



TOWN OF HUDSON

Zoning Board of Adjustment

Tristan Dion, Chairman Dillon Dumont, Selectmen Liaison

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MEETING MINUTES – MARCH 26, 2026 – DRAFT

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

46 without encroaching on the wetland. This leads to be request for a variance. His client is elderly
47 and the intention is to allow a place to store vehicles in the winter.
48

49 Mr. Hudson reviewed the Variance criteria. There is already a paved driveway on the property.
50 The location of the proposed garage is outside of the wetland buffer zone. There are other
51 detached garages in the neighborhood. The garage will be set back behind the paved driveway. It
52 will not impede the wetland, snow removal, etc. The property owner has approximately a 3/4
53 acre lot that is mostly unusable due to a wetland. The proposed area is the only area to construct
54 the garage. There are also a retaining wall and septic system closer to the house, so attaching it is
55 not an option. The addition of a garage will only serve to increase the value of the property.
56 There is a significant wetland buffer on the property. Additionally, there is a septic pump system
57 and retaining wall directly abutting the house, preventing an attached option. The existence of
58 the wetland buffer, the location of the septic system, and the existence of the retaining wall, all
59 create an immense hardship to build an enclosed space to park vehicles. The majority of the
60 property is rendered unusable due to the wetland that runs directly through the middle of it.
61

62 **Board Questions:**

63
64 Mr. Sakati asked if the applicant assessed how much it would cost to move or change the septic
65 system. Mr. Hudson stated that this has already been changed once as there was a failed leach
66 field on the front of the property. The only other place to put the septic system on the property is
67 where it already failed, as it cannot be placed in the wetland. He spoke to a plumber about
68 replacing it, which would likely cost approximately \$30,000-\$40,000. The excavation for a
69 garage costs approximately \$25,000 so removal of a septic system would be much more than that
70 and it is unclear where else it could be moved to.
71

72 Mr. Sakati asked for detail of the retaining wall. Mr. Hudson explained that there is a path
73 leading up to the house. At the bottom of that path, earth is built up in front of the house to make
74 it at grade. The grade on the side of the house is lower, due to it being a walkout, and so there are
75 retaining blocks holding the earth in place.
76

77 Mr. Dion asked about a path from the north side of the house. Mr. Hudson explained that the
78 retaining wall is between the two marked sections, with paths from the north and west sides of
79 the house.
80

81 Mr. McDonough asked the proposed height of the garage. Mr. Hudson stated that the garage will
82 have standard 8'-9' walls with a standard pitch. The garage will not be finished or have a second
83 floor. The garage will be the same color as the house and will have power to it to allow for
84 garage door openers.
85

86 Mr. Dion asked if the Applicant evaluated placing the garage on the north side of the property.
87 Mr. Hudson stated that there is not enough room in that area for a garage, and this would require
88 removal of a number of trees. Mr. Witham-Gradert stated that he reviewed this further and there
89 is perhaps a 3' gap between the edge of the buffer and the front setback on that edge of the
90 property.
91

92 Mr. Lanphear asked about the number of vehicles on site. Mr. Hudson stated that there will be
93 three vehicles parked on site. Mr. Lanphear noted that there is approximately 13.6' from the front

94 of the garage to the road. A four-door pickup truck will not fit in that space and so would need to
95 park elsewhere on the property.

96
97 Mr. Lanphear asked about the pipes in this area. Mr. Judson explained that there is one pipe for
98 the old leach field and one for the new leach field. The pump system runs under the walkway
99 which comes from the side of the house. Mr. Lanphear asked if there might be a possibility to
100 slide the garage over 10'. Mr. Hudson stated that he does not believe there is 10' available in that
101 area. This would lead to a corner of the garage sitting on the retaining wall, adding
102 approximately 6' of earth to level it. Mr. Lanphear asked about moving over 5' instead. Mr.
103 Hudson noted that he cannot technically build a structure over the pump or in order to allow
104 access to it. Mr. Lanphear asked if the pipe is located 5' away from the corner of the house
105 foundation or closer to 2' away. Mr. Hudson explained that the leach field is in the front yard.
106 The pipe runs underneath the walkway and underneath the retaining wall. The pipe is dead center
107 between the house and the proposed garage location. Moving the garage over would place it on
108 top of the pipe at least somewhat.

