



TOWN OF HUDSON

Zoning Board of Adjustment



Charlie Brackett, Chairman Marilyn E. McGrath, Selectmen Liaison

12 School Street • Hudson, New Hampshire 03051 • Tel: 603-886-6008 • Fax: 603-594-1142

MEETING AGENDA – August 22, 2019

The Hudson Zoning Board of Adjustment will hold a meeting on August 22, 2019, in the Community Development Paul Buxton Meeting Room in the basement of Hudson Town Hall (please enter by ramp entrance at right side). The public hearings for applications will begin at 7:00 PM, with the applications normally being heard in the order listed below.

SUITABLE ACCOMMODATIONS FOR THE SENSORY IMPAIRED WILL BE PROVIDED UPON ADEQUATE ADVANCE NOTICE BY CALLING 886-6008 OR TDD 886-6011. The following items before the Board will be considered:

- I. CALL TO ORDER**
- II. PLEDGE OF ALLEGIANCE**
- III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:**
 1. Case 208-001 (deferred to 8-22-19): Richard and Robin Sevigny, 161 Bush Hill Road, Hudson, NH requests an Appeal From An Administrative Decision of a Notice of Violation dated May 24, 2019 citing violations of two provisions in the Hudson Zoning Ordinance: §334-15B (2) Parking prohibited and §334-13 Junkyards prohibited; outdoor storage. [Map 208, Lot 001-000; Zoned General-One (G-1); HZO Article III, §334-15B(2) & §334-13].
 2. Case 168-012 (8-22-19): Attorney Christopher J. Fischer of Boynton Waldron Doleac Woodman & Scott, P.A., 82 Court St., Portsmouth, NH representing Peter and Kimberly Heilman, 8 Madison Drive, Hudson, NH, requests an Appeal From An Administrative Decision of a Notice of Violation dated June 12, 2019 citing violations of two provisions in the Hudson Zoning Ordinance: §334-16 Building permits and §334-8 Certificate of Occupancy. [Map 168, Lot 012-000; Zoned Residential Two (R-2); HZO Article III, §334-16 & §334-8].
- IV. PUBLIC HEARING:**

2nd Reading of proposed bylaws amendments.
- V. REQUEST FOR REHEARING:** None
- VI. REVIEW OF MINUTES:**
 1. 07/25/19 Minutes
- VII. OTHER:**
 1. Possible Zoning Ordinance Amendments

Bruce Buttrick
Zoning Administrator



TOWN OF HUDSON

Zoning Board of Adjustment



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SITE WALK MEETING MINUTES – July 29, 2019

The Hudson Zoning Board of Adjustment members met for a Site Walk Review at 161 Bush Hill Rd., Hudson, NH on Monday, July 29, 2019,

Meeting opened at 6pm EDT

Present were:

Mr. Daddario
Mr. Dearborn
Mr. Pacocha
Mr. Etienne
Ms. Davis
Chairman Brackett
Atty. Kent Barker (Applicant's Attorney)
Mr. and Mrs. Boutin (Abutter 167 Bush Hill Rd)
Mr. Robert Davis (member of the public)
Mr. Beau Bergeron (Abutter 155 Bush Hill Rd)
Ms. Robin Finnegan (member of the public)

Excused were:

Mr. Buttrick (Zoning Admin/Code Enforcement)
Ms. McGrath (Selectman Liaison)
Ms. Knee (Recorder)

Notes:

Purpose of the meeting was to walk the property for a 1st hand review in consideration of an Appeal from a Zoning Determination that a 45' trailer needs to be removed from the site and that the on-site trash needs to be cleared up and removed.

The Board discussed the trailer on site and measured the size to be 45' L x 8'6" H x 8' W.

The trailer is leaning to the right side (away from the driveway), is in poor condition (noted rot and holes) and was filled with items such as tires, pallets, shelving and plastic storage containers.

No one entered the trailer nor was the weight of the contents estimated as it did not appear safe to do so.

There was a discussion on the boundaries, the area in question. The general area on both sides of the driveway (used by the abutters at 167 Bush Hill Rd under an easement agreement) included various items (pictures attached) that included broken glass, glass or mirrored panels, wood, wooden pallets that were broken up, a rusted trailer and the 45' trailer. The 45' trailer also had debris in, around and under it.

There was also a green Jeep to the side of the driveway (within the easement) that had a current registration on the plates of March 2020 but no inspection sticker. It also had 2 flat tires and was covered in dust and pine needles. There was a question as to the ownership of the Jeep and the address of whom it was registered to- this would need to be resolved by the HPD by running the plates.

The Board viewed up to the boundary line of the property located at 167 Bush Hill Rd - this was marked as +/- 30' beyond the PSNH pole marker 49B 5R.

A view from the driveway into the property at 161 Bush Hill Rd showed a clearing/field that was to the side of the property; this was overgrown but there wasn't any debris/discarded items that were visible.

The Board then viewed 155 Bush Hill Rd (opposite abutter) and noted a tent/canopy to be 12' from the side setback where 15' is required.

There was an impassable makeshift fence installed with pallet that is within the 15' setback along with trash from 161 Bush Hill Rd that has spilled over to 155 Bush Hill Rd.

The meeting was adjourned at 6:52pm.

Respectfully submitted,

Maryellen Davis, ZBA Clerk



161 Bush Hill Rd interior of 45' trailer

161 Bush Hill Rd Glass Panels; discarded, rusted TRAILER





141 Bustt Hill Rd Broken glass panel or mirror



161 Bush Hill Rd Discarded wooden Figure / wood

161 Bush Hill Rd
Broken Pallets





161 Bush Hill Rd STRUCTURE in SET BACK between 155 Bush Hill

161 Bush Hill Rd Field on actual property, overgrown but no trash
NOT on easement area.



2076313

2002 AUG -1 PM 3: 50

22.37 Cohen
24.37 2100
B87 TS

WARRANTY DEED

We, Eugene P. Dunn and Eleanor J. Dunn, husband and wife, of Hudson, Hillsborough County, New Hampshire, for consideration paid, grant to

ROBERT PAUL BOUTIN, SR., ^{A SINGLE PERSON} of 400 Rutland Street, Carlisle, Middlesex County, Massachusetts

with WARRANTY COVENANTS

a certain tract or parcel of land situated in Hudson in the County of Hillsborough and State of New Hampshire, more particularly bounded and described as follows:

Premises being Lot No. 1004-002 on plan of land entitled "Subdivision Plan 'Bush Hill Road', Hudson, NH" surveyed by the A.F. Maynard Civil Engineers, Nashua, NH. Scale 1"=100', for George Strickholm, August 1976, recorded in the Hillsborough County Registry of Deeds as Plan No. 10390.

Beginning at a point on Bush Hill Road on the edge of the northern line of the New Hampshire Public Service Company right-of-way,

1. Running along that edge of the right-of-way nine hundred twenty-eight and forty Seven hundredths feet (928.47') (S 46° 21' 44" W) to a point; thence;
2. At right angles to said line three hundred forty-seven and four hundredths feet (347.04') (N 43 38' 16" W) to a stone wall to a point, thence;
3. Southerly along a stone wall by six (6) courses:
 - a. seventy-one and fifty hundredths feet (71.50') (S 46° 37' 09" W) to a point;
 - b. Continuing seventy-six and seventy-eight hundredths feet (76.78') (S 35° 53' 02" W) to a point, thence;
 - c. Continuing forty-nine and eighty-five hundredths feet (49.85') (S 25° 53' 22" W) to a point; thence
 - d. Continuing three hundred twenty-eight and forty-seven hundredths feet (328.47') (S 13° 55' 45" W) to a point; thence
 - e. Continuing fifty-six and eighty-six hundredths feet (56.86') (S 13° 11' 11" W) to a point; thence
 - f. Continuing six hundred and sixteen and twelve hundredths feet (616.12') (S 8° 53' 43" W) to a point; thence
4. Turning and running partially along a stone wall one hundred twenty-one and sixty hundredths feet (121.60') (S 84° 28' 45" E) to a point; thence
5. Then along a wall along five courses:
 - a. seventy-two and five hundredths feet (72.05') (N 44° 41' 15" E) to a point; thence
 - b. Continuing one hundred ninety-four and eleven hundredths feet (194.11') (N 40° 45' 55" E) to a point; thence
 - c. Continuing one hundred forty-one and twelve hundredths feet (141.12') (N 51° 59' 17" E) to a point; thence

BK 6680 PG 1696

COHEN LAW OFFICES, P.A.
873 TURNPIKE STREET
NORTH ANDOVER, MA 01845

- d. Continuing one hundred eighty-one and thirty-eight hundredths feet (181.38') (N 52° 27' 50" E) to a point; thence
 - e. Continuing one hundred fifty-four and twenty-seven hundredths feet (154.27') (N 52° 30' 34" E) to a corner of stone walls;
6. Thence one hundred eighty-six and sixty-nine hundredths feet (186.69') (N 43° 38' 16" W) to a point; thence
 7. One thousand eighty-five and ninety-six hundredths feet (1,085.96') (N 46° 21' 44" E) to a point along the stone wall on the Southerly side of Bush Hill Road; thence
 8. Along said wall by three courses:
 - a. Eleven and fifty hundredths feet (11.50') (N 58° 17' 06" W);
 - b. One hundred sixty-five and eight hundredths feet (165.08') (N 32° 59' 02" W);
 - c. Continuing twenty-six and eighty-nine hundredths feet (26.89') on an arc of a curve having a radius of two hundred and fifty feet (R 250') to the point of beginning.

Intending to describe a parcel of land containing 13.891 acres. Said property is subject in part to an easement more accurately described in the Plan referred to herein granted to the Public Service Company of New Hampshire.

The within described property is not homestead property.

Being all and the same premises conveyed to us by deed of Ruth G. Strickholm, dated October 16, 1986 and recorded with said Registry at Book 3750, Page 318.

GRANT OF EASEMENT

The grantors hereby grant to the grantees, their heirs, successors and assigns (hereinafter the grantees) the right to use, in common with the grantors and all others authorized by the grantors, their heirs and assigns a so-called tote road located on Lot 1004-001 as shown on Plan No. 10390. The entire layout of the existing tote road is located within fifty feet (50') of the easterly boundary of Lot 1004-001 and the westerly boundary of Lot 1004-002 as shown on said plan. However, the actual easement area is limited to the present tote road layout. The said grantees may improve the said tote road and thereafter may utilize the improved tote road as a driveway easement for the benefit of not more than two single-family dwellings to be constructed upon said Lot 1004-002. In any event, this easement is subject to the terms and conditions of all other easement grants, including that to the Town of Hudson.

Said easement is subject to the following terms and conditions:

- Neither the grantors nor their heirs, successors or assigns, (hereinafter the grantors) nor the grantees may make such use of the easement area as to interfere with the rights of the other party for the use of the easement;
- The grantees shall be solely responsible for the preparation, building and maintenance of the easement area and shall bear any and all costs for the same;
- The grantees shall at all times maintain liability insurance covering the easement area;
- The grantees shall at all times maintain the easement in a prudent and safe manner;

BK 6680 PG 1697

- The grantees shall not cause, create, allow or suffer to exist any damage or waste upon the land subject to the easement or upon the remaining land of the grantors that is not subject to the easement by reason of use or maintenance of the easement;
- The grantees shall be responsible for snow and ice removal from the easement area;
- The grantors shall retain the right, at the grantees' sole expense, to institute, carry out, perform and complete any reasonable maintenance and repair to the easement caused by any condition deemed to create an unsafe condition such as the existence of sink holes or downed trees or the like to the easement premises by the grantors upon giving the grantees thirty days notice of their intention to make such repairs or complete such maintenance, except that in the case of emergency repairs, no such notice need be given.
- Should the grantors incur any expenses for repair of maintenance caused by any condition deemed to create an unsafe condition to the easement premises by the grantors, then the grantors shall give the grantees written notice of the same and the grantees shall reimburse such expenses within ten days;
- The grantees may cut such timber to maintain and improve the driveway as the grantees, and the grantors may mutually agree; all timber so cut shall be cut at the sole expense of the grantees but shall be the sole property of the grantors; the grantees agree to remove from the easement site and stockpile at an area designated by the grantors all such cut timber at the grantees' sole expense. However, the initial timber cut undertaken by the grantees to improve the present tote road is excluded from the terms of this paragraph and such timber generated shall remain the property of the grantees.

For title to the property subject to the aforesaid easement, see deed of Ruth Strickholm to Eugene P. Dunn and Eleanor J. Dunn dated August 10, 1977 recorded with said registry at Book 2551, Page 801.


RESERVATION OF EASEMENT

Reserving to the grantors, their and their heirs the right to use, in common with the grantees and such other persons authorized by the grantees, the area shown on Plan No. 10390 as the Public Service Co. of New Hampshire Easement both as an access/egress easement to the unnamed pond(s) abutting said easement and located to the south border of the said premises and for the purposes of fishing and other sporting uses to which the premises can legally be put. This easement reserves no rights to the grantors, their heirs or assigns to layout, build, construct or maintain in any manner any roadway upon the said premises. Further, the rights of the grantors, their heirs and assigns are subject to any and all the rights heretofore granted to Public Service Co. of New Hampshire.

BK 6680 PG 1698

The aforesaid premises are not homestead property.

STATE OF NEW HAMPSHIRE

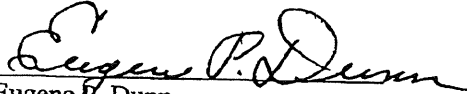
DEPARTMENT OF REVENUE ADMINISTRATION  REAL ESTATE TRANSFER TAX

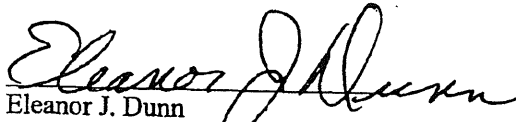
****2 THOUSAND 1 HUNDRED AND 00 DOLLARS

08/02/2002 553668 \$ ****2100.00

VOID IF ALTERED

In Witness whereof the we set our hands and seals this 31st day of July, 2002.


Eugene P. Dunn


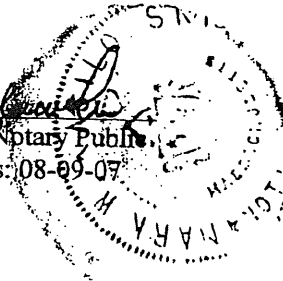

Eleanor J. Dunn

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX,SS

July 31 2002

Then personally appeared the above named Eugene P. Dunn and Eleanor J. Dunn and acknowledged the foregoing to be his/her free act and deed.


Mark W. Kasitowski Notary Public
My commission expires: 08-09-07


BK 6680 Pg 1699



TOWN OF HUDSON

Land Use Division



12 School Street • Hudson, New Hampshire 03051 • Tel: 603-886-6008 • Fax: 603-594-1142

Zoning Administrator Staff Report

Meeting Date: August 22, 2019

Case 168-012 (8-22-19): Attorney Christopher J. Fischer of Boynton Waldron Doleac Woodman & Scott, P.A., 82 Court St., Portsmouth, NH representing Peter and Kimberly Heilman, 8 Madison Drive, Hudson, NH, requests an Appeal From An Administrative Decision of a Notice of Violation dated June 12, 2019 citing violations of two provisions in the Hudson Zoning Ordinance: §334-16 Building permits and §334-8 Certificate of Occupancy. [Map 168, Lot 012-000; Zoned Residential Two (R-2); HZO Article III, §334-16 & §334-8].

Property description:

This is a developed lot of record: Having 20,255 sqft, where 43,550 sqft is required (existing non-conforming area). The frontage on Madison Dr. is 111 ft. where 120 ft. is required (existing non-conforming). The existing structure (house) appears to satisfy the required setbacks.

Summary:

- 1) Applicant requests the appeal of Notice of Violation dated 6/12/19 alleging violations of: Ordinance 334-16 Building Permits, and Ordinance 334-8 Certificate of Occupancy.
- 2) Code Enforcement Officer's Statement of Facts – See attachment “F”
- 3) In-House review/comments:
Town Engineer - yes
Town Planner - yes
Fire Dept./Inspectional Services - yes

HISTORY:

- 1) Assessing: Listed as a one family 1999 & 2000, then two family since 2001, one family 2019.
- 2) Building Permits: #241-80 to construct 24' x 24', 2 car garage issued April 3, 1980; #261-95 construct 180 sq. ft. breezeway connecting house w/garage issued March 20, 1995; #202-01 to construct farmer's porch issued Aug 21, 2000.

HISTORY (continued):

3) **Code Enforcement:**

1994 Complaint letter to owner about illegal dwelling above garage, 11-7-94 note on letter indicates "*brother's use as storage*".

2008: wood boiler w/o permit complaint.

Aug 19, 2010 email complaint/inquiry.

8/19/2010 written complaint: Illegal ALU, no permits or ZBA approval

8/25/2010 Letter of complaint about possible ALU sent to Owner.

9/13/10 Munismart history log: meet w/Owner 10:30am possible ALU.

9/15/10 Follow up letter to complainant: after investigation, no violation.

6/12/19 Notice of Violation: lack of Building Permit/Certificate of Occupancy for additional dwelling unit and use as transient lodging.

Attachments:

"A" Assessing record.

"B" Building Permit history

"C" Town Engineer comments

"D" Town Planner comments

"E" Fire Dept./Inspectional Services comments

"F" Code Enforcement

Previous Assessments

Year	Code	Building	Yard Items	Land Value	Acres	Special Land	Total
2019	101 - ONE FAMILY	248,300	0	87,700	0.47	0.00	336,000
2018	104 - TWO FAM	169,700	0	96,500	0.47	0.00	266,200
2018	104 - TWO FAM	169,700	0	96,500	0.47	0.00	266,200
2017	104 - TWO FAM	169,700	0	96,500	0.47	0.00	266,200
2017	104 - TWO FAM	173,200	0	79,300	0.47	0.00	252,500
2017	104 - TWO FAM	169,700	0	96,500	0.47	0.00	266,200
2016	104 - TWO FAM	173,200	0	79,300	0.47	0.00	252,500
2016	104 - TWO FAM	173,200	0	79,300	0.47	0.00	252,500
2015	104 - TWO FAM	173,200	0	79,300	0.47	0.00	252,500
2015	104 - TWO FAM	173,200	0	79,300	0.47	0.00	252,500
2014	104 - TWO FAM	173,200	0	79,300	0.47	0.00	252,500
2014	104 - TWO FAM	173,200	0	79,300	0.47	0.00	252,500
2013	104 - TWO FAM	173,200	0	79,300	0.47	0.00	252,500
2013	104 - TWO FAM	173,200	0	79,300	0.47	0.00	252,500
2012	104 - TWO FAM	173,200	0	79,300	0.47	0.00	252,500
2012	104 - TWO FAM	174,300	0	105,800	0.47	0.00	280,100
2011	104 - TWO FAM	174,300	0	105,800	0.47	0.00	280,100
2011	104 - TWO FAM	174,300	0	105,800	0.47	0.00	280,100
2010	104 - TWO FAM	174,300	0	105,800	0.47	0.00	280,100
2010	104 - TWO FAM	173,500	0	105,800	0.47	0.00	279,300
2009	104 - TWO FAM	173,500	0	105,800	0.47	0.00	279,300
2008	104 - TWO FAM	173,500	0	105,800	0.47	0.00	279,300
2008	104 - TWO FAM	173,500	0	105,800	0.47	0.00	279,300
2007	104 - TWO FAM	168,200	0	105,800	0.47	0.00	274,000
2007	104 - TWO FAM	151,700	0	79,300	0.47	0.00	231,000
2006	104 - TWO FAM	151,700	0	79,300	0.47	0.00	231,000
2006	104 - TWO FAM	153,300	0	79,300	0.47	0.00	232,600
2005	104 - TWO FAM	153,300	0	79,300	0.47	0.00	232,600
2005	104 - TWO FAM	153,300	0	84,600	0.65	0.00	237,900
2004	104 - TWO FAM	153,300	0	84,600	0.65	0.00	237,900
2004	104 - TWO FAM	120,200	0	64,400	0.65	0.00	184,600
2003	104 - TWO FAM	120,200	0	64,400	0.65	0.00	184,600
2003	104 - TWO FAM	120,200	0	64,400	0.65	0.00	184,600
2002	104 - TWO FAM	120,200	0	64,400	0.65	0.00	184,600
2002	104 - TWO FAM	120,200	0	64,400	0.65	0.00	184,600
2001	104 - TWO FAM	91,400	0	46,500		0.00	137,900
2000	101 - ONE FAMILY	91,400	0	46,500	0.65	0.00	137,900
1999	101 - ONE FAMILY	58,900	24,100	46,500	0.65	0.00	129,500

A



Town of Hudson, N. H.

Office of Town Building Inspector

BUILDING PERMIT

No. 211-77

April 3, 1980

This certifies that Franklin Street Name of Owner

is granted permission to erect
 alter
 repair
 move
24' x 24' 2 car garage Description

of Building

on premises located at and known as
to

442 Number Franklin St Street or Avenue 10-69/1-5

and to do things lawful to that end.

This permit is issued on application number _____, is subject to the conditions thereof and to the provisions of the Zoning Ordinance, and is void unless work thereunder shall have been commenced within 60 days next after the date hereof.

This Permit is issued under the condition that this building WILL NOT be occupied until a Certificate of occupancy is obtained from the Building Inspector.

Value \$ 3,500.00

Richard E. Williams
Administrative Officer

Fee \$ 6.00





TOWN OF HUDSON, N. H.

Application for a Permit To Build

Date 4/1 1980

Residential	
Commercial	
Industrial	
Garage	
Breezeway	
No. of Units	

Subdivision	Yes	No
Planning Bd. Approval Sub Div.	Yes	No
Water Pollution Approval Sub Div. No.		
Septic Construction Permit No.		
Necessary Bonds Posted	Yes	No
Bd. of Adj. Variance Granted If Nec.		

New	
Alter	
Addition	
Repair	

Permit Number

241-80

Name of Owner Kenneth A Parent Address 8 Madison Dr Tel. 885-1580

Land Purchased From _____ Address _____

Location _____ Property Tax No. 4421

Name of General Contractor _____ Map and Lot No. 62/5

Name of Heating Contr. _____ Name of Electrical Contractor _____

Type of Heat _____ Name of Plumbing Contractor _____

Name of Fireplace Mason _____ Name of Masonry Contractor _____

Material of Building wood Style of Roof Gambrel Roof Covering Shingles

Size of Foundation 24' x 24' Living Floor Area _____ No. of Stories _____

Size of Garage 2 CAR Water _____ Sewer _____

Foundation Material slab Width _____ Height _____ Footings Yes No

Fireplace No. of Flues _____ Size _____ Chimney Material _____

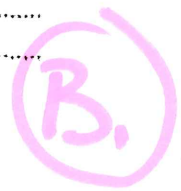
Brief Description of Repair, Alter or Other 2-CAR GARAGE with Gambrel roof, 24' x 24' on Foundation but a cement slab

Value 3,200.00
Fee 600 Garage

The undersigned hereby agrees that the proposed work shall be done in accordance with the foregoing statement, and with the plans and specifications submitted; and that the work connected therewith shall conform with the building laws and regulations of the town of Hudson, and that _____ will notify the Building Inspector when foundation, frame, chimneys, fire-stops and heater-pipes, electrical wiring and plumbing are ready for inspection. I also certify that I have been authorized by the owner to apply for this permit.

OVER
Sketch of building, show streets set back from property lines on all sides on other side.

Owner's Signature Kenneth A Parent
Contractor's Signature _____
Address _____



TOWN OF HUDSON
ATTN: SUSAN SNIDE
ZONING ADMINISTRATOR
12 SCHOOL STREET
HUDSON, NH 03051

BUILDING PERMIT

DEPT. FILE COPY

MAP 62 LOT 5
VALIDATION

AMOUNT PAID

APPLICANT KENNETH PARENT DATE MARCH 20, 19 95 PERMIT NO. 261-95
ADDRESS 8 MADISON DRIVE, HUDSON NH 508-640-0576
(NO.) (STREET) (OWNER'S LICENSE)

PERMIT TO CONSTRUCT ADDITION (1) STORY RESIDENTIAL NUMBER OF DWELLING UNITS ONE
(TYPE OF IMPROVEMENT) (NO.) (PROPOSED USE)

AT (LOCATION) 8 MADISON DRIVE ZONING DISTRICT _____
(NO.) (STREET)
BETWEEN _____ AND _____
(CROSS STREET) (CROSS STREET)

SUBDIVISION _____ LOT 5 BLOCK 62 LOT SIZE _____

BUILDING IS TO BE _____ FT. WIDE BY _____ FT. LONG BY _____ FT. IN HEIGHT AND SHALL CONFORM IN CONSTRUCTION

TO TYPE _____ USE GROUP _____ BASEMENT WALLS OR FOUNDATION _____ (TYPE)

REMARKS: CONSTRUCT 180 SQUARE FOOT BREEZEWAY TO CONNECT THE HOUSE TO THE GARAGE.
AN ELECTRICAL PERMIT IS REQUIRED IF ELECTRICAL WORK IS PROPOSED.

AREA OR VOLUME 180 SQUARE FEET ESTIMATED COST \$ 2,200.00 PERMIT FEE \$ 20.00
(CUBIC/SQUARE FEET)

OWNER KENNETH AND PAMELA PARENT BUILDING DEPT. BY Edward P. Malgoum
ADDRESS 275 MARSHALL STREET, TEWKSBURY MA 01876

(Affidavit on reverse side of application to be completed by authorized agent of owner)

B₂

RECEIVED

MAP
LOT
STREET



TOWN OF HUDSON — Building/Zoning

MAR 17 1995

APPLICATION FOR
PLAN EXAMINATION AND
BUILDING PERMIT
886-8005

TOWN OF HUDSON
ZONING ADMINISTRATION

IMPORTANT — Applicant to complete all items in sections I, II, III, IV, and IX.

