



TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Kara Roy, Selectmen Liaison

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PUBLIC MEETING & HEARING MINUTES – MARCH 23, 2023 - Approved

The Hudson Zoning Board of Adjustment met on Thursday, March 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**
- IV. SEATING OF ALTERNATES**

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), Tim Lanphear (Alternate), Normand Martin (Regular/Vice Chair), Jim Pacocha (Regular), 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 was Marcus Nicolas (Regular). Alternate Lanphear was appointed to vote.

V. PUBLIC MEETING:

Case 168-020 (03-23-23): Paul & Sandra O'Sullivan, **8 Washington Drive**, Hudson, NH, a remanded case from Superior Court back to the ZBA to consider the first standard for unnecessary hardship under RSA 674:33, I(b)(1), for a variance request 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. [Map 168, Lot 020-000; Zoned Residential-Two (R-2); 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 initialed 2/14/2022 and noted that the Case is before the Board as it was remanded from Superior Court. Mr. Daddario noted that the remand is for the Board to specifically revisit the fifth criteria, that of the hardship criteria.

Atty. Robert Shepard of Smith-Weiss, Shepard, Kanakis & Spony, PC in Nashua, NH introduced himself and Paul O'Sullivan, Property Owner of 8 Washington Drive. Atty. Shepard confirmed that no new evidence would be presented, confirmed that they are only to reconsider the hardship criteria and proceeded to provide a history of the Case and the property. In brief the information shared included:

- Purchased the house in 1990, raised three (3) children there
- Seek a front covered porch and measured out nine feet (9') to line up with the existing walkway and steps to the driveway
- History:
 - Informed needed a Variance to add a covered porch
 - Case heard and Variance not granted 12/9/2021
 - Rehearing requested 1/27/2022 and reheard 2/7/2022, Variance failed
 - To Superior Court 4/4/2022, had hearing 12/9/2022, Case remanded back to ZBA to revisit Hardship criteria
- House was built in 1968, 25' from the property line, not the 30' required by Ordinance
- Received an "after-the-fact" variance for encroachment into the front setback
- Proposed Use is a Permitted Use
- There are no safety concerns
- No abutters objected
- Already has the walkway and stairs, makes sense to line up the porch to them
- Adds a safety component to the house
- A porch is a reasonable and common Use
- The standard is not that there's "already a reasonable use"

Atty. Shepard stated that a condition could be added to reduce the width of the porch from nine feet (9') to six feet (6') if the Board feels that nine feet (9') is too far out.

Public testimony opened at 7:24 PM. No one addressed the Board.

Mr. Lanphear stated that during his drive-through he questioned whether the setback on #20 across the street met the front 30' setback. Mr. Buttrick responded that it did, measures 30.1 feet. Mr. Dion stated that he also questioned the front setback for that lot as well as others, even along Jefferson Street, noted that the neighborhood has been constructed so that anyone seeking to add a front porch could need a Variance to breach the front setback and expressed concern that a precedent could be established should the Board decide to grant this particular encroachment. Discussion ensued, additional measurements were pursued confirming the tightness of the front setback to others in the neighborhood and it was noted that a precedent should not be set as this particular Case has the actual house violating the front setback.

Mr. Pacocha questioned the two (2) highlighted areas on the plan prepared by Jeffery Land Survey, LLC. It was noted that the larger area represented the proposed porch and that the smaller is a garage overhang. Mr. O'Sullivan confirmed that the overhang has not yet been constructed. Mr. Buttrick noted that the overhang falls within the building envelope and would not require a Variance and added that a Building Permit would be needed prior to its construction.

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Approved 4/27/2023 as edited and amended.

Discussion continued. The OSI Handbook was consulted. The purpose and intent of front setback explored particularly with the safety need to keep structures away from the roadside in the event of an emergency, like fire.

Mr. Martin stated that the house was built into the front setback and that could create a unique condition for the property which the Board did grant an after-the-fact Variance, but the fact remains that it is still close to the road, the terrain is flat and literal enforcement of the Zoning Ordinance (ZO) does not cause the hardship, that allowing another Variance to further encroach the setback does not result in an unnecessary hardship.

Mr. Pacocha asked and received the timeline: the house was constructed in 1968, the after-the-fact Variance for the house constructed five feet (5') into the front setback was granted on 5/2/1984 and O'Sullivan bought the property in 1990.

Mr. Daddario stated that he is a proponent that a property owner has the freedom to use his own property but the criteria outlined in #5.A.1 is just not a true statement, the purpose of the front setback is to keep structures away from the road and especially since the area is flat and the granting of this Variance would reduce the required front setback by greater than half. Several Members agreed which led to a discussion of whether reducing the encroachment by three feet (3') would make a difference.

