



TOWN OF HUDSON

Zoning Board of Adjustment

Normand Martin, Chairman

Marilyn McGrath, Selectmen Liaison

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MEETING MINUTES – August 24, 2017 - Approved

The Hudson Zoning Board of Adjustment met Thursday August 24, 2017, in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall at 7:30 PM. Chairman Martin called the meeting to order and made the announcements to turn off cell phones, that there is no smoking in or near the building, that there is a curfew but with only one application it should not be a concern, that there are copies of the Agenda by the entry door but no Appeal copies so if anyone wishes to appeal the Board's decision they will need to contact the Zoning Administrator Bruce Buttrick and asked that any who wish to address the Board to please do so at either the lectern or at the table and to begin by stating their name and address.

Clerk Houle took a roll call. Members present were: Maryellen Davis (Reg.), Kevin Houle (Alt.), Normand Martin (Ch.), Maurice Nolin (Alt.), James Pacocha (Reg.), and Donna Shuman (Reg.). Also present were Marilyn McGrath and David Morin, Selectmen Liaisons, Bruce Buttrick, Zoning Administrator, and Louise Knee, Recorder. Excused were Charlie Brackett (V-Ch.) and Michael Pitre (Alt.). For the record, Chairman Martin seated Alternate Maurice Nolin to vote in place of Charlie Brackett.

I. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. Case 165-147 (8-24-17): Clifford Antonell, 1 Wildflower Lane, Wayland, MA, requests a Variance to allow a portion of the property at 76 Derry Street, Hudson, NH to be used as indoor self-storage units. [Map 165, Lot 147, Zoned (B) Business; HZO Article XII §334-20 & 21, Allowed uses provided in tables and Table of Permitted Principle Uses.]

Clerk Houle read the Case into the record. Chairman Martin asked Mr. Buttrick to speak to the Case. Mr. Buttrick referred to his Zoning Determination (#17-50 dated 5/19/17) that noted the particular use of indoor self-storage units is not an allowed Use in the Table of Uses and that a Variance would be needed.

Approved 9/28/2017

Attorney Mark Kanakis introduced himself, noted that the owner Cliff Antonell was present to answer any questions and proceeded to address the application before the Board beginning with the identification of the site and the layout of the existing building. It was noted that the lower (basement) level is not visible from the street and the self-storage units would occupy approximately nineteen thousand six hundred square feet (19,600 SF) with access in the rear by the level parking area and that there would be approximately twelve thousand square feet (12,000 SF) of indoor storage units on the first floor with access by the loading docks on the side of the building.

With regard to the application, the following information was shared:

- The proposed use will not alter the character of the neighborhood as there are other self storage units in the zone and it will actually improve the neighborhood with reduced traffic
- Other Uses allowed by the Zoning Ordinance that do not require Board approval could significantly impact the area with regard to traffic, sound/noise, lights, hours of operation, etc
- There will be no exterior modifications to the building to accommodate this use so therefore there will be no impact to surrounding property values as nothing is changing
- Like many strip malls, and especially with this one, it is challenging to keep it filled with tenants. The square footage for this proposal has been vacant for some time and that hurts the neighborhood and affects the character of the neighborhood.
- The proposed use will have minimum impact on the neighborhood and not alter its character and not pose a threat or impact general welfare.
- The proposed use is allowed in every other non-residential Zone in Town
- The proposed use is reasonable
- Literal enforcement will result in an unnecessary hardship due to the special conditions of the property's topography - it down slopes away from Route 102 and provides a unique challenge to enable the public to see retail establishments, an allowed use.

At 7:46 PM, Chairman Martin asked if anyone from the public would like to speak in favor of this application and if so to come to the microphone and state their name and address. No one approached. Chair asked if anyone wanted to address the Board in opposition or neutrally. Again, no one addressed the Board.

Board deliberation ensued. In response to Mr. Nolin's question, Mr. Morin responded that there is a fire zone along the front of the building. Mr. Nolin asked if goods could be moved without encroaching the fire zone. Owner Cliff Antonell stated that the loading dock is at the rear of the building. Attorney

Kanakis added that it would be okay to add no encroachment to the front fire zone as a condition of approval.

