



# TOWN OF HUDSON

## Zoning Board of Adjustment

Charlie Brackett, Chairman      Normand Martin, Selectmen Liaison

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### MEETING AGENDA – JUNE 28, 2018

The Hudson Zoning Board of Adjustment met on June 28, 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 7:00 PM; welcomed the public; explained that the Zoning Board is a quasi-judicial board to enforce and uphold State Laws and Town Regulations; stated the process of the meeting would be to solicit input from the Applicant and Abutters, deliberate, seek a second set of input if warranted and make a motion; asked that anyone wishing to address the Board to please come to the table or lectern and provide their name with spelling and address; and made housekeeping announcements that included: copies of the Agenda and Appeals on the shelf by the door, cell phones off, no smoking, no talking.

Members present were: Charlie Brackett (Chair), Gary Dearborn (Regular), Maryellen Davis (Regular) and Kevin Houle (Alternate/Clerk). Also present were Normand Martin, Selectmen Liaison, David Morin, Alternate Selectmen Liaison, Bruce Buttrick, Zoning Administrator and Louise Knee, Recorder. Absent was Michael Pitre (Alternate). Excused was James Pacocha (Vice Chair). For the record, Mr. Brackett appointed Mr. Houle as a sitting voting members for this meeting. Mr. Brackett stated that normally there are five (5) voting Members, but only four (4) are present for this meeting, noted that three (3) affirming votes would be needed to pass a motion and added that the option exists for any applicant to choose to defer their hearing tonight until next month's meeting in hopes that there will be five (5) Members present.

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

1. Case 191-012(R) (6-28-18): Jennifer Lebrun, 14 Regina Street, Hudson, NH, requests a Home Occupation Special Exception to allow a Family day-care home in a Town Residence (TR) zoning district. ***(Re-Hearing of a Home Occupation Special Exception Approved on 4/26/18 for licensed home daycare with the stipulation that all unrelated children attending the daycare must remain inside the residence.)*** [Map 191, Lot 012, Zoned TR; HZO Article VI §334-24, Home occupations].

Mr. Buttrick read the Case into the record. Jennifer Lebrun introduced herself as the property owner and only operator of the day care in her home. Mr. Buttrick stated that in April 2018 the Board approved the day care activity with a vote of 3:2 with one condition of approval that there be no outside activity and Ms. Lebrun has filed a motion to rehear the condition of approval as a State of NH requirement for day cares

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Approved 7/26/2018, as edited and amended.

is that the children be allowed outside activity. Brief discussion arose on whether this should be an appeal or a new Case. In response to Mr. Brackett's question, Ms. LeBrun stated that she is uncomfortable with proceeding with just four (4) Members but is willing to move forward as the past two months restricting the children indoors has not been healthy.

Ms. Lebrun distributed a packet of material that included a cover letter, supporting letters from abutters and clients, lists of other day care centers approved in Town highlighting that none received a restriction on outdoor play activity and with identification of the Zone they operate in Town, State RSA's identifying that outdoor play activity shall be provided, State Life Safety Compliance Report signed by Steve Dube of Hudson Fire Department, a copy of fire drill log sheet and pictures of her newly installed fence.

Ms. Lebrun read her four-page cover letter into the record. In addition to the above, Ms. Lebrun noted that the maximum number of children allowed by the State of NH is six (6) preschool aged children and three (3) school-aged children, that the State requires monthly fire drills which cannot be practiced with the limitation of no outdoor presence, that her hours of operation are from 7:00 AM – 5:30 PM Monday through Friday. Ms. Lebrun stated that in response to the comments/opposition received at the last hearing, she has pursued installing a 6-foot privacy fence to replace the 4-foot chain link fence. Ms. Lebrun asked the Board to reconsider and remove the restriction of outdoor play stipulation noting that this is her main source of income for her and her three (3) daughters, that she is the only Home Occupation Special Exception for a day care approved in the Town with this stipulation and unless removed, she will not receive her State license.