I. LOCATION OF BUILDING

AT (LOCATION) Madison Drive (NO) (STREET) ZONING DISTRICT _____

BETWEEN _____ (CROSS STREET) AND _____ (CROSS STREET)

SUBDIVISION _____ MAP 62 LOT 5 LOT SIZE _____

II. TYPE AND COST OF BUILDING — All applicants complete Parts A-D

A. TYPE OF IMPROVEMENT

1 New Building

2 Addition (If residential, enter number of Bdrm/Baths added, if any, in Sec. III, Part L.)

3 Alteration (See 2 above)

4 Repair, replacement

5 Wrecking (If multi-family residential, enter number of units in building in Part D, 13)

6 Moving (relocation)

7 Foundation only

D. PROPOSED USE - (For "Wrecking" most recent use)

Residential	Non-Residential
12 <input type="checkbox"/> One family	18 <input type="checkbox"/> Amusement, recreational
13 <input type="checkbox"/> Two family	19 <input type="checkbox"/> Church, other religious
14 <input type="checkbox"/> Transient hotel, motel, or dormitory - Enter number of units _____	20 <input type="checkbox"/> Industrial
15 <input type="checkbox"/> Garage	21 <input type="checkbox"/> Parking garage
16 <input type="checkbox"/> Carport	22 <input type="checkbox"/> Service station, repair garage
17 <input type="checkbox"/> Multi-Family - Townhouse, Apartment, etc (enter number of residential units)	23 <input type="checkbox"/> Hospital, institutional
18 <input checked="" type="checkbox"/> Other - Specify (shed, pool, fireplace, etc.)	24 <input type="checkbox"/> Office, bank, professional
	25 <input type="checkbox"/> Public utility
	26 <input type="checkbox"/> School, library, other educational
	27 <input type="checkbox"/> Stores, merchantile
	28 <input type="checkbox"/> Tanks, towers
	29 <input type="checkbox"/> Other - Specify _____

B. OWNERSHIP

8 Private (individual, corporation, nonprofit institution, etc.)

9 Public (Federal, State, or local government)

18 Other - Specify (shed, pool, fireplace, etc.) 15x10'
 Description: connecting house to GARAGE → BREWERY 180'

C. COST

10. Cost of improvement _____
 to be installed but not included in the above cost

a. Electrical _____

b. Plumbing _____

c. Heating, air conditioning _____

d. Other (elevator, etc.) _____

11. TOTAL COST OF IMPROVEMENT \$ _____

(Omit cents)

Nonresidential - Describe in detail proposed use of buildings, e.g., food processing, machine shop, laundry building, schools, college, parking garage, rental office building, industrial plant.
 If use of existing building is being changed, enter proposed use.

electrical work proposed

III. SELECTED CHARACTERISTICS OF BUILDING - For new buildings and additions, complete Parts E-L; for wrecking, complete only Part J, for all others skip to IV.

E. PRINCIPAL TYPE OF FRAME

30 Masonry (wall bearing)

31 Wood Frame

32 Structural steel

33 Reinforced concrete

34 Other - Specify _____

G. TYPE OF SEWAGE DISPOSAL

40 Town or private company

41 Private (septic tank, etc.) (#40 requires town permit)

H. TYPE OF WATER SUPPLY

42 Public or private company

43 Private (well, cistern)

J. DIMENSIONS

48. Number of stories 1

49. Total square feet of floor area all floors, based on exterior dimensions 180

50. Total land area, sq. ft.

F. PRINCIPAL TYPE OF HEATING FUEL

35 Gas 35a Undergrnd

36 Oil 36b Tank

37 Electricity

48 Coal

49 Other - Specify _____

I. TYPE OF MECHANICAL

Will there be central air conditioning?

44 Yes 45 No

Will there be an elevator?

46 Yes 47 No

K. NUMBER OF OFF-STREET PARKING SPACES

51 Enclosed

52 Outdoors

L. RESIDENTIAL BUILDINGS ONLY

53. Total Bedroom Capacity

Finished	<u>2</u>
Unfinished	<u>2</u>

54. Number of bathrooms

Full	<u>1</u>
Partial	<u>1</u>

B2

IV. IDENTIFICATION - To be completed by all applicants

NAME	MAILING ADDRESS - NUMBER, STREET, CITY, AND STATE	ZIP CODE	TEL. NO.
1. Owner or Lessee <i>Kenneth A Parent</i>	<i>8 Madison Dr Hudson, N.H.</i>	<i>03051</i>	<i>508-640-0576</i>
2. Elec., Plumb., Masonry, Heating, Gen. Contractor			
3. Architect or Engineer			

I hereby certify that the proposed work is authorized by the owner of record and that I have been authorized by the owner to make this application as his authorized agent and we agree to conform to all applicable laws of this jurisdiction.

SIGNATURE OF APPLICANT <i>Kenneth A Parent</i>	ADDRESS <i>8 Madison Dr</i>	APPLICATION DATE <i>3/17/95</i>
---	--------------------------------	------------------------------------

DO NOT WRITE BELOW THIS LINE

V. PLAN REVIEW RECORD - For office use

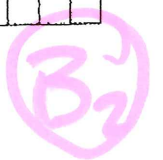
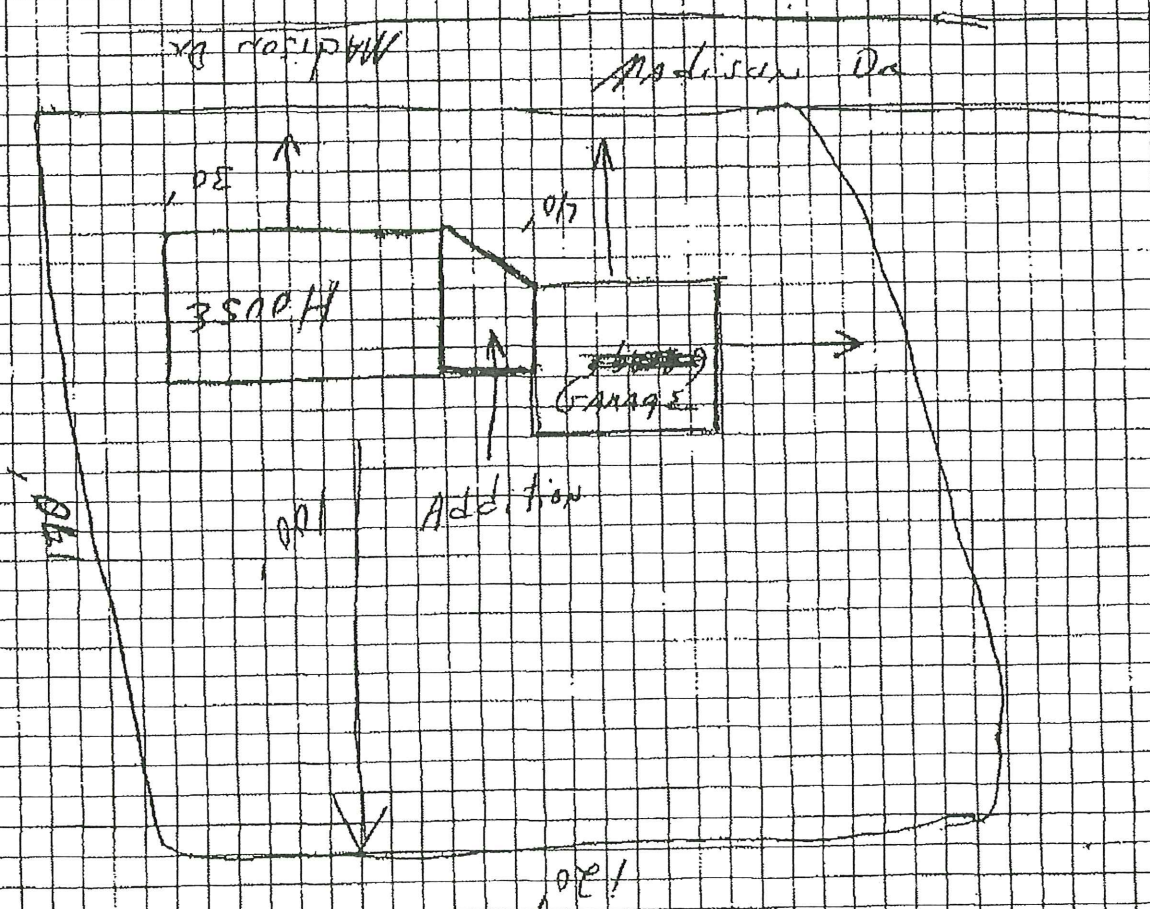
Plans Review Required	Date Rec'd.	Date Plans Check	Started	Date Plans By	Approved	By	Notes
BUILDING							
PLUMBING							
MECHANICAL							
ELECTRICAL							
SITE							
OTHER							

VI. ZONING PLAN EXAMINERS NOTES	VII. REQUIRED PERMIT APPROVAL NOS.
DISTRICT:	SEPTIC PERMIT:
USE:	SEWER PERMIT:
FRONT YARD:	SUBDIVISION APPROVAL:
SIDE YARD: SIDE YARD:	CONSTRUCTION APPROVAL:
REAR YARD: LIVING AREA:	EXCAVATION PERMIT:
LOT AREA: ZBA APPROVAL:	DRIVEWAY PERMIT:
FRONTAGE: SPEC. EXCEPTION:	SITE PLAN APPROVAL:
NOTES:	H.C.R.D. PLAN NO.:

VIII. VALIDATION	
BLDG. PERMIT NO. _____	IMPACT FEES \$ _____
BLDG. PERMIT ISSUED _____ 19__	REVIEW FEES \$ _____
BLDG. PERMIT FEE \$ _____	INSPECTION FEES \$ _____
APPROVED BY <i>2000 EP Madison</i>	SEWER FEES \$ _____
BUILDING INSPECTOR	OTHER FEES \$ _____
BLDG. PERMIT FEE COLLECTED \$ <i>3/20/95</i>	\$ _____
BY FINANCE _____	\$ _____
TITLE _____	



IX. SITE OR PLOT PLAN — For Applicant Use 1 block = 5 ft.



BUILDING PERMIT

AMOUNT PAID

8-31-00

VALIDATION

FORM NO. BOCA - BP 1994

APPLICANT KENNETH PARENT DATE 8-21-00 PERMIT NO. 0802-01
ADDRESS 8 MADISON DR. HUDSON NH
(NO.) (STREET) (CONTR'S LICENSE)

PERMIT TO FARMER'S PORCH NO. SEK STORY SEK NUMBER OF DWELLING UNITS 1
(TYPE OF IMPROVEMENT) (PROPOSED USE)

AT (LOCATION) 8 MADISON DR. HUDSON NH ZONING DISTRICT _____
(NO.) (STREET)
BETWEEN _____ AND _____
(CROSS STREET) (CROSS STREET)

SUBDIVISION _____ LOT 5 BLOCK 62 LOT SIZE _____

BUILDING IS TO BE _____ FT. WIDE BY _____ FT. LONG BY _____ FT. IN HEIGHT AND SHALL CONFORM IN CONSTRUCTION

TO TYPE _____ USE GROUP _____ BASEMENT WALLS OR FOUNDATION _____ (TYPE)

REMARKS: ALL CONSTRUCTION TO BE DONE TO HUDSON TOWN CODES

AREA OR VOLUME _____ ESTIMATED COST \$1,800 PERMIT FEE \$25
(CUBIC/SQUARE FEET)

OWNER KENNETH PARENT BUILDING DEPT BY [Signature]
ADDRESS 8 MADISON DR. HUDSON NH

(Affidavit on reverse side of application to be completed by authorized agent of owner)



Called 8-22-00

Paid 8/31/00



TOWN OF HUDSON — Building/Zoning

APPLICATION FOR
PLAN EXAMINATION AND
BUILDING PERMIT
886-6005

RECEIVED
AUG 18 2000

TOWN OF HUDSON

MAP 62 LOT 5 STREET 8 MADISON

IMPORTANT — Applicant to complete all items in sections I, II, III, IV, and IX.

I. LOCATION OF BUILDING	AT (LOCATION) <u>8 Madison Drive</u>	(NO)	(STREET)		ZONING DISTRICT	
	BETWEEN _____			AND _____		
	SUBDIVISION <u>The Presidential Heights</u>		MAP <u>62</u>		LOT <u>5</u>	LOT SIZE <u>20,000</u>

II. TYPE AND COST OF BUILDING — All applicants complete Parts A-D

<p>A. TYPE OF IMPROVEMENT</p> <p>1 <input type="checkbox"/> New Building</p> <p>2 <input checked="" type="checkbox"/> Addition (If residential, enter number of Bdrm/Baths added, if any, in Sec. III, Part L.)</p> <p>3 <input type="checkbox"/> Alteration (See 2 above)</p> <p>4 <input type="checkbox"/> Repair, replacement</p> <p>5 <input type="checkbox"/> Wrecking (If multi-family residential, enter number of units in building in Part D, 13)</p> <p>6 <input type="checkbox"/> Moving (relocation)</p> <p>7 <input type="checkbox"/> Foundation only</p>	<p>D. PROPOSED USE - (For "Wrecking" most recent use)</p> <table style="width:100%;"> <tr> <td style="width:50%; vertical-align: top;"> <p>Residential</p> <p>12 <input checked="" type="checkbox"/> One family</p> <p>13 <input type="checkbox"/> Two family</p> <p>14 <input type="checkbox"/> Transient hotel, motel, or dormitory - Enter number of units _____</p> <p>15 <input type="checkbox"/> Garage</p> <p>16 <input type="checkbox"/> Carport</p> <p>17 <input type="checkbox"/> Multi-Family - Townhouse, Apartment, etc (enter number of residential units)</p> <p>18 <input type="checkbox"/> Other - Specify (shed, pool, fireplace) <u>FARMERS PORCH</u></p> </td> <td style="width:50%; vertical-align: top;"> <p>Non-Residential</p> <p>18 <input type="checkbox"/> Amusement, recreational</p> <p>19 <input type="checkbox"/> Church, other religious</p> <p>20 <input type="checkbox"/> Industrial</p> <p>21 <input type="checkbox"/> Parking garage</p> <p>22 <input type="checkbox"/> Service station, repair garage</p> <p>23 <input type="checkbox"/> Hospital, institutional</p> <p>24 <input type="checkbox"/> Office, bank, professional</p> <p>25 <input type="checkbox"/> Public utility</p> <p>26 <input type="checkbox"/> School, library, other educational</p> <p>27 <input type="checkbox"/> Stores, merchantile</p> <p>28 <input type="checkbox"/> Tanks, towers</p> <p>29 <input type="checkbox"/> Other - Specify _____</p> </td> </tr> </table>	<p>Residential</p> <p>12 <input checked="" type="checkbox"/> One family</p> <p>13 <input type="checkbox"/> Two family</p> <p>14 <input type="checkbox"/> Transient hotel, motel, or dormitory - Enter number of units _____</p> <p>15 <input type="checkbox"/> Garage</p> <p>16 <input type="checkbox"/> Carport</p> <p>17 <input type="checkbox"/> Multi-Family - Townhouse, Apartment, etc (enter number of residential units)</p> <p>18 <input type="checkbox"/> Other - Specify (shed, pool, fireplace) <u>FARMERS PORCH</u></p>	<p>Non-Residential</p> <p>18 <input type="checkbox"/> Amusement, recreational</p> <p>19 <input type="checkbox"/> Church, other religious</p> <p>20 <input type="checkbox"/> Industrial</p> <p>21 <input type="checkbox"/> Parking garage</p> <p>22 <input type="checkbox"/> Service station, repair garage</p> <p>23 <input type="checkbox"/> Hospital, institutional</p> <p>24 <input type="checkbox"/> Office, bank, professional</p> <p>25 <input type="checkbox"/> Public utility</p> <p>26 <input type="checkbox"/> School, library, other educational</p> <p>27 <input type="checkbox"/> Stores, merchantile</p> <p>28 <input type="checkbox"/> Tanks, towers</p> <p>29 <input type="checkbox"/> Other - Specify _____</p>
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<p>B. OWNERSHIP</p> <p>8 <input checked="" type="checkbox"/> Private (individual, corporation, nonprofit institution, etc.)</p> <p>9 <input type="checkbox"/> Public (Federal, State or local government)</p>			

<p>C. COST</p> <p>10 Cost of improvement _____</p> <p style="font-size: small;">To be installed but not included in the above cost</p> <p>a. Electrical _____</p> <p>b. Plumbing _____</p> <p>c. Heating, air conditioning _____</p> <p>d. Other (elevator, etc.) _____</p> <p>11. TOTAL COST OF IMPROVEMENT <u>\$ 1800.00</u></p>	(Omit cents)	<p>Nonresidential - Describe in detail proposed use of buildings, e.g., food processing, machine shop, laundry building, schools, college, parking garage, rental office building, industrial plant.</p> <p>If use of existing building is being changed, enter proposed use.</p>
---	--------------	--

III. SELECTED CHARACTERISTICS OF BUILDING - For new buildings and additions, complete Parts E-L; for wrecking, complete only Part J, for all others skip to IV.

<p>E. PRINCIPAL TYPE OF FRAME</p> <p>30 <input type="checkbox"/> Masonry (wall bearing)</p> <p>31 <input checked="" type="checkbox"/> Wood Frame</p> <p>32 <input type="checkbox"/> Structural steel</p> <p>33 <input type="checkbox"/> Reinforced concrete</p> <p>34 <input type="checkbox"/> Other - Specify _____</p>	<p>G. TYPE OF SEWAGE DISPOSAL</p> <p>40 <input type="checkbox"/> Town or private company</p> <p>41 <input checked="" type="checkbox"/> Private (septic tank, etc.) (#40 requires town permit)</p>	<p>J. DIMENSIONS</p> <p>48. Number of stories _____</p> <p>49. Total square feet of floor area all floors, based on exterior dimensions _____</p> <p>50. Total land area, sq. ft. _____</p>	
<p>F. PRINCIPAL TYPE OF HEATING FUEL</p> <p>35 <input checked="" type="checkbox"/> Gas 35a <input type="checkbox"/> Undergrnd</p> <p>36 <input type="checkbox"/> Oil 36b <input type="checkbox"/> Tank</p> <p>37 <input type="checkbox"/> Electricity</p> <p>48 <input type="checkbox"/> Coal</p> <p>49 <input type="checkbox"/> Other - Specify _____</p>	<p>H. TYPE OF WATER SUPPLY</p> <p>42 <input checked="" type="checkbox"/> Public or private company</p> <p>43 <input type="checkbox"/> Private (well, cistern)</p>	<p>K. NUMBER OF OFF-STREET PARKING SPACES</p> <p>51. Enclosed _____</p> <p>52. Outdoors _____</p>	<p>L. RESIDENTIAL BUILDINGS ONLY</p> <p>53. Total Bedroom Capacity { Finished / Unfinished</p> <p>54. Number of bathrooms { Full / Partial</p>

53

IV. IDENTIFICATION - To be completed by all applicants

	NAME	MAILING ADDRESS - NUMBER, STREET, CITY, AND STATE	ZIP CODE	TEL. NO.
1. Owner or Lessee	Kenneth A Parent	8 Madison Drive Hudson, N.H.	03051	889-0842
2. Elec., Plumb, Masonry, Heating, Gen. Contractor				
3. Architect or Engineer				

I hereby certify that the proposed work is authorized by the owner of record and that I have been authorized by the owner to make this application as his authorized agent and we agree to conform to all applicable laws of this jurisdiction.

SIGNATURE OF APPLICANT <i>Kenneth A Parent</i>	ADDRESS 8 Madison Drive Hudson N.H.	APPLICATION DATE 8/18/00
---	--	-----------------------------

DO NOT WRITE BELOW THIS LINE

V. PLAN REVIEW RECORD - For office use

Plans Review Required	Date Rec'd.	Date Plans Check	Started	Date Plans By	Approved	By	Notes
BUILDING							
PLUMBING							
MECHANICAL							
ELECTRICAL							
SITE							
OTHER							

VI. ZONING PLAN EXAMINERS NOTES

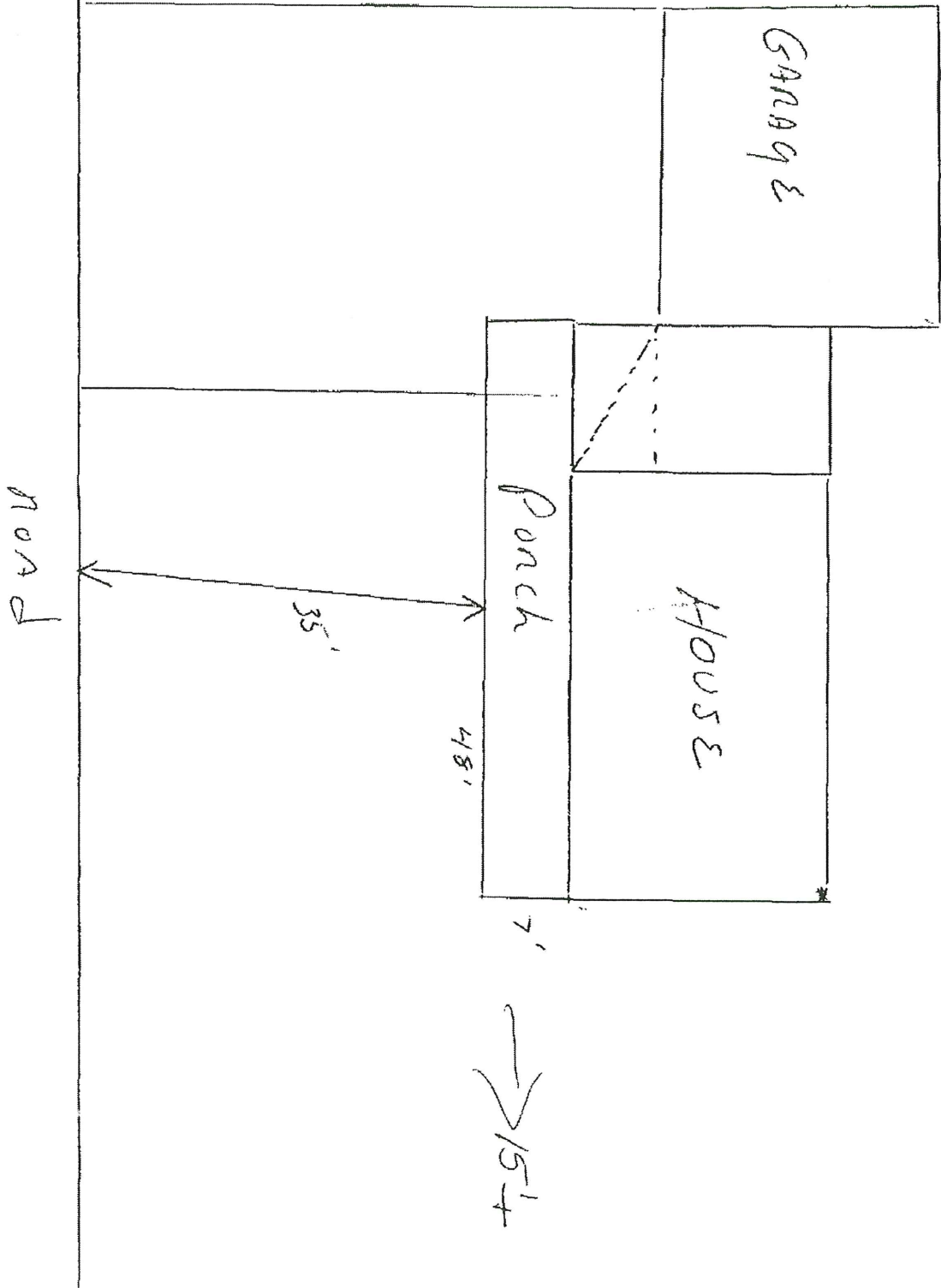
VII. REQUIRED PERMIT APPROVAL NOS.

DISTRICT:		SEPTIC PERMIT:	
USE:		SEWER PERMIT:	
FRONT YARD:		SUBDIVISION APPROVAL:	
SIDE YARD:	SIDE YARD:	CONSTRUCTION APPROVAL:	
REAR YARD:	LIVING AREA:	EXCAVATION PERMIT:	
LOT AREA:	ZBA APPROVAL:	DRIVEWAY PERMIT:	
FRONTAGE:	SPEC. EXCEPTION:	SITE PLAN APPROVAL:	
NOTES:		H.C.R.D. PLAN NO.:	

VIII. VALIDATION

BLDG. PERMIT NO. _____	IMPACT FEES \$ _____
BLDG. PERMIT ISSUED _____ 19 _____	REVIEW FEES \$ _____
BLDG. PERMIT FEE \$ <u>25</u>	INSPECTION FEES \$ _____
APPROVED BY <u><i>M. Parent</i></u> \$ <u>21.00</u>	SEWER FEES \$ _____
BUILDING INSPECTOR	OTHER FEES \$ _____
BLDG. PERMIT FEE COLLECTED \$ _____	\$ _____
BY FINANCE <u><i>M. Parent</i></u> \$ <u>21.00</u>	\$ _____
TITLE	





B₃

Buttrick, Bruce

From: Dhima, Elvis
Sent: Tuesday, July 30, 2019 10:49 AM
To: Goodwyn, Tracy
Cc: Buttrick, Bruce
Subject: RE: ZBA Request for Review/Comments- 8 Madison Dr.
Attachments: ENG Comments-8-madison-dr.pdf

Bruce / Tracy

Please see attachment and my comments below

1. We have received in the past complaints about this property relating to strong septic odor. The septic system, which we have no record of, was design for a single family use and not for the current use. The current use septic loading are higher than single family use septic loading.
2. It appears there is no parking available to accommodate current use.

Thanks

E

Elvis Dhima, P.E.
Town Engineer

Town of Hudson, NH
12 School Street
Hudson, NH 03051
Phone: (603) 886-6008
Mobile: (603) 318-8286



From: Goodwyn, Tracy
Sent: Monday, July 29, 2019 3:15 PM
To: Dhima, Elvis <edhima@hudsonnh.gov>; Buxton, Robert <RBuxton@hudsonnh.gov>; Groth, Brian <bgroth@hudsonnh.gov>
Cc: Buttrick, Bruce <bbuttrick@hudsonnh.gov>
Subject: ZBA Request for Review/Comments- 8 Madison Dr.

Hello All,

Bruce is requesting your review/comments for the above property located at 8 Madison Dr. I have attached a fillable form for your convenience. If you have comments, please include them on a separate sheet and attach with the form or in email is OK. We would like to have your input on/before this Friday, 8/2/19 so that Bruce may include in his Staff report which has been pushed up on the calendar timeline due to his upcoming vacation. The applicant is filing an Appeal From An Administrative Decision of a Notice of Violation dated July 12, 2019 (included in the case file attached). Please see the attached DRAFT Agenda for further info. Thank you in advance for your comments.



Buttrick, Bruce

From: Groth, Brian
Sent: Monday, August 5, 2019 2:31 PM
To: Goodwyn, Tracy
Cc: Buttrick, Bruce
Subject: RE: ZBA Request for Review/Comments- 8 Madison Dr.

Bruce,

My comments regarding the appeal of the notice of violation issued for 8 Madison Drive:

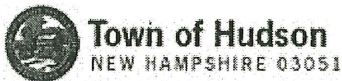
Use – short-term, or transient, rentals is not a permitted use. A residential use is one where the inhabitants establish residence. In this case, the use appears to be that of short-term rental. Furthermore, the subject property is not a duplex, but a single-family residence with an illegally constructed accessory dwelling unit.

Permits – The Appellant offers a memo from 2010 in which the Zoning Administrator found no zoning violation. This submittal omits other correspondence before and after this letter that indicate: there was an illegal unit; the owner at the time removed the kitchen and returned the space to storage at the time of inspection; the 2010 memo was received; the owner then returned the space to a dwelling unit.

In conclusion, I agree with the findings of your Notice of Violation.

Regards,
Brian

Brian Groth
Town Planner



12 School Street
Hudson, NH 03051
Phone: (603) 886-6008
Fax: (603) 594-1142
bgroth@hudsonnh.gov

From: Goodwyn, Tracy
Sent: Monday, July 29, 2019 3:15 PM
To: Dhima, Elvis <edhima@hudsonnh.gov>; Buxton, Robert <RBuxton@hudsonnh.gov>; Groth, Brian <bgroth@hudsonnh.gov>
Cc: Buttrick, Bruce <bbuttrick@hudsonnh.gov>
Subject: ZBA Request for Review/Comments- 8 Madison Dr.

