



# TOWN OF HUDSON

## Zoning Board of Adjustment



Charlie Brackett, Chairman

Marilyn E. McGrath, Selectmen Liaison

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MEETING MINUTES – May 28, 2020 - approved

### COVID-19 Meeting Procedure

In response to the NH State of Emergency Order #12 Pursuant to Executive Order 2020-04 regarding COVID-19, The Hudson Zoning Board of Adjustment conducted a virtual public meeting and hearings, held electronically by remote video & conference call on Thursday, May 28, 2020, at 7:00 PM. Written comments were requested to be sent in advance either by: 1) Email to [bbuttrick@hudsonnh.gov](mailto:bbuttrick@hudsonnh.gov) prior to 5:00 pm, May 28, 2020; or 2) Mail to ZBA, c/o Bruce Buttrick, Hudson Town Hall, 12 School St., Hudson, NH 03051. Details on how the public could listen in and/or comment, were given on the Town Website, Zoning Board of Adjustment page at: <https://www.hudsonnh.gov/bc-zba> or by calling (603) 886-6008 prior to the date of the meeting. Applications on the agenda were posted on the Town Website for viewing/download using the same link above (then click: View Agendas, Minutes, Packets & Videos). The meeting was streamed live on Hudson Community Television, Cable Channel 22 and online at: <http://hudsonctv.com/CablecastPublicSite/watch/2?channel=3>.

### I. CALL TO ORDER

Chairman Brackett called the meeting to order at 7:02 PM; read the Covid-19 Meeting Procedure into the record; noted that the Members have logged in remotely; that voting would be by roll call vote; and that the Board would go into recess so that the public could call in their questions/concerns during public testimony and added that if anyone cannot gain access, that the meeting would need to be adjourned. Mr. Brackett noted that specific instructions for meeting access was included in both the Applicant Notification and the Abutter Notification and on the website.

Mr. Dearborn read the Preamble into the record, identified as Attachment A of the Board's Bylaws, that included the procedure and process for the meeting, and the importance of the 30-day time period for appeal.

Clerk Daddario took the roll call. Members present through audio and visual remote access were Charlie Brackett (Regular/Chair), Gary Daddario (Regular/Clerk), Gary Dearborn (Regular/Vice Chair), Brian Etienne (Regular) and Jim Pacocha (Regular). Each Member attested that they were alone at their access location. Also present were Bruce Buttrick, Zoning Administrator, who was located in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall, and Louise Knee, Recorder, via remote access. It was noted that there was no one present

Not Official until reviewed, approved and signed.  
Approved 7/9/2020, as edited.

in the meeting room and that HCTV Staff was in the adjoining room. Excused was Marilyn McGrath, Selectman Liaison. For the record, all Members voted.

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

1. Case 246-001 (05-28-20) (deferred from 03-12-20): Dr. Warren Barclay, 24 Chalifoux Rd., Hudson, NH requests two variances for 2 Stonemill Dr., Hudson, NH: 1) To permit the construction of an approx. 1,155 sqft. accessory one-story building to be used as a chiropractic office accessory to the primary residential use and; 2) To permit the location of the building to be within the front yard setback of 30 ft. where 50 ft. is required. [Map 246, Lot 001-000; Zoned Residential-Two (R-2); HZO Article III, §334-10 D, Mixed or dual use on a lot and HZO Article VII, §334-27, Table of Minimum Dimensional Requirements].

Clerk Daddario read the Case into the record. It was noted that is was deferred from the 3/12/2020 meeting at the request of the applicant as a full Board was not present.

Mr. Buttrick referenced his Zoning Determination dated 1/29/2020 and his Staff Report signed 2/28/2020, noted that the lot is non-conforming with insufficient frontage on River Road and that the primary residence was converted from the mill abutting the sluiceway and that the applicant's desire to construct a chiropractic office is not an Accessory Use to the primary residential Principal Use with its placement in the front setback of River Road.

Mr. Buttrick stated that he also received a late abutter email supporting the project. Clerk Daddario read the email from Renee Paquette to Atty. Leonard into the record.

