



# TOWN OF HUDSON

## Zoning Board of Adjustment



Charlie Brackett, Chairman      Marilyn E. McGrath, Selectmen Liaison

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### MEETING MINUTES – November 14, 2019 - approved

The Hudson Zoning Board of Adjustment met on November 14, 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 6:56 PM and invited everyone to stand for the Pledge of Allegiance. 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 and Louise Knee, Recorder and Marilyn McGrath, Selectman Liaison. For the record, all Regular Members voted. Ms. McGrath addressed the public and stated that even though she may participate in the discussions with the Board, she does not vote.

#### **III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:**

1. Case 247-045-006 (11-14-19): Dennis & Elaine Smith, 3 Lucier Park Dr., Hudson, NH requests a Variance to allow a recently installed 8 ft. x 10 ft. shed structure to remain in the rear and side yard setbacks encroaching 13'-10" in the rear setback leaving 1'-2" where 15 ft. is required and 5'-10" in the side yard setback leaving 9'-2" where 15 ft. is required. [Map 247, Lot 045-006; Zoned Town Residence (TR); HZO Article VII, §334-27, Table of Minimum Dimensional Requirements].

Clerk Davis read the Case into the record. Mr. Buttrick referenced his Staff Report signed 11/5/2019 and stated that this was a result of a complaint received regarding the shed placement in the side and rear setbacks and noted that a shed less than one hundred square feet (100 SF) does not require a Building Permit. It was also noted that the house is in a recent development approved less than two (2) years ago.

Elaine and Dennis Smith introduced themselves as the property owners and residents. Ms. Smith stated that they bought their home in May 2019 and moved in in June 2019, that their lot has a no-build watershed line and is the only home in the neighborhood that does not have a two (2) car garage which was okay with them as her husband drives a Ford 150 truck that has never been garaged and they could install a shed to store lawn and snow equipment. Ms. Smith stated that they did not want to cut any of the large trees, that they selected the flattest section of their back yard which happened to be the far right corner, spoke with their neighbors who all were okay with the selected location, checked out shed businesses and selected Reeds Ferry Lumber based on their reputation and had the shed match the house, siding and roof. They leveled the site and placed rock corners and approximately three and a half weeks later the shed was installed, on a Friday. Ms. Smith stated that she was surprised that the following Tuesday she learned a complaint was filed with the Town from an abutter who verbally said there was no issue with the location.

Mr. Smith stated that they spoke with the Town Assessor's office, the builder Sousa and Reeds Ferry and none of them mentioned anything about Zoning setbacks. The first eight houses in their development have sheds right up to their property lines. They selected the only real placement option for the shed as there is a trench in their front lawn, not that they would want a shed in their front yard, and their lot is restricted with the wetland in the rear and their septic system to the side and they have a deck. To place the shed out of the setbacks (side, rear and wetland) it would need to be placed right by their deck which would block their view of the pond and probably reduce their property value.

Mr. Smith addressed the criteria for the granting of a Variance. The information shared included:

1. *not contrary to public interest*
  - shed is new, sturdy and matches the style and colors of the house
  - shed has a lifetime warrantee
2. *spirit of Ordinance observed*
  - house is the only one in the neighborhood with a one-car garage
  - shed will be used to store tools, outdoor power equipment, yard maintenance equipment, bikes and storage bins that would otherwise be exposed to the weather or under a tarp
3. *substantial justice done*

- the shed would provide much needed sheltered storage
  - the shed would add value to the property
  - of the 22 homes built by Sousa in Lucier Park Estates, 21 have 2-car garages
  - this property is the only one with a single car garage, limiting sheltered storage
  - the 1-car garage was mandated due to the structure's proximity to the neighborhood drainage pond and the wetland buffer setback
4. *will not diminish surrounding property values*
- the shed is new and aesthetically pleasing
  - the shed does not block any sightlines to the natural wetland area
  - shed was made and installed by Reeds Ferry, a Hudson based company known for quality and craftsmanship
  - shed will improve the property value for the owner and the neighborhood
5. *hardship*
- this is a unique lot in its location and features
  - there is a drainage trench in the front yard that services the neighborhood
  - there is a buried propane tank in the backyard
  - Eayrs Pond wetland setback takes up more than 50% of the backyard
  - Placement in rear corner avoids the cutting of mature trees and provides a line of sight to the pond which is important as children come to the sight and there is always a concern with a potential drowning incident

