



# TOWN OF HUDSON

## Zoning Board of Adjustment

3 Gary M. Daddario, Chairman Dillon Dumont, Selectmen Liaison

4 12 School Street • Hudson, New Hampshire 03051 • Tel: 603-886-6008 • Fax: 603-594-1142

5

6

### MEETING MINUTES – August 22, 2024 - draft

7

8 The Hudson Zoning Board of Adjustment met Thursday, August 22, 2024, at 7:00  
9 PM in the Community Development Paul Buxton Meeting Room in the lower level of  
10 Hudson Town Hall, 12 School St., Hudson, NH.

11

#### 12 I. CALL TO ORDER

#### 13 II. PLEDGE OF ALLEGIANCE

#### 14 III. ATTENDANCE

#### 15 IV. SEATING OF ALTERNATES

16

17 Chairman Daddario called the meeting to order at 7:02 PM, invited everyone to stand  
18 for the Pledge of Allegiance and read the Preamble (Exhibit A in the Board’s Bylaws)  
19 regarding the procedure and process for the meeting.

20

21 Clerk Dion called the attendance. Members present were Gary Daddario  
22 (Regular/Chair), Tristan Dion (Regular/Clerk), Tim Lanphear (Regular), Normand  
23 Martin (Regular/Vice Chair), Zachary McDonough (Alternate) and Dean Sakati  
24 (Regular). Also present were Louise Knee, Recorder (remote) and Chris Sullivan,  
25 Zoning Administrator. Excused was Dillon Dumont Selectman Liaison. All Regular  
26 Members present voted.

27

#### 28 V. PUBLIC HEARING OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

29

- 30 1. **Case 151-059 (08-22-24):** John Gargas, owner of Barrett Hill, LLC, 21  
31 Continental Blvd., Door #4, Merrimack, NH requests a Variance for 7 Barretts  
32 Hill Road, Hudson, NH to allow the construction of 13 condex/duplex units  
33 with the firewall located between the garages versus a firewall located between  
34 the principal dwelling units. [Map 151, Lot 059, Sublot-000; Zoned General-  
35 One (G-1); HZO Article II: Terminology; §334-6, Definitions, Duplex]

36 Mr. Sullivan read the Case into the record and referred to his Staff Report initialed  
37 8/22/2024 and noted that the Planning Board conditionally approved the  
38 subdivision and noted that what is before the Zoning Board pertains to the question  
39 of building design, not location.

40

41 John Gargas, owner of Barrett Hill, LLC introduced himself and stated that they  
42 have been working for the past ten (10) months in the design, including modeling  
43 and architecture of these net-zero homes, and seeking Planning Board approval.  
44 Mr. Gargas then addressed the criteria for the granting of a Variance and the  
45 information shared included the following:

