



TOWN OF HUDSON

Zoning Board of Adjustment



Normand Martin, Chairman

Marilyn McGrath, Selectmen Liaison

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

MEETING MINUTES – APRIL 27, 2017 - approved

The Hudson Zoning Board of Adjustment met on April 27, 2017, at 7:30 PM in the Community Development Paul Buxton Meeting Room in the basement of Hudson Town Hall. Chair Normand Martin called the meeting to order and made the following announcements: to please silence all cell phones; that there are copies of the Agenda and Appeal process on the shelf by the door; no smoking in the building; to address the Board to either sit at the table or stand by the lectern and to provide your name and address, with spelling; curfew is 11:00 PM; and to please refrain from talking in the audience.

Members present were: Charlie Brackett (Regular), Maryellen Davis (Regular), Normand Martin (Regular), Jim Pacocha (Regular), Mike Pitre (Alternate), Donna Shuman (Regular) and Maurice Nolin (Alternate/Acting Clerk). Also present was Bruce Buttrick, Zoning Administrator. Excused were Kevin Houle (Alternate/Clerk) and Selectmen Representative Marilyn McGrath.

For the record, the Regular (R) Members voted. Mr. Martin directed the Board's attention to the second Public Hearing Case.

I. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. Case 175-109 (4-27-17): Robert Gonthier, 9 Ferry Avenue, Hudson, NH, requests the following:
 - a) a Variance to expand the existing non-conforming use with the construction of a residential garage [Map 174, Lot 109, Zoned R-2 & B; HZO Article VII §334-27, Table of Dimensional Requirements]
 - b) a Variance to allow a 24' x 40' garage to be built within the side-yard setback, 15-feet required, 6-feet proposed [Map 174, Lot 109, Zoned R-2 & B; HZO Article VII §334-27, Table of Dimensional Requirements]

Mr. Nolin read the Case into the record. Mr. Buttrick referenced his Zoning Determination dated 6/7/2017 and stated that the lot is divided by two (2)

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Zones – Business (B) and Residential (R-2) – that the location of the proposed garage is in the B Zone section of the Lot which is not an allowed Use even though a garage is a normal accessory Use to a residence. In addition, the proposed garage is to encroach into the side-yard setback.

Ron Gonthier of 9 Ferry Avenue introduced himself to the Board and stated that he would like to build a garage next to the house, which is an existing non-conforming use in the Business district, and to place the proposed 24' x 40' garage nine feet (9') into the side-yard setback.

Mr. Gonthier addressed the criteria for the granting of a variance and the information shared included:

(1) not contrary to the public interest

- a garage is a common accessory use to a residence
- will not alter the character of the neighborhood as the house is the last house on a dead-end section that contains only private residences
- will not threaten public health, safety, or welfare as it would not affect anything the public has access to, or otherwise injure public rights

(2) proposed use observes the spirit of the Ordinance

- property is split zoned and used as residential
- there are only residences in the neighborhood and some have garages
- a garage is a customary accessory to a residence
- spirit of the Ordinance includes allowing an appropriate use of property and enhancing quality of living
- public health, safety and welfare will not be threatened

(3) substantial justice done

- property value will be increased
- garage will provide storage for vehicles, lawn equipment and toys as well as a wood storage area
- the dilapidated shed will be eliminated

(4) proposed use will not diminish surrounding property values

- house is the last house on a dead-end street
- other houses have garages in the neighborhood
- the property is owned by Rene & Sheila Jette who also own the property at 7 Ferry Avenue which abuts the property line where the proposed garage is intended to be placed
- the garage would only be visible to one other residence, the house across the street

(5) hardship

- house was built prior to the zone change to “B” (Business)
- house has always been used as a residence

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- house is the last structure on a dead-end street
- a garage is a customary accessory use to a home
- house location on the lot restricts the space and an encroachment into the side-yard setback is necessary to keep access to the backyard and to allow for snow removal
- there is a pool in the backyard and a septic system on the other side of the house
- a detached garage is proposed as an attached garage is not reasonable or economical

Ms. Davis clarified that the Board would first address the expansion of the non-conforming use variance and if approved would then address the variance for the garage to encroach the side-yard set-back.

