

1 **HOOKSETT ZONING BOARD OF ADJUSTMENT**
2 **Tuesday, December 12, 2023**
3 **HOOKSETT MUNICIPAL BUILDING**
4 **35 Main Street**
5 **Meeting Minutes**
6 **6:30 pm**

7
8 **CALL TO ORDER**

9
10 Anne Stelmach (Chairman) called the regular meeting to order at 6:34 pm.

11 **PLEDGE OF ALLEGIANCE**

12
13 **ATTENDANCE:** Anne Stelmach (Chairman), Richard Bairam (Vice-Chairman), Gerald Hyde,
14 Timothy Stewart, and Alex Glennon.

15 **ALTERNATES:** Colin Merritt, Thomas Chesnard, and Tony Lacasse (Alternate) (arrived at
16 7:04 pm).

17 **EXCUSED:** Matt St. Pierre, Phil Denbow (Alternate), and Roger Duhaime (Town Council
18 Representative).

19 **NOT PRESENT:**

20 **STAFF:** Dana Pendergast (Code Enforcement Officer)

21 T. Chesnard will be a voting member this evening.

22 **APPROVAL OF MINUTES:** October 10, 2023 and November 14, 2023

23 *R. Bairam motioned to table the minutes of the October 10, 2023 ZBA meeting. Seconded by*
24 *G. Hyde. Motion carried unanimously with a vote of 6-0.*

25
26 *R. Bairam motioned to approve the minutes of the November 14, 2023 ZBA meeting. Seconded*
27 *A. Glennon. Motion carried unanimously with a vote of 6-0.*

28
29 **UNFINISHED BUSINESS:**

30
31 None.

32
33 **6: CONTINUED PUBLIC HEARING:**

34
35 **Silver City NH LLC #Z20-12**
36 **39 Hackett Hill Road, Map 13 Lot 51**
37 **COM**

38 **APPLICATION FOR EXCAVATION PERMIT:**

39 OO-#14

40 ** Request to Continue to February 13th 2024 meeting.

41
42 *A. Glennon motioned to continue an application of excavation permit for Silver City NH LLC*
43 *#Z20-12, 39 Hackett Hill Road, Map 13 Lot 51, COM, OO-#14, until the February 13, 2024*
44 *ZBA meeting. Seconded by R. Bairam. Motion carried unanimously with a vote of 6-0.*

45
46 **63 LT, LLC #Z23-17**

47 **63 Londonderry Tpk, Map 49 Lot 2**

48 **IND**

49 **APPLICATION FOR Appeal from an Administrative Decision:**

50 **Article Section of the Zoning Ordinance in Question: Article 26(B)(2)**

51
52 A. Stelmach: We heard part of this at the October 10, 2023 meeting. We granted the variance
53 request but they also requested an administrative appeal. We received a letter from their attorney.
54 Roy Tilsley, Jr., dated November 29, 2023, requesting to withdraw their related application for
55 administrative appeal without prejudice.

56
57 **Alana & Dennis Demers Z23-21**

58 **68 Laurel Road, Map 21 Lot 15-26**

59 **LDR**

60 **APPLICATION FOR Variance**

61 **From Article 27 Section C. 3 of the Zoning Ordinance**

62 A basement ADU without a shared common entry.

63
64 C. Merritt and T. Chesnard will be voting members on this matter. G. Hyde and T. Stewart will
65 not be voting on this matter.

66
67 A. Stelmach: The Board has the original application. After looking at it at the last meeting we
68 thought the applicants should provide supplemental information. That information has been pro-
69 vided.

70
71 D. Demers: The proposed basement apartment does not meet your regulations. Due to that I am
72 here with an amended application. I guess we have to go through the five points of the criteria. I
73 provided a form that I did over again and it mirrors the application.

74
75 D. Pendergast: The applicant is in front of the Board regarding Article 27 (C) (3) which is the
76 ADU. Due to a flaw in our ADU ordinance the applicant needs a shared entry which he does not
77 have. With a basement apartment you are either going to have a door in between or a shared en-
78 try. You can't have both because of the layout of the building and the ADU. Our ordinance says
79 you will have a door in between the two living areas and a shared a shared entry/egress. He does
80 not have the shared egress.

81
82 D. Demers read the criteria into the record.

