



TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Dillon Dumont, Selectmen Liaison

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MEETING MINUTES – October 26, 2023 - approved

The Hudson Zoning Board of Adjustment met on Thursday, October 26, 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

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.

III. ATTENDANCE

IV. SEATING OF ALTERNATES

Members present were Gary Daddario (Regular/Chair), Tristan Dion (Alternate), 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 was Dean Sakati (Regular). Alternate Dion was appointed to vote.

V. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

1. **Case 182-108 (10-26-23):** Craig Parks, **41 School St., Hudson, NH** requests a Variance for a proposed subdivision of a 20,332 sq. ft. lot into 2 lots resulting in a new lot with 80 feet of frontage where a minimum of 90 feet is required. [Map 182, Lot 108-000; Zoned Town Residence (TR); HZO Article VII: Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements.]

Mr. Sullivan read the Case into the record, referenced his Staff Report initialed 10/17/2023 and reported that no in-house comments or concerns were received from the Town Engineer, Town Planner or Inspectional Services.

Mr. Martin asked and received confirmation that the existing dwelling on the premise is a two-family structure and according to the Assessor's Card, it was converted to a two-family in 2013, per the owner.

Craig Parks introduced himself and noted that his surveyor, Greg Jeffrey, LLS, was not able to attend the meeting and proceeded to address the Variance criteria. The information shared included:

Not Official until reviewed, approved and signed.
Approved as edited 11/16/2023

- (1) *not contrary to public interest*
 - The proposed use, a single-family dwelling, is consistent with other properties in the neighborhood
- (2) *will observe the spirit of the Ordinance*
 - The proposed modest single-family dwelling will be consistent with other houses in the immediate neighborhood
 - The proposed use will add character in the immediate neighborhood
- (3) *substantial justice done*
 - The lot is 20,332 Square Feet (SF), which is more than double the permitted area in the TR Zone
 - The Applicant wishes to utilize his property to its fullest and not leave the majority of the property vacant
- (4) *not diminish surrounding property values*
 - The proposed use is consistent with existing houses in the neighborhood
 - The addition of a new house in the neighborhood will serve to bolster the property values of the surrounding dwellings
- (5) *hardship*
 - Of the 14 properties within 200' of the lot, 7 of them have less than 75' of frontage
 - Granting a lot with 80' of frontage would not be inconsistent with the area and frontages with existing lots in the neighborhood

Mr. Pacocha inquired about the size of the remaining lot and whether it would require an address change. Mr. Martin noted that the current house has its frontage and address on School Street. Mr. Dillon stated that according to the plan presented by LLS Jeffrey, there is enough frontage on First Street for the remaining lot and noted that it is the Fire Department who would be responsible and advise of a needed address change. Mr. Sullivan confirmed that it would require a change of address. Mr. Pacocha noted that the existing duplex would become even more non-conforming on a smaller lot and questioned the existing foundation that would be bisected with the proposed lot subdivision. Mr. Parks stated that the existing foundation has already been removed.

Mr. Thompson stated that he toured the area today and noticed a Toyota parked in the setback and that it appeared that the other lots in the neighborhood were the result of a subdivision. Mr. Parkes responded that the Toyota is his neighbor's vehicle and it is parked on his neighbor's property, in their setback.

Mr. Martin stated that he does not see a hardship on the property. Mr. Parks stated that he discounted including in a dogleg to the subdivision to accommodate the required frontage. Mr. Dumont asked and received confirmation that a Variance would not be needed if the subdivision included a dogleg to meet the frontage requirement.

Public hearing opened at 7:26 PM. Nancy O'Neil Molnar, 13 Second Street, asked for specifics regarding the proposed house, the number of bedrooms, bathrooms, style and garage, and added that she actually grew up in the neighborhood and has lived there since 1945. Mr. Daddario responded that the Zoning Board is to address the

land Use only, that structure specifics could be addressed by the Planning Board and that a Building Permit would be required for its construction along with inspections. Mr. Parks added that the proposed structure would be a single-family residence. Being no one else to address the Board, public testimony closed at 7:30 PM.

