



TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Kara Roy, Selectmen Liaison

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MEETING MINUTES – October 28, 2021 - approved

The Hudson Zoning Board of Adjustment met on Thursday, October 28, 2021 at 7:00 PM in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall.

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

Chairman Gary Daddario called the meeting to order at 7:01 PM, invited everyone to stand for the Pledge of Allegiance and read the procedure for the meeting from the Preamble found in Exhibit A of the Board's Bylaws into the record.

Acting Clerk Normand Martin took attendance. Members present were: Gary Daddario (Regular/Chair), Leo Fauvel (Regular), Normand Martin (Alternate/Acting Clerk), Marcus Nicolas (Regular) and Jim Pacocha (Regular/Vice Chair). Also present were Bruce Buttrick, Zoning Administrator, Louise Knee, Recorder (remote) and Kara Roy, Selectman Liaison. Excused were Brian Etienne (Regular/Clerk) and Dean Sakati (Alternate) who was present but not yet sworn into the Board. Absent was Edward Thompson (Alternate). For the record, Mr. Daddario appointed Alternate Martin as a Voting Member and noted that there would be five (5) Voting Members.

III. PUBLIC HEARING OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

1. **Case 190-140 (10-28-21)**: Kevin & Cynthia Farrell, **29 Riverside Dr., Hudson, NH**, Map 190, Lot 140-000; Zoned Town Residence (TR) requests the following:

Mr. Buttrick read both requests into the record and noted that each should be reviewed independently.

a) A **Variance** for relief from HZO Article VII, Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements: to extend and rebuild an existing non-conforming (15 ft. x 5 ft.) three season porch to an enlarged size of 26 ft. x 6 ft. which further encroaches into the front yard setback leaving 9.2 feet where 30 feet is required and encroaches into the side yard setback leaving 9.8 feet where 15 feet is required. This Variance is required per HZO Article VIII, Nonconforming Uses, Structures and Lots; §334-31, Alteration and expansion of nonconforming structures.

Mr. Buttrick referenced his Zoning Determination dated 8/23/2021 and his Staff report signed 10/14/2021 and noted that the extension for the front porch is to

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expand it to the length of the front of the house and enlarge it a foot to encroach an extra foot into the front setback.

Cynthia Farrell and Kevin Farrell sat at the applicant's table and introduced themselves. Ms. Farrell stated that if one looks at the front of their house there is no main entrance and actually looks like the side of their home. Ms. Farrell distributed a picture of their home, noted that there is an existing 15'x5' three-season porch at the front of their house and stated that what they would like to do is extend that porch approximately ten feet (10') to include the entire front of their house and create a main entrance. Ms. Farrell stated that the house was built in 1918, long before the Zoning Ordinance and front setbacks established. Ms. Farrell stated that the proposed porch extension would not obstruct any view for the road or neighboring driveways and is just an extension of what already exists.

Mr. Buttrick posted the Site Plan prepared by Gregg Jeffrey of Jeffrey Land Survey LLC dated September 2021 and Ms. Farrell pointed out the existing porch and their desire to make it six feet (6') deep and extend it to the south to cover the entire front of their house for the length of twenty six feet (26').

Mr. Buttrick noted the dash line on the Plan that showed the buildable area for the lot honoring all current setbacks and noted that a good portion of the house is out of the buildable footprint but because the house existed at the time setbacks were implemented, it is now considered an existing non-conforming structure and the Zoning Ordinance requires that any expansion of a non-conforming structure requires a Variance from the ZBA.

Ms. Farrell noted that within the existing three-season porch there is a door from the house but no door leading to the outside and whenever packages are delivered, the driveway must be used to reach the outside door from the driveway. Mr. Pacocha asked and received confirmation that stairs are planned that would lead to the front door and then questioned if the steps should also be included in the Variance. Mr. Buttrick stated that definition of setback has been changed and now excludes stairs even when they encroach the setback.

Ms. Farrell next addressed the criteria for the granting of a Variance. The information provided included:

(1) *not contrary to public interest*

- proposed extension will not obstruct any view to abutting properties and nor will it obstruct any driveway or the street
- only asking to extend the already existing three-season porch to the length of the front of the house and add an entrance to the street side of the house

(2) *will observe the spirit of the Ordinance*

- homes deserve a street side front door
- any addition or change would require a variance because house is in the front setback and existed before the Zoning Ordinance and front setback established

(3) *substantial justice done*

- proposed addition allows to straighten the house and provide a functional use of the street side

- will give a slightly more modern look to a very old property
- (4) *not diminish surrounding property values*
- will increase curb appeal and add value to property
 - will not diminish other property values in neighborhood
- (5) *hardship*
- house was built in 1918 before the adoption of a Zoning Ordinance and implementation of setbacks
 - any update or addition to the front of the house would require a variance
 - Zoning Ordinance causes the hardship

Public testimony opened at 7:23 PM. John Padellaro, abutter at 27 Riverside Drive introduced himself, stated that he and the Farrells have a cordial relationship, that his lot is a “pork chop” lot and that he is present because he received notice. Mr. Padellaro asked and received confirmation that the proposed extension would not encroach the side setback and then stated that he is not opposed to the front porch extension. Being no one else to speak, public testimony closed at 7:30 PM.

