



# TOWN OF HUDSON

## Zoning Board of Adjustment



Charlie Brackett, Chairman

Marilyn E. McGrath, Selectmen Liaison

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### **MEETING MINUTES – August 13, 2020 – approved**

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

#### **II. PLEDGE OF ALLEGIANCE**

Chairman Charlie Brackett called the meeting to order at 7:01 PM and 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. Brackett invited everyone to stand for the Pledge of Allegiance.

Vice Chair Gary Dearborn 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), Gary Dearborn (Regular/Vice Chair), Leo Fauvel (Alternate) and Jim Pacocha (Regular). Excused were Brian Etienne (Regular) 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 165-155 (08-13-20): Christopher Baillargeon, 23 Brandy Lane, Pelham, NH requests a Special Exception for 77 Derry Street to operate a retail pet store selling puppies, kittens, fish, reptiles and pet supplies while also providing pet care education. [Map 165, Lot 155-000; Zoned Business (B); HZO Article VI, Special Exceptions, §334-23, General Requirements].

Not Official until reviewed, approved and signed.

As edited [BB, gd2]

Clerk Daddario read the Case into the record. Mr. Buttrick referenced his Zoning Determination #20-064 dated 6/11/2020 and his Staff Report signed 8/3/2020, acknowledged that the keeping of the animals overnight at the store fell under the definition of 'kennel' that requires a Special Exception and noted that the proposed unit in the mall is the same unit the Board previously approved for a similar business.

Christopher Baillargeon introduced himself and Mitchell Pelletier. Both were wearing a facial mask. Mr. Baillargeon stated that he has been working in the pet industry for seven (7) years, that he has no intention of operating a kennel but understands that the keeping of puppies overnight onsite falls under the definition of a kennel and is seeking a Special Exception. Mr. Baillargeon stated that his store will sell pets (dogs, cats, fish and reptiles), pet supplies and offer pet education and will operate from 10 AM – 6 PM seven (7) days a week.

Mr. Baillargeon stated that puppies generally sleep eighteen (18) hours a day and added that someone is present for two (2) hours after the store closes and that electronic monitoring would be in place.

Public testimony opened at 7:12 PM. No one addressed the Board. Board took a break at 7:13 PM to take phone calls from anyone else wishing to address the Case. Meeting reconvened at 7:18 PM. Mr. Buttrick reported that no phone calls were received. Public testimony concluded at 7:18 PM.

Mr. Fauvel asked whether the animals would be unattended for fourteen (14) hours and whether there would be any kind of monitoring system. Mr. Baillargeon confirmed and stated that cameras would be installed that he can access remotely and if anything does pop up he can be notified immediately and noted that he can reach the store within fifteen (15) minutes from where he lives.

Mr. Brackett stated that the only Town Official comment received was from the Animal Control Officer who noted that Mr. Baillargeon was working with Dr. Harvey to complete the necessary requirements and appears to meet the criteria. Jana McMillan, Animal Control Supervisor, also noted that the Applicant does not yet have a Veterinarian of Record. Mr. Baillargeon stated that having a Veterinarian of Record is both a State and a Town requirement, that he has begun the process but has not finalized any agreement until he obtains this Special Exception. Mr. Brackett noted that there was another applicant who had sought a kennel at this location and went through the State requirements and ended up at a different location.

Mr. Dearborn asked why Hudson was selected for the animal store. Mr. Baillargeon stated that he had been shopping for a while and when he found this space it was ideal with its location and traffic flow. In response to Mr. Dearborn's question to define "reptiles", Mr. Baillargeon stated that it would include chameleons, geckos and snakes.

Mr. Daddario made the motion to approve. Mr. Pacocha seconded the motion. Roll call vote was 5:0. Special Exception granted.

2. Case 190-096 (08-13-20): Paula Bowden, 1 Riverview Street, requests a Variance to build a 26' x 26' two car garage that has a side yard setback encroachment of 10.3 ft., leaving 4.7 ft. of side yard setback. [Map 190, Lot 096-000; Zoned Town Residence (TR); HZO Article VII, Dimensional Requirements, §334-27, Table of Minimum Dimensional Requirements].

Clerk Daddario read the Case into the record. Mr. Buttrick referenced his Zoning Determination #19-065 and his Staff Report signed 8/3/2020 noting the infringement into the side yard setback and need for Variance.

Paula Bowden introduced herself, sat at the applicant table with mask on and stated that she would like to withdraw her application at this time as there has been a change to propose a larger garage and that, according to Mr. Buttrick, would require a second variance for a front setback encroachment. Mr. Buttrick stated that the revised plan encroaches two feet into the front setback and cannot be addressed at this meeting as it has not been properly noticed.

