



# TOWN OF HUDSON

## Zoning Board of Adjustment



Normand Martin, Chairman

Marilyn McGrath, Selectmen Liaison

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

### MEETING MINUTES – MARCH 22, 2018 - approved

The Hudson Zoning Board of Adjustment met on March 22, 2018 at 7:00 PM, in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall.

Vice Chair Charlie Brackett called the meeting to order noting that even though the ZBA Chair Normand Martin was present and seated in the audience, Mr. Martin is no longer a ZBA Member having been elected Selectman at the recent Town Vote. Mr. Brackett stated that he would be Acting Chair until the Board holds its election.

Members present were: Charlie Brackett (Vice-Chair/Acting Chair), Maryellen Davis (Regular/Acting Clerk.) and James Pacocha (Reg.). Also present were David Morin, Alternate Selectmen Liaison, Bruce Buttrick, Zoning Administrator and Louise Knee, Recorder. Excused were Kevin Houle (Alt./Clerk), Marilyn McGrath, Selectmen Liaison, and Michael Pitre (Alt.). For the record, Acting Chair Brackett asked Ms. Davis to perform the Clerk Duties for this meeting.

Mr. Brackett stated that the Zoning Board is a quasi-judicial board that hear cases, receive input, rebuttal and engage in deliberation measuring the merits of a case to the governing laws and renders a decision. Mr. Brackett noted that on the shelf at the entrance of the room are copies of the Agenda for this meeting as well as Appeal forms in the event of disagreement with the Board's decision. Mr. Brackett made the following announcements: that there is no smoking in the building; to please silence all cell phones; to please refrain from talking in the audience; that when addressing the Board to please come to either the lectern or the two chairs and to state your name and address and spell your last name for the recorder; that there is an 11 PM curfew to the meeting; and noted that there is a quorum with only three (3) Members present and added that it would require a unanimous vote to approve a Case.

Mr. Brackett made a plea to the Selectman Representative to appoint two new Regular Members as well as Alternate Members. Mr. Brackett addressed the audience and noted that it is in the Applicant's right to ask for a deferment to the April meeting in the hopes that a full five Member Board would be present.

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

1. Case 190-024 (3-22-18): Farhat Cheema c/o Welts, White & Fontaine, P.C., 29 Factory Street, Nashua, NH, request a Variance to allow two residential apartment uses (not permitted) and a mixed use allowing a convenience store and two residential apartments at 29 Lowell Road, Hudson, NH. [Map 190/Lot 024, Zoned B; HZO Article V §334-21 Table of Permitted Principal Uses & Article III §334-10 Mixed or dual use on a lot].

Acting Clerk Davis read the Case into the record. Mr. Buttrick referred to the email in the supplemental packet from the Applicant's attorney requesting deferment to the April meeting for full Board presence. Ms. Davis read the email into the record.

To: Bruce Buttrick  
From: Thomas J Leonard  
Date: Wednesday, March 21, 2018  
Mr. Buttrick,  
I understand from our telephone conversation that there will not be five (5) members of the ZBA present for the scheduled hearing. As you know, I represent the Applicant. I have spoken with Mr. Cheema and he would like to wait for a full five (5) member board. Please accept this email as a request to postpone the above referenced hearing until the next scheduled meeting of the Hudson ZBA.  
Thank you for your assistance in this matter.  
Best Regards,  
Thomas J. Leonard  
Attorney at Law

Mr. Pacocha made the motion to accept the applicant's deferral request to the next meeting due to the lack of five Members at this meeting. Ms. Davis seconded the motion. Vote was unanimous at 3:0. Case #190-024 deferred. Mr. Brackett noted that with the motion to defer there would be no public testimony taken at this meeting and that the abutters and interested persons should come to the April meeting as there will be no new abutter notification. Ms. Davis suggested that the Members bring the information relative to this case to the next meeting.

