



# TOWN OF HUDSON

## Zoning Board of Adjustment



Charlie Brackett, Chairman

Normand G. Martin, Selectmen Liaison

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### MEETING MINUTES – May 24, 2018 - approved

The Hudson Zoning Board of Adjustment met on May 24, 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 in attendance; explained that the Zoning Board is a quasi-judicial board to enforce and uphold State and Town Law; stated the process of the meeting would be to solicit input from the Applicant and Abutters, deliberate, seek a second set of input and make a motion; asked that anyone wishing to address the Board to please come to the table or the lecturn and provide their name, with spelling, and address; and made housekeeping announcements that included no smoking, cell phones off, no talking.

Members present were: Charlie Brackett (Chair), Gary Dearborn (Regular), Maryellen Davis (Regular), Kevin Houle (Alternate/Clerk) and Michael Pitre (Alternate). Also present were Normand Martin, Selectmen Liaison, David Morin, Alternate Selectmen Liaison, Bruce Buttrick, Zoning Administrator and Louise Knee, Recorder. Absent was James Pacocha (Vice Chair). For the record, Mr. Brackett appointed Mr. Houle and Mr. Pitre as a sitting voting members for this meeting.

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

1. Case 165-075 (5-24-18): Michael J. Baldacchino, 7 Merrimack Street, Hudson, NH, request a Variance to rebuild the existing front stairs with an increased setback 13'.8" from the front yard setback, where 30 feet is required. [Map 165/Lot 075, Zoned TR; HZO Article VII §334-27 Table of Dimensional Requirements].

Mr. Buttrick read the Case into the record, referenced his Staff Report dated 5/16/2018 noting that the lot is an existing non-conforming lot with regard to land square footage and front setback, stated that the existing house meets the 30' front setback but the existing stairs encroach 9.8' into the front setback, leaving 20.2' of front setback. Mr. Buttrick stated that a variance is needed to allow the replacement steps to encroach 16.2' into the setback leaving 13.8' of front setback

Michael Baldacchino introduced himself, stated that the existing stairs encroach the front setback and are deteriorated to the point of being a potential safety hazard and that to rebuild them to Code (Building Code) would require a further encroachment into the front setback. Mr. Baldacchino proceeded to review the variance criteria noting that: it is not contrary to the public interest as there are several other houses

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in the neighborhood and some whose actual structures are in the front setback; it would observe the spirit of the Ordinance being built to Code and eliminating a safety hazard; that substantial justice would be done allowing the owner use of his front door and eliminating a possible lawsuit should anyone get hurt on the existing dangerous stairs; that new stairs built to Code would not only enhance his property value but also those of his neighbors; and that not granting the variance would create a hardship forcing his family to use just the backdoor and eliminating an exit route in an emergency or risk it and suffer additional injury.

Public Testimony opened at 7:08 PM. No one addressed the Board.

Board discussed. Mr. Dearborn stated that he drove by twice and noted that the stairs are in tough shape and look like they may collapse soon and added that the new stairs would be correcting a safety hazard. Mr. Pitre asked why the application was before the Board and Mr. Buttrick answered that the rebuilding of the stairs geometry to satisfy Code requires it to be larger than the existing stairs and the Ordinance does not allow increasing a non-conformity without a variance. Mr. Pitre noted that the new stairwell would be "L" shape with stairs towards the driveway instead of the street. Ms. Davis noted that the stairs predate the TR Zone. Consensus reached that all the criteria for a granting of a variance were satisfied.

Motion made by Ms. Davis, seconded by Mr. Dearborn and unanimously voted to grant the variance as requested. With a vote of 5:0 the variance was approved and the Applicant was advised of the 30-day Appeal period.

2. Case 200-003 (5-24-18): Ryan Reid, 11 Rumford Street, Lowell, MA, requests an Appeal From An Administrative Decision by the Zoning Administrator dated 04-11-18 for the property located at 89 Pelham Road, Hudson, NH, which states that the proposed "connector" roof structure between both buildings to satisfy the definition of a two family (duplex) will present a reasonable appearance, and will be in keeping with the neighborhood character. [Map 200, Lot 075; Zoned G, HZO Article II §334-6, Definitions, and HZO Article III §334-16.C.1, Building Permits – Conditions of issuance.]

