



# 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 – September 28, 2023 – approved**

The Hudson Zoning Board of Adjustment met on Thursday, September 28, 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. LEDGE OF ALLEGIANCE**
- III. ATTENDANCE**

Chairman Gary Daddario called the meeting to order at 7:01 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), Dean Sakati (Regular) and Edward Thompson (Alternate/Clerk). Also present were Louise Knee, Recorder (remote), and Chris Sullivan, Zoning Administrator. Excused were Marcus Nicolas (Regular), Jim Pacocha (Regular) and Dillon Dumont, Selectman Liaison. Alternates Dion and Lanphear were appointed to vote.

#### **IV. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:**

1. **Case 149-022 (09-28-23):** Daniel & Lisa Mahoney, **7 Rosemary Ct., Hudson, NH** requests an Equitable Waiver of Dimensional Requirement to allow a 2020 installed above-ground pool, in an Open Space Subdivision, to remain which completely encroaches into the required 7.5 ft. rear setback. [Map 149, Lot 022-000; Zoned Residential-Two (R-2); HZO Article VII: Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements and HZO Article XI: Open Space Development; §334-52, Dimensional requirements.]

Mr. Sullivan read the Case into the record, referenced his Staff Report initialed 9/19/2023 and noted that the violations were documented by Bruce Buttrick in his 12/5/2022 Notice of Violation that was based on a recent certified plot plan that showed two (2) violations, the pool into the setback up to the property line and the shed that crossed the property line onto Lot 140-004, the land dedicated to Open Space of the Subdivision.

Daniel Mahoney introduced himself and stated that the error was caused by the engineer they hired and thought they were within their lines and added that this strip of land would never be used as it is open space for the development and that he has

Not Official until reviewed, approved and signed.  
Approved 10/26/2023 as edited.

been maintaining it for the past decade. In response to Board questions, Mr. Mahoney responded that there are approximately a hundred homeowners in the development and the existing trees block view of the pool.

Mr. Mahoney addressed the criteria for the granting of an Equitable Waiver of Dimensional Requirement and the information shared included:

(1) *discovered too late*

- pool was installed in May of 2020
- lack of required setback was not discovered until December 2022 when they had their land surveyed in preparation of an addition to their home

(2) *innocent mistake*

- the above ground pool was placed using measurements from the front of the lot
- we believed that we had successfully placed the pool inside the required boundary

(3) *no nuisance*

- the above ground pool is not outside the required setback, it sits a few feet within the required setback
- the setback borders an unused grassy area that leads into the wooded area of our homeowner's association, the pond view

(4) *high correction cost*

- there would be substantial cost involved in moving the above ground pool, including adjusting the accompanying deck and deck supports
- there is no public benefit to moving the above ground pool

Mr. Dion noted that it seems that the pool was located right up to the property line and inquired about the status of the shed that was placed over the property line. Mr. Mahoney stated that he thought the pool could be placed up to the property line and was not concerned when it was placed up to the property line because it was professionally installed with the proper Permit and inspection and added that the shed has already been removed from its trespass onto Lot 140-004. Mr. Daddario inquired about the line through the pool and Mr. Sullivan stated that it represents the property line, but that aerial views are known for inaccuracies and that reference to the certified plot plan shows that the pool is fully located on the Mahoney property. Mr. Mahoney also confirmed that the pool was professionally installed and that a Permit was obtained.

Public testimony opened at 7:15 PM. No one addressed the Board.

Mr. Lanphear inquired if there were any measurements on the pool plan and Mr. Sullivan responded that there were measurements for the pool but not of any distances from any property line.

Board discussion ensued and included whether or not to place conditions on an approval to potential eventualities like replacing the above ground pool should it ever be required to the ability to replace, in like kind, but if it were dismantled to be

replaced by an in-ground pool, the in-ground pool would have to be located outside the setback and fully onto/into the lot

Mr. Martin made the motion to grant the Equitable Waiver. Mr. Sakati seconded the motion. Mr. Martin spoke to his motion stating that the error was discovered two (2) years after, that it abuts open space and tennis courts, that there is a high correction cost and that perhaps it was an innocent mistake from the property owner but the developer should have known better. Mr. Sakati spoke to his second noting that it was discovered too late, has a high correction cost, poses no nuisance and with the existing tree line there is no visibility.

