



TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Dillon Dumont, Selectmen Liaison

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MEETING MINUTES – March 28, 2024 – approved

The Hudson Zoning Board of Adjustment met on Thursday, March 28, 2024 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 7:03 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.

Members present were Gary Daddario (Regular/Chair), Tristan Dion (Alternate/Clerk), Tim Lanphear (Regular), Normand Martin (Regular/Vice Chair), Marcus Nicolas (Regular) and Dean Sakati (Regular). Also present were Dillon Dumont, Selectman Liaison, Louise Knee, Recorder (remote) and Chris Sullivan, Zoning Administrator. Alternate Dion was appointed to vote in Mr. Nicolas place on Case #166-31 as he was in attendance at the February meeting when the Case was first heard.

IV. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

DEFERRED/CONTINUED HEARING:

- 1. Case 166-031-001 (03-28-24) (Continued from 02-22-24):** Gregory McAdams, **7 St John Street, Hudson, NH** [Map 166, Lot 031, Sublot 001; Zoned Town Residence (TR)] requests a Home Occupation Special Exception to operate a seasonal party rental home business office as permitted by special exception only with business equipment storage in the garage and outside parking of trailers within the required setbacks from the side lot line. [HZO Article V: Permitted Uses; §334-22, Table of Permitted Accessory Uses and HZO Article VI: Special Exceptions; §334-24, Home Occupations.]

Mr. Sullivan read the Case into the record, noted that it was continued from the 2/22 meeting and stated that since then that a Site Walk was held on 3/2/2024 where it was observed that the food truck has been removed from the property and that an email has been received from abutter Jeff Ferentino of 5 St. John Street dated 2/28/2024.

Greg McAdams confirmed that the food truck is no longer at the property and that all storage will be in the garage. Mr. McAdams clarified that the term "food truck" is not a truck and is actually is a trailer as it has no motor and requires electricity to keep the refrigeration running.

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Public testimony opened at 7:10 PM. No one addressed the Board.

Mr. Sakati stated that it was good to have the Site Walk, that it is a tight space and one vehicle appeared close to the setback but there is no screening and suggested that screening could be a condition of approval. Mr. Martin stated that the TR Zone does have houses close to one another and that at the Site Walk he heard the Abutter's concerns regarding flooding and pointed out that the concern falls under the purview of the Planning Board and not the Zoning Board and that there will be no employees. Mr. Dumont clarified that the Applicant can hire employees but cannot have employees to the house. Mr. Martin stated that the bouncy houses are being stored in the garage. Mr. Daddario stated that at the first hearing, the Applicant stated that the bouncy houses are not washed at the property but at the rental site. Mr. McAdams stated that he has three (3) 10'x20' storage units in Pepperell, MA and that there will be no employees to his house.

Mr. Sakati stated that in his opinion there should be screening to the right of the house. Mr. McAdams stated that that side of the house is all woods, that he did speak with his neighbor and his only concern seemed to be with the food truck, which has been removed and added that he is okay if the Board requires any screening. Discussion arose on the type of screening, vegetative or a six foot high fence, whether it would be of sufficient height to shield the logo on the trailer and truck and that discretion could be left to the judgment of the Zoning Administrator. Mr. Daddario suggested that perhaps the condition could be "screen to be installed of sufficient height to shield the logo on the truck to be approved by the Zoning Administrator".

Mr. Lanphear made the motion to approve the Home Office Special Exception (HO-SE) with the condition that screening be installed of sufficient height to shield the logo on the truck and that screening be approved by the Zoning Administrator.

Direct abutter Jeff Ferentino of 5 St John Street asked the Board to please require no screening, fence or bushes, because there already exists a big water issue between these two lots and any land disturbance for any screening would just make matters worse. Mr. Daddario stated that the lettering on the Applicant's truck is not considered a sign. Mr. Dumont agreed with Mr. Daddario and the Abutter. Mr. McAdams stated that if in the future his neighbor changes his mind, that he is okay with adding screening, but he too would not like to exacerbate the water issue.

Mr. Lanphear restated his motion to approve the HO-SE with no condition. Mr. Dion seconded the motion.

Mr. Lanphear spoke to his motion stating that the proposed is not provided on-site and is secondary to the principal residential use and will be carried inside and have no external storage or sign and will not present objectionable circumstances such as noise or generate extra traffic to the neighborhood and parking shall be off-street, and be conducted only by the residents of the dwelling and that the vehicle used for the HO-SE is the property owner's personal truck. Mr. Lanphear voted to grant.

