



# TOWN OF HUDSON

## Zoning Board of Adjustment

Normand Martin, Chairman      Marilyn McGrath, Selectmen Liaison

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### MEETING MINUTES – October 26, 2017 - draft

The Hudson Zoning Board of Adjustment met on October 26, 2017, in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall. Chairman Martin called the meeting to order at 7:00 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 to Board to please come to either the lectern or the two chairs and to state your name and address; that there is an 11 PM curfew to the meeting; and to please refrain from talking in the audience. (

Clerk Houle took roll call. Members present were: Charlie Brackett (V-Ch.), Maryellen Davis (Reg.), Kevin Houle (Alt.), Normand Martin (Ch.), Maurice Nolin (Alt.), James Pacocha (Reg.), Michael Pitre (Alt.) and Donna Shuman (Reg.). Also present were Marilyn McGrath and David Morin, Selectmen Liaisons, Bruce Buttrick, Zoning Administrator, and Louise Knee, Recorder. Chair Martin stated that he would be recusing himself from the first Case, that Vice Chair Brackett would conduct the Hearing, appointed Alternate Pitre to vote in place of himself and left the Board Table.

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

1. Case 197-128 (10-26-17): Matthew Keller, 32 Cedar Street, Hudson, NH, requests a Variance to build an Accessory Dwelling Unit larger than the 750 sq. ft. maximum allowed at 32 Cedar Street, Hudson, NH. [Map 197, Lot 128, Zoned (TR) Town Residential; HZO Article XIII A §334-334-73.3H, Provisions].

Clerk Houle read the Case into the record. Vice Chair Brackett asked Mr. Buttrick to explain why the Case was before the Board. Mr. Buttrick stated that at the last meeting the Applicant was before the Board for an addition to encroach to the side setback and when plans were presented there was a kitchen included which transformed it from a straight addition to an Accessory Dwelling Unit (ADU). Mr. Buttrick noted that what is before the Board at this meeting is a Variance from the maximum size of 750 SF (Square Feet) allowed

1 in the Zoning Ordinance for an ADU and to allow an ADU of 1,288 SF to  
2 accommodate handicap accessibility necessary for a motorized wheelchair.

3  
4 Matthew Keller introduced himself and Gary Thomas of Northpoint  
5 Construction who prepared the plans for the addition, noted that they were  
6 granted a Variance at the last meeting for the addition to encroach the side  
7 setback and stated that they are again before the Board to approve the addition  
8 as an Accessory Dwelling Unit larger than what is allowed in the Zoning  
9 Ordinance. Mr. Keller stated that the size is necessary to accommodate his  
10 handicap son as he is bound to a wheelchair and that it is important for him to  
11 also have an exercise room in the addition. Mr. Keller asked the Board  
12 whether he should address the criteria for the granting of a Variance or the  
13 criteria for an ADU. Vice Chair/Acting Chair Brackett stated that with the  
14 recent change in the Law, there is no need ZBA action necessary for an ADU  
15 providing it meets specific criteria and asked Mr. Keller to address the Variance  
16 criteria as it pertains to the requested size of the ADU.

17  
18 Mr. Keller stated that the 28' x 46' handicap accessible ADU is to accommodate  
19 his son Josh's power wheelchair and allow him to leave the VA hospital where  
20 he has been for the last eight months. The addition is not contrary to the  
21 public interest, it will provide functional space and keep him close to family for  
22 support, it meets the spirit and intent of the Ordinance and will enhance the  
23 quality of life for Josh, substantial justice will be done to bring his son home  
24 and allow him as much independent living as possible, there will be no  
25 diminution of property values, the addition will match the house and add value  
26 both to his property and those in the neighborhood, that the house will remain  
27 a single-family dwelling and the only way the size could be reduced would be to  
28 eliminate the gym room, but that room is essential to Josh's life.

29  
30 Mr. Brackett opened up to meeting for public input at 7:08 PM. Craig Powers  
31 of 31 Cedar Street addressed the Board, stated that he lives across the street  
32 from the Kellers and has watch all the children in the neighborhood grow up  
33 over the years, that the addition will not impact the property values and that  
34 approving the request is actually a benefit to everyone, that he supports the  
35 project and to please approve it. No one else addressed the Board.

36  
37 Mr. Pitre asked if there were any chances to the plan since last reviewed two  
38 weeks ago. Gary Thomas stated that they have included a door to connect to  
39 the house to meet the criteria of an ADU. Ms. Davis inquired about the roof  
40 elevations and Mr. Thomas confirmed that they will tie into the existing home  
41 and added that there is also a farmer's porch planned for the front of the house  
42 to tie it all together. Mr. Nolin asked if the day comes when the son no longer  
43 resides there is the kitchen would be dismantled. Mr. Keller stated that there  
44 is no plan to dismantle the kitchen and Ms. Davis added that ADU's are now a  
45 matter of right and does not support a condition to remove the kitchen. Ms.  
46 Davis noted that the proposed size is not to abuse the Law but to accommodate

1 the son. Mr. Thomas stated that the VA (Veteran's Association) are providing  
2 some funds to construct the addition and they also have guidelines/conditions  
3 to meet, which have been incorporated into the plans before the Board.

4  
5 Motion made by Ms. Davis, seconded by Mr. Pitre and unanimously voted to  
6 grant the Variance as presented and with no conditions. Ms. Davis spoke to  
7 her motion noting that the request is reasonable and will enhance property  
8 values. Mr. Pitre stated that the spirit and intent have been met, that it will  
9 enhance property values in the neighborhood and that the hardship criteria  
10 has been met not only with regard to the land size but also because of the son's  
11 handicap. Motion passed. Mr. Brackett noted the 30-day appeal period and  
12 that a Notice of Decision would be available in five to seven days.

13  
14 Chair Martin returned to the Board table. Mr. Pitre no longer voting. Both  
15 Selectmen Liaisons McGrath and Morin left the meeting.

