



Hudson Board of Appeals

Town Hall

Hudson, Massachusetts 01749

Minutes of Meeting—October 10, 2019

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

Members Present: Todd Pietrasiak, Chairman; Dorothy Risser, Clerk; Jill Schafer, Member; Jason Mauro, Member; Pamela Cooper, Associate Member; Ronald Sorgman, Associate Member, Justin O'Neil, Associate Member.

Members Absent: Darja Nevits, Vice Chair

Other Attendees: Kristina Johnson, AICP, Assistant Planning Director
Jeffrey Wood, Building Commissioner

Chairman Pietrasiak convened the meeting at 7:00 PM.

Petition #2019- 14 136 Main Street

Present were: Joe Paneda, Property Owner
Joseph Moreira, Property Owner's Attorney

Chairman Pietrasiak read aloud the public hearing notice for the above-referenced petition, which entails appeal pursuant to MGL Chapter 40A Section 8 from Jose P. Peneda of the Hudson Building Commissioner's Cease and Desist Order dated August 5, 2019 concerning property located at 136 Main Street, Assessors Map 29 Parcel 562, in the C-1 Zoning District. The Board may consider any other action deemed necessary relative to this matter.

Dorothy Risser read the right of appeal.

Attorney Moreira introduced himself and noted he was representing Joe Paneda, the property owner of 136 Main Street and the subject of the recently issued cease and desist order.

Prior to proceeding with testimony, Chairman Pietrasiak noted that there were some questions about whether the Mr. Paneda had standing before the Board with this appeal. Chairman Pietrasiak expressed his understanding that pursuant to Chapter 40 A Section MGL Chapter 40A Section 15 which states:

Any appeal to a board of appeals from the order or decision of a zoning administrator, if any, appointed in accordance with section thirteen shall be taken within thirty days of the date of such order or decision or within thirty days from the date on which the appeal, application or petition in question shall have been deemed denied in accordance with said section thirteen.

Chairman Pietrasiak pointed out that date timestamped by the Town Clerk on the appeal was actually 31 days from the time of the issuance of the cease and desist order. Attorney Moreira stated that he filed the appeal on September 5, 2019 immediately following Labor Day weekend, as the cease and desist order was filed on August 5th. Furthermore, Attorney Moreira stated that it took longer than usual to obtain a certified abutters list from the Assessors' Office.

Attorney Moreira emphasized that the filing after 31 days was an oversight, and noted that there is no proof that his client, Joe Paneda received the cease and desist order on August 5, 2019. Jill Schafer reminded the Board that Chapter 40A Section 15 does not specify how the notice is received, or the date when the notice is received; it just states that the 30 day filing period for the appeal is from the date on the cease and desist notice.

Attorney Moreira requested that the Board consider a continuance in order to give him more time to respond to this issue.

Chairman Pietrasiak seconded by Jason Mauro moved to continue the public hearing until November 14, 2019. 7-0-0. Unanimous.

Petition #2019- 15 279 Coolidge Street

Present were: Declecio Gomes, appellant and owner of Mr. Gomes Granite and Marble
Attorney Michael Norris, attorney for the appellant

It should be noted that the property owner (s) was not in attendance.

Chairman Pietrasiak read the public hearing notice entailing an appeal from Gomes Marble and Granite of the Hudson Building Commissioner's Cease and Desist Order dated August 19, 2019 concerning a violation of Special Permit #18-8617 pursuant to M.G.L Chapter 40A Section 8. The subject property is located at 279 Brigham Street, Assessors Map 73 Parcel 34 in the SA-7 Zoning District. The Board may consider any other action deemed necessary relative to this matter.

Dorothy Risser read the right of appeal.

Chairman Pietrasiak first discussed the hearing logistics with the appellant and his attorney, and for the benefit of meeting attendees.

Attorney Morris provided an overview of the history of commercial uses at the subject property, even though the property is zoned residential. He noted that the property was originally a farm and then was subsequently divided up amongst the members of the Davis family, which they operated as a paving, striping, and roadway-construction related business. Attorney Norris described the existing garage on the property, and stated that in 1988, the property owners appeared before the zoning board of appeals to enlarge the garage. Attorney Norris stated that the Board of Appeals granted a special permit for the enlargement of the garage, and noted since that time the garage has been used for various commercial business purposes since then.

Attorney Norris then went on to discuss the two violations cited in the cease and desist order. The first violation fell under Section 5.2.2 of the Zoning By-Laws, prohibiting the operation of a commercial business out of a residential property. Attorney Norris contends that current use is a pre-existing non-conforming use, and that the property has been used for commercial –related activities since the building was constructed prior to zoning and subsequent to the issuance of the Special Permit. The second violation cited in the cease and desist order was with respect to the Special Permit issued in 1988. He underscored that the conditions attached to the Special Permit only prohibit the structure to be used for oil changes and/or other mechanical work.

Davis sold the business in 2001 and have rented out the property to a several commercial tenants including: carpet installation business, appliance storage for a local appliance store, and a granite storage and fabrication facility. The property has been used as a granite storage and fabrication facility for the past 13 years, with the current tenant continuing the same operation.