Mr. Dion stated that the hardship criteria is a tough one to satisfy, that it generally relies on some uniqueness the land offers, that, in this case, the inclusion of a dogleg would satisfy the frontage requirement and negate needing a variance and that, like Mr. Martin, does not believe the hardship criteria has been satisfied. Mr. Dillon countered and stated that the neighborhood is the hardship, and that it is better planning to not present the dogleg. Mr. Lanphear stated that, in his opinion, the property line could be straightened out and Mr. Dumont noted that the odd line was probably established because it satisfied the existing building's setback to the new property line. Mr. Martin stated that odd shaped lots and odd property lines are common and noted that the Applicant already has good use of his property and added that the hardship criteria is per State Law and is not a Town regulation.

Mr. Dumont stated that another criteria is "like and kind" and to develop/subdivide this property in like and kind to fit into the neighborhood is what causes the hardship. Mr. Sullivan noted that the proposed subdivision is consistent with other lots in the neighborhood. Mr. Martin disagreed that the TR Zone poses the hardship and Mr. Dion noted that the simple addition of a dogleg to satisfy the frontage requirement is a ready solution especially considering that property lines are not visible by the general public. Mr. Daddario concurred, that is, until a fence is added, then it is quite apparent.

Board questioned the timing of when the TR Zone was established and the existing structure. Mr. Lanphear questioned whether there is enough square footage on the remaining lot for a two-family residence. Mr. Martin stated that according to the Property Card, it was converted to a two-family structure in 2013. Mr. Pacocha questioned whether the TR Zone was established before 2013 when the structure was converted to a two-family as it appears the neighborhood is all single family. Mr. Daddario noted that the existing two-family structure is a pre-existing non-conformity and noted that the Zoning Ordinance changed to require ninety feet (90') of frontage after it was constructed. Mr. Nicolas stated that it is hard to see any hardship from the property. Mr. Pacocha countered that substantial justice would be done versus leaving half the property vacant. Mr. Parks noted that prior to that conversion it was a three-family structure and that there are several two-family structures in the neighborhood.

Mr. Dumont explored the possibility of creating the subdivision with a dogleg, thereby avoiding ZBA and the need for a Variance, then apply to the Planning Board for a Lot Line Adjustment. Mr. Dion responded and stated that the Planning Board cannot create a non-conforming lot and the Applicant would need to come to the ZBA and would still face the need to satisfy the hardship criteria.

Mr. Dumont stated that the hardship is trying to fit into the character of the neighborhood. Mr. Martin stated that it is not the ZBA's job to find the hardship or how it is satisfied.

Mr. Martin made the motion to not grant the Variance request as the hardship criteria has not been satisfied. Mr. Dion seconded the motion.

Mr. Martin spoke to his motion stating that it would not be contrary to public interest, that it may observe the spirit of the Ordinance, that of course it would be beneficial to the owner, that it would add value to the surrounding properties as new construction increases property values but it does not satisfy the hardship criteria as there is no hardship on the property, the hardship is self-created by subdividing and maybe it is a reasonable use, but the applicant already has reasonable use of the property.

Mr. Dion spoke to his second stating that the proposal does not alter the character of the neighborhood as the surrounding lots are of similar size, that it does not threaten public health or rights or welfare but it doesn't conflict with the implicit purpose of the neighborhood, that the granting of the variance would not bring harm to the general public, that the proposed use of adding another house would not diminish the surrounding value of the surrounding properties but the hardship criteria is not met, there is no special conditions on the property that could impede the homeowner from doing their plan, and that even the proposed use is reasonable, the hardship is self inflicted.

Mr. Pacocha voted not to grant the Variance request stating that it is subjective whether granting the request would be contrary to the public interest, that he disagrees that the spirit of the Ordinance is to create uniformity, that substantial justice would be done to the property owner and that the hardship presented is self created.

