

TOWN OF HUDSON

Planning Board

Glenn Della-Monica, Chairman

David Morin, Selectmen Liaison



12 School Street • Hudson, New Hampshire 03051 • Tel: 603-886-6008 • Fax: 603-594-1142

WORKSHOP MEETING TOWN OF HUDSON, NH MAY 9, 2018

The Town of Hudson Planning Board will hold a regularly scheduled workshop meeting on Wednesday, May 9, 2018 at 7:00 p.m. in the “Buxton Community Development Conference Room” at Town Hall. The following items will be on the agenda:

- I. CALL TO ORDER BY CHAIRPERSON AT 7:00 P.M.
- II. PLEDGE OF ALLEGIANCE
- III. ROLL CALL
- IV. SEATING OF ALTERNATES
- V. MINUTES OF PREVIOUS MEETING(S)
- VI. CASES REQUESTED FOR DEFERRAL
- VII. CORRESPONDENCE
- VIII. PERFORMANCE SURETIES
- IX. ZBA INPUT ONLY
- X. PUBLIC HEARINGS
- XI. OLD BUSINESS/PUBLIC HEARINGS
- XII. DESIGN REVIEW PHASE
- XIII. CONCEPTUAL REVIEW ONLY
- XIV. NEW BUSINESS/PUBLIC HEARINGS

- XV. OTHER BUSINESS
 - A. Review of Draft Land Use Guidelines
 - 1) Review of Condominiums
 - 2) Impact Fees
 - 3) Parking Setbacks and Buffers

- XVI. ADJOURNMENT

All plans and applications are available for review in the Planning Office. Comments may be submitted in writing until 10:00 a.m. on the Tuesday prior to the day of the meeting. The public is invited to attend.

George Theborge, AICP
Interim Town Planner

POSTED: Town Hall, Library & Post Office – 04-27-18

WORKSHOP ON LAND USE GUIDELINES

Staff Report
9 May 2018

ATTACHMENTS:

- Land Use Guideline #18-005 **No Subdivision Review on Condo Projects.**
- Land Use Guideline #18-003 **Parking Setbacks & Buffers.**
- Land Use Guideline #18-001 **Impact Fees.**

DISCUSSION:

As a follow-up to the joint workshop held on April 28, I have prepared three “Land Use Guidelines” that relate to Planning Board issues. As stated in the common introduction to each draft Guideline, the purpose of these documents is to provide needed guidance to staff, applicants, and Planning Board members. Information that affects such decisions is contained in the State statutes, Zoning Ordinance, Hudson Land Use Regulations, past Board decisions, past legal opinions, and administrative forms prepared by the department. The Land Use Guidelines pull together relevant provisions into a single document for each topic to make that information readily available during application preparation, reviews, and decision-making.

To address concerns about the Guidelines limiting Board authority, a statement was added to clarify that the Guidelines do not limit the Board’s authority to deliberate and come to potentially different conclusions than those stated in the Guidelines. But having the Guidelines will ensure that such departures are made with full knowledge of the legal requirements and past precedents.

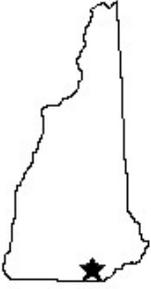
The Guidelines can also be used to identify needed changes to the Zoning Ordinance and Land Use Regulations. Reviewing the Guidelines on an annual basis and applying them to ongoing project reviews will provide a comprehensive framework for preparing amendments.

Wherever possible, references to sources of the information contained in the Guidelines are provided in *(italicized text in parentheses)* so that readers can go to those sources for confirmation and clarification.

I have prepared a PowerPoint presentation that will walk Board members through each of the first three draft Guidelines that include case studies. At the conclusion of the presentation of a Guideline, the Board can deliberate and decide if changes are needed.

Once the Board is satisfied with a draft Guideline, we will submit it for legal review by the Town Attorney. If Attorney Lafevre has concerns about any draft, we can have him attend a future workshop. We can also invite his attendance if the Board has questions or concerns.

Each draft Guideline has provision for recording the origination date, approval authority, and future revisions. It would be helpful to have a Planning Board endorsement to lend credibility to the documents, promote consistency in future communications and decisions, and assure accountability for staff in carrying them out.



TOWN OF HUDSON

Land Use Division



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Land Use Guideline #18-005

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Compiling all of this information into one document will help participants in the regulatory process to understand its requirements and will help ensure that all requirements are complied with. Adoption of a Land Use Guideline does not, however, limit the Board's authority to deliberate on individual applications and come to potentially different conclusions based on the facts of those applications.

