

# TOWN OF HUDSON

## Zoning Board of Adjustment



Normand Martin, Chairman      Marilyn McGrath,  
Selectmen Liaison

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### MEETING MINUTES – March 23, 2017

The Hudson Zoning Board of Adjustment met Thursday, March 23, 2017, in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall. Chairman Martin called the meeting to order and made the announcements to turn off all cell phones, that there is no smoking in or near the building, that there is a curfew but with only one application before the Board it should not be a concern, that there are copies of the Agenda by the entry door but no Appeal copies so if anyone wishes to appeal the Board's decision they will need to contact the Zoning Administrator Bruce Buttrick and asked that any who wish to address the Board to please do so at either the lectern or at the table and to begin by stating their name and address. Chairman Martin noted that the Members seated to his right are Regular voting Members and those to his left are Alternates who could be called to vote if a Regular Member is recused.

Clerk Houle took a roll call. Members present were: Charlie Brackett (V-Ch.), Maryellen Davis (Reg.), Kevin Houle (Alt.), Normand Martin (Ch.), Maurice Nolin (Alt.), James Pacocha (Reg.), Michael Pitre (Alt.) and Donna Shuman (Reg.). Also present was Bruce Buttrick, Zoning Administrator. There was no Recorder present. Selectmen Liaison Marilyn McGrath was excused with no appointed alternate present.

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

1. Case 254-041 (3-23-17): Robert Charbonneau, 25 Gumpus Hill Road, Pelham, NH, requests a Variance to allow the frontage of the proposed two-lot subdivision at 4 Sherburne Road, Hudson, NH, to have 150 feet of frontage on the existing Lot 41, and 150.77 feet of frontage on the proposed Lot 41-1, where a minimum of 200 feet per lot is required. [Map 254, Lot 041, Zoned G-1; HZO Article VII, Section §334-27 Table of Minimum Dimensional Requirements.]

Clerk Houle read the Case into the record. Mr. Buttrick referenced his Staff Report noting that the proposed two-lot subdivision would create both lots with insufficient frontage and that a Variance would be needed for each lot. Mr. Buttrick added that back on October 2016 a similar proposal was presented to the Board, with only one lot proposed to have less than minimum frontage, and that request was denied.

Morgan Hollis of Gottesman & Hollis, PA in Nashua NH introduced himself as representing Mr. Charbonneau as both the owner and applicant of this request.

Approved 9/28/2017

Mr. Hollis referenced the available maps/plans available for the lot and proposed subdivision and noted that Robert Charbonneau is also present and available to answer any Board questions.

Mr. Hollis identified the location of the site and noted that the current use of the 5.358-acre property is a single-family home. In 1936, the parent parcel was conveyed and, between 1936-1955, several parcels were created pretty much in the current configuration shown on the Town's tax maps. Mr. Hollis noted that most were one acre, plus or minus, with one hundred feet of frontage that matched the then Zoning requirements. Mr. Hollis noted that this parcel was the largest, probably the left over parcel and even though he has not confirmed probably owned and occupied by the then owners of the conveyed parent parcel.

Mr. Hollis stated that since that time, the Zoning has changed, now requiring two hundred feet (200') of frontage and two (2) acres. Mr. Hollis added that immediately adjacent to this property is another subdivision, located on Ponderosa Drive, that was created from the original parent parcel and each of those lots is between one (1) acre to one and a half (1½) acres with approximately one hundred fifty feet (150') of frontage. Mr. Hollis noted that there are abutters present in the audience that may speak to those facts.

Mr. Hollis stated that this information is important as it satisfies one of the criteria, and affects a couple of others, that the Board must consider as being satisfied in order to grant a variance – specifically the character of the neighborhood and whether it would be altered by the granting of this variance.

The result of all the subdividing of the original parent parcel left this one parcel larger than all the others, greater than five acres with over three hundred feet of frontage and with an unusual shape. Mr. Hollis noted that the location of the house is not centered, that it was constructed closer to one property line and projected that the original intent was to allow this particular lot to be divided into two parcels at some time in the future. Mr. Hollis stated that the lot resides in the G-1 Zone and cited several of the Uses allowed in this mixed-use Zone and noted that several of the permitted Uses would not be “in character” with the neighborhood and would not need to come before the Board.