Mr. Buttrick posted an aerial view of the neighborhood. Mr. Fauvel noted that the bulk of the homes all seem to have seventy-five feet (75’) or less and that all the older houses appear to infringe the front setback. Mr. Fauvel noted that this is an older neighborhood and would probably not be subject to any road expansion. With regard the additional foot, Mr. Fauvel stated that it would not really be apparent and would provide more functionality.

Mr. Martin stated that he drives down Riverside Drive every afternoon and has lived in the neighborhood for twenty (20) years, and does not see this as an additional encroachment to the front setback, that it will improve the functionality of the home and help increase property values to the neighborhood. Mr. Daddario concurred and noted that the porch would be an extension to the existing corner of the existing house, basically filling in the space, and that primarily it is an extension of the existing encroachment.

Mr. Pacocha asked and received confirmation that the existing door from the driveway would remain but now would be considered the side entrance instead of the main and only entrance.

Mr. Fauvel made the motion to grant the Variance as requested. Mr. Pacocha seconded the motion. Mr. Fauvel spoke to his motion stating that it is not out of character in the neighborhood to encroach into the front setback so no precedent is being set, that property value would increase, that there is no conflict with other properties in the neighborhood and would not diminish other property values and that hardship is satisfied by the fact that the house was built in 1918 before there was a Zoning Ordinance and setbacks established. Mr. Pacocha concurred and stated that the hardship, which usually pertains to the land, is satisfied because the house was built prior to a Zoning Ordinance being adopted. Mr. Marcus and Mr. Martin concurred and noted that it is not contrary to public interest and the spirit of the Ordinance is observed. Mr. Daddario also concurred and added that nothing could be done to the house to make it fit into the current buildable area and there was no true opposition presented to the Board and it just makes sense to have a front door on the

street side. Roll call vote was 5:0. Variance granted. Mr. Daddario noted the 30-day appeal period and Mr. Buttrick added that a building permit could be issued but any work performed during the appeal period would be at the Property Owners' risk should an appeal be filed.

- b) An **Equitable Waiver of Dimensional Requirement** for an existing 9 ft. x 13 ft. (117 sqft) shed which encroaches the side and rear setbacks leaving 2 feet and 11 feet respectively where 15 feet is required for both setbacks. [HZO Article VII, Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements.]

Mr. Buttrick referenced his Zoning Determination dated 10/1/2021 noting that the shed is not a legal non-conforming structure in regards to rear and side setbacks and his Staff report signed 10/19/2021 and noted that sheds less than two hundred square feet (<200SF) do not require a Building Permit and posted an aerial view from 2010 that showed the shed encroaching both the side and rear setbacks.

Cynthia Farrell and Kevin Farrell sat at the applicant's table. Ms. Farrell addressed the criteria for Equitable Waiver and the information included:

- (1) *violation has existed for more than ten (10) years*
 - shed existed on property prior to purchase in 2003 and has been a taxable yard item the entire time
 - according to the tax card it has been a taxable item since 1960
 - there has been no code enforcement on record
- (2) *no nuisance*
 - lived there eighteen (18) years with the shed and no one has mentioned or complained the existence of the shed
 - shed does not sit on a concrete foundation and is less than 200 SF
 - shed does not impede use of any surrounding property
- (3) *high correction cost*
 - because of the rocky topography of the land, there is no useable area to move the shed to meet today's requirements
 - the cost to do any movement (if it were possible) would be unjust because there have been no claims of nuisance in at least 18 years

Public testimony opened at 7:50 PM. John Padellaro, abutter at 27 Riverside Drive introduced himself, and stated that his home is situated directly behind their (Farrell) home and that a few years ago he erected a fence and the fence takes away some of the sting from his view from his front windows but the fence does not obstruct the view of their shed and garage and is concerned that it diminishes his property value because the shed is so close and physical unappealing visually and, contrary to what Ms. Farrell said, the shed could be moved, could even be eliminated, and noted that the Farrell's were able to put in a swimming pool. Mr. Padellaro stated that it would be unfair to allow that shed to continue to exist in its location forever. Mr. Martin stated that the purpose of an Equitable Waiver is to allow what is existing to remain and if the Applicants decide to tear the shed down they would have to place a new shed within the regulations (out of the setback). Mr. Martin stated that another purpose is to meet mortgage company requirements should the Applicants decide to

sell their home because a mortgage company would/should question the encroachment and complimented the Applicants for pursuing to legitimize the existence of their shed in the setback. Being no one else to address the Board, public testimony closed at 7:55 PM.

