



# 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 October 27, 2016

#### I. CALL TO ORDER

Chairman Davis called this meeting of the Hudson Zoning Board of Adjustment to order at 7:30 PM on Thursday, October 27, 2016, in the Paul Buxton Meeting Room in the Town Hall basement. Chairman Davis seated Mr. Gerald Dearborn as clerk to replace Mr. Houle who was excused from the meeting. Chairman Davis then requested Mr. Dearborn 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:** Gerald Dearborn

**Staff Present:** Bruce Buttrick, Zoning Administrator

**Excused:** Selectmen Liaison Ted Luszey  
Kevin Houle  
Maurice Nolin

**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 254-041 (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.]**

Richard Maynard testified on behalf of Robert Charbonneau and his firm Charbonneau Trucking and Excavating Company, LLC. Except for frontage, proposed 3.358 acre lot exceeds all Ordinance criteria and all lots in the neighborhood. The proposed house on the new lot would enhance property values. Except for frontage, two houses on 5.3 acres is a very minimal use and promotes rural character while staying very much in the Spirit of the Ordinance. Granting the Variance would allow the property owner a reasonable use of his large lot yet still maintain the character of the neighborhood.

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. Mr. Jay Nyberg came forward to speak neutrally.

Mr. Nyberg testified that he wasn't as concerned with the frontage as he was with the location of the new lot. The water table is high back there and in the Spring he has two streams that run down either side of his property. His well is in the back and it is only 110 feet. He didn't know if they were going to drill a well back there or install a septic. He is concerned about the run off.

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

Mr. Martin asked if Mr. Maynard could address the Garage and the House as they appear to be in the setbacks. Mr. Martin wanted to know if there should be an equitable waiver applied for them.

Mr. Brackett asked if Mr. Maynard could address the logic for the subdivision of the lot.

Mr. Maynard testified that the well and septic would have at least 100 to 150 feet of separation from the rear of the house to the rear of the lot line and should be well away from Mr. Nyberg's property. He further testified that the water would flow away from Mr. Nyberg's property by the natural pitch/grade of the land. Mr. Maynard also stated that the Garage does not encroach into the setback and that the House straddles the front setback. The House is vested and has been there for some 40-50 years. It's vested as preexisting legal conforming lot of records. In answer to Mr. Brackett's question as to why the lot is not subdivided equally, Mr. Maynard stated that the way the lot is being subdivided was the best way for the applicant. Mr. Pacocha asked Mr. Maynard to explain the argument for hardship. Mr. Maynard testified that there were 2 arguments for hardship. First, this is a lot that is larger in size than any other lot in the neighborhood. It is also long and narrow and to construct a town road to create one building lot in the back does not serve any purpose. It would put a burden on the Town to maintain the road and it puts a burden on the property owner to build the road. Second, the neighborhood is a G-1 Zone; 33 of the 36 lots do not meet the G-1 criteria.

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. Mr. Don Staveley and Mr. David Shillhamber came forward.

Mr. Staveley testified that he was concerned about the Wetlands being affected if the Variance is approved.

Mr. David Shillhamber stated that he would like to hear and see more detail than what was provided so far.

Chairman Davis stated that she had a concern about hardship. Limiting someone to one dwelling on a lot just because the lot is large is not a hardship in itself. There needs to be some other hardship and she requested that Mr. Maynard address that.

Mr. Maynard testified that when someone has the largest lot in the neighborhood and even after you subdivide it will still have the largest lots in the neighborhood is a hardship in itself. You are unable to utilize your land in a similar manner your neighbors do. Their request is for 2.5 and 3.5 acres which are larger lots than the neighbors. That is the character of the neighborhood argument. Lots in the neighborhood are 2 and 3 acres. The lot is also long and narrow. He also testified that the flow of the wetland gently slopes toward Ponderosa Road and that they would not create any additional run off to other properties.

Chairman Davis declared the matter before the Board.

Mr. Pacocha made a motion to deny the Variance and stated that he did not believe that the Spirit of the Ordinance was to create a non-conforming lot in a rural conforming area. He also stated that he did not believe that a hardship existed as presented by previous testimony. Motion to deny was seconded by Mr. Brackett.

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

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

Vote: 5-0                      Not to Grant Variance for Case 254-041

- 2. Case 183-028 (10-27-16): Jay Lafond, 38 Adelaide Street, Hudson, NH, requests a Variance to allow the extension of a roof over the existing walkway that attaches the existing non-conforming house and garage. [Map 183, Lot 028, Zoned TR; HZO Article VIII §334-31A, Alteration and Expansion of Nonconforming Structures.]**

Mr. Lafond testified that he was requesting a Variance to extend his roof over the side of the garage to provide coverage over the existing side door. The proposed roof would be attached to the house and garage covering the existing paved area and will divert the water from the roof to prevent water build-up and ice build-up. He also testified that by allowing the Variance there would not be any real change in the appearance of the property area, no impact on the neighborhood and the Town would be providing them with the safety of not having water and ice build-up. Extending the roof will keep the door from the garage from getting rotted and in disrepair. This Variance will not affect the surrounding neighborhoods and will provide coverage over the side door of the garage especially in the winter where the ice build-up could cause accidental slips and falls. This Variance eliminates any hazard from the entry way into the garage.

