



TOWN OF HUDSON

Zoning Board of Adjustment



Charlie Brackett, Chairman David Morin, Selectmen Liaison

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MEETING MINUTES – January 24, 2019 – approved

The Hudson Zoning Board of Adjustment met on January 24, 2019, in the Community Development Paul Buxton Meeting Room in the basement of Hudson Town Hall.

Chairman Charlie Brackett called the meeting to order at 7:00 PM, gave a brief overview of the purpose of the Zoning Board and the process of the meeting, asked that anyone addressing the Board to give their name, with spelling, and address, noted that there is no smoking in the building, asked everyone to turn off the ringers on their cell phones and to refrain from talking unless addressing the Board due to the sensitivity of the microphones, stated that there are copies of the Agenda and Appeal process on the shelf by the door, noted that should anyone disagree with a decision made by the Board, that an appeal can be filed within thirty days and should include new evidence or specify the error the Board made. Mr. Brackett recognized that there are only four (4) Members present, that normally there are five (5), that three (3) is a quorum, that a vote of three (3) Members is needed to pass any motion and offered the opportunity to the applicants to defer the hearing on their Case until next month in the hope that there would be five (5) voting Members present. Neither applicant asked for a deferment.

Members present were: Charlie Brackett (Chair), Maryellen Davis (Regular/Acting Clerk), Gary Dearborn (Regular) and James Pacocha (Vice Chair). Also present were David Morin, Selectman Liaison, and Louise Knee, Recorder. Excused were: Gary Daddario (Regular) and Bruce Buttrick, Zoning Administrator. Absent was Mike Pitre (Alternate). Kevin Houle (Alternate/Clerk)'s term has expired. Ms. Davis was asked to perform the duty of the Clerk for this meeting. For the record, the four (4) Members present would be Voting Members for this meeting.

I. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. Case 169-011 (1-24-19): Stephen Hebert, 27 Windham Rd, Hudson, NH requests a Variance to construct a 48 ft. x 28 ft. residential garage, in the Business district where residential use is not a permitted use. [Map 169, Lot 011, Zoned B; HZO Article VII §334-21, Table of Permitted Principal Uses].

Ms. Davis read the Case into the record. Stephen Hebert introduced himself, stated that he would like to construct a 3-car garage stand-alone garage on his property to accommodate his collector cars, that his home is in the 'B' (Business Zone) even though there is only one business in his neighborhood, the rest being single-family

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homes and that because of the Zone, is seeking a variance for a garage, which is a reasonable accessory use for a home.

Mr. Hebert addressed the criteria necessary for the granting of a variance and the information shared included the following:

- 1) *not contrary to public interest*
 - proposed construction would be in keeping with the character of the established residential neighborhood in a business zone
- 2) *spirit of Zoning Ordinance observed*
 - is met as a garage is an established accessory use to a residence and would be in character with the established residential neighborhood
- 3) *substantial justice done*
 - the addition of a garage is an accessory use for the residential use already established in the
- 4) *surrounding property values not diminished*
 - proposed construction would be in keeping with the character of the established residential neighborhood
 - proposed construction allows for good housekeeping and storage of vehicles in a garage
- 5) *unnecessary hardship if not granted*
 - garage is a common accessory to every and any residence
 - the proposed garage meets all other requirements, except Zone
 - the placement of this neighborhood in the “B” (Business) Zone causes the hardship

Public testimony opened at 7:08 PM. No one addressed the Board.

Mr. Dearborn stated that he went to the site and there were all homes in the neighborhood and was surprised that it was classified as the “B” Zone and thought perhaps it was due to the proximity to Route 111. Mr. Brackett noted that variances were given to build the houses. In response to Mr. Dearborn’s question regarding the second floor of the garage, Mr. Hebert stated that there would be no plumbing and would not be or become an ADU (Accessory Dwelling Unit). Ms. Davis questioned the personal use of the garage and Mr. Hebert stated that he is a collector of vehicles. Mr. Brackett noted that a curb cut onto Route 111 is not proposed and that the existing curb cut on Windham Road will remain as is and would not be altered.

