



# 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 – March 21, 2019 - approved

The Hudson Zoning Board of Adjustment met on March 21, 2019, in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall.

Chairman Charlie Brackett called the meeting to order at 7:00 PM; stated that it is a special meeting to conclude the business begun at the 3/14/2019 meeting where two (2) rounds of public testimony were received; noted that copies of the Agenda and the Appeal are on the shelf by the door; and announced housekeeping matters that included silencing cells phones, no talking and no smoking.

Members present were Charlie Brackett (Regular), Gary Daddario (Regular), Maryellen Davis (Regular/Acting Clerk), Gary Dearborn (Regular) and Jim Pacocha (Regular). Also present were Bruce Buttrick, Zoning Administrator, Dave Morin, Selectmen Representative, and Louise Knee, Recorder. For the record, all Regular Members voted.

#### **I. CONTINUED PUBLIC HEARINGS OF DEFERRED APPLICATIONS BEFORE THE BOARD BEGINNING 7:00 PM**

1. Case 209-001 (Deferred from 3-14-19): Mark Pilotte of Dakota Partners, LLC, 1264 Main St., Waltham, MA requests a Variance at 161 Lowell Road, Hudson, NH to permit the use of the entire buildable lot area (after subdivision) within the Applicant's lot for calculation of density, using a portion of that buildable lot area within the G Zone. [Map 209, Lot 001, Split districts: Zones B and G; HZO Article VII §334-27, Table of Minimum Dimensional Requirements- Note 2].

Ms. Davis read the Case into the record. Mr. Buttrick stated that included in the supplemental packet are copies of the three (3) Exhibits submitted at the last meeting: (1) Exhibit A 2018 Workforce Housing Purchase and Rent Limits, RSA 674:58-61; Exhibit B Hudson Crossing specifics; and Exhibit C February 2019 NH Magazine article on Affordable Housing Crisis. Mr. Brackett stated that additional correspondence has been received: (1) an anonymous/unsigned letter speaking out against the proposed project; and (2) a letter from Atty. Leonard addressing the issues raised at the last meeting.

Ms. Davis read the unsigned letter into the record.

Atty. Leonard read his five-page letter dated 3/18/2019 into the record. The three (3) issues addressed and excerpts included:

Not Official until reviewed, approved and signed  
Approved, as edited, 4/11/2019

## (1) Hardship criteria

- Multifamily homes are only allowed in the B Zone
- Only 5% of the land in Hudson is in the B Zone
- The exact location of the B Zone is defined by Lowell Road rather than characteristics of the land or other factual matters
- The lot has wetlands and steep slopes that reduce the buildable area
- Full buildable area of a lot is considered for every use except Multifamily. It is a “quirk” in the Zoning Ordinance and in the Zoning Administrator’s Zoning Determination
- Where a particular public need has been declared (NH RSA 674:59) the NH Supreme Court has stated that “the suitability of a specific parcel of land for that purpose should be considered for the purposes of determining hardship”.
- The adjacent multifamily development uses land in both its G & B Zones
- The proposed construction will be entirely contained in the B Zone portion of the lot. The acreage in the G Zone will not be developed and will remain passive recreation and serve as a buffer.
- A smaller number of units will have an adverse impact on the economics of the project and its ability to support professional management and administration
- Designing a smaller building adds a substantial cost and the cost will be added to the unit price

## (2) No Fair and Substantial Relationship

- The general purpose of a Zoning Ordinance is to separate incompatible uses; to locate uses where infrastructure exists; and to assure highest and best use of land to benefit both the private owner and public
- The general purpose for determining buildable lot area is to prevent overcrowding; to have spacing for safety access reasons; and to afford opportunities for active and passive recreation
- Zone area is irrelevant
- The proposed construction will be entirely contained in the B Zone portion of the lot.

## (3) Reasonable Use

- The proposed construction (buildings and parking) will be entirely contained in the B Zone portion of the lot where multifamily is permitted.
- The only use on the G section will be open space / passive recreation
- It is a reasonable use.

Mr. Pacocha stated that as presented, the proposal does not meet the criteria, especially “not being contrary to public interest” because, in his mind, it is contrary and will add an additional tax burden to the Town and believes Hudson has ‘workforce’ housing already with rents in the range proposed for this project.

Ms. Davis clarified that the use of the land is not questioned, just whether the land in the G Zone can be used to calculate the number of units in the B Zone and added that she questions whether the hardship criteria has been satisfied because hardship applies to the land and there is nothing unique about the land in this property. Mr.

Brackett stated that multifamily use is by right in the B Zone and that is not in front of the Board, just the increase in the number of units by utilizing the buildable land in the G Zone.

Ms. Davis noted that inclusion of both Zones yields ninety-six (96) units to be constructed in two (2) buildings, each three floors high and each with forty eight (48) units. Utilizing just the land in the B Zone would yield seventy-six (76) units by right, or thirty-eight (38) units in each building.

