



# TOWN OF HUDSON

## Zoning Board of Adjustment



Normand Martin, Chairman      Marilyn McGrath, Selectmen Liaison

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

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

Chairman Normand Martin called the meeting to order at 7:01 PM and made the following announcements: to please silence all cell phones; that there are extra copies of the Agenda as well as Appeal forms by the door; that there is no smoking in the building; 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 to please refrain from talking in the audience.

Members present were: Charlie Brackett (V-Ch.), Maryellen Davis (Reg.), Kevin Houle (Alt./Clerk), Normand Martin (Ch.), James Pacocha (Reg.) and Michael Pitre (Alt.). Also present were David Morin, Alternate Selectman Liaison, Bruce Buttrick, Zoning Administrator and Louise Knee, Recorder. Excused was Marilyn McGrath, Selectman Liaison. For the record, Chair Martin appointed Alternate Pitre to vote in the vacant Regular seat.

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

1. Case 228-007 (2-22-18) (Case “a” Deferred from 1-25-18): Joel Kahn of BlueBird Storage, 1 Bayside Road, Greenland, NH requests the following Variances at 256 & 266 Lowell Road, Hudson, NH;
  - a) A Variance to allow the construction of a 3-story self-storage facility which is a non-permitted use at 256 & 266 Lowell Road, Hudson, NH. [Map 228/Lots 007 & 008, Zoned B; HZO Article V §334-20, Allowed uses provided in Table of Permitted Principal Uses].
  - b) A Variance to allow the construction of a major commercial project which is a non-permitted use in the Business (B) zoning district at 256 & 266 Lowell Road, Hudson, NH. [Map 228/Lots 007 & 008, Zoned B; HZO Article V §334-20, Allowed uses provided in Table of Permitted Principal Uses].

Approved 03-22-2018, as edited and amended.

Clerk Houle read both Cases into the record. Mr. Buttrick stated that the variance to construct a 3-story self-storage facility is a rehearing and was continued from the January meeting when it was discovered that another variance would be needed for a Major Commercial Project in the Business Zone with a proposed structure greater than one hundred thousand square feet (100,00 SF).

Attorney John Cronin of Cronin, Bisson & Zalinsky in Manchester, NH, introduced himself as representing the Applicant, and Brent Cole Project Engineer from Keach Nordstrom in Bedford NH who has been responsible for much of the design work on the project team and Architect Brandon McNamara and Bill Goodison, a principal from Bluebird.

Atty. Cronin stated that Bluebird Storage offers temperature control storage units, that they have a target and a plan to build these facilities in strategic locations in New Hampshire with approved locations already in Rochester, Hooksett, Manchester Bedford and Exeter with other locations "in the works" and believe that they have developed a product that is entirely different from what is historically known as self-storage facilities with corrugated steel structures. In recent years, customer demand and people with valuable items now desire temperature controlled and secure storage units. Bluebird has worked with an architect to design what resembles more retail similar to a Jared Jeweler, albeit on a bigger scale, than the traditional mini self-storage warehouses. The location in Hudson, the demographics, proximity to the highway and traffic counts, all satisfy their selection for site selection.

Atty. Cronin stated that in looking at the Ordinance there is ambiguity between the intent and purpose of the Table of Uses where the narrative talks about allowing warehouses as a permitted use but conflicts with the Table of Uses which omits such a reference. Atty. Cronin noted that since this issue was raised at their first meeting with the Board, it has been referred to Counsel who made the determination that it was just a typographical error. Atty. Cronin stated that the ambiguity has existed since 2007 and expressed his opinion that it is not as simple as a "typo".

Atty. Cronin stated that they are well aware that the property abuts a residential area and noted that many of those homeowners came out at the first hearing and expressed concerns with children drowning in the detention pond and the disturbance to the fisher cats. Atty. Cronin noted that the site is in the Business Zone that allows, as a matter of Right, uses such as retail and other big-box uses that are not residential. Atty. Cronin referenced the document submitted with their original application provided by Appraiser Mark McKeon of McKeon Appraisal Services, Inc., dated 10/5/2017 where he determined that the proposed use would not diminish the values of the surrounding properties. Since then, Mr. McKeon was asked to do more, to specifically select houses in the abutting neighborhood and provide his analysis. Atty. Cronin read the letter Feb 22, 2018 into the record referencing sales over the past few years between homes within proximity to commercial businesses and concluded with the same determination that this project will not diminish the value to surrounding properties.

Brent Cole Project Engineer from Keach Nordstrom provided an overview of the site noting the 112,500 SF indoor storage building with access through one driveway cut off Lowell Road, parking to the front of the structure with a few parking spaces by the

overhead doors along the side and rear, travel way around the building, the one hundred foot (100') buffer from the abutting residences and noted that they have received a Wetland Special Exception for stormwater retention within the wetland buffer as well as driveway access through the buffer. Brendon McNamara, architect, addressed the architectural design of the structure noting the appearance is more of an office than the common corrugated traditional self-storage structures, that the building will be climate controlled, and will have a stucco finish over a stone concrete base with the building mechanics on the roof which will be concealed by the towers. Mr. McNamara noted that the design has become the Bluebird image and constructed on their other locations in NH.

