



# TOWN OF HUDSON

## Zoning Board of Adjustment



Charlie Brackett, Chairman

Marilyn E. McGrath, Selectmen Liaison

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### Meeting Minutes – August 27, 2020 – approved

#### I. CALL TO ORDER

#### II. PLEDGE OF ALLEGIANCE

Chairman Charlie Brackett called the meeting to order at 7:0 PM and invited everyone to stand for the Pledge of Allegiance. Mr. Brackett read the COVID-19 meeting procedure that in conformance with the NH State of Emergency Order #12 confirmed the following: (a) providing public access to meeting by telephone and video access; (b) provided public notice on how to access the meeting; (c) mechanism to advise if there is a problem with accessing meeting and (d) should there be an issue with accessibility, the meeting will need to be adjourned and rescheduled; and (e) that voting would be by roll call vote. Mr. Brackett stated that the Board would go into recess so that the public could call in their questions or concerns during public testimony and added that if anyone cannot gain access, that the meeting would need to be adjourned. Mr. Brackett noted that specific instructions for meeting access was included in both the Applicant Notification and the Abutter Notification and were posted on the website.

Mr. Buttrick read the Preamble into the record, identified as Attachment A of the Board's Bylaws, which included the procedure and process for the meeting, and the importance of the 30-day time period for appeal.

Clerk Gary Daddario took attendance. Members present were Charlie Brackett (Regular/Chair), Gary Daddario (Regular/Clerk), Brian Etienne (Regular via audio and visual remote access), Leo Fauvel (Alternate), Jim Pacocha (Regular via audio and visual remote access) and Ethan Severance (Alternate). Excused were Gary Dearborn (Regular/Vice Chair) and Marilyn McGrath, Selectman Liaison. Also present were Bruce Buttrick, Zoning Administrator and Louise Knee, Recorder (via audio and visual remote access). For the record, Alternate Fauvel was appointed to vote with the Regular Members.

#### III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

1. Case 163-024 (08-27-20): Andrew Worcester, 7 Telolian Dr., Hudson NH, requests a Variance to allow a driveway to a garage with an encroachment of 9.0 ft. into the side yard setback leaving 6.0 ft. where 15 feet is required. [Map 163, Lot 024-000; Zoned General One (G-1); HZO Article II, §334-6, Terminology, Definition; Building Setback; HZO Article VII, §334-27, Table of Minimum Dimensional Requirements].

Not Official until reviewed, approved and signed.

Approved as edited 9/24/2020

Clerk Daddario read the Case into the record. Property Owners Andrew Worcester and Kristina Young introduced themselves, sat at applicant's table, stated that they want to construct a garage/workshop in their backyard and extend their driveway to access the garage/workshop. The driveway currently ends in front of the garage and the extension would need to go into the sideyard setback nine feet (9'). The garage/workshop would not be visible from the road. The area is well wooded. The driveway extension would only be seen by one neighbor, Thomas and Kristin Couturier, 9 Telolian Drive, who were not at the meeting but did submit a letter, signed and dated 8/15/202, supporting the variance to encroach the side yard setback.

Mr. Worcester next addressed the Variance criteria. The information shared included:

*(1) not contrary to public interest*

- proposed driveway will not be generally visible from the other properties
- proposed driveway location is already flat so there is no need to grade the land and is clear so no trees will need to be cut

*(2) spirit of Ordinance observed*

- neighbor's house is approximately fifty feet (50') from property line
- there's a large wooded area between proposed driveway and neighbor's residence

*(3) substantial justice done to property owner*

- due to slopes and wetlands on property, the proposed location of the garage/workshop is the only possible location and allows use of large section of back lot
- substantial justice done to allow access to only possible location of garage/workshop

*(4) will not diminish surrounding property values*

- proposed driveway would generally be not visible from any of the surrounding properties since the area is heavily wooded and the houses are well separated

*(5) hardship*

- slopes and wetlands on property dictate location of proposed garage/workshop
- literal enforcement would prevent construction of the proposed garage/workshop

Public testimony opened at 7:13 PM. No one in the audience addressed the Board. Mr. Buttrick reported that there were no call-ins. Public testimony closed at 7:17 PM. It was noted that the letter received from the abutter was submitted into the record.

Mr. Daddario noted that there is some discrepancy in the documentation submitted and, to be clear for the record, the encroachment would leave six feet (6') to the property line. Mr. Pacocha noted that the applicant testified that the land would not need to be graded for the driveway, yet the plan by Maynard & Paquette Inc. dated October 1985 attached to the Staff Report would indicate otherwise. Mr. Brackett

stated that the plan prepared by Jeffrey Land Survey, LLC, submitted with the application would prevail and noted that it carries the PE (Professional Engineer) stamp. Mr. Brackett added that there has been no opposition to the proposed driveway encroachment and noted that it is well hidden and out of the way.

