



# TOWN OF HUDSON

## Zoning Board of Adjustment



Charlie Brackett, Chairman      Marilyn E. McGrath, Selectmen Liaison

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### **MEETING MINUTES – May 21, 2020 - approved**

#### **COVID-19 Meeting Procedure**

In response to the NH State of Emergency Order #12 Pursuant to Executive Order 2020-04 regarding COVID-19, The Hudson Zoning Board of Adjustment conducted a virtual public meeting and hearings, held electronically by remote video & conference call on Thursday, May 21, 2020, at 7:00 PM. Written comments were requested to be sent in advance either by: 1) Email ...to [bbuttrick@hudsonnh.gov](mailto:bbuttrick@hudsonnh.gov) prior to 5:00 pm, May 21, 2020; or 2) Mail to ZBA, c/o Bruce Buttrick, Hudson Town Hall, 12 School St., Hudson, NH 03051. Details on how the public could listen in and/or comment, were given on the Town Website, Zoning Board of Adjustment page at: <https://www.hudsonnh.gov/bc-zba> or by calling (603) 886-6008 prior to the date of the meeting. Applications on the agenda were posted on the Town Website for viewing/download using the same link above (then click: View Agendas, Minutes, Packets & Videos). The meeting was streamed live on Hudson Community Television, Cable Channel 22 and online at: <http://hudsonctv.com/CablecastPublicSite/watch/2?channel=3>.

#### **I. CALL TO ORDER**

Chairman Brackett called the meeting to order at 7:00 PM; read the Covid-19 Meeting Procedure into the record; noted that the Members have logged in remotely; that voting would be by roll call vote; and that the Board would go into recess so that the public could call in their questions/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.

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

Clerk Daddario took the roll call. Members present through audio and visual remote access were Charlie Brackett (Regular/Chair), Gary Daddario (Regular/Clerk), Gary Dearborn (Regular/Vice Chair), Brian Etienne (Regular) and Jim Pacocha (Regular). Each Member attested that they were alone at their access location. Also present remotely was Louise Knee, Recorder. Bruce Buttrick, Zoning Administrator, was present and located in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall,. It was noted that there was no one present in the meeting room and that HCTV Staff was in the adjoining room. Excused was Marilyn McGrath, Selectman Liaison. For the record, all Members voted.

**II. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:**

1. Case 246-001 (05-21-20) (deferred from 3-12-20): 2 Stonemill Dr., Hudson, NH. Received applicant email—Request to be deferred to May 28, 2020 ZBA Meeting.

Mr. Buttrick read the Case into the record and noted that an email dated 4/15/2020 was received from the Applicant's attorney (Jay Leonard) requesting deferment to the May 28<sup>th</sup> meeting due to a scheduling conflict. It was noted that this Case had also been deferred from the 3/12/2020 meeting, due to lack of a full Board present, to the 3/26/2020 meeting, which was then cancelled due to Covid-19. Motion made by Mr. Dearborn and seconded by Mr. Daddario to accept the request and defer the Case to the 5/28/2020 meeting. Roll call vote was 5:0. Request approved.

2. Case 235-002 (05-21-20): Jack Beard, 4 Stuart St., Hudson, NH requests a Home Occupation Special Exception to operate a fence installation service business with office activities of computer work for client estimates and ordering fence materials for delivery & install at job site. Some work in garage for preparation/custom installs and limited outdoor storage of material with new fence surround. [Map 235, Lot 002-000; Split Zoned General-One (G-1) and Residential-Two (R-2); HZO Article VI, §334-24, Special Exceptions, Home Occupations].

Clerk Daddario read the Case into the record. Applicant Jack Beard joined the meeting remotely (visual and audio), introduced himself and stated that he was alone.

Mr. Buttrick referenced his Zoning Determination #19-004 dated 1/14/2019 and his Staff Report signed 5/14/2020, noted that this is an existing non-conforming lot of record, due to insufficient area and frontage, and is split by two (2) Zones (G-1 & R-2). The Home Occupation Special Exception is for an off-site fence installation operation that would use the house for computer work to provide client estimates and order supplies, store some tools in the garage and occasionally do work in the garage for custom installs and temporary outside storage of materials behind the fence.