Mr. Hollis acknowledged that this property was once before the Board and that the regulations do not allow another Board revisit of the same case and claimed that what is now before the Board is not the same case. The difference is with the frontage and even though creating the need for variances for the two (2) lots, the result is the creation of two (2) lots consistent with the neighborhood. Mr. Hollis referenced the plan submitted with the application that identifies the proposed location of the single-family house and the property line along the existing stonewall essentially splitting the parcel into two (2) near equal parcels. Mr. Hollis stated that conditions of approval could be that its use would be restricted to a single-family structure and located as per plan submitted with the application.

Mr. Hollis pointed out that the plan submitted also identifies a fifty-foot (50') no-cut no-disturb buffer along the entire back portion of the property and added that it is in direct response to abutters concern expressed with the previous/original application.

Mr. Hollis proceeded to present evidence directly pertaining to the variance criteria. In sum, the criteria and evidence presented included:

- The variance will not be contrary to the public interest, that the proposed single family home and reduced frontage will mirror those in the neighborhood and will not alter the character of the neighborhood.
- The lots and the use honor the zoning requirements regarding its spirit for safety, welfare and public health and preventing houses and driveways that will not be not too close to one another.
- Frontage also limits density. The proposed variance honors all other zoning requirements, including the minimum acreage, and in fact will exceed the minimum acreage to further confirm the zoning intent.
- Frontage also contributes to a neighborhood's appearance and what is being proposed mirrors what already exists in the neighborhood; one hundred fifty feet (150') frontage lots.
- With regard to whether substantial justice is done by the granting of the requested variance, Mr. Hollis stated that it is a balancing act for the Boards and added that there are not many court cases. Mr. Hollis quoted one Supreme Court Case: *"Any loss to an individual that is not outweighed by a gain to the general public is an injustice."*
- Impact to the surrounding property values is another criteria and Mr. Hollis noted that they are not creating an undersize lot, which could have an adverse affect, that they are offering a fifty-foot no-cut buffer to the rear of the property to further protect abutting parcels and that the location of the house as stipulated on the proposed plan also protects the abutting parcel.
- Mr. Hollis stated that he consulted an independent appraiser, J. Chet Rogers of Hollis NH, and shared Mr. Rogers' analysis of the proposed application with the Board which included a comparison of surrounding lots, noting that 59% involved lots with less than 200' of frontage and 78% have a total area of less than two acres. Mr. Rogers' conclusion was that the proposed variance would not have a negative impact on the other properties in the neighborhood.
- The requirements of hardship criteria were addressed in great detail. Mr. Hollis began by reading the criteria into the record. With regard to the special conditions of the property, it is the largest lot in the area. It also is of an unusual shape. The present location of the house is tucked into one corner, leaving the remainder dividable that would have met the zoning requirements the time the lot was originally created.
- Is there a fair and substantial relationship? The intent of minimum frontage requirements was addressed [fire, safety, separation, etc.] and Mr. Hollis stated that those elements are all satisfied with the proposed subdivision of this lot especially with the proposed conditions and mirrors those already in the neighborhood.
- Is the proposed use reasonable? Being a single family it will blend right into the neighborhood, unlike many of the other Uses allowed in the Zone that would not need to come before the Board.

At 8:05 PM, Chair asked if anyone from the public would like to speak in favor of this application and if so to come to the microphone at either the lectern or the table and

state their name and address for the record. No one approached. Chair asked if anyone wanted to address the Board in opposition or neutrally. Again, no one addressed the Board.

Board deliberation ensued. Ms. Davis asked if the existing home would remain or would it be torn down and something else developed. Mr. Charbonneau answered that it would remain, that their plans are not firm and that one possibility is that it could be rented. Mr. Charbonneau confirmed that it would not be turned into a "business". Mr. Hollis added that it would be acceptable to condition the approval that the lots be restricted to residential use only.