83

84 T. Chesnard: Can you elaborate on the topography?
85

86 D. Demers: We blasted 10,000 sq. ft. of rock from that location. That is how we build on that
87 lot. It was one rock pile.
88

89 T. Chesnard: I understand what you are saying regarding the hardship and as the special condi-
90 tions go you are talking about the property has particular topography that is part of the reason
91 there were no alternative available to you.
92

93 D. Demers: The home sloped off and that is where we put the entrance to the ADU.
94

95 T. Chesnard: Because of the change in elevation you could not put it in any other area.
96

97 D. Demers. Right.
98

99 A. Stelmach: I am confused with the work prior to the topography. You blasted and graded?
100

101 D. Demers: Yes. It was used as a boneyard for the developer. We blasted it to put in the founda-
102 tion.
103

104 A. Stelmach: It sounds like you put the house in and this was an afterthought.
105

106 D. Demers: The ADU was an afterthought when doing the plans. The house is built up to the
107 rafters.
108

109 A. Stelmach: Is the entire development sitting on ledge?
110

111 D. Demers: That section where the house is near the road is all ledge. On the downward side we
112 were able to put in a septic.
113

114 A. Stelmach: Is the neighbor on Hemlock all rock?
115

116 D. Pendergast: It isn't built yet.
117

118 T. Stewart: Do you have any current pictures of a street view of the property?
119

120 D. Demers: I have pictures on my phone of the build itself before I started blasting.
121

122 A. Glennon: Is the exit of the ADU located in the garage?
123

124 D. Demers: No. There is a garage next to the entrance of the ADU. It is a walk in basement on
125 the east side of the house and there is another entrance that goes into the house itself; into the
126 foyer and out.
127

128 A. Stelmach: Your intent is to put in a second kitchen, etc.
129

130 D. Demers: Yes. It would be a one bedroom with a washer dryer, etc. It would be under the slab
131 and not obstructive.

132
133 R. Bairam: Is there an entrance from the ADU to the main house?

134
135 D. Demers: Yes.

136
137 D. Pendergast: There is a stairway from the basement to the main level.

138
139 D. Demers: The site engineer, Jon Rokeh would like to accompany me and answer questions
140 pertaining to the sub-division.

141
142 J. Rokeh: I did the original sub-division plan for Hemlock Drive. I worked with Scott getting it
143 constructed and through the blasting. I can attest to it is really hard to change the grade.

144
145 A. Stelmach: How many houses have been developed?

146
147 J. Rokeh: 14 out of 34.

148
149 A. Stelmach: Did the 14 have as many rocks as this one?

150
151 J. Rokeh: Four or five.

152
153 Scott Bussiere: Four or five were blasted. There will be four or five more. The applicant's was
154 all rock.

155
156 T. Chesnard: There is nowhere else an egress could go that could be shared?

157
158 D. Pendergast: An ADU is an allowed use per the state and there are certain dimensional re-
159 quirements that have to be met. Our ordinance says you have to have a shared entry and a door
160 that is shared between the living areas. With a basement ADU it is impossible to have a shared
161 entry.

162
163 T. Chesnard: So it isn't the rock that is the issue?

164
165 D. Pendergast: The rock impacts the layout of the property. This way he is accomplishing his
166 goal without increasing the size of the footprint. The grade is at least a 10' drop.

167
168 C. Merritt: What side of the property is the ADU going to go on?

169
170 D. Demers: On the side with the "15" on the plan. The house runs east to west.

171
172 Open public comments.

173
174 Steven Vincent (77 Laurel Road): From what I am listening to all these issues could be solved
175 by having the kids stay upstairs. It seems like more of a rental property that will be in the mix.

176 All 34 homes in the sub-division are single family. I am concerned this will change the dynamic
177 of the neighborhood.

178

179 D. Demers: It has been set up by the state of NH to allow single family ADU's in homes. They
180 used to be called in-law apartments. Now we have progressed into this form of building.

181

182 Matthew Parker (72 Laurel Road): Similar to Steve our biggest concern is this sounds like it
183 could be a rental property. He had plenty of time to cut out what he wanted to make this property
184 his. There could be more blasting. Is the ADU actually necessary? We have all come in as single
185 family homes and worked hard to have the cash we had to make them single family homes. This
186 could be a rental property. Mr. Demers said if he is not happy with it he could sell it off and
187 build where he wanted to. He owns other properties on Hemlock.

188

189 D. Demers: My neighbor also has the opportunity to turn his home into a rental property or he
190 can build himself an apartment on a portion of his property. He has every option to do this too. I
191 am incorporating the ADU as I am building. It was an afterthought but not really. I will be occu-
192 pying the property. It is not going to be a rental. The minute the property is not occupied by the
193 owner the ADU cannot be rented out. The owner has to occupy the dwelling. If they want to they
194 can add one too.

195

196 A. Stelmach: I don't think that is the message. It isn't just because you want to you can do it.
197 That is why the variance process exists and the legal standard applies as it does.

198

199 D. Demers: In the old days you used to be able to have set up's in the basements of family mem-
200 bers living there. Now they legitimized it and the insurance companies protect themselves.

