



TOWN OF HUDSON

Zoning Board of Adjustment



Charlie Brackett, Chairman Marilyn E. McGrath, Selectmen Liaison

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MEETING MINUTES – December 12, 2019 - approved

The Hudson Zoning Board of Adjustment met on December 12, 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 7:00 PM and invited everyone to stand for the Pledge of Allegiance.

Selectman Marilyn McGrath went to the podium and announced that a longstanding Member of the Board has decided not to renew her term and expressed appreciation for all the years of service and dedication to the Town and confirmed that she would always be welcomed back. Ms. McGrath presented Maryellen Davis a Certificate of Appreciation signed by all the Selectmen and a bouquet of flowers. The sentiment of appreciation was shared by the 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), 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. Excused was Gary Daddario (Regular). For the record, Alternate Etienne was appointed to vote. 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 165-155 (12-12-19): Keri Demers, 23 Dexter St., Nashua, NH requests a Special Exception for 77 Derry Street, Hudson, NH to allow a Dog Daycare and Boarding facility which will have uses of retail grooming, training, community pet education and kennel/boarding of dogs (day & overnight). [Map 165, Lot 155-000; Zoned Business(B); HZO Article VI, §334-23, Special Exceptions, General Requirements].

Clerk Davis read the Case into the record. Mr. Buttrick referenced his Zoning Determination dated October 24, 2019 and his Staff Report signed December 3, 2019, noted the need for the Special Exception and that comments were received from the Fire Chief and the Town Planner.

Robert Buxton, Fire Chief, questioned whether there is a plan for noise control especially with active businesses on both sides of the proposed facility, the ventilation requirements and the need for review by the Inspectional Services Division. Brian Groth, Town Planner, confirmed need for Site Plan amendment and shared three (3) issues requiring resolution from his preliminary observations: (1) access/loading as it relates to other uses in the plaza and how the outdoor play area will affect loading and circulation for the site as a whole; (2) safety as it relates to (1) and necessary safety precautions around the outdoor area; and (3) nuisance mitigation – sound and smell – and impact onto other business in the plaza and abutting cemetery.

Keri Demers introduced herself and stated that she would like to establish a dog daycare and boarding facility in Hudson and distributed additional material for the Board to consider regarding sanitation and cleaning product, “Rescue” that she would be using, the list of bacteria, viruses, fungi and mold/mildew it combats as well as the type of flooring she would install, commercial Polyflor, a poly-safe mosaic flooring that performs better than resin flooring and is used in animal hospitals.

Ms. Demers stated that the name of her facility is Dewey & Friends, a state of the art Dog Daycare and Boarding facility that will also have grooming, training, retail and pet education inside the building. The kennel aspect is the overnight and day boarding of dogs. She is in negotiations to rent two (2) units, Unit A-2A in the front where the retail aspect of her business will be located and adjoining Unit #A-1D with access to the rear. There will be an outdoor area for use of eliminations at the rear. It is her hope to expand and include grooming, training, pet massages, client education and offer dogs and cats for adoption. Ms. Demers read her application into the record that addressed the Special Exception criteria. With regards to the concerns of the Fire Chief, Ms. Demers stated that the Rescue solution will address the odor, that she is investigating a HVAC system and that she will monitor the barking. Ms. Demers stated that she is aware that if ZBA approves the Special Exception that she then needs to go to the Planning Board

Public testimony opened at 7:17 PM. The following individuals addressed the Board:

- (1) Lisa DiBernardo, 100 Derry Street, stated that she has three (3) concerns: (a) noise with barking day and night added to the already existing noise of racing cars and teenagers parked by Auto Zone playing their music loud; (b) sanitation and waste management; and (c) traffic as there are already 28,000 cars that go by every day, it is congested often times backed up to the front of her home, there are 3-6 accidents every day and asked if a traffic light is proposed. Mr. Brackett noted that the location is proposed to be in the mall plaza next to Auto Zone and not on the nearby vacant lot and that appeared to mitigate some of Ms. DiBernardo's traffic concern.
- (2) Robin Lawrence stated that he is the property owner of 100 Derry Street and is opposed to this project and the noise it will bring.

Being no one else to address the Board, public testimony closed at 7:23 PM.

Ms. Demers stated that the plan is to fence in an area at the back of the building away from traffic, that she will install special "pee on" grass that is cleanable, that the poo will be double bagged and placed in the dumpster at the rear of the building and that the dogs will be screened and excessive barking dogs will not be allowed.

Public testimony reopened at 7:25 PM. No one addressed the Board.

