



# TOWN OF HUDSON

## Zoning Board of Adjustment



Charlie Brackett, Chairman      Marilyn E. McGrath, Selectmen Liaison

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### **MEETING MINUTES – July 25, 2019 - approved**

The Hudson Zoning Board of Adjustment met July 25, 2019, in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall at 7:00 PM.

#### **I. CALL TO ORDER**

#### **II. PLEDGE OF ALLEGIANCE**

Chairman Brackett called the meeting to order at 6:59 PM and invited everyone to stand for the Pledge of Allegiance. Vice Chair Dearborn read the Preamble into the record, identified as Attachment A of the Board's Bylaws, that included the procedure and process for the meeting, that copies of the Agenda and Application for Rehearing are on the shelf by the door, the importance of the 30-day time period as well as housekeeping items regarding cell phones, smoking and talking. Clerk Davis took the roll call.

Members present were Charlie Brackett (Regular/Chair), Gary Daddario (Regular), Maryellen Davis (Regular/Clerk), Gary Dearborn (Regular/Vice Chair) and Brian Etienne (Alternate). Also present were Bruce Buttrick, Zoning Administrator, and Louise Knee, Recorder. Excused were Jim Pacocha (Regular) and Marilyn McGrath, Selectmen Liaison. For the record, Alternate Etienne was appointed to vote.

#### **III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:**

1. Case 208-001 (7-25-19): Richard and Robin Sevigny, 161 Bush Hill Road, Hudson, NH requests an Appeal From An Administrative Decision of a Notice of Violation dated May 24, 2019 citing violations of two provisions in the Hudson Zoning Ordinance: §334-15B (2) Parking prohibited and §334-13 Junkyards prohibited; outdoor storage. [Map 208, Lot 001-000; Zoned General-One (G-1); HZO Article III, §334-15B(2) & §334-13].

Clerk Davis read the Case into the record. Mr. Buttrick referred to his Staff Report dated 7/25/2019 and stated that the violation to Hudson Zoning Ordinance (HZO) Section 334-15B(2) pertains to the Outside Parking or Storage of Vehicles or Trailers used in commerce at Residential Sites with a Gross

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Vehicle Weight (GVW) greater than 13,000 pounds and Section 334-13 pertains to Outside Storage of Junk. Mr. Buttrick noted that the ZBA denied the Variance to allow the parking of a box truck over 13,000 GVW to be used to clean up the junk and debris cited in the 2018 Code Enforcement Violation and directed the Board's attention to Attachment D of his Staff Report and Attachment CEO3 regarding a court ruling declared that simply removing wheels from a trailer does not convert it to a structure. Mr. Buttrick also noted the supplemental information regarding the many definitions of Gross Vehicle Weight.

Mr. Dearborn asked the Chairman to consider postponing hearing this Case until next month's meeting so that the ZBA can conduct a Site Walk to view the violations as noted as it is extremely difficult to view the subject property from the road and the postponement would also allow Member Pacocha, who Chaired the meeting that denied the Variance, to attend both the Site Walk and the Appeal before the Board. Mr. Brackett also noted that it was difficult to view from the road, especially with the high growth. Ms. Davis also concurred with the need for a Site Walk but stated that she would like to hear from the Applicants and Abutters before taking action.

Mr. Daddario stated that in full disclosure he noted that Attorney Kent Barker would be representing the Applicant and that even though they used to work for the same firm, he has not discussed this Case with him and does not feel that there is a conflict of interest but would defer to the Board or the Applicant whether to recuse himself. No Board Member objected to Mr. Daddario voting. Attorney Barker stated that on behalf of himself and his clients, there is no objection to Mr. Daddario voting.

Ms. Davis clarified for the record that she is not related to the Abutter's wife and that she did receive an email from Mr. Boutin after the February meeting to which she responded that he needed to contact the Zoning Administrator and/or the Selectmen, forwarded Mr. Boutin's email to Mr. Buttrick only and added that she has had no further contact.

