



TOWN OF HUDSON

Zoning Board of Adjustment



Charlie Brackett, Chairman

Marilyn E. McGrath, Selectmen Liaison

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MEETING MINUTES – September 26, 2019 - approved

The Hudson Zoning Board of Adjustment met on September 26, 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

Chairman Brackett called the meeting to order at 6:58 PM and invited everyone to stand for the Pledge of Allegiance. Mr. Brackett noted the 11:00 PM curfew and with six (6) Cases before the Board the possibility exists that all may not be addressed and added that they will endeavor to hear them all.

Selectman McGrath went to the podium and presented on behalf of the Board of Selectmen Certificates of Appreciation to Jim Pacocha for seventeen (17) years of volunteer service to the Town of Hudson, to Charles Brackett for eighteen (18) years of voluntary service and to Maryellen Davis for seventeen (17) years of volunteer service to the Town of Hudson. Ms. McGrath also added her personal thanks to the entire Board.

Vice Chair Dearborn read the Preamble into the record, identified as Attachment A of the Board's Bylaws, that included the procedure and process for the meeting, that copies of the Agenda and Application for Rehearing are on the shelf by the door, the importance of the 30-day time period as well as housekeeping items regarding cell phones, smoking and talking. Clerk Davis took the roll call.

Members present were Charlie Brackett (Regular/Chair), Gary Daddario (Regular), Maryellen Davis (Regular/Clerk), Gary Dearborn (Regular/Vice Chair), Brian Etienne (Alternate) and Jim Pacocha (Regular). Also present were Bruce Buttrick, Zoning Administrator, Louise Knee, Recorder and Marilyn McGrath, Selectmen Liaison. For the record, all Regular Members voted unless recused. Mr. Pacocha stated the he would recuse himself from the first Case.

Ms. McGrath addressed the public and noted that she is the Selectman Liaison to the Zoning Board and that even though she may participate in the discussion, she does not vote.

III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

1. Case 208-001 (deferred/continued from 7-25-19): Richard and Robin Sevigny, 161 Bush Hill Road, Hudson, NH requests an Appeal From An Administrative Decision of a Notice of Violation dated May 24, 2019 citing violations of two provisions in the Hudson Zoning Ordinance: §334-15B (2) Parking prohibited and §334-13 Junkyards prohibited; outdoor storage. [Map 208, Lot 001-000; Zoned General-One (G-1); HZO Article III, §334-15B(2) & §334-13].

Clerk Davis read the Case into the record. Mr. Pacocha recused himself as he was not present at the July meeting. Alternate Etienne appointed to sit and vote on the matter.

Mr. Brackett noted that this Case was continued from the July 25th meeting, that the Board has received two (2) rounds of testimony, that a Site Walk was held on July 29th, that the deference to tonight's meeting was at the request of the Applicant and that now the Case is before the Board for discussion.

Ms. Davis noted that the only new evidence was receipt of the Warranty Deed.

Mr. Dearborn noted that the Applicant (Richard Sevigny) and his attorney were present and asked if it was permissible to pose them questions. Chairman Brackett noted it was permissible.

Mr. Dearborn asked Attorney Kent Barker of Winer & Bennett in Nashua, NH, if there has been any attempt to clean up the site over the summer. Atty. Barker responded that there has not as there is an existing restraining order. Mr. Dearborn asked whether the Jeep vehicle in the tote road was still there and Atty. Barker stated that it was and believes that it belongs to a family member. Mr. Brackett noted that the Jeep was registered but not plated/inspected, had flat tires and was not road worthy. Atty. Barker referenced the Site Walk comment that a check for ownership by HPD (Hudson Police Department) could determine ownership and asked whether a check was conducted. Ms. McGrath noted that Mr. Sevigny had left the meeting to take a cellphone call. Atty. Barker stated that his family is out-of-State. Mr. Brackett declared a five (5) minute recess at 7:11 PM. Mr. Brackett called the meeting back to order at 7:12 PM. Atty. Barker stated that the Jeep is owned by his client's brother.

Mr. Brackett stated that the issue before the Board is the trailer and added that from the Site Walk other possible violations were noted such as used appliances strewed across the property and possibly over the property line. Mr. Dearborn noted that the temporary garage on the site is in the side setback.