201

202 Nathaniel Rice (42 Laurel Road): Is the requested variance with request to the first sentence of
203 Article 27 (3)(c) or the whole Section 3?

204

205 D. Pendergast: We require the two prongs according to the RSA and guidance we have received
206 in the past. We are required a door in between, which he has, and a shared entry and exit through
207 a common area which he does not have.

208

209 N. Rice: If the board grants the variance will it be applicable to both sentences or the just first.

210

211 D. Pendergast: The first. He meets the requirement of the second.

212

213 Close public comments.

214

215 T. Chesnard: If you decided you wanted an ADU early on, before there was any foundation put
216 down, would it have been possible to comply with both of the prongs?

217

218 D. Demers: We didn't think of it.

219

220 T. Chesnard: Let's say you had.

221

222 D. Demers: The house would have been a ranch instead of what we are now building. The ADU
223 is because our kids work remotely and they have the ability to leave their office cities. My wife
224 thought it would be nice to have them in our house but not too close. We were building a house
225 for ourselves. If it would have been a ranch, like a duplex style, yes but I don't think that would
226 have flown with the zoning regulations. I think this is the only town that has these regulations.

227
228 T. Lacasse: There is a typo in the ordinance and it needs to be amended. The hardship is the
229 "and/or" in the Hooksett zoning regulation. If the property were to be rented out the owner
230 would have to live in the home.

231
232 Close public hearing.

233
234 D. Pendergast: An ADU is allowed by right. The issue is they don't have the prong of the shared
235 entry.

236
237 Board discussion ensued.

238
239 **Criteria 1 & 2 - The variance will not be contrary to Public Interest & the Spirit of Ordinance will be observed.**
240

241 It was a board consensus that the variance will not be contrary to Public Interest & the Spirit of
242 Ordinance will be observed. The ADU would be in the basement and the look of the house
243 would not change. It will not harm any public rights.

244
245 **Criteria 3 (Substantial Justice is done)**

246 It was a board consensus that the variance will not harm the general public.

247 **Criteria 4 (The value of surrounding properties will not be diminished)**

248 It was a board consensus that the variance will not diminish the value of surrounding properties.

249
250 **Criteria 5 (Literal enforcement of the provisions of the ordinance would result in an Un-**
251 **necessary Hardship)**

252 A. Stelmach stated the ADU would not harm the essential character of the neighborhood as they
253 are allowed by right and it is a reasonable use.

254
255 T. Chesnard stated there are special conditions of the property. It is one of the more rockier lots
256 in that area. A. Stelmach state how you can see the slope on the topography map and the next
257 neighbors flatten out. T. Chesnard stated his initial concern was the rocky aspect of the lot wasn't
258 the issue and this was potentially a self-created hardship. In listening to the applicant he stated
259 the necessity of needing the ADU, and he seems credible. It came late in the game after he and
260 his wife designed the house. If that was the case it sounds like this request is made in good faith.
261 I think it would be different this was intended the whole time and he tried to do this in a back
262 door way. It sounds like this need came out of the blue and they were so far along they were
263 stuck. I think his approach was made in good faith and that created a hardship.
264

265 ***C. Merritt motioned to approve an application for variance from Article 27 Section C. 3 of the***
266 ***Zoning Ordinance to allow a basement ADU without a shared common entry for Alana &***
267 ***Dennis Demers, Z23-21, 68 Laurel Road, Map 21 Lot 15-26, LDR. Seconded by R. Bairam.***
268

269 A. Glennon opposes as he believes a lot of thought goes into building a house of this size and
270 this consideration should have decided before the house was built. It is a self created hardship.

271
272 A. Stelmach opposed due to the belief that there is no hardship.

273
274 **Motion carries with a vote of 3-2.**

275
276 **8: DISCUSSION OF ANY IMPACT TO REGIONAL PLANNING per RSA 36:56 Review**
277 **Required**

278
279 None.

280
281 **9: NEW BUSINESS:**

282
283 **Raven Wood LLC #Z23-23**
284 **249 Londonderry Tpk, Map 32 Lot 25-1**
285 **COM**

286 **APPLICATION FOR EQUITABLE WAIVER:**

287 ***Raven's Nest Self Storage Per approved and constructive plan. The northerly side of the***
288 ***property should have a setback of 25' for Commercial Zone and the plan was designed and***
289 ***built where the front corner of the building was set at 20'***

290
291 Jon Rokeh (Rokeh Consulting): This lot was originally one parcel. Scott owned the original par-
292 cel. He sub-divided into three MDR lots. The town of Hooksett wanted this to be developed as
293 commercial. For the initial design for Scott's lot was for the commercial building. He got a vari-
294 ance but the zone was still MDR. MDR has 15' side setbacks. Immediately after Scott did his
295 building I did a site plan for Springwood Homes which was approved by the Planning Board.
296 That all had 15' side setbacks because it was MDR.

