



# TOWN OF HUDSON

## Zoning Board of Adjustment



Charlie Brackett, Chairman      David Morin, Selectmen Liaison

---

12 School Street • Hudson, New Hampshire 03051 • Tel: 603-886-6008 • Fax: 603-594-1142

---

### MEETING MINUTES – December 13, 2018 - approved

The Hudson Zoning Board of Adjustment met on December 13, 2018, in the Board of Selectmen Meeting Room in the lower level of Hudson Town Hall. Chairman Charlie Brackett called the meeting to order at 7:01 PM, gave a brief overview of the purpose of the Zoning Board and the process of the meeting, asked that anyone addressing the Board to give their name, with spelling, and address, noted that there is no smoking in the building, asked everyone to turn off the ringers on their cell phones and to refrain from talking unless addressing the Board, noted that there are copies of the Agenda and Appeal process on the side table and recognized that there are only four (4) Members present, that normally there are five (5), that three (3) is a quorum, that a vote of three (3) Members is needed to pass any motion and offered the opportunity to the applicants to defer the hearing on their Case until next month in the hope that there would be five (5) voting Members present. Neither applicant asked for a deferment.

Members present were: Charlie Brackett (Chair), Gary Daddario (Regular), Gary Dearborn (Regular/Acting Clerk), and James Pacocha (Vice Chair). Also present were David Morin, Selectman Liaison, Bruce Buttrick, Zoning Administrator and Louise Knee, Recorder. Excused were: Maryellen Davis (Regular) and Kevin Houle (Alternate/Clerk). It was commented that Alternate Mike Pitre was no longer a Member. For the record, the four (4) Members present would be Voting Members for this meeting.

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

1. Case 240-016 (12-13-18): Patrick Gendron, 579 Bridge Street, Pelham, NH requests a Variance for MOOZIT, LLC c/o Anthony Karistianos at 14 River Road, Hudson, NH to allow an apartment/residential dwelling unit for the owner of the business above the automotive service garage which would become a mixed/dual use property. [Map 240, Lot 016, Zoned G-1; HZO Article III §334-10A, Mixed or dual use on a lot].

Mr. Buttrick read the Case into the record and noted the attention to this location came via an individual interested in the property for sale with garage and apartment. Research into the Town's records found no paperwork for the construction or occupancy of the apartment and violations were noted regarding the apartment's existence as well as old code violations for the accumulations of tires on the site. The Case is a result of a Code Enforcement Action taken on 10/3/2018 resulting from a

Not Official until reviewed, approved and signed.  
Approved 1/24/2019 as edited

physical inspection with the Fire Department Officer Dube of the second floor that confirmed the existence of the second floor dwelling unit. Mixed Use is allowed in the G1 Zone; however, a Variance is required as the lot is non-conforming with regard to area and frontage and Site Plan Review for Change-of-Use by the Planning Board would also be needed.

Patrick Gendron introduced himself as representing his mother-in-law Kim Gobbi who resides in the apartment with her significant other, Anthony Karistianos of MOOZIT LLC. Mr. Gendron stated his mother-in-law is in her eighties, has lived in the apartment for fifteen (15) years and neither speaks nor understands English well. The apartment is small, totaling approximately seven hundred and sixty square feet (760 SF). The apartment existed when they bought the building and the only renovation they have done is get a permit to install a new septic system in 2009. The in-laws wish to retire to Florida and put the property up for sale. Mr. Gendron stated that they are seeking permission to continue living in the apartment until the property is sold and that the new owner can pursue legalizing it with the Planning Board.

Chair Brackett stated that the granting of a Variance is given serious consideration because it stays with the land, it is not temporary and has five (5) specific criteria that the Board must determine have been satisfied and asked Mr. Gendron to address each criteria.

Mr. Gendron addressed each of the five criteria for the granting of a variance and the following information was shared:

- 1) *not contrary to public interest*
  - not visible to the public
  - apartment is on second floor of existing building, no exterior changes
  - area is within a mix of commercial and residential properties
  - septic system sized to accommodate 300 gallons per day, ample for both business and residence
  - property has enough parking area to accommodate both business & apartment
- 2) *spirit of Zoning Ordinance observed*
  - area is within a mix of commercial and residential properties
  - apartment not obvious from the exterior
  - septic system is State approved
  - there is a well on site
  - allowing apartment will not threaten health & welfare of the public
- 3) *substantial justice done*
  - granting variance will allow property owner to live on premise to watch over business during non-business hours
- 4) *surrounding property values not diminished*
  - there is no change to existing building
  - apartment on second story falls within footprint of existing building
  - the mixed use of garage/apartment will not affect property values in the area

Not Official until reviewed, approved and signed.

