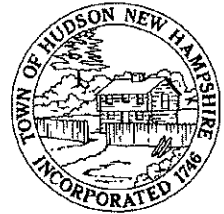


TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Kara Roy, Selectmen Liaison

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MEETING MINUTES – April 28, 2022 - approved

The Hudson Zoning Board of Adjustment met Thursday, April 28, 2022 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. CONSULTATION WITH TOWN COUNSEL (non-public) per RSA 91-A:2 I (b) START 6:30 PM

II. CALL TO ORDER

III. PLEDGE OF ALLEGIANCE

Chairman Daddario called the meeting to order at 7:10 PM, apologized for the late start, invited everyone to stand for the Pledge of Allegiance and read the Preamble (Exhibit A in the Bylaws) on the proceedings of the meeting.

Clerk Normand Martin took attendance. Members present were Gary Daddario (Regular/Chair), Gary Dearborn (Regular), Brian Etienne (Regular), Normand Martin (Alternate/Clerk), Marcus Nicolas (Regular), Jim Pacocha (Regular/Vice Chair), Dean Sakati (Alternate) and Edward Thompson (Alternate). Also present were Bruce Buttrick, Zoning Administrator, Louise Knee, Recorder (remote) and Kara Roy, Selectman Liaison.

IV. PUBLIC HEARING OF SCHEDULED APPLICATIONS BEFORE THE BOARD: 7:00 PM

1. **Case 147-016 (04-28-22):** Derry & Webster, LLC, c/o Vatche Manoukian, Manager, 253 Main St., Nashua, NH requests an extension of the Variance granted with stipulations on 01/23/2020 for **181 A Webster St., Hudson, NH** to prepare food (hot & cold) on site for take-out and serve ice cream for take-out within convenience store, a use not permitted. [Map 147, Lot 016-000, Zoned Residential-Two (R-2); HZO Article XV, Enforcement and Miscellaneous Provisions; §334-82 F, Time Limit.]

Mr. Nicolas recused himself as he is an abutter. Mr. Daddario appointed Alternate Martin to vote on Case.

Mr. Buttrick read the Case into the record, referenced his Staff Report initialed 4/19/2022 noting that the Variance was granted on 1/23/2020, that an extension was requested, and that the Board overruled his Administrative Decision #22-002 on the timing of the filing and allowed the request for an extension to come before the Board. Mr. Buttrick also noted that the Town Planner submitted his review comments

Not Official until reviewed, approved and signed.

Approved as edited 5/26/2022

dated 4/15/2022 citing that the Site Plan was before the Planning Board (PB) on 8/19/2020 and denied the application without prejudice due to lack of compliance to the Zoning Ordinance and outstanding code violations.

Atty. Gerald Prunier, of Prunier & Prolman P.A. in Nashua, NH, addressed the Board and stated that their intent is to present a complete Site Plan for the entire lot, that the Planning Board meeting was via zoom and they did not get the opportunity to speak to their application and have been working with Mr. Buttrick and Town Counsel to bring the site into compliance and have recently received Variances and are requesting an extension for one (1) year.

Public testimony opened at 7:25 PM. No one addressed the Board.

Mr. Pacocha asked Mr. Buttrick if they are seeking to reapply for the Variance and Mr. Buttrick responded that they are seeking an extension to the timeline to implement the Variance granted. Mr. Dearborn asked if there were other issues that prevent them from going to the Planning Board with a complete Site Plan Review (SPR) application and Atty. Prunier responded that it may or may not. Mr. Buttrick noted that a clean Site Plan was not possible in 2020 with the Code and Zoning Ordinance violations. Mr. Etienne asked if the administrative extension for one (1) year is adequate to present a clean and comprehensive Site Plan to the Planning Board, especially considering the stipulations attached to the recently approved Variations.

Discussion arose on the viability of the time frame of one (1) year and the possibility that another extension might need to be requested.

Mr. Martin made motion to grant an extension of the Variance for two (2) years. Mr. Etienne seconded the motion. Roll call vote was 5:0. Extension granted.

Mr. Nicolas returned to the Board table. Mr. Martin no longer voting.

- 2. Case 218-002-002 (04-28-22):** Kariuki P. Kimungu, **9B Trigate Rd., Hudson, NH** requests a Home Occupation Special Exception to operate a home office for his business, Comfort Angels Home Care of NH LLC. [Map 218, Lot 002-002, Zoned General (G); HZO Article VI, Special Exceptions; §334-24, Home Occupations.]