109
110 Donna Green, 5 Circle Drive and Applicant, stated that her current driveway can fit a pick-up
111 truck.

112
113 Mr. Witham-Gradert stated that the plan shows a 13.6' measurement from the corner of the
114 driveway to the nearest parcel bound. This is not where the driveway is located, due to the radius
115 as this property has a curved front setback. The actual section where the existing driveway is
116 located and is proposed to stay has notably more space. The depth of the existing driveway is
117 approximately 28' deep at the nearest point. There is more than ample parking for a truck.

118
119 Mr. Sakati stated that the application mentioned other properties with detached garages in the
120 area. He asked if these are in the neighborhood of this property specifically. Mr. Hudson stated
121 that they are not adjacent to this property but in the general area.

122
123 Mr. Dion asked to receive public comment either in favor, neutral or opposed from the public at
124 7:27 PM.

125
126 **Public Comments in Favor:** None at this time.

127
128 **Public Comments Neutral or Opposed:** None at this time.

129
130 Seeing no additional comments at this time, Mr. Dion closed the public comment period at 7:28
131 PM.

132
133 **Board Discussion and Deliberation:**

134
135 Mr. Sakati stated that the wetlands create a uniqueness to the property. Alternatively, the garage
136 is proposed fairly far into the setback, leaving only 13.6'.

137
138 Mr. McDonough stated that, in terms of the spirit of the ordinance, the proposal does not threaten
139 the general public safety or welfare or cause any damage. It does not appear to obstruct visibility
140 of the area. The only concern could be aesthetics of the neighborhood.

141

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

145
146 *The Board reopened public comment at 7:30PM.*

147
148 **Board Questions:**

149
150 Mr. Sakati asked if the Applicant has discussed the proposed project with neighbors. Mr. Hudson
151 stated that he discussed the project directly with the owners of 3 Circle Drive when he was
152 considering designing a very narrow garage for single-file vehicle parking which would have
153 stayed within the 15' setback. The owners of 3 Circle Drive were okay with that proposal, even
154 against their existing fence. He believes those owners would be okay with the current proposal,
155 as it is not against the property line. Those are the only nearby owners he directly discussed this
156 with.

157
158 Mr. McDonough asked what grows in the wetland area. Mr. Hudson explained that this wetland
159 is for runoff from the manmade pond behind the property. This is currently a dry creek bed with
160 some grass in it. Mr. McDonough stated that the garage will not be blocking the aesthetics of this
161 area. Ms. Green stated that the area is currently filled with junk and similar to a swamp. This
162 wetland can only be seen from the other side of her property.

163
164 Mr. Dion asked about the character of the neighborhood. Ms. Green explained that there is not
165 generally much traffic aside from the people who live there. This is not a thoroughfare that goes
166 through to something on the other side. The road is a circle which comes back out next to her
167 house, effectively a dead end cul-de-sac. This is only a residential area.

168
169 Mr. Sakati stated that there appears to be a large pine tree to the right of the garage location. Ms.
170 Green explained that this was removed, along with other trees, before she bought the house.
171 Some trees will need to be removed for the garage placement. She had some trees removed for
172 the installation of a solar system on her roof.

173
174 Seeing no additional comments at this time, Mr. Dion closed the public comment period at 7:35
175 PM.

176
177 **Board Discussion and Deliberation:**

178
179 **Mr. Lanphear moved to grant a variance from §334-27 – Table of Minimum Dimensional**
180 **Requirements: to construct a 36 x 20-foot detached garage which would encroach upon the**
181 **front yard setback by 16.4 feet, leaving 13.6 feet of front setback where 30 feet is otherwise**
182 **required, based on the written and verbal testimony of the applicant, duly seconded by Mr.**
183 **McDonough:**

184
185 **Board Speaking on Each Variance Criterion:**

- 186
187 **1. Granting this variance will not be contrary to the public interest**
188 Mr. Lanphear stated that there will not be any conflict with the neighborhood
189
190 **2. The proposed use will observe the spirit of the ordinance**

191 Mr. Lanphear stated that the proposed use will observe the spirit of the ordinance. It will
 192 not alter the essential character of the neighborhood. It will help the neighborhood and
 193 increase the values of surrounding properties.
 194

