



TOWN OF HUDSON

Zoning Board of Adjustment



Charlie Brackett, Chairman

Marilyn E. McGrath, Selectmen Liaison

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MEETING MINUTES – June 27, 2019 - approved

The Hudson Zoning Board of Adjustment met on June 27, 2019, in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall at 7:00 PM.

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

Vice Chairman / Acting Chair Gary Dearborn called the meeting to order at 7:02 PM, apologized for the slight delay and invited everyone to stand for the Pledge of Allegiance.

Mr. Dearborn noted that on the shelf by the entry door are two (2) documents: the Agenda for tonight's meeting and an Application for Rehearing if one is needed. Mr. Dearborn stated that there is only one (1) application before the Board tonight and noted that the 11 PM curfew would not be an issue. With regard to housekeeping matters, Mr. Dearborn stated that there is absolutely no smoking in the building and asked everyone to silence their cell phones and to refrain from talking in the audience due to the interruption and interference with the sensitive recording microphones and noted that there were no individuals of the public present. Mr. Dearborn stated that when the application is read into the record, the Applicant may come either to the lectern or the table, state and spell their name and present their application.

Members present were Gary Daddario (Regular), Gary Dearborn (Regular/Vice Chair/Acting Chair), Brian Etienne (Alternate) and Jim Pacocha (Regular). Also present were Bruce Buttrick, Zoning Administrator, Louise Knee, Recorder, and Marilyn McGrath, Selectmen Liaison. Excused were Charlie Brackett (Regular/Chair), and Maryellen Davis (Regular/Clerk). For the record, Alternate Etienne was appointed to vote.

Mr. Dearborn noted that there are only four (4) Voting Members at this meeting when there are usually five (5) and offered the Applicant the option to defer the hearing of their application to next month when the possibility exists that a full Board (five [5] Voting Members) could be present. Mr. Dearborn explained that for a motion to pass it requires a minimum of three (3) votes and should the vote be 2:2, the motion would fail and the application would be denied.

Selectman McGrath clarified that she is only the Selectmen Liaison, that she may ask questions but is not voting. The Applicant stated that they choose to be heard at this meeting.

III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

1. Case 168-107 (6-27-19): Richard Tassi, 20 Frenette Drive, Hudson, NH requests a Variance to construct an 18' x 22' carport which encroaches 11.1 ft. into the front yard setback, leaving 18.9 ft. where 30 feet is required. [Map 168, Lot 107-000, Zoned R-2; HZO Article VII, §334-27, Table of Minimum Dimensional Requirements].

Mr. Buttrick read the Case into the record, referenced his Staff Report and noted the positioning of the lot inside the circle of Frenette Drive leaves the lot with no side yard, the lot only has a front yard setback line and a back yard setback line. There exists legal non-conforming aspects; specifically, the lot is nonconforming with regard to size and the existing house is non-conforming being in the front setback. Mr. Buttrick referenced Elvis Dhima, PE, Town Engineer's emails dated 6/12/2019 & 5/16/2019 and shared the two (2) points noted: (1) that a new driveway permit is needed which will require both a plan and profile; and (2) that the original driveway be removed or a second driveway be approved by the Planning Board prior to the proposed new driveway's final inspection.

Richard Tassi of 20 Frenette Drive introduced himself and Denise Tassi of 20 Frenette Drive, stated that they are seeking a variance into the front setback for about eleven feet (11') to construct a carport and addressed each criteria for the granting of a variance. In brief, the information shared included:

(1) not contrary to public interest

- there is no physical or visual infringement on any private or public property

(2) spirit of Ordinance observed

- proposed carport will blend with existing concrete apron which appears to have been a driveway at sometime in the past
- proposed carport will align with the existing house

(3) substantial justice done

- length of existing driveway is too short, parked vehicles are too close to the edge of the street which creates difficult conditions for snow plowing
- both occupants are senior citizens and the granting of this variance would greatly improve access to the house at grade level

(4) surrounding property values not diminished

- proposed carport would blend in with the neighborhood structures
- proposed carport will be partially concealed by a row of bushes

(5) *hardship*

- the shape of the lot has no side yards
- the location of the existing house, the setback restrictions and the existence of ledge renders the proposed location for the carport the only feasible option

Mr. Dearborn stated that normally the meeting would be opened to public testimony but noted that there were no other individuals present and asked Mrs. Tassi if she wished to add anything. Denise Tassi stated that there are stairs to the existing driveway and in wintertime it gets slippery, added that last winter she actually fell down and was fortunate not to get hurt much.

