

# TOWN OF HUDSON

## Zoning Board of Adjustment



Gary M. Daddario, Chairman

Kara Roy, Selectmen Liaison

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

### MEETING AGENDA – June 23, 2022

The Hudson Zoning Board of Adjustment will hold a meeting on Thursday, **June 23, 2022** at **7:00 PM** in the Community Development Paul Buxton Meeting Room in the basement of Hudson Town Hall, 12 School St., Hudson, NH (please enter by ramp entrance at right side). The following items before the Board will be considered:

#### I. CALL TO ORDER

#### II. PLEDGE OF ALLEGIANCE

#### III. PUBLIC HEARING:

Proposed ZBA Bylaws amendments 1<sup>st</sup> reading:

- Global revision of gender terms to gender neutral terms throughout document;
- Added §143-3.B gender neutral inclusion statement;
- Amended §143-5.C Clerk, preferably Alternate member, elected annually and use Appendix “B” Clerk Duties;
- Deleted §143-5.C Clerk...“read cases into the record” (Zoning Administrator reads case into record);
- Amended §143-6.E “and Zoning Administrator” notify regarding member absences;
- Amended §143-7.D(2) on Alternate status as full Board member for continued/deferred cases;
- Amended §143-7.E by adding “Recusals”;
- Amended §143-7.E(2)(g) striking “then” and adding “currently”;
- Added §143-7.E(2)(h) direct or indirect abutter as disqualification;
- Amended §143-7.E(3) striking “shall” and adding “may”;
- Added §143-7.F. (4)(a), (5), (7)(a), (7)(b) pertaining to Order of Business;
- Amended §143-8.A(2) Appeal from Administrative Decision filed within “35” days;
- Amended §143-8.B(2) previously shown as §143-8.B(3);
- Added §143-8.B(3) Property/Site location Notification Sign of Public Hearing;
- Deleted §143-8.C(12) regarding Finding of Facts form in Appendix C;
- Amended §143-9.E by adding “per RSA 677:2”;
- Amended §143-11 to “RSA 677:3”

IV. REQUEST FOR REHEARING: None

V. REVIEW OF MINUTES: 05/26/22 edited Draft Minutes

VI. OTHER:

Bruce Buttrick, Zoning Administrator

**PROPOSED**

**Zoning Board of Adjustment**

**Chapter 143**

**(BYLAWS)**

**1<sup>ST</sup> Reading**

Town of Hudson, New Hampshire Bylaws  
Zoning Board of Adjustment  
Amended ~~xx-xx-22~~

Chapter 143

- § 143-1 History
- § 143-2 Authority
- § 143-3 Purpose
- § 143-4 Amendments
- § 143-5 Officers
  - § 143-5.1 Recorder
  - § 143-5.2 Vacancy and Succession of Officers
- § 143-6 Members and Alternates
- § 143-7 Meetings
  - A. Regular Meetings
  - B. Other Meetings
  - C. Board Member Notice of Meetings
  - D. Quorum
  - E. Disqualification
  - F. Order of Business
- § 143-8 Application Process
  - A. Applications
  - B. Public Notice
  - ~~C. Forms~~
  - C. Public Hearing
  - ~~D. 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. [Amended 00-00-2022]**

- A. 12-14-1978: Adopted by the Zoning Board of Adjustment of the Town of Hudson
- B. 06-23-1988: Amended in its entirety,
- C. 06-23-2011: Amended again in its entirety.
- D. Subsequent amendments noted where applicable.
- E. 10-12-17: Amended in entirety.
- F. 04-11-19: Subsequent amendments noted where applicable.
- G. 09-26-19: Added Recorder; revised Clerk; unexcused absences; order of business: pledge of allegiance, introduction and 11:00 pm curfew; thirty-day re-hearing note and attachment "A".
- H. 01-28-21: Added §143-5.1 on vacancy □ succession of officers.
- I. xx-xx-22: Global revision of gender terms to gender neutral terms throughout document; Added §143-3.B gender neutral inclusion statement; Amended §143-5.C Clerk, preferably Alternate member, elected annually and use Appendix "B" Clerk Duties; Deleted §143-5.C Clerk... "read cases into the record" (Zoning Administrator reads case into record); Amended §143-6.E "and Zoning Administrator" notify regarding member absences; Amended §143-7.D(2) on Alternate status as full Board member for continued/deferred cases; Amended §143-7.E by adding "Recusals"; Amended §143-7.E(2)(g) striking "then" and adding "currently"; Added §143-7.E(2)(h) direct or indirect abutter as disqualification; Amended §143-7.E(3) striking "shall" and adding "may"; Added §143-7.F. (4)(a), (5), (7)(a), (7)(b) pertaining to Order of Business; Amended §143-8.A(2) Appeal from Administrative Decision filed within "35" days; Amended §143-8.B(2) previously shown as §143-8.B(3); Added §143-8.B(3) Property/Site location Notification Sign of Public Hearing; Deleted §143-8.C(12) regarding Finding of Facts form in Appendix C; Amended §143-9.E by adding "per RSA 677:2"; Amended §143-11 to "RSA 677:3"

**§ 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:I. 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.**

- A. The purpose of these bylaws is to ensure an orderly procedure in the execution of the duties of the Board.
- B. For purposes of this document all terms are not intended to exclude any genders. [Added 00-00-2022]

**§ 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.**

- A. A **Chairperson** shall be elected annually by a majority vote of the Board at the first meeting in the month of January. The **Chairperson** 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.
- B. A **Vice-Chairperson** shall be elected annually by a majority vote of the Board at the first meeting in the month of January. The **Vice-Chairperson** shall preside in the absence of the **Chairperson** and shall have the full powers of the **Chairperson** on matters, which come before the Board during the absence of the **Chairperson**.