Hello All,





TOWN OF HUDSON

FIRE DEPARTMENT


39 FERRY STREET, HUDSON, NEW HAMPSHIRE 03051



Emergency 911
Business 603-886-6021
Fax 603-594-1164

Robert M. Buxton
Chief of Department

TO: Bruce Buttrick
Zoning Administrator

FR: Robert M. Buxton 
Fire Chief

DT: August 6, 2019

RE: 8 Madison Drive

As you are aware we have been working with the property owner of 8 Madison Drive. The purpose of our involvement was to review any outstanding building and life safety concerns regarding a dwelling unit that was found above the two car garage located on this site.

We have attached several documents to provide you historical data from the Inspectional Services Division regarding property assessment and building permit activity. Please see the attached;

Site Assessment

Inspector Hebert conducted an assessment of the garage and dwelling unit above. In his correspondence you will find a list of items that will need to be addressed by the property owner prior to continued use of this space.

Additionally we met with Mr. Heliman to review the concerns highlighted.

Building Permit Activity

1980 BP Permit # 241-80 Construct a 24' X 24' detached garage 2 Car

1995 BP Permit # 261-95 Construct a 180 sqft. Breezeway to connect house and detached Garage

2000 BP Permit # 202-01 Construct a Farmers Porch

We have attached copies of permits and applications along with Inspector Hebert's correspondence with Mr. Heliman. We did not find any building permit activity to support the additional dwelling unit located above the garage.

If you have any questions please contact me directly.

Cc: Building Official
File

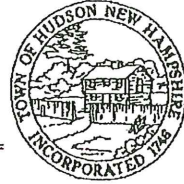




TOWN OF HUDSON

FIRE DEPARTMENT
INSPECTIONAL SERVICES DIVISION

12 SCHOOL STREET, HUDSON, NEW HAMPSHIRE 03051



Emergency 911
Business 603-886-6005
Fax 603-594-1142

Robert M. Buxton
Chief of Department

July 11, 2019

Peter Heilman
8 Madison Drive
Hudson, NH 03051

Re: Building Permit for Finished Dwelling above Garage

Dear Mr. Heilman,

Thank you for the opportunity to walk through and perform an assessment of the garage and dwelling above at 8 Madison Drive. The dwelling and the garage have building and life safety code violations that will need to be addressed. I do have a concern about the structural integrity of the foundation. The foundation is CMU hollow block and the mortar is missing or fell out in many areas. The floor above the garage is not level and appears to be sloped towards the rear of the structure. At the garage wall adjacent to the dwelling, it appears that the bottom plate is not anchored and is not resting on the foundation. Please provide a stamped assessment report from a licensed structural engineer on the integrity of the foundation as well as why the floor is sloping. All walls and floor framing are concealed with sheetrock.

You can apply for a building permit to correct the code violations but this building permit application will also require Zoning to sign off prior to issuance. This building permit is for the authorization to correct the building, plumbing, electrical, mechanical and life safety code violations. This building permit when issued, does not give authorization to continue with the use that is a Zoning Ordinance Violation.

Due to the condition of the workmanship that was visible, a significant amount of drywall will need to be removed from the garage ceiling and the garage/dwelling wall for inspection. Once a building permit has been issued the licensed trades will need to pull their permits – electrical, plumbing and mechanical. Please see the list below regarding the inspection I conducted on July 10th, 2019.

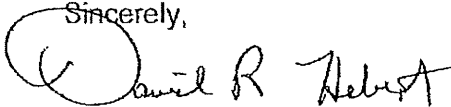
- Smoke detectors not wired on system wiring and not interconnected - Ref: State of NH Department of Safety Informational Bulletin 2015-01
- No second means of escape in either of the bedrooms or the living area - Ref: 2015 NFPA 101 24.2.2.1.1
- No guardrail around upstairs landing - Ref: 2009 IRC R312.1

E2

- No continuous handrail on stairs to dwelling above garage - Ref: 2009 IRC R311.7.7
- Cannot verify venting of plumbing fixtures, no vent stack through roof - Ref: 2009 IRC P3102.1
- Fire separation between garage and dwelling compromised - Ref: 2009 IRC Table R302.6
- Plumbing fixture drainage piping located in the electrical panel board service space - Ref: 2017 NFPA 70 110.26(1) (2) (3)
- A 3" sanitary drainage pipe exits garage ceiling into cantilevered space - Ref: 2009 IRC P3001.2
- Insulation voids visible in areas where the sheetrock is missing in garage ceiling - non-conforming to NH Energy Code
- Cut floor joist visible in garage ceiling/living area above
- Holes bored in floor joist beyond the allowable limits for sanitary drainage piping - Ref: R 502.8.1
- Electrical panel board circuits not labeled
- Living area above garage branch circuits not on arc fault protection
- Branch circuits in living area tested as wired properly

If I may be of further assistance or if you have any questions, please contact me at 603-886-6005, thank you.

Sincerely,



David Hebert
Building Inspector

cc: Robert Buxton, Fire Chief
File



Attachment "F"

Table of Contents:

Code Enforcement Officer's Statement of Facts

Old history:

- F1: 1994 Complaint letter to owner about illegal dwelling above garage, 11-7-94 note on letter indicates "*brother's use as storage*".
- F2: 2008: wood boiler w/o permit complaint.
- F3: Aug 19, 2010 email complaint/inquiry.
- F4: 8/19/2010 written complaint: Illegal ALU, no permits or ZBA approval
- F5: 8/25/2010 Letter of complaint about possible ALU sent to Owner.
- F6: 9/13/10 (and 8/6/19) Munismart history logs: meet w/Owner 10:30am possible ALU.
- F7: 9/15/10 Follow up letter to complainant: after investigation, no violation.

Current violation:

- F8: Two separate neighbor complaint forms.
- F9: Air BnB 6/6/19 website listing.
- F10: 6/12/19 Notice of Violation: lack of Building Permit/Certificate of Occupancy for additional dwelling unit and use as transient lodging.
- F11: Copy of 6/21/19 letter from the Heilmans' to a complainant.
- F12: Current history log of MuniSmart.

Resources:

- F13: NHMA "Municipal Regulations of Short-Term Rentals" Handout/publication from 2019 NHoSI spring planning and zoning conference.

8-6-19

Code Enforcement Officer’s Statement of Facts:

RE: violations at 8 Madison Dr (M168-L012)

§334-8 Certificate of Occupancy. *“A certificate of occupancy will not be issued until all chapter requirements and site plan/development regulations have been met”.*

A Certificate of Occupancy is required per **§334-16C(3)** as follows: *“A certificate of occupancy shall be issued by the Building Inspector only after the Zoning Administrator shall have fully inspected the completed premises and found such premises, in all zoned districts, including subdivisions, to be in full compliance with the zoning and subdivision regulations pertaining to the premises to be occupied. No premises shall be occupied without a certificate of occupancy issued by the Building Inspector.”*

This property has no Certificate of Occupancy for the additional Dwelling Unit, thus in violation of §334-16C(3) & §334-8. In order to generate a Certificate of Occupancy a Building Permit would need to be obtained to make alterations and change the use from single family to the creation of the additional dwelling unit.

There is no record (Building Permits) for the additional dwelling unit.

An additional dwelling unit would only be allowed in the R-2 district as a “traditional” two family/duplex if §334-27: Table of Minimum Dimensional Requirements are met.

The Zoning Ordinance is written as a “permissive” Table of Permitted Uses, meaning any use described in the Table of Permitted Uses are “permitted”.

§ 334-20 Allowed uses provided in tables. , states: *“Any uses not specifically listed in the Table of Permitted Principal or Accessory Uses are hereby expressly prohibited.”*

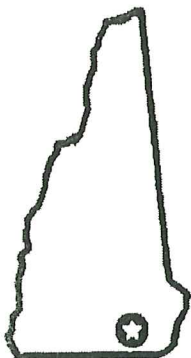
My Notice of Violation orders the following: *“Cease and desist the operation of the illegal and unpermitted use. Either remove the unpermitted dwelling unit (with building permits), Or Apply for a Variance from the Zoning Ordinance §334-22 Table of Permitted Accessory Uses, §334-21 Table of Permitted Principal Uses (as a Bed and Breakfast), and if successful obtain the required permits and inspections.”*

I included Bed and Breakfast, as that being the most familiar and similar use to the current use as an Air BnB of “transient lodging”. Air BnB transient lodging rentals is not listed in the Table of Permitted Principal Uses, therefore it is **“expressly prohibited” [§ 334-20]**.

Conclusion: There is no way a Building Permit which would generate a Certificate of Occupancy could or would have been issued in violation of the Table of Permitted Principal Uses or Table of Permitted Accessory Uses. Therefore this use as an additional dwelling unit for short term rentals are violations of **§334-16C(3)** and **§334-8**.

TOWN OF HUDSON

168/12



12 School Street

Hudson, New Hampshire 03051

603/886-6005



November 3, 1994

Kenneth and Pamela Parent
275 Marshall Street
Tewksbury, Massachusetts 01876

SUBJECT: Illegal Apartment
8 Madison Drive
Map 62, Lot 5

Dear Mr & Mrs Parent:

A complaint was received by this office regarding the use of your garage at the above-referenced location as an illegal apartment. A review of our building files indicates that a permit, #241-80, was issued for the construction of the garage, but nothing was noted about finishing the second floor into living space. A certificate of occupancy was not issued for a garage to be occupied as a dwelling.

Please contact the Zoning Department at 886-6005 as soon as possible to discuss this situation.

Sincerely,

William A. Oleksak
Health & Code Enforcement Officer

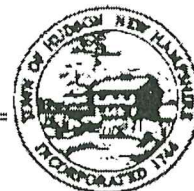
11-7-94

Conversation w/ KEN
brother renting house
using upstairs of the
garage as a storage area
for clothes.



TOWN OF HUDSON
COMMUNITY DEVELOPMENT DEPARTMENT

FILE COPY



12 School Street • Hudson, New Hampshire 03051 • 603-886-6005 • Fax 603-594-1142

Thomas & Judy Parent
8 Madison Drive
Hudson, NH 03051
Map 168, Lot 012

October 14, 2008

Re: Outdoor Wood Boiler

Dear Mr. & Mrs. Parent,

We have received a complaint that you have installed an Outdoor Wood Boiler (OWB) no permits were issued for the installation of this unit. Permits are required and the unit must be installed; operated and maintained by State Law and the manufactures instructions.

Any owner that operates an OWB in a manner that is deemed a nuisance or injurious to public health by a Municipality or the NH Department of Health and Human Services will be required to abate the nuisance.

For more information on this subject contact the DES Air Resources Division at 603-271-1370.

Sincerely,

Town of Hudson

William A. Oleksak
Inspectional Services Supervisor/Health Officer,
Interim Zoning Administrator

PC: Steve Malizia, Town Administrator
Board of Selectmen
Shawn Murray, HFD Chief
Rob Buxton, HFD Deputy Spt. Services
Neal Carter, HFD Deputy Chief Ops.

Fiorenza, Susie

From: Michaud, Jim
Sent: Thursday, August 19, 2010 2:30 PM
To: Fiorenza, Susie
Subject: FW: Zoning

Same taxpayer seeking zoning answers, thanks

jim

From: Joyce Kerouac [mailto:joyce.kerouac@yahoo.com]
Sent: Thursday, August 19, 2010 2:28 PM
To: Michaud, Jim
Subject: Zoning

Hi,

I found out from the Patriot Website that Jefferson Drive is R2. Then my question now is does that mean anyone can just turn their home into a 2 family dwelling without permits?

Our neighborhood is over run with this kind of activity and I have never seen a permit anywhere. Years ago our neighbor put on an "in law" and was told they could not have a kitchen in it but now I see on the Patriot Website that their is indeed a kitchen in the in law. Did our zoning change in the last few years????? Any help you can give me will be appreciated. Our neighborhood has turned into a "dump" in plain English. We have been in our home since 1977 and I think we will have great problems is selling since the neighborhood has taken this path. I thought when we purchased we were moving into a single residence area. Any help you can give me will be greatly appreciated.

Sincerely,

Joyce E. Kerouac
2 Jefferson Drive
Hudson NH 03051
cell 603-566-3884

Joyce E Kerouac
Practice Administrator
Granite State Anesthesiologists, PA
168 Kinsley Street Suite 4
Nashua, NH 03060
Tel: 603-882-1501





TOWN OF HUDSON

COMMUNITY DEVELOPMENT DEPARTMENT

Code Enforcement/Investigation Form



12 School Street Hudson, New Hampshire 03051
Community Development Department 603-886-6005 • Engineering Division 603-886-6008 • Fax 603-594-1142

Date: 8/19/2010

Address in question: 8 Madison Map 168 Lot 12

Please write your question or concern below. Be as specific as possible.

Illegal full - no permits at
ZBA approval

Your Name: Jayce Herouac
Address: 2 Jefferson
Daytime Phone Number: 566-3884
Signature: [Handwritten Signature]

Received complaint
that a second dwelling
units exists we need
to do an inspection
please schedule
attach
evidence
etc

For Office Use Only

Pending Enforcement Issues Yes

Additional Comments:

Letter sent 10/19/2008 regarding outdoor
wood loader letter sent 11/3/09 "Illegal Apt." attached.

Environmental Issues Yes No

Possible Site Plan Infractions Yes No

If "Yes" please forward to Engineering Dept.:

If "Yes" please copy Planning Dept.

Date forwarded to Engineering Department: _____

Date Forwarded to Planning: _____

Other Department Notifications

Department: _____

Date Forwarded: _____





TOWN OF HUDSON

COMMUNITY DEVELOPMENT DEPARTMENT

12 School Street • Hudson, New Hampshire 03051 • 603-886-6005 • Fax 603-594-1142



CERTIFIED MAIL # 7008 1300 0001 6088 7713

August 25, 2010

Thomas and Judy Parent
8 Madison Drive
Hudson, NH 03051

Re: 8 Madison Drive, Hudson (Map 168/Lot 012)

Dear Mr. and Mrs. Parent:

It was brought to our attention that the aforementioned property may be in violation of the Hudson Zoning Ordinance Article XIII A, Section 334-73.1, Accessory Living Units (please see attached).

Please contact the Community Department within ten (10) days of receipt of this letter to schedule an inspection at (603)816-1272.

Thank you.

Sincerely,

COMMUNITY DEVELOPMENT DEPARTMENT

William Oleksak,
Zoning Administrator

Pc: Board of Selectmen
Assistant Town Administrator
File

WO/jk



Code Enforcement
Activities for Follow-up - By Officer
Town of Hudson, NH
9/13/2010 Through 9/13/2010

Officer: Bill Oleksak
Due Date: 9/13/2010

Violation: V2010-00144 M/L: 191-107-000 Str.: 6 COLL ST
DROUIN, RAYMOND, TR. RAYMOND DROUIN LIVING TRUST

Wetland violation
(8/10/10 violation letter sent) (8/12/10 owner came in spoke with Bill, he will be removing all debris from the wetlands. He will call when done)

Date Entered: 8/12/2010 Entered By: jkennedy Activity Type: Site Insp
status of removal of debris from wetlands

clean-up has started - couple more loads to be removed. ✓

Thank so much at #9 call. will need to talk to him about the

Violation: V2010-00155 M/L: 168-011-000 Str.: 6 MADISON DR
MAILLOUX, CONRAD C. MAILLOUX, SHARON A.

Phone complaint received; an Accessory Living Unit without ZBA approvals.
(9/7/10 violation letter sent) (9/10/10 owner came in scheduled an inspection for 9/13/10)
(original occurrence date 8/19/10)

Date Entered: 9/10/2010 Entered By: jkennedy Activity Type: Site Visit
meeting with owner at 10:00

full kitchen

have a buyer need to come to ZBA

Violation: V2010-00154 M/L: 168-012-000 Str.: 8 MADISON DR
PARENT, THOMAS PARENT, JUDY

Written complaint received; Accessory Living Unit without a ZBA approval.
(9/2/10 violation letter sent) (original occurrence date 8/25/10)

Date Entered: 9/13/2010 Entered By: jkennedy Activity Type: Site Visit
meet with owner at 10:30 AM for inspection for possible ALU

*above the garage
master bedroom
bath +
game room*

*daughter
Cindy
438-9285*

649 Coll St. f/u - debris material left to be removed. kitchen

*Blake
649 Mcclintock carport?*

→ 9/14/10 phone call w/ Cindy - she had the stove removed from the basement under the site. She informed new potential buyers that this was done. They currently will not have anyone down there. If they do they will apply for ALU thru the ZBA. We will call in couple weeks for inspection of the basement.



**Code Enforcement
Violation Detail
Town of Hudson, NH**

Number: V2010-00154 **Type:** Zoning8 **Status:** Complies

Permit Number: **Business License:**
Reported: 9/02/2010 **Issued:** **Resolved:** 9/13/2010

Description: Written complaint received; Accessory Living Unit without ZBA approval.
(9/2/10 violation letter sent) (9/13/10 inspection with owner, ALU does not exist only one kitchen)
(9/17/10 response to complainant sent) (original occurrence date 8/25/10)

Site Information:
Name: PARENT, THOMAS PARENT, JUDY
Map Lot: 168-012-000
Street: 8 MADISON DR

Owner Information:
Name: PARENT, THOMAS PARENT, JUDY
Street: 0 8 MADISON DRIVE

Activities:

Date Entered	Entered By	Type	Due Date	Status
8/25/2010	AutoEntry	Initial entry Violation - Auto Activity	/ /	C
		Initial Entry of Violation		
9/02/2010	AutoEntry	Mail Delivered - Auto Activity	/ /	C
		Auto Activity Document Delivery - Purpose request for inspecti Sent To PARENT, THOMAS PARENT, JUDY The Delivery Type is Certified / return receipt		
9/13/2010	jkennedy	meet with owner at 10:30 AM for inspection for possible ALU - ALU does not exist only one kitchen.	9/13/2010	O

Delivered Mail:

Purpose	Date Sent	Sent To Whom
Delivery Type Number	Sent To Address	
request for inspecti	9/02/2010	PARENT, THOMAS PARENT, JUDY
Certified	8 MADISON DRIVE	
70081300000160887713	HUDSON	NH 03051

Reported By Information:

Name	Title	Phone
Email		





TOWN OF HUDSON

COMMUNITY DEVELOPMENT DEPARTMENT

RESPONSE TO COMPLAINT FILED



12 School Street • Hudson, New Hampshire 03051 • 603-886-6005 • Fax 603-594-1142

September 15, 2010

Joyce E. Kerouac
2 Jefferson Drive
Hudson, NH 03051

Re: Follow-up on complaint dated August 19, 2010

Dear Ms. Kerouac:

Please be advised that the Hudson Zoning Administrator received a complaint from you concerning the alleged zoning violation(s) at 8 Madison Drive, Hudson concerning a possible Accessory Living Unit without approvals.

After an investigation of this complaint, I have determined that this complaint is:

- not a violation of zoning.
- a violation of zoning and applicable enforcement action is in process.
- under investigation at this time.
- a civil matter between the parties.
- other _____

Sincerely,

COMMUNITY DEVELOPMENT DEPARTMENT

William A. Oleksak
Zoning Administrator

pc: Board of Selectmen
Assistant Town Administrator
File

WO/jk



#V2019-00031

TOWN OF HUDSON

JUN 05 2019

TOWN OF HUDSON

LAND USE DIVISION

12 School Street • Hudson, New Hampshire 03051 • Tel: 603-886-6008 • Fax: 603-564-1142

Planning Department

Code Enforcement/Investigation Form

Address in Question: 8 Madison Drive Hudson NH.

Business Name (if applicable): Airbnb - Hudson Haven

Type of Occupancy: Residential Commercial Industrial

Please write your question or concern below. Please be as specific as possible.

Are BNBs Allowed in our area?
This one will sleep up to 7 guests!!
Please check on this for us,
Thank you

Your Name: Joyce Kerouac Daytime Phone #: 603-566-3884

Address: 2 Jefferson Dr. Hudson NH.

Signature: Joyce Kerouac Date: 6/5/19
Joyce.Kerouac@yahoo.com

For Office Use Only Date Filed: 6/5/19 Map: 168 Lot: 012-000

Pending Enforcement Issues: Yes No
Environmental Issues: Yes No Date Forwarded to Engineering: _____
Possible Site Plan Infractions: Yes No Date Forwarded to Planning: _____
Other Department Notifications: Department: _____ Date Forwarded: _____

Additional Comments:

"Google Address" = Hudson Haven (AIRBNB)

F3



TOWN OF HUDSON

JUN 12 2019

TOWN OF HUDSON

LAND USE DIVISION

12 School Street • Hudson, New Hampshire 03051 • Tel: 603-886-6008 • Fax: 603-594-1142

Planning Department

Code Enforcement/Investigation Form

Address in Question: 8 Madison Drive Hudson NH

Business Name (if applicable): Hudson Haven

Type of Occupancy: Residential Commercial Industrial

Please write your question or concern below. Please be as specific as possible.

Our neighborhood is not a cut thru and we have been seeing a lot of new faces so when I found out there was an Air BNB in our neighborhood, I was not happy. There are a lot of kids in our neighborhood and having many people come and go makes me fearful for them. I'm not the only one in the neighborhood that feels this way.

Your Name: Melanie Plante Daytime Phone #: 978-804-7504

Address: 8 Jefferson Drive Hudson NH 03051

Signature: Melanie Plante Date: 6/12/19

For Office Use Only Date Filed: _____ Map: _____ Lot: _____

Pending Enforcement Issues: Yes No

Environmental Issues: Yes No Date Forwarded to Engineering: _____

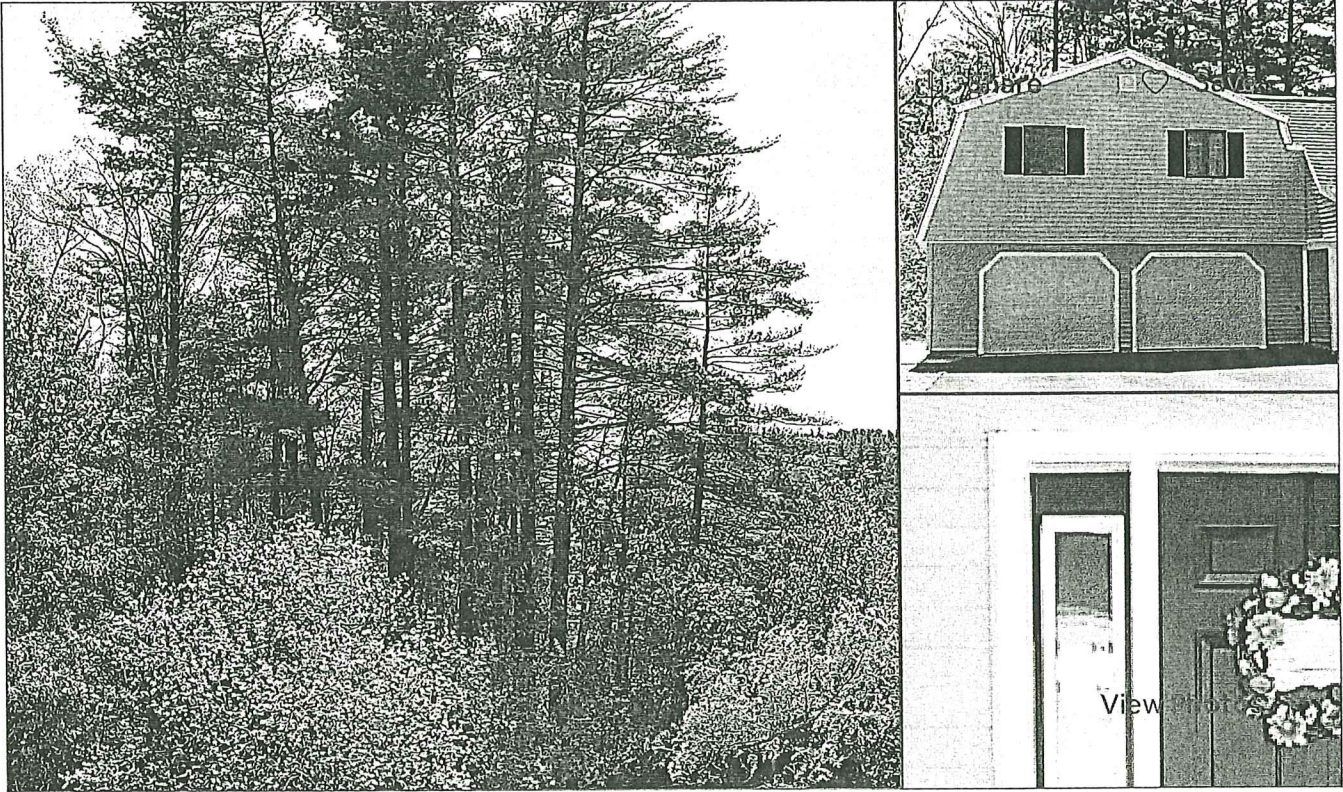
Possible Site Plan Infractions: Yes No Date Forwarded to Planning: _____

Other Department Notifications: Department: _____ Date Forwarded: _____

Additional Comments:

Bruce FYI, 6/21/19 entered on memorandum. (TR)





The Hudson Haven: A private & tranquil guest suite

Hudson



Logan

This place is getting a lot of attention.
It's been viewed 267 times in the past week.

🏠 Entire guest suite
7 guests 2 bedrooms 5 beds 1 bath

🔑 Great check-in experience
100% of recent guests gave the check-in process a 5-star rating.



Accuracy

Communication

Cleanliness

Location

Check-in

Value

Yasia

June 2019

Awesome neat clean and well decorated place! Quiet neighborhood as well.

Sue

June 2019

This was a beautifully decorated private space in a nice quiet area. We'd definitely stay there again.

Karen

June 2019

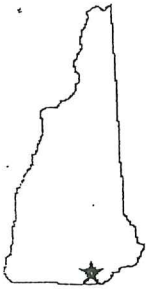
Logan and Kimberly were so accommodating and welcoming to my family! The apartment is open, bright, clean, and spacious. The kitchenette has everything we needed (including coffee and homemade snacks!) and they even left treats for our pets. The bed was so comfortable and...Read more

Serina

May 2019

Spouse and I needed a place to sleep during our travel from Vermont to Boston. This place was low-cost and seemed reasonable along our route. Nashua was a larger





TOWN OF HUDSON

Land Use Division



12 School Street • Hudson, New Hampshire 03051 • Tel: 603-886-6008 • Fax: 603-594-1142

Notice of Violation

June 12, 2019

Peter and Kimberly Heilman
8 Madison Dr
Hudson, NH 03051

Certified 7016 2710 0000 0595 2315
USPS

Re: 8 Madison Dr Map 168 Lot 012-000
District: Residential Two (R-2)

Dear Peter and Kimberly,

Complaint: Operation and occupancy of a transient rental unit (bed and breakfast) on the rental service: Air BnB. No permits/approvals for the creation of such additional "rental" unit. Violation of Hudson Town Code §334-16 Building Permits and §334-8 Certificate of Occupancy.