Mr. Beard unmuted himself and addressed the Board, stated that Mr. Buttrick outlined what is needed for the fence installation service he wants to provide, noted that he is now retired and his home is split diagonally by two (2) Zones with part of it in the Business Zone, that he meets potential customers at their location to measure and then provides the estimate and if they want the fence, he orders the material from his home computer. Mr. Brackett asked Mr. Beard if he had more information to offer why the Board should consider granting a Special Exception and Mr. Beard stated that it was all in his application. Mr. Beard's handwritten application was posted on the screen for everyone's viewing.

Mr. Brackett asked Mr. Buttrick if any public input (phone calls or emails or mail) had been received and Mr. Buttrick responded that there has been no public input.

Public testimony opened at 7:15 PM. Mr. Brackett declared a five (5) minute recess for Mr. Buttrick to man the phones and check email. Board resumed the meeting at

7:20 PM. Mr. Buttrick reported that there was no public input received. Public testimony closed at 7:20 PM

Board deliberation ensued. Mr. Brackett noted that there are several letters going back a few years. Mr. Buttrick responded that the applicant started making inquiries in 2017 and only recently submitted an application, and, as per usual, it was circulated among Town Staff. Only the Town Engineer responded with concerns if the lot required a second driveway for access to storage. Mr. Brackett noted that it can't have a second driveway without a Variance and that is not before the Board. Mr. Brackett also noted that it is not a traditional residential neighborhood, that there are several homes with business as well as a church, a hairdresser, an auto repair facility, an auto sales facility and a dog day care in the neighborhood.

Mr. Dearborn stated that he drove by to view the site and it appears that access to the storage area is already being used as a second driveway, that a home Occupation is supposed to be 'silent' to the neighborhood but there was a flatbed Isuzu truck parked in the driveway and expressed concern that the Home Occupation would increase traffic to the neighborhood.

Mr. Etienne stated that this Home Occupation would be similar to the other uses in the neighborhood and questioned whether the deliveries to the home could be in the evening hours and whether it also included a cement truck. Mr. Pacocha noted that a Home Occupation is for the homeowner and according to the application more people are involved, like his friend Shawn Swett and his daughter Tiffany Beard, and questioned if any of the vehicles exceeds 13,500 GVW (Gross Vehicle Weight). Mr. Daddario shared Mr. Pacocha's questions and questioned the parking and whether there would be off-street parking involved.

Mr. Beard responded and the following information was obtained: Shawn Swett lives at 4 Stuart Street as does his daughter and grandson; there are four (4) vehicles, his daughter's Toyota Corolla that is in the garage, Mr. Swett's and his pickups which are parked in the driveway, and the Isuzu flatbed used for business also parked in the driveway and weighs approximately eleven thousand (~11,000) pounds; and noted that generally materials arrive one day and leaves the next day to be installed. Mr. Pacocha asked if there are any business logos on the vehicles and Mr. Beard responded that there was on only one vehicle – the Isuzu.

Mr. Brackett noted that Stuart Street is between two (2) arterial roadways, that the change to the Business Zone included an arbitrary five hundred foot (500') swath of land that entrapped several neighborhoods in Town, that the majority of the properties in this neighborhood area have some business use, and that, in his opinion, to not grant the Special Exception would be a disservice because it is no longer really a residential area and even though it is unusual it is not unusual to this area.

Discussion arose on the second driveway. It is not allowed and appears to already be in use. An aerial view taken from 2017 was posted and a second driveway was not apparent. It was noted that a second driveway would require a separate Variance and that Variance is not in front of the Board. Attaching a condition to the Home Occupation Special Exception prohibiting a second driveway was considered and dismissed so as not to prevent a Variance from being pursued.