Motion made by Mr. Pacocha and seconded by Mr. Dearborn to grant the Variance as presented and with no conditions. Mr. Pacocha spoke to his motion noting that even though it is Zoned “B”, the neighborhood is all residential homes and that a garage is a standard accessory to any home and would be in character with the neighborhood. Mr. Dearborn agreed with Mr. Pacocha noting that the zone classification could possibly be due to its close proximity to Route 111 and added that the hardship is met/due by the zone classification. Vote was 4:0. Motion passed. Variance granted. The 30-day appeal period was noted.

2. Case 211-039 (1-24-19): Janice Jabczanka, 61 Burns Hill Road, Hudson, NH, requests a Variance, to build a 1,250 square feet Accessory Dwelling Unit (ADU), where 750 square feet max is allowed.[Map 211, Lot 039, Zoned R-2; HZO Article XIII A, §334-73.3, ADU Provisions].

Ms. Davis read the Case into the record. Jay Leonard introduced himself as an attorney from Nashua representing Janice Jabczanka who was also present and sitting with the public. Atty. Leonard referenced the Fact Sheet submitted with the application, Mr. Buttrick's Staff Report dated 1/11/2019, the Assessor's record and two (2) floor plans, one titled "Original Basement Layout" and the other titled "Proposed Layout".

Atty. Leonard stated that the property is the former "Provincial House" of the Oblate Fathers associated with the former owners, the Missionary Oblates of Mary Immaculate, and was built as a home for several Oblate Fathers associated with the retreat. The home was built, and continues to have, one heating system, one well and one septic system. In the late 1980's, the Provincial House was sold as part of a development effort. The size of the Provincial House lot is 6.04 acres and the new lots created in the development were created close to the one-acre minimum lot size.

Atty. Leonard stated that the house itself is also an unusual home, referenced the Assessor's Sheet and noted that the house has two (2) floors above ground and a basement totaling 11,714 SF (square feet) of gross living area of which 5,742 SF is above ground level and finished and a basement with 3,376 SF. Due to the size of the structure, the basement has several lally columns to provide support for bearing walls, two (2) existing stairways to/from the first floor, a half bath, a utility room, a furnace room, an electrical closet, an unfinished hobby room and game room, several other unfinished rooms and an 8.6'x5' chimney base. There exists two (2) external access/egress points from the basement, at the opposite end from the existing garage, one regular door and one 6' sliding glass door, and a couple of windows.

Atty. Leonard stated that the intent of the ADU (Accessory Dwelling Unit) is to provide housing for the property owner's sister Brenda, who is also present at the meeting and sitting in the public, and proceeded to identify how an ADU is one mechanism for a community to offer diverse housing options for independent living, that the State recently passed law defining and mandating ADUs to be available, that ADUs are designed to protect the single family character of a neighborhood, and that Hudson complies and has stipulated a more restrictive size limitation of 750 SF. Atty. Leonard stated that the proposed 1,250 SF ADU is acceptable per State Law but not with the Town of Hudson.

Atty. Leonard directed the Board's attention to the "Proposed Layout", noted that the ADU area is colored in yellow, located on the right, away from the garage and where plumbing, windows and doors are already located and noted that it only has one bedroom with no opportunity for a second bedroom. Atty. Leonard stated that there would be no exterior changes to the house building, that this is a modest proposal given the existing 8.5' x 5' fireplace/chimney base between the proposed Kitchen and living room, that the ADU would consume approximately one third (1/3) of the basement area and that the ADU complies with all State regulations and Hudson's

criteria with the exception of square footage. Atty. Leonard noted that the Board (ZBA) has approved larger ADU units in the past and cited examples on Kara's Crossing and Schaeffer Circle. Atty. Leonard also noted that the applicant sent letters to her neighbors regarding the proposal and received no objections.