Mr. Dion spoke to his second and stated that in his opinion all the criteria for a HO-SE have been satisfied noting that the proposed use is for services provided (offsite) and will be secondary to the principal use as a residence with all activity contained to the residence and garage, that there will be no sign or exterior storage or display indicating that the business exists, that there will be no increase of traffic to the neighborhood and parking will be off-street and that the vehicle used for the business will be the property owner's personal truck.

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Mr. Martin voted not to grant as only half of the criteria have been satisfied. The criteria satisfied: proposed use is secondary to the principal use as a residence as the bouncy houses will only be stored in the garage if his rental is top be in a closer vicinity to Hudson, that the traffic generated will not be substantially greater in volume to the neighborhood, that parking will be off-street and that there will be no employees at the residence. The criteria not satisfied include that the proposed use does not involve goods produced or services provided on site, that there will be external display of the business as advertised on the owner's vehicle, that there will be objectionable circumstances and there is no screening provided.

Mr. Sakati voted to grant as all but three (3) of the criteria have been satisfied and that the criteria that were not satisfied include the fact that the business does not produce goods or service on site and will not be carried on within the residence and that there is exterior evidence of the business with the logo on the owner's truck.

Mr. Daddario voted to grant as in his opinion all the criteria have been satisfied: the proposed use does provide a service from the site and is secondary to the principal use as a residence and will be carried out within the residence and garage by the resident, and does not display any exterior indication that a business is run at the site as there will be no exterior storage nor will there be any objectionable circumstances such as noise and traffic will not increase in the neighborhood and all parking will be onsite and the vehicle to be used for the business is the property owner's personal truck

Roll Call vote was 4:1. Mr. Martin opposed. Motion to grant passed. The 30-day Appeal period was noted.

Mr. Nicolas reinstated as the Voting Member. Mr. Dion returned to his Alternate non-voting status.

NEW HEARINGS:

- 2. Case 190-162 (03-28-24):** Orrin & Laura Clegg, Trustees of the Clegg Family Revocable Living Trust of **16 Oak Ave., Hudson, NH** [Map 190, Lot 162, Sublot 000; Zoned Town Residence (TR)] requests a Variance for the construction of a proposed 16 ft. x 30 ft. addition on an existing nonconforming single family structure (side yard & front setback encroachments) where a nonconforming structure may not be altered or expanded, except by variance. [HZO Article VIII: Nonconforming Uses, Structures and Lots; §334-31 A., Alteration and expansion of nonconforming structures.]

Mr. Sullivan read the Case into the record, referenced his Staff Report initialed 3/18/2024 and noted that the house is a non-conforming structure and that it was constructed in 1926 prior to the Town having implemented a Zoning Ordinance.

Atty. Colin Jean of Nashua, NH introduced himself as representing the Property Owners and that Michael Grainger, LLS, was present to answer any questions. Atty. Jean stated that Oak Street is a dean-end road and the subject property is at the end with a vacant lot to its right. Atty. Jean stated that the house was constructed in 1926 prior to Zoning being adopted by the Town and is deemed a non-conforming lot due to the side setback encroaching approximately two feet and front setback encroachment by about nine feet to requirements of the TR Zone. The GIS map was displayed on the screen. It was noted that most houses on Oak Street are close to the road, not observing the front setback requirement of the TR Zone.

Atty. Jean stated that the owners propose to add a sixteen foot (16') wide addition to the right hand side of the principal structure beginning at the foundation after the open front porch that would encompass the two story height of the existing home

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and would not further encroach the encroachment of the front setback by the existing home and would not encroach the right side setback and would meet all other conditions of the Ordinance for the TR Zone. Atty. Jean stated that allowing the proposed addition would allow the owners to increase the enjoyment of their property without in any way diminishing the intent of the Ordinance

Atty. Jean addressed the Variance criteria and the information shared included:

(1) *not contrary to public interest*

- The granting of the variance is not contrary to public interest because the requested addition to the existing structure would not further encroach on the pre-existing non-conforming setback requirement of the Ordinance
- All other Zoning regulations are met

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

- the proposed addition to the existing home will observe the spirit of the Ordinances the nature and character of the neighborhood is populated by residences constructed prior to the current setback requirements as set out by the Ordinance
- the proposed addition would pose no threat to public health, safety or welfare or otherwise injure public rights as the property would be a singly family residence and there would be no increase to the existing non-conforming use of the property

(3) *substantial justice done*

- Substantial justice would be done to the property owners because there would be no harm incurred by neighbors or the community in general
- The allowance of the Variance would not enlarge the existing setback deficiencies
- The existing non-conforming pre-existing conditions would remain as previously recorded, with no intrusion into the setback where the proposed addition would be located

