



TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Kara Roy, Selectmen Liaison

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MEETING MINUTES – April 27, 2023 - approved

The Hudson Zoning Board of Adjustment met on Thursday, April 27, 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), Tim Lanphear (Alternate), Normand Martin (Regular/Vice Chair), Marcus Nicolas (Regular), 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 Tristan Dion (Alternate).

IV. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

DEFERRED HEARING:

1. **Case 174-197 (04-27-23)(deferred from 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 noting that it was continued from the 2/23/2023 meeting and that he received written notice, an email dated 3/21/23, from the Applicant to withdraw the application and, according to the Board's Bylaws

Section 143.10 Deferment and Withdrawal a motion is needed from the Board to accept the withdrawal. Motion made by Mr. Martin and seconded by Mr. Nicolas to accept the requested withdrawal of Case 174-197 without prejudice. Roll call vote was 5:0.

Board next addressed Agenda item #5 as it was not properly advertised and requires a continuation.

NEW HEARINGS:

1. **Case 191-042 (04-27-23):** Christopher Reilly, **24 B Street, Hudson, NH** requests a Variance to install an above ground pool within the front yard setback leaving 15 feet ("A" street side) where 30 feet is required. [Map 191, Lot 042-000; Zoned Town Residence (TR); 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 4/12/2023 noting that it is a corner lot with a single family conforming Use and two (2) front setbacks from A Street and B Street and added that the frontage along A Street actually serves as a Side yard.

Chris Reilly introduced himself as the Property Owner of 24 B Street, stated that his lot is a corner lot with bushes along A Street that is in actuality his side yard and noted that several abutters also have pools. Mr. Reilly addressed the criteria for the granting of a Variance and the information shared included:

(1) *not contrary to public interest*

- The proposed location of the pool is to be in his backyard
- Because his lot is a corner lot, his 'backyard' is bordered by A Street which requires a 30' setback instead of a 5' setback
- The optimal location for the proposed pool is within the front setback of his side yard as the land is flat
- To place the pool outside of the setback is topographically unsuitable for a pool as the land is sloped and would require re-grading and the construction of a retaining wall that would be unduly expensive and raise other concerns, especially considering that his neighbor has a fence along the property line
- There is existing foliage along A Street that will shield the pool from view
- The proposed location for the above ground pool is nowhere near the intersection of A Street and B Street and will not cause any visual impediment
- There will be no deck construction around the pool – just a ladder into the pool
- The requested Variance will not be contrary to public interest and there will be no overcrowding of land

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

- The spirit of the Ordinance is to keep certain uses separated and promote the health, safety and general welfare of the inhabitants
- This use fits in with the neighborhood – there are two (2) direct abutters and many other houses in the neighborhood that have pools
- The request is in accord with the essential character of the TR zoning district – small residential lots which reflect that reflect a traditional New England town or village

Not Official until reviewed, approved and signed.

Approved 5/25/2023.

- A backyard pool is a quintessential part of suburban life
 - The zoning purposes of setbacks will not be impaired, nor will there be overcrowding or safety concerns and nor will there be any aesthetic changes to the neighborhood with the granting of this variance
- (3) *substantial justice done*
- Because the property is a small 0.277 acre lot size and is a corner lot with two 30' front setbacks and two 5' rear & side setbacks, there is very little buildable space and the buildable space that is available is topographically challenged and would require re-grading and construction of a retaining wall
 - The request to install an above-ground pool 15' into the setback is modest and reasonable, especially considering if the side yard was not bordered by the road it would only require a 5' setback and the proposed location would be 60'-100' away from the dwellings of abutters
 - Substantial justice would be done to the property owner
- (4) *not diminish surrounding property values*
- A pool is a common feature in the neighborhood and will not negatively impact surrounding properties
- (5) *hardship*
- The lot has an irregular shape and is a corner lot subject to 2 30' front setbacks instead of 3 5' setbacks and 1 30' front setback
 - The small amount of available land outside the setbacks is topographically unsuited for a pool as the land slopes and would require expensive re-grading of land and construction of a retaining wall
 - Because of the unique positioning and dimensions of the property, the pool will still be approximately 15' from the Applicant's 'side yard' property line
 - The proposed distance to the property line is 3X more than what would be required if not bordered by A Street

Mr. Lanphear asked and Mr. Reilly confirmed that there will be no deck around the pool and that access will just be a ladder. Mr. Pacocha asked why the location could not be further out of the setback and Mr. Reilly stated that the proposed location is flat, that it begins to slope down to his neighbor's lot where he has placed a fence and added that the proposed location also has shrubbery along A Street to shield the pool from view.

