



# TOWN OF HUDSON

## Zoning Board of Adjustment



Normand Martin, Chairman

Marilyn McGrath, Selectmen Liaison

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### MINUTES – JANUARY 25, 2018 - approved

The Hudson Zoning Board of Adjustment met on January 25, 2018, at 7:00 PM 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.

Mr. Martin stated that there were only four (4) Regular Members and no Alternate Members present and that should any applicant wish to wait for a fifth voting Member, they may request that their Case be deferred to the February meeting.

Members present were: Charlie Brackett (V-Ch.), Maryellen Davis (Reg.), Normand Martin (Ch.), 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), Michael Pitre (Alt.) and Marilyn McGrath, Selectmen Liaison. Regular Member Donna Shuman and Alternate Maurice Nolin terms have expired and have not yet been replaced.

#### **I. Attorney-client (non-public) session (RSA 91-A:3 II(l)).**

Chair Martin noted that the session with Town Counsel was held.

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

Chair Martin read the first Case into the record. The Applicant was not present. It was noted that even though the newspaper ad and the Town's website correctly identified the new meeting start time of 7:00 PM, the Abutter and Applicant Notices were issued with the old start time of 7:30 PM. As

members of the public continued to arrive, the Board, by general consensus at 7:06 PM, decided to recess until 7:30 PM.

Chair Martin called the meeting back to order at 7:30 PM, and, due to the standing room only in the public, retook attendance and restated his announcements regarding cellphones, smoking and talking and asked for a show of hands who was present for the third Public Hearing Case on the self-storage facility. The majority of the public present raised their hands and Chair Martin directed the Board's attention to act upon Agenda item II.3, Case 228-007

3. Case 228-007 (R) (1-25-18): Joel Kahn of BlueBird Storage, 1 Bayside Road, Greenland, NH requests a Re-Hearing for 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].

Chair Martin read the Case into the record; clarified that the Re-Hearing pertains only to the Use Variance; and noted that another Variance will also be required for this project as the proposed building exceeds one hundred thousand square feet (100,000 SF) which, according to Zoning Ordinance on page 334.13.M Definition, would classify it as a Major Commercial Project and according to the Table of Permitted Uses under D.27, a Major Commercial Project is not allowed in the Business (B) District.

Attorney John Cronin of Cronin, Bisson & Zalinsky in Manchester, NH, representing the Applicant, and Brent Cole of Keach Nordstrom in Bedford NH both sat at the Presenter's table. Atty. Cronin stated that he was unaware of this new requirement, was surprised it did not surface during Zoning review and stated that there are two things they could do: (1) move forward and modify the size of the building, but that is a client call and Mr. Gooddison, though present at the meeting would probably not make a business decision at this meeting; however, given the probability that the size of the building might be reduced to less than 100,000 SF and seeing as all representatives and public are present, the matter could proceed with the Use Variance and avoid re-notice; and/or (2) submit another Variance application for the Major Commercial Project if the size of the building is not reduced to less than 100,000 SF.

Chair noted that there are only four (4) voting Members present at this meeting, as Mr. Morin is the Selectmen's Representative. Atty. Cronin asked and received a few minutes to confer with his client and noted that there are other potential interests in this property other than the self-storage facility. During the few minutes Atty. Cronin was conferring with his client, Chair answered public question regarding the Zoning Ordinance section pertaining to

Major Commercial Project. Atty. Cronin returned and reported that, given only four (4) voting Members and the new consideration of 100,000 SF of building, his client's preference is to defer to next month for a full Board and use the opportunity to do an architectural review. Timelines were discussed. If a new variance application for building size were to be submitted it would need to meet the February 6, 2018 deadline. Atty. Cronin assured that the deadline could be met and asked the Board to defer to the February meeting.

Motion made by Ms. Davis, seconded by Mr. Brackett and unanimously voted to honor the Applicant's verbal request and defer addressing the Rehearing of Case #228-007 on the Use Variance to the February 22, 2018 meeting at 7:00 PM. Chair Martin noted that if the building size remains greater than 100,000 SF additional relief would also be required. Mr. Brackett stated that the additional relief was discovered today and apologized for any inconvenience to the applicant and public. Mr. Pacocha asked and received confirmation from Chair Martin that the meeting would be re-noticed and if the additional application is submitted, abutters will receive a notice by US Mail.