Mr. Brackett stated that according to Town Counsel the Board can consider other violations but that the Board should vote on them separately. Mr. Buttrick noted that the definition of ZO (Zoning Ordinance) Article 334-13 is broad. Mr. Brackett stated that the identification of 'junk' is difficult because one man's "treasures" can be considered as "junk" to another man. Mr. Daddario stated that his observations on the other side of the property fall under Article 334:13 along with the stuff observed along the tote road. Mr. Buttrick read the ZO definition of "Junk" and "Junkyard" into the record. Mr. Brackett stated that those items were observed at the Site Walk. Ms. Davis concurred and added that she did not see anything that could be used.

Mr. Brackett noted that the other violation cited was the Gross Vehicle Weight (GVW) of the trailer by the easement. Considering the condition of the trailer, an accurate weight cannot be taken. It resides by the driveway easement with its doors open and filled with material. Ms. Davis noted that the previous owner, Mr. Dunn, attested that its GVW was greater than 13,000 and the Board has testimony from Scott Boisvert of BSP Trans, Inc. that this trailer model weighs 13,750 pounds.

Motion made by Mr. Dearborn and seconded by Ms. Davis to uphold the Zoning Administrator's / Code Enforcement Officer's 5/24/2019 Notice of Violation. Mr. Dearborn spoke to his motion noting that the debris and junk clearly depicts what's on the property, there has been no attempt to clean any of it up, that the trailer is greater in GVW than what is allowed, that the trailer doors were left open, unprotected and filled with various material. Ms. Davis concurred with Mr. Dearborn and stated that junk is not in the Spirit of the Ordinance and it is not fair to the abutters or the Town and that it is clearly, in her opinion, a violation. Mr. Etienne noted the Warranty Deed and its terms regarding "any damage" subject to use and added that the trailer violates the intent of the Deed. Ms. Davis noted that the Deed runs with the land. Mr. Daddario agreed with the Zoning Administrator's decision, that considering the inability to obtain an accurate weight of the tractor-trailer "trailer" due to its current condition, that it is best for the Board to accept the trucking company for its weight, that there may be some leeway on the junkyard but the evidence witnessed at the Site Walk showed materials over the easement and property line. Vote was 5:0. Zoning Administrator's decision upheld.

Discussion ensued and Site Walk observations were shared regarding other potential violations. Mr. Dearborn stated that from the view of 155 Bush Hill Road, the temporary garage appears to be well within the setback. Motion made by Ms. Davis, seconded by Mr. Etienne and unanimously voted that based on the observation made from the Site Walk to instruct the Zoning Administrator / Code Enforcement Officer to go back to the property to re-inspect the entire property for other areas of junk and potential violations. Motion carried 5:0.

2. Case 191-135 (9-26-19): Adam Gidley, owner of Salem Manufactured Homes LLC, Salem, NH, requests a prior Variance amendment for 3 Bay Street, Hudson, NH to correct clerical errors of a replacement manufactured home from 72 ft. x 16 ft. to 76 ft. x 16 ft. yielding a total square footage of 1,216 rather than 1,152 as previously stated on the Variance granted on 7/25/19. This Variance request is also to address the proposed site built decks of 4 ft. x 6 ft. and 10 ft. x 12 ft. [Map 191, Lot 135-000; Zoned Business (B); HZO Article VIII, §334-29 Extension or enlargement of nonconforming uses].

Clerk Davis read the Case into the record. Mr. Buttrick stated that there was a discrepancy between the plot plan and the Building Permit (BP). The BP had the wrong dimensions. The submitted plot plan showed the correct dimensions of seventy six feet by sixteen feet (76'x16') for one thousand two hundred sixteen square feet (1,216 SF) and the front stoop and that also the rear deck and front and rear steps were not included and should have been because it was an expansion of a non-conformity. The incorrect dimensions from the BP were carried to the Agenda and included in the motion made on 7/25/2019. Mr. Brackett noted that the case was reviewed, discussed and approved with one condition at the 7/25/2019 meeting.

Adam Gidley, owner of Salem Manufactured Homes LLC in Salem, NH, admitted placing the incorrect dimension of 16'x72' instead of the correct dimensions of 16'x76' and noted that the plot plan submitted with the application had the correct dimensions, including the two steps to the front and rear doors.

Public testimony opened at 7:30 PM. No one addressed the Board.

Several Members stated that their decision was based on the plot plan, which included the steps. Mr. Dearborn asked and received confirmation that the rear steps do not encroach the setback.