Ms. McGrath asked how long dogs would/could be boarded and Ms. Demers stated that it would be determined on a case-by-case basis and added that it would generally be to cover the owner's vacation schedules. Ms. McGrath asked where the dogs would exercise, play and have access to fresh air while there, whether during boarding or day care. Ms. Demers responded that the retail space is approximately four thousand square feet (4K SF) at the front of the location and boarding/day care would be in the back area that is approximately three thousand five hundred square feet (3.5K SF) along with the outside section and added that it is her plan to add ventilation to the back space. Ms. McGrath asked about the number of dogs planned and about snow removal, especially considering that Hudson has received almost two feet (2') of snow already this year, and noted that the abutting cemetery is a quiet place and barking could interfere with a burial service. In response to the number of dogs Ms. Demers stated that on average it is approximately fifteen to twenty square feet per dog (15-20 SF) per dog, that the dogs will rotate to the outdoor section but would be inside the majority of time.

Mr. Brackett asked about the meeting with the Animal Control Officer and Mr. Buttrick confirmed that two (2) meetings were held with Jana McMillan, Animal Control Officer, and the applicant prior to this meeting. Ms. Demers added that they decided that all animals would not only have to have the core

vaccines for rabies, distemper, leptospirosis and kennel cough but also a negative stool check every six (6) months and added that most facilities only require the test annually.

Ms. McGrath asked if the dogs would be crated and Ms. Demers responded that her facility is a crate-free environment and that beds would be laid out at night and that there would also be luxury suites available.

Mr. Dearborn asked if there were any hours where a human being would not be on premise and Ms. Demers responded that there will always be a human on the premise when the animals are present. Mr. Dearborn asked if that also applied to the green space outside and asked specifically where the green space is intended to be located and its dimensions. Mr. Etienne asked if the outdoor space was included in the lease. Ms. Davis asked if any parking spaces would need to be eliminated/converted for the outdoor green space. Mr. Etienne asked if there was a plan for walking the dogs. Ms. Dexter stated that she has not yet signed a lease but has received verbal agreement that it would not be a problem to have an outdoor grass area. Ms. Davis noted that there was a letter in the file authorizing Ms. Demers to pursue the Special Exception but that it was signed by the Manager, Daniel Gordon, of Hudson Vickerry, LLC, not the Property Owner. It was also noted that Daniel Gordon signed the application.

Mr. Brackett stated that a commitment from the property owner is important. Mr. Dearborn stated that lease and any lease restrictions would also be beneficial. Ms. Davis suggested reaching out to other mall neighbors as they would not have been notified and could possibly have concerns or conflicting issues. Ms. McGrath stated outdoor space specifics should also be finalized, that confirmation that NH State Licensing requirements have been met and how, and asked if the operation is restricted to only dogs. Ms. Demers responded that she would like to include cats as part of the rescue & adoption component of her business. Mr. Brackett suggested that the applicant pursue the issues raised at this meeting, by the Fire Chief and Town Planner and present a succinct plan to the Board. Ms. Demers agreed.

Motion made by Mr. Dearborn, seconded by Mr. Etienne and unanimously voted 5:0 to continue the hearing to the January meeting (1/23/2020) for the applicant to meet with the Zoning Administrator and Animal Control Officer (Jana McMillan) to ascertain that the State regulations are to be met, how to incorporate any recommendations from the ACO, to get a letter from the Property Owner that her proposal (including outdoor green space) is authorized in the lease, to meet with other in-mall neighbors regarding her proposal and how to address any of their concerns, to address the concerns from the Fire Chief and Town Planner and present a succinct plan to the Board.

Ms. McGrath asked Ms. Demers if she has checked out other properties, possible locations. Ms. Demers stated that she has, that she has been looking for over a year now.

2. Case 199-027 (12-12-19): Maria Sousa, 63 Pelham Rd., Hudson, NH requests a Variance to allow the construction of an Accessory Dwelling Unit (ADU) with 896 sqft. which exceeds the 750 sqft. maximum for ADU's. [Map 199, Lot 027; Zoned General (G); HZO Article XIII A, §334-73.3 H, Accessory Dwelling Units, Provisions].

Clerk Davis read the Case into the record. Mr. Buttrick referenced his Zoning Determination dated 11/25/2019, his Staff Report signed 12/5/2019 and stated that the intent is to convert the existing detached garage into an ADU (Accessory Dwelling Unit) that would be connected to the main house with the construction of a four-season breezeway and that a variance is needed with regard to the square footage of the proposed ADU being eight hundred ninety six square feet (896 SF) when the maximum is seven hundred fifty square feet (750 SF) for an ADU. Mr. Buttrick noted that duplexes are allowed in the G (General) Zone and that the lot is 2.259 acres where only one acre is required and that comments were received from the Town Engineer.

Town Engineer, Elvis Dhima, PE, comments provided on 11/26/2019 were: (1) applicant shall provide an approved septic system design that will handle the proposed ADU; (2) existing driveway is non-conforming (within building setback); and (3) applicant shall determine existing well flows and if it can accommodate the proposed ADU.