- 16  
17 2. Case 191-116 (10-26-17): James Allard, 26 Cherokee Ave, Nashua,  
18 NH, requests a Variance to change an existing non-conforming use to  
19 another non-conforming use at 23 Roosevelt Ave, Hudson, NH. [Map  
20 191, Lot 116, Zoned (TR) Town Residential and (B) Business; HZO  
21 Article VIII §334-30 Changes to or discontinuance of non-conforming  
22 uses].

23  
24 Clerk Houle read the Case into the record. Mr. Buttrick recapped his Staff  
25 Report dated October 17, 2017 stating that the Applicant is requesting a  
26 variance to change an existing non-conforming use of woodshop  
27 /manufacturing to another non-conforming use for indoor personal and group  
28 class training and noted that the building itself is split longitudinally in half  
29 between two Zones, specifically the Business (B) and Town Residential (TR)  
30 Zones. Mr. Buttrick noted that light manufacturing is not a permitted use in  
31 either Zone but is an existing non-conforming use on this parcel and that the  
32 proposed use for indoor commercial recreation is a permitted use in the B Zone  
33 but is not a permitted use in the TR Zone. Mr. Buttrick also noted that the  
34 parcel has two hundred forty five feet (245') of frontage on Roosevelt Avenue  
35 and one hundred sixty five feet (1654') frontage on F Street which exceed the  
36 required one hundred fifty feet (150') frontage required on each.

37  
38 Attorney Gerald Prunier of Prunier & Prolman located in Nashua NH  
39 introduced himself and distributed three (3) Exhibits. Exhibit 1 included the  
40 Assessor's Card where Atty. Prunier noted that James Allard is the current  
41 owner, that the building was built around 1945, which predates Zoning, and  
42 has been used for industrial purposes until his client bought the property  
43 approximately a year ago. Atty. Prunier noted that from 1964 - 2016 there was  
44 industrial use at the site. Exhibit 2 was an aerial view of the parcel with the  
45 building hand drawn on it along with the Zone boundary that traverses  
46 through the building placing approximately seventy percent (70%) in the B

1 Zone. Exhibit 3 is written testimony from Mark Prolman of Prolman Realty,  
2 Inc. dated October 5, 2017 stating that the proposed use of an indoor  
3 recreational facility would not diminish the neighboring property values.  
4

5 Atty. Prunier stated that the Spirit of the Ordinance is maintained as that site  
6 has always been used for business and what is being proposed is a less  
7 intensive use. The building exists and falls in two different Zones. Atty.  
8 Prunier pointed out that even though they are not proposing a new building  
9 and would like to continue with the commercial use of the building for a cross  
10 fit business. Atty. Prunier stated that both the property owner and the  
11 business owner were present and available to answer any questions.  
12

13 Chair Martin noted that there is no documentation in the file authorizing Atty.  
14 Prunier to represent the property owner. James Allard, current property  
15 owner, introduced himself and verbally acknowledged Atty. Prunier authority.  
16

17 At 7:23 PM, Chair Martin opened the meeting for public comment.  
18

- 19 (1) Nancy Nordstrom of 15B Roosevelt Avenue, a condominium complex  
20 with five (5) families and noted that she is speaking for herself and  
21 her husband and not the condominium. Ms. Nordstrom stated that  
22 she has five (5) concerns with the proposed:

23 A) Increased traffic and noise – Roosevelt Ave already handles  
24 heavy traffic from the Kiwanis Bingo Hall, which operates six  
25 days a week. Roosevelt Ave is a short cut to Lowell Road,  
26 especially for taking for turning south onto Lowell Rd and the  
27 result today is a backup onto Roosevelt Road, usually in the  
28 evening. Ms. Nordstrom stated that she checked out other  
29 gyms in the area for hours of operation and learned that most  
30 are open very early in the morning, as early as 5:00 AM, until  
31 late at night. Ms. Nordstrom stated that one of the gyms in the  
32 area, Anytime Fitness, is open twenty-four hours.

33 And this brings on more noise – loud mufflers at all  
34 hours of the day, doors slamming, people chatting in the  
35 parking lot – and none of the promotes the peace and quiet that  
36 people in the neighborhood are entitled. The problem will be  
37 made worse if the trees are cleared to make for a larger parking  
38 lot. There are a large number of walkers, with and without  
39 dogs, who regularly use Roosevelt Avenue, their safety could  
40 also be at risk with increased traffic

41 B) Speeding is another concern. There is a regular ongoing issue  
42 with speeders on Roosevelt Avenue and that will worsen with  
43 more traffic. Ms. Nordstrom noted that a flashing “your speed”  
44 sign would help the existing problem.

45 C) Increased litter is another concern. Ever since Ashley  
46 Furniture Warehouse moved into the area at 8 Roosevelt

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1 Avenue, there is packing material blowing everywhere, and this  
2 proposed use may bring more litter of water bottles and energy  
3 bar wrappers. This litter issue from nearby business negatively  
4 affects the neighborhood's residential property values.

5 D) Zoning – It is understood that the building has been used as a  
6 business since 1945 despite the fact that it is surrounded by  
7 residences but it has been empty, Nashua Woodcraft was a low  
8 impact business and the area should be rezoned Residential.

9 E) The last concern is with regard to the real estate letter that  
10 states that this business will not affect our property values and  
11 want to be on record as vehemently opposed to his findings.

- 12 (2) Dan Dumont, 21 Roosevelt Avenue, and his backyard is the woodcraft  
13 shop. Mr. Dumont stated that he has lived there since 1971 and with  
14 the woodcraft business there was maybe three to four cars and not  
15 much noise. The trees have grown over the years and have provided  
16 a nice buffer. The proposed gym runs beyond normal regular  
17 business hours and is concerned that there will be noise, wonders  
18 how many customers will be onsite at one time, parking and loss of  
19 tree buffer, sewer impact as the area has septic now and lastly the  
20 negative impact on his property values.

21  
22 Chair Martin closed public hearing at 7:30 PM. Ms. Davis asked and received  
23 confirmation that this proposed business will need to go before the Planning  
24 Board for Site Plan Review. Ms. Davis noted that, according to the map in the  
25 packet, the building is approximately seventy percent (70%) in the business  
26 and therefore 70% is allowed. Mr. Brackett asked to have the attorney address  
27 the business uses of the property since 1945. Mr. Pitre asked about the  
28 proposed hours of operation and size of classes.