Public testimony opened at 7:43 PM. The following individuals addressed the Board:

- (1) Rene Jette, 9 Ferry Avenue, stated that he owns both (9 & 7 Ferry Avenue and that he has no problem with the proposed garage being close to the property line.
- (2) Greg Suter, an abutter on 126 Central Street asked for clarification and the positioning of the garage on the proposed lot, received a copy of the plan and expressed no concerns.

Being no one else to speak, Public Testimony closed at 7:45 PM.

Mr. Pitre commented that a 40' garage is a big garage and Mr. Gonthier stated that it's length is 40' but it is only 24' wide. Ms. Shuman asked if other areas of the lot were considered for the garage and Mr. Gonthier responded that he had and determined that the selected location is the ultimate best location because the septic system is on the other side of the house and there is an existing pool in the backyard. Mr. Brackett noted that the house preceded the change in zone, that the whole area is residential, that in his opinion the request seems reasonable and the applicant addressed each of the variance criteria.

Ms. Davis asked what is the long-term plan for the two-car garage, specifically the second story of the garage. Mr. Gonthier responded that it will be used for storage, that it will be unfinished and would not be a complete second floor due to the roof-line, that it would be basically a center strip more like a shelf. Mr. Brackett asked and received confirmation from Mr. Gonthier that it would never be converted to a dwelling unit.

Mr. Pacocha noted that the garage would reside in the Business zone.

Motion made by Mr. Pacocha to grant the variance for the expansion of a non-conforming use to construct a garage with the stipulation that there would be

no further expansion of or construction of a dwelling unit in the garage. Motion seconded by Ms. Davis. Mr. Pacocha spoke to his motion nothing that it is in a residential neighborhood and a garage is a common accessory and that the change in zoning caused the hardship and that denial would impose a hardship on the individual and deny him a customary use. Ms. Davis concurred and noted that the condition satisfies her concerns. Mr. Martin noted that there is already a garage with a second dwelling unit on this lot that was approved by variance back in 1987. Vote was 4:1. Mr. Martin opposed. Motion carried. Variance to expand existing non-conforming use granted with one stipulation.

The second variance, to allow a garage to be built nine feet (9') into the required fifteen-foot (15') side-yard setback, was addressed. Mr. Gonthier responded to the variance criteria and the following information was shared:

(1) not contrary to the public interest

- there is little to no public interest due to the residential neighborhood on a dead-end street
- a garage is a common accessory use to a residence
- there are other houses in the neighborhood that have a garage
- will not alter the character of the neighborhood as the house is the last house on a dead-end section that contains only private residences

(2) proposed use observes the spirit of the Ordinance

- will preserve property values, allow appropriate use of the land
- property is split zoned and used as residential
- a garage is a customary accessory to a residence
- spirit of the Ordinance includes allowing an appropriate use of property and enhancing quality of living
- public health, safety and welfare will not be threatened

(3) substantial justice done

- garage will improve property value and appearance
- garage will provide storage for vehicles, lawn equipment and toys as well as a wood storage area
- the dilapidated shed will be eliminated
- construction of garage will not harm public or individuals

(4) proposed use will not diminish surrounding property values

- house is the last house on a dead-end street
- other houses have garages in the neighborhood
- the property is owned by Rene & Sheila Jette who also own the property at 7 Ferry Avenue which abuts the property line where the proposed garage is intended to be placed
- the garage would only be visible to one other residence, the house across the street

(5) hardship

- house is the last structure on a dead-end street
- a garage is a customary accessory use to a home
- house location on the lot restricts the space and an encroachment into the side-yard setback is necessary to keep access to the backyard and to allow for snow removal and use of the existing ramp
- other locations were considered and discarded as there is a pool in the backyard and a septic system on the other side of the house
- a detached garage is proposed as an attached garage is not reasonable or economical

Mr. Gonthier acknowledged that there already exists a garage on the property with a dwelling unit above it, noted that there are two families living on this 3+ acre lot and added that he does not have access to the existing garage. Mr. Gonthier stated that he would like a garage close to his home to contain his vehicles, lawn care equipment and toys.

