



TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Dillon Dumont, Selectmen Liaison

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MEETING MINUTES – January 23, 2025 – approved

The Hudson Zoning Board of Adjustment met on Thursday, January 23, 2025, 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

IV. SEATING OF ALTERNATES

Chairman Daddario called the meeting to order at 7:06 PM, apologized for the delay, invited everyone to stand for the Pledge of Allegiance and presented the Preamble (Exhibit A in the Board's Bylaws) regarding the procedure and process for the meeting.

Acting Clerk Martin called the attendance. Members present were Gary Daddario (Regular/Chair), Tim Lanphear (Regular), Normand Martin (Regular/Vice Chair) and Dean Sakati (Regular). Also present were Dillon Dumont, Selectman Liaison, Louise Knee, Recorder (remote) and Chris Sullivan, Zoning Administrator. Excused were Tristan Dion (Regular/Clerk) and Zachary McDonough (Alternate). All Regular Members voted, no Alternate was appointed to vote. Mr. Daddario noted that there would be only four (4) Members voting when there are normally five (5) and offered the opportunity to continue a hearing to the next meeting in hopes that there would be five (5) Members present.

V. PUBLIC HEARING OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

1. **Case 245-012 (01-23-2025):** Bradford Baker Sr., **23 Fairway Drive, Hudson, NH** requests an Equitable Waiver of Dimensional Requirement to allow a newly built detached 41.3 ft. x 39.6 ft. metal garage on a cast-in-place concrete foundation to remain which encroaches both the side and front yard setbacks leaving 13 feet and 22.3 feet respectively where 15 feet and 30 feet are required. [Map 245, Lot 012, Sublot-000; Zoned Residential-One (R-1); HZO Article VII: Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements and NH RSA 674:33-a.I.]

Mr. Sullivan read the Case into the record, referenced his Staff Report and noted that Inspectional Services/Fire Department supplied comments that noted that the structure was built without a Building Permit and that the Foundation Only Permit

clearly stated that a certified foundation plan is required prior to the issuance of a Building Permit.

Bradford Baker of 23 Fairway Drive introduced himself, stated that he hired a contractor to place the foundation and erect the building. The rebar and forms were inspected and the foundation poured. Once the concrete cured we raised the kit for the roof supports in order to get the material off the ground and the project started. It was many months before he returned to do the rest. When I went to print a copy of the permit I then realized I needed an as built certified plan and immediately hired a surveyor only to reveal that this discrepancy occurred. It was discovered well after the fact.

Mr. Baker stated that it is his belief that the contractor misread the plot point when he measured and by all outward appearance of the form, the placement appeared to be correct. The intent was to follow the proposed design meeting all setbacks. It was an innocent mistake and only discovered with the as built plan and does not cause a nuisance as the building is only a few feet from its intended position and still within the property and won't change the building's appearance. Mr. Baker stated that there will be no vehicles pulling into the garage from the street as the garage doors will face backwards towards the Target industrial property and the front of the garage will resemble a residential home. Mr. Baker stated that he understands folks have taken issue with the current appearance of the structure and offered the fact that it is not yet complete, there is to be siding on it, with windows and will resemble a home, not an industrial building, and a rendition was posted. Mr. Baker added that he basically lives on a corner and there is very little traffic; that in fact there no reason for anyone to travel except to visit his neighbor or himself.

Mr. Baker stated that to relocate the garage would be a total loss of the materials used and expenses up until this point – approximately \$65,000 plus the demolition cost and noted the negative impact that would result.

Mr. Baker also submitted an email dated 1/19/2025, from his direct abutter Samantha King, 21 Fairway Drive, who has no issue with the placement and supports his request. Mr. Dumont inquired about the proposed fencing she mentioned and Mr. Baker confirmed there is no issue for either the plantings or the fence.

Mr. Sakati asked for a recap of the timeline as it appears to him that it has lasted for more than a year. Mr. Baker confirmed that it has been a long time, that this contractor did not want to pour the foundation and he had to fine someone else and he contacted many who just ended up ghosting him. Discussion ensued that included alternatives to extending the foundation and moving the structure out of the front setback by panels, if at possible. Discussion branched to other Cases the Board has reviewed where the foundation was laid that violated setbacks.

