



Hudson Board of Appeals

Town Hall

Hudson, Massachusetts 01749

Minutes of Meeting—October 12, 2017

The Hudson Board of Appeals met in the Selectmen's Hearing Room, 2nd Floor, Town Hall, Hudson, Massachusetts. At 7:00 PM, Vice Chairman Todd Pietrasiak called the meeting to order.

Members Present: Todd Pietrasiak, Vice-Chairman; Darja Nevits, Member, Christopher Tibbals, Member; Jill Schafer, Associate Member; Jason Mauro, Associate Member; Pamela Cooper, Associate Member

Staff: Kristina Johnson, AICP, Assistant Director of Planning and Community Development

Petition #2017-17; 46 Church Street, *Special Permit*

Present were: Attorney Joe Moreira, representing the petitioner
Ana Maria Sousa, Petitioner

Vice Chairman Pietrasiak read the public hearing notice for the above-referenced petition requesting a Special Permit pursuant to Section 5.1.6.1 for a change of a pre-existing nonconforming use to allow for the conversion of a two-family dwelling to a three-family dwelling. The subject property is located at 46 Church Street, Assessor's Map 19 Parcel 324 in the SB Zoning District.

Vice Chairman—for the benefit of attendees in the audience—explained the meeting format and protocol with respect to hearing the petition, Board Members asking questions, public comments, and deliberative session. He underscored that public comment is not accepted during the deliberative session, as the Board discussed the petition amongst themselves and take a vote. He also noted that the Board has heard a similar petition to what is before them tonight, and many aspect of the petitioner remain the same.

Ms. Darja Nevits, acting as the Board Clerk read the right of appeal.

Attorney Moreira, as a point of order, requested clarification on what information he should be presenting to Board, whether he should start from scratch, or whether it would be appropriate to incorporate all of the evidence presented previously into the new petition. He noted that the prior petition was denied, and that the petition now before the Board is a request to convert a two-family dwelling to a three-family dwelling.

Vice Chairman Pietrasiak concurred with this approach and expressed his belief that it was unnecessary to revisit the prior evidence, especially with respect to the establishment of the non-conformity.

Attorney Moreira then proceeded to highlight the changes to the site plan, including the reduction of the number of units (which he noted would be occupied by family members), and the removal of the overhang. He also emphasized that the revised site plan was reviewed by Town Staff

Assistant Director Kristina Johnson noted that the revised site plans were reviewed by the Department of Public Works, the Building Department, the Fire Department, and the Police Department, and there were no comments issued on the revised the site plans. Further, she mentioned that the Planning Board declared the subject petition a non-repetitive petition and approved the minor modification. She indicated that the site plan decision and the letter to the Town Clerk were both contained in their meeting packets.

Mr. Lew Colton, Architect for the project, proceeded to give a detailed presentation of the revised site pan. He highlighted the architectural revisions to exterior of the building and noted the following: the reduction of the building footprint, the increase in open space, increased landscaping and buffering, especially in the front where the previous parking spaces were located, and all the entry ways would be covered.

Ms. Jill Schafer inquired about the applicability of Section 5.1.6.1 of the Zoning By-Laws and whether this request is being pursued under the correct section. Ms. Schafer indicated her discomfort with the use of the word “enlargement” to describe the petition request, when, as she noted, the petitioner is willingly demolishing the building. Attorney Moreira stated that it is his argument that 5.1.6.1 covers a “premises; “ which, as such, he believes is being “enlarged” in this specific circumstance. Ms. Schafer then inquired whether Section 5.1.6.3 is the more appropriate Section of the By-Laws for this request. Attorney Moreira expressed his understanding of that Section of the By-Laws to mean that those uses by-right who have been damaged or destroyed would not be subject to the review of the Zoning Board, provided that there was no increase in the non-conforming nature of the building.