Mr. O'Sullivan confirmed his offer to reduce the width from nine feet (9') to six feet (6') and that he would just move the stone steps to line up. Mr. Daddario asked if there was a means to enter the house from the garage to which Mr. O'Sullivan confirmed and added that visitors do not have that option.

Mr. Pacocha made the motion to grant the Variance with the stipulation that the width be reduced from the proposed nine feet to six feet. Mr. Martin seconded the motion for discussion only. Mr. Martin questioned whether the Board can reduce the width when the Remand is on a nine foot width. Mr. Daddario stated that one of the options posed by Town Counsel was that the Applicant could return to the Board with a different application and a reduced width constitutes a different application. Mr. Dion questioned whether the reduced width meets criteria 5.A.1.

Mr. Sakati asked Atty. Shepard his input on criteria 5.A.1). Atty. Sheppard stated that it is a Permitted Use and a Variance can allow a Reasonable Use and the reduction in width is a reasonable condition and is less of an encroachment and would not, in his opinion need to be republished. Mr. Daddario noted that if the Board goes with the six-foot width stipulation, the decision could be appealed by the Public.

Mr. Martin withdrew his second. Mr. Lanphear seconded the motion to grant the Variance with the stipulation that the width of the porch is reduced to six feet (6').

Mr. Pacocha spoke to his motion noting that the Property Owner is starting with the hardship that his house was constructed five feet (5') into the front setback and agrees that a porch is a reasonable use and the reduction in width to six feet (6') is a reasonable compromise providing for a reasonable porch and less intrusion into the front setback, there's been no abutter or neighbor objection, it serves a purpose and

anyone else wanting a front porch may need a variance but they would be from their structure already in the setback. Mr. Lanphear concurred and added that appreciated the reduced width being offered by the Property Owner.

Roll Call vote:

Mr. Pacocha: to grant with stipulation that width be no greater the six feet (6')

Mr. Lanphear: to grant with reduced width

Mr. Sakati: to grant as it is a reasonable use and safety is maintained due to the extra wide road as noted in the Director of Public Works email dated 12/22/2021

Mr. Martin: not to grant as the Applicant has not demonstrated unnecessary hardship, the Zoning Ordinance (ZO) was established to prevent overcrowding in Town, the restriction applied by the ZO is reasonable, there are no natural special conditions on/from the property and allowing a structure closer to the road is in violation of the ZO and sets precedent.

Mr. Daddario: not to grant as unnecessary hardship has not been demonstrated, the ZO is reasonable and fair, it sets a precedent not justifiable and there are no special conditions that exist from the land and the granting of this Variance would reduce the ZO required front setback by more than fifty percent (<50%)

Roll call vote was 3:2 with Mr. Daddario and Mr. Martin opposed. Variance granted with the stipulation that the width of the porch cannot be greater than six feet (6'). The 30-day Appeal Period was noted.

Board took a break from 8:11 PM to 8:15 PM.

VI. PUBLIC HEARING OF SCHEDULED APPLICATION BEFORE THE BOARD:

Case 204-003 (03-23-23): Daniel Proulx, Jr., Managing Member of Monument Construction, LLC, **149 Lowell Rd.**, Hudson, NH requests an Appeal from an Administrative Decision to allow the proposed three (3) 8' x 40' storage containers on a ¾" stone pad and proposed gravel area for equipment storage in the rear of the existing garage (to be converted to office space) constituting an Industrial Use as a Contractor's Yard (E-10) where it is not permitted in the Business Zone. [Map 204, Lot 003-000; Zoned Business (B); HZO Article V: Permitted Uses; §334-21, Table of Permitted Principal Uses.]

Mr. Buttrick read the Case into the record, referenced his Staff Report initialed 3/15/2023, stated that attention to this lot began with Code Enforcement action when it underwent a change from residential Use to non-residential Use in 2021 which led to his determinations that the proposed change would require Site Plan Review (SPR) by the Planning Board and a Variance from the ZBA to conduct a contractor's yard as outlined on the Site Plan. Mr. Buttrick stated that the Zoning Ordinance (ZO) does not specify or define contractor's yard and under these conditions, if the term is also not found in the Building Code or the RSAs, then the common usage of the word as found in an American dictionary would be its meaning.