Mr. Buttrick read the Case into the record, referenced his Staff report initialed 4/19/2022 and noted that the building is now a duplex/condex and that the Town Engineer submitted review comments on 4/19/2022 requesting additional information on the parking situation and the abandoned vehicles at the property.

Kariuki Kimungu introduced himself as the Applicant and Property Owner, stated that he moved his business into the house in February 2022, and that the abundant vehicles are being addressed and distributed a revised plan that shows parking.

Mr. Daddario asked about the dimensions of the parking spaces and Mr. Kimungu responded they are eight and a half feet wide (8½' W) by fourteen to sixteen feet long (14-16' L).

Mr. Kimungu addressed the criteria for the granting of a Home Occupation Special Exception. The information shared included:

- Comfort Angels Home Care of NH LLC is a visiting nurse and homemakers' company that sends out nurses, LNAs and homemakers to patient homes for services such as nursing visits, home maker and home health aides to help the patients in activities of daily living, medication administration and wound care.
- Only two (2) people work in the office – the property owners – and the rest of the workers are out in the field.
- The Home Occupation will be secondary to the Principal Use of the business owners' residence – only one (1) room will be used as office space
- The home business will be carried out within the residence
- There will be no signs and no exterior storage
- No noise, vibrations, dust, smoke, electrical disturbances, odor, heat or glare produced by the business
- Traffic generated by the business will be minimal since most employees work in the field. There will be occasions when workers come to the home briefly – for supplies or paychecks, but most employees have direct deposit
- Parking is available to the right of the driveway as one drives in
- The owners, Kariuki Kimungu and his wife Mary Kimungu will be conducting the Home Occupation
- There will be no vehicles for the Home Occupation – the owners will be using their own personal vehicles

Public testimony opened at 7:47 PM. No one addressed the Board.

Mr. Etienne asked if the building is a two-unit structure, whether Mr. Kimungu owns both and whether the second unit would ever be rented? Mr. Kimungu confirmed that it is a two-unit condex, that he owns both and that the second unit is already rented and they park in front of the house.

In response to Mr. Etienne's question, Mr. Kimungu stated that the hours of operation are 9:00 AM – 5:00 PM.

Mr. Dearborn inquired about the Town Engineer's comment regarding the abandoned vehicles and Mr. Kimungu responded that one is already gone and the other two (2) will be removed by the end of next week.

Mr. Martin inquired about the supplies and whether they are delivered by UPS. Mr. Kimungu confirmed and added that the supplies are stored in the office.

Mr. Sakati inquired about the parking and Mr. Kimungu responded that currently it is dirt and that maybe sometime in the future it could be paved. Mr. Dearborn stated that there are five (5) spaces noted on the plan, on the unpaved area that may one day get paved, and questioned whether there should be signs placed to designate that the five (5) spaces are reserved for the business. Mr. Daddario noted that the number of spaces shown seems to represent the maximum number of spaces possible for the designated area and asked how many employees the business employs. Mr. Kimungu responded that it is just his wife and himself who work in the office and their

employees report directly to client's homes. Mr. Thompson asked how many nurses are employed and whether they come to the house. Mr. Kimungu responded that currently they have three (3) nurses and they do not come to the house regularly but go directly to the client's homes. Mr. Pacocha asked if any clients come to the home and Mr. Kimungu responded that they do not, that they go to potential clients' homes.

Mr. Etienne made the motion to grant the Home Occupation Special Exception with the following two (2) conditions: (1) that the Special Exception does not transfer with a change of ownership of the property; and (2) that the hours of operation are 9:00 AM – 5:00 PM only. Mr. Dearborn seconded the motion. Mr. Dearborn stated that the criteria are satisfied with the conditions applied and added that it is understood that all other Zoning and Code regulations be satisfied. Roll call vote was 5:0. Home Office Special Exception conditionally granted. The 30-day Appeal period was noted.

3. **Case 183-006 (04-28-22):** Jesse M. Couillard, **102 Central St., Hudson, NH** requests a Variance to replace and expand an existing non-conforming 12 ft. x 10 ft. deck as a breezeway and build an attached 2-stall, 24 ft. x 20 ft. garage addition. Both encroach the front yard setback 12.5 feet and 21.8 feet leaving 17.5 feet and 8.2 feet respectively where 30 feet is required. [Map 183, Lot 006-000, Zoned Town Residence (TR); 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 and referenced his Staff Report initialed 4/19/2022 noting that it is a corner lot with frontage on Central Street and Vinton Street and that the Town Engineer notation that there is a second nonconforming driveway and that the second driveway should be abandoned if Variance granted.