29  
30 Atty. Prunier stated that he does not have any more information than what is  
31 on the Assessor's Card noting that it identifies that the building is serviced by  
32 Town sewer, that there has always been a business on site and did have traffic,  
33 that Zoning is what it is, that the site was purchased with the intent for  
34 business, that the trees would not be touched except what would be needed for  
35 parking, that litter will be handled with onsite containers and that speeding is  
36 a problem everywhere in Hudson and that they would be willing to work with  
37 the Police.

38  
39 Jon Simoneau, 11 Hilindale Drive in Hudson, owner of OCN Crossfit, stated  
40 that he does not run a gym like a Planet Fitness or a WOW, and offered the  
41 following information: that it is a community based organization of thirty five  
42 (35) members that may double in size from 60-75 members; that they are very  
43 respectful; that he will be open early in the mornings with classes at 5:30 AM  
44 to 6:30 AM for his clients to work out before going to work and classes from 5 –  
45 8 PM, that they are not open all day; that there will be no structural changes to  
46 the building but there will be indoor renovation and perhaps exterior "sprucing

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1 up” of the look of the building; that they will need to expand the pavement as  
2 currently there is room for eleven spaces and the regs (regulations) may require  
3 twenty to twenty-five which they should be able to accommodate with paving  
4 and without the cutting of trees; that, to his knowledge, the building is on  
5 Town sewer; that signage has not been finalized but may only involve a sign on  
6 the building and not street side; that class size involve 12-15 participants.

7  
8 Chair Martin opened the meeting for public testimony again at 7:41 PB.

- 9
- 10 (1) Dan Dumont, 21 Roosevelt Avenue, stated that fifteen to twenty (15-  
11 20) cars is a significant increase when there has been only three to  
12 four (3-4) cars in the past forty seven (47) years and added that he  
13 doubts the building is connected to Town sewer as there is no Town  
14 sewer availability from F Street to Bay Street.
  - 15 (2) Nancy Nordstrom of 15B Roosevelt Avenue, stated that she is familiar  
16 with Crossfit facilities, that her son is a member and that she has  
17 been to the facility when they exit and they are naturally a high  
18 exuberate bunch of individuals, and added that in the summer there  
19 windows will be open and they do have music which added to the  
20 traffic will impact the neighborhood.

21  
22 Public testimony closed at 7:44 PM.

23  
24 Mr. Brackett noted that this building and business use existed prior to Zoning  
25 and therefore has a pre-existing hardship, appreciates the concerns raised by  
26 the neighbors but the concerns will be addressed by the Planning Board and  
27 that what is before the ZBA is the use

28  
29 Ms. Davis stated that the zoning map is the issue, why the lot is divided  
30 between two zones even though the building existed prior to Zoning and was  
31 clearly constructed for business and not residential, and that even though valid  
32 concerns have been raised, the ZBA can not control speeding but can control  
33 the signage. Mr. Brackett noted that the Police do take speeding seriously, that  
34 the Town reacts to input from the citizens and suggested that the residents  
35 contact the Highway Committee.

36  
37 Mr. Brackett made the motion to grant the variance with the stipulation that  
38 signage take into consideration the neighborhood with such features as down  
39 lighting and approved by the Planning Board. Ms. Davis seconded the motion  
40 and added three conditions: (1) that trash removal be set to a designated time  
41 and not at 3:00 AM; (2) that onsite signing have only down lighting; and (3)  
42 that the hours of operation be limited to 5 AM to 8 PM. Chair Martin noted  
43 that all three conditions proposed are not part of the variance and will be  
44 addressed by the Planning Board. Mr. Brackett stated that the Town already  
45 has a trash ordinance that restricts the hours from 7 AM to 7 PM Monday  
46 through Friday and noted that he will need to recuse himself from the Planning

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1 Board table on this proposal but would volunteer to present the concerns to  
2 the Planning Board. Ms. Davis withdrew her second. Ms. Shuman seconded  
3 the motion. Mr. Brackett spoke to his motion noting that Zoning superimposed  
4 onto the building after it was constructed and that the variance criteria has  
5 been met, especially the hardship criteria. Ms. Shuman agreed with Mr.  
6 Brackett, that zoning came after the building was constructed, and that the  
7 Planning Board will address the issues and concerns heard at this meeting.  
8 Vote was 4:1 with Ms. Davis opposed. Motion passed. Chair Martin stated  
9 that a Notice of Decision will be issued in five to seven (5-7) days and noted the  
10 thirty (30) day appeal period.

11  
12 3. Case 228-007 (10-26-17): Joel Kahn, 1 Bayside Road, Greenland, NH  
13 requests:

14 A) A Variance to allow a non-permitted use at 256 & 266 Lowell Road,  
15 Hudson, NH. [Map 228, Lots 007 & 008, Zoned (B) Business; HZO  
16 Article V §334-20, Allowed uses provided in tables].

17 B) A Variance to allow a building height exceeding 38 feet at 256 &  
18 266 Lowell Road, Hudson, NH. [Map 228, Lots 007 & 008, Zoned  
19 (B) Business; HZO Article III §334-14, Building Height].

20 C) A Wetland Special Exception to allow permanent wetland buffer  
21 impact of 15,154 sq. ft. at 256 & 266 Lowell Road, Hudson, NH.  
22 [Map 228, Lots 007 & 008, Zoned (B) Business; HZO Article IX  
23 §334-35 B (2), Uses within Wetland Conservation District].

24  
25  
26 Clerk Houle read all three (3) applications into the record. Chair Martin stated  
27 that the Board would hear and decide on the first application and noted that if  
28 it failed, there would be no need to address the other two requests and asked if  
29 the Board wished to hear the entire presentation or address each individually.  
30 General consensus was to hear an overview of the proposal and focus on the  
31 use variance first.

