



TOWN OF HUDSON

Zoning Board of Adjustment

Gary M. Daddario, Chairman Dillon Dumont, Selectmen Liaison

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MEETING AGENDA – November 14, 2024 - edited

The Hudson Zoning Board of Adjustment met Thursday, November 14, 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 7:00 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 Tristan Dion (Regular/Clerk), Gary Daddario (Regular/Chair), Tim Lanphear (Regular), Zachary McDonough (Alternate), Normand Martin (Regular/Vice Chair) and Dean Sakati (Regular). Also present were Dillon Dumont, Selectman Liaison, Louise Knee, Recorder (remote) and Chris Sullivan, Zoning Administrator. All Regular Members voted, no Alternate was appointed to vote.

V. PUBLIC HEARING OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

- 1. Case 147-029 (11-14-24):** Laurie & Robert Greer, **28 Derry Lane, Hudson, NH** requests an Appeal from an Administrative Decision of a Notice of Violation letter dated September 27, 2024 citing the current placement of an unpermitted 14 ft. x 40 ft. shed and pergola structure in a 25 ft. cemetery setback which are in violation of a NH State Regulation and also Hudson Zoning Ordinance for building permits. [Map 147, Lot 029, Sublot-000; Zoned Residential-Two (R-2); HZO Article III: General Regulations; §334-16, Building permits; NH RSA Title XXVI: Cemeteries; Burials; Dead Bodies; §289:3, III., Location]

Mr. Sullivan read the Case into the record, referenced his Staff Report initialed 11/15/2024, noted that the Notice of Violation came as a result of a Site visit where it was noted that the shed and the bee house were on location outside Hudson’s side yard setback but not in conformance with the State of NH twenty-five foot (25’) cemetery setback Regulations, email correspondence from the dncr.nh.gov website

48 and NH Cemetery Association and NH Division of Historical Resources that
49 supported the twenty-five foot (25') cemetery setback. In-house Review Comments
50 were received from the Town Engineer advising that local boards do not have the
51 authority to supersede state or federal requirements with cemeteries as it does with
52 water or bridges or septic systems and that the applicant should seek relief from the
53 State and not ZBA or Staff.

54
55 Mr. Martin stated that with the evidence presented and that the Zoning Ordinance
56 does not regulate cemeteries, made the motion to not review this Case. There was
57 no second to the motion.

58
59 Both Mr. Lanphear and Mr. Dion stated that they would like to hear from the
60 Applicant. Mr. Dumont stated that he would like to hear the Appeal and added that
61 the Board has two (2) things to consider – how the Zoning Ordinance looks at
62 cemeteries and how setbacks are general in nature and added that it is not wise to
63 jump to conclusions. Mr. Martin received confirmation that there was no written
64 documentation from Town Counsel and that the Board is relying on a conversation
65 between Mr. Dumont and Town Counsel. Mr. Dion stated that the Case before the
66 Board is to determine whether or not to support the Zoning Administrator's decision
67 in support of the State RSA. Mr. Sakati and Mr. Daddario stated that they too
68 would like to hear from the Applicant.

69
70 Atty. Andrew Prolman of Prunier and Prolman, PLLC, introduced himself as
71 representing the Property Owners and noted that Property Owner Laurie Greer also
72 sat at the Applicant's table and wished to address the Board. Atty. Prolman
73 distributed a packet and stated that they are appealing because the shed in
74 question complies with Hudson's 15' side yard setback requirements in the R-2
75 Zone and noted that this appeal presents an unusual conflict between Hudson's
76 setback ordinance and State Law.

