



TOWN OF HUDSON

Zoning Board of Adjustment



Tristan Dion, Chairman Dillon Dumont, Selectmen Liaison

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MEETING MINUTES – MARCH 26, 2026 – Approved

I. CALL TO ORDER

Mr. Dion called the meeting to order at 7:04 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. ROLL CALL - ATTENDANCE

Mr. Dion asked the Clerk to call for attendance.

Full members present were: Tristan Dion, Tim Lanphear, Dean Sakati

Full members absent were: Todd Boyer

Alternate members present were: Zachary McDonough – Clerk, Brendon Sullivan

Others present were: Ben Witham-Gradert – Town Liaison, Dillon Dumont – Selectman Liaison

Remote attendance: Kristan Patenaude – Recording Secretary

IV. SEATING OF ALTERNATES

Alternates Zachary McDonough and Brendon Sullivan were appointed to vote.

V. PUBLIC HEARING OF SCHEDULED APPLICATION BEFORE THE BOARD:

Case 122-016 (03-26-26): Aaron Hudson, 659 Primrose St, Haverhill, MA, requests a variance for **5 Circle Dr., Hudson, NH** to build a proposed 36 ft. x 20 ft. detached garage which encroaches the front yard setback 16.4 feet leaving 13.6 feet where 30 feet is required. [Map 122, Lot 016, Sublot-000; Zoned Residential-Two (R-2); HZO Article VII: Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements]

Mr. Witham-Gradert read the Case into the record.

Applicant's Representative Testimony:

Aaron Hudson, 659 Primrose Street, Haverhill, MA and representing the Applicant, explained that there is a wetland which cuts directly through the center of this property, leaving approximately 85% of it completely unusable. Also, directly to the right of the proposed garage location is a septic pump system which runs directly beside the house, and a retaining wall. This makes it so that the garage cannot be attached to the side of the house. The proposed spot is literally the only place to place the garage. He has adjusted the garage size multiple times to make sure it is outside the wetland, off the septic system, and off the retaining wall. The

proposed location is behind an existing driveway and to the north of the house as far as possible without encroaching on the wetland. This leads to be request for a variance. His client is elderly and the intention is to allow a place to store vehicles in the winter.

Mr. Hudson reviewed the Variance criteria. There is already a paved driveway on the property. The location of the proposed garage is outside of the wetland buffer zone. There are other detached garages in the neighborhood. The garage will be set back behind the paved driveway. It will not impede the wetland, snow removal, etc. The property owner has approximately a 3/4 - acre lot that is mostly unusable due to a wetland. The proposed area is the only area to construct the garage. There are also a retaining wall and septic system closer to the house, so attaching it is not an option. The addition of a garage will only serve to increase the value of the property. There is a significant wetland buffer on the property. Additionally, there is a septic pump system and retaining wall directly abutting the house, preventing an attached option. The existence of the wetland buffer, the location of the septic system, and the existence of the retaining wall, all create an immense hardship to build an enclosed space to park vehicles. The majority of the property is rendered unusable due to the wetland that runs directly through the middle of it.

Board Questions:

Mr. Sakati asked if the applicant assessed how much it would cost to move or change the septic system. Mr. Hudson stated that this has already been changed once as there was a failed leach field on the front of the property. The only other place to put the septic system on the property is where it already failed, as it cannot be placed in the wetland. He spoke to a plumber about replacing it, which would likely cost approximately \$30,000-\$40,000. The excavation for a garage costs approximately \$25,000 so removal of a septic system would be much more than that and it is unclear where else it could be moved to.

Mr. Sakati asked for details about the retaining wall. Mr. Hudson explained that there is a path leading up to the house. At the bottom of that path, earth is built up in front of the house to make it at grade. The grade on the side of the house is lower, due to it being a walkout, and so there are retaining blocks holding the earth in place.

Mr. Dion asked about a path from the north side of the house. Mr. Hudson explained that the retaining wall is between the two marked sections, with paths from the north and west sides of the house.