32  
33 Mr. Buttrick stated that the variance application before the Board is to allow a  
34 non-permitted use, specifically an indoor self-storage facility, which is not an  
35 allowed use according to the Table of Uses in the in the B (Business) Zone.

36  
37 Attorney John Cronin of Cronin, Bisson & Zalinsky in Manchester, NH,  
38 introduced himself, as representing the Applicant, and Fred Cole of Keach  
39 Nordstrom in Bedford NH who has been responsible for much of the design  
40 work on the project team and noted others on the team seated in the audience:  
41 Bill Goodison and Joel Kahn of Bluebird Self Storage and Tony Basso, a  
42 principal of Keach Nordstrom. Atty. Cronin stated that from a procedural point  
43 of view and regardless of how the Board votes on the Use Variance, asked that  
44 the other two applications be addressed at this meeting so that there can be a  
45 complete record.

1 Atty. Cronin stated that Bluebird Storage offers a new concept in self-storage  
2 with temperature and humidity controlled standalone storage units. Currently  
3 Bluebird Self Storage has a building in Rochester, one under construction in  
4 Greenland, one in Hooksett that will open tomorrow (10/27/2017) and an  
5 established one in Manchester and plans for another in Epping. The goal of  
6 Bluebird is to establish ten (10) locations in New Hampshire. Bluebird is  
7 attracted to Hudson because of its proximity to other uses and frontage on a  
8 main road. Atty. Cronin cited the several examples in the vicinity of the  
9 proposed location (WalMart and Sam's Club which historically have been  
10 referred to as "wholesale type warehouses", a lumber yard and residents) and  
11 commented that the residents would have concerns for any development  
12 coming to the vacant site.

13  
14 Atty. Cronin stated that he looks to the designation of a particular zone and  
15 when he checked Hudson's Zoning Ordinance Business Zone and the Table of  
16 Uses he was somewhat confused. The Spirit and Intent of the Zone specifically  
17 allows for warehouses but according to the Table of Uses, it is classified as an  
18 Industrial Zone and it is not allowed. Atty. Cronin stated that there is a  
19 conflict internal in the Hudson Zoning Ordinance. The proposed use is more of  
20 a commercial type than industrial. Atty. Cronin stated that during the review  
21 of this proposal the benchmark should not be the empty lot but consideration  
22 for the other types of uses that could go onto this site without any ZBA  
23 variance and consider their impact on increased traffic and parking and  
24 proximity to the neighborhood. The proposed use is traditionally a low traffic  
25 generator, particularly during peak hours, and hours of operation are limited,  
26 with hours from 6:00 AM – 8:00 PM Monday through Friday, 6:00 AM – 6:00  
27 PM on Saturday and 6:00 AM – 4:00 PM on Sunday, and generally staffed with  
28 one to three people. It is a quiet obscure operation.

29  
30 A) Use Variance

31  
32 Atty. Cronin addressed the criteria for the granting of a variance. The purpose  
33 of a Zoning Ordinance is to promote the general health, safety and welfare of a  
34 community. Atty. Cronin stated that when comparing the other uses that are  
35 allowed by right in this zone, the proposed project advances that cause, with  
36 low impact to neighbors, low traffic, very attractive design and a very abundant  
37 tax payer considering that this is a six million dollar (\$6M) project that would  
38 generate approximately one hundred and twenty thousand dollars (\$120M) per  
39 year in taxes. With respect to the neighboring impact there is none as it is not  
40 a Wal Mart or other high impact use being proposed and they are offering a one  
41 hundred foot (100') buffer between the zones/uses, which will be landscaped  
42 with evergreens and not deciduous trees, and that there will be no diminution  
43 of property values when compared to an empty lot or to the highest and best  
44 uses allowed for the site. Atty. Cronin referenced Mark McKeon of McKeon  
45 Appraisal Services, Inc., 10/5/17 letter attesting to no detrimental impact to  
46 surrounding property values with the proposed development. With reference to



1 the hardship criteria and with regard to the fair and substantial relationship of  
2 the Ordinance which, in the narrative, allows warehouses but is not supported  
3 in the Table o Uses for this particular use. The proposed use is a reasonable  
4 use, especially when compared to the allowed uses. It is attractive and Atty.  
5 Cronin offered the example of the one on Queen City Avenue in Manchester  
6 and noted the influence it has had on the sprucing up of neighboring  
7 properties. Atty. Cronin stated that they do respect the opinions of the  
8 neighbors, have had discussions with them, are offering the evergreen buffer  
9 and other considerations deemed by the Planning Board.

10  
11 Chair Martin opened the meeting for public testimony at 8:11 PM. The  
12 following individuals addressed the Board:

- 13  
14 (1) Paula Michalski, 1 Rena Avenue, directly across from Rita Avenue, the  
15 street to be most impacted if this is developed. Ms. Michalski stated  
16 that this residential development was one of the original ones  
17 developed in Hudson almost one hundred years ago and people who  
18 live there have invested their time energy and fortunes in their homes  
19 and have the right to have a quiet quality of life. In recent years they  
20 have watched Hudson grow and Lowell Road developed with eight to  
21 ten strip malls in a space of a mile. Most of those businesses have  
22 maintained a low profile and it is unethical and inappropriate to place  
23 a thirty-eight foot tall building against residences with towers that can  
24 go as high as a hundred feet. What will the lighting be? The  
25 proposed one hundred feet of buffer seems inadequate. If they need  
26 three variances, it has to be the wrong building and the wrong  
27 property. The building is beautiful but.... Also, the New England  
28 Cottontail population is becoming endangered, and there are  
29 cottontails on that land in the bushes.
- 30 (2) Robert Belleville, 8 Rita Avenue, questioned the height of the building,  
31 whether the one hundred feet is preemptive so they can add onto it  
32 later on. In reviewing the plan is looks like three sheltered loading  
33 docks and with that many storage units questioned the traffic,  
34 especially with only one egress. If the turn is missed, traffic will go  
35 onto Rita Avenue and then wait for the light and traffic will back up.  
36 What about security, lights and noise? Water and water runoff needs  
37 to be addressed. All the neighbors have wells and septic system and  
38 there is significant runoff.
- 39 (3) Colin Goyette, 4 Rita Avenue, shared several concerns. Traffic?  
40 Number of units, directly correlates to traffic. Turning radius does  
41 not seem sufficient for large trucks. Don't need trucks in the  
42 neighborhood, which will happen if they miss the turn. To make a left  
43 turn, the vehicles would be better served to exit onto Rena Avenue  
44 and catch the traffic light for the left onto Lowell Road. Drainage  
45 impact on the neighborhood, there is a tremendous underground flow  
46 of water. Wildlife – there is a wildlife corridor there with deer, ducks,