46

- 47 (1) *not contrary to public interest*

- 48 • The granting is not contrary to the public interest because it permits  
49 construction of net-zero ready and full net zero homes
- 50 • The condex homes match the existing area, most recently the construction of  
51 the Granite Heights subdivision but also the immediate abutter at 85/87  
52 Barretts Hill Road and the homes on Rangers Road
- 53 • The design actually increases the general safety with all electric design and  
54 solar power generation on site
- 55 (2) *will observe the spirit of the Ordinance*
- 56 • the proposed use observes the spirit of the Ordinance because it maintains  
57 the character of the neighborhood and matches the aesthetic of many  
58 recently built homes in the area
- 59 (3) *substantial justice done*
- 60 • substantial justice would be done
- 61 • the developer has spent 10 months in the design, planning board approval,  
62 energy modeling and architecture of these net-zero homes
- 63 • these architectural plans were presented to the planning board during the  
64 approval process and the grading plan with center load condexes is part  
65 of the approved and recorded plan set
- 66 • this has been a substantial investing to achieve a sustainable development
- 67 (4) *not diminish surrounding property values*
- 68 • the list price of a condex unit at Barrett Hill is \$695K
- 69 • A Comparative Market Analasis (CMA) for similar size homes in the area  
70 performed by Berkshire Hathaway shows an average sales price of \$630K
- 71 • Barrett Hill homes will will generally increase the value, not diminish the  
72 value, of the surrounding community
- 73 • See attached CMA by Gail Nickerson dated 8/7/2024 that was attached to  
74 her 8/8/2024 letter noting her involvement in real estate for the past  
75 twenty (20) years with a primary focus on new construction and attesting  
76 her opinion that to allow the proposed project as presented would not  
77 diminish the value of surrounding properties and would significantly  
78 improve values with a positive impact
- 79 (5) *hardship*
- 80 • The developer presented a subdivision and architectural plan to the  
81 planning board that was specifically engineered at significant expense to  
82 meet net zero ready and full net zero requirements
- 83 • This plan was unanimously approved by the planning board – see Notice of  
84 Approval dated 6/4/2024
- 85 • Barrett Hill has incurred significant expense and time to develop to develop  
86 this plan
- 87 • Altering the plan at this time would be technically challenging, increase the  
88 cost of the homes and further delay the delivery of much needed housing
- 89 • The variance request is to simply permit a center garage layout with firewall  
90 that will provide a safer home than having shared dwelling unit walls and  
91 provides a quieter living environment for the home owners and is  
92 aesthetically pleasing.
- 93

94 Mr. Sullivan stated that in order to obtain a Building Permit, the design will need to  
95 include a firewall between the garage and the living quarters. Mr. Gargasz nodded his  
96 acknowledgement.

97

98 Mr. Daddario opened the public hearing to anyone wishing to address the application,  
99 either in favor or opposition or neutrally. No one addressed the Board. Public  
100 testimony closed at 7:18 PM.

101  
102 Mr. Lanphear made the motion to grant the Variance as requested. Mr. Martin  
103 seconded the motion.

104  
105 Mr. Lanphear spoke to his motion stating that it is not contrary to public interest  
106 and observes the spirit of the Ordinance with an advanced type technology and with  
107 a well thought out design improvement, that substantial justice would be done to  
108 the property owner, that it would not diminish and would actually improve the  
109 surrounding property values according to the real estate analysis from Berkshire  
110 Hathaway on the market values, that there is no fair and substantial justice as the  
111 Zoning Ordinance does not allow this style, this well thought out net zero design,  
112 that it is a reasonable use and the hardship would be not to approve. Mr. Lanphear  
113 voted to grant the Variance as requested.

114  
115 Mr. Martin spoke to his second stating that it is not contrary to the public interest,  
116 that it does observe the spirit of the Ordinance, that substantial justice would be  
117 done to the property owner, that the net zero different build in Town with all electric  
118 makes for a safer house, that comparable documentation has been presented that  
119 these homes will not diminish values of surrounding properties, that the Zoning  
120 Ordinance does not allow this style of buildings, which in his opinion is a bad  
121 choice to allow only one style, so the hardship is the Zoning Ordinance and that the  
122 proposed use is a reasonable use. Mr. Martin voted to grant the Variance as  
123 requested.

124  
125 Mr. Sakati voted to grant stating that it is not contrary to public interest and does  
126 not harm the public and might be safer; that it maintains the character of the  
127 neighborhood; that it does not conflict nor threaten public health; that justice is  
128 done to the property owner; that the variance is constructive and the justice to the  
129 property owner is provided with no harm to the public; that there is no  
130 diminishment to surrounding property values but actually could be an improvement  
131 per the analysis provided by Berkshire Hathaway; that the duplex definition in this  
132 case is restrictive and that a firewall between the garages is a reasonable variance  
133 and that the proposed use is reasonable.

134  
135 Mr. Dion voted to grant stating that he concurs with what has already been  
136 presented, that it is not contrary to public interest, that the plan has already been  
137 approved by the Planning Board which is a solid plan, that the approved plan  
138 included the house design plan which, even though it is not defined in the Zoning  
139 Ordinance seems to be a safer design that what is allowed by definition, that is does  
140 conform to the neighborhood without bringing any harm to the general public and  
141 without diminishing surrounding property values per the evidence provide by the  
142 applicant from Berkshire & Hathaway, that the strict enforcement of the Zoning  
143 Ordinance which is overly restrictive and goes against the general design causes the  
144 hardship and that the use is a reasonable one.

