



TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Marilyn E. McGrath, Selectmen Liaison

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

MEETING MINUTES – February 25, 2021 - draft

I. CALL TO ORDER

Chairman Gary Daddario called the meeting to order at 7:05 PM, welcomed everyone 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. Daddario 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. Daddario 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.

Mr. Daddario invited everyone to stand for the Pledge of Allegiance and asked everyone to sign the contact meeting form for Covid tracking purposes.

Clerk Etienne took attendance. Members present were Gary Daddario (Regular/Chair), Brian Etienne (Regular/Clerk), Leo Fauvel (Regular), Ethan Severance (Alternate and remote), and Jim Pacocha (Regular). Also present were Bruce Buttrick, Zoning Administrator, Louise Knee, Recorder (via remote access) and Kara Roy, Interim Selectman Liaison. Excused was Marilyn McGrath, Selectman Liaison. For the record, Alternate Severance was seated as a Voting Member.

II. OLD BUSINESS:

- Case 157-001 (02-25-21) (continued from 01-28-21):** Andrea Mastrangelo, **56A Ledge Rd., Hudson, NH** requests a Home Occupation Special Exception to operate a home hair salon color studio business in the basement area of the primary residence. [Map 157, Lot 001-000; Zoned Residential-Two (R-2); HZO Article VI, Special Exceptions, §334-24, Home Occupations].

45 Mr. Buttrick read the Case into the record, provided a recap of the original
46 continuation and noted that a Public Hearing could not have been held last month
47 due to incomplete abutter notification and advised that even with recent email follow-
48 up with the Applicant, a septic design plan has not been submitted to the Town for
49 review.

50
51 Mr. Daddario asked if the Applicant was present. Ms. Mastrangelo was not present at
52 the meeting and Mr. Buttrick checked and confirmed that she was not remotely
53 connected, via phone or online. Mr. Daddario stated that it appears the application
54 has been abandoned. Mr. Buttrick stated that a withdrawal should identify whether it
55 is accepted “with prejudice” and “without prejudice”.

56
57 Mr. Etienne made the motion to accept the withdrawal of the application without
58 prejudice. Mr. Pacocha seconded the motion. Roll call vote was 5:0.

59
60

61 **III. PUBLIC HEARING OF SCHEDULED APPLICATIONS BEFORE THE BOARD:**

62
63 1. **Case 259-011 (02-25-21):** American Towers LLC and T-Mobile Northeast LLC
64 represented by Daniel D. Klasnick, Esq. of Duval & Klasnick LLC, P.O. Box 254,
65 Boxford, MA requests a Special Exception for **143 Dracut Rd., Hudson, NH** to allow a
66 proposed 155 ft. tall camouflaged wireless telecommunications tower and facility as a
67 mixed use on a single lot that includes a residential use. This proposal is considered a
68 Development of Regional Impact per RSA 36:57 IV, and RSA 12-K:7 Regional
69 Notification. [Map 259, Lot 011-000; Split Zoned General-One (G-1) & Residential-Two
70 (R-2); HZO Article III, General Regulations, §334-10.D, Mixed or dual use on a lot, and
71 Article V, Permitted Uses, §334-21, Table of Permitted Principal Uses].

72
73 Mr. Buttrick read the Case into the record. Mr. Etienne recused himself as he is an
74 employee of one of the Applicants and left the Board table. Mr. Buttrick referenced his
75 Staff Report signed 2/17/2021, noted that the eleven point eight (11.8) acre parcel is
76 split zoned with the smaller residential zone in the front section along Dracut Road
77 with an existing single family house and several commercial out-buildings previously
78 permitted by Variance in larger rear portion of the lot and advised that: (1) Article III,
79 General Regulations, §334-10.D, Mixed or dual use on a lot, does not apply because
80 §334-95 Siting Standards, states that a “different existing use or an existing structure
81 on the same lot shall not preclude that installation of a commercial wireless
82 telecommunication facility”; and (2) that Site Plan Review (SPR) and a Conditional Use
83 Permit (CUP) from the Planning Board are also required.

