

TOWN OF HUDSON

Zoning Board of Adjustment



Tristan Dion, Acting Chairman

Dillon Dumont, Selectmen Liaison

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MEETING MINUTES – JUNE 26, 2025 – Approved

I. CALL TO ORDER

Mr. Dion called the meeting to order at 7:00 PM.

II. PLEDGE OF ALLEGIANCE

Mr. Dion invited all to participate in the Pledge of Allegiance and read through the Chairperson's introduction/order of business and cited housekeeping items.

III. ATTENDANCE

Mr. Dion asked the Clerk to call for attendance.

Full members present were: Tristan Dion(Chair), Dean Sakati, Tim Lanphear, Timothy Lyko

Alternate members present were: Zachary McDonough-(Clerk) and Brendon Sullivan.

Excused member: Normand Martin

Others present were: Chris Sullivan – Town Liaison; Dillon Dumont-Selectman Liaison

IV. SEATING OF ALTERNATES

Alternate Brendon Sullivan was appointed to vote.

V. PUBLIC HEARING OF SCHEDULED APPLICATION BEFORE THE BOARD:

DEFERRED HEARING:

1. **Case 245-012 (06-26-25) (deferred from 04-24-25; 05-22-25):** Bradford Baker Sr., 23 Fairway Dr., 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 into 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- I); 1-IZO Am-tide VII: Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements and NT-I RSA 674:33-a.I.]

Mr. Chris Sullivan read the Case into the record and referred to the Zoning Administrator's Staff Report.

Applicant & Legal Representative Testimony:

Attorney Elizabeth Hartigan, Gottesman & Hollis, P.A., representing the applicant, explained that this case deals with a constructed garage foundation and structure that is 2' into the side yard setback and a triangle of the building within the front yard setback. Exhibit A shows the 7'x9' triangle encroachment, along with the 2' side yard encroachment. In June 2023, her client met

with the Town to construct a garage. A foundation permit was approved in October 2023. In April 2024, the foundation and the rebar for the base of the garage were installed. The Town inspected this at that time. Mr. Sullivan corrected this to explained that the Town saw the forms for the garage but were never brought a certified plan. Attorney Hartigan explained that later in April the contractor went AWOL. In October, the pad was finally poured, and construction began. At that point, her client learned that the structure needed to be inspected again. The Town asked for the certified plot plan for the cement pad, and this is when the encroachment was found.

Attorney Hartigan stated that an equitable waiver for dimensional requirements allows property owners to seek relief from Zoning violations after the fact. Her client received a foundation permit, but there was a lot of time between the submission of materials to the Town and work having begun. Her client contacted the neighbor who did not express concern with the violations. The 2' side yard setback does not seem to be as much of a concern for anyone as is the face of the very large garage within the setback.

Attorney Hartigan reviewed the four factors for an equitable waiver: Was it discovered too late? Was it innocent mistake? Does the encroachment cause a nuisance? Is there a high cost of correction? The encroachment was not discovered until after the concrete pad was completed. The anchors and building arches had already been erected. The encroachment is approximately 73 s.f. in the front yard, and 151 s.f. on the side yard, while the total garage size is 1,521 s.f. The encroachment was discovered after a certified plot plan was created and the contractor did not follow the survey pins correctly. Another part of the encroachment was found after the structure was substantially complete. The New Hampshire Supreme Court has recently opined that substantial completion means having largely, but not necessarily all components, of the structure completed. In this case, the structure is operating as it should and housing equipment and vehicles. The issue is that the final permit was not in place when the structure was completed.

Attorney Hartigan stated that the second prong of this factor is that this was an innocent mistake. The applicant hired a surveyor to layout the location of the structure. The applicant had the Town Building Inspector review the site. The foundation was then poured because it was getting close to winter. It is a reasonable mistake that her client received a building permit in April, but work did not start until October, and this was a two factor building permit. There was a mistake in reading the pins and a mistake of not obtaining the second structure building permit. The structure was not constructed square to the street, as this is a corner lot. The encroachment is approximately 73 s.f. in the front yard, and 151 s.f. on the side yard. This was a miscalculation by the contractor, not ignorance of the law and failure to comply with obeying the setbacks.

Attorney Hartigan stated that there is no nuisance in this case. Nuisance is defined by an encroachment that endangers health, safety, peace, and enjoyment of the community or the neighborhood. The question is if the encroachment substantially and unreasonably interferes with the use and enjoyment of others' property. There are no nuisances that arise from this item. The garage was a permitted structure. There is no threat from the encroachment and there is no danger to the health, safety, peace, and enjoyment of the community of the neighborhood. An appraiser's opinion detailing that the encroachments do not rise to the level of a nuisance was submitted.

Finally, Attorney Hartigan stated that there is a high correction cost. The cost of correction far outweighs any public benefit that could be gained. It would be inequitable to require the removal of portions of the garage based on the small encroachments. Exhibit C shows a scope of work estimate of approximately \$70,000 to correct this.

Board Questions:

Mr. Lanphear asked Mr. C. Sullivan if the building permit makes it clear that this was for the foundation only. Mr. Sullivan stated that there are large letters on the permit that states that a certified plot plan needs to be submitted. Mr. Dumont agreed that the permit states "Foundation Only" at the top.

