



TOWN OF HUDSON

Zoning Board of Adjustment



Charlie Brackett, Chairman David Morin, Selectmen Liaison

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MEETING MINUTES – SEPTEMBER 27, 2018 - approved

The Hudson Zoning Board of Adjustment met on September 27, 2018, in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall at 7:00 PM.

Acting Chair Maryellen Davis called the meeting to order at 7:00 PM; welcomed the public in attendance; stated that neither the Chairman nor the Vice Chair were present, that she is a Regular Member and would be acting as Chairman for the meeting, noted that two other Regular Members were present as well as an Alternate Member and appointed Alternate Kevin Houle to sit as a voting Member; noted that three (3) votes are required to pass any motion and with only four (4) Members voting the percentage is increased to 75% to pass any motion with a vote of 3:1 whereas it is normally 60% with a vote of 3:2; advised that any applicant can ask that their Case be deferred to next month in the hope that five (5) Members would be present; outlined the process of the meeting would be to solicit input from the Applicant and Abutters, seek a second set of input if warranted, deliberate and make a motion; noted that there is a 30-day appeal period for all decisions; asked that anyone wishing to address the Board to please come to the table or the lectern and provide their name and address; and made housekeeping announcements that included no smoking, to silence cell phones and, with the sensitivity of the microphones, to please refrain from talking and that there is an 11 PM curfew.

Members present were: Gary Daddario (Regular), Gary Dearborn (Regular), Maryellen Davis (Regular/Acting Chair) and Kevin Houle (Alternate/Clerk). Also present were David Morin, Selectman Liaison, and Louise Knee, Recorder. Excused were Charlie Brackett (Chair), James Pacocha (Vice Chair) and Bruce Buttrick, Zoning Administrator. Absent was Michael Pitre (Alternate).

I. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. Case 190-156 (09-27-18) (Deferred from 08-23-18): Lesley A. MacMillan, 10 Cross Street, Hudson, NH, requests a Variance to continue the use of an above ground pool located in the front setbacks on a corner lot. [Map 190, Lot 156, Zoned TR; HZO Article VII §334-27, Table of Minimum Dimensional Requirements].

Not Official until reviewed, approved and signed.
Approved 10/25/2018 as edited and amended.

Mr. Houle read the Case into the record. Ms. Davis stated that the Case was heard at last month's meeting, that the lot is a corner lot, that the pool was installed in the front setback to the side of their home, that the property owner did not realize a permit was needed and this is an "after-the-fact" variance, that the applicant replaced their existing chain link fence with a stockade fence and that the hearing was continued to this meeting so that the Applicant could provide a copy of their pool contract and a decision from the Town Engineer and DPW (Department of Public Works) regarding the sight distance issue caused by the stockade fence.

Lesley MacMillan stated that she knew nothing about installing a pool and hired local professionals, ASAP Pools, and the installer said that there was no permit needed. Ms. MacMillan stated that she was unaware of the dual frontage requirement on her corner lot and truly believes corner-lot owners should be notified of this dual frontage requirement. It was noted that the Town is clear regarding corner lots, it is even in the Zoning Ordinance, and that additional notification could/should be the responsibility of the real estate agents

Ms. Davis stated that an email from abutters Luz & Russell Gavlak dated 9/26/2018 at 7:52 PM was received and read it into the record

My husband and I were at the last zoning meeting regarding the pool at 10 Cross St. The decision was deferred until tomorrow the 27th after the individuals made a couple of adjustments and the town reviewed other information. One of the adjustments was the corner of the fence when one is stopped at the corner of Cross and Riverside and the view of cars coming from the left cannot be seen.

We will not be able to attend tomorrow nights meeting as we have another commitment but wanted to say the fence issue has not been corrected as instructed. Hope something will be done about the fence because once winter comes and the town starts to pile up the snow it will be a lot more difficult to see left from Cross St and to turn right from Riverside into Cross.

Thank you for your time and hopefully a positive decision is made.