84
85 Atty. Daniel Klasnick representing the Applicants was connected remotely and
86 inquired about the Voting Members with Mr. Etienne recused. Chair Daddario
87 responded that there would be only four (4) Members voting on the Case and added
88 that there are no other Members on the Board, Alternates or Regular, and unless a
89 vacant position is filled, there would be only four (4) Voting Members next month.
90 Atty. Klasnick introduced Ryan Monte de Ramos, RF Engineer from T-Mobile, and
91 Scott Wirgan Engineer from American Towers who were both connected remotely and
92 available to answer questions. Atty. Klasnick stated that they have prepared and
93 submitted their SPR and CUP applications to the Planning Board.

94 Atty. Klasnick presented a Power Point presentation and the information shared
95 included:

- 96
- 97 • Site plan of the 11.8 acre lot showing the Zone line, the residence and
98 commercial buildings, the proposed 50' x 50' lease area for the tower and base
99 which will house the equipment cabinet and be protected by a 6' high chain link
100 fence and the gravel way, 12' wide and 120' long, from the tower base to
101 existing driveway with its access to Dracut Road, an arterial road
 - 102 • Aerial view showing that the proposed tower location in the already cleared area
103 at the tree edge
 - 104 • Proposal is for a 155' tall monopole tower camouflaged as a pine tree, capable to
105 house four (4) providers, T-Mobile plus three (3) others
 - 106 • T-Mobile intends to have nine (9) panel antenna and one (1) dish antenna at the
107 150' mark and anticipates one monthly maintenance trip to the site
 - 108 • Utilities will be underground
 - 109 • Engineer stamped structural letter by Michael Plahovinsak dated 12/29/2020
 - 110 • Real Estate Market Study by Mark Correnti, SRA dated 12/1/2020 attesting no
111 diminution in surrounding property values
 - 112 • T-Mobile Radio Frequency Report and pictures of coverage areas, pre & post
 - 113 • Balloon test performed 11/5/2020 – only visible around Dracut Road and
114 Sherburne Road – not visible from Ponderosa Drive, Long Pond Road, Norris
115 Road, Beverlee Road, Sagewood Drive, Anna Louise Drive, Robert Road, Spring
116 Street, Spaulding Hill Road, Parham Road, Wilson Drive, Crestwood Drive,
117 Summer Street, Slavin Drive, Gowing Road and Schaefer Circle
 - 118 • Pictures of balloon taken from Dracut Road and Sherburne Road and with
119 tower superimposed at balloon siting
- 120

121 Mr. Daddario asked Atty. Klasnick to address the five (5) criteria for the granting of a
122 Special Exception (S/E). Atty. Klasnick referenced his brief and noted that the S/E
123 criteria were addressed on pages 4-6. In brief, the information included:

- 124 (1) Use is permitted in the G-1 Zone by Special Exception
- 125 (2) Use meets Ordinance requirements regarding location, height, site and fall
126 zone radius and applications for Site Plan Review and Conditional Use
127 Permit have been submitted with the Planning Board
- 128 (3) Proposed use is consistent with the purpose and intent of the Zone, subject
129 to S/E, SPR and CUP
- 130 (4) Use is compatible with the character of the neighborhood with limited
131 visibility due to natural growth and dense vegetation and tower camouflaged
132 to look like a pine tree
- 133 (5) Access to be via extension of existing driveway from Dracut Road, an arterial
134 road.
- 135

136 At 7:46 PM, Mr. Daddario declared a five-minute recess for public to call-in or connect
137 remotely before opening the meeting for public testimony. At 7:52 PM Mr. Daddario
138 called the meeting back to order

139

140 At 7:53 PM, Public testimony opened. Mr. Daddario asked Mr. Buttrick to read the
141 emails received:

- 142 (1) Nancy & Kirk Hauman, 2 Norris Road, asked three (3) questions: (a) if
143 approved, what is the time frame from start to finish: (b) why is a cell tower
144 needed because according to coverage map Pelam and Dracut need it more;
145 & (c) why weren't Norris Road in MA notified of project. Mr. Buttrick stated
146 that he addressed the notification question, confirmed that notification
147 complied with the Laws and added that courtesy notices were sent and it
148 was posted in the Union Leader and the Lowell sun.
- 149 (2) Danielle Robichaud, 126 Norris Road, Tyngsboro, MA, expressed three (3)
150 concerns: a(a) health concern for radiation and impact on her children's long
151 term well being; (b) decrease in her property value; and (c) animal
152 displacement and impact on ecosystem
- 153 (3) Justin Moreau, 1 Norris Road, Hudson, NH and 132 Norris Road,
154 Tyngsboro, MA, expressed concerns for having a cell tower literally above his
155 head and the long term well being for his young children