Motion made by Ms. Davis and seconded by Mr. Dearborn to grant the correction of the dimensions as per the plot plan from 1,152 SF to 1,216 SF and noted that the condition applied to the 7/25/2019 decision remain intact ("that the existing damaged recreational trailer vehicle currently in the rear setback be removed from the site when the existing manufactured home is removed, or sooner"). Ms. Davis stated that it is clearly a clerical error, that there are no setback violations and the spirit of the Ordinance is met. Mr. Dearborn concurred. Mr. Brackett stated that this motion amends the previous Notice of Decision (NOD), that this is not a stand-alone NOD as the same stipulation assigned to the 7/25/2019 decision remains and added that the 30-day appeal period begins anew as of this meeting. Vote was 5:0.

Dimensions corrected. For the record, Alternate Etienne voted as Mr. Pacocha had stepped down and was not reinstated at the beginning of the Case.

3. Case 198-038 (9-26-19): Victor A. Cote, 8 B St., Hudson, NH requests a Variance to allow an installed 12 ft. x 24 ft. above ground pool to remain, which encroaches ~ 6 ft. into the rear setback leaving ~ 9 ft. where 15 ft. is required. [Map 198, Lot 038-000; Zoned Town Residence (TR); HZO Article VII, §334-27 Table of Minimum Dimensional Requirements].

Clerk Davis read the Case into the record. Mr. Buttrick stated that the matter was discovered when the applicant filed for an Electrical Permit (EP) on a recently installed pool and the link to a Building Permit (BP) was not found as it had not been obtained. Mr. Buttrick stated that based on the filing for a BP he performed a Zoning Determination and had to deny the BP on account of the setback encroachment from the installed pool.

Victor Cote introduced himself as the Property Owner and referenced his Variance application and shared the following: a pool is a reasonable and extremely common use at a residential property; that the installed pool does not present any intrusion to the neighbors, that there is no direct line-of-sight of the pool to the neighbors or public, except from #9 A Street; locating the pool to the rear of the site is reasonable and allows property owner reasonable use of his property; the lot is small with the house placed in the center so that anywhere the pool would be located on the site would infringe into a setback. Mr. Cote stated that he purchased the pool from Naamco, that it sat in a box on his lawn for approximately three (3) weeks before Naamco installed and then told him to obtain an electrical permit to complete its installation.

Public testimony opened at 7:43 PM. No one addressed the Board.

Mr. Brackett asked for clarification on the time line. Mr. Buttrick stated that when the electrical permit (EP) was sought it was discovered that a corresponding Building Permit (BP) had not been obtained, an application for the BP was submitted and on 7/2/2019 additional information was requested, specifically a plot plan with dimensions of the pool's placement on the lot, then based on the additional information, a Zoning Determination was made on 7/29/2019 noting that the pool encroached the rear setback and a Variance would be needed. Mr. Buttrick stated that the BP was denied because of the setback issue.

Discussion ensued and included similar experiences with the pool company, the filing of complaints and concern for insurance coverage not covering damage to anything constructed (or installed, such as a pool) without a Building Permit / Pool Permit. Mr. Brackett noted that this is the second Case

this year regarding the installation of a pool, from the same Company, without a Building/Pool Permit. Ms. McGrath expressed concern with the ability of the pool company to install a pool without obtaining a permit and just 'walk away'.

Mr. Dearborn asked whether Mr. Cote decided where to place the pool. Mr. Cote stated that all he communicated to Naamco was that the pool was to be installed in his backyard, never identified a specific location, and, in fact, was not even advised when Naamco would arrive to install it, that he came home one day to find it installed.

Ms. Davis referred to the Town Engineer's comment/concern regarding discharge from the pool as there is no Town drainage on the road and the topography is relatively flat and is close to neighbors. Mr. Cote stated that he already added crushed stone around the pool and constructed a two-foot (2') stonewall to the left and a 4' – 5' stonewall to the right. Ms. McGrath suggested Mr. Cote make an appointment with the Town Engineer to explain what has been done to see if it is enough to satisfy the concern. Mr. Brackett added that the concern is real and shared that he experienced an unexpected loss of 20,000 gallons from his 28,000-gallon pool last November.

Mr. Etienne asked Mr. Cote if he carried insurance and Mr. Cote advised that he notified his Insurance Company and added the pool to his policy. Mr. Daddario asked Mr. Cote if he filed a complaint. Mr. Cote responded that he did file a complaint with Naamco and that they responded "read your contract". Mr. Brackett suggested to Mr. Cote to place it on their website. Mr. Etienne asked Mr. Cote if he filed a complaint with the State of NH and highlight that the pool was installed without the necessary permit. Mr. Cote stated that he did not file a complaint with the State.