77
78 Atty. Prolman stated that in late April/early May, his client called the Planning
79 Department, asked about the setback for the shed and was advised that it is/was
80 fifteen feet (15'). On June 22, the Greers ordered a prebuilt shed made in
81 Pennsylvania. The Greers then cleared brush and established a crushed stone pad
82 for the shed fifteen feet (15') from their property line. The shed was delivered as a
83 finished product so there was no assembly or construction on site. The shed was
84 removed from the delivery truck and placed onto the prepared pad. On 7/31/2024
85 Ms. Greer called the Town to ask about the needed Building Permit and only then
86 was informed about the State RSA 289:3,III regarding a twenty-five foot (25')
87 setback for cemeteries. Next, the Greer's received a Notice of Violation dated
88 9/7/2024 from Mr. Sullivan stating that the shed was in violation of the State
89 Building Code and Hudson Zoning Ordinance and his determination that a Building
90 Permit could not be issued for the shed as it violates the State's statute regarding
91 setback for cemeteries and the lack of cemetery setback in the Zoning Ordinance.
92 The cemetery in question is Hills Farm Cemetery.

93
94 Atty. Prolman stated that Mr. Sullivan is wrong because Hudson does have
95 regulations regarding cemeteries as they are clearly represented in the Town's Table
96 of Permitted Principal Uses (§334), and are permitted by Special Exception in the R-
97 1 (Residential-One), R-2 (Residential-Two), G (General) and G-1 (General-One) Zones
98 and prohibited in the TR (Town Residence), B (Business) and I (Industrial) Zones

99 and RSA 289:3 states “In the absence of such regulations” the setback is twenty-five
100 feet (25’). There is no absence of cemeteries in the Ordinance.

101 Atty. Prollman stated that Greer’s shed complies with both RSA 289:3,III and
102 Hudson’s Zoning Ordinance §334 Table of Permitted Principal Uses, 337-27, Table
103 of Minimum Dimensional Requirements and respectfully requests that both the
104 8/6/2024 and 9/27/2024 determinations by Mr. Sullivan be reversed.

105
106 In response to Mr. Dion’s questions, the shed is not visible from Derry Lane as there
107 is a bend in the driveway that prevents its viewing and that it is recognized that the
108 pergola, which houses the beehives, is set in the setback and does need to be moved
109 outside of the setback. Mr. Greer provided additional information regarding the
110 existing vegetation and Ms. Greer added that she has been told that she cannot add
111 any additional vegetation by Mr. Sullivan.

112
113 Discussion ensued and focused on the fact that the Zoning Ordinance (ZO) does
114 have setback criteria but does not have a specific setback for cemeteries, that
115 setbacks apply to a multitude of things, that the RSA specifically states “in the
116 absence” and whether interpretations are stretching the intent and whether the
117 Board has the authority to supersede State Regulations.

118
119 Ms. Greer addressed the Board, stated that she got into beekeeping and that led to
120 the pergola, that bees live approximately seven (7) weeks and she has approximately
121 three hundred thousand (300,000) bees, that she measured the size for the shed
122 that she needs for the beekeeping paraphernalia and various lawn equipment, that
123 she ordered a pre-made 14/x40’ shed, set a pad for it but did not “stomp” the
124 ground, did not dig, just laid down forty eight (48) yards of crushed stone to
125 compensate for the slop in her land, stated that the RSA does not apply, that she
126 feels targeted by the Town and offered examples of other cemetery setbacks the
127 Board has granted that also ignored the RSA - 32 Ledge Road that had land with an
128 eight foot (8’) land disturbance within the twenty five foot (25’) cemetery setback; 28
129 Ledge Road; and other pictures of sheds in “cemetery” setbacks in Town.

130
131 Mr. Sullivan stated that he was not targeting the Greers and added that the land at
132 32 Ledge Road was in preparation to construct a house. Mr. Sakati, Mr. Dumont
133 and Mr. Daddario each affirmed that there was no targeting on behalf of the Town.

134
135 Public testimony opened at 8:05 PM. The following addressed the Board:

- 136
137 (1) Tony Lekas, State Representative, 30 Barrets Hill Road, Hudson, NH,
138 stated that the key point is whether RSA 289:3 applies and that since the
139 Town’s setback ordinance exists for all uses in a Zone, then it applies to
140 cemeteries; therefore the Town does include cemeteries in the fifteen foot
141 (15’) setback requirements. The Town Ordinance does apply and RSA
142 289 does not.
- 143 (2) Representative Alicia Lekas, 30 Barrets Hill Road, stated that most of the
144 discussion at the State level is whether or not there is Local control – if a
145 Town has a setback, it is in control – that the RSA only applies if a Town
146 does not have ay Ordinance
- 147 (3) Representative Josh O-Keller, 16 Timmins Road, Fremont, NH, stated
148 that he is a three-term State Rep and serves on many committees
149 including the Municipal and County Government Committee and many

