



# TOWN OF HUDSON

## Zoning Board of Adjustment



Charlie Brackett, Chairman      Normand Martin, Selectmen Liaison

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### MEETING MINUTES – MAY 10, 2018 – approved

The Town of Hudson Zoning Board of Adjustment met on May 10, 2018, in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall at 7:00 PM.

Chair Brackett called the meeting to order at 7:00 PM and stated that this is a special meeting for the continuation of Case #172-018 & 022 that began on April 26, 2018 where public testimony was received from both abutters and tenants and a Site Walk was conducted last Thursday, May 3, 2018 and included Abutters. Mr. Brackett noted that there were copies of the Agenda and Appeal Forms on the shelf by the entrance door; advised on the meeting proceedings of hearing the Case followed by receipt of public testimony followed by Board deliberation; and made housekeeping notes that included no smoking in the building, to turn off cell phones and avoid side conversations.

Members present were: Charlie Brackett (Chair), Gary Dearborn (Regular), Maryellen Davis (Regular), Kevin Houle (Alternate/Clerk) and James Pacocha (Vice Chair). Also present were Normand Martin, Selectmen Liaison, David Morin, Alternate Selectmen Liaison, Bruce Buttrick, Zoning Administrator and Louise Knee, Recorder. Absent was Michael Pitre (Alternate). For the record, Mr. Brackett appointed Mr. Houle as a sitting voting member for this meeting.

#### **I. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD**

1. Case 172-018 & 022 (5-10-18) (Deferred from 4-26-18): Turbo Realty, LLC by Patricia M. Panciocco, One Club Acres Lane, Bedford, NH, requests the following Variances at 15 & 17 Tolles Street, Hudson, NH;
  - a) A Variance to allow each vested use to take place within any Unit located on the property. [Map 172, Lots 018 & 022; Zoned TR, HZO Article VIII §334-30, Changes to or discontinuance of nonconforming uses.]
  - b) A Variance to allow uses that are not allowed in the TR zoning district. [Map 172, Lots 018 & 022; Zoned TR, HZO Article V §334-21, Table of Permitted Uses.]
  - c) A Variance to allow uses not listed in the Table of Permitted Uses. [Map 172, Lots 018 & 022; Zoned TR, HZO Article V §334-20, Allowed uses provided in tables.]

Not Official until reviewed, approved and signed.  
Approved 5/24/2018 as edited and amended.

Mr. Buttrick read the Case into the record. Patricia Panciocco introduced herself as Attorney for the Applicant and Thomas Walsh of Turbo Realty, LLC, and submitted a flash drive that contained photographs and an overview map of the property taken from USGS in 1965 that showed 14 Tolles Street by the river and Banks Street, now discontinued but used to access the many campsites in the area. It was noted that there is no well company yet and that there were fields/open areas on both sides of the property.

Another aerial/overhead view, taken from the Environmental folder, showed tractor trailers, presumably used for storage, and pictures of 17 Tolles (now merged with 15 Tolles) that showed dumpsters (five in all), tires, junk cars, living and storage trailers and junk trailers stored behind the dumpsters backed up to the riverbank. The "pit" file showed pictures of rubble, concrete etc. by the Well Company and junk cars behind 14 Tolles Street.

In response to Board questions, Mr. Walsh stated that initially there were several monitoring wells, all State mandated via the EPA (Environmental Protection Agency), to monitor impacts presumably caused by the storage of junk and vehicle leakage of fluids and noted that there is now only one monitoring well and that last monitoring well is actually on Town owned land. Atty. Panciocco added that the monitoring began in 2004.

Additional pictures showed 14 Tolles all cleaned up, with the plumbing business as well as 15 Tolles with both buildings and plenty of parking spaces. Pictures of the inside of the building at 15 Tolles Street without walls and with walls that showed Units A, B & C in one building with access to/from Tolles Street and Unit D & E in the second building noting that E is in the back of the building. Mr. Walsh stated that additional parking and atorage is assigned to each Unit across the street at 14 Tolles Street andthat the arrangement is actually part of the lease agreement.