- C. A Clerk shall be elected annually by a majority vote of the Board at the first meeting in the month of January, preferably an Alternate member. The Clerk shall take attendance, ~~read cases into the record,~~ and process the member decision sheets for a summary of decision made and use Appendix B as a guide. [Amended 9-26-2019 ~~□ □ □ □~~ 2022]
- D. All officers shall serve for one year and shall be eligible for re-election.

**§ 143-5.1. Recorder. [Added 9-26-2019]**

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 Chairperson and Zoning Administrator.

**§ 143-5.2. Vacancy and succession of officers. [Added 1-28-2021]**

- A. In the event that the unexpired term of Chairperson becomes vacant, the Vice-Chairperson will fill the vacancy until the first meeting in January of the following year, at which time the voting members will elect a new Chairperson.
- B. In the event that the unexpired term of Vice-Chairperson becomes vacant, the voting members will vote to fill the vacancy at their next regular scheduled meeting.
- C. In the event that the unexpired term of Clerk becomes vacant, the voting members will vote to fill the vacancy at their next regular scheduled meeting.

**§ 143-6. Members and Alternates.**

- A. Five (5) regular members shall be appointed by the Selectboard, attend all meetings, and sit as voting members.
- B. Five (5) alternate members shall be appointed by the Selectboard, 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 their responsibilities.
- C. A Selectboard Liaison may be appointed by the Selectboard 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.
- D. 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 Chairperson 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 Chairperson shall fully inform the public of the status of any alternate present and identify the members who shall be voting on the application.

- E. 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 **Chairperson and Zoning Administrator** as soon as possible. Members, including the **Chairperson** 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 **Selectboard** through the Town Administrator, to take appropriate action. **[Amended 9-26-2019 ~~□□-□□-2022~~]**

#### **§ 143-7. Meetings.**

- A. Regular meetings (for appeals and Hearings) shall be held at Hudson Town Hall, at 7:00 p.m. on the fourth Thursday of each month in accordance with RSA 676:5 through 676:7 and RSA 91-A:2. The **Chairperson** may schedule additional overflow meetings, or reschedule meetings after consultation with the Zoning Administrator (or designee).
- B. Other meetings may be held on the call of the **Chairperson**, or a majority vote of the Board in accordance with RSA 91-A: 2II.
- C. All Board members shall be given notice of meetings by mail or email one week prior to the meeting date.
- D. Quorum. A quorum for all meetings of the Board shall be three (3) members, including alternates sitting in place of members.
- (1) The **Chairperson** 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.
  - (2) If any regular Board member is absent from any meeting or hearing, or disqualifies **themselves** from sitting on a particular case, the **Chairperson** 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 **including any continued/deferred cases. [Amended ~~□□-□□-2022~~]**
  - (3) Alternates shall generally be activated on a rotating basis from those present at a particular meeting. When an alternate is needed, the **Chairperson** shall select the alternate who has not been activated for the longest time.
  - (4) If there are fewer than five members (including alternates) present, the **Chairperson** 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.
- E. Disqualifications/**Recusals**:
- (1) If any member finds it necessary to disqualify **themselves** from sitting in a particular case, as provided in RSA 673:14, they shall notify the **Chairperson** as soon as possible so that an alternate may be requested to sit in **their** 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 nonbinding.

- (2) 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~~ **currently** pending in the court. **[Amended 02-02-2022]**
  - (h) **Is a direct or indirect abutter [Added 02-02-2022]**
- (3)** Either the Chairperson or the Member disqualifying **themselves** before the beginning of the public hearing on the case shall announce the disqualification. The disqualified ~~shall~~ **may** step away from the table during the public hearing and during all deliberation on the case as he/she so chooses. **[Amended 02-02-2022]**

F. Order of Business. The order of business for regular meetings shall be as follows:

- (1) Call to order by the **Chairperson**.
- (2) Pledge of allegiance. **[Added 9-26-2019]**
- (3) Introduction/order of business. Attachment "A". **[Added 9-26-2019]**
- (4) Roll call by the Clerk.
  - (a) **Chairperson seats any Alternate appointments due to absences. [Added 02-02-2022]**
- (5) **Announce any adjustment to the agenda (order of cases etc.) [Added 02-02-2022]**
- (6) Unfinished Business (Continued or Deferred Hearings).
- (7) New Hearing(s). Board will not hear new cases after 11:00 p.m. **[Amended 9-26-2019]**
  - (a) **The Zoning Administrator will read the case into the record. [Added 02-02-2022]**
  - (b) **The Zoning Administrator will read their Staff Report. [Added 02-02-2022]**
- (8) Requests for Rehearing.
- (9) Approval of Minutes from Previous Meeting(s).
- (10) New Business.
- (11) Communications and Items of Interest to the Board, Other Business.
- (12) 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.**

**A. Applications**

- (1) 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.
  - (a) Application deadline for meeting is 12:00 noon, 12 business days (Monday through Friday, including holidays) prior to the scheduled meeting date.
  - (b) Only complete and accurate applications will be submitted for agenda action. Incomplete or inaccurate applications will not be submitted for agenda action.
- (2) Appeals from an administrative decision taken under RSA 676:5 shall be filed within 35 days of the decision or when such decision becomes known or reasonably could have been known by the petitioner as determined by the Board. **[Amended 03-03-2022]**
- (3) All forms and revisions prescribed shall be adopted by resolution of the Board and shall become part of these rules of procedure.