Public testimony opened at 7:26 PM. The following individuals addressed the Board:

- (1) James Crowley, 4 Fairway Drive where he has lived for over thirty years and submitted two (2) complaints, 12/21/2024 and submitted pictures taken of the property. Mr. Crowley stated that his presentation would last about ten (10) minutes and referenced his complaint. "It was discovered too late" common since one does not take placement on a plan. "Need to get material off the ground" just sets a sense of urgency where it could just have been covered. Hard to believe he didn't know he needed a certified plan when he pulled the foundation permit himself and he never pulled a framing permit. It was not an innocent mistake. With regard to "no nuisance", please see photograph 2 and 3 and see how it does not resemble a single family home especially when one realizes that over 80% of the driveways in the neighborhood have attached garages. And size does matter, this is the largest and of you look at the pictures, there's easily going to be a second floor. The burden of proof is upon the applicant. With regard to the high correction cost, it is because the owner did not do his job and demolition and removal would improve the neighborhood

Mr. Martin noted that there are second floors on the pictures submitted. Mr. Sullivan responded to Mr. Crowley's concern, that there will be inspection during the building process so the Town will know if there is a second floor. Discussion then led to roof types, and the definition of gambrel. Mr. Dumont stated that the second floor is moot, just as is the "look" of it, and the Board will always make the assumption that an applicant speaks truth. Mr. Daddario concurred and noted that the applicant did pull a foundation permit and Mr. Sullivan confirmed that the applicant stopped construction until he came before the Board to seek an Equitable Waiver.

- (2) Lynn Ashworth, 25 Fairway Drive, direct abutters, while the structure/garage is non-compliant and the design does not fit the neighborhood – no one in the neighborhood has a quonset hut and this will impact surrounding property values.
- (3) Richard Speer, 22 Fairway Drive, across the street for about 25 years and stated that he is not opposed to a garage but this building is very tall and very wide. Mr. Sullivan stated that the original plan was for a much larger structure. Mr. Speer correlated the proposed garage to an army structure, commonly called a quonset hut, and this one looks like it will accommodate 8 vehicles. It is too close to the road. And it will negatively impact their property values and cited examples. And looking at the lot, there seems to be enough land to place the garage to the back of the house and there are two neighbors who had to move their sheds out of their front setback, so what is being asked is not unusual.
- (4) Rita Banatwala, 29 Fairway Drive, 300' away, noted that the structure is very visible and because of its height, the encroachment is huge, the nuisance issuance issue does matter, it does not fit into the neighborhood, and yes a mistake was made but then it sat there and sat on the lawn for almost a year.

Mr. Dumont clarified his previous statement – the Zoning Board get to decide on Use, not style or type of a structure. Mr. Daddario concurred and stated that even though the Board appreciates hearing people's concerns, they are restricted in what they can consider. Mr. Lanphear noted that if the structure had not violated the setbacks, he would not be in front of the Zoning Board. Mr. Sullivan confirmed that there is no Planning Board involvement for a garage within setbacks.

- (5) Edward Thompson, 22 Burns Hill Road, stated that when he did his garage, he had inspections along the way and would it have been flagged then. Mr. Sullivan stated that only occurs when the certified as built plan is prepared. Mr. Thompson stated that the fact remains that it is a commercial building in a residential zone and he is opposed to it.

Mr. Martin stated that if the foundation was laid out of the setbacks, the applicant would not need to be in front of the Board. Discussion ensued. The intended Use of the building is not in front of the Board. Mr. Sullivan stated that he has emails that it is not intended for commercial Use.

- (6) Jerome Bento, 7 Muldoon Drive, and has lived there since 1988 and echoes all the previous speakers and would like to also focus on the 'substantial justice' to the homeowner and the negative benefits to the neighbors

Mr. Daddario stated that the application before the Board is not for a Variance, that there are only four (4) criteria when reviewing the validity of an Equitable Waiver of Dimensional Requirements and that does not include looking at Hardship or Impact/Substantial Justice.

