



# TOWN OF HUDSON

## Zoning Board of Adjustment



Charlie Brackett, Chairman      David Morin, Selectmen Liaison

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### MEETING MINUTES – November 8, 2018 – approved

The Hudson Zoning Board of Adjustment met on November 8, 2018, in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall.

Chairman Charlie Brackett called the meeting to order at 6:59 PM, stated the purpose of ZBA and the process of receiving public testimony noting that when addressing the Board, at either the lectern or the table with the microphone, to begin by stating your name, with spelling, and home address, noted that the microphones are sensitive and asked everyone to refrain from talking in the audience, that on the shelf by the entry door there are copies of the Agenda and Appeal Forms should anyone disagree with a motion made, that there is no smoking in the building and asked everyone to turn off the ringer on all cell phones.

Members present were: Charlie Brackett (Chair), Gary Daddario (Regular), Gary Dearborn (Regular), Maryellen Davis (Regular), Kevin Houle (Alternate/Clerk) and James Pacocha (Vice Chair). Also present were David Morin, Selectman Liaison, Bruce Buttrick, Zoning Administrator and Louise Knee, Recorder. Absent was Alternate Mike Petri. For the record, the five (5) Regular Members present were Voting Members for this meeting.

#### **I. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD**

1. Case 230-022-025 (11-8-18): William O'Brien, 34 James Way, Hudson, NH requests a Variance to construct a 36 ft. x 24 ft. garage in the 30 ft. required front setback leaving a varying setback of 14.7 ft. to 25.2 ft. where a 30 ft. setback is required. [Map 230, Lot 022-025, Zoned G-1; HZO Article VII §334-27, Table of Minimum Dimensional Requirements].

Mr. Houle read the Case into the record.

Mr. Buttrick referenced his Zoning Determination dated 10/25/2018 and his Staff Report dated 10/29/2018, stated that the lot is 1.1 acres, below the required two acres so is therefore an existing non-conforming lot, and noted that this lot has no side yard but a semicircular front yard residing on the inside loop, similar to the inside of a cul-de-sac.

Bill O'Brien, property owner, introduced himself, stated that he would like to construct a free-standing 24' x 36' garage on his property near his driveway for his hobby of

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antique classic cars but in order for their every-day vehicles to keep access to their current garage, the new garage will need to encroach the “front” setback, which is actually the side setback to his house. Mr. O’Brien addressed the criteria for the granting of a variance and the information shared included:

- Granting the variance will not be contrary to the public interest as the garage will be built to resemble the existing house, fitting well into the neighborhood and will be surrounded by trees and not really visible from the road
- The use of the new garage will be for personal use, the storage of antique cars and a lawn mower
- There are technically no side yard to this lot but the way the house is situated on the lot, the left side of the house is like its side yard, where the driveway is located
- It will not impact the surrounding property values as it is adequate to the neighborhood and will look like the house with matching siding and roof
- If the 30’ “front” setback is observed, there would not be enough distance to the house to safely move cars in and out of the three-car garage.
- There is ledge on the other side of the house, so the garage cannot be placed there
- The lot is up on a hill and there is a steep slope to the right of the property

Public testimony opened at 7:10 PM. No one addressed the Board.

In response to Mr. Daddario’s question, Mr. Buttrick stated that due to the configuration of the road and lot, there is technically no side yard, that it is considered front-yard, which requires a 30’ setback. In response to Mr. Daddario’s question, Mr. O’Brien responded that the distance between the existing garage and the location of the new garage is approximately thirty-five feet (35’). Mr. Daddario noted that a car’s length is approximately sixteen feet (16’) but does not know what turning radius would be required. Mr. Dearborn noted that a right turn to the house could put a restriction onto existing garage to which Mr. O’Brien agreed especially when considering snow and added that the septic system is to the rear of the driveway.

Ms. Davis asked the purpose of the new garage and whether there would be any maintenance done on the cars in the proposed garage as there is concern it would be turned into a workshop. Mr. O’Brien responded that the new garage would store the lawn mower and other yard equipment along with his classic car and that the only maintenance proposed is the washing and waxing of his vehicle for shows. Ms. Davis asked if the arborvitae would remain or be removed for the new garage. Mr. O’Brien stated that the arborvitae would remain.

Mr. Brackett stated that it is an unusual lot, that there are no neighbors present at the meeting, that another house close-by has a seven-car garage and that it is not probable that James Way would be expanded, which is one of the reasons for front-yard setbacks. Mr. Buttrick stated that one person came into the office to review the application and did not voice any objection. Mr. Pacocha reviewed the pictures presented with the application and noted the existing shrubbery.