Mr. Dearborn declared the matter before the Board.

Mr. Etienne stated that the Town Engineer noted that a second driveway would need Planning Board approval and that the mark-up plan submitted identified that the existing driveway would be abandoned “upon completion”, presumably meaning the new driveway for the carport. Mr. Tassi confirmed that it is their intent to no longer use the existing driveway for parking cars and added that it would just be used as a walkway to the front door of their house. Mr. Etienne asked if there would be a walkway from the carport to the house and Mr. Tassi stated that there would be a walkway.

Mr. Daddario asked if the carport would be constructed against the existing concrete apron so that the concrete apron becomes the new driveway. Mr. Tassi stated that the carport would be further back into the yard, that gravel will initially be laid between the concrete apron and the carport and added that perhaps next year they would concrete the gap.

Mr. Pacocha asked why the carport could not be constructed further back and out of the setback. Mr. Tassi responded that ledge exists and that the carport is placed as far back as possible. Mr. Dearborn asked if the ledge protrudes from the ground and Mr. Tassi responded that the ledge does not protrude and added that they hit ledge within six inches (6”) of digging which prevents them from placing adequate footings for the carport.

Discussion focused on the existing non-conformities (lot size and setbacks), a need for an Equitable Waiver, and the need to define “abandon” with regard to the existing driveway. A geographic overview of the lot was placed on the screen that showed two (2) cars parked just off-street in the existing driveway and the concrete pad.

Both Ms. McGrath and Mr. Buttrick agreed on the need to define “abandon”, Mr. Buttrick citing enforcement guidelines and Ms. McGrath citing avoidance of future owners deciding to utilize and encouraged current owners to seek

approval for two (2) residential driveways from the Planning Board or to convert the existing driveway physically to just a walkway. Ms. McGrath inquired if the Town Engineer, Elvis Dhima, has approved the new driveway location and Mr. Buttrick referred to Mr. Dhima's two (2) emails, dated 5/16/2019 and 6/12/2019, and noted that the latter one required removing the existing driveway prior to the proposed driveway's final inspection.

With regard to the fact that the existing house encroaches the front setback, Mr. Buttrick stated that it is a legal non-conformity, added that the shed in the rear of the property is entirely within the setback, and that an Equitable Waiver is a separate application to the Board. It was noted that a lack of an Equitable Waiver may pose a concern should the current owners wish to refinance or sell their property.

Ms. McGrath noted that there were no abutters present and asked Mr. Buttrick if it would be appropriate for the Applicant to ask for an Equitable Waiver. Mr. Buttrick responded that the Board could not accept such a verbal request as it has not been given due public notice. Ms. McGrath encouraged the Applicants again to pursue the Equitable Waiver and asked Mr. Buttrick if the application fee for the Equitable Waiver could be waived. Mr. Buttrick responded that only the Board of Selectmen could waive fees. Ms. McGrath asked Mr. Buttrick to be proactive in the future to encourage an Equitable Waiver application be filed in tandem with a variance request and to only charge one Application Fee. Mr. Buttrick stated that he does not have the authority to waive fees. Ms. McGrath asked Mr. Buttrick to pursue with the Town Administrator.

Discussion next focused on the existing driveway and its abandonment. General consensus was that the existing asphalt needed to be eliminated, particularly from the roadside to the ROW (Right-of-Way) line with better demarking from the ROW line to the front door. After some discussion regarding the seeding/grassing/landscaping, Mrs. Tassi suggested mulching and the planting of bushes for ease in maintenance and would appreciate having a walkway at least five feet (5') wide from the street to her front door. Mr. Dearborn questioned where visitors park and Mrs. Tassi stated that they would continue to park on the street, as they do today because they have two (2) cars. Mr. Buttrick referenced Exhibit E, The Proposed Final Site Plan, hand drew the passageway from the street to the front door, showed Mr. & Mrs. Tassi and Mrs. Tassi stated that a pathway would also be needed to the steps by the retaining wall. It was noted that access from the new pathway from the road can occur as that would be on their property.

Mr. Daddario made the motion to grant the Variance with the stipulation that the existing driveway be abandoned and that the driveway area from the street to the Town ROW (Right-of-Way) line be covered with a form of natural vegetation with the exception of a single path to be no more than five feet (5') wide to allow foot passage from the street to the front door area of the house.

