

TOWN OF HUDSON

Zoning Board of Adjustment

Normand Martin, Chairman

Marilyn McGrath, Selectmen Liaison

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MEETING MINUTES – September 28, 2017

The Hudson Zoning Board of Adjustment met September 28, 2017, at 7:30 PM in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall.

Chair Normand Martin called the meeting to order and made the following announcements: to please turn off or mute cell phones; that there is no smoking in the building; that there are copies of the Agenda near the door along with instructions for rehearings; that there is a curfew of 11:00 PM; that anyone addressing the Board come to either the lectern or the table and announce their name and address; and to please refrain from talking in the audience.

Clerk Houle took a roll call. Members present were: Charlie Brackett (V-Ch.), Maryellen Davis (Reg.), Kevin Houle (Alt.), Normand Martin (Ch.), Maurice Nolin (Alt.), James Pacocha (Reg.), and Donna Shuman (Reg.). Also present were David Morin, Selectmen Liaison, Bruce Buttrick, Zoning Administrator, George Theborge, Town Planner, and Louise Knee, Recorder. Excused were Michael Pitre (Alt.) and Selectmen Liaison Marilyn McGrath. The Board welcomed Mr. Theborge to the Town. For the record, Regular Members vote - unless an Alternate is appointed by the Chairman.

I. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. Case 168-101 (9-28-17): Bernard Mailloux, 69 Arlington St, Dracut, MA, requests a Wetland Special Exception to encroach with 790 sq. ft. within the Wetland Buffer for a reconstructed house at 21 Frenette Drive, Hudson, NH. [Map 168, Lot 101, Zoned (R-2) Residential Two; HZO Article IX §334-35, Uses within Wetland Conservation District].

Clerk Houle read the Case into the record. Mr. Buttrick referred to his Zoning Determination #17-81 dated 9/14/17 which modified his previous Zoning Determination #17-30 dated 3/20/17, that a Special Exception would be needed to encroach the wetland buffer to the rear of the site. The existing house is not in compliance with the setbacks and would be razed to construct

Approved 10/12/2017

a new house that would meet the setback requirements. The Determination also instructed the Applicant to seek the Conservation Commission review and approval, which has been obtained in their motion to recommend dated 8/14/17. Chair Martin asked and received confirmation that there is no Planning Board action needed to reconstruct the new single-family house.

Josh Taylor of 110 Lincoln Lane in Dracut MA introduced himself as working with Mr. & Mrs. Bernard Mailloux on the construction of the single-family home at 21 Frenette Drive and are before the Board seeking a Special Exception to encroach the wetland buffer. Mr. Taylor noted that the existing dwelling does not meet the front or side setbacks. If permission is received, the new structure will meet both front and rear setbacks and only require a twenty-five foot (25') encroachment of the wetland buffer at the rear of the site.

Chair Martin opened the meeting for Public input/testimony at 7:34 PM and closed it at 7:36 PM. The following individuals addressed the Board:

- (1) Thomas LeBlanc, 23 Frenette Drive noted that the existing wetland is not much of a wetland, that the existing house is decrepit and asked the Board to approve the application as that would be better for the community.
- (2) Denise Bellefille, 19 Frenette Drive, stated that she agreed with her neighbor Mr. LeBlanc and noted that there is no water in that wetland and to please approve the application so that the existing house that has been vacant for the past six to seven years has become an eyesore and can be replaced.

Ms. Davis stated that this was a straight forward application, that the existing residence was nonconforming, that there would be minimum intrusion to the wetland buffer and that the Conservation Commission granted their approval. Chair Martin asked if the existing shed in the setback had been moved yet and Mr. Taylor acknowledged that it hasn't yet, but would be removed.

Mr. Brackett questioned the March Determination and what caused the delay and change to the August Determination. Mr. Buttrick responded that the March Determination was that a Variance would be required but the new proposal would place the new house outside of the setbacks and only require a Wetland Special Exception. Mr. Taylor added that Mr. & Mrs. Mailloux only recently purchased the property and Mr. Mailloux added that he just recently received the information. Mr. Brackett asked and received confirmation from Mr. Taylor that the Special Exception is for the destruction of the existing house and the reconstruction of it only as presented. Mr. Brackett noted that the backyard is entirely in the wetland buffer and inquired if the pool would be replaced. Mr. Mailloux responded that he has no intention of having a pool on the property.

Chair Martin read the Conservation Commission's unanimous Determination to approve the Special Exception dated 8/14/17 into the record.

Motion made by Ms. Davis, duly seconded by Mr. Pacocha and unanimously voted to grant the Special Exception for Case #168-101 as presented. Ms. Davis spoke to her motion stating that the lot will be conforming with regard to the setbacks and that the application meets the criteria for granting the Wetland Special Exception. Mr. Pacocha noted the compliance to the setbacks, that the Conservation Commission voted in favor of the application and that the wetland was created for drainage. Motion granted. Chair Martin noted the thirty-day appeal period.

