



TOWN OF HUDSON

Zoning Board of Adjustment



Maryellen Davis, Chairman

Thaddeus Luszey, Selectmen Liaison

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HUDSON ZONING BOARD OF ADJUSTMENT MEETING MINUTES January 26, 2017

I. CALL TO ORDER

Chairman Davis called this meeting of the Hudson Zoning Board of Adjustment to order at 7:30 PM on Thursday, January 26, 2017, in the Paul Buxton Meeting Room in the Town Hall basement. Chairman Davis then requested Mr. Houle to call the roll. Representatives of the Hudson Zoning Board of Adjustment were as follows:

Members Present: Maryellen Davis, Donna Shuman, Charles Brackett, Normand Martin, Jim Pacocha

Alternates Present: Kevin Houle, Maurice Nolin

Staff Present: Bruce Buttrick, Zoning Administrator

Excused: Selectman Liaison Ted Luszey
Recorder Mary-Ellen Marcouillier

II. SEATING OF ALTERNATES AND ANNOUNCEMENTS

For the benefit of all attendees Chairman Davis noted that copies of the agenda for the meeting, as well as an outline of the rules and regulations governing hearings before the Zoning Board of Adjustment were available at the door of the meeting room. She noted the outline includes the procedures that should be followed by anyone who wished to request a rehearing in the event the Board's final decision was not felt to be acceptable.

The curfew for the meeting is 11 PM. Chairman Davis does not anticipate this to be a problem for this session. In the event that a case is not heard by 11 PM, it will be postponed until the next meeting. If a case is in process, it will be heard until midnight then continued at the next meeting.

III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. **Case 198-066 (1-26-17):** Jan and Carey Schlecht, 9 Tessier Street, Hudson, NH, requests a Special Exception for an existing Accessory Living Unit (ALU) to be maintained within the existing dwelling unit. [Map 198, Lot 066, Zoned TR; HZO Article XIII A §334-73.3, Accessory Living Unit.]

Carey Schlecht testified that he was attempting to legitimize (after the fact) an existing ALU. He further testified that the existing house is a single family structure with an existing addition previously constructed

for an ALU unit. It was purchased June 30, 2014. The ALU unit is attached. Carey and Jan Schlecht are the owners and residents of 9 Tessier Street. Carey's mother, Emily Schlecht, would be the occupant of the ALU. The dwelling structure appears as a one family dwelling with a smaller addition on its side. There is a shared access between the two kitchens near the ALU's front door. A second means of egress for the ALU unit exists at the rear, where the shared porch is located. There is one water heater, one gas meter and one water meter. There is one electric meter and one electric panel. There are two existing driveways; one at the garage and one at the front lawn/ALU unit. There are curb cuts for both. The ALU GLA is 355.25 sq. ft. and is 24.42 % of the principle structure of 1,455.00 sq. ft. GLA. It is an existing ALU with an approved permit for interconnected smoke alarms.

Chairman Davis asked if anyone in the audience wished to speak in favor of the application, no one came forward. Chairman Davis then asked if anyone in the audience wished to speak neutrally or in opposition of the application, no one came forward.

Chairman Davis then asked if there were any comments, questions or concerns from the Board.

Mr. Nolin asked Mr. Schlecht if when the Realtor sold him the property, if it was implied that it was a legal ALU?

Mr. Schlecht responded that the initial representation was that it was a legal unit and it had all the permits and there was no reason to pursue anything further.

Mr. Nolin commented that the representation to Mr. Schlecht constitutes an illegal sale of real estate.

Mr. Schlecht further testified that upon researching the property he spoke with the former Zoning Administrator who told him that the current ALU was not legal. Mr. Schlecht then spoke with his Realtor who spoke with the Selling Realtor and was informed that the Selling Realtor was not aware that the ALU was illegal. The Selling Realtor went to the Town of Hudson representatives and asked that they take a look at the property to see if the structure was sound. Mr. Schlecht was then told that the property was sound and that it would pass building inspection. The listing was then changed after Mr. Schlecht brought it to their attention that the ALU was not legal. Final sale of the property noted that the ALU was not legal and that Mr. Schlecht would be responsible for pursuing the ZBA Special Exception for an existing ALU to be maintained within the existing dwelling unit. Mr. Schlecht purchased the property in 2014 and has paid taxes for three years without anyone living in it. Before occupying the property he wanted to be sure that everything was legal. After renovations were completed, he has now come before the ZBA for legal approval.