**B. Public Notice.**

- (1) Public notice of hearings on each application shall be given in general newspaper and shall be posted at Town Hall, the 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.
- (2) Personal notice shall be made by certified mail to the applicant and all direct abutters and regular mail for indirect abutters within 200 feet not less than five (5) days before the date of the hearing. **The applicant shall pay for all required notice costs in advance. [Amended 03-03-2022]**
- (3) **A property/site location Notification sign shall be posted regarding the Public Hearing for all cases in front of the ZBA, which require a Public Hearing and subsequent notice per RSA 676:7 shall also have posted a prescribed notice on a sign not larger than three (3) sqft on the subject property. The Zoning Administrator shall prepare such notice as follows: Type of appeal/application, Address of subject property, Brief description of the appeal/application, Date of Public Hearing, and Town contact information for details. The property owner shall allow the Zoning Administrator to place the sign on subject property closest to the most heavily traveled Right of Way. The Zoning Administrator shall place and post the sign for 14 days (counting the posting day and the Hearing day). The property owner shall remove the sign no later than 5 days after the Public Hearing. [Added 03-03-2022]**

**C. Public Hearing.** The conduct of public hearings shall be governed by the following rules:

- (1) The **Chairperson** shall call the hearing in session by instructing the Clerk to report on the first case.
- (2) The Zoning Administrator shall report why the case has been brought before the Board.
- (3) Members and **Alternates** of the Board, and any party to the case, may ask questions at any point during testimony once recognized by the **Chairperson**.
- (4) Each person who appears shall be required to state **their** name and address for the record and indicate whether **they** are a party to the case or an agent or counsel of a party to the case.
- (5) The applicant shall be called to present **their** appeal.



- (6) Those appearing in favor of the appeal shall be allowed to speak.
- (7) Those in opposition or neutral to the appeal shall be allowed to speak.
- (8) The applicant and those in favor shall be allowed to speak in rebuttal.
- (9) Those in opposition to the appeal shall be allowed to speak in rebuttal.
- (10) Any person who wants the Board to compel the attendance of a witness shall present **their** request in writing to the **Chairperson** in accordance with RSA 673.15.
- (11) 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.
- ~~(12) The Chairperson 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.~~
- (12) 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.
- (13) All subsequent cases shall then be heard in the order they were presented.

#### § 143-9. Decision Process.

- A. Before deliberations begin, the **Chairperson** shall allow non-sitting alternates, the **Selectboard's** Liaison, if present, and the Zoning Administrator or his/her replacement to ask questions and give input, if they so desire.
- B. Once this phase is completed, the **Chairperson** shall declare the matter before the Board and the sitting members present who are voting will raise any further questions they may have and then deliberate all concerns in order to reach a decision on the request.
- C. The Board shall vote on each of the applications for which testimony was given, after adequate deliberations.
- D. For the granting of variances: the Board will consider a “vertical” (member) method of voting on each request. **[Added 04-11-2019]**
- E. The **Chairperson** shall announce all decisions after the vote has been taken, and explain that the appeal/rehearing process is available to all aggrieved within 30 days of the meeting vote **per RSA 677:2. [Amended 9-26-2019 → 2022]**

#### § 143-10. Deferment and Withdrawal.

- A. 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.
- B. 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.

- C. 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 676:3[BB1]. [Amended 11-11-2022]

#### **§ 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.**

- A. 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.
- B. Final written decisions will be placed on file and available for public inspection within five (5) business days after the decision is made (RSA 676:3).
- C. 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 five (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.**

- A. 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.
- B. Joint business meetings with any other Land Use Board may be held at any time when called jointly by the Chairperson of the two Boards.

- C. A public hearing on any appeal to the Board of Adjustment will be held jointly with another Board only under the following conditions:
- (1) The joint public hearing must be a formal public hearing on appeals to both Boards regarding the same subject matter; and
  - (2) If the other Board is the Planning Board, RSA 676:2 requires that the Planning Board Chairperson shall chair the joint hearing. If the other Board is not the Planning Board, then the Board of Adjustment Chairperson shall chair the joint hearing; and
  - (3) 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
  - (4) The other Board shall concur with the above.

## Attachment "A" [9-26-2019]

### Chairperson'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. Any carryover cases will be heard at the next carryover meeting usually the 2<sup>nd</sup> Thursday. 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 Chairperson 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 and 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 Chairperson 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 lectern 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.....

## Appendix “B” “Clerk” Duties [xx-xx-2022□

**Roll Call / Attendance Sheet:** Sheet provided by Town staff. Mark each Member as either Present, Absent or Excused – as well as Zoning Administrator, Selectmen Liaison and Recorder. [Note: Sheet should also list Alternate Selectboard Liaison]

**Case # Sheet:** Prefilled by Staff with Name of Applicant, Case # etc. For each Member identify if present and whether voting on the Case (“Sitting Member” = voting on Case); identify who made the motion and who seconded the motion. Write out the Motion and any conditions/stipulations applied to it and the vote. If there is opposition [or abstinence] must identify the individual(s) and reason(s) why.

**Individual Member Vote Sheet:** Collect and make sure they are signed.

**Exhibits / Material received at/during meeting:** Write the Case # it applies to, date received (the date of the meeting) and assign it an Exhibit #, beginning with “A”.

Place all Sheets in ZBA Clerk Binder / Notebook.

**CLERK PURPOSE** –With a reliable Recorder and the recent change to the ByLaws (including the shift of preparing NODs to the Recorder), extensive note taking is no longer required by the Clerk – just the basics to satisfy RSA 91-A:2.II

- in the event that something happens to the Recorder, the Clerk's notes can be utilized to produce and meet the RSA's (minimum) Minute requirements as follows:

"Minutes ... shall include the names of members, persons appearing before (the Board) ... and a brief description of the subject matter discussed and final decisions ... who made and seconded the motion..." and the vote

### **CLERK / MEETING BINDER**

- 1) Meeting Date
- 2) Time Chairperson called meeting to order
- 3) Standard intro – in the order performed: Pledge, Preamble, attendance
- 4) Case # and who read into the record
- 5) Name of person(s) presenting the Case
  - Applicant
  - Applicant’s attorney – full name, firm name and address

