



TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Kara Roy, Selectmen Liaison

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MEETING MINUTES– February 23, 2023 – approved

The Hudson Zoning Board of Adjustment met Thursday, February 23, 2023 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 Gary Daddario called the meeting to order at 7:00 PM, invited everyone to stand for 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), Normand Martin (Regular), Jim Pacocha (Regular/Vice Chair), Dean Sakati (Regular) and Edward Thompson (Alternate/Clerk). Also present were Bruce Buttrick, Zoning Administrator, Louise Knee, Recorder (remote) and Kara Roy, Selectman Liaison. Excused were Tim Lanphear (Alternate) and Marcus Nicolas (Regular). Alternate Dion was appointed to vote.

IV. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

DEFERRED HEARING:

1. **Case 228-006 (02-23-23) (deferred from 01-26-23):** Jeffrey R. Davis, Permit Coordinator of pb2 Architecture & Engineering, 2809 Ajax Ave., Suite 100, Rogers, AR requests a Variance for **254 Lowell Rd., Hudson, NH** to allow three (3) additional wall signs on the west front side of the Walmart Store (#1785) building where one wall sign is allowed. [Map 228, Lot 006-000; Zoned Business (B); HZO Article XII, Signs; §334-63, Business and Industrial building signs.]

Mr. Buttrick read the Case into the record, referred to his Staff Report initialed 1/17/2023 noting that this is an existing developed lot of record with one sign per building per the Zoning Ordinance and noted that no comments have been received from the Town Planner, Fire Department or Town Engineer.

Jeffrey Davis, Permit Coordinator of pb2 Architecture & Engineering, 2809 Ajax Avenue, Suite 100, Rogers, AR introduced himself as representing Walmart who is seeking three (3) additional wall signs on the west front side to identify the locations of:

- (1) "Outdoor" supplies are to be positioned on the left side of the building by fenced-in area and for a total of 20.67 SF (Square Feet)
- (2) "Pharmacy" sign to be positioned right of center to approximate the location within the store and total 17.63 SF and
- (3) "Pick-up" is to be positioned on the right side of the building and total 32.37 SF. Mr. Davis noted that online business is an important aspect of Walmart's business and added that placement will require relocation of the existing Subway sign

Mr. Davis stated that the Zoning Ordinance allows size of signage based on the size/length of the building frontage and noted that the addition of three (3) more signs totaling 70.67 SF - to the front of the building will total less than the 840 SF (square feet) that what the Zoning Ordinance would allow.

Mr. Davis addressed the variance criteria. The information shared included:

- (1) *not contrary to public interest*
 - The additional exterior signs will not adversely affect any of Walmart's surrounding neighbors or the community
 - The three (3) signs being proposed are relatively small when considering the distance from the front of the store to the adjacent properties and the distance to Lowell Road
- (2) *will observe the spirit of the Ordinance*
 - The spirit of the Ordinance accounts for smaller commercial businesses and structures which are closer to rights-of-way and thoroughfares
 - According to the Zoning Ordinance, the allowed sign for this building size would a maximum of 840 SF and the existing Walmart logo sign is only 368.67 SF, less than half of what is allowed
- (3) *substantial justice done*
 - The requested signs are primarily installed to help customers find their way to the correct location within the building
 - This store is made up of many departments with a variety of goods and services
 - If the store were broken down into individual businesses and lined up along a traditional hypothetical Main Street, the grocery, pharmacy, outdoor, online pick-up etc. would all have their own signs to help customers find their business.
- (4) *not diminish surrounding property values*
 - Due to the distances of the surrounding properties, the new sign package will not affect the surrounding property values
 - The proposed new signs are an important part of operating a business and would not have a negative impact on surrounding businesses or properties
 - The new signs will bring a clean fresh look to the store and community

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Approved as edited 3/23/2023

(5) *hardship*

- The location of the Walmart store is behind a screen of trees and a large berm of raised ground between the road and the parking lot
- Since visibility is compromised, additional signs would not be visible from Lowell Road and intended to direct customers already in the parking lot
- The function of the signs is to direct customers to the goods and services within the store and to the pickup parking location on the outside of the building

Public testimony opened at 7:28 PM. No one addressed the Board.