Mr. Bento apologized. Mr. Bento stated that he is still opposed to the project and does not see why the applicant does not go back to the contractor or surveyor or whoever was involved for remediation. It is not for the Town to endure this loss.

- (7) Kerry Nevin, 3 Eagle Drive, stated that she has been a resident of Green Meadow Estates for forty plus (40+) years and have had to deal with a lot over recent years, like Amazon and Target, and should not have to deal with this setback issue. She has never seen such a monstrosity built/constructed built in the front yard and so close to the neighbor and asked who would ever want to live with this right next door and assumes many folks in Green Meadow feel the same and knows that several emails have been sent in opposing this project. Ms. Nevin questioned the purpose of this extremely large 'garage', is it going to be a business, either parking of its equipment or storing of its materials – and if it is, this is not the right location for it. It is the largest garage she has ever seen – and the garages in the neighborhood are only about 500 SF and this one is over 1,600 SF. This 'garage' is not compatible with the neighborhood and noted that most garages in the neighborhood are in their backyards, not the front yard and none are constructed out of steel. This will impact our

property values negatively and is concerned their front yard will be used as a parking lot. The Owner simply did not comply. Ms. Nevin asked who addresses the style of a structure that is allowed in Town?

There was some discussion regarding the size and the fact remains that there are several garages in Town that are this large and in people's front yard and that the Board has no say in the matter of size, just whether the size fits onto the property and out of the setbacks.

- (8) George Powell, 18 Par Lane, stated that he agrees with what his neighbors have testified and if he was sitting on the Board he could not be happy to approve this Equitable Waiver to it being where it is.
- (9) Todd Boyer, 2 Merrill Street, stated that he does not live close to this project but he has built structure in this Town before and explained the process, the need for a certified plot plan and how that is intended to be corrected and prevent a structure from being constructed in a setback. The applicant stated that he had a surveyor do the survey and yes it will cost some money to correct.

Being no one else to address the Board, Mr. Martin read the two (2) emails received.

- (10) Email dated 1/19/2025 from Chris Mulligan, 23 Fairway Drive, who has lived there for 30 years and voiced his opposition and stated it "will establish a terrible precedent in the neighborhood and the town as it will clearly suggest that you can build anywhere you want without regard for town requirements, and as long as you build fast enough and there are significant costs involved, you can simply ask for forgiveness."
- (11) Email dated 1/21/2025 from Scott Wade, I Fairway Drive, in opposition of the proposal and stated that it is not up to the Town to rectify the property owner's mistake, innocent or not.

The Applicant was given the opportunity to address the comments just heard. Mr. Daddario noted that the size and design do not factor in the criteria nor the Board's decision; however, several concerns were raised regarding and asked Mr. Baker to comment. Mr. Martin objected to hearing about the Use, it is intended for personal Use for the parking of vehicles and if it is not, then that would become a Code Enforcement issue. Mr. Martin left the room. Mr. Dumont stated that the only reason he mentioned it was that it adds, to his mind, whether or not it is a nuisance or not, and the reason for Zoning pertains to safety and health, not architecture. Mr. Sakati concurred, that it would not factor into his decision and he is curious.

Mr. Baker stated the intended Use is purely residential, that they have fairly sizeable property right on the river with a lot of landscaping in the backyard and that have a lot of agricultural equipment like tractors that they use to maintain their property and he owns six (6) vehicles registered to him. Mr. Baker stated that he runs a business, has a separate building in Town, larger than this one with a ten (10) year lease. Mr. Martin returned to the meeting room.

Mr. Martin thanked Mr. Crowley for all the information he provided and commented on the other garages in the neighborhood and over time and noted that the State has changed the requirements from having to satisfy one of the criteria to having to satisfy every criteria. Mr. Martin stated that in his mind, this has satisfied two (2) and did not satisfy two (2).