- Engineer - full name, firm name and address
  - Other (example: parent, child, realtor)
  - Exhibits, if any received during hearing
- 6) Public Testimony
- Time opened
  - Chairperson requests an order – supporting/opposed/neutral
  - ID who addressed the Board – full name & address
  - Time closed
- 7) Motion
- On the “roll call” (summary) sheet:
  - ID who made the Motion & who seconded
  - Write out any stipulations, if made
  - Vote – if any opposed or abstained, id by name & why
- 8) Repeat 4), 5), 6) &7) for each Case on the Agenda
- 9) Agenda Item # - Minutes etc – see 7)
- 10) Motion to adjourn – who made & seconded - Time adjourned -



**Current Posted on Town Code  
Zoning Board of Adjustment  
Chapter 143  
(BYLAWS)**

## Chapter 143

### ZONING BOARD OF ADJUSTMENT

**[HISTORY: Adopted by the Zoning Board of Adjustment of the Town of Hudson as amended through 10-12-2017. Subsequent amendments noted where applicable.]**

#### GENERAL REFERENCES

Planning Board — See Ch. 88.

Zoning — See Ch. 334.

Regional Planning Commission — See Ch. 116.

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#### **§ 143-1. History. [Amended 1-28-2021]**

- A. 12-14-1978: Adopted by the Zoning Board of Adjustment of the Town of Hudson.
- B. 06-23-1988: Amended in its entirety.
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- D. Subsequent amendments noted where applicable.
- E. 10-12-17: Amended in entirety.
- F. 04-11-19: Subsequent amendments noted where applicable.
- G. 09-26-19: Added Recorder; revised Clerk; unexcused absences; order of business: pledge of allegiance, introduction and 11:00 p.m. curfew; thirty-day re-hearing note and attachment "A."
- H. 01-28-21: Added § 143-5.1 on vacancy and succession of officers.

#### **§ 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:I. In the event of a difference between these bylaws and the applicable NH-RSAs, the NHRSAs 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.**

- A. 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.
- B. 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.
- C. 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 take attendance, read cases into the record, and process the member decision sheets for a summary of decision made. **[Amended 9-26-2019]**
- D. All officers shall serve for one year and shall be eligible for re-election.

**§ 143-5.1. Recorder. [Added 9-26-2019]**

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.

**§ 143-5.2. Vacancy and succession of officers. [Added 1-28-2021]**

- A. In the event that the unexpired term of Chairman becomes vacant, the Vice-Chairman will fill the vacancy until the first meeting in January of the following year, at which time the voting members will elect a new Chairman.
- B. In the event that the unexpired term of Vice-Chairman becomes vacant, the voting members will vote to fill the vacancy at their next regular scheduled meeting.
- C. In the event that the unexpired term of Clerk becomes vacant, the voting members will vote to fill the vacancy at their next regular scheduled meeting.

**§ 143-6. Members and alternates.**

- A. Five regular members shall be appointed by the Board of Selectmen, attend all meetings, and sit as voting members.
- B. 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.
- C. 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.
- D. 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.

- E. 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 consecutive unexcused absences by a member or alternate shall be reported to the Board of Selectmen through the Town Administrator, to take appropriate action. **[Amended 9-26-2019]**

#### **§ 143-7. Meetings.**

- A. Regular meetings (for appeals and hearings) shall be held at Hudson Town Hall, at 7:00 p.m. on the fourth Thursday of each month in accordance with RSA 676:5 through 676:7 and RSA 91-A:2. The Chairman may schedule additional overflow meetings, or reschedule meetings after consultation with the Zoning Administrator (or designee).
- B. 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.
- C. All Board members shall be given notice of meetings by mail or email one week prior to the meeting date.
- D. Quorum. A quorum for all meetings of the Board shall be three members, including alternates sitting in place of members.
  - (1) 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.
  - (2) 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.
  - (3) 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.

- (4) If there are fewer 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.

E. Disqualifications.

- (1) 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 nonbinding.
- (2) Determining the threshold of disqualification can be difficult. To assist a member in determining whether or not he should step down (recuse himself), 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.
- (3) 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 he/she so chooses.

F. Order of Business. The order of business for regular meetings shall be as follows:

- (1) Call to order by the Chairman.
- (2) Pledge of allegiance. **[Added 9-26-2019]**
- (3) Introduction/order of business as Attachment A.<sup>1</sup> **[Added 9-26-2019]**
- (4) Roll call by the Clerk.
- (5) Unfinished Business (Continued or Deferred Hearings).

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1. Editor's Note: Attachment A is on file in the Town offices.

- (6) New hearing(s). Board will not hear new cases after 11:00 p.m. [**Amended 9-26-2019**]
- (7) Requests for Rehearing.
- (8) Approval of Minutes from Previous Meeting(s).
- (9) New Business.
- (10) Communications and Items of Interest to the Board, Other Business.
- (11) 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.**

#### **A. Applications**

- (1) 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.
  - (a) Application deadline for meeting is 12:00 noon, 12 business days (Monday through Friday, including holidays) prior to the scheduled meeting date.
  - (b) Only complete and accurate applications will be submitted for agenda action; incomplete or inaccurate applications will not be submitted for agenda action.
- (2) 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.
- (3) All forms and revisions prescribed shall be adopted by resolution of the Board and shall become part of these rules of procedure

#### **B. Public notice.**

- (1) Public notice of hearings on each application shall be given in a general newspaper and shall be posted at Town Hall, the 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.
- (2) Personal notice shall be made by certified mail to the applicant and all direct abutters and regular mail for indirect abutters within 200 feet not less than five (5) days before the date of the hearing.

