



TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Dillon Dumont, Selectmen Liaison

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MEETING MINUTES – August 24, 2023 – approved

The Hudson Zoning Board of Adjustment met Thursday, August 24, 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), and Edward Thompson (Alternate/Clerk). Also present were Dillon Dumont, Selectman Liaison, Louise Knee, Recorder (remote), and Chris Sullivan, Zoning Administrator. Excused were Dean Sakati (Regular) and Tristan Dion (Alternate). Alternate Lanphear was appointed to vote.

IV. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

1. **Case 201-002 (08-24-23):** David Arvedon, **115 Bush Hill Rd., Hudson, NH** requests a Variance to continue the operation of a boarding house with 6 residents where boarding houses are a prohibited use. [Map 201, Lot 002-000; Zoned General-One (G-1); HZO Article V: Permitted Uses; §334-21, Table of Permitted Principal Uses and §334-20, Allowed uses provided in tables and HZO Article III; General Regulations; §334-16, Building permits.]

Mr. Sullivan read the Case into the record, referenced his Staff Report initialed 8/10/2023 and added that his determination and classification that this residence is being used as a Boarding house was based on physical inspection and added that the Zoning Ordinance does not address (or mention) Boarding Houses. Mr. Sullivan stated that the Town Engineer commented that this site has a 3-bedroom septic system capacity and that the Fire Marshall commented on need to be in compliance with Life Safety Code NFPA 101 (2018 Edition) for Boarding Houses.

David Arvedon introduced himself, stated that he is deaf in one ear and hard of hearing out of the other and asked the Board's indulgence. Mr. Arvedon stated that he is seventy seven (77) years old and his brother is an invalid and last year he threw

his back out shoveling and the four (4) people who he shares his home with are good people he has known for years, in fact one worked for him for five (5) years, and they help out caring for his brother and the dogs and yard maintenance and shoveling and utilities and running errands and if they are forced to leave they would probably become homeless with the exorbitant rental rates of today and he would have to sell his home and find alternate care for his brother because it would be too much for him alone, being a senior citizen and all. His house is not a boarding house because it is big and a home where everyone shares the kitchen, living room, deck, bathrooms and each one has a bedroom. Mr. Arvedon stated that it is good karma, doing the right thing sharing his home

Mr. Daddario asked Mr. Arvedon to address the Variance criteria. Mr. Arvedon stated that the hardship would not be to him but to his people as they would end up homeless if they had to move and that it not fair – this is a huge house surrounded by vast wasteland with no close neighbors.

The other information contained in the application included

- (1) *not contrary to public interest*
 - Four (4) responsible people live at this property in addition to himself and his brother
- (2) *will observe the spirit of the Ordinance*
 - There is plenty of space between house and all other houses
- (3) *substantial justice done*
 - Need people here to care for my dogs, my disabled brother and myself, being a senior citizen
 - Also need constant help maintaining the property and paying for utilities and other property expenses
- (4) *not diminish surrounding property values*
 - Nobody in surrounding properties is remotely close to my house
 - There are less people in my house than most other houses this size
- (5) *hardship*
 - It is the other people in this house who would face hardship because they would end up homeless
 - He would be forced to sell his home and find alternate care for his disabled brother

Mr. Martin asked and received confirmation from Mr. Sullivan that he did have a tour of the residence and because the residents were not related, except for the brothers who own the property, and there is an exchange of money, he determined that the closest definition is that of a boarding house and added that there is no mention or definition of boarding houses in the Zoning Ordinance and because it is not listed in the Table of Permitted Uses, he concluded that it was not allowed and needed a Variance.