Attorney Kent Barker of Winer & Bennett in Nashua, NH, introduced himself as representing Mr. & Mrs. Sevigny, stated that they have no objection to a Site Walk and clarified that the Variance that was denied pertained to a box truck and not the tractor-trailer trailer violation that is being appealed.

Atty. Barker stated that the Sevigny's have owned the property since March 2017 and that the prior owner, Eugene Dunn, subdivided a lot that they sold to Mr. & Mrs. Boutin around 2003/2004 and granted an easement along the tote road by the power line easement that was the sole access from Bush Hill Road to the Boutin residence.

Atty. Barker stated that the Zoning Ordinance is specific in stating that outside storage of junk is prohibited yet does not specify “what” beyond “ashes, refuse, waste” and asked how those terms are defined but more importantly how is his client to know and then referenced the adage that “one man’s treasure is another man’s junk”.

Atty. Barker distributed a packet – a write-up prepared by Richard Sevigny dated 7/25/2019 regarding Appeal of Administrative Decision dated 5/24/2019 with attachments of the selected Sections from the Hudson Zoning Ordinance, pictures of the barn and a collection of outside material and two printouts from the Internet: one titled Gross Vehicle Weight Rating by Dale Wickell updated May 24, 2019 and another from Cerasis 2015 Trailer Guide for Standard Freight Trailer.

Atty. Barker referenced ZO Section 334-13.B.(2) “Any quantity of waste, refuse, junk or ashes”. The first picture contains items Mr. Sevigny wants to keep, mostly wood pallets that he intends to burn at some point. The second picture shows a different perspective of the material in close proximity to the barn. Atty. Barker noted that the prior owner was someone who ran a business from this site and brought this material and the tractor-trailer trailer to this site.

Atty. Barker stated that the Notice of Violation fails to give the minimum basis for the exact violation, what is prohibitive, what is unacceptable, what needs to be cured because there is no specificity on what is “wrong”.

With regard to the tractor-trailer trailer, Atty. Barker stated that it came to the property by the prior owner, Mr. Dunn, not by Mr. Sevigny, and has been on the site since approximately 1998. Atty. Barker noted that the Zoning Ordinance was amended in 1995, read ZO 334-15.B.(2) into the record and noted that it passed with a vote of 913:573 at the Town Meeting. Atty. Barker stated that he could not locate any legislative history that could have prompted this Ordinance change and speculated that it might have been prompted to dissuade long-haul truckers from parking their rig at their residence. Atty. Barker noted that the ZO change was very specific to include gross vehicle weight greater than 13,000 pounds in the amendment.

Atty. Barker referenced the research provided by Mr. Buttrick, “GVWR: Payload, Trailer Weight, & Why It Matters” from Pro-Line Trailers’ webpage and read the following into the record: “The GVW is the maximum amount of weight the trailer is able to safely hold and transport. A trailer’s total GVW is made up of the weight of the actual trailer and the maximum load capacity of that specific trailer.” Atty. Barker stated that his research yielded different in that the Gross Vehicle Weight Rating represents what the maximum load can be and read the following into the record that “Gross Vehicle Rating is what the maximum load can be” which includes the weight of the vehicle with the load in/on it and offered an example. Atty. Barker referenced his second handout

(Cerasis: 2015 Trailer Guide – Standard Freight Trailer) that shows that a 43’ trailer has a maximum weight of 11,900 pounds and a 48’ trailer with a maximum weight of 13,500 pounds. The tractor-trailer trailer on site is 45’ long. Atty. Barker explained his calculations that yielded a weight capacity for a 45’ trailer to be less than 13,000 pounds and added that according to the Ordinance, it is acceptable. Atty. Barker also noted that the Ordinance is specific in defining that trailers used in commerce at residential sites and that there is no question that this trailer was once used for commerce and noted that it has not been used for commerce since at least 1998. Atty. Barker mentioned the Hudson court case Mr. Buttrick provided and stated that the “use” of the trailer is of no consequence as the violation cited is its weight being over 13,000 pounds. Based on the evidence provided regarding weight and the fact that it is not used in commerce and that it has been on this property for over twenty (20) years, Atty. Barker asked the Board to dismiss the Violation.