156

157 Mr. Daddario asked the Applicant to respond to the emails before continuing with
158 public testimony. Atty. Klasnick stated that the estimated time frame to construct the
159 tower is approximately three (3) months; T-Mobile signed an affidavit for the location
160 and coverage map noting a significant gap in coverage and capacity; FCC has
161 jurisdiction on RF emissions and has standards and referred to the study in the
162 package noting that 2.64% of 100% of allowed exposure; referenced the Real Estate
163 study provided from a Broker attesting to no impact to property values from visibility;
164 and with regard to wildlife there was a detailed checklist and there was no impact, the
165 area is already cleared, there will be minimal grading and little disturbance.

166

167 Mr. Daddario asked Mr. Buttrick to queue in the callers:

168

- 169 (1) Nancy & Kirk Hauman, 2 and 130 Norris Road, addressed the Board. Mr.
170 Hauman noted that there were no pictures shown from Norris Road on the
171 balloon test visibility. Atty. Klasnick responded that the balloon was flown
172 to the height of the proposed tower and pictures were taken from public
173 access ways, because they don't have access to private property, in a one-
174 mile radius for its visibility and the balloon was not visible from Norris Road.
175 Mrs. Hauman questioned the location for the proposed tower as it is near an
176 area where three (3) structures exist. Atty. Klasnick stated that the area
177 selected is level and would require minor grading and be accessible from the
178 existing driveway from Dracut Road. Scott Wirgan, Engineer from American
179 Towers, added that the three (3) buildings are five to six feet (5'-6') higher in
180 elevation and the base of the proposed tower. Mr. and Mrs. Hauman
181 opposed to the project.
- 182 (2) Kimberly & Justin Moreau, 1 Norris Road, Hudson, NH and 132 Norris
183 Road, Tyngsboro, MA, addressed the Board. Mr. Moreau thanked the ZBA
184 and expressed concern that they were not notified of the project, that there
185 is new construction at 151 & 153 Dracut Road and their concerns should
186 also be heard, that this project is dangerous and they are opposed to it. Mr.
187 Buttrick stated that it is the Applicant's responsibility to provide a list of
188 Abutters, not the Town. Atty. Klasnick responded that he did double check
189 the list and that there is one (1) property in between so the Hauman's are

190 not direct Abutters and added that the point is moot because of their
191 attendance at the meeting. With regard to the project being dangerous, att
192 Klasnick referred to the special report provided from Dr. Hayes that it
193 complies with FCC and added that the proposed tower is a monopole
194 capable of accommodating four (4) carriers.

195 (3) Reginas Axxx, 133 Norris Road & 221 Fox Hollow Drove, stated that he is
196 opposed to the project, that he has children and is concerned for their well
197 being as well as for the surrounding wildlife and the impact from radiation,
198 and that he has been a Real Estate broker for fifteen (15) years and
199 properties near power lines and cell towers are negatively impacted. Atty.
200 Klasnick stated that all three (3) concerns have been addressed and
201 referenced their studies that this project falls within RF standards, their
202 detailed review from a Broker who testified that there is no negative impact
203 to property values and their wildlife studies that complies.

204
205 With no other callers, Mr. Daddario opened in-house public testimony at 8:30 PM.

206
207 (1) Jeff & Cheryl Zduniak, 135 Dracut Road, stated that they are opposed to the
208 project, that they will have direct visibility of the tower, that there is an 11.8
209 acre lot and decided to place the tower close to the residences and not on
210 the backside of the property and noted that the lot once had a pond and
211 wetlands, that they have health concerns, that 5G tech is unproven, that
212 recent EPA studies show an increase in owl population that could be
213 undermined with this cell tower, that Hudson coverage may be weak but
214 coverage in Pelham, Windham and Dracut is very poor and the tower should
215 be placed there, this is not a Hudson problem, and lastly, they were never
216 notified of the other tower that got approved and abandoned. Atty. Klasnick
217 stated that the location for the tower is in the G-1 Zone of the property
218 which is an allowed Use with a Special Exception and the prior location was
219 abandoned as it was unsuitable primarily due to wetlands and access from
220 Dracut Road.

