



TOWN OF HUDSON



Zoning Board of Adjustment

Gary M. Daddario, Chairman

Kara Roy, Selectmen Liaison

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MEETING MINUTES – June 24, 2021 - approved

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

Acting Chair Brian Etienne called the meeting to order at 7:00 PM and invited everyone to stand for the Pledge of Allegiance. Mr. Etienne stated that Chair Gary Daddario was excused from this meeting and that Vice Chair Jim Pacocha was on vacation and, per RSA 91-A:2, is attending remotely.

RSA 91-A:2.III(a) states: “A member of the public body may participate in a meeting other than by attendance in person at the location of the meeting only when such attendance is not reasonably practical. Any reason that such attendance is not reasonably practical shall be stated in the minutes of the meeting.” Mr. Pacocha is on vacation out of the State of NH.

RSA 91-A:2.III(c) states: “Each part of a meeting required to be open to the public shall be audible or otherwise discernable to the public at the location specified in the meeting notice as the location of the meeting ... and shall be audible or otherwise discernable to the public in attendance at the meeting’s location. ... All votes taken during such a meeting shall be by roll call vote.” Acting Chair Etienne confirmed.

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

Mr. Etienne noted that there would be only four (4) Members voting and offered the option to continue a hearing to the July Meeting with the hope that there would be five (5) Members present. Mr. Buttrick noted that a tie vote (2:2) is technically a denial of an applicant’s request and would require a Rehearing. Mr. Fauvel noted that it takes three (3) votes to approve a request.

III. PUBLIC HEARING OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

Not Official until reviewed, approved and signed.
Approved 7/22/2021 as edited

1. **Case 247-045-012 (06-24-21):** Alberto Mateo, **15 Lucier Park Dr.**, requests a Home Occupation Special Exception to operate an on-line/ecommerce store business. [Map 247, Lot 045-012; Zoned Town Residence (TR); HZO Article VI, Special Exceptions, §334-24, Home Occupations].

Mr. Buttrick read the Case into the record and referenced his Staff Report signed 6/7/2021 and added that the Applicant seeks the Home Occupation Special Exception (HO/SE) to be able to use his residence address for the business and confirmed with the Applicant that there would be no retail sales from the residence.

Alberto Mateo sat at the Applicant table, introduced himself and stated that he wants to run an ecommerce store that would be conducted totally on line and would not carry any inventory or have customer interaction at his home. Mr. Mateo explained the business operation stating that he would use Market Place (like Amazon, Ebay, Facebook Marketplace), that all orders are placed by the customer through Marketplace for items to purchase that would connect to him and he would place the order to his supplier who would then ship the item directly to the customer.

Mr. Mateo addressed the criteria for the granting of a HO/SE. The information shared included:

- All operation of the business performed online on a laptop computer
- Business name is Licofiya
- Resale of tangible goods such as home products (tools, décor, furniture etc)
- House remains primary residence - owned by his parents and he lives there with them
- There will be no sign and no exterior display of the business and no exterior storage would be required as there is no inventory on site
- Being a fully run on-line business, there will be no noise or disturbances or traffic to the neighborhood

Public testimony opened at 7:12 PM. No one addressed the Board. Mr. Buttrick stated that he received an email dated 6/16/2021 from Gabriele and Nicholas Bernado of 8 Lucier Park Drive in support of the HO/SE. Public testimony closed at 7:13 PM.

Mr. Fauvel stated that with no inventory and no customers to the site/home, he is satisfied that the criteria for the granting a HO/SE have been met,

Mr. Fauvel made the motion to grant the Home Occupation Special Exception as requested. Mr. Pacocha seconded the motion. Roll call vote was 4:0. HO/SE granted. Mr. Buttrick noted the 30-day appeal period.

2. **Case 167-052 (06-24-21):** David A. Thompson, **135 Highland St.**, requests a Variance to construct and locate a 14 ft. x 6 ft. shed 7 ft. from the property line where 15 ft. is required. [Map 167, Lot 052-000; Zoned Residential-Two (R-2); HZO Article VII, Dimensional Requirements, §334-27, Table of Minimum Dimensional Requirements].

Mr. Buttrick read the Case into the record, referenced his Staff Report signed 6/7/2021, noted that the Case is a result of Code Enforcement action taken and advised that sheds less than two hundred square feet (<200 SF) are not required to pull a Building Permit.

David Thompson sat at the Applicant table, introduced himself and stated that he is before the Board to continue work on the shed and added that he was aware that he did not need a Building Permit for it because of its size but failed to realize the Zoning Ordinance setback requirements. Mr. Thompson stated that he received the Stop Work Order and did. Mr. Thompson stated that the size selected for the shed is based upon his need to shelter deck furniture and flammable material away from the residence.