Mr. Buttrick read the Case into the record and referenced his Staff Report dated 5/17/2018 noting that the proposed construction may technically satisfy the definition of a duplex, it does not, in his opinion, satisfy the intent of the Zoning Ordinance and would be "out of character" as a duplex. The definition of a duplex is "two dwelling units attached by any portion on one or more floors, walls or roofs". The opinion of the Board is needed to determine if the suspended connector qualifies it as a duplex.

Ryan Reid introduced himself, thanked the Board for their consideration and noted that the existing detached two-car garage would have a portion of it converted to living space for the property owner's daughter and thought that the addition of a permanent roof connector would satisfy the Zoning Ordinance criteria for a duplex. Mr. Reid stated that the garage is offset from the house, noted that it would not be visible from the street and offered a similar example on the corner of Allen Road.

Other similar examples were offered by Board Members that included Greeley Street by Kingdom Hall Jehovah Witness and Burns Hill Road and 46 Pelham Street. Mr. Buttrick was asked to check if they were permitted.

In response to Ms. Davis' questions, Mr. Reid stated that the house is serviced by private well and septic and that there is no longer an auto body business on site and the upper floor of the garage would continue to be used for storage.

Discussion continued and alternatives were explored and opinions were expressed. Mr. Pitre noted that a permanent structure connecting the two dwelling units would suffice. Mr. Houle asked and received confirmation that a three-season porch would suffice. Mr. Brackett stated that what has been presented is an extreme interpretation of the Zoning Ordinance, that in his opinion it looks like a stretched ladder and agreed with the Zoning Administrator.

In sum, Board discussion included: other examples in Town; the comparison to ADUs (Accessory Dwelling Units); the fact that duplexes are allowed in the G Zone; the recent Warrant Article allowing two houses on a lot without each satisfying the frontage requirement *and* with Planning Board Site Plan Review for Dual Use; and other alternatives to achieve the Applicant's goal.

Motion made by Ms. Davis and seconded by Mr. Pitre to uphold the Zoning Administrator's decision that, as proposed, does not keep in character of the neighborhood or satisfy the definition of a duplex. Vote was 4:1 to uphold ZA decision. Mr. Houle opposed.

3. Case 174-168 (5-24-18): 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 four (4) 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 four (4) 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 and both variances into the record, referenced his Staff Report dated 5/17/2018 noting that it is a conforming lot with a non-conforming Use as a duplex and added that if the existing duplex is voluntarily demolished it cannot be rebuilt as a two-family dwelling unless a variance is granted. It was noted that neither a duplex or a four-unit multi-family dwelling are Permitted in the TR Zone.

Board consensus was to discuss both variances and then vote on each individually.

Attorney Jeffrey Zall from Nashua, NH, introduced himself as representing the applicant Another Beautiful Day; identified the location of the site that now contains a run-down duplex that needs to be taken down; noted that eight out of eleven surrounding properties have structures that are greater than duplexes; acknowledged that many, if not all, predate the area being Zoned TR; provided density calculations on the proposed units to those in the neighborhood and addressed the variance criteria for each variance.

With regard to Variance a) to allow a four-unit multi-family dwelling, Atty. Zall offered the following information: the general area has many two-family and multi-family dwellings so the proposed use would be consistent with the neighborhood and would not be contrary to the public interest and would not harm public health, safety or welfare; the spirit of the Ordinance is to maintain the character of a neighborhood; substantial justice would be done as it is consistent with others in the neighborhood and would not impose greater restrictions onto the applicant; the proposed four-family Townhouses would not diminish the surrounding property values as testified in letter by Real Estate Broker Donald Gingras; and imposing a greater restriction onto the Applicant than what already exists in the neighborhood would result in an unnecessary hardship.

