



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 June 23, 2016

I. CALL TO ORDER

Chairman Davis called this meeting of the Hudson Zoning Board of Adjustment to order at 7:40 PM on Thursday, June 23, 2016, 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, Kevin Houle

Alternates

Present: Gerald Dearborn, Maurice Nolin

Staff

Present: Bruce Buttrick, Zoning Administrator

Selectman

Liaison: Ted Luszey (Excused)

Transcriptionist: 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 the hearing 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 THIS BOARD

1. **Case 112-026 (6-23-16) (Deferred from 5-26-16): David, Barbara & Benjamin Baker, 69 Kienia Road, Hudson, NH requests the following items to allow a second dwelling unit, described as a free standing garage with living area above, in addition to an existing duplex on the lot [Map 112, Lot 026, Zoned G-1]:**
 - a) **A Special Exception for an Accessory Living Unit (ALU) to exist on the property with an existing duplex home. [Map 112, Lot 026, Zoned G-1; HZO Article VII §334-26, Reduction of Requirements for Mixed and Dual Uses.]**
 - b) **A Use Variance to allow an Accessory Living Unit (ALU) to exist on the property as a free standing, detached structure on the lot in addition to an existing duplex dwelling. [Map 112, Lot 026, Zoned G-1; HZO Article VIII §334-31, Alteration or Expansion of Non-Conforming Structures.]**
 - c) **An Area Variance to allow an additional single-family dwelling unit located above the existing garage, in addition to an existing duplex on the lot. [Map 112, Lot 026, Zoned G-1; HZO Article VII §334-26, Reduction of Requirements for Mixed and Dual Uses.]**

Members Normand Martin and Donna Shuman stepped down. Chairman Davis seated Alternate Nolin to replace Mr. Martin and Alternate Dearborn to replace Ms. Shuman.

Chairman Davis recapped that the Baker's had three structures on the property. The first structure built is permitted as a duplex. The second structure built was permitted as a garage; it is a hobbyist's garage on the ground floor with an office/workshop on the 2nd level. No residential use. The third structure was built without permit and has a hobbyist garage on the ground floor level. The 2nd level is being used as a dwelling unit which is currently occupied by their daughter, son-in-law and two grandchildren.

David and Barbara Baker testified that the only thing they wanted to do was keep the third structure as a dwelling unit on the 2nd level so their daughter, son-in-law and two grandchildren could continue to live there. If their daughter should move out, the 2nd level would go back to being a storage area without residential use.

Mr. Brackett stated that out of the three options before them he would like to see option (a) approved – a Special Exception for an ALU. Mr. Dearborn will not approve option (a) as he believes the third structure does not qualify for a Special Exception for an ALU.

Discussion took place among the members as to what option should be heard before the Board this evening. Chairman Davis stated that she would like option (a) heard. Chairman Davis then asked that the Board be polled as to what option should be heard. Vote as follows for option (a):

Maurice Nolin	Yes
Gerald Dearborn	No
Charles Brackett	Yes
Jim Pacocha	Yes

Maryellen Davis Yes
Vote: 4-1 To Hear Option A

As the vote was 4-1 in favor of hearing option (a) no further vote was needed for options (b) and (c). Chairman Davis asked the Baker's to testify based on option (a) – requesting A Special Exception for an ALU.

An ALU is allowed only in one-family dwellings. An ALU is not allowed in a two-family or multi-family dwelling or any non-residential uses. An ALU is expressly prohibited in an Open Space Development. This site will conform to this requirement by: Barbara Baker testified that she had difficulty answering the question.

An ALU is not allowed as a free-standing, detached structure or as part of any structure which is detached from the principal dwelling. This site will conform to this requirement by: Barbara Baker testified that she submitted a picture for review.