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

196 Mr. Lanphear stated that substantial justice would be done to the property owner. The
 197 property owner has done their due diligence to determine the best placement for the
 198 garage. The Applicant was able to find a place for a double garage on the property with
 199 the existing constraints, including the wetland setbacks and leach field.
 200

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

202 Mr. Lanphear stated that the proposed use will not diminish values of the surrounding
 203 properties.
 204

205 **5. Ordinance results in unnecessary hardship**

206 Mr. Lanphear stated that the old failing leach field, new tanks, and the pipe running to the
 207 front yard restrict the Applicant so that the only location for the garage is the corner of
 208 the property.
 209

210 **Mr. Lanphear – to grant**

211
 212 **1. Granting this variance will not be contrary to the public interest**

213 Mr. McDonough stated the proposal will not harm the public or any of the neighborhood
 214 characteristics. Based on testimony of the owner, the garage would be in line with the
 215 neighborhood characteristics. He cannot see any harm to the public safety by building the
 216 garage.
 217

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

219 Mr. McDonough stated that the proposal will be in the spirit of the ordinance. The
 220 Applicant is doing their best to maintain a setback. Based on the unique characteristics of
 221 the property, this is the most suitable location.
 222

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

224 Mr. McDonough stated that the property has a unique feature in the nearby wetland
 225 which renders most of the property unbuildable. Other features of the property also limit
 226 the options for building a garage or any other structure. Granting this variance would
 227 provide the owners a benefit to use the property to its fullest extent and allow for vehicle
 228 coverage in the winter.
 229

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

231 Mr. McDonough stated that the proposed use will not diminish the value of the property
 232 or surrounding properties. A garage such as the one proposed, if built well and
 233 maintained, can increase the value of the owner's property and make the neighborhood
 234 more appealing to everyone.
 235

236 **5. Ordinance results in unnecessary hardship**

237 Mr. McDonough stated that enforcement of this ordinance would create a hardship for the
 238 owner. The property has several unique features that limit the buildable area. The related
 239 costs to relocate the septic pump or other features would be exorbitant and an

240 unnecessary hardship to the owner. The proposed use is a reasonable one. The owner and
241 builder have made all attempts to find a different location which better adheres to the
242 ordinance. The proposed location is the best and most reasonable attempt at that.
243

244 **Mr. McDonough – to grant**
245

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

247 Mr. Sakati stated that he does not see any safety concerns or harm to the public interest.
248

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

250 Mr. Sakati stated that this criterium deals with a conflict of the explicit purpose of the
251 ordinance and the essential character of the neighborhood. The proposal will be a
252 significant enough the intrusion into the setback that it could change the character of the
253 neighborhood.
254

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

256 Mr. Sakati stated that substantial justice would be done to the property owner as there are
257 no other locations to place a garage on the property, whether it be attached or detached.
258 The property is very constricted.
259

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

261 Mr. Sakati stated that the proposed use will not diminish any surrounding property
262 values.
263

264 **5. Ordinance results in unnecessary hardship**

265 Mr. Sakati stated that there is significant hardship due to the septic constraint, the wetland
266 constraint, and the retaining wall constraint. However, as he could not come up with an
267 answer for the second criterium, this defaults him to a position to not grant the Variance,
268 regretfully.
269

270 **Mr. Sakati – to not grant**
271

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

273 Mr. Brendon Sullivan stated that there will be no conflict with the public interest.
274

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

276 Mr. Brendon Sullivan stated that the spirit of the ordinance will be observed.
277

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

279 Mr. Brendon Sullivan stated that substantial justice would be done to the property owner.
280 The proposal will do no harm to the general public or other individuals.
281

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

283 Mr. Brendon Sullivan that the proposed use will not diminish values of the surrounding
284 properties.
285

286 **5. Ordinance results in unnecessary hardship**

287 Mr. Brendon Sullivan stated that enforcement of the ordinance would impose
288 unnecessary hardship on the Applicant and the proposal is reasonable.

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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 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.

338 **VII. OTHER BUSINESS:**

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

340

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

354

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

360

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

365

366 Mr. Dion asked if essentially two family dwellings are allowed on every property in the State at
367 this time. Mr. Witham-Gradert stated that there are a few minor requirements. For example, the
368 owner of record still has to live in one of the structures. However, they can be detached and can
369 have separate utilities. The structures can have separate driveways. There can essentially be two
370 independently functioning dwellings on the same parcel. The owner of record for the parcel must
371 live in either the ADU or in the original dwelling. Mr. Lanphear asked how long this must be the
372 case for. Mr. Witham-Gradert stated that this requirement is forever. There is some leniency for
373 certain situations, but if someone is the only owner of record and moves out, while there is still
374 someone living in the ADU, this would bring it out of compliance with the Ordinance. The intent
375 is that there should not be someone renting out both units on a property. Any issues with this
376 would likely be enforced via complaint.