(4) *not diminish surrounding property values*

- The value of the surrounding properties will not be diminished as this is a well established and long developed area where most properties suffer the same pre-existing non-conforming issues relative to the code requirements (front setback)
- The proposed addition would add value to the existing property while not enlarging the scope or severity of the existing setback conditions

(5) *hardship*

- Literal enforcement of the Ordinance would result in an unnecessary hardship to the property in question because the purpose of the Ordinance is to enforce setback requirements in a manner that protects the development of property in accordance with the public good, existing conditions of the neighborhood and assurance of continued public safety and property value
- The proposed variance to construct an addition to a pre-existing non-conforming property that does not enlarge the existing setback requirement deficiencies simply serves to enhance an existing residence without causing any ill effect contrary to frontage requirements is both reasonable and consistent with the intent of the Ordinance
- Denial of the Variance request would not serve the purpose of the Ordinance in a fair and reasonable way

- The special conditions associated with the subject property and request for the Variance are rooted in the pre-existing non-conforming characteristic of the property and the neighborhood in general
- The failure of the property to meet present day setback requirements is directly related to the development of the general area prior to the present day TR requirements
- The proposed addition is reasonable given the fact that it will not enlarge the existing setback deficiency or create a new setback deficiency.

Mr. Lanphear stated that in looking at the GIS, it appears that almost all in the houses in the neighborhood are close to the road and perhaps all could have placed additions to the rear of their structures and questioned why this proposed addition could not be added to the rear of the house. It was noted that there is an existing deck at the rear of the house and the garage and shed are to the rear of the house.

Public testimony opened at 7:57 PM. Michael Beauchesne, 10 Oak Avenue, addressed the Board, stated he lives two doors down, that all the houses are old and were built in the 1920's, and is in favor of granting this Variance noting that it will increase property values for the whole neighborhood. Being no one else to address the Board, Public testimony closed at 7:59 PM.

Mr. Martin stated that Oak Ave is a dead end road and that it is not against public interest to add onto home.

Mr. Martin made the motion to grant the Variance with no stipulations. Mr. Sakati seconded the motion.

Mr. Martin spoke to his motion stating that the proposed Variance will have no further encroachment that the existing encroachment to the front setback, that it is in line with the character of the house and neighborhood and does not pose a threat to the public, that it will increase this property's value and there was no evidence presented that it would decrease other property values in the neighborhood and that the purpose of the setbacks is not triggered here as the addition is within the setbacks considering the setbacks were imposed well after the house was constructed in 1926 and that it is reasonable and customary for a single family home to seek an addition. Mr. Martin voted to grant the motion.

Mr. Sakati spoke to his second noting that no further encroachment would occur, that it is not contrary to public interest and will not change the essential character of the neighborhood, that there is no harm to the general public or to individuals, that property values may increase and that an unnecessary hardship would occur to the desire to expand house size and that the proposed use is a reasonable use. Mr. Sakati voted to grant the motion.

Mr. Nicolas voted to grant the motion stating that it is not contrary to public interest as other homes are of the same construction and character and the neighborhood will not be altered, that there is no threat to public health, safety or welfare, that harm to the general public is not outweighed by harm to individuals, that surrounding property values will not diminish and that the hardship is on the property when it was constructed prior to the implementation of the TR Zone and that a reasonable use is being proposed.

Mr. Lanphear voted to grant the motion as all the criteria have been satisfied – the layout of the property having been constructed in 1926, that there is no threat to the public or safety or welfare, that substantial justice would be done, that it will not

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affect property values, and that the hardship due to the setbacks on the house layout keep it with the layout of the house.

Mr. Daddario voted to grant the motion noting that there would be no further encroachment, no threat to the public and will be in line with the character of the neighborhood, that it will increase this property's value and that there was no evidence presented that it would decrease other property values and that the purpose of setbacks is not triggered as an addition is within the setbacks as the initial non-conformity resulted from the Ordinance after the house was constructed and that the proposed use is reasonable and customary for a single family home.

Roll call vote was 5:0. Motion granted. The 30-day Appeal period was noted.

3. Case 168-038 (03-28-24): Thomas O'Dowd and Tammy Jordan, **11 Jackson Dr., Hudson, NH** [Map 168, Lot 038, Sublot-000; Zoned Residential-Two (R-2)] requests an Equitable Waiver of Dimensional Requirement to allow an 8 ft. x 12 ft. shed to remain in its current location which encroaches approx. 5 feet into the side yard setback leaving approx. 10 feet where 15 feet is required. [HZO Article VII: Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements and NH RSA 674:33-a.II.]