Ms. Davis commented that it was difficult to follow the floor plan and asked if the Planning Board would be reviewing and identifying the number of units appropriate for the space and taking measures to limit the impact to the surrounding neighborhood. Mr. Pacocha noted that the majority of the storage units proposed are in the back below the grade of the first floor, like a walkout basement of a house, and loading would be at grade with the parking lot. When asked how the units would be accessed on the first floor without an elevator, the Owner responded that the storage units on the main level would use the entrance of the old workout entrance at the front of the building.

Ms. McGrath questioned the hours of operation, especially the rear access to the proposed storage units, and noted that a couple of years ago, a tenant wanted to put on a deck and the neighbors expressed concern regarding the noise. Ms. McGrath pointed out that the neighbors to the rear are individual residences and an elderly housing facility and does not want to create a situation where there will be complaints. Mr. Antonell stated that he has two other self-storage facilities with twenty-four (24) hour access by remote control and has not received any complaints regarding noise. Ms. McGrath noted that there is another self-storage business in the area and they close around ten or eleven at night. Mr. Pacocha stated that if twenty-four hours is the preference, could access between 11 PM to 7 AM be restricted through the front only. Mr. Antonelli noted that other businesses in the area are open until 1:00 AM, including the one right across the street, that there was traffic behind the building when it was fully occupied and that the proposed use will bring even less traffic.

Ms. Davis stated that we live in a 24/7 world, that the proposed use is less intrusive than a restaurant/bar, that the only less intrusive use she can think of would be an internet sales business, that the proposed use is not contrary to the public interest, that there is a good buffer behind the building, especially with the parking lot, and added that her only concern would be the lights, and that too is controlled by the Planning Board.

Clerk Houle stated that the rear parking lot is a big area and asked if there was any intent to rent parking spaces. Mr. Antonell responded that he had not thought of the possibility to rent parking spaces as the parking spaces should be used up by tenants.

Mr. Kanakis stated that they are before the ZBA for a determination whether the USE could be at this location and that they need this determination before proceeding to the Planning Board for Site Plan Review. Ms. McGrath stated that the Planning Board has an option to determine this to be a Minor Site Plan Review, which could then be reviewed by Subcommittee. Chair Martin agreed

that hours of operation, lights, and noise are also his concerns and stated that they could be reviewed at the Planning Board level. Discussion arose as to whether to include as conditions of ZBA approval.

Ms. Davis made the **motion** to grant the variance with the stipulation that the applicant obtain Site Plan Review approval from the Hudson Planning Board; and furthermore, as a directive, authorize the Chairman of the Zoning Board to send a letter to the Planning Board outlining the concerns of the Zoning Board particularly regarding the hours of operation. Mr. Pacocha seconded the motion.

Ms. Davis spoke to her motion: the variance criteria have been met, the proposed use is not contrary to the public interest or safety, it is appropriate to the area which already has two late night operations, the twenty four hour gas station and the gym across the street, there is no proposed change to the outside of the building so there will be no impact to property values and that it is the zone that creates the hardship. Mr. Pacocha stated that it is not contrary to public interest, it does observe the spirit of the Ordinance, justice is being done, there is no impact to surrounding property values as nothing is changing to the structure appearance of the building and that the hardship is that it is an acceptable use for the area, that it is just not in the Table of Uses.

Chair Martin asked Clerk Houle to call the vote:

Ms. Davis: to grant with one stipulation

Mr. Pacocha: to grant with the stipulation

Ms. Shuman: to grant with stated stipulation

Mr. Nolin: to grant

Mr. Martin: to grant

By unanimous vote, the ZBA conditionally approved Case # 165-147. Chair Martin explained the thirty-day appeal process and stated that a Notice of Decision would be available in seven to ten days.

II. REVIEW OF MINUTES

Mr. Buttrick reported that the January 26, 2017 Minutes have been prepared in final format as well as the February 23, 2017 Minutes and both are ready for Chairman's signature.