Mr. Brackett opened the meeting for public testimony at 7:20 PM asked that anyone wishing to speak to come either to the lectern or the microphone on the table, to state their name and address and invited first those individuals wishing to speak in support to be followed by those neutral or opposed. The following individuals addressed the Board:

- (1) Fabiana Fickett introduced herself as a parent of two daughters, a Hudson resident, a Board Certified Behavior Analyst and former Mental Health Therapist. Ms. Fickett stated that she has known Jennifer Lebrun for seven (7) years, that her youngest daughter goes there, stated that Jen is an asset to the community and having someone on this side of Hudson for a day care by someone who is dedicated, organized and loving and proceeded to cite examples of the quality of care provided. As a professional, the restriction of outdoor play and freedom of movement is detrimental to the children and affects their social and play development. Ms. Fickett stated that State of NH, in April of this past year, made a change to make kindergarten play-based once again because of the developmental benefits.
- (2) Cedi Rousseau, 10 Regina Street, stated that her son has been cared for by Jenn and as a result has gained valuable social skills, is polite, knows how to interact with other children and is now thriving in school. The neighborhood is a community. Her children play outside and are probably louder and she doesn't get complaints. Homes are where

families are raised. Not everyone has children. It is a neighborhood, with community yard sales, bonfires, and holiday luminaries. Children laugh and giggle and make noise but it is a good sound.

- (3) Mike Sousa, 2 Ricky Drive, stated that he is opposed to the day care, that he spoke with Mr. Buttrick, that this hearing is going down as a licensing hearing which is not what the Board does, that at the last meeting the stipulation was regarded as redundant as it is covered in the Home Occupation Special Exception and a day care is a permitted business but it is still a business and applies to all businesses. It is unfortunate that it is causing Ms. Lebrun difficulty in obtaining her license but there are alternatives available to Ms. Lebrun, that the State does allow for offsite outdoor activity, that the option exists to become pre-school only with just five (5) hours a day, that he is aggrieved enough to show up a second time protesting, that Ms. Lebrun has not passed all safety criteria and offered the trampoline as an example, that the day care is a business, a business for profit, that she has been running a day care for ten years, that the Town Code allows Home Occupations and criteria D. specifically states that the Home Occupation must be confined within a residence or a garage, that more kids generates more noise and that the Board is on a slippery slope by allowing otherwise.
- (4) Stacy Sousa, 2 Ricky Drive, stated that she does not have an issue with Jennifer's children or any other children in the neighborhood, children make noise and sometimes there is screaming and crying, and with more children there will be more noise and there are days where windows need to be closed to keep the children's noise outside of her home, and it is a good gesture about the fence but Ms. Sousa stated that she lives in a raised ranch and her living space is above the fence line and there are no trees between their properties, so there is no real sound benefit from the fence. Ms. Sousa stated that she spoke with a Realtor and with the day care there will be property devaluation in her home. According to Town Code, the business needs to be confined to the home or garage.

Being no one else to address the Board, Mr. Brackett closed public testimony at 7:36 PM, offered Ms. Lebrun the opportunity to reply to the comments heard and noted that there would be a second opportunity for more Public Testimony.

Ms. Lebrun thanked the people who have come out to support her, here at the meeting and in letters, and stated that she lives in a fantastic neighborhood but it has been a long two months enforcing no outdoor play, that she feels singled-out for no-outdoor play, that the State of NH Health and Human Services had never heard of the outdoor restriction, that the trampoline is acceptable and has been inspected by the State, that children playing are not the same as a snowmobile Home Occupation and added that the dogs are louder than the children.

Public testimony opened for a second round at 7:40 PM. The following individuals addressed the Board:

- (1) Fabiana Fickett stated that she heard errors in statements made as the Town has never placed this stipulation on a day care before, that other cases have been before the Board where there was opposition expressed and

permit given, noting 12 Kenyon Street and another that had a pool as examples; that she agrees with the comment that the Zoning Board is not a licensing Board and noted that Jennifer has passed every criteria to get licensed with the exception of this outdoor activity imposed by the Zoning Board; and lastly, Hudson has a Noise Ordinance and it has never been violated by Jenn and noted the overhead map that shows the house at 2 Ricky Drive further away than the house at 12 Regina Street and yet 12 Regina Street have submitted a letter stating that they have no issue with noise and encourage the Board to lift the no-outdoor restriction.