Bradford Baker, applicant, stated that he received the permit by email and forwarded it to his contractor. He believed the contractor knew what he was doing. Mr. Baker stated that he self-reported the issue as soon as he realized it. He noticed this when he went to obtain a framing permit.

In response to a question from Mr. Lanphear, Mr. Baker explained that the contractor who poured the concrete was the same person who erected the steel for the structure. There was a six month gap between construction periods. There was a rush to complete the project. There was no intent to try to skirt the rules.

Mr. Sakati asked the height of the structure. Mr. Baker stated that this is 25' at the peak. He has not spoken with the contractor in months but did make the contractor aware of this issue. There were multiple sets of pins. On the 2' side, he believes the measurement was made incorrectly. The front work was apparently measured off the wrong pin. The contractor has stated that filing action against him would ruin him. The concept of having to undo this work and complete it with another contractor is stressful. The estimate for the correction cost was from the original contractor.

Mr. Sakati asked the intended use of the structure. Mr. Baker stated that this will be used for storage and vehicle parking. The open part of the garage will face the rear of his property. The front of the garage will be finished to look similar to a barn. This will be a custom built front façade.

Mr. Sakati stated that the garage is located 30% into the front setback, which is significant. The side setback encroachment is also significant, though the neighbor has stated that they are not concerned with it. The size of the structure seems to magnify the issue. Attorney Hartigan noted that it is not the full front of the building, but only a portion of it.

Mr. Lyko stated that it appears the owner carried out the permit process correctly. The mistakes were made by the contractor, and the owner immediately self-reported the issues once discovered. The structure was approved in terms of height and size. The Board should be reviewing the foundation only. The corner is only just barely over the front setback. This appears to be an innocent mistake.

Mr. Dion asked to receive public comment either in favor, neutral or opposed from the public at 7:31 PM.

Public Comments in Opposition:

James Crowley, 4 Fairway Drive, stated that the foundation permit was issued after the as-built plan was submitted. On March 27th, new evidence was presented in terms of the assessor's letter. The third requirement of RSA 674:33 is that any dimensional violation must not constitute a public or private nuisance, diminish the value of other properties in the area, or interfere with or adversely affect any current permissible future uses of nearby properties. The original lawyer's letter relies on the Zoning Ordinance definition of nuisance. The Hudson Zoning Ordinance is notably deficient in establishing clear criteria for acceptable architectural designs in residential neighborhoods. This deficiency affords property owners discretion of design of residential structures within required building setbacks. Consequently, the public has little legal recourse to demand designs that maintain the character of existing neighborhoods. He previously supplied pictures of existing detached garages to demonstrate comparisons to what was erected on the property in question. The appraisal letter, dated February 25, 2025, was issued by the applicant's lawyer to counter argue and obtain a rehearing. The metal garage on the property in question is not compatible to the surrounding neighborhood. In the Hudson Zoning Ordinance, a structure with a footprint of 200 s.f. or less is required to be located behind a residential dwelling. However, this 1,521 s.f. footprint structure was allowed to be in the front yard if it had no setback violations. This case highlights significant gaps in the Hudson Zoning Ordinance that warrant future revisions. While the appraisal letter references other setback issues within the neighborhood, it fails to substantially support these examples. The letter provides only two examples to justify the claim of no property value diminution. The property at 114 Wason Road has no house on it and the garage is located over 45' from the front property line on the 1.27 acre lot. There are no setback violations. The property at 110 Barretts Hill Road features a garage well behind the house and over 150' from the property line. Both examples are situated on collector roads with high volumes, differing dramatically from Fairway Drive, a rural road devoid of through traffic. The Fairway Drive neighborhood consists of approximately 80 homes with a distinct rural character and having an assessed values more than double the examples given in the appraiser's letter. Higher valued properties attract buyers who prioritize neighborhood quality and character. The appraiser's analysis is fundamentally flawed. He requested that the Board find that the evidence provided by appraiser fails to meet the burden of proof required under criterion C.

Criterion A states that the violation was not noticed or discovered by the current property owner, owner's agent, representative or municipal official until after the structure was substantially complete. The evidence attempts to find that the structure was substantially complete by aligning it with the International Building Code simplified definition. However, this interpretation should not overshadow the issue of the established permitting requirements. The lawyer stated that the applicant is currently storing vehicles and materials in the garage, as per its intended purpose, in order to justify the determination under this criteria. However, this highlights a direct violation of the permitting regulations. The foundation permit states that no building shall be occupied or used until a final inspection is performed. The Fire Department's comments in the April 24th Board packet note permitting deficiencies, such as that the structure was built without a building permit and inspections are required. At the January 23rd Board meeting, the property owner admitted to possessing a printed copy of the foundation permit and read its conditions. It is unclear how the homeowner can claim ignorance.

Regarding criterion B, at the Board's March 27th reconsideration hearing, there was discussion regarding the foundation location issues. The RSA defines no threshold of severity in terms of values and percentages of the measurement area, but rather that they occurred and the reason for

it. It appears the property was well staked and this was well documented. It seems highly suspicious that the errors were completed by mistake.

