



# TOWN OF HUDSON

## Zoning Board of Adjustment



Maryellen Davis, Chairman      Ted Luszey, Selectmen Liaison

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### HUDSON ZONING BOARD OF ADJUSTMENT MEETING MINUTES March 24, 2016

#### I. CALL TO ORDER

Chairman Davis called this meeting of the Hudson Zoning Board of Adjustment to order at 7:30 pm on Thursday, March 24, 2016, in the Paul Buxton Meeting Room in the Town Hall basement. Chairman Davis then requested Mr. Houle to call the roll. Those persons present along with various applicants, representatives and interested citizens, were as follows:

**Members**

**Present:** Maryellen Davis, Donna Shuman, Normand Martin, Charles Brackett, Jim Pacocha, Kevin Houle

**Members**

**Absent:**

**Alternates**

**Present:** Gerald Dearborn, Maurice Nolin, Ted Luszey

**Alternates**

**Absent:**

**Staff**

**Present:** Bruce Buttrick, Zoning Administrator

**Recorder:** Rachelle Cincotta

#### II. SEATING OF ALTERNATES AND ANNOUNCEMENTS

For the benefit of all attendees Chairman Davis noted that copies of the agenda for the meeting, as well as an outline of the rules and regulations governing hearings before the Zoning Board of Adjustment were available at the door of the meeting room. She noted the outline includes the procedures that should be followed by anyone who wished to request a rehearing in the event the Board's final decision was not felt to be acceptable.

The curfew for the meeting is 11 PM. Chairman Davis does not anticipate this to be a problem for this session. In the event that a case is not heard by 11 PM, it will be postponed until the next meeting. If a case is in process, it will be heard until midnight then continued at the next meeting.

#### III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THIS BOARD

**1. Case 248-016 (3-24-16): Michael Gaillardetz, 1 Williams Drive, Hudson, NH, requests a Special Exception for an Accessory Living Unit (ALU) to be constructed within the space above the existing attached garage. [Map 248, Lot 016, Zoned G-1; HZO Article IIIA §334-73.3, Accessory Living Unit.]**

Ms. Davis has stepped down from this matter and Mr. Pacocha has taken her place. Mr. Pacocha seated Mr. Dearborn in place of Ms. Davis.

Michael Gaillardetz, owner, presenting in accordance with the filed Application, stated "I'm applying for an Accessory Living Unit for my daughter Shauna. She's pregnant, due for a baby in May, and right now they are living down in the basement. So, I would like to move her up into the garage building room for her. Set her up there".

Mr. Pacocha requested that Michael Gaillardetz address the first nine conditions on the Application for an Accessory Living Unit and indicate that Michael Gaillardetz has initialed the other conditions and that Michael Gaillardetz fully understands what Michael Gaillardetz had done in that respect. Subsequently, Michael Gaillardetz started reading from the Application for an Accessory Living Unit, which he had previously prepared and submitted to the Town of Hudson, Zoning Board of Adjustment.

Upon Michael Gaillardetz statement that the room already existed and he was planning on putting up a wall to make a bedroom, Ms. McGrath inquired if Michael Gaillardetz was planning on installing cooking facilities and Michael Gaillardetz stated there was a pre-existing kitchen sink, refrigerator, and bathroom. Michael Gaillardetz continued to read the questions from the Application for an Accessory Living Unit and provided his responses as he had previously written.

Mr. Pacocha asked the Board if Michael Gaillardetz should continue to read the additional conditions or if Michael Gaillardetz's initials were sufficient. Mr. Martin requested that Michael Gaillardetz acknowledge that Michael Gaillardetz read and understands the additional conditions that were initialed. Michael Gaillardetz acknowledged that he read them and he initialed every one of them.

Mr. Pacocha asked Michael Gaillardetz if there were any other comments that he would like to make and Michael Gaillardetz declined.

Mr. Pacocha asked if anyone in the audience would like to speak favorably, neutrally or in opposition to the application. No one came forward.

Mr. Pacocha presented to the Board and asked if there were any questions or comments for the applicant.

Mr. Brackett referenced the floor plan that was prepared and stated that it showed a proposed office. Mr. Brackett asked if this was a part of ALU, a business office. Michael Gaillardetz responded stating it was not a business office but a home office. Mr. Brackett asked for confirmation that business would not be conducted out of the home and Michael Gaillardetz acknowledged.

Mr. Pacocha asked Michael Gaillardetz where the entrance to the bathroom was located because no doorway was indicated within the floor plan. Michael Gaillardetz responded that he thought all the doorways were shown. Michael Gaillardetz held up his floor plan, referred to where the proposed kitchen was reflected and identified the doorway with his fingertip. Mr. Nolin asked for confirmation of location.