Atty. Cronin next addressed the criteria for the granting of a variance pursuant to RSA 674:33 and cited the Bartlett Case. Zoning Ordinance (ZO) Section 334-18.D provides that the Business District is established to provide for the development of general wholesale and retail commercial uses, services, office uses, industry, warehousing, multi-family dwellings and customary accessory uses and structures. ZO 334-21, Table of Uses, prohibits warehouse facilities in the Business District. Granting of the variance would not be contrary to the public interest as it is one single building with no significant traffic, versus a Wal-Mart or a Sam's Club, and will have provisions prohibiting the storage of liquids, perishables, biological contaminants, toxic materials, explosives and other hazardous materials to address public health and safety concerns. These factors also address and satisfy the spirit and intent of the ZO. The central character of the business zone is well developed in the area. The ZO allows for hospitals, schools and indoor recreational facilities which indicates a Commercial Use often with a larger building or several buildings and more traffic.

Atty. Cronin stated that the substantial justice prong is a subjective one and a balancing test. The harm to the applicant is extensive if the variances are denied versus the harm to the public if the variances are granted. It is unreasonable for anyone to expect a vacant piece of land to remain vacant and no one can object to anyone wanting to develop their land within the guidelines. The hardship criteria has two (2) standards, the Simplex standard and the Grey Rocks standard. The applicant desires to be reviewed under the Simplex standard in that the denial of the variance would result in unnecessary hardship to the owner and special conditions of the land and that there is no fair and substantial justice between the general public purpose. The land is also unique in its triangular shape and is encumbered with wetlands. The second part of the Simplex standard is the determination whether the proposed use is a reasonable use. Atty. Cronin noted that the proposed use requires less parking and will generate less traffic than many of the "allowed" uses, such as a Wal-Mart, and has a more aesthetic appearance than the traditional warehouse structures.

With regard to the second Variance, Atty. Cronin stated that it was discovered at the last meeting and not during initial review and has to do with the size of the building exceeding 100,000 SF deeming it a Major Commercial project. Under the Bartlett provision, it is under the Board's purview to determine whether it is needed or not. When looking at Section 8 Industrial Uses, it identifies it as wholesale, warehouse, self-storage, mini warehouses or distribution facility. Bluebird has been classified as a self-storage mini warehouse, not a general warehouse. Under the definition of a Major Commercial Project in the ZO, it includes retail, hotel, office, research, warehouse or industrial facility, but it does not include self-storage mini warehouses. Atty. Cronin

stated that he does not believe his client needs this variance. Consideration was given to reduce the size of the building from 112,500 SF to the 100,000 SF benchmark to avoid the link to a Major Commercial Project; however, as the architect previously stated, the building is according to the blueprint Bluebird has selected for their facilities. With regard to the criteria, Atty. Cronin stated that the Zoning Ordinance allows warehouses and mini warehouses, the architecture is more in line of retail/office space and has curb appeal, it is a reasonable use, it will generate tax revenue, it will not have an impact on the school system, the building will be sprinklered and the use is a low volume usage. In response to the Chairman's request to explain the hardship criteria, Atty. Cronin stated that, in his opinion, the Board got lost in the Grey Rock standard instead of the Simplex standard that allows for the fact that strict adherence to the Zoning Ordinance is not appropriate and added that when the ZO was written in 2007, this concept of temperature controlled was not considered and it is a fair and reasonable use.

Chair Martin opened the meeting for public testimony asking that anyone wishing to speak to the Board to come to the podium and to state their name and address and noted that the wetlands are not at issue. The following people addressed the Board:

- (1) Roger Coutu, 10 Rita Avenue, thanked the Members of the Board for their service, noted that this is the third meeting before the ZBA, that he is speaking as an immediate abutter and not as a Selectman, that he has never been approached regarding this project, that there is a sizeable neighborhood of approximately seventy five homes who form a community of people who work together, talk with one another, help one another, that there is only one way in and one way out of Rita Avenue and there will be an impact as the travel way to this site traveling south to north is okay but traveling north to south will require a u-turn or a turn onto Rena Avenue, noted the height of the proposed three-story structure which will block his view and questioned how many other three-story structures exist in Town, stated that he does not place much faith in the realtor's opinion, that he does not believe the applicant intends to be a good neighbor and that the property location and site is not appropriate.
- (2) Colin Goyette, 4 Rita Avenue, an immediate abutter, asked the Board if this hearing is in violation of the Board's Rules and RSA 677 and distributed two sheets with highlighted areas regarding timeliness and grounds for appeal. Chairman Martin responded and stated that the items were discussed, that it was acknowledged that no new evidence was being brought forward and the reasons for granting the appeal was due to the meeting minutes availability and the fact that the Notice of Decision was not specific regarding why the denial was issued.

Their testimony that the hardship to the applicant would be substantial if the variance was denied confuses the fact that this is a real estate deal and the applicant took a risk. They claim the site was selected because of easy access to the highway, but the reality is that the easy access ends as soon as anyone hits Lowell Road and the problem becomes that with a single curb cut there will be trouble traveling north to south. Testimony has been given that the site will generate little traffic, but no one has addressed the amount of traffic during construction and/or where the construction crews will park or whether the equipment will be fueled on site or how the big equipment will

travel to the site. Chairman Martin stated that these issues will be addressed by the Planning Board.

The buffer was referenced as well as Wal-Mart. The good part about Wal-Mart being a good neighbor is that their buffer is high, they built a berm and planted trees and it is not visible from the neighborhood's backyards. Trees will be cut down to construct this building and it will be visible. There is a picture, not posted, that shows the back of the building with a row of steel roll up doors that will be the view from our backyards and regardless of what their appraiser stated, that will impact my property value. The plan is to place the buildings mechanicals on the roof and shield it from front view with a tower façade but all that will do is push the noise to the neighborhood twenty four hours a day, seven days a week, three hundred sixty five days a year. And there is still concern regarding the underground stream that comes down through the neighborhood and even though the project is to take care of their drainage, what happens if they affect this underground stream and the neighborhoods' basements become afflicted with water? Chairman Martin stated that should that occur, it is a civil matter.