221
222 Being no one else to speak, Mr. Daddario closed the public testimony at 8:56 PM.

223
224 Mr. Fauvel stated that he has concerns with the weight of the base to the tower and
225 noted that when the tower is to be installed that frost can affect the stability of the
226 land. Atty. Klasnick stated that there is a stamped PE letter attesting that the tower
227 design is structurally sound. Mr. Wirgan Engineer from American Towers, stated that
228 they did a geotech soil report for the specific site and noted that the depth of the
229 foundation would be below the frost line, ten feet (10') into the ground with a 4' x 33'
230 x 33' mat on the surface.

231
232 Mr. Severance stated that he heard the health concerns expressed but they are not
233 part of ZBA review and added that it appears the Residential section was arbitrarily
234 selected at seven hundred feet (700') from Dracut Road.

235
236 Mr. Daddario stated that he too heard the concerns, noted that there would be other
237 hearings with the Planning Board and encouraged public attendance and stated that

238 there are only five (5) criteria that the Zoning Board gets to review for the granting of a
239 Special Exception. Mr. Daddario stated the criteria and his opinion:
240

241 Criteria 1: Use requested is permitted by Special Exception – yes, per Table of
242 Permitted Uses

243 Criteria 2: Proposed use meets applicable requirements – location met

244 Criteria 3: Proposed use is consistent with the purpose of the Zone – tower is to
245 be located in the G-1 Zone of the property

246 Criteria 4: Proposed use is compatible with character of neighborhood –
247 probably most challenging but use is compatible as cell phone usage is commonplace,
248 the location is close to a wooded area and will be camouflaged as a pine tree

249 Criteria 5: Primary access must be from arterial or collector roads – access will
250 be via driveway from Dracut Road, which is an arterial road.
251

252 Mr. Pacocha made the motion to grant the Special Exception as the criteria have been
253 satisfied. Mr. Fauvel seconded the motion for the same reason and added that the
254 area selected is also the highest area on Dracut Road. Roll call vote was 4:0. Special
255 Exception granted. Atty. Klasnick thanked the Board.
256

257 Board took a five-minute break at 9:14 PM. Meeting resumed at 9:19 PM
258

259 2. **Case 199-023 (02-25-21):** Marc & Gail Mousseau, **75 Pelham Rd., Hudson,**
260 **NH** [Map 199, Lot 023-000; Zoned General (G)] requests the following:
261

262 a. An **Equitable Waiver of Dimensional Requirement** per RSA 674:33-a: due to the
263 location of an existing garage, which encroaches eleven (11) feet into the front yard
264 setback leaving 39 feet where 50 feet is required as shown on the Certified Plot
265 Plan dated November 18, 2020. [HZO Article VII, Dimensional Requirements, §334-
266 27, Table of Minimum Dimensional Requirements.]
267

268 Mr. Buttrick read the request into the record and referenced his Staff Report signed
269 2/17/2021 and noted that the existing 36' x 30' garage with game room received a
270 Building Permit in 2001 based upon a Plan that showed the fifty-foot (50') front
271 setback was to be met. Mr. Buttrick stated that if there had been a nuisance, there
272 would have been some Code Enforcement activity, but there is no record of such, and
273 added that the Town issued a Permit and in effect could be considered estoppel
274

275 Marc Mousseau connected with the Board over the telephone and shared the following
276 information: the garage was built in 2001 by Permit; the garage does not impede on
277 the roadway, has not been a problem for twenty (20) years and does not pose a
278 nuisance; the cost to correct is not feasible and noted that there are other buildings on
279 Pelham Road that are closer to the road.
280

281 Public testimony opened at 9:29 PM. No one was present to address the Board. There
282 were no calls waiting in queue. The Board went into recess for the public to call in.
283 No one called.
284

285 Mr. Fauvel made the motion to grant the Equitable Waiver. Mr. Etienne seconded the
286 motion. Mr. Fauvel stated that the garage has existed more than ten (10) years and
287 that its placement was an honest mistake. Mr. Etienne agreed and added that the
288 Town failed to notice the setback on final inspection. Roll call vote was 5:0