Motion made by Ms. Davis and seconded by Mr. Daddario to grant the motion to allow the garage to be built into the front setback with no conditions. Ms. Davis spoke to her motion noting that it meets all criteria, that it will not injure the rights of others nor diminish surrounding property values, that there will be no maintenance performed in the new garage, and that hardship is met due to the way the house is located on the lot, the slopes and the circular frontage making it unique. Mr. Daddario concurred. Vote was 5:0. Motion granted. Variance approved. Mr. Daddario asked if a clarification should be in the motion that the approval is based per the plan submitted with the application and Mr. Brackett stated that it is a recognized assumption. The 30-day appeal period was noted.

2. Case 240-013 (11-8-18): Vincent Braccio, 27 River Road, Hudson, NH, requests two Variances, to build a farmers porch which encroaches approximately 9 ft. into the required 50 ft. front setback and an exterior 2<sup>nd</sup> floor stairway landing deck which encroaches approximately 11.8 ft. into the required 50 ft. front setback. [Map 240, Lot 013, Zoned G-1 and R-2; HZO Article VIII, §334-31, Alteration and expansion of non-conforming structures, and HZO Article VII, §334-27 Table of Minimum Dimensional Requirements].

Mr. Houle read the Case into the record.

Vincent Braccio introduced himself as the applicant and builder and it was noted that his father, Kenneth Braccio, property owner of 27 River Road was also present.

Mr. Buttrick referenced his Zoning Determination dated 10/25/2018 and his Staff Report dated 10/30/2018, noted that this is an existing lot of record with its frontage bisected with two Zoning Districts (G-1 & R-2) and the house is an existing non-conforming structure residing in the now front setback by approximately nine feet (9') and that the proposed new construction would require two variances, as stated in the Agenda. Mr. Buttrick stated that he approved a Building Permit for the renovation in June and when he drove by and noticed the exterior stairway, he posted a Stop Work Order.

Vincent Braccio stated that the house is currently an eyesore, the front of the house has a small front yard with the expansion of River Road and that part of the renovation is to move the front of the two-family house to the side and adding a deck. The deck would not encroach the setback any more than the house currently does. The driveway will be relocated further to the north and they have already received State (of NH DOT) approval for this change.

Mr. Braccio addressed the variance criteria and the following information was shared:

- Currently the front entrance of the house faces River Road and the plan is to move it to the north side of the residence which would be safer for the occupants and those traveling River Road
- The proposed decks will encroach the now current setback but they will not encroach more than the original foundation of the house that was built back in 1935
- The property has been in his family since 1954 – River Road was expanded after

- Any improvement will increase the property value as well as increase other properties in the immediate area
- The house has not changed its location, it is still on original foundation; River Road has since been widened placing the house into the new setback requirement; and the intent of the renovation is to make the house more usable and safer.

Public Testimony opened at 7:32 PM. No one addressed the Board.

Mr. Brackett noted that the house was constructed in 1935, which was pre-zoning, and that, since then, the front setback increased from thirty feet (30') to fifty feet (50') and River Road was widened and the Zones were assigned that split this lot's frontage between two zones. It seems that the Town imposed hardship onto this lot. Mr. Pacocha asked if the lot had enough land and Mr. Buttrick responded that the house itself is located in the G-1 Zone and has enough acreage but not enough frontage.

Mr. Dearborn referenced the plans submitted with the application and noted that there are two (2) driveways on the lot, one north of the house and one south of the house, and that the existing house is approximately nine feet (9') into the setback. Ms. Davis stated that the applicant plans to relocate the north driveway further north and has already obtained a curb cut from the State (of NH) and noted that the south driveway is gravel and used to be a farm road leading to the barn and woods path.

Mr. Daddario questioned the Stop Work order and Mr. Buttrick responded that the Permit issued was for internal renovation and not new exterior construction. Mr. Braccio stated that the exterior staircase became necessary when he moved the second floor entrance. Mr. Daddario asked if that move was a result of the road widening and Mr. Braccio responded that it wasn't, that it was the result from the first floor interior renovation.

Ms. Davis questioned whether the house has always been a two-family. Mr. Braccio stated that he is forty four (44) years old and it has been a two-family all his life and added that each unit has their own heating system and that there are two (2) septic systems. Kenneth Braccio stated that he bought the property in 1957, as it is today with all the buildings and apartment, and added that there used to be a two-car garage under the original house and that they closed out one of the garages.