Mr. Goyette stated that he spoke with a Bluebird employee and learned that they have approximately thirty (30) employees and average two to four employees on a rotating basis to a facility. Not offering a lot of jobs. Will the Hudson residents use this facility? How many units will this building hold? We heard numbers that range from two hundred fifty to six hundred (250-600) units. They stated that their hours of operation would be from 6:00 AM to 8:00 PM Monday through Friday with reduced hours on the weekend. Is there a demand for this? The building is too big for this site.

- (3) Steve Levesque, 9 Rita Avenue, stated that he and his wife came to the neighborhood in 2003 primarily for the privacy factor that the trees provide shielding the neighborhood from Lowell Road. If this is built, trees will be cut and they lose their privacy. Chair Martin noted that the Planning Board can issue a no-cut ruling for the buffer. If valuables are to be stored, will the building be lit "like a Christmas tree"? Property values with a beacon of light will be affected.
- (4) Beverly Belus 5 Rega Ave, asked to be excused for her emotional state as she finds this "most preposterous" and sickens her. This is a generational neighborhood. She has been there for twenty-five years. "We are family". There are other places in town that would be better suited. Greed is an economic plight. Concern for the security in the neighborhood and the impact with the cutting of trees
- (5) Brenda Boncore, 16 Rita Avenue, stated that she moved into the neighborhood 3½ years ago so she is not "generational". What drew her to the neighborhood was the "no outlet" sign and does not want this project. There's been discussion about Wal-Mart. Wal-Mart is a good neighbor. Their air condition system broke down last summer and she called them to complain about the noise disturbing her sleep and they had it fixed within twenty-four hours. Can/will this project offer the same commitment? There is also the security aspect. Her children ride their bikes throughout the neighborhood. Does she now need to worry about "strangers in the neighborhood"?
- (6) Thomas Clifford, 3 Rita Ave, stated that to require so many variances, there is a problem. This is a three-story monstrosity. Not the right project for the neighborhood.

- (7) Eric Gorby, 12 Rita Avenue, stated the he directly abuts this land and sitting in his backyard this building will be visible. He has been in the neighborhood since 2002 and is opposed to this project.
- (8) Michele Raymond, 5 Rega Drive, stated that she doesn't really care what the building looks like, it does not belong there and there are bigger parcels elsewhere where this could go on. Wal-Mart was there when they moved in. This is something new and does not belong.
- (9) Cynthia Webster, 1 Rita Avenue, stated that there are buildings in the Industrial Park that are empty and that this is not the location for this project.
- (10) Gail Wilson, 0 Rita Avenue, expressed concern for the AC machine noise in the summer time when her windows are open or the heat the machines create. This project belongs in the Industrial Park.
- (11) Paula Michalski, 1 Rena Avenue, thanked the Board and the applicant for their consideration. In the real estate assessment, one of the homes on Rita Avenue in the vicinity of Wal-Mart was sold without an impact to the price but she knows that one of the homes on top of Rita Avenue left the neighborhood because of the lights and noise from Wal-Mart. It is subjective. We purchase our homes for different reasons. Some people live out of their homes. Some people live in their homes. With regard to the hardship issue, it is not for the purchaser but for the seller as she is sure these approvals are part of their Purchase and Sales Agreement. At the last meeting she heard that this project will bring in about \$100,000 in taxes but if you add up the neighborhood, she is sure it is close to \$500,000. They need four variances and that means it is not the right property. It is moot whether you classify it mini or not mini. Six hundred units is a lot. In reading the letter from the lawyer in November, she disagrees and believes it is an appropriate consideration. The building should not impact the neighbors or affect the property values or our quality of life, but this project will. Ms. Michalski submitted a handwritten petition opposing the project and signed by residents in Ridgecrest Development.
- (12) Albert Webster, 1 Rena Avenue, stated that he can see traffic on Lowell Road and does not want to see this tall structure. We do not need it. We do not want it.
- (13) Amy Farby, 1 Ridgecrest Drive, stated that she bought her home ten years ago because of its location and it is a generational neighborhood and she does not want this project.
- (14) Luisa Clifford, 5 Rita Avenue, stated that she has been there 56 years and watches the goings on and this building will block her view, it is too big and she does not want it.
- (15) Jessica Caron, 1 Rita Avenue, stated that her house is on the corner and people will drive on her property trying to make the corner and that causes her a hardship. With regard to the real estate values, the information provided included sales from 2014 - 2015 and that was at the top of the real estate market and would not be comparable to today and still feels that this project will negatively impact her property's value.

Being no one else to speak, Chair Martin closed public testimony at 8:38 PM. Ms. Davis stated that she would like to see more pictures of the building, from all sides. Chair Martin called a break at 8:39 PM. Chair Martin called the meeting back to

order, noted that all Members had returned to the table and turned the meeting over to Atty. Cronin's rebuttal to the testimony just heard.