377

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

385

386 Mr. Dion asked if this could lead to items in front of the Board in terms of driveways or
387 buildings being too small for the use. Mr. Witham-Gradert noted that hearings before the Board
388 for accessory uses are rare. There may be additional anticipated code enforcement calls.
389

390 Mr. Lanphear asked about operating hours from the State for these uses. Mr. Witham-Gradert
391 stated that he is unclear on this. There will need to be a period of transition as potential cases
392 come before the Town for these uses. The changes were the minimum amount needed to come
393 into compliance with the State. If this becomes problematic, it may be revisited with ZORC for a
394 greater consideration of the rules. He does not believe that this will lead to many issues.
395

396 Mr. Witham-Gradert explained that the next item is a change in setbacks for the TR Zone. The
397 Town has changed both the arterial collector and local roadway setbacks to 20', 10', and 10'.
398 This is a reflection of the fact that most of the TR Zone is older and was built out early in
399 Hudson's development. At that time, zoning restrictions were either much less stringent or
400 nonexistent. Due to that, there is a fair amount of housing that is inherently non-compliant due to
401 it being pre-existing, non-conforming. The intent is to bring those setbacks to match with the
402 generally smaller sized parcels within this Zone.
403

404 Mr. Witham-Gradert stated that the next item has a lot of struck out text which was replaced with
405 one sentence. It states that growth management practices and findings of fact shall be in
406 accordance with the most recently adopted Master Plan. This section previously contained many
407 quotes from the Master Plan and, in order to keep it up to date, staff was repeatedly updating it.
408 In lieu of that, staff decided to remove the direct quotation-based references and simply reference
409 the current Master Plan to avoid having the voters revote on an administrative update repeatedly.
410 This is a housekeeping clean-up item.
411

412 Mr. Witham-Gradert noted that the Planning Board discussed a large-scale overhaul of the land
413 use regulations. Ultimately, expenditure of funds for this would be decided on by the Board of
414 Selectmen, but the Planning Board is on board with the idea. This would be comprehensive to
415 both planning and zoning regulations, as there are many sections which have not been touched in
416 over a decade. Some parts are very out of date. For example, the telecommunications ordinance
417 has not been changed in years and could be quite out of date with current practices. If this is
418 approved by the Board of Selectmen, it will go out to bid through a Request for Proposal. This
419 would be done by an external firm. He will share more news with the Zoning Board as he
420 receives it.
421

- 422 • Training Session: Powers, Stipulations, & Re-hearings
423

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

435 and land used for business, industrial, residential and other purposes. The last item incorporates a
436 large section of the zoning ordinance and leaves a lot of power with the municipality to craft its
437 own zoning ordinance to best serve the town.

438

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

443

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

458

459 Mr. Witham-Gradert stated that the next section is RSA 674:33. This is the set of rules that
460 govern how to run a zoning board, how it determines cases, and what criterion can be used to
461 determine hardship. A few highlights are that it specifically talks about the forms of hardship and
462 variance granting. For example, there is one alternative type, primarily for specific types of cases
463 before the Board. While the State RSA sets the basic framework, this is a section where the body
464 of case law from the New Hampshire court system comes into practice.

465

466 Mr. Witham-Gradert stated that the item next is RSA 674:33-1a. This deals with the powers of
467 the zoning board. First and foremost, the Board is allowed to hear and decide appeals if it has
468 been alleged that there was an error in any order, requirement, decision, or determination made
469 by an administrative official in the enforcement of the zoning ordinance. The Board is the appeal
470 authority for those administrative actions. Section 2 includes the criteria for granting variances.
471 These include that the variance will not be contrary to the public interest, that the spirit of the
472 ordinance is observed, and that the values of surrounding properties are not diminished. These
473 items A, B, and D are similar to a checklist. These are not the crux of the applicant's argument.
474 Item C, while also not the crux of the argument, is less of a checklist and more of a value
475 judgment from individual board members, regarding if justice is done. This is not something that
476 can be measured or proven, but something each Board member personally has to decide. Item E
477 is that literal enforcement of the provisions of the ordinance would result in an unnecessary
478 hardship. This is the crux of the argument, and the reason an applicant is before the Board.
479 Determining hardship has evolved over the past century of zoning as a concept. At its core is the
480 question of what reason this person has to require special permission to bend the rules. Within
481 this section is the definition of hardship, which is that owing to special conditions of the property
482 which distinguish them from others in the area. This includes a few tests. The first test has two
483 prongs (A & B). Prong A is that no fair and substantial relationship exists between the general