Mr. Dearborn stated that the second (south) driveway appear to be an access to the rear of the property, and provides fire access and does not appear to be a separate driveway to the apartment. Mr. Braccio agreed that it is not a driveway for the apartment, especially when one considers that one would have to walk all the way around the building to enter it, and added that there is a walkout from the basement to the gravel (south) driveway.

Discussion arose on the driveways. It was noted that if this was a new application, two (2) driveways would be allowed.

Mr. Pacocha stated that there are two variances before the Board and questioned whether each should be treated individually. Mr. Buttrick suggested to treat as one, as "new construction" for the porch and stairs, and to vote on each individually.

Motion made by Ms. Davis and seconded by Mr. Daddario to grant the variance for the alteration/expansion of a non-conforming structure and the variance to encroach into the front setback for the proposed new construction to build a farmer's porch and exterior second floor staircase. Ms. Davis spoke to her motion noting that the house has been in existence a long time, pre zoning, that the proposed renovations will improve property values and observe the spirit of the Ordinance and that there is hardship on the land. Mr. Daddario stated that the hardship was caused with the expansion of River Road, that the original foundation of the house remains unchanged and added that it is commendable that the improvements will not be closer to the road.

Vote to grant the Variance to allow expansion/alteration of a non-conforming structure was 5:0. Motion passed. Variance granted.

Vote to grant the Variance to allow encroachment into the front setback was 5:0. Motion passed. Variance granted.

The 30-day appeal period was noted.

3. Case 251-005-000 (11-8-18): Ajit Patel, 8 Nottingham Road, Tyngsborough, MA, requests a Variance at 85 River Road to maintain the location (base) for a proposed free standing sign which encroaches approx. 22 ft. into the required setback of 25 ft. leaving approx. 3 ft. of front setback. [Map 251, Lot 005-000, Zoned G-1; HZO Article XII, §334-60C, General Requirements].

Mr. Houle read the Case into the record.

Hooshmad Afshar introduced himself as representing the property owner Ajit Patel.

Mr. Buttrick referenced his Zoning Determination dated 10/18/2018 that included the Stop Work Order when he noticed an unpermitted electrified sign base in the front setback and very close to the road and his Staff Report dated October 30, 2018. Mr. Buttrick stated that this site underwent Planning Board Site Plan Review

Mr. Afshar addressed the Board and made the following statements:

- Had a conceptual with the Zoning Administrator, prepared the plans, went to the Planning Board and received Site Plan Review approval
- Site used to be a used-car lot, is now a ministorage facility and welcomed to the neighborhood
- It is an improvement to the neighborhood
- Sign placement was on the plan approved by the Planning Board and recorded at the Registry of Deeds
- All permits have been pulled and they are close to CO (Certificate of Occupancy)
- Approximately two (2) months after the concrete was poured with anchor bolts for the sign, they received a Stop Work Order
- Interdepartmental miscommunication is **not** the fault of the applicant, yet creates a hardship for the applicant

- The State Highway is okay with the location of the sign
- Pictures were presented showing the drainage pond to the front, complete with rip rap and landscaping and the base for the sign
- Moving the sign base will affect the drain basin and ruin the landscape
- The sign originally intended was huge, ten feet in height (10'h), but, considering a variance is now needed, they are willing to reduce it to six feet (6'h, 6'w, 6'l).  
A picture of the new sign was presented

Public testimony opened at 8:07 PM. Mr. Brackett noted that there was no one in the audience.

Mr. Buttrick stated that he did submit his Site Plan Review comments to the Planning Board on 2/16/2017 where he noted that the proposed sign location violates the Zoning Ordinance and needs to meet the twenty-five foot (25') setback and added that no Sign Permit was pulled for this site. Mr. Buttrick referenced the Site Plan, specifically the GENERAL NOTES on Sheet 1 of 6, and pointed out Note #6 "Contractor is responsible for obtaining all the required permits from the Town of Hudson" and Note #8 "All signage shall be per Town of Hudson applicable regulations". Mr. Buttrick stated that he noticed the concrete base close to the road when he was driving by in August 2018, checked the files and found no Sign Permit, either applied for or issued, so he issued the Stop Work Order on August 18, 2018.