Mr. Daddario voted to grant stating that it was discovered too late, that it was an innocent mistake, that the proper Permits were pulled, that it poses no nuisance and has no visibility to the neighbors and it presents a high correction cost.

Mr. Lanphear voted to grant stating that it has a high correction cost, that Permits were pulled, that it was not discovered until two (2) years after installation and it does not present any nuisance.

Mr. Dion voted to grant stating that it does present a high cost to correct, that it was discovered two (2) years after installation, that it was probably an innocent mistake by the agent and noted that there was no opposition presented.

Roll call vote was unanimous at 5:0. Equitable Waiver granted. The 30-day Appeal period was noted.

2. **Case 231-017 (09-28-23):** Dennis Wilkinson & Laurie Brown, **9 Beaver Path, Hudson, NH** requests a Variance to locate a proposed 12 ft. x 16 ft. shed in the front yard where accessory storage structures (sheds) shall be placed to the rear of the main building. [Map 231, Lot 017-000; Zoned Residential-Two (R-2); HZO Article VII: Dimensional Requirements; §334-27.1(C), General Requirements.]

Mr. Sullivan read the Case into the record, referenced his Staff Report initialed 9/19/2023 and noted that the Town Engineer advised to locate the placement of the septic system and leach field as the Town has no record and placement of the shed should not interfere with future maintenance or replacement. Mr. Sullivan stated that the Property Owners provided their septic system sketch that identified the location of the one thousand (1,000) gallon septic tank and location of the leach field for a three-bedroom house that was built in 1979 as well as the location of the well with its seventy-five foot (75') protective well radius.

Dennis Wilkinson and Laurie Brown sat at the Applicants' table and introduced themselves. Mr. Wilkinson stated that they seek a variance to place the shed to the front of the house, which is not really the front of the house as the front of their house is perpendicular to the road and considering that they have a stream that bisects their property and imposes additional wetland setbacks and that the back of their house is hilly and has a high water table that the ground is often saturated, leaves the only possible location for a shed to be accessible/useable is to the rear of their house just outside the front setback.

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

(1) *not contrary to public interest*

- The proposed placement of the shed is within a stand of trees that minimizes view of the shed from the road (Beaver Path), abutters and adjacent neighbors and would not be an eyesore to surrounding neighbors
- An aerial view was reviewed and showed a combination of evergreen and deciduous trees, so providing a visual screen year-round

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

- A shed is a reasonable accessory use for a dwelling
- The Ordinance stated that sheds must be to the rear of the house and technically the proposed location is to its rear, but the front of the house does not face the road and the rear of the house places the shed closer to the road adjacent to the front setback line
- The proposed location of the shed is in a stand of trees by the roadside which will limit view of the shed from the road and surrounding neighbors

(3) *substantial justice done*

- The placement of the shed in this area will allow easy access and allow for storage of various yard equipment and items currently stored in the basement of the house and not easily accessible today

(4) *not diminish surrounding property values*

- The proposed placement would mostly be shielded from view from the road and surrounding neighbors and should not pose as a distraction

(5) *hardship*

- The lot is approximately 1.2 acres and is divided in half by a stream
- The space behind the house is relatively small and has a steep drop off to the property line
- Abutters property line is also too close to squeeze in a shed
- The front of the house does not face the road and the proposed placement of the shed is to the rear of it and would be placed outside the 40' front setback and 15' side yard setback and would be shielded by a grove of trees that include both evergreen and deciduous trees to provide year-round screening

Public testimony opened at 7:35 PM. No one addressed the Board.

Mr. Thompson inquired about adding a condition/stipulation that the existing tree screening remain intact. Ms. Brown stated that she has no intention of cutting any trees. Mr. Sakati asked if the Applicants have spoken to their neighbors regarding the placement of the shed and received confirmation that neither Applicant discussed with the neighbors. Mr. Lanphear stated that he is familiar with the property, that it is a tough property with the "ebb and flow" of the high-water table and wetland setbacks and added that the shed would probably have to be constructed on site to avoid cutting trees.

Mr. Martin made the motion to grant the Variance with no stipulations. Mr. Lanphear seconded the motion. Mr. Martin spoke to his motion stating that the requested Variance would not injure the public or private rights of any abutter, that the selected location for the shed is the only reasonable place and would observe the spirit of the

Ordinance, that substantial justice would be done to the property, that the shed would not be seen from the street, and locating the shed across the property over the stream would not be good for the property owner and that the proposed use is a reasonable use. Mr. Lanphear spoke to his second stating that the position of the house with its front not facing the road and the extensive wetlands on the property and the necessary added wetland setbacks cause the hardships on this property and limits the location of the shed which will not be contrary to public and provide substantial justice to the property owners.