Barbara Baker further testified that the 2nd level of the third structure was currently occupied by her daughter, son-in-law and two grandchildren. The oldest grandchild has Type I Diabetes. The structure is a one family dwelling with a hobby garage underneath and has two means of egress; two decks to ground. The structure has its own heating system, septic, with holding tank well water. It has plenty of off-street parking. The structure currently exists and has smoke detectors as well as carbon monoxide detectors installed. It was built to code, it was a rush decision and they felt they could not wait for permits.

Chairman Davis asked if anyone wanted to speak in favor of the Special Exception. No one came forward. Chairman Davis then asked if anyone wanted to speak neutrally or in opposition of the Special Exception. No one came forward. The case was brought before the Board.

Mr. Brackett made a motion to grant with 2 stipulations as follows: (1) Special Exception (ALU) ceases when daughter and family vacate the property and/or the property is sold. (2) ALU and structure itself be inspected and permits are pulled from the Town of Hudson. Mr. Pacocha seconded the motion with the stipulations. Vote as follows:

Charles Brackett	Grant with 2 Stipulations
Jim Pacocha	Grant with 2 Stipulations
Gerald Dearborn	Not to Grant
Maurice Nolin	Grant with 2 Stipulations
Maryellen Davis	Not to Grant with Comment: Structures were previously built without permits and by doing so went against all rules and regulations of the ZBA which in turn does a disservice to the citizens of Hudson.

Vote: 3-2 Grant Special Exception for an ALU with 2 Stipulations

Chairman Davis noted that Mr. Martin and Ms. Shuman resumed their seats as Members and Mr. Dearborn and Mr. Nolin resumed their seats as Alternates.

- 2. Case 182-153 (6-23-16) (Deferred from 5-26-16): Maryellen Davis, 14 Nathaniel Drive, Hudson, NH requests an Appeal of a Zoning Administrative Decision issued by the Zoning Administrator dated 4-18-16, which states that the proposed Art School at 38 B**

Library Street, Hudson, NH is a permitted use but the change of category from D-31 to C-7 within the Table of Permitted Principle Uses would require a Site Plan review by the Planning Board. [Map 182, Lot 153, Zoned TR; HZO Article VII §334-30 & 31, Changes to or Discontinuance of Nonconforming Uses & Alteration and Expansion of Nonconforming Structures.]

Chairman Davis stepped down and seated Mr. Jim Pacocha as acting Chairman. Mr. Pacocha seated Mr. Dearborn to replace himself.

Maryellen Davis testified that only site plan review from Planning Board is required for change of use on a non-conforming property. Gills' Appliance Repair – Art Studio/School is expansion of change in use on non-conforming 1st floor. Additionally this property has never received a variance for mixed or dual use of a lot (residential/commercial.)

Acting Chairman Pacocha asked if anyone wanted to speak in favor of the Application. No one came forward. Acting Chairman Pacocha then asked if anyone wanted to speak neutrally or in opposition of the Application. Robert Parodi came forward.

Attorney Parodi testified that he was representing John Sarris and that he submitted a letter to Bruce Buttrick on June 3, 2016 which he hoped would be part of the record. He stated that the letter represented their position. He also stated that clearly it is a conforming use in that zone and it should be allowed. He further stated that the ZBA Board should be supporting their Zoning Administrator's decision.

Acting Chairman Pacocha asked Attorney Parodi why he felt that a school was a conforming use. Attorney Parodi asked how the ZBA ordinances defined a school. Mr. Buttrick replied that the ordinances do not specifically define a school. Attorney Parodi also stated that Kristen Jensen, applicant requesting to open an art school testified at the last hearing that she went to the State of New Hampshire, Department of Education and was told that she could open an Art School. She is not offering college credits so she does not need to be associated with that department. Mr. Dearborn asked if there was any legal document from the State of NH, Department of Education on file. Attorney Parodi maintains that the ZBA ordinances do not specify what constitutes a school and therefore no legal document is needed from the Department of Education.