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.

Mr. Pacocha made a motion to grant and was seconded by Mr. Brackett. Mr. Pacocha stated that to deny the Variance would be cruel and unusual punishment. Mr. Brackett stated that to close off an open area is a good thing and improves his property.

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

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

Vote: 5-0 Grant Variance for Case 183-028

- 3. Case 165-138 (10-27-16): Kelly and Norman Nantel, 16 Summer Avenue, Hudson, NH, requests a Variance to allow a third living unit in an existing two family dwelling unit located in a Town Residential (TR) zone. [Map 165, Lot 138, Zoned TR; HZO Article V §334-20, Table of Permitted Principle Uses.]**

Chairman Davis read into the record a letter received from Rob & Ann Malik of 8 Summer Street, Hudson, NH 03051; dated October 24, 2016.

Thomas Leonard testified on behalf of Kelly and Norman Nantel. The Nantel's purchased the home (Lot 138) to accommodate family needs. Kelly Nantel's parents live in the house and her sister (Joanne Smith) proposes to live in the dwelling unit that is the subject of the Variance. The house is currently occupied by Kelly's elderly parents, who previously owned the home for over sixty years. There is a second permitted unit consisting of a small studio apartment over the garage. The third unit, located in the basement is currently occupied by Kelly's sister who is disabled and suffers from early onset dementia. The requested Variance will provide the continued use of the basement unit for the benefit of Ms. Smith's care. The Applicants are willing to limit the Variance to remain in effect only as long as Ms. Smith occupies the dwelling unit. The Applicant's lot is located in a small town residential (TR) zone, which is completely surrounded by a business zone, and just a small distance from in industrial zone. Several of the lots in the TR zone maintain duplexes. The Applicants' lot directly abuts the business zone on three sides. One of the business zone lots directly abutting the Applicants' lot maintains a condominium complex. Granting the Variance will do little if anything to alter the character of the neighborhood and will in no way impact the public health, safety or welfare of the neighborhood. The water, sewer and infrastructure servicing the house are all sufficient and satisfactory. Permitting the unit to remain will simply make it easier for a disabled daughter to remain in the family home, while maintaining some sense of autonomy. The existence of the unit will not result in overcrowding or a more concentrated population, as it will not be utilized to attract additional residents onto the property. Denying the Variance could result in taking away Ms. Smith's sense of autonomy, force her to move out of her family home and require Ms. Smith and her family to take on the added expense of an assisted living facility. The presence of one additional unit on the Applicants' lot will have no impact on the surrounding properties' values. Ms. Smith has a permanent disability determined under federal law. Granting the Variance will assist Ms. Smith in maintaining reasonable accommodations to allow her to remain in her family's home.

Chairman Davis asked if anyone in the audience wished to speak in favor of the application, Kelly Nantel came forward.

Kelly Nantel testified that she was the only care giver for her parents and sister and that was the reason for buying the home. Keeping the family together is extremely important to her. She has spoken to her direct abutters and they have expressed no opposition. She believes the proposed Variance is the only way to keep her family safe.

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 questions, concerns or comments from the Board.

Mr. Dearborn stated that he had a problem with an apartment in the basement and asked Mr. Leonard if the Fire Department had inspected the structure and if it passed all codes.

Mr. Leonard replied that if the ZBA were to approve the requested Variance then they would have the Fire Department inspect and would conform to all regulations set forward.

Mr. Brackett asked if the unit was in the basement or in the garage.

Mr. Leonard replied that the unit was in the basement.

Mr. Pacocha asked if there was any access to the basement unit from the other units in the house.

Ms. Nantel replied that there were two egresses. Two outside sliding glass doors give direct access to the apartment and there is also access from the main floor leading to the basement.

Chairman Davis stated that there were no other three family dwellings in the neighborhood and asked Mr. Leonard to speak on the reasonableness of the Variance being granted.

Question was then asked who was living where.

Mr. Leonard replied that Mr. Burton and his wife (Ms. Nantel's parents) are living in the Main House. The one unit above the garage is an approved apartment and is currently occupied. Ms. Smith is living in the basement.

Mr. Leonard explained that if this was a single family home with four occupants there would not be an issue. Because it is assessed as a three family lies the issue. There was a kitchen downstairs at one point which then classified the home as 3 family. Based on that classification, the kitchen was removed and was no longer deemed a 3 family. Ms. Smith needs a kitchen as she is unable to climb the stairs so the stove was put back in which is the reason why we are here tonight. The aesthetics of the building are not being changed. The neighborhood really isn't a single family neighborhood.

Mr. Brackett asked for clarification on the apartment above the garage. He is having a hard time going from 2 family to 3 family.

Mr. Leonard stated that it was a rental property that has been occupied by the same person for about 20 years and that individual is not a family member.