Mr. Fauvel stated that the assessing history shows that the shed has existed since 1991 with no code enforcement action taken so it does satisfy the greater than ten year requirement and questioned why the garage is not included in the Equitable Waiver. Mr. Buttrick stated that in 1962 a Variance was granted for the garage and it was constructed accordingly. Mr. Martin asked and received confirmation that the home to the rear of the property (Padellaro) has existed for twelve (12) years and was built knowing the existence of the shed.

Mr. Nicolas made the motion to grant the Equitable Waiver of Dimensional Requirement as it has met all the requirements and noted that if the shed is ever replaced, the replacement shed would be located out of the setback. Mr. Martin seconded the motion and agreed with Mr. Nicolas' reasoning. Mr. Daddario listed the three (3) criteria. Roll call vote was 5:0. Equitable waiver granted. Mr. Daddario noted the 30-day appeal period. Mr. Pacocha stated the Equitable Waivers cannot be appealed and Mr. Buttrick disagreed.

Board took a break at 8:05 PM. Mr. Daddario called the meeting back to order at 8:10 PM, noted that there were several members in the public present and asked which Case they were interested in addressing. Mr. Daddario directed the Board's attention to the third item on the Agenda to accommodate the majority of the public in attendance.

2. **Case 166-031 (10-28-21)**: Daniel M. Flores, PE of SFC Engineering Partnership, Inc., 183 Rockingham Rd, Unit 3 East, Windham NH 03087 requests a Variance for **8 Lindsay St., Hudson, NH** for relief from HZO Article VII, Dimensional Requirements; § 334-27.1 D, General Requirements: to allow the creation of a new lot that has insufficient required frontage on a class V or better portion off **Grigas St.** [Map 166, Lot 031-000, Zoned Town Residence (TR).]

Mr. Buttrick read the Case into the record and referenced his Staff Report signed 10/4/2021 and the additional material in the supplemental package that contained comments (letter) from an indirect abutter.

Dan Flores, PE, of SFC Engineering Partnership, Inc. in Windham NH, sat at the Applicant's table, introduced himself and submitted a thumb drive to Mr. Buttrick. The GIS of the lot at 8 Lindsay Street was posted. Mr. Flores stated that a variance is being sought to create a lot that would have insufficient frontage on a Class V or better road. Mr. Flores stated that the address for the lot is 8 Lindsay Street owned by Amnon Waisman Revocable Trust and that the lot is 1.319 acres in the shape of an "L" and the Property Owner's desire is to create a new lot in the back lower section of the "L" with frontage from Grigas Street extension that has not been paved. Mr. Flores stated that there have been questions raised about the ROW (Right-of-Way) identified on their Plan dated 10/4/2021 and noted that that issue should be resolved with the Planning Board when the Subdivision is reviewed and added that they will also go

before the Board of Selectmen to gain access in order to pull a Building Permit for the proposed four-bedroom house. Access is proposed to be a private driveway from Grigas Street. Water service is also proposed to come off Grigas Street. Sewer service will be pumped from the back of the proposed house down along the southerly lot line out to the infrastructure on Lindsay Street and would require a sewer easement on the existing lot. Mr. Flores stated that the new lot will satisfy all Zoning requirements with the exception of the frontage requirement on a Class V or better road but it does have frontage on a right-of-way that exists today.