Mr. Daddario noted that it came to attention because the Electrical Permit had no corresponding Building Permit and asked about the electrical status. Mr. Cote stated that the electrical work has been done, that the pool is completely installed.

Mr. Daddario made a motion to approve the variance into the rear setback with the condition that both the Building (Pool) Permit and Electrical Permit be obtained and inspected. Ms. Davis stated that there should also be a condition to require the applicant to confer with the Town Engineer regarding the drainage system for recommendations and implementation. Mr. Daddario agreed to add the condition to his motion, Ms. Davis seconded the motion,

Prior to voting, Mr. Brackett directed review the criteria for the granting of a Variance:

(1) not contrary to public interest

- in rear setback

- least intrusive
- no injury
- no abutter testimony
- (2) *spirit of Ordinance observed*
 - does not alter character of the neighborhood
 - cannot be seen from the road
 - fence surrounding property
- (3) *substantial justice done to property owner*
 - already installed
 - removal provides no benefit
- (4) *surrounding property values not diminished*
 - no impact
 - any improvement is good
- (5) *hardship*
 - small lot
 - cannot be relocated to avoid setbacks - any placement on property would infringe a setback as house is placed in center of lot
 - back deck previously built – with proper Building Permit
 - applicant voluntarily sought Electrical Permit
 - ZBA not being held hostage, doing the right thing is a good thing

Recap of motion: To grant the variance into the rear setback with the conditions that both the Building (Pool) Permit and Electrical Permit be obtained and that the applicant confer with the Town Engineer regarding the drainage system for recommendations and implementation. It was noted that the Town's Engineer submit any recommendation in writing to be included in the Case file and be included in the motion. Mr. Buttrick was asked to coordinate.

Vote was unanimous at 5:0. Variance granted. The 30-day appeal period was noted.

For the record, Alternate Etienne voted as Mr. Pacocha had not been reinstated at the beginning of the Case. Mr. Pacocha reinstated for the remainder of the meeting.

4. Case 222-039 (9-26-19): Margaret McQueeney, 3 Colson Rd., Hudson, NH requests a Variance to allow a second separate driveway for an existing Accessory Dwelling Unit. [Map 222, Lot 039-000; Zoned Residence-Two (R-2); HZO Article XIII A Accessory Dwelling Units, §334-73.3G, Provisions].

Clerk Davis read the Case into the record. Mr. Buttrick referenced his Staff Report dated 9/26/2019, noted that the ZBA approved the ALU *Accessory

Living Unit on 1/27/2000 and that on 1/28/2001 the Planning Board (PB) granted a waiver for a temporary second (2nd) driveway to expire in four (4) years (1/3/2006) and PB granted an extension of the second driveway until 2/10/2010. Mr. Buttrick also noted that a Home Occupation Special Exception was granted in 2010 for child care.

Ms. McGrath stated that her recollection was that the ALU NOD (Notice of Decision) was to specify that if there was a new owner, that the new owner must get ZBA approval. Mr. Buttrick stated that he was unaware and had not found any supporting paper trail of a condition requiring the ALU to be re-registered with new owner.

Margaret McQueeney of 3A Colson Rd. introduced herself as residing in the ALU with her husband Mike McQueeney, stated that her daughter and son-in-law (Meridith and Stephen Molloy) bought the property in December 2018 because it had the ALU, that the site has two (2) driveways and that the one for the ALU is dirt with ruts, referenced pictures of it attached to their application, noted that there are other properties in the neighborhood that have two (2) driveways, and that their desire is to pave the driveway to improve maintenance and their safety. Ms. McQueeney stated that what Ms. McGrath just shared was news to them, that the house was purchased as a single-family home with an ADU and with two driveways.

Ms. McQueeney reviewed their application and addressed the criteria for the granting of a variance. The information shared included:

1. *not contrary to public interest*
 - the ADU is located in the R-2 Zone
 - R2 Zone allows duplexes
 - There are several homes in the neighborhood with more than one driveway or curb cut and cited the following three (3) examples: home across the street is a duplex with two driveways, another has a circular driveway with two curb cuts and an indirect abutter (16 Wason Street) has an ADU with two driveways
 - The second driveway existed and when house was purchased
2. *spirit of Ordinance observed*
 - the second driveway provides those living in the ADU easier and direct and safer access to their living quarters
 - the main driveway only allows access to the main home
 - there is approximately 80 feet from the main driveway to the ADU
 - the ADU currently has an unpaved driveway which is icy, slushy and dangerous in the winter months
 - there is no direct access to the ADU for emergency personnel without the second driveway
 - the occupants of the ADU are elderly