Thomas J. Leonard, Esq. of Welts, White & Fontaine, P.C. at 29 Factory Street, Nashua, NH, introduced himself as representing Dr. Warren Barclay. Both Atty. Leonard and Dr. Barclay were present, visually and verbally, through remote access. Atty. Leonard expressed his appreciation to the Board and Mr. Buttrick, noted that their submitted packet is substantial and asked to address both variances simultaneously regarding the project as both are needed for the project.

Atty. Leonard posted the Guertin Lot Line Relocation Plan prepared by Maynard & Paquette Engineering Associates, LLC dated 8/22/2001, that showed the 1.38 acre-lot with its 119.83 foot frontage on River Road, the sluiceway that bisects the property and feeds into Eayrs Pond, the residence that was once the flour mill, the existing garage and noted that access to the residence is via a private ROW (Right-of-Way) from Stone Mill Road off of Chalifoux Road from River Road. Atty. Leonard noted that the old mill existed since the 1930's, pre Zoning.

Atty. Leonard stated that the area of River Road has been rezoned to residential yet in this portion of River Road there exists several commercial enterprises. Atty. Leonard posted the Hudson Property Map and identified the commercial operations in the direct vicinity of the property that included the three (3) commercial buildings across River Road, Pioneer Automotive and BAE complex. Various pictures of the

surrounding area were posted. Atty. Leonard noted that the area is really a mixture of Uses.

Atty. Leonard next posted the Property Plan prepared by Maynard & Paquette Engineering Assoc, LLC, Rev 10/22/2019, that showed the sluiceway, wetlands, the 50' wetland buffers and the steep slopes. Atty. Leonard noted that only approximately one third (1/3) of the site is being used for the existing residence and garage. Dr. Barclay wants a Home Office and requires a structure that equates approximately to a 3-car garage for the equipment necessary to run a chiropractic service. There is no space by the residence, given the topography of the land, for such an addition; however, the River Road side of the property has a building envelope. The proposal is for an 1,155 SF (square foot) one-story building, out of the wetland buffer but encroaching twenty feet (20') into the required fifty-foot (50') front/road setback and thirteen (13) parking spaces to insure off street parking.

Atty. Leonard next referenced the Zoning Ordinance, specifically: Article III Section 334-10 Mixed or Dual Use on a Lot; Article IV Section 334-18, Districts described; and Article V Section 334-22 Table of Accessory Uses. Even though Section 334-18.B allows "complimentary nonresidential" uses, and Section 334-10.D allows multiple or mixed uses on a lot, the Zoning Administrator, Bruce Buttrick, made the determination that both Uses would need to be Permitted Uses for the Zone; therefore they are seeking a Variance for the Accessory Use of the chiropractic office to the Primary Use as a residence. Atty. Leonard stated that it would be okay to have that as a condition of approval as well as stating that its use is for the occupant of the residence and that the land cannot be subdivided.

Atty. Leonard stated that the new one-story 1,155 SF professional office building would be for the property owner/professional, one professional associate and one to two staff members or employees or individuals. The principal professional will be the owner/occupant of the single family home on the same lot. His client does a lot of work with the VA (Veterans Association) and they require certain hours of operation/availability. The professional associate will be Dr. Warren Barclay's son and together they would be offering approximately fifty (50) hours of chiropractic services a week.

Atty. Leonard next addressed the Variance criteria. The information shared included:

1. *not contrary to public interest*

- lot is unusual – divided by a sluiceway – residence on western 1/3 portion of the lot with no road frontage, just an easement from Stone Mill Drive – the remaining 2/3 of the lot is not developed and is the only segment that has road frontage, on River Road
- there is no risk to public health and safety
- it will be serviced with Municipal water
- septic system will be kept out of the wetland and wetland buffer
- there is ample frontage with good sight distance

2. *spirit of Ordinance observed*

- met - purpose of Dual Uses is to insure compatibility and in this section of River Road there are several other businesses

- the location is not in a residential neighborhood
  - the size of the proposed office is approximately equivalent to a three-car garage and would be Accessory to the residence
3. *substantial justice done*
- currently only 1/3 of the lot is in use with a residence with no road frontage, just an access easement
  - currently 2/3 of lot is unused and not accessible from residence due to the sluiceway
  - there would be no gain to the public from a denial
  - there would be no consequence to the public from an approval
  - the reduce frontage proposed is in keeping with others in area
4. *will not diminish surrounding property values*
- there will be no adverse impact
  - new construction tends to improve property values and the proposal will also include renovation of residence
  - surrounding area has several different commercial businesses and the residential developments are to the north and west of the site
5. *hardship*
- special condition exists – the sluiceway bisects the lot and leaves no room for an accessory building in proximity of residence
  - there are significant wetlands and steep slopes barring connection of proposed accessory building to residence

Public testimony opened at 7:49 PM.