Mr. Nicolas voted not to grant the variance stating that no evidence was given of a threat to public health or safety, that the surrounding homes are of similar size, that no evidence was given that the essential character of the neighborhood would be disturbed and that even though the proposed use is reasonable, the property could be subdivided with other plans/layout without coming to the ZBA, that the land seems to have no hardship placed upon it and that subdividing as per the plan proposed would create where there is none from the land.

Mr. Daddario voted to grant the variance as there is no change in the character of the neighborhood, no harm to the public, that even though the applicant could subdivide otherwise the proposal presented better serves the public, that there is no evidence or reason why another residence would diminish other property values and that the lot is of sufficient size to subdivide and that hardship exists because the existing house was placed so the lot could be subdivided and prior to the change requiring ninety foot (90') of frontage.

Vote was 4:1 not to grant the Variance as the hardship criteria was not satisfied. The 30-day Appeal period was noted.

2. **Case 198-147 (10-26-23):** Benjamin Mercuri, 30 Temple St., Nashua, NH requests a Variance for **100 Lowell Rd., Hudson, NH** to build a proposed eight (8) unit multifamily dwelling on a 34,848 sq. ft. existing lot of record where multifamily developments with both Town water and sewer shall require 53,560

square feet of buildable lot area for the building of three (3) attached dwelling units of a multifamily complex, with each additional dwelling unit requiring a minimum of 5,000 square feet of additional buildable lot area. This equates to a total of 78,560 sq. ft. required. [Map 198, Lot 147-000; Zoned Business (B); HZO Article VII: Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements.]

Mr. Sullivan read the Case into the record, referred to his Staff Report initialed 10/17/2023 and noted that comments were received from the Town Planner stating that Site Plan Review would be required if the Variance is granted and from the Town Engineer who noted that from a traffic standpoint a residential use of the property would be preferred compared to a commercial use that could generate more traffic in and out of the parcel. Mr. Dumont recused himself as he manages a property that is a direct abutter and left the Board table.

Benjamin Mercuri introduced himself as the Applicant and that he seeks a Variance to build an eight-unit multifamily dwelling serviced by public (Municipal) water and sewer and added that each unit would be 960 SF with two (2) bedrooms, one and a half (1 1/2) bathrooms and a full basement. Mr. Mercuri addressed the criteria for the granting of a Variance and the information shared included:

(1) *not contrary to public interest*

- Not contrary to public interest as additional housing units are needed in Hudson and southern New Hampshire
- Will not alter the character of the neighborhood but will rather maintain and attractively add to existing character which is mixed use and residential
- The intensity of the proposed development and its use will be minimal and that it will not be a threat to public health, safety, welfare or otherwise injure public rights

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

- The proposed development would revive a lot of record that has been siting vacant in recent years
- The proposed development would be preserving and adding to the character of this section of town which in recent years has experienced an increase in new development, new uses and new growth
- which will limit view of the shed from the road and surrounding neighbors

(3) *substantial justice done*

- it would be an injustice to deny this project as the public gain outweighs any potential public loss
- housing units are much needed throughout Hudson
- a denial of the project would result in no gain and a much bigger loss to the public, versus the applicant
- allowing residential multifamily housing on this lot serves substantial justice to a very undersized business zone
- proposed building would be consistent with the current uses in this area

(4) *not diminish surrounding property values*

- The proposed use would “breathe life” back into an existing undersized vacant business-zones lot

- Proposed development would improve the cosmetic appearance, landscape and functional appeal of this lot
- Property maintenance and landscaping would be routinely maintained and can only help add to the value of this property, but more importantly, add to the marketability of the neighborhood resulting in an increase of the value on the surrounding and neighboring properties as well