Atty. Cronin stated that they took the opportunity of the break to check out pictures and noted that pictures submitted with the original proposal included samples of other project sites and stated for the record that this project will not have the line up of doors to the rear and stated that as further commitment it would be okay if that were added as a condition of approval. Most of the abutter comments focused on not wanting anything on the empty lot but that is not a legal basis to deny a project and has to have some merit. The land will get developed. It was troubling to hear the Selectman's concerns and more troubling to hear that we don't want to be good neighbors without any facts to refute. There were several comments about the size of the building. It will meet the required size limitations and it is really not an issue. The mechanicals on this building will be similar in nature to any type of retail commercial type building. Studies and analysis of real estate are available to anyone who seeks and, yes, lawyers make use of them, but no other was submitted. Atty. Cronin asked the Board to consider just the project presented and weigh it on its merits presented.

Mr. Pitre asked and received confirmation that the buffer is 100' along the residential zone and it can be declared a no cut zone. With regard to the number of units, Mr. McNamara, architect, stated that the modular units can be built in 10' increments. In response to Mr. Pitre's questions regarding lighting, Bill Goddison, Bluebird Managing Director of 5 Oak Street in Rye, NH, stated that all the lights are dark sky compliant and would be down-lit and on all night for security purposes. Mr. Pitre asked if the tower façade could be placed on all four sides of the building's mechanicals to help with the noise and Mr. McNamara responded that it was only placed on the front as it would not be visible from the sides.

Selectman Morin stated that it is hard to conceive that the number of units is not known and asked if the units would be constructed to suit a customer. Atty Cronin stated that they may make some standard and they will build to suit a customer's need. Mr. McNamara stated that with a 100,000 SF building, 650 units is reasonable to expect as a maximum. Selectman Morin asked for the number of units in other Bluebird facilities. Mr. Goddison responded that there are approximately 715 units in one Manchester location which is in a bigger building than the one proposed for this site, 630 units in Bedford in a building similar to the one proposed for this site and 480 units in another Manchester facility. Mr. Goddison stated that walls move to accommodate client space needs and added that a certain amount of space is lost to electrical, water, sewer and elevators.

Ms. Davis asked if the applicant Joel Kahn was present and whether he owns Bluebird. Atty. Cronin responded that Mr. Kahn was not present and that Bluebird is owned by a group of people.

Mr. Brackett stated that the Simplex Case talks about relaxing the hardship issue and being less consistent with the hard and fast Zoning Ordinance and more in characteristic with the present use of the neighborhood. Mr. Brackett stated that he did not hear that addressed. There is a three-part standard to the hardship issue. The first is that the Zoning restriction as applied to the property interferes with the

reasonable use of the property considering the unique setting of the property. The other part talks about the substantial relationship between the Zoning Ordinance and the specific restriction or uniqueness to this property. Atty. Cronin stated that every property is unique and this one is by its triangular shape, wetlands and bounded by State highway. Atty. Cronin stated that the next step is to determine if the application of the ZO preventing a reasonable use. The site is located in the Business Zone that includes commercial and retail yet one part of the ZO allows for warehouses and another does not, so the question becomes whether the use of the ZO to restrict this use is reasonable. The next question is to determine if this is a reasonable use in the Business area, not the Residential area. Atty. Cronin stated that the proposed Bluebird facility is a reasonable use of this property. The third part of the hardship test applies if the first two don't and is referred to as Grey Rocks. Atty. Cronin stated that Gray Rocks does not apply to this application. Mr. Brackett stated that there was a difference in the Simplex Case and with regard to this application, there is no Industrial Use in the Business Zone, yet, and therefore the Simplex prong does not apply in his mind. Atty. Cronin stated that this project is more of a commercial use than an industrial use and added that the purpose of a variance mechanism is to provide a release valve.

Chair Martin opened the meeting for public testimony at 9:03 PM. The following individuals addressed the Board:

- (1) Colin Goyette, 4 Rita Avenue, stated that at the first meeting we heard 250-400 possible units and tonight we're hearing 650 units, what is the number? This has an impact on traffic. We still don't know what the back of the building will look like.
- (2) Roger Coutu, 10 Rita Avenue, stated that he is not at the meeting as a Selectman but as a resident and immediate abutter to the property and takes deference to the attorney continually referring to being a Selectman. Mr. Coutu stated he wanted to clarify another point the attorney made, specifically that he had not spoken to anyone who works for the company he represents who stated to me that he did not want to be a good neighbor. What I said was that it was apparent to me that they don't want to be a good neighbor because they never came to talk to us about this project. When making a decision, regardless of the case in front of you, place yourself in the residences that are being affected, look at the plan and visualize what they are proposing in your backyard and ask yourself if you would want to live next to that and if the answer is no, your decision is made.
- (3) Gail Wilson, 0 Rita Avenue, stated that she thinks they have a right to know who is behind this; that there will be a long line if this does go through; and is Hudson a town or a city because as soon as you put in three-story buildings you've set a whole new different tone.

Being no one else to speak, public testimony closed at 9:08 PM.

Board discussion focused first on Variance a) to allow construction of a three-story self-storage facility which is a non-permitted Use.

Mr. Pitre asked for clarification on exactly how many doors will be on the back and sides of the building as it affects noise and lights. Mr. Goddison went to the posted



Site Plan and identified the two overhead sliding loading dock doors and accompanying man doors on the structure and noted that all lights will be downcast.

Mr. Pacocha stated that, in his opinion, Simplex does not apply to this application. Mr. Brackett agreed that this is beyond the “cow and pasture” and questioned what is unique about this property and its surrounding environment, that Routes 111 & 102 and Lowell Road are commercial, that storage is not a drive-by opportunity, the Use is not allowed, there is no uniqueness, that the Table of Uses is specific and trumps the general Introductory paragraph. Ms. Davis stated that the discussion is focusing on hardship but there are five (5) criteria to be satisfied in order to grant a variance and that, in her opinion, this application fails all five (5) criteria. Mr. Brackett agreed that there is more than hardship, that public interest is more than the abutters, there’s the spirit of the Ordinance and this is a valuable location for commercial business.