Public testimony opened at 7:58 PM. No one addressed the Board.

Mr. Brackett questioned the type of toys to be stored in the garage. Mr. Gonthier stated that he has two (2) children and would use the garage to store their power wheels, bicycles, boat, tractor; the garage would help unclutter the lawn of these items and provide clean storage.

Ms. Davis asked if there is a fence between 7 & 9 Ferry Street and Mr. Gonthier responded that there is for a short distance and no fence by the proposed garage. Ms. Davis asked the distance between the house next door in relation to the proposed garage as there is a need to insure enough space for fire personnel to have access to both structures in the event of an emergency. Mr. Jette shared the concern and confirmed that there is enough space between the two structures and would still be enough space if the garage was built right on the property line. Mr. Jette added that there is enough space for him to take a backhoe or a dump truck through. Ms. Davis noted that there is a white fence in the front of the property and Mr. Jette confirmed noting that that fence is on the other side of his property between his neighbor Mark Turner and himself.

Discussion ensued. It was noted that there is enough space between the proposed garage and the house at 9 Ferry Avenue and should fire trucks need access the rear of 7 Ferry Avenue, they could access via 9 Ferry Street driveway or go around the house at 7 Ferry Street through their driveway on the other side of the structure.

Mr. Pacocha inquired about the row of arborvitae and the two big trees and Mr. Jette stated that the arborvitae would remain and that the two trees would need to be cut down. It was also noted that the existing shed with its lean-to for wood storage would be removed.

Mr. Brackett stated that a two-car garage is common and has no concern with the width of twenty-four feet (24'), that the critical dimension is the depth of forty feet (40') which extends the encroachment of the side-yard setback and added that, in his opinion, forty feet (40') is reasonable to accommodate the vehicles, yard equipment and toys. Mr. Brackett stated that it is not uncommon to have garages encroach side-yard setbacks, that the placement of existing structures on this lot dictates garage location and added that consideration has been given for heavy equipment maneuvering and noted that there was no opposing testimony presented.

Ms. Davis stated that this particular lot is unique in that the owner owns both this property and the adjacent property and that the public rights of others would not be injured. Mr. Pacocha stated that the owner could sell one of the lots and Ms. Davis agreed but noted that the garage would be in existence then and noticed.

Mr. Pacocha inquired about the woods road and Mr. Jette state stated that it extends from his driveway, leads to the barn and beyond as it circles around to 9 Ferry Road.

Motion made by Ms. Davis to approve the variance to construct a 24' x 40' free-standing garage nine feet (9') into the side-yard setback with no conditions. Motion seconded by Mr. Brackett. Ms. Davis spoke to her motion noting that every case is different, that it amazes her how conversation and testimony clarify so many questions and issues, that having two lots with one owner is unique, that public rights are not violated, that there is no other feasible place to locate the garage and it satisfied all the criteria. Mr. Brackett agreed with Ms. Davis, that it meets all the criteria because of the uniqueness of the property and there was no opposing testimony. Vote was 4:1. Mr. Martin opposed. Motion passed. Variance granted.

Mr. Martin stated that a Notice of Decision would be issued within the week and advised the Applicant of the 30-day Appeal period.

2. Case 176-026 (4-27-17): Lori McGibbon, 7 Stuart Street, Hudson, NH, requests a Variance to establish a dog training facility at 214-216 Central Street, Hudson, NH, which is not a use specifically listed in the Table of Permitted Uses. [Map 176, Lot 026, Zoned B; HZO Article V §334-20, Allowed Uses provided in tables]

Mr. Martin read the Case into the record and stated that the Board received an email request yesterday from Bob James, authorized representative from Keller Williams Realty Nashua, that the applicant no longer wants to pursue the dog training facility. Motion made by Ms. Davis to accept the withdrawal of Case #176-026 (4-27-17) without prejudice. Motion seconded by Ms. Shuman. Ms. Davis stated the applicant has well maintained the property at 7 Stuart Street and that if this variance had been pursued, she would have been inclined to approve it. Ms. Shuman concurred. Motion passed. Vote 5:0. Case withdrawn without prejudice.

