



TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Kara Roy, Selectmen Liaison

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

MEETING MINUTES – December 9, 2021 – approved

The Hudson Zoning Board of Adjustment met on Thursday, December 9, 2021 at 7:00 PM in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall, 12 School St., Hudson, NH.

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

Chairman Gary Daddario called the meeting to order at 7:02 PM, invited everyone to stand for the Pledge of Allegiance, acknowledged that Regular Member Leo Fauvel has resigned and appointed Alternate Normand Martin to vote in his place, assigned Alternate Member Dean Sakati as Clerk for the meeting and read the procedure for the meeting from the Preamble, found in Exhibit A of the Board's Bylaws, into the record and asked everyone to address the Board from the Applicant's table as the microphone at the lectern is not functioning.

The Clerk took attendance. Members present were Gary Daddario (Regular/Chair), Brian Etienne (Regular), Normand Martin (Alternate), Marcus Nicolas (Regular), Jim Pacocha (Regular/Vice Chair), Dean Sakati (Alternate/Clerk) and Edward Thompson (Alternate). Also present were Bruce Buttrick, Zoning Administrator, Louise Knee, Recorder (remote) and Kara Roy, Selectman Liaison. Mr. Daddario stated that appointing Alternate Martin as a Voting Member, that there would be five (5) Voting Members for this meeting.

III. PUBLIC HEARING OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

1. **Case 234-048 (12-09-21)**: Lori McGibbon, 7 Stuart St., Hudson, NH [Map 234, Lot 048-000; Zoned General-One (G-1)] requests the following:

- a. A **Variance** to change a current dual use of an existing building used as a business into a residential use in the G-1 Zone where multiple principal uses are only allowed within the Business or Industrial Zones within lots that meet area requirements. [HZO Article III, General Regulations; §334-10.A, Mixed or dual use on a lot.]

Mr. Buttrick read the Case into the record and referenced his Staff Report signed 12/1/2021 noting that there exist two (2) buildings on this existing non-conforming corner lot where one is the residence of Lori McGibbon and the other a business for a dog training and kennel center approved by Variance 10/03/2008. The non-

conformity of the lot is due to its lack of satisfying minimum size for a multi-use plus the fact that both buildings on site infringe the front setback.

Anthony Basso, LLS, from Keach-Nordstrom Associates, Inc. of Bedford NH introduced himself and his Associate Ms. Alison Lewis as representing Lori McGibbon, the property owner, and stated that his client could not be present at the meeting because of her back injury.

Mr. Basso identified the location of this corner lot, noted that his client, Lori McGibbon lives in the residence, and her parents now need care. Mr. Basso stated that they considered and have eliminated the option of constructing an ADU (Accessory Dwelling Unit) at the residence and are pursuing the possibility of converting the commercial building into a residence for her parents. The business was a coffee shop prior to becoming a dog facility by variance in 2008 and has a rather large septic system. The dog training business is no longer there, having grown and moved to another location in Nashua, NH. Mr. Basso noted that a two-family house is allowed in the General-One (G-1) Zone but not two separate houses.

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

(1) *not contrary to public interest*

- The requested variance would allow for the applicant's ailing family member to live adjacent to immediate care
- Property is surrounded by mixed use lots containing both businesses and residential homes
- Allowing a second residential use would not impact any adjacent landowners or the Town of Hudson
- Building was used as a dog training facility and, if variance granted, would bring less traffic to the neighborhood and therefore would not have an adverse impact on traffic or nearby neighbors
- No new buildings or external construction is being proposed, just internal construction changes to change the business building into a residence
- Variance would not contrast current goals for the Town or abutting properties

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

- G-1 Zone established to provide wide diversity of land uses at an appropriate density
- No new construction proposed, therefore will not result in overcrowding of buildings or any impact to neighboring properties
- Spirit of Ordinance is to prevent overcrowding of buildings and any risk to public safety and welfare while providing a variety of uses
- Variance does observe spirit of the Ordinance
- Multi-family use is allowed in G-1 Zone so dual residential use is not contrary to the allowed uses in G-1 Zone