Rita Banatwala, 29 Fairway Drive, stated that the structure is not a gambrel, as stated; it is a Quonset hut. The setbacks need to be honored. The structure is 25' tall, so a 7' encroachment makes a difference. The additional space in the front of the garage would allow for landscaping and fencing. In terms of the issue being discovered too late, the enrichment was not found until the foundation pad was completed, and the building arches had been erected. This is still a mistake made that needs to be fixed. It has not been discovered too late as the inspection has not yet happened. The materials for the project were stored in the yard for a long time. The excuse to get these items out of the yard before winter does not make sense, as they sat through multiple winters previously. The foundation permit is clear that the structure needs to be inspected prior to building. The permit was granted for owner construction and so the owner is responsible, not the Town or contractor. This is a huge nuisance for the neighborhood as it stands. The use of the structure has changed. It was previously stated that the structure would be used to store equipment, but it is now also being used to house vehicles. There were previously vehicles and a tent on the property, which are also violations and a nuisance. Fixing this issue, unfortunately, does have a high correction cost, but the owner brought this on himself. The structure is diminishing neighborhood property values. Construction on the structure was continued after the owner heard from the Town, violating the Town's request to halt. This does not meet any of the requirements for an equitable waiver.

Richard Speer, 22 Fairway Drive, stated that he lives directly across from the property in question. The structure impinges on the setback by 25%. The letter submitted by the owner to try to show a lack of any nuisance compared the garage to other Quonset huts, but the examples are not located in residential communities like Fairway Drive. The supposedly comparable structures are not the same size as the garage in question. The one on Wason Road is approximately 30'x30' which is 46% smaller than the garage in question and 60' away from the road. These are not comparable examples. The appraiser mentioned there was not an impact to neighborhood homes, but this is a false logic. For a structure that is 40'x25', a 7' encroachment closer to the road is significant. This has a significant impact on the value of the homes in the neighborhood. Regarding there being a significant cost to fixing the issue, this is relative. The 23 Fairway Drive property is one of the largest in the neighborhood. The owner had plenty of space to locate the structure where it would not be offensive, such as behind the house. The cost of fixing the cement is not that significant.

Lynn Ashworth, 25 Fairway Drive, expressed concern that the owner's lawyer presented new evidence on this case, requiring the Board to meet again. The new evidence was a traffic study. The only traffic down Fairway Drive is residents, mail, and delivery drivers. She asked how a traffic study has bearing on this case. She witnessed the structure being built and believes it was mostly done by the owner himself. In terms of beautifying the structure, she does not believe this will be done, based on the rest of the owner's property.

Edward Thompson, 22 Burns Hill Road, stated that approving an equitable waiver in this case would set a bad precedence. The hardship in this case is of the applicant's own doing and was not brought on by the Town. The encroachment into the front setback is nearly 8' or 27%. The fact that the structure was erected without a building permit displayed gross negligence to the zoning process. The applicant was within his legal right to hire an attorney to argue this case.

Not Official until reviewed, approved and signed.

Approved 10/23/2025

The Board represents the Town and is within its rights to enforce the zoning laws. The criteria for an equitable waiver have not been met. He read from the decisions sheet of January 23, 2025. Although a foundation permit was pulled, a building permit for this structure was not. Therefore, the process was not followed. It was determined that the dimensional error would have been discovered before the structure was built on the foundation. There was a failure of the owner to not inquire or not understand the ordinance. This was not an innocent mistake on the part of the contractor. Measurement checks should and could have been taken to ensure the placement was correct. The foundation and structure in the front yard setback of approximately 30% is significant and considered a nuisance to abutters that live within the immediate proximity. All Board members agreed that there would be a high correction cost, but that the cost might have been less if the building permit process was followed. Mr. Thompson stated that Mr. Lyko was only recently seated to the Board and this is very this is his first meeting. Mr. Lyko was not on the original case, and the timing is curious. He would like assurance that Mr. Lyko does not have an acquaintance with the applicant. Mr. Thompson asked the Chair to make sure that Section 143-9, items 1 and 2, of the bylaws are carried out – that the Chairperson shall allow non-sitting alternates, the Select Board Liaison if present and the Zoning Administrator or his or her replacement, to ask questions and give input if they so desire; and that the Chairperson shall declare the matter before the Board and the sitting members present who are voting will raise any further questions they may have and deliberate all concerns in order to reach a decision on the request. Finally, Mr. Thompson read a letter addressed from Scott Wade (1 Fairway Drive), dated January 21, 2025, in opposition of the applicant's waiver request to grant equitable relief.

Mr. Lyko stated that he is disgusted by the accusation made against him. He does not know the applicant personally but has watched previous Board meetings regarding this case.

Applicant Representative Rebuttal of Public Comments:

Attorney Hartigan stated that this is a new hearing, so prior submissions are not applicable. This case only deals with the encroachment, not the entire building. The appraisal information is an expert opinion. There has been no contrary expert opinion provided. The point of an equitable waiver is for relief from a violation, specifically for dimensional requirements. There is no hardship issue in this case. The encroachment was found after the garage was constructed. The existing concrete was done by the book, but the contractor put it in the wrong spot by 7' too close to the road and 2' to the side. Once the encroachment was determined, there was no additional work done. The type of building and its potential use are not before the Board tonight. Regarding the submission of a traffic study, traffic is part of the health, safety, and welfare of the Town, which is part of the nuisance discussion. As the neighbors have stated, there is not a lot of traffic in this area, so having the structure a bit closer to the road does not pose an issue for health, safety, or welfare. The error is not in the owner's understanding of the ordinance. The error is the measurement of the setback. The installation was completed by contractors, though the owner's sons did help with tightening the screws to speed along the process.