II. REVIEW OF MINUTES

1. 1-26-17 Minutes

Board reviewed the draft Minutes. Ms. Davis noted that the letterhead needs to be changed to reflect Mr. Martin as the Chairman. Ms. Shuman noted that her name has a variety of spellings. Additional edits to clarify were made on page 4, changing “ruling” to “decision” and clarification on the Rehearing Case and additional edits made for spelling and grammatical errors.

Motion made by Ms. Shuman to approve the 1/26/2017 Minutes as amended. Motion seconded by Ms. Davis. Vote was unanimous. Motion carried. Minutes approved.

2. 4-23-17 Workshop Meeting – Minutes?

Mr. Martin noted that the workshop was held and that Minutes were not taken. Mr. Buttrick prepared skeletal Minutes to satisfy the RSA and noted that there is no need for the Board to vote on them.

III. REQUEST FOR REHEARING

There were no requests presented for Board consideration.

IV. OTHER

1. Bylaws

Mr. Martin stated that when the Bylaws were amended in 2011, the Board did not formally present them to the Board of Selectmen. Mr. Buttrick stated that Board went through the correct process of holding Public Hearings and formally adopting the Amended Version in June 2011, but the Town Code has the old version of the Bylaws and when he investigated he was told that the Board of Selectmen had to approve the Amended Bylaws before inclusion into the Town Code. Mr. Buttrick suggested making a formal motion at this

meeting to present the June 2011 Bylaws to the Board of Selectmen for inclusion into the Town Code.

Motion made by Ms. Davis, seconded by Mr. Brackett to present to the Board of Selectmen (BoS) the 2011 Bylaws of the ZBA that were approved by the ZBA after two (2) Public Hearings on June 23, 2011 to update the Town Code, Section 143 titled Zoning Board of Adjustment. Letter to the BoS is to be written by ZBA Chairman, Normand Martin. Mr. Brackett suggested identifying the two (2) Public Hearing dates in the letter. Mr. Buttrick concurred. Vote was unanimous, 5:0. Motion passed.

2. Discussion of any Town/State activity of interest to the Board

Mr. Martin made the following announcements regarding upcoming events:

- Next Saturday the OEP (Office of Estate Planning) Conference will be held at the Grapponne Center in Concord, NH
- Next Tuesday, 5/2/17 at 7:00 PM, there is a Joint meeting scheduled with the BoS, Town Council and ZBA in a non-public session
- Next Workshop meeting tentatively scheduled for May 11th at 7:00 PM, Mr. Buttrick to post Notice to satisfy Right-to-Know Law

Discussion arose on the meeting times. By general consensus, the start time for ZBA meetings will be 7:00 PM. Ms. Davis questioned whether the change can be effective under the old Bylaws or whether the Board had to wait for the BoS to approve the 2011 ByLaws.

Ms. Davis asked about the ZORC (Zoning Ordinance Review Committee) meetings as there have been several discrepancies noted that should be addressed. Ms. Shuman thought the next meeting was scheduled for sometime in May. Mr. Buttrick was asked to email the Planning Board Chairman, with a copy to ZBA, regarding the next meeting.

Motion made by Ms. Davis, seconded by Mr. Brackett and unanimously voted to adjourn the meeting. The 4/27/2017 ZBA meeting adjourned at 8:26 PM.

NOTE: Minutes prepared in January 2019 from audio recording by current Recorder, Louise Knee, reviewed and approved at ZBA 2/28/2019 meeting and signed by 2019 ZBA Chairman.

Respectfully submitted,

Charles J. Brackett, ZBA Chairman