

**MINUTES  
BOARD OF ZONING APPEALS  
CASE A-233**

Mrs. Vickie Watts, Chair of the Board, called the hearing to order at 7:01 p.m. The following Board Members were present: Mrs. Vickie Watts and Ms. Tracy McCoy. Board Member Michael Joseck had recused himself from the case. Staff members present were: Zoning Administrator Jim Roark, and Police Officer Casey Mann.

Guests present: Thomas and Lauren Breakey, Matt Hurff, Lindsay and Sharon Chiodi, Jason Butterhoff.

**CASE A-233**

On October 5, 2023, the Board of Zoning Appeals heard testimony and received evidence concerning Case A-233, a request by Thomas and Lauren Breakey for a variance reducing the required side yard setback for a swimming pool in a residential zoning district at 4020 Champion Tree Road.

Mr. Roark read the Written Record of the hearing stating that all public notice of the hearing had been made along with notification letters being sent to all adjoining properties. He stated that the Town had received five letters of support with the Appellant's application. The Town has since received three additional letters of support and two phone calls, one from Kyle Brooks and one from Shelly Crisler. He stated that the documents described above make up the official record of Case A-233. Mr. Roark concluded the Written Record by stating that a Board of Zoning Appeals Hearing is normally heard by 3 Board members, which a majority vote ruling. In this case with a Board member having to recuse themselves and no alternate currently serving in that position the Appellant was given the opportunity to delay this hearing until an alternate could be found. The Appellant stated that he would like to proceed with two board members present.

Mrs. Watts stated that if there were no objections, the documents would be entered into the Official Record of the Hearing. There were no objections.

Mr. Roark read the Zoning Administrator's Statement. The statement explained that this property is in the R-40,000 zoning district. The Applicant, who is the owner of this parcel would like to build a 18 foot x 40 foot pool in the backyard of their property. The pool would be built within the 1,166 sq. ft. pool patio that the Appellant is also proposing to build. The pool and patio would be enclosed with a proposed 4ft fence with self-latching gates. Mr. Roark stated that the Hampstead Town Code zoning regulations for a swimming pool are that the pool, the decking, pool filter and pump, and any storage buildings must be at least ten feet from any side or rear property line. Additionally, a private swimming pool may not be placed in a septic replacement area. He explained that in the Breakey's proposed plan, the pool and patio are not located in a septic replacement and meet the 10-foot requirement for the rear set back. The pool or deck are not proposed to go in any easement which would also prohibit the construction. The pool itself is 10 feet from the side lot line, but the patio would extend 3 feet into the required setback. Mr. Roark stated that the Appellants are requesting a variance to reduce the side yard setback from 10 feet to 7 feet. The statement concluded by stating that there is nothing in Town Code to prohibit this conditional use, and it is the recommendation of the Zoning Administrator to defer to the Board's judgment for the case decision.

The Appellants' presentation was given by Mr. Thomas Breakey, the Applicant and an owner of the property seeking the variance. Mr. Breakey began by giving the Board and Mr. Roark a paper presentation outlining his request for a variance. The presentation was entered into the record.

Mr. Breakey thanked the Board for their time this evening and began by stating that he and his wife are long-time Hampstead residents with family ties to the community. He explained that both he and his wife have volunteered many hours to local youth sports organizations and community boards. Mr. Breakey stated that the family has always wanted a pool and saved money to do so when they purchased this house. He explained the layout of the pool and exactly where on the property the 3ft variance request was located. Mr. Breakey said that the size and location of the septic field on the property created a practical difficulty and hardship and that is the case with most of the properties in this community. He explained that because of the septic field it would be nearly impossible to place a pool anywhere else. He shared the site plan for the property which showed where the septic field is located. Mr. Breakey stated that the well-being of their community is paramount and they would not do anything to jeopardize the welfare of the community. He stated that he hoped the letters of support from neighbors hoped show that this pool would not be detrimental to the community. Mr. Breakey stated that this pool would have no impact on health, public safety, or welfare.

Mrs. Watts asked if the pool could be moved 3ft to the left. Mr. Breakey stated that if that was done, it would then be in the septic field required set back area. Mr. Roark stated that the Town's requirement was just to not build in a septic field, but that the Health Department of Carroll County may have different requirements. Mr. Breakey explained that was correct and Carroll County does have a distance requirement. Mrs. Watts enquired as to the size of the deck. Mr. Breakey explained that it is a minimal 3 feet on the right-hand side and larger on the left-hand side near the house. Ms. McCoy asked what type of fence would go around the pool and patio. Mr. Breakey responded that it would not be a privacy fence, but a black fence that is normally associated with pools.

