



TOWN OF HUDSON

Zoning Board of Adjustment



Charlie Brackett, Chairman David Morin, Selectmen Liaison

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MEETING MINUTES – February 28, 2019 – Approved

The Hudson Zoning Board of Adjustment met on February 28, 2019, in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall at 7:00 PM.

Vice Chair Pacocha called the meeting to order, noted that the Chairman is excused due to illness, stated that four (4) Members were present, that a quorum is three (3) so the meeting will be held and made the following housekeeping announcements: that there are copies of the Agenda and Appeal process on the shelf by the door; no smoking in the building; to address the Board either sit at the table or stand by the lectern and to provide your name and address, with spelling; to please refrain from talking in the audience; to please silence all cell phones; and that there is an 11:00 PM curfew and any business not addressed by then would be continued.

Members present were Maryellen Davis (Regular), Gary Daddario (Regular), Gary Dearborn (Regular/Acting Clerk) and James Pacocha (Vice Chair). Also present were David Morin, Selectman Liaison, Bruce Buttrick, Zoning Administrator, and Louise Knee, Recorder. Excused was Charlie Brackett (Chair). For the record, the four (4) Members present would be Voting Members for this meeting.

Mr. Pacocha offered the Applicants the opportunity to request that their Hearing be continued to the next meeting if they would prefer their Case to be heard with five (5) Members voting and with assuming that five (5) Members would be present. Mr. Pacocha raised the plea to Selectman Morin that Alternate Members are needed.

Brad Westgate, attorney from Nashua NH representing the Applicant of Case #2, asked and received identification of which four (4) of the five (5) people sitting at the table would be voting. Ms. Davis further explained the odds are different seeking three (3) affirmative votes out of five (5) versus seeking three (3) affirmative votes from four (4) Members. After conferring with his client, Mr. Westgate advised the Board that they would like to proceed at this meeting. The individuals from Case #4 were still conferring when Mr. Pacocha resumed the meeting.

I. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. Case 208-001 (2-28-19): Richard & Robin Sevigny, 161 Bush Hill Rd, Hudson, NH requests a Variance to be able to park a vehicle greater than 13,000 lbs (GVW) on their property located at 161 Bush Hill Rd, Hudson,

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NH. [Map 208, Lot 001, Zoned G-1; HZO Article III §334-15 B (2), General Regulations, Parking].

Acting Clerk Dearborn read the Case into the record. Mr. Buttrick referenced his Staff Report signed 2/14/2019, noted that the Applicants request to be allowed to park a box truck vehicle of greater than 13,000 GVW (Gross Vehicle Weight) on their residential property of almost eight (8) acres where two (2) are required, that the Assessor's record lists the property as two-family, that the house does not appear to meet the front setback, that there is approximately six hundred eight four feet (684') along Bush Hill Road where two hundred feet (200') are required, that there exists a drainage and utility easement on the property's deed but none found for a driveway easement and that in July 2018 certain concerns and violations were brought to the Town's awareness which resulted in a Notice of Violation being issued, dated 11/6/2018, noting that a Variance was required from the Zoning Board for the parking and garaging of vehicles and equipment in addition to the residential use and citing that a Mixed or Dual Use requires Site Plan approval from the Planning Board. Mr. Buttrick added that there exists a dispute and noted that it is a civil matter, not a concern for the Board.

Richard Sevigny introduced himself. His wife, Robin Sevigny sat beside him at the table. Mr. Sevigny stated that the truck belongs to his brother's company, DCATM, that there is no business run from his home, that the vehicle will just be parked there primarily because his brother, Donald Sevigny, lives in a Residential district (the TR Zone) which does not allow the truck on his property at 7 Charbonneau Drive (and distributed an aerial view of his brother's lot), that in exchange for the parking of the vehicle on his property he has use of the truck to help clean all the junk left by the prior owner who owned an eBay business and collected a bunch of junk, that so far they have taken twenty seven (27) truck loads to the dump. Without use of this vehicle, clean up and improvement would be impeded. Mr. Sevigny stated that all the complaints being sent to the Town are due to a civil matter in the court with his next door neighbor, the Boutin's, that there was no issue prior to the start of that civil matter, that they bought the property in March 2017 and have continued to clean up since then.