Mr. McDonough asked the proposed height of the garage. Mr. Hudson stated that the garage will have standard 8'-9' walls with a standard pitch. The garage will not be finished or have a second floor. The garage will be the same color as the house and will have power to it to allow for garage door openers.

Mr. Dion asked if the Applicant evaluated placing the garage on the north side of the property. Mr. Hudson stated that there is not enough room in that area for a garage, and this would require removal of a number of trees. Mr. Witham-Gradert stated that he reviewed this further and there is perhaps a 3' gap between the edge of the buffer and the front setback on that edge of the property.

Mr. Lanphear asked about the number of vehicles on site. Mr. Hudson stated that there will be three vehicles parked on site. Mr. Lanphear noted that there is approximately 13.6' from the front of the garage to the road. A four-door pickup truck will not fit in that space and so would need to park elsewhere on the property.

Mr. Lanphear asked about the pipes in this area. Mr. Hudson explained that there is one pipe for the old leach field and one for the new leach field. The pump system runs under the walkway which comes from the side of the house. Mr. Lanphear asked if there might be a possibility to slide the garage over 10'. Mr. Hudson stated that he does not believe there is 10' available in that area. This would lead to a corner of the garage sitting on the retaining wall, adding approximately 6' of earth to level it. Mr. Lanphear asked about moving over 5' instead. Mr. Hudson noted that he cannot technically build a structure over the pump or in order to allow access to it. Mr. Lanphear asked if the pipe is located 5' away from the corner of the house foundation or closer to 2' away. Mr. Hudson explained that the leach field is in the front yard. The pipe runs underneath the walkway and underneath the retaining wall. The pipe is dead center between the house and the proposed garage location. Moving the garage over would place it on top of the pipe at least somewhat.

Donna Green, 5 Circle Drive and Applicant, stated that her current driveway can fit a pick-up truck.

Mr. Witham-Gradert stated that the plan shows a 13.6' measurement from the corner of the driveway to the nearest parcel bound. This is not where the driveway is located, due to the radius as this property has a curved front setback. The actual section where the existing driveway is located and is proposed to stay has notably more space. The depth of the existing driveway is approximately 28' deep at the nearest point. There is more than ample parking for a truck.

Mr. Sakati stated that the application mentioned other properties with detached garages in the area. He asked if these are in the neighborhood of this property specifically. Mr. Hudson stated that they are not adjacent to this property but in the general area.

Mr. Dion asked to receive public comment either in favor, neutral or opposed from the public at 7:27 PM.

Public Comments in Favor: None at this time.

Public Comments Neutral or Opposed: None at this time.

Seeing no additional comments at this time, Mr. Dion closed the public comment period at 7:28 PM.

Board Discussion and Deliberation:

Mr. Sakati stated that the wetlands create a uniqueness to the property. Alternatively, the garage is proposed fairly far into the setback, leaving only 13.6'.

Mr. McDonough stated that, in terms of the spirit of the ordinance, the proposal does not threaten the general public safety or welfare or cause any damage. It does not appear to obstruct visibility of the area. The only concern could be aesthetics of the neighborhood.

Mr. Dion noted that he does not believe this structure could be shoehorned into the backyard, as this would cause someone to drive over the existing septic system. Locating the structure elsewhere on the property does not seem reasonable.

The Board reopened public comment at 7:30PM.

Board Questions:

Mr. Sakati asked if the Applicant has discussed the proposed project with neighbors. Mr. Hudson stated that he discussed the project directly with the owners of 3 Circle Drive when he was considering designing a very narrow garage for single-file vehicle parking which would have stayed within the 15' setback. The owners of 3 Circle Drive were okay with that proposal, even against their existing fence. He believes those owners would be okay with the current proposal, as it is not against the property line. Those are the only nearby owners he directly discussed this with.

Mr. McDonough asked what grows in the wetland area. Mr. Hudson explained that this wetland is for runoff from the manmade pond behind the property. This is currently a dry creek bed with some grass in it. Mr. McDonough stated that the garage will not be blocking the aesthetics of this area. Ms. Green stated that the area is currently filled with junk and similar to a swamp. This wetland can only be seen from the other side of her property.