(3) *substantial justice done*

- Opportunity lost to the applicant by not granting the variance far outweighs any gain that could possibly be realized by the public
- Dual use proposed is not incongruous with neighborhood

- There will be no adverse impact to residences along Stuart Street or River Road
- (4) *not diminish surrounding property values*
- Multi-family homes allowed in G-1 Zone
 - will not diminish other property values in the neighborhood
- (5) *hardship*
- lot is a current non-conforming corner lot based on size and that both buildings infringe into the expanded front setback
 - two buildings currently exist – no additional buildings proposed
 - unnecessary construction to combine the two buildings to create a multi-family structure
 - connecting the two (2) buildings to create a two-family home would also require a Variance to expand non-conforming use/lot
 - literal enforcement would result in the applicant not being able to care for their ailing family member and that hardship would be unimaginable

Mr. Pacocha inquired about the business property and Mr. Basso responded that it requires interior renovation to become a residence and in response to Mr. Thompson inquiry, Mr. Basso responded that it would result in eight hundred sixty-four square feet (864 SF). Mr. Daddario noted that in one of the aerial views there was a shed and questioned if the two buildings could be connected and result in a two-family residence. Mr. Basso responded that is not desirable and could be an impact to the neighborhood with exterior construction.

Ms. Roy questioned the number of bedrooms in the house (answer: 2) and the septic system and its capability to handle a second residence. Mr. Buttrick noted that the Town Engineer's review comments dated 11/23/2021 also requires confirmation that the existing septic system can accommodate two (2) single-family residences as well as the water service connection. Mr. Basso responded that the existing septic system has a greater than average septic field, probably because it used to be a coffee shop, that it is a pump system with alarm, and that Planning Board Site Plan Review and approval is also required for Change in Use.

Ms. Roy noted that many properties in the neighborhood have two structures and Mr. Etienne asked if any of them were two-family buildings. Mr. Basso stated that there are many lots of mixed uses in the neighborhood. It was unknown whether any had two (2) residential structures.

Public testimony opened at 7:32 PM. No one addressed the Board.

Mr. Martin stated that in his opinion there is no land-based hardship and the property owner has reasonable use of it already. Mr. Etienne concurred and added that allowing two (2) single-family homes on a small lot would be setting a precedent. Mr. Basso stated that when they reviewed the possibility of connecting the two (2) buildings, the point of connection would be to the only bathroom in the home and there is no space in the house to create/move the bathroom.

Mr. Martin stated that there is a condition that allows hardship to be satisfied based on a recognized physical disability, but none has been presented and prudence does

not allow the question to be asked. Mr. Buttrick confirmed that there is a disability exclusion, RSA 674:33.V and added that the RSA is generally invoked for handicap accessibility. Mr. Etienne noted that Variance stays with the property for eternity and Mr. Buttrick agreed and added that a condition of approval could be made. Mr. Basso stated that his client could not be present at this meeting due to a back injury and that they could provide the needed documentation and added that the option exists to either table a decision tonight pending such documentation or add a condition to the approval to satisfy the hardship criteria.

Mr. Martin made the motion to grant the Variance with the condition that the Applicant provides documentation to the Zoning Administrator that satisfies RSA 674:33.V. Mr. Pacocha stated that he would add a second condition that there could be no future subdivision of the lot and Mr. Daddario stated that a third condition would be that the Variance expires when it is no longer needed by the current Property Owner. Discussed. Motion to grant the Variance with three (3) conditions was seconded by Mr. Pacocha.

Recap: Motion to grant the Variance with three (3) stipulations:

- (1) that documentation be submitted to the Zoning Administrator sufficient to satisfy RSA 674:33.V;
- (2) that there shall be no subdivision allowed in the future; and
- (3) that this Variance survives only for such time as the particular individual qualifying under RSA 674:33.V(b) has a continuing need to use the premises.