Mr. Sevigny addressed the criteria for granting of a variance. The information shared included:

- 1) *not contrary to public interest*
 - the parking of Heavy Commercial Trucks is allowed in the Table of Uses in the G1 Zone
 - the use of the truck to help in the cleanup of the site left by the previous owners will improve this community's safety and appearance.
- 2) *spirit of Zoning Ordinance observed*
 - parcel has almost eight (8) acres and six hundred eighty two feet (682') of frontage which is more than enough space to accommodate a Heavy Commercial Truck
 - having the truck ready available allows more efficient cleanup and maintenance of the property

- have been able to remove twenty seven (27) loads of unwanted items to the town dump from house, sheds, barns and yard
- 3) *substantial justice done*
- the parking of Heavy Commercial Trucks is allowed in the Table of Uses in the G1 Zone
 - granting the variance would allow achieving the goal of cleanup
 - truck has a loading bed that can be lowered and allows items to be easily loaded
 - granting the variance would also benefit his brother as he is unable to ask for a variance for his property in a residential zone
- 4) *surrounding property values not diminished*
- the parking of a truck does not pose any threat to surrounding property values
 - there is almost eight (8) acres of land and the truck can be kept in a reasonable location
 - the truck is not a permanent fixture
 - truck allows cleanup of existing property which can only raise the property value and property values to surrounding properties
- 5) *unnecessary hardship if not granted*
- use is an allowed use in the G1 Zone, except if the primary use is residential
 - site has almost eight (8) acres, plenty of space to park
 - variance would allow use of the truck to clean up the property and without it the cleanup would be prolonged and unnecessarily difficult

Mr. Pacocha stated that hardship applies to the property (land), not personal. Mr. Sevigny stated that without use of the truck his efforts to clean up his property would be impeded.

Public testimony opened at 7:15 PM. The following individuals addressed the Board:

- (1) Bob Boutin, 167 Bush Hill Road, Hudson, NH, stated that there is nothing further from the truth that he has been using the truck to do any type of cleaning, there has been nothing but harassment to my family, the truck was originally placed right up to the top of the road where there is a bend in the road where his driveway comes out purposely to block sight exiting my driveway. Mr. Sevigny was asked to move it by the Police and he refused until a violation showed up at his house and then he only moved it on the last day specified in the violation and then it was placed next to this other box truck impinging onto my driveway. Mr. Boutin distributed pictures. Mr. Boutin noted that commercial vehicles are not allowed at the Dump and the Dump only distributes three (3) permits a year, so now we're hearing twenty seven (27) loads taken to the dump in this truck. This truck has not moved but twice, the first on the very last day in the violation from the street to next to the driveway bend and then yesterday. Nothing has been removed from the property. Things have been imported. All this trashed has been placed close to his easement just to harass him. Mr. Boutin explained that

- his driveway is over an easement he has onto the Sevigny's property at the top of it before it (the driveway) bends towards his home. Mr. Boutin stated that once a Jeep showed up, parked on his driveway and blocked his daughter from getting home and his wife from driving off their property. It has been nothing but harassment and the truck has not been used and cannot use the Town Dump.
- (2) Beau Bergeron, 155 Bush Hill Road, Hudson, NH, stated he shares a property line with the Sevigny's on the southern side and that his understanding is that all five (5) of the Variance criteria have to be met in order for a variance to be granted and proceeded to give his responses to each (criteria) and how he feels they are not met: (1) it is contrary to the public interest as it is contrary to both Mr. Boutin and himself and they are "public"; (2) character of the neighborhood and public health are violated especially where he parks it, this thirty foot (30') long box truck, and where he parks it next to Mr. Boutin's driveway, he has to drive it into his driveway and his driveway is narrow so Mr. Sevigny has to back it in off Bush Hill Road or he noses it in and has to back out and either way he blocks the two lanes of traffic on Bush Hill Road which is a very windy road with a number of vehicle accidents and to have a large vehicle blocking two lanes is a threat to public health; (3) "substantial" justice to the property owner is really "convenience" to the property owner if he decides to use it; (4) not diminish the value of surrounding property values from a large lettered commercial vehicle parked along the side of Mr. Boutin's driveway would absolutely diminish his property value and that is why the Ordinance does not allow commercial vehicles in residential areas; and (5) unnecessary hardship applies to special characteristics of the land and of the eight (8) acres of land the only dry land is by the Sevigny residence or Mr. Boutin's driveway as the rest is marsh, pond or rolling hills. Please deny this request.

Being no one else to speak, Mr. Pacocha gave the Applicants the opportunity to address the comments just received. Mr. Sevigny stated that Mr. Boutin does not have a driveway, that he was granted a Certificate of Occupancy without a driveway by the Town and ordered to put one (driveway) in by July 2005; that Mr. Boutin claims that it is his driveway but it is an easement for him to drive over my land to reach his residence. Mr. Sevigny stated that he has removed junk from his property and has proof of receipts from the City of Nashua dump and doesn't understand Mr. Bergeron's objection as he lives approximately 1,500 - 2,000 feet away from where he wants to keep the vehicle (as marked on the aerial view submitted with the application).