Attorney Norris concluded by stating that his client is not in violation of the Special Permit or the Zoning By-Laws, and requested that the Board consider overturning the enforcement action of the Building Commissioner.

Chairman Pietrasiak requested that Attorney Norris expand upon the argument as to how Chapter 40A Section 7 is applicable in this specific case.

Attorney Norris argued that this section of Chapter 40A is applicable, as there had not been any enforcement action for 10 years with respect to the uses in the Special Permit. He further argued that current use of the property is a pre-existing non-conforming uses and complies with the Special Permit issued in 1988.

Members of the Board discussed Attorney Norris's legal reasoning. Although the Special Permit issued in 1988 represents an acknowledgement of the pre-existing nonconformity; however, the Board expressed their uncertainty about the specifics of the nonconformity, as the Special Permit is silent on that matter. Further the Board was unclear as to how the garage was non-conforming, whether it was the use or the its

Chairman Pietrasiak read into the record Chapter 40 Section 7 verbatim:

If real property has been improved by the erection or alteration of 1 or more structures and the structures or alterations have been in existence for a period of at least 10 years and no notice of an action, suit or proceeding as to an alleged violation of this chapter or of an ordinance or by-law adopted under this chapter has been recorded in the registry of deeds for the county or district in which the real estate is located or, in the case of registered land, has been filed in the registry district in which the land is located within a period of 10 years from the date the structures were erected, then the structures shall be deemed, for zoning purposes, to be legally non-conforming structures subject to section 6 and any local ordinance or by-law relating to non-conforming structures.

Dorothy Risser asked Jeffrey Wood, Building Commissioner if prior to this current cease and desist order whether there had been complaints regarding the use of the property, to which he said there had been complaints regarding noise, dust, and the visual impacts of the storage of granite slabs.

Mr. Gomes, the property owner noted to the Board that he addressed any all issues regarding noise, dust, and visual impacts.

In an effort to get the decision correct, the Board felt it would be prudent to obtain a legal opinion from Town Counsel on the applicability of Chapter 40A Section 7 to this appeal, and directed Kristina Johnson, Assistant Director to request a legal opinion prior to the next meeting.

Chairman Pietrasiak seconded by Dorothy Risser moved to continue the public hearing until November 14, 2019. 7-0-0. Unanimous

Petition #2019- 16 82 Lincoln Street

No one was present for the above-referenced matter.

Chairman Pietrasiak read aloud the public hearing notice for the above-referenced petition which entails the consideration of a revocation of Special Permit #1013 granted on April 8, 2010 pursuant to Section 5.2.6 of the Town of Hudson's Zoning By-Laws to construct an Accessory Dwelling Unit. The subject property is located at 82 Lincoln Street, Assessors' Map 19, Parcel 82 in the SB Zoning District. The Board may consider any other action deemed necessary relative to this matter.

Dorothy Risser read the right of appeal.

Chairman Pietrasiak noted that the new property owner submitted a notarized letter to the Building Commissioner regarding the requirements to occupy the main house or the accessory dwelling unit. Based on this letter, Chairman Pietrasiak moved seconded by Dorothy Risser to take no action on the revocation and keep Special Permit #1018 in full force and effect. 5-0-0. Unanimous. ***Voting on this matter: Todd Pietrasiak, Dorothy Risser, Jill Schafer, Jason Mauro, and Pamela Cooper, first associate***

Petition #2019- 17 91 Hunter Avenue

Present were: Kathleen Adams Property Owner
Scott Hayes, Forsyte Engineering

Chairman Pietrasiak read aloud the public hearing notice the petition of Kathleen Adams to expand a non-conforming structure pursuant to Section 5.1.6.3 of the Town of Hudson Zoning By-Laws . The subject property is located at 91 Hunter Avenue, Assessors Map 25 Parcel 9 in the SB Zoning District. The Board may consider any other action deemed necessary relative to this petition.

Dorothy Risser read the right of appeal.

Scott Hayes presented an overview of the petitioner's plans to expand a pre-existing non-conforming garage, and noted that the existing structure does not conform to the dimensional requirements. Mr. Hayes indicated that the expansion (adding 8 feet) would conform to the dimensional requirements, and is seeking a variance to allow for the expansion.

Dorothy Risser noted that petitioner may be confused by the action required to expand the non-conforming structure. Pursuant to the Zoning By-Laws, a Special Permit, not a variance, would be required to expand the non-conforming structure. After some discussion, the Board reached a consensus that the subject petition, as it concerns a nonconforming structure, falls under the provisions of Section 5.1.6.2 of the Zoning By-Laws.

Chairman Pietrasiak seconded by Dorothy Risser voted to enter deliberative session. 7-0-0. Unanimous.

Board members agreed that the proposed alteration of the garage of the garage would create a safer condition on the property, and offered no further comments.