Mr. Dion asked about the character of the neighborhood. Ms. Green explained that there is not generally much traffic aside from the people who live there. This is not a thoroughfare that goes through to something on the other side. The road is a circle which comes back out next to her house, effectively a dead-end cul-de-sac. This is only a residential area.

Mr. Sakati stated that there appears to be a large pine tree to the right of the garage location. Ms. Green explained that this was removed, along with other trees, before she bought the house. Some trees will need to be removed for the garage placement. She had some trees removed for the installation of a solar system on her roof.

Seeing no additional comments at this time, Mr. Dion closed the public comment period at 7:35 PM.

Board Discussion and Deliberation:

Mr. Lanphear moved to grant a variance from §334-27 – Table of Minimum Dimensional Requirements: to construct a 36 x 20-foot detached garage which would encroach upon the front yard setback by 16.4 feet, leaving 13.6 feet of front setback where 30 feet is otherwise required, based on the written and verbal testimony of the applicant, duly seconded by Mr. McDonough:

Board Speaking on Each Variance Criterion:

- 1. Granting this variance will not be contrary to the public interest**
Mr. Lanphear stated that there will not be any conflict with the neighborhood
- 2. The proposed use will observe the spirit of the ordinance**
Mr. Lanphear stated that the proposed use will observe the spirit of the ordinance. It will not alter the essential character of the neighborhood. It will help the neighborhood and increase the values of surrounding properties.
- 3. Substantial justice would be done to the property owner by granting this variance**
Mr. Lanphear stated that substantial justice would be done to the property owner. The property owner has done their due diligence to determine the best placement for the garage. The Applicant was able to find a place for a double garage on the property with the existing constraints, including the wetland setbacks and leach field.
- 4. The proposed use will not diminish the value surrounding properties**
Mr. Lanphear stated that the proposed use will not diminish values of the surrounding properties.
- 5. Ordinance results in unnecessary hardship**
Mr. Lanphear stated that the old failing leach field, new tanks, and the pipe running to the front yard restrict the Applicant so that the only location for the garage is the corner of the property.

Mr. Lanphear – to grant

- 1. Granting this variance will not be contrary to the public interest**
Mr. McDonough stated the proposal will not harm the public or any of the neighborhood characteristics. Based on testimony of the owner, the garage would be in line with the neighborhood characteristics. He cannot see any harm to the public safety by building the garage.
- 2. The proposed use will observe the spirit of the ordinance**
Mr. McDonough stated that the proposal will be in the spirit of the ordinance. The Applicant is doing their best to maintain a setback. Based on the unique characteristics of the property, this is the most suitable location.
- 3. Substantial justice would be done to the property owner by granting this variance**
Mr. McDonough stated that the property has a unique feature in the nearby wetland which renders most of the property unbuildable. Other features of the property also limit the options for building a garage or any other structure. Granting this variance would provide the owners a benefit to use the property to its fullest extent and allow for vehicle coverage in the winter.
- 4. The proposed use will not diminish the value surrounding properties**

Mr. McDonough stated that the proposed use will not diminish the value of the property or surrounding properties. A garage such as the one proposed, if built well and maintained, can increase the value of the owner's property and make the neighborhood more appealing to everyone.

5. Ordinance results in unnecessary hardship

Mr. McDonough stated that enforcement of this ordinance would create a hardship for the owner. The property has several unique features that limit the buildable area. The related costs to relocate the septic pump or other features would be exorbitant and an unnecessary hardship to the owner. The proposed use is a reasonable one. The owner and builder have made all attempts to find a different location which better adheres to the ordinance. The proposed location is the best and most reasonable attempt at that.

Mr. McDonough – to grant

1. Granting this variance will not be contrary to the public interest

Mr. Sakati stated that he does not see any safety concerns or harm to the public interest.

2. The proposed use will observe the spirit of the ordinance

Mr. Sakati stated that this criterium deals with a conflict of the explicit purpose of the ordinance and the essential character of the neighborhood. The proposal will be a significant enough the intrusion into the setback that it could change the character of the neighborhood.