2. Case 222-006 (9-28-17): John T. Smolak Esq., Agent, East Mill 21 High Street, Suite 301 North Andover, MA, requests a Variance for the properties (to be consolidated) located: at 2 Flagstone Dr., Flagstone Dr., 225 Lowell Rd., and 227 Lowell Rd. as a proposed single lot, for a retail gas station to be located within 800-feet of another retail gas station. [Map 222, Lots 3,4,5-000 through 5-008, and 6, Zoned (I) Industrial; HZO Article III §334-15.1, Retail gasoline sales].

Clerk Houle read the Case into the record. Mr. Brackett recused himself noting that the applicant would be coming before the Planning Board and he is also a Planning Board member. Chair Martin appointed Alternate Nolin to vote.

Mr. Buttrick referred to his Zoning Determination dated 9/18/17 noting that the applicant wishes to consolidate four (4) lots into one that would have frontage on three streets (Lowell Road, Flagstone Drive and Sagamore Park Road.) for redevelopment as an automotive fuel station and retail store. Mr. Buttrick noted that the Variance is required as the proposed fueling station would be within eight hundred feet (800') of an existing fuel station known as Haffner's gas service and car wash on Lowell Road.

Attorney John Smolak introduced himself as representing the property owners and Chris Tymula, Civil Engineer. An aerial view of the area was presented that showed the mix of commercial and industrial uses in the area. To the north by Flagstone Drive is Dunkin Donuts and Burger King. To the south by Sagamore Park Road are the on/off ramps. To the east, at the front by Lowell Road are retail shops, Market Basket and Rite Aid, and to the rear is United Van Lines, a moving and storage company.

The next plan posted showed the four lots. Lot 3 is one acre with frontage on Lowell Road and Sagamore Park Road and has an existing residence with a shed and garage that was constructed in the 1960's. Lot 4 is 0.22 acres with frontage on Lowell Road and Flagstone Road and is essentially vacant. Lot 5 is 0.89 acres with a single building constructed in the 1960's and 1980's has

frontage on Flagstone Road and 50' of frontage onto Lowell Road. Lot 6 is 0.664 acres with frontage on Flagstone Drive only with one concrete block building.

The third plan was a conceptual drawing of the proposed facility on the combined 2.7-acre site depicting access by Flagstone Drive and Lowell Road with pump stations located at the front of the site and the proposed convenience store to the rear. Atty. Smolak noted that there would be no drive-through and no car wash on site.

The last presentation was a rendering of what the building would look like as seen from Lowell Road – a Colonial style Cumberland Farms building with a free standing sign on the corner.

Atty. Smolak stated that over the past several months he has had discussions with Mr. Buttrick, Zoning Administrator, Mr. Dhima, the Town Engineer, Mr. Cashell, the former Town Planner and Mr. Della-Monica, the Planning Board Chair, regarding the traffic along Lowell Road and their desire for a third southbound lane to Sagamore Bridge Road which would need frontage from this parcel. Atty. Smolak stated that they will offer an easement grant (10' – 15') along Lowell Road and noted that NH DOT would also be involved.

Atty. Smolak next addressed the criteria for the granting of a variance and the following information was presented:

- The proposal is not contrary to the Spirit and Intent of the Ordinance, the Zone provides for co-development and the residential use will be eliminated
- The purpose for the 800' distance is to alleviate potential traffic congestion, but a gas station is not a destination use like a Wal Mart so there should be little to no increase in traffic, but if the Planning Board desires, they are willing to do a Traffic Impact Study.
- Left turns from the site has the option to use the Flagstone driveway to exit via the light at Lowell Road
- A third lane along Lowell Road will alleviate traffic congestion
- There will be no drive-through or car wash on site
- The Use is allowed in the Zone
- Substantial justice will be done in the granting of this variance and there is no benefit to the public by not granting and much harm to the owner that is greater than any harm to the public
- Tax revenue would be enhanced with this five million dollar project
- The buildings are now obsolete
- The distance to the nearest gas station is 430' and there are no other locations in the area to gain 800'

In conclusion, Atty. Smolak stated that they have met the Variance criteria.

Chair Martin opened the public hearing at 8:07 PM. No one addressed the Board.

Ms. Davis asked if the lot could be reconfigured or perhaps one lot not merged to gain the necessary 800' distance. Mr. Tymula stated that the distance from the other station is 430' and with 150' of frontage the maximum distance would be approximately 600'; that 800' is beyond the property limits.

Traffic and aesthetics were discussed. Ms. Davis commented that the Town has many gas stations and added that the premise for the 800' distance was to protect public safety without clustering gas stations so close to one another and especially so in an already congested traffic area but also for the aesthetics of/to the Town and asked if the gas tanks could be placed behind the building. Mr. Tymula responded that there are two lanes on Lowell Road and that they will survey for the third lane; that there is an easy right turn in and out of the site; that left turns can be handled utilizing the driveway to Flagstone Drive. Mr. Tymula stated that he was involved in the Irving project approximately one mile down the road and if there is any queuing it will be contained on site and not block traffic. Selectman Morin noted that the exit for Dunkin Donuts has large volume with huge backups. Mr. Tymula noted that the third lane would alleviate traffic congestion at this site. Mr. Tymula also stated the gas tanks need to be located at the front of the lot to help ease the turning radii for the gas tankers coming into the property.