Ms. Smith distributed copies of letters from four (4) abutters supporting their shed. The letters were from: (1) Adam Stone, 3 Chestnut Street dated 9/9/2019; (2) Samantha Landry, 2 Lucier Park Drive dated 9/9/2019; (3) Sriram Vrinda and Nivya Krishamoorthy, 1 Lucier Park Drive dated 9/9/2019; and (4) Debbie Cole, 4 Chestnut Street dated 10/10/2019.

Public testimony opened at 7:21 PM. No one addressed the Board.

Mr. Brackett asked and received confirmation that the stakes he saw in the ground represent the surveyed property line and noted that even though several people were consulted it would have been wise to consult with the Town's Land Use Division. Ms. McGrath stated that the spelling of Eayr's Pond is incorrect on the plan prepared by KNA Assoc and noted that Mr. Sousa is aware of the Town's setbacks and it is an unfortunate shame that he did not communicate it to the Applicants.

Mr. Daddario questioned the location of the underground propane tank and Mr. Smith identified the approximate location noting that it was already there

when they purchased the property. It appears that the location is in the setback and possibly also in the wetland buffer. Ms. McGrath asked Mr. Buttrick to check on any permits regarding its installation and suggested that there should be correspondence to Mr. Sousa regarding the burying of a propane tank in the setback and wetland buffer, if applicable, and to copy the Town Administrator and Town Planner and NHDES (NH Department of Environmental Services) in the event of leakage contamination. Mr. Buttrick noted that a Gas Permit is a Sub-permit of a Building Permit.

Mr. Daddario questioned the drainage easement in the front yard and Mr. Smith responded that it does serve the entire neighborhood. Ms. Davis stated that she appreciates the preservation of the existing trees and the selection of a modest size shed and added that she would not like to see a larger shed installed in the current location if the Board grants the Variance. Mr. Dearborn and Mr. Brackett both noted their observation that there were several sheds in the neighborhood that appear to be placed close to the property lines.

Mr. Etienne noted that the shed rests on rocks and is therefore portable. Mr. Smith responded that technically it could be moved but not practically speaking as the shed rests on three inches (3") of white crushed rocks with cement supports in the corners.

Board reviewed the Variance criteria:

1. *not contrary to public interest*
  - Mr. Daddario: sheds are a normal customary accessory use, the size of the shed is reasonable at 8'x10' and it matches the house and does not appear to be out-of-place
  - Mr. Dearborn: public / neighbors in favor of the shed with only one 'disgruntled' having filed a complaint with the Town regarding setbacks that led to this Variance request
  - Mr. Pacocha: shed poses no threat to public health
  - Ms. Davis: shed does not harm the public and does not contribute to overcrowding and noted that fencing in a neighborhood can tend to lead to an overcrowding 'feel / look'.
  - Mr. Brackett: shed will eliminate clutter in the yard and that is in public interest
2. *spirit of Ordinance observed*
  - Mr. Daddario: matches those in neighborhood, reasonable customary accessory use, poses no threat to neighborhood
  - Mr. Dearborn: no impact or threat to neighborhood
  - Mr. Pacocha: concurred with Mr. Daddario and Mr. Dearborn
  - Ms. Davis: allows applicant reasonable use of property
  - Mr. Brackett: property imposes unique restrictions
3. *substantial justice done*