Board reviewed the five (5) criteria for the granting of a variance and their comments included:

1) *not contrary to public interest*

Mr. Brackett stated that it is contrary to the abutters as we heard and also to the public interest to introduce an industrial use in an area that is all business/commercial. Mr. Pacocha agreed that it is contrary to public interest and especially so with a three-story structure. Ms. Davis agreed and added that because it is an industrial use it is even more unreasonable. Mr. Pitre agreed, especially with the height and its overall grandeur in general and in particular to the site. Mr. Brackett stated that the Board approved the building height at the first meeting and Mr. Pitre and Ms. Davis clarified that it was the building façade that the Board voted on that was not habitable space. Chair Martin added his consensus to the opinions expressed, especially with the Simplex, and that it would be contrary to public interest. Mr. Brackett added that the case regarding the uniqueness of the property does not carry weight

2) *spirit of the Ordinance*

Mr. Brackett stated that the discussion thus far included the spirit of the Ordinance and noted that the second part of the criteria, *does not alter the essential character of the neighborhood*, is also not met as it applies to the abutting Residential Zone and the Business Zone itself.

3) *Justice done to the property owner*

Mr. Pitre noted that it is prime business property and believes it will be developed soon. Mr. Brackett noted that it is attractive to businesses.

4) *Not diminish surrounding property values*

It was noted that this criteria is subjective and could be argued either way.

5) *hardship*

Mr. Brackett stated that it does not satisfy the Simplex criteria or the three prongs. All concurred.

Motion made by Mr. Brackett and duly seconded by Ms. Davis to not grant the variance requested to allow a three-story self-storage facility as the criteria for the granting of a variance were not satisfied, specifically the hardship criteria, and was deemed to be contrary to public interest and it does not observe the spirit of the Ordinance. Mr. Brackett spoke to the disparity in the Zoning Ordinance between the general introductory paragraphs and the specific uses identified in the Table of Uses

and noted that it should be corrected but regardless, the Table rules. Vote was unanimous at 5:0. Variance denied.

#### Variance b) Major Commercial Project

Discussion focused on whether it needed to be addressed seeing that Variance a) failed. Mr. Pacocha and Mr. Martin stated that it is moot. Mr. Brackett noted that the two are not mutually exclusive. Ms. Davis stated that it should not come before the Board as a) was not granted. Mr. Brackett stated that the case has not been made regarding this application, no evidence has been presented as to why the building needs to exceed 100,000 SF or how many units it will contain and that overall it needs more discussion and information and referenced all the discussions that ensued when Wal-Mart came to town and issues were hammered with public testimony.

Motion made by Mr. Brackett and duly seconded by Ms. Davis that based on the lack of evidence presented and the fact that the Use Variance was denied, to deny this variance request for a Major Commercial Project. Vote was 5:0. Application denied.

Chair Martin declared a brief recess at 9:37 PM while the room cleared out. Chair Martin called the meeting back to order at 9:41 PM and noted that all Board Members had returned to the table.

2. Case 186-020-005 (2-22-18): Robert & Alyson Bergeron, and Richard & Andrea Sevigny, 2 Kara's Crossing Drive, Hudson, NH, request a Variance to allow the continued usage of an ADU that exceeds 750 square feet. [Map 186/Lots 020-005, Zoned G-1; HZO Article XIII A §334-73.3H, Accessory Dwelling Units Provisions].

Clerk Houle read the Case into the record. Mr. Buttrick referenced his Staff Report and noted that the owner bought the house with the ADU (Accessory Dwelling Unit) already constructed and is before the Board to clean up the paper trail. The ADU was built in 2007 by the previous owner. It far exceeds the maximum allowed square footage for an ADU. The Building Permit (BP) acknowledged that there was an ADU and there is correspondence to alter the kitchen in the ADU to a "wet bar" thereby nullifying the ADU and the home has been assessed as a single-family home. Board discussion focused on the mishaps, the reasons, the corrections necessary, the complicity or oversight of prior Town officials and the impact of after-the-fact corrections and they wonder of how many more are out there.

Richard Sevigny introduced himself as one of the co-owners at 2 Kara's Crossing Drive and his son-in-law Robert Bergeron also of 2 Kara's Crossing Drive. Mr. Sevigny stated that they purchased the residence two (2) years ago June and noted that it was advertised/ marketed as a "multi-generational home" which suited their purposes perfectly. There is one single utility to the house, two separate heating systems and fire suppressions systems, one septic system designed for a 6-bedroom capacity. The Assessor's Card shows four (4) bedrooms but there are six (6) bedrooms, four (4) on one side and two (2) on the other. Mr. Sevigny questioned why it was assessed as that because the Assessors have been inside the property and it clearly has six (6) bedrooms. Mr. Sevigny stated that they are in the process of refinancing the property,

that they hired an appraiser who did the value of both sides and the bank during their review discovered the inconsistency and want it documented before proceeding. Mr. Sevigny stated that they are before the Board to straighten out the paper work and are seeking a variance due the square footage of the ADU and noted that it satisfies all the other criteria for an ADU and acknowledged that it is an 'after-the-fact' permit being sought.

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

- *Not contrary to public interest*
  - Only the square footage exceeds the ADU specifications
  - House has the single family "look" – in fact neighbors were surprised to learn there was an ADU in the house
- *Spirit and intent*
  - The ADU has been in use since 2007.
  - Only the square footage exceeds the ADU specification
- *Justice*
  - The ADU's intended use is documented in the Building Permit and in correspondence with prior Town Officials.