At 8:20 PM, Selectman Liaison Marilyn McGrath excused herself from the rest of the meeting, stated that she cannot attend every ZBA meeting and asked the Chairman to please contact her for any meeting she should attend.

Board took a five-minute recess. Meeting called back to order at 8:25 PM.

1. July 27, 2017 Minutes

Board reviewed the edited version presented. Ms. Davis name needs to be corrected and the "NOTE" on page 2 is to be eliminated.

Motion made by Mr. Nolin to approve the July 27, 2017 Minutes as edited and amended. Ms. Shuman seconded the motion. Vote was unanimous. Motion passed.

Mr. Buttrick asked that the line numbers be removed for the final approved version that the Chairman is to sign.

2. June 22, 2017 Minutes

Mr. Buttrick noted that the June Minutes were distributed electronically, that edits were provided by Mr. Pacocha and himself, as noted at the top of page one and in the footer of the edited version of the Minutes, and were placed in the supplemental package. Ms. Davis questioned the purpose of edited Minutes. Mr. Buttrick stated that the main purpose is efficiency. Ms. Davis asked if the edited version would be sent in their packet. Ms. Knee responded that the edited Minutes would be compiled as edits are received and finalized the night before a meeting with the presumption that the Board will take action on them at the meeting. Ms. Knee noted that there are three main reasons for sending the edits just to her and Bruce: (1) to not violate the Right-to-Know Law and conducting "meetings" outside of published meetings; (2) to keep them from becoming part of public record noting that once produced, they become public record and subject to the retention laws; and (3) to allow any discrepancy in the editing to be verified with the actual recording. Discussion continued. Mr. Pacocha stated that he experienced trouble sending along his edits, had to send them twice but did not receive confirmation that his second attempt was successful. Ms. Knee apologized for not communicating and promised to in the future, even if it is just a "thank you".

Chair Martin brought forth each page of the June Minutes for additional comments/editing. Ms. Shuman offered the following additional edits:

Page 2 line 33 – should be "his" not "her"

Page 3 line 36 – reworded the sentence for clarity

Page 4 line 12 – remove the "the".

Motion made by Ms. Shuman to approve the June 22, 2017 Minutes as edited and amended. Mr. Nolin seconded the motion. Vote was 4:0:1. Ms. Davis abstained as she had not attended the meeting. Motion passed.

3. March 23, 2017 Minutes

Mr. Buttrick noted that these Minutes were emailed August 13th but not included in the package mailed to the Members as the package was mailed the

week prior. Ms. Knee confirmed that she had not yet received edits. Several Members asked to have the Minutes deferred to the next meeting and asked Ms. Knee to resend electronically for editing.

III. REQUEST FOR REHEARING

There were no requests for rehearings received for Board consideration.

IV. OTHER

1. Municipal Law Series 2017

Mr. Buttrick stated that there will be no evening seminars this year, that an all day session is being offered in Concord, NH on Saturday October 14th and asked Members to email him with their preference of seminars.

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

A. Legislative Update – House Bills

Mr. Buttrick provided an update of recent Legislative actions that included:

- HB 170 Chapter 234 Posting Notices and Minutes on Website Statute amended. RSA 91-A:2 ED January 1, 2018
- HB 123 Chapter 123 Continuation of ZBA Hearing Statute amended. RSA 676:7 ED May 30, 2017
- HB 299 Chapter 59 Notice by Verified Mail for PB & ZBA Hearings Statutes amended. RSAs 674:27, 674:66, 676:4, 676:4-a and 676:7 ED August 1, 2017.
- HB 265 Chapter 89 Limitation on ADU's Statute amended. RSA 674:72 ED June 5, 2017
- HB 131 Chapter 231 Petitioners to Pay Costs for creation of ZBA Notices Statute amended. RSA 675:7 ED September 16, 2017
- HB 258 Chapter 238 Septic Approval for ADUs Statute amended. RSA 674:72 ED September 16, 2017. See also section V. Discussion arose. Zoning Ordinance amendment needed. Ms. Davis asked to submit to ZORC (Zoning Ordinance Review Committee). Mr. Buttrick was asked to insure that this item is added to the Building Permit checklist.