Regards,
Luz & Russell Gavlak

Ms. MacMillan took exception and stated that at the last meeting she was told that "Kevin and Elvis" were to put something in writing. Ms. Davis stated that she made the motion last month to defer hearing to tonight with two (2) conditions: (1) that the applicant provide a copy of their contract with ASAP Pools, which they have supplied; and (2) that the applicant seek a written statement from the Town Engineer and Road Agent regarding the newly erected stockade fence and any resulting sight issue with possible solutions. Ms. Davis added that both conditions were clearly stated in the Notice of Decision that was issued and which the applicant received. Ms. MacMillan stated that the Town had already come to the site, moved the stop sign and told them they were okay. There was no mention whether the stockade fence was erected at the time the stop sign was moved.

Ms. Davis opened the meeting to public testimony at 7:18 PM. The following individuals addressed the Board:

- (1) William Volpe, 10 Cross Street, stated that the corner of the fence has not yet been adjusted because they were waiting for the written statement from the Town Engineer and DPW, and like Ms. MacMillan, thought the Town would just go do it and did not think they had anything to do with getting that done. The copy of the pool contract was submitted along with current pictures of the intersection.

Ms. Davis noted that Elvis Dhima, Town Engineer, sent an email to Mr. Buttrick on 9/17/2018 that contained an email dated 9/11/18 from Jess Florence, Public Works Supervisor, that stated that the painted stop bar at the intersection is in the right (correct) location. Ms. Davis stated that she reached out to the Town Engineer (Elvis Dhima) and he stated that the fence does present a sight and a safety issue and suggested that either the fence be removed (which the applicant does not desire) or that the stop sign and painted bar be moved closed to the intersection (which DPW does not want to do).

Mr. Morin referenced the draft 8/23/2018 Minutes, page 3 paragraph beginning on Line 9 that confirmed that both the Town Engineer and DPW had visited that site. Mr. Dearborn stated that he was the one who raised the issue that there was nothing written about that visit.

- (2) Normand George Martin, 3 Edgar Court, stated that he is representing himself as a citizen, not a Selectman or ex-Chair of the ZBA, stated that he travels this route every day and drew the intersection on the chalkboard, identified where the two stop signs exists today and stated that one solution would be to add two new stop signs so that the intersections becomes a four-way stop.

Question raised who should/would fund that solution. Issue was created by the applicant when they changed the see-through chain link fence to a stockade fence, after the pool was installed. Mr. Volpe stated that kitty-cornering the fence is a solution and if the Board directs it, he is willing to make that alteration to the fence.

Being no one else to address the Board, Public Testimony closed at 7:26 PM.

Mr. Dearborn stated that the ninety degree corner is the problem, that the applicant has already agreed to make it forty five degrees and questioned whether the fence is part of the variance application. Ms. Davis stated that the stockade fence constructed to shield the pool has created a safety issue and that is part of the Board's responsibility. Mr. Dearborn stated that he visited the area and Cross Street is so narrow, he had to back-up to allow a vehicle to pass.

Mr. Morin stated that the question is whether the pool is the issue and that the Highway Safety Committee should view the intersection and, in his opinion, be the ones to request the two (2) additional stop signs.

Mr. Daddario stated that he sat with the public at the last meeting, that he did not hear anyone objecting to the pool, that some took issue with the sight constriction with the fence claiming it is a safety hazard and also noted that at the last meeting the Road Agent, Kevin Burns, went to the intersection regarding the stop sign that could

now be moved to its proper location with the removal of a tree and that at the last meeting he was to be asked about the sight distance at that corner. Mr. Daddario stated that he would approve the variance with the condition that the corner of the fence be adjusted to improve sight distance. Mr. Dearborn agreed and added that the applicant should also pursue obtaining all the other needed Town permits and inspections, like electrical, so that there is a proper paper trail.

Motion made by Mr. Daddario, seconded by Mr. Dearborn and unanimously voted to grant the Variance requested to allow the pool to remain in the front setback with the following two (2) conditions:

- (1) that the applicant adjust the corner of the stockade fence to forty five degrees by removing the corner post and two panels to improve sight distance within the next sixty (60) days; and
- (2) that the applicant obtain all the necessary Town Permits and inspections, like electrical, within sixty (60) days to provide the necessary paper trail.