150 others. The sentiment at the State House is that this RSA is a catch-all
151 for all Towns with no Zoning and is mostly there to regulate cemeteries in
152 the twelve (12) NH communities that have no Zoning in the State. The
153 verbiage “in the absence if such” actually refers to the previous statement
154 and not the foregoing language. In new construction, the expectation is
155 that it will comply with local regulation. In Hudson, cemeteries are
156 clearly listed in the list of specific Uses as an allowed Use in specific
157 Zones and there is also a Table of setbacks for each Zone. This ‘catch-all’
158 RSA is just in case a municipality did not consider cemeteries so that
159 they can be protected – it was never intended to regulate people. The
160 RSA was never intended to overrule municipality regulations.
161

162 Mr. Daddario asked and received confirmation that there are approximately
163 twelve (12) municipalities in NH that do not have Zoning Ordinances.
164

165 Mr. Sullivan questioned why on the recorded plan that is a twenty-five foot
166 (25’) setback identified for the cemetery. Mr. O-Keller stated that perhaps it
167 was because the person who prepared the plan believed that was how to
168 interpret the Regulation and added that this Board (ZBA) is the one to decide
169 if this Regulation is somewhat vague, then perhaps the Law requires
170 clarification and perhaps needs clarification to avoid Unintended
171 Consequences. The Regulation is not intended to impose the twenty-five foot
172 (25’) setback. Mr. Sullivan then asked if the recorded Plan needs to be
173 corrected and Mr. O-Keller responded that, in his opinion, it does not
174 because it is not a Regulation.
175

176 Mr. Dion questioned whether, and received confirmation that, the twenty-five
177 foot (25’) setback is for Towns who have no consideration for cemeteries and
178 no Zoning Ordinance.
179

180 Mr. Sakati asked if there are any towns in the Sate that specify a les-than
181 twenty-five foot (25’) setback to cemeteries. Unknown.
182

183 Mr. Dumont questioned the dialogue taking place noting that it is not a
184 ‘normal’ practice and added that even though there is no specific Use
185 assigned to the setback, the Town’s specificity regarding setback distances
186 holds, if that is what this Board needs to decide upon.
187

188 Mr. McDonough asked if Towns can supersede State Regulations. Mr. O-
189 Keller responded that the answer is no and added that this Regulation is
190 intended to apply only to those Towns that have no Zoning Ordinance with
191 the intent of protecting cemeteries – the spirit is to comply with Local
192 Regulations if they exist and why the verbiage exists “in the absence of”. Mr.
193 McDonough questioned if Mr. Sakati point that there is an implied “no less
194 than twenty-five feet (25’) setback. Mr. O-Keller referenced the comparable to
195 ADUs (Accessory Dwelling Units) where Towns can affect there own
196 regulations within certain guidelines defined by the State.
197

198 Mr. Lanphear asked if wetland buffers and their stipulated buffer distance
199 apply.
200

201 Mr. O-Keller stated that all words following “in the absence of such” does not
202 apply to Hudson.
203

204 (4) Ellen Read, 283 Legal Lane, New Market, NH, stated she is also a
205 Representative, now in her fifth (5th) term, and serves on the Housing
206 Committee and agrees with Representative O-Keller and corrected his
207 misstatement as there are nineteen (19) towns in NH with no Zoning
208 Ordinances. Ms. Read stated that when they pass laws, there are very
209 specific on the wording. The fact of the matter is that if they wish to
210 specify a minimum, they use such wording as “the Town *shall* be” and
211 the fact that this Regulation does not mean that is specifically intends to
212 impose a distance, just provide boundaries. According to this RSA, the
213 Town has put its limitation on the setback. Also, in good faith, that when
214 there is ambiguity presents itself, like this evening, it is incumbent of this
215 body (the ZBA) to give the benefit of the doubt else give the appearance
216 that you are giving that there is “spot” zoning occurring. Ms. Read added
217 that it is very concerning that before even hearing from the appellant
218 there was a motion to disband.
219