Mrs. Sevigny stated that Mr. Boutin claimed that she and her husband are deliberately putting things around the easement and that is not true, they inherited everything on that site, they have not brought in any more and there are pictures on eBay to prove it all existed prior to them purchasing the property. Mrs. Sevigny stated that they were in a severe motorcycle accident last June (2018), that her husband was considered dead on the side of the road but they revived him and he has a brain bleed and is still being treated, that she is also being treated and is facing another surgery for her wrist, that they are still cleaning up but the accident has slowed their cleanup progress and the benefit of the truck is that it has a flat bed they can lower and wheel stuff into the truck. Mrs. Sevigny stated that they hired kids to help them over the summer with the clean up, that they removed a dilapidated fence and will come back

when the weather permits. Mrs. Sevigny restated that they are not doing anything deliberate to Mr. Boutin and that all this stuff was there when they bought the property and does not see why they cannot park the Jeep or the truck on their property and use their property as they need to. Mrs. Sevigny added that Mr. Boutin did not even know they bought the property, thought that they were the previous owner when all this started because she dumped some grass clippings into a gully that was on her property when Mr. Boutin called the Hudson Police Department instead of them and claiming that we were dumping horse manure just to annoy him even though his house cannot be seen from the gully. Mrs. Sevigny stated that they came from Nashua and used the Nashua Dump with their permission to dump twenty-seven (27) loads mostly from the existing house and area by the house.

Mr. Pacocha opened Public Testimony a second time. No one addressed the Board. Mr. Pacocha closed Public Testimony at 7:27 PM and declared the matter before the Board.

Mr. Dearborn noted that there is no driveway easement in the meeting packet and asked Mr. Boutin if there is a recorded easement for his driveway. Mr. Boutin stated that he has a recorded easement and confirmed that he plows the driveway.

Ms. Davis asked and received confirmation from Mr. Sevigny that the truck is registered. Ms. Davis asked how many licenses are registered to the DOT (Department of Transportation) number listed on the truck and Mr. Sevigny responded that he does not know, his brother owns the Company and believes he has another vehicle in Waltham Massachusetts and added that the truck on his property services the northern area and his brother uses the truck daily and cannot park it at his residence. In response to Ms. Davis' question regarding the 53' trailer on site, Mr. Sevigny stated that it is used for storage.

Ms. Davis questioned Mr. Buttrick. Mr. Buttrick stated that box trailers can have multiple uses so the first determination is to identify its use and added that box trailers generally start out attached to registered vehicles can become just storage units. Mr. Sevigny confirmed that it is his plan to get rid of the trailer. Mr. Buttrick stated that this came to the Town as a Code Enforcement Complaint and he had to sift through what was being handled as a Civil Complaint regarding the driveway easement and added that when he went to the site for the Code Enforcement investigation he noted that there was a huge box truck that is not allowed per Hudson Zoning Ordinance because the property is being used as a residence and is why a Variance is being sought. The box trailer is being used for storage. A parcel is allowed one (1) unregistered vehicle and there was an unregistered short bed truck on site. Mr. Sevigny stated that Wayne's Auto will be removing the unregistered truck.

Mr. Dearborn stated that he has a difficult time accepting this Case as a Variance, particularly when a Variance stays with the land, that this appears to be a short term need and more of a variance for the brother to park his truck there. Mr. Sevigny stated that it is for the sake of his brother as well as a convenience for him to have the truck at his place and be able to clean up his property. Mr. Sevigny stated that he is zoned G1 which allows for the truck and if he were to have a business on his property he would not need to be before the Board. It was noted that Mr. Sevigny's brother could pursue a variance to keep his truck at his residence. Mr. Sevigny confirmed

that once his property is cleaned up, the truck would no longer be on his property and added that the Board could put a time limit on the variance.

Motion made by Ms. Davis not to grant the requested Variance. Motioned seconded by Mr. Dearborn. Ms. Davis spoke to her motion stating that all five (5) criteria for the granting of a Variance were not met; it is contrary to the public rights; it does injure the abutters; it is contrary to the Ordinance and what the Town's people voted; affect the neighborhood; it alters the essential character of the neighborhood which is residential; it does infringe on the rights of others; it does diminish surrounding property values; it does pose a safety hazard and it does block sight distance; and there are no special conditions on the property that distinguishes it from any property in the area to satisfy the hardship criteria. Mr. Dearborn spoke to his second, that in his estimation this is not a variance, it does not show any hardship with regard to the property, which is different than a use for the convenience for the applicant, it is a temporary issue where a variance stays with the land and the vehicle does not belong to the property owner. Mr. Daddario added that the hardship criteria applies to the land, that the hardship is with regard to the condition of the property, not the property owner. Mr. Pacocha agreed with Ms. Davis. Vote was 4:0. Variance denied. The 30-day Appeal period was noted. Mr. Sevigny thanked the Board.