Public testimony opened at 7:31 PM. No one addressed the Board.

Motion made by Mr. Martin and seconded by Mr. Nicolas to grant the motion as requested with no stipulations as all five (5) criteria have been satisfied. Roll call vote was 5:0. Variance granted. The 30-day Appeal period was noted.

- 2. Case 204-003 (04-27-23):** Daniel Proulx, Jr., Managing Member of Monument Construction, LLC, **149 Lowell Rd.**, Hudson, NH requests a Variance to allow a proposed gravel area for equipment storage in the rear of the existing garage (to be converted to office space) and three (3) 8' x 40' storage containers on a $\frac{3}{4}$ " stone pad constituting an Industrial Use as a Contractor's Yard (E-15) 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 4/14/2023, noted that at the 3/23/2023 meeting the ZBA upheld his Determination that the Contractor's Yard did exist and required a Variance, and added that both the Town Engineer and the Town Planner submitted review comments.

Atty. Robert Shepard of Smith-Weiss, Shepard, Kanakis & Spony, PC in Nashua, NH introduced himself and Daniel Proulx, Jr. a disabled veteran and manager and operator of Monument Construction LLC, noted that the existing building and garage purchased in July 2020 is to be converted to office space for the contractor business, that a Site Plan application was submitted to the Planning Board with a plan prepared by Meisner Brem Corporation dated 11/09/2022 that showed three (3) storage containers at the lowest elevation level at the rear of the property and a gravel area that has been determined to classify it as a Contractor's Yard. Atty. Shepard stated that it would be acceptable to add conditions upon the Contractor's Yard like (1) no heavy equipment to be on site, like tractor trailers or excavators; and (2) a restriction that no more than 3 pieces of smaller equipment like skidders and bobcats. The three (3) storage containers are considered accessory structures that are a necessary to the main purpose of the property, which is the business office for Monument Construction services, LLC. The storage containers would be used to store construction materials and equipment and accessed by pick-up trucks.

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

(1) *not contrary to public interest*

- Property was a non-conforming Use as a residence in the B Zone and the change to a business office is a Permitted use
- Adding 3 storage units in the rear of the property will allow Applicant to fully use the business office for the construction company
- The use of the 3 storage containers will not alter the essential character of the neighborhood, threaten public health, safety or welfare or otherwise injure public rights
- The use of the property will be according to an approved Site Plan from the Planning Board

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

- The primary use of the property will be as a business office
- As an accessory use and structure, Monument Construction Services, LLC, will utilize 3 storage containers to store construction materials, supplies and equipment to better service customers
- The storage containers will be located in the rear of the property at a lower elevation and probably with plantings to further shield them

(3) *substantial justice done*

- There will be no harm to the general public or other individuals
- The storage containers will allow the construction company to better service its customers
- Substantial justice would be done to the property owner

(4) *not diminish surrounding property values*

- The proposed Use will be in conformity with the Business Zone and will enhance property values, for the Applicant and neighbors

(5) *hardship*

- Primary purpose of the property will be as a business office for the construction company
- It is a normal use for a construction business office to also have storage available for construction materials, supplies and equipment
- The contractor's yard portion of the property will be accessory to the business office
- It is fair and reasonable to expect that a business office for a construction company would want to have storage capability for storage for construction materials, supplies and equipment
- The property is located on a busy highway surrounded by other more intensive commercial uses
- The special condition of the property is that the storage units would be located in the rear of the property, out of sight of the public at large and pursuant to an approved Site Plan by the Planning Board
- The ability to have 3 storage containers on the property is essential to the operation of a construction business office
- The Zoning Ordinance does not define the term 'contractor's yard'
- The use of a contractor's yard in conjunction with the business office can be controlled by conditions imposed by the Planning Board to make it a compatible use in the Business District

In response to Mr. Lanphear's question, the height of the 8' x 40' storage containers would be 24'. Mr. Lanphear asked if consideration has been given to pave the gravel area and whether paving would eliminate the classification of a contractor's yard. Ms. Roy noted that there is no definition of a contractor's yard in the Zoning Ordinance, let alone any definition pertaining to the degrees of a contractor's and added that an attempt should be made to reduce the intensity of a contractor's yard in the Business District. It was also confirmed that the site is serviced by Town water and sewer.