220 Mr. Daddario stated that, for the record, he believed the motion was made based on
221 the question if whether or not the Board had jurisdiction in hearing the Case. Mr.
222 Martin confirmed that that was his intent.
223

224 (5) Jordon Ellory, 36 Baker Street, Hudson, NH, stated that a lot has been
225 shared this evening and Representatives from both sides are saying the
226 same thing regarding this Regulation and added that he sits on the Ways
227 and Means Committee that gets to write more complex laws, like tax law.
228 He sits on the Planning Board, and deference to specificity is not
229 uncommon; however, Regulations such as this one, applies “in general”
230 and apply everywhere. The exception is when an Ordinance comes into
231 effect and if one wants an exception, it must be written otherwise the
232 setback applies to all Uses in a Zone. Under Common Law there is a
233 principal called lumbency, giving a person as much room as is reasonably
234 possible based on common definition of terms used. Mr. Ellory stated
235 that Hudson has an Ordinance, passed by Town Vote, and it includes
236 cemeteries.

237 (6) Mr. Dion read into the record the email dated 11/9/2024 received from
238 abutter John Shoel of 57 Bowes Circle living in Abbie’s Landing,
239 complained that the Notice was posted Saturday 11/9/2024 on the door
240 of the community club house and not delivered to any of the twenty two
241 (22) homes in the community when he believes that all the Abutters
242 should have received notice of the ‘violation meeting’, stated that he feels
243 the pergola and shed are too close to the cemetery, that it is an eyesore,
244 that the shed size of 14’x40’ is bigger that his house and probably has
245 unpermitted electricity inside and that the site is big enough to place the
246 shed and pergola elsewhere on the property and not so close to the
247 cemetery.
248

249 Ms. Greer responded that she owns property in Abbie’s Landing and sits on their
250 Board and that this is probably a ‘slam’ to her but she has no dealings with how
251 such notices are distributed and referenced the pictures of the inside of her shed

252 that clearly shows there is no electricity. It was noted that per the Town's practice
253 and in accordance with the Law, Homeowner's Associations receive the Notice and it
254 is up to them to post or distribute to their residents. Mr. Dumont noted that the
255 Town has no restrictions on the sizes of sheds allowed.

256

257 Being no one else to address the Board, public testimony closed at 8:51 PM.

258

259 Mr. Martin noted that the Board received more information during the meeting than
260 what was contained in their meeting packets and that he has heard that given the
261 way the Regulation is worded, the setback should be fifteen feet (15').

262

263 Mr. Martin made the motion to overrule the Zoning Administrator's decision and
264 that setback to the property line of fifteen feet (15') applies to the shed and pergola.

265 Mr. Dion seconded the motion. Mr. Daddario clarified that the Board is overruling
266 the Zoning Administrator's decision regarding the shed and enforcing the Zoning
267 Administrator's decision that the pergola needs to be removed from the established
268 fifteen foot (15') setback. Board concurred.

269

270 Mr. Dion stated that he agrees with the testimony received from the State
271 Representatives and to do otherwise would be "spot" zoning. Mr. Lanphear and Mr.
272 Sakati agreed, that the language is sufficiently vague enough and appreciated the
273 clarification. Mr. Daddario stated that he understands Mr. Sullivan's decision and
274 how he derived at his decision and added that the information received during this
275 meeting changed his mind, that Hudson allows cemeteries as a Use in a Zone and
276 has setbacks established per Zone and that includes cemeteries.

277

278 Vote was 5:0. Motion passed to overrule the Zoning Administrators Notice of
279 Violation dated 9/27/2024 regarding the placement of the shed only - the pergola
280 needs to be moved out of the setback.

281

282 Mr. Daddario thanked everyone and noted the 30-day Appeal period. Ms. Greer
283 asked, and received confirmation, if that it would be okay to move the pergola in the
284 spring as the bees have hibernated for the winter.

