



## Hudson Board of Appeals

Town Hall

Hudson, Massachusetts 01749

### Minutes of Meeting— March 9, 2017

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The Hudson Board of Appeals met in the Selectmen's Hearing Room, 2<sup>nd</sup> Floor, Town Hall, Hudson, Massachusetts. At 7:00 PM, Lawrence Norris called the meeting to order.

Members Present: Lawrence Norris, Dorothy Risser, Todd Pietrasiak, Jason Mauro, Darja Nevits; Christopher Tibbals, and Jill Schafer

Staff: Jack Hunter, Director of Planning & Comm. Dev.

Chairman Lawrence Norris convened the meeting at 7:00 PM. He apologized for all of the unfortunate events over the past few months. He stated that everyone is now present and ready to move the subject petitions forward.

#### **Petition: 174 Cox Street, Special Permit**

Present were: Frank Budrewicz, Petitioner, resident of 174 Cox Street  
Sean Barrows, Engineer/Architect

Chairman Norris read the public hearing notice, and Dorothy Risser read the right of appeal.

Sean Barrows, Architect for the petitioner provided an overview of the layout of the new unit, explained the future living arrangements, and described the ingress and egress. Frank Budrewicz gave a history of the house and noted that his family has resided in the house for 45 years. Most recently, he explained, his son and daughter –in- law have moved back into the residence with their grandson, and the proposed addition would allow the space for the entire family to comfortably reside at the premise. Mr. Budrewicz noted that the house is served by sewer and water; he indicated that all utilities for the new accessory unit will be connected through the main house.

Dorothy Risser inquired further about the ingress and egress relative to the barn, to which Mr. Barrows explained that the main part of the house has a door that will remain in place. He pointed to the layout plan to indicate how the occupants would circulate between the main house and the accessory unit. Ms. Risser followed up about whether there was a door adjacent to the farmer's porch. Mr. Barrows clarified that the structure that Ms. Risser is referring to is actually a window not a door.

Chairman Norris inquired about whether the required residency affidavit was included as part of the petition. Several Board Members pointed out that indeed the required affidavit was included in the petition.

Todd Pietrasiak asked if the barn was being torn down and rebuilt. Mr. Barrows explained that the barn would be torn down and rebuilt with a new foundation. Mr. Pietrasiak then asked if alternative location for the front door was investigated as part of the design of the accessory unit. Mr. Barrows explained that the door was kept the way it is so that a vestibule could be created, but he does have a design alternative for the front door. Mr. Pietrasiak underscored that Section 5.2.6.4 Section F of the Zoning By-Law requires that the a new separate entrance to the unit be created, and inquired if the petitioners would entertain the design alternative to meet the intent of this requirement. Mr. Barrows indicated that the petitioners would be amenable to this design alternative.

Darja Nevits asked Mr. Barrows to clarify the light storage areas depicted on the plans could not be used as habitable areas. Mr. Barrows walked through the design and underscored that the angle of roofline slopes in such a way that it would be impossible for the storage areas to be used as habitable space. Ms. Nevits followed up and asked Mr. Barrows to discuss the area underneath. Mr. Barrows indicated that the existing garage is structurally unsound for future car use and the area underneath currently functions as crawl space. To accommodate the new garage, Mr. Barrows stated that no digging would be required, as this space would be used to support the foundation.

Chairman Lawrence Norris, seconded by Dorothy Risser moved to enter deliberative session. VOTE: 7-0-0 Unanimous

Chairman Norris stated that this petition is fairly straightforward and nice use of the space, especially the existing crawl space. Chairman Norris then asked members of the Board to state to weigh in on the petition.

Darja Nevitis expressed her desire to see the alternative design illustrated on the plans; however, she indicated that she doesn't have a n issue with the location of the door since it would be located in the same spot.

Todd Pietrasiak reminded everyone that the Board has enforced this provision within the Accessory Dwelling Unit regulations with respect to the location of the door.

Darja Nevitis again expressed that she does not have a problem with the door—that it's a new door. Dorothy Risser followed up that comment by stating that it's a not a new placement of the door, but rather a new door with the same façade.

Todd Pietrasiak expressed his comfort level with the design and stated that the original door placement, not the alternative design is acceptable.

Todd Pietrasiak, seconded by Darja Nevits moved to approve the special permit. VOTE:5-0-0 Unanimous

Lawrence Norris, seconded by Todd Pietrasiak, made a motion to come out of deliberative session. VOTE: 7-0-0 Unanimous

**Petition; 16 Apsley Street, Variance**

Present were: Edward Andrade, representing the petitioners, Antonio C. Andrade and Ilda C. Andrade

Chairman Norris read the public hearing notice, and Dororthy Risser read the right of appeal. Chairman Norris then explained the process for granting a variance and noting that it is a different process from a special permit request.

Edward Andrade introduced himself and stated that he is son of the petitioners, who were out of the Country at this time of this meeting. He noted that he would be presenting the petition on their behalf.