Attorney Leonard clarified the numbers. Utilizing just the land in the B Zone section of the proposed lot would yield seventy-one (71) units. If the lot were subdivided to include all of the land in the B Zone (which it cannot as that would create a land lock property), the number could be eight-one (81) units. Utilizing the lot as configured and as a whole (including the land in both the B Zone section and the G Zone section) yields ninety-six (96) units. Atty. Leonard pointed out that Fox Hollow, an abutter, utilized and developed in both their B and G Zones.

Mr. Dearborn asked, and received confirmation from Atty. Leonard that the additional acreage was selected from the G Zone so that the buildable acreage of the lot would substantiate the desired ninety-six (96) units, that all development would be in the B Zone section of the lot and that the three plus (3+) acres in the G Zone section of the lot would remain undeveloped and designed as open space and recreational land. Mr. Dearborn appreciated the open space area as that would also create a buffer when the larger remaining parcel gets developed. Both Mr. Brackett and Mr. Daddario stated that, if approved, there should be a condition/stipulation that G Zone portion of the lot never be developed.

Mr. Brackett stated that he checked workforce housing online, discovered that NH is recognized to be short on workforce housing, has the support of the State and recognizes it is being offered as an enticement to bring in business and industry for the State's growth and that any appeal would not come back to the Board but go straight to Court. Ms. Davis stated that does not necessarily apply to Municipalities or to Hudson as she checked earlier in the day and discovered that there are one hundred twenty seven (127) apartments for rent in Hudson in the nine to eleven hundred dollar (\$900 - \$1,100) range. Never the less, Mr. Brackett stated that this land is a good track of land for multifamily development.

Mr. Brackett stated that he is wrestling with how economics relates to hardship. Workforce housing is a recognized NH problem and he checked out other cities in the State and discovered very few cases and is impressed by the State's position that this need must be met. Ms. Davis stated that is not the issue as multifamily is allowed by right in the B Zone. Mr. Dearborn stated that, as an abutter, he would be more concerned with how the remaining large G Zone lot would be developed than this 12.7-acre lot for multifamily workforce housing.

Mr. Daddario stated that Hudson is compliant with the State of NH, that the RSAs state the importance of its use, that the need is there and, more important, the Hudson Zoning Ordinance does allow this use. Mr. Daddario stated that the applicant is before the Board for a variance to increase the number of units, from seventy-one to

ninety-six (71 to 96), and the Board needs to determine if the variance criteria has been met.

Atty. Leonard stated that the Board's first step is to determine if a variance is needed as determined by the Zoning Administrator or if the buildable area calculation can use the entire lot as a whole and not by Zone. Atty. Leonard noted that the entire development of the site, buildings and parking, will be contained in the B Zone section of the lot, where it is permitted by right.

Ms. Davis stated that there is no Zoning issue if the calculation is based on the number yielded by using just the B Zone area. Mr. Brackett and Ms. Davis noted that the subdivided lot could have been created at the B and G Zone line but instead was created with some G Zone land and creating a split zoned lot. Mr. Dearborn noted that the land area in the G Zone section of the subdivided lot would remain undeveloped. Mr. Pacocha stated that he appreciates that that section would remain undeveloped and recognized that there are many lots in Town that have split zones and require variances. Ms. Davis stated that the question is whether the whole area of the subdivided lot, both the land in the B and the G Zones, can be used in the calculation of the number of units.

Mr. Daddario stated that page 3 of the application, in bold letters, mentioned that there is no guidance in the Zoning Ordinance regarding split-zoned lots. Mr. Buttrick responded and agreed that the Hudson Zoning Ordinance is not well defined for bisected lots, the footnote 2 in the Table led to his determination and it appeared to him that the applicant wanted a specific number of units and included land in the G Zone to achieve that number and thought it best that the Board make that determination. Ms. Davis agreed with Mr. Buttrick. Mr. Buttrick stated that he found no Zoning records on the Fox Hollow development. Mr. Brackett noted that Mr. Buttrick has been consistent in his methodology and to the Board.

Motion made by Mr. Pacocha and seconded by Mr. Daddario to uphold the Zoning Determination that a variance is required to utilize the land area in the G Zone to calculate the available number of units to build in the B Zone. Mr. Pacocha stated that there are no prior examples and that seeking a variance for a split-zone property is consistent. Mr. Daddario stated that he supports the Zoning Administrator especially because multifamily use is not permitted in the G Zone. Vote was 5:0. Motion passed. Zoning Administrator's Determination upheld. Variance needed.

Motion made by Mr. Pacocha and seconded by Ms. Davis to not grant the variance request to include land from the G Zone section of the lot in the calculation for the number of units. Mr. Pacocha stated that the hardship criteria has not been met, that the increased number is contrary to the public interest and will add a burden to the community, that the application does not meet the spirit of the Ordinance and that substantial justice is not done as the benefit to the property owner does not outweigh the harm to the general public. Ms. Davis concurred with Mr. Pacocha and added that the use is reasonable with seventy-one (71) units, as per the Zoning Ordinance, and that the desire for ninety-six (96) units is a convenience to the builder, not the public. Mr. Brackett agreed that it is contrary to the public interest, that even though it is a NH State interest/need, there is no change required to Hudson Zoning Ordinance to meet the need, that the hardship criteria has not been met, that a smaller number of

units can be built and that it is a matter of scale and that it is not a good precedence to set using adjacent land for calculations. Mr. Daddario noted that only the variance for increased number of units is before the Board, that the project can still proceed with the allowed number of units and added that, in his opinion, criteria #4 has also not been satisfied as Fox Hollow, with units available for ownership and rental in the project next door, the new project could very well have a negative impact on the market value of the Fox Hollow units. Vote was 4:1. Mr. Dearborn opposed. Motion passed. Variance denied. The 30-day appeal period was noted.

