



TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Kara Roy, Selectmen Liaison

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MEETING MINUTES – November 17, 2022 - approved

The Hudson Zoning Board of Adjustment met on Thursday, November 17, 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. CALL TO ORDER**
- II. PLEDGE OF ALLEGIANCE**
- III. ATTENDANCE**

Chairman Daddario called the meeting to order at 7:00 PM, invited everyone to stand and join in the Pledge of Allegiance, and read the Preamble (Exhibit A in the Board's Bylaws) regarding the procedure and process of the meeting.

Members present were Gary Daddario (Regular/Chair), Tristan Dion (Alternate), Tim Lanphear (Alternate), Normand Martin (Regular/Clerk), Marcus Nicolas (Regular), Jim Pacocha (Regular/Vice Chair), and Edward Thompson (Alternate). Also present were Bruce Buttrick, Zoning Administrator, Louise Knee, Recorder (remote) and Kara Roy, Selectman Liaison. Excused were Brian Etienne (Regular) and Dean Sakati (Alternate). Alternate Dion was appointed to vote.

IV. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

1. **Case 251-008 (11-17-22):** Kenneth L. MacGrath, **79 River Rd., Hudson, NH** requests a Variance to build a proposed 2,395 SF building addition with a roof overhang which encroaches 3.1 feet into the side yard setback leaving 11.9 feet where 15 feet is required. [Map 251, Lot 008; Zoned General-One (G-1); HZO Article VII, Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements.]

Mr. Buttrick read the Case into the record, referenced his Staff Report initialed 11/8/2022 and noted that it is an existing non-conforming lot based on frontage and lot size and that in-house comment was received from the Town Planner citing that a Site Plan Review application has been filed and that the manufacturing use received their Certificate of Occupancy on 3/5/2008.

Applicant Kenneth MacGrath introduced himself and his son, Collin MacGrath, both residing at 20 Baldwin Road, Milford, NH.

Not Official until reviewed, approved and signed.
Approved 12/08/2022 as edited and amended

Kenneth MacGrath identified the location of Core Compliance Testing Services and noted that he owns the adjacent site, that his sister owns the other adjacent site and that the BAE site is behind them. Mr. MacGrath added that his mother divided her lot among her three children as equally as possible and when his brother died, he bought that adjacent lot.

Mr. MacGrath stated that the existing building resembles a red barn and is all fiberglass with no metal, except for the floor and door handles. Both Kenneth and Collin MacGrath explained the function of their business in that they test products before they go to market to determine compatibility, that they are FCC approved to measure waves in OATS (Open Area Test Site) and that the addition of a three-meter chamber is important function in the testing of products and will allow them to remain progressive in their industry. The proposed addition will create a L-shape building and provide what they need in terms of length/distance to measure waves, running of cables hoses etc. and the necessary open space around the chamber for its functionality.

The Variance criteria were addressed next by both Kenneth and Colin MacGrath. The information shared included:

(1) *not contrary to public interest*

- The proposed addition is in an area where the only visibility would be from the property at 77 River Road, and they own that lot
- The requested variance will not alter the essential character of the neighborhood or threaten the health safety or general welfare of the public and does not violate the basic zoning objectives of the Zoning Ordinance
- The requested variance is to allow for the roof overhang of the proposed addition to extend 3.1' feet into the property setback

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

- The overhang does not infringe on the abutter's property
- There is no direct line of sight
- There is an 8' tall fence

(3) *substantial justice done*

- Substantial justice would be done to the Property Owner as it would allow maintenance of the current building design, which was done with a specific intent and function in mind
- Business competitors have a chamber to test in a controlled environment
- Granting the variance will allow business to remain competitive

(4) *not diminish surrounding property values*

- The allowance of the proposed relief would not diminish the values of the surrounding properties
- The only lot with visibility is at 77 River Road, which they own, but there is no clear line of sight and there is an 8' high fence along that property line

(5) *hardship*

- The proposed building is an addition to the existing building
- The design and placement were done to accommodate the loading dock, scissor lift and handicap accessible entrance

- The building overhang does not impact any of the abutters, it is a cosmetic rather than a property infringement issue
- There is potential for Phase II, another addition

Mr. Thompson asked if the hardship is based on the constraint of the size of the existing building. Mr. MacGrath confirmed and noted that they are trying to be operational with what they have to deal with and added that only a portion of the overhang breaches the side setback because the property line is not perpendicular to the road. Mr. Thompson asked the number of employees and whether there would be an increase with the proposed addition. Mr. MacGrath responded that currently they have nine (9) employees, six (6) full time and three to four (3-4) part time and no increase is planned as the addition will allow them to be competitive.

