



# TOWN OF HUDSON

## Zoning Board of Adjustment

Gary M. Daddario, Chairman

Dillon Dumont, Selectmen Liaison

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### MEETING MINUTES – May 23, 2024 – Approved

The Hudson Zoning Board of Adjustment met Thursday, May 23, 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

Chairman 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 for the meeting.

#### III. ATTENDANCE

#### IV. SEATING OF ALTERNATES

Clerk Dion called the attendance. Members present were Gary Daddario (Regular/Chair), Tristan Dion (Alternate/Clerk), Normand Martin (Regular/Vice Chair) and Dean Sakati (Regular). Also present were Louise Knee, Recorder (remote) and Chris Sullivan, Zoning Administrator. Excused were Tim Lanphear (Regular) and Dillon Dumont, Selectman Liaison. Alternate Dion was appointed to vote. All Members present voted. Mr. Daddario stated that normally there would be five (5) Members voting, that only four (4) are present, that in order to act on a motion requires three (3), and stated that the Applicants have the prerogative to ask to wait until next month in hopes that there would be five (5) Members in attendance.

#### V. PUBLIC HEARING OF SCHEDULED APPLICATION BEFORE THE BOARD:

1. **Case 184-021 (05-23-24):** Ryan T. Burke, **152 Belknap Rd., Hudson, NH** [Map 184, Lot 021, Sublot-000; Zoned Residential-Two (R-2)] requests the following:
  - a. A Variance to install a proposed 21 ft. diameter above ground pool 8.5 feet in the side yard setback leaving 6.5 feet where 15 feet is required. [HZO Article VII: Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements]
  - b. An Equitable Waiver of Dimensional Requirement to allow a 10 ft. x 12 ft. metal shed to remain in its current location, which encroaches approximately 9 feet into the side yard setback leaving approximately 6 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 both the Variance and the Equitable Waiver into the record, referenced his Staff Report initialed 5/13/2024 and noted that the Town Engineer asked about the location of the water discharge hose and how backwash discharge will be handled.

Ryan Burke stood at the lectern and introduced himself, stated that the land slopes toward Central Street and drops down in the back, noted that his driveway and garage are below street level and the drainage has been dealt with and has established a path to the rear of his property, that there is a large mature maple tree in the rear center of his back yard with overreaching branches, that Jim Hedlund, owner of ASAP on Lowell Road, performed a site visit on 4/24/2024 and due to the tree location, the sloping land of the yard and the existing water drainage concerns, recommended the location of the pool and noted that it is the most level section of his backyard, that any other location could subject it to falling branches or shade from the tree and could cause water drainage issues due to the naturally sloping yard. Mr. Burke stated that the pool would be fenced in and surrounded by flora so as to not be wholly visible from the road and not impact the neighborhood or affect property values.

Mr. Burke referenced other properties in his neighborhood citing that most add on/develop on the left side due to the sloping of the land, that 148 Belknap Road has a pool, that another lot has a greenhouse and walked the Board through the pictures that accompanied his application. Mr. Burke stated that in reference to the Town Engineer's comment regarding pool drainage, that he has a five hundred foot (500') hose to use that can be directed to where the Engineer directs and added that he anticipates the time frame for dismantling the pool to be in September for the winter.

Public testimony opened at 7:19 PM. Denise Beausoleil, 150 Belknap Road, stated that she is a direct abutter and shares a property line with the Burkes, that they have been neighbors for about six (6) years and that she has no objection to the variance to allow the pool to be installed in their side yard setback. Being no one else to address the Board, Mr. Daddario declared the public testimony closed at 7:21 PM and the matter before the Board.

Mr. Martin stated that the slope on the property could satisfy the hardship criteria, but according to the testimony received, every lot in the neighborhood has to deal with slopes. Mr. Daddario stated that the hardship is to be to the lot in question and after rereading the criteria, it does not mean that it has to be different, that it is okay that the slope is on many of the lots in the neighborhood but that does not negate the fact that it presents a hardship to this lot.

Mr. Martin made the motion to grant the Variance as requested in Case #184-021a. Mr. Sakati seconded the motion.