With regard to the aesthetics of the building, Mr. Tymula stated that the design is Cumberland's gold standard with canopy and stone base around the building. Atty. Smolak stated that Cumberland Farms is flexible, that this is a very popular design and added that the interior layout follows a specific layout with glass front, coolers in the back and the cashier by the main door. Mr. Tymula stated that placing the pumps to the rear would prevent the cashier from viewing the pumps, which would raise a safety concern, and added from a retail perspective, it is more important to have the pumps in the front. Chair Martin stated that another reason to have the pumps out front is so that the Police can see into the store, especially during drive-by checks. Atty. Smolak noted that the Board has raised concerns and added that they will be addressed in more detail with the Planning Board during Site Plan Review.

Mr. Pacocha asked about the tank refueling. Mr. Tymula posted the plan that showed the location of the two (2) twenty thousand gallon tanks by Lowell Road and noted that the fuel tanker would enter from Flagstone Drive, proceed behind the building to the tanks, refuel and exit by Lowell Road. It was noted that NH DOT (Department of Transportation) will need to approve the driveway locations.

Chair Martin reminded the Board that the Use is allowed in the Zone and that the issue is whether to grant a Variance to allow it less than 800' distance from an already existing gas station. Mr. Nolin asked about the new Fire Station that is intended in this area. Chair Martin stated that the Fire Station driveway will not exit on Lowell.

Motion made by Mr. Pacocha, duly seconded by Ms. Shuman and voted 4:1 to grant the Variance as presented. Mr. Pacocha spoke to his motion stating that the criteria have been satisfied, that the main issue is the distance and that the third lane will aid traffic flow. Ms. Shuman mirrored the same comments. Mr. Nolin reluctantly voted in the affirmative. Ms. Davis opposed. Chair Martin noted the thirty-day appeal period.

Mr. Brackett returned to the Board table.

II. PUBLIC HEARING

1st reading of proposed revision to ZBA By-Laws (Chapter 143).

Chair Martin read the item into the record and opened the Public Hearing at 8:29 PM. No one addressed the Board. The second Public Hearing has been scheduled for October 12, 2017. Discussion arose on the remaining step, obtaining Selectmen review and the benefit of providing a "track-change" document. Ms. Davis agreed to provide Ms. Knee with an electronic version of the prior By-Laws and the revised By-Laws to create a track-change document to facilitate review.

III. REVIEW OF MINUTES

1. 3-23-17 Minutes

Board reviewed the edited edition. Consensus reached to identify attorneys as "Atty." instead of "Mr." or "Ms.". Motion made by Ms. Davis, duly seconded by Ms. Shuman and unanimously voted to approve the 3/23/17 Minutes as edited.

2. 8-24-17 Minutes

Board reviewed the edited edition and made no further changes, Motion made by Ms. Shuman, duly seconded by Ms. Davis and unanimously voted to approve the 8/24/17 Minutes as presented.

IV. REQUEST FOR REHEARING

There were no requests for rehearing presented.

V. OTHER

1. Discussion of any Town/State activity of interest to the Board.

ZORC update

Mr. Buttrick reported that there may be seven (7) or (8) Zoning Amendments ready for the March ballot and stated that there may not be enough time to include barnyard animals. Mr. Brackett noted that without the inclusion of barnyard animals on the ballot, there will be a big hole in the Zoning Ordinance. Chair Martin commented that with SB2, every expenditure from/to the CIP (Capital Improvement Plan) now requires a Warrant Article and that there could be as many as thirty (30) Articles on the ballot this year .

2017 NH Municipal Law Lectures Oct 14

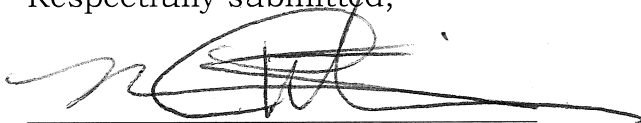
Board reviewed the course offerings. Mr. Brackett noted that the first session, "Procedural Basics for Planning and Zoning Boards" was good and his first choice last year but he was refused entry because he was already an experienced Member of both Boards.

Mr. Theborge asked the Members if they would be interested in having a joint workshop with the Planning Board and Town Counsel. Mr. Brackett stated that they had one before and it was very helpful. Mr. Brackett noted that the traffic concern raised this meeting is really a Planning Board issue and Chair Martin commented that traffic does fall under ZBA as it relates to safety. Mr. Theborge stated that one way to approach is to consider the ZBA as the "first cut" for the overall affect and leave the details to be addressed by the Planning Board. The Board asked Mr. Theborge to set up the workshop.

Chair Martin noted that the ZBA will meet next on October 12th.

Motion made by Ms. Davis, seconded by Mr. Brackett and unanimously voted to adjourn the meeting. The 9/28/17 ZBA meeting adjourned at 8:51 PM.

Respectfully submitted,



Normand Martin, ZBA Chairman