2. Case 101-014 (3-22-18): SMT 7 Tracy Lane, LLC, 3 Tracy Lane, Hudson, NH, requests a Variance to allow the fabrication of wood trusses and cutting of plywood, defined as manufacturing, which is not a permitted use in the Business zoning district. [Map 101/Lot 014, Zoned B; HZO Article V §334-21, Table of Permitted Principal Uses].

Ms. Davis read the Case into the record. Jason Hill, Civil Engineer from T.F. Moran introduced himself. Laurie Blanchette of Tracey Lane LLC introduced herself. Mr. Brackett asked if they wanted to proceed with just three Members present or wait a month with the hope that five Members would be present. Ms. Blanchette responded that they would like to proceed and not wait a month with the realization that a unanimous vote would be required.

Mr. Hill posted an overview of Tracy Lane, identified the near three-acre site noting that the Town Line between Hudson and Londonderry bisects the property at an approximate forty five degree angle resulting in approximately one acre in Londonderry and two acres in Hudson, pointing out that the structures totaling approximately eight thousand square feet (8K SF) sit on the Hudson side of the property line and that there are no new structures being considered and that only upgrades to the existing structures are proposed and are in process (ie new windows, paint etc.). Mr. Hill stated that the use would be in connection with Reeds Ferry Small Buildings, Inc. to build their wood trusses and the cutting of plywood to build their sheds, which has been defined as “manufacturing” by the Zoning Administrator and which is not a permitted use in the B Zone; hence their need for a variance. Mr. Hill noted that the completed sheds would be stored at 3 Tracy Lane, the main location for Reeds Ferry Small Buildings, Inc.

Mr. Hill stated that there are several other industrial uses in the area and those not designated as industrial include an adjacent strip mall and a gymnastic training center that also has the Town line in their property.

With regard to the Variance criteria, Mr. Hill offered the following:

1) *not contrary to public interest*

All work will take place indoor. The appearance of the building will be freshened up/improved, consistent with the look of the property at 3 Tracy Lane. The size of the building will not change. The traffic patterns will remain similar to the previous facility with relatively low volume of trucks and cars. Public safety and health will be improved working with the Hudson Fire Chief and replacing the existing fire alarm system and windows. Essential character of the neighborhood will not be altered.

2) *spirit of the Ordinance*

The site is buffered well. Proposed use is similar to existing industrial uses in the neighborhood and identical to the use at 3 Tracy Lane. Public health, safety and welfare will be enhanced over existing conditions.

3) *justice done to the property owner*

Granting the property owner this variance for truss assembly and plywood cutting at 7 Tracy Lane will allow its related entity, Reeds Ferry Small Buildings, Inc., to expand their business adjacent to their current location and

have more room at 3 Tracy Lane to build shed walls which in turn increases the number of sheds that can be built and increase their employee count by six to eight (6-8) employees.

4) *not diminish surrounding property values*

The prior owner did not maintain the building. Since December 2017, Reeds Ferry Small Buildings, Inc. began making improvements to the site which included replacing the fire alarm system, replacing broken windows and doors and missing shingles and painting the exterior to match 3 Tracy Lane. Drainage will not be affected. These efforts will not only improve the value of the site but also the property values of the neighboring sites.

5) *hardship*

Approximately one third of this property resides in Londonderry. The Londonderry Zoning Ordinance allows this use. Reeds Ferry is currently at production capacity at 3 Tracy Lane and must either move all its operations to an entirely new location or provide additional production capacity at this nearby location. The prior tenant, Mailhot Industries, performed repair and assembly of hydraulic pistons. There are other Industrial Uses already in existence on Tracy Lane. There will be no additional noise, waste or other negative impacts. There is no benefit to the public to deny this variance and substantial justice to the property owner in the granting of this variance.

Mr. Brackett opened the meeting for Public Testimony at 7:25 PM. No one addressed the Board.

In response to Mr. Pacocha's question, it was noted that the adjacent building is a gymnastic training center and it too is split by the Londonderry Town Line. Ms. Davis asked if all the work would be performed inside and received confirmation that the one piece buildings and gazebos would all be constructed in the building and the only outside storage would be those structures waiting delivery. Mr. Buttrick confirmed that they would need to go before the Planning Board for a Modification of Site Plan as there is a slight change of use as manufacturing is not assembly. Mr. Brackett noted that there is manufacturing in the neighborhood and that Reeds Ferry Small Buildings, Inc. is well known for producing quality products.