145  
146 Mr. Daddario voted to grant stating that there is no harm to the public, that it is in  
147 character of the neighborhood and with a design that offers benefits to a potential  
148 homebuyer, that the spirit of the Ordinance is met as there will be a firewall

149 between the dwelling areas, that, at issue, is the placement of the firewall and noted  
150 that there were no concerns received, nor any negative comments received from the  
151 Town Officials including the Fire Department, that there will be no harm to the  
152 general public and no diminishing of surrounding property values as attested from  
153 Berkshire Hathaway, and that the hardship has been met noting that the project  
154 has been previously approved by the Planning Board that included the design of the  
155 duplex/condex with their garages between the living quarters, and that what is  
156 before the Zoning Board is the placement of the firewall between the garages of the  
157 two (2) living quarters, that the burden has been met, that the design is consistent  
158 with the neighborhood and that the development has design benefits.

159

160 Roll call vote was 5:0. Motion granted. The 30-day Appeal period was noted.

161

162 **VI. RQUEST FOR REHEARING: (Addendum)**

163

164 **Case 165-049 (06-27-24):** Manuel D. Sousa of Sousa Realty & Development  
165 Corp., 46 Lowell Rd., Hudson, NH requests a Variance for 36 Campbello St.,  
166 **Hudson, NH** for the proposed construction of a new private road and 10 new  
167 single family homes plus retaining the existing single family home on a lot with  
168 30.37 feet of frontage where a minimum of 90 feet is required in the Town  
169 Residence (TR) district. [Map 165, Lot 049, Sublot-000; Zoned Town Residence  
170 (TR); HZO Article VII: Dimensional Requirements; §334-27, Table of Minimum  
171 Dimensional Requirements]

172

173 Mr. Sullivan read the request into the record. Mr. Sullivan stated that a Motion for  
174 Rehearing is governed by RSA 677:22 and includes the Board's determination on  
175 either new evidence being presented, or determining if the Board made a procedural  
176 error or an error in law or whether the applicant presented good reason that should  
177 be considered.

178

179 PE David Jordan from Greenen-Pedersen, Inc. introcuded himself as representing  
180 Sousa Realty in pursuit of this motion for rehearing and proceeded to present their  
181 case which included the following information:

182

- 183 • Belief that the majority of the Board erred in determining that the granting of  
184 the variance would alter the essential character of the neighborhood as the  
185 character of the neighborhood is single family homes on TR sized lots which is  
186 what is being proposed
- 187 • The applicant's project proposessingle family homes on TR sized lots within the  
188 homeowner's association
- 189 • What is not in character of the neighborhood is the subject lot with one house  
190 on a 4.7 acre lot
- 191 • The number of proposed homes cited as a basis for that determination even  
192 though the density proposed is less than what is allowed in the district
- 193 • The Board erred in stating that public safety woulf be threatened without the  
194 benefit of testimony from anyone charged with reviewing public safety as was  
195 evidenced in Mr. Sullivan's Staff Report that neither the Town Engineer,  
196 Inspectional Services/Fire Department or the Associate Town Planner had  
197 offered no comments related to the proposed subdivision. PE Jordan had

198 stated that there would be adequate access for public safety and that it would  
199 be vetted by the Planning Board during their review process.