Mr. Dearborn asked if the pictures shared at the Site Walk were included on the flash drive. Mr. Walsh stated that he gave those pictures to Atty. Panciocco who stated that the flash drive was prepared before and they were not included on the flash drive but could be submitted if the Board wanted.

Ms. Davis asked if there were any plans to pave Tolles Street and Mr. Walsh responded that idea was considered but abandoned as it would accelerate water flow and increase deterioration.

Mr. Brackett acknowledged that the pictures do show vested rights. Atty. Panciocco stated that their goal is to streamline the process with the Town, especially with regard to obtaining permits, and avoid the dilemma imposed upon the Zoning Administrator, Mr. Buttrick, having to determine if the permit is for an expansion or new, conforming or non-conforming, use. Atty. Panciocco stated that Exhibit A titled PERMITTED USES PROPOSED submitted with the application shows Uses they have vested rights to, noted that not all are permitted in the TR Zone and present the reason/need for streamlining the process and noted that, by definition, a Variance creates a Non-conforming Use. Atty. Panciocco stated that their next step is to go through Site Plan Review with the Planning Board.

Atty. Panciocco next addressed the Variance criteria and the information shared included:

*(1) not contrary to public interest*

- 1925 property was platted as a subdivision for 2,500 SF camp lots
- 1942 Town of Hudson adopted Zoning
- 1950's camp lots acquired & 2 large steel buildings constructed
- Earl's Rubbish, Inc. operated from the 1950's to the 1990's
- 1996 TR Zone was adopted
- Current Uses not allowed but vested
- 1998 reports submitted by NHDES, cleanup & well monitoring scheduled
- 2009 Variance granted – land was unsuitable for residential use
- Preparing a list / menu of vested Commercial & Industrial Uses along with Site Plan Review by the Planning Board will not be contrary to the public interest and relieve Town Officials the analysis burden of tenant changes and their non-conforming Uses

*(2) will observe spirit of the Ordinance*

- Uses of this property predates TR Zone and residential uses to the north
- Establishing a list / menu of vested commercial and industrial uses helps to reconcile the consistent use of this property with the more current surrounding residential development
- A menu / list is consistent with the spirit of the Ordinance

*(3) justice done to property owner & benefits do not outweigh public rights*

- Substantial justice requires that the loss to the applicant does not outweigh the public benefit
- Applicant is willing to give up some prior uses of the property
- A menu / list would protect the public while also protecting the applicant's vested rights as well as provide Town officials with clearer direction and clarity by such a plan

*(4) use will not diminish value of surrounding properties*

- Has not diminished property values in sixty (60) years
- Predates surrounding property uses
- Recent cleanups has improved property's value
- Improvements can continue if it can be used productively, as it has been historically, by the owner

*(5) hardship*

- Generally the hardest criteria to satisfy, but not so with this case
- Commercial land in the midst of residences
- Prior contamination of the land
- Non-conforming lots, two buildings on one lot with neither meeting Zoning setback requirements, and permits previously issued
- Not fair nor reasonable to implement scrutiny of interior spaces with vested Uses and causing loss of potential tenants

Atty. Panciocco stated that they hope to reach a compromise with the Town in seeking these variances to identify the vested Uses and pursue Site Plan Review with the Planning Board so there can be a better understanding of the operations. Atty. Panciocco submitted a list of current tenants. Mr. Walsh stated that since the Site Walk, he received notice that one tenant would be leaving at the end of June.

Mr. Brackett opened the meeting for public testimony at 7:48 PM. No one addressed the Board. Ms. Davis stated that, to be clear, this is the last opportunity to bring any concerns to the Board. Still no one addressed the Board. Public testimony opportunity closed at 7:50 PM.

Board deliberation began with review of Exhibit A, PERMITTED USES PROPOSED, submitted with the application. Mr. Buttrick stated that he correlated the list to their corresponding Zoning Ordinance line in the Table of Uses and noted the following: D9 has a history of prior permits; D10 is not quite as described on Exhibit A and will require clear specificity when requesting; D30 should have the word "light" to describe commercial vehicles as D32 specifies "heavy"; and E29-E30 are not described in the Table and could/should be added. Mr. Brackett stated that poses a problem, granting a Variance to something that does not yet exist in the Zoning Ordinance.