Approved 1/24/2019 as edited

5) *unnecessary hardship if not granted*

- building has existing space above service garage
- it is a small business and there is ample space on main level
- there is no real value of an “office” on the second floor, it is better served as an apartment for the business owner to live on premise
- granting of the variance will allow reasonable use of the accessory apartment to occupy the office space on the second floor
- there is no harm done to the public by allowing the apartment
- an apartment is not a detriment to the neighborhood that already contains a mixed use of both commercial and residential

In conclusion, Mr. Gendron stated that the apartment existed when they bought the building, that they have been living in it for fifteen (15) years, that they are now elderly and want to sell and move to Florida, that his mother-in-law is Vietnamese with limited use and understanding of the English language, and that her significant other, Anthony Karistianos, is Greek with similar English limitations and that is why he was asked to represent them and their case to the Board.

In response to Mr. Dearborn’s question, Mr. Buttrick stated that it has only been classified as “auto repair” since the year 2001. Mr. Dearborn noted that the Building Permit issued in 1988 was to raise the roof to install two garage doors with no mention of any construction of a second floor.

Public testimony opened at 7:14 PM. No one addressed the Board.

Mr. Pacocha asked how familiar Mr. Gendron was with the building. Mr. Gendron stated that the apartment existed when it was purchased. Mr. Daddario noted that there were Code Enforcement issues identified in 2007 and 2011 with people living upstairs. Mr. Pacocha stated that there was also a note to “continue monitoring” in 2010. Mr. Buttrick added that the Code Enforcement activities were multi-faceted with one violation being with the accumulation of tires being stored. In response to Mr. Dearborn’s question regarding recent violations, Mr. Buttrick stated that no violations have been filed since he’s been with the Town.

Mr. Dearborn stated that there is documentation of a meeting with Ms. Gobbi in 2010 and a letter signed by her dated 1/16/2008 stipulating that the second floor was not to be a living area. Mr. Gendron did not dispute it but added that his mother-in-law does not understand the spoken English well and understands the English written language even less. Mr. Buttrick confirmed the struggles with the English language in his dealings with Ms. Gobbi and appreciates Mr. Gendron’s involvement. Mr. Dearborn expressed concern for the lack of a Building Permit or plumbing & electrical inspections or a Certificate of Occupancy for the apartment or an office on the second floor. It was noted that the Replacement Septic System plan dated 11/6/2009 identified the building as “Existing Service Garage / Office”.

Mr. Daddario stated that it is understandable to utilize the open space, to create an office and even for an office to contain a kitchenette, but, according to his understanding, a variance applies to the land impact to justify the hardship criteria and does not believe the Board has the authority to grant this variance. Mr. Brackett

Not Official until reviewed, approved and signed.

Approved 1/24/2019 as edited

acknowledged and noted that at one point in time when variances could have been distinguished based on use, Simplex could have been applied, as there are similar uses in the area.

Discussion continued and focused on attempting to reconstruct the sequence of events noting that a Building Permit was not issued for the second floor office or apartment, that there were several notices of violations of people living at the building, that the Town's records are scant or missing, and that the violation has continued without any attempt, by the Town or residents, to correct and speculated that correction is only now being sought in order to sell the property as a commercial garage with accompanying apartment and concern that a variance goes with the land.

Mr. Buttrick stated that it is a non-conforming residential use, that the lot is not large enough for a Mixed-Use, that the variance is needed to establish the Mixed-Use designation and that execution would also require Planning Board Site Plan Review for implementation.

Mr. Brackett stated that he would have a greater concern if the apartment was converted from an Office. Mr. Daddario stated that the hardship criteria apply to the property and asked what would need to happen to the property if the variance was not granted. Discussion arose on whether the second floor office could include a kitchen and it was determined that it's dual use could be a break-room and that it is common for a break-room to have a kitchenette. Mr. Brackett stated that the real issue is that a variance goes with the land.

Motion made by Mr. Dearborn and seconded by Mr. Daddario to not grant the variance, as the hardship criterion has not been met. Mr. Daddario stated that it gives him no pleasure to deny the variance but the land presents no hardship, that the present owner is selling the property, which is not dependent on the apartment and noted that the apartment can be used as a break-room. Mr. Brackett agreed that the relief is to be based on the land and the primary use of this land is as a service garage. Vote was 4:0. Variance request denied.

