



# TOWN OF HUDSON

## Zoning Board of Adjustment



Maryellen Davis, Chairman

Thaddeus Luszey, Selectmen Liaison

12 School Street · Hudson, New Hampshire 03051 · Tel: (603) 886-6008 · Fax: (603)594-1142

### HUDSON ZONING BOARD OF ADJUSTMENT MEETING MINUTES May 26, 2016

#### I. CALL TO ORDER

Chairman Davis called this meeting of the Hudson Zoning Board of Adjustment to order at 7:30 PM on Thursday, May 26, 2016, in the Paul Buxton Meeting Room in the Town Hall basement. Chairman Davis then requested Mr. Houle to call the roll. Representatives of the Hudson Zoning Board of Adjustment were as follows:

**Members Present:** Maryellen Davis, Charles Brackett, Normand Martin, Jim Pacocha, Donna Shuman

**Alternates Present:** Gerald Dearborn, Kevin Houle, Maurice Nolin

**Selectman Liaison:** Ted Luszey

**Staff Present:** Bruce Buttrick, Zoning Administrator

**Transcriptionist:** Mary-Ellen Marcouillier (excused)

#### II. SEATING OF ALTERNATES AND ANNOUNCEMENTS

For the benefit of all attendees Chairman Davis noted that copies of the agenda for the meeting, as well as an outline of the rules and regulations governing hearings before the Zoning Board of Adjustment were available at the door of the meeting room. She noted the outline includes the procedures that should be followed by anyone who wished to request a rehearing in the event the Board's final decision was not felt to be acceptable.

The curfew for the meeting is 11 PM. Chairman Davis does not anticipate this to be a problem for this session. In the event that a case is not heard by 11 PM, it will be postponed until the next meeting. If a case is in process, it will be heard until midnight then continued at the next meeting.

#### III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THIS BOARD

1. Case 182-153 (5-26-16) Deferred from 5-12-16: Maryellen Davis, 14 Nathaniel Drive, Hudson, NH requests an Appeal of a Zoning Administrative Decision issued by the Zoning Administrator dated 4-18-16, which states that the proposed Art School at 38 B Library Street, Hudson, NH, is a permitted use but the change of category from D-31 to C-7 within the Table of Permitted Principle Uses would require a Site Plan review by the Planning Board. (Map 182, Lot, 153,

**Zoned TR; HZO Article VIII §334-30 & 31, Changes to or Discontinuance of Non-Conforming Uses and Alteration and Expansion of Non-Conforming Structures.)**

Chairman Davis stepped down; Vice Chair Pacocha replaced Ms. Davis as Chairman. Vice Chair Pacocha appointed Gerald Dearborn to replace himself as a voting member.

Mr. Buttrick informed the Board that there are a compilation of notices of decisions. Administration decision was made for “non-conforming use Gill’s” to “permitted use Art School” only required site review from Planning Board.

Ms. Davis testified that only site plan review from the Planning Board is required for change of use on a non-conforming property. Applicant is requesting to open an Art School where Gill’s Appliance Repair Shop was located on the 1<sup>st</sup> Floor of 38 B Library Street, Hudson, NH. Gill’s Appliance Repair to an Art Studio/School is expansion of change in use on non-conforming 1<sup>st</sup> floor. This property has never received a variance for mixed or dual use of a lot (residential/commercial). Gill’s Appliance has been vacated for 12 months and requires a variance. An Art School must be registered with the State of NH and a copy of that registration must be submitted for the file. The rooming house never allowed pre-zoning sites in conformance.

Mr. Buttrick spoke with the applicant and indicated that she needed to speak with the State of New Hampshire, Department of Education to make a legit school.

Ms. Davis added that a school is a school as we know it – registered with the State, classes, curriculum, etc. If not, then it is a studio and not a school.

A member of the public took the podium and asked to be recognized. Ms. Davis stated that the public was not allowed to speak on an appeal. Vice Chair Pacocha agreed with Ms. Davis that the public cannot speak on an appeal. Mr. Martin was against the decision and felt that the public should be allowed to speak. Mr. Brackett agreed that the public should be allowed to speak as the notice was advertised to the public. Mr. Buttrick read the rules of procedure which he interpreted to read that the public in this case should be allowed to speak. Ms. Davis disagreed and maintained that the hearing was before the board and not the public.

Motion was made by Mr. Martin to allow the public to speak and 2<sup>nd</sup> by Mr. Brackett. Vote as follows:

Mr. Martin	Allow public to speak
Mr. Brackett	Allow public to speak
Ms. Shuman	Allow public to speak
Mr. Dearborn	Do not allow public to speak
Mr. Pacocha	Allow public to speak

Vote: 4-1                      Motion granted

Bob Tarody testified that the school is a permitted use and not a non-conforming use. Mr. Tarody further commented that he could not find anything in the regulations that defines a school. The Zoning Administrator instructed the applicant on what she needed to do and the Board should stand by that determination.

Kristen Jensen, applicant, testified that she wanted to open an Art School. Ms. Jensen confirmed that she spoke with the State of NH, Department of Education and was told that she could open an Art School; she is not offering college credits so she does not need to be associated with that department. Ms. Jensen further stated that she is just trying to bring something to the Town of Hudson that is needed. She believes she is making a change for the better.