3. Substantial justice would be done to the property owner by granting this variance

Mr. Sakati stated that substantial justice would be done to the property owner as there are no other locations to place a garage on the property, whether it be attached or detached. The property is very constricted.

4. The proposed use will not diminish the value surrounding properties

Mr. Sakati stated that the proposed use will not diminish any surrounding property values.

5. Ordinance results in unnecessary hardship

Mr. Sakati stated that there is significant hardship due to the septic constraint, the wetland constraint, and the retaining wall constraint. However, as he could not come up with an answer for the second criterium, this defaults him to a position to not grant the Variance, regretfully.

Mr. Sakati – not to grant

1. Granting this variance will not be contrary to the public interest

Mr. Brendon Sullivan stated that there will be no conflict with the public interest.

2. The proposed use will observe the spirit of the ordinance

Mr. Brendon Sullivan stated that the spirit of the ordinance will be observed.

Not Official until reviewed, approved and signed.

Approved as edited 04/23/2026

- 3. Substantial justice would be done to the property owner by granting this variance**
Mr. Brendon Sullivan stated that substantial justice would be done to the property owner. The proposal will do no harm to the general public or other individuals.
- 4. The proposed use will not diminish the value surrounding properties**
Mr. Brendon Sullivan that the proposed use will not diminish values of the surrounding properties.
- 5. Ordinance results in unnecessary hardship**
Mr. Brendon Sullivan stated that enforcement of the ordinance would impose unnecessary hardship on the Applicant and the proposal is reasonable.

Mr. Brendon Sullivan – to grant

- 1. Granting this variance will not be contrary to the public interest**
Mr. Dion stated that the proposed use will not lead to any issues with the public interest or threatening public health or safety, based on the chosen placement of the garage.
- 2. The proposed use will observe the spirit of the ordinance**
Mr. Dion stated that, as far as the violating the explicit purpose of the ordinance, the front setback is made to prevent overcrowding and maintaining of sight lines. Some of the concerns mentioned by Mr. Sakati are relieved by the fact that this property is on a dead-end cul-de-sac. This is a wide-open neighborhood with not much going on. There is no traffic outside of the residents of the neighborhood. This lowers the risk level enough that he is comfortable with the structure as proposed in the setback.
- 3. Substantial justice would be done to the property owner by granting this variance**
Mr. Dion stated that substantial justice would be granted to the property owner in being able to build the garage in a manner that will not come at an exorbitant cost in having to install a massive retaining wall or do excessive work to the septic system.
- 4. The proposed use will not diminish the value surrounding properties**
Mr. Dion stated that this proposal will not diminish the value of surrounding properties.
- 5. Ordinance results in unnecessary hardship**
Mr. Dion stated that there is absolutely an unnecessary hardship on this property. The property has a unique layout and is on a cul-de-sac, leading to a radius to deal with. There are not typically round garages that can match the radius. This is coupled with the extreme encroachment of the wetlands which does not allow the Applicant to do much the property. The Applicant has done a due diligence to place the garage in the most optimal location while trying to take into account the setback itself. The proposed use is a reasonable one.

Mr. Dion – to grant

Vote: 4-1-0 (Sakati -NTG). Motion carried to grant the variance.

Mr. Dion reviewed the 30-day appeal period with the Applicant.

The Board took a ten-minute recess at 7:47pm.

The meeting resumed at 8:01pm.

VI. REVIEW OF MINUTES:

02/26/2026 edited draft Meeting Minutes

Mr. Lanphear moved to approve the meeting minutes of 02/26/2026, as edited, duly seconded by Mr. Sullivan.

Vote: 5-0-0 motion carried to approve the meeting minutes.