Motion made by Mr. Etienne and seconded by Mr. Pacocha to approve the Home Occupation Special Exception with no stipulations. Roll call vote was 4:1. Mr. Dearborn opposed. Home Occupation Special Exception granted. The 30-day appeal period was noted.

3. Case 175-088 (05-21-20): Albert J. & Ann M. Antosca, 13 Alpine Ave., Hudson, NH [Map 175, Lot 088-000; Zoned Business (B)] requests four (4) Variances:
- (1) To allow the addition of an Accessory Dwelling Unit (ADU) to be attached to an existing single-family dwelling on a lot in the Business (B) Zoning District which does not allow single family dwellings. [HZO Article V, §334-20 and §334-21, Table of Permitted Principal Uses; and HZO Article XIII A, §334-73.3, Accessory Dwelling Units, Provisions];
  - (2) To allow the enlargement of an existing single family dwelling in the B District to be extended/enlarged to accommodate the ADU. [HZO Article VIII, §334-29, Extension or enlargement of nonconforming uses];
  - (3) To allow the ADU with a 34.6 ft. setback from Alpine Ave., 21.2 ft. setback from Cliff Ave. and 48 ft. setback from Cliff Ave. where 50 foot setbacks are required. [HZO Article VII, §334-27, Table of Minimum Dimensional Requirements];
  - (4) To allow an approx. 947 sqft. ADU where 750 sqft. is allowed. [HZO Article XIII A, §334-73.3 H, Accessory Dwelling Units, Provisions].

Clerk Daddario read the Case into the record. Mr. Brackett asked the Board's preference – whether to hear each Variance separately or to hear the total Case and vote on each Variance separately. Consensus was to hear the whole Case and vote on each Variance separately.

Electronic remote connections established separately with Atty. Brad Westgate of Winer & Bennett, LLP located in Nashua, NH, Albert & Ann Antosca applicants and occupants of 13 Alpine Ave, and civil engineer and septic designer Michael Grainger, LLS, of MJ Grainier Engineering, Inc. in Hudson, NH. Each attested to being alone at their respective locations.

Atty. Brad Westgate introduced himself as representing the property owners and applicants Albert & Ann Antosca and thanked the Board for the opportunity to present their Case.

Atty. Westgate stated that the property lies in the Business District and is the cause for three (3) of the Variances being requested. The property is an existing non-conforming lot being a residence in the Business District and failing to meet two of the three required front setbacks and failing to meet the minimum lot size. The site has three (3) road frontages – 150' on Cliff Avenue, another 113' on Cliff Avenue and 155' on Alpine Avenue – and only one side that abuts land. The Zoning Map was displayed and it was noted that the site is at the outer edge of the Business Zone in a neighborhood that has retained its residential character with the abutting Residential Zone. A GIS Overview was next displayed displaying the site with the location of the proposed ADU. It was noted that the land across from the ADU to the East is not developed along Cliff Avenue. The site has Town water and an onsite septic system.

According to the Town's records, the house was built in 1952 and is almost seventy years old (70 y/o).

Atty. Westgate stated that the property is unique having three (3) road frontages and now located in the Business Zone even though well removed from any business aspect and with the Residential Zone across Alpine Avenue. The neighborhood is residential and all the homes were constructed in the same era. The house across the street, 16 Alpine Avenue, is a single-family residence with an ADU above their detached garage.

Atty. Westgate stated that it is the Business Zone setting that requires three (3) of the four (4) Variances before the Board. The location of the ADU was selected because it enables it to be setback from the front of the home and maintain the Business Zone fifty foot (50') setback and generates a very minimal Variance to the setback from Cliff Avenue (leaving 48' of the 50' required setback from Cliff Avenue to the rear and 21.2' from the easterly side of Cliff Avenue to the side).

Atty. Westgate stated that the design of the ADU accommodates all the ADU requirements of the Zoning Ordinance except for Criteria H that limits the square footage (SF) to 750 SF. The proposed ADU is 974 SF, approximately 197 SF over. The occupant of the ADU will be the Applicants' daughter, who was raised in their home on Stuart Avenue, and her fiancé. Atty. Westgate stated that the spirit and Intent of the Zoning Ordinance have been met with this proposal and that the increase in square footage is not excessive.