Mr. Sakati voted to grant the Variance noting that it will not be contrary to public interest and observes the spirit of the Ordinance and does not alter the character of the neighborhood or diminish surrounding property values, that there is no practical alternative to locate the shed on the property, that the proposed shed is a reasonable use and that the hardship criteria is satisfied with the topography of the property and the orientation of the house on the property.

Mr. Dion voted to grant the Variance stating that the shed will not threaten public rights and is a reasonable use, that it will be shielded from view and is a common accessory use and is of similar size to others in the neighborhood, that there is very little feasible locations to locate a shed that allows access without threat of flooding and that literal enforcement allows essentially no leeway for locating the shed due to all the required setbacks on the property.

Mr. Daddario voted to grant stating that sheds are customary for residential areas, will not cause public harm and don't interfere with front and side setbacks, that substantial justice would be done to the property owners without causing public harm, that there is no reason to believe a shed would negatively impact property values and that the hardship is due to the angle of the house on the lot as well as the steep slope and well at the rear and the setbacks required for the stream that crosses the lot and the wetlands beside it.

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

3. **Case 165-154 (09-28-23):** Keri Demers, 153 Lowell Rd., Hudson, NH requests a Special Exception for **102 Derry St., Hudson, NH** to allow a dog & cat daycare facility with retail services of grooming, training, animal rescue services, pet supplies retail sales, community pet education and kennel (day & overnight boarding). [Map 165, Lot 154-000; Zoned Business (B); HZO Article VI: Special Exceptions; §334-23, General Requirements and HZO Article V: Permitted Uses; §334-21, Table of Permitted Principal Uses (D-2).]

Mr. Sullivan read the Case into the record, referenced his Staff Report initialed 9/19/2023, noted that even though the address is Derry Street the access to the lot is by driveway on Grand Avenue, that there is an existing Site Plan previously approved that would require a Modification by the Planning Board if the Special Exception is granted as it would constitute a Change of Use, and that the Fire Marshall provided four (4) comments: (1) that Permits through Inspectional Services would be required for the renovations to accommodate the proposed Use and layout; (2) that a Certificate of Occupancy would be required prior to operating the business; (3) that all State

Adopted Building and Fire Codes shall apply; and (4) that ADA accessibility would be required.

Applicant Keri Demers sat at the Applicant's table and introduced herself as residing at 153 Lowell Road and owner of Dewey and Friends Pet Resort that opened two and a half (2½) years ago, in May 2021, and has already reached capacity.

Ms. Demers addressed the Special Exception requirements and the information shared included:

- (1) *Use specified in the Table of Permitted Uses*
  - The use requested is listed as permitted by Special Exception
  - Dog kennel (overnight boarding) is specifically identified in the Table as requiring a Special Exception
- (2) *Proposed use meets all requirements of Article V*
  - Dewey and Friends will be in the Business District and we will be offering "retail" services such as day care, overnight boarding, training, grooming, cat boarding, client education as well as community services
- (3) *Proposed use is consistent with purpose and intent of the district*
  - Dewey and Friends is a dog daycare and boarding facility
  - We hope to expand to offer dog training, grooming and cat boarding as well as potential cats/dogs for adoption, client education among other services offered to the community for their pets.
  - The Business District is established to provide for the development of general wholesale, retail commercial uses, office uses, industry, warehousing, multifamily dwellings and customary accessory uses and structures
  - Due to the boarding of dogs overnight, this triggers a kennel use that requires a Special Exception from the ZBA
- (4) *Proposed use compatible with character of surrounding neighborhood*
  - The location is in the Business District and we are offering "retail" services.
  - Many homes have pets and more families work full time
  - We are asking to allow a service to assist these families by letting their dogs be monitored safely while they are at work, or away for a period of time
- (5) *Nonresidential uses to have primary access from arterial or collector roads*
  - Not applicable as the location is in the Business District

Mr. Lanphear asked and received confirmation from Ms. Demers that the plan is to use the existing building. Mr. Dion questioned the floor plans, asked about overnight boarding and what a "typical day" might look like. Ms. Demers stated that the first floor would be dedicated mostly to dogs with three (3) large playrooms, and the second floor would have a room for cats, a training room and a grooming station. With regard to the hours of operation, there is no set time for drop-offs and pick-ups, that they are open from 7:00 AM to 7:00 PM Monday through Friday and 9:00 AM to 5:00 PM on Saturdays. Mr. Dion questioned overnight boarding and whether it would be staffed and whether the lodging for the staff would be considered a dwelling unit. Mr. Sullivan confirmed that it would not be considered a dwelling unit.