Atty. Leonard next addressed the variance criteria and shared the following information:

1) not contrary to public interest

- Proposal provides an independent living space for a family member without any impact to the neighborhood, the community or public interests.
- The exterior structure will not change
- Public interests and general welfare of the community are met in that appropriate water, sewer and fire access already exists

2) spirit of Zoning Ordinance observed

- The Ordinance specifically states that it is designed to "increase the supply of affordable housing in Town without the need for more infrastructure or further land development.
- The Ordinance also intends to maintain a relationship between the size of the accessory dwelling unit and the size of the primary unit. The primary unit has 5,742 SF of finished space plus garage and deck. The accessory unit will have 1,250 SF of finished space that represents approximately 13% of the finished space within the structure and will consume approximately 27% of the total basement level.
- There is no threat to public health, safety or welfare

3) substantial justice done

- The property owner will always reside at the premise and desires to pursue an ADU instead of a duplex.
- The cost to redesign and relocate existing structural and utility improvements would be a substantial financial burden on the applicant and that burden would be imposed without any benefit to the general zoning scheme or to the neighborhood.

4) surrounding property values not diminished

- With no exterior changes, there will be no impact to surrounding property values, nor will there be changes to the character of the neighborhood.

5) unnecessary hardship if not granted

- The size of the lot and the size of the house are unique in that both are larger than the others in the area/neighborhood
- The house with its walk-out basement also has existing structural walls that must be accommodated
- The inclusion of a laundry room and storage closets are reasonable for a dwelling unit. The design is reasonable.
- The scale of the ADU is appropriate when compared to the primary living unit. There is no change to the primary living unit.

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- The proposed ADU meets all State of NH conditions and all of Hudson's conditions except for the size.

Public testimony opened at 7:36 PM. No one addressed the Board.

Board discussion ensued. Mr. Brackett asked if this was the residence that had the short wave radio antenna and Atty. Leonard confirmed and added that there are no antennae currently on the property. Mr. Brackett stated that the garage is at the other end of the house from the proposed ADU and asked if a garage and driveway are being considered for the ADU and Atty. Leonard responded that neither are proposed.

Ms. Davis stated that the house is big, asked how many bedrooms and bathrooms currently exist, noted the number of unfinished rooms and space in the non-ADU section of the basement, noted that variances stay with the land and expressed concern that it could become a boarding house, which would require Planning Board approval. Discussion arose on how to safeguard against it becoming more than just an ADU. One suggestion was to have the deed adjusted to reflect the ADU. Atty. Leonard stated that the ADU would be specified on the Building Permit and with the Assessors. Mr. Brackett stated that there is historical evidence that unless recorded with the registry, a check of Town records could be overlooked by a new owner. Suggestion made to have the specificity reflected in the Notice of Decision because it is recorded at the Registry of Deeds. Janice Jabczanka addressed the Board, stated that she is trying to follow all the rules, has no intent to create a duplex, an apartment or a boarding house and has no objection if the variance approval specifies it is just for an ADU and that get recorded at the Registry.

Motion made by Mr. Dearborn and seconded by Mr. Pacocha to grant the variance allowing a 1,250 SF ADU (Accessory Dwelling Unit) with the stipulation that it is just for an ADU to be filed with the Registry of Deeds and with the understanding that any further changes to the structure would require appropriate Town approvals. Vote was 3:1 to grant with the stipulation. Ms. Davis opposed based on the size. Motion passed. Variance granted with stipulation. The thirty-day appeal period was noted.

II. REVIEW OF MINUTES

1. 12-13-18 Minutes

Board reviewed the edited version presented and made no additional changes. Motion made by Mr. Dearborn and seconded by Mr. Pacocha to approve the 12/13/2018 Minutes as edited and presented. Vote 3:0:1. Ms. Davis abstained

III. REQUEST FOR REHEARING

1. Case 240-016 (12-13-18) Request for Rehearing of Variance for MOOZIT, LLC c/o Anthony Karistianos at 14 River Road, Hudson, NH to allow an apartment / residential dwelling unit for the owner of the business above the automotive service garage which would become a mixed / dual use property. [Map 240, Lot 016, Zoned G-1, HZO Article III §334-10A, Mixed or dual use on a lot].

