

TOWN OF HUDSON

Zoning Board of Adjustment



Normand Martin, Chairman

Marilyn McGrath, Selectmen Liaison

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MINUTES – October 12, 2017 - approved

The Hudson Zoning Board of Adjustment met on October 12, 2017, in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall. Chair Normand Martin called the meeting to order at 7:30 PM and made the following announcements: to please silence all cell phones; that there are extra copies of the Agenda as well as Appeal forms by the door; that there is no smoking in the building; that when addressing to Board to please come to either the lectern or the two chairs and to state your name and address; that there is an 11 PM curfew to the meeting; and to please refrain from talking in the audience.

Clerk Houle took roll call. Members present were: Charlie Brackett (V-Ch.), Maryellen Davis (Reg.), Kevin Houle (Alt.), Normand Martin (Ch.), Maurice Nolin (Alt.), James Pacocha (Reg.) and Michael Pitre (Alt.). Also present were Selectmen Liaisons Marilyn McGrath and David Morin, Bruce Buttrick, Zoning Administrator, and Louise Knee, Recorder. Excused was Donna Shuman (Reg.). Chair Martin appointed Mr. Pitre to vote in place of Ms. Shuman.

I. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. Case 197-128 (10-12-17): Mathew Keller, 32 Cedar Street, Hudson, NH, requests a Variance to encroach 2½ feet into the required setback of 15 feet at 32 Cedar Street, Hudson, NH. [Map 197, Lot 128, Zoned (TR) Town Residential; HZO Article VII §334-27, Table of Minimum Dimensional Requirements].

Chair Martin recused himself and left the Board table. Vice Chair Brackett took the Chair's seat and appointed Alternate Maurice Nolin as a voting member in his place. Clerk Houle read the Case into the record.

Mr. Buttrick referenced his Staff Report dated 9/27/17 that a Variance would be needed for the proposed 28' x 46' handicap accessible addition to the family home to encroach 2½ feet into the required 15' side yard setback and noted RSA 674:33.V, which allows for waiving the hardship criteria to make reasonable accommodations with a recognized physical disability, may be applicable as the addition is to accommodate the Applicants' handicap son.

Approved 10/26/2017, as edited

Gary Thomas of Northpoint Construction introduced himself as having worked closely with the Veteran Association and the Kellers to devise a solution for their son. Mr. Thomas stated that the existing home is actually a tri-level house that cannot be renovated to accommodate wheelchair access and as a result they have decided to add a 26' x 48' addition to be built on a slab at grade level that will accommodate wheel chair access. Mr. Thomas noted that extra wide access to kitchen and bathroom necessitated the encroachment of two and one half feet (2½') into the side setback and distributed a set of plans.

Matthew Keller introduced himself and stated that the addition is needed to allow his son Josh to come home. Josh is one of three children. His son Josh has medical issues and has been at the VA for the past eight (8) months, has three (3) damaged vertebrae and is currently confined to a wheel chair. The addition will give him his own space while being close to much needed family support. Mr. Keller noted that substantial justice would be done with the granting of this Variance as it would allow his son to leave the VA hospital and regain some independence and added that the addition would not detract from the neighborhood and nor would it become a rental unit – it is to be a home for his son.

Mr. Brackett noted that hardship is the most difficult criteria to meet for the granting of a Variance and, as Mr. Buttrick noted, the RSA does allow the Board to waive the hardship criteria if the request is in harmony with the neighborhood and is, in effect, for a specific individual. However, there are four (4) other criteria that need to be met for the granting of a Variance. Review of the remaining criteria ensued and included testimony that the Variance would not be contrary to the public interest especially since the addition will match in style and color of the existing residence; that it will remain a single family residence with no intention that it ever become a rental unit; that it will increase the property value of the home and other houses in the neighborhood; and substantial justice, especially to the Keller family and particularly to their son, would be done without any injustice to others.

Mr. Brackett opened the meeting for public testimony at 7:46 PM. No one addressed the Board.

