



Hudson Board of Appeals

Town Hall

Hudson, Massachusetts 01749

Minutes of Meeting—April 11, 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; Darja Nevits, Vice Chair; Dorothy Risser, Clerk; Jill Schafer, Member; Jason Mauro, Associate Member

Other Attendees: Aldo Cipriano, Esq., Town Counsel
Jeffrey Wood, Building Commissioner
Kristina Johnson, AICP, Assistant Planning Director

Chairman Pietrasiak convened the meeting at 7:00 PM.

Petition #2010-13; 82 Lincoln Street

Present were: Elijah Vandenburg, Property Owner
Scott Wrenn, Attorney for the Property Owner
Jeffrey Wood, Building Commissioner

Chairman Pietrasiak read aloud the public hearing notice for the above-referenced Petition to consider the 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 Single Family Zoning District. He further noted that the Board may take any other action deemed necessary relative to the matter.

Chairman Pietrasiak explained how this matter before the Board will be heard. He noted that the request for revocation has come from the Town of Hudson's Building Commissioner. As such, Chairman Pietrasiak stated that the Board will hear the case from Jeffrey Wood, Building Commissioner, and ask any questions of him, hear the testimony of the property owner, Mr. Vandenburg, and entertain questions from abutters. Finally the Board will ask any final questions, discuss the evidence presented and the testimony received, and will render a decision accordingly.

Chairman Pietrasiak asked Jeffrey Wood, Building Commissioner to present the Town's testimony and evidence relative to the revocation of the Special Permit. Mr. Wood presented an overview of the matter. He first noted that violation of Section 5.2.6 was discovered as a result of another violation on the on the premise, the parking of a

tractor trailer in the driveway, a violation of the general by-laws. Mr. Wood went to explain that when his office attempted to notify the property owner of the violation, it was discovered that the owner, Mr. Elijah Vandenburg had been residing out of State in New Hampshire, a violation of the Town of Hudson's Accessory Dwelling Unit by-laws. Section 5.2.6 of the Town of Hudson's Accessory Dwelling Unit (ADU) by-law requires that the owner of the property live on the premise, either in the accessory unit or in the main house, and submit a notarized affidavit to that effect. Mr. Wood indicated that Mr. Vandenburg had bought the property from Nelson and Tracey Graca, the original petitioners who received the Special Permit from the Zoning Board of Appeals to construct the accessory unit, and signed an affidavit upon purchase of the property on April 30, 2012 stating that he would live on the premise as required by the ADU by-law. Furthermore, Mr. Wood explained to the Board that Mr. Vandenburg was not living on the premise and that the ADU was unoccupied.

Mr. Wood acknowledged Mr. Vandenburg's verbal agreement to put the property up for sale, as a way to remedy the zoning violation, but noted that Mr. Vandenburg to date still has not put the property on the market. Because the zoning violation is still in effect, Mr. Wood recommended that the Zoning Board of Appeals consider the revocation of the Special Permit allowing for the ADU

Dorothy Risser pointed out for clarification that in order to comply with Section 5.2.6, the property owner would have to move back to the premise. She also inquired whether the tenant lived in the main house or in the ADU, to which Mr. Wood answered the ADU, and whether the truck that caused the first violation has been moved, to which Mr. Wood answered yes.

Chairman Pietresiak asked the property owner Mr. Elijah Vandenburg and his Attorney Scott Wrenn if they would like to provide the Board testimony relative to this matter.

Attorney Wrenn acknowledged that his client, Mr. Vandenburg had purchased the property on April 30, 2012, and upon purchase, had signed an affidavit relative to the requirement of the ADU Special Permit regarding living on the premise. Attorney Wrenn did say that although his client signed the paperwork, his client does not have any recollection of doing so or was aware of the requirement to live on the premise in perpetuity unless the property was sold. Attorney Wrenn explained that his client, due to work circumstances, moved out of state and rented

Attorney Wrenn stated that his client did receive the notification from the Building Commissioner concerning the zoning violation, but thought it was in regards to the illegal parking of the tractor trailer. Mr. Vandenburg acknowledged that he did sign the affidavit regarding the residency requirement when he purchased the property; however, at the closing, did not realize exactly what he was signing, and believed it was paperwork relative to his FHA Loan.