Order: Cease and desist the operation of the illegal and unpermitted use.
Either remove the unpermitted dwelling unit (with building permits),
Or

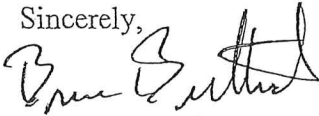
Apply for a Variance from the Zoning Ordinance §334-22 Table of Permitted Accessory Uses, §334-21 Table of Permitted Principal Uses (as a Bed and Breakfast), and if successful obtain the required permits and inspections.

Please be advised that in accordance with the Hudson Zoning Ordinance §334-79 Violations and Penalties, and RSA § 676:17, you are subject to a civil penalty of \$275 for the first offense, and \$550 for subsequent offenses, for each day that your property is found to continue in violation of the HZO after the date you receive this notice, with each day that the violations continue being a separate offense. If the Town must pursue legal action against you, the Town shall be entitled to recover its costs and reasonable attorney fees if it is found to be a prevailing party.

NOTE: this determination may be appealed to the Hudson Zoning Board of Adjustment within 30 days of the receipt of this letter.

6/12/19
entered
muni.
Fib

Sincerely,



Bruce Buttrick, MCP

Zoning Administrator/Code Enforcement Officer

(603) 816-1275

bbuttrick@hudsonnh.gov

cc: Public Folder
Chief Buxton – Inspectional Services
File

NOTE: this determination may be appealed to the Hudson Zoning Board of Adjustment within 30 days of the receipt of this letter.

F10

Joyce Kerouac
2 Jefferson Dr.
Hudson N.H. 03051
cell 603-566-3884

TOWN OF HULSON

JUN 24 2019

Zoning Department

Mr. Buttrick

Kindly give me a call when you can.
THANKS

Kindly give me a call when you can.
THANKS

Zoning Department

JUN 24 2019

TOWN OF HULSON

Mr. Buttrick

Joyce Kerouac
2 Jefferson Dr.
Hudson N.H. 03051
cell 603-566-3884

(F)

6/25/19
enters

Mrs. Joyce Kenouac,

June 21st, 2019

We are writing to inform you that we have received a cease and desist order from the Town of Hudson as a result of the complaint that was received from your address. We have made multiple attempts to talk to you in person all of which have been refused. So we are leaving this letter as an attempt to communicate with and inform you of the whole situation.

We first want to make it absolutely and unequivocally clear that we are working with the town to resolve the issues that have been brought to our attention; many of which severely predate our occupancy of the house, but that we now are somehow expected to fix. It is going to take us time and a lot of fighting over things we didn't even know were problems. For example, imagine our surprise when we were informed that the 2 bedrooms, bathroom and living room above our garage were not permitted. We bought a 4 bedroom house, paid for a 4 bedroom house, and are now being told that we either have to tear down the additional space or bring it up to code and get it permitted for occupancy. We were not the ones that built the structure, but we are now financially liable for it as a result of the town not stopping the building of the structure in the first place and allowing it to be used as a livable space without permits since it's erection. So we ask for your patience and understanding as we progress through this process.

We have reached out to a real estate attorney to determine who it is that we need to hold accountable for allowing this gross oversight to happen. We are honestly not sure what our first steps are in correcting this issue because we don't believe that we should be held accountable for the actions that were taken by others years before we ever bought this home. We also were led to believe that everything on this home was permitted before we bought it. We had inspections and assessments done and worked with a title company to ensure that there was nothing outstanding. Yet somehow, this was missed. So we are talking with everyone who was involved with the purchase to determine why this was allowed to happen.

Now to address what we believe is the true reason for your complaint to the town. We first want to express our confusion and hurt for whatever we have done that made you feel as though you could not approach us directly with any concerns or questions you might have had. We would have been, and still are, happy to discuss them and come to a reasonable and fair conclusion. Had you come and asked us, we would have let you know that we rent 2 of our extra bedrooms to people who come to town to visit family and friends, attend weddings, attend funerals, attend school orientations, experience the history of Boston, etc. We do this by listing those rooms on the home-sharing site AirBnB. Most of these families wouldn't have been able to come see their daughter graduate, or go to the St. Anselm orientation with a new student, or lay to rest their mother in Bedford, or take care of ailing elderly patients in the area if we did not make it financially feasible for them to do so.

We would like to make it clear that the Town of Hudson has never dealt with this situation and currently has no active legislation governing, allowing, or restricting the permitting or use of Home-Sharing which is the technical and legal term for what we are doing. This has been confirmed by the Land-Use Division and Zoning Board of the Town of Hudson. We have reached out to a land-use and zoning attorney to make sure that by continuing the use of our home business we are not breaking any laws or putting ourselves at risk for any kind of retribution by the town or neighborhood. Currently there is a New Hampshire Supreme Court case dealing with this very topic that was heard earlier this week. The case has been taken under advisement and is pending a ruling.

Now we understand that safety is likely the biggest concern. Every guest that stays with us is required to have a background check and provide 2 forms of identification one being a federally approved form of identification such as a social security or passport number. My husband is a high-level security cleared employee

F

6/25/19
RB

of the United States Air Force, with a focus in protecting military and national security assets and employees within the United States and Abroad, and as such takes security and safety very seriously. We would never allow any dangerous, illegal, or questionable activity to take place on the property or within the neighborhood. There are specific house rules that prevent parties, large gatherings, or smoking on the property and invoke quiet hours after 10pm. We really enjoy our privacy and the quaint setting so we have gone to great lengths to make sure our guests have that same mindset. One of us is always on the property while guests are here so that if any issue were to arise it could be dealt with immediately.

All of our guests have been quiet and respectful families and individuals. The number of guests that have stayed with us, typically between 1-4 per stay, have accounted for an additional 20 cars over the last 2 months and they are not joyriding around the neighborhood. We only allow one group of guests at a time hence the minimal extra traffic. Most of our guests leave early in the morning and return later in the evening. They do not spend the majority of their time in the house or in the neighborhood. We do actively track the traffic entering and exiting our neighborhood to ensure that our guests are not affecting the area. The cars coming to and from our property are no more than those of people who regularly have social gatherings with friends, family, church members, etc. of which there are a number along our street.

The last thing we'd like to address is of a more personal nature. We are 39 weeks pregnant. Expecting our first, a little girl. And at this time of our lives, all we SHOULD be worrying about is when will we go into labor, whether or not we're going to be good parents, if she is going to be a quiet baby or a fussy one, how we are going to get enough sleep, whether we have everything we need for her. Instead, having a baby doesn't even register on the list of things causing us anxiety and worry because we have to worry about lawyers and permitting and finances and whether or not our neighbors hate us.

Our daughter is a large reason we decided to do this in the first place. We are young, just starting out in life and coming from regions with a much lower cost of living. My husband is 28, I am 26. He graduated 2 years ago and has done everything he possibly can to put us in a position where we are comfortable and contributing members of society. But life is expensive, and since I was 5 months pregnant when we moved here, finding a job(I was previously employed as a medical assistant) was not an easy task. We also knew that we wanted our daughter raised at home after she was born and it felt unfair to go through the process of employment only to leave that employer once she was born. We have the extra rooms and saw that we could make some money to pay off student loans, get caught up on credit card debt, make improvements to the property, prepare for her arrival, and allow me to work from home so that we can raise our daughter to be a good person instead of letting a daycare center raise her.

We understand that this might be new and that there might be a lot of growth and questions for everyone in the coming months, but we hope that if you have further concerns , questions, or just want to say Hi that you will come and talk to us or give us a call any time(our phone numbers are below). We are home almost every night after 6pm. And we really are trying to make sure that the only impact we have on our neighborhood is a positive one.

With Respect,

Logan and Kimberly Heilman

8 Madison Drive

Logan: 480-773-4623

Kimberly: 480-493-7179

TOWN OF HUDSON

JUN 24 2019

Zoning Department

F

✓
entered
6/25/19
TG

**Code Enforcement
Violation Detail
Town of Hudson, NH**

Number: V2019-00031 **Type:** Zoning8 **Status:** Active

Permit Number: **Business License:**
Reported: 6/06/2019 **Issued:** **Resolved:**

Description: 6/5/19- Received CE/Investigative form:
" Are AirBNB's allowed in our area ? This one will sleep up to 7 guests !! Please check on this for us."
Business name- Airbnb- Hudson Haven

Site Information:

Name: HEILMAN, PETER L. HEILMAN, KIMBERLY M.
Map Lot: 168-012-000
Street: 8 MADISON DR

Owner Information:

Name: HEILMAN, PETER L. HEILMAN, KIMBERLY M.
Street: 0 8 MADISON DR.

F12

Code Enforcement
Violation Detail
Town of Hudson, NH

Number: V2019-00031 **Type:** Zoning8 **Status:** Active

Activities:

Date Entered	Entered By	Type	Due Date	Status
6/06/2019	AutoEntry	Initial entry Violation - Auto Activity Initial Entry of Violation- B. Buttrick to investigate.	6/12/2019	O
6/12/2019	AutoEntry	Mail Delivered - Auto Activity Auto Activity Document Delivery - Purpose Notice of Violation Sent To HEILMAN, PETER L. HEILMAN, KIMBERLY M. The Delivery Type is Certified 7016 2710 0000 0595 2315/ return receipt	/ /	C
6/12/2019	AutoEntry	Mail Delivered - Auto Activity Auto Activity Document Delivery - Purpose Notice of Violation Sent To HEILMAN, PETER L. HEILMAN, KIMBERLY M. The Delivery Type is Reg Mail	/ /	C
6/12/2019	tgoodwyn	Owner or Complainant came in 6/12/19- Complainant Melanie Plante came into counter and filled out CE/Investigation Form: "Our neighborhood is not a cut thru and we have been seeing a lot of new faces so when I found out there was an AirBNB in our neighborhood, I was not happy. There are a lot of kids in our neighborhood and having many people come and go makes me fearful for them. I'm not the only one in the neighborhood that feels this way." Complainant was informed that a Notice of Violation was mailed to the owner today (6/12/19).	6/12/2019	C
6/17/2019	tgoodwyn	Owner or Complainant called in 6/15/19- Owner-Peter Heilman called @ 11::10 AM and left voicemail msg to return call before 9AM on Monday, 6/17/19 RE:NOV received	6/17/2019	O
6/17/2019	tgoodwyn	Phone call out to Owner or Complainant 6/17/19- CEO B. Buttrick called and spoke with owner, Peter Heilman before 9:AM. Owner states will stop by and review file and also requested Variance and Appeal from Admin Decision Applications.	6/17/2019	C
6/21/2019	tgoodwyn	Email-in from Owner or Complainant 6/20/19 6:53 AM received email from complainant Joyce Kerouac RE: ...8 Madison continues to receive guests..."	6/21/2019	C
6/21/2019	tgoodwyn	Email out to Owner or Complainant 6/20/19 9:02 AM B. Buttrick emailed reply to complainant, Joyce Kerouac. Explained owner has a 30 day period to appeal the NOV...owner has requested a mtg. with us..." Attached recent article from conference held in NH on "Municipal Regulation of Short-Term Rentals"	6/21/2019	C
6/21/2019	tgoodwyn	Meeting with Complainant, Owner, Violato 6/21/19- Meeting:CEO B.Buttrick and Admin Assist. T.Goodwyn met with owner-Logan (confirmed he goes by name Peter also) and his consultant? named Ryan. Owner requested meeting to review his options to the NOV sent and received. Buttrick explained options: 1) Appeal of Admin Decision of NOV dated 6/12/19 2) Do a Variance/Home Occupation Special Exception	6/28/2019	O

Informed no permits/approvals/inspections on file of add'l units
Discussed tax assessing
Discussed Residential use versus Transient use for:(hotel/bed&breakfast/commerce)
Gave copies of 2 CE complaints to owner

F₁₂

**Code Enforcement
Violation Detail
Town of Hudson, NH**

Number:	V2019-00031	Type:	Zoning8	Status:	Active
6/25/2019	tgoodwyn	Owner or Complainant came in		6/25/2019	C
Complainant Joyce Kerouac stopped by counter and dropped off a letter dated June 21, 2019 and addressed to her from the owners Logan and Kimberly Heilman.					
Complainant requested CE B. Buttrick call her.					
7/17/2019	bbuttrick	Made site inspection to verify		7/17/2019	C
7/10/19 CEO Buttrick & B.I. Hebert visited and inspected site.					
7/17/2019	bbuttrick	Owner or Complainant came in		7/17/2019	C
7/11/19 Owner's Lawyer came to counter to fill out Appeal form.					
7/17/2019	bbuttrick	Misc. actions/information received		8/14/2019	O
7/12/19 received via overnight delivery: Appeal of Admin Decision, will be on Aug 22 ZBA agenda.					
7/17/2019	bbuttrick	Letter Returned		7/17/2019	C
Certified ltr returned "unclaimed"					
7/17/2019	bbuttrick	Email-in from Owner or Complainant		7/17/2019	C
7/16/19 Email received from Complainant: What's status of C&D etc?					
7/17/2019	bbuttrick	Email out to Owner or Complainant		7/17/2019	C
7/16/19 CEO Buttrick emailed answers to complainant.					
7/17/2019	bbuttrick	Owner or Complainant called in		7/17/2019	C
7/17/19 Complainant's husband called and wanted to know the status. Also indicated they are listing on VRBO					

Delivered Mail:

Purpose	Date Sent	Sent To Whom
Delivery Type	Sent To Address	
Number		
Notice of Violation	6/12/2019	HEILMAN, PETER L. HEILMAN, KIMBERLY M.
Certified	0 8 MADISON DR.	
70162710000005952315	HUDSON	NH 03051
Notice of Violation	6/12/2019	HEILMAN, PETER L. HEILMAN, KIMBERLY M.
Reg Mail	0 8 MADISON DR.	
	HUDSON	NH 03051

Reported By Information:

Name	Title	Phone
Email		
Joyce Kerouac		603-566-3884
2 Jefferson Dr		

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Municipal Regulation of Short-Term Rentals

Cordell Johnston
Government Affairs Counsel
New Hampshire Municipal Association

New Hampshire Office of
Strategic Initiatives
Spring Planning and Zoning
Conference 2019

1. Why should my town care about short-term rentals?

Everyone knows that the short-term rental business has exploded in the last decade. The temptation to get into the business is strong; there probably are few people who haven't thought at least briefly about whether they could make a few extra dollars from renting out a room in their home a few days, or a few weekends, a year—or perhaps 365 days a year.

Although there are plenty of good things about short-term rentals, they can bring problems. Among the negative effects that many municipalities have experienced are increases in noise, littering, traffic, illegal parking, and disorderly conduct. In some cities around the country, the conversion of residential housing into short-term rental properties has exacerbated existing housing shortages and an affordable housing crisis.

Most New Hampshire municipalities have not yet expressed significant concerns about short-term rentals. Reported problems have come primarily from areas with heavy tourist traffic, like the seacoast and the White Mountains. But short-term rentals are likely to come to your town if you have, or are close to, any of these: the ocean, a lake, a ski area, a college, a hospital, a racetrack, a hiking destination, an ATV or snowmobile trail, a popular hunting area, a large business, or leaves that change colors in the fall.

There is a good chance that one or more properties in your municipality are already being operated as short-term rentals. And there is a reasonable chance that they are not in compliance with your zoning ordinance.

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II. What is a short-term rental?

A. No controlling definition. Statutes and local ordinances in other states typically define a short-term rental as the rental of a residential unit, for a fee, for occupancy for less than 30 days, or less than one month, or similar language.

There is no firm definition of “short-term rental” in New Hampshire land use law, but there are two tangential statutes that define the term.

- RSA 48-A, the housing standards statute, defines “short-term rental” or “vacation rental” as “any individually or collectively owned single-family house or dwelling unit or any unit or group of units in a condominium, cooperative, or timeshare, or owner occupied residential home, that is offered for a fee and for less than 30 consecutive days.” See RSA 48-A:1, V.
- RSA 78-A, the meals and rooms tax statute, defines “short-term rental” as “the rental of one or more rooms in a residential unit for occupancy for tourist or transient use for less than 185 consecutive days.” See RSA 78-A:3, XX.

The 185-day standard in the meals and rooms tax statute is an aberration. (The relevance of the definition to that statute is that the meals and rooms tax is imposed on rentals of sleeping accommodations other than to “permanent residents,” defined as someone who occupies a room for at least 185 consecutive days.) A rental for less than a month is considered the standard definition.

B. Municipality may adopt its own definition. However, a municipal zoning ordinance may define terms however the municipality’s legislative body decides (with some exceptions). The definitions in RSA 48-A and RSA 78-A apply only for purposes of those chapters. A one-month or 30-day limit is not required. If a municipality chooses to regulate short-term rentals through its zoning ordinance, it may define the term however it chooses.

III. Do municipalities have zoning authority to limit or prohibit short-term rentals?

The short answer is YES.

A. Statutory authority. RSA 674:16, the zoning enabling statute, states that a zoning ordinance “shall be designed to regulate and restrict,” among other things, “the location and *use of buildings, structures and land used for business, industrial, residential, or other purposes.*”

That is quite clear. The zoning ordinance may regulate the use of buildings for “business, industrial, residential, or other purposes”—that is, for any purpose. Various statutes and court decisions impose limits on municipal authority to regulate property uses through zoning, but there is nothing that prohibits regulation of short-term rentals.

B. The argument against allowing regulation: “It’s a residential use.” In New Hampshire, a standard argument used by those who want to prohibit municipalities from regulating short-term rentals goes something like this:



- 1) Short-term rental is a residential use; and
- 2) A municipality may not treat rental residential property differently from owner-occupied residential property. "If I have a right to live in a house that I own, I have a right to rent the house to someone else."

Answer: It's not a residential use. A room rented for a weekend does not become the temporary occupant's residence. Renting a room to a continuing sequence of guests for a weekend or a week at a time is not the same as renting it to a tenant who resides there on a long-term basis. This is the difference between a hotel room and an apartment.

Nor does the owner's residing on the property keep it within the definition of a residential use. If you buy a house and live in half of it, but convert the other half into a convenience store, or a bar, or a gunpowder factory, it is no longer a purely residential use. Similarly, if you use it as a hotel or a bed and breakfast, it is no longer purely a residential use.

Note: New Hampshire law (RSA 21:6-a) defines "residence" as "a person's place of abode or domicile. The place of abode or domicile is that designated by a person as his or her principal place of physical presence to the exclusion of all others." When a person rents a room or a house for a weekend or a week and then goes home, that rental is clearly not within the definition of "residence." Further, the meals and rooms tax statute (RSA 78-A), the hotel statute (RSA 353), and the landlord-tenant statute (RSA 540) all recognize a difference between long-term and short-term rentals, treating the former as residential and the latter as commercial (although they draw the line at different places—185 days, one month, and 90 days, respectively). These statutes are not controlling for zoning purposes, but they reflect a general recognition that a short-term rental is significantly different from a residence.

C. Limitation on authority: RSA 48-A. There is one statutory limitation on municipal authority to regulate short-term rentals. Section 2 of the housing standards statute, which authorizes municipalities to adopt codes to remedy substandard housing, states, "The power conferred by this section shall not be used to impose any additional ordinances, codes, bylaws, licenses, certificates, or other restrictions on dwellings used as a vacation rental or short-term rental." RSA 48-A:2. (That statute also states that, ***only for purposes of RSA 48-A***, "vacation rental and short-term rental are residential uses of the property and do not include a unit that is used for any nonresidential use, including retail, restaurant, banquet space, event center, or another similar use.")

This limitation clearly applies only to regulation under the housing standards statute. It was enacted in 2017 specifically to prevent municipalities from using their housing codes—not their zoning ordinances—to regulate short-term rentals. In fact, the original language of the bill that led to this enactment, HB 654 from the 2017 session, *would* have severely restricted municipalities' authority to regulate short-term rentals through their zoning ordinances, but that language was rejected in favor of the provisions that merely restrict the use of housing codes.

IV. Other challenges to regulation of short-term rentals

A. Constitutional challenges. Property owners in New Hampshire and elsewhere have claimed that restrictions on short-term rentals are unconstitutional on various grounds, including equal protection, due process, and even the federal constitution's commerce clause and privileges and immunities clause. These claims have been mostly unsuccessful, as they should be.

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A full analysis of these constitutional claims is beyond the scope of this presentation. Suffice it to say that if the municipality does not do anything outrageous, such as openly discriminate against some property owners and in favor of others, it is highly unlikely that any constitutional challenge could succeed.

B. Federal Communications Decency Act. Some cities (not in New Hampshire) have enacted ordinances requiring on-line short-term rental platforms (like Airbnb and HomeAway) to provide information about hosts, listings, and guests, or otherwise assist in compliance with local zoning requirements. Those companies have challenged these ordinances based on, among other things, the federal Communications Decency Act.

Although its title doesn't sound like something that would affect land use law, the Communications Decency Act essentially says (in part) that companies that host websites cannot be held legally accountable for content published on the websites by third-party users. The claim is that this precludes a municipality from requiring the website host to enforce compliance by rental property owners. The companies have also claimed that these ordinances violate their First Amendment rights.

There may be merit to these claims. The problem can be avoided by keeping the on-line company out of it. Municipal regulation of short-term rentals (like any property) should be directed at the property and those who are using it, not at those who may be assisting in advertising its use. A short-term rental provision should not seek to obtain information from, or compel compliance by, a company that serves only as a broker.

C. Selective enforcement. Some short-term rental property owners have challenged municipal enforcement efforts by claiming "selective enforcement"—i.e., that the municipality is enforcing its ordinance only against one or a few property owners, while others are allowed to ignore the ordinance with impunity.

Selective enforcement is a legitimate claim, but the property owner "must show more than that the enforcement was merely historically lax." It must be shown that "the selective enforcement was a conscious, intentional discrimination." *Anderson v. Motorsports Holdings*, 155 N.H. 491, 499 (2007).

A municipality's historical failure to enforce its zoning ordinance against short-term rental property owners does not prevent it from initiating enforcement now—so long as it does so consistently. Nor is it required to perform detective work to find every single violator; zoning violations often come to a municipality's attention only because a neighbor has complained. If the municipality undertakes enforcement as it becomes aware of potential violations, and does so fairly, that is sufficient to avoid a claim of selective enforcement.

V. Regulation of short-term rentals in the zoning ordinance

A. Does your ordinance already regulate short-term rentals? For municipal officials who want to regulate short-term rentals, it may seem that the obvious route is to draft a zoning amendment that directly addresses the subject. That may work, but it may not be necessary. Before embarking on a zoning amendment effort, it is suggested that the planning board review the existing ordinance to see whether it already addresses short-term rentals.

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1. Is your ordinance permissive or prohibitory? There are two kinds of zoning ordinances, and each is the opposite of what it sounds like:

- a) Permissive ordinances. A permissive ordinance generally **prohibits** all uses that are not **expressly permitted** in the ordinance. If a particular use is not mentioned in the ordinance, it is not allowed in the municipality, unless it can be deemed an accessory use to a permitted use. The ordinance typically lists all the permitted uses and contains a statement saying something to the effect of "Any use of a building, structure, or land not expressly permitted in this ordinance shall be prohibited."
- b) Prohibitory ordinances. A prohibitory ordinance **permits** all uses that are not expressly **prohibited**.

The majority of zoning ordinances in New Hampshire are of the permissive variety.

Under a permissive ordinance, short-term rentals are prohibited unless the ordinance expressly permits them. Under a prohibitory ordinance, short-term rentals are permitted unless the ordinance expressly prohibits them.

2. Are short-term rentals covered? Once you determine whether your ordinance is permissive or prohibitory, it is not enough just to look for the term "short-term rental" in the ordinance and see whether it is expressly permitted or prohibited. Unless it was recently added, the term probably does not appear, but there may other defined uses in the ordinance that could be interpreted to include short-term rentals. Some examples of defined uses that **could** include short-term rentals, depending on how they are defined in the ordinance, are:

- Bed and breakfast
- Rooming house
- Hotel
- Home rental
- Home business
- Apartment

For example, one randomly selected zoning ordinance defines "hotel" as "any building, or any part thereof, which contains one or more lodging units devoted to transient or semi-transient rental occupancy and which has a common entrance or entrances, including an inn, motel, motor inn, tourist court, boarding house, lodging house or rooming house, but specifically excepting a Bed and Breakfast Home." The definition of "bed and breakfast home" is similar, but it has a limit of three lodging units and a requirement that the building be owner-occupied. The ordinance expressly permits both uses, but only in certain districts. If this is a "permissive" zoning ordinance (it is), and if there is no other definition that encompasses short-term rentals, then a property owner could operate a short-term rental only under the authority, and in the permitted district, for a hotel or bed and breakfast.

The planning board ought to perform a thorough review of its zoning ordinance to determine whether short-term rentals are covered, and if so under what classification. If there is a desire to have looser regulation of short-term rentals by homeowners than the existing regulations of hotels or bed



and breakfasts, an amendment to the ordinance may be necessary. In any event, the board needs to understand whether, and to what extent, short-term rentals may already be permitted or prohibited (or whether, as is certainly possible, the ordinance is too ambiguous to provide a clear answer) and determine whether it wants to change that treatment.

3. Accessory use. If the zoning ordinance cannot be interpreted to expressly permit short-term rentals, an owner could still claim that a short-term rental must be allowed as an accessory use to a residential dwelling. An accessory use is one that is “subordinate and customarily incidental to the main use on the same lot.” *Forster v. Town of Henniker*, 167 N.H. 745, 758 (2015). A common example of an accessory use is a garage on a residential lot. If residential dwellings are permitted and garages are not expressly prohibited, a garage ordinarily will be allowed as an accessory use to the house.

The “subordinate” and “incidental” criteria require that the accessory use be “minor in relation to the permitted use and . . . bear a reasonable relationship to the primary use.” The “customarily” requirement is an important one. It requires evidence that the accessory use “has commonly, habitually and by long practice been established as reasonably associated with the primary residential use in the town.” *Becker v. Town of Hampton Falls*, 117 N.H. 437, 440-41 (1977).

A homeowner might claim that renting out a room in his or her home is an accessory use to the primary use as a residence. There is no clear, uniform answer to this, but there are some obvious cases: if the homeowner does not actually live there, but merely rents individual rooms or the entire house to short-term occupants, then the rental is not “subordinate”—it is the primary use. Similarly, if the owner occupies just one or two rooms and rents several units to short-term occupants, the rental business is not subordinate and not an accessory use.

A more difficult case is where the owners legitimately occupy the house as their primary residence and merely rent one or two rooms on a short-term basis. That may satisfy the “subordinate” requirement, but the owner would still need to establish that homeowners in the municipality have “customarily” rented rooms to short-term occupants as an incident to their use of the property as a residential dwelling. This seems unlikely in most cases; but these questions need to be resolved on a case-by-case basis. Consultation with the municipality’s legal counsel is strongly encouraged before any conclusions are drawn on whether a short-term rental is an accessory use.

4. Variance. If short-term rentals are not allowed under the ordinance, or not allowed in the district where the subject property is located, requesting a variance is always an option. As with any variance, the applicant will need to satisfy the criteria in RSA 674:33, I. Every case depends on its specific facts, of course, but it seems unlikely that many cases would be able to satisfy the “unnecessary hardship” requirement if it is applied conscientiously.

B. Amending the ordinance. If a municipality chooses to address short-term rentals directly in its zoning ordinance, it has the same options it has with respect to most other types of use: it may permit them without limitation, it can restrict their location, it can restrict their size or other attributes, or it can prohibit them altogether. (At least one New Hampshire town has prohibited them in all districts.)