484 public purpose of the ordinance provision and the specific application of that provision to the
485 property. This item speaks to that by waiving this this item, the Board would remove the point of
486 the ordinance entirely and thus defeat the purpose of it. If so, this may be a reason not to grant.
487 There is a question as to why applying the ordinance literally to the property in question
488 specifically advances the public good. This is a value judgment that has to be made by the Board.
489 Prong B is that the proposed use is a reasonable one. This is also a value judgment amongst
490 Board members. One way to think of this is that, owing to the special condition of the property
491 that distinguish it from others in the area, the proposed use is a reasonable one. If this question
492 can be answered affirmatively, then ostensibly the use is reasonable.

493
494 The Board discussed examples of these that could be considered unreasonable. For example, a
495 parcel in the TR Zone, which is densely packed, and a request to build a manufacturing plant or
496 other industrial use. It may be inherently unreasonable to build an industrial use in a tightly
497 residential area with small setbacks and a small parcel size. There may be no special condition of
498 this property which would render this reasonable to grant. Mr. Witham-Gradert gave the example
499 of the case previously heard this evening by the Board instead being a two story garage or an
500 industrial style garage with 13' doors. This may be considered unreasonable. Reasonableness as
501 an argument has a lot of nuance to it. The Board has to make a value judgment as to if a request
502 is reasonable and what conditions of the property require it to be as proposed that it needs relief.
503 The Board can also consider if the proposed use would make sense if it were dropped into any of
504 the other spots in the residential area. The reason these rules are so vague is because the intention
505 is to take a fixed set of rules and apply them to an infinite set of permutations and variable lots.
506 This gives the Board the opportunity to make a judgment call with room for flexibility. There is
507 also the appeals process, allowing for someone who feels aggrieved to take this to court
508 eventually.

509
510 Mr. Witham-Gradert explained that the hardship argument began with Simplex Technologies v
511 Town of Newington. The State legislator decided to take the rules test that the court decision
512 created and formalize it into law as a primary way to determine hardship. This is in addition to
513 the original method of finding hardship. A separate court case, Boccia v City of Portsmouth,
514 determined that use and dimensional variances are to be treated and evaluated the same.
515 Previously, there was a separate test for dimensional variances which no longer exists. Each type
516 of variance is evaluated the same way now.

517
518 Mr. Witham-Gradert explained that the other way to find hardship is that an unnecessary
519 hardship will be deemed to exist if, and only if, owing to special conditions of the property that
520 distinguish it from other in the area, the property cannot reasonably be used in strict conformance
521 with the ordinance, and a variance is therefore necessary to enable all reasonable use of it. This
522 was originally derived from the very earliest zoning written by the State in 1925/1926. To grant a
523 variance under this, the Board needs to find that there is no way to reasonably use the property.
524 This is an incredibly heavy-handed and strict test. This method likely will not be used much
525 because the new method is more permissive. However, an example where this could be used is
526 the Ayers Pond area. This area contains old camper lots which are barely 30' wide, have hardly
527 any frontage to them, and are completely unusable for anything. Some of these contain irregular
528 tiny houses or cottages and, due to their uniqueness, nothing else could be one with them under
529 the modern rules. These are rare and becoming rarer as time goes on.