- Mr. Daddario: shed poses no harm to public, no benefit received if Variance denied. Will it benefit the homeowner? Yes.
  - Mr. Dearborn, Mr. Bracket & Mr. Pacocha concurred
  - Ms. Davis: concurred and noted Property Owners have made a serious investment
4. *will not diminish surrounding property values*
- Mr. Brackett, Mr. Dearborn & Mr. Pacocha: It will improve the property value for the owner and the neighborhood
  - Mr. Daddario concurred and noted that they have purchased a quality product
  - Ms. Davis: not an expert and has no opinion except that it looks good
5. *Hardship*
- Mr. Daddario: hardship is typically difficult but not in this case as the lot is different than others in the neighborhood with its single garage, neighborhood drainage, wetland buffer and underground propane tank
  - Mr. Dearborn: noted hardship would occur without shed to house outdoor maintenance equipment
  - Mr. Pacocha: tight property, no other reasonable location for shed
  - Mr. Brackett: lot has several constraints – 70% of sheds in neighborhood have been placed on the property line
  - Ms. McGrath: concurred

Motion made by Ms. Davis and seconded by Mr. Pacocha to grant the Variance with the stipulation that a shed no larger than 8'x10' (or 80 SF) would ever be placed or built in the setback at the current location. Vote was 5:0. Variance granted with one stipulation. The 30-day appeal period was noted.

Case 165-109 (11-14-19): George Hurd, Member of Tumpney Hurd Clegg, LLC, 39 Trigate Rd., Hudson, NH requests a Variance for 12 Hill St., Hudson, NH to allow the replacement of a single family dwelling with the construction of a new residential duplex structure where a two family (duplex) is not permitted in the Town Residence District. [Map 165, Lot 109; Zoned Town Residence (TR); HZO Article V, §334-20, Allowed uses provided in tables and §334-21 Table of Permitted Principal Uses].

Clerk Davis read the Case into the record. Mr. Buttrick referenced his Zoning Determination dated 10/7/2019 and his Staff Report signed 11/14/2019, noting that the razing of the existing structure would require the replacement to comply with setbacks and that he received feedback from the Town Engineer and Town Planner in response to the Applicant's desire to replace existing single-family home with a two-family home which is prohibited in the TR Zone.

Town Engineer, Elvis Dhima, PE, responded on 10/29/2019, that the Applicant shall: (1) state whether the proposed duplex will be serviced by one or two driveways; (2) provide a separate water service, minimum 1", to the new unit; and (3) confirm with DPW if existing sewer service is adequate to handle a duplex or if a new sewer service is required. Town Planner, Brian Goth, responded on 11/14/2019, described the character and composition of the neighborhood noting that there are nineteen (19) lots on Hill Street that includes thirteen (13) single-family homes, five (5) duplexes and one (1) single-family with an accessory living unit; that 12 Hill Street sits approximately midpoint of Hill Street with the cluster of five (5) duplexes to the west and single-family homes to the east.

Atty. Colin Jean of Nashua, NH, introduced himself as representing the Applicant, Tumpney Hurd Clegg, LLC, and noted that George Hurd, and Michael J. Grainger, PE, were also present in the audience and available to answer any questions from the Board.

Atty. Jean addressed the variance criteria and the information shared included:

1. *not contrary to public interest*
  - duplex will not be contrary to the public interest because the essential character of the neighborhood includes many two-family residences and is consistent with the historical use of the residential area
  - proposed duplex will not threaten public safety or welfare or health as all necessary setbacks, parking, storage, public safety requirements would be met
  - existing structure has a "camp" look/feel, is outdated and seems out of character with the neighborhood
2. *spirit of Ordinance observed*
  - there is no conflict with the implicit or explicit spirit of the Ordinance because the existing nature and use of the general and proximate neighborhood has traditionally housed two-family residences
  - the character of the neighborhood is consistent with the proposed duplex
  - the neighborhood is a mixed neighborhood with a 60/40 split of single-family homes versus duplexes
3. *substantial justice done*
  - substantial justice would be done to the property owner with the granting of the variance because the economic use of the property would be consistent with the surrounding properties