3. *substantial justice done*
 - the second driveway provides safety to the ADU residents for direct access and paving it eases in maintaining it, especially in winter, would allow safer access to the ADU
 - and would allow safer access for emergency personnel too
4. *will not diminish surrounding property values*
 - the current dirt (secondary) driveway is an eye-sore
 - paving it would improve the site as well as the neighborhood
5. *hardship*
 - literal enforcement results in an unnecessary hardship because the driveway to this home does not extend to the ADU – it is 80' away from the ADU
 - 80' is too far to walk for some elderly people
 - it is also unreasonable to expect emergency personnel to access the ADU from the main home
 - emergency access through the main home will cause trauma and stress to children living in the main home
 - existing main driveway cannot extend to ADU because the leach field is in the front yard and the well is to the rear and the topography to the rear is not suitable for access
 - by paving the existing second driveway next to the ADU will provide necessary safety as it could be plowed and treated in winter and eliminate the ruts and icing and safety threats now posed by the dirt driveway
 - paving the driveway will help prevent falls and help allow the residents to keep their independence

Public testimony opened at 8:29 PM. No one from the public addressed the Board. Mike McQueeney stated that it is hard in the wintertime dealing with the ruts, snow and ice, that he and his wife are elderly and their safety is a concern and why they want it paved, and, added that emergency access would also benefit from a paved driveway. Public testimony closed at 8:30 PM.

Mr. Buttrick referenced the Town Engineer and the Town Planner responses in the Supplemental Packet. Town Engineer noted that a driveway permit would need to be pulled and that a turn-around be added so that there would be no backing into the road. The Town Planner noted that two neighbors across the street both have two driveways, that the pre-existing “temporary” driveway serves just the ADU and that complying with a single driveway would likely require paving a substantial amount of the front lawn or backyard.

Ms. Davis noted that two (2) driveways are allowed for duplexes but the Ordinance clearly specifies a single driveway to serve both the main home and the ADU and that the character of the single-family home be maintained.

Discussion ensued. Ms. McGrath stated that the ALU was approved and should have common access to the house and if not, the ADU should be abandoned and a duplex established. Ms. McQueeney noted that the house was financed as a single-family home and an ADU should meet safety requirements. Mr. Brackett noted that the financing of the house did not seem to be hindered by the second driveway even though the second driveway temporary permit has expired and is now in violation. Ms. Davis noted that the lot does not qualify for a duplex as it does not meet lot size. Mr. Brackett expressed concern that the Planning Board authorized a temporary driveway as it usurps Zoning Ordinance requirement.

With regard to the Town Planner's comment, Mr. Daddario stated that it would seem more off and out-of-character with the neighborhood to have the front yard substantially paved to accommodate use of the main driveway. Mr. McQueeney stated that the septic system is located in the front yard and cannot be paved over and added that the well is located in the back of the house and that there is a hill in the back of the house that prevents a rear access to the ADU from the main driveway. Mr. Dearborn noted that the ZBA recently did not approve a second driveway for another ADU in Town. Ms. Davis noted that hardship is to be based on the "land". Mr. Brackett asked if the possibility exists to eliminate both driveways and create one that will service both the main home and the ADU.

Other alternatives were explored. Ms. Davis stated that she is inclined to disapprove the paving of the second temporary dirt driveway based on the literal strict enforcement of the Zoning Ordinance but could consider an alternative to paving that would continue to serve the ADU and not look like a second driveway. The thought of an open grid paved system was mentioned as it could be plowed in wintertime and mowed in summer and allow safer passage for the residents without obviously being a second paved driveway.

Mr. McQueeney expressed confusion as there is a driveway now that is dirt and ruddy and a safety hazard and all they seek is to pave it. The Board explained that the existence of the dirt driveway was to be temporary and the time period for its existence has expired and it is technically in violation. It was also noted that should the Board vote tonight for paving the second illegal driveway at this meeting, an appeal would have to provide either new evidence or an alternate variation and the temporary driveway could be subject to Code Enforcement action. Ms. McQueeney asked the Board to defer making a motion until they have had the opportunity to check out other options that would be less intrusive than full pavement.