Chairman Pietrasiak, seconded by Dorothy Risser moved to approve Petition #2019-17 and grant a special permit with the standard conditions for the alteration of a nonconforming structure in accordance with architectural drawings dated September 8, 2019 at 91 Hunter Avenue pursuant to Section 5.1.6.2 of the Town of Hudson Zoning By-laws. 5-0-0. Unanimous. ***Voting on this petition: Todd Pietrasiak, Dorothy Risser, Jill Schafer, Jason Mauro, Pamela Cooper, first associate***

Chairman Pietrasiak seconded by Dorothy Risser voted to leave deliberative session. 7-0-0. Unanimous.

Petition #2019- 18 42 Lincoln Street

Present were: Michael and Jennifer Allen, petitioners

Jason Mauro read aloud the public hearing notice for the above-reference petition, which entails a request for a variance from Section 6.3.1 of the Town of Hudson Zoning By-Laws to construct a 24 X 42 foot garage in the front yard setback. The subject property is located at 42 Lincoln Street, Assessors Map 19 Map 109 in the SB Zoning District. The Board may consider any other action deemed necessary relative to this petition.

Dorothy Risser read the right of appeal.

Michael Allen presented an overview of his petition, first noting the uniqueness of the lot, as the petitioners have two front yards, one fronting Lincoln Street and Warner Street. He further noted that their official mailing address is Lincoln Street, and their “backyard” is Warner Street. The petitioner argued that the layout of the property limits the where the garage can be located adjacent to the driveway on Lincoln Street.

Chairman Pietrasiak discussed the nature of the petition and the required findings the Board of Appeals is required to make relative to the issuance of a variance: ***1) Special circumstance exist that affect the parcel of land related to the soil conditions, shape, and topography that do not affect other properties in the same zoning district; 2) A literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise; and 3) Desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent of the by-laws.***

The Petitioner stated that the other lots along Warner Street are standard in shape and size, but their lot essentially a double lot with two front yards.

Dorothy Risser inquired as to why the garage could not be placed further back away from Warner Street and closer to the main structure. The Petitioner noted that there are existing trees in the back of the house that they would prefer not take down.

Patrick Manzo, 61 Warner Street, expressed concerns about the size and location of the garage. Mr. Manzo also expressed concerns that the garage may look like, and/or be used for commercial purposes.

John Rezendes, 38 Warner Street, expressed concerns about the size and location of the garage in relation to his driveway. Mr. Rezendes indicated that the location of the proposed garage could pose a safety issue for ingress and egress from his driveway.

After considerable discussion, members of the Board agreed that the petitioner should investigate some alternative designs for the size of the garage, and investigate the feasibility of locating the garage somewhere else on the site closer to the main structure. The Petitioner was presented three options for proceeding: requesting a continuance, withdrawing the petition without prejudice, or continuing with the Board voting. The Petitioner opted to request a continuance until next month.

Chairman Pietrasiak, seconded by Jason Mauro moved to continue the public hearing until November 14, 2019. 7-0-0. Unanimous.

Petition #2019- 19 299 Cox Street

Present were: Pamela Cooper, Petitioner and sole property owner

Justin O'Neil read the public hearing notice to construct a ± 650 square foot accessory dwelling unit pursuant to Section 5.2.6.4 of the Town of Hudson Zoning By-laws. The subject property is located at 299 Cox Street, Assessors Map 21, Parcel 67 in the SB Zoning District. The Board may consider any other action deemed necessary relative to this petition.

Dorothy Risser read the right of appeal.

Before proceeding with the presentation, Pamela Cooper read a letter from the Commonwealth's State Ethics Commission about appearing before the Zoning Board for her own petition. Even though Ms. Cooper is a member of the Zoning Board, the State Ethics Commission determined that it was acceptable for her to present the petition as she is the sole owner of the property. Ms. Cooper is recused, however, from voting on said petition.

Ms. Cooper presented an overview of her petition, which entail the construction of an accessory dwelling unit. Ms. Cooper indicated that her daughter will be living in the accessory unit.

Chairman Pietrasiak seconded by Dorothy Risser voted to enter deliberative session. 7-0-0. Unanimous.

Members of the Board expressed their belief that the petitioner had satisfied all of the requirements under the Accessory Dwelling Unit By-law. There were no further questions from the Board.

Jason Mauro seconded by Jill Schafer moved to grant the special permit under Section 5.2.6 of the Town of Hudson's Protective Zoning By-laws to allow the petitioner to construct an accessory dwelling unit in accordance with the plans dated September 17, 2019 on the subject property located at 299 Cox Street. 5-0-0. Unanimous . ***Voting on this petition: Todd Pietrasiak, Dorothy Risser, Jill Schafer, Jason Mauro, and Ronal Sorgman, second associate***

Chairman Pietrasiak seconded by Dorothy Risser voted to enter deliberative session. 7-0-0. Unanimous.

Minutes

Dorothy Risser seconded by Jason Mauro moved to approve the minutes of the September 12, 2019 meeting. 7-0-0. Unanimous.

Adjournment

Chairman Pietrasiak moved to adjourn the meeting at 9:10 PM. Seconded by Dorothy Risser. 7-0-0. Unanimous.