Mr. Andrade provided an overview of the proposed project, and noted that there was a mistake in the petition and in the public hearing notice regarding the proposed dimensions of the garage. He explained that the garage dimensions are actually 12 X20 feet, not 17 X20 as described in the petition and the notice. Mr. Andrade noted that his parents have lived at 16 Apsley Street for over 29 years, and they intend to stay in the house. He explained that his parents—in an attempt to make the residence more accommodating for them—they are hoping to add a garage at the top of the driveway, which has available yard space. He indicated that even with the available yard space, the structure will not meet the required setbacks (short by 3 feet) due to the location of the existing fence and other appurtenances. Mr. Andrade passed out additional pictures of the driveway and described all of the lots in the neighborhood as being small and thin.

Chairman Norris explained to Mr. Andrade that in order for the Board to consider a variance to find certain conditions; and, one of those conditions needs to be related to shape and/or uniqueness of the lot. Chairman Norris asked if Mr. Andrade would elaborate on the conditions related to the shape, soil, and topography of the lot. Mr. Andrade responded that there are some elevation issues, and the that lot (in relation to the adjacent properties) is right in the center of the hill, which causes the steep slope in the driveway. Chairman Norris again asked Mr. Andrade to articulate the uniqueness of the lot. Chairman Norris stated his understanding that there is nowhere else for the garage to be located; but, the hardship still needs to be demonstrated. Chairman Norris asked if it were possible for the driveway to shifted, but Mr. Andrade indicated that the existing shed would be in conflict.

Chairman Norris asked if members of the Board of had any further questions for Mr. Andrade.

Jason Mauro inquired about the color of the proposed garage, to which Mr. Andrade said that it would be brown.

Dorothy Risser requested that exact distances between the proposed garage and the adjacent appurtenance be articulated in more detail . In particular, Ms. Risser inquired exactly how many feet of the lot line that proposed garage would be located, to which Mr. Andrade said 7 feet.

Todd Pietrasiak asked the petitioner what exactly is being depicted in the photographs provided as part of the petition. Mr. Andrade indicated that the photographs depict the adjacent houses and their lots, and his intention of showing them was to demonstrate that the proposed garage would not change the look of the neighborhood. The petitioner further underscored that the adjacent properties all have garages that are closely situated at or near the property line. Mr. Pietrasiak followed up and asked the petitioner how he knows that he needs three feet to located the proposed garage. The petitioner indicated that the measurement was determined by using the fence line as a starting point. Mr. Pietrasiak then asked if a survey was done to determine these measurements and the exact location of the lot line and the existing appurtenances, to which Mr. Andrade said that the property has not been surveyed for the purpose of constructing a new garage.

Chairman Norris, Ms. Risser, and Mr. Pietrasiak all concurred that the proper method for determining whether a variance is required, i.e., surveying the property should be done before the Board even entertains a variance. Chairman Norris underscored the importance of following the correct procedure to avoid any future regulatory issues for the petitioner and his parents.

Chairman Norris then asked if any members of the audience would like to speak to the petition before Board; there were none. Chairman Norris recommended that the matter be continued so that the petitioner can furnish the appropriate documentation for them to consider the variance.

Darja Nevits outlined the procedure for the Board to entertain a variance and reminded the petitioner that obtaining a variance is more difficult than obtaining a special permit.

Jack Hunter, Planning Director summarized the documentation requested by the Board for the next meeting: 1) a survey; 2) a plot plan; 3) a photo of the garage prototype. Mr. Hunter stated that he and Kristina Johnson, Assistant Director will work with the petitioner to address the issues raised by the Board.

**Petition; 46 Church Street, *Special Permit***

Present were: Attorney Jose Moriera, representing the petitioner  
Lewis Colton, Architect  
Anna Sousa, Petitioner  
Debbie Sousa, Petitioner

Chairman Norris read the public hearing notice, and Dorothy Risser read the right of appeal.

Chairman Norris turned the floor over to Attorney Moreira, attorney representing the petitioners Anna and Debbie Sousa. He also indicated that should the Board look favorably upon the petition and grant the special permit, both Anna and Debbie will be residing within two of the new dwelling unit; furthermore, he underscored his familiarity with the property, as having represented the previous owners.

Attorney Moriera discussed his conversation with the Building Commissioner, Jeffrey Wood as to whether this property is or has always been a two-family property. According to Attorney Moriera, Mr. Wood indicated that it was his understanding that the property has always been a two family; however, Attorney Moriera understands that there may be still some questions as to whether this property is a two-family. Since the petitioner is moving forward under Section 5.6.1 of the by-laws, Attorney Moriera underscored the importance of addressing this issue of the two-family to establish the existence of the non-conformity.

Attorney Moriera presented a timeline (based on information received from the Town Clerk's Office) of the property ownership of 46 Church Street and the number of person living at the property. His timeline suggested that the property was occupied by one occupant through the late 1970s and then became occupied by multiple persons. Furthermore, he discussed several enforcement actions that he believes also suggests that the property functions (and is considered by the Town) as a two-family.