Mr. Pacocha inquired if the house is a single-family residence or modified into apartments/separate living quarters. Mr. Sullivan stated that it is a single-family residence. Mr. Pacocha asked why it is before the ZBA. Mr. Sullivan stated that the Fire Department was called to the house and it was noted that the people there were not related. Mr. Dumont expressed his opinion that it is wrong that a call to the Fire

Department for an ambulance could lead to this and asked Mr. Sullivan what the difference is between a boarding house and receiving help with health care and house maintenance. Mr. Sullivan stated that it is the exchange of money. Mr. Martin asked if there was any type of proof of payment and Mr. Sullivan responded that no proof of payments was submitted. Mr. Martin noted that there does not appear to be an issue with the type of boarders and that there is no code enforcement issue. Mr. Dumont asked how long the boarders have been there and Mr. Arvedon responded that they have been with him for about four (4) years. Mr. Dumont asked Mr. Arvedon if he advertised rooms for rent and Mr. Arvedon stated that he has never advertised, that he knows his people, and Mr. Dumont noted that this is not a business.

Public testimony opened at 7:33 PM. The following individuals addressed the Board:

- (1) James Mills, 118 Bush Hill Road, stated that he met Mr. Arvedon when he first moved to the neighborhood and recalled his surprise by the welcoming because where he came from (Massachusetts) people just didn't do that, noted that the property has always been well maintained and cited that even the cedar logs were sanded and refinished, that he has met all the people living there and noted that there are less people living there now than in the past and that he supported granting Mr. Arvedon the variance as it is no impact to him or the neighborhood
- (2) Bert and Lisa Masse, 7 Moose Hill Road, sent an email on 8/20/2023 stating that they are opposed to the granting of this variance because it is prohibited and they don't want boarding houses in their neighborhood.

Mr. Dumont asked if any other classification is possible besides boarding house? Mr. Martin noted that there is nothing in the Zoning Ordinance for Boarding Houses and questioned why it was even before the ZBA. Mr. Pacocha stated that there cannot be a Variance for Boarding House without the proper procedure and process that includes the Planning Board and reminded the Board of the similar issue they had with an Air B&B application.

- (3) James Mills, 118 Bush Hill Road, asked if the variance could be limited to the current owner only? It was noted that Variances usually stay with the land.

Public testimony closed at 7:41 PM.

Mr. Daddario stated that it would give him no pleasure to deny the Variance but would have to because the underlay is that all five (5) criteria need to be met and by the Applicant's own admission, there is no hardship; but there's still the question of what is happening at the house, considering that there are six (6) people in six (6) bedrooms with a three-bedroom the septic system leading to a potential issue; that there's no definition of Boarding House in the Zoning Ordinance; and as Mr. Pacocha pointed out, the Board must be consistent in its decision making process. Mr. Arvedon asked what difference is there between two (2) people in each of the three (3) bedrooms or six (6) people in six (6) bedrooms, that Triangle Septic maintains his system, and that he would suffer a hardship, from guilt being forced to tell his people to move out, from having to find an alternate home and care for his disabled brother and having to sell his home.

Mr. Lanphear stated that in RSA 540.1-A there is a requirement that involves transitioning every ninety (90) days, but that under Landlord and Tenant, not Land Use and the people at this address have been there for four (4) years. Mr. Daddario stated that if the Hudson Zoning Ordinance does not define Boarding House then the ZBA is unable to grant a variance for it. Mr. Martin stated that the application should be withdrawn and the Application fees refunded as this is not an enforcement issue, that observations were made and ZORC (Zoning Ordinance Review Committee) should address.

Mr. Arvedon asked the Board for time in order to get everyone resettled especially since one of his people has muscular dystrophy. Mr. Daddario spoke louder stating that nobody would be asked to leave tonight and that the Board is unable to grant the variance. Mr. Martin also spoke up stating that the option exists for Mr. Arvedon to withdraw his application and request his application fee refunded. Mr. Arvedon asked to withdraw his application. Mr. Arvedon stated that he is happy that no one has to move and if it costs him his application fee, then so be it.

Motion made by Mr. Martin to accept the Applicant's request to withdraw his Variance Application without prejudice and to refund the Application Fee of two hundred two dollars and sixty-seven cents (\$202.67). Mr. Lanphear seconded the motion. Roll call vote was unanimous at 5:0. Variance withdrawal and refund granted.

The Board took a five-minute recess. The meeting resumed at 8:02 PM.