Mr. Sakati asked if the proposed Pickup sign would be visible to the residents abutting the property. Mr. Davis responded that the sign faces Lowell Road, not the abutters so there would be no direct line of sight and added that the sign would be internally lit. Mr. Dion inquired about the relocation of the Subway sign and Mr. Davis responded that Subway has that responsibility and will handle whatever permit is required and the moving of their sign. Mr. Sakati stated that the Board recently denied additional signs for Aroma Jo's but noted that this is a much larger lot and a different case altogether.

Mr. Pacocha inquired about whether the location of the proposed signs would only be on the west, roadside, of the building and their actual measurements compared to what is allowed by the Zoning Ordinance (ZO). Mr. Buttrick stated that according to the ZO, a building of this size would be permitted an eight hundred forty square foot (840 SF) sign, that the total square feet proposed for the three (3) additional signs is 70.67 SF which would yield 368 SF for all signage, existing and proposed, and noted that the total is less than half of what is allowable per ZO. Mr. Pacocha asked and received confirmation that the Variance being sought is for multiple signs. Mr. Thompson stated that it would be impractical to clump all the signs into one sign.

Mr. Pacocha made the motion to grant the Variance as requested. Mr. Dion seconded the motion. Mr. Pacocha spoke to his motion noting that it is not contrary to the public interest, there's no impact on the neighbors, observes the spirit of the Zoning Ordinance, the building is not close to the road, that the signs are helpful to customers, that justice is done, that there's no harm to the public and no diminution of property values and that there is a screen of trees and elevation of terrain in the front of the property. Mr. Dion spoke to his second stating that there is no threat to the public and no impact to the neighborhood, that the spirit of the Ordinance is being observed, that justice is being done by the granting of the Variance with no harm being done to the public, that there is no impact to the neighborhood, that there is no impact to surrounding property values as all signs face the street, that there is a berm roadside and trees screening the building, and that a small percentage (less than half) of total allowable signage in square feet is being requested.

Mr. Sakati voted to grant the Variance as it is not contrary to the public interest, that no harm will be done to the public, that abutters cannot see the proposed signs, that the spirit of the ZO is observed as the signage is applied tastefully and not seen by the residential abutters, that substantial justice is done to the property owner and helps efficient commerce and will not impact surrounding property values as the signs will not be seen by the abutters and that the signs are needed to help property owner's interaction with customers

Mr. Martin voted to grant, stated that he agreed with Mr. Sakati noting that no public interest would be injured, that the building is designed for the types of signage proposed, that the spirit is observed, that justice is done with no harm to the general public and no diminution of surrounding property values and even though the land does not create a hardship it is a good use.

Mr. Daddario voted to grant the Variance and noted that there will be no change in use or character, no harm to the public, total square footage of all the signs combined is less than what is allowable in the ZO, just requesting multiple signs for the benefit to the public, that no change is expected to surrounding property values as all signs face Lowell Road and hardship does exist as the property is raised roadside by a berm and the planting of trees and if signage is located elsewhere they would not serve their intended purpose.

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

NEW HEARINGS:

2. **Case 167-052 (02-23-23):** Ausama Mohamed Ali & Soukayna El Bouayadi, **135 Highland St., Hudson, NH** request a Home Occupation Special Exception to allow a Family day-care home as permitted in the Table of Permitted Accessory Uses § 334-22, and defined in the Hudson Zoning Ordinance and NH State RSA 170-E:2, IV(a). [Map 167, Lot 052-000; Zoned Residential-Two (R-2); HZO Article VI: Special Exceptions; §334-24, Home Occupations and HZO Article II: Terminology; §334-6, Definitions.]

