



TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Dillon Dumont, Selectmen Liaison

12 School Street • Hudson, New Hampshire 03051 • Tel: 603-886-6008 • Fax: 603-594-1142

MEETING MINUTES – July 27, 2023 – approved

The Hudson Zoning Board of Adjustment met Thursday, July 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

Vice Chairman Normand Martin called the meeting to order at 7:03 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 Tristan Dion (Alternate), Normand Martin (Regular/Vice Chair), Marcus Nicolas (Regular), Jim Pacocha (Regular), Dean Sakati (Regular) and Edward Thompson (Alternate/Clerk). Also present were Dillon Dumont, Selectman Liaison, Louise Knee, Recorder (remote), and Chris Sullivan, Zoning Administrator. Excused were Gary Daddario (Regular/Chair) and Tim Lanphear (Alternate). Alternate Dion was appointed to vote.

IV. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

1. **Case 191-073 (07-27-23):** Shannon L. Baluta and William J. Janocha, **28 B Street, Hudson, NH** requests a Variance to build a proposed 864 SF car port within the front yard setback leaving 17.9 feet where 30 feet is required. [Map 191, Lot 073-000; Zoned Town Residence (TR); HZO Article VII: Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements.]

Mr. Sullivan read the Case into the record and referenced his Staff Report initialed 7/18/2023. It was noted that no comments were received from in-house Officials and a certified plot plan prepared by Gregg R. Jeffrey, LLS, of Jeffrey Land Survey LLC dated March 2023 was received on 6/12/2023 that locates the proposed eight hundred sixty four foot (864 SF) car port with dimensions of 24' x 36' directly in front of existing garage leaving 17.9' of front setback from the northern corner and 19' from the southern corner.

Shannon Baluta and William Janocha introduced themselves as the property owners and sat at the Applicants' table. Ms. Baluta addressed the criteria required for the granting of a variance and the information shared included:

Not Official until reviewed, approved and signed.
As Edited [LK, CS]

- (1) *not contrary to public interest*
 - Not contrary to public interest as having a carport in front of existing garage will protect our vehicles from the elements and keep them off the street side
 - Vehicles are expensive
- (2) *will observe the spirit of the Ordinance*
 - The proposed carport does observe the spirit of the Ordinance and is a reasonable use and would allow us to place our vehicles under cover from the elements and off the roadside
 - The carport cannot be placed on the side of the house as it would be too close to 30 B Street and require the land to be built up and add pavement
 - The carport will also help to protect from falls for her 88 year old mother in-law who lives with them
 - The carport will be built to code and will not make the property unappealing
- (3) *substantial justice done*
 - Substantial justice would be done to us as the property owners as it will help us keep our vehicles on our property and keep them protected
 - The balancing test weighs in favor of the property owners and their mother
- (4) *not diminish surrounding property values*
 - proposed carport will not diminish surrounding property values but instead help them as it will keep our cars off the street – in fact, the proposed carport could help increase property values in the neighborhood with its proper construction
- (5) *hardship*
 - There is no reasonable use that can be made of the property that would be permitted under the Ordinance
 - Need the variance to have the ability to enter the garage under the protection of the carport and keep our vehicles out of the elements and also keep them off the street and protected
 - There is no other location to place to locate the carport on the lot.

Public testimony opened at 7:17 PM. No one addressed the Board.

Mr. Sakati inquired if others in the neighborhood had carports and Ms. Baluta responded that she did not know but has seen some of those cloth-covered tents. Mr. Dumont noted that all the lots in this neighborhood are small lots and that there is only a five foot (5') setback required for driveways and that no comments were received from DPW (Department of Public Works).

Mr. Dion asked and received conformation from Mr. Janocha that the carport would be open-air supported by eight (8) twelve inch (12") sona tubes to a dept of four feet (4') below grade due to being in a snow-zone. Ms. Baluta added that it will be a sound structure with roofline matching the house.

Mr. Dion asked to view the street view and questioned if there were plans to widening the driveway and needing a curb cut. Mr. Janocha responded that it should line-up, that the Town is currently redoing A Street and then next B Street and ideally he would want a straight shot from his driveway to the carport.

Motion made by Mr. Pacocha and seconded by Mr. Sakati to grant the Variance as requested. Mr. Pacocha spoke to his motion stating that it will not be contrary to public interest and not alter the character of the neighborhood, that it observes the spirit of the Ordinance and does not conflict with its purpose, that there would be no harm to the general public and improvements do not diminish surrounding property values and that the size of the lot and location of the home there hinders reasonable use. Mr. Sakati spoke to his second stating that it does not alter the character of the neighborhood or introduce safety issues, that justice is done because the applicant needs this shelter and it does not diminish value of surrounding property values and there was no public opposition presented and that literal enforcement of the Ordinance would result in unnecessary hardship.

Mr. Nicolas voted to approve the motion as public health and safety do not seem to be threatened and the character of the neighborhood will not be altered and public welfare will not be outweigh benefit to owner, property values will not be diminished, and the house lot configuration is not uniform thereby posing a challenge to find reason not to grant.