Mr. Dion asked if the setback could be avoided with a reconfiguration of the proposed addition. Mr. MacGrath responded that a change in size is not possible considering the technical aspects of their operation, the requirement of special ports in the chamber to run lines, cable, hoses etc. and the chamber's need to have three to five feet (3'-5') distance to any wall. Mr. Lanphear asked the distance the overhang would breach the sideyard setback. Board reviewed the available plans and no measurement was provided; however, it was noted that a very small section of the overhang would breach the sideyard setback.

Public testimony opened at 7:38 PM. No one addressed the Board.

Mr. Pacocha made the motion to grant the variance. Mr. Dion seconded the motion. Mr. Pacocha stated that the request is not contrary to the Zoning Ordinance (ZO) or public interest, that the spirit of the ZO is observed, that justice is done, that there would be no diminution of surrounding property values, that hardship is based on business operation need and location of existing building resulting in a minor intrusion into the setback due to the way the lot was created and just a small corner infringes the setback. Mr. Dion concurred, that all the criteria have been satisfied and noted that the overhang is a short run into the setback and is just a roofline that it would not impede or threaten the public, that the current neighborhood is already in an industrial zone, that by not granting the variance the owner would not have means to grow his business, that the addition does not show that it would diminish property values in the neighborhood and that the lot boundaries and setup is what limits the expansion of the business.

Mr. Nicolas stated that it would not alter the essential character of the neighborhood and that there is no conflict as the neighborhood is industrial with open views, that the general public would not be harmed and is not being outweighed by the benefit to the owner, that property values would not be impacted by the construction of the proposed addition and that the hardship is because of the layout of the lot and how it was divided giving way to a non-conforming lot shape. Mr. Martin stated that he doesn't see hardship from the land but seeing that it is only a small portion of the corner of the overhang that runs into the setback that not granting the variance would present the owner with a hardship. Mr. Daddario stated that it is a continuation of an existing character and use with no impact to the public, that the roof overhang for

approximately three to four feet (3'-4') into the side yard setback will not interfere with neighboring properties and present no harm to the public and allow necessary development of the property owner's business, that a slight overhang will not likely impact property values of other properties in the neighborhood and that hardship criterion is met because placement of existing building will not allow expansion to the front or other side and that the proposed design is based on technological needs and ADA (American Disability Access) access.

Roll call vote was 5:0. Variance granted with no stipulations. The 30-day Appeal period was noted.

2. **Case 150-001-001 (11-17-22):** Richard Drowne, Mgr. of Hathaway Home Builders, L.L.C., P.O. Box 187 Sandown, NH requests an Equitable Waiver of Dimensional Requirement at **82 A Greeley Street, Hudson, NH** for a 5-1/2" encroachment of a recently added bulkhead into the side yard setback leaving 14.54 feet where 15 feet is required. [Map 150 Lot 001-001; Zoned Residential Two (R-2); HZO Article VII, Dimensional Requirements, §334-27, Table of Minimum Dimensional Requirements, RSA 674:33-a, Equitable Waiver of Dimensional Requirement.]

Mr. Buttrick read the Case into the record, referenced his Staff Report initialed 11/8/2022 and noted that the duplex had a fire that destroyed the structure and is currently being rebuilt through a current foundation only Building Permit that requires a certified foundation plan before a full Building Permit can be issued. The bolt-on bulkhead was discovered with the certified plot plan to infringe the side yard setback at the corner for five and a half inches (5.5"). Mr. Buttrick noted that bulkheads are not exempt from building setback requirements.

Mr. Buttrick stated that he received a letter today from direct abutter Georgia Flynn, 84B Greeley Street, who expressed disappointment that the same setbacks were not being observed, had no objections to the bulkhead infringed into the side setback by less than six inches (<6") and would like to ask that some evergreen shrubbery be planted to afford her the same privacy as she has had since the 1980's. Mr. Buttrick stated that a copy of the letter is in the supplemental meeting packet.