1 foxes, coyotes, woodchucks etc. They will be creating a 'pond' to  
2 manage drainage and there are many children in the neighborhood  
3 and that will pose a health and safety hazard. Construction phase  
4 has not been addressed and there will be an impact with trucks,  
5 blasting of ledge and noise, which could affect them as well as their  
6 wells. Yes, a hundred and twenty thousand dollars (\$120K) sounds  
7 good but improvements to Lowell Road sounds better. As far as  
8 neighborhood outreach, there has been none to his knowledge. He  
9 only found out about this project when he received a registered letter  
10 six days ago from the Town.

11 (4) Gail Wilson, 0 Rita Avenue, stated she is appalled. There is a water  
12 issue, she has water in her yard in the spring and will probably have  
13 a swimming pool if this is constructed. The site is inappropriate for a  
14 building of this height.

15 (5) Mandy Caouette, 6 Rita Avenue, expressed her opposition for the  
16 same reasons her neighbors have already shared – safety, buffer,  
17 animals, water and sewer. There is only one entrance being proposed  
18 and should have another, preferably by Wal Mart, to alleviate the  
19 traffic. Ms. Caouette stated that she too is opposed.

20

21 Public testimony closed at 8:31 PM.

22

23 Mr. Pitre questioned the septic system and whether there would be public  
24 restrooms, the loading docks facing Rita Avenue and whether there would be a  
25 fence at the one hundred foot buffer line. Ms. Davis questioned the number of  
26 units proposed within the structure and asked how the six million dollar (\$6M)  
27 valuation was derived and to clarify the exact address of Bluebird's site in  
28 Manchester. Mr. Brackett questioned the traffic counts and traffic numbers  
29 from the other sites. Chair Martin asked for information on how the hardship  
30 criteria has been addressed and satisfied and to explain how this particular  
31 site satisfied Bluebird's suitable location criteria, especially considering how it  
32 needs two variances and a special exception. .

33

34 Atty. Cronin stated that he listened to the abutters and took notes and wanted  
35 to clarify the confusion regarding the height noting that they are not seeking a  
36 one hundred foot level that is allowed in the Zoning Ordinance for unoccupied  
37 space. The proposed building is thirty eight feet (38'), as allowed in the  
38 Ordinance, and that proposed towers are at a height of forty five feet (45) on  
39 the building's two front corners that will shield the building's HVAC system

40

41 Atty. Cronin stated that traffic is a Planning Board issue and that a traffic  
42 study has been performed and offered the following statistics: that there is  
43 expected to be eleven (11) new vehicle trips, seven (7) entering and four (4)  
44 exiting during the weekday AM peak hour; nineteen (19) new vehicle trips, nine  
45 (9) entering and ten (10) exiting during the weekday PM peak hour; and thirty  
46 five (35) new vehicle trips, twenty one (21) entering and fourteen (14) exiting

1 during the Saturday peak hour and noted that this represents less than one  
2 additional vehicle trip on Lowell Road every one and a half minutes. With  
3 regard to the concerns for the exits and trucks, Atty. Cronin noted that it has  
4 been addressed in the Traffic Study, has been deemed adequate and stated  
5 that it will be decided by the Planning Board. Atty. Cronin submitted a copy of  
6 the Traffic Study.

7  
8 Atty. Cronin stated that there is only one (1) loading dock facing Rita Avenue.  
9 With respect to the questions raised regarding wells, every property owner has  
10 equal rights to the groundwater and is not an issue for the Board. With  
11 respect to drainage, Atty. Cronin noted that the Chairman correctly noted that  
12 Hudson has strict regulations and they will be addressed with the Planning  
13 Board. Wildlife is a concern everywhere and this is a commercial area in a  
14 densely populated area and there is probably wildlife there but hardly a major  
15 wildlife corridor going to Route 3 and cannot be used to deny a variance. Atty.  
16 Cronin stated that there will be no encroachment into the one hundred foot  
17 (100') buffer and noted that the measurement is from the rear property line.

18  
19 With regard to site selection, Atty. Cronin stated that his client would not  
20 invest the dollars to establish a location and have it fail – if people cannot get to  
21 the site, if they can't get their trucks in and out of the site, if they can't unload,  
22 they won't rent and the business will fail. Easy access from a main route is  
23 essential and this location provides that opportunity. With regard to the  
24 number of units, that has not been determined and Atty. Cronin noted that the  
25 most popular size is ten feet by ten feet (10' x 10') unit which could yield up to  
26 six hundred (600) storage units. The internal layout is flexible and depending  
27 on the demand could yield as few as two hundred (200) storage units. The  
28 Manchester location fronts on Queen City Avenue by Elliot Hospital with the  
29 stub of Brown Avenue as Brown Avenue breaks by the airport and Sundial  
30 Center. In terms of the tax base, the cost of construction, site work and the  
31 land acquisition cost is in the six million dollar range and based on twenty  
32 dollars per thousand dollar of valuation (\$20/1,000) as an average tax rate to  
33 estimate the one hundred and twenty thousand dollar (\$120K) of annual taxes.

34  
35 Atty. Cronin stated that this cite could be developed in many ways and  
36 referenced the Table of Uses noting that a truck facility and large retail  
37 operations are allowed by right. Atty. Cronin stated that the most common size  
38 truck would be the box truck, not a tractor-trailer.

