



# TOWN OF HUDSON

## Zoning Board of Adjustment

Gary M. Daddario, Chairman      Dillon Dumont, Selectmen Liaison

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### MEETING MINUTES – July 25, 2024 - draft

Amended 7/23/2024

The Hudson Zoning Board of Adjustment met Thursday, July 25, 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.

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

**V. PUBLIC HEARING OF SCHEDULED APPLICATIONS BEFORE THE BOARD:**

1. **Case 144-005 (07-25-24):** Rowdy Smith, **19 Robinson Rd., Hudson, NH** requests a Variance to allow a continued existing unpermitted multi-family use in the R-2 zoning district where multi-family dwellings are not permitted. [Map 144, Lot 005, Sublot-000; Zoned Residential-Two (R-2); HZO Article V: Permitted Uses; §334-21, Table of Permitted Principal Uses]

Mr. Sullivan read the Case into the record and referred to his Staff Report initialed 7/15/2024 that included a property description and a time line of events noting that in early 2015 the Code Enforcement Officer was notified that a third and fourth unit had been added, without a Building Permit or a Variance, and that on 6/15/2015 the ZBA denied the Variance request to add a third and fourth unit and that decision was confirmed on 10/2/2015 when the then property-owner, documented in writing that the property had returned to a two-family duplex unit.

Mr. Sullivan stated that in order for the Board to hear another Variance for a multi-family residence, it would have to be determined that either there is material change of circumstances affecting the merits of the new application or that the second variance request materially differs from the first variance request.

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49 Mr. Sullivan also stated that in-house review comments have been received from the  
50 Town Engineer regarding the septic system; the Fire Department/Inspectional  
51 Services regarding fire alarms and sprinkler requirements and the need to perform  
52 an inspection of the entire structure; and the Associate Town Planner noting that if  
53 the Variance is approved, then Site Plan Review by the Planning Board is required.

54

55 Elizabeth Hartigan, attorney from Gottesman & Hollis PA in Nashua, NH introduced  
56 herself and the current Property Owner, Rowdy Smith, of 19 Robinson Road.

57

58 Mr. Dumont asked if the Board is first required to determine if the Case has the  
59 merit to be heard, especially as it appears to be the same multi-family request. Mr.  
60 Martin stated that he is the only person on the Zoning Board today who was also  
61 present on the Zoning Board then and made the motion to hear the Applicant's  
62 testimony in order to determine if there is either a material change or a difference.  
63 Mr. Lanphear seconded the motion. Vote was unanimous. Motion passed.

64

65 Atty. Hartigan stated that she reviewed the evidence presented in 2015, the  
66 application, the Minutes and the notice of decision and noted that the applicant had  
67 not addressed two of the five criteria – whether there was any impact to the  
68 neighboring property values and whether there was any hardship imposed. Atty.  
69 Hartigan stated that she is prepared to address both in her presentation.

70

71 Atty. Hartigan addressed the criteria necessary for the granting of a Variance. The  
72 information shared included:

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(1) *not contrary to public interest*

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

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- the spirit of the Ordinance will be observed, as even though the number of units is greater than what is permitted, its appearance is similar to other properties in the area
- the character of neighborhood will not be changed as there is no exterior change proposed so there is no threat to public health, safety or welfare
- the outside footprint does not change with a duplex or the 4-units
- the character of the neighborhood remains the same