Mr. Martin and Mr. Brackett both stated that Mr. Schlecht did a great job preparing the application. Mr. Brackett's concern is with the 2 driveways. There should not be 2 driveways.

Mr. Schlecht responded that the 2nd driveway was necessary for his mother. His mother has difficulty walking and going from the garage driveway to the front of the house would be a challenge.

Chairman Davis asked Mr. Schlecht if he was planning on moving his mother in shortly. Mr. Schlecht responded that he and his wife were currently living in the house and would like his mother to move in as soon as possible. Chairman Davis further stated that in order for the Board to approve the application, the applicant would need to agree to the permitting process.

Mr. Martin made a motion to grant, seconded by Mr. Brackett.

Chairman Davis asked the Clerk to call the roll. Vote as follows:

Normand Martin	Grant
Charles Brackett	Grant
Donna Shuman	Grant
Jim Pacocha	Grant
Maryellen Davis	Grant

Vote: 5-0 Grant Case 198-066

IV. REQUESTS FOR REHEARING

1. **Case 254-041 (Variance – Denied 10-27-16):** Robert Charbonneau, 4 Sherburne Road, Hudson, NH, requests a Variance to allow the frontage of the proposed two-lot subdivision to have 200 feet of frontage on the existing Lot 41, and 100.77 feet of frontage on the proposed Lot 41-1, where a minimum of 200 feet is required. [Map 254, Lot 041, Zoned G-1, HZO Article VII §334-27, Table of Dimensional Requirements.]

Mr. Martin commented that there was no new evidence presented and that the applicant is still maintaining that because the lot is the largest in the area, he should be afforded the right to create 2 lots and that creation is a feasible use of the property. Mr. Martin will stand by his original decision to deny as he believes the applicant's reasoning does not constitute a hardship.

Chairman Davis reminded the Board that the property in question is in a G1 Zone. She asked the Board if there was anything special about this particular property that is different other than the size that makes it unique. Chairman Davis reviewed the Request for Rehearing presented by Gottesman & Hollis and does not believe any new information was provided that would change her initial decision to deny the requested Variance.

Mr. Brackett commented that he believes the applicant does have full use of the property and will stand by his original decision to deny the Variance.

Motion was made by Mr. Brackett to deny rehearing and seconded by Mr. Martin.

Chairman Davis asked the Clerk to call the roll. Vote as follows:

Charles Brackett	Not to Rehear
Normand Martin	Not to Rehear
Donna Shuman	Not to Rehear
Jim Pacocha	Not to Rehear
Maryellen Davis	Not to Rehear

Vote: 5-0 Deny Rehearing of Case 254-041

2. **Case 174-079 (Variance – Denied 12-8-16):** Andrew H. Sullivan, ESQ, Agent, 24 Eastman Avenue, Bedford, NH, requests a Variance to allow the frontage of the proposed two-lot subdivision at 25 Derry Street, Hudson, NH, to have 90 feet of frontage on the existing Lot 79, and 78 feet of frontage on the proposed Lot 79-2, where a minimum of 90 feet is

required. [Map 174, Lot 079, Zoned TR; HZO Article VII §334-27, Table of Minimum Dimensional Requirements.]

Mr. Martin commented that this case was another self-created hardship. The applicant has reasonable use of the property. Mr. Martin also stated that he didn't see any new information provided in the Request for Rehearing.

Chairman Davis stated that she did find new information in exhibit B and does not understand why it was included in the rehearing package.

Mr. Brackett commented that to grant the variance would not be in the interest of the Town.

Motion was made by Mr. Brackett to deny rehearing and seconded by Mr. Martin.

Chairman Davis asked the Clerk to call the roll. Vote as follows:

Charles Brackett	Not to Rehear
Normand Martin	Not to Rehear
Donna Shuman	Not to Rehear
Jim Pacocha	Not to Rehear
Maryellen Davis	Not to Rehear

Vote: 5-0 Deny Rehearing of Case 174-079

3. Case 168-121 (Variance – Denied 12-8-16): H & B Berggren, LLC/Steve Trefethen, 4 Mulberry Street, Windham, NH, requests a Variance at 238 Central Street, Hudson, NH, to change an existing nonconforming use that consists of commercial use and two apartments, to a nonconforming multi-family use with a total of six apartments. [Map 168, Lot 121, Zoned R-2; HZO Article VIII §334-30, Changes to or Discontinuance of Nonconforming Uses.]