Atty. Westgate referenced the Zoning Determinations rendered on this Case where it was noted that a single family home is not allowed in the Business Zone but the home was built prior to the Zone change and became a non-conforming requiring two (2) Variances – one to expand a non-conforming structure and another to expand the use and add an ADU. Atty. Westgate noted that the business zone requires a fifty foot (50') front setback and considering that this lot has three (3) road frontages leaves a very small building envelope and the need for a third Variance.

Atty. Westgate complimented Mr. Buttrick on the preparation of his Staff Report and addressed the two (2) comments received from the Town Engineer, Elvis Dhima, PE, dated 3/6/2020 regarding septic system capability and driveway widening. Mr. Grainger applied to NHDES (NH Department of Environmental Services) for a septic permit and posted NHDES Approval dated 2/7/2020 and noted item D.4 that identifies that the approval is for a two bedroom house and a one bedroom studio apartment. Atty. Westgate stated that the existing septic system is capable of handling the ADU based on the gallons calculated but in the event there arose an issue a replacement system has been designed and approved. Atty. Westgate stated that Mr. Grainger is present (connected remotely) to answer any questions. Atty. Westgate noted that the driveway is along Alpine Avenue and with regard to the question raised of driveway widening, he consulted with his clients and can confirm that there will be no driveway widening at the apron. Atty. Westgate stated that Mr. Buttrick's Staff Report also noted that a shed on the property does not comply with the fifty foot (50') setback; that the shed was permitted in 1989; and questioned whether it is considered "grandfathered" or whether an Equitable Waiver should be sought. Before discussion ensued, Mr. Brackett noted that the shed is not related to the Variances before the Board and its resolution should be pursued independently.

Atty. Westgate next addressed the Variance criteria. The information shared included:

1. *not contrary to public interest*
  - despite being currently in the Business Zone, the house was constructed approximately seventy (70) years age
  - the neighborhood is still residential
  - an ADU is appropriate to a residence
2. *spirit of Ordinance observed*
  - the Spirit is derived from the Purpose and ADU's provide Affordable Housing
  - there is no burden to Town's infrastructure
  - the location is in a residential neighborhood
3. *substantial justice done*
  - there would be no gain to the public from a denial
  - there would be no consequence to the public from an approval
4. *will not diminish surrounding property values*
  - there will be no adverse impact
  - neighbors/abutters contacted regarding the ADU project and nine (9) submitted independent letters of support. The letters submitted were from: June Parker, 15 Alpine Avenue; Scott & Melissa Weikle, 6 Cliff Avenue; Leo & Karen Graham, 12 Alpine Avenue; Claudette Duval, 16 Alpine Avenue; Rick & Cheri Chenel, 4 Cliff Avenue; Maurice & Laura Charron, 13 Burnham Road; Vaya & Arthur Handaras, 162 Central Avenue; Jacqueline Thissell, 19 Alpine Avenue; and Stanley Eaton, 7 Burnham Road.
5. *hardship*
  - special condition exists – property now located in the Business Zone and has three (3) road frontages
  - neighborhood has retained the residential character and abuts the Residential Zone
  - three (3) frontages in the Business Zone at fifty feet (50') each, leaves a very small building envelope
  - there is open space on the lot to the east
  - an ADU is a reasonable residential Use

Public testimony opened at 8:29 PM. Board went into recess while Mr. Buttrick manned the phones and checked email. At 8:36 PM, Mr. Buttrick reported that there was no public input received. Public testimony closed at 8:36 PM

Board deliberation ensued. Mr. Dearborn stated that even though located in the Business Zone, there are no businesses in the neighborhood and does not have a concern regarding the Business Zone increased setback infringement but the lot is half the size required and the Board has a history with denying other ADUs with greater square footage and noted that none of the abutters' letters submitted identified the significant increase in square footage. Atty. Westgate stated that the lot size not

being conforming has been recognized. Mr. and Mrs. Antosca stated that they showed the plan and the ADU layout to their neighbors.