- (3) The applicant shall pay for all required notice costs in advance.
- C. Public hearing. The conduct of public hearings shall be governed by the following rules:
- (1) The Chairman shall call the hearing in session by instructing the Clerk to report on the first case.
  - (2) The Zoning Administrator shall report why the case has been brought before the Board.
  - (3) 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.
  - (4) 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.
  - (5) The applicant shall be called to present his appeal.
  - (6) Those appearing in favor of the appeal shall be allowed to speak.
  - (7) Those in opposition or neutral to the appeal shall be allowed to speak.
  - (8) The applicant and those in favor shall be allowed to speak in rebuttal.
  - (9) Those in opposition to the appeal shall be allowed to speak in rebuttal.
  - (10) 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.
  - (11) 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.
  - (12) 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.
  - (13) 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.
  - (14) All subsequent cases shall then be heard in the order they were presented.

**§ 143-9. Decision process.**

- A. 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.
- B. 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.



- C. The Board shall vote on each of the applications for which testimony was given, after adequate deliberations.
- D. For the granting of variances: the Board will consider a "vertical" (member) method of voting on each request. **[Added 4-11-2019]**
- E. The Chairman shall announce all decisions after the vote has been taken, and explain that the appeal/rehearing process is available to all aggrieved within 30 days of the meeting vote. **[Amended 9-26-2019]**

#### **§ 143-10. Deferment and Withdrawal.**

- A. 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.
- B. 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.
- C. Moreover, once an application has been withdrawn, any reapplication 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 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 676:3

#### **§ 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.

### **§ 143-13. Records.**

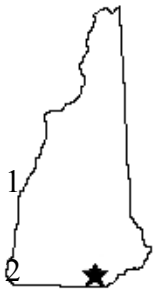
- A. The records of the Board shall be kept by the Zoning Administrator and made available for public inspection at Hudson Town Hall in accordance with RSA 673:17.
- B. Final written decisions will be placed on file and available for public inspection within five business days after the decision is made (RSA 676:3)
- C. 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 five 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.**

- A. 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.
- B. Joint business meetings with any other land use board may be held at any time when called jointly by the Chairmen of the two boards.
- C. A public hearing on any appeal to the Board of Adjustment will be held jointly with another board only under the following conditions:
  - (1) The joint public hearing must be a formal public hearing on appeals to both boards regarding the same subject matter; and
  - (2) 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
  - (3) 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
  - (4) The other board shall concur with the above.



# TOWN OF HUDSON



## Zoning Board of Adjustment

3 Gary M. Daddario, Chairman Kara Roy, Selectmen Liaison  
 4 12 School Street • Hudson, New Hampshire 03051 • Tel: 603-886-6008 • Fax: 603-594-1142  
 5  
 6

### MEETING MINUTES – May 26, 2022 – as edited

7  
 8  
 9 The Hudson Zoning Board of Adjustment met Thursday, May 26, 2022 at 7:00 PM in  
 10 the Community Development Paul Buxton Meeting Room in the lower level of Hudson  
 11 Town Hall, 12 School St., Hudson, NH  
 12

- 13 I. CALL TO ORDER
- 14 II. PLEDGE OF ALLEGIANCE

15  
 16 Chairman Daddario called the meeting to order at 7:02 PM, invited everyone to stand  
 17 for the Pledge of Allegiance and read the Preamble (Exhibit A in the Bylaws) on the  
 18 proceedings for the meeting.  
 19

20 Clerk Normand Martin took attendance. Members present were Gary Daddario  
 21 (Regular/Chair), Gary Dearborn (Regular), Normand Martin (Alternate/Clerk), Marcus  
 22 Nicolas (Regular), Dean Sakati (Alternate) and Edward Thompson (Alternate). Also  
 23 present were Bruce Buttrick, Zoning Administrator, Louise Knee, Recorder (remote)  
 24 and Kara Roy, Selectman Liaison. Excused were Brian Etienne (Regular) and Jim  
 25 Pacocha (Regular/Vice Chair). Mr. Daddario appointed Alternates Sakati and  
 26 Thompson as Voting Members for this meeting.  
 27

### III. PUBLIC HEARING OF SCHEDULED APPLICATION BEFORE THE BOARD:

28 **Case 166-031 (05-26-22):** Daniel M. Flores, PE of SFC Engineering Partnership, Inc.,  
 29 183 Rockingham Rd, Unit 3 East, Windham NH requests a Variance for **8 Lindsay St.,  
 30 Hudson, NH** for relief from HZO Article VII, Dimensional Requirements; § 334-27.2, Lot  
 31 requirements for subdivision of land: to allow the creation of one (1) new lot (off Grigas  
 32 St.) with 25.73 feet of frontage on a Class V road where 90 feet is required. This matter is  
 33 before the Board as a Rehearing granted on 4/28/22. [Map 166, Lot 031-000, Zoned  
 34 Town Residence (TR).]  
 35  
 36  
 37

38 Mr. Buttrick read the Case into the record, referred to his Staff Report initialed 5-17-22,  
 39 noted the history of the request, referenced Town Counsel’s 1/12/2022 letter to Atty.  
 40 Pan*ci*occo confirming that the Gingas Street “Extension” dedicated to public use has  
 41 lapsed by Operation of Law and stated that a revised Subdivision Plan for 8 Lindsay  
 42 Street dated 5/9/2022 was submitted that depicts a new lot line along the centerline of  
 43 what was previously designated as Grigas Street Extension with a driveway that leads to  
 44 a four-bedroom house with garage.  
 45

46 Dan Flores, PE, SFC Engineering, 183 Rockingham Road Unit 3E, Windham, NH 03087  
47 introduced himself as representing the Property Owner and Atty. Patricia Panciocco of  
48 Panciocco Law representing the Developer, M.R. Lacasse Homes, LLC and noted that  
49 both were in attendance.