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

- (1) *not contrary to public interest*
 - proposed lot creation will be similar in size to existing lots in neighborhood
 - proposed use of the lot is as a single family residence, in keeping with other properties in neighborhood
- (2) *will observe the spirit of the Ordinance*
 - proposed lot will meet all other requirements of the Zoning Ordinance, except the required frontage on a Class V or better road
 - lot does have frontage on the Grigas Road ROW/extension; however, Grigas Road was never extended within the ROW that forms the proposed lot frontage
- (3) *substantial justice done*
 - the lot at 8 Lindsay Street was created as an “L” shape with frontage on both Lindsay Street and on an extension of Grigas Street ROW, as depicted on the recorded subdivision plan
 - Grigas Street extension was never built, so the proposed lot does not have frontage on a Class V road, as intended when lot was created
 - Variance will allow Property Owner to fully develop the property as intended
- (4) *not diminish surrounding property values*
 - Proposed lot will not diminish property values
 - Proposed lot size and configuration will be similar to existing properties along Grigas Street, St. John Street, Nellie Court and Ledge Road
- (5) *hardship*
 - Lot has a unique configuration with the “L” shape and frontage on both Lindsay Street to the west and a paper street to the north – Grigas Street ROW
 - Reviewing past recorded plans, it is clear that the *intent* was to extend Grigas Street to create additional lots
 - The Town never constructed the Gringas Street extension, resulting in the planned Grigas Street frontage not existing
 - Town accepted Grigas Street in 1978
 - Plan #1667 recorded in 1957 shows Grigas Street extending south with a number of lots created along the frontage
 - Plan #2888 recorded in 1964 shows changes to the lot sizes along Grigas Street continuing south
 - Plan #13558 recorded in 1980 is the Plan what created the current lot and shows Grigas Street ROW extending the create the current “L” configuration of the subject lot

Mr. Flores stated that from 1893 – 1969, a Right of Way (ROW) that was not used/utilized by a town in twenty (20) years automatically disappeared and anything after 1969 required action by the Town (Selectmen) to release/discharge the ROW. Mr. Flores concluded his presentation and stated that a legal opinion from Pancioco (?) Law was sought and submitted previously and should be in the Board's supplemental folders tonight.

Mr. Fauvel asked what the frontage is along Grigas Street and Mr. Flores responded that it has one hundred four feet (104') and that only ninety feet (90') is required.

Mr. Nicolas stated that he knows Mr. Lacasse of M.R. Lacasse Homes, LLC, noted that they are neighbors and asked if ethically he is allowed to vote. Mr. Buttrick referred to the Juror Test – is there a monetary gain, is there a family relationship and would the relationship taint your decision. Mr. Nicolas stated that there is no need to recuse himself.

Mr. Daddario opened public testimony at 8:32 PM. The following individuals addressed the Board:

- (1) Robert Graves, 4 Grigas Street, stated that he has concerns and questions. Who owns the Grigas Street extension and who pays taxes on it? Mr. Graves stated that his biggest concern is drainage and noted that Grigas Street is crowned and drains into that corner so that there always seems to be a puddle, or an ice skating rink in the winter months, and wondered if there are designated wetlands in the area. Without knowing the exact measurements, it appears that the proposed house seems rather big for the neighborhood and could impact his property value and does not see the hardship because there's already a house on the lot and not making money by building another does not satisfy the hardship requirement.

Mr. Buttrick responded that the Town owns it by dedication on a Planning Board subdivision plan that was approved and recorded. Mr. Daddario stated that drainage and size of the house will be reviewed by the Planning Board. Mr. Buttrick stated that "frontage" on a "paper street" does not equal a Class V road, but a Class VI road and that requires a Variance. Mr. Fauvel asked if all Class V roads are to be paved and Mr. Buttrick stated that question should be posed to the Town Engineer. Mr. Pacocha stated that the Town closes many Class VI roads in the winter. Mr. Buttrick noted that Gringas Street turns into St John Street creating a rounded corner. Mr. Pacocha asked if Grigas Street should be extended.

- (2) Andrew Cloutier, 6 Grigas Street, direct abutter, opposed the subdivision for the lack of frontage and the fact that all the water runoff from Grigas Street and St John Street flows approximately twenty five feet (25') from his rear property line and puddles. Mr. Cloutier stated that he does not believe duplexes are allowed in the TR Zone and Mr. Buttrick stated that the proposed home is to be a single family home and that the existing duplex on the property is permitted by right and permit.

- (3) Susan Cloutier, 25 George Street, Hudson NH, stated the Mr. Flores kept mentioning “intent” over the years and wonders if there is an underlying issue of why the Town never finished Grigas Road and whether there’s a good reason why the street stopped where it did. Ms. Cloutier stated that the corner has had drainage issues all along and the Town plows snow in there every winter and she and her family and neighbors have cleaned out that extension several times. No one should rely on “intent” if there is a reason why it has not been finished in all these years.
- (4) Jeff Ferentio, 5 St John Street, pointed to his lot on the map and stated that all the water from Grigas Lindsay and St John travels to this lot in the corner and pools there. Developing this lot will create more of a disaster than what is there already.
- (5) Robert Graves, 4 Grigas Street, asked if the Town owns the extension would they pave it and maintain it if the variance is granted to build a house there? Mr. Daddario stated that will be discussed in deliberation as he too has the same question.
- (6) Rene Gregoire, 16 St John Street, stated that statements have been made that developing this lot would benefit the area, or at least not harm it, but extending Grigas Street would require the cutting of trees but trees are a benefit and those trees were one of the reasons she selected to purchase her home in the neighborhood because the area is not congested. Ms. Gregoire stated that there is no benefit to the Town if they have to build the extension and maintain it. There is no benefit to the public/neighborhood.
- (7) Andrew Cloutier, 6 Grigas Street, referenced the original plan, Plan 1667 dated 1957, and asked if there was an easement for the drainage because the line for his property is dotted, not solid, and that could mean an easement. Mr. Cloutier stated that one possible reason Grigas Street was not completed is because Lindsay Street got developed.