Mr. Buttrick read the Case into the record and referenced his Staff Report initialed 2/8/2023 noting that there are a couple of easements across and through the property and that comments were received from the Town Engineer and Inspectional Services/Fire Department. Both reports were read into the record.

Elvis Dhima, Town Engineer made two comments: "(1) Applicant should be aware that the three parking spaces marked on Attachment A should not be

included as available parking spaces. (2) This property is serviced by municipal water and sewer and has the ability to accommodate the proposed use.”

David Hebert, Fire Marshall, stated that “licensing shall be obtained from the State of NH DHHS. State-required inspections shall be performed and approved prior to operating.”

Ausama Mohamed Ali & Soukayna El Bouayadi introduced themselves as the property owners and stated that they seek a Special Exception to operate a day care from their home and are seeking a license with the State of NH for six (6) pre-school aged children, which will also include their son, and three (3) school-aged children.

Mr. Ali and Ms. Bouayadi addressed the criteria for the granting of a Special Exception and the information shared included:

(1) Proposed use for services provided on-site

- The family daycare will be as described in NH document He-C4002.34
- In the process of obtaining a State license for the daycare for six (6) preschool-age and three (3) school-age children for a total of 9 children
- One of the six (6) preschool-age children will be for their son
- Hours of operation to be 7:00 AM – 5:00 PM
- Children to enter the house through the side door that is accessible by entering the driveway and going straight
- Children will have a classroom for learning as well as a toy room in the sunroom, a bedroom for naps, a living/dining room for eating and a kitchen for preparing breakfast, lunch and snacks
- See attached floor plan
- The second floor will be for the primary residents and stairway will be blocked off

(2) Proposed use shall be secondary to principal residential use

- The house has 2 floors
- The 2nd floor has 3 bedrooms and a full bathroom and will be for the primary residents and the stairway to it will be gated keeping it separate from the daycare
- The 1st floor has a primary bedroom, sunroom, living/dining room. kitchen and a ½ bath

(3) Proposed use shall be conducted within the residence

- Proposed use will be solely conducted on the first floor

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- For drop off & pickup the cars will park in the driveway
- (4) *There shall be no exterior indication of the proposed use*
- There will be no sign or any exterior indication of proposed
- (5) *There shall be no exterior storage unless*
- There will be no exterior storage
- (6) *There shall be no objectionable circumstances such as noise, odors, dust*
- Aside from the normal children's voices there should be no objectionable noises, odors, dust etc.
 - House not close to any neighbors and hours of operation is within normal working hours when neighbors are off to their work
- (7) *Traffic in the neighborhood shall not be substantially increased*
- Traffic will not be greater than normal
 - Parents/guardians will enter the driveway from Highland Street and won't block traffic
 - Parents do not often arrive at the same time and driveway can handle parking for 11 cars
- (8) *Off-street parking required*
- Off street parking is available - see attached parking plan
 - No objection to eliminating the spaces identified by the Town Engineer as it leaves enough for the proposed use
- (9) *Home occupation shall be conducted only by residents*
- Both property owners will be conducting the proposed use
 - Ms. Bouayadi has a CPR Certificate
- (10) *Any vehicles required for Home Occupation?*
- There will be no vehicles for the proposed use – both property owners have their own vehicles

Mr. Dion inquired about the above ground pool. Mr. Ali stated that there is no pool, that there was no pool when they moved there in 2021.

Mr. Pacocha asked about the outdoor play area required for the daycare and was informed that a 27' x 22' area was planned in the front of the house. In depth discussion arose and concerns were expressed. The front is very close to Highland Street. The proposed 3.5' high fence would not stop a moving vehicle. The size of the play area was questioned if it was satisfactory to meet State of NH requirements.

Safety is a serious concern. The backyard was suggested for the play area but there are easements on the property. Mr. Ali stated that he would check with the State.

Public testimony opened at 8:08 PM. No one addressed the Board.