The thirty-day appeal period was noted. Mr. Gendron inquired about the Appeal process and was given the Appeal paperwork. Mr. Brackett stated that an Appeal stems from either the Board having made an error in judgment or there is new evidence to be considered.

2. Case 198-027 (12-13-18): Paul L. Ferronetti, 18 Forest Street, Haverhill, MA, requests a Variance at 68 Lowell Road, Hudson, NH, to demolish the existing non-conforming structure in the required front setbacks and rebuild on same slab footprint. [Map 198, Lot 027, Zoned Business-(B); HZO Article VIII, §334-31, Alteration and expansion of non-conforming structures].

Mr. Buttrick read the Case into the record and referenced his Staff Report dated 12/3/2018 and his Zoning Determination dated 10/2/2018. Mr. Buttrick stated that it is an existing non-conforming lot of record due to it's size with a non-conforming building due to its setbacks, that the shape of the lot is triangular with frontage on two sides, and that, per the Zoning Ordinance, requires a variance when a non-conforming structure is being voluntarily demolished and reconstructed.

Not Official until reviewed, approved and signed.

Approved 1/24/2019 as edited

Paul Ferronetti introduced himself as the owner of the business and property and stated that the building is not insulated, that it does have baseboard and that the pipes have frozen twice already. Mr. Ferronetti stated that he plans to install insulated walls on the same foundation and put on a pitched roof to better blend the building with the surrounding properties.

Mr. Ferronetti addressed the criteria for the granting of a variance and shared the following information:

- 1) *not contrary to public interest*
  - Would not be contrary to the public interest
  - Would not alter the essential character of the neighborhood which is currently a mix of single family homes, multi-family homes and businesses
  - Would not injure public rights as it is a business / commercial store
- 2) *spirit of Zoning Ordinance observed*
  - area is in the Business Zone and surrounded by a mix of commercial businesses and residential properties
  - permitting an alteration to a business / commercial store conserves property values as well as preserves and enhances the quality of life for the occupants and maintains the character of the area
  - spirit is observed because the improvements satisfies the general purposes of the Zoning Ordinance which includes promoting efficiency and economy in the process of development by encouraging the most appropriate use of the land, conserving property values and preserving and enhancing quality of life
- 3) *substantial justice done*
  - granting variance will allow property owner to renovate his business and enhance the property value and quality of life for the occupants
  - substantial justice is done if the general public realizes no appreciable gain if the variance is denied; however the general public would benefit by the granting of the variance with an improved building renovated in style to better fit in with the neighborhood
- 4) *surrounding property values not diminished*
  - surrounding property values will not be diminished and will most likely be enhanced with an improved newly renovated building
- 5) *unnecessary hardship if not granted*
  - the lot is unique with its triangular configuration with two frontages with increased setbacks constricting the structure's placement
  - the newly renovated building will be constructed on the existing slab
  - the proposed use is a reasonable use

Mr. Ferronetti concluded by saying that it is an older un-insulated building, that it would be rebuilt on the same foundation with a pitch roof and fit better within the neighborhood.

Public Testimony opened at 7:53 PM. Donald Aldrich of 5 Roosevelt Avenue, Hudson, NH addressed the Board, stated that he walks by this property everyday with his dogs, that it is a “shanty”, that the proposed rebuild would be an improvement and has no problem with the proposal. Being no one else to address the Board, Public Testimony closed at 7:53 PM.

Mr. Dearborn asked if the new plans for the building have been designed and if there was a time selected to do the construction. Mr. Ferronetti stated that the plans have not been finalized and added that it will have a pitched roof to better suit the neighborhood, that it will be just a single-story and will be built on the same foundation which already houses the electrical and plumbing and that construction could be the first two weeks of July, 2019. Mr. Daddario asked if the building would have the same dimensions and Mr. Ferronetti responded that it would internally but would probably go over the slab foundation by approximately one foot on each side. Mr. Buttrick stated that the increase in footprint is to accommodate the insulated walls and noted that if the building was to be built much bigger it could interfere with traffic flow and could then need to go before the Planning Board for a Modification to Site Plan Review to a bigger building for the store. Mr. Brackett stated that he remembers all the discussion when this site changed from a gas station to a coffee shop and how the coffee shop was a better suited use for this unique lot and expressed surprise that documentation was not part of the packet. Mr. Buttrick stated that he provided all the information regarding this site that he found on the Town’s files.