Chairman Davis commented on RSA 673 and 674:33 that the use and request has to be reasonable and in harmony with the Spirit of the Ordinance. What is reasonable and in harmony with the Spirit of the Ordinance of a 3 family in a TR Zone in a predominately single family neighborhood that has no 3 families on that street. What is reasonable about granting that – it sets a precedent that everyone can come in and say can I have 3 families in my home. It’s a situation that she is very sympathetic towards but can be solved another way.

Mr. Leonard replied that they are not asking for a 3 family but a 1 family with 2 units.

Mr. Brackett asked Mr. Leonard what he could do to assure the Board that it would go back to a 2 family in words or writing.

Mr. Leonard confirmed that they would be willing to do that. He suggested having the stipulations refer directly to the RSA.

Ms. Shuman stated that she did not believe the Variances from the ZBA were being recorded and that it should be requested that this Variance with the Stipulations be recorded.

Chairman Davis declared the matter before the Board.

Mr. Martin made the motion to Grant the Variance with 3 Stipulations:

1. RSA 674:33 V a & b. This Variance is to survive as long as Joanne Smith is in need of the unit.
  2. A sworn statement from the property owner in front of a Justice of the Peace that states that the 3<sup>rd</sup> unit must be dismantled upon no longer needing use of the 3<sup>rd</sup> unit.
  3. Property owner of record must notify the Town of Hudson of discontinued need of 3<sup>rd</sup> unit.
- Mr. Pacocha seconded the motion.

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

Normand Martin	Grant with 3 Stipulations
Jim Pacocha	Grant with 3 Stipulations
Charles Brackett	Not to Grant
Donna Shuman	Grant with 3 Stipulations
Maryellen Davis	Not to Grant with Comment – She does not believe that the application meets the criteria at all; all of the criteria for a Variance. She stated that it only meets part B of the hardship, is not in the Spirit of the Ordinance and could injure the public rights of others.

Vote: 3-2                      Grant Variance with 3 Stipulations

4. **Case 211-063 (10-27-16): Robinson R. Smith, 48 Burns Hill Road, Hudson, NH, requests a Variance to construct a 24’x34’ home addition on a corner lot which would encroach both front yard setbacks, due to the unusual angled placement of the existing non-conforming structure. [Map 211, Lot 063, Zoned R-1; HZO Article VII §334-27, Table of Dimensional Requirements.]**

Robinson Smith testified that the proposed structure will not alter the essential character of the neighborhood, threaten public health, safety or welfare. The proposed structure will enhance the overall value of the existing neighborhood due to larger homes in close proximity. The proposed use will follow

all ordinance processes. Granting the Variance will assist the applicant with needed storage requirement and will generate a modest tax increase for the Town of Hudson. The proposed use will not diminish surrounding properties because it will still be utilized as a residential one family property. The surrounding properties are much larger and the expansion would bring the existing structure on par square footage wise with the rest of the neighborhood. The existing structure is placed at an unusual angle in respect to the property lines. The existing structure is an existing non-conforming structure being built in 1976 and in use prior to the reclassification of the 1978 thirty foot setback on Burns Hill Road to an increased fifty foot setback in 1984 when the road was extended for construction and use of the Burns Hill Fire Station. With the historical changes of the Zoning Ordinance combined with the angle of the existing structure this request is a natural progression and evolution of the structure and the only solution for the attached garage to be built on that side. The encroachment is not excessive due to the small corner portions of the proposed structure not complying with Town Ordinance and the Variance request is in the Spirit of existing zoning laws and regulations.

Chairman Davis asked if anyone in the audience wished to speak in favor of the application, on one came forward. Chairman Davis then asked if anyone in the audience wished to speak neutrally or in opposition of the application, Mr. Peter Radziewicz came forward.

Mr. Radziewicz testified that he was not opposed but only present as a property owner who did not know what was being proposed by the Applicant. His concern is that the current single family home does not convert into a duplex now or sometime in the future. It is a R1 restricted zone.

Mr. Smith testified that they did not have an attic and the addition was basically for storage. A stairwell would lead to the addition and it would have the same base line roof as the house.

Mr. Randy Collins, DC for the project passed out a copy of the drawing for the Board to preview.

Mr. Smith testified that the Shed would be taken down. The cords of wood would be stored in the back and have a tarp over them. The plan is to burn it up.

Joanne Radziewicz wanted assurance that it will never be a multi-family home further down the road.

Mr. Smith testified that it will never be used as a rental and will always be R1.

Chairman Davis declared the matter before the Board.

Mr. Brackett made a motion to Grant and was seconded by Mr. Pacocha.

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

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

Vote: 5-0                      Grant Variance for Case 211-063

*Chairman Davis declared a recess at 10:01 PM*

*Chairman Davis declared the meeting back in order at 10:07 PM*

**IV. REVIEW OF MINUTES**

September 29, 2016 meeting minutes were reviewed. Motion made by Ms. Shuman to approve as amended and seconded by Mr. Martin. All in favor. Vote: 5-0

*Next Meeting is scheduled for November 10, 2016*

**V. ADJOURNMENT**

Mr. Martin made a motion to adjourn and Ms. Shuman seconded the motion. All in favor, the motion passed unanimously. Chairman Davis declared the meeting adjourned at 10:15 PM.

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Maryellen Davis, Chairman