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

Mr. Martin asked if the Site Plan has been approved by the Planning Board. Atty. Shepard responded that it has not been approved as of yet. Mr. Martin and Ms. Roy inquired about the storage containers, whether they were permanent or whether they could go onto a job site and received the response that it could be possible, although unlikely, that two (2) could be relocated to a job site but not the third larger/longer one.

Discussion ensued regarding potential conditions for the Variance. Mr. Buttrick stated that from a Code Enforcement point of view, the GVW (Gross Vehicle Weight) should also be stipulated, to which Mr. Daddario countered that the stipulation should just be "no heavy equipment stored or parked overnight" regardless of the GVW.

In response to Mr. Martin's questions regarding materials, Mr. Proulx responded that ninety percent (90%) of materials go direct from supplier to job sites, which could be in New England, New York, and North Carolina; and any materials or equipment needed from storage containers would generally be retrieved by employees in pickup trucks.

Discussion also arose on the possibility of paving the gravel area. Opinions expressed that pavement could prevent larger equipment to the site and other opinions that the

decision should be under the Planning Board's purview as they take into consideration other factors like a regulated amount of impervious surface.

Mr. Martin made the motion to grant the Variance with three (3) stipulations:

- (1) No heavy equipment to be onsite day or night
- (2) No more than three (3) pieces of smaller equipment be on site day or night
- (3) Proposed gravel area to be paved unless otherwise directed by the Planning Board during Site Plan Review.

Mr. Daddario seconded the motion.

Mr. Martin spoke to his motion noting that the granting of the Variance as conditioned satisfies the criteria for the granting of a Variance as the Applicant will be keeping his business low-key, that substantial justice would be done, that the conversion to a business will enhance the surrounding properties, that enforcing the Zoning Ordinance would cause hardship and that the contractor's yard is a reasonable accessory use to the construction company. Mr. Daddario concurred and added that the change to office space and use meets the Zoning Ordinance since it corrects a prior non-conforming Use, that the contractor's yard will not have any heavy equipment, that all setbacks are exceeded, that it benefits the Property Owner with no harm to the general public, that the transition to office space from a residence in the Business Zone will not diminish surrounding property values, that a contractor's yard without heavy equipment is consistent with the Business Zone and that accessory storage in conjunction with office space for a construction company is reasonable, especially with the stipulations.

Roll call vote was 3:2. Mr. Martin and Mr. Daddario opposed. Variance granted with three (3) stipulations. The 30-day Appeal period was noted.

Board took a break at 8:33 PM. Meeting resumed at 8:42 PM.

- 3. Case 110-011 (04-27-23):** Donald Lamothe, **19 Putnam Rd., Hudson, NH** requests an Equitable Waiver of Dimensional Requirement to allow a shed to remain approx. eight (8) feet in the rear yard setback where 15 feet is required. [Map 110, Lot 011-000; 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 4/14/2023 noting that it is an existing non-conforming corner lot due to reduced size, and his Zoning Administrator Comment that confirmed that the Applicant/Property Owner secured a Building Permit with the setback indicated, had the inspection and approval by the Town and that there has been no notice of violation nor deficiency noted and concluded that the principal of estoppel applies.

Donald Lamothe introduced himself as the Property Owner and stated that the shed in question was built in 2010, over two (2) decades ago, and at that time he believed that the shed was located twenty five feet (25') from his property line. That information was based from the developer that built the house behind him back in 1985. Clearly there was a mistake and the shed now appears eight feet (8') from the property line, not the required fifteen feet (15'). Mr. Buttrick confirmed that the Building Permit for the shed identified the location to be fifteen feet (15') from the property line.

Mr. Lamothe stated that there has been no enforcement ever taken because the discrepancy was just noticed on 3/27/2023 by the Zoning and Code Enforcement Administrative Aide Tracy Goodwyn when he applied for a Building Permit for a second shed. Mr. Lamothe stated that no persons have been affected by the shed's current location as the shed is completely on his property and the area of land abutting his property is a wooden section of land that is not being used by the current property owners. The shed does not create any public or private nuisance, nor does it obstruct or prevent anyone from using their property. The house in the lot abutting the shed is over one hundred feet away.