With regard to Variance b) to allow a four-unit multi-family dwelling without minimum lot area, Atty. Zall offered the following information: will not be contrary to the public interest and is consistent with the spirit of the Ordinance considering the other multi-family dwellings in the neighborhood with densities similar to and greater than what is being proposed; substantial justice will be done if Applicant is allowed to use his property in similar manner to others in general area; there will be no diminishment to surrounding property values; and it would create an unnecessary hardship by imposing a more restrictive density requirement on this property than what exists on surrounding properties.

Atty. Zall stated that they have spoken to abutters and have the support of fifteen (15) lot owners. It was understood that if the variances are approved that Planning Board Site Plan Review approval would also be needed.

Public Testimony opened at 8:04 PM. Stuart Schneiderman, 2 Highland Street expressed concern with water runoff. Chair Brackett stated that the Planning Board would address that concern. Atty. Zall stated that it would be engineered prior to going to the Planning Board. Mr. Brackett also noted that the Planning Board has the option to enlist an independent engineering review. Being no one else to speak, Public Testimony ended at 8:06 PM.

Board deliberated. Mr. Dearborn acknowledged the delapidated condition of the building, noted that the Board recently denied an application for a third apartment at 9 Highland Street and expressed concern for parking as four units would require a minimum of six spaces. Atty. Zall stated that two-car parking would be provided for each Townhouse, with one in the garage under and another in the driveway. Mr. Pitre noted that each unit would have a backdoor and expressed concern for potential future encroachment with deck additions that would need to come before the Board for a variance into the sideyard setback. Atty. Zall responded that it could be a

condition of approval and noted that the units would be condominiums and stated that a restriction regarding decks could be included in the condominium documents.

Ms. Davis stated that all the examples offered for comparison are structures that pre-date the TR Zone and the proposed new non-conforming use is even more non-conforming than the current non-conforming duplex use. Mr. Pitre agreed and noted that the hardship criteria in his opinion is not met as the site has an existing duplex and limiting what is desired with a comparison of other non-conforming uses is not applicable

Mr. Brackett stated that this could fall under Simplex and agreed that the proposed use is more non-conforming than the current duplex use regardless of the fact that less intensity is proposed compared to the surrounding properties by offering larger square footage of living space.

Motion made by Mr. Pitre and seconded by Ms. Davis to deny the variance requesting the construction of four Townhouses as the use is too intense and not allowed in the TR zone, that expansion of non-conforming uses are not allowed and applicant failed to meet the hardship criteria. Vote was 4:1. Mr. Brackett opposed / willing to grant.

Atty. Zall asked if the Board would reconsider a presentation of three Town house units and Board stated that a reduction in the number could be entertained. Atty. Zall withdrew the second variance application. Motion made by Mr. Pitre, seconded by Ms. Davis and unanimously voted to accept the verbal withdrawal request of the square footage requirement without prejudice.

Board took a ten-minute break at 8:26 PM.

4. Case 174-119 (5-24-18): Kevin Allard of Pathway Homes, Inc., 79 Cortland Drive, Bedford, NH, requests a Variance at 76 Highland Street, Hudson, NH, to allow the subdivision of one residential lot into 2 residential lots consisting of 75 feet of frontage each, where 90 feet of frontage each is required. [Map 174, Lot 119; Zoned TR, HZO Article VII §334-27, Table of Minimum Dimensional Requirements.]

Mr. Buttrick read the Case into the record and referenced his Zoning determination dated 4/24/2018 noting that the Town GIS shows the 175' of frontage and that either an additional 5' was required to meet the 90' frontage requirement or a variance *and* that Planning Board would also be needed to subdivide the 2.253-acre lot.

Kevin Allard introduced himself as representing Pathway Homes, Inc., property owner, stated that there has been renovation work done to the property for the past four months and added that it was their intent from the beginning to split the 2.2 acre lot and create another residential lot. Knowing that the frontage on the Town's GIS Map showed 175' of frontage and recognizing that 180' frontage was needed, they had discussions with neighbor to obtain the additional five feet; however, when the site was surveyed, it was discovered that there is actually only 150' of frontage and are now before the Board seeking a variance to allow both lots to have 75' frontage. Mr. Allard noted that there are 45 surrounding lots with less than 75' of frontage.