VII. OTHER BUSINESS:

- Review of the results of the March 10, 2026 Town Election Zoning Warrant Articles

Mr. Witham-Gradert reviewed the results of the Town Meeting Warrant Articles that will affect the Zoning Ordinance. These are live and in effect already. The bulk of the changes were in line with making Hudson's code compliant with the changes from the State. The first set of changes were to accessory dwelling units (ADUs). These included a mix of changes to comply and a few changes through ZORC. For Section 334-73.3, provisions under Subsection B, this allows ADUs to be detached from the primary dwelling. This is a State required change. The next meaningful change was in Subsection F which also comes from the State change. This is to reduce from four off-street required parking spaces, to two, as at the State level only one per unit can be required currently. In Subsection G, there is a discretionary change as the original Ordinance allowed for a maximum of 750 s.f. This has been expanded to 950 s.f. As part of that, the Ordinance retains that the principal dwelling for attached ADUs may not be reduced to less than 850 s.f. through creation of the new dwelling. In addition, the ADU may not be greater in size than the primary dwelling.

Mr. Dion asked about a situation where there is a tiny house for the primary dwelling, below 800 s.f., and an ADU is requested. Mr. Witham-Gradert explained that this would require a variance through the Zoning Board. The goal is to not allow someone to create a single family ADU which is larger than the existing house, as this is not in the spirit of what an ADU is meant to be. The goal is that the ADU remains subordinate to the primary dwelling.

Mr. Witham-Gradert stated that the rest of the provisions section largely remains the same. One cannot have multiple ADUs or create an ADU with a separate address. A new change is that the maximum number of unrelated persons may not exceed two per bedroom. This was a State change.

Mr. Dion asked if essentially two-family dwellings are allowed on every property in the State at this time. Mr. Witham-Gradert stated that there are a few minor requirements. For example, the owner of record still has to live in one of the structures. However, they can be detached and can

have separate utilities. The structures can have separate driveways. There can essentially be two independently functioning dwellings on the same parcel. The owner of record for the parcel must live in either the ADU or in the original dwelling. Mr. Lanphear asked how long this must be the case for. Mr. Witham-Gradert stated that this requirement is forever. There is some leniency for certain situations, but if someone is the only owner of record and moves out, while there is still someone living in the ADU, this would bring it out of compliance with the Ordinance. The intent is that there should not be someone renting out both units on a property. Any issues with this would likely be enforced via complaint.

Mr. Witham-Gradert explained that the second set of changes came from the State related to family daycare and family group daycare. Essentially, these uses have to be permitted everywhere. The Town used to have some restrictions through Special Exceptions, but the State has shifted these uses to be by-right in all zones. This is a push from the State to make childcare more affordable and available. There are State requirements to legally operate a daycare. This is still considered an accessory use through the Town. As long as the primary use is legal and permitted on the parcel, someone can include an accessory use, such as a daycare,

Mr. Dion asked if this could lead to items in front of the Board in terms of driveways or buildings being too small for the use. Mr. Witham-Gradert noted that hearings before the Board for accessory uses are rare. There may be additional anticipated code enforcement calls.

Mr. Lanphear asked about operating hours from the State for these uses. Mr. Witham-Gradert stated that he is unclear on this. There will need to be a period of transition as potential cases come before the Town for these uses. The changes were the minimum amount needed to come into compliance with the State. If this becomes problematic, it may be revisited with ZORC for a greater consideration of the rules. He does not believe that this will lead to many issues.

Mr. Witham-Gradert explained that the next item is a change in setbacks for the TR Zone. The Town has changed both the arterial collector and local roadway setbacks to 20', 10', and 10'. This is a reflection of the fact that most of the TR Zone is older and was built out early in Hudson's development. At that time, zoning restrictions were either much less stringent or nonexistent. Due to that, there is a fair amount of housing that is inherently non-compliant due to it being pre-existing, non-conforming. The intent is to bring those setbacks to match with the generally smaller sized parcels within this Zone.

Mr. Witham-Gradert stated that the next item has a lot of struck out text which was replaced with one sentence. It states that growth management practices and findings of fact shall be in accordance with the most recently adopted Master Plan. This section previously contained many quotes from the Master Plan and, in order to keep it up to date, staff was repeatedly updating it. In lieu of that, staff decided to remove the direct quotation-based references and simply reference the current Master Plan to avoid having the voters revote on an administrative update repeatedly. This is a housekeeping clean-up item.