Mr. Martin spoke to his motion stating that the granting would not be contrary to public interest, that the proposed use will observe the spirit of the Ordinance, that substantial justice would be done to the property owner and that the hardship criteria is met due to the sloping in certain areas of the property and the current drainage issues. Mr. Martin voted to grant the Variance.

Mr. Sakati spoke to his second stating that the proposed location is hidden from sight, does not conflict with the explicit purpose of the Ordinance and does not change the character of the neighborhood, that justice would be done as it is difficult to build on this slope, that there will be no change in values to surrounding properties and that the hardship is met by the slope of the land. Mr. Sakati voted to grant the Variance.

Mr. Dion voted to grant stating that the pool will not hurt the neighborhood and will not obstruct the neighbors or threaten public rights and could likely increase property values and that the hardship is met by the slopes and that the proposed use is a reasonable use.

Mr. Daddario voted to grant the Variance stating that there is no injury to the public and a pool is a normal use for a residence in any neighborhood, that it will not cause public harm, that favorable direct abutter testimony has been received, that there has been no evidence that it would affect property values but it is unlikely that a pool would have a negative effect on property values, that it is a reasonable common use to have a pool with a residential property, that a portion of the setback will remain, that the direct abutter is in favor of the Variance, that the conditions of the property dictate the location for the pool.

Vote was 4:0 to grant the Variance as requested in Case 184-021a. The 30-day Appeal period was noted.

Mr. Burke next addressed his application for an Equitable Waiver of Dimensional Requirement and stated that he only recently discovered that it was needed, noted that the shed was in its current location when he bought the property in 2018, that when he checked a 2011 aerial map, the shed was visible in its current location and that his property card identified that the shed was built in the year 2000. Mr. Burke stated that the shed is being used to store such items as wheel barrels and is in good condition by the wood line and nestled between two (2) trees and not visible by his neighbor or roadside and stated that moving it could damage it and would be encroaching his backyard and that, to his knowledge, it has not been a nuisance to anyone. Mr. Burke showed pictures of the shed in its current location.

Public testimony opened at 7:37 PM. No one addressed the Board. Public testimony closed at 7:38 PM.

Mr. Martin made the motion grant the Equitable Waiver of Dimensional Requirement. Mr. Sakati seconded the motion.

Mr. Martin spoke to his motion stating that the shed sits in the corner and is not bothering anybody, that it has not posed any nuisance to anyone, that it has existed for more than ten (10) years and that it presents a high correction cost to relocating it. Mr. Martin voted to grant the request.

Mr. Sakati spoke to his second stating that it has existed more than a decade, that it existed in its current location when the Applicant bought the property, that it has not bothered anyone or been a nuisance and that there would be a high correction cost to relocate it. Mr. Sakati voted to grant the request.

Mr. Dion voted to grant the Equitable Waiver stating that it has existed for more than a decade and was present when the Applicant bought the property, that it has not presented a nuisance, that it is located at the rear of the property and hidden from the street, and that there would be a high correction cost to alter the location.

Mr. Daddario voted to grant the Equitable Waiver stating that it has existed for more than ten (10) years, that it doesn't and has not presented itself as a nuisance and that relocating a shed that is more than two (2) decades old is tantamount to destroying it.

Vote was 4:0 to grant the Equitable Waiver of Dimensional Requirement. The 30-day Appeal period was noted.

Mr. Martin thanked Mr. Burke for his well-prepared clear and concise presentation of both the Variance and the Equitable Waiver. Mr. Burke thanked the Board for their consideration and asked whether he needed to wait the 30-day Appeal period before being able to pull a pool/building permit. Mr. Sullivan stated that any work performed during the Appeal period was at the Applicant's own risk and asked Mr. Burke to come into the office to discuss.