285

286 Board took a five-minute break at 9:03 PM. Meeting resumed at 9:08 PM.

287

288 **2. Case 174-216 (11-14-24):** Joseph F. Roberts, duly Authorized for LK41 Real
289 Estate, LLC, requests a Variance for **71 Ferry Street, Hudson, NH** for a
290 proposed two-lot subdivision with the newly created lot containing 70 feet of
291 frontage where 90 feet is required in the TR zone. [Map 174, Lot 216,
292 Sublot-000; Zoned Town Residence (TR); HZO Article VII: Dimensional
293 Requirements; §334-27, Table of Minimum Dimensional Requirements and
294 §334-27.2, Lot requirements for subdivision of land]

295

296 Mr. Sullivan read the Case into the record, referenced his Staff Report initialed
297 11/5/2024, noted that it is a lot of record with a multi-family structure and another
298 structure on site that were built in the 1900s, and that In-House Comments have
299 been received from the Fire Department and Associate Town Planner. The Fire
300 Department noted that a Building Permit, Electrical Permit and Inspections would
301 be required. The Associate Town Planner noted that, if granted, a Subdivision Plan
302 would need to be submitted to the Planning Board for approval.

303
304 Atty. Chris Drescher of Cronin, Bison & Zalinsky, PLLC, introduced himself as
305 representing the Property OwnerLK41 Real Estate, LLC, and stated that currently
306 there is a multi-family house on the 0.89 acre site along with an outbuilding
307 (garage) that were both constructed in the 1900s before the Town adopted Zoning
308 and an extensive lawn that is rarely utilized by the tenants. The Applicant desires
309 to subdivide the lot to create another buildable lot for the construction of a modest
310 single-family home. The lot is currently serviced by Municipal water and sewer.

311
312 A GIS overview was displayed.

313
314 The proposed new lot would be zoning compliant with respect to all setbacks and
315 square footage; however, a Variance is needed for reduced frontage. A shared
316 driveway had been contemplated to make it work, however, shared driveways are
317 not feasible. Atty. Drescher stated that his client is aware that if granted, they
318 would need to go before the Planning Board to seek approval for a Subdivision Plan
319 and obtain a driveway permit. The Variance needed is for a modest reduction of
320 twenty feet (20') permitting seventy feet (70') of frontage instead of the required
321 ninety feet (90') and despite the frontage deficiency, the proposed new lot would be
322 larger than many of the surrounding lots in the immediate area.

323
324 Atty. Drescher next addressed the criteria necessary for the granting of a Variance
325 and the information shared included:

- 326
327 (1) *not contrary to public interest*
- 328 • The standard prongs for criteria (1) and (2) are whether the requested relief
329 would alter the essential character of the neighborhood or negatively impact
330 the health, welfare and safety of the surrounding area
 - 331 • Prong (1) is in the negative which translates that the Applicant is not required
332 to prove that the proposed use is in the public interest, but only prove that
333 it is not contrary to the public interest
 - 334 • The proposed use is an allowed use in the Zone and will have Town water and
335 sewer so there is no concern relative to water quantity or quality
 - 336 • The proposed new lot will still be larger than many in the surrounding area
 - 337 • The lot is dry – there are no wetlands on site
 - 338 • The intent is to construct one (1) single-family home on the lot
 - 339 • The ask for the reduction in frontage is only in mere conflict with the
340 Ordinance as there is nothing in this proposal that would negatively impact
341 the public's health, safety, and/or welfare and it will not alter the residential
342 character of the neighborhood
- 343 (2) *will observe the spirit of the Ordinance*
- 344 • The spirit is observed/met
 - 345 • see prong (1)
- 346 (3) *substantial justice done*
- 347 • The guiding light on this criteria is that any loss to the individual that is not
348 outweighed by a gain to the general public is an injustice
 - 349 • The loss to the Applicant in not approving this Variance would far outweigh
350 any benefit to the general public – especially considering that the Town,
351 State, region are dealing with a housing crisis in that there is no
352 inventory

