



# TOWN OF HUDSON



## Zoning Board of Adjustment

Gary M. Daddario, Chairman

Kara Roy, Selectmen Liaison

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### **MEETING MINUTES – May 27, 2021 - approved**

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

Chairman Gary Daddario called the meeting to order at 7:17 PM, welcomed everyone, invited all to stand for the Pledge of Allegiance 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 stated that Clerk Etienne is excused from the meeting and that Mr. Pacocha would be Acting Clerk for this meeting.

Mr. Pacocha took attendance. Members present were Gary Daddario (Regular/Chair), Leo Fauvel (Regular), Marcus Nicolas (Member) and Jim Pacocha (Regular/Vice Chair/Acting Clerk). Also present were Bruce Buttrick, Zoning Administrator and Louise Knee, Recorder (via remote access) and Kara Roy, Selectman Liaison. Excused was Brian Etienne (Regular/Clerk). Absent was Ethan Severance (Alternate).

Mr. Daddario noted that there would be only four (4) Members voting and offered the option to continue a hearing to the June Meeting with the hope that there would be five (5) Members present. Mr. Dhima stated that the Board could have only four (4) Members present next month too and stated that it is okay to move forward with just four (4) voting.

#### **II. PUBLIC HEARING OF SCHEDULED APPLICATIONS BEFORE THE BOARD:**

##### **CONTINUED HEARING:**

Not Official until reviewed, approved and signed.  
Approved as edited 06/24/2021

1. **Case 111-017 (05-27-21)(continued from 04-22-21):** Elvis Dhima, Town Engineer and authorized representative, Town of Hudson, requests a Variance for **151 Robinson Rd., Hudson, NH** to allow a front yard setback of 30 feet where 50 feet is required. [Map 111, Lot 017-000; Zoned General-One (G-1); HZO Article VII, Dimensional Requirements, §334-27, Table of Minimum Dimensional Requirements].

Mr. Pacocha raised a Point of Order, questioned if the Case is valid to be before the Board tonight and stated that at the last meeting the vote was tied and should have been a denial and the Case should have been Appealed for a Rehearing to be in front of the Board again. Mr. Buttrick and Mr. Daddario stated that Town Counsel was consulted and even though the Board made two (2) Motions, one to deny and one to approve with both Motions failing with a Vote of 2:2, the Board then made a third Motion, unanimously voted, to continue the Case and that a Point of Order should have been made at that meeting.

Town Engineer Elvis Dhima stated that the lot is an existing lot of record approved by the Planning Board in 1969 when the front setback was set at thirty feet (30') and noted that the front setback was increased to fifty feet (50') in 1978 and the wetland setback was also increased in 1990. The previous application was seeking a twenty five foot (25') front setback. The application before the Board is seeking a front setback at thirty feet (30'), the exact front setback that existed in 1969 when the lot was created. Mr. Dhima stated that since the last meeting the proposed plan has been reviewed and unanimously approved by both the Conservation Commission and the Planning Board.

Mr. Dhima addressed the criteria necessary for the granting of a Variance and the information shared included:

- (1) *not contrary to public interest* – existing developed lots in proximity to this lot (143-148, 155 & 157 Robinson Road) currently do not comply with the 50' front setback – granting the Variance would place the proposed house in similar location to most of the properties around it.
- (2) *use will observe spirit of Ordinance* – the proposed use provides a thirty foot (30') front setback while avoiding impact to the wetland in the rear of the property while minimizing wetland buffer impact
- (3) *substantial justice to the property owner* – this is currently an approved lot by the Hudson Planning Board and State of NH and the variance should be granted because the lot was created in conformance to the rules and regulations of the time, prior to the expansion of the front and wetland buffer setback distances
- (4) *use will not diminish surrounding property values* – this lot would have the same front setback as most of the existing developed properties along this road and would not result in diminution of surrounding properties as there would be an improvement (a single family house) built
- (5) *hardship* – this is an existing lot of record that is currently undeveloped and since it was created the rules and regulations have changed (increased) making this lot currently a non-conforming/grandfathered lot and the proposed layout provides for the thirty foot (30') front setback as was the standard when the lot was created and does not impact the extensive wetlands in the rear of the lot

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Mr. Daddario asked and received confirmation from Mr. Dhima that the relief being sought is twenty feet (20') into the current fifty foot (50') front setback and that both the Conservation Commission and the Planning Board have granted their approvals for the proposed plan.

Mr. Fauvel stated that he attended their meeting and his concerns were addressed – shrubs to be eliminated for sight distance, that if Robinson Road was to be expanded the widening in pavement would occur across the street from this lot - that a developed lot is an improvement over an underdeveloped lot and that a condition of the CUP approval was that a stone barrier be placed at the wetland buffer line.

Mr. Pacocha stated that he still has concern for the large wetland on this property and Ms. Roy stated that the application before the Board is for a Variance to the front setback only. Mr. Buttrick concurred and stated that until approximately a year and a half ago, encroachment into a wetland buffer was under ZBA jurisdiction through a Wetland Special Exception and was changed to needing a Conditional Use Permit (CUP) from the Planning Board. Mr. Buttrick stated that both the Conservation Commission and the Planning Board conditionally approved the plan and added that their condition requiring a stone barrier at the wetland buffer is good for Code Enforcement purposes should there be any attempt to further encroach.