Motion made by Ms. Davis and seconded by Mr. Daddario to accept the verbal request of the Applicant and defer the Hearing until the next meeting, October 24, 2019. Vote was 5:0. Motion passed. Case continued to October meeting,

Board recessed for ten minutes at 8:59 PM. Meeting called back to order at 9:10 PM.

5. Case 174-079-005 (9-26-19): Don Dumont, owner of Posey Investments, LLC., 195R Central St., Hudson, NH requests an Equitable Waiver of Dimensional Requirement for 7 Lee Way, Hudson, NH to allow a newly built foundation to encroach 6 inches into the side yard setback leaving 14.5 ft. where 15 ft. is required. [Map 174, Lot 079-005; Zoned Town Residence (TR); HZO Article VII, §334-27 Table of Minimum Dimensional Requirements].

Clerk Davis read the Case into the record. Mr. Buttrick noted that this is a newly created subdivision and the lot is under construction and stated that the discrepancy (violation of setback) was discovered when the applicant submitted the required Certified Plot Plan (plan dated 9/5/2019 prepared by Boudreau Land Surveying, PLLC) after the foundation was poured in order to obtain a Framing Permit. The rear corner was poured six inches (6") into the side setback. An Equitable Waiver is being sought as the violation was not intended and the proximity of the poured foundation was in error.

Don Dumont, owner of Posey Investments, LLC, addressed the Board, concurred with Mr. Buttrick's statements, noted that the excavator missed the footing for the left rear corner and it ended up being poured six inches (6") into the setback. Mr. Dumont stated that it was an honest error and not discovered until after the foundation was poured and the surveyed as-built plan prepared.

Public testimony opened at 9:14 PM. Dillon Dumont of Posey Investments stated that the lot is a tight lot, that it was mapped out honoring the setbacks and the excavation missed the mark only at the rear corner by six inches (6"). It was an honest mistake. Being no one else to address the Board, public testimony closed at 9:15 PM

Ms. McGrath stated that there have been several issues and concerns regarding this development/subdivision. Mr. Dillon did not disagree and added that the Town Engineer has had no issues with Posey and added that they (Posey & Town Engineer) have a good working relationship.

Ms. Davis asked why the house could not be brought closer to the road and Mr. Dillon responded that it could not on account of the grade required for a driveway and the front setback requirement.

Ms. McGrath asked how/why this is an Equitable Waiver request and Ms. Davis asked why it was not a Variance request. Mr. Buttrick stated that an after-the-fact Variance request usually is a result of not having pulled

required permits and this had the Building Permit pulled along with the Foundation Sub-permit and was discovered when the required As-built Plan was submitted, which was a requirement before the Framing Sub-permit could be pulled. Mr. Buttrick stated that according to RSA 674:33-a there are two prongs to consider for an Equitable Waiver, the first one regarding greater than a decade to be noticed or the second resulting from an innocent mistake and a high correction cost. Mr. Buttrick pointed out that the discovery of the mistake was because the Applicant was complying with the process and provided the As-built Plan. Mr. Etienne asked whether the Board could expect another “mistake” from this development. Mr. Daddario stated that six inches (6”) is minimal enough to be considered a mistake.

Motion made by Mr. Daddario and seconded by Mr. Dearborn to grant the Equitable Waiver for the foundation that was poured six inches (6”) into the rear setback for a length of approximately one foot (1’). Mr. Daddario spoke to his motion stating that it was an innocent mistake, the foundation was staked to be in compliance with the setback, that the excavation missed the mark by six inches (6”), that the foundation has been poured, that it was discovered too late to bring into compliance and that it does not pose a public or private nuisance. Mr. Dearborn concurred. Ms. Davis asked and received confirmation from Mr. Buttrick that the foundation permit was pulled and because the foundation was not poured per plan the foundation sub-permit cannot be signed-off and the framing sub-permit cannot be pulled until the Board acts on the Equitable Waiver. Mr. Brackett stated that there was an engineered plan and it was approved by the Town Engineer. Mr. Daddario stated that ten feet (10’) could not be considered a mistake in his opinion, but six inches (6”) can. Mr. Dearborn added that the 6” encroachment is for only a length of one foot (1’). Vote was 5:0. Equitable Waiver granted. The 30-day appeal period was noted.

6. Case 165-036 (9-26-19): John Colby, 11 Kenyon St., Hudson, NH requests a Variance to build an Accessory Dwelling Unit (ADU), porch and sunroom onto an existing nonconforming house/structure. The new porch addition encroaches 17.7 ft. leaving 12.3 ft. of front yard setback. The new ADU & sunroom encroaches 8.1 ft. leaving 21.9 ft. of front yard setback where 30 ft. is required. [Map 165, Lot 036-000; Zoned Town Residence (TR); HZO Article VIII, §334-31 Alteration and expansion of nonconforming structures and HZO Article VII, §334-27 Table of Minimum Dimensional Requirements].