- the duplex would pose no threat or harm to the general public or neighboring property owners and residents
4. *will not diminish surrounding property values*
- the granting of the variance would facilitate the razing of the existing outdated structure that very likely does diminish the value of the surrounding properties
  - the addition of a new well constructed duplex would likely increase the look and appeal of the neighborhood
5. *hardship*
- the existing Zoning Ordinance criteria to not permit duplexes does not serve the intended purpose in this particular case because of the existing nature and character of the neighborhood already having many duplexes
  - enforcing the strict language of the Ordinance would create an unnecessary hardship on the applicant
  - the need to raze the existing structure in order to use the property in a manner consistent with meeting setbacks and the existing quality of homes in the neighborhood make the proposed construction of a new duplex on the property reasonable and economically viable

Atty. Jean distributed a rendering of the proposed duplex, front and rear view and the floor plans of the first and second story. Atty. Jean stated that they propose a single driveway. Mr. Brackett commented that the duplexes in the neighborhood have two (2) driveways and Atty. Jean responded that a single driveway was chosen for safety reasons and confirmed that each unit would have separate entrances.

Public testimony opened at 7:58 PM. The following individuals addressed the Board:

- (1) Richard Clocher, 9 Hill Street, stated that he and his family live diagonally across the street and stated that a duplex is not in the best interest of the neighborhood and that he is opposed to the duplex. The applicant's attorney stated that they propose a single driveway for safety reasons but the opposite would be true because that translates to more cars parking on the street. There are too many cars parked on both sides of their narrow street all the time now. Mr. Clocher stated that he has two (2) small children and he is concerned for their safety. More traffic on the street is a concern. There are already five (5) duplexes on the street and that is more than enough. Adding another duplex is not a 'positive'. Mr. Clocher submitted a petition opposing the granting of a variance to allow a duplex signed by himself and five (5) other neighbors. The following individuals signed the petition:
  - (a) Allyson Clocher, 9 Hill Street



- (b) Judy Husted, 8 Hill Street
  - (c) Tyler Glaude, 13 Hill Street
  - (d) Emily Veloso, 13 Hill Street
  - (e) Lisa Haven, 6 Hill Street
- (2) Christine Husted, 10 Hill Street, stated that she lives next to the property, noted that it is a small lot and questioned the setbacks and whether they would be met and noted that a single driveway just means more cars parked on the street. Ms. Husted stated that the street is not wide and the parking on both sides is a problem.
- (3) Harvey Husted, 10 Hill Street, stated that he agrees with everything his neighbor Richard (Clocher) and wife said, that he has lived on Hill Street for twenty two (22) years and the parking of cars on both sides of the street causes a problem and poses a safety hazard and explained that the street is not wide enough for two cars to travel past one another with vehicles parked on both sides. Mr. Husted stated his preference is for a single-family house.

Being no one else to speak, public testimony closed at 8:07 PM

Atty. Jean acknowledged that valid points were raised and gave assurances that each unit has a garage with their own parking area for off-street parking, that new is better than the existing 'camp' and that the prospect from an economic viewpoint to raze the existing structure is to build a new duplex, that the neighborhood is a mix of one- and two-family residences, in fact approximately one third (1/3) are duplexes, and one more duplex would not affect the density of parking in the neighborhood.

Public testimony opened again at 8:09 PM. No one addressed the Board.

Mr. Dearborn stated that the lot barely meets the minimum square footage (SF) for a single-family home and asked Mr. Buttrick what the minimum square footage was for a two-family home in the TR Zone. Mr. Buttrick stated that the Zoning Ordinance does not specify the minimum square footage of a two-family home in the TR Zone because it prohibits two-family homes in the TR Zone.