Mr. Etienne shared Mr. Dearborn's concerns and asked to view the construction detail of the proposed ADU. The ADU floor plan was posted and Mr. Etienne noted that the den creates the overage in square footage and noted that it could readily be converted to a second bedroom. Mr. Antosca stated that the door in the den provides the unit with a second egress. Mrs. Antosca stated that that den's door connects to her home.

Mr. Daddario shared Mr. Etienne's observations, noted that multiple variances are needed for an ADU but noted that nothing has been submitted justifying a larger ADU and questioned why there is a staircase, going up and down in the ADU if it is to be a single story unit. Mr. Antosca responded that the stairways lead to the attic and to the basement.

Mr. Brackett stated that the Zone changed to commercial because of the proximity to Ferry Street and an arbitrary five hundred foot (500') swath of land was selected that hit the Residential Zone. The area has maintained its residential character. Mr. Brackett stated that, in his opinion, an ADU is to be part of the residence and easily re-converted to the main residence once no longer needed, but this ADU looks like a separate building which could easily be converted to a two-family structure and noted that it appears that the connector to the main house is the garage. Mr. Buttrick responded and pointed out that the connector is the breezeway, to be constructed, behind the garage to connect the main house to the ADU and that there is nothing in the Zoning Ordinance or RSA 674:71 mandating the single-house look. Mr. Dearborn agreed with Mr. Brackett regarding the look of it being two separate houses.

Atty. Westgate noted that the house across the street (16 Alpine Avenue) has an ADU in its detached garage on the second floor and stated that the practicality and age of the property was taken into serious consideration. The house is seventy (70) years old and a second story addition is not possible, there will continue to be single utilities and the occupant for the ADU is a family member. Mr. Brackett noted that the law changed and ADU's are no longer restricted to family member(s). Mr. Antosca recapped the various designs considered and the flaws that resulted (conflicting roof lines, greater setback intrusions etc.) and why they will create the breezeway to connect the ADU to the main house.

Mr. Etienne asked if the exterior of the ADU would match the house and why there is a separation on the newly approved septic plan. Mr. Antosca answered that the existing house will actually be renovated to match the proposed siding for the ADU. Mr. Grainger responded that, in his professional opinion, installing a separate septic tank to feed into the existing leach field was a better plan.

Board proceeded to consider each Variance separately.

Variance (1) allow an ADU to existing house in Business Zone

Motion made by Mr. Etienne and seconded by Mr. Daddario to grant the Variance for the addition of an ADU to the residence in the Business Zone.

Mr. Daddario spoke to his second noting that, in his opinion, all five (5) variance criteria have been satisfied: the addition of an ADU is not contrary to public interest, it is in character with the neighborhood; the request observes the Spirit of the Ordinance; there is substantial justice done and it would be detrimental to not provide housing; it will not diminish property values, there are similar ADUs in the neighborhood and several neighbors have submitted letters of support; and hardship has been met as it a a unique lot with three (3) road frontages and is located in the B Zone. Mr. Etienne spoke to his motion and agreed with Mr. Daddario's reasoning as the request is a natural expansion of a home residence, the neighborhood is residential, substantial justice would be done to the property owner with no adverse impact onto the public, there is no conflict with the Zoning Ordinance and it is a corner lot with three (3) road frontages with enough land for an ADU.

Roll call vote was 4:1. Mr. Dearborn opposed. Variance granted.

Variance (2) allow enlargement of dwelling unit in Business Zone for an ADU

Motion made by Mr. Pacocha and seconded by Mr. Daddario to grant the variance to allow enlargement of the existing non-conforming family residence for an ADU.

