D'Urso, yes.***

#### **IV. COMMUNICATIONS AND OTHER BUSINESS**

Laura Gandia indicated that the Board needs to discuss on a process to fill the vacancy of Board members. She noted that a list of candidates has been provided to Board members. She suggested the Board can interview the candidates and provide recommendations to the Select Board to

appoint new members or the Board can review the applications and make recommendations to the Select Board for interviews and appointments.

John Devereaux indicated he was under the impression the Select Board was responsible for appointing members. He asked if they requested this Board screen the candidates.

Al Guilbeault commented that he believes the Town Administrator made that request to the Select Board. He indicated that the Board would review the applications and provide a list of candidates to the Select Board for appointments.

John Devereaux asked for the number of full members and alternates needed.

Al Guilbeault indicated 2 full time members and 1 alternate are needed. He commented he would prefer to have 2 alternates.

Laura Gandia indicated the law dictates that the Board can only have 5 members and 3 alternates. She commented that her preference is to give existing alternate members first choice to become full board members.

Kyle D'Urso indicated that he would consider becoming a full member and wants to make sure he can make the commitment to attend the meetings.

Al Guilbeault mentioned he has been watching Zoning Board meetings of other towns lately and asked if this Board should try to have alternates attend the meetings (not as a voting member) to become familiar with the process and how the meetings are held.

John Devereaux agreed and noted it would be a good learning experience.

Laura Gandia commented that she would like to move the process along. She asked Board members to look at the potential candidates and forward the top five. She noted the Board would forward the top five recommendations to the Town Administrator to bring to the Select Board.

She indicated it would be best for members to forward their choices with the reasons for those choices directly to the Town Administrator and copy the Board. She was concerned that emailing between Board members could violate the Right to Know law by having a meeting electronically.

Laura Gandia mentioned that she would like to have someone from the NHMA come and provide some training for new Board members. She indicated she will request the Town Administrator bring the request to the Select Board.

The Board agreed.

## **V. ADJOURNMENT**

***John Devereaux made a motion to adjourn the meeting and Al Guilbeault seconded the motion. The motion passed by roll call vote: Laura Gandia, yes; John Devereaux, yes; Al Guilbeault, yes; Kyle D'Urso, yes.***

The meeting was adjourned at 7:40p.m.

Respectfully submitted,  
Michele E. Flynn