



TOWN OF HUDSON

Zoning Board of Adjustment



Charlie Brackett, Chairman

David Morin, Selectmen Liaison

12 School Street • Hudson, New Hampshire 03051 • Tel: 603-886-6008 • Fax: 603-594-1142

MEETING MINUTES – JULY 26, 2018

The Hudson Zoning Board of Adjustment met at 7:00 PM on July 26, 2018, in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall.

Chair Brackett called the meeting to order at 6:59 PM; welcomed the public in attendance; noted that there are copies of the Agenda and Appeal forms on the shelf by the entry door; explained that the Zoning Board is a quasi-judicial board to enforce and uphold State and Town Laws; outlined the process of the meeting that would be to solicit input from the Applicant and Abutters, seek a second set of input if warranted, deliberate and make a motion; asked that anyone wishing to address the Board to please come to the table or the lectern and provide their name, with spelling, and address; and made housekeeping announcements that included no smoking and, with the sensitivity of the microphones, to please turn off cell phones and refrain from talking.

Members present were: Charlie Brackett (Chair), Gary Dearborn (Regular/Acting Clerk), and Maryellen Davis (Regular). Also present were Bruce Buttrick, Zoning Administrator and Louise Knee, Recorder. Selectmen Liaison David Morin arrived at 7:32 PM. Excused were Kevin Houle (Alternate/Clerk), James Pacocha (Vice Chair) and Michael Pitre (Alternate).

Chair Brackett noted that the three Members present constitute a quorum, that usually there are five (5) Members voting on a Case but with only three (3) Members present a unanimous vote would be required for a decision to pass. Chair Brackett stated that an applicant has the right to ask for deferment to next month when more Members could be present.

I. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. Case 182-113 (07-26-18): Jessica Hayes, 11 School Street, Hudson, NH, requests a Home Occupation Special Exception to allow a Family day-care home in a Town Residence (TR) zoning district. [Map 182, Lot 113, Zoned TR; HZO Article VI §334-24, Home occupations].

Mr. Buttrick read the Case into the record. Jessica Hayes, 11 School Street, introduced herself and stated that she has a Bachelor's Degree in Early Childhood Education and a two-year old son and would like to have a home day care and that her first step is to obtain a Special Exception for a Home Day Care from the Town and once obtained she would pursue licensing with the State. Ms. Hayes stated that her day care business would be in an existing separate stand-alone converted garage on her property that is approximately 300 SF (square feet) and has heat and a kitchen.

Ms. Hayes next addressed the criteria for a Special Exception that included the following information: that the primary use of her house would be as her home, that the home care would be secondary; that there would be no changes to her home or yard as she has a child of her own; that the children coming into her care would be during the normal traditional work hours; that no additional storage would be needed; that there would be no significant increase in noise or traffic considering that there is a school and fire station and Town Hall in the neighborhood; that there would be cameras installed to connect with the parents during the day; that she anticipates caring for five (5) children, which she would be allowed to do by right in her home; and that her driveway can accommodate up to four (4) vehicles for her client's use or the side of the road in front of her home and noted that arrival and pickup times vary.

In response to Mr. Brackett's direct question whether she wished to pursue with just three (3) Members present or continue to next month, Ms. Hayes stated that she would like to continue with this meeting noting that there is an Appeal process if she gets denied.

Mr. Brackett opened the meeting for public testimony at 7:08 PM. The following individuals addressed the Board:

- (1) Sarah Nich, 13 School Street, distributed a written handout of their objections, stated that she and her husband bought their home in 2016, that he works third shift and needs to sleep during the day, that their bedroom is less than one hundred feet (100') away from the Hayes' backyard and recapped their concerns that included:
 - Noise - noting that the traffic to Town Hall is just vehicles coming and going and emergency vehicle noise is acceptable and short lived, that the Town has a Noise Ordinance and allows up to fifty five decibels (55 dbls) in residential areas noting that one child alone can reach eighty plus decibels (80+ dbls) let alone a group of children;
 - Parking – based on Article L of the Zoning Ordinance, there cannot be any street parking for a Home Occupation Special Exception, that the driveway only allows for three (3) vehicles and the applicant has two (2) vehicles, leaving just one space