Mr. Sakati made the motion to grant the Home Occupation Special Exception with no stipulations and with the acknowledgement that the State of NH would need to issue a license for it. Mr. Pacocha seconded the motion. Mr. Sakati spoke to his motion noting that the proposed use is a service operation secondary to the principal residential use that will be conducted on the property by the property owners with no exterior display or sign or exterior storage with off-street parking provided and no substantial increase to traffic or excess noise produced. Mr. Pacocha and Mr. Dion both agreed that all the criteria have been satisfied and voted to grant the motion. Mr. Martin stated that he objects to the location of the outdoor play area being in the front of the house as it is too close to Highland Street and a 3.5' high fence would not stop an on-coming vehicle which poses a serious concern for the safety of the children, noted that the State of NH may want/require a bigger play area and asked if an affidavit should be required that the property owners will be the only individuals to operate the daycare and voted to not grant the request. Mr. Daddario voted to grant the request as all the criteria have been met and noted that the State of NH will do an inspection prior to the granting of a permit and the decision regarding the size and location of the proposed outdoor play area lies in their jurisdiction, not the Board's.

Roll Call vote was 4:1. Mr. Martin opposed due to safety concerns with outdoor play area located in the front yard. Motion passed to grant the Home Occupation Special Exception. The 30-day appeal period was noted as well as the need to have NHHS permit/license issued.

3. **Case 105-014 (02-23-23):** Steel Properties, LLC, represented by Stephen L. Chasse, Mgr., 8 Christine Dr., Hudson, NH requests a Variance for **5 Christine Dr., Hudson, NH** to allow an expansion of an existing non-conforming use by demolishing the existing 24,106 SF building and rebuilding a 30,175 SF. industrial building where a nonconforming use shall not be extended or enlarged, except by variance. [Map 105, Lot 014-000; Zoned Business (B); HZO Article VIII: Nonconforming Uses, Structures and Lots; §334-29, Extension or enlargement of nonconforming uses.]

Mr. Buttrick read the Case into the record and referenced his Staff Report initialed 2/14/2023 noting that it is an existing, now non-conforming Use, lot

of record and requires a Variance to enlarge the footprint of the existing building. Mr. Buttrick stated that Town Planner has advised that if this Variance is granted, it will require Site Plan Review by the Planning Board and that neither the Town Engineer nor the Fire Department submitted any review comments.

Mr. Daddario stated that he was formerly engaged in the practice of law with Atty. Westgate but is no longer and that their practice together had nothing to do with this Case, that he does not feel prejudiced in voting on the Case and asked whether he should recuse himself. No Board Member asked for his recusal.

Atty. J. Bradford Westgate of Winer and Bennett, LLP, in Nashua, NH introduced himself as representing the Applicant, Stephen L. Chase, Manager for Steel Properties, LLC, stated that he has no opposition with Mr. Daddario sitting on the Case, and introduced Anthony Basso, LLS of Keach Nordstrom Associates, Inc. in Bedford, NH and noted that the Applicant/Owner was also present.

Atty. Westgate stated that the building was constructed in 1989 after having received Site Plan Review approval from the Planning Board in 1988. Atty. Westgate stated that since that time, the Zone was changed to Business and, in 2005, Industrial Use was no longer permitted in the Business Zone, thereby rendering the Use as Non-conforming. The existing building is 24,106 SF (Square Feet) and the proposed new building will be 30,175 SF and the Zoning Ordinance requires a Variance for any expansion of a non-conformity.

Atty. Westgate identified the location of the building and noted that every parcel on Christine Drive is now owned by companies controlled by Stephen Chasse - either Steel Properties, LLC or by S.L. Chasse Welding or by S.L. Chasse Steel - and all are serviced by Municipal water and sewer.

Atty. Westgate stated that the property at 5 Christine Drive is no longer adequate to accommodate S.L. Chase Steel's modernized and expanded operations, which include fabricating steel stairs, railings and miscellaneous metals, and the decision to demolish the current building with its walled-off internal sections and two (2) tenants and replace it with a shorter wider open space building, eliminating the wetland buffer encroachment, is being proposed.