Chairman Pietrasiak inquired as to how many tenants are currently living on the premise, to which Mr. Vandenburg said only one. Mr. Vandenburg indicated that the second tenant who previously residing at the premise moved out in early March 2019, in response to remedying the situation regarding the zoning violation. Furthermore, Mr. Vandenburg mentioned that the current tenant is under court order to vacate the premise within 72 hours.

Jill Schafer inquired as to how Mr. Vandenburg purchased the property without any knowledge of the requirement relative to the ADU. Mr. Vandenburg mentioned that the property was for sale by the owner, and that he believes that full information about the property was not provided. Dorothy Risser followed up and asked why the bank in its title search did not come across this information, or wonder why there is a two-family house within a single-family zoning district. Ms. Risser also confirmed that Mr. Vandenburg filed a declaration of homestead in 2012.

Chairman Pietrasiak expressed his interpretation of the ADU by-law is clear about the requirement that the owner of the property shall occupy one of the units, and asked Attorney Wrenn his opinion of this interpretation. Attorney Wrenn agreed. Chairman Pietrasiak asked about next steps, as Mr. Vandenburg is not planning to move back to premise and the remaining tenant will be vacating. Attorney Wrenn expressed the preference of his client to keep the property and the ADU in compliance the by-law, as the loss of the permitted ADU could potentially have a chilling effect on the sale of the property.

Chairman Pietrasiak asked if members of the Board had any further questions. There were none.

Chairman Pietrasiak asked if Mr. Wood would like to respond to any of the testimony presented by the Attorney Scott Wrenn and his client Mr. Vandenburg. Mr. Wood inquired as to when Mr. Vandenburg plans to list the property for sale, to which he responded within the next ten days. Mr. Vandenburg stated that he has some delays getting the property ready for the market, as the prior tenant had damaged the premise. Mr. Wood asked what kind of interior renovations are being completed to fix the damage, to which Mr. Vandenburg stated that the renovation are cosmetic in nature.

Chairman Pietrasiak asked if any abutters and/or members of the audience wished to speak on this matter. There were no comments.

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Chairman Pietrasiak moved to enter deliberative session. Seconded by Dorothy Risser 5-0-0. Unanimous.

Chairman Pietrasiak asked members of the Board for their comments.

Jason Mauro expressed his understanding of the property owner's issues with respect to the tenants and not having full knowledge of the requirements of the ADU by-law. Notwithstanding, Mr. Mauro noted that the property owner is still not in compliance with the by-Law.

Darja Nevits agrees that the property owner is in not compliance with the ADU by-law, but pointed out that there is a fully-permitted ADU that could sit idle should the Board revoke the permit. Ms. Nevits expressed her belief that if the Board exercise a little patience, there could be a satisfactory resolution to the matter. She further expressed her belief that the Board should not keep this matter open ended and recommend a deadline for the property owner putting the property on the market.

Dorothy Risser stated that the property could be put on the market immediately even without the interior cosmetic improvements, and expressed confidence that it would sell immediately. Ms. Risser expressed her belief that getting the property on the market would be a step in the right direction towards addressing the zoning violation.

Chairman Pietrasiak presented the three actions that the Board can take relative to this matter: 1) revoke the Special Permit; 2) not revoke the Special Permit; or 3) continue the matter until next month.

Dorothy Risser stated that option 3 would be the best course of action. She recommended that the Board continue the hearing until next month to evaluate whether the property owner has made a reasonable effort to sell the property.

Dorothy Risser moved to continue the revocation hearing on petition 2010-13 until the May 9, 2019 with the understanding that the property owner will furnish information pertinent to the sale of the property. Seconded by Jill Schafer. 5-0-0. Unanimous.

Chairman Pietrasiak moved to come out of deliberative session. Seconded by Dorothy Risser. 5-0-0. Unanimous.

Petition #2019-02; 367 River Road

Present were: Paul M Prockett, Petitioner and property owner

Chairman Pietrasiak read aloud the public hearing notice for the above-referenced petition requesting a special permit pursuant to Section 5.2.6 of the Town of Hudson's Protective By-laws to construct a ±812 square-foot accessory dwelling unit. The subject property is located at 367 River Road, Assessors Map 62 Block 6 in the M7 Zoning District. The Board may consider any other action deemed necessary relative to the subject petition.

Dorothy Risser read the right of appeal.