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Ms. Davis read the request into the record. Mr. Pacocha stated that he read the letter from Atty. Robert Shepard from Smith-Weiss Shepard, PC of Nashua and thought it was more of an argument for the variance application than an appeal. Mr. Dearborn stated that there was no new evidence presented. Mr. Brackett noted that it was received six (6) days after the appeal period expired and stated that the 30-day appeal period is extremely important and it is up to the applicant to do their due diligence and that, in his opinion, a rehearing is not warranted.

Motion made by Mr. Dearborn and seconded by Mr. Pacocha to deny the request for re-hearing for the following ten (10) reasons:

- (1) the request was not filed within the 30-day appeal period
- (2) there was no new evidence presented
- (3) the Building Permit issued in 1988 was to raise the existing roof to accommodate garage doors with no mention of office space or living accommodations
- (4) in 2008 Kim Gobbi agreed that the office space would not be used for living space
- (5) the lot is undersized for Mixed / Dual Use. A minimum of 87,120 SF is required and this lot has 20,950 SF which is about a quarter of the size
- (6) the lot does not have the required 200' frontage. It has 149' frontage on River Road and 94' frontage on Stuart Street
- (7) there have been multiple code violations over the years
- (8) there was never a Building Permit pulled for the living accommodations
- (9) the 30-day appeal period was clearly stated by the Chairman
- (10) the living space has existed without any form of Town approval

Vote to deny the Request for Re-hearing was 3:0:1. Ms. Davis abstained. Request denied.

IV. OTHER

1. Proposed Zoning Ordinance amendments going to ballot.

Mr. Brackett stated that he attended the Planning Board meeting; thought Brian Groth, Town Planner, did a good job translating Zoning to the Planning Board; that the Planning Board only wants to submit six (6) Warrant Articles for the ballot; that Mr. Groth managed to combine nine (9) proposed amendments into six (6); that Tiny Houses needs more work, that the State is also working on it and the Planning Board thought it prudent to wait for the State. Mr. Brackett stated that Zoning Amendments falls under the Planning Board's jurisdiction and that going forward Mr. Groth should be included for both his knowledge and his ability to feed the Planning Board.

Ms. Davis stated that the process invoked this year worked well, that the next changes, Tiny Houses and Backyard Animals, will be more substantive and require much more work and would welcome Mr. Groth to the process.

2. Election of Officers

Suggestion made to defer until full Board present. Selectman Morin agreed.

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3. Proposed State legislation of interest.

Mr. Buttrick identified six (6) House Bills of interest, one pertaining to Tiny Houses. By general consensus, discussion deferred so Mr. Buttrick could participate.

4. Status of Alternate Mike Pitre

Mr. Brackett stated that he has reached out to Mike Pitre but has not received a response, that he values Mr. Pitre's input and that the cost of the mailings is now questioned especially if Mr. Pitre is no longer able to serve on the Board. Mr. Brackett asked Mr. Morin to have the Selectman reach out to Mr. Pitre to determine his status and if Mr. Pitre is no longer able to be a Member to please make sure to thank him for his service. Mr. Morin agreed and asked if ZBA has the 3-missed meetings clause in their Rules and Ms. Davis confirmed.

Mr. Brackett emphasized the Board's need for Alternate Members

5. Training by NH Municipal Association

Selectman Morin reported that he attended a two-hour class by NH Municipal Association that was very beneficial and hopes to make it available to all Chairmen, Vice Chairmen and all Members of every Town Board and Commission – after March's Town Vote.

Motion made by Mr. Dearborn, seconded by Mr. Pacocha and unanimously voted to adjourn the meeting. The January 24, 2019 meeting adjourned at 8:29 PM.

Respectfully submitted,

Charles J. Brackett
ZBA Chairman