- (1) John Sullivan, 53 River Road, direct abutter, connected over the phone lines. The connection was not good, garbled with much blowback and barely audible. After ten minutes, Chairman Brackett called for a recess in order for Mr. Buttrick to speak directly with Mr. Sullivan and other individuals wishing to address the Board and report back to the Board.

At 7:59 PM the Board went into recess. Board meeting resumed at 8:09 PM. Mr. Buttrick reported that he spoke with Mr. Sullivan and that the other two (2) callers had disconnected/hung up.

- (1) John Sullivan, 53 River Road, direct abutter, noted that there is no septic system on the plan, questioned the parking by his property line and whether the spaces would be out of the setback, commented that his house was built before the road existed and that his well is twelve feet (12') from River Road and expressed concern with water runoff and possible pollution.

Atty. Leonard responded that they will follow the rules, know they will need to get a Building Permit from the Town and a septic permit from the State, that the plan only displays the geometry and land limitations that justify the placement of the building and parking and added that they will only have the number of parking spaces needed to insure off-street parking.

Second round of Public Testimony opened at 8:12 PM. Board went into recess for Mr. Buttrick to call Mr. Sullivan and check for other callers. Mr. Buttrick reported that his call to Mr. Sullivan went directly to voice-mail and that there were no other callers. Public Testimony ended at 8:15 PM. Atty. Leonard noted that Dr. Barclay had met with Mr. Sullivan regarding the project prior to the meeting.

Board deliberation ensued. Mr. Dearborn asked Atty. Leonard to address the four (4) items raised by the Town's Engineer dated 3/12/2020. The first (1<sup>st</sup>) item noted that the proposed parking layout is not constructible as shown and Atty. Leonard responded that there is flexibility to the plan and the details would be finalized when before the Planning Board. The second (2<sup>nd</sup>) item noted that the plan does not show grading in the wetland buffer. Atty. Leonard noted that the plan is not the final plan and that it is their intent not to have to do any grading in the wetland buffer. The third (3<sup>rd</sup>) item noted that the plan has not been certified by a wetland scientist (CWS). Atty. Leonard stated that they will incur the expense of a CWS once approval is received from the ZBA and prior to going to the Planning Board. The fourth (4<sup>th</sup>) item noted the curb cut on River Road which is a State road and would require a driveway permit by District 5. Atty. Leonard stated that they will comply and obtain the necessary State permit. Mr. Daddario questioned the proposal to have two (2) driveways on one (1) lot and Atty. Leonard noted that would be addressed by the Planning Board which has the authority to waive the restriction and could waive because of the unique nature of this particular lot.

Mr. Brackett asked how long Dr. Barclay has owned the lot. Atty. Leonard stated that Dr. Barclay does not yet live there. Dr. Barclay stated that he bought the lot two (2) years ago from his sister's estate, that she lived there thirteen (13) years, that the house was built in the 1940's as a rebuild of the old mill and in fact rests on the old mill's foundation. Dr. Barclay added that it is his plan to update the house at the same time he hopes to build the building for his practice. Mr. Brackett noted the discrepancy in acreage on the Assessor's sheet and Dr. Barclay offered that the change may have been the result of the Guertin Lot Line Adjustment that occurred around 2001-02.