Board Questions:

Mr. Sakati asked Attorney Hartigan to define the duty of candor of a professional lawyer. Attorney Hartigan stated that she did not understand the question. Mr. Sakati stated that he would leave the question alone.

Mr. Dumont clarified that the certified plot plan would only occur once the structure was in place. It is not possible to get a certified plot plan until the structure is in the ground. The pins are

removed as things are set for the foundation. The structure itself is not why this item is in front of the Board. Attorney Hartigan stated that the building itself does not cover the entire area of the foundation and is slightly further back in the encroachment.

Mr. Sakati asked when the Town renders an opinion that a structure is consistent with the character of the neighborhood. Mr. Chris Sullivan stated that this is considered right away in the process by everyone in the Department. Attorney Hartigan stated that this was carried out in this case early on. Mr. Dumont stated that this typically involves the use of the structure, not the building type. Attorney Hartigan stated that the architecture and size were considered by the Town and based on comments, there was a redesign. This was the only location on the lot that could fit the structure. Mr. Sakati stated that the Town seemed to lose its ability regarding what was built on this lot. It appears some of the steps were missed. Attorney Hartigan stated that her client and the Town spent months discussing the structure. The pins were set, and the concrete was thus poured incorrectly. The structure would have otherwise looked the same as it currently exists.

Mr. Dumont noted that two of the pictures submitted regarding character of the neighborhood showed garage structures in the front yard of the properties, similar to the location of the one in question.

Mr. Lanphear asked why the contractor was not called back sometime between April-October after it was discovered that the measurement was off by 2'. Attorney Hartigan stated that this was not discovered until after the certified plot plan was obtained. Mr. Lanphear stated that the owner, as the GC of the project, should have been told by the contractor that things were moved over by 2'. Attorney Hartigan stated that the forms were 2' over. Mr. Baker stated that he was not present when the 2' error was made. He was unclear how or when the mistake was made.

Mr. Dion asked for a second round of public comments.

Follow-up Public Comments:

James Crowley, 4 Fairway Drive, stated that there must have been prior knowledge by the owner/applicant of the construction process and/or permitting. There were pins from a licensed land surveyor on the property and it is unclear how these were missed. The owner should have gone to the contractor regarding how the mistake occurred. There should have been a recourse for the contractor to fix the mistake. The public should not have to absorb this mistake.

Rita Banatwala, 29 Fairway Drive, noted that the permit was granted for owner construction. Thus, the owner is the GC and responsible for those he hired and the job they completed.

Mr. Dion closed the public comment period at 8:38 PM

Attorney Hartigan noted that a member of the Board lives in the neighborhood and it is unclear if this is a conflict of interest. Mr. Sakati stated that he lives at 11 Fairway Drive, six acres away from the property in question. Board members take an oath before sitting on the Board. He is not an abutter to the property in question. Asking him to recuse himself from this case would be a direct question as to his objectivity about the case. He reviewed the criteria for a recusal. Mr. Lanphear and Mr. Dion stated that they did not see a need for recusal.

Mr. Sakati asked Mr. Dumont his opinion. Mr. Dumont noted that he is not a voting member on the Board. Mr. Sakati again asked for his opinion. Mr. Dumont stated that optics matter and he would have recused himself, if in a similar position. The matter of potential conflict should be considered by the Board member in question and those sitting on the Board. He does not disagree with Mr. Sakati's ethics or duty to the position. Mr. Sakati stated that the RSA on this item is simple.

There was consensus on the Board that Mr. Sakati could sit as a voting member for this case.

Board Discussion and Deliberation:

The Board reviewed each criterion for the Equitable Waiver of Dimensional Requirement.

a. Discovered Too Late

Mr. Lyko stated that this was discovered after the concrete was poured by mistake in the wrong location. Mr. Sakati stated that the complicating factor is that the owner chose or was willfully ignorant to create the conditions for the error. Mr. Dumont stated that, with a certified plot plan, the foundation is already in the ground. In this case, the error was discovered too late. Mr. Sullivan agreed.

b. Innocent Mistake

Mr. Lyko stated that the applicant everything correctly in the process up until the point that the error was made. This was an innocent mistake made by a contractor. Mr. Sakati stated that if the problem would have been caught earlier, it would have been a less expensive fix. The 7' is significant due to the size of the structure. He would have liked to see a presentation regarding what could be done to mitigate the issue. There is usually a fundamental problem when issues like this are contentious. This error occurred due to ignorance and a mistake not to inquire further by the owner.