Roll call vote was 4:1 with Mr. Etienne opposed. Variance conditionally granted. The 30-day appeal period was noted.

- b. A **Special Exception** to allow 2 (two) single-family structures on a lot where multiple or mixed uses on a single lot, which includes a residential use, shall only be allowed by Special Exception with the general requirements listed in Article VI, § 334-23. [HZO Article III, General Regulations; §334-10.D, Mixed or dual use on a lot.]

Mr. Buttrick read the Case into the record and referenced his Staff Report signed 12/01/2021 and stated that the Special Exception is required to allow a dual residential use on a property with mixed use by Variance (granted on 10/23/2008) and noted that the lot is a non-conforming corner lot with both existing buildings not conforming to the setback from River Road.

Anthony Basso, LLS, from Keach-Nordstrom Associates, Inc. of Bedford NH introduced himself and his Associate Ms. Lewis and re-stated that his client could not be present at the meeting because of her back injury and that all the information presented earlier applies to the Case as well.

Ms. Lewis addressed the criteria for the granting of a Special Exception. The information shared included:

- (1) Use requested is permitted by Special Exception*

- Property is in General-One Zone where the Use is allowed by Special Exception
- (2) *Proposed Use meets requirements in Zoning Ordinance*
 - Proposed Use is residential and is allowed in District
 - Building to be used as a residence exists today
 - No addition or expansion is proposed
- (3) *Proposed Use is consistent with purpose and intent of Zone/District*
 - The G-1 district allows residential Use and duplexes (two-family) by Right
 - Property will have only two (2) residences and therefore consistent with purpose and intent
- (4) *Proposed Use is compatible with character of neighborhood*
 - Proposed Use is residential and the neighborhood is a mixture of residential and business Uses
- (5) *Non-residential Use ...*
 - Not applicable

Public Testimony opened at 7:53 PM. No one addressed the Board.

Board briefly discussed and looked at aerial views of the neighborhood noting several lots with more than one (1) structure.

Mr. Martin made the motion to grant the Special Exception as requested. Mr. Nicolas seconded the motion. Roll call vote was 4:1 with Mr. Etienne opposed. Special Exception granted. The 30-day appeal period was noted.

2. **Case 168-020 (12-09-21)**: Paul & Sandra O’Sullivan, 8 Washington Drive, Hudson, NH [Map 168, Lot 020-000; Zoned Residential-Two (R-2)] requests the following:

- a. A **Variance** to build a 9 ft. x 20 ft. covered porch on the front of an existing non-conforming structure (house), which encroaches the front yard setback an additional 9.3 feet, leaving 14.8 feet where 30 feet is required. [HZO Article VII, Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements and HZO Article VIII, Nonconforming Uses, Structures and Lots; §334-31.A, Alteration and expansion of nonconforming structures.]

Mr. Buttrick read the Case into the record, referenced his Staff Report signed 12/01/2021 and noted that it is a non-conforming corner lot of record based on non-conforming frontage along Madison Drive and residence into the front setback along Washington Street.

Paul O’Sullivan introduced himself, stated that he would like to construct a covered 9’ x 20’ front porch to the front of his residence along Washington Street and addressed the criteria for the granting of a Variance. The information shared included the following:

- (1) *not contrary to public interest*
 - Does not alter the essential character of the neighborhood
 - Several homes in the neighborhood with similar porches and referenced 17 Washington St., 3 Jackson Drive, 2 Jefferson Drive, 8 Jefferson Drive, 8 Madison Drive, 11 Madison Drive and 14 Madison Drive