There was a mass exodus and several members of the public attempted to address the Board to which Chair Martin responded that all discussion and questions will need to wait for the February meeting to be addressed in public forum with everyone present or that specific questions could be directed to Mr. Buttrick Zoning Administrator.

Chair Martin declared a five-minute recess while the room was cleared. Chair Martin declared the meeting back to order at 7:48 PM and directed the Board's attention to Agenda item II.1 Case #182-068.

1. Case 182-068 (1-25-18): Jenn Robichaud of Barlow Signs, 158 Greeley Street, Hudson, NH, requests a Variance to allow additional wall signs, beyond the permitted (1) primary wall sign, and (1) secondary sign at 16 Chase Street, Hudson, NH.[Map 182 Lot 068, Zoned B; HZO Article XII §334-63, Business and industrial building signs].

Chair Martin read the Case into the record. Mr. Buttrick referenced his Staff Report dated 1/18/2018 that identified the sign permits already issued for Domino's, the square foot calculations for permitted signs and the additional wall signs requested on the Ferry Street side and the Chase Street side on this existing non-conforming lot.

Ms. Davis asked Mr. Buttrick about this non-conforming lot being in front of the Planning Board for expansion of parking and peak store occupancy without having first come to the ZBA to obtain a Variance for expansion of non-conformity. Mr. Buttrick responded that the non-conformity of the lot has to

do with its size (reduced acreage), that it is a Permitted Use and is a legal non-conforming lot entitled to all rights and privileges of a conforming lot.

Craig Moore of Barlo Signs International introduced himself as representing Domino's Hudson LLC who is seeking one additional sign on the storefront and two additional small signs on side of the building. Mr. Moore provided a history of the site: it is currently Title Cash; the new owner is renovating the exterior of the building and dividing the interior space to accommodate two businesses (Title Cash and Domino's); Domino's will occupy the northeast portion of the building; and that there are currently two signs permitted for the building, one for each business.

Mr. Moore stated that they seek approval for additional small signage for the Domino's business that is consistent with Domino's national rollout of their new image. The Ordinance allows one primary sign and one secondary sign and the sign size allowed for the building is 84 SF on the front and 50% of that (42 SF) on the side of the building. The additional sign on the front of the building is 17.5 SF and the two signs on the side of the building measure 7.9 SF and 30.4 SF. The Domino lettering and symbol total 28.57 SF, which is suitable for the size of the building. Mr. Moore noted that the total square footage of all the signs proposed is less than the 84 SF allowed and that they are essentially asking to separate the signs to match the new Domino's rollout identity and increase their visibility.

Mr. Moore stated that one of the major reasons for the splitting of the signs has to do with the location of the building to the rear of the site as it faces Chase Street and noted that the building has more visibility from Ferry Street, Derry Road and Bridge Street.

Mr. Moore addressed the criteria for the granting of a variance and stated how each are satisfied and added that the refurbishing of the building will serve as a positive reflection on the neighborhood and be welcoming as it is located at one of the entrances to the Town of Hudson.

Chair Martin opened the meeting for public testimony at 7:59 PM. Dominic Benvenuti, 182 Durham Road, Dover NH introduced himself and stated that he and his partner have a combined total of thirty-five (35) years with Domino's Pizza and they pride themselves on coming into a community and serving the community. Hudson is a small community, has had a Domino's in the past under different ownership but it was at a very poor site with poor signage and it failed. Domino's is branching out, changing it's image, no longer just take-out pizza, focusing on an open-concept kitchen, new and improved menu and inviting eat-in seating. Visibility is important. Signs are important to bring notice to the site and emphasize the new and improved Domino image. Being no one else to speak, public testimony closed at 8:01 PM.

Chairman Martin pointed out that there are only four Voting Members and asked if that was okay or if deferment to next month for a full Board would be preferred. Mr. Moore and Mr. Benvenuti both stated that they have no objection to proceeding.