Kristen Jensen testified that she called the Department of Education and was told that she could open an Art School. She also stated that she could get something in writing if the ZBA needed that documentation. Again, she testified that she was only trying to do something good for the Town of Hudson. The school will have 6-8 pupils per class and the curriculum will be based on the artist that will be teaching. There will be Sculpture, Photography and Water Color; it will not just be painting on a canvas. Ms. Jensen plans on having 2 hour block offerings in the morning, afternoon and evenings.

Don Dumont asked if the zoning was allowed then why there are so many hearings on the matter. Mr. Dearborn replied that there were prior zoning issues on the property and the ZBA wanted to do their due diligence in sorting out the matter.

Charles Brackett made a motion to uphold the Zoning Administrator's decision with a Stipulation that Kristen Jensen, the applicant, attain a letter from the State of New Hampshire, Department of Education stating that she could open an Art School. Mr. Martin seconded the motion. Vote as follows:

Charles Brackett	Uphold Administrator's Decision with Stipulation
Normand Martin	Uphold Administrator's Decision with Stipulation
Donna Shuman	Uphold Administrator's Decision with Stipulation
Gerald Dearborn	Uphold Administrator's Decision with Stipulation
Jim Pacocha	Not to Uphold Administrator's Decision

Vote: 4-1 Uphold Administrator's Decision with Stipulation

Acting Chairman Pacocha noted that he would resume his post as Member, Gerald Dearborn would resume his post as Alternate and Maryellen Davis would resume her post as Chairman.

3. Case 198-016 (6-23-16): Law Office of Attorney Andrew H. Sullivan, 24 Eastman Avenue, Bedford, NH requests a Variance for the property located at 91 Lowell Road, Hudson, NH proposed new Lot 16, to allow a retail combination gas station, car wash and convenience store to be located within 800-feet of another retail gas station. [Map 198, Lots 011, 012, 013, 014, 015, and 016, Zoned B; HZO Article III §334-15.1, Retail Gasoline Sales.]

Attorney Andrew Sullivan testified on behalf of Eric Sojka that the following lots were before the ZBA: 11, 12, 14, 15 and 16. He further testified that granting the variance would not be contrary to the public interest and would be consistent with the spirit of the ordinance. Granting the variance is consistent with the purpose of the Business Zone. No traffic congestion or slowdowns will be caused or exacerbated by traffic queuing. The proposed use is the highest and best use for the new Lot 16 and best enables the Owner to obtain full value upon sale of the lot. Applicant's proposal is consistent with the neighborhood and an allowed use in the Business Zone and consequently, will not alter the essential character of the neighborhood. Granting the variance will promote and facilitate a use that characterizes the neighborhood and add to the tax base; will provide a gain to the general public without harm to the general public and without causing loss to the Owner or any other lot owner in the area. To deny the variance would unconstitutionally deprive the owner/applicant of the right to make valuable use of the land based upon an unreasonable, arbitrary and confiscatory regulation as applied to Applicant's property, and thereby cause an impermissible, unnecessary hardship to the Applicant.

Chairman Davis asked if anyone wanted to speak in favor of the Variance. No one came forward.

Chairman Davis then asked if anyone wanted to speak neutrally or in opposition of the Variance. The following people came forward:

Martha Lachance testified that allowing the variance would create a traffic hazard and she feared for the safety of the Town residents. There are already too many accidents in that area.

Joan Barnes testified that the traffic was unbelievable and she cannot cross Lowell Road as it stands now. She needs to take her car to go down the street. Safety is her major concern.

James Gardner testified that his concern was for the wetlands and traffic flow. He has witnessed way too many accidents.

Chairman Davis declared the matter before the Board. Mr. Martin has an issue with the Applicant's hardship - Applicant has not met the criteria for hardship with the current use of the property. Mr. Brackett has an issue with the 50 foot setback and would like the applicant to speak on that.