Mr. Dumont questioned which criterion was not satisfied. Mr. Martin responded "discovered too late". Discussion ensued on the process. Mr. Dumont commented that the Board has heard many such cases based on the result of a certified plot plan and maintained that it may be different but the process is the same. "Innocent mistake" is also debatable. Mr. Martin noted that an Equitable Waiver used to apply to something "old", that has existed for over a decade and to his way of thinking, the property owner should have applied for a Variance, not and Equitable Waiver.

At 9:04 PM, public input closed and the matter before the Board.

Mr. Lanphear asked if it were possible to add conditions of approval to an Equitable Waiver and specifically okaying the two-foot side setback intrusion but not the seven-foot front setback. General consensus was both setbacks as a package deal as that is what is before the Board.

Mr. Sakati asked Mr. Sullivan to speak to the purpose of setbacks. Mr. Sullivan stated that one purpose is to allow access to the backyard and that there is separation between neighbors.

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

Mr. Martin spoke to his motion and stated that it was not discovered too late, would have been discovered sooner if the process was followed and before the structure was assembled, that it was not an innocent mistake on part of the contractor, that it is a nuisance to the neighborhood as per the testimony received but perhaps not as a finished product when it would resemble a house and that is a high correction cost. Mr. Martin voted to deny.

Mr. Sakati spoke to his second, that it wasn't an innocent mistake, it was installed without a building permit and there was a failure to inquire, that it is a nuisance to the immediate neighbors and is too close to the street but almost thirty percent (30%). And the size creates an imposition. There is a high correction cost. It was discovered too late but it could have been avoided. Mr. Sakati voted to deny.

Mr. Lanphear voted to deny. It was discovered too late, the process was not followed, it may have been an innocent mistake on part of the homeowner but not the contractor, that it is a nuisance to some, perhaps not others, and there is a high correction cost and even though the cost to correct should fall on the contractor it is the Property Owner who is responsible to correct.

Mr. Daddario voted to grant the Equitable Waiver. It was discovered too late – it is a metal arch, the applicant got a surveyor, hired a contractor pulled a permit and only discovered after he got an as-built plot plan created. It was an innocent mistake as the owner has been dealing with the Town toward a correction. With regard to being a nuisance, he understands the neighbors do not like the looks of it but the no nuisance criteria does not pertain to the architectural aspect but the dimensional violation and whether that poses a nuisance and noted that every property owner has the right to build what he wants within his building envelope and he believes that moving it a few feet will not remedy the problems the neighbors asserted out of the setbacks. With regard to the high correction cost, and without factoring in the metal arch, there is a high correction cost even for just the concrete foundation.

Vote was 3:1. The Equitable Waiver of Dimensional Requirement not granted. The 30-day Appeal period was noted.

VI. REQUESTS FOR REHEARING: None

No requests were presented for Board consideration.

VII. REVIEW OF MINUTES:

12/12/2024 edited draft Meeting Minutes

The edited version was not included in the Supplemental Folder. The spelling of an Abutter name was questioned. Mr. Lanphear made the motion, seconded by Mr. Martin and unanimously voted to defer review.

VIII. OTHER BUSINESS:

Election of Zoning Board of Adjustment Officers

Discussion initially focused on Mr. Daddario being able to complete his next term and the end of the discussion was to allow the natural sequence to unfold, that when/if the Chairman resigns midterm, the Vice Chair becomes Chair and the Clerk becomes Vice.

Motion made by Mr. Sakati, seconded by Mr. Martin and unanimously voted to appoint Mr. Daddario as Chairman.

Motion made by Mr. Lanphear, seconded by Mr. Daddario and unanimously voted to appoint Mr. Martin as Vice Chairman.

Motion made by Mr. Lanphear, seconded by Mr. Martin and unanimously voted to appoint Mr. Dion as Clerk.

Mr. Sullivan stated that the Town is still seeking Alternates for the Board

IX. ADJOURNMENT:

Not Official until reviewed, approved and signed.
Approved 2/27/2025 as edited

Mr. Martin made the motion, seconded by Mr. Lanphear and unanimously voted to adjourn the meeting. The 1/23/2025 ZBA meeting adjourned at 9:36 PM

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gary M. Daddario', written over a horizontal line.

Gary M. Daddario, Chairman