Vote was unanimous at 4:0. Variance conditionally granted. Applicant was reminded of the thirty (30) day appeal period.

Normand Martin thanked the Board for their service to the Town.

2. Case 191-177 (09-27-18): Jamie Clarke, 8 Nevens Street, Hudson, NH, requests a Variance to obtain a foster dog license for a volunteer dog rescue association. [Map 191, Lot 177, Zoned R-2; HZO Article V §334-21, Table of Permitted Principal Uses].

Mr. Houle read the Case into the record. Ms. Davis stated that the need for the variance is based on the Zoning Administrator's review of the request to foster dogs and, with the recognition that even though fostering dogs until adopted is not the same as running a kennel, it was the only logical placement in the Zoning Ordinance and kennels are not allowed in the Residential District. The applicant seeks a zoning permit from the Town in order to file for "pet vendor license" from the State of NH in order to be able to foster dogs in her home until they can be adopted.

Jamie Clarke introduced herself and her husband Jason Clarke, stated that they: are passionate about rescuing dogs and helping to place them into foster homes while seeking adoption into new homes; volunteer with the Australian Cattle Dog Rescue Association; coordinate with shelters in Massachusetts and New Hampshire; work with veterinarians; need a State kennel license to foster the dogs and part of that requirement is a form that certifies that the Town has permitted that use; that they do not plan to run a kennel; that it is unfair to have it grouped with kennels; that they will only foster one dog at a time unless they are bonded, then it would be two dogs; that they have two older dogs of their own; that they both work full time; and noted that the Zoning Ordinance allows up to five (5) pets.

Ms. Clarke distributed pamphlets on rescue, the Australian Cattle Dog Rescue Association, a list of ninety three (93) dogs that were rescued last year in Georgia and Massachusetts, foster home guidelines, the ACDRA Foster Home Guidelines (updated

10.9.17), and stated that they have reached out to their close neighbors/direct abutters who each signed a letter expressing their support.

For the record, Ms. Davis read the letter into the record

“We have received the certified letter from the Town of Hudson regarding the application for a Zoning Variance submitted by Jamie & Jason Clarke regarding their wish to foster dogs at their home for the Australian Cattle Dog Rescue Association. We would like to show our support of their wish to foster dogs at their home located at 8 Nevens Street, Hudson, NH 03051 by providing our signature below. Please note that we take no objection to the approval of the zoning variance nor do we take objection to them having foster dogs at their home.”

and announced signed copies were received from: Allen Milner, 9 Nevens Street; Kevin & Carolyn Cormier, 10 Nevens Street; Carol Angell, 12 Nevens Street; David McNeil, 11 Nevens Street; and Carrie & Jeff Meadows, 6 Nevens Street.

Ms. Clarke next addressed the variance criteria and the information shared included:

- *Not contrary to public interest*

The fostered dogs will have the same impact as a neighbor with three (3) dogs; the Zoning Ordinance allows up to five (5) dogs; their dogs are well behaved.

- *Use will observe spirit of the ordinance*

The Zoning Ordinance is to prevent kennels in residential areas, but they are not seeking to run a kennel, just to foster for one, maximum two dogs at any given time until they are adopted.

- *Substantial justice done on the granting of the variance*

Volunteering for the dog rescue is a passion to them; thousands of dogs are killed in Georgia everyday; their rescue operation remove dogs from the high kill shelters, have veterinarians check them out and place them in foster homes until they are adopted. It is common that dogs are fostered for two – three (2-3) months. Being able to foster saves lives and that is justice to their passion and to the animals.

- *Use will not diminish surrounding property values*

Their dogs and every foster dog will remain on their property, they will not go onto surrounding properties and will have no effect on their property values.

- *Enforcement results in unnecessary hardship*

The State of New Hampshire requires foster homes to be licensed and the license itself lumps together kennels, pet vendors and foster homes for rescue operations into one license. That is unfair. They are not running a kennel, will not vendor animals and all their efforts are volunteered, they do not get paid. The spirit of the Zoning Ordinance is maintained with foster care and an unnecessary hardship will result if they cannot pursue their passion about being proactive in rescue. Mr. Clarke added that they have been looking forward to fostering and is the reason why they bought their home.