Public testimony opened at 7:30 PM. The following individuals addressed the Board:

- (1) Melissa Boutin and Robert Boutin of 167 Bush Hill Road introduced themselves as direct abutters and distributed pictures that were taken yesterday, three sets to the Board and one set to the Applicant. Mrs. Boutin stated that she contacted BSP and spoke with Scott Boisvert, Safety Manager, and based on the exact specification of the tractor-trailer trailer, estimated the weight to be 13,750 pounds when empty. Mr. Boutin noted that the trailer is effectively tipping. Mrs. Boutin stated that the trailer was placed in that location late in August 2007, on the day she was to take her oldest daughter to sixth-grade orientation at Hudson Memorial School and noted that it effectively blocked her from using her driveway and added that Mr. Sevigny was not the owner then. Mrs. Boutin referenced the Google street-map-view picture taken in 2005 that shows the entrance to her driveway and noted that the trailer was not parked there then. Mr. Boutin stated that he built the driveway in 2003 and that they have an easement. Mr. Boutin stated that he too found the website referenced by the attorney and noted that it was produced in 2015 and clearly states that it is for estimation only which prompted them to contact BSP directly. Mrs. Boutin stated that the trailer is in the setback, in the easement and abutting their driveway, it is effectively sinking into the ground and it is their (Boutin’s) responsibility to maintain and insure the easement. Mr. Brackett asked that a copy of the easement be given to Mr. Buttrick. Mr. Boutin stated that the trailer was used by the prior owner to house items for his eBay business, used in “commerce” for his business even though not taken “on the road”, and added that the first time he noted the current owner entering that trailer was on 6/9/2019.

- (2) Beau Bergeron, 155 Bush Hill Road, abutter on the northern most property line, stated that the unregistered vehicles is part of the Junk Violation even though not mentioned by the attorney. There are at least three (3) unregistered vehicles on the property, a red Grand AM, a Mustang and a Jeep Cherokee. Mr. Bergeron stated that he has filed multiple complaints about the setback laws and notices that vehicles keep being placed in the setbacks. Mr. Bergeron invited the Board to go onto his property and look down on the site and they will notice several areas of trash and asked the Board to please do a Site Walk on the entire property, not just by the easement.

Being no one else to speak, public testimony closed at 7:40 PM. Mr. Brackett offered Atty. Barker the opportunity to address the comments made and Atty. Barker deferred.

Ms. Davis stated that she too discovered the Cerasis Guide in her research and did additional research to discover that a 45' trailer was a length manufactured prior to 1985, is no longer used and offered to forward that information to Mr. Buttrick. There is no way to determine what the gross vehicle weight is when empty because trailers come equipped with various options. Ms. Davis asked to have access to the inside of the trailer during the Site Walk.

Ms. Davis stated that, according to her recollection, the reason for the verbiage "used in commerce" was for descriptive language to differentiate between recreational uses, like a mobile home/RV (Recreational Vehicle).

Discussion ensued regarding specificity of Junk and definitions of GVW. It was noted that the trailer and much of the junk came to the site by the prior owner. Atty. Barker stated that the exact measurements of the trailer are 45' long, 8' wide and 9' high and noted that the material of the trailer would also affect its weight, whether it is fiberglass, aluminum, metal or wood. Atty. Barker stated that the brakes on the trailer are seized and that it is not possible to place it on a scale and asked, considering the lack of a true definition, how relevant is the Ordinance specifying the 13,000 GSW to the Violation and added that he would argue that it is not and that the Board is part of the due process and that due process comes from the Constitution. Mr. Buttrick spoke to the "due process" and that as the Zoning Administrator it is his job to make an interpretation and it can be appealed to the Board and it is the Board's responsibility to make the final determination on how the Zoning Ordinance is to be interpreted and whether the Zoning Administrator's decision is right or wrong. Mr. Buttrick also stated that the accusation regarding the lack of specificity regarding junk, there is a definition in the Ordinance. Mr. Brackett added that the ZBA is been defined as a quasi-judicial Board and will consider all evidence.