Since State statutes frequently change, court decisions affect local regulations, and the community faces new growth management challenges over time, each Land Use Guideline should be reviewed and updated annually. Updates should also identify whether amendments are needed for the Zoning Ordinance and Land Use Regulations.

Subject: No subdivision review on condo projects.

1. The State statutory definition of subdivision was revised to include condominium as a form of subdivision requiring local approval. *(RSA 672:14.I)*
2. Hudson has not adopted this definition that recognizes or includes condominium development. *(HR §276-2)*
3. In the absence of the term "condominium" in our subdivision definition, there is a presumption that the Town chose not to adopt the State's definition and not to apply a separate subdivision approval process for condominiums, which are subject to the site plan review process that applies to all multi-family development *(HZO §334-16.1)*, and to Planning Board approval of more than one single family home or duplex on a single lot. *(HZO §334-16. C. (2)(e))*
4. If the Town through its Planning Board had consistently required a separate subdivision approval process in addition to site plan approval, that fact could indicate legislative intent to follow the State definition of subdivision, notwithstanding the fact that the definition in our Subdivision Regulations did not change. *(Email from Stephen Buckley Esq. dated 10-13-2017)*
5. A review of several past condominium projects, including Cobblestone Village, Fox Hollow, and Sparkling River Condominiums indicate that the Planning Board has not required a separate subdivision approval for condominium projects. Condominiums in Hudson have only been approved through the site plan review process, and no subdivision approval was required or granted.

6. Condominium development where no lots are created does not constitute a subdivision, and therefore no separate review process is required. If separate lots are created, then subdivision review would be triggered. This applies whether condominium ownership is proposed at time of site plan review or occurs outside of site plan review. Ownership of buildings is not regulated.

Origination Date:	Revision Number:
Approved By:	Revision Date:

DRAFT



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Land Use Guideline #18-001

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Subject: Impact fees.

Background:

1. The term CAP (Cost Allocation Procedure) has been applied to impact fees in general and also to traffic impact fees in particular. The term has been used interchangeably with the term impact fee. (*Town of Hudson, New Hampshire Traffic Impact Fee System, Vanasse Hangen Brustlin (VHB), Inc. Jan. 2014*)
2. The current traffic impact fee schedule is based on an update prepared by VHB in 2014. That analysis replaced the prior system that was based on specific road improvements along the 111, 102, and 3A road corridors. (*VHB, Jan. 2014*)
3. In 2014 the Planning Board adopted a map breaking the Town into 2 Traffic Impact Zones with all road projects within those Zones being eligible for use of traffic impact fees collected within that Zone (see attached map). The original traffic impact fees were based on pm peak hour traffic, while the current methodology is based on average daily trips. (*VHB, Jan. 2014*)
4. The Town's traffic consultant prepared, and the Town adopted a "Traffic Impact Fee Table" (see attached table) based on average road improvement costs and daily trip generation per the ITE Trip Generation manual. (*VHB, Jan. 2014*)
5. Any use proposed that is not included in the table requires an estimate of daily trips prepared by a traffic engineer multiplied by the current non-specified use rate (\$187/trip in 2018) to determine the impact fee amount. (*VHB, Jan. 2014*)

6. The Town's traffic consultant updates the traffic impact fee schedule annually based on the construction cost index. (*VHB, Jan. 2014*)
7. The current school impact fee is based on a study performed by a planning consultant in 1996. That study and the calculated impact fees for schools and the library were updated in 2000. The Town no longer collects a library impact fee. (*Impact Fee Needs Analysis & System Design for Public Schools, Library, & Recreation Facilities, Hudson, New Hampshire, Bruce C. Mayberry (BCM), Feb. 1996, updated Oct. 2003*)
8. The 2000 update adopted the following school impact fee schedule (*BCM, Oct. 2003*):
 - Single Family Detached – \$3578
 - Single Family Attached – \$1295
 - Duplex & 2-unit – \$3063
 - Multi-Family 3-4 units – \$1442
 - Multi-Family 5+ units – \$898
 - Manufactured Housing - \$2668
9. In 2013, a challenge was filed on the collection of school impact fees for age-restricted housing based on analysis that indicates student enrollments from such housing is inadequate to support collection of an impact fee. As a result, the Town has ceased collecting the school impact fee on age-restricted housing. (*Planning Board Minutes/Decisions Apr. 24, 2013*)
10. The Town also collects a “voluntary” recreation impact fee of \$400 per housing unit, regardless of type. The Sparkling River project pays this amount per unit into an Alvirne Varsity Hockey fund.
11. The New Hampshire Housing Authority produced a guide for local governments to regulate Accessory Dwelling Units (ADUs). That guide points to the law prohibiting towns putting more zoning requirements on ADUs than apply to standard single family homes apart from the specific standards contained in the law on ADUs (*RSA 674:71-73*). That guide argues that towns can only charge impact fees on ADUs if the impact fee is based on the number of bedrooms or the square footage of the building. Residential impact fees in Hudson are based on the number of units, and therefore the Town does not apply impact fees to ADUs. This policy also reflects the 2006 Master Plan goal of improving housing affordability. (*Accessory Dwelling Units in New Hampshire: A Guide for Municipalities, NH Housing Finance Authority, Dec. 2017*)
12. All impact fees are approved by the Planning Board at the time of subdivision or site plan approval based on these tables. The Town Planner fills out a worksheet based on the impact fee tables and the use proposed that is attached to the staff report. (*ZO §334-74.5*)
13. If no site plan or subdivision review is involved (e.g., new house on existing lot), the CAP fees are determined at the time of building permit issuance and paid as a condition of the occupancy permit. (*ZO §334-74.5*)
14. In cases where there is a change of use, the impact fee is based upon the net increase in capital services facilities demand. If a new use will have a significant increase in trip generation, an impact fee is based on that increase in traffic. As with uses not included in the traffic impact fee table, the net increase in trip generation should be determined by a qualified traffic engineer. (*ZO §334-74.4.B*)