Mrs. Watts called for anyone not in support of the variance to come forward to give their testimony. Ms. Lindsay Chiodi of 4032 Champion Tree Road stepped forward to speak. Ms. Chiodi stated that she felt the proposed pool was too close to her property line. She commented she has an issue with the noise that will potentially come from the granting of this proposal. She indicated that in the past there have been children running through her yard "at all hours of the night". She continued by saying that she had to put (a message) on Oakmont Overlook to say that kids should not run through her yard. She expressed that she told the children/community that she feared potential attacks by her dogs. Ms. Chiodi said that the running through the yard continued even after this. She said this past summer she also followed up with Mr. Breakey to request that that children stop "dingdong ditching" her house. Then Mrs. Watts of the Board interjected to ask for clarification on the term "dingdong ditching", which the Ms. Chiodi explained refers to ringing a doorbell, jumping off her porch and into her flower beds, and running away. Ms. Chiodi then stated that she fears the Appellant will have sports teams over to the pool since Mr. Breakey is a sports team coach and that this will increase the hardship that she has been dealing with. She complained of her neighbor playing basketball until 11:30pm and not considering the noise. She went on to say that if a pool was placed where it is proposed she feels that "half of Hampstead" will be on her property line. Ms. Chiodi said she was unclear where the 122 ft (from her house) number came from. She went on to say she walks her dogs a lot and they pee close to the location that the children play. Ms. Chiodi then began a new story concerning a football that was thrown towards her head, after which she told children to get their things off her

property, including bikes. She said she was ostracized for this, and that shortly after all the kids in the neighborhood came out and shouted that she was the “meanest person in the world”. Ms. Chiodi then entered four photos into the BZA case record, one of which she said was of one of the kids that shouted at her outside her bedroom window. The photos were shared with the Board and discussed, including a photo of trees on the property line between the properties in question. Ms. Chiodi said that she felt that application was moving too fast and that there had been no survey regarding the property line completed. Mrs. Watts asked Ms. Chiodi if the pool would be on her property, Ms. Chiodi clarified that it would not be. Ms. Chiodi stated that she feels this project will bring a lot of noise, even more than what she is currently experiencing. She requested a property line survey to be completed. Board Member Tracy McCoy asked how the site plan drawing in the application could be completed if a survey had not been completed. Mr. Roark answered by saying that the exhibit in the application was completed by CLSI likely at the time of construction (dated 1/8/1016). He stated that there should be posts in the corners of the lot and inquired as to whether anyone had looked for those posts. Ms. Chiodi stated that they mow the grass based on where the four properties come together. She then continued by saying that she does not feel that the letters of support included in the application are relevant, that it is mainly her property that is affected by the proposed project. She said that the property owners in the neighborhood that wrote letters of support were located on courts and would not be affected. The Crislers are the other property that butts up against the subject property, Ms. Chiodi stated, and the Cready’s property also partially abuts, but Ms. Chiodi said other than that no other properties are affected by the proposed project (only hers). No additional questions were posed to Ms. Chiodi by the Board.

Ms. Sharon Chiodi, the mother of Ms. Lindsey Chiodi, stepped forward to testify. She stated that her bedroom is downstairs on the first floor (of the Chiodi house) and that the bedroom faces where the pool is proposed. She continued saying she currently sleeps with a white noise machine to block out some of the noise (from the subject property). Ms. Sharon Chiodi turned to the applicant to inquire whether a generator was used in the summer, and Mrs. Watts requested that all questions be posed to the Board. Ms. Sharon Chiodi continued her testimony by saying that other neighbors who wrote the letters would not want to project to continue either because, she stated, one of the neighbors had complained once that when kids got off the bus they walked through her yard and dogs started barking and the neighbor couldn’t concentrate. Another neighbor complained that kids walk their bikes through her yard, Ms. Sharon Chiodi stated. There was another complaint by one of the neighbors that wrote letters (included in the application) about kids coming off the bus and walking through neighbors’ yards. Ms. Sharon Chiodi stated that none of the neighbors saying how great the pool will be are going to be affected by the proposed project, only the Chiodis would be affected. She said that there are two other properties in the neighborhood that are nowhere near the property lines of other families/houses, and she doesn’t care if they want a pool, her concern is where they want it. The Appellant has an acre of property, Ms. Sharon Chiodi said, but everything the Breakeys do is on a quarter of an acre on the side of their house on the shared property line. She continued that there is sports equipment “hanging out of” their shed, and that there are weeds under their trampoline that they never cut. She expressed concern regarding this and inquired as to whether they were going to complete maintenance of their yard as she felt that it didn’t look well maintained now. She stated that she can hear the Breakeys when they are on their deck, noise travels, and that the Chiodi’s deck looks right out onto where the pool is proposed. Thus concluded Ms. Sharon Chiodi’s testimony, and Mrs. Watts thanked Ms. Chiodi.

Mrs. Watts opened the floor for any comments in support of the Appellant’s petition. Mr. Matthew Hurff, a neighbor of the Breakey’s and owner of the property located at 2088 Mountain

Ash Court said he's located across the road and uphill from the Chiodi property and the Breakey property. He said that the Breakey's are excellent neighbors, very involved in the community, he said he has no complaints about them as neighbors. He stated that the backyard of his property looks down towards the location of this proposed project, and he would have a "highline view" of the project. He does not object to the proposal, he said. As neighbors, the speaker said that he moved into his house around the same time as the Breakeys and they as homeowners did not have say in where the septic systems would be installed or how their homes were situated on the property. He said that this poses practical difficulties. He concluded testimony by re-stating that he does not have any objection to the project.