- (2) Jonathon Weston, 14 Regina Street, stated that if you do a Google search of Hudson Zoning Board of Adjustment, Section G includes child day care and if the stipulation remains in place there will be a violation of State's standards not just with outdoor play but also conducting fire drills. Mr. Weston stated that Jennifer has three children of her own who have friends and active lives and they go out to play and do what kids do, play and make some noise. The trampoline is for Jennifer's children. Melendy Road is a busy road and in the summertime you hear lots of motorcycles and loud cars and that drowns out any sounds made by the children.
- (3) Alfreda Rousseau, 10 Regina Street, stated that she lives two houses down, spends a lot of time outside and has never been disturbed by the children's noise, they are just kids playing, they are not screaming.
- (4) Cedi Rousseau, 10 Regina Street, stated that when she takes her children to the doctor's office, there is a 5-4-3-2-1 Rule which stipulates how many hours the children should play outside for health reasons and in a world of obese children and diabetes there needs to be outdoor opportunities and busing them makes no sense and asked if there could be a limitation placed on the number of hours or specific hours that the children could be outside.
- (5) Stacy Sousa, 2 Ricky Drive, stated that we are losing sight of the Home Occupation business and noted that it has specific criteria and yes her business is children, but it is a business first being run out of her home.
- (6) Mike Sousa, 2 Ricky Drive, stated that other avenues are available to Ms. Lebrun.

Being no one else to speak, Mr. Brackett closed public testimony at 7:50 PM

Ms. Davis stated that her decision was in the negative and it had nothing to do with the day care or the applicant's ability; rather it had to do with the situation of a business in the TR Zone on a very small lot with negative abutter testimony and no real screening from the abutters. Ms. Davis added that she did not agree with the stipulation primarily because it is not really enforceable and firmly believes that both the applicant and the abutters have the right to use their property and the right to peace and quiet. The intent of Home Occupations is for small unobtrusive businesses to give entrepreneurs a start-up avenue, like an office or an in-home day care that is not excessive and emphasized that each case is unique and has to be evaluated on its own merits.

Ms. Davis stated that she reviewed the two hundred page State document and found references where outdoor play was recommended and asked if it was specifically stated that it is an actual requirement. Ms. Lebrun stated that the specific requirement is in the packet she distributed – page 17 handwritten at the top - titled

NH Code of Administrative Rules He-C 4002.24 Program Requirements section (e) (1) "On a daily basis provide children... indoor and outdoor activities" – and also page 18 He-C 4002.21 Child Care Space section (o) "Programs shall be equipped with an outside play area...". Discussion continued. State regulations searched on-line. Ms. Lebrun stated that she entered "NH Child Care Rules". Citations confirmed.

Mr. Dearborn stated that the record shows that he made the motion with the no-outdoor stipulation and the State has proven him to be wrong so he searched other Cases that have come before the Board and quoted a previous Chairman "Family day cares are an asset to the community and routinely granted by the Board" and cited another Case where the Board approved a day care that had a pool which is more of a threat to the children than a trampoline. Mr. Dearborn stated that he added the stipulation to appease the neighbors and that was wrong.

Mr. Houle stated that in looking at page 17 & 18, there is no specified times dictated for outdoor activities and noted that he voted against granting the motion based on the safety aspect and is pleased that the fence has since been installed.

Mr. Brackett stated that he had erroneously reported that daycare for his grandkids had no outdoor activities, that he has since learned that they do go outside and agreed that to his knowledge and experience a day care in Town has not been denied except with regard to the number of children, that the Zoning Ordinance has an oversight which needs to be corrected, that the Town does have a Noise Ordinance and lastly, that a Town cannot overrule a State requirement.

In response to Mr. Dearborn's question, Ms. Lebrun confirmed that the children are always supervised when outdoors and added that if one of them needs to go to the bathroom or have a diaper changed, all the children come inside. In response to Ms. Davis' question, Ms. Lebrun stated that the children don't go outside before 9:00 AM, that they are indoors for lunch and naptime and may go back outside, weather permitting from 2:30 PM until pickup or 5:30 PM.

Mr. Dearborn made the motion to approve with two new stipulations: (1) that there be no sign; and (2) that the Special Exception be confined to Jennifer Lebrun and be terminated on sale of property. Ms. Davis seconded the motion for discussion and noted that those stipulations already exist in the Ordinance and do not need to be singled out in the motion and offered instead a more direct replacement of the condition/stipulation specifying that there be no outdoor activity before 9:00 AM. Discussion ensued. Mr. Dearborn agreed to eliminate his two stipulations. Motion to approve with the stipulation that there be no outdoor activity before 9:00 AM. Vote was unanimous at 4:0. Motion carried.