Board discussion ensued and focused primarily on the fact that the plans just distributed included a kitchen, which raised the question whether the addition should be considered an ALU (Accessory Living Unit) or a duplex. It was noted that the recent change in State Law allows ALU's by Right, with certain size restrictions and connection to the main residence, and has been incorporated into the Building Permit process. The proposed addition exceeds the seven hundred fifty feet square feet (750 SF) allowed for ALU. Mr. Thomas noted that, as presented, the connection to the main residence is via the shared front porch, but if necessary, a slight change to the plan could be made. Question

raised whether one or more variances would be required. Board suggested that Mr. Thomas work with Mr. Buttrick to determine whether another variance would be required and noted that the Variance before the Board at this meeting and as advertised is whether to allow the proposed addition to encroach into the side setback. Board also noted that they would be willing to call another special meeting if another Variance or Special Exception was needed as they recognize the urgency to create a living space for their quadriplegic son and especially with winter fast approaching. Mr. Pacocha also noted that should the need ever be eliminated, the only renovation that would be required would be the elimination of the kitchen and Mr. Buttrick suggested that the Board has the option to include that as a condition of approval.

Mr. Pitre questioned the grade and driveway and Mr. Thomas stated that the front yard would require slight grading, especially to allow wheelchair access from to driveway to the front porch entrance. Ms. Davis and Mr. Pacocha both commented on the fact that the existing garage is in the other side setback. Mr. Buttrick noted that it was granted a Variance back in 1980.

Motion made by Ms. Davis and seconded by Mr. Pitre to approve the Variance and allow encroachment of two and one half feet (2½') into the side setback. Ms. Davis spoke to her motion stating that, in her opinion, there is hardship by the land. Mr. Pitre concurred and added that the hardship is further substantiated by the handicap aspect and noted that, in his opinion, there will be justice done in the granting of the Variance. Ms. McGrath noted that there were no negative comments received from anyone in the public. Mr. Brackett stated that this is indeed a special case. Vote was unanimous. Motion passed.

Mr. Brackett noted the 30-day appeal period and restated the importance of working with Mr. Buttrick.

Chair Martin returned to the Board table. Alternate Nolin no longer voting.

2. Case 173-034 (10-12-17): Rita Chourb, 1 Sapling Circle Unit 13, Nashua, NH requests a Variance to change an existing non-conforming use to another non-conforming use at 46 Derry Street, Hudson, NH. [Map 173, Lot 034, Zoned (TR) Town Residential; HZO Article VIII §334-30, Changes to or discontinuance of nonconforming uses].

Clerk Houle read the Case into the record. Mr. Buttrick referred to his Staff Report dated 9/28/2017 noting that the lot of record is 0.382 acres with 112.95 feet of frontage and that according to the Assessing records, this lot has been shown as Commercial since 2001. Mr. Buttrick noted that this is an existing non-conformance where the Zone changed and the proposal is to change an existing non-conformance use to another non-conforming use.

Joe Fuoco introduced himself as the Managing Partner of the office building at 46 Derry Street, known as Landmark Crossing d/b/a Hutchin Crossing, and testified that they are allowing Ms. Chourb to apply for the Variance for the Change of Use. Mr. Fuoco stated that after the Board has acted on the Variance, he would like to address another matter.

Rita Chourb introduced herself and stated that she would like to establish a dental lab in Hudson NH at 46 Derry Street in Suite 1. Ms. Chourb addressed the Variance criteria and shared the following information:

- The public interest is served by the granting of the variance as the proposed business will bring value to a vacant unit while providing a valuable service to the community.
- The proposed business does not have high traffic.
- The essential character of the neighborhood will not change as the building is currently being used as commercial.
- There will be no exterior changes to the building, the existing parking is shared and the feel and look of the neighborhood will not change with the proposed use.
- There is no other dental labs in the area; therefore, there is a demand from the local dentists
- There is no general public access required. Only clients referred by dentists and suppliers will come to the site.
- The business complies with FDA (Federal Drug Administration) and ADA (American Dentistry Association)
- The business will also help to bring notice to Hudson, that there are two dental practices nearby and will help promote business in Town.

Mr. Fuoco added that the Zone used to be R-2 with business allowed and was changed to TR and that in itself has created a challenge as not all potential applicants are willing to go through the variance process.

Mr. Martin opened the meeting for public input/testimony at 8:14 PM. No one addressed the Board. Mr. Martin read into the record an email from Mr. Trefethen of H&B Berggren, a direct abutter, addressed to Mr. Buttrick dated 10/12/17 in support of this application noting that there are already about six (6) properties in that busy section of Derry Street in the TR Zone and that the current zone has caused hardships and loss of rents as each change of use requires Board approval and should be zoned business, not residential.