Vice Chair Pacocha asked if there was anyone else present that wanted to speak. No one came forward. The matter was directed to the Board for deliberation.

There was a lengthy discussion on whether to allow the Art School to open a commercial property in a residential zone. Mr. Martin felt that he should uphold the administrative decision because it is a permitted use yet on the other hand for 47 years it has been an illegal use. Mr. Brackett felt that he should not uphold the administrative decision because opening the school would put a commercial use back in residential property.

Mr. Buttrick added that there are currently three uses in place. Two on the 1<sup>st</sup> floor are commercial in nature and one is currently vacant; both are non-conforming. The third, the rooming house remains residential and is also non-conforming.

Motion was made by Mr. Martin to defer the matter to the Town Attorney until June 23<sup>rd</sup> and was seconded by Mr. Brackett. Vote as follows:

Mr. Martin	To defer
Mr. Brackett	To defer
Mr. Dearborn	To defer
Ms. Shuman	To defer
Mr. Pacocha	To defer

Vote: 5-0 Motion granted to defer to Town Attorney until June 23, 2016.

Chairman Davis resumed her seat as Chairman, Vice Chair Pacocha resumed his seat as a voting Member and Gerald Dearborn resumed his seat as an Alternate.

- 2. Case 106-028 (5-26-16): Bob and Marlene Savoie, 6 Deblo Drive, Hudson, NH, request an Equitable Waiver to allow the existing garage to remain within the side-yard setback; 15-feet required, 11.1 feet proposed. Map 106, Lot 028, Zoned G-1; HZO Article VII §334-27, Table of Dimensional Requirements.**

Bob and Marlene Savoie testified that they were seeking an equitable waiver for an innocent mistake made in 2003 when they added a two-car garage to their existing property. Their property was surveyed by M. J. Grainger Engineering and they were given the dimensions as to where the new two-car garage needed to be placed. They pulled all the appropriate permits that were required through the Town of Hudson. All parties were in agreement that the new garage was built within the legal lot lines. The property is currently up for sale and the bank alerted the Savoie's that the garage is not within the legal 15 foot requirement from their lot line. The Savoie's further explained that they needed the waiver to satisfy the bank.

Chairman Davis asked if there was anyone in the audience who would like to speak in favor of this application. No one came forward. Chairman Davis asked if there was anyone in the audience who

would like to speak neutrally or in opposition of this application. No one came forward. Chairman Davis asked the board if anyone had any questions.

Mr. Martin emphatically stated that M. J. Grainger Engineering did a disservice to the Savoie's and he wanted the ZBA to send a letter to the Over Sight Board for Professional Engineers informing them of the situation. This mistake has cost the Savoie's their time, money and unnecessary aggravation.

Mr. Brackett is concerned that there are more issues than currently being raised; driveway, trailer, basketball hoop and shed. As a board they can only vote on what is before them and they cannot add things.

Chairman Davis suggested stipulations can be made to any motion. Mr. Martin made a motion to grant an equitable waiver for the garage and add a stipulation to move the shed onto the property line. No one seconded the motion. The motion failed.

Mr. Pacocha made a motion to grant an equitable waiver for the garage and add a stipulation to move the shed and basketball hoop onto the property line. No one seconded the motion. The motion failed.

Ms. Shuman made a motion to grant an equitable waiver for the garage with no stipulations. Mr. Martin seconded. Vote as follows:

Donna Shuman	Grant equitable waiver for garage
Normand Martin	Grant equitable waiver for garage
Charles Brackett	Not to Grant equitable waiver for garage
Jim Pacocha	Grant equitable waiver for garage
Maryellen Davis	Grant equitable waiver for garage

Vote: 4-1 Motion granted for equitable waiver for garage

**3. Case 191-108 (5-26-16): Melissa Corson, 9 Coll Street, Hudson, NH, requests a Variance to allow the construction of an 80-square foot addition to the front of the existing, non-conforming, single-family structure. (Map 191, Lot 108, Zoned B; HZO Article VII §334-31A, Alteration and Expansion of Non-Conforming Structures.)**

Mr. Nolan stated that the abutters on 38, 40 and 42 B Street were not properly noticed. It was also determined that the abutter on 45 Melendy was not properly noticed.

Mr. Martin made a motion to defer to June 9<sup>th</sup> meeting so the abutters in question could be properly noticed. Motion was seconded by Mr. Brackett. Vote as follows:

Normand Martin	Defer to June 9 <sup>th</sup>
Charles Brackett	Defer to June 9 <sup>th</sup>
Donna Shuman	Defer to June 9 <sup>th</sup>
Jim Pacocha	Defer to June 9 <sup>th</sup>
Maryellen Davis	Defer to June 9 <sup>th</sup>