- 2. Case 214-012 (05-23-24):** Daniel Barowski, Survey Project Mgr. of Fieldstone Land Consultants, PLLC, 206 Elm St., Milford, NH proposes a two-lot subdivision which requires the following two (2) Variances for **173 Bush Hill Road, Hudson, NH** [Map 214, Lot 012, Sub lot-000; Zoned General-One (G-1)]:
- a. A Variance to allow the lot area with the existing dwelling (after subdivision) to contain 0.833 acres where 2 acres of contiguous land exclusive of any wetland and slopes in excess of 25% is required. [HZO Article VII: Dimensional Requirements; §334-27.1.B., General requirements and §334-27.2, Lot requirements for subdivision of land and §334-27, Table of Minimum Dimensional Requirements]
  - b. A Variance to develop a 30 ft. x 40 ft. single-family home on the vacant new lot with 194.66 feet of frontage where 200 feet is required. [HZO Article VII: Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements]

Mr. Sullivan read the Case into the record and referenced his Staff Report initialed 5/14/2024 noting that the Associate Town Planner cited that Planning Board approval of a subdivision application would be required if the Variances are granted and that the Town Engineer made four (4) requests – well and septic system locations for new lot, plan and profile for proposed driveway, sight distance plan and profile for proposed driveway and provide approval by PSNH regarding proposed driveway within the existing PSNH easement.

Dan Barowski of Fieldstone Land Consultants, PLLC, introduced himself, identified the location of the 7.37 acre lot with 394.66 feet of frontage and noted that the land slopes from northeast to southwest and is bisected by Musquash Brook that requires wetland buffers and is encumbered by several areas of steep slopes and has four (4) pockets of dry land. Mr. Barowski stated that there is an existing house, built in 1978, that is located in the northeast corner of the lot leaving most of the lot undeveloped and that the proposal is to subdivide the 7+ acres into two residential

lots and that two (2) variances would be required before a subdivision application could be pursued with the Planning Board.

Mr. Barowski stated that the existing residence would be left with 2.57 acres but with only 0.83 acres of contiguous dry non-steep land, 14,961 SF of wetlands and 200' of frontage. The proposed new lot would contain 4.80 acres with 2.94 acres of contiguous dry non-steep land, 6,666 SF of wetlands and 194' of frontage. A variance is requested to allow only 0.83 acres of contiguous land exclusive of wetlands and slopes over 25% for the existing residence and another variance is needed to create the new residential lot with 194' of frontage.

Mr. Barowski addressed the criteria for the granting of a variance and the information shared included:

(1) *not contrary to public interest*

- The granting of the variance would allow for the productive use of the existing property
- The proposal is consistent with the surroundings as several of the lots along Bush Hill Road possess less than 2 acres of land
- Both of the proposed lots exceed the minimum required lot size, however, the 14,961 SF of wetlands that exist on the lot are configured in such a way as to prevent a large contiguous area
- No development is proposed on the existing house lot of 2.57 acres which has existed for decades
- The proposed subdivision would not be contrary to public interest, nor will it alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public
- The proposal to subdivide the 7+ acre residential parcel into two (2) residential lots would not be contrary to public interest

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

- The proposed subdivision is reasonable and meets the spirit of the Ordinance especially when one considers the size of the 7+ acre parcel, the size of the lots being proposed (2.57 and 4.8 acres) and the placement of the proposed building sites in relation to the surrounding lots
- The Zoning Ordinance, Section 334-27.2, requires lots to have their minimum area contiguous and exclusive of wetlands and steep slopes as the intent is to provide adequate separation and buffering between landowners and uses and to ensure each lot has enough useable area for development
- The Variance for Lot 214-12 is already developed with a single-family residence, driveway and other associated improvements
- The configuration of the wetlands on the lot, along with the steep slopes present preclude it from being subdivided conventionally
- The largest section of dry, non-steep area is north of Musquash Brook and not contiguous with the existing dwelling
- The steep slopes on the revised lot 214-12 are excluded from potential as they are almost all contained within the 50' wetland buffer of Musquash Brook
- The proposed new lot, 214-12-1, in this proposed subdivision contains 4.8 acres of which 2.94 are contiguous dry land with no steep slopes



- The existing residence is already separated from the required two contiguous non-steep dry acres by Musquash Brook; therefore the spirit of the Ordinance is observed