Atty. Westgate stated that the type of Use is not changing and that they are aware that Site Plan Review would be needed once the Variance is granted.

Atty. Westgate addressed the criteria required for the granting of a Variance and the information shared included:

(1) *not contrary to the public interest*

- Not contrary to the public interest to allow demolishing the existing building and replace it with a new modern building with upgraded site improvements, including storm water management and no impact to the

- wetland buffer, which will permit the Applicant's sister company, S.L. Chasse Steel, to improve its operation in an updated modern facility
- All businesses on Christine Drive have industrial uses, have had industrial uses for over 30 years and now have common or related ownership forming a campus like setting
 - It is in the public interest to permit reasonable natural expansion of a longstanding business property when the expansion further modernizes and facilitates operation
- (2) *will observe the spirit of the Ordinance*
- The spirit of the Ordinance is partially derived from the purpose of the Ordinance which includes promoting efficiency and economy in the process of development
 - If the variance is granted, it will permit modernization and improvements and encourages the most appropriate use of the land
 - The proposed new building will be new modern building to better facilitate the business operation on land historically used for industrial purposes
- (3) *substantial justice done*
- Substantial justice is done by allowing the existing building to be demolished and replaced with a new building and related improvements
 - The property is already used for industrial purposes and the expansion of the non-conforming use is only needed because of the net increase in building size by approximately 6,000 SF while at the same time reducing the overall length of the building (by shortening the length and increasing the width, and removing the existing encroachment into the wetland buffer
 - Removing the encroachment into the 50' wetland buffer encroachment actually makes the property less on-conforming
 - Substantial justice is also done by permitting modernized storm water management facilities, upgraded parking and traffic flow arrangements which will be addressed by the Planning Board during Site Plan Review
 - Substantial justice is done if the general public realizes no appreciable gain from denying the variance but the denial of a variance would cause significant adverse impact to the Applicant
- (4) *not diminish surrounding property values*
- The demolition of the existing building and replacement with a new modernized building adjacent to other properties used by S.L. Chasse for its operations will not diminish surrounding property values
 - The property has been used for industrial purposes for over 30 years
 - Allowing the business operations to be modernized and enhanced does not adversely affect surrounding property values
- (5) *hardship*
- When the Site Plan was approved for this property in 1988, industrial use was allowed in the Business District but in 2005 it changed and removed industrial use from the B District rendering this industrial use non-conforming
 - The need for a variance to expand this now non-conforming use is a direct result of a change to the Zoning Ordinance [ZO]
 - This building, as all the other properties on Christine Drive are all industrial and all owned by companies controlled by the Applicant
 - The two prong test of the hardship criteria is met

(1) There is no fair and substantial relationship between the general public purposes of ZO Section 334-29 and the specific application to this property and enforcement of this reasonable expansion of the non-conforming use

(2) The proposed use is a reasonable use that has existed since its inception and the variance is simply to enhance and improve operations

Ms. Roy inquired about the purpose of the new building and Mr. Daddario questioned if it would have the same use. Stephen Chasse responded that it will be part of his steel fabrication business with light manufacturing and that the existing building has internal walls separating each bay and the new building will be open concept. Mr. Chasse added that one of his tenants has found another location and that he's assisting his last tenant in relocating.

Mr. Dion asked about the back of the building and the proposed gravel storage area and whether there would be trucks entering or just be used for stockpiling. Mr. Chasse stated that there would be no trucks going in or out, and that currently his tenant has trucks in that area but they will go when he relocates.

Mr. Dion asked about the actual dimensions of the proposed new building and Mr. Basso stated that the proposed new industrial building would be 355' long, 85' wide and 25' high. Mr. Dion noted that it abuts St. Joseph's medical building and asked if a berm or shielding has been considered for their privacy. Mr. Sakati asked about landscaping plans in general. Mr. Basso responded that would be addressed by the Planning Board during Site Plan Review (SPR). Mr. Thompson asked about the four (4) proposed loading spaces identified in the front of the building. Mr. Basso stated that there are no loading docks and added that specifics would occur during SPR.