Public testimony closed at 8:57 PM.

Mr. Buttrick provided a recap of the abutter concerns just heard: drainage, too big a house, intent of original subdivision and why Grigas Street extension never completed, removal of trees, Town plows snow into Grigas Street extension, Town maintenance required if Grigas Street extension is built and easement.

Mr. Flores responded to Abutter concerns and stated that they are aware of the drainage issue and posted the subdivision plan for the new lot, agreed with the statement made that water collects, noted to the rear of the proposed new lot is a cemetery and that they will have to contain stormwater runoff and plan to keep the driveway low and place a swale and added that the details for the drainage will be reviewed with the Planning Board. With regard to the question raised about paving the road (Gigras Street extension), several options were explored which included building a private road built to Town standards and no longer owned by the Town but the Town Planner and others were not receptive to that idea. Mr. Flores stated that after all the discussion, it is his opinion that the Town will not build the extension and

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as a result they are proposing a private driveway. The paper street is a fifty-foot (50') ROW. One of the questions for the Board of Selectmen will be to decide whether they wish to retain the easement land (Grigas Street extension) or have it split in half and add to the abutting lots and if split, then the driveway would be on the lot proposed for subdivision and noted that it would still need a Variance for frontage. The proposed house size is 28'x36' with a 24'x24' garage and is similar to other buildings in the neighborhood.

With regard to the dashed line easement question, Mr. Flores posted the plan from 1964 and noted that it revised the 1957 Plan by adjusting the lot lines for specific lots (2,3,4 & 18) and the dash line was probably the old lot line. Mr. Flores stated that the soil on the proposed lot is sandy soil that is well drained. The interesting factor is sewer that starts on St John Street but the manhole is too shallow so the plan is to pump it from the house along the property line, with an easement, to Lindsay Street. With regard to the trees, only the space needed for the house, garage and driveway would have trees removed leaving the rear and side trees untouched and added that there is no plan to cut trees in the back of the existing duplex.

Public testimony reopened at 9:00 PM and the following individuals addressed the Board:

- (1) Robert Graves, 4 Grigas Street, stated that that when there is an existing ROW, specifically the Grigas Street extension, apparently owned by the Town, will the Town allow someone to put in a driveway on Town owned land? Ms. Roy stated it is her belief that the Town, the Board of Selectmen (BoS), will have to either grant them an easement to build the driveway or carve the section needed for the driveway. Mr. Buttrick stated a driveway is allowed on Class VI roads, but maintenance relies on/with the Property Owner as the Town does not maintain or plow Class VI roads.
- (2) Andrew Cloutier, 6 Grigas Street, asked how the drainage issue will be solved, whether trees would be cut and land regraded and stated that he would prefer trees to be left along his property line for the shade and expressed concern if the trees are cut it would negatively affect his home's value.

Mr. Flores responded the intent is to leave as many trees as possible and added that the soils are sandy with excellent drainage and the drainage details will be reviewed with the Planning Board. Mr. Flores stated the Grigas Street extension is a Class VI road now and the Town does not maintain it and that they need to go to the BoS to get permission in order to get a driveway permit.

- (3) Mr. Buttrick referred to the email received yesterday with a lengthy letter attached in opposition that was placed in the supplemental folder.
- (4) Jeff Ferentino, 5 St John Street, asked if Grigas Street extension is actually a "paper street" owned by the Town and a Class VI road and if anyone else can have access/use of it beside the Applicant and wondered if he could have a second driveway onto it?

Mr. Buttrick stated that there is an outstanding question regarding whether “quiet title” can be claimed, noted that there are processes in place for such a claim and urged Mr. Ferentino to pursue independently as that is not under ZBA purview and added that the plan presented to the ZBA “prescribes” it as a ROW. Mr. Fauvel stated that if approval is given to one person, i.e. the applicant, then everyone should be able to use it. Mr. Daddario questioned who decides who can use a Town ROW. Mr. Flores stated that the RSA addresses this Class VI road issue and that is why he needs to go before the BoS and added that maintenance would be on the user and not the Town.