Board took a five-minute break at 8:12 PM.

2. Case 174-140 (6-28-18): Jamie Pascoe, 15 Nottingham Street, Hudson, NH, requests a Variance to allow the construction of an attached garage to encroach within 9-feet of the front-yard setback, proposing 21-feet where 30-feet is required. [Map 174, Lot 140; Zoned TR, HZO Article VII §334-27, Table of Dimensional Requirements.]

Mr. Buttrick read the Case into the record. Mr. Dearborn stated that his brother in-law and sister in-law live directly across the street and asked if he should be recusing himself. Mr. Brackett asked and received confirmation from Mr. Dearborn that he feels he can be objective and Mr. Brackett asked him to sit on the Case.

Ms. Davis asked and received confirmation from Mr. Buttrick that the house itself is in the front setback and questioned whether the applicant should also be asking for an Equitable Waiver of Dimensional Requirement. It was noted that an Equitable Waiver was not advertised and that there are several houses in the neighborhood that do not have the required front setback. Ms. Davis next asked if an addition and a garage are being added to a non-conforming structure whether it would fall in the category of expanding a non-conforming use and structure. Mr. Buttrick responded that technically the addition of a garage does not and noted that the house is 14.8' and the proposed garage would be 21' from the front property line and added that the existing mudroom will be upgraded.

Jamie Pascoe introduced himself as the owner of the residence at 15 Nottingham Street, noted that his house was built pre-1900 and has a dirt floor in the basement. Mr. Pascoe stated that he was hired as a contractor in 2008 to work on this house and ended up falling in love with it and the neighborhood and has since bought it and has kept up with the maintenance. Mr. Pascoe stated that he is getting remarried, that he has joint custody of his two children and will have three stepchildren and there will be three more vehicles at the residence.

With regard to the Variance criteria, Mr. Pascoe shared the following information:

- All setbacks will be met with the exception of the front setback from the street and will not alter the character of the neighborhood because many of the houses do not meet the setback
- Spirit of the Ordinance will be met and the garage will be further from the property line than the house (21' versus 14.8') which is similar to other homes in the neighborhood
- Substantial justice will be done both to the look of the neighborhood and allowing similar use of his property
- Will not diminish surrounding property values because it will be similar to the other properties and it will add value to his home and those in the neighborhood
- With regard to hardship, it is the existing setback of the residential structure and if forced to meet the setback for the garage there will not be enough of the existing house to connect to and be functioning.

Mr. Brackett opened the meeting for public testimony at 8:25 PM. No one addressed the Board.

In response to Ms. Davis' questions, Mr. Pascoe confirmed that there would be no living space over the garage and that the driveway would be lined up for the garage. Mr. Dearborn commented that the property was in tough shape before 2008 and with the renovations it now stands in the forefront of the neighborhood.

Motion made by Ms. Davis and seconded by Mr. Dearborn to grant the variance. Ms. Davis spoke to her motion noting that the house was built pre-zoning, that its non-conformity is causing the hardship leaving the only logical place for the addition and garage to also be in the setback. Mr. Dearborn agreed. Vote was 4:0. Motion passed. Variance granted. Applicant noticed regarding the 30-day appeal period. Ms. Davis pointed out that an Equitable Waiver of Dimensional Requirement should be considered to legitimize the non-conformity of the house with regard to setback to avoid future issue with a bank. Mr. Buttrick noted that the Equitable Waiver would only be needed to clean up the property title for the existing house as the Variance will cover the garage and mudroom.

3. Case 198-032 (6-28-18): Douglas Murray, 7 A Street, Hudson, NH, requests a Variance to allow the replacement of an existing 12'x23' shed with a new 12'x20' shed that encroaches within 7-feet of the side-yard setback, proposing 8-feet where 15-feet is required. [Map 198, Lot 032; Zoned B, HZO Article VII §334-27, Table of Minimum Dimensional Requirements.]