Attorney Sullivan testified that the 50 foot setback was not part of the variance before the ZBA – it is a Planning Board discussion. He further testified that there were no wetlands on the site. Attorney Sullivan did state that there is no denying that the traffic flow would change however the ZBA is not the forum for that discussion. The current hardship is based on the land as it is configured.

Due to a second round of testimony, Chairman Davis asked if anyone wanted to speak in favor of the Variance. No one came forward. Chairman Davis then asked if anyone wanted to speak neutrally or in opposition of the Variance. No one came forward. The matter was declared before the Board.

Discussion took place on traffic flow and the issues around volume and inability to make a left hand turn onto Lowell Road from any business. Mr. Brackett will grant the Variance. Mr. Martin cannot support the Variance because of safety concerns. Chairman Davis struggled with the Applicant's hardship but then realized that the Applicant should not be penalized for the 400 feet in question.

Mr. Brackett made a motion to grant and Mr. Pacocha seconded the motion. Vote as follows:

Charles Brackett	Grant Variance
Jim Pacocha	Grant Variance
Donna Shuman	Not to Grant Variance
Normand Martin	Not to Grant Variance
Maryellen Davis	Grant Variance
Vote: 3-2	Variance Granted

Chairman Davis declared a 10 minute recess at 9:50 PM

Chairman Davis declared the ZBA Meeting back to order at 10:00 PM

- 4. Case 124-054 (6-23-16): William C. & Mary Ellen Hanley, 15 Terra Lane, Hudson, NH requests a Special Exception for an Accessory Living Unit (ALU) to be constructed within the space above the existing attached garage. [Map 124, Lot 054, Zoned R-1; HZO Article XIII A §334-73.3, Accessory Living Unit.]**

Mary Ellen Hanley testified that the ALU is already part of the single family home with a two car garage underneath and access to the principle dwelling. There will be no change to the structure that is already attached and part of the single family home. The Applicant's daughter, son-in-law and two grandsons will be residing in the extended living unit. The only addition to the front face of the home will be an added egress window. A small deck will be added on the back of the house with a staircase going down the side of the garage. There will be no changes to the utilities, off street parking is not needed and wired smoke detectors have been installed above the garage.

Chairman Davis asked if anyone wanted to speak in favor of the Special Exception for an ALU. No one came forward. Chairman Davis then asked if anyone wanted to speak neutrally or in opposition of the Special Exception for an ALU. No one came forward. The matter was declared before the Board.

No comments, no questions, no input from the Board. A motion was made by Mr. Martin to grant and seconded by Mr. Brackett. Vote as follows:

Normand Martin	Grant Special Exception for an ALU
Charles Brackett	Grant Special Exception for an ALU
Donna Shuman	Grant Special Exception for an ALU
Jim Pacocha	Grant Special Exception for an ALU
Maryellen Davis	Grant Special Exception for an ALU

Vote: 5-0 Special Exception for an ALU Granted

IV. REVIEW OF MINUTES

- a) 05-26-16 Minutes
- b) 06-02-16 Minutes

May 26, 2016 minutes were reviewed. Motion made by Mr. Martin to approve as amended and seconded by Ms. Shuman. All in favor. Vote: 5-0.

June 02, 2016 minutes were reviewed. Members Normand Martin and Donna Shuman stepped down. Chairman Davis seated Alternate Dearborn to replace Mr. Martin and Alternate Nolin to replace Ms. Shuman.

Motion made by Mr. Brackett to approve as amended and seconded by Mr. Nolin. All in favor. Vote: 5-0. Chairman Davis noted that Mr. Martin and Ms. Shuman resumed their seats as Members and Mr. Dearborn and Mr. Nolin resumed their seats as Alternates.

V. ADJOURNMENT

Mr. Martin made a motion to adjourn and Mr. Brackett seconded the motion. All in favor, the motion passed unanimously. Chairman Davis declared the meeting adjourned at 10:40 PM.

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