Mr. Lanphear stated that the delay in building should have led to a second check on the location of the forms. This would have been a cheap fix. Mr. Dumont stated that not checking the form may have been the mistake. Mr. Sullivan stated that this was an innocent mistake to a point. Surveyors are not cheap to come recheck locations.

c. No Nuisance

Mr. Sakati stated that the Board has a responsibility to review the expert's submitted documents. There seem to be a lot of caveats in the document. Mr. Dion stated that this case only deals with the location of the structure. This case is not about the building's height and/or design. Mr. Sakati stated that these items matter because the structure is so imposing. If the structure were located in the correct spot, it may be less imposing.

Mr. Lyko stated that, as the Board is to be reviewing the foundation over the setback, he does not believe there is a nuisance to the 7' of encroachment. Being 7' closer will not diminish abutting property values. There are no traffic/safety issues to the encroachment. This has nothing to do with the height of the structure. He stated that he does not believe the structure being moved back 7' would make it less imposing.

d. High Correction Cost

Mr. Sakati stated that the correction cost is high, but the Board also needs to consider if this outweighs the impact to the neighborhood. Mr. Lanphear stated that the correction cost could be less if the error was discovered earlier.

Mr. Sakati moved to deny the application, duly seconded by Mr. Lanphear.

Board Speaking on Each Equitable Waiver Criterion:

Mr. Sakati spoke to his motion. The structure was installed without a building permit. It was determined that a building permit would have given the owner a chance to catch the dimensional error sooner, making it easier to remedy the situation. There was a failure by the owner to inquire or understand the ordinance. Although a foundation permit was pulled, a building permit for the structure was not, and therefore the process was not followed. The dimensional error likely would have been discovered beforehand if the building permit had been pulled. There is an imposition due to the foundation and structure being located in the front setback, by approximately 25%-30%. This is a nuisance to abutters and near abutters. It is difficult to believe there would not be a diminution of value of surrounding properties. There would be a high correction cost.

Mr. Lanphear echoed Mr. Sakati's comments. The foundation permit was pulled, and it was the owner's responsibility to carry through the process. This is not an innocent mistake as the permitting process was not followed. The permit is clear on how it should be followed. The structure being located in the setbacks is a nuisance, as spoken to by some neighbors. This will effect some neighboring property values. There would be a high correction cost.

Mr. McDonough called for the vote: Mr. Sakati –to deny; Mr. Lanphear –to deny, as stated.

Mr. Lyko – to grant

Mr. Lyko stated that the mistake was discovered too late, once the concrete was already poured. This was an innocent mistake, as the contractor poured the concrete incorrectly. Allowing one corner of the structure to be 7' over the setback is not a nuisance to the neighborhood and will not diminish nearby property values. There would be a high correction cost.

Mr. Brendon Sullivan – to deny

Mr. B. Sullivan stated that there were opportunities to find the mistake earlier. This leads to it not being an innocent mistake. This error is a nuisance and the 7' make a difference. The high correction cost does not factor into the decision.

Mr. Dion – to deny

Mr. Dion stated that the owner found the mistake when the paperwork was submitted. This was not an innocent mistake. The onus was on the owner, functioning as a GC, to understand where the forms should be placed. A 7' encroachment is a gross mistake and almost appears to place the structure as though it should have been in that position. There was significant testimony heard from neighbors that there is a nuisance of the building being almost 30% within the setback. This is contrary to other structures in the neighborhood. The garage should not be located as close as it is to the street, especially with a large backyard. There would be high correction costs.

Vote: 4-1-0 motion carried to deny the Equitable Waiver of Dimensional Requirement.

The Board took a brief recess.

NEW HEARINGS:

2. **Case 191-173 (06-26-25):** Edward and Christine Curran, 6 Merrill St., Hudson, NH requests a variance for a proposed attached 12 ft. x 24 ft. single-bay garage addition with room above which encroaches 0.91 feet (10.92 in.) into the side yard setback leaving 14.09 feet where 15 feet is required. The existing single-family structure is nonconforming due to lot size and frontage, requiring a variance for any expansion. [Map 191, Lot 173, Sublot-000; Zoned Residential-Two (R-2); HZO Article VII: Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements; and HZO Article VIII: Nonconforming Uses, Structures and Lots: §334-3 IA, Alteration and expansion of nonconforming structures]

Mr. Chris Sullivan read the Case into the record and referred to the Zoning Administrator's Staff Report.

Applicant Testimony:

Edward and Christine Curran, applicants, stated that a surveyor found that the back corner of the garage addition would encroach on the side yard setback of the property. If this is moved, he will not be able to fit his antique car into the garage. The lofted room over the garage is proposed to allow for necessary medical equipment. Regarding the five criteria: the garage will help to decrease clutter as well as improve the property value. Many of the neighbors have a two car garage with 10' doors to accommodate two cars. The existing garage only has an 8' and their existing cars cannot fit through this width. A larger bedroom to accommodate the necessary medical equipment would be preferred. The addition will help increase the property value as well as increase taxes for the Town. The proposal is to allow for a larger car to access the garage. The garage space without the variance will not be able to house the car in question. The request is for an 11" variance, to hold 4.8 s.f. of garage structure. The garage cannot be moved forward or backward due to other setbacks and requirements.

Board Questions:

Mr. Dumont stated that there does not appear to be anywhere else on the property to locate the structure.

Mr. Sakati asked the applicants if they had conversations with their abutters. The applicants responded yes, that they are all for it.