Mr. Dion inquired about the proposed hours of operation. Mr. Chasse responded they started running two (2) shifts per day when Covid broke out and it has worked out well. Mr. Chasse stated that the first shift covers the hours between 7:00 AM – 3:00 PM.

Public testimony opened at 8:49 PM. No one addressed the Board.

Mr. Martin stated that rarely does one see removal of building out of a wetland buffer impact and stated that, in his opinion, this is a win-win for the Town and the Applicant.

Mr. Buttrick confirmed that the Planning Board will deal with the issues questioned plus other items during Site Plan Review.

Mr. Martin made the motion to grant the Variance as requested. Mr. Pacocha seconded the motion. Mr. Martin spoke to his motion stating that all the criteria have been satisfied, that the granting of the variance will not be contrary to the public interest, will observe the spirit of the Ordinance, does

not alter the character of the neighborhood and will enhance property values in the area, and substantial justice will be done to the property owner and the land with the removal of the building from the wetland buffer and that hardship is met due to the wetland in the side of the property. Mr. Pacocha spoke to his second agreeing that the criteria have been satisfied, that allowing the applicant to make and upgrade site improvements is not contrary to public interest, that making improvements is in the spirit of the Ordinance and substantial justice is done by making improvements without harm to the public and the change in the uses allowed in this zone forcing the need to obtain a variance to make improvements is in itself a hardship.

Mr. Sakati voted to grant the variance stating that there is no change in property use, no alteration in the existing character, that justice is done because the owner needs to reorganize to run/expand his business, that a new building with landscape improvements will not diminish surrounding property values and a hardship would be done to the property owner is not allowed to re-organize.

Mr. Dion voted to grant as all the criteria have been satisfied, that all the buildings and businesses on Christine Drive have related ownership, that adding a new up-do-date building will increase the character of the neighborhood and increase property values without causing any harm to the general public and that hardship is met due to a change in use for the B District and a variance is needed for the productive growth of the business.

Mr. Daddario voted to grant as there is no harm to the public and appearance seems to be the same but improved with new construction and benefit from proposed plan includes compliance with wetland buffer, substantial justice done as the proposal would allow existing business to modernize with no harm to the public and with no benefit to the public if variance denied, new construction should not diminish surrounding property values especially considering all surrounding properties on Christine Drive are commonly owned and the Applicant's use was originally conforming and use has remained consistent and what made the use non-conforming was a change to the Zoning Ordinance.

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

Board took a break at 8:58 PM. The meeting resumed at 9:07 PM.

4. **Case 174-197 (02-23-23):** Properties 79 Ferry LLC, represented by Kenneth Forrence, Member, 11 Ledge St., Nashua, NH requests a Variance for **79 Ferry St., Hudson, NH** [Map 174, Lot 197-000; Zoned Town Residence (TR)] as follows:

- i. To allow multiple uses in the form of a two-family dwelling (existing) and a third dwelling (existing 600 SF detached garage to be converted to a single-family dwelling) in the TR Zone where multiple principal uses are allowed only in the Industrial or Business Zones with sufficient frontage and size to satisfy minimum frontage and lot size requirements. [HZO Article III: General Regulations; §334-10.A, Mixed or dual use on a lot.]
- ii. To eliminate the requirement of Planning Board site plan approval where no more than one single-family home or duplex shall be constructed on one lot without Planning Board site plan approval. [HZO Article III: General Regulations; §334-16.C(2)(e), Building permits, Conditions of issuance.]

Mr. Buttrick read the Case into the record. Mr. Martin stated that the Board should not hear the second part of the application and the Applicant should withdraw it because the ZBA cannot usurp Planning Board's jurisdiction.