297
298 A. Stelmach: Are we going to have the same problem with American Asphalt?

299
300 J. Rokeh: No. We are good with American Asphalt. When Springwood Homes decided not to do
301 it and sold their lot back to Scott I had all the site plans set up. I designed the plan and submitted
302 everything. It went through the review process and everyone had seen the lot over and over. No
303 one realized there was anything wrong with the setbacks. We went through the whole process,
304 recorded mylars, had reconstruction meetings, laid it all out and built it. When we went to get our
305 as-built from TF Bernier he pointed out that something didn't seem to be right and it seemed like
306 the set-backs should be 25'. The as-built plan he provided us was still showing MDR. We looked
307 at it and realized this all should have been changed to commercial with the correct commercial
308 set-backs. These parcels had been through so much review and it was missed. The site is con-
309 structed. In the front the set-backs are just short of 20'. In the back they are at 24'. It is not a dra-

310 matic encroachment. There is no impact. We did a global AOT for Scott's and American As-
311 phalt. All of the drainage is completely set up. There are no issues with the building being close
312 or not. All three lots are fully developed. You would not be setting precedent to grant an equita-
313 ble waiver because there are going to be hardly any situation where you have an MDR where the
314 town requested it to be commercial.

315
316 Scott Bussiere: It got rezoned after I bought it. It used to be residential. I went for a variance for
317 the first building which is the commercial construction units. In that process Hooksett asked to
318 rezone those eight pieces on by-pass 28. During the development process of the first piece it got
319 rezoned commercial so there were no longer variances. That is where the problem came in with
320 the set-backs because no one picked on on changing the set-backs after it was changed from
321 MDR to commercial. It went from 15' to 25'.

322
323 J. Rokeh: All of the original survey plans, development plans, and other original things I had
324 done had the original set-backs for all three parcels.

325
326 A. Stelmach: The plan you gave us with the application has the one from TF Bernier.

327
328 J. Rokeh: Correct. He is the surveyor. That is the as-built he just did.

329
330 A. Stelmach: He pulled the lines to put that storage unit there. Was he the one that figured this
331 out?

332
333 S. Bussiere: He figured it out.

334
335 A. Stelmach: On this is shows on the front 19.2 and 23.8 in the back?

336
337 J. Rokeh: Yes. If we used a surveyor to stake it, it would have been staked out according to the
338 approved mylar plans which would have been at those dimensions. I have done equitable waivers
339 of dimensions in other towns. The financial burden to try to remedy the situation dramatically
340 outweighs any benefit that could be derived by enforcing the dimension. In this case there was
341 no ill will and nothing was done wrong. The town of Hooksett had gone through everything and
342 made everybody review this. It was fully permitted and ready to go.

343
344 S. Bussiere: It was built according to the plans and the plans were wrong.

345
346 A. Stelmach: I got a copy of the first two plans before it was sub-divided and the MDR. They
347 are all TF Bernier. I first thought he came along after the fact.

348
349 J. Rokeh: He has been part of this all along. He did the existing conditions plan. I did all of the
350 site plans using that as my existing conditions.

351
352 S. Bussiere: He is the surveyor and Jon is the engineer.

353
354 D. Pendergast: This does not make it non-conforming. It is a waiver. This does not stay with the
355 land. If the building comes down they have to conform to the 25'.

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CRITERIA

Lack of Discovery.

It was a board consensus there was a lack of discovery.

Good faith error in measurement or calculations.

It was a board consensus there was a good faith error in measurement and calculations.

Diminish the value of surrounding properties.

It was a board consensus this would not diminish the value of surrounding properties.

Cost of correcting the mistake outweighs any public benefit.

It was a board consensus that the cost of correcting the mistake outweighs any public benefit.

G. Hyde motioned to grant the application for equitable waiver for Raven Wood LLC #Z23-23, 249 Londonderry Tpk, Map 32 Lot 25-1, COM. Seconded by R. Bairam. Motion carried with a vote of 6-0.

10: COMMUNICATIONS & MISCELLANEOUS

1) Review of 2024 Meeting Schedule for approval

G. Hyde motioned to approve the 2024 ZBA meeting schedule. Seconded by R. Bairam. Motion carried unanimously with a vote of 6-0.

11: MOTION TO ADJOURN:

C. Merritt motioned to adjourn at 8:01 pm. Seconded by G. Hyde. Motion carried unanimously with a vote of 5-0.

Next meeting January 9, 2024 application deadline December 20

Respectfully submitted by:

/s/ AnnMarie Scott

AnnMarie Scott
Recording Clerk