- available which is not enough unless they use street parking or one of the coveted parking spots for Town Hall;
- Traffic – School Street is already busy with traffic and questioned the wisdom of allowing more traffic on the road with no place to park;
 - Home Value – being next door to a loud day care business would, in her opinion, diminish the value of her property and make it hard if not impossible to sell in the future.
- (2) Brian Etienne, 13 Chase Street, stated that he moved here from Texas in December, that he is opposed to the day care proposal, that his husband is in real estate and works from home during the day, that they have health and safety concerns regarding the small outbuilding and small yard, and noted that with the railroad system upgrade it is important to the Town that the quality of the neighborhood remain high.
- (3) Alexandra Mead, 15 Chase Street, stated that she supports local businesses but is opposed to this day care; that the out building has only one door and with five (5) children that poses a safety concern; that if her mortgage is a FHA loan she is restricted to twenty five percent (25%) if it is for any business venture; that traffic is already a concern, cars now park on the street as do school busses; that dropping off and picking up of children takes more than ten (10) minutes; that she is concerned about property value, that she just fenced in her yard for her dogs; and wondered if spraying for poison ivy on her property could be impacted with the day care business.

Being no one else to speak, Mr. Brackett closed public testimony at 7:19 PM.

Ms. Davis stated that the Case is before the Board for a Special Exception Home Occupation in the TR Zone and that the non-conforming lot is a separate issue and, in response to her question, Mr. Buttrick confirmed that in 1992 there had been a beauty salon on site and prior to that the Assessor's Office has record of an eye doctor office.

Mr. Brackett inquired if an application has been filed with the State of NH. Ms. Hayes stated that her first step is obtaining the Special Exception because it is in a separate building and noted that she would not need State permission for the number of proposed children if it were in her home and added that she is mindful of fire, health and safety concerns, that work would be done by a licensed electrician, that the window in the structure facing the back yard would be replaced with a door and that it is her intent to replace the existing fence.

Mr. Dearborn expressed concern with the swimming pool shown on the property and Ms. Hayes confirmed that the swimming pool is not there

anymore. Mr. Dearborn inquired about the hours of operation and Ms. Hayes stated that it would be Monday through Friday beginning at 7:30 AM to 5:00 or 5:30 PM. When Mr. Dearborn questioned insurance, Ms. Hayes stated that the children coming into her care would not be covered under her current insurance, that she would need and would get liability insurance coverage. In response to Mr. Dearborn's question regarding the electrical improvements to the secondary structure, Ms. Hayes stated that it would not include air conditioning.

Mr. Brackett inquired about the parking noting that there are already two cars and five would be needed for the day care business. Ms. Hayes stated that the driveway actually can hold up to four cars single file, that her husband leaves for work at 4:00 AM so only her car would be in the driveway, that arrival and pick-up times vary so it is unlikely that all five would arrive at the same time and noted that there would only be four paying children as her son would be the fifth child. In response to Ms. Davis' question, Mr. Buttrick confirmed that the family day care home business allows up to six (6) pre-school children and up to three (3) school age children. Ms. Davis noted that there could be up to six pre-school children with one being Ms. Hayes' son

Ms. Davis expressed concern for cars backing out onto the road and asked Ms. Hayes if drop-off and pick-up can all be off-street. Ms. Hayes responded that she is in touch with the parents during the day and could possibly coordinate pick-up times to insure driveway access.

Selectman Liaison David Morin arrived at 7:32 PM.

Mr. Brackett stated that the Town does have a Noise Ordinance and believes that it allows greater than the 55 decibels during the day hours and asked Ms. Hayes her plans for outdoor times for the children. Ms. Hayes stated that there would be outdoor time, weather permitting, for about an hour before lunchtime which is then followed by naptime before going back outside, probably after 3:00 PM, and again, weather permitting could remain outside until pick-up. To summarize, Ms. Hayes stated that outdoor time could range from 1 – 3 hours in the summer time and less in winter.

Mr. Brackett opened the meeting for a second round of public testimony at 7:36 PM. The following individuals addressed the Board:

- (1) Brian Etienne, 13 Chase Street, stated that he received a Zoning Determination approving a chicken coop and now wonders if he would need to install a 10' fence to shelter the chicks from the noise the children will produce. Selectman Morin stated that there would not be much noise from the children as compared to what noise happens now in the neighborhood. Board reminded Mr. Etienne that the chicken coop cannot be placed in the setback.