Mr. Dearborn made the motion to accept the applicant's verbal request to withdraw the application. Mr. Fauvel seconded the motion. Mr. Fauvel stated that he would like to discuss the application. Mr. Brackett stated that he went to the site and also has questions. Mr. Brackett also noted that variances have strict criteria that must be satisfied and are based on the land and suggested that the applicant consult with Mr. Buttrick. Ms. Bowden noted that there was once a garage at that location. Mr. Buttrick asked the Members to share their questions and concerns with him. Roll call vote was 5:0. Variance application withdrawn, without prejudice.

3. Case 252-023 (08-13-20): Jessica Ryan Kozick, 6 McKinney Drive, requests a Home Occupation Special Exception to install a single chair home beauty salon in the lower level of the primary residence. [Map 252, Lot 023-000; Zoned Residential-One (R-1); HZO Article VI, Special Exceptions, §334-24, Home Occupations].

Clerk Daddario read the Case into the record. Mr. Buttrick referenced his Zoning Determination #20-066 dated 6/18/2020 and his Staff Report signed 8/3/2020 and noted that additional information has been received and included in the supplemental meeting packet. Jessica Ryan Kozick sat at the applicant's table with mask, introduced herself, and stated that she has been ill and the home salon will allow her to continue to practice her profession.

Mr. Buttrick stated that two abutters raised questions regarding covenant restrictions applied to their deeds forbidding business trade or profession to be operated from the residence. Mr. Buttrick reported that his research confirmed that this was a 42-lot subdivision approved in 1983 that did have restrictive covenants applied to each deed and that the original deed to 6 McKinney Drive (Lot 023-000) carried the covenant restrictions. Mr. Buttrick also stated that disputes with covenants are a private matter and does not involve ZBA or the Town. Mr. Brackett added that Town Counsel was contacted. Town Counsel confirmed that the covenants remain in effect even if not carried forward onto future deeds of the lots, that it is a private matter that does not concern or involve the Board until resolved and suggested that the Board not

listen to the Case until the applicant resolves with the subdivision to lift the deed restriction prohibiting an in-home business.

Ms. Kozick stated that she contacted her three (3) direct abutters and has their support, that she knows nothing of a deed restriction and questioned the next step. Mr. Brackett apologized for the seemingly late notice but it was only in the last couple of days ago that the issue was raised by others in the subdivision and suggested that Ms. Kozick seek her own legal opinion. Mr. Buttrick stated that a real estate lawyer would be knowledgeable of covenants and how to resolve/change or advise on why her deed dropped reference to any covenants.

Mr. Dearborn made the motion to accept withdrawal of the application, without prejudice. Mr. Pacocha seconded the motion. Roll call vote was 5:0. Case withdrawn without prejudice.

4. Case 111-017 (08-13-20): Earl J. Sanford of Sanford Surveying & Engineering representing 4NH Homes, LLC (c/o Mike Gallo), 597 New Boston Road, Bedford, NH requests a Variance for 151 Robinson Road to build a 28 ft. x 48 ft., two bedroom house with a 25 ft. front yard setback where 50 ft. is required. [Map 111, Lot 017-000; Zoned General-One (G-1); HZO Article VII, Dimensional Requirements, §334-27, Table of Minimum Dimensional Requirements].

Clerk Daddario read the Case into the record. Mr. Buttrick referenced his Zoning Determination #20-048 dated 5/13/2020 and his Staff Report signed 8/5/2020 and noted that currently the Town of Hudson is the Property Owner and in order to construct a house a Variance is needed for encroachment into the front setback as well as a Conditional Use Permit (CUP) from the Planning Board for construction in the Wetland Buffer.

Earl Sanford, PE, of Sanford Surveying & Engineering introduced himself and Mike Gallo of 4NH Homes. Both sat at the applicants' table and wore masks. Mr. Sanford posted a Site Plan dated 5/12/2020 titled Variance & Conditional Use Plan 4NH Homes, LLC, noted that it is a lot of record currently owned by the Town of Hudson created as a result of a four-lot subdivision in the 1970's with less than one (1) acre and identified the wetland line, the wetland buffer setback line and the road (front) setback line. Mr. Sanford noted that it is a "tight lot" with no building envelop unless granted a Variance and a Conditional Use Permit. Mr. Sanford stated that a two-bedroom house is being proposed and represents both the maximum possible as well as the minimum possible for a septic design and noted that placing the leach field outside the seventy five foot (75') well radius is ten feet (10') from the road which is permitted because a leach bed is not considered a structure.