Mr. Pacocha seconded the motion. Mr. Daddario spoke to his motion stating that a carport is a common structure and not contrary to public interest; the carport is a common use and does not contradict the spirit of the Ordinance; substantial justice is done as the carport is needed for the senior citizen owners to access their home from the parking area without stairs which are necessarily use with the existing driveway; the proposed use is common and structure is common to residential neighborhoods and will not diminish surrounding property values; and hardship is met due to the fact that behind the proposed location ledge is just six inches (6") below the surface preventing the location of the carport out of the setback. Mr. Daddario stated that the five (5) variance criteria have been met and the stipulation to remove the existing driveway addresses the concerns raised. Mr. Pacocha stated that all the criteria have been met and concurred with Mr. Daddario.

Ms. McGrath proposed an amendment, suggesting to use the word "eliminated" instead of "abandoned". Mr. Etienne proposed another amendment, specifically to state to decommission the existing driveway to two inches (2") below grade, as that is the standard and allows room for the mulch proposed to keep elevations as they exist today. Both Mr. Daddario and Mr. Pacocha agreed to the change in wording proposed.

The stipulation to the motion now reads: "that the existing driveway be decommissioned to 2" below grade relative to the driveway area from the street to the Town Right-of-Way line and that this area be covered with some form of natural vegetation with the exception of a single path, no more than 5' wide, to allow foot passage from the street to the area at the front door of the house."

Vote was 4:0. Motion passed. Variance granted with one stipulation. The 30-day appeal period was noted.

IV. REVIEW OF MINUTES:

1. 05/23/19 Minutes

Mr. Etienne suggested that review of the Minutes be tabled to the next meeting due to the absent Members. It was noted that both of those Members have reviewed the Minutes and submitted edits. Mr. Buttrick pointed out that in the footer of the Edited Version are initials. Mr. Pacocha asked why some initials are in upper case and others in lower case, and Ms. Knee stated that those in lower case communicated to her that they read the Minutes and had no edits to offer and that those who did make edits are in upper case.

Board reviewed the Edited Minutes as presented. Minor amendments were made, specifically to Page 2 Line 52 "the Applicant" was added and to Page 3 Line 125 the word "there" was added.

Ms. McGrath left the meeting at 7:50 PM.

Motion made by Mr. Daddario, seconded by Mr. Etienne and unanimously voted to approve the 5/23/2019 Minutes as edited and amended.

V. REQUEST FOR REHEARING:

There were no requests presented for consideration.

VI. OTHER:

1. Recap of recent 25th Annual Planning and Zoning Conference – Handouts

Mr. Buttrick referenced the material in the packet – the ZBA Decision Making Process which is the “meat and potatoes” of the Board and The Zoning Board of Adjustment in New Hampshire that offers more details for hearing appeals and also the link for additional material.

2. Continued discussion of possible ZBA Bylaws revisions.

Mr. Buttrick recapped the recent changes made: redefining the duties of the Clerk; the addition for the Recorder position; action for three (3) consecutive unexcused absences; the addition of the Chairman’s introduction/order of business as Attachment A; the inclusion of the Pledge of Allegiance; and the 30-day appeal period and process.

Board reviewed. Clarification made to the Recorder’s distribution regarding Minutes (to the entire Board) and Notices of Decision (to the Zoning Administrator and Chairman/Acting Chair). Two changes were made to the Chairman’s introduction – the inclusion of the meeting date and the 30-day Appeal period. Consensus reached that the required two (2) public hearings can be scheduled to affect the changes. Mr. Buttrick asked to schedule for July 25, 2019.

3. Discussion of possible Zoning Ordinance Amendments, and prep for 7/11/19 ZBA workshop mtg.

Mr. Buttrick referenced the draft dated 6/27/2019 and drafts prepared for the four (4) top items: (A) Alteration or Expansion of Non-conforming Structures with the possible inclusion of Equitable Waivers; (B) Doggie Day Care/Training adding “kennel” definition and section as well as including dog fostering; (C) Special Exception for Day Cares to include outside requirements; and (D) Manufactured Home Parks and the removal of the BOCA Code.

Mr. Buttrick offered an electronic copy for editing and noted that the next workshop is scheduled for July 11, 2019.

Motion made by Mr. Pacocha, seconded by Mr. Daddario and unanimously voted to adjourn the meeting. The 6/27/2019 ZBA meeting adjourned at 8:06 PM.

Respectfully submitted,

Gerald A. Dearborn, Vice Chair/Acting Chair