



# TOWN OF HUDSON

## Zoning Board of Adjustment



Charlie Brackett, Chairman Marilyn E. McGrath, Selectmen Liaison

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### **MEETING MINUTES – July 23, 2020 – approved**

#### **I. CALL TO ORDER**

#### **II. PLEDGE OF ALLEGIANCE**

Chairman Charlie Brackett called the meeting to order at 6:58 PM and read the Covid-19 meeting procedure that in conformance with the NH State of Emergency Order #12 confirmed the following: (a) providing public access to meeting by telephone and video access; (b) provided public notice on how to access the meeting; (c) mechanism to advise if there is a problem with accessing meeting and (d) should there be an issue with accessibility, the meeting will need to be adjourned and rescheduled; and (e) that voting would be by roll call vote. Mr. Brackett stated that the Board would go into recess so that the public could call in their questions or 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 were posted on the website.

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

Mr. Brackett invited everyone to stand for the Pledge of Allegiance.

Clerk Gary Daddario took attendance. Members present were Charlie Brackett (Regular/Chair), Gary Daddario (Regular/Clerk), Gary Dearborn (Regular/Vice Chair), Brian Etienne (Regular, connected via audio and visual remote access), Leo Fauvel (Alternate) and Jim Pacocha (Regular). Excused was Marilyn McGrath, Selectman Liaison. Also present were Bruce Buttrick, Zoning Administrator, Tracy Goodwyn, Zoning Administrative Aide to handle the call-ins, and Louise Knee, Recorder (via audio and visual remote access). For the record, the Regular Members voted. Mr. Brackett disclosed that Town Counsel received a letter from the Board's newest Member that led to an education session, as Cases are not discussed out of a public meeting.

#### **III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:**

1. Case 116-075 (07-23-20): Diane Bean, 13 Stoney Lane, requests a Home Occupation Special Exception for a home care and staffing agency business from her primary residence. Staffing will be conducted off-site at client's

Not official until reviewed, approved and signed.

Approved 8/13/2020, as edited

homes or businesses. [Map 116, Lot 075-000; Zoned Residential-One (R-1); HZO Article VI, Special Exceptions, §334-24, Home Occupations].

Clerk Daddario read the Case into the record. Mr. Buttrick referenced his Staff Report dated 7/23/2020, noted that the Fire/Health Department expressed no concerns and the Town Engineer noted that the Applicant would need to satisfy any State of NH licensing requirements and obtain a Building Permit from the Town, if needed.

Wearing a mask, Diane Bean sat at the presenter's table, introduced herself as the property owner and stated that she seeks a Home Occupation Special Exception to start a home care and staffing agency from her home for elderly clients in their own homes and/or temporary staffing to licensed nursing facilities. Ms. Bean stated that she only requires a computer and a telephone to run the business and that there would be no employees or clients coming to her home.

In review of the Home Occupation Special Exception criteria, the following information was shared:

- Their home is their primary and only residence and this use would be a secondary use only
- All business activities will be carried out within the home utilizing their daughter's bedroom as an office for a desk, computer and printer
- No signs are proposed
- No alterations will be made to the home
- No exterior storage will be required
- No noise, vibrations, dust, etc. will be produced
- With no clients or employees or deliveries coming to her home there will be no increase in traffic
- No additional vehicles are needed, just her personal vehicle

Mr. Buttrick stated that he received an email from an abutter with a letter to the Board and that there was another abutter on the phone waiting to speak during public testimony.

Public testimony opened at 7:10 PM.

- (1) Barbara Doyle, 12 Stoney Lane, emailed Mr. Buttrick 7/21/20 expressing support of and best wishes to her neighbor in this endeavor.
- (2) Barbara Doyle, 12 Stoney Lane, letter to the Board dated 7/21/20 was read into the record by Mr. Buttrick. In summation, cited her knowledge of the home care operation, expressed positive support to Ms. Bean and asked the Board to grant the Special Exception.
- (3) Darlene Parkhurst, 14 Stoney Lane telephoned and stated that she lives across the street and has no problem with the proposal, noted that there will be no change to the neighborhood and wished Ms. Bean success.

Mr. Brackett called for a five-minute recess at 7:14 PM to allow anyone else wishing to call in and speak on this Case. Meeting called back to order at 7:19 PM. Mr. Buttrick reported that no additional calls were received. Public testimony closed at 7:19 PM.

Mr. Dearborn noted that the request would be completely invisible to the neighborhood and that nothing negative has been expressed. Mr. Etienne concurred and added that he is shocked to be here hearing this Case and that the Town should consider some changes in the post Covid-19 world. Mr. Brackett applauded that Applicant for coming to the Board and agreed with Mr. Etienne.