- (5) Andrew Cloutier, 6 Grigas Street, asked how the Board can proceed to grant this variance when there are so many unanswered questions and asked that Mr. Nicolas be removed from voting on this Case due to a personal relationship with the builder.

Mr. Martin responded that per the RSA, Mr. Nicolas did notify the Board of this neighbor relationship prior to the going into public testimony and both the Board and the Applicant raised no issue/concerns and Mr. Nicolas made the decision not to recuse himself. Mr. Fauvel noted that if any Member had a problem with Mr. Nicolas remaining to vote, they would have spoken up then.

Public testimony closed at 9:14 PM.

Mr. Martin stated that in 2012 there was a similar Case that claimed frontage on a stump of a circle, the March Street extension Case, and that was denied by ZBA, appealed to Supreme and the Town prevailed. Mr. Martin stated that this lot has frontage on Lindsay Street and if they want to have Grigas Street extension then they can build it out, with the permission of the BoS of course, and they can maintain it. Mr. Fauvel agreed and added the option that they could offer to buy the property (Grigas Street extension/ROW) from the Town.

Mr. Buttrick suggested review of Town Counsel’s opinion. Mr. Daddario stated that he is unsure the Board is in a position to grant a Variance and would prefer to defer deciding until the driveway issue is resolved. Mr. Martin stated that the Town owns the land, that it is a “paper street” never developed/finished and questioned when or if it reverts to the abutting property owners and that, added to the driveway resolution, it is his opinion that the hardship criteria has not been satisfied and would vote to deny the Variance. Mr. Buttrick stated that there are processes in place to “quiet” the title. Mr. Daddario stated Town Counsel opinion is needed. Mr. Fauvel agreed and stated that it is also important to know if the stub extension can be purchased. Mr. Martin asked what would remain of the stub should the Selectmen allow a driveway to be paved.

Discussion continued. It was noted that the current ROW width is sixty feet (60’) and a Variance for reduced frontage would still be required to subdivide this lot. It was also noted that the ZBA has no authority regarding the dispensation of Gigras Street extension and the Applicant does not have approval from the Selectmen to construct a driveway on Town owned land.

Mr. Daddario asked Mr. Flores if he had a preference whether to withdraw the application without prejudice or to defer in order for him to meet with the BoS and

ZBA to confer with Town Counsel. Mr. Flores asked for a deferral. Discussion focused on selecting a date.

Mr. Martin made the motion to defer to the January 27, 2022 in order for the Applicant to meet with the BoS and ZBA to confer with Town Counsel. Mr. Fauvel seconded the motion and suggested each Member submit their question(s) in writing to Mr. Buttrick for Town Counsel to address. Roll call vote was 5:0. Motion passed. Case continued to 1/27/2022. Mr. Buttrick announced that there would be no further notice sent for the continuedHearing.

3. Case 190-029 (10-28-21): Antonio Marcos Pinheiro De Carvalho, **14A Riverside Dr., Hudson, NH**, Map 190, Lot 029-000, Split Zoned Business (B) and Town Residence (TR) requests the following:

- a) A Use **Variance** for relief from HZO Article V, Permitted Uses; §334-21, Table of Permitted Principal Uses: for newly built deck, pool and shed structures. This Variance is required per HZO Article VIII, Nonconforming Uses, Structures and Lots; §334-29, Extension or enlargement of non-conforming uses.

Mr. Buttrick read the request into the record and referenced his Zoning Determination #21-159 dated 9/23/2021 and his Staff Report signed 10/14/2021. The Zone line diagonally bisects the lot and structure.

Antonio De Carvalho, 14ARiverside Drive, sat at the Applicant table with his wife and introduced himself. Mr. De Carvalho stated that he bought the property about a year ago, that he has two (2) small children and installed a small nine foot diameter pool and he extended his deck about six feet (~6') to the pool. Mr. De Carvalho apologized and stated that he did the work without obtaining any permits. Mr. De Carvalho stated that he had his lot surveyed (Promised Land survey, LLC, Timothy Peloquin, LLS, dated 8/17/2021, and discovered he had an issue with his side setback, that his property actually goes into his neighbor's property by approximately fourteen and a half feet (~14.5') and goes over his neighbor's bulkhead.

Mr. De Carvalho stated that there used to be an in-ground pool on the property as shown on an older aerial view (maybe 1986 or 1998?) as well as a shed. Mr. De Carvalho stated his property has two Zones but he only uses the property for his home and wondered if he could have his whole property in the residential zone.