Mr. Witham-Gradert noted that the Planning Board discussed a large-scale overhaul of the land use regulations. Ultimately, expenditure of funds for this would be decided on by the Board of Selectmen, but the Planning Board is on board with the idea. This would be comprehensive to

both planning and zoning regulations, as there are many sections which have not been touched in over a decade. Some parts are very out of date. For example, the telecommunications ordinance has not been changed in years and could be quite out of date with current practices. If this is approved by the Board of Selectmen, it will go out to bid through a Request for Proposal. This would be done by an external firm. He will share more news with the Zoning Board as he receives it.

- Training Session: Powers, Stipulations, & Re-hearings

Mr. Witham-Gradert explained that a copy of the presentation on this training session is available at the office in Town Hall. The intent is to take a deeper dive and understand why and how the Board does what it does. Also, to understand best practices for the Board. There are two different sections of State Code that regulate the Zoning Ordinance itself and the ZBA as a board, 674:16, and 674:33. RSA 674:16 deals with the authority to adopt a zoning ordinance. It permits what the governing body, in Hudson's case the Board of Selectmen, can adopt. This was last amended in 2025. This set all the rules for what a zoning ordinance may govern, alongside a set of exceptions, such as for home daycares, occupants per bedroom, parking spaces, and other types of demographic protections. It also explicitly lists some criteria for what the zoning ordinance is intended to govern, such as height, number of stories, size of buildings, lot sizes, occupiable percentage of lots, population density, and the location and use of building structures and land used for business, industrial, residential and other purposes. The last item incorporates a large section of the zoning ordinance and leaves a lot of power with the municipality to craft its own zoning ordinance to best serve the town.

Mr. Dion asked about the concept of spot zoning, as this language is broad and wide. Mr. Witham-Gradert explained that this delves into what the Board can do, as opposed to what it cannot do. However, the balance from the State comes from case law. Restrictions, such as spot zoning, are not generally covered here. Much of that comes from a logical determination.

Mr. Witham-Gradert stated that under RSA 674:16-2, the power to adopt the subdivision ordinance, allows for innovative land use controls, including but are not limited to the methods contained in 674:21. The bulk of these primarily affect the Planning Board, however some affect zoning, most notably open space developments, environmental characteristic zoning, and inclusionary zoning efforts. Open space developments come with special dimensional requirements, such as smaller lot sizes and smaller frontages in exchange for open space. Inclusionary zoning would be something similar to adopting a workforce housing ordinance or similar incentive programs. These items would not come before the Board for a variance request. Sections 3, 5, and 7 state that the ordinance can control timing of development, accessory uses on private land unless carved out by the State, accessory parking for vehicles, etc. There are a few other omitted sections not listed which generally reference other overriding authorities. In terms of changing the rules in Town, this is the body of legislation that governs how the Board can change those rules. If something is listed in the original list of things that a zoning ordinance may govern, it is safe to assume the Board can make a stipulation based on those.

Mr. Witham-Gradert stated that the next section is RSA 674:33. This is the set of rules that govern how to run a zoning board, how it determines cases, and what criterion can be used to

determine hardship. A few highlights are that it specifically talks about the forms of hardship and variance granting. For example, there is one alternative type, primarily for specific types of cases before the Board. While the State RSA sets the basic framework, this is a section where the body of case law from the New Hampshire court system comes into practice.