Mr. Brackett noted that use of this property began in the 1920's, that pictures from the 1950's shows farms in the area, then Zoning changed and now there needs to be an adjustment and that creates a problem for the Town. The rights of land came before Zoning. This site is unique to the Town. Mr. Brackett stated that, in his mind, this site operates like business condominiums but with rentals and there needs to be a list of non-permitted Uses that have been okayed by this Board to lease to tenants. Mr. Brackett stated that such a 'permitted' list would be helpful to the Zoning Administrator and/or Code Enforcement and that the Board has to be careful to avoid spot zoning.

Ms. Davis stated that in preparation for this meeting, she reviewed the current Uses permitted in the TR Zone and compared them to the proposed Uses and is of the opinion that with the application of stipulations, like a limited amount of vehicles, days and hours of operation and parking, a list of proposed Uses could be determined that would allow the site to support its activity and protect the property rights of the abutters. Ms. Davis distributed a draft copy of her list, titled Proposed Uses by Variance (with stipulations) and noted that the list is for discussion purposes.

Mr. Walsh stated that Mr. Buttrick has been great to work with but the classifications do not represent the reality and is further compounded with the adoption of the 1996 International Building Code and concluded that what has been going on at the site is not in the Zoning Ordinance.

Mr. Brackett shared copies of the Proposed Uses by Variance (with stipulations) distributed with the public and invited questions during discussion and noted that only #15 & #17 are before the Board, not #14 Tolles Street.

Much discussion arose on the proposed limitation to number of vehicles. Mr. Walsh opposed to a number limitation as size of vehicles dictates the number of vehicles that can fit into the bays and in the allotted parking area. Mr. Walsh explained that his

leases include space on/at #14 Tolles and that the space is measured by the width of the bay to a depth of seventy-five feet (75') to be used at the tenant's discretion. Questions of appearance and storage arose and Mr. Walsh commented that there is a difference between storage and units that are licensed or registered and noted that "one man's junk is another man's treasure". Selectman Morin stated that parking is important and that led to a discussion of employee parking which must be provided off street. In response to Mr. Dearborn's question, Mr. Walsh stated that there is space in front of the buildings to park that could be used for customer parking or for employee parking and that would be determined by the tenant and confirmed that off-street employee parking would be provided. Mr. Dearborn asked who would enforce and after some discussion regarding employee parking and potential encroachment of designated areas on #14 Tolles Street by one tenant over another tenant and Atty. Panciocco's request not to micro-manage, it was concluded that the property owner would be the first line of defense and enforcement.

Mr. Buttrick stated that #14 Tolles Street is also unique and has a Variance that prohibits sales and added that the commingling uses over the lots (#14 with #15 & #17 Tolles Street) could become an issue. Mr. Walsh stated that Assessing has auto repair listed for #14 Tolles Street. Ms. Davis asked where vehicles for sale would be displayed if not allowed at #14 Tolles Street and Selectman Martin noted that there is plenty of space at #15 Tolles to display vehicles for sale and added that any auto repair tenant should only be allowed to park vehicles at #14 Tolles and not perform any repair to vehicles on #14 Tolles Street.

Hours of operations were discussed. Proposed hours were Monday through Friday 7:00 AM – 9:00 PM and Saturday 8:00 AM – 12 noon and no hours on Sundays. Atty. Panciocco asked to have Saturday's hours extended to 5:00 PM. Meredith Rackliff, 10 Campbello Street, stated that they hear noise even with the bay doors closed. It was noted that the Noise Ordinance is in effect from 7:00 PM – 7:00 AM. Consideration was given to limiting the hours of operations to match the Noise Ordinance hours noting that a tenant could still use the space for the quiet/paperwork aspect of his business.

Mr. Walsh asked how noise is measured, whether there is a certain/particular decibel level. Mr. Buttrick stated that it is covered in Chapter 249 and is very technical and usually involves a Sound Engineer and noted that enforcement is not specified. Selectman Morin stated that the Selectmen have the right to shut down any operation and hire a Sound Engineer. Mr. Brackett stated that there is ambient noise to take into consideration and noted that sound seems to be louder at night. It was noted that the speed traveled on Tolles Street should be "driveway speed".