15. The payment of impact fees occurs prior to issuance of an occupancy permit. The Administrative Aide provides applicants for occupancy permits with a copy of the CAP fee worksheet containing the fees. The Administrative Aide signs off on the building permit after the CAP fees are paid. *(ZO §334-74.5)*
16. The Planning Board has authority to waive or reduce impact fee payments where an applicant proposes contributions of an equivalent value in land, easements, or other improvements. The Planning Board is not required to waive impact fees for improvements that the applicant is required to complete regardless of the impact fee requirements (i.e., off-site traffic improvements). Before the Planning Board grants a waiver of impact fees, a calculation should be made to verify that the proposed contribution(s) is/are greater than or equal to the amount of the impact fee that would be paid. *(ZO §334-74.3 B. & ZO §334-74.9)*
17. Applicants have the option of paying a proportional share (exaction) for off-site infrastructure improvements, with the Town collecting shares from other projects or paying the balance needed to complete infrastructure projects. If the Town does not come up with the matching money to complete the improvements within 6 years, the exaction money must be returned to the developer, and permits for the approved project remain valid without the infrastructure improvements. *(RSA 674:21 V.(j), ZO §334-74.10, & ZO §334-74.8.B)*
18. Notwithstanding the allowance for payment of a proportional share of off-site improvements, the Planning Board can refuse a proportional share offer and can deny a project approval if the Town is faced with “an excessive expenditure” to complete the infrastructure improvements. Such a project would be classified as “scattered and premature,” and the denial of the project should be based on facts that establish the need for the improvements and the Town’s inability to complete them due to other competing infrastructure priorities. At that point, the developer has a choice of completing the improvements or delaying the project until the Town decides to move forward with them. The Planning Board should only accept proportional shares for off-site improvements that are included in the Town’s CIP. *(RSA 674:36 II.(a) & ZO §334-74.11)*
19. Since impact fees are set by the Planning Board at the time of project approval, staff doesn’t use the current traffic impact fee schedule but the one that was in place at the time of subdivision or site plan approval if approved under a prior impact fee schedule. School impact fees have not changed since 2000. *(ZO §334-74.5)*
20. New Hampshire law and local regulations require that all impact fees be spent or encumbered within 6 years of being collected. Impact fees are deposited into segregated accounts and can only be spent on the purposes for which they were collected. *(RSA 674:21 V.(e), ZO §334-74.7.A, ZO §334-74.8.A)*
21. Although the statutes and local ordinance do not specify the process for disbursement of impact fees or for release of impact fees that have not been spent or encumbered within the 6-year time limit, the Planning Board reviews all disbursements and refunds and makes recommendations to the Board of Selectmen who have sole authority to disburse impact fees. For refunds, the Planning Board makes recommendation for both the need to refund impact fees and the party(ies) eligible to receive them. *(ZO §334-74.7. B)*
22. From time to time the Town has attempted to return impact fees after the 6-year limit and been unable to identify the owners of the property due the refund. Those impact fees were deposited in account 09-2000-2050-000-200 Impact Fees – Planning Board Expense Funds and are available for the Planning Board to use for planning projects and equipment.