Atty. Robert Shepard of Smith-Weiss, Shepard, Kanakis & Spony, PC in Nashua, NH introduced himself and Daniel Proulx, Jr. of Monument Construction LLC and noted the novelty of appearing before the same Board in the same meeting for two different clients. Atty. Shepard stated that Mr. Proulx owns Monument Construction, is a disabled vet and

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does various VA jobs throughout New England as well as New York, Texas, North Carolina and Florida. Mr. Shepard stated that once there were over sixty-five (>65) employees and currently have approximately twenty-four (~24) employees.

Atty. Shepard distributed a copy of the Site Plan submitted to the Planning, identified the existing house and garage structures noting that both would be converted to office space as the intent of this site is to become the main headquarter of Monument Construction, and noted that there were three (3) conex storage boxes to the rear of the site that slopes down and will not be seen from Lowell Road when fence and landscaping are introduced. The primary purpose of the site is office space for the Project Managers, Controllers, Estimators, Human Resources etc., not a staging area or storage of equipment and that the conex boxes are mainly needed to store fencing that may be required at some job sites. Atty. Sheppard stated that vehicles, equipment and assembly could be conditions of Site Plan Review and added that contractor's yard has "visitors" which is not proposed for this site. Mr. Proulx added that since COVID, they've experienced a higher need than normal to store more equipment and noted that he pays stipends to his workers to use their own personal vehicles to get to job sites.

Ms. Roy asked if the containers are movable and whether there would be any outside storage. Mr. Proulx stated that they are moveable, could be rented, noted that the longer one used to be a site-trailer, and that normally there would be no outside storage, but there is some today due to COVID. Atty. Sheppard stated that the plan is not to have any outdoor storage and that too could be a condition of SPR.

Mr. Dion inquired why security lighting is proposed on all sides and what kind of noise can be expected. Mr. Proulx stated that lighting is proposed on all four (4) sides of the garage building for safety reasons, noted that there is a cellar under the garage and noise would be mostly from pick-up trucks, no bulldozers or heavy machinery except for a mini excavator as they do a lot of subcontracting.

Public testimony opened at 8:37 PM. Abutter Paige Schaller stated that she only received notice yesterday (3/22/2023) from the Condo Association Management firm and questioned if the three (3) containers would remain or would be replaced as they can be seen from Lowell Road. Mr. Proulx answered that they will not be seen from Lowell Road once the fence and landscaping are installed. Being no one else, public testimony closed at 8:43 PM.

Ms. Roy noted that the Town Planner agrees with Mr. Buttrick, that it is a contractor's yard and required a Variance.

Mr. Martin noted that residential use is not a Permitted use in the Business Zone but once Site Plan is approved and the existing buildings are converted to office use, it will become a permitted Use and that the inclusion of three (3) storage containers, even if only generating traffic between jobs, constitutes a contractor's yard and require a Variance in the Business Zone. Mr. Dion agreed and added that even if not constant, it will exist on site. Mr. Lanphear agreed that it is a contractor's yard, complete with gravel area on site. Mr. Daddario concurred and noted that it is unfortunate that there is no definition of Contractor's Yard in the Zoning Ordinance or in the RSAs and noted that failing a definition from either of those sources, Mr. Buttrick cited the dictionary definition of the ordinary meaning of the term and that since this was a yard, associated with a contractor's business,

where some amount of materials related to the contracting business would be stored, one must reach the conclusion that this is a contractor's yard.

Mr. Martin made the motion to uphold the Zoning Administrator's determination that the Site Plan presented to the Planning Board with the three (3) storage containers and gravel area on site constitute a Contractor's Yard and requires a Variance in the Business Zone. Mr. Sakati seconded the motion. Roll call vote was 5:0. Motion passes. Zoning Determination upheld. Variance needed.

VII. REQUEST FOR REHEARING: None

No requests received for Board consideration.

VIII. REVIEW OF MINUTES:

2/23/23 edited Draft Minutes

Board reviewed the edited Draft Minutes. Motion made by Mr. Martin, seconded by Mr. Sakati and unanimously voted (5:0) to approve the 2/23/2023 Minutes as edited.

IX. OTHER

Mr. Buttrick noted that Board Contact Sheet has been updated; that the Spring Zoning Conference scheduled for Saturday 4/29/2023 is now open for registration and encouraged enrollment; and lastly, that he has submitted his resignation for June – he will be retiring. Many were stunned with the last announcement. Everyone wished him well. Ms. Roy stated that the Town is now seeking a replacement for Mr. Buttrick and would appreciate any referrals or recommendations.

X. ADJOURN

Motion made by Mr. Pacocha, seconded by Mr. Lanphear and unanimously voted to adjourn the meeting. The 3/23/2023 ZBA meeting adjourned at 8:59 PM.

Respectfully submitted,

Gary M. Daddario, Chairman