



TOWN OF HUDSON

Zoning Board of Adjustment

Gary M. Daddario, Chairman

Dillon Dumont, Selectmen Liaison

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MEETING MINUTES – August 22, 2024 – approved

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

- I. CALL TO ORDER**
- II. PLEDGE OF ALLEGIANCE**
- III. ATTENDANCE**
- IV. SEATING OF ALTERNATES**

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

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

V. PUBLIC HEARING OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

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

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

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

(1) *not contrary to public interest*

- The granting is not contrary to the public interest because it permits construction of net-zero ready and full net zero homes
- The condex homes match the existing area, most recently the construction of the Granite Heights subdivision but also the immediate abutter at 85/87 Barrett's Hill Road and the homes on Rangers Road
- The design actually increases the general safety with all electric design and solar power generation on site

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

- the proposed use observes the spirit of the Ordinance because it maintains the character of the neighborhood and matches the aesthetic of many recently built homes in the area

(3) *substantial justice done*

- substantial justice would be done
- the developer has spent 10 months in the design, planning board approval, energy modeling and architecture of these net-zero homes
- these architectural plans were presented to the planning board during the approval process and the grading plan with center load condexes is part of the approved and recorded plan set
- this has been a substantial investing to achieve a sustainable development

(4) *not diminish surrounding property values*

- the list price of a condex unit at Barrett Hill is \$695K
- A Comparative Market Analysis (CMA) for similar size homes in the area performed by Berkshire Hathaway shows an average sales price of \$630K
- Barrett's Hill homes will generally increase the value, not diminish the value, of the surrounding community
- See attached CMA by Gail Nickerson dated 8/7/2024 that was attached to her 8/8/2024 letter noting her involvement in real estate for the past twenty (20) years with a primary focus on new construction and attesting her opinion that to allow the proposed project as presented would not diminish the value of surrounding properties and would significantly improve values with a positive impact

(5) *hardship*

- The developer presented a subdivision and architectural plan to the planning board that was specifically engineered at significant expense to meet net zero ready and full net zero requirements
- This plan was unanimously approved by the planning board – see Notice of Approval dated 6/4/2024
- Barrett Hill has incurred significant expense and time to develop to develop this plan
- Altering the plan at this time would be technically challenging, increase the cost of the homes and further delay the delivery of much needed housing
- The variance request is to simply permit a center garage layout with firewall that will provide a safer home than having shared dwelling unit walls and provides a quieter living environment for the home owners and is aesthetically pleasing.

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

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

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

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

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

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

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

Mr. Daddario voted to grant stating that there is no harm to the public, that it is in character of the neighborhood and with a design that offers benefits to a potential

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

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

VI. RQUEST FOR REHEARING: (Addendum)

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

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

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

- Belief that the majority of the Board erred in determining that the granting of the variance would alter the essential character of the neighborhood as the character of the neighborhood is single family homes on TR sized lots which is what is being proposed
- The applicant's project proposes single family homes on TR sized lots within the homeowner's association
- What is not in character of the neighborhood is the subject lot with one house on a 4.7 acre lot
- The number of proposed homes cited as a basis for that determination even though the density proposed is less than what is allowed in the district
- The Board erred in stating that public safety would be threatened without the benefit of testimony from anyone charged with reviewing public safety as was evidenced in Mr. Sullivan's Staff Report that neither the Town Engineer, Inspectional Services/Fire Department nor the Associate Town Planner had offered comments related to the proposed subdivision. PE Jordan had stated

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

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

Mr. Martin inquired why a single family residence on a 4.7 acre lot is not reasonable. Mr. Jordan stated that it is not reasonable to the property owner nor the applicant.

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

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

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

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

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

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

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

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

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

Mr. Daddario voted to deny the motion and to rehear the application stating that no new evidence was heard but a convincing argument was made about a possible error of law; that there were no procedural errors made and that good reason were stated to warrant a rehearing.

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

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. Andrew Tine asking to defer for thirty (30) days in order to address the issues raised in the Board’s decision.

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 meeting.

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,

Gary M. Daddario, ZBA Chairman

Not Official until reviewed, approved and signed
Approved 9/26/2024 as edited.