Mr. Brackett stated that he has concerns with the proposed building being twenty feet (20') into the front setback as River Road is an arterial road and heavily traveled and could conceivably be widened in the future and questioned if the proposed parking and building could be reversed as it is easier to reconfigure parking than relocate a building in the future event of road widening. Atty. Leonard stated that it could be considered. Mr. Brackett also questioned the number of parking spaces and expressed concern that it could lead to more chiropractors working at the site and stated that, in his opinion, the number could be reduced to six (6). Atty. Leonard stated that he is not certain how the number of parking spaces was derived and suggested that maybe it was derived from Dr. Barclay's current practice. Dr. Barclay disagreed as it could be possible that both chiropractors hours could overlap and even though they only service one patient at one time the possibility exists that the next patient could be waiting and stated that he originally proposed ten (10) parking spaces and the number was increased by their consulting engineer, Richard Maynard. With regard to swapping the building with the parking, Dr. Barclay stated that their intent is to hook up to Municipal water and that would then require a longer pipe line increasing his expense. After more discussion, which included the unknown impact of

the Shoreland Protection Act being so close to Eayrs pond and what Site Plan Review requirements are regarding parking calculations, Atty. Leonard stated that it would be okay to condition an approval requiring the building to be located out of the front setback and honor the Shoreland Protection Act and that the number of parking spaces be limited to ten (10) noting that at least one space would need to be handicap.

Mr. Brackett polled the Board members whether to continue the application so that the actual number of parking, per regulations, could be determined as well as the impact of the Shoreland Protection Act. Mr. Dearborn saw no reason to postpone, that he was ready to vote and noted that approximately two months ago the Board denied a business into the Residential Zone and cautioned not being consistent. Mr. Brackett concurred but noted that even though the Zone is residential, the neighborhood in the area of River Road is not residential. Atty. Leonard added that Zoning has to reflect what is on the ground, that even though this is the R-2 Zone, it is the TR Zone across the street yet there exists several commercial businesses in this section of River Road and that special circumstances exists by the property's geography and the neighborhood. Mr. Dearborn also expressed concern regarding the enforceability and the monitoring of the combined fifty (50) hours of chiropractic services.

Mr. Etienne stated that it was by Town Vote to change the Zone to residential, that, even though there are businesses in the area, the direct abutter is a residence and with two (2) chiropractors plus staff seems more than an 'accessory' use. Mr. Pacocha asked why a variance is being pursued for an accessory structure for a Principal Use and creating two (2) Principal Uses and noted that the chiropractic business/building could possibly be sold as a stand-alone entity. Atty. Leonard responded and noted: the site is surrounded by non-residential uses to the northeast, the south and across the street; the abutting residence existed pre-zoning; agreed that it could be professional offices but they have proposed limitations for it to remain accessory and subordinate to the Primary Use as a residence, and the two (2) part-time chiropractors (the property owner and his son), with a total of one to two (1-2) staff people, will only work a combined total of fifty (50) hours per week.

Mr. Daddario questioned the parking configuration if the building is moved out of the setback, the inability to enforce that each doctor only would work twenty five (25) hours a week and stated that according to his calculations with two (2) chiropractors plus two (2) staff plus two (2) patients being serviced plus two (2) patients waiting totals only needing eight (8) parking spaces. Mr. Pacocha questioned what the Planning Board's regulation stipulates for the required number of parking spaces and whether or not parking could be allowed thirty feet (30') from the road and in the setback. Atty. Leonard stated that they will be required to provide handicap parking and agreed to limit the number of parking spaces to ten (10) and added that they will also contemplate moving the building. Mr. Brackett stated that it has been clear that the Board desires the building to be moved to the north and out of the setback and suggested that it be reflected in the motion to approve.

Mr. Daddario made the motion to approve Case #246-001 with the following stipulations:

- (1) the combined work hours for both doctors shall not exceed fifty (50) hours per week

- (2) the total number of parking spaces be established at the minimum amount required and not exceed ten (10) parking spaces
- (3) that the lot remain in common ownership and cannot be subdivided or transferred separately
- (4) that the plan be reconfigured moving the building out of the fifty foot (50') front setback and resituating the building to the right side (north) of the plan and the parking area to the left side (south) of the plan.

Mr. Pacocha seconded the motion. Mr. Daddario spoke to his motion stating that with the conditions/stipulations the variance is not contrary to the public, does not conflict with the neighborhood, that the of the spirit of the Ordinance is observed, that substantial justice is rendered as currently the property owner has no use of two thirds (2/3) of his property, that there is no harm to the general public, that property values are not impacted as the surrounding is mostly commercial and hardship is met with the unique configuration of the land with the sluiceway, wetlands, steep slopes and frontage on River Road. Mr. Pacocha spoke to his second stating that it is not contrary, that the second structure poses no harm to the public, that the spirit is observed with an approved Use, that substantial justice is met allowing the property owner full use of his property, that there is no negative impact to the property values in the neighborhood, that the land's features (sluiceway, wetlands and buffers and steep slopes) meet the hardship criteria and added that the proposal does not have any wetland buffer impacts.