Mr. Buttrick stated that in his review there was a fire in 2001 and the house was rebuilt and added that the issue of the side property line is not before the Board as it is a civil matter and the two-family residence has a Permit but neither the TR or the B Zones allow for two-family residences so it is non-conforming and the installation of the deck is an expansion of the non-conformity and requires a Variance.

Mr. Daddario asked for the criteria for the granting be addressed. Mr. De Carvalho stated that he reading of English is not very good, that he had his friend's help to answer and signed the Application. Mr. Buttrick read the questions and answers to the criteria from the application form. The information shared included:

- (1) *not contrary to public interest*

- Not contrary – residential neighborhood
 - Half of the property is residential, the other half is business – would prefer for all the property to be in the residential zone
- (2) *will observe the spirit of the Ordinance*
- Is a residential neighborhood
 - Does not threaten public health, safety or welfare
- (3) *substantial justice done*
- When house was purchased, had no idea that half was zoned business
 - Do not wish to change anything regarding property, just seek to have property zoned residential
- (4) *not diminish surrounding property values*
- A variance deeming property residential will in no way diminish values of surrounding properties
 - Variance will provide flexibility to improve residence in the future
- (5) *hardship*
- Variance will allow me to perform normal home owner improvements, such as a deck and deck improvements
 - Town's Zoning map imposes the use restrictions

Mr. Daddario asked Mr. Carvalho if this was his testimony and Mr. Carvalho responded in the affirmative.

Public testimony opened at 9:58 PM. No one addressed the Board. Mr. Buttrick stated he received an email in the afternoon today and placed it in the Supplemental folder and read it into the record. In brief, the email was dated 10/28/2021 from Joyce Wilcox, 15 Cross Street, expressed concern regarding the speed and ease of putting in a pool, an enlarged deck and shed, replacement of an old wooden fence extending it along the multi-car driveway, questioned quality workmanship and noted that all seem to have been well coordinated with speed and assistance and questioned whether this is a classic case of “sorry, didn’t know I needed permission and is now asking for forgiveness” and wondered about the bobcat that’s always parked there.

Mr. De Carvalho stated he recently bought the excavator and has parked it in the back of his yard and hopes to one day start a business.

Public testimony closed at 10.04 PM.

Mr. Buttrick stated that this needs a Variance because the Town changed the Zone and that change split the Applicant’s lot into two zones and noted that the whole neighborhood is residential.

It was also noted that a change to Zones does not fall under the purview of the Zoning Board and can only happen if the Planning Board presents an amendment to the Zoning Ordinance and the amendment gets majority vote at the annual Town Meeting.

Mr. Pacocha made the motion to grant the Variance. Mr. Nichols seconded the motion. Mr. Pacocha stated that the requested Variance is not contrary to public interest, that it does observe the spirit of the Ordinance, there is no harm to the general public, no decrease in property values and that hardship is satisfied due to the

lot being split zoned. Mr. Nicolas concurred, as did Mr. Martin who also stated that justice is afforded to the Property Owner. Mr. Daddario stated that it does not alter the character of the neighborhood, which is predominantly residential, the deck preexisted and only extended to connect to the pool, there is no harm to the public and no decrease in property values and that hardship is met because of the split zone and the existing house is a two-family by Permit making it non-conforming and any change would require a Variance. Roll call vote was 5:0. Variance granted. The 30-day appeal period was noted.

- b) An **Equitable Waiver of Dimensional Requirement** to allow a newly installed 12'-6" x 20'-4" (254 square feet) shed to remain in its current location which encroaches the side and rear yard setbacks leaving 11'-3" and 3' respectively where 15 feet is required for both setbacks. [HZO Article VII, Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements.]

Mr. Buttrick read the request into the record and referenced his Staff Report signed 10/19/2021, noted that this resulted from after-the-fact Building Permits submitted after having received a complaint and noticed that this falls under Option 1 of the Equitable Waiver of Dimensional Requirements as it has not existed for more than ten (10) years. Board discussed the material submitted.