Of critical importance is that the ordinance be clear, starting with the definition of “short-term rental.” The ordinance might establish a separate definition specifically for short-term rentals, or it might fold it into an existing definition of hotel, bed and breakfast, or something else.

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If the ordinance is going to allow short-term rentals, the following are some of the issues that should be considered. (There are most likely several others):

- Limit on number of units per property
- Limit on number of guests per unit
- Limit on number of days per year units may be rented
- Owner occupancy requirement
- Allowance only by special exception
- Restriction to specific zoning districts
- Periodic safety inspections

Assuming the planning board has site plan review authority, other matters, such as noise, trash, parking, and hours of check-in and check-out, can be addressed there. Otherwise, they should be considered for inclusion in the ordinance. It is impossible to address every imaginable situation in a zoning ordinance, but an effort should be made to anticipate and answer as many questions as possible.

If the ordinance is going to prohibit short-term rentals, clarity is equally important. The ordinance should be very specific about what constitutes a short-term rental so there is no question about what is and is not prohibited. A statement that "short-term rentals of residential property are prohibited" will raise more questions than it answers.

Any amendment will need to be tailored to accommodate the municipality's specific needs and to fit with the existing ordinance. ***Consultation with the municipality's attorney and/or a professional planner is strongly recommended.***

C. Don't forget site plan review! Some may be inclined to look at the zoning ordinance, conclude that it allows short-term rentals, and figure that's the end of the story. It's not. If the planning board has site plan review authority, it should apply to short-term rentals. RSA 674:43 provides for review of "site plans for the development or change or expansion of use of tracts for nonresidential uses." Unless one accepts the shaky argument that short-term rentals are residential uses, site plan review would apply.

As mentioned above, site plan review is where the planning board can address issues like noise, trash, parking, hours of check-in and check-out. No doubt the neighbors will have something to say about these matters.



HUDSON ZONING BOARD OF ADJUSTMENT
APPEAL OF ADMINISTRATIVE DECISION WORKSHEET

On **8/22/19**, the Hudson Zoning Board of Adjustment heard **Case 168-012**, pertaining to a request filed by **Attorney Christopher J. Fischer of Boynton Waldron Doleac Woodman & Scott, P.A., 82 Court St., Portsmouth, NH** representing **Peter and Kimberly Heilman, 8 Madison Drive, Hudson, NH**, to appeal an Administrative Decision issued by the Zoning Administrator, dated **June 12, 2019** which cites **violations of two provisions in the Hudson Zoning Ordinance: §334-16 Building permits and §334-8 Certificate of Occupancy. [Map 168, Lot 012-000; Zoned Residential Two (R-2); HZO Article III, §334-16 & §334-8].**

Members sitting on the Zoning Board of Adjustment for this hearing are to vote to determine if they would make the same decision as the Zoning Administrator.

Y N

I would have made the same decision and/or interpretation based on the evidence presented.

Signed: _____ Date _____
Sitting Member of the Hudson ZBA

TOWN OF HUDSON

JUL 12 2019

Zoning Department

APPLICATION FOR APPEAL FROM AN ADMINISTRATIVE DECISION

Zoning Board of Adjustment
Town of Hudson

Entries in this box are to be filled out by Land Use Division personnel

Case No. 168-012

Date Filed 7-12-19

Name of Applicant Christopher J. Fischer, Esq. Map: 168 Lot: 000 Zoning District: R-2

Telephone Number (Home) _____ (Work) 603-436-4010

Mailing Address 82 Court Street, Portsmouth, NH 03801

Owner Peter and Kimberly Heilman

Location of Property 8 Madison Drive, Hudson, NH 03051
(Street Address)

Ch Fischer
Signature of Applicant 7/11/19
Date

Ch Fischer Attorney for Owners
Signature of Property-Owner(s) 7/11/19
Date

NOTE: Fill in all portions of the Application Form(s) as appropriate. This application is not acceptable unless all required statements have been made. Additional information may be supplied on a separate sheet if space provided is inadequate. If you are not the property owner, you must provide written documentation signed by the property owner(s) to confirm that the property owner(s) are allowing you to speak on his/her/their behalf or that you have permission to seek the described appeal from an administrative decision.

Items in this box are to be filled out by Land Use Division personnel

COST:

Application fee:	\$130.00
<u>8</u> Direct Abutters x \$4.05 =	<u>32.40</u>
<u>5</u> Indirect Abutters x \$0.55 =	<u>2.75</u>
Total amount due:	<u>\$165.15</u>

Date received: 7/12/19

Amt. received: \$ 157.05
7/23/19 Paid Due - \$8.10
Receipt No.: 560,530

CHK # 4504
\$8.10
CHK # 5568
Rcvd 7-23-19

Received by: TSG

By determination of the Zoning Administrator or Building Inspector, the following Departmental review is required:


Engineering Fire Department Health Officer Planner

AUTHORIZATION

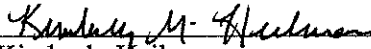
We, Peter and Kimberly Heilman, confirm that we are the owners of 8 Madison Drive, Hudson, NH.

We also confirm that we are allowing Attorney Christopher Fischer to speak on our behalf and pursue the Appeal filed on our behalf.

Dated this 11th day of July, 2019.



Peter Heilman



Kimberly Heilman

TOWN OF HUDSON
JUL 12 2019
Zoning Department
BK

LAW OFFICES

**BOYNTON WALDRON DOLEAC
WOODMAN & SCOTT, P.A.**

CHARLES B. DOLEAC*+
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WILLIAM G. SCOTT
FRANCIS X. QUINN, JR.*
CHRISTOPHER E. GRANT*+Δ
CHRISTINE WOODMAN CASA*
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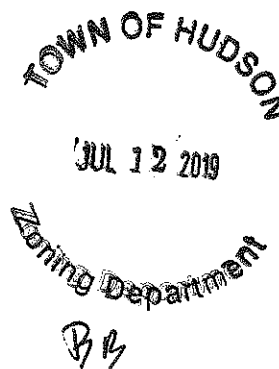
www.boyntonwaldron.com

JEREMY R. WALDRON
(1921-2012)

WYMAN P. BOYNTON
(1908-1997)

* ALSO MEMBER OF MAINE BAR
† ALSO MEMBER OF MASSACHUSETTS BAR
Δ ALSO MEMBER OF VERMONT BAR

July 11, 2019



VIA FEDEX

Bruce Buttrick
Zoning Administrator/Code Enforcement Officer
Town of Hudson
12 School Street
Hudson, NH 03051

**RE: Appeal of Peter and Kimberly Heilman
8 Madison Drive, Hudson, NH**

Dear Mr. Buttrick:

Enclosed please find an Application for Appeal from an Administrative Decision for filing in the above matter, together with our check in the amount of \$157.05 for the application fee.

I am acting as agent for Mr. and Mrs. Heilman in this matter. We will supplement this filing with the authorization form from the owners.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Fischer".

Christopher J. Fischer

CJF/met
Enclosure

TOWN OF HUDSON, NH

NOTICE TO APPLICANTS

The following **requirements/checklist** pertain to the Town of Hudson, NH, Zoning Board of Adjustment applications, as applicable:

Applicant Initials		Staff Initials
<u>CF</u>	The applicant must provide 13 copies including the original of the filled-out application form, together with this checklist and any required attachments listed. (Paper clips, no staples)	<u>TG</u>
<u>CF</u>	Before making the 13 copies, please review the application with the Zoning Administrator or staff.	<u>BB</u>
<u>CF</u>	A separate application shall be submitted for each request, with a separate application fee for each request i.e.: Variance, Special Exception, Home Occupation Special Exception, Wetland Special Exception, Appeal from an Administrative Decision, and Equitable Waiver but only one abutter notification fee will be charged for multiple requests. If paying by check, make the check payable to the Town of Hudson.	<u>BB</u>
<u>CF</u>	If the applicant is not the property owner(s), the applicant must provide to the Town written authorization, signed and dated by the property owner(s), to allow the applicant or any representative to apply on the behalf of the property owner(s). (NOTE: if such an authorization is required, the Land Use Division will not process the application until this document has been supplied.)	<u>BB</u>
<u>CF</u>	Provide two (2) sets of mailing labels from the abutter notification lists (Pages 4 & 5) prepared by applicant, with the proper mailing addresses, must be dated within (30) thirty days of submittal of the application. The abutter lists can be obtained from the assessor's office. (NOTE: the Land Use Division cannot process your application without the abutter lists. It is the applicant's responsibility to ensure that the abutter lists are complete and correct. If at the time of the hearing any applicable property owner is found not to have been notified because the lists are incomplete or incorrect, the Zoning Board will defer the hearing to a later date, following notification of such abutters.)	<u>BB</u>
<u>CF</u>	A copy of both sides of the assessor's card shall be provided. (NOTE: these copies are available from the Assessor's Office)	<u>BB</u>
<u>CF</u>	A copy of the Zoning Administrator's correspondence confirming either that the requested use is not permitted or that action by the Zoning Board of Adjustment is required must be attached to your application.	<u>BB</u>
n/a <u>CF</u>	For a Wetland Special Exception, a letter or a copy of the relevant decision from the Hudson Conservation Commission shall be attached to the application for existing single-family and duplex residential uses. All other Wetland Special Exceptions (multifamily, commercial, or industrial uses) must have letters both from the Conservation Commission and from the Planning Board.	<u>N/A BB</u>

PLOT PLAN-

CF

n/a

Except for requests pertaining to above-ground pools, sheds, decks and use variances, the application must include a copy of a certified plot plan from a licensed land surveyor. The required plot plan shall include all of the items listed below. Pictures and construction plans will also be helpful. (NOTE: it is the responsibility of the applicant to make sure that all of the requirements are satisfied. The application may be deferred if all items are not satisfactorily submitted):

- a) _____ The plot plan shall be drawn to scale on an 8 1/2" x 11" or 11" x 17" sheet with a North pointing arrow shown on the plan. _____
- b) _____ The plot plan shall be up-to date and dated, and shall be no more than three years old. _____
- c) _____ The plot plan shall have the signature and the name of the preparer, with his/her/their seal. _____
- d) _____ The plot plan shall include lot dimensions and bearings, with any bounding streets and with any rights-of-way and their widths as a minimum, and shall be accompanied by a copy of the GIS map of the property. (NOTE: copies of the GIS map can be obtained at the Land Use Division.) _____
- e) _____ The plot plan shall include the location and dimensions of existing or required services, the area (total square footage), all buffer zones, natural features, any landscaped areas, any recreation areas, any safety zones, all signs, streams or other wetland bodies, and any drainage easements. _____
- f) _____ The plot plan shall include all existing buildings or other structures, together with their dimensions and the distances from the lot lines, as well as any encroachments. _____
- g) _____ The plot plan shall include all proposed buildings, structures, or additions, marked as "PROPOSED," together with all applicable dimensions and encroachments. _____
- h) _____ The plot plan shall show the building envelope as defined from all the setbacks required by the zoning ordinance. _____
- i) _____ The plot plan shall indicate all parking spaces and lanes, with dimensions. _____

N/A

BB

The applicant has signed and dated this form to show his/her awareness of these requirements.

[Handwritten Signature]

Signature of Applicant(s)

7/11/19

Date

The Land Use Division will schedule a public hearing at the next available meeting of the Hudson Zoning Board of Adjustment for your properly-completed application. Applications are scheduled on a first-come, first-served basis. Public notice of the hearing will be posted on public bulletin boards in the Town Hall, the Post Office, and the Rogers Library and also printed in a newspaper, and a notice will be mailed to the applicant, all abutters, and any other parties whom the Board may deem to have an interest.

After the public hearing, the Board will deliberate and then reach a decision either to grant the request (perhaps with stipulations to make it palatable) or to deny the request—or to defer final action to another meeting, or perhaps to accept a request for withdrawal. You will be sent a Notice of Decision during the following week.

If you believe that the Board's decision is wrong, you have the right to appeal. In addition, any third party/parties affected by the decision also has/have the right to appeal the decision of your case. To appeal, you must first ask the Board for a rehearing; this motion for rehearing may be in the form of a letter to the Board. The rehearing request must be made in writing within thirty (30) days following the Board's decision, and must set forth the grounds on which it is claimed the decision is unlawful or unreasonable.

The Board may grant such a rehearing if, in the Board's opinion, good reason is stated in the motion. In general, the Board will not allow a rehearing unless a majority of its sitting members conclude either that the protested decision was illegal or unreasonable or that the request for rehearing demonstrates the availability of new evidence that was not available at the original hearing. The Board will not reopen a case based on the same set of facts unless it is convinced that an injustice would be created by not doing so. Whether or not a rehearing is held, you must have requested one before you can appeal the decision to the Court(s). When a rehearing is held, the same procedure is followed as for the first hearing, including public notice and notice to abutters.

Please refer to NH RSA Chapter 677 for more detail on rehearing and appeal procedures.

ALL DIRECT ABUTTERS

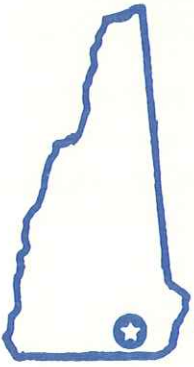
List name(s) and mailing addresses of the owner(s) of record of the property and all direct abutters as of the time of the last assessment of taxation made by the Town of Hudson, including persons whose property is either contiguous or separated from the subject tract of land by a street or stream. If at the time of your hearing any applicable property owner is found not to have been notified because your lists are incorrect or incomplete, the Zoning Board will defer your hearing to a later date, following notification of such abutters. (Use additional copies of this page if necessary)

MAP	LOT	NAME OF PROPERTY OWNER	MAILING ADDRESS
176	016-000	Properties Burnham LLC	11 Ledge Street Nashua, NH 03060
168	011-000	Brian A. House	6 Madison Drive Hudson, NH 03051
168	013-000	Christopher J. Kulick	10 Madison Drive Hudson, NH 03051
168	050-000	Gina R. Dion	5 Madison Drive Hudson, NH 03051
168	002-000	Krystal Drive Estates LLC	5 Krystal Drive Hudson, NH 03051
168	027-000	Robert E. Kerouac, Jr.	2 Jefferson Drive Hudson, NH 03051
168	012-000	Peter & Kimberly Heilman	8 Madison Dr. Hudson, NH 03051
		Christopher J. Fischer, Esq. Boynton Waldron Doleac Woodman & Scott 82 Court St. Portsmouth, NH 03801	

ALL INDIRECT ABUTTERS WITHIN 200 FEET

List name(s) and mailing addresses of all indirect abutters (those whose property is not contiguous but is within 200 feet from the property in question) as of the time of the last assessment of taxation made by the Town of Hudson. If at the time of your hearing any applicable property owner is found not to have been notified because your lists are incorrect or incomplete, the Zoning Board will defer your hearing to a later date, following notification of such abutters. (Use additional copies of this page if necessary)

MAP	LOT	NAME OF PROPERTY OWNER	MAILING ADDRESS
168	014-000	Bernard E. Moore	12 Madison Drive Hudson, NH 03051
168	010-000	Kristin Cullinane	4 Madison Drive Hudson, NH 03051
167	077-000	Justin Hatem	14 Washington Drive Hudson, NH 03051
168	026-000	Richard R. Dumas	9 Madison Drive Hudson, NH 03051
168	028-000	Jason L. Mailloux	4 Jefferson Drive Hudson, NH 03051



TOWN OF HUDSON
ZONING BOARD OF ADJUSTMENT

APPLICANT NOTIFICATION

12 School Street

Hudson, New Hampshire 03051

603/886-6008



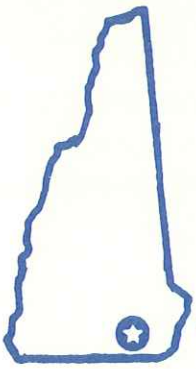
You are hereby notified of a hearing that will be presented before the Zoning Board of Adjustment for review and/or action on Thursday, **08/22/19** starting at 7:00 P.M., Town Hall, 12 School Street, Hudson, NH, in the Community Development Paul Buxton Meeting Room.

- 1. Case 168-012 (8-22-19): Attorney Christopher J. Fischer of Boynton Waldron Doleac Woodman & Scott, P.A., 82 Court St., Portsmouth, NH representing Peter and Kimberly Heilman, 8 Madison Drive, Hudson, NH, requests an Appeal From An Administrative Decision of a Notice of Violation dated June 12, 2019 citing violations of two provisions in the Hudson Zoning Ordinance: §334-16 Building permits and §334-8 Certificate of Occupancy. [Map 168, Lot 012-000; Zoned Residential Two (R-2); HZO Article III, §334-16 & §334-8].**

Please be advised, the above notice is being sent to all abutters listed on the application. You, or a representative, are expected to attend the hearing, and make a presentation.

Respectfully,

Bruce Buttrick
Zoning Administrator



TOWN OF HUDSON
ZONING BOARD OF ADJUSTMENT

ABUTTER NOTIFICATION

12 School Street

Hudson, New Hampshire 03051

603/886-6008



You are hereby notified of a hearing that will be presented before the Zoning Board of Adjustment for review and/or action on Thursday, **08/22/19** starting at 7:00 P.M., Town Hall, 12 School Street, Hudson, NH, in the Community Development Paul Buxton Meeting Room.

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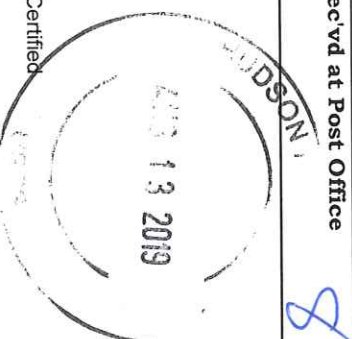
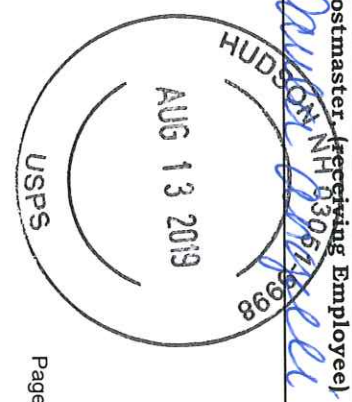
Please be advised, this notice is for your information only. Your attendance is not required; however, you may attend this meeting for the purpose of providing information or comments on the proposal.

A full copy of this Application is available for your review on the Hudson Town Hall website: www.hudsonnh.gov or in the Land Use Department located at Hudson Town Hall.

Respectfully,

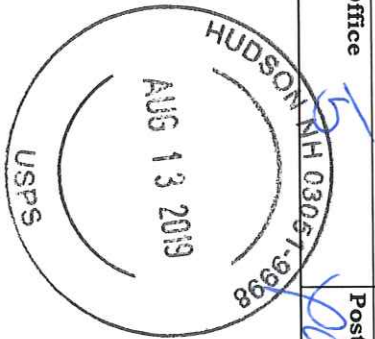
Bruce Buttrick
Zoning Administrator

SENDER:		TOWN OF HUDSON 12 SCHOOL STREET HUDSON, NH 03051	US POSTAL SERVICE - CERTIFIED MAIL	Case# 168-012 Appeal From An Administrative Decision 8 Madison Drive Map 168/Lot 012-000 1 of 1
ARTICLE NUMBER			08/22/19 ZBA Meeting	
1	701b 2710 0000 0595 2025	PETER & KIMBERLY HELLMAN	APPLICANT/OWNER-NOTICE SENT	
2	701b 2710 0000 0595 2049	8 MADISON DR, HUDSON, NH 03051 CHRISTOPHER J. FISCHER, ESQ.;BOYNTON WALDRON DOLEAC WOODMAN & SCOTT, P.A.	APPLICANT/OWNER-NOTICE SENT	
3	701b 2710 0000 0595 2032	82 COURT STREET, PORTSMOUTH, NH 03801	ABUTTER NOTICE SENT	
4	701b 2290 0001 3001 8565	11 LEDGE STREET, NASHUA, NH 03060 HOUSE, BRIAN A.	ABUTTER NOTICE SENT	
5	701b 2290 0001 3001 8572	6 MADISON DRIVE, HUDSON, NH 03051 KULICK, CHRISTOPHER J. & DIANE	ABUTTER NOTICE SENT	
6	701b 2290 0001 3001 8589	10 MADISON DRIVE, HUDSON, NH 03051 DION, GINA R. & CHRISTOPHER	ABUTTER NOTICE SENT	
7	701b 2290 0001 3001 8596	5 MADISON DR., HUDSON, NH 03051 KRISTAL DRIVE ESTATES LLC	ABUTTER NOTICE SENT	
8	701b 2290 0001 3001 8602	5 KRISTAL DRIVE, HUDSON, NH 03051 KEROUAC, ROBERT & JOYCE	ABUTTER NOTICE SENT	
9		2 JEFFERSON DRIVE, HUDSON, NH 03051		
10				
Total Number of pieces listed by sender 8		Total number of pieces rec'd at Post Office	Postmaster (receiving Employee) HUDSON, NH 03051 998	

Direct Certified

SENDER:		TOWN OF HUDSON 12 SCHOOL STREET HUDSON, NH 03051	US POSTAL SERVICE - FIRST CLASS MAIL	Case# 168-012 Appeal From An Administrative Decision 8 Madison Drive Map 168/Lot 012-000 1 of 1
	ARTICLE NUMBER	Name of Addressee, Street, and post office address	08/22/19 ZBA Meeting	
1	N/A-mailed First Class	MOORE, BERNARD & SARSHA 12 MADISON DRIVE, HUDSON, NH 03051	ABUTTER NOTICE SENT	
2	N/A-mailed First Class	CULLINANE, KRISTIN; LUMB, SCOTT 4 MADISON DR., HUDSON, NH 03051	ABUTTER NOTICE SENT	
3	N/A-mailed First Class	HATEM, JUSTIN 14 WASHINGTON DRIVE, HUDSON, NH 03051	ABUTTER NOTICE SENT	
4	N/A-mailed First Class	DUMAIS, RICHARD & KELLIE 9 MADISON DRIVE, HUDSON, NH 03051	ABUTTER NOTICE SENT	
5	N/A-mailed First Class	MAILLOUX, JASON & DAWN 4 JEFFERSON DRIVE, HUDSON, NH 03051	ABUTTER NOTICE SENT	
6				
7				
8				
9				
10				
11				
Total Number of pieces listed by sender 5		Total number of pieces rec'vd at Post Office	Postmaster, (receiving Employee) <i>Paula Angell</i>	



Non-Direct First Class

For any appeal, the application form must be properly filled out. The application form is intended to be self-explanatory, but be sure that you show:

1. Who owns the property? If the applicant is not the owner, please include a statement from the owner that you have permission to speak on his/her behalf.
2. Where the property is located.
3. What you propose to do. Supply twelve copies of an 8.5" x 11" or 11" x 17" scale plan which gives lot area, frontage, side and rear lot lines, natural features, existing and proposed structures, alteration to the lot, and distance to lot lines or wetlands. Pictures and construction plans are helpful.
4. Why your proposed use requires an appeal. Please fill out the attached appeal forms completely. Include why the appeal should be granted.
5. List of abutters, per NH RSA 672:3. This includes property and the name(s) of the owner(s) of properties which physically touch the subject property, across the street and kitty-corner to the subject property.

Prepare a list of all abutting property owners using the Assessing Office records, and attach it to your application. **The accuracy of the list is your responsibility. If the list is found to be incorrect, you may be required to appear before the ZBA a second time, at your expense.**

6. Deliver the completed application, with all attachments, to the office of the Zoning Administrator. A fee is charged sufficient to cover the cost of preparing and mailing the legally required notices. If paying by check, make the check payable to the Town of Hudson and submit with your application.

The Zoning Office will schedule a public hearing within thirty (30) days of receipt of your **properly-completed** application. Applications are scheduled on a first come, first serve basis. **Only completed applications will be scheduled for a hearing.** Public notice of the hearing will be posted and printed in a newspaper, and a notice will be mailed to you, all abutters and other parties whom the Board may deem to have an interest.

After the public hearing, the Board will reach a decision. You will be sent a Notice of Decision.

If you believe that the Board's decision is wrong, you have the right to appeal. Any party affected has the right to appeal the decision of your case. To appeal, you just first ask the Board for a rehearing; this motion for rehearing may be in the form of a letter to the Board. The motion must be made within thirty (30) days of the Board's decision, and must set forth the grounds on which it is claimed the decision is unlawful or unreasonable.

The Board may grant such a rehearing if, in its' opinion, good reason is stated in the motion. The Board will not reopen a case based on the same set of facts unless it is convinced that an injustice would be created by not doing so. Whether or not a rehearing is held, you must have requested one before you can appeal the decision to the Court(s). When a rehearing is held, the same procedure is followed as for the first hearing, including public notice and notice to abutters.

See **NH RSA Chapter 677** for more detail on rehearing and appeal procedures.

Requests before the Board may require connection to the municipal sewer system. Please contact the Town Engineer prior to submittal of this application to determine if connection is required, and the procedures for such application.

APPEAL FROM AN ADMINISTRATIVE DECISION

Relating to the interpretation and enforcement of the provisions of the Zoning Ordinance.

Decision of the Zoning Administrator to be reviewed:
Notice of violation

DATE: June 12, 2019 ARTICLE: III SECTION: 334-8, 334-16,
334-21 & 334-22

of the Zoning Ordinance in question:
See attached

NOTE: If you are appealing an Administrative Decision, a copy of the decision appealed must be attached to your application.

Statement on Behalf of Owners

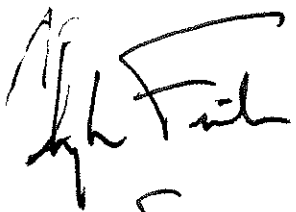
The notice of violation filed herewith appears to cite two violations: 1. violation of permitted accessory uses and permitted principal uses based on the characterization of the owners' use as a "transient rental unit (bed and breakfast)"; and 2. the lack of "permits/approvals for the creation of such additional 'rental' unit." The zoning ordinances cited in the notice of violation are Town Code Article III §§ 334-8, -16, -21, -22.

The owners, through counsel, appeal both alleged violations.

First, the owners have not violated zoning ordinance relating to either permitted accessory uses or permitted principal uses. A two-family dwelling unit is permitted in the R-2 district and the owners' use falls with the definition of a duplex. The zoning ordinance does not define bed and breakfast, and the owners' use is not that of a bed and breakfast. Furthermore, the length of time the area in question is rented out is not determinative on the question of whether the owners' use is permitted. Indeed, the zoning ordinance does not mention durations of occupancy or the term transient in connection with the applicable definitions and uses permitted. Yet, the Town issued a notice of violation even though the owners' use is expressly permitted by the zoning ordinance, and the purported violation is based on an interpretation that rewrites the relevant provisions of the zoning ordinance. Consequently, there is no legal or factual basis to support this aspect of the notice of violation.

Second, the claim that the owners violated the provisions governing permitting and occupancy is unsustainable. In 2010, a complaint about an illegal apartment above the garage was made and investigated by the Town. The investigation concluded with a determination that there was no violation. A copy of that determination is attached hereto. Moreover, the Town's tax assessor has included the area above the garage as living space for years. Accordingly, the Town is estopped or otherwise barred from now claiming that a building permit and certificate of occupancy is needed. Therefore, the notice of violation lacks any factual or legal basis whatsoever.