Mr. Brackett noted that this has been presented to the Board before, in a different subdivision layout, and that his objection before was the 100' frontage and added that the 150' frontage for both lots, as presented this evening, that it is consistent with the neighborhood. Mr. Brackett stated that the location of the current residence in the corner of the lot leads him to believe that it was their original intent to be able to subdivide the lot into two (2) and that since then, the Zoning changed to requiring two hundred feet (200') of frontage.

Ms. Davis stated that this plan as presented tonight is more reasonable and in keeping with the neighborhood. Ms. Davis stated that her concern was the possibility that the house would be taken down and another use allowed by the Ordinance could occur and be intrusive to the neighborhood. Ms. Davis stated that her other concern has been satisfied with the proposed fifty foot (50') buffer to the rear of the site.

Mr. Pacocha stated that the presentation tonight was three times better and that the history of the lots development in the area allows him to make an informed decision tonight. Ms. Davis noted that the placement of the existing home was more probably situated in the corner not for potential future subdivision but to be closer to the road and allow the rest of the land to be farmed.

Mr. Brackett expressed appreciation for the proposed placement of the house in the newly created lot as it shows consideration to the neighbor and accomplishes the two hundred foot 200' frontage intent of space between neighbors

Motion made by Ms. Davis to approve Case #254-041 with the following stipulations:

- (1) That there will be no further development on either parcel other than as a single-family home on each lot, as presented on plan submitted with the application [prepared by Maynard Paquette Engineering Associated, LLC titled *4 Sherburne Road, Hudson, New Hampshire*]
- (2) That the fifty-foot (50') non-disturbed no-cut buffer be clearly delineated and permanently marked with the Conservation markers.

Motion seconded by Mr. Brackett. Ms. Davis stated that the updated plan is less intrusive and in keeping with the character of neighborhood, that the one hundred fifty feet (150') frontage is reasonable and maintains the rural character. Mr. Brackett stated that this is a strong classic case for a variance given the history.

Clerk polled the Board: Ms. Davis voted to grant with stipulations. Mr. Bracket voted to grant with the stipulations. Ms. Shuman voted to grant. Mr. Pacocha voted to grant. Mr. Martin voted to grant with the two stipulations. Motion carried unanimously. Case approved, with two stipulations.

Chair Martin announced the decision of the Board and noted that a Notice of Decision would be available within seven to ten (7-10) days and reminded the Applicant of the thirty-day (30) appeal period.

## II. REVIEW OF MINUTES

Chair Martin read the item into the record.

### 1. 1-26-17 Minutes

Chair Martin distributed the latest edition of the Minutes. Mr. Buttick stated that it was noticed that a segment, when compared to the video, was missing and subsequently added. Mr. Buttrick also noted that the order of the Minutes as compared to the recording of the meeting do not match and cited an example that the election of Officers was done before the review of the Minutes. Board reviewed the Minutes. Ms. Davis wondered if the review should be tabled. Chair Martin stated that the order with regard to the Cases is in order and that is most important. Mr. Bracket asked if the Board could approve the Minutes with the condition that it be rearranged in the order that the meeting took place. Ms. Davis noted that page 6 has missing discussions. Motion made by Ms. Davis to defer review until Mr. Buttrick coordinates the rewrite to match the meeting. Motion seconded by Mr. Brackett. Chair Martin noted that it was a procedural motion and all Members vote. Vote was unanimous.

### 2. 2-23-17 Minutes

Board reviewed the Minutes, page by page.

Page 1, Ms. Davis noted that the attendance usually identifies the role of the people, especially under absent.

Page 2, sixth paragraph down, Ms. Davis noted that the word "stated" instead of "makes note to the Board" should be added after "Ms. Langis".

Page 4, the asterisk section that the "to" be changed to "too". Chair Martin stated that the 12<sup>th</sup> paragraph down, Mr. Pacocha's name is spelled wrong.

Page 5, Chair Martin corrected the Minutes as he asked the Clerk to call the roll. A spelling correction was noted under VI. Other #1 - that the very last word should be "one", not "on".