(3) *substantial justice done*

- 98           • substantial justice would be done as this property has been maintained as a  
 99           4-unit building since approximately 2009, that the current owner bought  
 100           the property in 2021 as advertised as a 4-unit building, and the  
 101           assessor's card has the lot listed as a 4-family  
 102           • denial of the variance would create harm to the property owner and the  
 103           tenants and are not outweighed by any harm to the public  
 104           • the property owner has no knowledge whether the building ever returned to  
 105           a duplex after the 2015 denial  
 106       (4) *not diminish surrounding property values*  
 107           • Granting the variance will not cause any real change as to what has long  
 108           been a 4-family use of the building in the neighborhood since  
 109           approximately 2009  
 110           • Adjacent properties will not be adversely affected as they will see no change  
 111           to the exterior of the building nor any practical change from what has  
 112           been in use for years  
 113           • The proposed use will not diminish surrounding property values  
 114           • Atty. Hartigan submitted J. Chet Rogers, MAI, Certified General Appraiser  
 115           NHCG-727 of Hollis, NH 6/11/2024 assessment attesting that there  
 116           would be no diminishment to surrounding property values  
 117       (5) *hardship*  
 118           • the special condition is satisfied due to it being a large parcel (5.79 acres)  
 119           with 252,212 SF where only 60,000 SF is required in the TR Zone  
 120           • in addition there are wetlands along the front of the property and power  
 121           lines along the rear of the property  
 122           • it has been a 4-unit building for over a decade and a half, illegal yet pre-  
 123           existing  
 124           • enforcing the density regulations against this property bears no fair and  
 125           substantial justice to the purpose of the zoning ordinance to prevent  
 126           overcrowding  
 127           • this large lot is in compliance with all zoning requirements except its use  
 128           and requiring compliance presents a hardship to the property owner and  
 129           tenants occupying the units and brings no relief to the neighborhood or  
 130           its surroundings as there would not be any exterior change to the  
 131           building whether it convert to a 2-unit or remain a 4-unit building  
 132           • the property has sufficient land area to be subdivided and where duplexes  
 133           would be permitted on each lot; however, the wetlands along Robinson  
 134           Road affecting the frontage and a significant power line easement to the  
 135           rear of the property, the lot cannot be subdivided.  
 136           • It is a reasonable use to allow the existing units to remain with no changes  
 137           or harm to the public.  
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139 Atty. Hartigan stated that her client bought the property in 2021, as advertised, as  
 140 a four-unit building and added that the building has been being taxed as a four-  
 141 unit building since 2015.

142  
 143 Mr. Sakati asked and received confirmation that all four units are occupied.  
 144

145 Mr. Martin referenced the Staff Report and noted that on 6/12/2007 the waste  
 146 disposal system was disapproved and that on 9/4/2007 there was a septic  
 147 inspection under BP#2007-00112. Mr. Martin concluded that the Town was aware

148 as far back as 2007 that there were four (4) units and the septic system was being  
149 corrected with a Building Permit. Mr. Dumont concurred and asked if there was  
150 any correspondence on file. Mr. Sullivan stated that there was in 2015 and the  
151 property owner applied for a Variance to keep the four (4) units, which the ZBA  
152 denied. Mr. Dumont stated that, in his opinion, it seems logical that a Property  
153 Owner would assume that the Town was definitely in the know, that there were four  
154 (4) units in the building. Mr. Sullivan stated that there is no record on file that a  
155 Building Permit was ever pulled to create the third and fourth unit. Mr. Lanphear  
156 stated that would be another item that is in need of correction.

157  
158 Mr. Lanphear made to motion to accept the application for a Variance to allow  
159 continued use of the four (4) units contained in the building as the Applicant has  
160 demonstrated that a hardship does exist and has submitted documentation from a  
161 Realtor that there is no negative impact to surrounding property values. Mr. Martin  
162 seconded the motion. By unanimous roll call vote of 5:0, motion passed.

163  
164 Mr. Daddario opened the meeting to the public. The following individuals addressed  
165 the Board:

- 166 (1) Brian Tarr, 19A Robinson Road, stated that he has been there 4-5 years  
167 now, that his parents live downstairs, that they are all close to one  
168 another and look out for one another and that it would be hardship if they  
169 had to move.
- 170 (2) Molly Blain, 19C Robinson Road, and Debbie Meleski, 19B Robinson  
171 Road, sat at the applicant's table. Ms. Blaine stated that she lives in the  
172 one-bedroom apartment, which is a beautiful apartment, and has been  
173 there four (4) months not and that it would be a hardship if she had to  
174 move and try to find another apartment. Ms. Meleski concurred about  
175 the hardship if any were to be forced to relocate.

176  
177 Being no one else to address the Board, Public testimony closed at 7:42 PM  
178

179 Board discussion included whether it has been properly documented that an error  
180 was made in 2015, whether the septic correction made in 2007 had inadvertently  
181 communicated Town knowledge of the four units, that there is still a need regarding  
182 Building Permits and addressing Town Official Review Comments and the need for  
183 Site Plan Review by the Planning Board, and the acknowledgement that there would  
184 be no change to the footprint of the building whether it contained two or four units.