Mr. Pitre inquired about employees, deliveries and equipment. Ms. Chourb responded that she would be the only employee working a forty (40) hour work week and that she would utilize UPS or Fed Ex for shipping or on occasion deliver herself.

Mr. Morin noted that he is aware of two (2) other local dental labs in Hudson – one on Webster Street and another on George Street – and added that both are in residential house structures.

Ms. Davis stated that she is not versant in implants or dentures and asked about the chemicals used and fire hazards. Ms. Chourb explained the process/procedure, noted that the products would either be shipped back via Fed Ex or UPS or personally delivered and that her operation is both FDA and ADA compliant.

Mr. Fuoco stated that there used to be a yoga studio at this location and noted that it brought in more people and traffic to the property.

Motion made by Mr. Pitre and duly seconded by Mr. Pacocha to grant the Variance as presented. Mr. Pitre spoke to his motion noting that there are numerous businesses in the area and that the proposed use is less intrusive than the previous tenant. Mr. Brackett noted that the area is a mixed-zone and the proposed use is consistent with the neighborhood. Vote was unanimous to grant the Variance. Chair Martin noted the thirty (30) day appeal period.

Mr. Fuoco addressed the Board and asked if the Zone can be changed. Chair Martin suggested that he approach the Planning Board and/or discuss with the new Land Use Director Mr. Thebarga and/or submit a petition Warrant Article. Mr. Brackett stated that it has been discussed at the Planning Board and that it would be a good thing if the Board heard such feedback from Mr. Fuoco. Mr. Buttrick noted that the Zone was A-1 according to the Site Plan filed in 1981. Mr. Fuoco thanked the Board, for their suggestion and approving the Variance.

Ms. McGrath stated that the Case business before the Board was concluded and departed at 8:29 PM.

II. PUBLIC HEARING

2nd reading of proposed revision to ZBA By-Laws (Chapter 143).

Chair Martin read the item into the record, noted that this was the second Public Hearing on the matter and asked if there was anyone in the public who wished to comment. No one addressed the Board.

Discussion focused on the next step – review by the Board of Selectmen and possible review by Town Counsel. Board reviewed the draft edited document of the now in-effect Bylaws to the recently revised Bylaws.

Motion made by Mr. Brackett, duly seconded by Ms. Davis and unanimously voted to adopt the revised Bylaws as presented at this meeting. The revised Bylaws will be dated effective as of October 12, 2017.

Chair Martin stated that when review of the ZBA Bylaws appears on the Selectmen's Agenda, that he will attend their meeting to answer any questions and invited any other Board Member to attend.

It was noted that the start time of the next ZBA meeting will be at 7:00 PM, as stipulated in the newly adopted Bylaws, and that should there be any revisions by the Selectmen, or Town Counsel, the Board will review and schedule another public hearing.

III. REVIEW OF MINUTES – September 28, 2017

Chair Martin read the item into the record. Board reviewed the edited version presented and made additional minor changes. Motion made by Ms. Davis, seconded by Mr. Martin and unanimously voted to approve the 9/28/2017 Minutes as presented and amended.

IV. REQUEST FOR REHEARING

No requests were presented for Board consideration.

V. OTHER

1. Discussion of any Town/State activity of interest to the Board.

- ZORC update

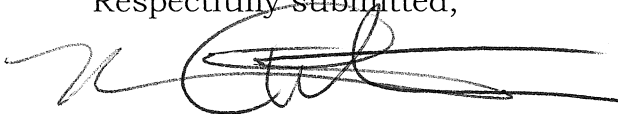
It was noted that the next ZORC meeting has been scheduled for 10/18/2017. Ms. Davis stated that she would not be able to attend and suggested that the Table of Uses not be pushed forward until more thoroughly reviewed

- 2017 NH Municipal Law Lectures Oct 14

There were no sign-ups to attend this session.

Motion made by Mr. Pitre, seconded by Mr. Pacocha and unanimously voted to adjourn the meeting. The 10/12/2017 ZBA meeting adjourned at 8:48 PM

Respectfully submitted,



Normand Martin, Chairman