Board next discussed the need for a Site Walk. Board asked if there would be an objection to the abutters attending the Site Walk and Atty. Barker stated

that they can use the easement and added that his client, Mr. & Mrs. Sevigny, would not attend the Site Walk due to other issues with the abutters. Confusion arose on the junk violation. Atty. Barker was of the impression that it was junk in the area of the easement and saw no reason to access the entire site. Mr. Brackett stated that the Board should view the entire site, especially in light of testimony received regarding 'junk' in other areas of the site. Atty. Barker again referenced the lack of specificity in the Violation and added that the prior owner had sort of a country western theme with a covered wagon and mannequins and horse cutouts nailed to trees and noted that the Sevigny's have owned the property less than two (2) years. Mr. Brackett stated that the Board is addressing the property and noted that there is a violation that dates back to 2006 regarding junk on the property with no confirmation that it was ever cleaned up. Ms. Davis stated that usually when the Board conducts a Site Walk it is of the property, of the entire property.

Mr. Dearborn made the motion to conduct a Site Walk to a date certain, to be determined, and to continue the hearing to the next regular scheduled ZBA meeting on Thursday, 8/22/2019 and be placed as the first item on the 8/22/2019 Agenda. Ms. Davis seconded the motion and clarified that the Site Walk would be of the entire property. Vote was 5:0.

Board discussed possible days and dates for the Site Walk. Site Walk scheduled for Monday, 7/29/2019 at 6:00 on-site. Members to park on the easement. Members reminded to wear their identification badge, wear long pants and good walking shoes/boots and consider bug spray

2. Case 175-107 (7-25-19): Brian Girard, 8 Ferry Ave, Hudson, NH requests a Variance to allow the expansion of an existing non-conforming use, for the construction of a 36' x 24' detached residential garage. [Map 175, Lot 107-000; Zoned Business (B); HZO Article V, §334-20 Allowed uses provided in Tables & §334-21 Table of Permitted Principal Uses].

Clerk Davis read the Case into the record. Mr. Buttrick referenced his Zoning Determination dated 6/20/2019 denying a Building Permit to construct a detached residential garage and his Staff Report dated 7/25/2019. Mr. Buttrick stated that the site is located in the Business (B) Zone and, according to the Table of Permitted Uses, a residential house is not permitted and added that in 1948 a Variance was granted to allow a workshop in the present garage, in 1991 a Building Permit was issued to construct a 10' x 10' 3-season porch and in in 2005 the septic system was replaced.

Brian Girard of 8 Ferry Avenue introduced himself, stated that he would like to construct a detached 36' x 24' two-car detached garage with storage on the side on the existing concrete slab at the rear of his property and addressed the criteria for the granting of a variance. The information included:



- (1) *not contrary to public interest*
  - is located in an established residential neighborhood
  - garage would keep the residential aspect of the neighborhood even though it is Zoned Business
- (2) *will observe the spirit of the Ordinance*
  - garage is a common residential accessory use
  - garage would cause no change to the neighborhood which is established as residential
- (3) *justice would be done*
  - garage is a common residential accessory use
- (4) *will not diminish values of surrounding properties*
  - proposed construction would be for storage for a couple of vehicles
  - housing of the vehicles keeps the yard “clean” looking which is a benefit to both him and his neighbors
- (5) *unnecessary hardship*
  - the zone classification of Business causes the hardship, the neighborhood is all residential

Public testimony opened at 8:10 PM. No one addressed the Board.

