



TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Dillon Dumont, Selectmen Liaison

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MEETING MINUTES – November 14, 2024 - approved

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 and NH Cemetery Association and NH Division of Historical Resourced that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (5) Jordon Ulery, 36 Baker Street, Hudson, NH, stated that a lot has been shared this evening and Representatives from both sides are saying the same thing regarding this Regulation and added that he sits on the Ways and Means Committee that gets to write more complex laws, like tax law. He sits on the Planning Board, and deference to specificity is not uncommon; however, Regulations such as this one, applies “in general” and apply everywhere. The exception is when an Ordinance comes into effect and if one wants an exception, it must be written otherwise the setback applies to all Uses in a Zone. Under Common Law there is a principal called lambency, giving a person as much room as is reasonably possible based on common definition of terms used. Mr. Ulery stated that Hudson has an Ordinance, passed by Town Vote, and it includes cemeteries.
- (6) Mr. Dion read into the record the email dated 11/9/2024 received from abutter John Shoel of 57 Bowes Circle living in Abbie’s Landing, complained that the Notice was posted Saturday 11/9/2024 on the door of the community club house and not delivered to any of the twenty two (22) homes in the community when he believes that all the Abutters should have received notice of the ‘violation meeting’, stated that he feels the pergola and shed are too close to the cemetery, that it is an eyesore, that the shed size of 14’x40’ is bigger that his house and probably has unpermitted electricity inside and that the site is big enough to place the shed and pergola elsewhere on the property and not so close to the cemetery.

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

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

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

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

Mr. Martin made the motion to overrule the Zoning Administrator's decision and that setback to the property line of fifteen feet (15') applies to the shed and pergola. Mr. Dion seconded the motion. Mr. Daddario clarified that the Board is overruling the Zoning Administrator's decision regarding the shed and enforcing the Zoning Administrator's decision that the pergola needs to be removed from the established fifteen foot (15') setback. Board concurred.

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

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

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

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

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

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

Atty. Chris Drescher of Cronin, Bisson & Zalinsky, PLLC, introduced himself as representing the Property Owner LK41 Real Estate, LLC, and stated that currently there is a multi-family house on the 0.89 acre site along with an outbuilding (garage) that were both constructed in the 1900s before the Town adopted Zoning and an extensive lawn that is rarely utilized by the tenants. The Applicant desires to subdivide the lot to create another buildable lot for the construction of a modest single-family home. The lot is currently serviced by Municipal water and sewer.

A GIS overview was displayed.

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

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

(1) *not contrary to public interest*

- The standard prongs for criteria (1) and (2) are whether the requested relief would alter the essential character of the neighborhood or negatively impact the health, welfare and safety of the surrounding area
- Prong (1) is in the negative which translates that the Applicant is not required to prove that the proposed use is in the public interest, but only prove that it is not contrary to the public interest
- The proposed use is an allowed use in the Zone and will have Town water and sewer so there is no concern relative to water quantity or quality
- The proposed new lot will still be larger than many in the surrounding area
- The lot is dry – there are no wetlands on site
- The intent is to construct one (1) single-family home on the lot
- The ask for the reduction in frontage is only in mere conflict with the Ordinance as there is nothing in this proposal that would negatively impact the public's health, safety, and/or welfare and it will not alter the residential character of the neighborhood

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

- The spirit is observed/met
- see prong (1)

(3) *substantial justice done*

- The guiding light on this criteria is that any loss to the individual that is not outweighed by a gain to the general public is an injustice
- The loss to the Applicant in not approving this Variance would far outweigh any benefit to the general public – especially considering that the Town, State, region are dealing with a housing crisis in that there is no inventory

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

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

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

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

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

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

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

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

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

VI. REQUESTS FOR REHEARING:

No requests were received for Board consideration.

VII. REVIEW OF MINUTES:

- 10/24/2024 edited draft Meeting Minutes

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

VIII. OTHER BUSINESS:

- Reminder: The next ZBA Meeting is scheduled on Thursday, December 12, 2024 @ 7:00 PM

So noted.

IX. ADJOURNMENT:

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

Respectfully submitted,

Gary M. Daddario, ZBA Chairman