Mr. Dion asked to receive public comment either in favor, neutral or opposed from the public at 9:20 PM.

Public Comment in Favor of the Application:

Todd Boyer, 2 Merrill Street, stated that the applicants deserve this proposed structure and variance. This is not contrary to the ordinance. The spirit of the ordinance is maintained as this will look like every other house in the neighborhood. The surrounding property values will increase. Strict conformance with the ordinance will impact the applicant's quality of life.

Mr. Dion closed the public comment period at 9:22 PM

Mr. Lanphear moved to grant the Variance, duly seconded by Mr. Sakati.

Board Discussion and Deliberation:

Mr. Lanphear spoke to his motion. Granting this Variance is not contrary to the public interest. It will conform with the area, as other houses in the neighborhood seem to have two car garages. This is a good location for the proposed structure and it will not create any public safety problems. The proposed use will observe the spirit of ordinance. Substantial justice will be done, as it will allow for improvements to the health of the owner. The proposed use will not diminish the value of surrounding properties. The applicant established the literal enforcement of the provisions of the ordinance. This is the only reasonable place on the property for the proposed structure.

Mr. Sakati stated that he proposal is not contrary to the public interest. It does not alter the essential character of the neighborhood. The Board heard from an abutter that the structure will blend in with the neighborhood. The proposal will enhance the value of the property. Substantial justice will be done by enabling the applicant to expand the use of the dwelling. The proposed use may actually enhance abutting property values. Literal enforcement of this provision would result in an unnecessary hardship to the applicant.

Mr. McDonough called for the vote: Mr. Sakati – to grant; Mr. Lanphear – to grant; as stated.

Mr. Lyko – to grant

Mr. Lyko stated granting the Variance will increase property values and will not threaten the neighborhood. The proposal is in keeping with the spirit of the ordinance, as the encroachment is barely over the setback line. Substantial justice will be done as the owner needs a place to store his car and a new room for his medical equipment. The proposal will not decrease property values and could increase them. Literal enforcement would create a hardship as there is not much other space on the property for the garage. This is a reasonable use.

Mr. Brendon Sullivan – to grant

Mr. B. Sullivan stated that this will not affect the neighbors. The property owner will get health benefits and a place to store his car. The proposal will not diminish property values. It will enhance property values. There is no unnecessary hardship.

Mr. Dion – to grant

Mr. Dion stated that this will not change the character of the neighborhood. Other houses in the neighborhood have similar sized garages. The proposal will increase the safety for the owners themselves. Substantial justice is done, and there will be no harm to the general public. There will be no diminution of property value. There is a slight unnecessary hardship, as this is a large property, with the house situated at a front corner instead of in the middle. Pushing the garage forward or back would cause unnecessary costs and look odd. This seems to be the best location for a garage and is only a few inches over the setback. This is a reasonable proposed use.

Vote: 5-0-0 motion carried unanimously to grant the variance.

3. **Case 165-050 (06-26-25):** Edward and Joyce Welsh, 38 Campbello St., Hudson, NH [Map 165, Lot 050, Sublot 000: Town Residential (TR)] requests two (2) variances as follows:
- A. **Garage 1 (North side):** A variance for a proposed detached 36 ft. x 28 ft. garage addition which encroaches 10 feet into the front yard setback, leaving 20 feet where 30 feet is required, [1-IZO Article VII: Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements]
 - B. **Garage 2 (South side):** A variance for a second proposed detached 36 ft. x 28 ft. garage addition which encroaches 3.3 feet into the side yard setback and 10 feet into the front yard setback, leaving 11.7 feet and 20 feet respectively, where 15 feet and 30 feet are required. [HZO Article VII: Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements]

Mr. Chris Sullivan read the Case into the record and referred to the Zoning Administrator's Staff Report.

Applicant Testimony: Variance A - Garage 1 (North side):

Ed Welsh, applicant, stated that he was previously before the Board 2.5 years ago in order to build a slightly larger house with a garage. That idea was later changed to only build a garage, but the original variance had expired. The existing house is non-conforming, as it is only 15' from the road. The request is to build a structure 20' from the road, which will be less non-conforming. The two different variances are for a car and motorcycle garage, and a watercraft garage. He reviewed the variance criteria. The neighborhood is characterized by homes with short front yards with less than the required setbacks. This would be in keeping with the neighborhood. He chose a 20'x20' garage to allow for a car to be parked in the driveway. Pushing the garage further back could be a safety concern, as the nearby river seems to be eroding. The proposed use of the garages is for storing vehicles, boats, equipment, etc. This is well within the spirit of the ordinance for single family home in a residential area. This does not conflict with the explicit or implicit purpose of the ordinance, nor does it alter the essential character of the neighborhood. In terms of substantial justice, garages are almost necessities in New Hampshire, especially in the winter. Substantial justice would be done by being able to park cars in the garage to avoid exacerbating his VA service connected disabilities. The proposed garages should raise the value of surrounding properties, as they will look nice and remove vehicles and equipment currently stored on the lawn. In terms of hardship, one special condition is that the property is along the Merrimack River, making it subject to RSA 43-B, Shoreland Water Quality Protection Act. This covers all the land within 250' of the River and his property is 145' from the river. The Act requires that the first 50' are protected shoreline, which is approximately 1/3 of the property. If the garage were moved back to the 30' line, he would be left with almost no backyard at all. The Act also requires that only 20% of the rest of the property be developed structures or permeable surfaces. He will pull a driveway permit for the project. The top garage will be used for cars. There is currently a large driveway leading to the area proposed for the second garage, but he plans to get rid of that driveway as it may not be needed and may put him over the surface calculation. He plans to work around the well and sewer line for the project.