39  
40 Atty. Cronin stated that the hardship criteria has been addressed in the  
41 application and with regard to the fair and substantial relationship to the  
42 Zoning Ordinance the proposed use advances this fair and substantial nature  
43 of the intent. Warehouse usage is allowed. The proposed project advances the  
44 Health Safety and Welfare aspect of the Ordinance and satisfies the first  
45 criteria. With regard to the number of variances, there is a NH Court case  
46 where the Judge ruled that the number of variances was immaterial as

1 everyone has the right to pursue a variance and each variance should be  
2 evaluated individually. Atty. Cronin stated that looking at the Use, it is a  
3 reasonable Use and it is well designed.

4  
5 Mr. Pitre asked and received confirmation that the “squiggly” line on the plan  
6 represents the proposed tree line and also represents the extent of the clearing.  
7 When he asked if a fence would also be included, Mr. Cole responded that one  
8 is not proposed, that the buffer would be discussed with the Planning Board  
9 and that they are not opposed to supplementing with evergreen trees. Mr. Pitre  
10 stated that a fence would help with noise. Mr. Cole stated that the site has  
11 access to public water and sewer.

12  
13 Chair Martin stated that his query regarding hardship was with regard to site  
14 selection and not the number of variances expressed his concerns that  
15 included.

16  
17 Chair Martin opened the meeting for public testimony at 8:47 PM. The  
18 following individuals addressed the Board:

- 19  
20 (1) Colin Goyette, 4 Rita Avenue, asked if the “proposed stormwater  
21 management area” on the plan would be a pond and if so how deep  
22 and would the culverts be big enough to entrap children as this is a  
23 serious safety concern. With regard to the traffic study, Mr. Goyette  
24 stated that he has worked for UPS for twenty four (24) years and a  
25 twenty-four foot (24)’ truck won’t be able to handle that intersection.  
26 (2) Mandy Caouette, 6 Rita Avenue, noted that the lawyer (Atty. Cronin)  
27 stated that several people in the neighborhood were contacted but, to  
28 her knowledge, none had – their only notice came from the Town’s  
29 certified letter  
30

31 Public testimony closed at 8:49 PM. Atty. Cronin stated that the number of  
32 units has not yet been determined and could range from two hundred to six  
33 hundred (200 – 600) storage units; that the depth of the “pond” will be  
34 approximately four feet (4’), that it could be fenced if the Planning Board  
35 mandate, that the turning radii is sufficient and that there would be no tractor  
36 trailers coming to the site.

37  
38 Mr. Pacocha asked and received confirmation from Atty. Cronin that the  
39 building would contain three (3) stories plus the two extensions on the front  
40 corners, which is the next variance to address. Mr. Pacocha asked and  
41 received confirmation that people accessing this site from the North will have to  
42 use Rita Avenue and asked if access via the Wal Mart had been considered.  
43 Mr. Cole responded and stated that he does not believe there is an access  
44 agreement to use the Wal Mart land. It was noted that a house used to exist  
45 and that their driveway pavement is still there accessing through Wal Mart and  
46 could possibly be used for access for this project and alleviate some of the

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1 concerns raised. Mr. Cole responded that Wal Mart was contacted for possible  
2 use of this access point and Wal Mart denied their request. Mr. Pacocha  
3 commented that, in his opinion, the proposed use is more of a business use  
4 than an industrial use.

5  
6 Chair Martin stated that he disagrees that the proposed use would not  
7 diminish the surrounding property values, especially with the height and  
8 towers to forty-five feet (45') as they will overshadow the properties behind  
9 them; that granting the variance will be contrary to the public interest  
10 especially with only one access and the fact that traveling north will require a  
11 turnaround which will create more traffic delays which is not conducive to the  
12 neighborhood.

13  
14 Mr. Brackett stated that, in his opinion, this area has been properly zoned as  
15 'business' and sees no reason to grant a variance as there is no special  
16 hardship on this property, no uniqueness to the property, no benefit to the  
17 public and money does not constitute hardship and it is a very big facility but  
18 there are other land options in Hudson. Ms. Davis agreed with Mr. Brackett  
19 and noted that there are four (4) other criteria to the granting of a variance  
20 and, in her opinion, this project does not meet three of them as it does alter the  
21 character of the neighborhood and it is contrary to the public interest and  
22 would injure the public's rights. Mr. Brackett added that substantial justice to  
23 the property owner is not relevant as the property can function with a use  
24 allowed in the Ordinance. Mr. Pacocha stated that there is other land in  
25 Hudson that would be more suitable for this project, one that meets their  
26 requirements and satisfies Zoning.

27  
28 Motion made by Ms. Davis and duly seconded by Mr. Brackett to not grant the  
29 variance that would allow a non-permitted use. Ms. Davis stated that she  
30 already spoke her reasons but to recap: the project is contrary to the public  
31 interest, it does alter the essential character of the neighborhood, and it was  
32 specifically kept out of the business zone and placed in the industrial zone  
33 which does address warehouses and mini storage units. Mr. Brackett stated  
34 that there is no hardship attributed to the land, that the land is very suitable  
35 for a business identified in the Table of Uses for the Business Zone and there  
36 would be no substantial justice done in the granting of the variance. Clerk  
37 Houle called the vote. Vote was unanimous at 5:0 to not grant the variance.

38  
39 In response to Chair Martin's question, Atty. Cronin asked to have the other  
40 two applications addressed so as to have a complete record. Board took a  
41 break at 9:0e PM. Chair Martin called the meeting back to order at 9:10 PM  
42 and noted that all Members had returned to the Board Table.