Mr. Dion voted to grant the Variance stating that the carport is providing shelter to vehicles and does not intrude public way or safety, compared to other properties in local area the garage carport does not seem out of place, there is no harm done to the general public and will potentially increase the safety of the occupants, will not diminish property values and is a valuable addition to the property, the properties are small and location of the property limits potential for change and the proposed carport is a reasonable use.

Mr. Martin voted to grant stating that it will not be contrary to public interest, will observe the spirit of the Ordinance and substantial justice would certainly be done to the property owners, that no evidence supported to show that this project will diminish the values of surrounding properties and that the Zoning Ordinance creates these hardships.

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

2. **Case 165-155 (07-27-23):** Jared Buttles, 8 Wire Road, Merrimack, NH requests a Variance for **77 Derry Street (Unit A-1D), Hudson, NH** owned by Hudson-Vickerry, LLC to allow the uses of warehousing (E-10) and distribution (E-8) of toys from online retail sales in the Business Zone where these uses are not permitted. [Map 165, Lot 155-000; Zoned Business (B); HZO Article V: Permitted Uses; §334-21, Table of Permitted Principal Uses.]

Mr. Sullivan read the Case into the record and referenced his Staff Report initialed 7/18/2023 and Zoning Determination #23-090 and noted that authorization letters have been filed by Daniel Gordon if Property Owner Hudson Vickery, LLC for the Applicant Jared Buttles and by Jared Buttles authorizing Gottesman & Hollis, PA and

that, by his Zoning Determination #23-090 dated 6/29/2023, if the Variance is granted, the Applicant would then need Site Plan Approval by the Planning Board.

Atty. Morgan Hollis of Gottesman & Hollis, PA, in introduced himself as representing both the Applicant, Jared Buttles, and Property Owner Dan Gordon of Hudson Vickery, LLC. Atty. Hollis noted that Building A of the Hudson Mall got divided into smaller spaces with all the front spaces designed for retail space and noted that the rear unit with access to the loading dock (Unit A-1D) has been vacant for a while. Atty. Hollis stated that what is before the Board is an unusual ask and an unusual property. Atty. Hollis stated that Mr. Buttles seeks space with a loading dock to store/warehouse toys for later distribution, either through mail or delivery, with very little, if any, "street" retail. Atty. Hollis stated that a tractor-trailer would deliver to the site every two (2) weeks and box vans, like UPS, would come/go every business day.

Atty. Hollis addressed the criteria required for the granting of a variance and the information shared included:

(1) *not contrary to public interest*

- The proposed use is a toy distribution and warehouse use in a 3,300 SF area in the rear of what is known as the "Hudson Mall" in Unit A-1D.
- Unit A-1D within the mall does not have a street view and is located in the back of the building where shipments and deliveries take place for the existing grocery store (Hannaford) and other tenants.
- Granting the Variance will not alter the character of the neighborhood, as there will be no change to the street front of the building and shipping and receiving already occur behind this building for existing businesses.
- Allowing a warehouse and distribution of toys behind the building that does not have a storefront in the typical sense is not contrary to the public interest.

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

- The lot is Zoned Business (B) which allows for retail uses, but not storage of retail goods.
- The proposed use will be in the back of the mall where many deliveries are made daily.
- The proposed use is not an industrial use, but rather a warehouse and distribution of toys from an online storefront, much like a retail store, without the same level of storefront traffic.
- The proposed warehouse will not alter the essential character of the neighborhood and will not threaten the public health, safety or welfare as water and sewer are available at the unit and more than adequate space for truck deliveries exist and such movements do not threaten pedestrian safety.

(3) *substantial justice done*

- If granted, there will be no harm to the general public or any other individual.
- The location of the unit where the proposed use will be is behind the portion of the building used for retail and public parking for such use and is

where all storage, deliveries and shipping normally occur for the retail uses.

- For the limited foot traffic, if any, there is sufficient parking and access to the unit.
- The proposed use will not alter the essential character of the neighborhood as the use will not be any different than shipping and receiving for retail uses that already exist and there is no street view of the unit.
- Denial will impose substantial harm to the applicant that is not outweighed by harm to the public and harm to the owner with unusable space
- The balancing test weighs in favor of the property owner and the applicant.