- 200 • The Board also erred in their determination that the spirit of the Ordinance  
201 would not be observed as the purpose of the frontage requirement is to prevent  
202 overcrowding and the proposed development would not place any overcrowding  
203 as it will fully comply with all area, density and dimensional requirements  
204 within the Zoning Ordinance, which therefore does embrace the spirit of the  
205 Ordinance
- 206 • The proposed development is consistent with the present use of the area
- 207 • There is no gain to the general public through the denial of the variance and  
208 there is a substantial injustice to the applicant through the denial of the ability  
209 to use and develop the property in a manner consistent with others in the area.
- 210 • The 1980 Atkinson Subdivision Plan shows that future development of the 4/7  
211 acres was contemplated 44 years ago using the same 30.37' for access
- 212 • To deny that access is a serious injustice to the Owner and Applicant and could  
213 amount to an unconstitutional taking of property without compensation
- 214 • The denial of the variance resulted in an unnecessary hardship to the applicant
- 215 • At over 4.7 acres, this is the largest property in the area and the last of this size  
216 to have not been previously developed.
- 217 • Unlike other properties in the area, this lot has always existed with its current  
218 frontage since it was created in 1980.
- 219 • Unlike the other properties in the area, Campbello Street comes to a dead end  
220 at this property's frontage
- 221 • With the proposed density being less than what is allowed (15 homes versus 11)  
222 there is no fair and substantial reason to reject the hardship criteria
- 223 • The current use as a 4.7 acre single family house lot is not reasonable for this  
224 site or the neighborhood
- 225 • Every property enjoys a "use" whether to be single family, multiple units or even  
226 as a vacant lot.
- 227 • Literal enforcement of the frontage requirement for this site does not result in  
228 unnecessary hardship to the applicant that can only be remedied through the  
229 granting of a variance
- 230 • "When an area variance is sought, the proposed project is presumed to be  
231 reasonable if it is a permitted use under the Town's applicable zoning  
232 ordinance" *Vigeant v. Town of Hudson*, 151 NH 747, 752 (2005)
- 233 • Development of this property on full compliance with all provisions of the  
234 zoning ordinance other than frontage, including the proposed use, cannot be  
235 seen as anything other than reasonable.

236  
237 Mr. Martin inquired why a single family residence on a 4.7 acre lot is not reasonable.

238 Mr. Jordan stated that it is not reasonable to the property owner nor the applicant.

239  
240 Mr. Lanphear asked if Campbello Street comes to a dead end. Mr. Jordan stated that  
241 it ends to a driveway. Mr. Lanphear asked if the driveway is useable and Mr. Jordan  
242 confirmed that it is.

243  
244 Mr. Daddario opened the meeting to anyone wishing to address the Board and speak  
245 either in favor, in opposition or neutrally to this Case before the Board. No one  
246 addressed the Board. Public testimony closed at 7:45 PM.

247



248 Mr. Sakati stated that he has not heard any new evidence, nor tht the Board made an  
249 error in law nor a procedural error and neither was there a good reason presented.  
250 Mr. Martin agreed with Mr. Sakati and added that he does not feel it is unreasonable  
251 to have a 4.7 acre property to have access to one home which has a reasonable use of  
252 the entire property.

253  
254 Mr. Sullivan noted the plan submitted with the request for a rehearing – specicifally  
255 the plan prepared by GPI dated July 23, 2024 depicting a Ladder Truck Turn Plan –  
256 that is new evidence and addresses one of the concerns raised for public safety.

257  
258 Mr. Lanphear asked if he heard correctly that a subdivision was proposed 44 years  
259 ago. Mr. Sullivan stated thst there was.

260  
261 Mr. Martin stated that he was prepared to make a motion to deny the petition to  
262 rehear based on the fact that no new evidence was presented and that no error was  
263 made, either procedurally or in law. Mr. Sakati asked if the Board was acting  
264 prematurely in jumping to a vote. Mr. Doherty asked whether the proposed plan  
265 submitted with the rehearing improves or detracts but it seems that it doesn't. Mr.  
266 Daddario stated that there are terms of rehearing factors before the Board; specifically  
267 whether there is new evidence presented, or that an error was made by the Board or  
268 whether there was an error in the law that was applied and whether there was enojgh  
269 presented to warrant a rehearing. Mr. Martin stated that it would seem then that the  
270 Board made an error by opening a public hearing at this meeting. Both Mr. Daddario  
271 and Mr. Sullivan disagreed, there was no error made and noted that no one addressed  
272 the Board. Mr. Sakati concluded that it was then that it was not a rehearing but a  
273 reconsideration. Mr. Doherty stated that he was not on the Board back in June but  
274 would be inclined to hear more from the applicant. Mr. Dion asked if there was any  
275 new evidence in the rehearing packet. Mr. Sakati stated that he didn't hear any new  
276 evidence that would change his mind and nor was there any error made, either  
277 procedurally of in the law. Mr. Daddario stated that the granting of a rehearing  
278 request is different than a decision against a rehearing request.