Mr. Buttrick stated that he researched the lots on Hill Street, provided specific findings and concluded that each of the duplexes were constructed when the street was in the B-2 Zone that allowed duplexes by Right – the duplexes were built 1987 or older. Ms. McGrath stated that the TR Zone was expanded from Webster Street by a Town Vote driven by the residents in these types of neighborhoods to prevent further overcrowding and preserve residential neighborhoods. Ms. Davis stated that she believes the change to TR Zone occurred in 1998. Mr. Etienne thanked Mr. Buttrick for his in-depth research.



Mr. Brackett stated that a new house would increase the value of the neighborhood and it is still true if the new house was a single-family and noted that the drive for a duplex is economics. Atty. Jean noted that the existing house/'camp' is outdated and there is a cost to razing. Mr. Brackett stated that one side of Hill Street has the majority of the duplexes and finds the statement that it does not change the neighborhood problematic. Atty. Jean stated that there are few lots on the street with structures to be razed, that there is not room for more conversions to create duplexes in the neighborhood and adding one more duplex will not change the neighborhood. Mr. Brackett stated that it is economics that is driving the push for a duplex, to recoup the cost of razing. Atty. Jean stated that the existing house/'camp' does not meet the Town's setbacks and by Right the house could be razed and rebuilt on the same footprint but they are proposing to rebuild with a duplex that will honor the town's setbacks. Atty. Jean noted that at one point in time, this area was Zoned to allow duplexes and the addition of one more will not change the neighborhood.

Mr. Pacocha stated that the fact remains that the Zoning Ordinance does not allow duplexes in the TR Zone, that the TR Zone was created because duplexes crowd neighborhoods, and expressed concern that the granting of this Variance would set a bad precedence. Ms. Davis stated that there are nineteen (19) houses on Hill Street, that thirteen (13) are single-family homes and six (6) are duplexes that were built in 1987 or earlier and the Zone was changed to TR in 1998. Mr. Daddario stated that duplexes are part of the neighborhood character and is surprised with the number of residents who spoke against another duplex but recognizes that duplexes have been prohibited for approximately twenty (20) years now.

Ms. Davis stated that she drove by on a Sunday morning and noticed a lot of traffic and cars parked along the street. Mr. Brackett stated that he drove by as well and noticed what Ms. Davis noted and also noticed that the single-family homes were better maintained. Mr. Pacocha shared their observations along with noticing that many of them had single-car garages and today most homes have two (2) vehicles minimum. Ms. Davis stated that she has concerns with the shared driveway and Atty. Jean asked if separate driveways would be preferred.

Mr. Brackett directed the Board's attention to review of the Variance criteria.

1. *not contrary to public interest*

- Ms. Davis: it is contrary to the public interest; it conflicts with the Zoning Ordinance; TR Zone voted in by the Town residents to restrict size, amount and growth
- Mr. Brackett: testimony received that the lot is surrounded by duplexes, it is not, the majority of homes are single family homes,

there is not a mixture in the neighborhood, just one section of the neighborhood has duplexes, criteria not met

- Mr. Pacocha: it is contrary to public interest, many abutters opposed and expressed safety concerns
- Mr. Dearborn: it is contrary, Zoning Ordinance does not allow
- Mr. Daddario: not unsympathetic to applicant but it is contrary to public interest

2. *spirit of Ordinance observed*

- Ms. Davis: duplex is not in the spirit of the Ordinance, safety concerns exists, negative public input received, will alter the character of the neighborhood
- Mr. Brackett: change made to the Zoning Ordinance to prevent further erosion of the neighborhood
- Mr. Pacocha: not met, does alter the character of the neighborhood
- Mr. Dearborn: proposed duplex is for the financial advantage to the applicant; a single-family home would observe the spirit of the Ordinance
- Mr. Daddario: agreed with all previous comments and added that in 1998 the Town folks voted to change the Zone to TR to put the brakes on and has held fast for twenty-one (21) years, the new structure should not be a duplex

3. *substantial justice done*

- Ms. Davis: financial gain is to the applicant but detrimental to the neighborhood
- Mr. Brackett: just as easy to build a single-family house and do less harm
- Messrs.' Pacocha, Dearborn and Daddario concurred