Mr. Witham-Gradert stated that the item next is RSA 674:33-I.(a). This deals with the powers of the zoning board. First and foremost, the Board is allowed to hear and decide appeals if it has been alleged that there was an error in any order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance. The Board is the appeal authority for those administrative actions. Section 2 includes the criteria for granting variances. These include that the variance will not be contrary to the public interest, that the spirit of the ordinance is observed, and that the values of surrounding properties are not diminished. These items A, B, and D are similar to a checklist. These are not the crux of the applicant's argument. Item C, while also not the crux of the argument, is less of a checklist and more of a value judgment from individual board members, regarding if justice is done. This is not something that can be measured or proven, but something each Board member personally has to decide. Item E is that literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. This is the crux of the argument, and the reason an applicant is before the Board. Determining hardship has evolved over the past century of zoning as a concept. At its core is the question of what reason this person has to require special permission to bend the rules. Within this section is the definition of hardship, which is that owing to special conditions of the property which distinguish them from others in the area. This includes a few tests. The first test has two prongs (A & B). Prong A is that no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property. This item speaks to that by waiving this this item, the Board would remove the point of the ordinance entirely and thus defeat the purpose of it. If so, this may be a reason not to grant. There is a question as to why applying the ordinance literally to the property in question specifically advances the public good. This is a value judgment that has to be made by the Board. Prong B is that the proposed use is a reasonable one. This is also a value judgment amongst Board members. One way to think of this is that, owing to the special condition of the property that distinguish it from others in the area, the proposed use is a reasonable one. If this question can be answered affirmatively, then ostensibly the use is reasonable.

The Board discussed examples of these that could be considered unreasonable. For example, a parcel in the TR Zone, which is densely packed, and a request to build a manufacturing plant or other industrial use. It may be inherently unreasonable to build an industrial use in a tightly residential area with small setbacks and a small parcel size. There may be no special condition of this property which would render this reasonable to grant. Mr. Witham-Gradert gave the example of the case previously heard this evening by the Board instead being a two-story garage or an industrial style garage with 13' doors. This may be considered unreasonable. Reasonableness as an argument has a lot of nuance to it. The Board has to make a value judgment as to if a request is reasonable and what conditions of the property require it to be as proposed that it needs relief. The Board can also consider if the proposed use would make sense if it were dropped into any of the other spots in the residential area. The reason these rules are so vague is because the intention is to take a fixed set of rules and apply them to an infinite set of permutations and variable lots. This gives the Board the opportunity to make a judgment call with room for flexibility. There is

also the appeals process, allowing for someone who feels aggrieved to take this to court eventually.

Mr. Witham-Gradert explained that the hardship argument began with Simplex Technologies v Town of Newington. The State legislator decided to take the rules test that the court decision created and formalize it into law as a primary way to determine hardship. This is in addition to the original method of finding hardship. A separate court case, Boccia v City of Portsmouth, determined that use and dimensional variances are to be treated and evaluated the same. Previously, there was a separate test for dimensional variances which no longer exists. Each type of variance is evaluated the same way now.

Mr. Witham-Gradert explained that the other way to find hardship is that an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other in the area, the property cannot reasonably be used in strict conformance with the ordinance, and a variance is therefore necessary to enable all reasonable use of it. This was originally derived from the very earliest zoning written by the State in 1925/1926. To grant a variance under this, the Board needs to find that there is no way to reasonably use the property. This is an incredibly heavy-handed and strict test. This method likely will not be used much because the new method is more permissive. However, an example where this could be used is the Ayers Pond area. This area contains old camper lots which are barely 30' wide, have hardly any frontage to them, and are completely unusable for anything. Some of these contain irregular tiny houses or cottages and, due to their uniqueness, nothing else could be one with them under the modern rules. These are rare and becoming rarer as time goes on.

Mr. Witham-Gradert explained that there is a variance type of finding under subsection V. If the Board cannot find hardship using the normal rules, this specifically allows for a variance to be granted under the pretense that the hardship is a recognized for a physical disability. There was a recent case where the applicant needed an extra bedroom due to someone with a severe medical disability which required additional live-in care and constant monitoring. This would have been a reasonable way to use this finding, if the Board had not found hardship in another manner. This could be used if someone needed a wheelchair ramp on the front of their home, but which might be non-conforming. However, this is generally not the preferable way to grant variances, as it comes with some rules and stipulations laid out by the State. First and foremost is that the variance does not go with the land; it goes with the occupants. If the occupancy changes and the need is no longer required, the variance, by default, is no longer valid. In terms of best practices, he encouraged the Board to add a stipulation reiterating that requirement from the State. Also, if the Board finds hardship under this, at the top of its motion, it should be made clear that this subsection is being used.