Attorney Jay Leonard asked to address the Board as he has conferred with his client and it is their desire to continue their Case (Case #4 on the Agenda) to the next meeting in the hopes that there will be five (5) Members present. Mr. Pacocha directed the Board's attention to Case #4.

2. Case 256-001 (2-28-19): Ramenbhati K. Patel, Trustee of the Hudson Realty Trust, 99 River Road, Hudson, NH requests a Special Exception to convert his convenience store second floor space into an accessory/caretaker's residential space. [Map 256, Lot 001, Zoned G-1; HZO Article V §334-22, Table of Permitted Accessory Uses].

Mr. Dearborn read the Case into the record. Mr. Daddario stated that in the interest of full disclosure he was formerly a partner in the Law firm representing the Applicants, that he no longer has any business interest in Atty.'s Westgate's firm and has no business interest or knowledge of the Case Atty. Westgate is presenting and added that he feels capable of sitting as a Voting Member on this Case but would recuse himself if the Board preferred. No Member asked for his recusal. Mr. Pacocha asked Atty. Westgate if he had an opinion and Mr. Westgate that he has no concerns with Mr. Daddario voting.

Mr. Buttrick referenced his Staff Report, signed 2/15/2019, stated that the Applicant has requested a Special Exception to utilize the second floor as an accessory use for a caretaker's residential unit and noted that the Ordinance states that "Accessory uses, not provided in the Table of Permitted Accessory Uses, that are appropriate to a district can be permitted as a special exception ... The addition of such accessory uses does not result in the mixed or dual use of a parcel ...". The Zoning Determination dated 1/14/2019 noted that this is an existing non-conforming lot and the proposed use as a "caretakers" residential unit is an accessory use to the retail store use.

Atty. Brad Westgate of Winer and Bennett at 111 Concord Street in Nashua, NH, introduced himself as representing the owner and applicant, Mr. Ramenbhati K. Patel, Trustee of Hudson Realty Trust, who is also present along with Jit Patel, who is the son-in-law and manager of Mr. Ramenbhati Patel's various properties and the store manager Venkata Reddy Emani.

Atty. Westgate posted and distributed 11" x 14" copies of the As-built Plan, prepared by T.F. Moran dated 12/20/2013 and noted the Site Plan was approved by the Planning Board in 2011. Atty. Westgate noted that the State line that bisects the property appears to be different on the televised screen than on the As-built Plan showing the majority of the lot located in Hudson, NH. Atty. Westgate stated that the building, on-site septic system and the site's access points are located in Hudson, that the site is serviced by Town water and only a few parking spaces cross into Tyngsborough Massachusetts.

Atty. Westgate stated that they are seeking a Special Exception for an Accessory Use, not a Variance, for a caretaker's residence for a maximum of two (2) individuals per the Zoning Determination made by Mr. Buttrick. Atty. Westgate noted that this is not to be an apartment for third party use, just an apartment for a store employee and their spouse. The apartment will be small, approximately one thousand square feet (1,000 SF) either a one-bedroom or studio, with a stairway from inside the store to the second floor. Currently the second floor is used mostly for storage. It is understood that they would need a Building Permit and meet life and safety codes.

Atty. Westgate stated that it is not a Dual Use or Mixed Use. At one point, approximately five (5) years ago Mr. Patel sought a variance for a Dual Use which would create an unrestrictive use of an apartment for rental to a third party which constituted a Dual Use. Atty. Westgate noted that the variance application was withdrawn before any Board action was taken. Atty. Westgate stated that the lot is non-conforming and meets all setbacks and a variance would not be needed for a caretaker's apartment.

Atty. Westgate next addressed the criteria for the granting of a Special Exception and the information shared included:

- A) *use not in the Table of Permitted or Accessory Uses*
 - a caretaker apartment is not listed in the Table
 - proposal is for an Accessory Use, as per Zoning Determination
 - historically caretaker's apartments are common for small retail stores
- B) *proposed use meets applicable requirements*
 - the proposal meets Zoning Ordinance (ZO) requirements
 - there is nothing specific in ZO for caretaker's like there is for wetlands
- C) *proposed use is consistent with purpose and intent of District*
 - surrounding area has mixed uses already
 - there will be no changes to the footprint or exterior of the building, unless an exterior stairwell is required to meet life safety regulations
 - there is no change proposed for utilities
- D) *proposed use is compatible with character of surrounding neighborhood*
 - surrounding area has mixed uses already

E) primary access from arterial or collector roads

- access is River Road, an arterial road, and no changes are proposed

Atty. Westgate stated that before concluding his presentation he would like to address the following three (3) items: (1) policing for caretaker's residence; (2) parking; and (3) septic system capacity.