Jason Butterhoff of 2124 Gallery Court was next to comment to the Board. He stated that they built their homes at the same time, and that the Breakey's home is one of the closest to the Butterhoff's. He recently installed a pool and can sympathize with the Appellant and said he didn't feel that 3 ft was consequential. He noted that the neighborhood has lots of kids and that it can be noisy but that doesn't bother him. The Breakey's are good neighbors and Mr. Butterhoff said he doesn't mind looking at the proposed pool. He concluded testimony by saying that it's a good neighborhood to raise kids, and that a pool "makes it even better".

Mr. Breakey spoke to the Board again with his rebuttal. The Appellant began by saying he wanted to note that in addition to Mr. Butterhoff and Mr. Hurff said regarding their support, the Creabys and the Crislers, whose properties adjoin the subject property, both wrote letters of support. Mr. Breakey stated that he feels that the requirements for a variance have been met and asked that the Board stick to the facts of the case instead of opinions. Mrs. Watts asked if the trampoline would be removed from the property. Mr. Breakey said that yes, it would be removed. Mrs. Watts asked if there was a homeowner's association. Mr. Breakey said no there was not. Mrs. Watts asked if there was a cut-off time for noise? Mr. Roark said that the Town Code has a noise ordinance that states that quiet time starts at 10pm during the week and on the weekends it is 11pm. Board Member/Vice Chair McCoy asked if the applicant had looked at proposing a 15ft x 40ft pool to gain the 3 feet needed to meet the setback requirement, and asked if the pools were standard sizes. Mr. Breakey said that he believed there is flexibility in terms of dimensions, but continued to say that he would like to have others see the case in terms of the applicant spending money and time to build on their "dream pool", within the code with a small variance. Ms. McCoy asked the Appellant to confirm that what he was saying was that he did not want to give up the 3 ft (needed to make the setback requirement). Mr. Breakey said that the neighborhood is filled with children and that he would not be able to control the noise of all the children living there. Ms. Watts said she agreed but was just referring to the noise level that would need to be controlled if there were a pool party at the proposed location. Mrs. Watts thus ends the public comment period with no further comments.

The Board then began deliberations in the case. Ms. McCoy asked if they had a definition for hardship. Mr. Roark informed the Board that page two of the process states that a variance may be granted for "unwarranted hardship". Ms. McCoy said that the Appellant should make the pool 3ft smaller, because the Appellant is asking their neighbor to give up 3ft, but they themselves don't want to give up 3ft, and Ms. McCoy said she feels that is unfair. She said the pool doesn't have to be 18ft, it could be smaller and therefore not needing a variance. Mrs. Watts said yes, or the deck could be made smaller on the left-hand side, Ms. McCoy saying yes, and the pool could be shifted. Mrs. Watts and Ms. McCoy discussed other solutions regarding the pool placement and moving farther away from the property line. Mrs. Watts noted that 3ft difference in setback requested via variance is not going to make a difference with the neighborhood noise. She then said if there is a fence that would keep the children inside of the yard/the property line. Ms.

McCoy asked again if there is a hardship, and she continued by saying is the definition of hardship if that we don't have a variance for an additional 3ft of pool that's a hardship. She says if the Appellant does not get a variance can they still have a pool? The pool could be 15ft across. Ms. McCoy said that she felt like there could be other solutions. Mrs. McCoy states that it's not a hardship because it's not what they want it to be, it would be a hardship if there was no other way. Mrs. Watts said that she wanted to know if the pool could be moved to the left. Mr. Roark then said that it was his understanding that the proposed pool could not be moved to the left because of the County-required setback distance from the septic area. Mrs. Watts said therefore the pool could not be shifted to the left. Ms. McCoy said she does not feel that there is a hardship if there is another way the Appellant can meet the required 10ft setback. Mrs. Watts continues that the Appellant wants a pool as proposed and that the variance will only affect a small area of the yard. Mrs. Watts discusses the distance between the houses, and notes that that will not change. Mrs. Watts notes that this is what the applicant wants, all they need is a variance. Ms. McCoy discussed further by saying that the Breakey's are saying that the requirement is a hardship because they want the pool to be the way they want it, and Mrs. Watts said that this is the only place on the property the Breakey's can have the pool. Mrs. Watts said that the property is unique due to the septic field and septic replacement fields which limits the area of development. Mrs. Watts ends the deliberation.

Mrs. Watts made **a motion to approve the request by Thomas and Lauren for a variance to reduce the side yard setbacks to 7ft from 10ft for a swimming pool in a residential zoning district at 4020 Champion Tree Road.** Ms. McCoy seconded the motion. The motion passed with two votes for, no votes against and no abstentions.

Mrs. Watts made **a motion to adjourn.** Ms. McCoy seconded the motion. The motion passed and the hearing was adjourned.

Submitted by:

Approved by:

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Jim Roark  
Zoning Administrator

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Vickie Watts  
Chair