Roll call vote was 3:2. Mr. Dearborn and Mr. Etienne opposed. Mr. Dearborn stated that the proposal does not meet the spirit of the Ordinance, that there is no way to monitor or enforce the number of hours to be worked and there is no definitive location for the building or number of parking spaces. Mr. Etienne stated that, in his opinion, the proposal fails variance criteria 1, 2, 3 and 5 and only satisfies criteria 4. Variance granted with four (4) stipulations. Mr. Dearborn asked what would happen if the building is not moved out of the front setback and both Mr. Brackett and Mr. Dearborn noted that the applicant would need to come back before the ZBA as the stipulation places the obligation onto the applicant to reconfigure the plan. The 30-day appeal period was noted.

Board took a five-minute break at 9:21 PM. Meeting called back to order at 9:26 PM, all Members present. Mr. Brackett directed the Board to Case #174-119-001.

2. Case 174-119-001 (05-28-20): Quan Hua Li, 74 Highland St., Hudson, NH 03051 requests a variance to allow a driveway to remain with an encroachment of 9.5 ft into the side yard setback leaving 5.5 ft. where 15 feet is required. [Map 174, Lot 119-001; Zoned Town Residence (TR); HZO Article II, §334-6, Terminology, Definitions, Building Setback; HZO Article VII, §334-27, Table of Minimum Dimensional Requirements].

Clerk Daddario read the Case into the record. Mr. Buttrick stated that the applicant seeks a variance to allow the expansion of the driveway into the side yard setback to remain and noted that this request was the result of a Code Enforcement action that involved Town Counsel. Mr. Brackett inquired why the request is not being presented as an Equitable Waiver of Dimensional Requirement. Mr. Buttrick responded than an

Equitable Waiver would only apply if the action was permitted and an error occurred, and there was no permit pulled for this driveway expansion.

Mr. Quan Hua Li was connected remotely (audio and visual) and his wife was also present in the room with him. Mr. Li stated that they moved to Hudson last year and did not know that a permit was needed and that he checked with Stan's Paving who told him a permit was not needed. After the driveway was installed, Mr. Li said his neighbor informed him that he needed to go to Town Hall to get a permit, which he did and that is when he learned that there was a fifteen-foot (15') setback. Mr. Li stated that his land slopes on the left side of his property and that his original driveway was too narrow for his vehicle to turn around and drive off his property. A hand drawing was posted that showed the original driveway constructed 10/1/2015 and the expansion to the driveway that was constructed 7/1/2019.

Mr. Li read the answers of his application that addressed the criteria for the granting of a variance. The additional information shared included:

- Builder did not complete landscape – they moved in in wintertime and after snow melted and spring rains, his soil was all muddy and seeping to his back yard
- A proper driveway, just a basic asphalt driveway, nothing fancy to attract attention, is an improvement over the mud and stops erosion, and allows him to make a three-point turn and head out of his driveway
- Original driveway too narrow for vehicle to turn around and head out of driveway onto Highland Street
- Highland Street heavily traveled and many do not follow speed limit
- Relied on Stan's Paving company, a local company presumably aware of Town's regulations, that a permit was not needed for the extra driveway paving
- Would not have incurred expense of paving driveway if he had knowledge of the setback

Public testimony opened at 9:39 PM. Board went into recess while Mr. Buttrick checked the phone lines. At 9:44 PM Mr. Buttrick reported that there were no calls or emails received. Public testimony closed at 9:45 PM.

Mr. Dearborn asked Mr. Li why he ignored Mr. Buttrick's letter and only responded after Town counsel wrote his letter. Mr. Li said it was basically due to money. His neighbor told him it would cost about fifty dollars (\$50) for the permit, which he came to Town Hall and paid and while there he was told he needed to file another application for more money that he did not have and just let it lie until his friend read Town Counsel's letter and told him to address it.