Paul Prockett presented an overview of the petitioner and described the internal layout of the proposed Accessory Dwelling Unit (ADU).

Chairman Pietrasiak indicated that the plans supplied to the Board lack significant details to appropriately ascertain compliance with the ADU by-law. Chairman Pietrasiak requested Mr. Prockett explain the drawing submitted, specifically the internal square footage of the proposed unit, and identify the usage of the appurtenances noted on the certified plot plan.

It came to light that a cabana house in the backyard was being used as dwelling unit, which is in violation of the Zoning by-laws, as multi-family uses are not permitted in the manufacturing zoning district. Mr. Prockett acknowledged the use of the cabana as a dwelling unit, and stated that he was trying to help out a friend in need.

Chairman Pietrasiak indicated that this zoning violation would need to be remedied in order to move forward the petition, which he reminded Mr. Prockett was lacking information. Chairman Pietrasiak provided two options: 1) continue the hearing until May 9, 2019, and furnish the Board with evidence that the zoning violation has been remedied and furnish the Board with more detailed plans of the proposed ADU; or 2) withdraw the project without prejudice and have the ability to come back before the Board with a clean slate. Mr. Prockett agreed to withdraw this petition without prejudice and asked the Board to consider this request.

Dorothy Risser moved to accept the withdrawal of Petition 2019-02 without prejudice. Seconded by Darja Nevits. 5-0-0. Unanimous

Petition #2019-03; 7 Crestview Drive

Present were: Tim Creen, AT &T/Cingular Wireless

Chairman Pietrasiak read aloud the public hearing notice of New Cingular Wireless PCS, d/b/a AT&T requesting modification of Special Permit #11-00/02 to increase the diameter of the existing monopole from 29 feet to 38 feet , from a height elevation of 82.75 feet to 92.25 feet in accordance with Section 5.9 of the Town of Hudson's Zoning By-Laws. The subject facility is located at 7 Crestview Drive, Assessor's Map 24 in the SA-5 Zoning District. The Board may consider any other action deemed necessary relative to the subject petition.

It was noted for the record that the public hearing notice contained a typo with respect to the height elevation of the monopole.

Tim Creen presented an overview of the petition and noted that this work is part of a nationwide effort to upgrade cellular infrastructure. He noted that the poles themselves are owned by a company called Crown Castle, and AT &T is a tenant, and underscored that there is no change in the height of the poles.

Bill Wade, a direct abutter to the tower noted that that the existing monopoles are a visual blight to adjacent properties, and there is loud noises being admitted from the antennae. Mr. Wade provided images an audio recording to the effect. He also noted that he has witnessed construction/maintenance crews working outside traditional working hours, which he believes is a major nuisance for the neighborhood.

Kristina Johnson, Assistant Director, noted that the Board could place a condition on the Special Permit regarding work hours, similar to what the Planning Board will do when they approve a site plan.

Chairman Pietrasiak moved to enter deliberative session. Seconded by Dorothy Risser 5-0-0. Unanimous.

Chairman Pietrasiak to grant the special permit under Section 5.9 of the Town of Hudson's Protective Zoning By-laws to approve the modification of Special Permit #10-00/01 to allow for the modification of the existing monopole located at 7 Crestview Drive from 82.75 inches to 92.25 inches in accordance with the plans dated March 14, 2019. Seconded by Dorothy Risser.

With the following conditions:

1. Hours of construction will be Monday through Friday 7:00 a.m. to 5:00 p.m. and Saturday 8:00 a.m. to Noon. No work or operation of machinery may happen before 7:00 a.m., in accordance with the town's noise by-law or after 5:00 p.m. Per the Massachusetts General Laws, work on Sundays and holidays need to be permitted on a case by case basis by the Chief of Police.
2. In order to minimize visual impacts to the neighborhood, shrouds shall be re-installed within 90 days of construction of being completed on the antennae.

5-0-0. Unanimous.

Chairman Pietrasiak moved to come out of deliberative session. Seconded by Dorothy Risser. 5-0-0. Unanimous.

Minutes

Dorothy Risser moved to approve the minutes of March 14, 2019. Seconded by Jason Mauro 5-0-0. Unanimous

Adjournment

Chairman Pietrasiak moved to adjourn the meeting at 8:40 PM. Seconded by Jason Mauro. 5-0-0. Unanimous.