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

- (1) *not contrary to public interest* – shed is located in the rear portion of the backyard mostly out-of-sight of the general public due to the existing pine trees and a large dirt mound used by the electric utility company to elevate high-power lines across the pond. Landowner that directly abuts the property line closest to the shed provided a letter stating he has no objection with the placement of the shed – see letter signed and dated 4/14/2021 from Ismael Valenzuela of 137B Highland Street
- (2) *use will observe spirit of Ordinance* – there is a fence and the shed will not be placed up against the fence and be only partially visible to the public and will be built soundly and similarly to the house with a shingled roof, door, windows, siding and on the existing deck that is supported by concrete blocks
- (3) *substantial justice to the property owner* – the shed is located in the only position available on the property, substantial expense has already been incurred with the purchasing of material and it is partially constructed and to move the shed out of the side setback would require it to be reduced/downsized to half the size to keep it out of the overhanging power line easement and would not meet the need for having a shed
- (4) *use will not diminish surrounding property values* – there would be no negative impact, the shed will be constructed soundly and match the house and end up looking better than a “Reeds Ferry” shed.
- (5) *hardship* – the location selected does not infringe the two (2) easements on the property and is the only available location and denial of the variance would cause the shed to be reduced by fifty percent (50%) and waste the material costs already purchased.

Mr. Etienne asked for the colored aerial view to be posted which showed the extensive Eversource Easement that bisects the property, the steep hill along the side property line, the wetland and wetland buffer and the wastewater easement and the location of the deck and shed in the slice of land between the wastewater and utility easements.

Mr. Fauvel asked the distance between the house and the street and Mr. Buttrick measured and stated that it is approximately forty-seven feet (47') and noted that the Zoning Ordinance prohibits sheds in the front yard.

Mr. Pacocha referred to the pictures and asked if the shed is out of the wetland buffer and received confirmation that it is and then asked if the shed could be placed under the utility easement and Mr. Buttrick responded that would depend on the terms of the easement but generally utility easements do not allow permanent structures.

Public testimony opened at 7:27 PM. No one addressed the Board.

Mr. Pacocha made the motion to grant the Variance with no stipulations. Mr. Fauvel seconded the motion. Roll call vote was 4:0. Variance granted. Mr. Buttrick noted the 30-day appeal period.

Mr. Pacocha questioned if the deck is greater than two hundred square feet (>200 SF) and whether a Building Permit was obtained for it. Mr. Buttrick stated that he would check to confirm.

3. **Case 182-035 (06-24-21):** Steve Lombardi, Member Manager of SJL Properties of NH, LLC, **3 Fulton St.** [Map 182, Lot 035-000; Zoned Town Residence (TR)] requests the following:

- a. An Equitable Waiver of Dimensional Requirement per RSA 674:33-a: to allow an existing garage to remain in its current location which encroaches approximately 9 feet into the side yard setback leaving approximately 6 feet where 15 feet is required. [HZO Article VII, Dimensional Requirements, §334-27, Table of Minimum Dimensional Requirements]

Mr. Buttrick read the request into the record and referred to his Staff Report signed 6/9/2021 noting that this is an existing conforming corner lot with frontage on Reed Street and Fulton Street, that research into the history had not uncovered any Code Enforcement action, that on 10/7/1966 the ZBA granted a Variance to add a dentist office to the main house and that a Building Permit (#319-82) was issued 6/22/1982 for a sunspace addition to the main house that showed the garage on the plan.

Joseph Conti, attorney at Wells, White & Fontaine, P.C., 29 Factory Street, Nashua, NH, introduced himself. Atty. Conti stated that the garage has existed for more than ten (10) years, that there are no complaints in the record regarding it and that it is not a nuisance to the neighborhood and has in fact been used by the American Legion. Atty. Conti stated that they have spoken with the American Legion and will attempt to fix the fence between their properties or replace it.

Public testimony opened at 7:34 PM. No one addressed the Board.

Mr. Etienne stated that it is clear the garage has existed since 1982, that it has been used by the American Legion for parties etc. and acknowledged that it would be a high cost to correct. Mr. Buttrick posted an aerial view from 1998 that showed the garage.

Mr. Nicolas asked if the agreement to either fix or replace the fence was in writing. Atty. Conti stated that it wasn't but has been spoken so therefor is now part of the public record. Mr. Etienne stated that it is not pertinent to what is before the Board.

Mr. Fauvel made the motion to grant the Equitable Waiver. Mr. Nicolas seconded the motion. Roll call vote was 4:0. Equitable Waiver of Dimensional Requirement granted. The 30-day appeal period was noted.

- b. A Variance to allow the continued use of an existing non-conforming two-family structure as a two-family dwelling in the TR Zone. [HZO Article V, Permitted Uses, §334-21, Table of Permitted Principal Uses].