Ms. Davis referenced the Plan with the Dig Safe stamp and noted that there is a twelve foot (12') easement from River Road and that the base of the sign was placed in that easement. Mr. Pacocha stated that the entire footing for the sign was poured in the easement. Mr. Afshar stated that the Planning Board requested the easement line "in case of (road) expansion" but no easement has been recorded.

Ms. Davis expressed concern for snowplows being encumbered with the sign so close to the road. Mr. Brackett stated that three feet (3') from the property line is extreme. Mr. Daddario stated that it basically eliminates the setback. Mr. Dearborn noted that if a Sign Permit had been sought, the applicant would have been told that it needed the twenty-five foot (25') setback before anything was constructed. Mr. Dearborn stated that ministorage is not a high traffic business requiring a sign close to the road, noted that there is plenty of space on the lot to place a sign out of the setback and added that a sign could even be on the building itself and be visible from the road. Mr. Brackett and Ms. Davis concurred.

Board next discussed the sign itself. Mr. Brackett stated that the sign would block the view looking north and that presents a danger and creates a safety hazard. Ms. Davis stated that with the reduction in height to six feet (6') places the sign at eye level and if the sign is lit at night, it would create a serious safety hazard.

Mr. Pacocha questioned the testimony received that the plan with the sign placement in the setback was approved by the Planning Board. Mr. Brackett confirmed that the Planning Board approved the Site Plan and noted that the Planning Board does not have the authority to waive the Zoning Ordinance. Ms. Davis stated that the Planning Board places reliance on the applicant to pull all necessary Permits. Mr. Daddario

added that the Planning Board would not be concerned about an item needing a Permit yet concerned enough that it be done and noted on the Plan.

Mr. Daddario stated that the hardship criteria relies on the land and what has been presented does not relate to any hardship resulting from the land but hardship on the applicant resulting from their failure to pull permits.

Motion made by Mr. Dearborn and seconded by Ms. Davis to deny the variance and not grant any waiver that would eliminate any of the required front setback for a sign. Mr. Dearborn spoke to his motion noting that a three foot (3') distance to the road is extreme, that it creates safety concerns with snow plowing and sight and that the type of business can be served well with a sign out of the setback. Ms. Davis stated that the request fails three out of the five criteria necessary to grant a variance; namely the application does not serve the public interest, it does set up a safety concern, it injures the public rights of others, it does not satisfy the spirit of the Ordinance and there is no hardship. Vote was 5:0. Motion passed. Variance denied.

Mr. Afshar made reference the Sheet 3 of the approved plan regarding sight distance. Mr. Brackett suggested that any discussion be held with the Zoning Administrator. It was noted that the approved Plans identified a ten-foot (10') sign and a six-foot (6') sign was presented at this meeting.

## **II. REVIEW OF MINUTES**

### 1. 10-25-18 Minutes

Board reviewed the edited version presented and made no additional changes. Motion made by Ms. Davis and seconded by Mr. Dearborn to approve the 10/25/2018 Minutes as edited and presented. Vote was 4:0:1. Mr. Daddario abstained, as he had not attended the meeting. Motion passed. Minutes approved.

## **III. REQUEST FOR REHEARING**

There were no requests received for Board consideration.

## **IV. OTHER**

### 1. Proposed ZBA workshop meeting 11/15/18: Zoning Ordinance amendments

Mr. Buttrick stated that the meeting will be held in the Board of Selectmen room at 6:30 PM and noted that the Animal Control Officer has been invited. Ms. Davis stated that the process invoked for this year worked well and that she would create a document for next year's potential amendments. Mr. Brackett stated that the 2019 Proposed Zoning Amendments have been submitted to the Planning Board, that the Planning Board cancelled their last meeting and asked Ms. Davis to attend their next meeting, next Wednesday 11/14/18, to help present their Amendments.

### 2. Zoning Ordinance – 2018 Edition

It was noted that the stand-alone Zoning Ordinance booklet has not been updated with the 2018 Zoning Ordinance Amendments that were passed in March. After

discussion, it seemed like it had fallen through the cracks with personnel transitions and that a PO (Purchase Order) should be submitted to have minimum copies made.

Mr. Buttrick noted that ZBA's next regular meeting is scheduled for December 13<sup>th</sup>. Mr. Morin advised that he cannot make December's meeting.

Motion made by Ms. Davis, seconded by Mr. Pacocha and unanimously voted to adjourn the meeting. The 11/8/2018 ZBA meeting adjourned at 8: 41 PM

Respectfully submitted,

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Charles J. Brackett, Chairman