Mr. Dearborn questioned why there is no application for an Equitable Waiver of Dimension before the Board for this site especially considering that Selectman McGrath asked at the last meeting that such discrepancies be addressed in tandem. Mr. Dearborn stated that he notices at least four (4) violations that need to be addressed – setbacks are not met for the existing garage, the pool and the shed and the Zoning Ordinance does not permit two (2) driveways on a residential site without Planning Board approval. Mr. Brackett stated that it also appears that the house is in the front setback. Mr. Buttrick pointed out that the existing gravel driveway is not a Zoning violation and falls under the jurisdiction of the Planning Board and cannot be resolved with an Equitable Waiver. Mr. Brackett explained and supported the need to obtain an Equitable Waiver for the existing violations.

Discussion arose regarding the second driveway. Mr. Girard stated that it exists, it is gravel and can be used to park a vehicle and added that he has no intention to pave a driveway to the new garage and when asked how the proposed new garage would be accessed, Mr. Girard stated that he would drive on the lawn to it. Mr. Girard stated that the existing garage is used to house his car and motorcycle and that there is no “workshop” in it and was surprised that one was granted in 1948 as he thought his house was built in 1960.

Ms. Davis asked if the house is serviced by Municipal water and sewer. Mr. Girard stated that he is connected to Town water but has his own septic system and identified the location of it on his property noting that accessing

the proposed garage would not drive over the leach field and that the tank is located by the deck.

Mr. Etienne also agreed that an Equitable Waiver is needed for the existing violations and shared his observations that there seems to be a history with the Town having residential neighborhoods in the Business Zone and imposing a need for a Variance. Members agreed and discussion prevailed on the evolution of neighborhoods and zoning in Hudson, the existence of several lots in need of Equitable Waivers, the conundrum whether to require cleanup before or in tandem or separate when a variance is required and that actual re-zoning is under the Planning Board's jurisdiction and that perhaps it should be discussed in a Zoning Ordinance Amendment workshop. Mr. Girard asked and received information regarding the Equitable Waiver process.

Ms. Davis stated that, in her opinion, the application does not meet all the criteria for the granting of a variance, noted that it is a small lot but no real hardship from the land, the lot currently has a house, garage, pool, shed, deck and the request before the Board is for a second garage which will require a second driveway and that alone could be disruptive to an abutter. In addition, Ms. Davis stated that the proposed use does not observe the spirit of the Ordinance which is to protect the health, the welfare ...

Mr. Dearborn interjected and stated that at last month's meeting, which neither Mr. Brackett nor Ms. Davis attended, the Board approved a second driveway with the specific stipulation that the original driveway be removed and was even specific as to what constituted removal.

Ms. Davis continued by stating that the second garage would require a second driveway, which is an issue and will overcrowd and injure the public rights of others. Mr. Brackett concurred, noted that it is already an extensive use of a small lot and added that the length of a driveway to a garage at the rear of the lot could consume almost ten percent of the lot. Mr. Dearborn added that it is doubtful that grass would remain with it being used as a travel way to the second garage. Mr. Brackett asked Mr. Girard why a second garage and driveway are needed as it appears that the paved driveway could accommodate three (3) vehicles. Mr. Girard responded that he has five (5) cars, one being an older classic car, a convertible Camaro and a couple of motorcycles and thought a wood garage would be more aesthetically pleasing to the neighborhood than a Quonset tent.

Board discussed the hardship criteria. The applicant is not being denied reasonable use of his lot, it is already extensively and intensively utilized and yes it is a small residential lot in the Business Zone. The Board and Applicant wrestled with options that included eliminating the driveway, the shed and the pool to reduce the intensity of the use of the site. It was noted that if the Variance is denied tonight, the Applicant can resubmit but Mr. Buttrick noted



that the new Variance would need to contain something different. Ms. Davis suggested that the applicant withdraw the application without prejudice and work with Mr. Buttrick taking into consideration all the concerns the Board has raised. Mr. Daddario agreed and noted that he would be looking for changes that addressed the second driveway, the intensity of use and the violations in the setback. Mr. Brackett added the pool setback should also be considered and would like to see the leach field being protected.