Mr. Sullivan read the Case into the record, referenced his Staff Report initialed 3/18/2024, noted that the house was constructed in 1969 and that the shed has been in existence since at least 2011, that the shed location was noted when a Plot Plan prepared by WSP, Inc. of Merrimack, NH dated 2/22/2024, stamped by David Prince, LLS, was submitted for a proposed three hundred and eight square foot (308 SF) addition and that no comments were received from Town Officials.

Tom Dowd introduced himself and stated that the shed was there when he purchased the property in June of 2019, that the house was built in the mid 1990's and that he had no knowledge that the shed was located in violation of the setback requirements.

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

Has existed ten years or more

- Aerial photos show that the shed has been in existence since 2010
- Internal Town records show no previous code enforcement that the shed falls within 10' of the property line

No nuisance

- It is a small shed within 10' of the property line that abuts a power line corridor which is not used by the abutting property owner
- The shed is not visible by the abutting property owner
- The shed is totally within the property, and is into the setback

High Correction Cost

- The shed is small (8'x12')
- The shed is built on a concrete foundation
- Moving the shed and destroying the foundation is too costly

Mr. Dumont noted that the shed was too small to require a Building Permit and is why there was no inspection when placed.

Public testimony opened at 8:13 PM. No one addressed the Board. Public testimony closed at 8:14 PM.

Mr. Lanphear made the motion to grant the Equitable Waiver of Dimensional Requirement as it has existed for more than ten years, presents no nuisance and is too costly to correct. Mr. Martin seconded the motion noting that there was no Building Permit due to the size of the shed and therefore no inspection was ever performed performed, that it has existed for over a decade with no knowledge communicated that it violated the setback, that it has provided no nuisance and that the cost to correct is too costly.

Mr. Nicolas voted to grant the Equitable Waiver of Dimensional Requirement stating that it has existed for more than ten (10) years, that it has and does not present a nuisance and that there is too high a correction cost.

Mr. Sakati voted to grant the motion noting that evidence showed it has existed for more than a decade and has not poised a nuisance and that the cost of correction is too high.

Mr. Daddario voted to grant the Equitable Waiver of Dimensional Requirement stating that the requirements for the granting have all been satisfied, that it has existed for over ten (10) years as evidenced by Google Maps, that it has poised no nuisance and has never received notice or complaint, and abuts the power line corridor and that the cost to correct is too high, especially considering the concrete pad it resides on.

Roll call vote was 5:0. Motion granted. The 30-day Appeal period was noted.

V. REQUEST FOR REHEARING:

No requests for Rehearing were presented for Board consideration.

VI. REVIEW OF MINUTES:

02/22/2024 draft Meeting Minutes

Board reviewed the draft Minutes presented and discussion/edits were made to Lines 245-247, 656-658, 690, and 702-705. Motion made, seconded and unanimously voted to approve the 2/22/2024 draft Minutes as edited.

03/02/2024 edited draft Site Walk Minutes

Motion made, seconded and unanimously voted to approve the 3/02/2024 draft Site Walk Minutes as edited.

VII. OTHER:

- ZBA (overflow) Meeting- Please reserve **April 11, 2024, 7:00 PM** on your calendar. So noted.

- **SAVE THE DATE: Saturday, May 11, 2024 from 8:45 AM to 3:30 PM** for the 2024 NH Office of Planning and Development's Spring 2024 Planning and Zoning conference. The cost is free. Registration Opens: April 1, 2024. Please note that this

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year's conference will be held virtually (online). There will be three tracks including Planning Board, Zoning Board of Adjustment, and Historic Preservation & Housing. Each session will be recorded and available after the conference. More details, including a tentative agenda, will be available soon on the [conference web page](#) or scan the QR code below.



So noted.

- ZORC – Zoning Ordinance Review Committee – Meeting 4/29/2024 7PM

Both Mr. Sullivan and Mr. Martin noted that the process is beginning earlier this year. Mr. Dion and Mr. Lanphear expressed interest in participating. Mr. Dumont stated that anyone can and that it is acceptable to send comments along to the Committee.

- Warrant Article on open questions to Boards

Mr. Sakati noted the Warrant Article and wondered if five minutes should be set aside at the beginning of a meeting for open questions. Mr. Dumont stated that the ZBA does a good job with opening up the meeting for public comment on every Case presented and suggested seeking Town Counsel input.

VIII. ADJOURNMENT

Mr. Martin made the motion to adjourn, seconded by Mr. Sakati and unanimously voted to adjourn. The 3/18/2024 ZBA meeting adjourned at 8:40 PM.

Respectfully submitted,

Gary M. Daddario, Chairman