43  
44 B.) Height Variance

1 Mr. Buttrick stated that the applicant is requesting a variance to allow a  
2 building height to exceed thirty-eight feet (38). The proposed building includes  
3 HVAC equipment on top of the building for a total height of forty-five foot (45').  
4

5 Atty. Cronin asked the Board to make a Bartlett determination before delving  
6 into the prongs of the variance criteria. Atty. Cronin explained that the case  
7 Bartlett v. City of Manchester, 164 NH 634 (2013), allows claim of accessory  
8 use even though no administrative appeal was filed and requires that the ZBA  
9 determine whether a variance is even required. Atty. Cronin stated that if the  
10 Use Variance were overturned at a future date it would be beneficial to have  
11 this height issue resolved.  
12

13 In depth discussion arose. ZO 334.14 places a height restriction of thirty-eight  
14 feet (38') and excludes protuberances and non-habitable space. The proposed  
15 building will have seven feet (7') of HVAC equipment on the roof at the two front  
16 corners and will be shielded by the towers but will not be completely encased.  
17

18 Mr. Pacocha stated that the exclusion of non-habitable space negates the need  
19 for a variance. Mr. Buttrick agreed. The Zoning Determination should have  
20 been appealed; however, the appeal period lapsed and variance application was  
21 submitted. Chair Martin noted that the Bartlett case is a Federal case ruling  
22 and not Statutory Law, that the Zoning Determination was not appealed within  
23 the required time frame and that the variance application was advertised and  
24 should be addressed at this meeting. Mr. Brackett expressed concern for  
25 setting precedent. Ms. Davis questioned why HVAC had to be on the roof and  
26 Atty. Cronin stated that it has to do with air flow and temperature  
27 maintenance. Ms. Shuman suggested the attorney withdraw the application  
28 and Ms. Davis noted that it could be withdrawn without prejudice. Atty.  
29 Cronin responded that he is sensitive to the clock and that he would prefer to  
30 get a decision on the record. Mr. Brackett noted that he is leaving the Board  
31 no choice but to deny the variance. Ms. Davis expressed concern if the Use  
32 variance is appealed and ZBA has denied the Height variance and Atty. Cronin  
33 responded that the owner is anxious and added that if denied, one or all, they  
34 have a right to appeal within thirty (30) days.  
35

36 Public testimony opened at 9:34 PM. The following individuals addressed the  
37 Board:

- 38 (1) Paula Michalski, 1 Rena Avenue, noted that the abutting homes are  
39 about twenty feet (20') in height which is less than half the height of  
40 what is being proposed and expressed concern with regard to security  
41 lighting and noise from the AC system.
- 42 (2) Colin Goyette, 4 Rita Avenue, inquired about the decibel readings,  
43 particularly because his home is directly behind the building and the  
44 building will wall the HVAC units and push the sound his way twenty  
45 four hours a day, seven days a week, three hundred sixty five days a  
46 year.

1 (3) Gail Wilson, 0 Rita Avenue, noted that the noise may be acceptable  
2 now but what about in five to ten years when the machines age?  
3

4 Public testimony closed at 9:38 PM.  
5

6 Atty. Cronin stated that noise is a Planning Board concern and he noted that  
7 they could arrange a site walk to an existing facility to hear the noise and even  
8 invite abutters. Mr. Brackett stated that the Planning Board could also ask for  
9 dB ratings and engage a Sound Engineer to address this concern.  
10

11 Motion made by Mr. Brackett and seconded by Chair Martin to deny the  
12 Variance sought in Case #228-007 B as it does not meet the criteria and meets  
13 the Zoning requirements of a maximum habitable height of thirty-eight feet  
14 (38') with HVAC equipment on the roof for a total building height of forty-five  
15 feet (45') and that the parapet is really decorative and non-occupied and only  
16 covers two exterior walls. The request does not violate the Ordinance and a  
17 variance is not needed. Mr. Brackett spoke to his motion noting that is was  
18 based on interpretation of what was being proposed. Mr. Pacocha agreed as it  
19 is the only recourse. Clerk Houle took the vote. Vote was unanimous at 5:0 to  
20 deny the variance.  
21

### 22 C.) Wetland Special Exception 23

24 Mr. Buttrick stated that a permanent wetland buffer impact on 15,154 square  
25 feet for the driveway, retaining wall and stormwater improvements.  
26

27 Atty. Cronin stated that this is the third application before the Board for this  
28 project and turned the presentation over to Fred Cole of Keach Nordstrom  
29 Associates.  
30

31 Mr. Cole posted a plan and identified the two (2) wetland areas on the site  
32 noting that the impact are only to the wetland buffers and not to the wetlands.  
33 The driveway will have 8,024 SF (square feet) of buffer impact and that has  
34 been minimized with the installation of a retaining wall. The  
35 roadway/driveway that circulates around the building is essential to the  
36 project. The second wetland buffer impact is for the stormwater detention  
37 pond and will have 7,130 SF of buffer impact on the southern side. Erosion  
38 control measures will be taken around the buffers. The plan has been  
39 presented to both the Conservation Commission and the Planning Board who  
40 each have approved of the plan. See Conservation Commission Motion to  
41 Recomend dated 9/12/2017 and Planning Board's Notice of Decision for ZBA  
42 Input Only dated 9/26/2017.  
43

44 Mr. Cole addressed the criteria and shared the following information:

- 45 a) *The proposed use is essential to the reasonable use of land request –*  
46 *the proposed driveway and stormwater impacts are commensurate*

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- 1 with the use of the land. The “central” wetland buffer makes it  
2 difficult to locate the driveway around the proposed building and  
3 provide safe vehicular flow, especially considering the 100’ buffer to  
4 the residents at the rear of the site. The stormwater pond must be  
5 located on the low end of the site to allow runoff to drain properly and  
6 provide the necessary treatment of impervious runoff.
- 7 b) *There is no reasonable alternative* - The 100’ setback buffer at the rear  
8 of the site consumes buildable area and forces the building to the  
9 front of the site and the relatively high water table restricts the depth  
10 of the stormwater pond and the natural topography of the land limits  
11 its location.
- 12 c) *Design, construction and maintenance to be prepared by PE*  
13 *(Professional Engineer)* – will be done and meet NH DES (Department  
14 of Environmental Services) and will use BEST Management Practices  
15 and the proposed site grading will follow the same pattern of the  
16 existing topography.
- 17 d) *Proposed use is not based primarily on economic considerations* – The  
18 proposed plan will actually cost the client more money as there is a  
19 need to access around the building and that requires a retaining wall  
20 because of the placement of the building
- 21 e) *Wildlife access corridor* – The NH Natural Heritage Bureau was  
22 contacted regarding rare and endangered species and their database  
23 indicated that there are no recorded occurrences for sensitive species  
24 in the project area. The site is completely surrounded by developed  
25 properties and currently limits access and migration to this site  
26 today. The 100’ buffer setback will allow migration of wildlife to and  
27 from the wetland conservation district.