The owners reserve the right to amend or supplement the foregoing.


Attorney for owners



TOWN OF HUDSON
COMMUNITY DEVELOPMENT DEPARTMENT

12 School Street • Hudson, New Hampshire 03051 • 603-886-6005 • Fax 603-594-1142



CERTIFIED MAIL # 7008 1300 0001 6088 7713

August 25, 2010

Thomas and Judy Parent
8 Madison Drive
Hudson, NH 03051

Re: 8 Madison Drive, Hudson (Map 168/Lot 012)

Dear Mr. and Mrs. Parent:

It was brought to our attention that the aforementioned property may be in violation of the Hudson Zoning Ordinance Article XIII A, Section 334-73.1, Accessory Living Units (please see attached).

Please contact the Community Department within ten (10) days of receipt of this letter to schedule an inspection at (603)816-1272.

Thank you.

Sincerely,

COMMUNITY DEVELOPMENT DEPARTMENT

William Oleksak,
Zoning Administrator

Pc: Board of Selectmen
Assistant Town Administrator
File

WO/jk

TOWN OF HUDSON
JUL 19 2019
Zoning Department

LAW OFFICES

**BOYNTON WALDRON DOLEAC
WOODMAN & SCOTT, P.A.**

CHARLES B. DOLEAC*†
RALPH R. WOODMAN, JR.
WILLIAM G. SCOTT
FRANCIS X. QUINN, JR.*
CHRISTOPHER E. GRANT*†△
CHRISTINE WOODMAN CASA*
PHILIP L. PETTIS
CHRISTOPHER J. FISCHER
MICHAEL H. DARLING †

82 COURT STREET
PORTSMOUTH, NEW HAMPSHIRE 03801
TELEPHONE (603)436-4010
FAX (603)431-9973

www.boyntonwaldron.com

JEREMY R. WALDRON
(1921-2012)

WYMAN P. BOYNTON
(1908-1997)

* ALSO MEMBER OF MAINE BAR
† ALSO MEMBER OF MASSACHUSETTS BAR
△ ALSO MEMBER OF VERMONT BAR

July 17, 2019

Bruce Buttrick
Zoning Administrator/Code Enforcement Officer
Town of Hudson
12 School Street
Hudson, NH 03051

**RE: Appeal of Peter and Kimberly Heilman
8 Madison Drive, Hudson, NH**

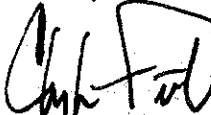
Dear Mr. Buttrick:

The appeal package sent on behalf of my clients, Peter and Kimberly Heilman, on July 11, 2019 did not include the Town of Hudson's September 15, 2010 determination that the lack of permits/approvals for the living space above the garage did not constitute a zoning violation. That decision is enclosed herewith. Please supplement the enclosed determination with my clients' appeal.

Additionally, and per our conversation at the Town of Hudson offices on July 11, 2019, my clients submitted authorizations approving the undersigned's execution of the appeal package on or about July 12, 2019.

Please contact me if you have any questions or concerns about my clients' appeal. Thank you for your attention to this matter.

Sincerely,

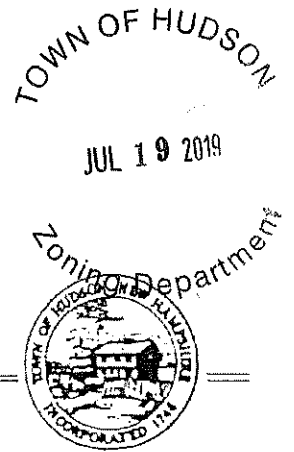


Christopher J. Fischer

CJF/met
Enclosure



TOWN OF HUDSON
 COMMUNITY DEVELOPMENT DEPARTMENT
 RESPONSE TO COMPLAINT FILED



12 School Street • Hudson, New Hampshire 03051 • 603-886-6005 • Fax 603-594-1142

September 15, 2010

Joyce E. Kerouac
 2 Jefferson Drive
 Hudson, NH 03051

Re: Follow-up on complaint dated August 19, 2010

Dear Ms. Kerouac:

Please be advised that the Hudson Zoning Administrator received a complaint from you concerning the alleged zoning violation(s) at 8 Madison Drive, Hudson concerning a possible Accessory Living Unit without approvals.

After an investigation of this complaint, I have determined that this complaint is:

- not a violation of zoning.
- a violation of zoning and applicable enforcement action is in process.
- under investigation at this time.
- a civil matter between the parties.
- other _____

Sincerely,

COMMUNITY DEVELOPMENT DEPARTMENT

William A. Oleksak
 Zoning Administrator

cc: Board of Selectmen
 Assistant Town Administrator
 File

WO/jk



TOWN OF HUDSON

Land Use Division



12 School Street · Hudson, New Hampshire 03051 · Tel: 603-886-6008 · Fax: 603-594-1142

Notice of Violation

June 12, 2019

Peter and Kimberly Heilman
8 Madison Dr
Hudson, NH 03051

Certified 7016 2710 0000 0595 2315
USPS

Re: 8 Madison Dr Map 168 Lot 012-000
District: Residential Two (R-2)

Dear Peter and Kimberly,

Complaint: Operation and occupancy of a transient rental unit (bed and breakfast) on the rental service: Air BnB. No permits/approvals for the creation of such additional "rental" unit. Violation of Hudson Town Code §334-16 Building Permits and §334-8 Certificate of Occupancy.

Order: Cease and desist the operation of the illegal and unpermitted use. Either remove the unpermitted dwelling unit (with building permits),
Or

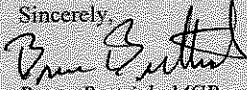
Apply for a Variance from the Zoning Ordinance §334-22 Table of Permitted Accessory Uses, §334-21 Table of Permitted Principal Uses (as a Bed and Breakfast), and if successful obtain the required permits and inspections.

Please be advised that in accordance with the Hudson Zoning Ordinance §334-79 Violations and Penalties, and RSA § 676:17, you are subject to a civil penalty of \$275 for the first offense, and \$550 for subsequent offenses, for each day that your property is found to continue in violation of the HZO after the date you receive this notice, with each day that the violations continue being a separate offense. If the Town must pursue legal action against you, the Town shall be entitled to recover its costs and reasonable attorney fees if it is found to be a prevailing party.

NOTE: this determination may be appealed to the Hudson Zoning Board of Adjustment within 30 days of the receipt of this letter.

603-814-1275

Sincerely,



Bruce Buttrick, MCP

Zoning Administrator/Code Enforcement Officer

(603) 816-1275

bbuttrick@hudsonnh.gov

cc: Public Folder
Chief Buxton – Inspectional Services
File



TOWN OF HUDSON

Bruce Buttrick, MCP
Zoning Administrator
Code Enforcement Officer

12 School Street
Hudson, NH 03051

603 886-6008
FAX: 603 594-1142
bbuttrick@hudsonnh.gov

NOTE: this determination may be appealed to the Hudson Zoning Board of Adjustment within 30 days of the receipt of this letter.

168 012 000
MAP LOT SUB

1 of 1 RESIDENTIAL
CARD Hudson

Total Card / Total Parcel
APPRAISED: 336,000 / 336,000
USE VALUE: 336,000 / 336,000
ASSESSED: 336,000 / 336,000



PROPERTY LOCATION

No	8	ALL No	MADISON DR, HUDSON	Direction/Street/City
OWNERSHIP		Unit #		
Owner 1:	HELLMAN, PETER L.			
Owner 2:	HELLMAN, KIMBERLY M.			
Owner 3:				
Street 1:	8 MADISON DR.			
Street 2:				
Twn/City:	HUDSON	City		
Postal:	03061	Own Occ:		

PREVIOUS OWNER

Owner 1:	NOCELLA DEVELOPMENT, LLC.
Owner 2:	
Street 1:	937 WEIRS BLVD
Twn/City:	LACONIA
State:	NH
Postal:	03246

NARRATIVE DESCRIPTION

This parcel contains .465 ACRES of land mainly classified as ONE FAMILY with a CAPE Building built about 1967, having primarily VINYL Exterior and 2462 Square Feet with 1 Unit, 1 Bath, 1 3/4 Bath, 1 Halfbath, 9 Rooms, and 4 Bdrms.

OTHER ASSESSMENTS

Code	Description	Amount	Com. Int

PROPERTY FACTORS

Item Code	Description	%	Item Code	Description
Z R2	RESID TWO		water 3	TOWN WARE
0			Sewer 0	SEPTIC
n			Electri	
			Exmpt	
			Topo 1	LEVEL
			Street	
			Gas:	

LAND SECTION (First 7 lines only)

Use Code	LUCC	No of Units	Depth / Pctd/Hts	Unit Type	Land Type
101 ONE FAMIL Y		0.465		SITE ACRESITE	

IN PROCESS APPRAISAL SUMMARY

Use Code	Land Size	Building Value	Yard Items	Land Value	Total Value
101	0.465	248,300		87,700	336,000
Total Card	0.465	248,300		87,700	336,000
Total Parcel	0.465	248,300		87,700	336,000

PREVIOUS ASSESSMENT

Tax Yr	Use	Cat	Bldg Value	Yrd Items	Land Size	Land Value	Total Value	Asses'd Value	Notes
2019	101	JB	248,300	0	465	87,700	336,000	336,000	Year End Roll
2018	104	FV	169,700	0	465	96,500	266,200	266,200	Year End Roll
2017	104	JB	169,700	0	465	96,500	266,200	266,200	Year End Roll
2017	104	FV	169,700	0	465	96,500	266,200	266,200	Year End Roll
2017	104	PV	169,700	0	465	96,500	266,200	266,200	Year End Roll
2017	104	JB	173,200	0	465	79,300	252,500	252,500	Year End Roll
2016	104	FV	173,200	0	465	79,300	252,500	252,500	Year End Roll
2016	104	JB	173,200	0	465	79,300	252,500	252,500	Year End Roll

SALES INFORMATION

Grantor	Legal Ref	Type	Date	Sale Code	Sale Price	V	Tst	Verif
NOCELLA DEVELOP	9147-2352	2	2/21/2019	RESALE	340,000	No	No	
NRZ REO VI CORP	9116-1307	1	10/3/2018	BUSINESS	208,900	No	No	
NRZ REO VI CORP	8989-1335	5	7/13/2017	FORECLOSURE	269,400	No	No	
PARENT KENNETH	6505-1749		7/31/2001	FAMILY TRANS		No	No	

BUILDING PERMITS

Date	Number	Descr	Amount	C/O	Last Visit	Fed Code	F. Descr	Comment
8/21/2000	10202-01	PORCH	1,800	C				

TAX DISTRICT

Parcel LUC:	101	ONE FAMIL Y	Prime NB Descr:	RES AVG
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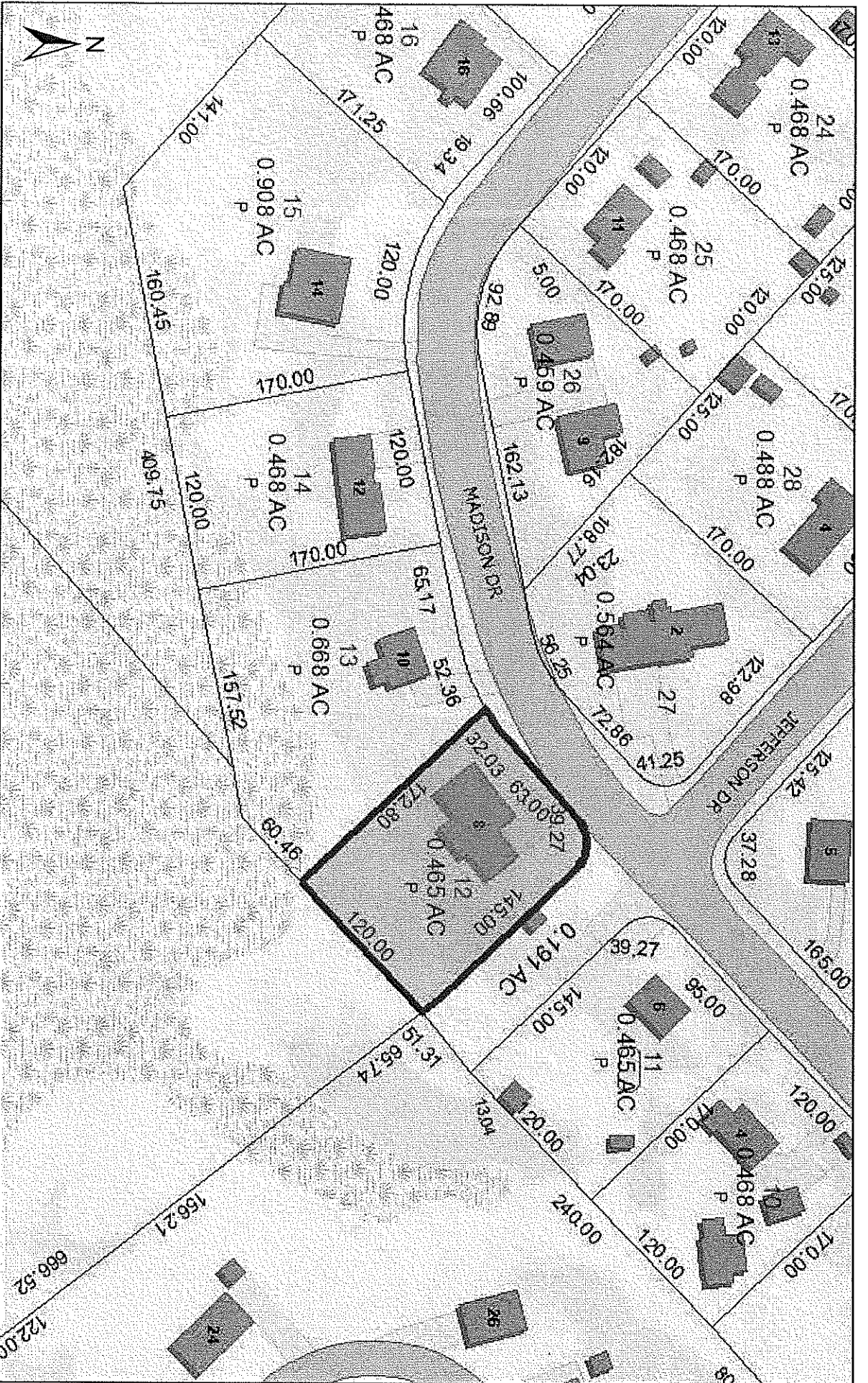
PAT ACCT.

Date	Result	By	Name
2/6/2019	Info Office	12	TECH ASMNT
6/29/2010	Measured	14	APPR TECH 4
5/25/2008	Measured	8	ASMT TECH 1
7/18/2005	New Maps	1	CHIEF ASSESS
4/9/2001	Left Notice	0	PATRIOT
6/4/1996	Inspected	2	AVITAR

ACTIVITY INFORMATION

Date	Result	By	Name
2/6/2019	Info Office	12	TECH ASMNT
6/29/2010	Measured	14	APPR TECH 4
5/25/2008	Measured	8	ASMT TECH 1
7/18/2005	New Maps	1	CHIEF ASSESS
4/9/2001	Left Notice	0	PATRIOT
6/4/1996	Inspected	2	AVITAR

8 Madison Dr. (Map/Lot 168-012-000)



July 18, 2019

Parcels

1 inch = 94 feet



Town of Hudson, New Hampshire Bylaws
Zoning Board of Adjustment

~~(Revised as of April 11, 2019)~~
2nd Reading 8-22-19

Chapter 143

- 143.1 History
- 143.2 Authority
- 143.3 Purpose
- 143.4 Amendments
- 143.5 Officers
- 143.5A Recorder
- 143.6 Members and Alternates
- 143.7 Meetings
 - 1. Regular Meetings
 - 2. Quorum
 - 3. Disqualification
 - 4. Order of Business
- 143.8 Application Process
 - 1. Applications
 - 2. Forms
 - 3. Public Notice
 - 4. Public Hearing
- 143.9 Decision Process
- 143.10 Deferment and Withdrawal
- 143.11 Reconsideration by the Board
- 143.12 Motions for Rehearing
- 143.13 Records
- 143.14 Waivers
- 143.15 Joint Meetings and Hearings

143.1 History

12-14-1978: Adopted by the Zoning Board of Adjustment of the Town of Hudson

06-23-1988: Amended in its entirety,

06-23-2011: Amended again in its entirety.

Subsequent amendments noted where applicable.

10-12-17: Amended in entirety.

04-11-19: Subsequent amendments noted where applicable.

08-22-19: Added Recorder; revised Clerk; unexcused absences; order of business; pledge of allegiance, introduction and 11:00pm curfew; 30 day re-hearing note and attachment "A".

143.2 Authority

These bylaws of the Hudson Zoning Board of Adjustment, hereinafter referenced simply as the Board, are adopted under the Authority of NH-RSA (New Hampshire Revised Statutes Annotated) 676:1. In the event of a difference between these bylaws and the applicable NH-RSAs, the NH-RSAs take precedence over these Bylaws.

143.3 Purpose

The purpose of these bylaws is to ensure an orderly procedure in the execution of the duties of the Board.

143.4 Amendments

These bylaws may be amended by a majority vote of the voting members at a regular meeting of the Board provided such amendments are read at two successive public meetings.

143.5 Officers

1. A Chairman shall be elected annually by a majority vote of the Board at the first meeting in the month of January.

The Chairman shall preside over all meetings and hearings, appoint such committees as directed by the Board and shall affix his/her signature in the name of the Board.

2. A Vice-Chairman shall be elected annually by a majority vote of the Board at the first meeting in the month of January.

The vice-Chairman shall preside in the absence of the Chairman and shall have the full powers of the Chairman on matters which come before the Board during the absence of the Chairman.

3. A Clerk shall be elected annually by a majority vote of the Board at the first meeting in the month of January.

The clerk shall ~~maintain a record of all meetings, transactions and decisions of the Board, and perform such other duties as the Board may direct by resolution.~~ take attendance, read cases

into the record, and process the member decision sheets for a summary of decision made. [8-22-19]

4. All officers shall serve for one year and shall be eligible for re-election.

143.5A Recorder

The Recorder is not a Member or Alternate. The Recorder shall transcribe the minutes and notices of decisions in accordance with State RSA requirements. The Recorder shall have minutes available for members to accept. The Recorder shall have notice of decisions available for the Chairman and Zoning Administrator. [8-22-19]

143.6 Members and Alternates

1. Five Regular Members shall be appointed by the Board of Selectmen attend all meetings, and sit as voting members

2. Five Alternate Members shall be appointed by the Board of Selectmen, attend all meetings to familiarize themselves with the workings of the Board and stand ready to serve whenever a regular member of the Board is unable to fulfill his/her responsibilities.

3. A Selectman Liaison may be appointed by the Board of Selectman to act as a liaison between the two Boards and should attend all meetings but shall have no voting powers nor the ability to sit in place of any regular member not in attendance.

4. At meetings of the Board, alternates who are not activated to fill the seat of an absent or recused member or who have not been appointed by the Chairman to temporarily fill the unexpired term of a vacancy may participate with the Board in a limited capacity. During a public hearing, alternates may sit at the table with the regular members and may view documents, listen to testimony, ask questions and interact with other Board members, the applicant, abutters and the public. Alternates shall not be allowed to make or second motions. Once the Board moves into deliberations, alternates shall remove themselves from any further deliberations with the Board. During work sessions or portions of meetings that do not include a public hearing, alternates may fully participate, exclusive of any motions or votes that may be made. At all times, the Chairman shall fully inform the public of the status of any alternate present and identify the members who shall be voting on the application.

5. All members and alternates must reside in the community and are expected to attend each meeting of the Board to exercise their duties and responsibilities. Any member unable to attend a meeting shall notify the Chairman as soon as possible. Members, including the Chairman and all officers, shall participate in the decision-making process and vote to approve or disapprove all motions under consideration. Three (3) consecutive unexcused absences by a member or alternate shall be reported to the Board of Selectmen through the Town Administrator, to take appropriate action. [8-22-19]

143.7 Meetings

1. Regular meetings (for appeals and Hearings) shall be held at Hudson Town Hall, at

7:00pm on the fourth Thursday of each month in accordance with RSA 676:5-7 and RSA 91-A:2. The Chairman may schedule additional overflow meetings, or reschedule meetings after consultation with the Zoning Administrator (or designee).

2. Other meetings may be held on the call of the Chairman, or a majority vote of the Board in accordance with RSA 91-A: 2II.

All Board members shall be given notice of meetings by mail or email one week prior to the meeting date.

3. Quorum: A quorum for all meetings of the Board shall be three members, including alternates sitting in place of members.

a. The Chairman shall make every effort to ensure that all five members, and one or two alternates, are present for the consideration of any appeal or application.

b. If any regular Board member is absent from any meeting or hearing, or disqualifies himself from sitting on a particular case, the Chairman shall designate one of the alternate members to sit in place of the absent or disqualified member, and such alternate shall be in all respects a full member of the Board while so sitting.

c. Alternates shall generally be activated on a rotating basis from those present at a particular meeting. When an alternate is needed, the Chairman shall select the alternate who has not been activated for the longest time.

d. If there are less than five members (including alternates) present, the Chairman shall give the option to proceed or not to the applicant. Should the applicant choose to proceed with less than five members present that shall not solely constitute grounds for a rehearing should the application fail.

3. Disqualifications: If any member finds it necessary to disqualify himself from sitting in a particular case, as provided in RSA 673:14, he shall notify the Chairman as soon as possible so that an alternate may be requested to sit in his place. When there is uncertainty as to whether a member should be disqualified to act on a particular application, that member or another member of the Board may request the Board to vote on the question of disqualification. Any such request shall be made before the public hearing gets underway. The vote shall be advisory and non-binding.

Determining the threshold of disqualification can be difficult. To assist a member in determining whether or not they should step down (recuse themselves) Board members should review the questions which are asked of potential jurors to determine qualification (RSA 500-A: 12). A potential juror may be asked whether he or she:

- a. Expects to gain or lose upon the disposition of the case;
- b. Is related to either party;
- c. Has advised or assisted either party;
- d. Has directly or indirectly given an opinion or formed an opinion;
- e. Is employed by or employs any party in the case;

- f. Is prejudiced to any degree regarding the case; or
- g. Employs any of the counsel appearing in the case in any action then pending in the court.

Either the Chairman or the Member disqualifying himself/herself before the beginning of the public hearing on the case shall announce the disqualification. The disqualified shall step away from the table during the public hearing and during all deliberation on the case as they so choose.

4. Order of Business

The order of business for regular meetings shall be as follows:

- a. Call to order by the Chairman;
- b. Pledge of allegiance [8-22-19]
- c. Introduction/order of business. Attachment "A". [8-22-19]
- ~~a.~~
- ~~b.~~d. Roll call by the clerk
- ~~c.~~e. Unfinished Business (Continued or Deferred Hearings)
- ~~d.~~f. New Hearing(s) Board will not hear new cases after 11:00pm [8-22-19]
- e.g. Requests for Rehearing
- ~~f.~~h. Approval of Minutes from Previous Meeting (s)
- g. New Business
- h. Communications and items of interest to the Board, Other Business
- i. Adjournment

(Note: Although this is the usual order of business, the Board may wish to hold the hearings immediately after the roll call in order to accommodate the public, based on a positive vote of the Board.)

143.8 Application Process

1. **Applications**

- a. Each application for a hearing before the Board shall be made on forms provided by the Board and shall be presented to the Zoning Administrator (or designee) who shall record the date and time of receipt.

Application deadline for meeting is 12:00 noon, 12 business days (Monday-Friday including Holidays) prior the scheduled meeting date.

Only complete and accurate applications will be submitted for agenda action, incomplete or inaccurate applications will not be submitted for agenda action.
- b. Appeals from an administrative decision taken under RSA 676:5 shall be filed within 30 days of the decision or when such decision becomes known or reasonably could have been known by the petitioner as determined by the Board.
- c. All forms and revisions prescribed shall be adopted by resolution of the Board and shall become part of these rules of procedure

2. **Public Notice**

- a. Public notice of hearings on each application shall be given in general newspaper and shall be posted at Town Hall, Town Public Library and the Post Office not less than five (5) days before the date fixed for the hearing. Notice shall include the name of the applicant, description of property to include tax map identification, action desired by the applicant, provisions of the zoning ordinance concerned, the type of appeal being made, and the date, time and place of the hearing.
- b. Personal notice shall be made by certified mail to the applicant and all direct abutters and regular mail for indirect abutters within 200' not less than five (5) days before the date of the hearing.
- c. The applicant shall pay for all required notice costs in advance.

3. Public Hearing

The conduct of public hearings shall be governed by the following rules:

- a. The Chairman shall call the hearing in session by instructing the clerk to report on the first case.
- b. The Zoning Administrator shall report why the case has been brought before the Board.
- c. Members and Alternates of the Board, and any party to the case, may ask questions at any point during testimony once recognized by the Chairman.
- d. Each person who appears shall be required to state his/her name and address for the record and indicate whether he/she is a party to the case or an agent or counsel of a party to the case.
- e. The applicant shall be called to present his appeal.
- f. Those appearing in favor of the appeal shall be allowed to speak.
- g. Those in opposition or neutral to the appeal shall be allowed to speak.
- h. The applicant and those in favor shall be allowed to speak in rebuttal.
- i. Those in opposition to the appeal shall be allowed to speak in rebuttal.
- j. Any person who wants the Board to compel the attendance of a witness shall present his request in writing to the Chairman in accordance with RSA 673.15
- k. The Board of adjustment will hear with interest any evidence that pertains to the facts of the Case or how the facts relate to the provisions of the zoning ordinance and state zoning law.
- l. The Chairman shall present a summary setting forth the facts of the case and the claims made for each side (see Findings of Facts form in Appendix C). Opportunity shall be given for correction from the floor.
- m. The public hearing on the Case shall be declared closed and the Case will be declared to be before the Board. The Board will deliberate and make its decision.

- n. All subsequent cases shall then be heard in the order they were presented.

143.9 Decision Process ~~[04-11-19]~~

Before deliberations begin, the Chairman shall allow non-sitting alternates, the Selectmen's Liaison, if present, and the Zoning Administrator or his/her replacement to ask questions and give input, if they so desire.

Once this phase is completed, the Chairman shall declare the matter before the Board and the sitting members present who are voting will raise any further questions they may have and then deliberate all concerns in order to reach a decision on the request.

The Board shall vote on each of the applications for which testimony was given, after adequate deliberations

For the granting of variances: the Board will consider a "vertical" (member) method of voting on each request. ~~[04-11-19]~~

The Chairman shall announce all decisions after the vote has been taken, and explain that the appeal/Re-Hearing process is available to all aggrieved w/in 30 days of the meeting vote. ~~[8-22-19]~~

143.10 Deferment and Withdrawal

After public notice has been given, each application presented to the Board for consideration may be deferred or withdrawn only by action of the Board, following receipt of written notice to the Zoning Administrator or to the Board, itself, by the applicant. A sitting member must make a motion to defer until the next regular meeting or a date specific, that motion must be seconded and voted on by the sitting members of the case in question, and abutter notice shall be presumed to have been accomplished by the decision of the Board's vote.