Clerk Davis read the Case into the record. Mr. Buttrick referenced his Zoning Determination dated 9/10/2019 and his Staff Report signed 9/26/2019, noted that the lot is conforming but the existing house, built in the early 1900s, is non-conforming being in the front setback approximately 17.7’ leaving approximately 12.3’ of the required 30’ front setback. Mr. Buttrick stated that a Variance is needed to expand a non-conforming structure with the extension

of the front porch, the addition of a sunroom few feet into the front setback and an ADU unit approximately 8' into the front setback

John Colby introduced himself and referenced his application. The information shared included:

1. *not contrary to public interest*
 - proposed addition will not negatively impact the character of the neighborhood because with the layout of the yard and the home's proximity to the road there will be enough open space between it and other properties
2. *spirit of Ordinance observed*
 - the proposed addition will be further back (7') than the existing porch and more than 30' from the road
 - the addition will provide a higher level of safety for the children than any other place on the property as it will create a more private area (backyard)
 - the addition as proposed will also tie in aesthetically to give the appearance of one house instead of two separate dwellings
3. *substantial justice done*
 - the way the home is set on the property now does not afford much privacy. The proposed ADU will help define the backyard and grant some privacy.
 - The existing front porch will be extended and tie into the proposed additions to create one long farmer's porch. This will open up the front of the home and give it more curb appeal than exists now.
4. *will not diminish surrounding property values*
 - the home is the least updated and least visually appeal in the neighborhood – it hadn't been kept up for many years. The addition will increase the property value and enhance the character of the neighborhood.
5. *hardship*
 - the original house was built in 1900, before Zoning, and does not satisfy the current 30' front setback requirement
 - other placement options were considered and discarded as they would negatively impact the set-up and practical usage of the home, would not promote the desired privacy, nor the safety for the children nor eye appeal
 - the house's placement is a pre-existing condition and it would be an unnecessary hardship to insist that the addition not be allowed
 - the proposed addition will be 7' further back from the existing home
 - the proposed addition maintains the character of the neighborhood and is the best use of the property

Mr. Colby referenced the surveyed "plot" plan prepared by Jeffrey Land Survey, LLC dated 8/13/19 that shows the existing house, the proposed wrap-around porch, the sunroom, the ADU and the proposed deck. Mr. Colby noted that the barn at the end of the driveway was built at the same time as the house and is in the rear setback. Mr. Colby stated that there is a 3½-acre field to the rear of his site and added that the 24' x 80' barn can accommodate three (3) cars.

Mr. Colby next referenced the picture of the existing house and noted that the far rear window is his mother's bedroom who has lived with them for nineteen (19) years and is handicap. The center double windows are his dining room. The ADU is for his in-laws who live in Scotland and are retiring to come live with them.

Ms. McGrath questioned the barn and the shed in the rear setback. Mr. Buttrick stated that the property owner could pursue an Equitable Waiver. Ms. McGrath noted that the point she has been making is that the Equitable Waiver should have been presented with this application to avoid having the property owner return to the Board at an additional cost.

Mr. Colby stated that he sent a letter to his neighbors about his proposal to construct a wrap-around porch, sunroom, ADU and deck and received their okay. Mr. Colby read his letter into the record and submitted copies of their signed consent.

It was noted that there was no one sitting in the audience.

Mr. Pacocha asked whether the existing porch needs an Equitable Waiver before granting a variance to extend it. Mr. Buttrick stated that the porch is an existing non-conformity built in 1900, pre-Zoning, and a variance granted to extend it acknowledges its existence and acceptance to/by the Town.

Mr. Dearborn stated that there is no outlet on Kenyon Street and there are many houses set in the front setback. Mr. Bracket agreed that the number and speed of cars is different than other Cases, this one being far lower. Ms. Davis agreed that Kenyon Street is not a busy road.

Mr. Brackett stated that he dislikes seeing an expansion in the setback, can agree with the farmer's porch as it will not intrude further into the setback and questioned if the sunroom and ADU could be reconfigured out of the setback. Mr. Colby stated that they have all the plans done already and asked if a new plot plan would be needed. Mr. Bracket stated that it would.