Mr. Daddario made the motion to grant the Variance as requested with two stipulations: (1) that a driveway permit be obtained; and (2) that the driveway profile plan be signed and stamped by a Physical Engineer (PE). Mr. Fauvel seconded the motion. Mr. Daddario spoke to his motion, noted that all Variance criteria have been satisfied, that a driveway is a normal use, that there is no negative impact and that the hardship criteria was met properly based on the land with its wetland and steep slope. Mr. Fauvel stated that his initial concern was with regard to the neighbor, but that has been addressed with the letter they submitted. Mr. Fauvel stated that his only other concern was that the State of NH requires Fire Department access and that should be addressed in the driveway permitting process. Mr. Buttrick noted that the stipulations would be addressed during the driveway permitting process and are redundant. Mr. Brackett stated that the stipulations may be redundant and noted that their inclusion as stipulations emphasizes their importance. Roll call vote was 5:0. Variance granted with two (2) stipulations. The 30-day appeal period was noted.

Mr. Brackett directed the Board's attention to Agenda III.3.

3. Case 175-019 (08-27-20): Joshua P. Lanzetta, Esq. of Bruton & Berube, PLLC., 601 Central Ave., Dover NH representing Christopher & Christine Floyd and Rene Joyal, 78 Highland St., Hudson, NH, requests an Appeal From An Administrative Decision of a Notice of Violation and Cease & Desist Order dated May 18, 2020 citing violation of the 2009 variance granted by the ZBA and 10 specific violations of the Hudson Zoning Ordinance. [Map 175, Lot 019-000; Zoned Town Residence (TR); HZO Article XV, Enforcement and Miscellaneous Provisions, §334-81, Appeals].

Clerk Daddario read the Case into the record. Mr. Buttrick stated that the applicant's representative emailed 8/19/2020 requesting a continuance to the 9/24/2020 meeting as the applicant mistakenly provided an incomplete copy of the Notice of Violation dated 5/18/2020. Mr. Buttrick asked the Board to schedule a Site Walk.

Atty. Joshua Lanzetta, 601 Central Avenue, Dover, NH, introduced himself as representing the applicant, confirmed the deferral and stated that there are no objections to holding a Site Walk prior to or on 9/24/2020.

Mr. Daddario made the motion to grant the applicant's request to defer the Case to 9/24/2020. Motion seconded by Mr. Fauvel. Mr. Buttrick stated that there is a caller waiting to speak to this Case and asked to check before a vote was taken. Board recessed for two minutes. Mr. Buttrick reported that the caller had disconnected. Roll call vote was 5:0. Case deferred to 9/24/2020. Mr. Buttrick to schedule the Site Walk prior to 9/24/2020.

Mr. Brackett directed the Board's attention to the second item on the Agenda (III.2).

2. Case 246-002 (08-27-20): John and Frederick Sullivan, 53 River Rd., Hudson NH, requests a Variance to allow a newly installed 8' x 12' shed to remain in the front yard setback 22'-10" where 50'-0" setback is required. [Map 246, Lot 002-000; Zoned Residential Two (R-2); HZO Article VII, Dimensional Requirements, §334-27, Table of Minimum Dimensional Requirements and §334-27.1 C, General requirements].

Clerk Daddario read the Case into the record. Mr. Buttrick referenced his Staff Report signed 8/19/2020 and stated that the Case is before the Board because sheds are not allowed in the front setback per the Zoning Ordinance.

John W. Sullivan sat at the applicant's table and introduced himself as the property owner and stated that the other property owner, his brother, Bill Sullivan, could not be at the meeting due to his disabilities. Mr. Sullivan stated that they live on a State (of NH) road, Route 3A, and that his house was constructed before Route 3A existed and Route 3A is a busy road. His house has been hit twice by vehicles, was broken into in January 2020 and added that there have been other calamities and that he is also not in good health. The shed is to house the snow blower and lawn mower and its location allows him to avoid having to go onto Route 3A. He also noted the incline in the property and that the shed has a six-foot (6') ramp. The shed actually replaces an old dilapidated metal shed and cannot be moved further from the road on account of the septic system. In fact, Mr. Sullivan stated that the front of the house does not face Route 3A and the shed is actually to the side of the house.

Mr. Sullivan next addressed the Variance criteria. The information shared included:

*(1) not contrary to public interest*

- the shed is placed behind 100-year old trees
- the shed has the same siding as the house
- the shed will have no impact on the essential character of the neighborhood and will not physically or visually infringe on any private or public rights
- the shed will not pose a threat to public health, safety or welfare

*(2) spirit of Ordinance observed*

- metal shed collapsed and was an eyesore before that, this shed is a better replacement, and is in the same location
- did research at the library – the road (River Road/Route 3A) was first laid in 1910 and the first deed to his house is 1880
- the front of his house does not face River Road, it faces the stream that feeds into pond (Eayrs) and he has trees that are greater than three hundred fifty years old (>350 y/o).
- River Road is to the side of his house
- His house is in the fifty-foot (50') setback
- The replacement shed does not conflict with the character of the neighborhood, which is now mixed use with Pioneer Auto and Lockheed