In the event that a deferred applicant is not ready when the case comes back before the Board, the Board may initiate withdrawal of the application, with or without prejudice, where "with prejudice" means that any new application (unless substantially changed) cannot be filed for a period of one year. Filing fees shall not be returned for withdrawn cases that have been reviewed and processed by staff with public notice of a scheduled hearing having been posted.

Moreover, once an application has been withdrawn, any re-application shall be considered a new application and the applicant shall be required to pay all applicable fees for consideration. In the event of a Board-initiated deferment, because members felt it necessary for more information or other reason, a sitting member must make a motion to defer until the next regular meeting or a date specific, that motion must be seconded and voted on by the voting members of the case in question, and abutter notice shall be presumed to have been accomplished by the decision of the Board's vote, but in some rare instances the Board may require that notification fees be paid again for deferred cases in order to ensure that abutters are properly notified. In the event of the Board's acceptance of a request for deferment by the applicant at the meeting, the request shall be handled in the same manner as a Board-initiated deferment. In the event that the applicant is not ready when the case comes back before the Board, the Board may initiate withdrawal of the application, with or without prejudice, as described above.

143.11 Reconsideration by the Board

The Board may reconsider a decision to grant or deny an application or grant or deny a motion for rehearing provided such reconsideration is within the appeal period of the original decision as per RSA 667:3

143.12 Motions for Rehearing

If the Board grants a motion for rehearing, the new public hearing shall be held within 30 days of the decision to grant the rehearing provided all notice fees are paid and an updated abutters list is submitted by the party requesting the rehearing. Notification of the rehearing shall follow the procedures set forth in RSA 677:2. [October 2012]

143.13 Records

1. The records of the Board shall be kept by the Zoning Administrator and made available for public inspection at Hudson Town Hall in accordance with RSA 673:17.
2. Final written decisions will be placed on file and available for public inspection within 5 business days after the decision is made. RSA 676:3
3. Minutes of all meetings including names of Board members, persons appearing before the Board, and a brief description of the subject matter shall be open to public inspection within 5 business days of the public meeting. RSA 91-A:2 II

143.14 Waivers

Any portion of these rules of procedure may be waived in such cases where, in the opinion of the Board, strict conformity would pose a practical difficulty to the applicant and a waiver would not be contrary to the spirit and intent of the rules. A majority of the Board present shall vote any waiver.

143.15 Joint Meetings and Hearings

1. RSA 676:2 provides that the Board of Adjustment may hold joint meetings or hearings with other "Land Use Boards," including the Planning Board, the Historic District Commission, the Building Code Board of Appeals, and the Inspector of Buildings, and that each Board shall have discretion as to whether or not to hold a joint meeting with any other land use Board.
2. Joint business meetings with any other land use Board may be held at any time when called jointly by the Chairman of the two Boards.
3. A public hearing on any appeal to the Board of Adjustment will be held jointly with another Board only under the following conditions:
 - a. The joint public hearing must be a formal public hearing on appeals to both Boards regarding the same subject matter; and
 - b. If the other Board is the Planning Board, RSA 676:2 requires that the Planning Board Chairman shall chair the joint hearing. If the other Board is not the Planning Board, then the Board of Adjustment Chairman shall chair the joint hearing; and
 - c. The provisions covering the conduct of public hearings, set forth in these rules, together with such additional provisions as may be required by the other Board, shall be followed; and
 - d. The other Board shall concur with the above.

Attachment "A" [8-22-19]

Chairman's introduction/order of business

Good evening ladies and gentlemen. Welcome to the (Date) Hudson Zoning Board of Adjustment. I call this meeting to order (state the time).

If you could please stand and join me in the Pledge of Allegiance.....

We will proceed with cases in the order they appear on tonight's agenda unless the Board deems it appropriate to take a case out of order. No new case will be heard after 11:00pm. State law and local ordinances set out the criteria that must be met in order for this Board to grant a request before the Board. These minimum requirements are outlined on application forms in the Town's Land Use Office. Applicants should proceed with this format to provide adequate justification for the Board to grant their request.

The Chairman will open the Hearing to hear testimony either for or against the request. The order of testimony will first be the applicant presenting their case as why it should be approved; next testimony from those supporting the applicant will be heard; and last will be testimony from those either neutral to or against the proposed case. If necessary a second round of testimony will be heard to respond to those in opposition and subsequent rebuttal.

All discussions will be between the applicant and the Board. Please be respectful of all and in interest of time refrain from repeating previous testimony. New documentation will be accepted by the Board for consideration this evening, but may cause the case to be continued or deferred. The Board reserves the right to ask for additional testimony at anytime.

After hearing the facts from all parties the Chairman will close the public hearing and the Board will deliberate and vote either to approve, deny or defer the request before moving on to the next case.

Handouts are at the back of the room: consisting of the agenda for tonight, and re-hearing request for those that feel aggrieved and wish to appeal any decision the Board may have made. Please be aware of the 30 day time period.

All those that wish to speak are asked to come either to the lecturn or the adjacent table, speak clearly, state your name and address. Please spell your last name for the recorder.

Before we begin a few housekeeping items:

- Turn off your cell phones
- There is no smoking in the building
- Please refrain from talking amongst yourselves as it distracts from hearing the testimony of the case

Will the Clerk please call for attendance.....



TOWN OF HUDSON

Zoning Board of Adjustment

Charlie Brackett, Chairman Marilyn E. McGrath, Selectmen Liaison

12 School Street • Hudson, New Hampshire 03051 • Tel: 603-886-6008 • Fax: 603-594-1142

MEETING MINUTES – July 25, 2019 - draft

The Hudson Zoning Board of Adjustment met July 25, 2019, in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall at 7:00 PM.

I. CALL TO ORDER
II. PLEDGE OF ALLEGIANCE

Chairman Brackett called the meeting to order at 6:59 PM and invited everyone to stand for the Pledge of Allegiance. Vice Chair Dearborn read the Preamble into the record, identified as Attachment A of the Board’s Bylaws, that included the procedure and process for the meeting, that copies of the Agenda and Application for Rehearing are on the shelf by the door, the importance of the 30-day time period as well as housekeeping items regarding cell phones, smoking and talking. Clerk Davis took the roll call.

Members present were Charlie Brackett (Regular/Chair), Gary Daddario (Regular), Maryellen Davis (Regular/Clerk), Gary Dearborn (Regular/Vice Chair) and Brian Etienne (Alternate). Also present were Bruce Buttrick, Zoning Administrator, and Louise Knee, Recorder. Excused was Jim Pacocha (Regular). Absent was Marilyn McGrath, Selectmen Liaison. For the record, Alternate Etienne was appointed to vote.

III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

1. Case 208-001 (7-25-19): Richard and Robin Sevigny, 161 Bush Hill Road, Hudson, NH requests an Appeal From An Administrative Decision of a Notice of Violation dated May 24, 2019 citing violations of two provisions in the Hudson Zoning Ordinance: §334-15B (2) Parking prohibited and §334-13 Junkyards prohibited; outdoor storage. [Map 208, Lot 001-000; Zoned General-One (G-1); HZO Article III, §334-15B(2) & §334-13].

Clerk Davis read the Case into the record. Mr. Buttrick referred to his Staff Report dated 7/25/2019 and stated that the violation to Hudson Zoning Ordinance (HZO) Section 334-15B(2) pertains to the Outside Parking or Storage of Vehicles or Trailers used in commerce at Residential Sites with a Gross

44 Vehicle Weight (GVW) greater than 13,000 pounds and Section 334-13 pertains
45 to Outside Storage of Junk. Mr. Buttrick noted that the ZBA denied the
46 Variance to allow the parking of a box truck over 13,000 GVW to be used to
47 clean up the junk and debris cited in the 2018 Code Enforcement Violation and
48 directed the Board's attention to Attachment D of his Staff Report and
49 Attachment CEO3 regarding a court ruling declared that simply removing
50 wheels from a trailer does not convert it to a structure. Mr. Buttrick also noted
51 the supplemental information regarding the many definitions of Gross Vehicle
52 Weight.

53
54 Mr. Dearborn asked the Chairman to consider postponing hearing this Case
55 until next month's meeting so that the ZBA can conduct a Site Walk to view the
56 violations as noted as it is extremely difficult to view the subject property from
57 the road and the postponement would also allow Member Pacocha, who
58 Chaired the meeting that denied the Variance, to attend both the Site Walk and
59 the Appeal before the Board. Mr. Brackett also noted that it was difficult to
60 view from the road, especially with the high growth. Ms. Davis also concurred
61 with the need for a Site Walk but stated that she would like to hear from the
62 Applicants and Abutters before taking action.

63
64 Mr. Daddario stated that in full disclosure he noted that Attorney Kent Barker
65 would be representing the Applicant and that even though they used to work
66 for the same firm, he has not discussed this Case with him and does not feel
67 that there is a conflict of interest but would defer to the Board or the Applicant
68 whether to recuse himself. No Board Member objected to Mr. Daddario voting.
69 Attorney Barker stated that on behalf of himself and his clients, there is no
70 objection to Mr. Daddario voting.

71
72 Ms. Davis clarified for the record that she is not related to the Abutter's wife
73 and that she did receive an email from Mr. Boutin after the February meeting
74 to which she responded that he needed to contact the Zoning Administrator
75 and/or the Selectmen, forwarded Mr. Boutin's email to Mr. Buttrick only and
76 added that she has had no further contact.

77
78 Attorney Kent Barker of Winer & Bennett in Nashua, NH, introduced himself as
79 representing Mr. & Mrs. Sevigny, stated that they have no objection to a Site
80 Walk and clarified that the Variance that was denied pertained to a box truck
81 and not the tractor-trailer trailer violation that is being appealed.

82
83 Atty. Barker stated that the Sevigny's have owned the property since March
84 2017 and that the prior owner, Eugene Dunn, subdivided a lot that they sold to
85 Mr. & Mrs. Boutin around 2003/2004 and granted an easement along the tote
86 road by the power line easement that was the sole access from Bush Hill Road
87 to the Boutin residence.

88

89 Atty. Barker stated that the Zoning Ordinance is specific in stating that outside
90 storage of junk is prohibited yet does not specify “what” beyond “ashes, refuse,
91 waste” and asked how those terms are defined but more importantly how is his
92 client to know and then referenced the adage that “one man’s treasure is
93 another man’s junk”.

94
95 Atty. Barker distributed a packet – a write-up prepared by Richard Sevigny
96 dated 7/25/2019 regarding Appeal of Administrative Decision dated
97 5/24/2019 with attachments of the selected Sections from the Hudson Zoning
98 Ordinance, pictures of the barn and a collection of outside material and two
99 printouts from the Internet: one titled Gross Vehicle Weight Rating by Dale
100 Wickell updated May 24, 2019 and another from Cerasis 2015 Trailer Guide for
101 Standard Freight Trailer.

102
103 Atty. Barker referenced ZO Section 334-13.B.(2) “Any quantity of waste, refuse,
104 junk or ashes”. The first picture contains items Mr. Sevigny wants to keep,
105 mostly wood pallets that he intends to burn at some point. The second picture
106 shows a different perspective of the material in close proximity to the barn.
107 Atty. Barker noted that the prior owner was someone who ran a business from
108 this site and brought this material and the tractor-trailer trailer to this site.

109
110 Atty. Barker stated that the Notice of Violation fails to give the minimum basis
111 for the exact violation, what is prohibitive, what is unacceptable, what needs to
112 be cured because there is no specificity on what is “wrong”.

113
114 With regard to the tractor-trailer trailer, Atty. Barker stated that it came to the
115 property by the prior owner, Mr. Dunn, not by Mr. Sevigny, and has been on
116 the site since approximately 1998. Atty. Barker noted that the Zoning
117 Ordinance was amended in 1995, read ZO 334-15.B.(2) into the record and
118 noted that it passed with a vote of 913:573 at the Town Meeting. Atty. Barker
119 stated that he could not locate any legislative history that could have prompted
120 this Ordinance change and speculated that it might have been prompted to
121 dissuade long-haul truckers from parking their rig at their residence. Atty.
122 Barker noted that the ZO change was very specific to include gross vehicle
123 weight greater than 13,000 pounds in the amendment.

124
125 Atty. Barker referenced the research provided by Mr. Buttrick, “GVWR:
126 Payload, Trailer Weight, & Why It Matters” from Pro-Line Trailers’ webpage and
127 read the following into the record: “The GVW is the maximum amount of weight
128 the trailer is able to safely hold and transport. A trailer’s total GVW is made up
129 of the weight of the actual trailer and the maximum load capacity of that
130 specific trailer.” Atty. Barker stated that his research yielded different in that
131 the Gross Vehicle Weight Rating represents what the maximum load can be
132 and read the following into the record that “Gross Vehicle Rating is what the
133 maximum load can be” which includes the weight of the vehicle with the load
134 in/on it and offered an example. Atty. Barker referenced his second handout

135 (Cerasis: 2015 Trailer Guide – Standard Freight Trailer) that shows that a 43’
136 trailer has a maximum weight of 11,900 pounds and a 48’ trailer with a
137 maximum weight of 13,500 pounds. The tractor-trailer trailer on site is 45’
138 long. Atty. Barker explained his calculations that yielded a weight capacity for
139 a 45’ trailer to be less than 13,000 pounds and added that according to the
140 Ordinance, it is acceptable. Atty. Barker also noted that the Ordinance is
141 specific in defining that trailers used in commerce at residential sites and that
142 there is no question that this trailer was once used for commerce and noted
143 that it has not been used for commerce since at least 1998. Atty. Barker
144 mentioned the Hudson court case Mr. Buttrick provided and stated that the
145 “use” of the trailer is of no consequence as the violation cited is its weight being
146 over 13,000 pounds. Based on the evidence provided regarding weight and the
147 fact that it is not used in commerce and that it has been on this property for
148 over twenty (20) years, Atty. Barker asked the Board to dismiss the Violation.
149

150 Public testimony opened at 7:30 PM. The following individuals addressed the
151 Board:
152

153 (1) Melissa Boutin and Robert Boutin of 167 Bush Hill Road introduced
154 themselves as direct abutters and distributed pictures that were
155 taken yesterday, three sets to the Board and one set to the Applicant.
156 Mrs. Boutin stated that she contacted BSP and spoke with Scott
157 Boisvert, Safety Manager, and based on the exact specification of the
158 tractor-trailer trailer, estimated the weight to be 13,750 pounds when
159 empty. Mr. Boutin noted that the trailer is effectively tipping. Mrs.
160 Boutin stated that the trailer was placed in that location late in
161 August 2007, on the day she was to take her oldest daughter to sixth-
162 grade orientation at Hudson Memorial School and noted that it
163 effectively blocked her from using her driveway and added that Mr.
164 Sevigny was not the owner then. Mrs. Boutin referenced the Google
165 street-map-view picture taken in 2005 that shows the entrance to her
166 driveway and noted that the trailer was not parked there then. Mr.
167 Boutin stated that he built the driveway in 2003 and that they have
168 an easement. Mr. Boutin stated that he too found the website
169 referenced by the attorney and noted that it was produced in 2015
170 and clearly states that it is for estimation only which prompted them
171 to contact BSP directly. Mrs. Boutin stated that the trailer is in the
172 setback, in the easement and abutting their driveway, it is effectively
173 sinking into the ground and it is their (Boutin’s) responsibility to
174 maintain and insure the easement. Mr. Brackett asked that a copy of
175 the easement be given to Mr. Buttrick. Mr. Boutin stated that the
176 trailer was used by the prior owner to house items for his eBay
177 business, used in “commerce” for his business even though not taken
178 “on the road”, and added that the first time he noted the current
179 owner entering that trailer was on 6/9/2019.

180 (2) Beau Bergeron, 155 Bush Hill Road, abutter on the northern most
181 property line, stated that the unregistered vehicles is part of the Junk
182 Violation even though not mentioned by the attorney. There are at
183 least three (3) unregistered vehicles on the property, a red Grand AM,
184 a Mustang and a Jeep Cherokee. Mr. Bergeron stated that he has
185 filed multiple complaints about the setback laws and notices that
186 vehicles keep being placed in the setbacks. Mr. Bergeron invited the
187 Board to go onto his property and look down on the site and they will
188 notice several areas of trash and asked the Board to please do a Site
189 Walk on the entire property, not just by the easement.
190

191 Being no one else to speak, public testimony closed at 7:40 PM. Mr. Brackett
192 offered Atty. Barker the opportunity to address the comments made and Atty.
193 Barker deferred.
194

195 Ms. Davis stated that she too discovered the Cerasis Guide in her research and
196 did additional research to discover that a 45' trailer was a length manufactured
197 prior to 1985, is no longer used and offered to forward that information to Mr.
198 Buttrick. There is no way to determine what the gross vehicle weight is when
199 empty because trailers come equipped with various options. Ms. Davis asked
200 to have access to the inside of the trailer during the Site Walk.
201

202 Ms. Davis stated that, according to her recollection, the reason for the verbiage
203 "used in commerce" was for descriptive language to differentiate between
204 recreational uses, like a mobile home/RV (Recreational Vehicle).
205

206 Discussion ensued regarding specificity of Junk and definitions of GVW. It was
207 noted that the trailer and much of the junk came to the site by the prior owner.
208 Atty. Barker stated that the exact measurements of the trailer are 45' long, 8'
209 wide and 9' high and noted that the material of the trailer would also affect its
210 weight, whether it is fiberglass, aluminum, metal or wood. Atty. Barker stated
211 that the brakes on the trailer are seized and that it is not possible to place it on
212 a scale and asked, considering the lack of a true definition, how relevant is the
213 Ordinance specifying the ~~13,000~~13,500 GSW to the Violation and added that
214 he would argue that it is not and that the Board is part of the due process and
215 that due process comes from the Constitution. Mr. Buttrick spoke to the "due
216 process" and that as the Zoning Administrator it is his job to make an
217 interpretation and it can be appealed to the Board and it is the Board's
218 responsibility to make the final determination on how the Zoning Ordinance is
219 to be interpreted and whether the Zoning Administrator's decision is right or
220 wrong. Mr. Buttrick also stated that the accusation regarding the lack of
221 specificity regarding junk, there is a definition in the Ordinance. Mr. Brackett
222 added that the ZBA is been defined as a quasi-judicial Board and will consider
223 all evidence.
224

225 Board next discussed the need for a Site Walk. Board asked if there would be
226 an objection to the abutters attending the Site Walk and Atty. Barker stated
227 that they can use the easement and added that his client, Mr. & Mrs. Sevigny,
228 would not attend the Site Walk due to other issues with the abutters.
229 Confusion arose on the junk violation. Atty. Barker was of the impression that
230 it was junk in the area of the easement and saw no reason to access the entire
231 site. Mr. Brackett stated that the Board should view the entire site, especially
232 in light of testimony received regarding 'junk' in other areas of the site. Atty.
233 Barker again referenced the lack of specificity in the Violation and added that
234 the prior owner had sort of a country western theme with a covered wagon and
235 mannequins and horse cutouts ~~mailed~~nailed to trees and noted that the
236 Sevigny's have owned the property less than two (2) years. Mr. Brackett stated
237 that the Board is addressing the property and noted that there is a violation
238 that dates back to 2006 regarding junk on the property with no confirmation
239 that it was ever cleaned up. Ms. Davis stated that usually when the Board
240 conducts a Site Walk it is of the property, of the entire property.

241
242 Mr. Dearborn made the motion to conduct a Site Walk to a date certain, to be
243 determined, and to continue the hearing to the next regular scheduled ZBA
244 meeting on Thursday, 8/22/2019 and be placed as the first item on the
245 8/22/2019 Agenda. Ms. Davis seconded the motion and clarified that the Site
246 Walk would be of the entire property. Vote was 5:0.

247
248 Board discussed possible days and dates for the Site Walk. Site Walk
249 scheduled for Monday, 7/29/2019 at 6:00 on-site. Members to park on the
250 easement. Members reminded to wear their identification badge, wear long
251 pants and good walking shoes/boots and consider bug spray

252
253 2. Case 175-107 (7-25-19): Brian Girard, 8 Ferry Ave, Hudson, NH
254 requests a Variance to allow the expansion of an existing non-
255 conforming use, for the construction of a 36' x 24' detached
256 residential garage. [Map 175, Lot 107-000; Zoned Business (B); HZO
257 Article V, §334-20 Allowed uses provided in Tables & §334-21 Table of
258 Permitted Principal Uses].

259
260 Clerk Davis read the Case into the record. Mr. Buttrick referenced his Zoning
261 Determination dated 6/20/2019 denying a Building Permit to construct a
262 detached residential garage and his Staff Report dated 7/25/2019. Mr.
263 Buttrick stated that the site is located in the Business (B) Zone and, according
264 to the Table of Permitted Uses, a residential house is not permitted and added
265 that in 1948 a Variance was granted to allow a workshop in the present garage,
266 in 1991 a Building Permit was issued to construct a 10' x 10' 3-season porch
267 and in in 2005 the septic system was replaced.

268
269 Brian Girard of 8 Ferry Avenue introduced himself, stated that he would like to
270 construct a detached 36' x 24' two-car detached garage with storage on the side

271 on the existing concrete slab at the rear of his property and addressed the
272 criteria for the granting of a variance. The information included:

273

274 (1) *not contrary to public interest*

- 275 • is located in an established residential neighborhood
- 276 • garage would keep the residential aspect of the neighborhood even
277 though it is Zoned Business

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

- 279 • garage is a common residential accessory use
- 280 • garage would cause no change to the neighborhood which is
281 established as residential

282 (3) *justice would be done*

- 283 • garage is a common residential accessory use

284 •

285 (4) *will not diminish values of surrounding properties*

- 286 • proposed construction would be for storage for a couple of vehicles
- 287 • housing of the vehicles keeps the yard “clean” looking which is a
288 benefit to both him and his neighbors

289 (5) *unnecessary hardship*

- 290 • the zone classification of Business causes the hardship, the
291 neighborhood is all residential

292

293 Public testimony opened at 8:10 PM. No one addressed the Board.

294

295 Mr. Dearborn questioned why there is no application for an Equitable Waiver of
296 ~~Dimension Distribution~~ before the Board for this site especially considering that
297 Selectman McGrath asked at the last meeting that such discrepancies be
298 addressed in tandem. Mr. Dearborn stated that he notices at least four (4)
299 violations that need to be addressed – setbacks are not met for the existing
300 garage, the pool and the shed and the Zoning Ordinance does not permit two
301 (2) driveways on a residential site without Planning Board approval. Mr.
302 Brackett stated that it also appears that the house is in the front setback. Mr.
303 Buttrick pointed out that the existing gravel driveway is not a Zoning violation
304 and falls under the jurisdiction of the Planning Board and cannot be resolved
305 with an Equitable Waiver. Mr. Brackett explained and supported the need to
306 obtain an Equitable Waiver for the existing violations.

307

308 Discussion arose regarding the second driveway. Mr. Girard stated that it
309 exists, it is gravel and can be used to park a vehicle and added that he has no
310 intention to pave a driveway to the new garage and when asked how the
311 proposed new garage would be accessed, Mr. Girard stated that he would drive
312 on the lawn to it. Mr. Girard stated that the existing garage is used to house
313 his car and motorcycle and that there is no “workshop” in it and was surprised
314 that one was granted in 1948 as he thought his house was built in 1960.

315

316 Ms. Davis asked if the house is serviced by Municipal water and sewer. Mr.
317 Girard stated that he is connected to Town water but has his own septic
318 system and identified the location of it on his property noting that accessing
319 the proposed garage would not drive over the leach field and that the tank is
320 located by the deck.

321
322 Mr. Etienne also agreed that an Equitable Waiver is needed for the existing
323 violations and shared his observations that there seems to be a history with the
324 Town having residential neighborhoods in the Business Zone and imposing a
325 need for a Variance. Members agreed and discussion prevailed on the
326 evolution of neighborhoods and zoning in Hudson, the existence of several lots
327 in need of Equitable Waivers, the conundrum whether to require cleanup
328 before or in tandem or separate when a variance is required and that actual re-
329 zoning is under the Planning Board's jurisdiction and that perhaps ~~its~~ should
330 be discussed in a Zoning Ordinance Amendment workshop. Mr. Girard asked
331 and received information regarding the Equitable Waiver process.

332
333 Ms. Davis stated that, in her opinion, the application does not meet all the
334 criteria for the granting of a variance, noted that it is a small lot but no real
335 hardship from the land, the lot currently has a house, garage, pool, shed, deck
336 and the request before the Board is for a second garage which will require a
337 second driveway and that alone could be disruptive to an abutter. In addition,
338 Ms. Davis stated that the proposed use does not observe the spirit of the
339 Ordinance which is to protect the health, the welfare ...

340
341 Mr. Dearborn interjected and stated that at last month's meeting, which
342 neither Mr. Brackett nor Ms. Davis attended, the Board approved a second
343 driveway with the specific stipulation that the original driveway be removed
344 and was even specific as to what constituted removal.

345
346 Ms. Davis continued by stating that the second garage would require a second
347 driveway, which is an issue and will overcrowd and injure the public rights of
348 others. Mr. Brackett concurred, noted that it is already an extensive use of a
349 small lot and added that the length of a driveway to a garage at the rear of the
350 lot could consume almost ten percent of the lot. Mr. Dearborn added that it is
351 doubtful that grass would remain with it being used as a travel way to the
352 second garage. Mr. Brackett asked Mr. Girard why a second garage and
353 driveway are needed as it appears that the paved driveway could accommodate
354 three (3) vehicles. Mr. Girard responded that he has five (5) cars, one being an
355 older classic car, a convertible Camaro and a couple of motorcycles and
356 thought a wood garage would be more aesthetically pleasing to the
357 neighborhood than a Quonset tent.

358
359 Board discussed the hardship criteria. The applicant is not being denied
360 reasonable use of his lot, it is already extensively and intensively utilized and
361 yes it is a small residential lot in the Business Zone. The Board and Applicant

362 wrestled with options that included eliminating the driveway, the shed and the
363 pool to reduce the intensity of the use of the site. It was noted that if the
364 Variance is denied tonight, the Applicant can resubmit but Mr. Buttrick noted
365 that the new Variance would need to contain something different. Ms. Davis
366 suggested that the applicant withdraw the application without prejudice and
367 work with Mr. Buttrick taking into consideration all the concerns the Board
368 has raised. Mr. Daddario agreed and noted that he would be looking for
369 changes that addressed the second driveway, the intensity of use and the
370 violations in the setback. Mr. Brackett added the pool setback should also be
371 considered and would like to see the leach field being protected.

372

373 Mr. Dearborn made the motion to deny the Variance. Mr. Etienne seconded
374 the motion. Before Mr. Dearborn could speak to his motion, Mr. Girard asked
375 to withdraw his application. Ms. Davis made the motion to accept the
376 Applicant's verbal request to withdraw the Variance application without
377 prejudice. Mr. Daddario seconded the motion. No discussion. Vote was 5:0.
378 For the record, Mr. Dearborn withdrew his motion to deny and Mr. Etienne
379 withdrew his second to that motion.