50  
51 Mr. Flores stated that Grigas Street Extension has lapsed by operation of law and that  
52 the new frontage along Grigas Street is 25.73' where the a twelve foot (12') wide driveway  
53 is proposed for the subdivided new lot from 8 Lindsay Street which currently has a two-  
54 family home permitted by Variance on 10/24/1981 that is connected to Municipal water  
55 and sewer and the remainder of the lot is wooded. Mr. Flores stated that the two-family  
56 home requires 40,084 SF (Square Feet) to satisfy Zoning and that the proposed new  
57 subdivided lot will have 20,050 SF which is approximately twice the size required in the  
58 TR Zone and of those in the neighborhood of Grigas Street/St John Street. Mr. Flores  
59 noted that the proposed four-bedroom home with garage and driveway from Grigas Street  
60 will be served by Municipal water from Grigas Street and that a sewer pump is proposed  
61 to be installed at the rear of the site to pump to Lindsay Street via a sewer easement  
62 along the southern property line. Mr. Flores stated that the proposed driveway, swale  
63 and pump will resolve the current water issues in that segment of the property.

64  
65 In reference to the aerial view of the immediate neighborhood, Mr. Flores pointed out  
66 that the proposed subdivided lot is larger, almost double, to that of the surrounding  
67 properties and noted that the distance between the proposed garage to the house at 5 St  
68 John Street to the southwest (Lot 21) will be eighty five feet (85') and the distance from  
69 the proposed house will be forty six feet (46') to the northeast neighbor at 6 Grigas Street  
70 (Lot 20). Mr. Flores concluded his presentation with the statement that the proposed  
71 creation of the new lot works well with the neighborhood and satisfies the criteria per the  
72 Zoning Ordinance, with the exception of frontage, and will resolve the current water  
73 issue at the corner of Grigas Street and St John Street.

74  
75 Atty. Panciocco stated that she is representing both the Trust (Property Owner) and the  
76 Developer, M.R. Lacasse, and referenced Plan 13358 that proposed four (4) lots to be re-  
77 subdivided from 8 Lindsay Street and noted the L-shape lot of 8 Lindsay Street, is a  
78 unique shape in the area, and stated that this property has been unique since 1980.

79  
80 Other factors presented included:  
81 • Zoning Determination of 7/7/2021, later updated 10/5/2021, noted that the  
82 existing duplex on Lindsay had to be on a 40K SF lot  
83 • BoS confirmed on 1/11/2022 that the undeveloped portion of Grigas Street  
84 lapsed by Operation of Law which resulted in an increase in lot size to 8 Lindsay  
85 Street to 60,139 SF  
86 • Proposed Subdivision Plan revised 5/9/2022 allocates 40,084 SF to 8 Lindsay  
87 Street and 20,055 SF for the proposed new lot  
88 • Proposed new lot is approximately twice the size of existing neighborhood lots  
89 and twice what is required for lots in the TR Zone  
90 • Proposed driveway is approximately the same distance from the driveways  
91 providing access to the abutting lots and equal to or greater than many of the  
92 driveways used to access existing homes in the neighborhood  
93 • Proposed driveway, when constructed, will provide drainage improvements that  
94 was noted by the abutters at the intersection of St John/Grigas Streets

- 95 • The frontage requirement in the Zoning Ordinance (ZO) is a mechanism to
- 96 prevent overcrowding
- 97 • ZO Section 334-18.C established/defines TR areas of 'village style' development
- 98 with smaller one quarter (1/4) acre requirement
- 99 • TR Zone allows for other uses, like an assisted living facilities, seasonal farm
- 100 stands, agricultural, Municipal services and facilities, water towers and schools
- 101 • The best Use for this new lot is a single family residence, which is what is being
- 102 proposed
- 103 • The extra size of the lot is a compensating factor for the reduced frontage and
- 104 they are able to construct a house further away from the others in the
- 105 neighborhood and satisfies the Spirit and Intent of the ZO
- 106 • The existing lot is the largest in the neighborhood, and it is the only L=shape lot
- 107 in the neighborhood and was originally intended to be subdivided into four (4)
- 108 lots and that makes it a unique lot
- 109

110 Atty. Panciocco next addressed the criteria necessary to be satisfied in the granting of a  
 111 Variance. The Information shared included:

112  
 113 (1) *not contrary to public interest*

- 114 • Purpose of frontage is to ensure safe access into individual properties for both
- 115 personal and emergency service vehicles – and – to provide proper spacing
- 116 between structures
- 117 • Proposed lot is almost double in size to surrounding lots and allows the
- 118 proposed home to be set back further from St John/Grigas Streets to
- 119 provide even greater spacing to the neighboring homes and will be
- 120 consistent, not contrary, to the public purpose of frontage
- 121 • Proposed twelve foot (12') driveway fits easily in the 25.73' frontage and can
- 122 accommodate emergency vehicles
- 123 • Proposed driveway when constructed will address current drainage issues
- 124 • Proposed use is a single family residence, like all others in the neighborhood

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

- 126 • Zoning segregates Uses and controls property development for the protection
- 127 of the public
- 128 • Proposed lot meets all Zoning requirements, except frontage
- 129 • Proposed Use is a single family home, the same Use as the neighborhood and
- 130 due to its size can locate the house further back into the lot providing more
- 131 than adequate spacing between existing homes
- 132 • Proposed driveway fits neatly in the reduced frontage and provides an
- 133 equivalent distance to other driveways in the neighborhood
- 134 • No safety concerns presented, the reduction of frontage is reasonable and not
- 135 contrary to the spirit of the Ordinance

136 (3) *substantial justice done*

- 137 • To be substantially just, public gain must exceed the Property Owner's loss
- 138 of reasonable use of its 20K SF area of land
- 139 • A single family home is presumed to be a reasonable use, as Permitted in ZO
- 140 • Size of new lot allows compensation in other ways to ensure proper
- 141 separation and safe access
- 142 • Variance will allow owner to fully develop the property as intended and will
- 143 be substantially just

Not Official until reviewed, approved and signed.