Richard Drowne, Manager of Hathaway Builders, LLC, introduced himself as representing the property owners, stated that there was a fire a year ago and it is being rebuilt, that the site is tight and has ledge and when they went to move the bulkhead they still found ledge and the need for the Equitable Waiver is that the stake that identified the setback was moved and affected the foundation. Mr. Drowne stated that the encroachment into the setback is a small five and a half inch (5.5") triangle at the corner and at grade level and cannot be cut off so as not to encroach the setback as it would affect the first step and cause a safety issue. Mr. Drowne stated that it would be too expensive to correct.

Mr. Drowne addressed the criteria for the granting of an Equitable Waiver of Dimensional Requirement and the information shared included:

(a) Discovered Too Late

- The bulkhead location had to be moved 12" due to ledge
- The surveyor noted the setback violation when doing the foundation certification after the foundation was backfilled
- It appears that one of the pre-set stakes showing the 15' setback had been knocked down and reset incorrectly

(b) Innocent Mistake

- The 15' setback was staked by the surveyor prior to commencement of excavation and foundation work
- The mistake was caused by one of the stakes being knocked down prior to the bulkhead installation and then mistakenly placed in a different position

(c) No Nuisance

- The 5½ inch triangle encroachment into the 15' setback on one corner of the precast bulkhead will not constitute a public nuisance or diminish the value of surrounding properties

(d) High Correction Cost

- The cost to excavate and demolish the bulkhead and prepare and find a small precast, or build from scratch, a new smaller bulkhead would be a substantial cost and would not outweigh the public benefit gained

Mr. Thompson inquired about replanting the trees. Mr. Drowne stated that currently there are two mobile homes in the setback, that there are about six to seven (6-7) arborvitaes lying on the ground that would be replanted in the spring, once construction is completed. Mr. Nicolas asked and received confirmation that the mobile homes are not crossing the property line and that the infringement into the setback is just the small triangle at the corner of the bulkhead.

Public testimony opened at 8:00 PM. No one addressed the Board.

Mr. Nicolas made the motion to grant the Equitable Waiver of Dimensional Requirement. Mr. Pacocha seconded the motion. Mr. Daddario asked whether a stipulation should be added to the motion requiring plantings, as suggested by the direct abutter. Mr. Nicolas stated that testimony has been received that there will be planting in the spring and that the small (five and a half inches) triangle intrusion into the setback does not require special additional screening. The replanting will suffice. Mr. Pacocha concurred.

Mr. Nicolas spoke to his motion stating that the intrusion was discovered too late, after it was installed, that it was an innocent mistake and not intentional, that the small triangular intrusion does not present a nuisance and there would be a high correction cost. Mr. Pacocha spoke to his second stating that it was too late in its discovery, that it was an innocent mistake, that it poses no nuisance and there is a high correction cost that far outweighs any benefit to the public and that it would not be an issue if the building had been situated parallel to the property line.

Mr. Dion stated that the intrusion was discovered too late, that it was an innocent mistake and poses no nuisance especially considering that the intrusion is at grade level and that the cost of correction is too high. Mr. Martin stated that he is inclined not to grant as the engineering firm has a history of these types of errors and even though the error was discovered too late, he questions the innocence of the mistake. Mr. Daddario stated that the mistake was discovered too late, after the concrete was poured, that the stakes were surveyed and properly marked but a stake fell over and was reset in error, that the intrusion into the setback is at grade level and should not pose any visual nuisance and there is a high cost to correct with no benefit to the general public.

Roll call vote was 4:1. Mr. Martin opposed. Motion granted. The 30-day Appeal period was noted.

V. REQUEST FOR REHEARING:

There were no requests presented for Board consideration.

VI. REVIEW OF MINUTES:

10/13/22 edited Draft Minutes

Motion made by Mr. Martin, seconded by Mr. Nicolas and unanimously voted to approve the 10/13/22 Minutes as edited.

10/27/22 edited Draft Minutes

Motion made by Mr. Martin, seconded by Mr. Nicolas and unanimously voted to approve the 10/27/22 Minutes as edited.

VII. OTHER:

There was no other business presented for consideration.

Motion made by Mr. Martin, seconded by Mr. Nicolas and unanimously voted to adjourn the meeting. The 11/17/2022 ZBA Meeting adjourned at 8:09 PM

Respectfully submitted,

Gary M. Daddario, Chairman