With regard to policing and insuring that the resident(s) of the caretaker's apartment include an employee or the manager of the retail store, Atty. Westgate stated the possibility exists to borrow from another segment of the Zoning Ordinance and require the property owner to file an affidavit to that affect periodically with the Town, whether yearly or biannually or whatever the Town prefers, and that would provide a continual record of compliance. With regard to future claim of ignorance for the apartment use being restricted to an employee, the Notice of Decision will be recorded at the Registry of Deeds and that will eliminate anyone claiming ignorance.

Atty. Westgate stated that the Planning Board determined that eleven (11) parking spaces were required based on the square footage of the building and they provided twelve (12) parking spaces. According to Mr. Buttrick, an apartment requires two (2) parking spaces. An argument can be made that an employee would occupy one of the parking spaces regardless of whether he drove his vehicle to work or used one as a resident of the caretaker's apartment. Atty. Westgate submitted a letter from Venkata Reddy Emani, Manager of the Hudson Quick Stop dated, 2/28/2019, attesting that there have never been parking issues for their customers at any time of the day, that there have never received customer or police complaints with regard to parking and that there is more than enough parking spaces. If that argument is not won, then maybe they can go back to the Planning Board and ask to waive one (1) parking space.

Mr. Buttrick noted that according to an email from the Town Planner that, if this Special Exception is granted, the Applicant would have to go to the Planning Board for Modification of Site Plan approval.

Atty. Westgate stated that the site obtained their septic approval from NHDES (NH Department of Environmental Services) in 2011 and asked T.F. Moran to evaluate the existing system for the addition of a studio or one-bedroom apartment. Atty. Westgate submitted a letter from Thomas Burns, PE, of T.F. Moran dated 2/28/2019, that stated the system was designed to handle four hundred sixty gallons per day (460 GPD) and that based on a unit design flow, the retail-supermarket is at 233 GPD leaving 227 GPD available for future/other consumption and that according to NHDES a single bedroom apartment would utilize 225 GPD. Atty. Westgate stated that the existing septic system can accommodate both the store and an apartment.

Mr. Pacocha opened the meeting for Public Testimony at 8:10 PM. Only one individual addressed the Board. Sanjay Thakkar, 2 Sleepy Hollow Lane, Tyngsborough, MA, stated that he is a regular daily customer to the store and he has never noticed an issue with parking, there always seems to be plenty of spaces available and added that the staff is very friendly. Public Testimony closed at 8:12 PM.

Mr. Dearborn asked and Atty. Westgate confirmed that there are no plans to expand the existing building, other than perhaps for an exterior fire escape stairwell or ladder

to meet Life Safety conditions. Mr. Dearborn inquired about existing windows on the second story and Atty. Westgate stated that there are two windows and the architect had suggested also installing skylights for additional lighting and confirmed that they would meet all life safety and building code requirements for the apartment. Mr. Dearborn asked what the plan was for the storage if the second floor is converted to an apartment. Jit Patel, son-in-law living at 5 Waldren Lane, Hopkinton, MA, responded that storage is in the basement and added that the second floor storage mostly has computer and paper files.

Mr. Pacocha asked and received confirmation from Jit Patel that there is an internal stairway to the second floor. When Mr. Pacocha asked if the plan is to raise the roof, to add a gable or dormer and Mr. Jit Patel responded that in their discussion with the architect, that type of expansion was not discussed.

Ms. Davis stated that according to the Table of Uses, this application seeks to add a residential use to an existing commercial use and both are considered Principal Uses and that typically an accessory use is subordinate to the principal use and asked Atty. Westgate how the residential use could become an accessory use. Atty. Westgate responded that it is because of the nature of the use itself, that its use will be restricted to either the store manager or an employee of the store itself, the principal use of the site. Ms. Davis stated that the Board cannot control that and especially so if it has an outside access. Ms. Davis stated that, in her opinion, a residential use cannot be subordinate to a commercial use. Atty. Westgate stated that it could, that there is historical occurrences with a shopkeeper living above or to the rear of the business and that Mr. Buttrick also agreed and issued his Zoning Determination acknowledging the apartment as a subordinate accessory use to the commercial business.