Mr. Martin inquired to common access in the front because it was unclear in the picture provided. Michael Gaillardetz then provided the layout to the front of the house. Mr. Pacocha asked if any portion of the front stairway was open. Mr. Martin asked if there was a door at the top of the stairs and Michael Gaillardetz said yes. Mr. Pacocha asked if there was garage access to the stairway also and Michael Gaillardetz said yes; however, the stairway was open to the garage. Mr. Brackett asked if there would be additional construction and if a building permit would be taken out for that work. Michael Gaillardetz said yes and that he wanted to build two walls. Mr. Brackett expressed his concern regarding the upstairs being sealed from fumes and fire protection, and that the dwelling being up to code.

Ms. McGrath asked Michael Gaillardetz for confirmation that he indicated that smoke detectors would be installed in each of the rooms. Michael Gaillardetz confirmed that smoke detectors would be installed and there was already one existing at the top of the stairs.

Mr. Pacocha asked Michael Gaillardetz if any other additional construction was anticipated. For example, adding access to the main hall, other than through the breezeway. Michael Gaillardetz said no.

Mr. Brackett made a Motion to Grant; second by Mr. Dearborn.

Ms. McGrath asked that it be on record that if his daughter moves out and it is no longer being utilized by a family member that it needs to be acknowledged. Michael Gaillardetz acknowledged.

Vote:

Mr. Martin	To grant
Mr. Dearborn	To grant
Mr. Brackett	To grant
Ms. Shuman	To grant
Mr. Pacocha	To grant

Vote 5-0 - Motion Passed

Ms. Davis reseated as Chairman. Mr. Pacocha reseated as Vice Chairman. Mr. Dearborn reseated as Alternate.

- Case 176-027 (3-24-16): Jay Thomas of Lix, LLC, 95 River Road, Hudson, NH, requests an Appeal of an Administrative Decision issued by the Zoning Administrator, dated 02-04-16, which states that site plan review would be required by the Planning Board to permit an ice cream stand at 218 Central Street, Hudson, NH. [Map 176, Lot 027, Zoned B; HZO Article III §334-16.1, Site Plan Approval.]**

Mr. Buttrick explained why the matter was before the Board. The case is an appeal of an Administrative Decision made by Mr. Buttrick, in which he stated the proposed use would need a site plan review according to the Zoning Ordinance. From the table of permitted uses, the current use is a farm stand, agricultural use. The current use is for the sale of produce, wine and dairy products produced on site. It is in the District B zone. It is a permitted use but a change on use requires Planning Board site plan review. The closest Mr. Buttrick could find was a change in classification to commercial use, was a restaurant, fast food, or drive in use that also is a permitted use. However, the detail is that a change of use is indicated per permitted use on the table. It is a change of classification and category. From the definition

is the Zoning Ordinance, a change of use occurs when the use of land or buildings change from one classification or a category to another one. Specifically, the site plan approval 334-16.1, example that the Zoning Ordinance depicts is a grocery store changes to a food service establishment. That example in the Zoning Ordinance is exactly what is being proposed and therefore he deduced from his Administrative Decision that the applicant would need a site plan review.

Ms. Shuman asked if all the abutters were noticed on this case because the Tax Map was not clear. Ms. Shuman referenced Lot 17 and Lot 25. Ms. Davis asked Mr. Maynard to explain why Lot 17 and Lot 25 were not there. Mr. Maynard stated Lot 17 was the large back lot (which is over 200 feet away) and Lot 25 was frontage to Lot 26 (which is over 200 feet away).

Ms. Davis asked Mr. Maynard to proceed.

Mr. Richard Maynard, Professional Engineer with Maynard & Paquette Engineering, Nashua, NH, representing the applicant, Jay Thomas and the property owner, Justine Mary Holding, Inc., both of whom were present in the audience. Mr. Maynard reviewed the property, building and history of use regarding the property, which is classified as a Farm Stand. Mr. Maynard stated the matter before the Board was what can be sold at a Farm Stand, then cited the RSAs' and case law definition, in addition to what can be consumed at a Farm Stand. Mr. Maynard stated the owners propose to sell ice cream, in addition to cones, wraps, milkshakes, sundaes', as well as containers of various dairy and ice cream products. Mr. Maynard then provided a handout to the Board that contained a list of Farm Stands within the general area that sold ice cream with onsite consumption. Ms. Davis asked if this concluded Mr. Maynard's testimony and Mr. Maynard acknowledged.

Ms. Davis asked if anyone in the audience wanted to speak in favor of the application.

Roger Coutu, Hudson, NH resident, spoke highly of Jay Thomas and recommended Mr. Thomas be allowed to pursue the undertaking of property re-development and the sale of ice cream.