Mr. Allard next reviewed the variance criteria and shared the following information: it would not be contrary to public interest and not alter the character of the neighborhood as the lots would be similar in size and frontage with the neighborhood; there would be no diminution in surrounding property values because of the similarity and as attested by letter from Bill Brown, Associate Broker of Century 21 Cardinal; there would be substantial justice done allowing the variance and will not allow the owner more than others in the neighborhood; the public has nothing to lose in the granting of the variance; and the hardship is due to the narrow shape of the lot with wetlands on the rear of the property allowing just one additional lot that would be for a single-family home which is a reasonable use and is in character with the neighborhood.

Public testimony opened at 8:42 PM. No one addressed the Board.

Board discussed. Mr. Dearborn stated that he drives by this lot ten times a day and there's a big hole/depression where the new house would be located and added that, in his opinion, the proposed split of the lot would not impact the neighborhood. Mr. Allard confirmed the depression and noted that the new house would have a full basement and be connected to Town water and sewer. Ms. Davis stated that the applicant is taking one conforming lot and creating two non-conforming lots and agreed that, while we do not want to be creating non-conformances, in her opinion, the proposal is in keeping with the character of the neighborhood.

Motion made by Ms. Davis, seconded by Mr. Dearborn and unanimously voted to grant the variance with the stipulation that it would only be for a single family lot. With a vote of 5:0, motion granted. Applicant was advised of the 30-day Appeal period.

## **II. REQUEST FOR REHEARING**

1. Case 191-012 (Home Occupation – Approved with 1 stipulation 4-26-18), 14 Regina Street, Hudson, NH.

Mr. Buttrick read the request into the record. Discussion ensued that ranged from past Board decisions regarding other daycares in Town, to the apparent change in the State's requirements now requiring outdoor activity and the need for fire drills, to the actual wording of the Special Exception Home Occupation (S/E HO) criteria that stipulates no outdoor activity, to the Board not giving due consideration to the supporting letters from four abutters, to the applicant now willing to install a fence to address the concerns raised at the Public Hearing.

Side discussion arose on the criteria regarding Special Exception Home Occupation and the stipulation prohibiting outdoor activity prompted by Ms. Davis. Mr. Brackett stated that it would be overkill to also require a variance from the S/E HO outdoor criteria, that it is a deficiency in the Town's Ordinance and has taken too long to correct and should not be held against the applicant. Mr. Pitre asked if all day cares in Town had fencing or restrictions on outdoor activity. Mr. Dearborn recalled testimony that a fence would be too costly. Mr. Brackett recalled one abutter's

testimony regarding letting his dogs out and noted that it is the dog owner's responsibility to control his dogs.

In response to Ms. Davis' question regarding what is new worthy of reconsideration, Mr. Pitre stated that the fence is new and the knowledge that the State requires outdoor time.

Motion made by Mr. Dearborn, and seconded by Mr. Pitre to grant the rehearing request. Vote was 3:2 with Ms. Davis and Mr. Houle opposed. Ms. Davis stated that it should be handled as a new application.

### **III. REVIEW OF MINUTES**

#### 1. April 26, 2018 and May 10, 2018 Minutes

Board reviewed the edited version of each set of Minutes and selected the wording choice of two edits presented in the 5/10/18 Minutes. Mr. Dearborn commented on the quality of the Minutes stating that they are the best he's read in a long time.

Motion made by Mr. Dearborn, seconded by Ms. Davis and unanimously voted to approve the 4/26/18 Minutes as edited and presented and the 5/10/18 Minutes as edited and amended.

### **IV. OTHER**

No other business was presented for Board consideration.

Motion made by Mr. Dearborn, seconded by Ms. Davis and unanimously voted to adjourn the meeting. The 5/24/2018 meeting adjourned at 9:18 PM.

Respectfully submitted,

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Charles J. Brackett, ZBA Chair