(4) *not diminish surrounding property values*

- Granting the variance will not cause any real change to the neighborhood.
- This is a Business district and the use will be located in only 3,300 SF (of 112,822 SF) and be for storage and distribution of toys, similar to any retail store that has more of an online presence.
- The proposed use will have no effect upon or be noticeable by the surrounding properties.
- Truck deliveries will be by smaller vehicles than those delivering to other users, notably the grocery store

(5) *hardship*

- This property is unique in that it is a shopping center which contains a grocery store and retail store fronts, with this single unit in the rear.
- This unit was created when the original grocery store relocated to the newer addition to the south and its former space was divided into small retail units with those units being shortened in depth as no user would agree to pay for the rear area.
- The unit has remained remarkable un-rentable due to no visibility from the front and the delivery trucks at its entry door area.
- To gain access to this particular unit, access is from the delivery lane around the back of the building.
- If the proposed use is granted there will be no change to the existing retail uses and there will be no visible changes to the public
- Enforcing the Business District where retail is allowed without allowing this small unit to store and distribute toys from an online retail business has no fair and substantial relationship to the purpose of the Zone as this portion of the building is really near the industrial type use of the property and the proposed use while similar to the retail uses permitted and existing only with no storefront presence.
- The proposed use does not belong in the district where warehousing and distribution are permitted, nor in the strictly retail location rather than other industrial where the use is permitted
- It is reasonable to allow this light industrial use of storing toys and distributing them in the rear of a retail center.

Public testimony opened at 7:50 PM. No one addressed the Board.

Mr. Nicolas asked and received confirmation that the proposed use is just to house inventory for later shipping.

Mr. Dion inquired about customer pick up and Mr. Buttles stated that would be a very rare occurrence. Mr. Dion noted that there is no wheelchair access and not ADA compliant. Atty. Hollis stated that it would be okay to place a condition of approval that there is to be no customer pickup.

Mr. Sakati reviewed the list of the other retailers in the mall and questioned if the variance, if granted, would stay with the property. Mr. Martin responded in the affirmative, that the variance remains in perpetuity but only for this specific unit (Unit A-1D) for small package distribution. Mr. Thompson questioned whether there would be any accessory storage and Atty. Hollis confirmed that there would be no accessory storage. Mr. Thompson inquired how many employees there would/could be and Mr. Sakati questioned the hours of operation. Atty. Hollis responded that the Applicant, Mr. Buttles, would be the only employee and that the hours of operation would be determined and stipulated at Site Plan Review with the Planning Board.

Mr. Dion questioned the shelving proposed, whether there would be any pallet stacking. Mr. Buttles responded and stated that it would be normal shelving, eight to ten feet in height, and there would be no need for a forklift

Mr. Nicolas made the motion to grant the Variance with the stipulation that the property unit is not to be used as a storefront retail store. Mr. Pacocha seconded the motion. Mr. Nicolas spoke to his motion stating that it does not alter the essential character of the neighborhood or threaten public health and safety, that it will not alter the character of the neighborhood nor will it infringe on public rights, the benefit to the owner will not be outweighed by harm to the general public, that property values will not be diminished and the property (unit) is hidden from public view, that it is a shopping center and delivery to the rear is normal in a center like this and the proposed use is reasonable.

Mr. Pacocha spoke to his second noting that it is not contrary to public interest and does not conflict or alter the character of the neighborhood, that there is no harm to the general public, there is no noticeable change so there should be no diminution of surrounding property values and because it is basically retail sales without walk-in customers, the use is more suited to the use proposed than the use allowed in the Ordinance.

Mr. Sakati voted to deny the Variance stating that there is no threat to public health or safety but it does conflict with the purpose of the Ordinance and even though there is no harm to the general public hardship and hardship was not established because the alterations were a choice made by the property owner. Criteria 2 & 5 were not satisfied.

Mr. Dion voted to grant the Variance with the stipulation stating that the neighborhood is already being utilized for storefronts and light industrial, that the neighborhood already has lots of trucks going in and out that are transporting goods

so this will not be noticeable, that the general public will have minimal to no impact due to the small size of the operation, that it potentially maintains or increases the property due to upkeep and maintenance, that the size and location of the property limits tenants and uses and the proposed use is a reasonable use.

Mr. Martin stated that he is in agreement with Mr. Dion, that they have the quietest neighbors with the abutting cemetery to the rear and voted to grant the Variance with the stipulation stating that the property already exists on this project and it will not be contrary to the public interest and will observe the spirit of the Ordinance and substantial justice will be done to the property owner and the proposed use will not diminish the surrounding property values, the property has been in use for a long time and hardship exists because of the zone in which this type of use is allowed and the proposed use is a reasonable one.

Roll call vote was 4:1 to grant the Variance with the stipulation that the property unit (#A-1D) is not to be used as a storefront retail store. Mr. Sakati opposed. The 30-day Appeal period was noted.

V. REQUEST FOR REHEARING:

No requests were presented for Board consideration.

VI. REVIEW OF MINUTES:

07/08/23 edited Draft Site Walk Minutes

Motion made by Mr. Martin, seconded by Mr. Dion and unanimously voted to approve the 7/8/2023 Minutes as presented.

07/13/23 edited Draft Minutes

Not available for review.

VII. OTHER:

No other business presented for Board consideration.

Motion made by Mr. Nicolas, seconded by Mr. Martin and unanimously voted to adjourn the meeting. The 7/27/2023 ZBA meeting adjourned at 8:05 PM.

Respectfully submitted,



Normand G. Martin, Acting ZBA Chairman