530
531 Mr. Witham-Gradert explained that there is a variance type of finding under subsection 5. If the
532 Board cannot find hardship using the normal rules, this specifically allows for a variance to be

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

545
546 Mr. Witham-Gradert stated that there are the Simplex method and the older method. Technically,
547 each Board member may individually find hardship using either one. Board members are not
548 obligated to all find hardship under the same test. If the Board is going to grant one under the
549 handicap provision, it is best to have everyone on board in order to attached explicit stipulations
550 to it. If a variance is granted under the standard finding methods, applicants have a two year
551 expiration date, if the variance not utilized. Unless something is accepted by the Planning Board
552 within six months, which alters the timer and extends it out to the Planning Board approval. The
553 ZBA acts as the appeal authority and may modify, nullify, or affirm administrative decisions as
554 they see fit upon appeal. In practice, when the Board is hearing a case, it has the powers of the
555 zoning administrator for the purposes of hearing the case. It means that, instead of completely
556 disbaring the decision, the Board could instead modify it to make all parties happy. Subsection 3
557 states that any motion requiring action of the Board must have three concurring votes. This does
558 not change even if fewer members are present. The Board consists of five sitting voting members
559 and up to five alternates. However, if there are four members in attendance, the Board must still
560 have three votes. This is why, per the bylaws, when there are fewer than five voting members,
561 the applicant is given the option to defer the hearing. This also means that decisions and motions
562 must be affirmative in nature and the Board may not default a decision. If the motion is to grant
563 and it does not pass at a vote of 2-3, this does not mean that the variance is denied. The Board is
564 then back to neutral, with no motion on the floor. If the Board then wants to deny, it would need
565 to make a motion to deny, which would then need to pass. This is true of everything, including
566 meeting minutes approval. If a motion does not pass, that does not mean the inverse. The Zoning
567 Board of adjustment shall not require receipt of a permit or permits from other state or federal
568 governmental bodies in order to accept a submission for its review or rendering of a decision.
569 For example, if there is a variance that will eventually require a conditional use permit and there
570 is a frontage variance in front of the Board, the Board cannot require DES approvals before
571 hearing the application. The Board's decision has to be independent of the other entities. Another
572 example would be if the DOT has to approve a driveway permit onto a state highway and the
573 Board is hearing a variance for a subdivision in terms of a frontage requirement; it cannot wait
574 for DOT to first weigh in.

575
576 Mr. Dion asked if this also accounts for decisions from other boards. Mr. Witham-Gradert stated
577 that, while this is not explicitly disbarred, the Board still has obligations to render decisions
578 within a timely manner. If the Board feels it cannot make a decision without the other
579 determination, then it would deny without prejudice and have the applicant come back when all
580 the information is ready it.

581

582 Mr. Witham-Gradert explained that when making a motion, the Board should read out the full
583 motion and the stipulations. This is the same reason that each Board member should read their
584 findings into the record when voting. The intention is to remove any potential ambiguity, both
585 for the benefit of the minute taker and for the benefit of the record should the Town ever go to
586 court. This also helps in drafting the notices of decision. When discussing a case, the time prior
587 to Board deliberation is meant for testimony, comments, and questions of the applicant, not for a
588 discussion of the Board. Also, not all public comment is weighted equally. The advice is to let
589 everyone speak. Technically, the Board could be restrictive and limit comment to parties
590 involved in the case and abutters. There is very rarely any benefit to this. Board members are not
591 obligated to weigh every testimony equally. For example, in terms of a use variance, one person
592 is a direct abutter, and their comments could receive full weight. Another person lives on the
593 opposite end of town, and the Board is not obligated to give their testimony the same weight.
594 The Board may also weigh more heavily someone who is credentialed.
595

- 596 • Save the date: Office of Planning and Development's Spring 2026 Planning and Zoning
597 Conference on Saturday, May 9, 2026, 8:45 AM- 3:30 PM. Sessions will be online and
598 will be recorded and available after the conference. The cost is free. Registration opens:
599 April 3rd. This year's virtual conference includes three tracks: Planning Board, Zoning
600 Board of Adjustment, and Special Topics
601

602 Mr. Witham-Gradert noted that there is a Spring Planning and Zoning Conference on May 9th.
603 This is online, free, and open to the public.
604

605 **VIII. ADJOURNMENT:**

606
607 **Motion made by Mr. Lanphear, duly seconded by Mr. Sakati and unanimously voted to**
608 **adjourn the 03/26/2026 ZBA Meeting at 9:17PM.**

609 **Vote: 5-0-0 motion carried to approve the meeting minutes.**
610

611 Respectfully submitted,
612 Kristan Patenaude, Recording Secretary
613

614

615

616

617

Tristan Dion, ZBA Chairman