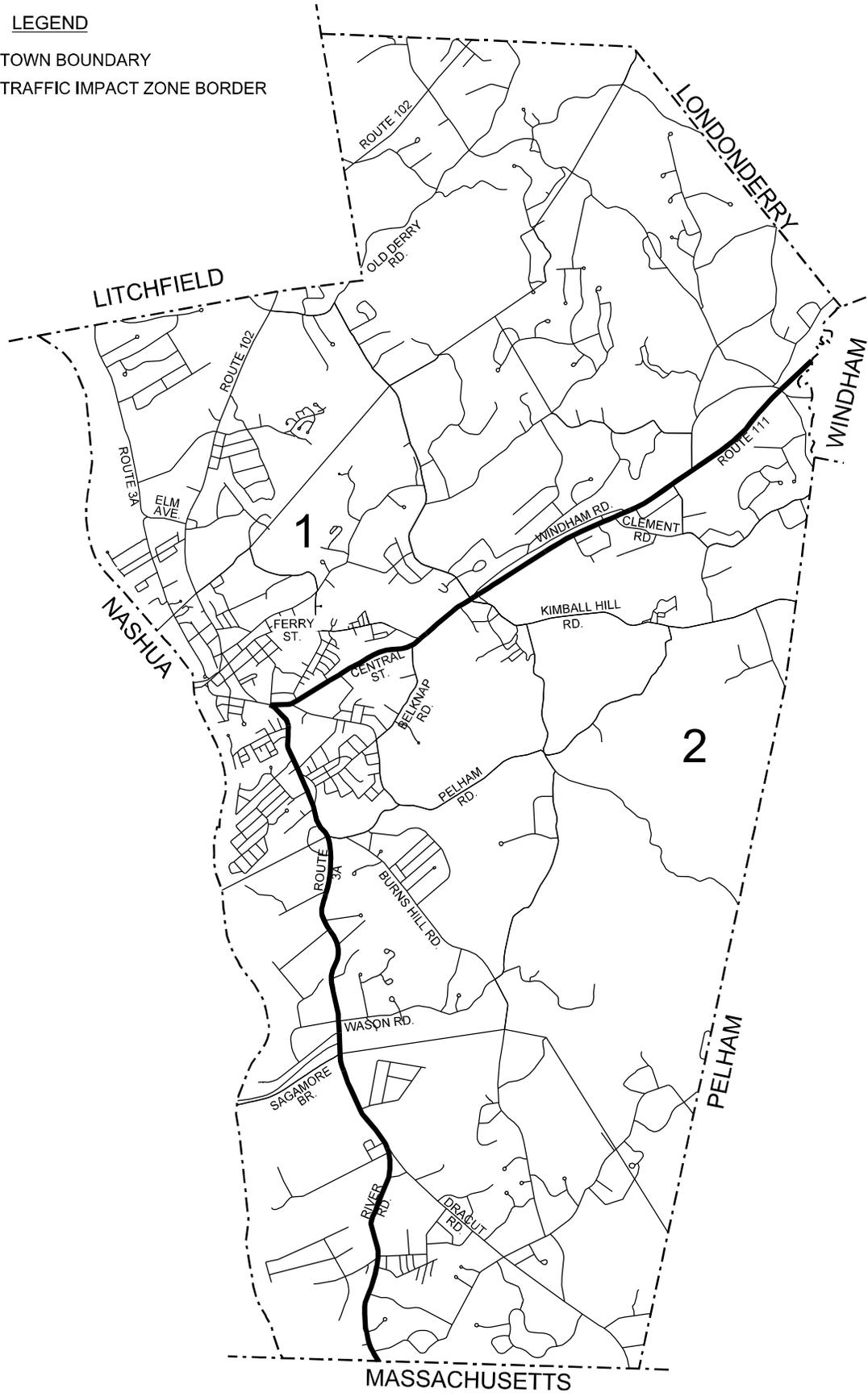
23. Per a bankruptcy court order (Case # BK-99-11087-JMD), the Shepherd's Hill Project has court ordered impact fees that limit the amount that be assessed to \$1200 or the amount under current impact fee schedules, whichever is lesser. This would be the total that can be assessed for all impact fees. *(Copy of court order in Legal Opinions)*
24. The Town Planner is required to prepare an annual report after the end of the fiscal year that tracks the collection and disbursement of all impact fees. This report is posted on the Town's web site *(RSA 674:21 V.(l))*.

Origination Date:	Revision Number:
Approved By:	Revision Date:

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LEGEND

- - - TOWN BOUNDARY
- TRAFFIC IMPACT ZONE BORDER



NOT TO SCALE

Vanasse Hangen Brustlin, Inc.