380

381 3. Case 191-135 (7-25-19): Bernard Campbell of Beaumont & Campbell,
382 Prof. Ass'n. of 1 Stiles Road, Suite 107, Salem, NH representing Salem
383 Manufactured Homes LLC, 3 Bay Street, Hudson, NH requests a
384 Variance to expand the existing non-conforming use (residential
385 structure) from 924 sq. ft. to 1,152 sq. ft. [Map 191, Lot 135-000;
386 Zoned Business (B); HZO Article VIII, §334-29 Extension or
387 enlargement of nonconforming uses].

388

389 Clerk Davis read the Case into the record. Mr. Buttrick referenced his Zoning
390 Determination dated 7/28/2019 and his Staff Report dated 7/25/2019 and
391 shared the following information: site is an existing non-conforming lot of
392 record with a 924 SF (Square Foot) Manufactured Home; site previously
393 received a Variance to place the Manufactured Home on site as the lot is in the
394 Business Zone which prohibits residence; the non-conformity also applies to
395 the size of the lot being substandard; the current Manufactured Home
396 encroaches the front setback; the proposed replacement of the Manufactured
397 Home is 1,152 SF thereby expanding an existing non-conformity; and the
398 replacement Manufactured Home will satisfy all setbacks.

399

400 Atty. Bernard Campbell of Beaumont & Campbell Professional Association in
401 Salem, NH, introduced himself as representing the property owner, Salem
402 Manufactured Homes, LLC, and introduced its principal Glenn Gidley and his
403 son, Adam Gidley and noted that Adam Gidley is also the occupant of 3 Bay
404 Street, the site for the requested variance.

405

406 Atty. Campbell stated that this lot has an existing Manufactured Home that
407 was placed there as a result of a prior Variance that ZBA granted many years

408 ago [8/24/2000] and his client would like to replace it with an upgraded
409 version and according to current housing standards, instead of the 940 SF this
410 new version is 1,152 SF, an increase of approximately 200 SF. Because this is
411 a residential house lot in the Business District, it is non-conforming and the
412 Zoning Ordinance does not permit an expansion of a non-conformity without
413 Board approval.

414

415 Atty. Campbell addressed the criteria for the granting of a Variance. The
416 information shared included:

417

418 (1) *not contrary to public interest*

419

- 420 • lot has a long history of non-conforming residential use
- 421 • the placement of the new Manufactured Home will meet all setback
422 requirements [not infringe into the front setback]
- 423 • there is no impact to the health, welfare or safety to the community
- 424 • will not change the character of the neighborhood, being a
425 residential neighborhood in the Business Zone
- 426 • is located in an established residential neighborhood
- 427 • will improve character of the neighborhood but will not change
428 essential character as an “in-kind” replacement
- 429 • site is serviced by Municipal water and sewer

429

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

431

- 432 • this section of the Business District has numerous single family
433 homes and to comply with the Ordinance and replace the
434 Manufactured Home with a business would observe the Ordinance
435 but be disruptive to the neighborhood
- 436 • minimal expansion, approximately 200 SF, is the result of
437 complying with current industry standards

436

437 (3) *justice would be done*

438

- 439 • when considering the main question of what would be gained by
440 the community by denial of the variance versus the harm to the
441 applicant if not granted, there is impact on the community with
442 the granting of the variance
- 443 • the replacement will honor current Zoning setbacks
- 444 • front setback from prior variance (year 2000) was 30’ and today
445 (year 2019) the front setback is 50’
- 446 • the applicant benefit includes updated unit with less expected
447 maintenance costs

446

447 (4) *will not diminish values of surrounding properties*

448

- 449 • use is already a previously allowed manufactured housing unit
- 450 • replacement should enhance the neighborhood and raise property
451 values

450

451 (5) *unnecessary hardship*

451

- property has history of prior non-conforming residential use

- 452 • insistence on compliance with Business District uses would
453 impose neighborhood impacts on surrounding residential
454 properties
455 • replacement of existing manufactured housing unit is reasonable
456 given the age and changes in standards since initial unit
457 placement
458 • the zone classification of Business causes the hardship, the
459 neighborhood is all residential

460
461 Glenn Gidley, Principal Owner of Salem Manufactured Homes introduced
462 himself and distributed pictures of the replacement. Mr. Gidley stated that
463 the new unit is sixteen feet (16') wide as opposed to the existing home that is
464 fourteen feet (14') wide. Mr. Gidley noted that the manufactured home has all
465 the features of a single-family home with the shingled roof, the vinyl siding, the
466 trim, bay window and a dormer.

467
468 Public testimony opened at 8:58 PM. No one addressed the Board.

469
470 Mr. Dearborn stated that on the map there is a trailer shown to be in the rear
471 setback. Mr. Gidley stated that there is a currently a camper trailer RV there
472 and added that back in the fall a substantial tree limb came down and
473 damaged it. Mr. Gidley stated that it is their intention to remove the trailer
474 from the site at the time they remove the existing home.

475
476 Mr. Brackett questioned the foundation for the new unit. Mr. Gidley stated
477 that the home will be placed on a permanent foundation, as defined by the
478 State of NH, which is essentially a slab, and once placed, the axles and wheels
479 are removed and siding will be completed down to the slab so as to have the
480 appearance of a typical single-family home.

481
482 Ms. Davis asked the Board's indulgence to question an expert on an unrelated
483 matter. Ms. Davis asked Mr. Gidley if he is seeing a lot of tiny homes. Mr.
484 Gidley stated that his company deals primarily in manufactured and modular
485 homes and according to the code requirements, the minimum size for a
486 manufactured home four hundred square feet (400 SF); they have seen some
487 interest but it is cost prohibitive and most customers end up opting for a bigger
488 home and added that in the last decade they have sold maybe a half dozen that
489 satisfy the manufactured home codes. Mr. Gidley stated that there does not
490 appear to be any standard code for building "tiny homes", that it seems to be a
491 slippery slope and despite the numerous inquiries/requests they receive, they
492 have not sold many.

493
494 Mr. Brackett stated that he noted the trailer when he drove by and wondered if
495 it was a second home on the site and it relieved to learn that it is not and that

496 it will be removed from the lot and appreciates that the new unit will comply
497 with the current setback requirements.

498
499 Mr. Dearborn noted that this is the second case tonight of a residence located
500 in the Business Zone.

501
502 Mr. Dearborn made the motion to approve the variance with the stipulation
503 that the travel trailer/camper currently in the rear setback and damaged be
504 removed from the lot before or at the time the manufactured home is replaced.
505 Ms. Davis seconded the motion. Mr. Dearborn spoke to his motion. Ms. Davis
506 stated that this request meets all five (5) criteria: it is not going to be contrary
507 to public interest; it is in the spirit of the Ordinance and the applicant is
508 placing the new unit out of the current setback; substantial justice is done to
509 the property owner; it will improve property values; and there are special
510 conditions that include the Business Zone overlaid onto a residential
511 neighborhood and the replacement is in like-kind with a two foot difference in
512 width. Mr. Brackett noted that there is no permitted use in the Business Zone
513 that could come to this site without an impact to the neighborhood. Mr.
514 Etienne noted that the Board previously granted a variance for a residential
515 use of this lot. Vote was 5:0. Motion passed. Variance granted. The 30-day
516 appeal period was noted.

517 518 **IV. PUBLIC HEARING:**

519 520 1st Reading of proposed bylaws amendments.

521
522 Mr. Brackett opened the hearing at 9:19 PM. Mr. Buttrick stated that this is
523 the first of two required Public Hearings required to affect a change to the
524 Rules of Procedure and proceeded to define the changes being proposed that
525 included a change in the Clerk position / duties, the addition of the Recorder
526 position / duties, unexcused absences, order of business and the
527 standardization of the opening statements, referred to as the Preamble. Ms.
528 Davis noted that the curfew should be part of the Preamble. Discussion
529 ensued. Question asked if the curfew was part of the Bylaws and search
530 discovered that it was not and suggestions were made where to include. Voice
531 vote was 5:0 to include the curfew in both the Bylaws and the Preamble with a
532 statement noting that the last Case can be opened no later than 11:00 PM.

533
534 Hearing closed at 9:27 PM

535 536 **V. REVIEW OF MINUTES:**

537 538 1. 06/27/19 Minutes

539
540 Board reviewed the edited version presented and made no changes. Motion
541 made by Mr. Dearborn, seconded by Mr. Daddario and voted 3:0:2 to approve

542 the 6/27/2019 Minutes as edited and presented. Mr. Brackett and Ms. Davis
543 abstained as they had not attended the meeting.

544

545 **VI. REQUEST FOR REHEARING:**

546

547 No requests were presented for Board consideration.

548

549 **VII. OTHER:**

550

551 1. Town email address and badges - update

552

553 Update: Town decision not to issue Town email addresses to Board Members.
554 Town has issued identification badges to Board and Committee Members.

555

556 Mr. Brackett expressed his concern with utilizing his personal email for
557 Board/Town business, noted that the possibility his personal email could be
558 subject to an investigation regarding a Town case, shared an experience he
559 once had in his business with an investigation involving email, stated that he
560 rarely responds to Town emails from his personal email and expressed
561 disappointment with the Town's decision not to provide Board Members with a
562 Town email address.

563

564 Mr. Brackett noted that a couple of individuals wore their ID badges at the last
565 Planning Board meeting even though their name plate sat before them at the
566 Board table.

567

568 2. Possible Zoning Ordinance Amendments as result from 7/11/19 ZBA
569 workshop meeting.

570

571 Mr. Buttrick referenced the Proposed Zoning Ordinance Amendments 7-11-19
572 ZBA Workshop Cover Sheet and the proposed amendments suggested for
573 Expansion of existing non-conformity; doggie day care, Home Occupation Day
574 Care Special Exception and Manufactured Homes.

575

576 Mr. Buttrick stated that, even though the Workshop was scheduled, they did
577 not have a Meeting as a quorum was not present and decisions could not be
578 made. Mr. Etienne stated that he had not realized a quorum was needed.

579

580 Mr. Buttrick stated that he receives requests to "replace in kind", noted that
581 the Ordinance strives to bring all into compliance and that it raises questions
582 when it deals with nonconformity. Discussion arose on the expansion of
583 nonconformity and what is truly meant by "replace in kind" and known
584 inconsistencies in Town, especially residences in the Business Zone, and how
585 to correct or synchronize with the Assessor's database for known
586 discrepancies, etc...

587

588 Nonconforming Uses versus nonconforming Structures was discussed~~explored~~.
589 With regard to additions to non-conforming structures, two (2) schools of
590 thoughts were expressed: (1) if the addition is conforming then no need to come
591 before the Board; versus (2) the physical addition expands the nonconformity of
592 the nonconforming structure. The issue of potential overcrowding a lot was
593 also mentioned as well as the Board's need/desire to view/review every
594 expansion.

595 Additional discussion warranted.

596
597 Mr. Brackett stated that the target date for proposing Zoning Amendments to
598 the Planning Board is by the end of September 2019 for a 2020 Town Vote.
599 Discussion arose on Member availability to meet and continue discussion in
600 August. It was noted that the next regular meeting is set for Thursday
601 8/22/2019. The next Workshop was scheduled for Thursday, August 29,
602 2019.

603
604 It was noted that the Planning Board's approach to Zoning Ordinance
605 Amendments and Zoning concerns are broader than that of the Zoning Board.
606 It was also noted that the rate of success is higher with fewer Warrant Articles
607 and that Mr. Buttrick and Town Planner, Brian Groth, are both knowledgeable
608 and their input is valuable.

609
610 Recap of next meetings:

611
612 Monday, 7/29/2019 6:00 PM Site Walk, 161 Bush Hill Road
613 Thursday, 8/22/2019 7:00 PM Regular Zoning Board meeting
614 Thursday, 8/29/2019 7:00 PM Workshop – Potential ZO Amendments

615
616 Motion made by Ms. Davis, seconded by Mr. Dearborn and unanimously voted
617 to adjourn the meeting. The 7/25/2019 meeting adjourned at 9:55 PM.

618
619 Respectfully submitted,
620 Louise Knee, Recorder

Proposed Zoning Ordinance amendments **7-11-19 ZBA Workshop** Cover Sheet

- 1) Prioritized master list 2 pages.
- 2) Expansion of exist. Non-conforming, 2 pages w/attachment "A".
- 3) Doggie day care , 1 pg.
- 4) Home Occupation Day Care Special Exception, 3 pages.
- 5) Manufactured homes, 1 pg.

Z.O. Section	Item/Topic	Comments	Priority	Discussion
334-31 (A)	Alteration or Expansion of Non-Conforming Structures	Add to A - tear down and replace in kind	1	
334-31 (A)	Alteration or Expansion of Non-Conforming Structures	Adding an addition to a non-conforming structure	1	These 3 items should be considered 1 entire meeting to shore up the ordinance; could be a 1
	Equitable Waivers	Consider granting as a matter of course if applicant is before the ZBA for something else, as long as conditions are met?	1	
	Doggie Day Care/Training	Add to 'Kennel' definition and section; include dog 'fostering'	1	HOSE or Variance required in the interim; definitions and included on Table of Permitted Uses
	Special Exception - Day Care	Needs specific criteria	1	Correct daycare outside requirements
334-43 (M)	Manufactured Home Parks	Refers to obsolete BOCA code	1	Remove BOCA; shore up what is included w/ Mfg's homes ie mobile?
334 - Attachment 1	Table of Permitted Uses	Align/Streamline Table	1	Dedicated meeting
	Backyard Farming	Defined, where allowed, as an accessory use to a principle dwelling	1	Bruce defined; this is almost ready to go; ensure NO roosters!!
334-60; 334-64	EMC/Electronic Signs	Un-complicate Verbiage	2	Bring experts in, DOT, NH Municipal Assoc - bruce to look at ICC for signs
	Trailers	Include RV's and use on lots	2	Time limit on occupying on residential lots
	Lighting	On signage	2	Turn off at night for "dark skies"
	Ocean Containers	Definition Added; need where allowed/used/restrictions ie painted to remove signage	2	Validate definition on 2018 ballot; add to table of permitted uses
	Campgrounds	Where Used, Table of Permitted Uses	3	Define and add to Table of permitted uses
334-120	Alternative Energy	Includes Small Wind energy Systems and Solar Panels/Cells	3	Define and add to Table of permitted uses (residential + commercial)

	Town Right of Way	Referring to Parking and/or Activities in Town ROW	3	Clarify to include side and front setbacks
	Tiny Homes	Defined, where allowed, as an accessory use to a principle dwelling	3	Need in ordinance
334.91 - 334.107	Wireless Communication Facility	Remove SE requirement and allow with a Planning Board Conditional Use Permit	?	George Language - Hold off on this one
334-15	Off Street Parking	Clarify to eliminate front/yard setbacks	?	Remove - duplicated
334-15	Driveways		?	Remove/co-ordinate w/ P/B/Engr
334:33 - 334:41	Wetland Conservation District	Eliminate permit process for permitted uses; SE exception process for non-permitted uses after Con Comm Input	?	George Language

Zoning Ordinance Amendment item 7-11-19 discussion

<u>Item</u>	<u>Z.O. Section</u>	<u>Item/Topic</u>	<u>Comments</u>	<u>Priorit</u>
"A"	334-31 (A)	*Alteration or Expansion of Non-Conforming Structures	Add to A - tear down and replace in kind	1
			See attachment "A"	
"A"	334-31 (A)	*Alteration or Expansion of Non-Conforming Structures	Adding an addition to a non-conforming structure	1
			See attachment "A"	
"A"		*Equitable Waivers	Consider granting as a matter of course if applicant is before the ZBA for something else, as long as conditions are met? Bruce comment: The E.W. of D.R. would need to be "noticed" as a Hearing etc.	1

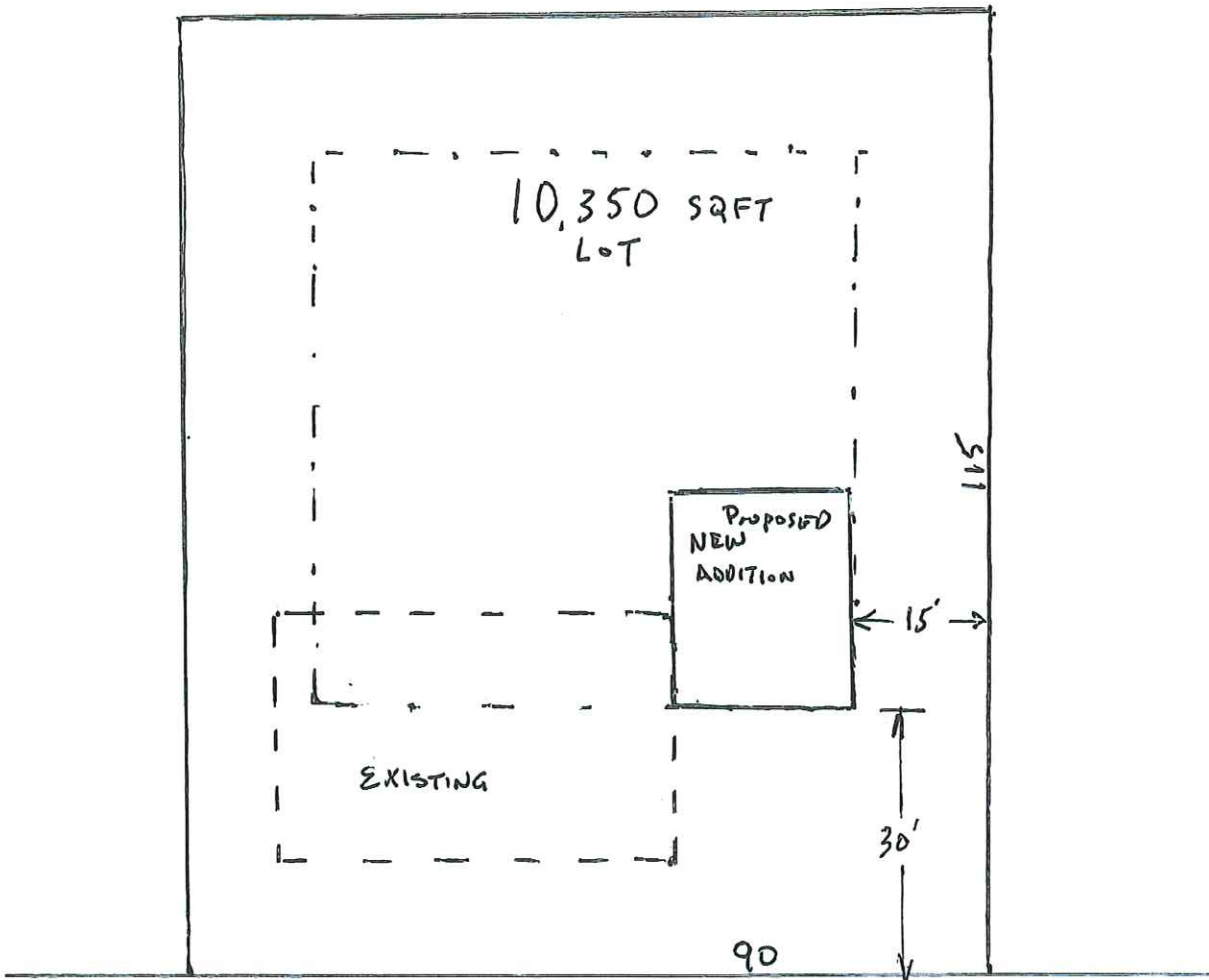
The Ordinance as written, Bruce comments in red:

§ 334-31 Alteration and expansion of nonconforming structures.

A.

"A nonconforming structure may not be altered or expanded, except by variance." If a structure is non-conforming due to a front yard setback encroachment, in my opinion if the expansion is in the rear of the existing structure, (not in the setbacks) why would they need a variance as they are doing the expansion in an area that is allowed. If the expansion is occurring within a setback, yes a variance is required as it is increasing the non-conformance. "A nonconforming structure may be altered, reconstructed, externally or structurally modified, provided that such alterations, reconstruction, extension or structural modification does not make any portion or

portions of the existing structure more nonconforming. A nonconforming structure cannot be reconstructed after demolition, except when the structure was demolished by an act of God, fire or flood". ~~A voluntary demolition of a non-conforming structure may be reconstructed, provided there is no additional non-conformance.~~ "A nonconforming building or a building occupied by a nonconforming use may be strengthened and made safe."



R.O.W.

1" = 20'



Zoning Ordinance Amendment 7-11-19 discussion

Doggie day care etc.

New definition:

Kennel / Doggie day care

An **establishment** in which a primary **use** is housing dogs, cats, or other **household pets**, and/or grooming, breeding, boarding, training, or selling of animals.

Currently:

In Principal Permitted Uses:

R-1	R-2	TR	B	I	G	G-1
N	N	N	S	P	P	P

I propose in Principal Permitted Uses:

R-1	R-2	TR	B	I	G	G-1
N	N	N	S	S	N	N

Kennel / Dog Day Care Special Exception:

Overnight boarding?

Hours of drop off?

Hours for pick up?

Parking?

Employees?

Animal Control Officer Involvement?

Outside/pen area?

Sanitation methods?

Noise control?

Separate bldg.?

Zoning Ordinance amendments 7-11-19 discussion

§ 334-24 Home occupations.

[Amended 3-13-2007 by Amdt. No. 3; 3-10-2009 by Amdt. No. 3]

Home occupations are defined by the Zoning Ordinance as "any activity carried out for gain by a resident in their dwelling unit, and such activity is a secondary use to the residence." The intent of providing a home occupation special exception is to allow for growth and development of a small in-home business while maintaining the character of residential areas. The applicant acknowledges that if the business grows and no longer meets the listed requirements, the business shall be moved to an appropriately zoned location such as Business, General or Industrial. Home occupations which include sales or service operations for wholesale goods produced or services provided on-site shall be permitted only as a special exception. The Zoning Board of Adjustment must find any such home occupation application to be in full compliance with the following requirements prior to approval of such special exception:

A.

The home occupation shall be secondary to the principal use of the home as the business owner's residence.

B.

The home occupation shall be conducted only by the residents of the dwelling who reside on the premises. If the applicant is the owner, the owner must sign an affidavit, stating he/she is the owner, and the residents of the dwelling are the only individuals conducting the activities associated with the home occupation. Said affidavit shall also state that the owner is responsible for any violations of this chapter. If the applicant is a renter, the owner of the dwelling must sign an affidavit, stating he/she is the owner, and shall acknowledge that the home occupation for the premises shall only be conducted by the current renter(s), who shall be identified on the application. The owner shall also acknowledge that he/she, as the owner of the dwelling, is responsible for any violations of this chapter conducted at said dwelling. Approval of the home occupation special exception expires with the change of ownership of the property or the rental agreement in effect at the time the home occupation special exception was granted. The home occupation special exception is conditional on the residents of the dwelling and not on the property.

C.

There shall be no employees or "for hire" staff conducting the home occupation activities, unless the employee(s) also resides on the premises.

D.

The home occupation business shall be carried out within the residence and/or within a structure accessory to the residence, such as a garage. **Exception: Daycares will require outdoor activity playground.**

E.

The requested special exception shall be for an occupation which is consistent for what is routinely and/or typically done in a home environment **such as a day care,** direct office billing, or other activities that are generally service-oriented or produce goods for wholesale purposes.

F.

On-site retail sales are an expressly prohibited home occupation special exception use.

G.

No more than 50% of the finished living space of the dwelling unit shall be used in connection with the home occupation.

H.

Other than the sign(s) permitted under Article [XII](#), there shall be no exterior display nor other exterior indication of the home occupation, nor shall there be any variation from the primarily residential character of the principal or accessory building.

I.

Exterior storage may be permitted only by special exception, granted by the Zoning Board of Adjustment, and must be screened from neighboring views by a solid fence or by evergreens of adequate height and bulk at the time of planting to effectively screen the area. In situations where a combination of existing foliage and/or long distances to neighboring views provide screening, the fencing requirements may be waived at the discretion of the Board.

J.

Objectionable circumstances, such as, but not limited to, noise, vibrations, dust, smoke, electrical disturbances, odors, heat or glare, shall not be produced.

K.

No traffic shall be generated by the home occupation activity that will be substantially greater in volume than would normally be expected in the neighborhood.

L.

Parking.

(1)

Parking for the home occupation shall be provided off-street and shall not be located in the front yard or within the required setbacks from the side and rear lot lines. Only the existing driveway may be used for the parking of customers. Customer parking shall be limited to a maximum of two vehicles at any one time.

(2)

Parking of vehicles used in commerce:

(a)

One registered vehicle used in commerce may be parked at the principal or accessory structure, and further provided that personal vehicles used in commerce are excluded from this provision.

(b)

In the B, I and G Zones (pertaining only to the home occupation activity), one registered vehicle used in commerce may be parked at the principal or accessory structure, provided that there are no heavy commercial vehicles which exceed a weight of 13,000 pounds (gross vehicle weight) and the screening requirements of § [334-24I](#) are met, and further provided that personal vehicles used for purposes of commerce are excluded from this restriction.

M.

Approval of the home occupation special exception expires with the change of ownership of the property or the rental agreement in effect at the time the home occupation special exception was granted. The home occupation special exception is conditional on the residents of the dwelling and not on the property.

N.

The Community Development Director/Zoning Administrator reserves the right to revoke the home occupation special exception if all conditions of the special exception are not maintained.

From the Zoning Ordinance definitions:

FAMILY GROUP DAY-CARE HOME

An occupied residence in which child day care is provided for less than 24 hours per day, except in emergencies, for seven to 12 children from one or more unrelated families. The 12 children shall include all children related to the caregiver and any foster children residing in the home, except children who are 10 years of age or older. In addition to the 12 children, up to five children attending a full-day school program may also be cared for up to five hours per day on school days and all day during school holidays.

Currently, This is/is not permitted as an Accessory Use:

R-1	R-2	TR	B	I	G	G-1
N	N	N	P	P	P	P

I would propose as follows:

R-1	R-2	TR	B	I	G	G-1
S	S	S	P	P	S	S

FAMILY GROUP DAY-CARE HOME Special Exception

An **owner** occupied **SFR/duplex** residence in which child day care is provided for less than 24 hours per day, except in emergencies, for seven to 12 children from one or more unrelated families. The 12 children shall include all children related to the caregiver and any foster children residing in the home, except children who are 10 years of age or older. In addition to the 12 children, up to five children attending a full-day school program may also be cared for up to five hours per day on school days and all day during school holidays.

Hours for drop off _____
Hours for pick up _____

Parking available _____

Outdoor area – fenced/barrier?

Employees?

FD/ISD requirements and inspection required

Zoning Ordinance Amendments – 7-11-19 Discussion

<u>Item</u>	<u>Z.O. Section</u>	<u>Item/Topic</u>	<u>Comments</u>	<u>Priority</u>	<u>Discussion</u>
D	334-43 (M)	Manufactured Home Parks	Refers to obsolete BOCA code	1	Remove BOCA; make reference to Federal & State stds.

§ 334-43 Manufactured home parks.

A.

Manufactured home parks shall be permitted in the General District; see the [Table of Permitted Principal Uses](#) in § [334-21](#) of Article [V](#).

M.

All manufactured homes must comply with ~~BOCA-Federal and State standards. current FHA manufactured home standards.~~