Mr. Etienne asked and received clarification that the widening of the driveway allowed for a three-point turn to occur on the property in order to head out of the driveway. Mr. Pacocha expressed displeasure at the advice received from the local paving company. Mr. Daddario referenced the plan in the package and questioned the driveway alignment and placement on the adjacent lot's driveway so close to the property line and noted that both the ZBA and the Planning Board approved the two lots with reduced frontage that leaves no real options. Mr. Brackett stated that the

cultural differences led to confusion along with the incorrect information received from the contractor, noted that the adjacent neighbor has no issue with the driveway expansion and that safety consideration was what prompted the driveway expansion and recognized that the hardship is not the making of the applicant.

Motion made by Mr. Dearborn and seconded by Mr. Daddario to grant the variance with no stipulations. Mr. Dearborn spoke to his motion noting that he too lives on Highland Street, that it is a pass-through and heavily traveled road and the expanded driveway addresses the safety issue of entering the road from a short driveway. Mr. Daddario spoke to his second stating that it is in-line with the neighborhood, there is no harm to the public, that it addressed the safety concern by being able to head out of the driveway and that the same hardship situation was approved for the adjacent neighbor. Mr. Brackett added that substantial justice is done with the granting of the variance and that it is in the spirit of the Ordinance.

Roll call vote was 5:0. Variance granted. The 30-day appeal period was noted along with the instruction to meet with Mr. Buttrick and the Town's Engineer to get the driveway permit issued.

Board took a few minutes to complete their vote sheets at 9:59 PM.

3. Case 173-022 (05-28-20): Turbo Realty, LLC by Patricia M. Panciocco, One Club Acre Lane, Bedford, NH requests a variance at 15 Tolles St., Hudson, NH to modify stipulations 3 and 6 of the three (3) variances granted by the ZBA on June, 7, 2018 for 15 & 17 Tolles St. [Map 173, Lot 022-000; Zoned Town Residence (TR) ; HZO Article V, Permitted Uses, §334-21, Table of Permitted Principal Uses].
4. Case 173-012 & 014 (05-28-20): Turbo Realty, LLC by Patricia M. Panciocco, One Club Acre Lane, Bedford, NH requests a variance at 4 & 14 Tolles St., Hudson, NH to be allowed to extend the same uses to Lots 173-012 & 014 as were granted by the ZBA on June 7, 2018 for three (3) variances at 15 & 17 Tolles St. [Map 173, Lot 012-000 and Lot 173-014-000; Zoned Town residence (TR) ; HZO Article V, Permitted Uses, §334-21, Table of Permitted Principal Uses].

Mr. Daddario read both Cases into the record. Mr. Buttrick stated that the request for 15 Tolles Street is to extend the time period for filing a Site Plan Review with the Planning Board for another year and for the addresses of 4 & 14 Tolles Street their intent is to merge with 15 Tolles and seek a variance for the application of the same uses and referenced his Staff Reports signed 5/20/2020.

Atty. Patricia Panciocco was connected remotely (visual and audio) and introduced herself as representing Turbo Realty and introduced Brent Cole & Jeff Merritt of Granite State Engineering who were also connected remotely (visual & audio in the same office). Atty. Panciocco stated that they were last before the Board in 2018 and noted that there are two new Members on the Board and offered a brief overview of the properties long history, all the related parcels together comprising of eight plus (8+) acres of land in the TR Zone but it is industrial. The lots in the vicinity were created in 1927 and were camp lots, not ever really developed as intended. By the 1950's it

became an industrial dump site, a junkyard, and cited some of the businesses at the site at that time.

Brent Cole of Granite State Engineering provided a pictorial review of the site beginning in 1965 with an aerial view of the properties that showed Tolles Road built, two (2) buildings of apparent industrial uses and a big field to the north (no residences) and nothing to the south (no commercial development). An aerial view from 1992 shows industry occurring and a third building, which was built in 1972, still no development to the north and a one (1) commercial neighbor to the south. The next picture is from 2003 and shows a residential development to the north and the most intense use of the site with box trailers scattered and storage everywhere. Several pictures were displayed covering the years 2005 to 2014 that showed increasing industrial use and various collection areas of tires, metal scraps, old cars and storage bins. The 2015 pictures were taken from the ground before Turbo Realty LLC bought the property – mostly scattered junk – old lawn mowers, excavators, cars, trucks etc. A 2016 aerial view showed more organization and a cleanup of the site's periphery.