Mr. Buttrick read the Case into the record. Ms. Davis stated that a 12' x 23' shed currently exists in the setback on the property and the intent is to replace it with a smaller 12' x 20' shed and asked if ZO (Zoning Ordinance) 334-31A applies. Mr. Buttrick stated that it does not apply because the original shed is to be demolished and then replaced.

Doug Murray introduced himself as living at 7A Street but not the property owner. The house and garage were built in 1930 and in the 1970's a 12' x 20' carport with a concrete pad and retaining walls was installed on one side of the house and the shed was placed on opposite sides of the house 8' from the property line. The shed is in tough shape. The proposal is to replace the shed with a smaller one constructed by Reeds Ferry that would still be in the setback. The only conforming location for the shed would be to place it in front of the carport and that would block the use of the carport.

With regard to the Variance criteria, Mr. Murray shared the following information:

- The house and garage were built in the 1930's making it one of the oldest homes in the neighborhood. The layout of the structures is consistent with earlier zoning rules.
- To the best of Mr. Murray's knowledge the structures have not interfered with the character of the neighborhood and do not threaten public rights.
- The spirit of the Ordinance is to preserve fair treatment and reduce natural conflict between neighbors. The shed does encroach on the new setback requirement being 8' from the property line but the neighbor has his 1950 house 6' from the property line and both have peacefully existed for decades. There are many instances in Town where older homes have setback issues without impacting public rights.

- Substantial justice will be done with the replacement of the dilapidated shed with a new Reeds Ferry shed and the replacement shed will be 3' shorter increasing the setback from 15' to 18'.
- Replacing the old shed will not diminish property values and will improve the property's appearance with a neutral to somewhat positive affect.
- The hardship is caused by the existing structures, the adjacent concrete carport, the topography of the land with its considerable slope in the lower section and the second driveway which accesses the shed.

Mr. Brackett opened the meeting for public testimony. No one addressed the Board.

In response to Mr. Brackett's question, Mr. Murray stated that the purpose of the shed is to safely store items like motorcycles, snowblower, lawn mover, bikes, fishing poles, boxes of stuff etc. In response to Mr. Houle's question, Mr. Murray stated that the property owners did write a letter authorizing him to represent them and it was submitted to the Town Office and added that one of the property owners is present and can also confirm.

Motion made by Ms. Davis and seconded by Mr. Dearborn to grant the variance as requested. Ms. Davis stated that the requests meet the criteria, the size of the lot, the location of the house on the lot and with the slope prompted the location of the shed, that the shed has been in that location for eighteen plus years and there's been no abutter testimony. Mr. Dearborn added that the replacement shed is smaller and less non-conforming. Vote was unanimous at 4:0. Motion passed. Variance granted. Applicant noticed regarding the 30-day appeal period.

4. Case 174-168 (6-28-18): Another Beautiful Day, LLC, c/o Attorney Jeffrey A. Zall, P.O. Box 3652, Nashua, NH, requests the following Variances at 3 Highland Street, Hudson, NH;
  - a) A Variance to allow a three (3) unit multi-family dwelling in a TR zoning district. [Map 174, Lot 168; Zoned TR, HZO Article V §334-20, Allowed uses provided in tables.]
  - b) A Variance to allow a three (3) unit multi-family dwelling on a lot consisting of 16,354 square feet buildable lot area where 58,560 square feet of buildable lot area is required. [Map 174, Lot 168; Zoned TR, HZO Article VII §334-27, Table of Minimum Dimensional Requirements.]

Mr. Buttrick read the Case into the record and the need for the variances. Mr. Buttrick noted that the applicant has been before the Board previously for a four-unit building on the lot that was denied.

Attorney Jeffrey Zall of 221 Main Street, Nashua, NH introduced himself as representing the applicant Another Beautiful Day, LLC. and distributed a packet of information that included aerial representations of surrounding properties and information regarding densities. Atty. Zall stated that they were before the Board with a proposal for four (4) unit multi-family building that was denied and based on the



comments received, they reconfigured the plan for three-unit building in a different configuration and parallel to the street to provide a backyard and avoid future setback variances should a deck ever be desired.