Discussion ensued. Ms. Davis stated that in her opinion, the addition of an apartment creates a Mixed or Dual use and this is a non-conforming lot and would also need variance for lack of frontage and lot size. Mr. Buttrick retraced the events that led to his determination and agreed that initially he too thought it was creating a Mixed or Dual use, but through review of the plans and discussions that the unit would be contained within the store and the Ordinance determined that it avoids the Mixed or Dual use classification with the access being the inside stairway within the store to the second floor warranting an accessory use determination. Ms. Davis stated that the apartment would not be contained within the store, on the main level with the store, but in a separate stand-alone area above the store. Mr. Buttrick stated that access is from the store section and noted that the Fire Department might or might not require an exterior egress from the second floor, that an egress from a window might be satisfactory or a sprinkler system. Mr. Buttrick stated that the apartment has to have an association with the store to be considered an accessory use to the store and agreed with Ms. Davis that it could change and disassociate itself from the store with an exterior access and that would then become an enforcement issue.

Atty. Westgate responded. The Zoning Administrator (Mr. Buttrick) rendered his determination that the proposed apartment is an accessory use and that the determination is the Town's position and was rendered over thirty (30) days ago without appeal. More importantly, Atty. Westgate stated that question of whether or not it is an accessory use or a Mixed/Dual use is not an issue for discussion at this

meeting but they are aware of the concerns and is why they offered a policing mechanism by offering the submission of regular affidavits if the Board desires. Atty. Westgate stated that their proposal is consistent with the Town of Hudson Zoning Ordinance as Section 334-22 permits seeking a special exception for uses not expressly identified as accessory in the Table of Uses and does not create a Mixed or Dual use and added that they have met all the criteria for a special exception.

Ms. Davis agreed that a determination was made and added that the Board Members no longer receive a copy of the Zoning Determinations because if they had she would have questioned it then and not at this meeting. Mr. Buttrick stated that a copy of all his determinations are kept in the Public Folder in the Town Office, per the Selectmen directive. Ms. Davis looked at Selectman Morin and stated that this is an example of the consequence from no longer receiving a copy of the Zoning Determinations.

Atty. Westgate acknowledged that the Determination was fundamental to establish and it was addressed at the beginning. They comply with the Zoning Ordinance, they have addressed parking and septic and offered a policing mechanism for it being an accessory use, they meet the special exception criteria, they will go to the Planning Board for a Modification of Site Plan approval and they will comply with Building Code and Fire Life Safety Regulations.

Mr. Dearborn noted that approximately five (5) years ago the applicants sought a variance for an apartment and asked what differences exist between that plan and the one proposed at this meeting. Atty. Westgate stated that the fundamental change is the restriction on its use to a caretaker's unit and its determination that the restriction creates an accessory use requiring a special exception instead of a variance.

Mr. Dearborn asked how that would be controlled and Atty. Westgate responded that it would be via the recording of the Notice of Decision at the Registry of Deeds to alert all future buyers of the property and the filing of pre-scheduled affidavits, which, if violated would be perjury and subject to additional penalties, and added that Code Enforcement can inspect seeking confirmation of compliance at any time.

Mr. Daddario stated that his initial concern from reading the paper work was with regard to the septic system and that has been addressed with the engineer's letter. Mr. Daddario stated that, in his opinion and experience, regulating enforcement through a signed affidavit by the property owner and reaffirmed every year is a good mechanism and has proven itself to be with communities that have age restriction for residents of older than age fifty-five.

Motion made by Ms. Davis not to grant. Motion seconded by Mr. Dearborn. Ms. Davis spoke to her motion stated that she does not believe it meets the spirit and intent of accessory use, that an accessory use has to be subordinate to the principal use which is commercial, the apartment creates a Dual or Mixed Use for two principal uses on the property that would require variances and adding residential living to the district is contrary to what exists which is predominantly business and does not satisfy the criteria for the granting of a Special Exception. Mr. Dearborn agreed with Ms. Davis particularly with it being considered an accessory use. Vote was 2:2. Mr. Pacocha and Mr. Daddario opposed. Mr. Daddario stated that the Board seems stuck on the

issue of the apartment being an accessory use, but it is not the issue before the Board as the Town has made its determination. Motion failed.

Motion made by Mr. Daddario to grant the special exception with the condition that the property owner sign a yearly affidavit that the tenant is the store manager or a store employee servicing in the caretaker role. Mr. Pacocha seconded the motion. Mr. Daddario spoke to his motion noting that it is his belief that the Board must view the Case from the perspective that the Zoning Officer already made the determination that the caretaker apartment could be an accessory use and the time period for the appeal has already run. Vote was 2:2. Ms. Davis and Mr. Dearborn opposed. Motion failed.

Atty. Westgate stated that with no definitive determination asked the Board to continue to the scheduled March 14, 2019 meeting in the hopes that there will be five (5) voting Members to break the tie vote.