Ms. Davis made the motion to grant the variance. Mr. Pacocha seconded the motion. Ms. Davis spoke to her motion noting that the proposal meets all five (5) variance criteria, no abutters were present to express any concerns, there are like businesses in the area, it is not intrusive to the public and there is no change to the building. Mr. Pacocha agreed that they have satisfied all five (5) criteria, that the hardship is satisfied by Simplex standard and that this is a small business zone. Mr. Brackett agreed that it is clearly Simplex, classically so. Vote was unanimous at 3:0. Motion passed. Variance granted. Mr.

Brackett advised that a Notice of Decision would be issued within the week and noted the one-month appeal period.

3. Case 183-068 (3-22-18): James Callahan, 5 Blackstone Street, Hudson, NH, requests a Special Exception to build a small outdoor blacksmithing forge for making small metal projects as a hobby. [Map 183/Lot 068, Zoned TR; HZO Article V §334-22, Table of Permitted Accessory Uses].

Ms. Davis read the Case into the record. Mr. Buttrick referred to his 3/9/2018 Staff Report noting that the Special Exception is for an Accessory Use and that his only concern was with regard to noise.

James Callahan introduced himself and stated that he would like to set up a backyard hobby that would not be visible from the street to learn blacksmithing. The hobby would be a secondary use of his property as it is still his primary residence. The forge would be contained in a 3' x 3' brick cube that will resemble a brick BBQ grill or pizza oven. The fire pit inside the cube will be approximately 10" x 12" and 12" deep in the center and burn coal coke. The anvil weighs seventy pounds that will be mounted and the noise it generates in use is similar in decibels to a lawnmower and will generate less noise than the auto shop down the street. Mr. Callahan noted that there is not a lot of banging. The work will all be done outside and only on his days off from 9:00 AM to 5:00 PM as he has a full time job. His intent is to learn how to make tools, ornaments, bells, gates and fireplace tools and has no interest in producing knives or swords.

Mr. Callahan stated that he misunderstood the Abutter requirement and actually went and spoke to his neighbors and received their okay signatures and could produce the list to the Board. Mr. Callahan stated that he was surprised at his neighbors' response as they ranged from excitement and curiosity to not caring what he does on his property.

Mr. Brackett opened the meeting for public testimony at 7:41 PM. No one addressed the Board.

Mr. Brackett stated that he can appreciate the hobby as a secondary use but knows that if it is successful, it could grow into a business. Mr. Callahan stated that if he finds himself proficient, he would move and set up a shop with retail exposure. Mr. Buttrick stated that he originally suggested pursuing a Home Occupation. Mr. Callahan stated that he did not want to pursue that as he does not know if he even likes blacksmithing. Mr. Brackett inquired if Mr. Callahan has done any blacksmithing. Mr. Callahan stated that he has never done blacksmithing, that it is totally new to him but he is interested in doing something more than watching TV. Ms. Davis asked what his "day job" was to

which Mr. Callahan responded that he is an IT administrative supervisor for BAE systems.

Mr. Brackett asked Mr. Callahan if he has checked with the Fire Department and Mr. Callahan responded that it was his first step and it was the Fire Department that referred him to Mr. Buttrick. Mr. Morin stated that a backyard enclosed fire pit does not require a Fire Permit. Mr. Brackett stated that the Town of Hudson has a Noise Ordinance and suggested Mr. Callahan familiarize himself with it. Mr. Morin stated that the hours are 7:00 – 7:00.

Mr. Brackett noted that there is a 10' x 10' shed on the property and asked if that is part of the blacksmithing operation. Mr. Callahan stated that his intent at first is to do everything outdoors and store his tools inside the shed and if all goes well, he may use the shed in the wintertime but only after he installs fire protection. Ms. Davis asked if there would be any exterior lighting. Mr. Callahan stated that he is not proposing any lighting as his intent is to do the blacksmithing during the daylight hours.