As edited [GD1, gd2, BB, TG]

- 144 (4) *not diminish surrounding property values*  
145 • Proposed lot size and configuration and size of house proposed will be  
146 similar to existing properties along Grigas Street, St. John Street, Nellie  
147 Court and Ledge Road  
148 • There is no evidence to support an argument that one new home will  
149 diminish surrounding property values
- 150 (5) *hardship*  
151 • Existing lot has a unique “L” shape configuration with frontage along Lindsay  
152 Street and on St John/Grigas Streets, unlike other lots in surrounding area  
153 • Lindsay Street has a duplex and fully complies with ZO, and, per Zoning,  
154 requires a minimum of 40K SF leaving in excess of 20K SF for new lot with  
155 25.73-foot frontage on Grigas/St John Streets  
156 • Applicant is entitled to reasonable use of this remaining land, but it is limited  
157 frontage is a special condition  
158 • Size of proposed lot mitigates lack of frontage and serves the purpose of  
159 spacing homes within the neighborhood  
160 • Size of proposed 12’ driveway fits well into reduced frontage and construction  
161 of it will address current drainage issues  
162 • The excess land in proposed new lot accommodates for its reduced frontage  
163 but allows it to meet the intended purpose of the ZO and there is no fair and  
164 substantial reason to strictly require 90’ of frontage  
165 • A single-family home is a Permitted Use in the TR Zone, and as a Permitted  
166 Use, it is presumed to be reasonable  
167

168 Atty. Panciocco confirmed that once the Variance is granted, their next step is to go  
169 before the Planning Board (PB) for the subdivision to create the lot and noted that the PB  
170 would also address the drainage issues.  
171

172 Mr. Dearborn asked the length of the proposed driveway, whether there would be a  
173 turnaround and if it was possible to consider a fence to address a potential privacy issue  
174 for the neighbor/abutter at 5 St John Street. Mr. Flores stated that the length of the  
175 driveway is approximately eighty feet (80’) and that there is parking in front of the garage  
176 that could be used to turn around. Atty. Panciocco noted that the area is currently  
177 heavily wooded now and Mr. Flores added that most of the trees are on the abutter’s  
178 land. Mr. Sakati asked if that meant that a fence would not be considered and Atty.  
179 Panciocco stated that it would depend on what is visible through the trees, whether or  
180 not it was “see-through”.  
181

182 Mr. Dearborn noted that there is a twenty foot (20’) Town ROW (Right-of-Way) and asked  
183 if it was reasonable to assume that the proposed twelve foot driveway would be centered  
184 within the 25.73’ of frontage. Mr. Daddario noted that, if centered, there would be  
185 approximately six feet (~6’) on both sides of the driveway to accumulate snow. Mr.  
186 Thompson stated that there is no snow problem as the neighboring buildings are far  
187 away. Mr. Sakati agreed that there is distance but added that every Property Owner  
188 must keep their snow on their land. Mr. Flores noted that it is usually the Property  
189 Owner who maintains the area between the road and property line, and that includes  
190 snow removal. Mr. Sakati asked if it is reasonable with only 25.75’ of frontage and a 12’  
191 wide by ~80’ long driveway to expect fire trucks, emergency vehicles, oil trucks, etc.



192 especially when there is only 6' to contain the snow. Mr. Flores stated that driveways are  
193 usually 8' wide and that there should not be any issue with removing snow.  
194

195 Mr. Martin questioned the hardship and would it exist if the property was not subdivided  
196 as there is reasonable use of the property already. Atty. Panciocco offered the analogy of  
197 a large farm that already has a house, a reasonable Use, and that the new property  
198 owner would be allowed to subdivide the land.  
199

200 Public testimony opened at 8:14 PM. Andrew Cloutier, 6 Grigas Street, addressed the  
201 Board, stated that there was to be an easement to help with drainage, that there was no  
202 T-section design for the St John/Grigas Streets and noted the existing telephone pole  
203 and, in his opinion, the hardship criteria is not met.  
204

205 Atty. Panciocco stated that she fully researched and found no easement on record, noted  
206 that PB will do an evaluation for the drainage at the corner and that what is before the  
207 ZBA is just a Variance request to allow the creation a lot with reduced frontage and  
208 asked the Board to please make findings of fact in their motion. Public testimony closed  
209 at 8:26 PM.  
210

211 Board discussion ensued. Concerns expressed regarding need for a turnaround to avoid  
212 backing out into the intersection of St John/Grigas Streets, whether a fire truck could  
213 back out the eighty-foot driveway and into an intersection; the ability of property owner  
214 to keep snow and debris on property with such a reduced frontage; and whether to  
215 include, as a condition of approval, that the PB evaluate the current drainage issues at  
216 the corner of St John/Grigas Streets to the abutting cemetery – St. Casimir Cemetery,  
217 Lot 17 – and determine if proposed plan with new driveway construction will resolve the  
218 current issue.  
219

220 Mr. Dearborn made the motion to grant the Variance with three (3) stipulations: ~~(1)~~  
221 ~~that the Fire Chief review to determine if a fire truck could back out safely from the~~  
222 ~~proposed eighty foot driveway into the intersection of Grigas/St John Streets or~~  
223 ~~whether a turnaround should be provided; (2) that the property owner keep all snow~~  
224 ~~and debris on property and not infringe onto neighboring properties; and (3) that the~~  
225 ~~Planning Board review the drainage issue at the northern property line to the abutting~~  
226 ~~cemetery to determine if proposed plan will function as intended.~~

227 (1) that there is assurance from the Fire Chief of adequate access (ingress/egress) for the Fire  
228 Department;

229 (2) that the property owner(s) do not place snow or debris from the driveway onto the  
230 property of others; and

231 (3) that the drainage issue (at the northern property line to the abutting cemetery) be  
232 reviewed by the Planning Board.