Ms. Schafer continued to express her discomfort with the word “enlarge,” and made reference to Massachusetts case law that indicates that the “enlargement” does not pertain to the demolition of an existing non-conforming building and the construction of a new non-conforming building. Lew Colton underscored that the new resulting building footprint would actually be smaller; however, Ms. Schafer once again stated the physical demolition of the building is voluntary.

Ms. Darja Nevits offered a recommendation to use the word “change” rather than “enlarge” and keep the petition request under Section 5.1.6.1 of the By-Laws. Vice Chairman Pietrasiak offered his understanding of the applicability Section 5.1.6.3 to this petition, in which he believes that the non-conformity could not be increased, and thus

the petitioner would be only allowed to keep a two-family dwelling on the site. He expressed his opinion that 5.1.6.1 is the correct provision for this petition as it allows for an enlargement of the non-conformity. Attorney Moriera inquired whether Town Counsel Attorney Cirpiano offered an opinion on this matter, to which Vice Chairman Pietrasiak indicated that Attorney Cipriano did not weigh in on the applicability of 5.1.6.3 but offered significant guidance to the Board regarding proceeding under 5.1.6.1

Jason Mauro concurred with Vice Chairman Pietrasiak's assessment of the applicability of 5.1.6.1, and stated that he believed Attorney Cipriano sufficiently addressed the issue in his legal opinion. Mr. Mauro suggested that the use of the word "change" vs. "enlarge could be worked into any final decision rendered.

Ms. Schafer underscored that there is an issue using the word "enlarge" in light of Massachusetts case law that interpreted the word enlarge to not apply to the demolition of a non-conforming structure and the construction of a new non-conforming structure. Consensus was reached amongst Board Members to consider this petition as a change of the non-conforming use rather than an enlargement of the non-conforming use.

Mr. Mauro inquired about the circulation into the handicap space located on the top left of the site plan. Mr. Colton indicated that extra space had been designed in order room for vehicles to maneuver into and out of that space. Ms. Pamela Cooper inquired about the need to provide a handicap space. Attorney Moreira cited the provision of the Zoning By-Laws 7.1.4.4 that no less than one (1) parking space be designated as handicap.

Mr. Matthew Runkle, of 42 Church Street indicated that he has reviewed the revised site plans, and that the design revisions satisfactorily address the concerns that had been raised previously. He welcomed the Sousa's to the neighborhood.

Vice Chairman Pietrasiak moved to enter deliberative session, seconded by Christopher Tibbals. 6-0-0. Unanimous

Jason Mauro, seconded by Todd Pietrasiak, moved to approve Petition #2017-17 to allow for the conversion of a pre-existing two-family dwelling to a three- family dwelling.

With the following findings:

1. The subject property is located in the SB Zoning District.
2. The proposed change of the use from a two-family dwelling to a three-family dwelling shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.
3. The use will not have an adverse effect on present and future dwellings in the vicinity, and is in harmony with the general purpose and intent of the Hudson Zoning By-Laws.

4. The use will not create traffic hazards or volume greater than the capacity of the street affected.
5. The proposed change, extension, or alteration is not contrary to the best interests of the inhabitants of the Town of Hudson.

And with the following conditions:

- 1) No dumpsters shall be located on the premises; and
- 2) No bumpers shall be placed at the end of any of the eight (8) parking spaces.

5-0-0. Unanimous

Assistant Director's Report

Ms. Johnson provided an overview of the recent amendments to MGL 94G—the Recreational Marijuana statute and how it will affect the Town of Hudson moving forward.

Minutes

Vice Chairman Pietrasiak moved to approve the minutes from the August 10, 2017 and September 14, 2017 meetings, subject to the correction of the noted scrivener's errors. Seconded by Jason Mauro. 6-0-0. Unanimous

Adjournment

Vice Chairman Pietrasiak moved to adjourn the meeting at 8:00 PM. Seconded by Vice Darja Nevits. 6-0-0. Unanimous.