Mr. Buttrick read the request into the record and referred to his Staff Report signed 6/8/2021, noted that it is a conforming corner lot of record with frontage on Fulton Street and Reed Street and provided a recap of the historical research that included: 10/7/1966 Variance for a dental office along the Reed Street frontage attached to the main house, presumably an owner-occupied business; various electrical permits; and Assessing record change to a two-family in 2006.

Atty. Conti stated that they are before the Board to make this right, that the Town records (Assessor's record) shows the property as a two-family since 2005 and the MLS listed it as a multi-family as did the P&S (Purchase and Sales Agreement) he client signed to buy the property.

Atty. Conti stated that each use has a separate address on a separate street, 3 Fulton Street and 8 Reed Street, and are on public sewer and water and are connected by a breezeway that has a wall to prevent access from one unit to the other. Mr. Conti referred to the surrounding property list that identified the mixture of single-family homes on much smaller lots, under a quarter of an acre, and multi-family buildings in the neighborhood. Atty. Conti stated that the site has ample space for parking and his client proposes to pave a second driveway for the 8 Reed Street unit.

Atty. Conti addressed the criteria for the granting of a Variance. The information shared included:

- (1) *not contrary to public interest* – property has been occupied and taxed as a two-family unit since 2005 – the second unit is a former dentist office that was legally built from a 1966 Variance
- (2) *use will observe spirit of Ordinance* – the character of the neighborhood would not be changed and there is no threat to public health, safety or welfare – the vitality and character and density of the neighborhood will be maintained. Steven Lombardi, Member Manager of SJL Properties of NH, LLC, addressed the Board, stated that he has spoken to and received positive support from the neighbors that there is no issue with the structure continuing to be used as a two-family
- (3) *substantial justice to the property owner* – property was formerly a pre-existing non-conforming two-family dwelling, for over a decade, and was advertised and purchased as such – there will be no harm to the public but denial would create harm to the new property owner that could not be outweighed by any benefit to the public
- (4) *use will not diminish surrounding property values* – granting the variance will not affect the character of the neighborhood as the neighborhood includes many other two-family and multi-family dwelling units. Adjacent properties will not be adversely affected as they will only see potential upgrades to the

- exterior of the building and not see any change from what it has been in use for over a decade
- (5) *hardship* – property is unique in that it has long been a non-conforming two-family home, taxed as a two-family residence since 2005 – the two dwelling units are connected only through a breezeway that has a barrier preventing cross access and the property is designed in a way where it cannot be converted to a single-family home and each has a separate address. Enforcing the single-family home regulations against the property bears no fair and substantial relationship to the purpose of keeping the character of the neighborhood and neither does reenacting a dental office that was granted by variance in 1966.

Ms. Roy asked about the number of bedrooms in each unit and the number of parking spaces. Mr. Lombardi stated that the driveway is very large on Fulton Street and can hold four to six vehicles and his intent is to have a separate driveway for the Reed Street unit which has been vacant since about September (2020). Mr. Buttrick posted a 2017 aerial view that showed two driveways in use and a 2020 aerial that showed vehicles parked only on the Fulton Street driveway. Mr. Etienne noted that there is no second driveway permit for Reed Street and could be a condition of approval. Mr. Fauvel noted that Zoning Ordinance Article III, Section 334:15 requires that parking spaces be paved.

Atty. Conti stated that his client's inquiry to the Town Engineer for a driveway on Reed Street was actually how they discovered that the second dwelling unit was illegal.

Mr. Buttrick noted that the Planning Board is authorized to grant driveways and that perhaps an exception can be made because this is a corner lot and cautioned against placing it as a condition of granting the variance and added that the Applicant is now aware that if a second driveway is desired on Reed Street they would need to seek Planning Board approval and submit an application which would invoke Town Engineer review for placement of it taking into consideration such items as line of sight and proximity to the corner.

Mr. Etienne questioned whether there was fire resistant walls between the two dwelling units and whether there were any electric inspections and if there was ever a CO (Certificate of Occupancy) issued for the dwelling units. Mr. Buttrick added that there is a higher bar for a dwelling unit than a dental office because people don't sleep in an office and if there was an inspection for the second dwelling unit, the Town does not have the paper trail/documentation. Mr. Buttrick suggested that if the Board approves the second dwelling unit that a condition be placed that it needs a life safety inspection prior to occupancy and noted that a CO is via a Building Permit and an after-the-fact inspection would entail opening walls etc. and that a Life Safety Inspection would entail making sure windows are properly sized, fire alarms installed, sound safe electricity etc.

Atty. Conti stated that his client is willing to do what is necessary to make sure the second dwelling unit is safe and livable. Mr. Lombardi stated that he would welcome an inspection by the Fire Department, and added that the units have hard wired smoke alarms and there is a window in every bedroom.