Board took a five-minute recess from 7:46 PM – 7:51 PM for the public to call in or connect. Mr. Buttrick confirmed that there were no calls or connections made during the recess. Mr. Daddario noted that Earl Sanford, CWS, was connected remotely and asked if anyone had questions for him. No questions. Mr. Daddario declared the Case before the Board.

Mr. Fauvel made the motion to approve Case #111-017 and grant the Variance for a thirty foot (30') front setback. Mr. Nichols seconded the motion. Mr. Fauvel spoke to his motion stating that his concerns regarding sight distance and future widening of Robinson Road have been addressed and that the stone barrier solves his concern, that granting the request would not be contrary to public interest and observes the spirit of the Ordinance and would not hinder public interest or diminish surrounding property values and that hardship is met with the later expansion of the front setback. Mr. Nicolas concurred and noted that the proposed plan meets the front setback of 1969 when the lot was created. Mr. Daddario added that a Variance is needed in order to make use of the lot. Roll call vote was 3:1. Mr. Pacocha opposed. Motion carried. Variance granted. Mr. Daddario noted the 30-day Appeal period. Mr. Dhima thanked the Board.

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

No requests were received for Board consideration.

### **IV. REVIEW OF MINUTES:**

04/22/21 edited Minutes: Mr. Pacocha stated that he submitted his edits late and that his edits had not been included and noted that Line 40 should read “Mr.” and not “Me”. Mr. Pacocha made the motion to approve the 4/22/2021 Minutes as edited and amended. Mr. Fauvel seconded the motion. Vote was 3:0:1. Mr. Nichols abstained. Minutes adopted.

**V. OTHER:**1. OSI 27th Annual Spring Planning & Zoning Recap

Mr. Buttrick stated that a printout of the information was included in the meeting packet, noted that importance of the information, that it is always helpful and will be placed on the Town's website under Resources.

2. Revival of ZORC Meetings

Mr. Buttrick stated that ZORC stands for Zoning Ordinance Review Committee, that it is comprised of two (2) Members from each Board and the Town Planner and the Zoning Administrator and should convene by September with a target date of November to submit proposed Zoning Ordinance Amendments to the Planning Board as they are required to hold Public Hearings before an item can be placed as a Warrant Article for Town Vote in March. Mr. Buttrick made an appeal to Members for late summer.

3. Workshop- Review Zoning Application Drafts

Mr. Buttrick stated that the recent review of Home Occupation special Exception application with its omission of "retail sales expressly forbidden" has prompted review of all other Application forms to the Zoning Ordinance and RSAs. Mr. Buttrick referenced the large packet that contained current Application forms, a proposed draft for the Equitable Waiver and Board Decision Sheets. Mr. Buttrick noted that according to the Board's ByLaws, the ZBA needs to approve changes to the Application Forms.

Mr. Buttrick stated that the Zoning Application Instructions is also in need of clarification and a draft of proposed changes has been prepared. Mr. Buttrick noted that in working with the Town Engineer it would/could also be beneficial to have the on-line Application Forms modified to allow answers to be inserted.

Discussion arose on the Equitable Waiver. Mr. Fauvel noted that the Decision Sheet is backwards, suggested that Option 1 and Option 2 be on separate sheets of paper and questioned why Mr. Buttrick as the Zoning Administrator could not be charged with the authority to approve an Equitable Waiver if there is documentation that it existed for longer than ten (10) years and not come before the Board. Tracy Goodwyn, Zoning Admn Aide, joined the conversation on the telephone, and stated that the RSA is clear that the ZBA needs to review and grant, that it is the Applicant who decides whether to pursue either Option 1 or Option 2, agreed that the Meeting Packets should only include the Applicant's choice and stated that review of the 2020-2021 RSA book should be made and compared to the Zoning Ordinance and all Application Forms. Mr. Buttrick added that one benefit is that all Abutters are notified for each Application, which would not be the case if it were handled administratively.

Mr. Fauvel questioned the Abutter preparation process. Mr. Buttrick stated that the burden is on the Applicant to provide an accurate abutter list and that the Town does

help with that process with the use of GIS and added that per State Law, only direct Abutters are to be sent certified notices of an application and that the Town of Hudson requires that all abutters within two hundred feet (200') also be notified through regular USP mail.

Mr. Fauvel stated that street number should be on every building in Town and added that it should be a requirement for the granting of a Certificate of Occupancy. Mr. Buttrick responded that it could be part of the Building Code, is a part of a Sign Permit and suggested it could be included in the upcoming ZORC review or maybe the Town Code.

Mr. Daddario agreed with Ms. Goodwyn that reference to the Zoning Ordinance and/or the RSA should be on every Application and noted that it is not on the Home Occupation Special Exception Application Form.

Mr. Daddario asked the Members to review the packet for continued discussion at the next meeting. Mr. Buttrick stated that there are already two (2) applications for the next meeting and added that fee charges should also be included in the review and noted that any change to the fees would require Selectmen approval.

Motion made by Mr. Pacocha and seconded by Mr. Fauvel to adjourn the meeting. Vote was 4:0. The 5/27/2021 ZBA meeting adjourned at 8:45 PM.

Respectfully submitted,

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Gary M. Daddario, Chairman