Mr. Pacocha asked Mr. Buttrick if the applicant could have just added insulated panels to the exterior of the building and not have to come before the Zoning Board. Mr. Buttrick confirmed that could have been done and added that he had to deny the Building Permit application because the non-conforming structure was being demolished voluntarily.

Motion made by Mr. Dearborn and seconded by Mr. Daddario to grant the variance as requested. Mr. Dearborn stated that the proposed changes is a definite improvement to the property and will remain a single story structure. Mr. Daddario stated that the first four (4) variance criteria have been satisfied as all are improvements and that the fifth criteria is satisfied by the land with its size and triangular shape. Mr. Pacocha agreed and added that the argument could be made that the Zoning Ordinance caused the hardship. Mr. Brackett expressed concern regarding the coffee shop documentation as, in his opinion, the coffee shop was the perfect use of the property. Vote was 4:0. Motion approved. Variance granted. The thirty-day appeal period was noted. Mr. Brackett stated that considering the project is not scheduled until June, there is little chance of the applicant beginning construction during the appeal period; however, someone could be opposed. Mr. Dearborn noted that no one spoke in opposition.

## **II. REVIEW OF MINUTES**

### 1. 11-08-18 Minutes

Board reviewed the edited version presented. Motion made by Mr. Dearborn, seconded by Mr. Daddario and unanimously voted to approve the 11/8/18 Minutes as edited and presented.

### **III. REQUEST FOR REHEARING**

There were no requests for rehearing presented for Board consideration.

### **IV. OTHER**

#### 1. Recap of ZBA workshop meeting 11/15/18: Zoning Ordinance amendments

Mr. Buttrick stated that the workshop meeting was held and the focus was on the backyard animals proposal with the Animal Control Officer. It was noted that this amendment still needs to be fine-tuned and would not be on the 2019 ballot. Mr. Brackett stated that the final draft still has to be prepared before going to the Planning Board and that the group would meet again after the holidays sometime in January. Mr. Pacocha stated that the Zoning Ordinance already addresses the Raising and Keeping of Livestock to which Mr. Buttrick confirmed if the use is a Principal Use and noted that what is being discussed is back-yard animals as an Accessory Use.

Mr. Brackett stated that Brian Groth, Town Planner, presented the proposed Zoning Ordinance amendments to the Planning Board and noted that they were well received but the general feeling was that perhaps there were too many to present on the 2019 ballot, like the tiny houses.

#### 2. Propose ZBA Bylaw amendment to address Variance voting per HB 1215

The general consensus was to select the vertical voice choice. Mr. Buttrick noted that adding it to the Bylaws requires two (2) public hearings/meetings. Motion made by Mr. Dearborn, seconded by Mr. Brackett and unanimously voted to schedule the required hearings to adopt the voting vertical criteria for the granting of variances into the Bylaws. Motion passed. Mr. Buttrick asked to advertise for the next two public meetings.

#### 3. Proposed 2019 ZBA Meeting Schedule

Board reviewed the proposed schedule. It was noted that meeting dates are changeable. Motion made by Mr. Dearborn, seconded by Mr. Pacocha and unanimously voted to adopt the ZBA 2019 Meeting Schedule as presented.

#### 4. ZBA Members

Mr. Dearborn asked the Selectmen to address the lack of ZBA Members. Mr. Dearborn noted that Alternate and Clerk Kevin Houle's term expires at the end of the month and he is not re-enlisting and the Board has no Alternate Members. Mr. Dearborn stated that he didn't mind performing the duties of Clerk this meeting but it is too compromising/distracting onto a Regular Voting Member and there are no Alternate Members on ZBA. ZBA needs Members; there are currently only five (5).

Selectman Normand Martin, 3 Edgar Court, stated that the Selectmen are working on the problem. Selectman Morin stated that all the Boards in Town are affected with reduced membership. Mr. Brackett stated he discussed this with former ZBA Member Donna Shuman and they want to suggest that a news article in the Hudson Litchfield News might help. Mr. Daddario inquired about the applicant with the dog-rescue who seemed to be interested in joining the Board. Mr. Buttrick stated that he did send her an email but has not received a response and was asked to check again.

Motion made by Mr. Daddario, seconded by Mr. Pacocha and unanimously voted to adjourn the meeting. The 12/13/2018 ZBA meeting adjourned at 8:35 PM.

Respectfully submitted,

---

Charles J. Brackett, Chair