Mr. Daddario stated that what is different for this Case is that Mr. Colby has a lack of any opposition and even submitted letters of consent from his abutters. Mr. Dearborn stated that we all have our own opinion, but the Case tonight is based on a set of plans and that is what the Board is to vote upon.

Ms. Davis stated that there is a size limit of 750 SF maximum for an ADU and the plan presented shows 749 SF. Ms. Davis also noted that another ADU criteria is that there can be no more than two unrelated people and Mr. Colby confirmed that his in-laws have been married for fifty (50) years.

Motion made by Mr. Dearborn and seconded by Ms. Davis to grant the Variance as per plan submitted – plan prepared by Jeffrey Land Survey LLC dated 8/13/2019. Before calling for a vote, Mr. Brackett asked the Board to address each criteria.

Variance criteria:

1. *not contrary to public interest*
 - Mr. Dearborn: not contrary to public interest, letters of consent from abutters submitted
 - Ms. Davis: not altering neighborhood, aesthetically tying it in
 - Mr. Pacocha: concurred
2. *spirit of Ordinance observed*
 - Mr. Dearborn and Ms. Davis: does not alter the neighborhood
3. *substantial justice done*
 - Mr. Pacocha: no harm to be found
 - Ms. Davis and Mr. Dearborn: justice for applicant and no gain to the public if there were to be denied
4. *will not diminish surrounding property values*
 - Ms. Davis and Mr. Dearborn: increase in property values for applicant and neighborhood
5. *hardship*
 - Mr. Pacocha: house already exists on the lot, existed before Zoning, cannot expect to move the house
 - Mr. Dearborn: house built in 1900
 - Ms. Davis: there are special conditions

Vote was 4:1. Mr. Brackett opposed. Variance granted. The 30-day appeal period was noted. In response to Mr. Colby's question, Mr. Brackett stated that any 'aggrieved' person has the right to appeal and to proceed within the appeal period is at the applicant's own risk.

Ms. McGrath excused herself at 10:12 PM and left the meeting.

IV. PUBLIC HEARING:

3rd Reading of proposed bylaws amendments.\

Public Hearing opened at 10:14 PM. Mr. Buttrick provided a recap of the proposed Amendments that included: adding a Recorder position and

description; changing description of Clerk duties; adding consequence for unexcused absences; changes to the Order of Business to include the Pledge of Allegiance, the Preamble (Attachment A) and the 11 PM curfew and the 30-day appeal period. The word “preamble” was added to Attachment A.

Motion made by Ms. Davis, seconded by Mr. Dearborn and unanimously voted (5:0) to adopt the changes proposed after having held three (3) Public Hearings. Bylaws amended.

Public Hearing closed at 10:17 PM.

V. REVIEW OF MINUTES:

1. 08/22/19 Minutes

Board reviewed the edited version and made no further changes. Motion made by Mr. Dearborn, seconded by Mr. Pacocha and unanimously voted (5:0) to approve the 8/22/2019 Minutes as edited.

VI. REQUEST FOR REHEARING: None

No requests were presented for consideration; however, Mr. Buttrick mentioned that the Air B&B case at 8 Madison has appealed and filed for re-hearing and could appear on October’s Agenda.

VII. OTHER:

1. Update of Zoning Ordinance Amendments proposed to Planning Board as result from 8/29/19 ZBA workshop mtg.

Mr. Buttrick stated that as a result of the last workshop, the following three (3) are ready for presentation to the Planning Board: (1) backyard farming / animals; (2) Day Care Special Exception to include outdoor activities; and (3) doggie day care / training.

Mr. Brackett stated that the Planning Board is also preparing their own amendments and one that is being contemplated is removing the wetland buffer Special Exception from ZBA.

2. Paper for Meeting Packets

General consensus was to keep the paper. The online availability is appreciated but paper is relied upon when actually reviewing each Case in preparation for a meeting. Mr. Dearborn added his appreciation for the Decision Sheet being placed up front for each Case.

3. Number of Cases per Agenda/Meeting

Even though the Board managed six (6) Cases at this meeting, it was recognized that one was a continuation for Board deliberation only and one was deferred to the next meeting. Varying opinions were expressed. Consensus reached to keep each Agenda for each meeting to a maximum of four (4) Cases.

Motion made by Mr. Dearborn, seconded by Mr. Pacocha and unanimously voted to adjourn the meeting. The 9/26/2019 ZBA meeting adjourned at 10:34 PM.

Respectfully submitted,

Charles J. Brackett
ZBA Chairman