Mr. Martin commented on the Addendum presented by the applicant. Mr. Martin read RSA 673:14 and maintains that he did nothing wrong and will not recuse himself from Case 168-121.

Mr. Brackett commented that the applicant stated that the building as a residential property would be converted to its original use in a residential zone with no offices and will contain a total of 6 two bedroom 750 sq. ft. to 1100 sq. ft. residential units. Mr. Brackett stated that the property never had 6 apartments and he cannot see bringing it to 6 apartments because that is not the way it was before. He would feel more comfortable bringing it to scale with the area in the zone it is in and not 6 apartments. Mr. Brackett feels that even though the Board did not have all the information at the 12-8-16 hearing, the fact that the building never had 6 apartments is reason enough not to rehear.

Chairman Davis stated that her decision on 12-8-16 to deny was based on the fact that she believed going from two residential units to six residential units was really intrusive and a dramatic increase versus what is there now. She has not seen anything in the Request for Rehearing packet to sway her from her previous decision to deny the Variance.

Mr. Pacocha stated that he believes to grant 6 apartments in an R2 Zone with limits of 2 would set a very bad precedence.

Motion was made by Mr. Brackett to deny rehearing and seconded by Mr. Martin.

Chairman Davis asked the Clerk to call the roll. Vote as follows:

Charles Brackett	Not to Rehear
Normand Martin	Not to Rehear
Donna Shuman	Not to Rehear
Jim Pacocha	Not to Rehear
Maryellen Davis	Not to Rehear

Vote: 5-0 Deny Rehearing of Case 168-121

Chairman Davis called a short recess at 8:37 PM
Chairman Davis called the meeting back to order at 8:47 PM

V. OTHER

1. Robert M. Buxton, Fire Chief – Review ZBA concerns.

Chief Buxton stated that a spreadsheet was handed out with the closed 2016 enforcement cases. There were 129 cases cleaned up by the Zoning Administrator, 123 were opened in 2016 and some dated back from 2014. They are presently carrying 13 open cases. In 2015, 58 cases were closed. Activity is up; however, having consistency within the position is important.

At the last Board of Selectman meeting, authorization was given to work with the attorney on a code enforcement court case for 108 Derry Street.

Chief Buxton gave Deputy O'Brien and Zoning Administrator Buttrick a list of 7 items to get started on:

- 1) Review of all applications, all forms will be fillable on line
- 2) Agenda – talking points for meetings twice a year
- 3) Internal review of guide lines – ZBA agendas
- 4) Zoning Administration Check List and Flow Sheets
- 5) Examination of communication not only with internal customers but external customers as well. The Zoning Administrator and Deputy have been tasked with sitting down with the Assessing and Planning Departments to determine how things are getting shared
- 6) Staff narrative
- 7) Bring ZBA concerns forward before frustration sets in

Chairman Davis commented that Zoning Determinations are in PDF form and would like to see that form become an editable file going forward. She also asked if Chief Buxton met with the Board of Selectman on December 13th. Chief Buxton replied that the Selectman Liaison for the Fire Department and ZBA presented the results of the December 8th meeting to the Board and informed Chief Buxton that his presence at the meeting was not necessary. Chairman Davis inquired as to when the meeting between the Board of Selectman, Fire Chief and ZBA would take place. Chief Buxton replied that he did not have a date as of yet but would look into it and let Chairman Davis know when he found out.