Board took a break at 8:12 PM. Meeting called back to order at 8:24 PM.

## **II. Public Hearing:**

### By-Laws amendment 1st reading

Public Hearing opened at 8:25 PM. Mr. Buttrick noted that at the last hearing, the wording was “will consider the “vertical” (member) method of voting on each criteria.” It should have read “each request”. Mr. Brackett noted that the vertical/member method is the way the Board has always performed and per Town Counsel and State Law, the method should become part of the Board’s Bylaws. Mr. Buttrick stated that one more public hearing is needed to amend the Bylaws. Mr. Brackett asked if anyone else had a comment and, seeing no one, closed the public hearing at 8:27 PM

## **III. Minutes:**

### 2/28/19 Minutes

Board reviewed the edited revision presented and made no further changes. Motion made by Mr. Dearborn and seconded by Ms. Davis to approve the 2/28/2019 Minutes as edited and presented. Vote was 5:0. Motion passed. Minutes approved.

## **IV. REQUEST FOR REHEARING**

There were no requests presented for Board consideration.

## **V. OTHER**

### 1. Election of Officers - Clerk

The election for a Clerk was suspended at the last meeting to pursue shifting of some of the responsibilities to the Recorder and eliminate redundant effort. Mr. Buttrick stated that he has discussed the Clerk “function” and has “unofficial” notification that the Board of Selectmen (BoS) is okay to allow the Recorder to compile votes and issue the Notices of Decisions (NODs). Selectman Morin stated that he has discussed with the Town Administrator and the shift in some of the Clerk responsibilities to the Recorder is acceptable to him. Mr. Buttrick was asked to draft the modifications into the Bylaws. It was noted that two (2) Public Hearings have to be held to affect a change to the Bylaws. Ms. Davis stated that the main shift/reduction in the Clerk duties is the elimination of tracking the discussions of a Case and recapped that the main duties of the Clerk position would be to take the roll call, read the Cases into the record and summarize the votes onto a single page. Brief discussion arose on the NODs. Mr. Brackett stated that it is important that the NODs contain any and all

stipulations / conditions the Board has placed on their vote and be specific on any basis for denial. Mr. Dearborn suggested that what is declared on the Agenda be incorporated into all motions so it is clear what the Board is approving / disapproving.

Motion made by Mr. Brackett and seconded by Mr. Pacocha to elect Ms. Davis as the Clerk with its redefined duties. Vote was unanimous at 5:0. Motion passed.

## 2. Meeting suggestions

Mr. Dearborn noted that some Boards in Town Salute the Flag prior to every meeting and asked why the ZBA did not. No reason. After brief consideration, each Member stated that they would like to begin their meeting with the Pledge of Allegiance.

Mr. Dearborn asked about having everyone who addresses the Board to be sworn in as the Board relies on their testimony and there should be assurance that they are presenting the truth and only the truth. Briefly discussed. Has been tried before and found to be cumbersome.

Mr. Brackett stated that he could standardize his introduction of the meetings and having something written would insure that nothing gets omitted.

## 3. Board of Selectmen Representative

Mr. Dearborn stated that he would like to commend Selectman Morin for his participation and dedication to the Board. Everyone concurred and thanked him

In light of the fact that the ZBA has no Alternatives and that not all five (5) Regular Members can attend every meeting, a suggestion was made to consider allowing the Selectmen Liaison a voting seat to bring the compliment to five (5) Voting Members and avoid a 2-2 split vote that recently occurred. Selectman Morin stated that the BoS is about to elect a new Chairman and once done he would raise the question whether the Selectman Liaison could/should be appointed to vote as needed. It was noted that if changed, the Bylaws would need to be modified.

## 4. Next meeting

Mr. Buttrick stated that the next regular ZBA meeting is scheduled for March 28, 2019 and that there are two (2) Cases to be heard; however, only three (3) Members can attend the 28<sup>th</sup> so he reached out to the applicants and learned that they will ask to defer until there is a full Board and that they inquired if a meeting on the second Thursday, April 11, 2019 could be possible. Members checked their schedule and agreed. No meeting for 3/28/2019. Next meeting to be 4/11/2019.

Motion made by Mr. Dearborn, seconded by Ms. Davis and unanimously voted to adjourn the meeting. The 3/21/2019 ZBA meeting adjourned at 8:42 PM.

Respectfully submitted,

---

Charles J. Brackett, ZBA Chairman

Not Official until reviewed, approved and signed  
Approved, as edited, 4/11/2019