2. **Case 174-080 (08-24-23):** Kenneth & Catherine Richard, **21 Derry St., Hudson, NH** requests a Variance for a proposed 375 sqft. addition with encroachments of 0.8 ft. into the required front yard setback of 30 ft., leaving 29.2 ft. of setback and 3.3 ft. into the required side yard setback of 15 ft. leaving 11.7 ft. This is a request for a new Variance due to the expiration of the Variance previously granted on 4/22/2021 and not filed for extension/renewal no later than 30 days prior to the Variance expiration. [Map 174, Lot 080-000; Zoned Town Residence (TR); HZO Article VII: Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements, HZO Article XV: Enforcement and Miscellaneous Provisions; §334-82, Time Limit and RSA 674:33.I-a.(a)]

Mr. Sullivan read the Case into the record, referenced his Staff Report initialed 8/10/2023, noted that ZBA previously granted the Variance on 4/22/2021 for this addition but it expired and this should be considered a new application, and that the Town Engineer noted that there is an existing sewer lateral that is serving 8R Highland Street which could be impacted by the proposed work which could also make it difficult to service that private sewer lateral in the future. Mr. Dumont asked who's responsibility it is to check out the exact location of this existing sewer lateral, and why it was not noted in the previously granted variance. Mr. Sullivan stated that it is the Applicant's responsibility to identify its location and to make sure that they stay five feet (5') away from it for this new construction. Mr. Dumont questioned if the sewer lateral should be on the LLS Plan. Mr. Martin stated that the sewer lateral should have been discovered prior to now and questioned if the hearing should be deferred to give the Applicant the opportunity to get it located and placed on the plan prepared by Jeffrey Land Survey, LLC dated March 2021 as this plan does not get

Planning Board review. Mr. Dumont noted that Inspectional Services gets to do their job and this should get addressed during the BP (Building Permit) process.

Mr. Daddario asked and received confirmation from Mr. Sullivan that what is before the Board is not an extension of the original Variance granted in 2021 because it has expired and the Board is to treat this as a brand new application.

Mr. Martin commented that 375 SF is about the area of a parking space.

Kenneth Richard, Cynthia Macgregor and Timothy Macgregor introduced themselves as the Property Owners. Mr. Macgregor apologized, as he knew the Variance was granted and he thought it remained forever but was unaware that it had any kind of expiration. Ms. Macgregor stated that the proposed addition is to renovate the existing bathroom and create another bathroom and a bedroom as they are expecting a child and need the space.

Mr. Macgregor addressed the Variance criteria and the information shared included:

(1) *not contrary to public interest*

- The requested variance will not threaten public health or welfare of the public
- The house will still be a ranch with a hip roof line, just longer
- The siding that will be removed will be used in the front of the addition to match original
- This addition will add a needed bedroom and change the bathroom that has been there for 60 years

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

- The proposed use of the addition will have a fourth bedroom, extend the master bedroom and construct a new bathroom.
- This house holds 3 children and 4 adults with a baby on the way
- The original bathroom is too small and needs repair with questionable mold in the shower wall
- The existing bathroom has been there for approximately 61 years
- We want to preserve and enhance the quality of life and add property value

(3) *substantial justice done*

- The addition without the variance would only be nine feet (9') making all the rooms very narrow and after we minus the outside wall and siding would probably be about eight and a half feet (8.5') wide or less
- Moving the addition's wall to ten point eight feet (10.8') would provide more usable space

(4) *not diminish surrounding property values*

- Having four (4) bedrooms and a newer bathroom brings up the value of this property
- Increasing our property value will have a positive effect on the new houses next door keep their value

(5) *hardship*

- The house sits at a skewed angle to the property lines making one end more encroaching than the other
- An addition to the north side would be by the garage and not a practical

- An addition to the rear of the house would force an existing and needed bedroom to become a hallway or force having to go outside of the house to access the new bedroom
- The only reasonable expansion/addition is on the south side of the existing house for our needs
- The proposed addition would encroach 3.3' into the 15' side yard leaving 11.7'
- The proposed addition would encroach 0.8' into the required 30' front setback leaving 29.20'

Public testimony opened at 8:20 PM. No one addressed the Board.