Mr. Dion questioned the outdoor area and whether it would be fenced. Ms. Demers identified the triangular area on the Site Plan prepared for the hair academy and stated that she would be installing an eight foot (8') high vinyl fence.

Mr. Sakati inquired about the noise. Mr. Sullivan referred to the email received from an abutter, Cheryle Lombardo, 9 Essex Avenue, who expressed similar concerns and questioned whether there would be dog walking in the neighborhood. Ms. Demers responded that there would be no dog walking outdoors and that her staff are trained to control dog barking, generally the leash and remove method is very effective, that currently she serves twenty five to thirty (25-30) dogs with two to three (2-3) onsite staff and could grow this business to fifty (50) dogs with the three (3) play areas. Mr. Lanphear noted that there are approximately four to five thousand square feet (4-5K SF) in the proposed facility. Mr. Dion asked if additional staff are proposed. Ms. Demers confirmed that there would be more dogs and now cats would be included. Mr. Daddario inquired about time spent outdoor and Ms. Demers responded that it is weather dependent, if it's too hot or too cold or rainy, then they are out to do their business and if it is a good weather day, they could be outdoors a few hours.

Public testimony opened at 8:09 PM. The following individuals addressed the Board:

- (1) Tiffany Rosten stated that she is the dog daycare manager, that she has been a vet technician for ten years and does the training of the staff and stated that barking is the method of communication among dogs but they do control it as best they can and noted that the barking is mostly in the morning hours during drop offs because they get excited.
- (2) Denise Duval, 2 Summer Avenue, stated that she has concern with the noise, with dogs being walked in the neighborhood, with headlights coming into her house, with where the dogs and cats up for adoption would come from (abandoned or puppy mill?), with waste management, ground upkeep, whether there are licenses required for the groomers, whether there will be staff overnight and whether now two (2) locations can both be serviced.

Ms. Demers confirmed that dog walking is not part of the service she provides or will provide; that it is very rare to have any car coming to the center after 7:00 PM so that there should be no issue with headlights interfering in the neighborhood after then; that she lives at the current location of Dewey and Friends and overnight borders are generally quite, that music is played for them, that there are cameras in each sleep area that is monitored; that they control dog waste as they occur and spray the area and bag before placing in one of the three (3) baskets on site but could look into a dumpster; and that the grooming service would be new to her business.

Mr. Martin noted that all the questions are great questions, but they fall under the pervue of the Planning Board to address – things like hours of business, waste management, noise etc.

- (3) Colleen Tyler, 5 Grand Avenue, stated that she lives directly in front of the property and that the land is slanted and is concerned with water runoff and whether there is any drainage around the proposed play area

Ms. Demers responded that the outside fence would be left alone, that there are two (2) possible locations for the proposed outside area and that she is unaware if any drainage exists. Mr. Sullivan stated that that would be determined when an engineer prepares the Site Plan for the Planning Board who would address the drainage and noted that all drainage would be maintained on site. Mr. Daddario stated that the Zoning Board only has four (4) criteria pertaining to the Special Exception and they all pertain to the proposed Use.

- (4) Bruce Morse, 4 Essex Drive, stated that his driveway is on Grand Avenue, that the proposed is a business in a residential neighborhood, that he is concerned with outside noise including the noise from snow removal and the hours that snow will be plowed and commented that if it is commercially plowed, they would hear the plow drop its blade and is also concerned with staffing, whether there is enough to control the animals.

Ms. Demers stated that she is unsure if snow removal would become her responsibility or remain with the landowner, that she has her current location plowed and can exert preference that it not be done in the middle of the night, unless of course it is a major snowstorm, and that her plan is to close her current operation for a month so that experienced staff would be onsite when this location opens and the training of new staff begins.

- (5) Pamela Ramsey, 7 Summer Avenue, stated that she supports the concerns her neighbors have expressed in opposition to this application.
- (6) Lisa Daigle, 11 Grand Avenue, stated that she is concerned with outside noise as she works from home three (3) days a week and is curious why a Special Exception is needed.