Vote: 5-0 Motion granted to defer Case 191-1008 (5-26-16) to June 9, 2016

4. **Case 165-147 (5-26-16): Charles Raz c/o Signs now NH & Cliff Antonell, PO Box 184, Pelham, NH, requests the following for the property located at 76 Derry Street, Hudson, NH.**
- a. **An appeal of a Zoning Administrative Decision issued by the Zoning Administrator dated 3-30-16, which states that the proposed LED changeable sign would be an alteration to the existing non-compliant sign, due to the change of the type of sign. Any alteration would need a Variance from the Zoning Board of Adjustment, per Zoning Ordinance §334-31A. (Map 165, Lot 147, Zoned B; HZO Article VII §334-31A, Alteration and Expansion of Non-Conforming Structures.)**
  - b. **A Variance to allow the replacement of a 40-square foot internally illuminated manually changeable sign, to a 40-square foot low voltage illuminated electronic changing sign that can be dimmed at night. (Map 165, Lot 147, Zoned B; HZO article VII §334-31A, Alteration and Expansion of Non-Conforming Structures.)**

Attorney Mark Kanakis testified that the site has a history with this non-conforming sign for many years. In 1996 this freestanding multi-use sign was approved thru the Zoning Board of Appeals to the current state of the sign as it is displayed currently (case number 55-24 / 12/05/1996.) The sign will only operate during the business hours and is keeping with the existing size of the current letter board. The request is not altering the size, shape or setback; it is only updating the technology of the changeable letter board which is allowed by the current ordinance.

Charles Raz testified that justice would be done by allowing an effective sign that allows the business owner to integrate product and services within the property without having to bring additional liability to the property while changing the letter board. Dated technology challenges the business owner to safely change the letter board during winter months. Mr. Raz also stated that by having a programmable message center with LED illumination the sign would be dimmed at night.

Chairman Davis asked if there was anyone in the audience who would like to speak in favor of this application. No one came forward. Chairman Davis asked if there was anyone in the audience who would like to speak neutrally or in opposition of this application. No one came forward. Chairman Davis asked the board if anyone had any questions.

Ben Barr of Watch Fire LED Signs testified that the purchaser of the sign will not turn the sign on until all revisions are complete. Mr. Barr also stated that only businesses in the Mall would be advertised on the sign.

Mr. Martin made a motion to overturn the Zoning Administrator's decision and was seconded by Mr. Brackett. Vote as follows:

Mr. Martin	Overturn
Mr. Brackett	Overturn
Ms. Shuman	Not to Overturn
Mr. Pacocha	Overturn
Ms. Davis	Not to Overturn with comment – the requested change to the sign impacts the whole area and therefore Ms. Davis believes that a variance is required.

Vote: 3-2 Motion granted to overturn the Zoning Administrator's decision that a Variance from the ZBA is necessary.

Attorney Mark Kanakis requested the ZBA to withdraw the variance application without prejudice.

Motion was made by Mr. Martin to withdraw and seconded by Mr. Brackett. Vote as follows:

Mr. Martin	Withdraw
Mr. Brackett	Withdraw
Ms. Shuman	Withdraw
Mr. Pacocha	Withdraw
Ms. Davis	Withdraw

Vote: 5-0 Motion granted to withdraw the variance application without prejudice

Short recess was realized from 9:15 PM to 9:24 PM.

5. **Case 112-026 (5-26-16): David, Barbara, & Benjamin Baker, 69 Kienia Road, Hudson, NH, requests an Area Variance to allow an additional single-family dwelling unit located above the existing garage, in addition to an existing duplex on the lot. (Map 112, Lot 026, Zoned G-1; HZO Article VII §334-26, Reduction of Requirements for Mixed and Dual Uses.)**

Mr. Martin stepped down and Chairman Davis appointed Maurice Nolin to replace Mr. Martin as a voting Member.

Much discussion took place on whether or not there was enough information to move forward with the applicant's request. Motion was made by Mr. Brackett to defer with date contingent upon a site walk and was seconded by Ms. Shuman. Vote as follows:

Mr. Brackett	Defer
Ms. Shuman	Defer
Mr. Pacocha	Defer
Mr. Nolin	Defer
Ms. Davis	Defer

Vote: 5-0 Motion granted to defer with date contingent upon site walk

The ZBA unanimously agreed to meet on June 2, 2016 at 6:15 PM in the Paul Buxton Meeting Room in the Town Hall basement before proceeding to 69 Kienia Road for a site walk of the property. Rehearing date will be determined after the site walk.

Mr. Martin resumed his place as a voting Member and Mr. Nolin resumed his place as an Alternate.

#### **IV. REVIEW OF MINUTES**

Board voted unanimously to approve the meeting minutes of April 28, 2016 as amended.

## **V. OTHER BUSINESS**

Set up an appointment with the ZBA Attorney prior to June 23, 2016 meeting.

In the meeting packets, were the new corrected abutter and applicant forms.

Usually in the packets are a copy of the actual list of abutters, copies of labels, and copies of the green slips from the Post Office. It was asked if the green slips are needed. Chairman Davis will inform Chief Buxton that the ZBA packets no longer need the green slips. This will save time and money.

## **VI. ADJOURNMENT**

Mr. Martin made a motion to adjourn and Ms. Shuman seconded the motion. All in favor, the motion passed unanimously. Chairman Davis declared the meeting adjourned at 10:20 PM.

DRAFT