4. *will not diminish surrounding property values*

- All Members agreed: any new construction would be an improvement – either a single-family or a two-family – but duplexes are prohibited by the Ordinance

5. *hardship*

- Ms. Davis: property as is has a reasonable use, as a single-family house; no change mandated by the land; no hardship presented by the property; other duplexes in neighborhood were built when the Zoning Ordinance allowed duplexes; the lot size at ten thousand square foot (10K SF) is small but small does not make a hardship
- Mr. Brackett: noticed size of proposed duplex is larger than others in neighborhood; a single-family home is reasonable; the change in Zone came as a result of a Town vote by the residents of the Town; criteria failed to be satisfied
- Mr. Pacocha: there is no hardship; property is of similar size to others in neighborhood, there is nothing unique, hardship not met
- Mr. Dearborn: the TR Zone does not allow duplexes, the existing duplexes were built pre-TR Zone change, there is no hardship

- Mr. Daddario: there is no hardship, lot currently has a single-family structure, there is nothing stopping updating this structure or building a new single-family

Motion made by Mr. Pacocha and seconded by Ms. Davis to deny the variance request as it failed to satisfy four of the five criteria required to grant a variance. Vote was 5:0. Variance denied. The 30-day appeal period was noted. George Hurd thanked the Board.

Ms. McGrath announced to the public that the Town is holding Visioning Sessions and invited them to participate. It was noted that information was on the Town's website.

#### **IV. REQUEST FOR REHEARING:**

No requests were received for Board consideration.

#### **V. REVIEW OF MINUTES:**

##### 10/24/19 Minutes

Board reviewed the edited version. Mr. Dearborn made a name correction to an abutter on page 3. Motion made by Mr. Dearborn and seconded by Ms. Davis to approve the 10/24/2019 Minutes as edited and with the name correction. Vote was unanimous (5:0). Minutes approved

#### **VI. OTHER:**

##### 1. Follow-up on ZBA Conditions of Approval

Mr. Buttrick referenced two documents in the Supplemental meeting packet:

- (1) Case #198-038 (9-26-19) 8 B Street: Interoffice Memorandum from Elvis Dhima, PE, Town Engineer dated 10/8/2019 stating that he reviewed the existing underground crushed stone chamber and assessed that it could accommodate the draining of the above-ground pool at a slow rate and if not, received agreement from homeowner to hire a water pool company to remove the water. Case closed.
- (2) Case #222-039 (10-24-19) 3 Colson Drive: submission of Certificate of Occupancy #109 dated 4/23/2003 for Building Permit #302 to construct a 2-story 5-bedroom single family residence with an in-law apartment and the approved septic design for five (5) bedrooms #eCA2019050617 dated 5/6/2019

Board thanked Mr. Buttrick for his follow-through and expressed their appreciation for the closure.

## 2. Nashua Cell Tower Notice

Mr. Buttrick referenced the Notice of Public Hearing from Nashua ZBA regarding the construction of a cell tower. No concerns were expressed; however ...

## 3. Regional Impact

Ms. McGrath asked about the apartment development across the River (Merrimack River) and does not recall that the Town of Hudson ever received a notice of its development especially considering that there is definitely a regional impact and Hudson is affected, particularly with the additional wear-and-tear on the bridge and roads. Discussion ensued. Mr. Buttrick asked to verify and check the criteria for Regional Impact and discuss with the Town Manager, Town Planner and Town Engineer, and possibly town Counsel.

## 4. Bylaws revision discussion agenda number of cases.

Mr. Buttrick stated that the draft amendment is not available for review as the time allotted was circumvented with the research required for the properties on Hill Street. Item deferred until drafted.

Motion made by Ms. Davis, seconded by Mr. Dearborn and unanimously voted to adjourn the meeting. The 11/14/2019 ZBA meeting adjourned at 9:06 PM.

Respectfully submitted,

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Charles J. Brackett, ZBA Chairman