- 353 • The area at issue of the proposed new lot is currently a lawn that non of the
354 tenants have been using
- 355 • If denied, the public gains nothing
- 356 • The one proposed single-family residence will not overcrowd the area as the
357 proposal is otherwise zoning compliant
- 358 (4) *not diminish surrounding property values*
- 359 • There is no evidence to suggest that the addition of one (1) modest single-
360 family house would negatively impact the surrounding property values
361 especially in light of the fact that there is Town water and sewer available
- 362 (5) *hardship*
- 363 • The special conditions are due to the preexisting nature of the Property as it
364 was part of a Subdivision Plan dated July 1947 which predates when
365 Hudson adopted Zoning
- 366 • The lot predates Zoning and predates the recorded Subdivision Plan
- 367 • The purpose and goal of the frontage requirement is to ensure that
368 neighborhoods do not become overcrowded and even with the requested
369 frontage, the resulting lot will still be larger than many of the
370 surrounding properties and many of the abutters
- 371 • The reduced frontage variance will not unreasonably frustrate the purpose
372 of the Zoning Ordinance
- 373 • The proposed use for the property is residential and the TR Zone allows for
374 residential use; therefore the proposed use is reasonable
- 375

376 Board continued review of the GIS overlay and noted the various sizes of the
377 surrounding lots. Mr. Martin stated that generally single- and multi-family houses
378 don't usually mix and Mr. Dion stated that they could be requested to erect a fence
379 or plant greenery and it was noted that if any visual 'barrier' were deemed to be
380 necessary, it would be addressed by the Planning Board during Subdivision review.

381

382 Public testimony opened. No one addressed the Board. Public testimony closed at
383 9:34 PM.

384

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

387

388 Mr. Lanphear spoke to his motion and stated that there is no conflict with the
389 purpose of the Ordinance, that it is not contrary to the character of the
390 neighborhood, that there is no harm to the general public and no change to the
391 surrounding property values and that the condition of the lot and minimal impact
392 to the property considering the placement of the driveway to the multi-family
393 residence preventing sufficient frontage to be obtained and that the proposed use is
394 very reasonable use for the property. Mr. Lanphear voted to grant.

395

396 Mr. Martin spoke to his second and stated that the granting of the Variance will not
397 be contrary to the public interest, that it will observe the spirit of the Ordinance,
398 that substantial justice will be done to the Applicant, that it should enhance
399 surrounding property values, that the property existed well before Zoning and
400 should be allowed to subdivide and that the proposed use is very reasonable. Mr.
401 Martin voted to grant.

402

403 Mr. Sakati voted to grant and stated that the proposed Variance brings no conflict
404 to/with the purpose of the Ordinance, that it is not contrary to the character of the
405 neighborhood and brings no harm to the general public, that it will not bring
406 change to the surrounding property values and not granting the Variance makes
407 the property unnecessarily unviable.
408

409 Mr. Daddario voted to grant and stated that the granting brings no harm to the
410 public, brings no change to the character to the neighborhood and no harm to the
411 public, that there is no evidence to suggest negative impact to surrounding property
412 values but that generally a new house may improve surrounding property values,
413 and that the existing structures predate the Zoning Ordinance and the required
414 setbacks are not necessary to achieve proper density and meets all other Ordinance
415 provisions and that the proposed use is reasonable and fully consistent with the
416 neighborhood.
417

418 Vote was 5:0. Variance granted. The 30-day Appeal period was noted.
419

420 **VI. REQUESTS FOR REHEARING:**

421
422 No requests were received for Board consideration.
423

424 **VII. REVIEW OF MINUTES:**

425
426 • 10/24/2024 edited draft Meeting Minutes
427

428 Motion made by Mr. Lanphear, seconded by Mr. Martin and unanimously voted to
429 approve the 10/24/2014 Minutes as edited.
430

431 **VIII. OTHER BUSINESS:**

432
433 • Reminder: The next ZBA Meeting is scheduled on Thursday, December 12, 2024 @
434 7:00 PM
435

436 So noted.
437

438 **IX. ADJOURNMENT:**

439
440 Motion made by Mr. Martin, seconded by Mr. Lanphear and unanimously voted to
441 adjourn the meeting. ZBA 11/14/2024 meeting adjourned at 9:45 PM
442

443 Respectfully submitted,
444 Louise Knee, Recorder
445
446