Ms. Davis stated that one of the goals with the stipulations was to be considerate to the residents regarding traffic. Mr. Walsh noted that Tolles Street connects to Webster Street, which has a lot of traffic as it is a cut-through to avoid Route 102.

Board took a break at 9:28 PM. Meeting resumed at 9:38 PM.

Mr. Brackett recapped that the hours of operation have to honor the Noise Ordinance and that the size of the unit space on #14 Tolles Street will equal the width of the bay

space on 15 Tolles Street for a depth of seventy-five feet (75') and employees will park off-street.

Ms. Davis stated that for the first three (3) Commercial Uses (Motor Vehicle, Trailer, Snowmobile Sales and Rentals; Repair and Service; and General Body Repair) would have hours of operation as follows: Monday through Friday from 7:00 AM – 7:00 PM, Saturday from 8:00 AM to 5:00 PM and no Sundays. With regard to the fourth Commercial Use (Limousine, Taxicab or Livery Business), Mr. Walsh stated that it could be eliminated from the list. The same hours of operation would apply to the fifth item (Business or Professional Office). Ms. Davis asked if a tenant could have an eBay business and Mr. Walsh expressed concern about whether delivery trucks could be confined to the specified hours of operation and Ms. Davis confirmed that delivery trucks could be scheduled to come to the site during the specified hours.

Questions arose on the next two (2) Commercial Uses. Mr. Walsh questioned why there is a distinction on the weight limits. Mr. Buttrick stated that from a Zoning perspective, heavy machinery does not equal a vehicle. Mr. Walsh asked if it distinguishes between in-service versus out-of-service, or registered, or seasonal and if there is a distinction with the arborist.

Discussion arose on the Additional Stipulations proposed to require natural screening, like arborvitae, behind the building known as #15 Tolles Street to provide some noise reduction to abutting properties. Atty. Panciocco stated that is a Planning Board decision during Site Plan Review. Meredith Rackliff, 10 Campbello Street, stated that trees are not needed.

Atty. Panciocco stated that the variances could be conditioned upon Site Planning Review (SPR) approval by the Planning Board and noted that it will take months to prepare for SPR. Mr. Brackett stated that the approval lasts a year and Selectman Martin noted that the Zoning Ordinance was recently amended to two years. Atty. Panciocco stated that they hope to avoid delays and asked if the ZBA decision regarding the Uses could be effective now and not based on SPR approval in order to avoid delays in obtaining Permits as Mr. Walsh seeks additional tenants. Selectman Martin asked Mr. Buttrick if an Electrical Permit is tied to a Use and Mr. Buttrick responded that it could especially if subdividing a space with a non-conforming Use. Ms. Davis noted that any site improvements between ZBA approval/identification of Uses and SPR approval would be at the owner's risk.

Mr. Brackett stated that good progress has been made at this meeting but the business cannot be concluded in the next hour and suggested a continuation. Ms. Davis agreed to update the list and give it to Mr. Buttrick and the Board. It was noted that the Applicant and the Abutters should contact Mr. Buttrick for the updated list. Atty. Panciocco asked to have arborist specified in the list.

The next regular ZBA meeting is scheduled for 5/24/2018 and already has four (4) Cases and one Appeal. Atty. Panciocco is not available next week, 5/17, and the week after is Memorial Day holiday week. Consensus reached to hold another special meeting on 6/7/2018 to continue with just this Case.

Motion made by Mr. Dearborn, duly seconded by Ms. Davis and unanimously voted to continue the hearing on Case #172-018 & -022 to Thursday, 6/7/2018 at 7:00 PM.

**The following Agenda items were not addressed:**

- II. REVIEW OF MINUTES**
- III. REQUEST FOR REHEARING**
- IV. OTHER**

Motion made by Ms. Davis, duly seconded by Mr. Dearborn and unanimously voted to adjourn the meeting. The special meeting of 5/10/2018 adjourned at 10:18 PM.

Respectfully submitted,

Charles Brackett, Chairman