Mr. Sullivan responded that the Special Exception is required for the kennel/overnight boarding aspect of the business. If that service was not requested/included, the business could just proceed to the Planning Board and not be seen by the Zoning Board. Mr. Martin referenced the Table of Uses, other Permitted Uses, that this lot could become, and cited examples that included convenience store, massage parlor, restaurant, gas station and commented that the proposed use is a relatively less impacting one for the abutting residential neighborhood.

Being no one else to address the Board, public testimony closed at 8:39 PM

Mr. Lanphear asked if it is okay to drain from the dog play area into the Town's sewer system and Mr. Sullivan stated that it would be addressed by the Planning Board. Mr. Dion asked about the eight-foot high (8'h) fence, whether it would be a chain link and Ms. Demers responded that her intent is for a vinyl fence so the dogs can't see through it and hopefully lack of sight will help reduce barking. Mr. Dion asked about noise control methods. Ms. Demers stated that she belongs to various different online groups and the preferred method is to "leash and remove" from immediate area and the proposed building will have small rooms/bedrooms for "time out", generally twenty to thirty (20-30) minutes, to help calm a dog.



Mr. Martin stated that he works from home too, that it is a natural instinct for a dog to bark, noted that this site was a hair academy since 1984 and that other Uses, like a Membership Club, like Knights of Columbus, could move right in and convert space for dining banquet halls, a bar or even a Dunkin Donut with all its traffic.

Mr. Sakati asked for clarification between the ZBA and PB roles and responsibility to which Mr. Sullivan that the ZBA is to focus on the Use proposed for this lot and the PB would focus on specific items like noise, light, fencing, hours of operation, play area, number of employees and drainage. Mr. Sakati stated that he has been impressed with the dialog and respect that has occurred at this meeting, that it is evident the Applicant is sensitive and considerate to her neighbors' concerns. Mr. Dion stated that the success of local businesses is vital to Hudson, that this business has been successful and has outgrown its current location and is ready to expand and open a second location and the selected location is a bit iffy with the noise (barking) factor but that seems manageable and certainly not as intrusive as other businesses that could enter this location with no ZBA involvement/intervention.

Mr. Martin made the motion to grant the Special Exception with no stipulations. Mr. Dion seconded the motion.

Mr. Martin spoke to his motion stating that the criteria have been satisfied, that a more intrusive use could be allowed per the Table of Uses that would be more intrusive, that a local business is expanding and staying in Town and unoccupied, the site is not really being maintained. Mr. Dion spoke to his second stating that the proposed use is compatible with the neighborhood, that he has two (2) dogs, a Huskie and a German Sheppard Huskie mix and dogs are loud, that it is a good thing having a local business expand itself in Town and that the criteria for the granting of a Special Exception have been met.

Mr. Lanphear voted to grant the motion stating that the criteria have all been satisfied, that it is in the Business District and seems like the best decision/selection.

Mr. Sakati voted to grant the motion, that the criteria have been satisfied with the exception of #4, compatible with the character of the surrounding neighborhood, but not because of the proposed Use, just any Business Use abutting a residential neighborhood.

Mr. Daddario voted to grant the motion as it is a Permitted Use and satisfies all the Special Exception criteria even though Criteria #4 is dicey for the reason Mr. Sakati stated, but dogs in the neighborhood is consistent with the character of residential use.

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

Mr. Daddario encouraged the public to bring their concerns to the Planning Board. Mr. Sullivan stated that they will receive notification of the Planning Board meeting like what they received from the ZBA. Mr. Sakati asked if there is a mechanism where ZBA can communicate the concerns expressed to the PB and Mr. Sullivan responded

that he receives the opportunity to comment on PB applications and will include the concerns raised at this meeting on it.

**V. REQUEST FOR REHEARING:** None

No requests were presented for Board consideration.

**VI. REVIEW OF MINUTES:**

08/24/23 edited Draft Minutes

Motion made by Mr. Martin, seconded by Mr. Lanphear and unanimously voted (5:0) to approve the 8/24/2023 Minutes as edited.

**VII. OTHER:**

No other items were presented for Board consideration.

Motion made by Mr. Martin, seconded by Mr. Dion and unanimously voted (5:0) to adjourn the meeting. The 9/28/2023 ZBA Meeting adjourned at 8:59 PM.

Respectfully submitted,

---

Gary M. Daddario, ZBA Chairman