Atty. Zall stated that there exists a two-family building on site that has been unoccupied for quite a while and is destined to be torn down. Their intent is to replace it with a three-unit Townhouse building with units ranging in size from 1,100 SF (square feet) to 1,300 SF. The site is in the TR Zone and the only residential permitted uses are single-family houses, older persons housing and assisted living. Two-family and multi-family housing are not permitted in the TR Zone. Even though not permitted, there are numerous two-, three- and four-unit and more unit dwelling units/houses in the TR Zone and especially in the neighborhood of this property. They conducted a survey along Ferry Street, Highland Street, Central Street and Library Street and discovered at least twenty five (25) multiple unit properties (two or more units).

Atty. Zall referenced page 4 of the handout and noted the neighborhood is outlined in blue and shows eleven (11) residential properties and one commercial property and of those eleven (11) residential properties, eight (8) are multi-unit properties ranging from two units to six units. On page 2 of the handout it shows four (4) residential lots directly abutting 3 Highland Street and they consist of a 6-unit, a 4-unit, a 3-unit and a 2-unit buildings with densities ranging from 1,793 SF/unit to 6,287 SF/unit for an average of approximately 3,000 SF/unit. A broader neighborhood comparison was also provided from Derry Road/Library Street to Pleasant Street and the average density is just shy of 4,000 SF/unit. What the applicant is proposing for density at 3 Highland Street is 5,451 SF/unit. Atty. Zall noted that the proposed SF is closer to the Zoning requirement than what currently exists in the neighborhood.

Atty. Zall next addressed the two variances being requested. The first variance is to allow a three-unit multi-dwelling structure in the TR Zone. Atty. Zall stated that applicant satisfied all the requirements for the granting of a variance and shared the following information: not contrary to the public interest considering the number of two-family and multi-family dwellings in the neighborhood and the proposed use would be consistent and not harm public health, safety or welfare; spirit of Ordinance observed with a proposal similar to existing uses in the neighborhood; substantial justice done allowing a consistent use and not subjecting applicant to greater restrictions than those imposed on neighboring properties; there will be no diminution to property values with consistent use and as attested by Donald Gingras Realty Co,; and hardship is met through the Simplex Law with the proposal being consistent with the current uses in the area and imposing a restriction presents no fair and substantial justice relationship between the purpose and specific application to this property.

Atty. Zall stated the second variance deals with lot sizes and density and is contingent upon the first variance being approved. For multi-family properties, the Ordinance requires 53,560 SF of buildable lot area for three attached units. The only Zone in Town that allows a multi-family dwelling building is in the B (Business) Zone that requires a minimum lot area 43,560 SF or 30,000 SF with Town water and sewer. Atty. Zall noted that the lot size in the TR Zone is 10,000 SF and if using the minimum size for a multi-family that requires a variance as identified in HZO 334:27 attachment

4 Note 2, the variance being requested would be to allow a 3-unit multi-family dwelling on a lot of 16,354 SF of buildable lot where the ZO requires 53,560 SF of buildable lot area.

Atty. Zall stated that the facts that support the first variance also support the second variance. In review of the variance criteria, the following information was shared: it is not contrary to the public interest and will observe the spirit of the Ordinance and substantial justice will be done because the proposed use and density will be consistent with the neighborhood that has numerous multi-family properties with densities similar to or greater than what is being proposed; values to the surrounding properties will not be diminished; and the restrictions applied to this property by the Ordinance does not serve the purpose of the restriction in a fair and reasonable way. A proposed density of three units on a 16,944 SF lot is a reasonable use in this neighborhood.

Atty. Zall stated that he had submitted letters of support from neighbors with the application for a 4-unit multi-family dwelling, read the letter into the record and submitted copies for the 3-unit multi-family application file.

Atty. Zall stated that the facts presented support the variances being sought and added that the Law also supports the variances and proceeded to note the Simplex Case and how it redefined hardship in the 2001 NH Supreme Court hearing and was further amended in 2009. The special conditions that applied in the Simplex Case are very similar to the special conditions that apply to the variances being sought by his client. With Simplex, it was unreasonable and unfair to require it to be restricted to Industrial use when surrounded by Commercial uses and it is unreasonable and unfair to restrict 3 Highland Street to a single-family use when surrounded by multi-unit dwellings. Simplex applies to the variances being sought.