(5) *hardship*

- Proposed use is reasonable since it continues with the use of the property that is similar in nature to neighboring and surrounding properties
- The proposed use is less intensive on the property than current uses allowed on this property
- The proposed use is more in line with the needs of “today” and housing and residential use is currently the number one need in Hudson which is why redeveloping and/or repurposing this property is reasonable and best use for the parcel
- Due to the unique size, topography and current zoning of the property, it seems that the current zoning restrictions prohibit reasonable use of the property as the property is located in the business zone, is irregularly shaped with topography challenges and, also, the property has challenges with the access on and off Lowell Road – County Road intersection
- Proposed use challenges that it could serve a bigger and better need of residential use rather than a business use
- Granting the variance would enable a reasonable use of the parcel

Public hearing opened at 8:15 PM. No one addressed the Board. Mr. Sullivan stated that two (2) emails had been received

- (1) Julia Paquin, 29 Atwood Avenue, email sent 10/25/2023 that expressed serious concerns with traffic and accidents at the intersection of County Road and Lowell Road and neighbors entering and exiting Atwood Avenue.
- (2) Ronald F. Maynard and Jerilyn O. Maynard, 104 Lowell Road, email sent 10/26/2023 expressing their “extreme opposition” that included traffic concerns, need for unit parking (to be eight or sixteen?), visitor parking, school aged children and play area and bus stops, tree removal etc.

Public testimony closed at 8:21 PM.

Mr. Mercuri stated that there is no plan to cut trees, weeds and shrubs, yes, that there is a ball field in the neighborhood and that he has spoken with Elvis Dhima, Town Engineer, that the property has two (2) curb cut possibilities, one from County Road and one from Lowell Road. Mr. Lanphear stated that his preference would be a curb cut from County Road.

Mr. Nicolas asked to have the street view displayed. Mr. Lanphear noted that County Road is a speedway and the intersection of County Road with Lowell Road is a dangerous intersection.

Mr. Thompson question the elevation views presented, that it only showed six (6) units to which Mr. Mercuri responded that it is one of his past developments, that he

proposes to add two (2) more units for a total of eight (8) units for this property, that there would be two (2) parking spots for each unit and that with regard to visitor parking, that would be determined by the Planning Board during Site Plan Review.

Mr. Thompson questioned the square footage - what it has versus what it needs - and his calculation is that the Applicant is asking for 56% forgiveness?!? Mr. Dion questioned how the Applicant deduced that he needed eight (8) units to which Mr. Mercuri responded that it was derived by adding the cost of material to the land purchase and noted that proposing a three-family or a duplex would not work cost wise.

Mr. Thompson questioned how ZBA can deal with the traffic concerns. Mr. Sullivan stated that it is a Planning Board issue to resolve. Mr. Martin disagreed and noted that the first criteria deal with safety and directly ties to traffic. Mr. Mercuri stated that traffic is already a safety concern for the intersection.

Mr. Lanphear questioned how many units would be allowed for the square footage of this lot. Both Mr. Daddario and Mr. Sullivan responded that three (3) units would be allowed. Mr. Pacocha asked of the proposed dwelling units would be for sale or be just rental units. Mr. Mercuri responded that they would be rental units with a firewall separation between units.

Mr. Martin stated that safety and hardship criteria have not been satisfied, that the Variance request is based upon square footage of the lot, that it is a small lot in need of topsoil and could have a business but the land does not present a hardship and the Zoning Ordinance did not create a hardship. Mr. Dion stated that he has concerns regarding the safety, that his preference would be for housing versus a business on the lot as there are single family houses in the neighborhood, that a three-unit dwelling could be on the lot with existing square footage but stretching it to eight (8) units is a self-imposed hardship. Mr. Thompson referred to the 11/5/2021 accident at the intersection and stated that criteria 2, 4 & 5 have not been satisfied, that the applicant only has 44% of what is required and there is a public safety threat.

Mr. Martin made the motion not to grant the variance as it failed to satisfy criteria # 1, 2 & 5. Mr. Pacocha seconded the motion.

Mr. Martin spoke to his motion stating that the project will threaten public safety, that this project appears to be the best use of the property but it still poses a public safety risk to the renters and motoring public, that granting the variance always does substantial justice to the property owner and new construction does seem to increase neighboring property values, and that there is no evidence presented that this property has a hardship on it, that it seems to be a reasonable use but the square footage of the property is one that is self created with the proposed number of units.