Jesse and Jamie Couillard introduced themselves and stated that they would like to construct a 2-stall 24' x 20' garage with an open room above and convert their existing deck into a breezeway to connect the house to the garage. Mr. Couillard stated that they bought the property twenty (20) years ago and have two (2) children and noted that their backyard abuts the Sunnyside Cemetery. Mr. Couillard stated that the house was built in 1960 and since then zoning changed and their house became nonconforming with the new setbacks from both roads.

Mr. Couillard addressed the criteria for the granting of a variance and the information shared included:

- (1) *not contrary to public interest*
 - The proposed addition is not contrary to public interest
 - House was built in 1960 and has two front setbacks
 - Proposed two-car garage with breezeway would bring positive value to all homes in the neighborhood and should not have not impact on the character of the neighborhood or impose any safety hazards or risks to the roadways, general public or any health or pose any safety hazards
- (2) *will observe the spirit of the Ordinance*

- Zoning Ordinance Section 334-2 sets the general purpose which includes promoting the most use of the land, conserving property values, maintaining aesthetics and residential use compatible with the neighborhood
 - Variance for this corner lot with a garage addition would allow efficient use of this portion of the lot as well as add square footage for additional tax revenue that will increase property value and property values of other homes in the neighborhood
- (3) *substantial justice done*
- House is already a nonconforming structure on a corner lot with two (2) front setbacks in an existing neighborhood leaving minimal building area
 - Substantial justice would be done because there would be no adverse impact on the general public
 - Been a resident for 20 years at 102 Central Street and realize this is our 'forever' home
 - As we continue to age, not having a garage will pose future hardship during our harsh New England winters
- (4) *not diminish surrounding property values*
- The proposed addition of a garage to an existing nonconforming building on a corner lot with two (2) front setbacks in an existing neighborhood will not diminish the values of surrounding properties
 - The lot can accommodate the addition of a garage without adverse impact on the neighborhood
 - Property values are generally enhanced with new construction
- (5) *hardship*
- House was built in 1960, well before current setback requirements making the house now a nonconforming structure
 - Corner lot with two (2) front 30' setbacks not met – the house is 23' from Central Street and 17.5' from Vinton Street
 - The lot also abuts Sunnyside Cemetery which imposes another restraint with its 25' no construction setback
 - Setbacks minimize the buildable area for this lot and the cause the hardship
 - A garage is a normal component of a house
 - The proposed location for the garage is the only option available

Ms. Couillard added that, objectively speaking, if the variance is denied, they cannot gain further equity from the house.

Public testimony opened at 8:15 PM. No one addressed the Board.

Mr. Martin noted that the Zoning Determination stated that two (2) Variances are required and questioned if the house required an Equitable Waiver instead of a Variance. Mr. Buttrick responded than an Equitable Waiver could be requested for the house but the two (2) Variances before the Board are for the garage addition and the conversion of the deck into a breezeway. Mr. Daddario asked if the footprint of the deck is changing and Mr. Buttrick responded that it is not, that just walls and a roof are being added and that the Use of the deck is changing and a Variance is required for that change in Use.

Mr. Daddario asked if the proposed garage would be covering the existing driveway and it was noted that it would. Ms. Roy asked how much of the driveway would remain and Mr. Couillard responded about seventeen feet (17').

Mr. Sakati and Mr. Thompson explored options like moving the garage further back or pivoting it for a lesser encroachment and after discussion it was realized that the existing deck and the rooflines would be impacted and neither was a viable option.

Mr. Pacocha asked if the plan also called for a room above the garage. Mr. Couillard responded that the plan is to include a room above the garage, an open room with no appliances. Mr. Pacocha asked about the parking and Mr. Couillard responded that there would be two (2) vehicles in the garage and two (2) in the driveway and added that his wife has a large vehicle and would utilize the stall that does not have the staircase to the room above.

Mr. Etienne asked if other houses on Vinton Street are so close to the road. Aerial views were displayed and it was noted that almost every house was close to the road.

Mr. Pacocha asked about the traffic on Vinton Street. Mr. Couillard responded that there is very little traffic and most of it is around school bus times. Mrs. Couillard added that not many kids walk.