Antonio De Carvalho, 14A Riverside Drive, sat at the Applicant table with his wife and introduced himself. Mr. Buttrick read the Application into the record and the following information was shared:

(a) *discovered too late*

- am a first time home owner
- did not realize permits (Building Permits) were needed
- as soon as notification of violation received went and applied for Permits

(b) *innocent mistake*

- it was an honest mistake
- did not realize permits were needed as I was going by old pictures that there was once a pool and shed on property and I only extended existing deck to reach the pool

(c) *no nuisance*

- property is totally fenced in with a 6' high fence
- there is no nuisance nor diminishment of/to property values
- *high correction cost*
 - nor feasible to move a structure (shed)
 - is in approximately same location as one was location in 1978
 - property is surrounded by a 6' fence

Mr. De Carvalho added that his neighbor has his shed close to the property line and it seems like there are many sheds in the neighborhood located similarly and it just makes sense to leave enough yard for children to have a backyard to play in. Mrs. De Carvalho stated that she comes from Brazil and speaks little English, has lived in apartments for eighteen (18) years and has two (2) children and this is their first house and are overjoyed to have a backyard for the children and honestly did not know permits were needed.

Board reviewed aerial views of the neighborhood and noted that there are several other sheds in the neighborhood with structures close to property lines and also a large pool. Discussion arose on the height of the shed and it was noted that a business (with lots of cars) abuts the rear property line.

Mr. Pacocha inquired about the height of the shed and fence. Mr. De Carvalho responded that the fence is six feet (6') high and that he does not know the exact height of the shed but estimated approximately ten feet (10'). Mr. Pacocha noted that the shed's roofline would be visible

Public testimony opened at 10:26 PM. No one addressed the Board. Mr. Buttrick referenced the email received from Ms. Wilcox. Public testimony closed at 10:27 PM.

Mr. Fauvel made the motion to grant the Equitable Waiver. Mr. Martin seconded the motion. Mr. Fauvel stated that when driving down the road, other sheds are visibly close to property lines and several houses too in the setbacks which is not surprising considering frontage is typically just seventy-five feet (75') of frontage and as soon as the Applicant received notice that permits were required he immediately called the Building Inspector and took corrective action. Mr. Fauvel added that it was an innocent mistake as there are many in the neighborhood with sheds similarly located and the cost to correct it (move the shed) would be outrageous. Mr. Martin stated that it was not discovered too late, it was discovered by the Town and possibly an innocent mistake because the Applicant is a new homeowner, and it poses no nuisance especially considering the rear abutter is a business with many cars parked on that lot and, because the shed is on cinder blocks, it could be moved, however since there is no nuisance and not hurting anyone and considering that the neighborhood has many sheds close to property lines he would vote to grant the request. Mr. Daddario spoke to the factors and concurs that it was discovered too late in the sense that the shed was complete before the complaint was received and probably was an innocent mistake because looking at the neighborhood it would appear to be a reasonable assumption to place a shed close to the property lines and the yard is fenced in and there would be no benefit and a high correction cost to move the shed. Roll call vote was 5:0. Equitable Waiver granted. The 30-day appeal period was noted.

IV. REQUEST FOR REHEARING

No requests were presented for Board consideration.

V. REVIEW OF MINUTES: Edited Minutes for 08/26/21, 09/09/21 & 09/23/21

Board reviewed the Minutes. Ms. Knee confirmed that Mr. Martin's edits were received and it was noted they were typographical and not substantive. Motion made by Mr. Martin, seconded by Mr. Nicolas and unanimously voted to approve the Minutes of 08/26/21, 09/09/21 & 09/23/21 as edited.

IV. OTHER:

1. 2022 Proposed ZBA Meeting Schedule

Board reviewed the proposed schedule. Mr. Pacocha noted that, traditionally for the months of November and December, the meetings are held on the second Thursday of the month to avoid the Thanksgiving and Christmas holidays and asked why November this year it is on the third Thursday. Mr. Buttrick responded that this year the second Thursday falls on Veteran's Day.

2. Member Contact Sheet

Mr. Buttrick stated that another updated list would be forthcoming as everyone is being urged to use a Town email address for ZBA business and not their personal email address. Mr. Buttrick offered to help streamline establishing a Town email for anyone interested.

3. Growth Management and Workforce Housing

Mr. Fauvel asked if the Growth Management Ordinance has been repealed or if it is still in effect and noted that the last update to the Master Plan was in 2002. Mr. Buttrick responded that it is still in the Zoning Ordinance, Article XIX Sections 334:108-119, and that workforce housing is covered by RSA 674:58. Mr. Buttrick noted that the Planning Board has the responsibility to propose Zoning Ordinance amendments for Town Vote as well as the Town's Master Plan that is traditionally updated every decade. Mr. Daddario stated that this could be a workshop topic for a future date.

Mr. Martin made the motion, seconded by Mr. Nicholas and unanimously voted to adjourn the meeting. The 10/28/2021 ZBA meeting adjourned at 11:01 PM

Respectfully submitted,

Gary M. Daddario, ZBA Chairman