Mr. Brackett asked what special conditions pertain to the location, noted that Domino's is identifiable with the domino dice symbol, and that, in his opinion, the other signs on the building are too small to offer recognizable value at a distance and that the re-branding signs are an advertising campaign. Mr. Benvenuti responded and acknowledged that the symbol is recognizable and noted that Domino's is not just pizza anymore, that Domino's new vision should be consistent nationwide, that "HAND TOSSED" and "100% REAL" are the focus of their new campaign and becoming their logo, that the word "pizza" is no longer part of their signage and that the signs are important and especially so on this property for the side of the building as it has the most visibility. Mr. Moore added that the size of the signs have been reduced and the total square footage of all the signs proposed is less than the square footage allowed by the Ordinance and noted that they are proportionate to the size of the building and agreed that their best exposure is on the side of the building.

Ms. Davis noted that there are homes across Chase Street and questioned the material of and illumination for the proposed signs. Mr. Moore identified the size, lettering, material and mounting of each proposed sign noting that all are under one half inch thick vinyl and wall mounted to the building and that lighting would be by the doors only with overhead hook lamps. Chair Martin added that the site is an 'eyesore' today and adding signs as proposed does look nice and would not injure public rights. Ms. Davis asked if posters or "specials" advertisement would be displayed in the windows and Mr. Benvenuti confirmed that there would not be window signage. Mr. Brackett noted that there would be seating along the windows and Mr. Benvenuti added that they would not want to distract the eat-in option visibility with posters in the window. Mr. Brackett asked and received confirmation from Mr. Benvenuti that the signs are not subject to change. When asked about vandalism, Mr. Benvenuti stated that they have not had any issue with vandalism at their other locations.

Motion made by Mr. Brackett and seconded by Mr. Pacocha to grant the variance as requested noting that the criteria for the granting of a variance have been met. Mr. Brackett commented that it was a good presentation and that he is satisfied that the hardship criterion has been met. Mr. Pacocha stated that the total square footage of all the proposed signs is less than the square footage allowed in the Ordinance and noted that it would be better if the building had been constructed at an angle on the property for better visibility, but it was not and business needs exposure. Ms. Davis stated that initially her concern was for the residents on Chase Street but that has been satisfied and, in her opinion, the proposed project will not injure the rights of others. Vote

was unanimous at 4:0. Motion passed. Variance granted. Chair Martin stated that a Notice of Decision would be issued in seven to ten days and noted that there is a thirty-day appeal process.

2. Case 137-016 (1-25-18): Bruce Briand, 278 Webster Street, Hudson, NH requests a Variance to encroach 2'-3" into the side yard setback leaving 11'-9" where 15'-0" is required. [Map 137 Lot 016, Zoned R-2; HZO Article VII §334-27, Table of Minimum Dimensional Requirements].

Chair Martin read the Case into the record. Mr. Buttrick referenced his Staff Report dated 12/19/2017 and noted that the remaining setback would be 11' 9" but that the actual encroachment would be 3' 3" and not 2' 3" as stated on the application.

Bruce Briand introduced himself and his wife, stated that they live at 278 Webster Street and would like to construct a 12' x 14' addition to the back of their home in line with the current foundation that encroaches the current setback requirement. The addition would be an expansion of their bedroom and include a bathroom and laundry room. When the house was built in 1956 the then Zoning Board allowed less than a fifteen foot setback.

Mr. Briand addressed the criteria for the granting of a variance, read his application into the record and emphasized that the proposed foundation for the addition would follow the current foundation line of their home and not encroach more than what the current foundation does today.

Chairman Martin opened the meeting for public testimony at 8:35 PM. John Zalenchak stated that he owns the property due south at 1 Farmington Road, that this project has zero negative impact on his property, increases the value of the neighborhood and completely supports the granting of the variance. Being no one else to speak, public testimony closed at 8:36 PM.