- Proposed porch does not threaten public health, safety, or welfare nor will it injure public rights
- (2) *will observe the spirit of the Ordinance*
- Proposed front porch would replace existing front stairway and walkway in the same footprint
 - Because proposed porch will be covered and elevated from existing walkway to the driveway it constitutes an expansion of the structure footprint
 - Purpose and use of proposed porch are the same as the existing porch and walkway with the advantage of a covered entryway
- (3) *substantial justice done*
- Proposed porch would provide an improved aesthetic appearance to the home without altering the use of the existing footprint
- (4) *not diminish surrounding property values*
- Improved aesthetic appearance of the home should not affect the values of surrounding properties
 - The improvement at 8 Washington Street will likely result in a very modest increase in property value but likely not result in any change to surrounding property values
- (5) *hardship*
- home is about 50- years old and they have lived there for 31 years
 - proposed porch is an improvement to the appearance of the home and would provide a covered entryway and walkway
 - is a reasonable request
 - denial of Variance would not recognize that the purpose and use of the proposed porch is the same as the existing porch and walkway with the added benefit of being covered

Mr. Etienne asked who lives in the ADU above the attached two-car garage and Mr. O'Sullivan responded that his mother-in-law is the occupant. Mr. Martin noted that the house is in the front setback. Mr. Buttrick confirmed. It was noted that a Variance was granted on 5/2/1984 to allow a twenty-five foot (25') front setback where thirty feet (30') was required.

Public testimony opened at 8:03 PM. No one addressed the Board.

Mr. Martin noted that the proposed covered porch would be very close to the road (Washington Street) and asked if it was a busy intersection because there is concern regarding safety. Mr. Etienne shared the same safety concern especially since there are no sidewalks in the neighborhood, plus the possibility of potential future road expansion of the road, questioned if the porch could be located on the rear of the house and asked to have aerial views posted of the others in the neighborhood referenced by the Applicant that have front porches. Mr. O'Sullivan stated that there is a patio on the back of the house, approximately four feet by four feet (4'x4') with a railing close to the garage as well as a deck for the ALU facing Madison Drive and that the ALU is connected via the mudroom. Aerial views were reviewed and it was noted that none of their covered front porches encroached the required front setback.

Mr. Etienne made the motion to not grant the Variance because the criteria have not been satisfied, it is not consistent with the neighborhood, there are safety concerns

and other options are available to the Property Owner. Mr. Martin seconded the motion. Mr. Daddario noted that there is also concern that the building itself is in the setback, that others in the neighborhood do not encroach the front setback, that other options are available to the Property Owner and that there is no hardship caused by the land. Mr. Nicolas concurred. Roll call vote was unanimous at 5:0. Variance denied. The 30-day appeal period was noted.

- b. An **Equitable Waiver of Dimensional Requirement** for an existing 19'3" x 12'3" (235.8 sqft) shed which encroaches ~9 feet into the side yard setback leaving ~6 feet where 15 feet is required. [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 12/01/2021 and noted that it is a non-conforming corner lot of record based on non-conforming frontage along Madison Drive and residence into the front setback along Washington Street and that he has found no history of Code Enforcement action in the last ten (10) years.

Paul O'Sullivan introduced himself, and stated that the shed was installed in April 2011, a little over ten (10) years ago, and addressed the criteria from Option 2 of RSA 673:33-a,II, for Equitable Waiver of Dimensional Requirement. The information shared included:

- The shed was included in the plot plan submitted in 2013 for the ALU (Accessory Living Unit)
- No enforcement action or written notice of violation has been commenced by the Town or any Abutter
- The shed is located near the back of the property approximately five feet (5') from the property line abutting 12 Jefferson Drive which has a wooded section and obscures the shed from their view
- Shed is set on a pad of sand and gravel and is obscured from most neighbors' view
- Relocating would require substantial investment to remove topsoil and install a new pad sufficient to adequately support the shed as well as hiring a firm with experience in moving such a structure
- There is no clear benefit to any party for incurring such cost

Public testimony opened at 8:21 PM. No one was present to address the Board.

Motion made by Mr. Etienne and seconded by Mr. Martin. Roll call vote was 5:0 to grant the Equitable Waiver of Dimensional Requirement. Waiver granted. The 30-day Appeal period was noted.