Atty. Westgate addressed the Board, stated that the submission of the second variance request is on his head, not the Applicant's, and explained his reasoning, understanding full well that the dismissing of the Site Plan Review (SPR) requirement lies in the jurisdiction of the Planning Board (PB), not the ZBA, but should the PB decide to waive it, a variance from the ZBA would still be needed because the Zoning Ordinance (ZO) stipulates that an SPR is required. Atty. Westgate stated that he did receive a call from Town Counsel confirming that only the PB can decide whether to waive the SPR requirement. Mr. Daddario stated that a condition could possibly be applied to the variance that stipulates that the PB has to make the determination regarding SPR and if required the variance would be rendered moot.

Atty. Westgate stated that, like in the previous Case, he has no issue with Mr. Daddario voting on this Case despite their one time association with the same law firm.

Mr. Buttrick continued the introduction and referenced his Staff Report initialed 2/14/23 noting the property's history and that Town Staff comments have been received from the Town Engineer, the Town Planner and the Fire / Health Department. Mr. Buttrick read the comments into the record:

Town Engineer: (1) It is unclear how the garage structure is serviced by water and sewer ... Our record indicates one sewer and water service for the entire lot. (2) It is unclear how the billing for water and sewer utilities will be handled. This detached building should show/ have its own water and sewer lateral services.

Town Planner: Re 334-16.C(2)(e) requirement of Planning Board site plan approval

Fire / Health: No town records were found to finish the garage as an illegal dwelling unit. Building permits will be required to convert the garage into a dwelling. All State Adopted Building and Fire Codes shall be followed. Walls and ceilings will need to be exposed if the inside of the structure has walls and ceilings concealed with drywall and/or other finishing materials from previous non-permitted work.

Atty. J. Bradford Westgate of Winer and Bennett, LLP, in Nashua, NH introduced himself as representing the Property Owner, Properties 79 Ferry, LLC, and introduced Anthony Basso, LLS of Keach Nordstrom Associates, Inc. in Bedford, NH and noted that both Timothy and Kenneth Florence, Members of the LLC and operators of Gate City Fence, were also present to answer any questions.

Atty. Westgate identified the location of the site at the T-intersection of Ferry Street and Buswell Street and noted that has greater than the half acre required in the TR Zone with a two-story house, detached garage, two (2) out buildings and serviced by municipal water and sewer. The detached garage was granted a variance to be in the side yard setback in 1974 and another variance was granted in 1981 for a two-family residence. In 1975 a Building Permit was issued to convert the two-car garage to a 1-car garage with a Home Occupation lamp shop. In 2019 the violation (and subsequent removal) of an unpermitted kitchen in the garage was closed. All this occurred prior to his client purchasing the property.

Atty. Westgate stated that his clients wish to convert the detached garage that has existed for approximately fifty (50) years, into a single-family dwelling residence. The garage is approximately 600 SF and a single-family residence in Hudson needs 850 SF of living space and the garage could be expanded for the extra square footage with the addition meeting all setback requirements in the building envelope and would not require an additional curb cut. Mr. Buttrick made the determination that a Variance would be needed for multiple principal uses – a two-family and a one-family.

Atty. Westgate addressed the criteria required for the granting of a Variance and the information shared included:

- (1) *not contrary to the public interest*
 - Not contrary to the public interest – the lot has twice as much lot area and more frontage than is required in the TR Zone – but not enough to subdivide
 - The property is serviced by municipal water and sewer so no significant utility improvements would be necessary
- (2) *will observe the spirit of the Ordinance*
 - One of the purposes of the Zoning Ordinance (ZO) is to promote efficiency and economy and facilitate housing opportunities for all family types and income levels
 - The conversion of the garage will provide a modest single-family dwelling in an efficient way to add a unit of affordable housing

(3) *substantial justice done*

- Substantial justice is done by allowing the conversion of the garage to a single-family residence without the need for any dimensional variances on a lot that can accommodate the single-family dwelling with an existing two-family dwelling
- Substantial justice also done since the conversion of the garage to a single-family dwelling will cause a significant upgrade to the structure that was constructed nearly 50 years ago
- If the variance is denied, the general public would realize no appreciable gain