Mr. Lamothe stated that he does not believe that any public or private benefit would be gained by moving the shed as it is not interfering with or impeding any use or access of any public or private land use. Mr. Lamothe stated that if the shed needs to be moved, the cost would be high and would include at a minimum: (1) surveying his property to identify the exact location of the property line in question; (2) modifying the irrigation system to move/remove some sprinkler heads; (3) preparing the new location for the shed; and (4) the expense of physically moving the shed and the rough estimates he has received for this work could easily exceed \$3,000.

Public testimony opened at 8:56 PM. No one addressed the Board.

Mr. Martin made the motion to grant the Equitable Waiver of Dimensional Requirement. Mr. Nicolas seconded the motion. Mr. Martin spoke to his motion noting that the requirements have been met, that the error occurred more than ten (10) years ago with a Building Permit and Inspection, that the location poses no nuisance and that there has never been a complaint registered with the Town and that there is a high correction cost. Mr. Nicolas concurred for the same reasons. Roll call vote was 5:0. Equitable Waiver granted. The 30-day Appeal period was noted.

4. **Case 136-001 (04-27-23):** Joseph A Miara, Jr., Trustee, Granite Realty Trust, **12 Bockes Road, Hudson, NH** requests a Variance to build a proposed 80 ft. x 120 ft. garage and attached 80 ft. x 45 ft. covered awning. This is an expansion of an existing, non-conforming use, not permitted in the R-2 district.[Map 136, Lot 001-000, Zoned Residential-Two (R-2); HZO Article VIII, Nonconforming Uses, Structures and Lots; §334-29, Extension or enlargement of nonconforming uses.]

Mr. Buttrick read the Case into the record, referenced his Staff Report initialed 4/17/2023 noting the previous activity with both the Planning Board (PB) and Zoning Board of Adjustment (ZBA) and that the non-conforming Use status of the lot came into being in 1985 when the area was rezoned to the R-2 District. Mr. Buttrick stated that In-House Review Comments have been received from the Town Engineer regarding intent of providing water and sewer to the proposed structure and the Town Planner noting that Site Plan Review with PB is required.

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, stated that he has no opposition with Mr.

Daddario sitting on the Case, and introduced Allison Lewis from Keach-Nordstrom Associates, Inc., and Chris Grioux and Chris Cleaver from Miara Transportation.

Atty. Westgate stated that in 2022 the Board approved an 80 ft. x ~79 ft. 'hoop' structure attached by 4 (four) 40 ft. ocean containers used as a base with a proposed location in the westerly side at the rear of the property; however, as his client pursued the 'hoop' structure further, it was determined that the 'hoop' structure was not to be a cost-effective solution for his client to store vehicles and equipment out of the elements and allow personnel to clear snow and ice in readiness for travel and transport on public roads and comply with Jessica's Law. Atty. Westgate stated that the Variance request now before the Board is for a permanent metal structure for the garage building of approximately 80' x 120' and approximately 25' in height with a proposed covered area of 45' x 80' adjacent to and immediately east of the proposed garage as well as parking spaces, additional paved surfaces for vehicle maneuverability and stormwater management.

Atty. Westgate stated that Miara Transportation operates a specialty moving and storage business and deals primarily with storage and shipping of machinery for manufacturing, fabricating and other commercial or industrial facilities that requires a number of specialty and often different and unique flatbeds trailers and flatbed trailers whose oversized loads require special permitting.

Atty. Westgate addressed the variance criteria necessary to satisfy and the information included:

(1) *not contrary to public interest*

- Not contrary to allow installation and use of a building and overhang to improve operations and aid in compliance to Jessica's Law
- Site developed when lot was in commercial/industrial zone
- Proposed location in western section of lot abuts open space parcel for a residential development and has a 150' wide power line easement through it
- It is in the public interest to permit reasonable, natural expansion of a long standing business property

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

- Observes the spirit of the Ordinance
- Will permit a reasonable improvement to better facilitate operations in that portion of the property

(3) *substantial justice done*

- Granting the variance would allow an upgrade to the facility and compliance to Jessica's Law
- If variance denied, the general public would realize no appreciable gain
- Is a modest expansion of the non-conforming use and does not increase the land area currently being used to operate the business
- Substantial justice is done by granting the Variance since it permits the possibility that the project can move forward with Site Plan Review with the Planning Board
- The general public would realize no appreciable gain from denying the Variance but denial would cause significant adverse impact to the Applicant and deny them reasonable expansion