REVIEW OF MINUTES

1. November 10, 2016 meeting minutes were reviewed. Motion made by Mr. Martin to approve as amended and seconded by Ms. Shuman. All in favor. Vote: 5-0

2. December 8, 2016 meeting minutes were reviewed. Motion made by Mr. Martin to approve as amended and seconded by Mr. Brackett. All in favor. Vote: 5-0

ELECTION OF NEW OFFICERS FOR CALENDAR YEAR 2017

Motion for Chairman as follows:

Maryellen Davis nominated Jim Pacocha, seconded by Normand Martin
Charles Brackett nominated Maryellen Davis, seconded by Jim Pacocha
Normand Martin nominated Normand Martin, seconded by Charles Brackett

Vote as follows:

Maryellen Davis	Jim Pacocha
Donna Shuman	Normand Martin
Charles Brackett	Maryellen Davis
Normand Martin	Normand Martin
Jim Pacocha	Maryellen Davis

Jim Pacocha	1 Vote
Normand Martin	2 Votes
Maryellen Davis	2 Votes

Maryellen Davis broke the tie by voting for Normand Martin

Final Vote:	3 Normand Martin
	2 Maryellen Davis

Normand Martin declared Chairman for 2017

Motion for Vice-Chairman as follows:

Maryellen Davis nominated Charles Brackett, seconded by Donna Shuman
Charles Brackett nominated Jim Pacocha, seconded by Maryellen Davis

Vote as follows:

Donna Shuman	Charles Brackett
Charles Brackett	Jim Pacocha
Normand Martin	Charles Brackett
Jim Pacocha	Charles Brackett
Maryellen Davis	Jim Pacocha

Final Vote:	3 Charles Brackett
	2 Jim Pacocha

Charles Brackett declared Vice-Chairman for 2017

Motion for Secretary as follows:

Normand Martin nominated Kevin Houle, seconded by Maryellen Davis

Nominations closed.

Normand Martin voted to elect Kevin Houle as Secretary by acclamation.

Vote: 5-0

Kevin Houle declared Secretary for 2017

Town Coding vs. ZBA Bylaws

Ms. Shuman brought forth to the ZBA Committee the issue of the linked Town Code and Hudson ZBA bylaws not being up to date nor the bylaw numbers matching on the Hudson town website.

Mr. Martin's review of the issue is that the Town Coding was never updated from 2011's changes. Chairman Davis suggested the idea to have the link on the Town Code directly link to the ZBA.

Mr. Buttrick commented that there were two versions of the bylaws on the Town's website, and the reference one should be the 2011 version.

The Board discussed the issue of where the source came from that uploaded the incorrect version to the Town website. Mr. Buttrick was unaware.

Chairman Davis asked for a volunteer or two to do a review and a re-write as an action if needed. Ms. Shuman volunteered her services. Mr. Martin also volunteered to help Ms. Shuman.

Mr. Brackett asked if there was a need for review and rewrite.

Mr. Buttrick stated the rewrite would only be done if needed.

Ms. Davis continued to Mr. Buttrick's statement that the bylaws would at least get a review for possible revision.

Any new revised motions to the ZBA Bylaws would first go before the Board before final changes were made.

Any Discussion of Town or State Activity of the Board.

Chairman Davis called attention of the right to know laws change as of January 2017.

Chairman Davis called to notice of an article of the Keene Sentinel that was about the Zoning Boards difficulties of keeping a Towns' charm when hearing cases.

Ms. Shuman brought before the Board with respect to minutes that there appears to be an issue with not being available to the Town within the 5 day requirement. Ms. Shuman brought the prior discussion that a skeleton version would be made available of the meeting minutes before the final version is completed for the Town.

Chairman Martin also noted the CD of the ZBA meeting is always available as well.

Ms. Shuman, along with Mr. Brackett both agreed that according to the law the skeleton version is sufficient for the law requirements. All discussions won't be on the skeleton version, but would have the entire agenda as well and cases heard.

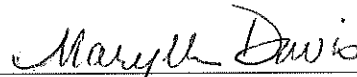
Chairman Davis questioned why when a requester of the minutes and the process of obtaining them, that the procedure isn't for the requester to be sent to Mr. Buttrick for clarification and to answer any and all questions.

Mr., Buttrick agreed that the requester is not always given the correct information in regards to the skeleton version vs. the final draft legal minutes when speaking to someone from Town Hall.

Mr. Brackett suggested an email be sent to the Town Department which gets the bulk of these requests and questions so that they have the correct procedure of the skeleton and final legal draft of minutes as well as direct them to Mr. Buttrick in case of any further questions.

VIII. ADJOURNMENT

Normand Martin made a motion to adjourn and Donna Shuman seconded the motion. All in favor, the motion passed unanimously. Chairman Davis declared the meeting adjourned at 9:50 PM.



Maryellen Davis, Chairman