Mr. Dearborn made the motion to deny the Variance. Mr. Etienne seconded the motion. Before Mr. Dearborn could speak to his motion, Mr. Girard asked to withdraw his application. Ms. Davis made the motion to accept the Applicant's verbal request to withdraw the Variance application without prejudice. Mr. Daddario seconded the motion. No discussion. Vote was 5:0. For the record, Mr. Dearborn withdrew his motion to deny and Mr. Etienne withdrew his second to that motion.

3. Case 191-135 (7-25-19): Bernard Campbell of Beaumont & Campbell, Prof. Ass'n. of 1 Stiles Road, Suite 107, Salem, NH representing Salem Manufactured Homes LLC, 3 Bay Street, Hudson, NH requests a Variance to expand the existing non-conforming use (residential structure) from 924 sq. ft. to 1,152 sq. ft. [Map 191, Lot 135-000; Zoned Business (B); HZO Article VIII, §334-29 Extension or enlargement of nonconforming uses].

Clerk Davis read the Case into the record. Mr. Buttrick referenced his Zoning Determination dated 7/28/2019 and his Staff Report dated 7/25/2019 and shared the following information: site is an existing non-conforming lot of record with a 924 SF (Square Foot) Manufactured Home; site previously received a Variance to place the Manufactured Home on site as the lot is in the Business Zone which prohibits residence; the non-conformity also applies to the size of the lot being substandard; the current Manufactured Home encroaches the front setback; the proposed replacement of the Manufactured Home is 1,152 SF thereby expanding an existing non-conformity; and the replacement Manufactured Home will satisfy all setbacks.

Atty. Bernard Campbell of Beaumont & Campbell Professional Association in Salem, NH, introduced himself as representing the property owner, Salem Manufactured Homes, LLC, and introduced its principal Glenn Gidley and his son, Adam Gidley and noted that Adam Gidley is also the occupant of 3 Bay Street, the site for the requested variance.

Atty. Campbell stated that this lot has an existing Manufactured Home that was placed there as a result of a prior Variance that ZBA granted many years ago [8/24/2000] and his client would like to replace it with an upgraded version and according to current housing standards, instead of the 940 SF this new version is 1,152 SF, an increase of approximately 200 SF. Because this is

a residential house lot in the Business District, it is non-conforming and the Zoning Ordinance does not permit an expansion of a non-conformity without Board approval.

Atty. Campbell addressed the criteria for the granting of a Variance. The information shared included:

(1) *not contrary to public interest*

- lot has a long history of non-conforming residential use
- the placement of the new Manufactured Home will meet all setback requirements [not infringe into the front setback]
- there is no impact to the health, welfare or safety to the community
- will not change the character of the neighborhood, being a residential neighborhood in the Business Zone
- is located in an established residential neighborhood
- will improve character of the neighborhood but will not change essential character as an “in-kind” replacement
- site is serviced by Municipal water and sewer

(2) *will observe the spirit of the Ordinance*

- this section of the Business District has numerous single family homes and to comply with the Ordinance and replace the Manufactured Home with a business would observe the Ordinance but be disruptive to the neighborhood
- minimal expansion, approximately 200 SF, is the result of complying with current industry standards

(3) *justice would be done*

- when considering the main question of what would be gained by the community by denial of the variance versus the harm to the applicant if not granted, there is impact on the community with the granting of the variance
- the replacement will honor current Zoning setbacks
- front setback from prior variance (year 2000) was 30’ and today (year 2019) the front setback is 50’
- the applicant benefit includes updated unit with less expected maintenance costs

(4) *will not diminish values of surrounding properties*

- use is already a previously allowed manufactured housing unit
- replacement should enhance the neighborhood and raise property values

(5) *unnecessary hardship*

- property has history of prior non-conforming residential use
- insistence on compliance with Business District uses would impose neighborhood impacts on surrounding residential properties

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Approved 8/22/2019 as edited.