185  
186 Mr. Lanphear made the motion to grant the Variance as requested. Mr. Sakati  
187 seconded the motion.

188  
189 Mr. Lanphear spoke to his motion stating that it is not contrary to public interest as  
190 it has been a 4-family for decades; that it observes the spirit of the Ordinance and  
191 that the Town was aware that it was a 4-family unit and it has opposed no threat;  
192 justice would be done as it has been taxed as a 4-unit; it will not diminish  
193 surrounding property values; the residents/tenants are very close and take care of  
194 one another and they would suffer a hardship if not granted and the proposed use  
195 is a reasonable use. Mr. Lanphear voted to grant.

196  
197 Mr. Sakati spoke to his second stating that it is not contrary to public interest and  
198 does not harm the public; that it does not conflict nor threaten public health; that

199 justice is done to the property owner; that there is no change in values as the use is  
200 not changing in a practical way and will remain 4 units; and that literal  
201 enforcement creates the hardship and reconfiguring the dwelling to 2 units is not  
202 practical; and that the proposed use is a reasonable one. Mr. Sakati voted to grant.  
203

204 Mr. McDonough voted to grant stating that the public interest is maintained, that  
205 the 4 units do not affect the safety on the public; that the neighborhood is  
206 maintained and has functioned as such for several years; that the new owner  
207 purchased under false assumptions, so substantial justice would be done to the  
208 property owner; that the outer house structure remains the same regardless if the  
209 unit count; and that the Town failed to correct multifamily use in earlier situations,  
210 and that the proposed use is reasonable.  
211

212 Mr. Martin voted to grant stating that it will not be contrary to the public interest;  
213 that it will observe the spirit of the Ordinance; that substantial justice would be  
214 done; that it will not diminish property values as per letter submitted by real estate  
215 appraiser; and that the hardship is the fact that the Town gave an inspection of an  
216 upgraded septic system yet failed to notice the number of living units on the  
217 property; and that the proposed use is a reasonable one.  
218

219 Mr. Daddario voted to grant stating that both the house and the character of the  
220 neighborhood will have no change; that there is no threat to public and there is  
221 enough square footage on site to support this use; that the current property owner  
222 purchased it this way, that it has been taxed as a 4-unit and that a 4-unit septic  
223 system was approved; that the 4-unit use has existed for years with no evidence to  
224 suggest diminished value to other properties; and that despite the size of the lot, it  
225 cannot be subdivided due to wetlands and power line easement, that the Town has  
226 taxed the lot as a 4-unit and previously approved a septic system for a 4-unit, and  
227 that the prior hearing had not presented a hardship argument.  
228

229 Roll call vote was 5:0. Motion granted. The 30-day Appeal period was noted.  
230  
231

232 2. **Case 126-024-002 (07-25-24):** Todd Hirst, **9 B David Dr., Hudson, NH**  
233 requests a Home Occupation Special Exception to allow the accessory use of a  
234 home office for two (2) businesses including storage of tools/equipment and  
235 parking of four (4) business vehicles. [Map 126, Lot 024, Sublot-002; Zoned  
236 General-One (G-1); HZO Article VI: Special Exceptions; §334-24, Home  
237 Occupations and HZO Article V: Permitted Uses; §334-22, Table of Permitted  
238 Accessory Uses]  
239

240 Mr. Sullivan read the Case into the record and referred to his Staff Report initialed  
241 7/15/2024 and noted that in-house review comment has been received from the  
242 Town Engineer regarding vehicle parking, and that no comments were received from  
243 Inspectional Services/Fire Department and the Town Planner.  
244

245 Todd Hirst sat at the Applicant table and introduced himself as the Property Owner  
246 seeking a Home Occupation Special Exception for his businesses. Mr. Hirst stated  
247 that there are no customers that come to his home, that he needs to run his  
248 business from there which includes paying bills/office type work, telephone work  
249 and some storage for his pesticide spraying business and the parking and storing of

250 trucks, trailer equipment and materials related to his irrigation company. Mr. Hirst  
251 stated that the Fire Department is aware and that his sister does come over and  
252 handles the receipts and files stuff in the file cabinet downstairs. Mr. Hirst stated  
253 that he bought the house in 2011 and held a normal job until 2017 and then  
254 started his landscaping business.