233 Mr. Thompson seconded the motion. Each Member spoke and agreed that Variance  
234 criteria 2-5 were met. Mr. Sakati stated that criteria 1 has not been satisfied as low  
235 frontage will alter the character of the neighborhood yet public safety is satisfied Roll  
236 call vote was 4:1. Mr. Sakati opposed. Variance granted with three (3) stipulations. The  
237 30-day Appeal period was noted.  
238

#### 239 IV. REQUEST FOR REHEARING:



240 **Case 183-006 (04-28-22):** Elvis Dhima, Hudson Town Engineer, requests a  
241 Rehearing/Reconsideration of a request for a Variance granted on 04-28-22 for **102**  
242 **Central St., Hudson, NH** to replace and expand an existing non-conforming 12 ft. x  
243 10 ft. deck as a breezeway and build an attached 2-stall, 24 ft. x 20 ft. garage  
244 addition. Both encroach the front yard setback 12.5 feet and 21.8 feet leaving 17.5  
245 feet and 8.2 feet respectively where 30 feet is required. [Map 183, Lot 006-000, Zoned  
246 Town Residence (TR); HZO Article VII, Dimensional Requirements; §334-27, Table of  
247 Minimum Dimensional Requirements and HZO Article VIII, Nonconforming Uses,  
248 Structures and Lots; §334-31.A Alteration and expansion of nonconforming  
249 structures.]

250  
251 Mr. Buttrick read the request into the record and referenced the letter dated  
252 5/13/2022 from Town Engineer Elvis Dhima with his concerns regarding the lack of  
253 addressing the second driveway and the resulting shortened driveway with two (2)  
254 possible alternative options. Ms. Roy asked if the Town Engineer had made a  
255 comment to the original application. Mr. Buttrick responded that his original  
256 comment was the notation of the second driveway and when he questioned Mr.  
257 Dhima, Mr. Dhima responded that he didn't think the Board would actually grant the  
258 variance. Mr. Nicolas stated that Town's Engineer's concern regarding the shortened  
259 driveway was late but he agreed that either option presented were much safer.

260  
261 Mr. Daddario noted that there was no public in attendance.

262  
263 Mr. Dearborn read his letter to the Chairman stating his disappointment with the 4:1  
264 vote, the lack of discussion with regard to the second driveway, concern with the  
265 downslope in the road, the fact that a two-story garage was being sought, and the  
266 Applicant's response of it being "not convenient" to move the proposed garage and  
267 asked how the hardship criteria was satisfied.

268  
269 Board checked the NOD (Notice of Decision) that was issued along with the Minutes.  
270 It was noted that two (2) Voting Members at the Hearing were not present and it was  
271 questioned whether any action should be taken on the Rehearing Request in their  
272 absence. Ms. Roy stated that if there was a substantive issue she would agree, but  
273 what is before the Board is just a decision whether to grant the Request for a  
274 Rehearing.

275  
276 Board questioned if the Town, particularly the Town Engineer, has standing for the  
277 Request. Board reviewed the applicable RSA's for Rehearing – RSA 677:2 Motion for  
278 Rehearing of Board of Adjustment, Board of Appeals, and Local Legislative Body  
279 Decisions and RSA 677:3 Rehearing by Board of Adjustment, Board of Appeals or  
280 Legislative Body. Board discussion ensued and included recognition that the ZBA  
281 has 'inherent authority' and can appeal its own decisions and can make a decision to  
282 rehear without causation being the Town Engineer but their own desire to do so.

283  
284 Mr. Dearborn made the motion to grant the Request for Rehearing. Mr. Nicolas  
285 seconded the ~~am~~otion. Roll call vote was 5:0. Rehearing granted. Both Mr.  
286 Dearborn and Mr. Sakati requested that the Town Engineer be present at the  
287 Rehearing. Mr. Buttrick noted that the Town will have to waive the fee to file the  
288 application and cost to notify and advertise.

289

290 **V. REVIEW OF MINUTES:**

291

292 04/14/22 edited Draft Minutes: Board reviewed the Minutes as edited and made no  
293 further changes. Motion made by Mr. Dearborn, seconded by Mr. Nicolas and  
294 unanimously voted to adopt the 4/14/2022 Minutes as edited.

295

296 04/28/22 edited Draft Minutes: Board reviewed the Minutes as edited and made no  
297 further changes. Motion made by Mr. Dearborn, seconded by Mr. Nicolas and  
298 unanimously voted to adopt the 4/28/2022 Minutes as edited.

299

300 **VI. OTHER:**

301 1. Court Cases

302 • 4 & 14 Tolles Street – Mr. Buttrick reported that the Superior Court ruled in the  
303 Town’s favor – see Turbo Realty v. Hudson #2020-CV-00549

304 • Washington Street – Mr. Dearborn asked if the Case was going to Court and Mr.  
305 Buttrick responded that he has received a request for Town Records, so it is  
306 possible.

307 2. Proposed ZBA Bylaws amendments: alternate status, recusals and Clerk  
308 position/duties.

309

310 Mr. Buttrick walked through the changes made to date. Discussion arose on Indirect  
311 Abutters’ notification – their definition and receipt of meeting notice by direct US mail,  
312 not certified mail, and whether consideration should be given to placing a sign on the  
313 property appearing before the Board to the exploring scenarios to the efficiency when a  
314 property is at the dead-end of a road or around a cul-de-sac. Discussion also arose on  
315 the ability to abstain

316

317

318 Motion made by Mr. Nicolas, seconded by Mr. Dearborn and unanimously voted to  
319 adjourn the meeting. The 5/26/2022 ZBA meeting adjourned at 9:38 PM.

320

321 Respectfully submitted,

322

323 Louise Knee, Recorder

324