Motion made by Mr. Dearborn and seconded by Mr. Daddario to continue the hearing to 3/14/2019. Vote was 3:1. Ms. Davis opposed. Motion passed. Case continued.

3. Case 147-001-020 (2-28-19): Florence and Marcus Nicolas, 1 Scenic Lane, Hudson, NH requests a Variance to construct an addition to an existing two (2) car garage creating a three (3) car garage resulting with a front yard setback of 44.8 ft setback, where 50 ft is required. [Map 147, Lot 001-020, Zoned R-2; HZO Article VII §334-27, Table of Minimum Dimensional Requirements].

Mr. Dearborn read the Case into the record. Mr. Buttrick referenced his Zoning Determination dated 1/24/2019 and Staff Report signed 2/15/2019, noted that this is a corner lot subject to two (2) front setbacks of fifty feet (50') each and the applicants wish to add onto their two-car garage to create a three-car garage that would only leave 44.8' of setback. Mr. Buttrick stated that if it were not for the corner lot, that the addition would satisfy the sideyard setback of fifteen feet (15') and the applicants would not need a variance. Mr. Buttrick noted that the residential structure and garage meet all setback requirements.

Marcus Nicolas introduced himself, his wife was seated next to him, and distributed a colored 11" x 14" picture of his existing residence with its white fence along Scenic Land and Webster Street with a marking showing where the intended garage would extend to on the fence.

Mr. Nicolas addressed the five (5) criteria for the granting of a variance that included the following information:

- 1) *not contrary to public interest*
 - the granting of the variance will have no impact on the character of the neighborhood, other properties in the neighborhood have three-car garages, and #9 Scenic Lane has a four-car garage
 - there is no threat to public health, safety, welfare and it will not injure the public rights
 - it is a straightforward and simple construction and will blend in with the existing garage and meet all building requirements

- 2) *spirit of Zoning Ordinance observed*
 - the proposed garage will not alter the character of the neighborhood or interfere with the aesthetics of the neighborhood
 - structure will be built by a licensed contractor
 - there is no threat to public safety or welfare
 - there is no substantial intrusion
 - the main issue is that this is a corner lot and the garage will encroach the other front setback by five feet four inches (5.3')
- 3) *substantial justice done*
 - there is no substantial conflict, explicit or implicit, in the purpose of the ordinance and there seems to be no harm to the general public or other individuals
- 4) *surrounding property values not diminished*
 - the property values in this subdivision have increased in the past three (3) years since they purchased their property.
 - the addition of the garage will not diminish the property values that are currently on the rise and cited examples of recent sales in the neighborhood
 - there is no threat of a possible diminishment of property values
- 5) *unnecessary hardship if not granted*
 - due to the fact that this is a corner lot, the garage will encroach into the second frontage, which is their side yard and if not for the corner, the addition would meet the side yard setback
 - the variance requested is minimal and a restriction should be deemed unfair and unreasonable as there is no injury to the public, no interference with the neighborhood aesthetics and does not pose any health risks to the public

Mr. Nicolas added that they have two vehicles, that he drives a Chevrolet Silverado crew cab, which means a long bed, and his wife drives a Suburban, and his truck has sustained damage, scratches to the mirror on the right side with the very tight fit into his garage. Mr. Nicolas stated that he is ninety nine percent (99%) disabled from the military, that their vehicles are parked so close he has to turn himself sideways to walk between and enter his home and that the majority of his disability concern his knees and there have been occasions where his knees buckle and he's fallen.

Mr. Dearborn asked if the purpose of the addition is to be able to park the truck and asked if the addition would be a bit bigger, either width or depth. Mr. Nicolas responded that it would be the same as the existing garage, just extended twelve feet (12') and referenced the picture he distributed noting that the extension would go to the gate of the existing fence.

Mr. Pacocha asked how far the fence was from the property line along Webster Street. Mr. Nicolas stated that he does not know, that he did not measure it, but it is a fair distance away and added that the fence seen jutting out at the end in the picture

belongs to his neighbor and that may be at the property line. Mr. Buttrick posted an aerial view of the neighborhood on the screen.

Mr. Pacocha asked and received confirmation that the existing outside wall would be removed leaving the inside all open and that the current size of the garage measures twenty-two feet by twenty two feet (22' x 22'). Ms. Davis stated that originally she had assumed that the left garage close to the house would be converted to a mudroom. Mr. & Mrs. Nicolas responded that even though a mudroom has its appeal, their primary purpose is to accommodate the big truck and ease of maneuvering inside the garage with both vehicles in it.

Mr. Pacocha opened the meeting to Public Testimony at 8:52 PM. No one was present.