255

256 Mr. Hirst next addressed the criteria necessary to be met in order for the Board to  
257 grant a Home Office Special Exception. The information shared included:

258

259 (a) nature of home office business

- 260 • it is the home base for both his LLCs – Hirst Mosquito and Tick, LLC
- 261 and Hirst Outdoors, LLC
- 262 • both businesses use this location for storage of materials, vehicles and
- 263 paperwork

264 (b) is home occupation secondary to the principal use of a home

- 265 • yes it is secondary – it is his primary residence and he lives there with
- 266 his two children, and dog and cats

267 (c) will it be carried within residence or accessory structure

- 268 • yes, for storage of materials and tools and paperwork
- 269 • tools stored in sheds, 4 trucks for landscaping business, no
- 270 landscaping materials stored on site

271 (d) no exterior display of the business

- 272 • no signs on property
- 273 • 2 sheds on property contain equipment, and plows in open
- 274 • one of the pickup trucks has lettering for the mosquito business

275 (e) no exterior storage unless screened

- 276 • two sheds
- 277 • two plows out in the open
- 278 • there is no storage of materials – stone, mulch etc – on site

279 (f) no objectionable circumstances such as noise, odors etc

- 280 • only noise will be loading and unloading of vehicles

281 (g) traffic not to exceed volume in a neighborhood

- 282 • no extra traffic from the business
- 283 • only two employees may pass through to his business

284 (h) parking to be off-street and limited to 2 vehicles at any one time

- 285 • no customer/client parking as they do not come to the site

286 (i) home occupation to be conducted only by residents of dwelling

- 287 • yes, himself, Todd Hirst

288 (j) number of vehicles for business

- 289 • 4 trucks – 1 truck for the Mosquito and Tick, LLC that has lettering on
- 290 the truck; and 3 trucks for Hirst Outdoors, LLC

291

292 Mr. Lanphear asked if any of the employees drive the trucks. Mr. Hirst responded  
293 that he is the only one qualified/licensed to operate the mosquito business so he is  
294 the only one to drive the lettered truck and added that the truck is also used for  
295 plowing in the wintertime.

296

297 Mr. Daddario opened the meeting for public comment. No one addressed the Board.  
298 Mr. Martin read into the record letter dated 7/11/2024 from Trudi J. Durham, 9A

299 David Drive, who expressed support for Mr. Hirst operating his business from his  
300 home. Mr. Daddario closed public testimony at 8:09 PM.

301  
302 Mr. Daddario asked about the vehicles. Mr. Hirst stated that he has his personal  
303 truck, which is a back up truck for his business, an '08 F350 with a utility visor  
304 which is his main work vehicle, a red '17 F250 that is the mosquito truck, '08 F250  
305 that is essentially a plow truck. Mr. Lanphear asked and received confirmation that  
306 all the trucks are under the GSW (Gross Vehicle Weight) of 13,000 pounds.

307  
308 Mr. Sakati asked Mr. Sullivan if the Special Exception is granted, does it remain a  
309 constant part of the land like a Variance would, or is it just as it pertains to this  
310 applicant. Mr. Sullivan stated that it pertains to the Use, and if Mr. Hirst moves,  
311 the Special Exception for this site becomes moot.

312  
313 Mr. Sakati asked if any equipment is used on site that creates noise, dust et. Mr.  
314 Hirst stated that he has a kidsteerer, a bobcat and a mini excavator, and all are  
315 being used for his personal use as he is building a patio on his home, both in front  
316 and in back, and, they are also used for his business and the noise from the  
317 business is just the loading and unloading of them, not any operational noise.

318  
319 Mr. Martin made the motion to grant the Home Occupation Special Exception. Mr.  
320 Lanphear seconded the motion.

321  
322 Mr. Martin spoke to his motion stating that it is a sales service operation that is  
323 provided off-site, that the proposed use is secondary to the principal residential use  
324 of the house, that the proposed use will be carried in within the house and  
325 accessory structures, that there will be no sign on the property identifying that a  
326 business resides within and there is lettering on one of the trucks, that there will  
327 not be any objectionable noise or nuisance from the proposed use, that traffic to the  
328 neighborhood will not be substantially greater, that parking will be off street, that  
329 there is one employee but he takes their vehicle home, and that none of the vehicles  
330 is greater than 13,000 pounds. Mr. Martin voted to grant.