Mr. Sanford addressed the Variance criteria. The information shared included:

*(1) not contrary to public interest*

- severe constraints by onsite wetlands – approximately 2/3 of lot
- Town approved lot predates current frontage setback

- Consistent with eighteen (18) other houses on Robinson Road in the front setback
  - Lot of record for over fifty (50) years
- (2) *spirit of Ordinance observed*
- consistent with other nonconforming houses in neighborhood
  - no wetland disturbance is proposed
  - septic system and driveway entrance conform with current regulations – thus promoting public health, safety and welfare
- (3) *substantial justice done to property owner*
- lot approved as a building lot by Planning Board
  - to condemn lot would cause far greater harm to individual owner than to general public
- (4) *will not diminish surrounding property values*
- consistent with other houses up and down Robinson Road
  - assessment, when built, would be greater than the older construction along Robinson Road and will not result in diminution of surrounding properties
- (5) *hardship*
- no feasible development is possible without this variance or substantially filling in the wetland
  - literal enforcement is tantamount to condemnation of the lot, which would be an unnecessary hardship
  - fair and reasonable to grant setback relief to make this a viable lot, without altering or impacting the wetland
  - it was legal in the 1960's to fill in wetlands to create building area
  - wetland to be protected, as delineated in the field

Mr. Brackett questioned the gray area on the plan noting that it appears as large as the proposed house. Mr. Sanford stated that the gray area represents the driveway with a turn around and added that because of the steep slope on Robinson Road, the entrance of the driveway was expanded for safety reasons. Mr. Dearborn noted the Town Engineer's concern regarding sight distance. Mr. Buttrick stated that the Applicant submitted sight distance and driveway profile to the Town Engineer this afternoon.

Mr. Brackett asked if anyone from the Town indicated that this was a buildable lot because, in his opinion, the reason the Town owns the lot is because it is not buildable. Mr. Gallo stated that the lot has been on the market for several months and when he spoke with the town, it was recognized that relief would be needed and added that obtaining the needed relief is a condition on the Purchase and Sales he signed with the Town. Mr. Buttrick confirmed that the Town acquired this lot, that the lot is not buildable as is and would need relief. Mr. Dearborn agreed and stated that he has concerns regarding the proposed deck.

Mr. Brackett stated that one of the reasons for a fifty-foot (50') setback on a Collector road is to plan for future widening of the road and care has to be given not to create a

situation for future eminent domain take-over. Mr. Gallo again mentioned the other eighteen (18) houses on the road that are in the fifty-foot (50') setback and added that he received the impression from the Town that he would get help the help/relief to build a house on this lot. Mr. Sanford added that his client would not have spent thousands of dollars to survey and develop plans without such assurance.

Discussion continued and opinions and consternation expressed. Mr. Daddario asked if, procedurally, the Board could grant a Variance to other than the Property Owner. Mr. Buttrick stated that the Town Administrator, Stephen Malizia, gave permission to Mr. Sanford to apply for the Variance in his letter dated 6/6/2020.

Mr. Brackett stated that the ZBA has not been privileged to any conversation or innuendos or promises made by the Town, that this is the only Board capable of granting a Variance and questioned why the lot was even placed on the market as it is one of the worse he has seen. Mr. Dearborn stated that every year the Town reviews its properties and decides to sell without knowing whether it is buildable or not. Mr. Buttrick added that a cursory review is performed on the lots when the decision is made to place them on the market and his review of this lot determined that it could not be developed without relief. Mr. Brackett noted that the ZBA has no political involvement with the Town and is governed solely by the Zoning Ordinance.

Mr. Sanford asked the Board to table the application and seek information from other Town Officials. Mr. Daddario stated that he would like to hear from the Town on why it was put on the market and what representations were made and/or encouragement given to the Applicant. Mr. Sanford stated that they did have a preliminary meetings with Town Officials. Mr. Dearborn stated that ZBA should have at the least received a letter or comments from the Town Officials.

Mr. Dearborn made the motion to continue the hearing to 9/24/2020 so the ZBA can be briefed by the Town and its representation of the property. Mr. Pacocha seconded the motion. Roll call vote was 5:0.

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

No requests were presented for Board consideration.

#### **V. PUBLIC HEARING – ByLaws amendment (1<sup>st</sup> reading)**

Public Hearing opened at 8:23 PM. Board reviewed the amendment that describes the role of the Selectman Liaison. One minor modification made, specifically, removing the words “deliberation and” prior to “discussion”. There were no call-ins. Public Hearing closed at 8:28 PM. Second Hearing will be at next meeting, 8/27/2020.

#### **VI. REVIEW OF MINUTES: 07/23/20**

Board reviewed the edited version and made no additional changes. Motion made by Mr. Dearborn and seconded by Mr. Daddario to approve the 7/23/2020 Minutes as edited. Vote was 5:0

**VII. OTHER:** 2020 Virtual Land Use Law Conference- 10/31/20- List of interested attendees

It was noted that the course curriculum is not yet available. Mr. Brackett stated that it is very beneficial for new Members and added that unless there are more advanced offerings for seasoned Members he himself might choose not to attend a 'refresher' course.

Motion made by Mr. Brackett, seconded by Mr. Pacocha and unanimously voted to adjourn the meeting. The 8/13/2020 ZBA meeting adjourned at 8:30 PM.

Respectfully submitted,

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Charles J. Brackett, Chairman