Mr. Pacocha spoke to his second stating that it will be contrary to public interest as demonstrated by the emails sent to the Board opposing this proposal, that the proposal is extremely out of compliance with the Ordinance, that it is subjective whether justice would be done to the property owner, that multifamily dwellings tend to reduce adjoining property values and disagree that the proposed use is a reasonable use because there are reasonable uses available that would not require a variance and

there are no conditions from the land to satisfy the hardship criteria. Mr. Pacocha's recap: criteria 1, 2, 4 & 5 failed. No amendment proposed to include criteria 4 onto the motion.

Mr. Dion voted not to grant the variance as the density of the proposed housing is too high for the neighborhood and does not meet the character of the neighborhood, that the intersection is too dangerous to the potential families or guests, that the character of the neighborhood would change based on the density of the housing, that justice would be done but does not outweigh the threat to public safety, that the value would not diminish as new construction typically tends to increase value and that there are no hardships on the property based on the land, that even though the proposed use is reasonable, the amount of units requested puts the required square footage far outside what is allowed. Mr. Dion's recap: criteria 1, 2, 3 & 5 failed. No amendment proposed to include criteria 3 onto the motion.

Mr. Nicolas voted not to grant as there is conflict with the implicit purpose of the Ordinance, that the lot size is 34,848 SF but 78,560 SF is needed, that the existing lot size only provides 44.4% of the SF needed for eight units leaving 55.6% requiring a variance, that the essential character of the neighborhood would not be altered if the correct amount were to be built, that there would be justice to the property owner, that improvements to land usually does not diminish property values and that the hardship criteria has not been satisfied, that enforcement of the Ordinance does not create a hardship, that it would be reasonable use if the correct amount of units were to be built, otherwise the proposed use on land does not seem reasonable due to the amount of footage needed. Mr. Nicolas's recap: criteria 1 & 5 failed. No amendment proposed to remove criteria 2 from the motion.

Mr. Daddario voted not to grant stating that the neighborhood has business and single family residences, not multi-families of this nature, that harm to the public takes precedence, that a variance would be needed for three units and eight are being proposed, that the Applicant did not submit any evidence of a substantial relationship between the general public purpose and his request, that the Ordinance does have a substantial relationship to the request because we are dealing with the amount of development allowed with the available square footage of the lot, that it is unclear if a reasonable use is prohibited because it could be used with a different building or lesser number of units. Mr. Daddario's recap: criteria 1, 2, 3 & 5 failed. No amendment proposed to include criteria 3 into the motion.

Roll call vote was 5:0 to not grant the Variance as the request failed to satisfy criteria

1. is contrary to public interest, does conflict with the purpose of the Ordinance, alters the essential character of the neighborhood, threaten public safety and injure public rights;
2. does not observe the spirit of the Ordinance and does alter the essential character of the neighborhood, threaten public health, safety or welfare or otherwise injure public rights; and
5. hardship was not demonstrated, the land presents no hardship

Variance denied. The 30-day appeal period was noted.

Mr. Nicolas left the meeting at 9:00 PM.

VI. REQUEST FOR REHEARING:

No requests were received for Board consideration.

VII. REVIEW OF MINUTES:

9/28/23 edited Draft Minutes

Motion made by Mr. Martin, seconded by Mr. Dion and unanimously voted to approve the 9/28/2023 Minutes as edited.

VIII. OTHER

1. ZORC – Zoning Ordinance Review Committee – scheduled to meet 11/9/2023
2. November ZBA Meeting – scheduled for 11/16/2023 due to the Thanksgiving holiday

IX. ADJOURNMENT

Motion made by Mr. Martin, seconded by Mr. Dion and unanimously voted to adjourn the meeting. The 10/26/2023 ZBA meeting adjourned at 9:02 PM

Respectfully submitted,

Gary M. Daddario, ZBA Chairman