- (2) Alexandra Mead, 15 Chase Street, stated the proposed business is in a residential area and, after her improvements, it would impact her property value.
- (3) Sarah Nich, 13 School Street, stated that personally she and her husband want to live in their house forever but he needs to sleep and this business may force them to leave.

Being no one else to speak, Mr. Brackett closed public testimony at 7:43 PM.

Board deliberation ensued. Mr. Brackett acknowledged that this is in a unique area, near high-traffic streets, close to the fire station and Town Hall. Ms. Davis stated that it is in a high traffic area because of Town Hall and has safety concerns with cars backing out onto the street. Mr. Dearborn stated that he is 100% in favor of day cares, noted that they are an asset to the community, but has concerns with this location in such a high traffic area. Mr. Brackett noted that the site has had previous businesses on it. Ms. Hayes commented that when she and her husband were looking for a home, they saw this one and thought it was perfect for a day care especially because it was across the street from a fire station. With regard to noise, Mr. Brackett stated that the business activities of Town Hall and the fire station create more noise than a day care would and that the Town has a good Noise Ordinance. Selectman Morin noted that school buses in the area also contribute to the existing noise in the neighborhood. With regard to property values, it was noted that day cares are now commonplace, that it is hard to evaluate and that evaluation is subjective. The need for insurance was also discussed as well as conformance to State, Federal and Local laws.

In response to Board questions, Ms. Hayes confirmed that there would be no employees, that she alone would provide the needed care and that she would like to have two children under the age of twenty four (24) months and two children under three years of age for a total of four pre-school children.

Motion made by Ms. Davis and seconded by Mr. Dearborn to grant the Special Exception for Home Occupation of a day care business with two conditions:

- (1) that the driveway only (not street side) be used for delivery and pickup of the children and that this condition become part of the day care application completed by the parents/patrons; and
- (2) that the applicant comply with all required Federal, State and Local laws, rules, regulations, permits and licenses.

Mr. Brackett noted that the electronic surveillance system proposed could also be used to communicate and coordinate pick-up times for the parents. Ms. Davis spoke to her motion noting that the requirements have been met, that there is the Noise Ordinance to handle any complaint, that the first condition deals with the traffic concerns and that the second condition protects the

neighbors. Mr. Dearborn concurred. Vote was unanimous at 3:0. Motion granted, Home Occupation Special Exception approved with conditions.

Selectman Morin apologized for his late arrival and advised that effective this past Tuesday, the Selectmen assigned him as the Liaison to the ZBA.

2. Case 101-014 (07-26-18): Reeds Ferry Small Buildings, 3 Tracy Lane, Hudson, NH, requests the following at 7 Tracy Lane, Hudson, NH;
 - a) A Variance to construct a paved area from an existing gravel area within the Wetland Conservation Overlay District. [Map 101, Lot 014; Zoned B, HZO Article IX §334-35.C, Uses within Wetland Conservation District].
 - b) A Wetland Special Exception to construct 18 new truck parking spaces and 8 new car parking spaces at the existing facility. Additionally, the project involves the creation of new display areas along the frontage of the lot. A new storm pond will be constructed for treatment of site runoff. There are 750 square-feet of permanent wetland impacts associated with the conversion of gravel to paved driveway. There are 6,885 square-feet of permanent wetland impacts associated with regrading for the stormwater retention basin. [Map 101, Lot 014; Zoned B, HZO Article IX §334-35, Uses within Wetland Conservation District].

Mr. Buttrick read both requests into the record, stated that a Variance is needed to allow paving of an existing gravel area creating a permanent wetland buffer impact of approximately 750 SF and that a Special Exception is needed to construct eighteen (18) new truck parking spaces and eight (8) new car parking spaces at the existing facility. Ms. Davis asked and received Board consensus that the requests could be presented in tandem but voted on separately.

Jason Hill, Civil Engineer from T.F. Moran introduced himself and Laurie Blanchette from Reeds Ferry, noted that they were recently before the Board and were granted permission for the expansion of the non-permitted manufacturing use in March 2018, provided a brief history of the site and business noting that since they have purchased the former New England Gymnasium site (Lot 15), posted a Site Plan and stated that they are before the Board seeking permission to pave a gravel section to create additional parking while eliminating a current blind spot in the travel way and upgrade the storm water management system.