- HB 654 Chapter 249 Regulation of Vacation & Short term Rentals Statute amended. RSA 48-A:1, :2 and :8 ED July 1, 2017

3. Chapter 143 ZBA By-laws amendments/revision discussion.

Board reviewed the latest version. Section 143.7 Meetings is to be renumbered in sequence as the draft presented two subsections 143.7.3. Global change is to be made for "him/herself".

Discussion arose regarding Section 143.8.2.b Public Notice, particularly with regard to Indirect Abutters up to two hundred feet (200') and whether they have "standing". Ms. Davis reported on her research. RSA 676:7 requires notification to abutters. RSA 672:3 defines abutter. RSA 672:3 also includes individuals who may be aggrieved. The example of a cul-de-sac was used to demonstrate an "aggrieved" abutter. For instance, a person at the end of the cul-de-sac may seek a Special Exception that could 'aggrieve' a person at the entrance of the cul-de-sac who is not technically an abutter and therefore would not have received notice. The question was raised whether the 200' abutters have "standing". Chair Martin stated that the 200' abutter does not have standing. Ms. Shuman expressed concern that one abutter within the 200' radius could be forgotten and thereby delay a Public Hearing

Board reviewed and discussed the new wording of Section 143.8.2b that would require certified notice to direct abutters and regular mail notice to indirect abutters within 200'. Chair took a roll call. Ms. Shuman expressed her opposition to the inclusion of indirect abutters. Chair Martin also stated that he is opposed. With three (3) votes in the affirmative, the decision was made to leave regular mail notification to indirect abutters within two hundred feet (200') in the Bylaws.

Chair Martin noted that two (2) Public Hearings are required before the revisions can be implemented and asked the Members if this draft is ready.

Motion made by Ms. Shuman, duly seconded by Ms. Davis and unanimously voted to schedule the two (2) Public Hearings for September 28th and October 26th, 2017. Ms. Davis was asked to send a 'clean' copy of the Chapter with today's date (8/24/17) to the Board and to Mr. Buttrick for posting.

4. ZORC – Zoning Ordinance Review Committee

Mr. Buttrick noted that they have progressed but there is concern that time is running out to bring forth any changes to the Zoning Ordinance. At the last ZORC meeting the Chairman asked to delay until October so that the new

Town Planner, who starts Monday, can get acclimated. Ms. Shuman questioned the delay as the ZBA needs to present potential ZO (Zoning Ordinance) changes to the Planning Board (PB) in September in order for the required meetings that need to be held prior to presenting Warrant Articles and at this time ZORC has no plan to bring forth any changes. Ms. Shuman added that ZORC has no Chairman, no Vice Chair and no Minutes. Chair Martin stated that ZORC needs to meet in September and prior to PB's September meeting.

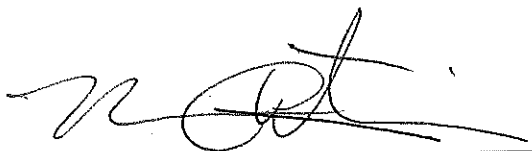
Mr. Buttrick stated that it may become complicated with CIP (Capital Improvement Plan) and thirty (30) Warrant Articles being considered.

Discussion continued. Ms. Shuman and Ms. Davis stated that so far there are no changes ready, that they feel that they have wasted their time and at the meeting before last, they have identified five to six of the most important items. Mr. Buttrick shared his notes from the 7/12/17 and 8/9/17 ZORC meetings.

Chair Martin directed Mr. Buttrick to contact Mr. Della-Monica (Planning Board Chairman) to schedule a ZORC meeting for Thursday, September 7, 2017 and to notify Mr. Brackett of the meeting as he is also on the Planning Board (PB) and ZORC is a subcommittee of the PB. The purpose of the 9/7/17 ZORC meeting will be to select and prepare proposed ZO amendments for submission to PB at their September meeting.

Mr. Nolin made the **motion**, duly seconded by Ms. Shuman and unanimously voted to adjourn the meeting. The August 24, 2017 ZBA meeting adjourned at 9:29 PM.

Respectfully submitted,



Normand Martin, ZBA Chairman