Chairman Norris—in light of the letter received by Matthew Runkle—if there has been any zoning conditions or activity associated this property, to which Attorney Moreira responded that he conducted research at the Town Clerk's office and found no records as such.

After considerable discussions amongst the Board members regarding the regulatory technicalities regarding this petition, Jack Hunter, Planning Director offered some guidance and thoughts. Mr. Hunter highlighted the recent change to MGL Chapter 40A, Section 6. He explained that Chapter 6 contained a 10-year "sunset clause" for all structures that did not obtain building permit (and provided no complained) became legally non-conforming; he underscored that it never dealt with the use. Mr. Hunter then went on to explain that Section 6 has been changed to deal with the use, so now after ten years the use will become legal non-conforming. Mr. Hunter stated his belief that

the burden is on the applicant to prove to the Board that 46 Church Street is indeed a legal two-family non-conforming use. Essentially, Mr. Hunter stated, the burden is on the petitioner to prove that the use pre-existed the ten years as stipulated in Chapter 40, Chapter 6.

To avoid having a circular argument about the legal technologies regarding the petition, Chairman Norris recommended that the petitioner continue with the presentation. He indicated his willingness to revisit any question that may have and go on from there.

At this time, Lewis Colton, provided an overview of the site plan. Mr. Colton underscored that the site plan meets all requirements for setbacks, driveways, height, drainage; circulation and parking, snow storage, trash removal, and landscaping. He also highlighted the following: 1) the added fencing to separate the property from the abutters; 2) new updated site utilities will be provided; 3) the access to and from the property; and 4) the configuration of the units on site. Members of the Board and Mr. Colton engaged in a discussion about the various elements of the site plan including the drainage, water storage, snow storage, and fire equipment access.

Upon conclusion of the site plan presentation, Attorney Moreira discussed his thoughts relative to the character of the neighborhood. He noted that the abutters list generated by the Assessor's Department contained 7 single-family homes, 11 two-family homes, 5 three-family homes, and 3 four-family homes. It was his opinion that the surrounding neighborhood is higher density mixed-use area, and that this proposed use would be consistent with the existing neighborhood context.

Dorothy Risser asked the petitioner if the units would be sold as condos, or whether they would be rentals. Mr. Colton indicated that the two of the units would be owner occupied and the other two would be rentals.

Todd Pietrasiak requested that Attorney Moriera speak to the zoning district issue with respect to multi-family uses. He stated his understanding that the property is located within the SB District, but the SB District gives no standards or requirements for multi-families (as it's not an allowed use). He noted that the SB1 District provides extensive requirements and guidance for multi-family uses, and that the existing two-family meets those requirements, not the proposed four-family. Attorney Moreira stated the SB1 is not applicable to this petition, and the existing and proposed multi-family meets all the requirements except for the use, hence the non-conforming use.

Chairman Norris then opened up the floor for any audience input.

Blaire Parkson of 42 Church Street expressed his concerns about the size of the lot and the number of bedrooms being proposed as part of the four-family structure. Mr. Parkson stated that the use being proposed for the site is intense and excessive.

Elizabeth Thompson of 43 Church Street (also representing Dr. Don Dacier of 41 Church Street.) submitted a letter for the record and offered to summarize its contents.

After some research, she discovered that the none of the homes in the immediate area conform to requirements of the SB District. Ms. Thompson, however, stated that it her opinion that since the neighborhood is zoned SB there is an aspiration for the neighborhood to look and feel like a single-family neighborhood,. She noted that most of the houses “feel” like large-scale single –family homes, and that the proposed four-family at 46 Church Street does not have the same aesthetic essence. Furthermore, she highlighted that the look and feel of 46 Church Street does not match with the architectural uniqueness (porches, turrets, etc.)of the other properties within the neighborhood.

Sherry Matthew, 45 Church Street discussed the historical use of the property and her belief that the proposed use is much different than how it has been used in the past. Ms. Matthew expressed her concern that the proposed units are too oversized for the lot and that the design of the garages it too modern and does not fit within the neighborhood context. Ms. Matthew believes that this neighborhood has a historical character, and this proposed use does not match this character.

Matthew Runkle, of 42 Church Street first disclosed that he was once a prospective buyer of the property at 46 Church Street. Mr. Runkle echoed the previous abutters testimony regarding the desire and how it does not match the existing neighborhood character. He noted that the current house is in dire need of repair; however what it is replace with—even if it’s a multi-family should maintain the neighborhood character.

Members of the Board and the Attorney Moreira engaged in further dialogue about how legal underpinnings of legal conformities as it relates to the subject petition. It was decided that the matter be continued until the next month, and Chairman Norris requested that Town Counsel weigh-in on this matter to clarify the Board’s line of thinking.

#### **Director’s Report**

No report was given.

#### **Minutes**

**Lawrence Norris, seconded by Dorothy Risser made a motion to accept the minutes of January 11, 2017, as written.**

**Vote: 8-0-0, Unanimous.**

#### **Adjournment**

**At 9:40 PM, Todd Pietrasiak, seconded by Dorothy Risser, moved to adjourn.**

**Vote: 8-0-0, Unanimous**