Mr. Dearborn made the motion to approve the Home Occupation Special Exception with no stipulations. Mr. Pacocha seconded the motion. Mr. Dearborn spoke to his motion stating that it would be completely invisible, that it is not often a Home Occupation Special Exception is so *not* impacting and commended the applicant for coming before the Board. Mr. Pacocha stated that all the criteria are met. Roll call vote was 5:0. Home Occupation Special Exception granted. The 30-day appeal period was noted.

2. Case 173-022 (07-23-20) (deferred from 07-09-20): Turbo Realty, LLC by Patricia M. Panciocco, One Club Acre Lane, Bedford, NH requests to amend the Variance application heard on the 5/28/20 ZBA meeting for 15 Tolles St., Hudson, NH to request a one-year extension from the previously imposed June 7, 2020 deadline, to submit a complete site plan application to the Hudson Planning Board. [Map 173, Lot 022-000; Zoned Town Residence (TR); HZO Article V, Permitted Uses, §334-21, Table of Permitted Principal Uses].
3. Case 173-012 & 014 (07-23-20) (deferred from 07-09-20): 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 014-000; Zoned Town Residence (TR); HZO Article V, Permitted Uses, §334-21, Table of Permitted Principal Uses].

Clerk Daddario read both Cases into the record. Via remote visual and audio connection, Atty. Patricia Panciocco of Bedford, NH introduced herself as representing the Property Owner and noted that her client, Thomas Walsh, was on the telephone and available to answer questions as they arise, and that Brent Cole, PE of Granite Engineering was also connected via remote audio and visual access. Mr. Brackett stated that the Cases were continued from the May 28, 2020 meeting after Public Testimony had been received due to the hour and again from the June 25, 2020 meeting due to technical issues.

Mr. Buttrick stated that the first Case seeks a modification to the Variance granted on 6/17/2018, specifically to: Condition #3 regarding the hours of operation requesting it to be deferred to the Planning Board during Site Plan Review; and to Condition #6 that a Site Plan Review application be filed with the Planning Board within a two-year period. Mr. Buttrick noted that the original extension request was for a ninety-day period but was amended after the 5/28/2020 meeting to a full year extension (June 2021) so that a singular Site Plan could be prepared that would encompass the entire site (4 & 14 Tolles Street with 15 Tolles Street). The second Variance request seeks to have the same Uses for 4 & 14 Tolles Street that were approved in June 2018 for 15 & 17 Tolles Street.

Atty. Panciocco stated that the reason for the hours of operation request is to avoid any potential conflict with the hours of operation that would be set by the Planning Board during Site Plan Review and added that it is her client's intent to honor the hours condition until defined by the Planning Board and to avoid another visit to the ZBA. The hours of operation were written as "shall be". Mr. Buttrick noted that the ZBA conducted an interim "soft" Site Plan Review when they considered the Variance for the Uses, pending official Site Plan Review by the Planning Board. Mr. Brackett stated that he'd prefer to leave the Condition in place, as is, until, and if, the Planning Board approves a Site Plan and sets the hours of operation.

Mr. Brackett stated that he asked Town Counsel for guidance as the Board did approve specific Uses two (2) years ago by Variance and that Variance expired 6/7/2020 for failing to meet Condition #6 but understands that there were extenuating circumstances and asked Atty. Panciocco to address. Atty. Panciocco stated that the site was surveyed and preliminary engineering work was begun shortly after receiving the Use Variance and then a catastrophe occurred in one of the larger rental units in autumn 2018 that took until January 2020 to resolve and repair and then COVID-19 occurred and the State of NH went into emergency quarantine for the pandemic.

Mr. Dearborn noted that back in 2018 the Board was liberal in setting the Uses to better serve both the property owner and the neighbors. Mr. Etienne asked a question regarding procedure and the extension to 2021. Mr. Brackett responded that it is his interpretation that the extension is to also include the other parcels, 4 & 14 Tolles Street. Mr. Brackett added that back in 2018, in his opinion, that only "half the loaf" was presented and should have included 4 & 14 Tolles Street as well. Mr. Dearborn questioned if a year extension was really necessary and whether it would solve the problem.

Atty. Panciocco stated that the meetings in 2018 focused on the existing Uses in the buildings at 15 & 17 Tolles Street; that there were no buildings on 4 & 14 Tolles Street; that outside storage and parking for the units at 15 & 17 Tolles Street were granted across the street on 14 Tolles Street; that there already was and still is a 'spilling' of Uses from 15 & 17 Tolles Street onto 4 & 14 Tolles Street; that the Property Owner wants to unify all the parcels into one (1) parcel; and that the Property Owner desires that the Uses previously approved for 15 & 17 Tolles Street to be allowed on 4 & 14 Tolles Street.