*Property values*

- There has been no depletion in the past ten years.
- There is no appearance of an ADU.
- *Hardship*
  - The house was purchased "in good faith". The completely separate living quarters, with the kitchen, was the 'deal maker'
  - If the variance is not granted, the ADU would somehow need to be cut in half and this would pose a significant financial hardship and disrupt two families' lives.
  - Literal compliance would be nearly impossible.
  - The space is reasonable due to the efficient use of space and unique floor plan for a "multi generational home".
  - Zone G1 permits two-family dwelling, which is essentially what is shown, without the separate meters.

Chair Martin opened the meeting for public testimony at 9:56 PM. No one addressed the Board.

Board discussion again focused on the whys and how this circumstance arose. In response to Mr. Pacocha's question, Mr. Sevigny confirmed that their (ADU) living space is on two floors and Mr. Pitre noted that the second floor has more square footage. Mr. Sevigny stated that by his calculations, the ADU has 1,729 SF including the finished basement and 1,290 SF without the basement. The Assessor's Card indicates 7,620 SF, which is the total for the entire building, and four (4) bedrooms.

Ms. Davis stated the Mr. Sevigny has a perfect right to go back to the realtor for having advertised and sold the house under false pretense because the ADU is not permitted and noted that it is this type of issue that she has been complaining for the past ten years about the Town not knowing what is in Town and questioned the life

safety aspect if ever there was a fire, how would the firemen know about the other residential portion of the building. Selectman Morin agreed with the fire aspect because they would not know to go look for the other unit and that the Assessors should have picked up and identified the second living unit and stated that he will address that correction.

Discussion arose on the after-the-fact permits and where the line should be drawn. In this particular situation, the Town, the original owner and the realtor have been involved and the current owner paid for something that was not allowed and is willing to make it right but should the current owner be penalized? If the right thing is done, no one wins. Mr. Pitre pointed out that it is very clear from the Building Permit that this was designed to be a “mega ALU” and the Town was aware. Mr. Pacocha noted that it does not meet the current ADU requirements and didn’t meet the ALU (Accessory Living Unit) requirements.

Motion made by Ms. Davis and seconded by Mr. Brackett to grant the variance as requested. Ms. Davis spoke to her motion noting that substantial justice is being done, that it is the right thing to do, there have been no objections voiced from the abutters and meets all the ADU requirements except for square footage. Mr. Brackett concurred and noted that the applicants are doing the right thing. Vote was unanimous at 5:0. Motion passed.

3. Case 110-039 (2-22-18): SLC Development, LLC, 8 Christine Drive, Hudson, NH, requests the following Variances at 2 & 8 Christine Drive, Hudson, NH;
  - a) A Variance to allow the expansion of their existing SL Chasse Steel operation which is not a permitted use within the Business zoning district. [Map 110/Lot 039, Map 105/Lot 015, Zoned B; HZO Article VIII §334-29, Extension or enlargement of nonconforming uses].
  - b) A Variance to allow the future expansion of their existing structural steel shop along Robinson Road and Christine Drive to encroach within the front yard setback along Robinson Road (36-feet where 50-feet is required). [Map 110/Lot 039, Map 105/Lot 015, Zoned B; HZO Article VIII §334-31, Alteration and expansion of nonconforming structures].
  - c) A Variance to allow the expansion of their existing structural steel shop along Robinson Road and Christine Drive to encroach within the front yard setback along Robinson Road (36-feet where 50-feet is required). [Map 110/Lot 039, Map 105/Lot 015, Zoned B; HZO Article VII §334-27, Table of Minimum Dimensional Requirements].

Clerk Houle read all three Cases into the record. Mr. Buttrick summarized the requests and why each are necessary.

Patrick Colburn, Project Manager from Keach Nordstron & Associates introduced himself as representing two property owners and two applicants – SLC Development is the company that owns the real estate on which SL Chasse Steel operates today and

B&D Land and two brothers, Bill & Dick Tate. Mr. Colburn stated that this property has been before the Board before. In 2007, SL Chasse came with regard to Lot 39 which had a sliver of land with frontage on Christine Drive and had an existing industrial building that received Board approval to be expanded in the conforming direction that essentially doubled its square footage for the structural steel manufacturing shop. At that time Mr. Chasse purchased from the Tate brothers two (2) additional properties with frontage on Christine Drive and received approval to construct a standalone structure for office space and miscellaneous metals shop. At that time, all three (3) lots were consolidated along with parking for visitors and employees. This phase was not completed until 2012 due to the economy. In 2016, 8500 SF (square feet) was approved and added to the standalone office building. Today, Mr. Chasse employs over one hundred twenty (120) employees and has outgrown his land. The Tate Brothers own the land at 2 Christine Drive that currently houses Dube's Automotive and the land on the other side that is addressed at 1 Robinson Road and has the large pond. The plan is to purchase both parcels and combined all three into one parcel and to demolish the structures at 2 Christine Drive to expand his industrial shop.

Mr. Colburn stated that Mr. Chasse is a structural steel fabricator and explained the industrial operations and the increased use of automation and its need for straight lines. Mr. Colburn identified the expansion of the structural shop, which would be a continuation of the existing shop and a wing along Christine Drive that would move many of the outdoor activities inside and undercover in a climate controlled environment. Mr. Colburn stated that the land is entirely in the Business Zone that does not allow industrial use and abuts the G1, Zone, which allows many uses. Christine Drive was originally developed to be an industrial park.