Board Questions:

Mr. Lanphear suggested one long, deep garage. This would create less impact and structure on the property. He asked about the proposed second floor. Mr. Welsh stated that this would be used for storage.

Mr. Sakati asked the applicant if he talked to the abutters. Mr. Welsh stated that he spoke with some of the abutters and heard no concerns.

Mr. Dion discussed the garage to the north within the street side setback. The streets in this area are quite narrow, and the garage will be right on the outlet of Merrimack Street. This could be a safety concern due to the further reduced setback and the narrow street. On an icy day, someone could plow directly into the garage. He suggested pushing the garage further from the setback. The hardship seems a bit self-induced, as there are other places on the property to site the garage. Mr. Welsh stated that his worst case scenario would be to have to move the garage back 30', as then the back of the house would be almost to the garage. Mr. Dion stated that there are shoreline limitations, but the garage could still be shifted further back and into the property. Mr. Welsh explained that this would cause a loss of the backyard space. It would make him nervous to be closer to the edge.

It was noted that the foundation of the backend of the garage should be deeper. Mr. Dion stated that the edge of the shed is where the property falls back. The garage could have been pushed further in and not required a variance. This is not a hardship of the property; it is that the owner does not want to lose space in the backyard and wants the additional garage. Mr. Welsh stated that it is unclear how the garage could be built if pushed further in.

Mr. Welsh explained that the existing house is within the setback. Mr. Dumont noted that much of the neighborhood was built out prior to the zoning and many of the houses are within the setbacks and that he understands the safety concern. The proposal is to try to match the existing house. The garage in the proposed location could save the house from being hit on an icy day.

Mr. Welsh stated that, the longer you make the driveway, it takes away more impervious surfaces. Then he will have to lose it from somewhere else. Mr. Chris Sullivan suggested that the driveway could be constructed with pervious pavers.

Mr. Welsh asked about pushing the garage back 5' instead of the originally requested 20' variance. Mr. Dion stated that this would have to be considered by the Board, if requested by the applicant. Mr. Welsh stated that he would like the application to be considered this evening.

Mr. Lyko asked about traffic near this property. Mr. Welsh stated that no one is living at the property next door and so there is not much traffic in the area. Mr. Lyko stated that this is a low density location and 20' will likely be enough space, even on an icy day. Aesthetically, it would look better for the garage to be in line with the house, instead of staggered back.

Mr. Sataki expressed concern regarding the south side setback being encroached upon in terms of future owners of the abutting property.

Mr. Lanphear noted that each of the garages would have three doors, totaling six garage doors for the front of the property. Mr. Welsh stated that the garage on the north will face the road, and the other will face the water. The garages are not currently proposed for accessory dwelling units at this time.

Mr. Lyko asked about utilities inside the garages. Mr. Welsh stated that the garage on the north may have a bathroom inside it.

Mr. Dion asked to receive public comment either in favor, neutral or opposed from the public at 10:00 PM. Seeing no public comment, Mr. Dion closed the public comment period.

Board Discussion: Variance A: Garage I (North side).

(1) not contrary to public interest

- Mr. Lanphear stated that the lot layout restricts what could be done on it. The proposal will not threaten the public health, safety, or welfare.

(2) will observe the spirit of the Ordinance

- No comments by the Board.

(3) substantial justice done to property owner

- Mr. Lyko stated that this will allow the owner space to store his items. This location will be far enough back from an eroding river.
- Mr. McDonough stated that the neighborhood already has setback violations by design, and the proposal does not go against that.
- Mr. McDonough stated that there was no negative public comment presented.
- Mr. McDonough stated that requiring the applicant to push the structures further back could lead to issues with erosion in the future.

(4) will not diminish surrounding property values

- Mr. McDonough stated that well-constructed garages should increase the value.

(5) hardship

- Mr. Lanphear stated that the layout of the property is the hardship.
- Mr. Sasaki stated that the existing structure is far forward on the lot already and the proposal will keep with the continuity.

Mr. Lanphear moved to grant Variance A, duly seconded by Mr. Sakati.

Board Speaking on Each Variance Criterion:

Mr. Lanphear spoke to his motion. Granting the variance will not be contrary to the public interest and welfare. It will not hurt or injure anyone in any way. It will improve the neighborhood. The proposed variance observes the spirit of the ordinance. It will be a nice addition to the neighborhood. Substantial justice will be done for the property owner by granting this variance. The property's setbacks and shoreline protection area makes it difficult to place the garage elsewhere. The proposed use will not diminish property values. The property has a hardship in terms of the way nearby houses were built.

Mr. Sakati stated the variance will not alter the character of the neighborhood, nor will it threaten public safety or health. Justice would be done due to the non-conforming nature of the property. There will not be a diminution of values. The property has some complications due to the river and the positioning of the house itself. Literal enforcement is not appropriate in this case.