Ms. Davis opened the meeting for public testimony at 8:00 PM. No one addressed the Board.

Mr. Dearborn asked how long the dogs are usually kept in foster care. Ms. Clarke responded that they are fostered a minimum of two weeks before being listed for adoption and added that adoptions are usually listed on social medias and noted that adoption time vary for a variety of reasons. Mr. Dearborn asked if the dogs are kept indoors and Ms. Clarke stated that they were kept inside.

Ms. Davis asked for a definition of a “bonded pair”. Ms. Clarke stated that it can vary but generally a bonded pair could include siblings – brother / sister – or if an owner who had two dogs dies and the dogs are accustomed to being together.

Several questions were raised regarding money. Ms. Clarke stated that there is an adoption fee and that the adoption fee goes to the Rescue Association and that the Rescue Association is run by passionate volunteers who receive no salaries.

Ms. Davis stated that the variance was needed for the State license to foster rescue animals and asked what else is required for the State license. Ms. Clarke said the State required sub-zoning paperwork, a form filled out by the Town that fostering is permitted, and that there is also an outline of care required filed with a veterinarian of record, home inspection and then yearly renewal. Ms. Clarke added that it is a simple form and that it has already been submitted to Mr. Buttrick.

Ms. Davis noted that variances go with the land and remain in effect even if the land is sold and noted that a motion would need to be clear that the variance is only for fostering dogs. Discussion arose on the enforceability if a number of dogs is specified especially considering that the Ordinance allows up to five, that the property owner’s dogs are older and could die.

Mr. Daddario stated that the dogs are inside the house when Mr. & Mrs. Clarke are at work and asked if there is an enclosed space in their yard for the dogs. Ms. Clarke stated that there is no enclosed space, that they have a sixty foot (60’) lead tied to the deck. Mr. Clarke added that they may put up a fence in the future and added that they just bought the house this past June.

Motion made by Mr. Daddario and seconded by Mr. Dearborn to approve the variance with two (2) stipulations: (1) that there be a maximum of two (2) foster dogs at one time and no more than five (5) dogs on the property at any time; and (2) that the applicants obtain and maintain all appropriate Town and State licenses.

Ms. Clarke asked if the foster dogs need to be registered with the Town. Mr. Morin stated that the Animal Control Officer would be the person to answer that question. Mr. Clarke stated that they will have in their possession all the paperwork on the foster dog and Ms. Clarke stated that there are id tags on the dog’s collar and added that the dogs are also chipped. Mr. Morin suggested calling and discussing the particulars with the Animal Control Office and to ask for something in writing.

Vote on the motion was unanimous at 4:0. Variance conditionally granted. Ms. Davis advised Mr. & Mrs. Clarke of the thirty (30) day appeal period, noted that Mr. Buttrick was on vacation until next Monday and asked Mr. & Mrs. Clarke to consider joining

the Board. Mr. Clarke stated that his wife could and he would stay home and tend the dogs.

3. Case 210-001-001 (09-27-18): Pro Signs c/o Amanda Schultz, 251 Boot Road, Dowlingtown, PA, requests a Variance for Irving Oil, 4 Executive Drive, Hudson, NH, to increase the size of the LED pricers on their free standing sign from 8" to 12" where 10" is max height allowed. [Map 210, Lot 001-001, Zoned B; HZO Article XII §334-64C(3), Freestanding business and industrial signs].

Mr. Houle read the Case into the record. Ms. Davis added that the location of this Irving Station is on Lowell Road.

Doug Fahey of Sebago Signs introduced himself as representing Irving Oil and Pro Signs. Ms. Davis asked if anyone was present who works for Irving Oil. Mr. Fahey stated that he is not an Irving employee but is their contractor. Ms. Davis noted that Samuel Tamposi owns the property and he authorized Irving Oil to represent the variance and Kevin Guay of Irving Oil gave permission to Amanda Schultz of Pro Signs but Mr. Guay never signed the letter and apparently Ms. Schultz of Pro Signs has transferred that permission to Mr. Fahey of Sebago Signs. Ms. Davis stated that signed letters from both Mr. Guay and Ms. Schultz are needed. Mr. Fahey stated that the three (3) of them, Irving, Pro Signs and Sebago Signs work together on many projects; that Kevin Guay works for Irving at their corporate office in Portsmouth; and that he can get signed letters to the Town soon. Ms. Davis thanked him and noted that without it at this meeting, any motion should have signed letters as a condition.

