



TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Dillon Dumont, Selectmen Liaison

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MEETING MINUTES – July 25, 2024 - approved

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.

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

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

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

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

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

(1) *not contrary to public interest*

- The building is set back over 200' from the road and barely visible from the road and has been occupied as a 2-unit building since approximately 2009 and referenced as a 4-unit building in the assessing records
- The footprint of the building has not been altered from having been a two-family residence'
- Granting the variance will not affect the character of the neighborhood
- It has existed in the neighborhood for over 15 years and the granting of the variance will not change the neighborhood and nor will it threaten public health, safety or welfare as the units are existing and the leach field and septic have been upgraded to service the property
- The property will be inspected by the fire safety division and there is sufficient parking and infrastructure in place
- Allowing the existing units to continue to be occupied is not contrary to the public interest

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

- 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*

- substantial justice would be done as this property has been maintained as a 4-unit building since approximately 2009, that the current owner bought the property in 2021 as advertised as a 4-unit building, and the assessor's card has the lot listed as a 4-family
- denial of the variance would create harm to the property owner and the tenants and are not outweighed by any harm to the public
- the property owner has no knowledge whether the building ever returned to a duplex after the 2015 denial

(4) *not diminish surrounding property values*

- Granting the variance will not cause any real change as to what has long been a 4-family use of the building in the neighborhood since approximately 2009
- Adjacent properties will not be adversely affected as they will see no change to the exterior of the building nor any practical change from what has been in use for years
- The proposed use will not diminish surrounding property values
- Atty. Hartigan submitted J. Chet Rogers, MAI, Certified General Appraiser NHCG-727 of Hollis, NH 6/11/2024 assessment attesting that there would be no diminishment to surrounding property values

(5) *hardship*

- the special condition is satisfied due to it being a large parcel (5.79 acres) with 252,212 SF where only 60,000 SF is required in the TR Zone
- in addition there are wetlands along the front of the property and power lines along the rear of the property
- it has been a 4-unit building for over a decade and a half, illegal yet pre-existing
- enforcing the density regulations against this property bears no fair and substantial justice to the purpose of the zoning ordinance to prevent overcrowding
- this large lot is in compliance with all zoning requirements except its use and requiring compliance presents a hardship to the property owner and tenants occupying the units and brings no relief to the neighborhood or its surroundings as there would not be any exterior change to the building whether it convert to a 2-unit or remain a 4-unit building
- the property has sufficient land area to be subdivided and where duplexes would be permitted on each lot; however, the wetlands along Robinson Road affecting the frontage and a significant power line easement to the rear of the property, the lot cannot be subdivided.
- It is a reasonable use to allow the existing units to remain with no changes or harm to the public.

Atty. Hartigan stated that her client bought the property in 2021, as advertised, as a four-unit building and added that the building has been being taxed as a four-unit building since 2015.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

stated that the Fire Department is aware and that his sister does come over and handles the receipts and files stuff in the file cabinet downstairs. Mr. Hirst stated that he bought the house in 2011 and held a normal job until 2017 and then started his landscaping business.

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

- (a) nature of home office business
 - it is the home base for both his LLCs – Hirst Mosquito and Tick, LLC and Hirst Outdoors, LLC
 - both businesses use this location for storage of materials, vehicles and paperwork
- (b) is home occupation secondary to the principal use of a home
 - yes it is secondary – it is his primary residence and he lives there with his two children, and dog and cats
- (c) will it be carried within residence or accessory structure
 - yes, for storage of materials and tools and paperwork
 - tools stored in sheds, 4 trucks for landscaping business, no landscaping materials stored on site
- (d) no exterior display of the business
 - no signs on property
 - 2 sheds on property contain equipment, and plows in open
 - one of the pickup trucks has lettering for the mosquito business
- (e) no exterior storage unless screened
 - two sheds
 - two plows out in the open
 - there is no storage of materials – stone, mulch etc. – on site
- (f) no objectionable circumstances such as noise, odors etc.
 - only noise will be loading and unloading of vehicles
- (g) traffic not to exceed volume in a neighborhood
 - no extra traffic from the business
 - only two employees may pass through to his business
- (h) parking to be off-street and limited to 2 vehicles at any one time
 - no customer/client parking as they do not come to the site
- (i) home occupation to be conducted only by residents of dwelling
 - yes, himself, Todd Hirst
- (j) number of vehicles for business
 - 4 trucks – 1 truck for the Mosquito and Tick, LLC that has lettering on the truck; and 3 trucks for Hirst Outdoors, LLC

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

Mr. Daddario opened the meeting for public comment. No one addressed the Board. Mr. Martin read into the record letter dated 7/11/2024 from Trudi J. Durham, 9A David Drive, who expressed support for Mr. Hirst operating his business from his home. Mr. Daddario closed public testimony at 8:09 PM.

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

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

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

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

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

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

Mr. Sakati voted to grant
Mr. McDonough voted to grant.
Mr. Daddario voted to grant.

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

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

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

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

VII. REVIEW OF MINUTES:

06/27/2024 draft-Meeting Minutes

Motion made by Mr. Lanphear, seconded by Mr. Sakati and unanimously voted to approve the 6/27/2024 Minutes as edited.

VIII. OTHER BUSINESS:

No other business was presented for Board consideration.

IX. ADJOURNMENT:

Motion made by Mr. Martin and seconded by Mr. Lanphear to adjourn the meeting and unanimously voted to adjourn the meeting. The 7/25/2024 ZBA meeting adjourned at 8:29 PM.

Respectfully submitted,

Gary M. Daddario, ZBA Chairman