Mr. Pacocha made the motion to grant the Variance to replace an existing 12' x 10' deck to create a breezeway and build an attached 2-stall 24' x 20' garage addition. Mr. Nicolas seconded the motion. Mr. Pacocha stated that the criteria have been satisfied including the hardship criteria due to the size of the lot and the existing setbacks. Mr. Nicolas concurred as the garage addition will not alter the character of the neighborhood, nor threaten public safety, nor pose any harm to the general public and noted that there are no sidewalks in the neighborhood and the house was constructed when there was no thirty foot (30') front setback requirement. Mr. Daddario agreed and noted that not only does the corner lot have two (2) 30' front setbacks it also has the cemetery setback leaving little buildable area and added that there is no further encroachment with the conversion of the deck into a breezeway. Roll call vote was 4:1. Mr. Dearborn opposed. Variance granted. The 30-day Appeal period was noted.

V. REQUEST FOR REHEARING:

Case 166-031 (02-24-22): Patricia M. Panciocco, Esq., Panciocco Law, LLC, One Club Acre Lane, Bedford, NH 03110 representing applicant, Daniel M. Flores, PE of SFC Engineering Partnership, Inc., requests a rehearing of a request for a Variance for **8 Lindsay St., Hudson, NH** 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); HZO Article VII, Dimensional Requirements; § 334-27.1 D, General Requirements.]

Mr. Buttrick read the request into the record. Mr. Daddario noted that this was not a public hearing. Mr. Dearborn asked to review the criteria for the granting of a rehearing. After reviewing the Request for Rehearing letter from Patricia M. Panciocco of Panciocco Law, LLC dated 3/24/2022, discussion with Town Counsel and review of the criteria, Board acknowledged that fault was found. Motion made by Mr.

Dearborn, seconded by Mr. Etienne and unanimously voted 5:0 to grant the rehearing based on an error made in the hardship determination. Rehearing granted. Mr. Buttrick noted that it would be a brand new application and essentially be a “start over”.

VI. REVIEW OF MINUTES:

03/24/22 edited Draft Minutes

Board reviewed the edited Minutes and made no further changes. Motion made by Mr. Dearborn, seconded by Mr. Etienne and unanimously voted 5:0 to adopt the 3/24/2022 Minutes as edited.

04/09/22 Site Walk- edited Draft Minutes

Board reviewed the edited Minutes and made no further changes. Motion made by Mr. Dearborn, seconded by Mr. Etienne and unanimously voted 5:0 to adopt the 4/9/2022 Minutes as edited.

VII. OTHER:

1. New Zoning Amendments: **Articles Passed at March 8, 2022 Town of Hudson Ballot**

Article 2– Repeal of Hudson Zoning Ordinance Article XIII – Housing for Older Persons.

Article 3–Amend Table of Minimum Dimensional Requirements-Reduction of side and rear yard setbacks for accessory structures & features in the TR zone: from 15 ft. to 5 ft.

Article 4–Eliminate Requirement for Special Exception for Mixed-Use Buildings

Article 5–Home Occupation Ordinance: To revise the Home Occupation Special Exception to allow outdoor play areas for daycare as required by the State of New Hampshire.

Article 7–Amend Article III, Building Height – By Petition (Addition §334-14 B)

Mr. Buttrick read the above into the record and noted that the Appeal Period has passed and the above Amendments are now part of the Zoning Ordinance.

2. Continued discussion of proposed ZBA Bylaws amendments

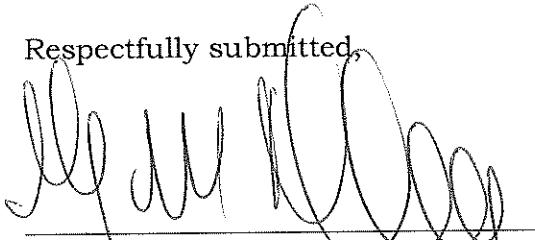
Mr. Buttrick read the following changes made to date and asked the Board to take one final review:

- Global renumbering.
- Global revision of gender terms to gender-neutral terms throughout the document.
- Added §143-3.B gender-neutral inclusion statement;

- Amended §143-5.C Clerk is voted by members, preferably an Alternate is selected and use Appendix "B" Clerk Duties;
- Amended §143-7.D(2) on Alternate status for continued/deferred cases;
- Amended §143-7.E by adding Recusals;
- Amended §143-7.E(2)(g) striking "then" and adding "currently";
- Added §143-7.E(2)(h) "Is a direct or indirect abutter" as disqualification;
- Added §143-7.F. (4)(a), (5), (7)(a), (7)(a)i, (7)(b) pertaining to Order of Business;
- Amended §143-8.A(2) Appeal from Administrative Decision filed within "35" days

The 4/28/2022 ZBA meeting adjourned at 9:10 PM.

Respectfully submitted,



Gary M. Daddario, ZBA Chairman