*(3) substantial justice done to property owner*

- the closest residence is the house on the other side of the pond that the owner wanted to put a chiropractic office on River Road that was before the Board a few months ago

- the owners, who are both elderly, would be able to conveniently access the shed from the existing driveway
  - the shed cannot be moved further away from the road because of the septic system
- (4) *will not diminish surrounding property values*
- any new construction would add value to the neighborhood
  - the shed is a relatively small structure that would blend in with the surrounding landscape
  - the tin shed was an eyesore
- (5) *hardship*
- the existing location of the septic system prevents moving the shed further away from the road
  - the lot is long and narrow with slopes and contours; the house is in the fifty foot (50') setback; and the wetland buffer to Eayrs Pond leaves little room for locating the shed
  - both property owners are elderly, he is a veteran and sick and his brother is disabled

Mr. Sullivan stated that when he checked with the Assessor's Office he was told he did not need a permit for any shed less than one hundred square feet (<100 SF) and seeing as how this is a replacement shed, they went ahead and installed it in the same location and now he is before the Board asking to keep it where it has always been. Mr. Buttrick stated that if he checked with Inspectional Services (Building Department) he would have been informed that a shed less than 200 square feet does not need a permit but must conform with Zoning.

Public testimony opened at 7:49 PM. No one addressed the Board. Board went into recess so Mr. Buttrick could check for call-ins. At 7:53 PM, Mr. Buttrick reported that there were no calls. Public testimony closed at 7:54 PM.

Mr. Brackett asked if there were two issues with regard to the front setback and the front of the house. Mr. Buttrick responded that it would be a stretch and that the Zoning Ordinance is specific that a shed should not be in the front setback. Mr. Brackett agreed that the issue is the front setback along River Road, that one purpose of the setback is for potential further future road widening and noted that the majority of the existing house is in the front setback. Mr. Brackett stated that the Board is protective of the front setback, noted that in a recent Case the Board insisted an applicant move the chiropractic office out of the front setback to avoid future road widening leading to an eminent domain issue and cited Mr. Sullivan's testimony that vehicles have already accidentally driven into his house and is inviting the same to happen to the shed being so close to the road.

Mr. Daddario inquired if an Equitable Waiver could be considered for where the shed has been placed and Mr. Buttrick responded that it does not apply as there was no permit pulled and its placement was not the result of an innocent error.

Mr. Daddario noted that the shed cannot be pushed back further into the property due to the location of the septic system and asked why the shed couldn't be placed at the end of the driveway and closer to the house for easier access. An aerial view of the

property was posted and discussed. It was noted that the structure at the end of the driveway and to the left is a screened patio. The camper currently parked could be moved and the shed placed there. Other potential shed locations were also noted. The ideal location for the shed is not across the driveway by the road.

Motion made by Mr. Etienne to deny the Variance request. Mr. Daddario seconded the motion. Mr. Etienne stated that it would alter the character of the neighborhood, that it sets a bad precedent and that there are other locations on the property for the shed. Mr. Daddario agreed that there are safer alternatives closer to the driveway and away from the road and the request fails to meet any of the criteria. Roll call vote was 5:0. Variance denied. The 30-day appeal period was noted. Mr. Sullivan asked what his next step should be and Mr. Brackett suggested he discuss options with Mr. Buttrick.

#### **IV. REQUEST FOR REHEARING:**

Mr. Buttrick stated that a request for rehearing has been received for 4-14 Tolles Street and will appear on the 9/24/2020 Agenda.

#### **V. PUBLIC HEARING – ByLaws amendment (2<sup>nd</sup> reading)**

Public Hearing opened at 8:21 PM. Mr. Buttrick noted the correction made from the 8/13/2020 meeting and that this is the second reading. No one was present in the audience and there were no phone calls. Public Hearing closed at 8:23 PM. Motion made by Mr. Daddario and seconded by Mr. Etienne to approve the ByLaws as amended 8/13/2020. Roll call vote was 5:0. ByLaws amended.

#### **VI. REVIEW OF MINUTES: 8/13/20**

The edited version was presented and no further changes were made. Motion made by Mr. Daddario and seconded by Mr. Etienne to approve the 8/13/2020 Minutes as edited. Roll call vote was 5:0.

#### **VII. OTHER**

##### **1. Site Walk for Case #175-019 at 78 Highland Street – before 9/24/2020**

Mr. Buttrick stated that Town Counsel has been asked to consult with the Board at 6:30 PM on 9/24/2020 and suggested the Site Walk be scheduled before that date. Mr. Etienne expressed his flexibility and his desire to have the Site Walk as early in the morning as possible. Mr. Buttrick to coordinate.

Motion made by Mr. Daddario, seconded by Mr. Pacocha and unanimously voted to adjourn the meeting. The ZBA 8/27/2020 meeting adjourned at 8:26 PM.

Respectfully submitted,

Charles J. Brackett, Chairman