Mr. Pacocha spoke to his motion noting that the variance is required because the Town changed the Zone to Business, and an ADU is an allowed use for residences, the granting will grant justice to the applicants and will cause no harm to the general public, it will increase property values and the hardship was caused by the Town. Mr. Daddario spoke to his second, noted that this variance tracks with the prior variance, that it observes the Spirit of the Ordinance particularly because the neighborhood retained its residential character, that substantial justice would be done, that the property owners seek to help a family member, that new construction increases property values, that many abutters support the ADU and that hardship exists because the Town changed the Zone. Mr. Brackett stated that he would vote against the request as it is not, in his opinion, an enlargement of the family unit to accommodate an ADU but a separate structure altogether. Mr. Dearborn stated that it failed to meet any of the criteria for the granting of a variance as, in his opinion, it is not an ADU but a separate building.

Roll call vote was 3:2. Mr. Brackett and Mr. Dearborn opposed. Variance granted.

Variance (3) to allow ADU to encroach into the three (3) front setbacks

Motion made by Mr. Dearborn and seconded by Mr. Pacocha to approve the encroachments into the three (3) front setbacks for the addition of an ADU.

Mr. Dearborn spoke to his motion and stated that this is the lesser of all the variances of this Case, the imposing of the Business Zone's fifty foot (50') front setback onto a residential neighborhood is the hardship but also insignificant in this Case because the encroachments are all behind the wooden fence and would not be visible. Mr. Pacocha concurred and noted that all the criteria were satisfied. Mr. Brackett added that this is a classic case where variance is required because of the Zone change made by the Town and also because of the unusual aspect that the lot has three (3) road



frontages, that substantial justice is done to the property owners and it will not devalue the neighborhood's property values.

Roll call vote was 5:0. Variance granted.

Variance (4) to allow construction of a 934 SF ADU

Motion made by Mr. Etienne seconded by Mr. Dearborn to not grant a variance to allow construction of a 934 SF ADU.

Mr. Etienne stated that even though it may not be contrary to public interest and does provide affordable housing, the issue is hardship as it has not been satisfied and there has been no evidence presented justifying an over-the-limit ADU. Mr. Dearborn stated that it has been the Board's practice to uphold the 750 SF ADU, as specified in the Zoning Ordinance, that there has been no justification presented requiring a larger unit and added that this lot is also half the size of a lot's requirement. Mr. Pacocha stated that the Board has made exceptions in the past. It was noted that there were special circumstances for those exceptions. Mr. Etienne stated that the Zoning Ordinance is clear in the 750 SF limitation and noted that it was voted into the Ordinance by the Town's people. Mr. Brackett stated that there is nothing unique requiring a larger living unit. Mr. Daddario added that three (3) variances are required to create an ADU at this site and that nothing has been presented justifying a larger size unit

Roll call vote on motion not to grant the Variance was 4:1. Mr. Pacocha voted to grant. Variance request denied.

The 30-day appeal period was noted.

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

No requests were presented for Board consideration

### **IV. REVIEW OF MINUTES: 2/27/20 Minutes; 3/12/20 Minutes**

2/27/2020 Minutes

Board reviewed the edited version presented and made no further amendments. Motion made by Mr. Dearborn and seconded by Mr. Etienne to approve the 2/27/20 Minutes as edited and presented. Procedural verbal vote was 5:0. Minutes approved.

3/12/2020 Minutes

Board reviewed the edited version presented and made no further amendments. Motion made by Mr. Dearborn and seconded by Mr. Daddario to approve the 3/12/20 Minutes as edited and presented. Procedural verbal vote was 5:0. Minutes approved.

**V. RECAP**

Reminder given to Members to mail back their Decision Sheets in the prepaid envelope.

Debrief of the first remote meeting. Comment made that it would be better to allow the applicant to respond to questions as they arise versus letting the questions accumulate. Having a split screen showing the plans was beneficial and appreciated.

Next ZBA meeting is next Thursday, 5/28/2020.

Motion made by Mr. Dearborn, seconded by Mr. Etienne and unanimously voted to adjourn the first remote meeting. The 5/21/2020 ZBA remote meeting adjourned at 9:51 PM.

Respectfully submitted,



Charles J. Brackett, Chairman