Traffic Impact Fee Zones
Hudson, New Hampshire

Figure 1

Traffic Impact Fees (2018)

Land Uses

Impact Fee

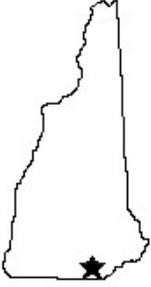
Residential Uses

- Single Family	\$1,781	per unit
- Apartment	\$1,238	per unit
- Condominium/Townhouse	\$1,082	per unit
- Mobile Home Park	\$929	per unit
- Senior Housing	\$691	per unit

Non-Residential Uses

- General Office	\$2.05	per s.f.
- Medical-Dental Office Building	\$4.37	per s.f.
- General Light Industrial	\$1.29	per s.f.
- Warehousing	\$0.66	per s.f.
- Hospital	\$3.07	per s.f.
- Health Club	\$2.15	per s.f.
- Day Care Center	\$1.97	per s.f.
- Shopping Center	\$3.19	per s.f.
- Supermarket	\$4.44	per s.f.
- Quality Restaurant	\$6.70	per s.f.
- High Turnover Restaurant	\$5.52	per s.f.
- Fast Food Restaurant	\$18.48	per s.f.
- Pharmacy	\$4.37	per s.f.
- Bank	\$4.60	per s.f.
- Coffee/Donut Shop	\$15.24	per s.f.
- Quick Lube	\$993	per bay
- Gas Station with Convenience Store	\$3,031	per pump
- Hotel	\$1,661	per room

For unique land use categories that are not found in the table, the impact fee can be determined by multiplying the number of new daily trips generated by the new use by \$187.



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Land Use Guideline #18-003

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Subject: Parking Setbacks & Buffers.

1. There is a specific zoning standard that prohibits parking areas within setbacks in residential zones. Therefore, any proposal for parking in the setbacks in a residential zone would require a variance from the ZBA. (*HZO §334-15. A (3)*)
2. Parking is also generally prohibited in the setbacks in all other zoning districts. (*HR §276-11.1.B (12)*)
3. Additional development setbacks of 100 feet and 200 feet are applied where commercial and industrial projects abut a residential property or a residential district. In the Business and Industrial Districts, there are existing nonconforming residential uses (properties), and those uses require commercial and industrial setbacks on abutting lots or lots within the proscribed distances. (*HR §276-11.1.B (12) (a-c)*)
4. Parking is allowed within the front setback of commercial and industrial properties if "green space" (grass or landscaping) is provided between the parking and the property or right of way line. (*HR §276-11.1.B (22)*)
5. Parking can be allowed in side and rear setbacks if green space along the frontage is increased (*HR §276-11.1.B (25)*).

6. In addition to green space between parking areas and roadways, landscaping is also required within parking lots to break up expanses of paving. At least ten (10%) percent of the total parking paved area must be planted with shade trees and shrubs per the parking lot landscaping schedule. *(HR §275-8.C.(7))*
7. In addition to green space between parking areas and roadways and landscaping within parking lots, screening is also required between parking and loading areas and “incompatible uses.” Incompatible uses would be residential properties but can include nonresidential as well. *(HR §275-8.C.(8))*
8. Driveways are not allowed in side or rear setbacks except for shared driveways approved by the Planning Board. *(HR §193-10.H. & I.)*
9. The Planning Board has authority to grant waivers of any and all requirements of the Land Use Regulations subject to the 3 waiver criteria *(HR §276-7)*:
 - (1) Said requirements are unnecessary for an application;
 - (2) Granting of the waiver shall not violate the purposes or general standards of those regulations; and
 - (3) Granting of the waiver shall result in a general benefit to the Town or surrounding properties, such as protection of natural features, increased separation of incompatible uses or the accommodation of future HIGHWAY projects.
10. Taking all of these provisions together, any proposal to locate parking or other improvements within the required property line setbacks requires a Planning Board waiver. Any commercial property improvements located within 100 feet of a residential property also requires a waiver. Any industrial property improvements located within 200 feet of a residential property requires a waiver.
11. In deciding whether to grant the waiver, the Planning Board will consider the specific guidance of HR §276-11.1.B (22) and HR §276-11.1.B (25) for green space and the potential for impacts on abutting properties and the general public. In most cases, installing landscape buffering where parking setbacks are reduced would be appropriate and acceptable mitigation. There may be cases of more intense use that cannot be effectively mitigated through buffering with reduced setbacks, and in such cases waivers of the setbacks would not be appropriate and visual buffering in addition to established setbacks should be considered.
12. For projects in a residential zoning district, a variance would also be needed to allow parking or driveways within the required setbacks. *(HZO §334-15. A (3))*

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