- replacement of existing manufactured housing unit is reasonable given the age and changes in standards since initial unit placement
- the zone classification of Business causes the hardship, the neighborhood is all residential

Glenn Gidley, Principal Owner of Salem Manufactured Homes introduced himself and distributed pictures of the replacement. Mr. Gidley stated that the new unit is sixteen feet (16') wide as opposed to the existing home that is fourteen feet (14') wide. Mr. Gidley noted that the manufactured home has all the features of a single-family home with the shingled roof, the vinyl siding, the trim, bay window and a dormer.

Public testimony opened at 8:58 PM. No one addressed the Board.

Mr. Dearborn stated that on the map there is a trailer shown to be in the rear setback. Mr. Gidley stated that there is a currently a camper trailer RV there and added that back in the fall a substantial tree limb came down and damaged it. Mr. Gidley stated that it is their intention to remove the trailer from the site at the time they remove the existing home.

Mr. Brackett questioned the foundation for the new unit. Mr. Gidley stated that the home will be placed on a permanent foundation, as defined by the State of NH, which is essentially a slab, and once placed, the axles and wheels are removed and siding will be completed down to the slab so as to have the appearance of a typical single-family home.

Ms. Davis asked the Board's indulgence to question an expert on an unrelated matter. Ms. Davis asked Mr. Gidley if he is seeing a lot of tiny homes. Mr. Gidley stated that his company deals primarily in manufactured and modular homes and according to the code requirements, the minimum size for a manufactured home four hundred square feet (400 SF); they have seen some interest but it is cost prohibitive and most customers end up opting for a bigger home and added that in the last decade they have sold maybe a half dozen that satisfy the manufactured home codes. Mr. Gidley stated that there does not appear to be any standard code for building "tiny homes", that it seems to be a slippery slope and despite the numerous inquiries/requests they receive, they have not sold many.

Mr. Brackett stated that he noted the trailer when he drove by and wondered if it was a second home on the site and it relieved to learn that it is not and that it will be removed from the lot and appreciates that the new unit will comply with the current setback requirements.

Mr. Dearborn noted that this is the second case tonight of a residence located in the Business Zone.

Mr. Dearborn made the motion to approve the variance with the stipulation that the travel trailer/camper currently in the rear setback and damaged be removed from the lot before or at the time the manufactured home is replaced. Ms. Davis seconded the motion. Mr. Dearborn spoke to his motion. Ms. Davis stated that this request meets all five (5) criteria: it is not going to be contrary to public interest; it is in the spirit of the Ordinance and the applicant is placing the new unit out of the current setback; substantial justice is done to the property owner; it will improve property values; and there are special conditions that include the Business Zone overlaid onto a residential neighborhood and the replacement is in like-kind with a two foot difference in width. Mr. Brackett noted that there is no permitted use in the Business Zone that could come to this site without an impact to the neighborhood. Mr. Etienne noted that the Board previously granted a variance for a residential use of this lot. Vote was 5:0. Motion passed. Variance granted. The 30-day appeal period was noted.

#### **IV. PUBLIC HEARING:**

##### 1<sup>st</sup> Reading of proposed bylaws amendments.

Mr. Brackett opened the hearing at 9:19 PM. Mr. Buttrick stated that this is the first of two required Public Hearings required to affect a change to the Rules of Procedure and proceeded to define the changes being proposed that included a change in the Clerk position / duties, the addition of the Recorder position / duties, unexcused absences, order of business and the standardization of the opening statements, referred to as the Preamble. Ms. Davis noted that the curfew should be part of the Preamble. Discussion ensued. Question asked if the curfew was part of the Bylaws and search discovered that it was not and suggestions were made where to include. Voice vote was 5:0 to include the curfew in both the Bylaws and the Preamble with a statement noting that the last Case can be opened no later than 11:00 PM.