Mr. Hill stated that they have met with Hudson Conservation Commission who approved their plan and he submitted a copy of their Motion to Recommend Wetlands Special Exception dated 7/9/2018.

Mr. Hill stated that they also met with the Hudson Planning Board who approved their overall design plan and are scheduled to meet with the Planning Board for Site Plan Review on the eighth of August. Mr. Hill added that they are also dealing with Londonderry Planning Board as the site is also in their jurisdiction and noted that the approved Site Plan would need to be signed by both Planning Boards.

Attention focused on the two green areas of the posted Site Plan. The top green portion represents the proposed paving area and the correction of the blind spot and the lower green area represents the area needed for the new stormwater management system. Mr. Hill stated that they have reduced the square feet impact onto the wetland, that the existing gravel lot is being pushed out of the wetland by approximately eight hundred square feet (800 SF), that the total permanent wetland buffer impact for the stormwater retention basin is 6,885 SF, that the wetlands would be protected during construction and noted that the stormwater flow matches the existing natural water flow on the site.

Mr. Hill addressed the criteria for the granting of a Special Exception. The information shared included:

- The proposed use is essential to the reasonable use of the land outside the Wetlands Conservation District and designed so that the stormwater pond will provide peak flow attenuation and water quality treatment of runoff from existing site as well as the proposed parking expansion.
- There is no reasonable alternative to the proposed use that will not adversely affect due to the existing topography and existing developed portions of the site including buildings and parking areas.
- The design, construction and maintenance and erosion control methods shall be prepared by a professional engineer (PE) and will include restoration of the site as nearly as possible to original grade and condition designed by a NH Licensed Landscape Architect.
- The establishment of a forested meadow in the upland corridor will promote wildlife activity and the slope will be kept gentle to promote wildlife and amphibian crossing.
- Based on NH Natural Heritage Bureau Data Check, there are no recorded critical habitats on the property.
- The emulation of the flow rates to the offsite wetlands will be provided which will also maintain the local hydrology.

- The proposed use within the Wetland Conservation District is not based primarily on economic conditions but rather dictated by existing watersheds and flow paths and unique site constraints.

Mr. Hill distributed pictures of the existing site.

Mr. Hill next addressed the criteria for the granting of a Variance. The information shared for each included:

(1) *Not contrary to public interest, alter neighborhood or threaten public*

- The paving of the existing gravel driveway will decrease the footprint of the driveway and parking in the Wetland Conservation Overlay District (WCOD) by approximately 800 SF.
- The change from compact gravel to asphalt will not alter the character of the site
- Pavement layout is necessary to provide adequate clearance for tractor trailer maneuvering, eliminate the blind corner around the garage and provide better sight lines

(2) *Will observe spirit of the Ordinance*

- Stormwater quality will be enhanced by the project considering that the runoff will be treated by a new treatment system instead of flowing untreated into the wetland.
- Septic system will be relocated from the WCOD to a new upland at the north end of the property and the nutrient loading from the existing leachfield will be eliminated.

(3) *Substantial justice done*

- The project will remove a portion of existing gravel driveway and parking from the buffer by 800 SF
- The granting of the variance will allow the owner to operate its facility safely
- Changes proposed will enhance the quality of the wetlands

(4) *Will not diminish surrounding property values*

- The site is currently and historically been used as a gravel driveway and parking area
- The project will remove a portion of existing use from WCOD
- The remaining paved areas are necessary for safe access to the interior portions of the property

(5) *Hardship*

- The property is unique in that there is a narrow existing gravel passage between the garage and property line
- There are no alternate locations to construct the driveway due to the existing property and building configurations

Mr. Brackett opened the meeting for public testimony at 8:27 PM. No one addressed the Board.

Mr. Brackett stated that the Conservation Commission approved the plan. Ms. Blanchette confirmed that the Conservation Commission did walk the property. Mr. Dearborn stated that the Conservation Commission does good work for the Town, that he reviewed their Minutes and Motion and agrees with the conditions they applied.