Mr. Pacocha asked if Hudson had a Zoning Ordinance in 1956 and whether an Equitable Waiver should be considered. Chair Martin stated that it may be wise to do, especially if the property is to be sold in the future, but an Equitable Waiver cannot be considered tonight as it was advertised for a variance. Mr. Brackett stated that there are many homes built prior to Zoning and it appears that many homes in this neighborhood do not meet the now required fifteen feet setback, so it is not inconsistent. Ms. Davis stated that the addition is to the rear, offers no further encroachment and is the more logical location. Mr. Pacocha asked if the Ordinance should be changed to allow this type of preexisting encroachment to be handled through the Building Permit process and Mr. Brackett disagreed as despite the many occurrences, each should be reviewed by the Board.

Motion made by Ms. Davis and seconded by Mr. Brackett to grant the variance as each of the criteria have been satisfied. Vote was 4:0. Motion passed. Variance granted. Chair Martin stated that a Notice of Decision will be issue in seven to ten days and noted that there is a thirty-day appeal process.

Chair Martin directed the Board's attention to Agenda IV.1 Case 190-191

#### **IV. REQUEST FOR REHEARING**

1. Case 190-191 (Variance A – Denied 12-14-17), 48 Lowell Road, Hudson, NH.

Chair Martin read the item into the record. Chair Martin read the entire three-page Motion for Rehearing letter dated 1/8/2018 and signed by Joseph Maynard of Benchmark Engineering, Inc. into the record.

Discussion ensued. The “self-imposed” hardship referred to the Applicant’s pursuit with the Planning Board and their testimony to abandon the residential use of the main structure. The house no longer has historical significance or historical value since it was converted from the powerhouse of the old Trolley to a duplex and has never been registered as historical. The neighborhood in all likelihood will never turn residential. The property should be business. The Planning Board approved the building for business, as was presented by the applicant. Any change will require Planning Board approval for Site Plan Modification. There has been no new information provided/presented to warrant a rehearing. The ZBA made no error in judgement and questioned if the Planning Board would have approved the Site Plan if the duplex building was presented to remain residential.

Motion made by Ms. Davis, seconded by Mr. Pacocha and unanimously voted (4:0) to not grant the motion for rehearing in Case #190-191 based on the points discussed and the fact that no new information has been provided.

Chair Martin directed the Board's attention to Agenda III Minutes

#### **III. REVIEW OF MINUTES**

Chair Martin read each set of Minutes into the record individually and the Board reviewed each set of Edited Minutes presented separately.

1. 10-26-17 Minutes

Motion made by Ms. Davis, seconded by Mr. Martin and unanimously voted to approve the 10/26/2017 Minutes as edited and presented.

2. 11-09-17 Minutes

Motion made by Ms. Davis, seconded by Mr. Martin and unanimously voted to approve the 11/9/2017 Minutes as edited and presented.

3. 12-14-17 Minutes

Amendments were made to pages 5-8 – mostly spelling corrections and one sentence clarification. Motion made by Ms. Davis, seconded by Mr. Martin and unanimously voted to approve the 12/14/2017 Minutes as presented, edited and amended.

Chair Martin directed the Board's attention to Agenda V.3, then 1 then 2

**IV. OTHER**

3. Election of Officers:

Motion made by Ms. Davis, seconded by Mr. Brackett and unanimously voted to reappoint Normand Martin as ZBA Chairman.

Motion made by Ms. Davis, seconded by Mr. Martin and unanimously voted to reappoint Charlie Brackett as ZBA Vice Chairman.

Motion made by Ms. Davis, seconded by Mr. Brackett and unanimously voted to reappoint Kevin Houle as ZBA Clerk.

1. ZBA application forms

Board reviewed the latest proposed edition. It was noted that the revised fees, non-direct abutter fees and newspaper ad fees all require Board of Selectmen approval. Discussion arose on the direct abutter fees, whether they should be sent "return/receipt" which is more expensive and lends to additional administrative work or just via "verified mail" as State Law RSA 676:7 requires. Chair Martin wishes to discuss with Town Counsel before Board takes action.

2. ZBA alternate vacancies

Board made their request to Seletman Morin to fill the Regular position and seek additional Alternates.

Motion made by Ms. Davis, seconded by Mr. Pacocha and unanimously voted to adjourn the meeting. The 1/25/2018 ZBA meeting adjourned at 9:55 PM.

Respectfully submitted,

Normand Martin, ZBA Chairman