(3) *substantial justice done*

- Granting the variance would allow productive use of the land on a 7+ acre parcel and would have no impact on the general public as the proposal is small and consistent with its surroundings
- The variance request is for a lot which contains the minimum contiguous dry acreage but is encumbered by steep slopes
- Several of the lots along Bush Hill Road and in adjacent developments possess less than two full acres
- Granting the variance will therefore not alter the essential character of the neighborhood or threaten the health safety welfare of the public
- Developing a 7+ acre parcel into two lots while preserving large acreage would not be contrary to the public interest
- The granting of the variance would do substantial justice and allow for the productive use of a large tract of land
- The proposal is certainly a reasonable use of the property

(4) *not diminish surrounding property values*

- The use is consistent with the zoning and the surroundings and as a result will have no negative impact on the surrounding property values and could increase the surrounding property values as it will allow new construction on a larger lot

(5) *hardship*

- The property is unique given its geometry and size and the fact that Musquash Brook bisects it and other natural features as steep slopes greater than 25%
- The G-1 Zone requires 87,120 SF of contiguous area exclusive of wetlands and steep slopes and requires 200' of frontage
- The development of this 7+ acre parcel with its 394.66' of frontage into 2 residential lots is reasonable and fair when you contemplate the purpose of the Ordinance provision and the specific application of that provision to the property
- A variance to permit a subdivision with a lot that contains 0.83 acres of contiguous dry non-steep land on an already developed parcel
- The natural features, particularly spots of steep slopes along the banks of Musquash Brook preclude a conventional subdivision from meeting the minimum area requirements
- The purpose of this section of the ordinance is to provide adequate space for development
- The development is already completed and exists without detriment to the surrounding properties or to Musquash Brook and no new development is being proposed to the existing residence
- There is no fair and reasonable relationship between the general public purpose of the Ordinance provision and the specific application of that provision to the property
- Musquash Brook creates a natural boundary between the existing site improvements and the proposed new lot

- The proposed subdivision requires a variance for contiguous non-steep lot size, the belief is that this style of development is consistent with its surroundings and would be supported by the general public as it meets the spirit and intent of the Ordinance when you consider the size (7+ acres), the size of the lots being proposed (2+ acres and 5+ acres) and the placement of the proposed building site in relation to the surrounding lots
- The intent of the Ordinance is to provide adequate area for development on an already established lot and allow for a subdivision resulting in a large 5+ acre lot with adequate buffering
- The proposed subdivision is reasonable and will create a lot with plenty of buffering from adjacent properties
- The proposed use and development are reasonable for a practical use when you consider the size of the lots and the separation and buffering that will exist
- The subdivision is a practical use and a reasonable request and will be consistent with the surroundings

With regard to the comments from Hudson's Town Engineer, Mr. Barowski stated that they will be addressed during the Subdivision application process with the Planning Board and noted that the site has not been surveyed for the driveway design but would be once the variances have been obtained and assured the Board that it will meet Town standards. With regard to identifying the location of the septic system and well location, Mr. Barowski stated that the location of the proposed new residence would first need to be finalized. Mr. Sakati asked if there were other locations on the proposed new lot to place the house and Mr. Barowski responded affirmatively and pointed to other possible locations on the plan.

Mr. Martin asked if the brook overflows and if so, could that affect the buffer? Mr. Barowski stated that according to the contours, any overflow would flow down and should not affect the buffer on the proposed new lot.

Public testimony opened at 8:04 PM. The following addressed the Board.

- (1) Robert Boutin, 167 Bush Hill Road, stated that he is opposed to both variances, the new lot with not enough frontage and the existing residence to a smaller non-conforming lot and admitted that if the prior owner, Mr. Williams, needed a variance for health care reasons, he would not object, but Mr. Williams no longer owns the property; and is concerned that the granting of the requested variances will have a negative impact on his well water; that he has been there for over 20 years and there is a lot of wildlife in the area and is concerned if emergency services would be able to get to the new house, through the easement and thanked Mr. Martin on the good point raised on what would happen to the wetland buffer if the brook overflowed.