Ms. Davis asked if anyone in the audience would like to speak favorably, neutrally or in opposition to the application. No one came forward.

Ms. Davis declared the matter before the Board.

Mr. Martin, referring to the handout that Mr. Maynard provided, asked if Mack's Apples, Londonderry, NH, which added an ice cream stand later on, if they underwent planning board review. Mr. Maynard stated that was not the point. Mr. Martin stated it was pertinent, as it was a change of use. Mr. Maynard stated the property in question was a pre-existing Farm Stand which has been there since the 1990's and the Zoning Administrator is denying the sale of ice cream which is clearly allowed by case law and it is common and usual. Mr. Maynard said there was no need for planning board review on a pre-existing business.

Mr. Brackett asked if the building was abandoned. Mr. Maynard said no, the building is vacant. Mr. Brackett asked if the owner of the Farm Stand is producing ice cream or milk and Mr. Maynard said it was not required by RSA. Mr. Brackett cited the RSA, "RSA 21:34 III. A farm roadside stand shall remain an agricultural operation and not be considered commercial, provided that at least 35 percent of the product sales in dollar volume is attributable to products produced on the farm or farms of the stand owner." Additionally, Mr. Brackett stated the Board was not denying it but that it required planning board review. Mr. Brackett also pointed out that the handout provided reflected Farm Stands with farms

associated with them. Mr. Maynard referred to Kimball v. Blanchard, 90 N.H. 298 (1939): Ice cream is farm produce. RSA 674:1, III-b; RSA 21:34-a, III's "35 percent" rule. Mr. Brackett emphasized he believes it should go before planning board review due to the fact that it is a commercial operation. Mr. Maynard stated the Farm Stand is not new it is existing and has been for quite some time.

Mr. Martin read the RSA again. "A farm roadside stand shall remain an agricultural operation and not be considered commercial, provided that at least 35 percent of the product sales in dollar volume is attributable to products produced on the farm or farms of the stand owner." Mr. Martin interprets it to be that the product must be made on the property. He is not opposed to having ice cream but the ice cream is going to be brought in and not made on the premises. Therefore, this needs planning board review.

Ms. Davis acknowledged that there was a second round of testimony. Ms. Davis asked if anyone in the audience would like to speak favorably, neutrally, or in opposition to the application.

Mr. Maynard reemphasized the case, stating ice cream products are allowed to be sold at a farm stand and the 35 percent rule means that on any farm stand you can sell hundreds of products but at least 35 percent, by dollar volume, must be produced from agriculture, which excludes items made out of plastic and other things that are not farm stand related. Mr. Maynard then read from RSA 672:1.

Ms. Davis declared the matter before the Board. The Board had no comments, or questions.

Mr. Brackett made a Motion to uphold the Administrative Decision; second by Mr. Martin.

Mr. Brackett spoke on behalf of his motion stating the issue was not selling ice cream, the issue is should it go before planning. Mr. Brackett believes it should because the Zoning Administrator ruled it is commercial use and according to the RSA it is a commercial business and not a Farm Stand.

Mr. Martin spoke that he believes ice cream is an agricultural product but it does need site plan review. The RSA is clear that 35 percent of the product needs to be made at the farm stand.

Ms. Davis stated the proposed ice cream shop is not affiliated with a working farm which turns it into Retail Sales, which changes use on the property.

Vote:

Ms. Davis	To uphold Administrative Decision
Mr. Martin	To uphold Administrative Decision
Mr. Brackett	To uphold Administrative Decision
Ms. Shuman	To uphold Administrative Decision
Mr. Pacocha	To uphold Administrative Decision

Vote 5-0 - Motion Passed

- Case 186-013 (3-24-16): Tuck Realty Corporation, 149 Epping Road, Suite 2A, Exeter, NH, requests a Wetland Special Exception to impact 17,650 square feet of permanent wetland buffer impact to locate a detention pond partially in the buffer and proximate to wetlands for a nine lot residential conservation subdivision located at 50 Speare Road, Hudson, NH with approximately 707 linear feet of proposed roadway connecting to**

**Speare Road. [Map 186, Lot 013, Zoned G; HZO Article VII §334-35, Uses within Wetland Conservation District.]**

Mr. Brackett stepped down from this matter. Mr. Houle was seated in his place.

Mr. Buttrick explained why the matter was before the Board. Basically for the special exception requirement within the zoning ordinance, Article IX, the uses within the wetland conservation district. They have been in front of the Planning Board and the Conservation Commission. The two recommendations are in the packet. They are procedurally going through the special exception process.

Mr. Mike Garrepy, Tuck Realty Corporation, presenting in accordance with the filed Application. Mr. Garrepy provided an overview of the project and adjustments made as a result of site walk determinations.