289
290
291 **b. A Variance** to construct a 2 ft. x 12 ft. roof/garage door overhang which
292 encroaches eight (8) feet into the front yard setback leaving 42 feet where 50 feet is
293 required. [HZO Article VIII, Nonconforming Uses, Structures and Lots, §334-31,
294 Alteration and expansion of nonconforming structures and HZO Article VII,
295 Dimensional Requirements, §334-27, Table of Minimum Dimensional
296 Requirements.]
297

298 Mr. Buttrick read the request into the record and referenced his Staff Report signed
299 2/17/2021 and noted that a Variance is needed for part of the overhang roof because
300 part of the garage infringes into the setback.

301
302 Marc Mousseau connected with the Board over the telephone and stated that he wants
303 to add a porch roof that actually encroaches into his front yard and added that it will
304 increase his property value and noted that there is no change in Use, it remains a two-
305 car garage with a recreation room. When asked to address the criteria for the granting
306 of a Variance, Mr. Mousseau shared the following information: (1) there would be no
307 negative effect on the neighborhood and not injure public rights; (2) there would be no
308 impact to the neighborhood; (3) justice would be done allowing him to invest/improve
309 his property; (4) there would be no change in appearance and would not diminish
310 property values; (5) there would be no change to the density in the neighborhood and
311 would be an unnecessary hardship not to allow him to improve his property.

312
313 Public testimony opened at 9:49 PM. No one was present. Board recessed to allow
314 public to call in. At 9:54 Mr. Buttrick reported that no calls were received.

315
316 Motion made by Mr. Pacocha and seconded by Mr. Fauvel to grant the requested
317 Variance. Mr. Pacocha stated that it is not contrary with public interest, the proposed
318 roof overhang does not exceed the violation of the existing setback violation, it
319 observes the Spirit of the Ordinance, there is no harm to the public and hardship is
320 that the building is already partially in the setback and there would be no further
321 encroachment. Mr. Fauvel agreed, the 2' x 12' overhang won't infringe more and there
322 is no adverse affect. Mr. Daddario stated that the five (5) criteria have been satisfied
323 as the request only applies to the overhang and presents no safety issues, no change
324 in character to the neighborhood, no harm to the public and improves the aesthetics
325 of the property and that the hardship is satisfied because the structure already exists
326 and was constructed with a Building Permit. Roll call vote was 4:1. Mr. Etienne
327 opposed based on historical precedent.

328
329 Mr. Buttrick advised Mr. Mousseau that based on this vote, the Town would issue the
330 Building Permit but any construction within the 30-day appeal period would be at his
331 own risk. Mr. Mousseau stated that he will wait for the 30-day appeal period to pass
332 and thanked the Board.

333
334 **IV. REQUEST FOR REHEARING:**

335
336 No requests were received for Board consideration.

337
338 **V. REVIEW OF MINUTES:**

339
340 01/28/21 edited Minutes – Motion made by Mr. Etienne and seconded by Mr. Pacocha
341 to accept the 1/28/2021 Minutes as edited and presented. Roll call vote was 5:0
342

343 **VI. OTHER:**

344
345 1. Distribution of January 28, 2021 Amended ZBA Bylaws

346
347 Board reviewed the edits made to Pages 5, 9 & 10. Discrepancy noted in the Order of
348 Business. Mr. Etienne stated that the seating of Alternates to vote should be part of
349 the Bylaws. Mr. Buttrick asked to incorporate both.

350
351 2. Home Occupation Special Exception Application- Discussion for proposed draft
352 amendment on retail sales.

353
354 Board reviewed the addition of No Retail Sales on Site. Mr. Daddarion suggested
355 adding the word “wholesale” into the first sentence on the Application Form.

356
357 Discrepancy also noted on the Equitable Waiver Application Form. Mr. buttrick asked
358 to add the missing criteria to the Form.

359
360 Motion made by Mr. Pacocha and seconded by Mr. Etienne to adjourn the meeting.
361 Roll call vote was 5:0. The 2/25/2021 ZBA meeting adjourned at 10:12 PM.

362
363 Respectfully submitted,

364
365 Louise Knee, Recorder