Motion made by Mr. Dearborn and seconded by Mr. Daddario to grant the variance as requested. Mr. Dearborn stated that all five (5) criteria have been met. Mr. Daddario agreed and noted that the hardship criteria is met due to the corner lot and without the second front yard setback, the proposed garage would not encroach if it were a side yard setback. Mr. Pacocha agreed noting that it would be unreasonable to relocate the residential structure and the garage is already situated on the right side of the residence. Vote was 4:0. Motion passed. Variance granted. The 30-day appeal period was mentioned and explained.

Board took a five-minute recess at 8:57 PM. Meeting resumed at 9:02 PM. Mr. Pacocha directed the Board's attention to Agenda item II.

4. Case 209-001 (2-28-19): Mark Pilotte of Dakota Partners, LLC, 1264 Main St., Waltham, MA requests a Variance at 161 Lowell Road, Hudson, NH to permit the use of the entire buildable lot area (after subdivision) within the Applicant's lot for calculation of density, using a portion of that buildable lot area within the G Zone. [Map 209, Lot 001, Split districts: Zones B and G; HZO Article VII §334-27, Table of Minimum Dimensional Requirements-Note 2].

Attorney Thomas Jay Leonard of Welts, White & Fontaine, PC, located in Nashua introduced himself and stated that he has spoken with the Applicants and it is their desire to continue the Public Hearing with the hopes that there would be five (5) Members present and asked if the Board would consider meeting in two (2) weeks. Board discussed their availability and the availability of the meeting room. Mr. Buttrick stated that the room is scheduled for the second Thursday of every month to handle overflow business. Motion made by Ms. Davis and seconded by Mr. Dearborn to continue the Public Hearing on Case #209-001 to March 14, 2019. Vote was unanimous at 4:0. Case continued to 3/14/2019.

Several people in the public asked to have at least a bare presentation of what is being proposed, particularly the type of housing proposed, as they are concerned. Mr. Buttrick directed them to the Town's website where this information is available and noted that there is also a paper file and plans in the office that can be viewed during normal business hours.

II. Public Hearing:

By-Laws amendment

Item read into the record. Mr. Pacocha opened the Public Hearing at 9:03 PM. There was no public present.

Mr. Buttrick referenced the correspondence received from Town Counsel dated 8/10/2018, particularly to the section pertaining to House Bill 1215 that became effective on August 7, 2018. Specifically, HB 1215 requires Zoning Boards to be consistent in their evaluation and voting for variances and that whichever method is selected that it become part of their ByLaws. Based upon previous discussion and review of the Board's current practice, the "vertical" method, with each Member voting on each criteria, has been incorporated into Section 143.9 Decision Process.

Discussion arose on the difference in each approach. Ms. Davis affirmed that they are proceeding the way they have always reached their decision and that the only difference is to document it into their Bylaws. The possibility that a condition could be stipulated that could turn a "not met" to a "met" for a specific criteria was mentioned. Mr. Buttrick added that it is important that for each negative vote, the specific criteria not met must be identified.

Public Hearing closed at 9:09 PM.

III. Minutes:

1. 01-24-19 Minutes

Board reviewed the Edited version presented and made one correction to page 3 regarding the square footage (should be 1,250 SF, not 1,200 SF). Motion made by Ms. Davis and seconded by Mr. Daddario to approve the January 24, 2019 Minutes as edited and amended. Vote was unanimous at 4:0. Minutes approved.

2. 04-27-17 Minutes

Board reviewed the Minutes prepared from the video recording and edited by Ms. Davis and Mr. Buttrick. Both Mr. Dearborn and Mr. Daddario stated that there were not on the Board back in 2017. Question arose regarding who Clerked at the meeting, that Mr. Nolin was the Acting Clerk in Clerk Houle's absence. Motion made by Ms. Davis and seconded by Mr. Pacocha to approve the April 27, 2017 Minutes as edited and approved. Vote was 2:0:2 with Mr. Daddario and Mr. Dearborn abstaining. Being an administrative matter a vote of three (3) is not required. Minutes approved.

Mr. Buttrick stated that this should be the last of outstanding Minutes. Ms. Knee stated that there is no listing for May 2017 Minutes on ZBA's website and added that it may be due to a joint meeting held with the Board of Selectmen and that the May Minutes are on the Selectmen's webpage. Mr. Buttrick to investigate.

IV. REQUEST FOR REHEARING

There were no requests presented.

V. OTHER

1. Election of Officers

By general consensus, deferred until March 14, 2019 meeting.

Motion made by Mr. Davis and seconded by Mr. Daddario to adjourn the meeting. The 2/28/2019 ZBA meeting adjourned at 9:24 PM.

Respectfully submitted,

James Pacocha, Vice Chair and Acting Chair