Ms. Davis requested that Mr. Garrepy address the criteria as provided on the Wetlands Special Exception Criteria and how the criteria will be satisfied. Mr. Garrepy read out loud the Tuck Realty proposed use, indicating the impact to the wetland and its buffer, which included the justification for the special exception, as requested. The response is included within the application.

Ms. Davis asked if anyone in the audience would like to speak favorably, neutrally or in opposition to the application.

Julie Shappy, 35 Bear Path Lane, Hudson, NH, inquired as to the wetland impact to the pond. Ms. Davis asked Mr. Garrepy to point out what the wetlands impact would be in relation to the stream. Mr. Garrepy explained the process and what was delineated on the oversized plot plan.

Doug Coppi, 45 Bear Path Lane, Hudson, NH, inquired as to where his property was located with regards to the plot plan. Mr. Pacocha responded within 200 feet. Mr. Coppi stated he would have liked to have received the proposal prior to the meeting for a better understanding of what was going on. Ms. Davis acknowledged and stated the documents were available at the Hudson Town Hall which should be stated within the notification letter.

Ms. Davis asked if anyone in the audience would like to speak favorably, neutrally or in opposition to the application.

Julie Shappy, 35 Bear Path Lane, Hudson, NH, expressed concern over running water and still water. Mr. Garrepy explained the process of still water, running water and detention. Ms. McGrath asked for assurance that the water is to be detained temporarily and not retained permanently. Mr. Garrepy acknowledged.

Ms. Davis declared the matter before the Board.

Mr. Martin inquired if the wells were temporary for the 3 parcels on the right side of the development where the detention pond is proposed. Mr. Martin's concern is runoff contamination to the well water. Mr. Garrepy stated the wells were proposed and eventually there will be a permanent water source on each lot.

Mr. Pacocha made a Motion to approve with the same 6 stipulations as the wetlands conservation commission; seconded by Mr. Houle.

Mr. Pacocha spoke on behalf of his motion. The proposed development is reasonable to the use of the land and there is no reasonable alternative to the proposed plan.

Mr. Houle is in agreement with Mr. Pacocha. The proposal is a great use of land with minimal impact to wetlands.

Vote:

Mr. Pacocha	To Grant with stipulations
Mr. Houle	To Grant with stipulations
Mr. Martin	To Grant with stipulations
Ms. Shuman	To Grant with stipulations
Ms. Davis	To Grant with stipulations

Vote 5-0 - Motion Passed

Mr. Brackett returned. Mr. Houle reseated.

#### **4. Case 199-044 (Variances - Denied 01-28-16), 18 Hilindale Drive, Hudson, NH**

Mr. Buttrick explained why the matter was before the Board. As a procedural condition of the bylaws on Town Chapter 143-10 Re-hearings. This case is exercising the option.

Ms. Davis reminded the matter was before the Board on whether the case should be reheard. There is no public input or testimony.

Mr. Brackett noted he was in favor of rehearing due to the complexity of the case.

Mr. Martin reads a letter received from Attorney Thomas Leonard dated February 24, 2016. Mr. Martin refutes, with detailed explanation, page 4 - letter G, page 4 - letter I and page 4 - letter L. Mr. Martin points out that no new additional information has been provided. Mr. Martin does not support a rehearing.

Mr. Brackett made a Motion for a rehearing; seconded by Mr. Pacocha.

Mr. Brackett spoke on behalf of his motion. Mr. Brackett noted this is a case from 1995 which has a long history. He is familiar with the property and is in agreement with Mr. Martin. However, he feels the case is important, the large parcels in town have unique issues and should be heard correctly. Mr. Brackett recommends review by Town Engineer.

Mr. Pacocha spoke on behalf of his motion. Mr. Pacocha recognizes there is no new evidence; however, the case is complex.

Ms. Davis requests that Mr. Buttrick invite the Town Council to the rehearing, if rehearing is approved.

Vote:

Mr. Brackett	To Rehear
Mr. Pacocha	To Rehear

Mr. Martin      Not to Rehear  
Ms. Shuman     To Rehear  
Ms. Davis        To Rehear

Vote 4-1 - Motion Passed

#### **IV. APPROVAL OF MEETING MINUTES**

The Board reviewed the meeting minutes from January 28, 2016 and February 25, 2016. The meeting minutes are approved as amended.

#### **V. ADJOURNMENT**

All scheduled items having been processed, Ms. Shuman made a motion to adjourn the meeting.

Mr. Martin seconded the motion.

VOTE: All Seated Members voted in favor. The motion passed unanimously.

Chairman Davis declared the meeting to be adjourned at 9:55 PM.

Date: March 24, 2016

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Maryellen Davis, Chairman