Mr. Fahey stated that the overall size of the sign would not change, just the size of the electronic pricers within the sign. There are currently eight inches (8") in height and they would like to change them to twelve inches (12"). Mr. Fahey stated that the lumens would not significantly increase. Mr. Fahey noted that there exists another gas station just over a mile from this location in Town that has sixteen inch (16") pricers and asked that it be taken into consideration when reviewing this request.

Mr. Fahey addressed the variance criteria and the information shared included:

- *Not contrary to public interest*

The current size of the LED units is eight inches (8"). Irving is requesting twelve inches (12"). The increase in lumens is minimal. For 8" red units give off 1.42 lumens at twenty feet (20') and the 12" red units five off 2.31 lumens at 20'.

Mr. Daddario asked if electronic sensors were possible or a photo sensor. Mr. Fahey responded that they are single color units with no sensors. Ms. Davis noted that there are residences across the street.

- *Use will observe spirit of the ordinance*

There does not appear to be a conflict with the spirit of the ordinance and Irving's intention to provide a clean non-muddled image.

- *Substantial justice done on the granting of the variance*

Irving is not looking to increase the overall of the sign, just the size of the LED units for the pricers.

- *Use will not diminish surrounding property values*

The majority of the surrounding properties appear to be commercial and not residential.

- *Enforcement results in unnecessary hardship*

There is no hardship, the pricers are visible now but larger would be clearer.

Ms. Davis opened the meeting for public testimony at 8:32 PM. No one addressed the Board.

Mr. Dearborn asked why Irving could not comply with the 10" size and Mr. Fahey responded that Irving does not have 10", they only have 8" and 12". Mr. Morin noted that Irving on Derry Road has 8" pricers and asked why would they want to change to a non-standard sign. Mr. Dearborn asked if another vendor could provide 10". Mr. Fahey stated that the internal works could be a problem based on the size of the lettering. Mr. Houle asked when and at what distance does the size of the pricers matter and noted that the numbers do not persuade him to stop to buy gas, that it is brand loyalty.

Ms. Davis stated that it is possible that the larger sized sign "down the road" occurred prior to the Zoning Ordinance capping the height to 10", noted that hardship is applicable to the land and that the sign is located in a good place and has visibility.

Motion made by Mr. Dearborn and seconded by Mr. Houle to deny the variance seeking twelve inch (12") pricers based on the fact that the variance criteria has not been satisfied, particularly hardship. Mr. Dearborn spoke to his motion stating that in addition to the Applicant not satisfying the hardship criteria, he has concerns with setting precedent. Mr. Daddario noted that the Board could not approve the request unless all five criteria were satisfied. Mr. Houle spoke to his second noting that the applicant failed to satisfy the hardship criteria.

Vote was unanimous at 4:0. Variance denied. Ms. Davis noted that there is a 30-day appeal period and that the applicant can appeal within 30 days (with new evidence). Mr. Fahey asked for and received an appeal form.

II. REVIEW OF MINUTES

1. 08-23-18 Minutes

Board reviewed and made changes. Motion made by Mr. Dearborn and seconded by Mr. Daddario and unanimously voted to approve the 8/23/2018 Minutes as edited and amended.

III. REQUEST FOR REHEARING

No requests were received.

IV. OTHER

Mr. Morin thanked the Board for their proposed Zoning Ordinance amendments and noted that they would be presented next week to the Planning Board.

Motion made by Mr. Dearborn, duly seconded by Mr. Daddario and unanimously voted to adjourn the meeting. The 9/27/2018 Zoning Board meeting adjourned at 8:56 PM.

Respectfully submitted,

Maryellen Davis, Acting Chair