3. **Case 234-016 (12-09-21)**: Peter & Joyce Drown, 7 Bruce St., Hudson, NH requests a Variance to build a 16 ft. x 24 ft. addition, which encroaches a front yard setback 5.2 feet leaving 24.8 feet where 30 feet is required due to a corner lot with 3 (three) front yard setbacks. [Map 234, Lot 016-000; Zoned General-One (G-1); HZO Article VII, Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements.]

Mr. Buttrick read the request into the record and referenced the string of emails with the applicant beginning 11/24/2021 in the Supplemental Meeting Folder pursuing the possibility of a deferral and requesting a deferral to the Board's 2/24/2022 meeting. Mr. Buttrick stated that a motion to accept the request to defer the hearing on the application would serve as notice and thereby omit the need to re-notify abutters.

Motion made by Mr. Martin, seconded by Mr. Nicolas and unanimously voted by a roll call vote of 5:0 to accept the Applicant's request and defer hearing to the Board's 2/24/2022 meeting.

IV. REQUEST FOR REHEARING:

No requests were received for Board consideration.

V. REVIEW OF MINUTES:

10/28/21 edited Minutes: Mr. Buttrick noted that the Minutes were mailed in the Meeting Packet. Motion made by Mr. Etienne, seconded by Mr. Nicolas and unanimously voted 5:0 to approve the 10/28/2021 Minutes as edited.

11/18/21 edited Minutes: Mr. Buttrick noted that the edited Minutes are included in the Supplemental Meeting folder. Motion made by Mr. Etienne, seconded by Mr. Nicolas and unanimously voted 5:0 to approve the 11/18/2021 Minutes as edited.

VI. OTHER:

1. Proposed Bylaws revision: alternate status, recusals and Clerk position/duties.

Mr. Buttrick referenced the draft changes to the Bylaws, noted the history of the Clerk position and the inclusion of Attachment B identifying what is involved with the Clerk duties; the proposed changes as well as the reasoning behind Recusals. Mr. Buttrick noted that there are two (2) meetings scheduled for January 2022 and if a motion is made, to please specify the dates. Discussion arose on inclusion of/for gender-neutral pronouns and to change "himself/herself" to "themselves" or include a gender statement at the beginning of the document; the time period for Appeals changing it from 30-days to 35-days from the date of the decision to accommodate mailing time; and other minor changes. Consensus reached to distribute the edited Bylaws for Members to review and submit additional edits in track-change mode for review at the next meeting.

2. Jan 20, 2022 meeting availability 6:30 start for non-public legal consult

Mr. Buttrick noted that Mr. Nicholas will be recused as he is a direct Abutter, that Town Counsel has been scheduled for legal counsel and asked which Members can attend beginning at 6:30 PM. Except for Mr. Marcus and possibly not Mr. Pacocha. Every Member is available. Board asked to receive paperwork as soon as possible. Ms. Roy asked if she, as the Selectmen Liaison to the Board, was permitted to attend the non-public session and Mr. Buttrick responded that he would check with Town Counsel so as not to avoid/void client confidentiality and advise.

3. Final request for written comments for Town Counsel regarding case #166-031 8 Lindsay St. for Jan 27, 2022 deferred mtg.

Mr. Buttrick stated that three (3) Members have submitted questions for Town Counsel and would appreciate questions from other Board Members and added that Town Counsel could be at the 1/27/2022 meeting and that there could be a non-public session with Town Counsel at 6:30 PM. All Members polled and with the possible exception of Mr. Etienne, all are able to be in attendance at 6:30 PM.

4. ZBA badges

Mr. Buttrick noted that the badges expire every year and to please contact Kathy Wilson to schedule.

5. Next ZBA Meeting scheduled for January 20, 2022

Mr. Pacocha made the motion, seconded by Mr. Nicolas and unanimously voted to adjourn the meeting. The 12/09/2021 ZBA meeting adjourned at 9:04 PM.

Respectfully submitted,

Gary M. Daddario, ZBA Chairman