Mr. Lanphear made the motion to grant the Variance as requested with two stipulations: (1) obtain the BP (Building Permit) after the 30-day Appeal period has passed; and (2) identify the lateral sewer line on the plan prepared by Jeffrey Land Survey LLC. Mr. Martin seconded the motion. Board discussed. Mr. Dumont disagreed with the stipulations as a BP is needed, any work prior to the lapse of the Appeal period is at the risk to the Applicant and the inclusion of the sewer lateral can and should be handled during the BP process. Mr. Macgregor stated that their BP application was denied and asked if they need to reapply. Mr. Sullivan advised that reapplication was not necessary, that it was denied because the Variance had expired and if the Board grants this motion, the hold/denial on the BP will be lifted and the process can resume. Revised motion: grant the Variance as requested.

Mr. Lanphear spoke to his motion stating that the granting of the variance is not contrary to public interest and does not conflict with the purpose of Zoning Ordinance (ZO) and does observe spirit of the ZO, and does not alter the character of the neighborhood, that substantial justice would be done to the Property Owners and will not diminish the property values of surrounding properties and that hardship is met with the placement of the house at a skewed angle to the property line.

Mr. Martin spoke to his second noting that the granting of this variance is not contrary to public interest and does not conflict with the purpose of the ZO and does not alter the essential character of the neighborhood or threaten public health or rights, that the spirit of the ZO is met and substantial justice would be done to the property owners and will not diminish values of surrounding properties and that hardship is met with the placement of the house not being parallel to the property lines. Mr. Martin expressed concern that the lateral sewer line was not known back in 2021 and that it appears that no easements were found for the lateral sewer line.

Mr. Nicolas voted to grant the motion with no stipulations as the granting of the variance would not be contrary to public interest and will not alter the essential character of the neighborhood or injure public rights, that the spirit of the ZO is maintained and substantial justice would be done to the property owners with no diminishment of surrounding property values and that hardship is met with the way the house sits on the lot and the internal floor plan.

Mr. Pacocha voted to grant as all the criteria have been satisfied, that it will not be contrary to public interest, that is does not alter the essential character of the

neighborhood or injure public rights and observes the spirit of the ZO, that justice would be done to the property owners with no harm to the general public, that it will not diminish surrounding property values and that hardship exists because of the placement of the house on the lot.

Mr. Daddario voted to grant with no stipulations stating that the granting of the variance would not be contrary to public interest nor alter the character of the neighborhood or injure public rights, that the spirit of the ZO is observed, that substantial justice would be done to the property owners without any harm to the general public nor diminish surrounding property values and increase their own property value, and that Part B of the hardship criteria has been satisfied with the angle of the house on the lot and the placement of the garage leaving only one side for the proposed addition. Mr. Daddario congratulated Mr. and Mrs. Macgregor on their new child.

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

V. REQUEST FOR REHEARING: None

No requests were received for Board consideration.

VI. REVIEW OF MINUTES:

07/13/23 edited Draft Minutes

Board reviewed the edited version and Mr. Sullivan made a date correction to Line #84 from 6/22/2023 to 6/28/2022. Mr. Martin made the motion to approve the 7/13/2023 Minutes as edited and amended. Mt Lanphear seconded the motion. Vote was unanimous at 5:0. The 7/13/2023 Minutes were approved as edited and amended.

07/27/23 edited Draft Minutes

Board reviewed the edited version and no further changes made. Mr. Martin made the motion to approved the 7/27/2023 Minutes as edited. Mt Lanphear seconded the motion. Vote was unanimous at 5:0. The 7/27/2023 Minutes were approved as edited.

VII. OTHER:

No other business was presented for Board consideration.

Motion made by Mr. Nicolas, seconded by Mr. Lanphear and unanimously voted to adjourn the meeting. The ZBA 8/24/2023 meeting adjourned at 8:45 PM.

Respectfully submitted,

Gary M. Daddario, ZBA Chairman