Mr. Colburn stated that he is before the Board seeking three (3) variances. The first is for the expansion of the business. The second has to do with frontage. The existing building sits right on the front 50' setback line. The surveyor measured the distance to be 49.36'. Robinson Road heading toward Route 102 sweeps gently to the west. The building expansion must be an extension of the existing building for the automated equipment to function. Robinson Road curves inward toward the property creating a front yard encroachment from the required 50' frontage. At the closest point, the expansion would be 36' from Robinson Road. Mr. Colburn noted that they are correcting an existing deformity at 2 Christine Drive by removing all the paving and parking in the front setback. Mr. Colburn stated that Mr. Chasse's ultimate plan, a Master Plan, is to eventually purchase the remaining parcels on Christine Drive and essentially turn Christine Drive into the driveway for SL Chasse Steel campus.

Discussion arose on the three variances being requested. One variance is needed for the expansion of the non-conforming use (industrial in the Business Zone). Another variance is needed for the expansion of a non-conforming structure. The third is for the expansion of the non-conforming structure to encroach the front setback to Robinson Road.

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

- *Not contrary to public interest*

- The existing facility has operated in this location for many years, over a decade, and as expanded twice since 2007
- The character of the surrounding land uses are in keeping with that of SL Chasse Steel
- Christine Drive, although in the Business District, was developed as an Industrial Park
- Allowing the SL Chasse Steel operation reasonable growth will create approximately thirty (30) more jobs for the area and additional tax base
- The encroachment to the front setback will have no adverse impact on the character of the neighborhood, safety or public rights
- *Spirit and intent*
  - The Business Zone was established to “provide for the development of general wholesale and retail uses, services, office uses, industry, warehousing, multi-family dwellings and customary accessory uses and structures.” The existing SL Chasse Steel operation consists of wholesale, office, industry and warehousing uses.
  - The Christine Drive industrial park is removed from the Route 102 corridor.
  - The planned building expansion will be thirty six feet (36’) from the property line and even though the building expansion is a straight extension of the existing building, the encroachment is a result of Robinson Road curving westerly
  - Existing frontage non-conformity on Christine Drive will be brought into conformity with the removal of paving and parking
- *Justice*
  - Substantial justice is done by allowing reasonable expansion of an existing non-conforming use and structure.
  - The benefits to the SL Chasse Steel far outweigh any potential harm to the general public

*Property values*

- Christine Drive is a dead-end cul-de-sac serving an industrial park that was developed in the 1980’s.
- Site is located away from the heavily traveled Route 102 corridor.
- No diminution of surrounding property values would occur as a result of the planned expansion.
- *Hardship*
  - Zoning restrictions interfere with the reasonable use of the site given the site’s special conditions because they prevent a once conforming use within the district from expanding.
  - There is no fair and substantial relationship between the general purposes of the Ordinance and the specific restrictions precluding the reasonable expansion of SL Chasse Steel operation because the most appropriate use of the site is an industrial use given the mix of surrounding uses and the proximity to the Route 102 commercial corridor.
  - Not granting the variances would contradict the general purpose of the Ordinance, which is to encourage the most appropriate use of the land.

Chair Martin opened the meeting for public testimony at 10:38 PM. No one addressed the Board.

Mr. Houle inquired about what appears to be a driveway cut at the back edge of the property on Robinson Road and asked if it was permitted. Mr. Colburn stated that his client does not own it and added that it is one reason why his client would like to purchase Lot 15 as additional land is needed to satisfy the parking requirement for the expansion.

Mr. Brackett made the motion to grant all three variance requests. Mr. Pacocha seconded the motion. Mr. Brackett spoke to his motion commenting on the good presentation, that it is a business expansion, that the business mandates a linear expansion for the operation of equipment and added that thirty six feet (36') is still a good distance. Mr. Pacocha stated that the use is already approved, the original zone was industrial, that consolidating properties is a good idea and that there is no control on the curve in Robinson Road. Vote was 5:0. Motion passed. All three (3) variances granted.

5. Case 168-108 (2-22-18): Justin & Meghan Gillen, 18 Frenette Drive, Hudson, NH, requests the following Variances for an addition to an existing single family residence;
  - a) A Variance to allow the expansion to an existing nonconforming structure that encroaches within the 30-foot front yard setback. [Map 168/Lot 108, Zoned R-2; HZO Article VIII §334-31, Alteration and expansion of nonconforming structures].
  - b) A Variance to allow the proposed addition with a 2-car garage to be set within the side yard setback, where 15 feet is required. [Map 168/Lot 108, Zoned R-2; HZO Article VII §334-27, Table of Minimum Dimensional Requirements].

Clerk Houle read both Cases into the record. Mr. Buttrick stated that the existing non-conformance of the structure is due to the front setback and that the applicant wants to construct an addition onto the rear for more living space and a garage and that two variances are required: (1) to expand the non-conforming structure; and (2) to allow the addition to encroach the side yard setback leaving 9.3' where 15' is required.