(4) *not diminish surrounding property values*

- The proposed building/new construction with overhang, parking spaces, additional paved areas, stormwater management facilities on the westerly portion of the property will not diminish property values
- The proposed location is many hundreds of feet from the duplex at 16 Bockes Road and the residential properties along the southern property line
- See supporting letter dated 4/27/2023 from Randy Turmel of Keller Williams Gateway Realty

(5) *hardship*

- The property is relatively large
- When property developed it was a permitted use but in 1984 the Zone changed to residential and the site then became a Non-conforming Use and now requires a variance to expand/grow
- Site has existed for over 30 years as a developed moving and storage facility
- If site was located across Bockes Road it would be in the G-1 Zone where its use would be permitted and a variance would not be needed
- Lot has good onsite buffering in its southerly half and buffering to the west
- The building will be integral to Miara Transportation's operation and aid in compliance with Jessica's Law and will be located at the rear of the site where tractor trailers and box trailers and other equipment and vehicles currently reside, but not under cover

Mr. Thompson asked Atty. Westgate to address the comment from the Town Engineer. Atty. Westgate stated that there is no intent to have the garage water and sewer in the new building. In response to Mr. Sakati's question, Atty. Westgate responded that there are approximately 250' of wooded area between the proposed garage and the houses.

Public testimony opened at 9:26 PM. No one addressed the Board.

Motion made by Mr. Nicolas to grant the Variance as requested. Mr. Pacocha seconded the motion. Mr. Nicolas spoke to his motion stating that the granting of the Variance would not alter the character of the neighborhood, nor would there be any threat to public health or welfare, that it encourages good use of the land and property values would not be diminished, that justice would be done to the owner and the benefit to the owner would not outweigh benefit to the public, that the proposed building is shorter than the hoop structure previously approved in 2022, that the hardship was caused by the Zone change and that the proposed use is reasonable. Mr. Pacocha stated that all five (5) criteria have been satisfied and concurred with Mr. Nicolas. Roll call vote was 5:0. Variance granted. The 30 day Appeal period was noted.

- 5. Case 165-139 (04-27-23): Kevin A. & Lucie Y. Jeffery, **99 Webster St., Hudson, NH** requests a Variance to allow a proposed 805 sq. ft. deck expansion on an existing non-conforming structure. The deck expansion encroaches 12.7 feet into the side yard setback leaving 2.3 feet where 15 feet is required and 30.8 feet into the front yard setback leaving 19.2 feet where 50 feet is required. [Map 165, Lot 139-000, Zoned Business (B); HZO Article VII: Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements.]**

Mr. Buttrick read the Case into the record, noted that request also requires a Use Variance which was not posted/advertised and suggested that the Case should be deferred to the 5/11/2023 meeting. At 7:12 PM Mr. Daddario asked if anyone was present for this Case. No one addressed the Board. Motion made by Mr. Martin and seconded by Mr. Nicolas to defer the hearing to the 5/11/2023 meeting. Vote was 5:0.

Board next addressed the first Case under New Hearings.

V. REQUEST FOR REHEARING:

No requests were presented for Board consideration.

VI. REVIEW OF MINUTES:

03/09/23 edited Draft Minutes; Motion made by Mr. Martin, seconded by Mr. Sakati and unanimously voted to approve the 3/9/2023 Minutes as edited and presented.

03/23/23 edited Draft Minutes: Mr. Thompson offered a correction to the name of an abutter. Motion made by Mr. Martin, seconded by Mr. Nicolas and unanimously voted to approve the 3/23/2023 Minutes as edited and amended.

VII. OTHER:

- 1) Reminder: Planning & Zoning Spring 2023 Conference- **Saturday, April 29, 2023**
8:45 AM-3:30 PM

Mr. Buttrick read the item into the record and encouraged everyone to sign up and attend.

- 2) Reminder: May 11, 2023 carry-over ZBA meeting

Mr. Buttrick noted that there are two (2) Cases, both Variances, one for 99 Webster Street and another for 100 Lowell Road and asked each Member to bring the information for each to that meeting.

- 3) ZORC – Zoning Ordinance Review Committee

Mr. Buttrick reported that the Planning Board has decided to resume ZORC and seeks two (2) volunteers from the Zoning Board. Both Mr. Martin and Mr. Lanphear volunteered.

Motion made by Mr. Martin, seconded by Mr. Nicholas and unanimously voted to adjourn the meeting. The 4/27/2023 ZBA meeting adjourned at 9:37 PM.

Respectfully submitted,

Gary M. Daddario, ZBA Chairman