279  
280 Mr. Lanphear made the motion to not grant a rehearing as there was no new evidence  
281 presented, there was no error in law made, that there was no procedural error made  
282 and there was no reason presented to warrant a rehearing. Mr. Martin seconded the  
283 motion stating that there was no new evidence presented, that the Board made no  
284 errior either procedurally or in the law.

285  
286 Mr. Sakati voted to support the motion and deny the rehearing request for the same  
287 reasons – there was no new evidence presented and the Board made no error either  
288 procedurally or with the law.

289  
290 Mr. Dion voted to deny the rehearing request for the same reasons just presented and  
291 stated that the evidence presented was previously discussed, that nothing new was  
292 presented and that the ZBA did not make any unlawful error or procedural error.

293  
294 Mr. Daddario voted to deny the motion and to rehear the application stating that no  
295 new evidence was heard but a convincing argument was made; that there were no  
296 procedural errors made and that good reason were stated to warrant a rehearing.

297  
298 Vote was 4:1. Motion to deny the rehearing request passed.

299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346

**Case 165-021 (07- 11-24):** Brendan Burke, Manager for Keystone Estates, LLC, 34R High Street, Hingham MA requests a rehearing of an Appeal from an Administrative Decision request for 12 14 Gambia St., Hudson, NH where a Code Enforcement – Notice of Violation Cease and Desist letter dated May 8, 2024 was upheld by the Zoning Board of Adjustment.

Mr. Sullivan read the request into the record and noted that an email dated 8/12/2024 was received from Atty. Amdrew Tine asking to defer for thirty (30) days in order to address the issues raised in the decisionthe hearing for thirty (30) days.

Mr. Martin asked if the requested deference was to the request for a rehearing or to a variance application. It was noted that a variance application has not been received, and Mr. Daddario surmised that the deference would be to the request for a Rehearing. Mr. Martin stated that the Board upheld Mr. Sullivan’s decision and asked what they would be expecting.

Board discussion ensued with a dominant focus on dates noting that the NOD (Notice of Decision) was issued late and that their assertion that a “reasonable accommodation” was not part of the hearing held when it had not been presented to the Board. Both Mr. Daddario and Mr. Martin surmised that the request for a rehearing should not have been placed on this meeting’s Agenda.

Mr. Martin made the motion to grant the deferment to the September meeting as requested. Mr. Lanphear seconded the motion. Mr. Lanphear noted that he would not be attending the September meeting. Roll call vote was unanimous at 5 :0 to defer to the 9/26/2024 Zoning Board meethg.

**VII. REVIEW OF MINUTES:**

07/11/2024 draft-Meeting Minutes

Neither the draft nor the edited Minutes were included in the meeting packet or in the supplemental meeting packet. Item deferred to the September meeting.

07/25/2024 draft-Meeting Minutes

Board reviewed. Motion made by Motion made by Mr. Lanphear, seconded by Mr. Martin and unanimously voted to approve the 7/25/2024 Minutes as presented.

**VIII. OTHER BUSINESS:**

No other business was presented for Board consideration.

**IX. ADJOURNMENT:**

Motion made by Mr. Martin and seconded by Mr. Sakati to adjourn the meeting and unanimously voted to adjourn the meeting. The 8/22/2024 ZBA meeting adjourned at 8:20 PM.

Respectfully submitted,  
Louise Knee, Recorder \_\_\_\_\_