Hearing closed at 9:27 PM

#### **V. REVIEW OF MINUTES:**

##### 1. 06/27/19 Minutes

Board reviewed the edited version presented and made no changes. Motion made by Mr. Dearborn, seconded by Mr. Daddario and voted 3:0:2 to approve the 6/27/2019 Minutes as edited and presented. Mr. Brackett and Ms. Davis abstained as they had not attended the meeting.

**VI. REQUEST FOR REHEARING:**

No requests were presented for Board consideration.

**VII. OTHER:**1. Town email address and badges - update

Update: Town decision not to issue Town email addresses to Board Members. Town has issued identification badges to Board and Committee Members.

Mr. Brackett expressed his concern with utilizing his personal email for Board/Town business, noted that the possibility his personal email could be subject to an investigation regarding a Town case, shared an experience he once had in his business with an investigation involving email, stated that he rarely responds to Town emails from his personal email and expressed disappointment with the Town's decision not to provide Board Members with a Town email address.

Mr. Brackett noted that a couple of individuals wore their ID badges at the last Planning Board meeting even though their name plate sat before them at the Board table.

2. Possible Zoning Ordinance Amendments as result from 7/11/19 ZBA workshop meeting.

Mr. Buttrick referenced the Proposed Zoning Ordinance Amendments 7-11-19 ZBA Workshop Cover Sheet and the proposed amendments suggested for Expansion of existing non-conformity; doggie day care, Home Occupation Day Care Special Exception and Manufactured Homes.

Mr. Buttrick stated that, even though the Workshop was scheduled, they did not have a Meeting as a quorum was not present and decisions could not be made. Mr. Etienne stated that he had not realized a quorum was needed.

Mr. Buttrick stated that he receives requests to "replace in kind", noted that the Ordinance strives to bring all into compliance and that it raises questions when it deals with nonconformity. Discussion arose on the expansion of nonconformity and what is truly meant by "replace in kind" and known inconsistencies in Town, especially residences in the Business Zone, and how to correct or synchronize with the Assessor's database for known discrepancies, etc...

Nonconforming Uses versus nonconforming Structures was discussed. With regard to additions to non-conforming structures, two (2) schools of thoughts were expressed: (1) if the addition is conforming then no need to come before

the Board; versus (2) the physical addition expands the nonconformity of the nonconforming structure. The issue of potential overcrowding a lot was also mentioned as well as the Board's need/desire to view/review every expansion. Additional discussion warranted.

Mr. Brackett stated that the target date for proposing Zoning Amendments to the Planning Board is by the end of September 2019 for a 2020 Town Vote. Discussion arose on Member availability to meet and continue discussion in August. It was noted that the next regular meeting is set for Thursday 8/22/2019. The next Workshop was scheduled for Thursday, August 29, 2019.

It was noted that the Planning Board's approach to Zoning Ordinance Amendments and Zoning concerns are broader than that of the Zoning Board. It was also noted that the rate of success is higher with fewer Warrant Articles and that Mr. Buttrick and Town Planner, Brian Groth, are both knowledgeable and their input is valuable.

Recap of next meetings:

Monday, 7/29/2019 6:00 PM Site Walk, 161 Bush Hill Road  
Thursday, 8/22/2019 7:00 PM Regular Zoning Board meeting  
Thursday, 8/29/2019 7:00 PM Workshop – Potential ZO Amendments

Motion made by Ms. Davis, seconded by Mr. Dearborn and unanimously voted to adjourn the meeting. The 7/25/2019 meeting adjourned at 9:55 PM.

Respectfully submitted,

Charles J. Brackett, Chairman