Maria Sousa introduced herself as the property owner, noted that she has no relationship to the developer of the same name, and stated that her daughter is buying the house and she would like to convert her existing garage into a dwelling unit where she plans to live. Ms. Sousa stated that it is financially feasible to convert the garage into an ADU than build onto the house. Architectural plans have been prepared by DM Designs.

Ms. Sousa addressed the variance criteria. The information shared included:

1. *not contrary to public interest*
 - house will remain a single family structure and not a duplex
 - there are already existing ADUs in the neighborhood
2. *spirit of Ordinance observed*
 - there will be no change to the existing characteristics of the house, it will remain to appear as a single family home
 - the garage is currently detached and a permanent four-season breezeway will be constructed to connect the house to the ADU
3. *substantial justice done*

- they have been part of this community for fourteen (14) years and the granting of this variance will allow them to remain part of the community for the rest of their lives
- all other ADU requirements will be met
- 4. *will not diminish surrounding property values*
 - there's would not be the first ADU in the neighborhood
 - it would continue to be a single family home
- 5. *hardship*
 - it is financially beneficial to them to use the existing garage
 - the existing garage is greater than 750 SF
 - it would pose an unnecessary hardship to them to not utilize the existing garage and would not benefit the neighborhood to do otherwise

Ms. Sousa addressed the Town Engineer's comments. The following information was shared: (1) the ADU would utilize the same existing septic system, that they would be adding a fourth bedroom to their approved and installed four-bedroom septic system; (2) according to the well-water people she contacted, their well produces ten gallons of water per minute (10 gals/min) and that exceeds the requirement of five gallons per minute (5 gals/min); and (3) the driveway is where it was when she bought her home fourteen (14) years ago and there is no plan to change it for the ADU. Mr. Buttrick stated that he found the Driveway Permit Application that was issued in 1997 and the driveway was not installed according to that plan.

Public testimony opened at 8:03 PM. Nicole Martin introduced herself as the daughter who would be purchasing the home, stated that she just lost her grandmother to Alzheimer's and it would bring her peace of mind to have her mom close by – just across the breezeway – and allow her mom to stay in the neighborhood. Being no one else to address the Board, public testimony closed at 8:04 PM.

Ms. McGrath noted that there was no abutter presence and asked Ms. Sousa if she contacted her neighbors. Ms. Sousa stated that she did speak and shared the plans with two of her neighbors and they were not opposed and glad she would be staying in the neighborhood.

Ms. Davis stated that it is logical to keep the existing garage footprint and hoped the ADU would have wheelchair accessibility. Mr. Dearborn stated that a hardship would be imposed to downsize the existing garage.

Mr. Etienne made the motion to grant the variance as requested and with no stipulations. Ms. Davis seconded the motion. Mr. Etienne stated that the garage already exists and the granting of the variance is both fair and fantastic and embraces the intent of ADUs. Ms. Davis concurred. Mr. Brackett stated

that a hardship would be to reconstruct the garage, that the ADU would be connected to the home with the construction of the four-season breezeway, that the spirit of the Ordinance is met and there is no diminution of property values. Vote was 5:0. Motion passed. Variance granted. The 30-day appeal period was noted.

IV. REQUEST FOR REHEARING:

There were no requests presented for Board consideration.

V. REVIEW OF MINUTES:

11/14/19 Minutes

Board reviewed the edited version presented and made minor corrections to pages 2 and 7. Motion made by Mr. Dearborn, seconded by Ms. Davis and unanimously voted (5:0) to approve the 11/14/2019 Minutes as edited and amended.

VI. OTHER: Proposed Zoning Amendments

Mr. Buttrick stated that the Planning Board met and proposed to move three (3) Zoning Amendments to Public Hearing: (1) Wetland Conservation Overlay District; (2) Duplexes; and (3) Industrial Zone Building Height. Draft Zoning Ordinance amendments and a printout of the presentation made to the Planning Board were distributed and discussed.

Discussion focused primarily on the Wetland Conservation Overlay District with a review of the current process, recognition that the ZBA inclusion created an unnecessary step in the review process and that Conservation Commission should be the major driver and that it was a major strike-out in the Zoning Ordinance eliminating the need for a Special Exception to requiring a CUP (Conditional Use Permit) from the Planning Board.

A better definition of Duplexes and the closure of the current loophole was recognized along with the need to standardize the building heights in the Industrial Zone.

Motion made by Ms. Davis, seconded by Mr. Bartlett and unanimously voted to adjourn the meeting. The 12/12/2019 ZBA meeting adjourned at 8:50 PM.

Respectfully submitted,

Charles J. Brackett, Chairman