331  
332 Mr. Lanphear spoke to his second, agreed with Mr. Martin with exception of the first  
333 stipulation in that the proposed use is not produced or provided on site and with  
334 regard to the number of vehicles limited to 3-4 vehicles. Mr. Lanphear voted to  
335 grant.

336  
337 Mr. Sakati voted to grant  
338 Mr. McDonough voted to grant.  
339 Mr. Daddario voted to grant.

340  
341 Vote was 5:0 to grant the Home Office Special Exception. Motion carried. The 30-  
342 day Appeal period was noted.

343  
344

#### 345 **VI. REQUEST FOR REHEARING: (Addendum)**

346  
347 **Case 165-049 (06-27-24):** Manuel D. Sousa of Sousa Realty & Development  
348 Corp., 46 Lowell Rd., Hudson, NH requests a Variance for **36 Campello St.,**  
349 **Hudson, NH** for the proposed construction of a new private road and 10 new

350 single family homes plus retaining the existing single family home on a lot with  
351 30.37 feet of frontage where a minimum of 90 feet is required in the Town  
352 Residence (TR) district. [Map 165, Lot 049, Sublot-000; Zoned Town Residence  
353 (TR); HZO Article VII: Dimensional Requirements; §334-27, Table of Minimum  
354 Dimensional Requirements]

355  
356 Mr. Sullivan read the request into the record. Mr. Sullivan stated that basically the  
357 Board is to determine whether to accept the petition to re-hear. Mr. Daddario noted  
358 this is not a public hearing at this meeting. Mr. Dumont noted that the material  
359 pertinent to this request was placed in the meeting's supplemental purple folder. Mr.  
360 Martin stated that he was perplexed to see it on the Agenda as the Board has thirty  
361 days in which to respond. Mr. Sullivan agreed and stated that what is before the  
362 Board this evening is whether to accept the request for a re-hearing. Mr. Daddario  
363 pointed out that information in the purple folder represents the first time seen by the  
364 Board and he has not had the opportunity to review the material.

365  
366 Mr. Sakati made the motion to defer the re-hearing to the next available meeting,  
367 8/22/2024. Mr. Lanphear seconded the motion. Mr. Sakati stated that it is best for  
368 the Town and the Applicant to have the opportunity to review the material presented  
369 and not be forced into making a hasty decision. Mr. Lanphear stated that even though  
370 the request was timely filed within the thirty day window, this is the first opportunity  
371 the Board has seen the material. Mr. Dumont asked that the motion be amended to a  
372 specific date, a date certain. Mr. Martin stated that the material was received Monday,  
373 July 22 and if scheduled/placed on the Agenda for the regular meeting in August,  
374 August 22, 2024, the Board will have acted in the required timeframe. Motion  
375 amended to specify to the August regular meeting. Roll call vote was 5:0. Amended  
376 motion carried. Mr. Daddario recapped what transpired to the public.

377  
378 Member of the public asked if they would receive notice of the August meeting. Mr.  
379 Daddario stated that no notices would be sent. That the public would not be invited to  
380 speak, that the purpose and intent of the August meeting will be to review the  
381 information to determine whether to grant a re-hearing based on certain criteria and if  
382 a re-hearing is granted, then it would be a public hearing and the proper notices  
383 would be sent. Mr. Martin noted that the information contained in the purple folder is  
384 public record and, if desired, a copy could be requested.

385  
386 **VII. REVIEW OF MINUTES:**

387  
388 06/27/2024 draft-Meeting Minutes  
389 Motion made by Mr. Lanphear, seconded by Mr. Sakati and unanimously voted to  
390 approve the 6/27/2024 Minutes as edited.

391  
392 **VIII. OTHER BUSINESS:**

393 No other business was presented for Board consideration.  
394

395 **IX. ADJOURNMENT:**

396 Motion made by Mr. Martin and seconded by Mr. Lanphear to adjourn the meeting  
397 and unanimously voted to adjourn the meeting. The 7/25/2024 ZBA meeting  
398 adjourned at 8:26 PM.

399  
400 Respectfully submitted, Louise Knee, Recorder \_\_\_\_\_