Mr. Brackett noted that there appears to be fewer individuals at this meeting than in March and Ms. Blanchette responded that it is because they split their team so they could be represented at the Heritage Commission in Londonderry this evening. Mr. Brackett commented on the thoroughness of the plan and appreciates that all the I's have been dotted and the T's have been crossed.

Motion made by Ms. Davis to grant the Variance requested to pave the gravel areas as presented with no conditions. Mr. Dearborn seconded the motion. In speaking to her motion, Ms. Davis stated that the criteria have been met, that the project would be an improvement and that the wetlands will be better protected. Mr. Dearborn agreed and added that Reeds Ferry has done everything by the book and does a good job. Vote was unanimous at 3:0. Variance granted.

Motion made by Ms. Davis to grant the Wetland Special Exception with the same conditions set by the Conservation Commission. Mr. Dearborn seconded the motion. The HCC conditions: "(1) Construction and restoration shall comply with BEST MANAGEMENT PRACTICES TO CONTROL NON-POINT SOURCE POLLUTION: A GUIDE FOR CITIZENS AND TOWN OFFICIALS published by NH Department of Environmental Services, current issue; (2) During construction and restoration erosion control barriers shall be installed and maintained to the satisfaction of the Town Engineer; (3) Inspect landscaping material after one year to ensure proper growth; (4) All notes found on the construction details in the site plan that pertain to alteration of terrain (AOT), stormwater runoff and management shall be strictly adhered to during all phases of construction. Approval is subject to a site walk inspection and potential amendment of the motion, subject to site observations; and (5) Applicant follows best management practices." Vote was 3:0. Wetland Special Exception conditionally granted.

Board took a break at 8:34 PM.

II. REVIEW OF MINUTES

1. 05-24-18 Minutes

Board reviewed the edited Minutes presented and corrected two street names and one typographical misspelling. Motion made by Ms. Davis, seconded by Mr. Dearborn and unanimously voted to approve the 5/24/2018 Minutes as edited and amended.

2. 06-07-18 Minutes

Board reviewed the edited Minutes presented. No amendments were offered, Motion made by Ms. Davis, seconded by Mr. Dearborn and unanimously voted to approve the 6/7/2018 Minutes as edited and presented.

3. 06-28-18 Minutes

Board reviewed the edited Minutes presented and typos were corrected. Motion made by Ms. Davis, seconded by Mr. Dearborn and unanimously voted to approve the 6/28/2018 Minutes as edited and amended.

III. REQUEST FOR REHEARING

No requests were received for Board consideration.

IV. OTHER

1. Supreme Court Ruling – Brian M. Perrault v. Town of Hampton

Board received a copy of the ruling and noted the importance of specificity when denying a variance.

2. Zoning Ordinance Changes?

It was acknowledged that Special Exceptions for day cares requires attention, especially where it conflicts with outdoor activity. It was noted that the Town has had ZORC (Zoning Ordinance Review Committee) for the past couple of years but since Town Planner John Cashell left, it seems to be lost. Mr. Brackett stated that the ZBA needs to take the initiative and acknowledged that draft wording seems to have been an area of disconnect. Ms. Davis agreed and added that examples should be included to illustrate the frustration/conflict/confusion.

After much discussion, it was agreed to utilize the list prepared by George Theborge, former interim Town Planner who recently left Town employment and to contact former ZBA Member Donna Shuman for her list, that a workshop be established to brainstorm needed amendments, select three to five for the coming year and to have that selection completed in September in

order to solicit Selectmen support in presenting to the Planning Board. Ms. Davis agreed to be the point person. Ms. Knee inquired if her services would be needed for Minutes and it was determined that the Minutes would be general and not detailed and if not in the budget would therefore not be required. Ms. Davis stated that she works during the day and would be available in the evenings or Saturdays. Decision made to schedule the initial workshop / brainstorming meeting for Thursday, 8/2/18 at 6:30 PM. Mr. Buttrick was asked to advertise the meeting, obtain the lists and reserve a meeting space.

Motion made by Mr. Dearborn, seconded by Ms. Davis and unanimously voted to adjourn the meeting. The 7/26/2018 ZBA meeting adjourned at 9:03 PM.

Respectfully submitted,

Charles J. Brackett, ZBA Chair