General discussion arose and Special Exception criteria reviewed and conditions of approval were suggested.

Ms. Davis made the motion to grant the Special Exception with the following three (3) conditions:

- (1) that the hours of operation be restricted from 7:00 AM to 7:00 PM with full compliance to the Town of Hudson Noise Ordinance;
- (2) that there will be no retail sales on site
- (3) that should the venture become more than a hobby and grows itself into a Home Occupation, this Special Exception is voided and another Special Exception would be needed.

Mr. Pacocha seconded the motion. Vote was unanimous at 3:0. Special Exception granted with three (3) conditions. Mr. Brackett advised that a Notice of Decision would be issued within the week and noted the one-month appeal period.

## **II. REVIEW OF MINUTES**

### 1. 02-22-18 Minutes

Board reviewed the edited Minutes as presented and made one amendment to Page 6 correcting the address to speaker #8. Motion made by Ms. Davis and seconded by Mr. Pacocha to approve the 02-22-2018 Minutes as edited and amended. Vote was 3:0. Minutes approved.

## **III. REQUEST FOR REHEARING**

No requests were presented for Board consideration.

#### **IV. OTHER**

##### April OSI spring conference

Noted. Mr. Pacocha filled out his registration form. Mr. Brackett will fill out his registration form within the week

##### Nomination and Appointment - Chairman and Vice-Chairman.

It was noted that the ZBA Chairman was elected to the Board of Selectmen and the Chair position is now vacant. Mr. Brackett submitted a plea to Selectmen Representative Dave Morin to replace the two vacant Regular Member positions and also fill the three vacant Alternate seats. Mr. Brackett stated that he is contemplating resigning from the Planning Board and that one of the new ZBA Members should be a Planning Board representative. Ms. Davis made the motion to defer selection until the next meeting when there are more Members present. Mr. Brackett seconded the motion to defer to the next meeting. Vote was unanimous at 3:0.

##### Town Counsel input and Joint Meeting with Planning Board

Mr. Brackett stated that he would like to schedule time with Town Counsel to discuss the “after-the-fact” permits, like Accessory Dwelling Units, and how to deal with them because one cannot get mad at a current owner trying to correct a past wrong. Ms. Davis stated that she would also like to discuss alteration and expansion of non-conforming uses and lots. Mr. Buttrick agreed that guidance is needed, that the “after-the-fact” permits places the Board in a tough position and could set a precedent and added that it also affects the Building Permit applications when setback encroachments are noticed. A process & procedure are needed.

Selectman Morin agreed and noted that the affects are far more reaching and also affect sewer and water with outstanding bills. Selectman Morin noted that, in his opinion, the Assessors should be the key finders of discrepancies and should also have a process and procedure and noted that the Land Use Director, George Theborge is creating a Procedure Sheet and suggested that ZBA contemplate the same.

Selectman Morin suggested waiting for new ZBA Members to join the Board before engaging Town Counsel and noted that there is a tentative Joint ZBA & PB meeting scheduled for next week. Ms. Davis asked that an Agenda be prepared for that meeting. Normand Martin, ex-ZBA Chairman noted that there is a governing law that in a joint meeting the Planning Board Chairman chairs the meeting. Mr. Brackett strongly disagreed as this is a workshop and not a Case hearing and neutrality is needed. Selectman Morin stated that he would call the joint meeting and prepare an Agenda and mediate. Ms. Knee was asked to attend and provide Minutes.

Ms. Davis stated that there is a strong need for a Vision for the Town, that a Master Plan is needed. Mr. Brackett concurred and noted that the Boards' responsibility is to build to the future of Hudson.

Motion made by Ms. Davis, seconded by Mr. Pacocha and unanimously voted to adjourn the meeting. The 03-22-2018 ZBA meeting adjourned at 8:35 PM.

Respectfully submitted,

Charles Brackett, Vice Chair/Acting Chair