Atty. Panciocco stated that the pictorial history demonstrates how the area evolved, how the industrial uses of the lots pre-existed the Zoning Ordinance, when the residential area emerged to the north, noting that the Zone was changed around 1996, noting that the site was polluted due to prior uses and how the site became non-conforming. There was confusion with the non-conforming uses and the Town kept insisting that her client (Turbo Realty) had to file for Change-of-Use. They met with Town Officials and came to the ZBA and worked through the existing uses and identified what uses could be on the site on June 7, 2018 with the intent of applying for a Site Plan in two (2) years.

Atty. Panciocco stated that there is a dangling particle from the Variances granted in 2018 and referred to the section of the Site Plan identified as Exhibit A in the application packet and noted that only the pink area of Units A-E from Lot 22 were included in the variances but not their corresponding appurtenant for outdoor storage display and parking across Tolles Street on Lot 14, identified in green. That should be rectified. The uses approved for the pink (Lot 22) should also be for the green (Lot 14). Atty. Panciocco stated that part of the second variance is to extend those same uses to Lot 12.

Atty. Panciocco stated that their first request before the Board has to do with Condition #6 of the 6/7/2018 approval to file a Site Plan Review with the Planning Board within two (2) years. The process was begun. They have a boundary survey done of the property. However, there was an interruption. In the spring of 2019 his building suffered a quarter of a million dollars (\$¼M) of property damage by a tenant that took almost a year to solve and re-rent and that placed a substantial financial impact onto the Property Owner. It was resolved in January 2020 and then her client met with the engineers from Granite State and during discussions explored the concept of tackling the entire site and submitting a comprehensive site plan application to the Planning Board. However, they now might miss the two-year mark to submit a Site Plan to the Planning Board. The plans cost money. Considering the current times, the Covid-19 pandemic, the financial stresses, the desire to address the

entire operation, they are asking for a year's extension to submit a comprehensive Site Plan Review application with the Planning Board.

Atty. Panciocco stated that she would also like to address Condition #3 of the 6/7/2018 approval regarding the hours of business operations, to avoid future confusion. Generally, the hours of operation are set by the Planning Board, but without a Site Plan, the ZBA deemed it appropriate to set the hours. Atty. Panciocco stated that the hours are fine, but if the Planning Board changes them, she would like not to have to come back to the ZBA for a modification to that Condition.

Atty. Panciocco asked if she should have Granite Engineering address the inclusion of 4 & 14 Tolles Street at this point or wait until a decision is reached on the extension of Site Plan submittal to the Planning Board and the hours of operation to include a clarification statement, such as "or as modified by the Planning Board during Site Plan Review."

Mr. Brackett summed what is before the Board: address/clarify hours of operation; extension of Site Plan Review application to the Planning Board until Spring 2021; and the inclusion of 4 & 14 Tolles Street. Mr. Brackett asked Mr. Buttrick to check the phones.

Mr. Buttrick stated that there are people on hold waiting to address the Board, but before unmuting them, addressed information that would have been included in a supplemental package, but due to Covid-19 procedure ended up emailing them to the Members late afternoon today. The first item has to do with #4 Tolles Street and a current code enforcement case that was brought in May about an inappropriate expansion of Use and when he inspected there was a pile of logs that constitutes a Change of Use from what was approved in June 2018. The second item is that the Town Planner submitted his comments late in reference to #4 & 14 Tolles Street. The third item is an email received from an abutter, Meredith Radcliff.

Public testimony opened at 10:34 PM.

- (1) Town Planner comments read into the record by Mr. Buttrick. In summary, comments made on violations, lack of site plan and communication and discouraged inclusion of two more lots.
- (2) email received from abutter Meredith Rackliff, 10 Campbello Street, expressed concerns, specifically hours of operation, and cited several examples that included: last night they were awakened at 9:45 PM with a truck idling out by Unit E; Saturday, 5/23, they were awoken at 7:00 AM with the start of a commercial vehicle only to have the vehicle idle for thirty minutes while the boom was in operation sixty feet (60') in the air. There have been other Saturdays with start times before 7:00 AM and on Mother's Day, 5/10, a logging vehicle started, idled and then left. Their privacy is being violated. They have an eight-foot (8') fence and the boom lies sixty feet (60') in the air above them and when being serviced, they look down on them. The noise operation in Unit E has been better than in the past but it is not fair to be woken up. Exhaust fumes from commercial vehicles so close to residential homes is still a problem