Mr. Dion asked about the negative impact Mr. Boutin referred to Mr. Boutin stated that he can not see any houses from his home and that is his preference; that the Town has a 2-acre minimum for a reason; that a lot of

people and wildlife walk through there, that there are herons galore; and that the easement gets clear cut, that the clear cutting is becoming more and more aggressive with the clear cutting going to the edge of the easement, that sometimes equipment is left on the easement during the process, that the workers often times sit on the equipment in the easement to have their lunch and what would happen if the easement became a driveway – and emergency services were needed at the new house?

- (2) Email dated 5/23/2024 6:09 PM from Christine Cambrils, 9 Woodland Drive, read into the record by Mr. Martin, spoke against the variances
- (3) Letter received 5/22/2024 from Dominic Jarry and Kay Nash, property owners of 175A Bush Hill Road, read into the record by Mr. Martin, opposed both variances

Public testimony closed at 8:32 PM

Mr. Sullivan stated that the Planning Board would be addressing the details regarding the driveway and its use of the easement during their review of the subdivision. Mr. Martin noted that, if the Variance(s) are granted, the application to the Planning Board would need to be submitted within six (6) months.

Mr. Martin asked the length of the proposed driveway and Mr. Barowski responded that it would be just shy of six hundred feet (600') and that they would adhere to the restrictions and guidelines specified by the Planning Board during their review. Mr. Dion stated that it is a long driveway and noted that PSNH has free range to do what they need/want in the easement. Mr. Martin noted that inspections are required throughout the process.

Mr. Daddario stated that it seems to be a big enough property and the existing house seems to be trapped in a corner but if the subdivision is approved, the house would be relegated to a non-conforming lot as it would not meet the two acres of contiguous land without steep slopes and wetland and the proposed new lot would also be a non-conforming lot based on frontage.

Mr. Sakati stated that the variances being requested seem small and/but the hardship criteria is a tough criteria. Mr. Daddario concurred. Mr. Dion asked if the hardship exists because the house exists or because a new lot is being proposed and whether this lot functionally differs from other lots in the area. Aerial views of surrounding lots were reviewed. Mr. Dion stated that the problem seems self-created, that there is no hardship now and that the proposed subdivision causes the hardship and the need for two (2) variances. Mr. Martin agreed. Mr. Daddario noted that the existing house would be placed on a non-conforming lot. Mr. Dion questioned if the creation of the new lot could be configured so as to allow the existing residence to be located on a conforming lot and asked if there was any testimony from the Property Owner that this land is "not practically useable". Mr. Martin noted that without Variance a. being granted, then Variance b. would become moot.

At 9:18 PM, Mr. Daddario opened Public Hearing. Mr. Robert Boutin, 167 Bush Hill Road addressed the Board and noted that currently the residence is vacant, it has no occupant, it was sold for approximately \$100,000 less than its market value and that



the point made about it being placed on a non-conforming lot is more important now because it would not be uncommon for a new property owner to want a garage or even a swimming pool and be required to seek a variance. Being no one else to address the Board, Public testimony closed at 9:19 PM.

Mr. Daddario stated that both variance requests were now before the Board and declared a five-minute recess.

Mr. Dion stated that creating a non-conforming lot just does not meet the Spirit of the Zoning Ordinance and that he is prepared to make a motion to deny. Mr. Martin and Mr. Sakati agreed.

Mr. Dion made the motion to deny granting Variance a. to create a non-conforming lot that contains just 0.83 acres where 2 acres of contiguous land exclusive of steep slopes and wetland is required. Mr. Sakati seconded the motion.

Mr. Dion spoke to his motion stating that the granting would not alter the essential character of the neighborhood; that the proposal does not observe the spirit of the Ordinance and that the need for a variance is self induced; that substantial justice could be done to the property owner but currently the property is conforming and has a use with a residence; that the proposed lot reduction will not likely diminish surrounding property values; and the hardship criteria has not been met, as it is self induced, the property has a use developed and to change it to a non-conforming lot goes against the Ordinance. Mr. Dion voted not to grant the Variance.

Mr. Sakati spoke to his second stating that the only criteria that could be satisfied is that the granting would not diminish surrounding property values but there was no evidence presented; that the request explicitly conflicts with the Ordinance, that the granting would be contrary to public interest; that there is no justice in creating a non-conforming lot; and the hardship criteria has not been met and has been caused with the desire to create a second lot. Mr. Sakati voted not to grant the Variance.