Mr. McDonough called for the vote: Mr. Sakati – to grant; Mr. Lanphear – to grant; as stated.

Mr. Lyko – to grant

Mr. Lyko stated that granting the variance will not be contrary to public interest. Most houses in this area have similar setbacks and garages. This will not threaten the public health, safety, or welfare. There are difficult setbacks on the property due to the river. Substantial justice will be done. The house is already nonconforming, and the variance will help the owner. Adding garages should increase the value of the house, which should increase the value of the surrounding properties. Literal enforcement would make it very hard for the owner to construct garages on the property as there is limited spacing for them.

Mr. Brendon Sullivan – to grant

Mr. B. Sullivan stated that granting the variance will not alter anything in the neighborhood. It may improve the neighborhood. Granting the variance does not threaten the public in any way. There is not much space on the property where the garage could be located. The garage will likely increase the value of the property. The unnecessary hardship is where else the garage could be located due to the river.

Mr. Dion – to grant

Mr. Dion stated that granting the variance will not threaten the public rights or safety. The proposal will keep with the essential character of the neighborhood. There is something to be said for having the garage closer to the street, in order to protect the investment from the river. This will not diminish the value of surrounding properties. The unnecessary hardship is a bit self-induced, but this is due to how the lot is laid out on top of current zoning restrictions. The area has low traffic, and this is a reasonable use.

Vote: 5-0-0 motion carried unanimously to grant the Variance A.

Applicant Testimony: Variance B - Garage 2 (South side):

Mr. Welsh stated that this garage will not change the character of the neighborhood. The garage is proposed 20' from the road, allowing for public safety away from the river and space to park vehicles. The proposal will observe the spirit of the ordinance as it will be used to store boats, kayaks, and equipment. This will help to beautify the area in keeping these items off the lawn. The garage will improve the value of the property. Keeping the garage further from the river is the best option for keeping the public safety and for the safety of the garage and property. This will look identical to the garage in variance A but open towards the river.

Mr. Dion asked to receive public comment either in favor, neutral or opposed from the public at 10:15 PM. Seeing no public comment, Mr. Dion closed the public comment period.

Mr. Lanphear moved to grant Variance B, duly seconded by Mr. Lyko.

Board Speaking on Each Variance Criterion:

Mr. Lanphear spoke to his motion. Granting the proposed variance would not be contrary with the public interest and welfare. The variance will not threaten the public. The proposed use will observe the spirit of the ordinance. The applicant will use the garage to store lawn equipment, watercrafts, etc. Substantial justice will be done for the property owner. The variance will not diminish the property value. The property has a hardship, as the applicant is only allowed a certain amount of coverage. The proposed use is a reasonable one.

Mr. Lyko stated that the requested variance will not be contrary to the public interest. The proposal will not threaten anything or cause any safety concerns. Substantial justice will be done for the property owner. There are not many other spots on the property to put the garage. The proposal will not diminish property values; it should increase property values. Literal enforcement would make it difficult to find another location on the property for the garage.

Mr. McDonough called for the vote: Mr. Sakati – to grant; Mr. Lyko – to grant; as stated.

Mr. Sataki – to grant

Mr. Sataki stated that the proposal will not alter the character of the neighborhood. It does not threaten public health. Substantial justice would be done due to the non-conforming nature of the property. There will not be a diminution of property value. The property has challenges due to the river and the positioning of the house itself.

Mr. Brendon Sullivan – to grant

Mr. B. Sullivan stated that this will not affect the public interest. This will make the neighborhood look more attractive. This will not diminish property values. Due to the location of the river on the property, this is the best place to put a garage.

Mr. Dion – to grant

Mr. Dion stated that the garage will not threaten public safety nor alter the essential character of the neighborhood. Most of the houses in this area are already close to the street. Substantial justice will be granted to the property owner. This will not diminish the values of the surrounding properties. The property itself, based on the position of the river and the existing setbacks, is a hardship. This is a reasonable use.

Vote: 5-0-0 motion carried unanimously to grant the Variance B. Mr. Dion reminded about the 30 day appeal period before building or obtaining building permits.

VI. REQUEST FOR REHEARING: None

VII. REVIEW OF MINUTES:

05/22/2025 edited draft Meeting Minutes

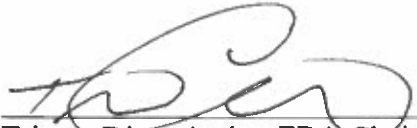
Mr. Lanphear moved to approve the meeting minutes of 05/22/2025, duly seconded by Mr. Sakati.

Vote: 4-0-1 (Mr. Lyko abstained), motion carried.

VIII. OTHER BUSINESS: Chris Sullivan stated ZORC will be starting up soon during the day around 3:00 or 3:30 PM. That's the plan and we will let all know when it happens. Mr. Sakati said he would like to participate.

IX. ADJOURNMENT: Motion made by Mr. Lanphear, seconded by Mr. Sakati and unanimously voted to adjourn the 6/26/2025 ZBA Meeting at 10:31 PM

Respectfully submitted,
Kristan Patenaude, Recording Secretary



Tristan Dion, Acting ZBA Chairman