- (3) Caller #8, Nick Deluca, 6 Tolles Street, stated that he lives between 15 Tolles Street and the logging company, there is incredible noise at all hours of the night, the boom sits forty feet (40') in the air invading his privacy, the cars that are repaired rip up the road causing more noise and concern for his three (3) children, will admit that Turbo has done a lot to clean up the site but there are still twenty to thirty (20-30) cars that are just sitting there at the property line for months now and all he sees every day is a junkyard.
- (4) Caller #9, Ed McNulty, 8 Campbello Street stated that he lives directly behind the building at 15 Tolles Street by the fence and asked what are people talking about as he hears nothing and added he has one neighbor that complains about every little thing and noted that Tom has done a good job cleaning up the site.

Being no one else waiting to address the Board, public testimony closed at 10:41 PM.

Atty. Panciocco was offered a chance to address the comments just heard. Atty. Panciocco's rebuttals included:

- The 4:30 PM arrival of the Town Planner's comment was unfortunate as is his unawareness of the progressive movement so perhaps there is need for more conversation but she take issue with his comment "refused to comply"
- Her client is opposed to a piecemeal Site Plan application and desires to address it in its entirety
- There were a lot of complaints mentioned, but the majority appear to be from one person, perhaps the same person Caller #9 attested to as being chronic
- There was a misunderstanding but it was resolved in December 2019
- Caller #8's complaint, from 6 Tolles Street, talked about cars, yes there are cars, they have been repaired but not yet paid for, so they remain until payment for services has been made
- The buckets have to be left up in the air when the machine is not in use, it is a safety requirement
- Chainsaw use is exempt from Zoning Ordinance Noise
- Stored logs? They are wood finished and the tractor with the splitter was for personal use, not a business

Mr. Brackett opened the second round of public testimony at 10:53 PM

- (1) Caller #10, Richard Suter, 12 Campbello Street stated that when he received the notification of the meeting, he went next door and chatted with the owner. He is okay with how his business is operated, two of his lots have already been granted use and he is okay with including the other two (2) lots.
- (2) Caller #8, Nick Deluca, 6 Tolles Street, stated that the logging/chainsaw was operating on Mother's Day, a Sunday, and the explanation on the number of cars makes no sense as Tom does custom work on cars and the cars just sitting there are not worth even two thousand dollars (\$2,000).

Being no one else to address the Board, public testimony closed at 10:57 PM.

Mr. Brackett stated that given the hour and the Board's Bylaws, polled the Board whether to continue hearing the Cases to the next meeting. Each Member stated that a continuance was in order.

Mr. Pacocha noted that the current Town Planner, Brian Goth, was not the Town Planner when this first came before the Board and perhaps is not privileged with all that went into getting this site to the condition it has reached today. Mr. Dearborn stated that the two (2) new Members need to view the site and Mr. Buttrick asked if a Site Walk should be scheduled. Mr. Brackett said no to a Site Walk as they are not re-opening the Case, that it is before the Board for an extension for submitting a Site Plan Review application and clarification on the hours of operation and the inclusion of the other two (2) lots, but encouraged the new Members to drive by before the next meeting.

Mr. Brackett asked if Town Counsel should be contacted. Mr. Buttrick stated that he did contact Town Counsel regarding the extension for the Variances for Site Plan Review application and received advice that, per ZBA Bylaws, the ZBA has the authority to grant an extension. Mr. Brackett asked to have Town Counsel present for an Executive Session before the next meeting and for Mr. Buttrick to provide Town Counsel with the Minutes from this meeting.

Atty. Panciocco thanked the Board for their consideration and looks forward to the June meeting.

Motion made by Mr. Daddario and seconded by Mr. Pacocha to continue the public hearing on the two (2) Cases to the 6/25/2020 meeting. Roll call vote was 5:0.

Motion made by Mr. Etienne and seconded by Mr. Dearborn to adjourn the meeting. Roll call vote was unanimous. The 5/28/2020 ZBA meeting adjourned at 11:10 PM.

Respectfully submitted,



Charles J. Brackett, Chairman