Mr. Pacocha questioned the Electrical Permits pulled in the past and noted that the one in 2005 had the work performed by the homeowner. Mr. Etienne noted that the electrical permits differentiate between Fulton Street and Reed Street “as if” the two dwellings units “legally” existed. Atty. Conti added that the exterior of each dwelling unit also differ from one another with only one having vinyl siding.

Public testimony opened at 8:04 PM. No one addressed the Board.

Mr. Fauvel made the motion to grant the variance. There was no second.

Mr. Etienne stated that he would consider granting with the conditions that there would be a CO for each unit and that a driveway permit for 8 Reed Street be obtained and paved. Mr. Nicolas stated that the whole house needs to be brought to current standards and meet the current inspection requirements.

Mr. Buttrick cautioned against a condition for the second driveway as the granting of a second driveway is under the purview of the Planning, that the Board could recommend but not condition and that the Property Owner is now aware of what needs to be done to get a second driveway permitted. And with regard to needing a CO, inspection ‘after-the-fact’ would require opening walls etc. and would suggest requiring a Life Safety Inspection by the Building and Fire Departments to evaluate current windows, egress, smoke detectors etc. satisfying the 2018 Life Safety Code and that a letter documenting such compliance be added to the Property File. Mr. Etienne agreed if such a condition would also include no occupancy of the Reed Street unit until after successful inspection.

Mr. Pacocha asked how the hardship criteria could be met, the second unit was done without permission/permit and that saying it is met would sanction an illegal activity and set precedent. Discussion arose on “after-the-fact” variance granting. Mr. Etienne noted that the Board granted an after-the-fact variance across the street for a day care so it is not unprecedented and noted that the only alternative for this Case would be to re-convert the second dwelling unit back to a dental office. Mr. Fauvel noted that it appears to be a two-family, has been taxed as a two-family since 2005 and asked how it could be ‘un-assessed’ as a two-family after so long a time and added that the new owner did his diligence and checked the Town records and only when he went to apply for a second driveway did he discover that the second dwelling unit is illegal. Mr. Buttrick added that the neighborhood has changed, that several structures are more than single-family homes. Concern expressed that the Assessor’s observations are just a snapshot in time with no concern given whether it is legal and not communicated to the Land Use Department.

Discussion continued. Opinion expressed that the Town caused the hardship by having the Assessing Department identify it as a two-family when it was never permitted or allowed and was only discovered by the new owner.

Mr. Nicolas made the motion to grant the Variance with the condition that the second dwelling unit, 8 Reed Street, obtain a Life Safety Inspection from the Hudson Fire Department and that documentation of a successful inspection be filed with the Zoning Administrator (Mr. Buttrick) prior to occupancy. Mr. Fauvel seconded the motion. Roll call vote was 3:1. Mr. Pacocha opposed noting that it failed three of the

five criteria (conflicts with the Ordinance; contrary to public interest; hardship not met). Variance granted with one stipulation. Mr. Etienne noted that 30-day appeal period

IV. REQUEST FOR REHEARING:

No requests were presented for Board consideration.

V. REVIEW OF MINUTES: 05/27/21 edited Minutes

Board reviewed the edited Minutes presented and made no changes. Mr. Fauvel made the motion to approve the 5/27/2021 Minutes as edited. Mr. Nicolas seconded the motion. Roll call vote was 4:0.

VI. OTHER:

1. Workshop (continuation)- Review Zoning Application Drafts

Mr. Buttrick reported that synchronizing the Application forms to the Zoning Ordinance, to the Decision Worksheets and to the governing RSAs continues and that Mr. Fauvel has submitted comments and that revised application drafts should be available at the next meeting.

Mr. Buttrick stated that the Board of Selectmen need to approve updating fees and suggested adding an advertising fee (today Cases are advertised in The Union Leader), recordation at the County Registry (HCRD) and mailing fees at the current rate.

Mr. Buttrick stated that the Planning Board does not advertise in the newspaper. Ms. Roy stated that posting just on line is fine but is easily scrolled by and often missed. Mr. Buttrick stated that the city of Nashua posts a 3' x 2' sign at the property and that has the added advantage of notifying the neighbors and identifying the exact location.

2. Upcoming Meetings

Mr. Etienne stated that he might be absent for the July meeting. Mr. Nicolas stated that he might be absent for the August meeting. Board asked Ms. Roy for Selectmen action to get more Alternates for the Board.

Motion made by Mr. Nicolas, seconded by Mr. Fauvel and unanimously voted to adjourn the meeting. The 6/24/2021 ZBA meeting adjourned at 8:52 PM.

Respectfully submitted,

Brian A. Etienne, ZBA Acting Chairman