Mr. Brackett opened the meeting for public testimony at 9:02 PM. Michael Lefavor of Nashua, NH, stated that he met with 17-18 abutters, both direct and non-direct abutters, showed them pictures of the existing building and the proposed plan for the site's development and encountered no resistance from any of them, in fact received much encouragement. Mr. Lefavor added that this project is not going to be a portfolio for him and is intended to provide affordable homes for first time homebuyers. Mr. Lefavor noted that it would be a potential hardship for a future homeowner should only a single-family residence be constructed because they will be surrounded by multi-family units in a multi-family neighborhood. Being no one else to speak, public testimony ended at 9:05 PM.

Ms. Davis questioned the recent Zoning Amendment that allows multiple principal uses on a lot without the required area and frontage if sewer and water could be supported and asked if it applied to three individual homes as multiple permitted principal uses without consideration for setback and additional area. Mr. Buttrick stated that it could and would need Planning Board Site Plan Review and noted that there is no square feet requirements. Discussion noted that this is another problem with the Zoning Ordinance that needs to be re-evaluated and resolved.

Ms. Davis stated that as a four-unit proposal she was concerned with the density and the fact that none of the surrounding properties were four-family units, that the

applicant has presented a much better design and reduced the number, and that, in her opinion, it would be unjust to deny a 3-unit family dwelling. When asked, Mr. Buttrick confirmed that a 3-unit multi-family dwelling would still require Planning Board Site Plan Review.

Motion made by Ms. Davis and seconded by Mr. Houle to grant the variance allowing a three-unit multi-family dwelling in the TR Zone at 3 Highland Street. Ms. Davis stated that the criteria have been met, it is not contrary to the neighborhood and justice is done with the granting of the variance. Mr. Brackett noted that this Case is an excellent example of the Simplex Case application. Vote was 3:1. Mr. Dearborn opposed. Motion passed. Variance granted.

Motion made by Ms. Davis and seconded by Mr. Houle to grant the variance allowing a three-unit multi-family dwelling on a lot consisting of 16,354 SF buildable area in the TR Zone at 3 Highland Street. Ms. Davis stated that the criteria have been met, it is not contrary to the neighborhood, the density is better than some in the neighborhood and it is an appropriate use for the site. Vote was 3:1. Mr. Dearborn opposed. Motion passed. Variance granted.

Applicant noticed regarding the 30-day appeal period. Michael Lefavor asked if the appeal period was to allow abutters to come to the Board or could it also be a time where the Board can discuss and change their vote. Chair Brackett stated that any aggrieved person can file an appeal and added that it is usually an abutter. It was also noted that the project still has to undergo Planning Board Site Plan Review which will surpass the appeal period for the variances just granted.

Atty. Zall thanked the Board for their reconsideration and the Board thanked the applicant for hearing the concerns and working out a better plan.

## **II. REVIEW OF MINUTES**

### 1. 05-24-18 and 06-07-18 Minutes

Mr. Buttrick stated that Executive Summary Minutes for the 5/24/18 Minutes were prepared to satisfy the RSA timeline (there was an issue with the recording) and was mailed in the meeting packet. The regular draft 5/24/18 Minutes was distributed over the past weekend. The 6/7/18 Minutes were produced and electronically distributed but paper was not provided in the Board's supplemental packet. By general consensus, action on the Minutes was deferred to the next meeting.

## **III. REQUEST FOR REHEARING – None received for Board consideration.**

## **IV. OTHER**

### 1. State Legislature – House Bills

Mr. Buttrick stated that HB 1215 was passed and established requirements for Zoning Boards of Adjustment voting on variances which refers to RSA 674:33 where a Board

should use one voting method consistently for all applications until it formally votes to change the method. Any change on the voting method shall not take effect until sixty days after the Board has voted to adopt and not affect current Cases under Board review. Chair Brackett noted that there has been recent discussion on the method the Board should take, specifically reviewing and voting on each criteria, and noted that it was not performed on the Cases heard at this meeting, and that it would be good to establish one method and consistently apply it. Suggestion made that the By Laws could be updated to reflect the Board's decision on how it addresses HB 1215. Mr. Buttrick was asked to distribute the HB 1215 bill/documents to the Board for future Board discussion.

Motion made by Ms. Davis, seconded by Mr. Houle and unanimously voted to adjourn the meeting. The 6/28/2018 ZBA meeting adjourned at 9:20 PM.

Respectfully submitted,

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Charles J. Brackett, ZBA Chairman