28  
29 Chair Martin opened the meeting for public testimony at 9:51 PM. The  
30 following individuals addressed the Board:

- 31  
32 (1) Paula Michalski, 1 Rena Avenue, stated that a single grown tree will  
33 consume one hundred and fifty gallons of water a day. The slope of  
34 this land comes down from Wal Mart and there is a lot of water and  
35 after these past five days of rain there is a pond in her back yard.  
36 When the church was constructed they cut trees on seven acres of  
37 land and that resulted in three inches of water in her basement all  
38 summer long. The Church had a catch basin near her property but it  
39 did not work as intended because the water came into her basement.  
40 Ms. Michalski expressed concern for her well and the others’ well  
41 when construction begins and is concerned water may need to be  
42 pumped. Ms. Michalski stated that she is horrified that their  
43 driveway is onto Lowell Road which has five lanes, especially when  
44 someone from the Town told her a month ago that there would be no



1 further cuts along Lowell Road and the assumption was made that  
2 this site would be accessed by Wal Mart.

- 3 (2) Colin Goyette, 4 Rita Avenue, expressed concern about the water as  
4 there are a lot of underground water streams, many neighbors have  
5 to have sump pumps run almost all year. Vehicles leak – oil,  
6 antifreeze, gas, diesel – it is inevitable especially when adding more  
7 tires with their runoff. There was mention of a 4’ retention pond and  
8 questioned it effectiveness as the seasonal high water mark on his  
9 property is basically his grass line and there is concern regarding  
10 pollution feeing into his well and ground water contamination.

11  
12 Atty. Cronin stated that the concerns just expressed were previously addressed  
13 and noted that any business to the site will create the same issues/concerns  
14 and added that stormwater and drainage are heavily regulated.

15  
16 Mr. Brackett noted that the treatment area is to keep all the water from the  
17 pavement from entering the wetland and groundwater supply until it has had a  
18 chance to clean it and asked if the system has been fully designed. Mr. Cole  
19 responded that it is preliminary design at this time but real close to the final  
20 design. Ms. Davis noted that another use or smaller development would still  
21 need stormwater management. Mr. Brackett asked if the neighborhood is up-  
22 gradient. Mr. Cole confirmed and added that no stormwater would go into the  
23 neighborhood.

24  
25 Chair Martin offered a last opportunity for public testimony at 10:04 PM. No  
26 one addressed the Board.

27  
28 Motion made by Ms. Davis and seconded by Mr. Brackett to grant the Special  
29 Exception. Ms. Davis stated that the special exception is essential to any  
30 reasonable use of the property and the plan has been sanction by both the  
31 Conservation Commission and the Planning Board. Mr. Brackett concurred  
32 and noted that there will be more questions and input coming to the Planning  
33 Board for Site Plan Review. Clerk Houle called the vote. Vote was unanimous  
34 at 5:0. Motion carried.

- 35  
36 4. Case 190-191 (10-26-17): Joseph Maynard, 1F Commons Drive, Suite  
37 35, Londonderry, NH requests:

38 A) A Variance to allow a non-permitted use at 48 Lowell Road,  
39 Hudson, NH [Map 190 Lot 191, Zoned (B) Business; HZO Article V  
40 §334-20 Allowed uses provide in tables].

41 B) A Variance to allow a sign within setbacks at 48 Lowell Road,  
42 Hudson, NH [Map 190 Lot 191, Zoned (B) Business; HZO Article  
43 XII §334-60 (C) & (D), General requirements].

44  
45 Clerk Houle read the Case into the record. Chair Martin read a letter received  
46 from Joseph Maynard requesting a continuance to the November 9, 2017

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1 meeting as there was an issue with abutter notification. Mr. Buttrick added  
2 that a third variance for mixed-use is also needed.

3  
4 Motion made by Mr. Pacocha and seconded by Ms. Davis to defer the Hearing  
5 to the November 9, 2017 meeting. Vote was unanimous.

6  
7 **II. REVIEW OF MINUTES**

8 10-12-17 minutes – Board reviewed the edited version presented and  
9 made no further changes. Motion made by Ms. Davis, duly seconded by  
10 Mr. Brackett and unanimously voted to approve the Minutes as edited.

11  
12 **III. REQUEST FOR REHEARING**

13  
14 There were no requests for rehearing presented for consideration.

15  
16 **IV. OTHER**

- 17  
18 1. Discussion of any Town/State activity of interest to the Board.  
19 ZORC update

20  
21 Mr. Buttrick distributed his notes from their 10/18/2017 meeting. Mr.  
22 Brackett and Ms. Davis objected to the Table of Uses being considered as the  
23 final document as there was no vote taken. Several complaints and  
24 frustrations were expressed. Mr. Buttrick suggested that George Thebarger  
25 become the focal point.

- 26  
27 2. 2018 Meeting Schedule

28  
29 Mr. Buttrick distributed a draft 2018 meeting schedule, noted that the regular  
30 meeting for November and December are set for the second Thursday of the  
31 month to accommodate the holiday schedule and expressed concern for the  
32 possible conflict between December 2018 meeting and the January 2019.  
33 Several opinions expressed that *if* a special meeting is required, it can be  
34 scheduled when it arises. Board asked to review. To be adopted at the  
35 November meeting.

- 36  
37 3. Bylaws

38  
39 Mr. Buttrick distributed a “clean” updated copy that became effective  
40 10/12/2017, noted that the web site has been updated, that the Selectmen  
41 accepted it and that Town Counsel was okay with it as revised.

42  
43  
44 Motion made by Mr. Brackett, duly seconded by Ms. Shuman and unanimously  
45 voted to adjourn the meeting. The October 26, 2017 ZBA meeting adjourned at  
46 10:26 PM.

47

- 1 Respectfully submitted,
- 2 Louise Knee, Recorder

DRAFT