(4) *not diminish surrounding property values*

- The conversion of the garage to a single-family residence will not diminish the value of the surrounding properties
- The garage is located to the rear of the property so they will be no “crowding” onto Ferry Street
- Please see attached letter from Realtor attesting to no negative impact

(5) *hardship*

- Special conditions of the lot include its location at the T-intersection having no direct opposite abutter, the lot area is more than twice the size for the TR Zone and its frontage being nearly twice the required length
- The purpose of regulating Dual Use is to prevent overburdening a property but this is a large parcel with the garage being set back onto the property it avoids overcrowding on Ferry Street
- Denying the variance would frustrate the purpose of the ZO – the proposed use is a reasonable use and a single-family dwelling is a Permitted Use in the TR Zone

Mr. Pacocha stated that in reviewing the history, a 3-family was denied and questioned how it can appear before the Board again. Mr. Buttrick stated that a variance was granted for a two-family residence and another variance was granted to build the garage into the side setback. Atty. Westgate stated that if the property were to be subdivided, it would create a non-conformity for lack of frontage; that in 2003 the Zoning Administrator made a Determination that a 3-family was not allowed; and that today they are seeking a Variation for Dual Use – a two-family residence and a single-family residence, so it is a different concept. Mr. Basso added that there’s also a change in the definition of the 3-family, this proposal is not to be specifically attached, but stand-alone 3rd unit.

Mr. Martin asked how the garage would be expanded to increase the square footage. Timothy Forrence stated that they are thinking of building out towards the two-family structure as they are trying to avoid impact to the two (2) abutters. An aerial view showed their close proximity.

Mr. Dion stated that there are safety and health concerns and questioned the connections of the sewer lines – and water. Atty. Westgate stated that whatever the Code requires will be done. Mr. Basso added that they will send a camera down and map the lines and will comply with whatever the Town Engineer decides. Mr. Buttrick noted the past illegal activity and stated that it

is unknown what really exists today. Mr. Basso agreed and noted the lack of service records prompts the need for a full check.

Public testimony opened at 10:02 PM. No one addressed the Board.

Discussion ensued. Ms. Roy and Mr. Sakati expressed concern that it will change the character of the neighborhood, that depending on how the additional square footage is added to the garage it could easily create a 3-family residence. Mr. Dion agreed that the third unit does not fit the character of the neighborhood. Mr. Sakati expressed concern for the absence of abutter voices. It was noted that the weather could have deterred them from attending this meeting.

Mr. Basso stated that there are several options to modify the garage to gain the extra square footage needed for a single-family house and if the meeting were continued he could prepare a few options and also speak with the abutters. Atty. Westgate asked the Board to please table so that can prepare more precise visuals for the expansion of the garage. Mr. Buttrick asked for a date specific. Atty. Westgate stated that they should be ready for the regular April meeting.

Motion made by Mr. Martin, seconded by Mr. Sakati and unanimously voted to defer/continue the Case to the 4/27/2023 meeting.

V. REQUEST FOR REHEARING: None

No requests were received for Board consideration.

VI. REVIEW OF MINUTES: 01/26/23 edited Draft Minutes

Motion made by Mr. Martin, seconded by Mr. Sakati and unanimously voted to approve the 1/26/2023 Minutes as edited and presented.

VII. OTHER: Planning & Zoning Spring 2023 Conference- **Saturday, April 29, 2023** 8:45 AM- 3:30 PM **Save the Date!** Where: Online (each session will be recorded and available after the conference) Cost: Free, Registration Opens: March 17, 2023

Mr. Buttrick read the item into the record, referenced the announcement published by NH BEA (Business and Economic Affairs), and encouraged everyone to sign up and attend.

Motion made by Mr. Martin, seconded by Mr. Sakati and unanimously voted to adjourn the meeting. The 2/23/2023 ZBA meeting adjourned at 10:10 PM

Respectfully submitted,

Gary M. Daddario, ZBA Chairman