Mr. Witham-Gradert stated that there are the Simplex method and the older method. Technically, each Board member may individually find hardship using either one. Board members are not obligated to all find hardship under the same test. If the Board is going to grant one under the handicap provision, it is best to have everyone on board in order to attached explicit stipulations to it. If a variance is granted under the standard finding methods, applicants have a two-year expiration date, if the variance not utilized. Unless something is accepted by the Planning Board within six months, which alters the timer and extends it out to the Planning Board approval. The

ZBA acts as the appeal authority and may modify, nullify, or affirm administrative decisions as they see fit upon appeal. In practice, when the Board is hearing a case, it has the powers of the zoning administrator for the purposes of hearing the case. It means that, instead of completely disbaring the decision, the Board could instead modify it to make all parties happy. Subsection 3 states that any motion requiring action of the Board must have three concurring votes. This does not change even if fewer members are present. The Board consists of five sitting voting members and up to five alternates. However, if there are four members in attendance, the Board must still have three votes. This is why, per the bylaws, when there are fewer than five voting members, the applicant is given the option to defer the hearing. This also means that decisions and motions must be affirmative in nature and the Board may not default a decision. If the motion is to grant and it does not pass at a vote of 2-3, this does not mean that the variance is denied. The Board is then back to neutral, with no motion on the floor. If the Board then wants to deny, it would need to make a motion to deny, which would then need to pass. This is true of everything, including meeting minutes approval. If a motion does not pass, that does not mean the inverse. The Zoning Board of adjustment shall not require receipt of a permit or permits from other state or federal governmental bodies in order to accept a submission for its review or rendering of a decision. For example, if there is a variance that will eventually require a conditional use permit and there is a frontage variance in front of the Board, the Board cannot require DES approvals before hearing the application. The Board's decision has to be independent of the other entities. Another example would be if the DOT has to approve a driveway permit onto a state highway and the Board is hearing a variance for a subdivision in terms of a frontage requirement; it cannot wait for DOT to first weigh in.

Mr. Dion asked if this also accounts for decisions from other boards. Mr. Witham-Gradert stated that, while this is not explicitly disbarred, the Board still has obligations to render decisions within a timely manner. If the Board feels it cannot make a decision without the other determination, then it would deny without prejudice and have the applicant come back when all the information is ready it.

Mr. Witham-Gradert explained that when making a motion, the Board should read out the full motion and the stipulations. This is the same reason that each Board member should read their findings into the record when voting. The intention is to remove any potential ambiguity, both for the benefit of the minute taker and for the benefit of the record should the Town ever go to court. This also helps in drafting the notices of decision. When discussing a case, the time prior to Board deliberation is meant for testimony, comments, and questions of the applicant, not for a discussion of the Board. Also, not all public comment is weighted equally. The advice is to let everyone speak. Technically, the Board could be restrictive and limit comment to parties involved in the case and abutters. There is very rarely any benefit to this. Board members are not obligated to weigh every testimony equally. For example, in terms of a use variance, one person is a direct abutter, and their comments could receive full weight. Another person lives on the opposite end of town, and the Board is not obligated to give their testimony the same weight. The Board may also weigh more heavily someone who is credentialed.

- Save the date: Office of Planning and Development's Spring 2026 Planning and Zoning Conference on Saturday, May 9, 2026, 8:45 AM- 3:30 PM. Sessions will be online and will be recorded and available after the conference. The cost is free. Registration opens:

April 3rd. This year's virtual conference includes three tracks: Planning Board, Zoning Board of Adjustment, and Special Topics

Mr. Witham-Gradert noted that there is a Spring Planning and Zoning Conference on May 9th. This is online, free, and open to the public.

VIII. ADJOURNMENT:

Motion made by Mr. Lanphear, duly seconded by Mr. Sakati and unanimously voted to adjourn the 03/26/2026 ZBA Meeting at 9:17 PM.

Vote: 5-0-0 motion carried to approve the meeting minutes.

Respectfully submitted,
Kristan Patenaude, Recording Secretary



Tristan Dion, ZBA Chairman