Mr. Martin voted not to grant the Variance stating that even though three (3) of the criterion could be satisfied, two (2) were definitely not. The proposed Variance may not affect the essential character of the neighborhood, that it would do justice to the property owner and probably would not diminish values of surrounding properties; however, it does not observe the spirit of the Ordinance because two (2) acres are required and the revised lot only provides for 0.833 acres and the hardship is self imposed by subdividing this property.

Mr. Daddario voted not to grant stating that there would not be any change to the neighborhood and no substantial threat to the public; that the Variance request introduces significant deficiencies that do not presently exist and that the lot size deficiency is significant regarding the buildable usable space; that the proposal allows use of the property without substantial harm; that no evidence was presented of diminished value to surrounding properties but there is no apparent reason why surrounding properties would suffer diminished value; and that the hardship criteria is not met, that the Ordinance is designed to have sufficient lot size of usable space and noted that the property is being reasonably used.

Vote was unanimous at 4:0 to not grant the Variance 214-012a. as requested as it unanimously failed to satisfy criteria 2 (spirit of the Ordinance) & 5 (hardship). The 30-day Appeal period was noted.

Mr. Sakati made the motion to deny granting Variance b. to create a new lot with 196.44 feet of frontage where 200 feet is required. Mr. Dion seconded the motion.

Mr. Sakati spoke to his motion stating that the request conflicts with the purpose of the Ordinance, that it does not alter the character of the neighborhood, that substantial justice is not required as land is currently used, that the proposed use may not diminish surrounding property values, that even though it seems a reasonable use, there is no hardship caused by the land, just the desire to divide the land. Mr. Sakati voted to not grant the Variance request.

Mr. Dion spoke to his second stating that the new lot would not threaten public rights, that it fits within the spirit of the Ordinance, that the land is currently being used and there is nothing harming the owner from current use, that it is not known whether the proposal would affect surrounding property values as the house location has not been established, and that even though it is a reasonable use, the purpose of the Ordinance is to maintain proper lot sizes and the hardship is self induced. Mr. Dion voted not to grant the Variance request.

Mr. Martin voted not to grant the Variance stating that the requested Variance will not be contrary to public interest, that substantial justice would be done and that new construction could enhance the values of surrounding properties, but allowing the property to be subdivided as presented does not observe the spirit of the Ordinance, that even though the proposed use is reasonable, hardship does not exist, it is self created by the desire to subdivide and create a new non-conforming lot.

Mr. Daddario voted not to grant stating that variance being requested is minimal, just over five feet, and will not alter the character of the neighborhood, that minimal relief is being sought, that the use would benefit the property owner without causing substantial harm to the general public, that no evidence was presented but there is no apparent reason to believe that any diminution of surrounding property values would occur, and that the hardship criteria has not been satisfied, the applicant is creating the non-conformity with the proposed subdivision, the lot has a reasonable use with the existing residence, the utility easement, wetlands and slopes on the lot does not cause the frontage deficiency and do not contribute to it.

Vote was unanimous not to grant Variance 214-012b. to create a lot with reduced frontage as it unanimously failed to satisfy the hardship criteria and did not observe the spirit of the Ordinance. The 30-day Appeal period was noted.

Mr. Dion stated the Mr. Barowski made a fantastic presentation and hoped that he did not feel attacked. Mr. Barowski thanked the Board for their honest feedback.

## **VI. REQUEST FOR REHEARING:**

No requests were presented for Board consideration.

**VII. REVIEW OF MINUTES:** 04/25/2024 edited draft Meeting Minutes

Motion made by Mr. Martin, seconded by Mr. Sakati and unanimously voted to approve the 4/25/2024 Minutes as edited.

**VIII. OTHER:**

No other business was presented for Board consideration.

**IX. ADJOURNMENT:**

Motion made by Mr. Martin, seconded by Mr. Sakati and unanimously voted to adjourn the meeting. The 5/23/2024 ZBA meeting adjourned at 9:58 PM.

Respectfully submitted,

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Gary M. Daddario, ZBA Chairman