Motion made by Ms. Davis to approve the February 23, 2017 Minutes, as amended. Ms. Shuman seconded the motion. Vote was unanimous. Ms. Davis asked a procedural question, whether Ms. Shuman can second a motion as she was not in attendance at the February meeting. Mr. Bracket offered to second the motion to approve as amended.

## III. REQUEST FOR REHEARING

Chair Martin noted that there were no requests received for Board consideration.

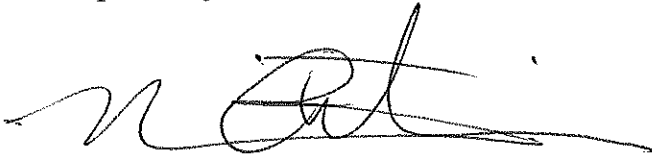
#### IV. OTHER - Discussion of any Town/State activity of interest to the Board.

- Mr. Buttrick called the Board's attention to the OEP (Office of Estate Planning) conference at the end of April and asked the Members who will be attending to complete the application noting which section they desired to attend.
- Mr. Brackett questioned an email received from the Selectmen and what was/is the proper procedure. Chair Martin read the email regarding a zoning determination made by Mr. Buttrick. The length of time to process the determination was questioned by Ms. Davis. Ms. Davis stated that she questioned if the determinations were being held and delivered en mass and/or whether the people in Town are being serviced adequately and added that it was an innocent question. Mr. Brackett questioned the tone of the Selectmen's email and personally found it inappropriate and unfounded and aggressive to the Board as a whole. Mr. Brackett stated that the Board is a judicial body responding to the laws of the State and are obligated to reflect that and not the pressures of the Town. Chair Martin expressed gratitude for Ms. Davis clarification on the questions she posed and shared that he too thought the email was harsh and plans to have a conversation with the Selectmen and noted that these types of questions should be directed to the Zoning Administrator, Mr. Buttrick. Ms. Davis stated that she is not the enemy, that all she is trying to do is make this Town a better place to live, that she has no qualms with Mr. Buttrick, that all she had was a simple question. Mr. Brackett stated that there is both a sensitivity and insensitivity regarding this issue, that the individual has actually attended only two meetings, one to introduce himself and another to tell us how the Board should be run and that the tone in his email was unprofessional. Ms. Davis confirmed that she was asking the question as an individual and not speaking on behalf of the Board and only copied the Members as a courtesy. Mr. Buttrick stated that he places the queries in a queue, performs his research then offers his determination generally within the week of receipt. Mr. Buttrick added that the particular query that raised this issue was also during his vacation. Mr. Buttrick stated that he would have preferred to be asked directly and that he has not heard of any discontent regarding the turn-around time for his responses. Ms. Davis apologized to Mr. Buttrick and restated her intent and that as we evolve we need to be aware and respond.
- Discussion branched to the level of service the Board currently provides. Chair Martin referenced the clarity of the case presented by the attorney earlier in the meeting and added that the evidence provided regarding the development of the area swayed his decision. Mr. Brackett agreed and asked if there was a question, would the Board be able to request such information from an applicant and noted that is one question he hopes to get answered when he attends the OEP conference. Chair Martin noted that when a policeman goes to court he has the history of the individual with him as that is expected by the judge and feels that when a ZBA case is appealed to the Board or the court, it too should be accompanied with history and would have no hesitation continuing a hearing so that an applicant can obtain that information so he can make an informed decision.

- Ms. Davis asked if the stipulation regarding the number of hours and employees was part of the decision rendered on the dog place at 5 Lowell Road.
- Chair Martin noted that the Board will be meeting in two weeks to discuss the bylaws and noted that those meetings are not recorded. Mr. Buttrick stated that it is an open public meeting with proper notice, just not visually and audibly recorded.
- Ms. Davis stated that all the Warrant Articles were approved and noted that was the result of ZORC (Zoning Ordinance Review Committee).

Motion made by Mr. Brackett, duly seconded by Mr. Pacocha and unanimously voted to adjourn the meeting. The Hudson Zoning Board of Adjustment meeting of March 23, 2017 adjourned at 7:40 PM.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Normand Martin', written over a horizontal line.

Normand Martin, ZBA Chairman