Attorney J. Bradford Westgate of Winer and Bennett from Nashua NH introduced himself and his client Justin Gillen and thanked the Board for their service and hearing his Case at such a late hour. Atty. Westgate posted two (2) plans; (1) identified the location of the property within the 1955 Subdivision plan; and (2) a detailed plot plan and addition. The proposed addition to the ranch house would come off the back of the house along the sideline toward the property of 28 Frenette Drive owned by Michael Fuller who was in the audience. Atty. Westgate stated that Mr. Gillen has spoken to several of his neighbors. The property is less than a quarter of an acre and smaller than most of the other properties on Frenette Drive. The Zone now requires a minimum of one acre with water and sewer. The house is a modest, ranch style with one story. The proposed addition will also be one-story. The goal of the Gillens is to modernize their home and add living space so they and their son can continue to live in Hudson and enjoy a two-car garage. They are aware that a one-car garage would not encroach the setback but without the two-car garage, the project is just not viable.

Atty. Westgate addressed the criteria for the granting of a variance. The information shared included:

- *Not contrary to public interest*
  - The proposed addition is to the side and rear of the building, not the front where the non-conformity exists.
  - It is not contrary to public interest to allow the modernization of their home
  - It is in the public interest to permit upgrading modestly sized residential properties, to enhance the core housing stock of the community, especially on longstanding stable neighborhoods
  - A two-car garage is a reasonable addition and more common and practical than a one-car garage
- *Spirit and intent*
  - The spirit of the ordinance is partially derived from the purpose of the ordinance
  - This type of addition does preserve property values and demonstrates an appropriate use of property
- *Justice*
  - The modernization of an older home with an addition is a customary addition for an older house, especially one with no garage
  - The general public realizes no appreciable gain with denying the variance and substantial justice is done to allow a reasonable opportunity to the property owner

*Property values*

- Adding on to and improving a permitted use enhances property value to the property owner and the neighborhood. The addition is towards 28 Frenette Drive, which is the largest lot within the circle and would be the furthest away from any house in the circle.
- Testimony from Randy Turmel of Keller Williams Realty dated 2/20/2018 submitted as evidence that there is no diminution of property values to any of the abutting properties or any properties in the surrounding area that would result from the granting of these variances
- *Hardship*
  - The two-prong test is met. There is no fair and substantial relationship between the purpose of the ordinance and the application and the proposed use is reasonable
  - Property does have unique conditions. It is part of a subdivision that was laid out in 1955 and the house was built in 1960. The lots are all substandard with less than the now required one-acre minimum size. This house is in the inner circle of Frenette Drive and centered on the lot with the narrow side facing Frenette Drive rather than the customary orientation where the wider portion faces the road front.

Meeting went into recess in order to insert a new disc for its recording.

- The addition will be in the conforming portion of the lot. They are seeking to expand a conforming use.
- The garage will be in the furthest southeast portion and intrude into the side setback approximately six feet (6')



- Two supporting abutter letters submitted – one from 15 Frenette Drive which is across the street and one from 28 Frenette Drive, direct abutter

Chair Martin opened the meeting for public testimony at 11:07 PM. No one addressed the Board.

Mr. Pitre asked to see the proposed floor plan for the addition. According to the Assessor's Card, the house has 1,240 SF of living space. Mr. Brackett noted that the additional living space will not be in the setback, that only a small portion of the proposed two-car garage will encroach the side yard setback, that a two-car garage is reasonable and that, in his opinion, the variances meet the Simplex test. Ms. Davis noted that a one-car garage actually creates a hardship to the owners and that a two-car garage is reasonable.

Motion made by Ms. Davis and seconded by Mr. Brackett to grant both variances – for the expansion of the addition and two-car garage and encroachment into the side yard setback for the garage. Ms. Davis spoke to her motion and noted that both Cases satisfy the variance criteria. Mr. Brackett agreed and added that it is very reasonable and a good improvement. Mr. Pacocha questioned whether the encroachment to the front yard setback should be addressed and handled with an Equitable Waiver of Dimensional Requirements. General opinion was that it could be handled that way but that is not in front of the Board and probably should be addressed by the property owner before selling or refinancing the property. Vote was 5:0. Motion passed.

## **II. REVIEW OF MINUTES**

### 1. 01-25-18 Minutes

Board reviewed the edited Minute presented and made no further amendments. Motion made by Ms. Davis and seconded by Mr. Martin to approve the 1/25/2018 Minutes as edited. Vote was unanimous.

## **III. REQUEST FOR REHEARING – None presented for Board consideration**

## **IV. OTHER**

### 1. ZBA application forms and fees.

Mr. Buttrick presented the information requested on “verified” mail and the new Application for a Rehearing and the inclusion of a checklist on each application form with a verification checklist to be checked off by both the applicant and Town Staff. It was noted that the application fees need Board of Selectmen approval. The packet included both the current application forms and the revised version. Ms. Davis stated that measures need to be taken to “oust” the old from all sources – web site, paper copy, everywhere.

### 2. Zoning Ordinance and ZORC

Discussion branched to the discrepancies in the Zoning Ordinance and whether ZORC will address ZORC the current/changes to the ZO. Selectman Morin suggested that

the ZBA Chair send a letter to the ZORC Chair with a copy to the Selectmen and if not action results, then the Selectmen can follow up on it. Selectman Morin asked whether it would be beneficial to bring both the Planning Board and the Zoning Board together. Mr. Martin agreed and stated that it should be done yearly. Selectman Morin agreed and asked to wait until after the March Town Meeting. Mr. Brackett asked what the expectations are for ZORC and shared the frustration ZBA Members Shuman, Davis and himself have experienced with ZORC. Chair Martin acknowledged and stated that the entire process should be addressed.

Motion made by Mr. Pitre, seconded by Mr. Brackett and unanimously voted to adjourn the meeting. The 2/22/2018 ZBA meeting adjourned at 11:29 PM.

Respectfully submitted,

Normand Martin, ZBA Chairman