Mr. Buttrick recapped the two (2) separate requests before the Board: (1) the extension for submitting a Site Plan Review application to the Planning Board for 15 Tolles Street (Condition 6); and (2) the extension of the Uses approved for 15 & 17 Tolles Street to 4 & 14 Tolles Street. Mr. Brackett agreed that the extension for Condition 6 needs immediate consideration but, in his opinion, the Board should deal with Uses to 4 & 14 Tolles Street separately now.

Atty. Panciocco disagreed and noted that the parking approved on 14 Tolles Street is subordinate to 15 & 17 Tolles Street; that when the Site Walk was done in 2018 the whole site was considered/walked; that it is better to bring one (1) Site Plan to the Planning Board; that all parcels were included in the survey; and added that the

immediate issue in 2018 was to identify the Uses because each time there was a new tenant a delay was encountered as the Town required a Change of Use / Variance.

Mr. Dearborn asked Mr. Cole, PE, for his estimate to finalize the Site Plan. Mr. Cole responded twelve (12) months is reasonable and noted that the permitting process with Shoreland Protection, NH DOT (Department of Transportation) and others would be extensive and time consuming.

Discussion continued. Mr. Brackett questioned why, two years later, Site Plan application was not prepared by 6/7/2020 for 15 & 17 Tolles Street. Atty. Panciocco restated that there were a lot of issues in 2019, the delay that occurred in autumn 2018 with the catastrophe in one of the units that was an unexpected expense her client had to incur that was not resolved until January 2020, and that S&H land surveyors were hired to survey the land and then Brent Cole, PE, was brought in for the engineering and added that it will cost her client between thirty to forty thousand dollars (\$30K - \$40K) for a full site plan. Mr. Brackett suggested that separate meetings should be set up for potential Uses for 4 & 14 Tolles Street and that 15 & 17 Tolles Street should proceed to the Planning Board for Site Plan. Atty. Panciocco stated that there were diverse land uses at the site and some of them were 'pretty ugly' and that both the property owner and the Board worked hard to identify and limit the Uses in 2018 to the benefit of the Town, the property owner and the neighbors, and added that the industrial and commercial uses pre-existed Zoning and continued to exist before the Zone was changed to TR (Town Residence).

Mr. Daddario asked if the reluctance is the extension request for a full year. Mr. Dearborn stated that the Board spent many hours deliberating and identifying which Commercial and Industrial Uses were to be allowed at 15 & 17 Tolles Street. Mr. Brackett polled the Board Members.

- Mr. Dearborn: should have meeting(s) to discuss Uses for 4 & 14 Tolles Street before *any* decision is made.
- Mr. Daddario: understands the issues for 4 & 14 Tolles Street and that it is acceptable, in his opinion, to grant an extension to 15 & 17 Tolles Street and treat the entire site in two (2) phases.
- Mr. Pacocha: 15 & 17 Tolles Street have buildings and the Board reviewed Uses for within those buildings; 4 & 14 Tolles were and are still predominantly vacant lots and the Board did not discuss Uses for 4 & 14 Tolles, just allowed usage from 15 & 17 Tolles Street to utilize a small portion across the street side on 14 Tolles Street for parking and outside storage. Buildings are proposed for 4 & 14 Tolles Street. Uses within those buildings need to be discussed. Should hear the requests separately.
- Mr. Etienne: best to go back to the drawing board and proceed with a more comprehensible plan; two years is a long time; and is inclined to deny an extension.

Mr. Brackett asked if the time frame could be reduced to three to six (3-6) months to submit a Site Plan Review application to the Planning Board for 15 & 17 Tolles Street and noted that the review of Uses for 4 & 14 Tolles Street could be identified in that same period to be followed by a second Site Plan for 4 & 14 Tolles Street to the Planning Board. Atty. Panciocco asked if shortening the time period was the central

issue. Mr. Cole joined the discussion and asked for a compromise, as it is better to present one (1) Site Plan to the Planning Board. Atty. Panciocco stated that there have been no violations and no enforcement issues since 2018 with the Town and noted that Site Plan deals with the *outside* aspects of the overall plan.

Mr. Dearborn suggested a nine (9) month time frame, until 3/31/2021, to submit a Site Plan to the Planning Board for 4 & 14 and 15 & 17 Tolles Street. Mr. Etienne stated he could support that compromise. Mr. Buttrick noted that would assume Uses for 4 & 14 Tolles Street would be addressed in that time frame. Mr. Daddario also agreed and noted that it is the Applicant's responsibility to get Uses for 4 & 14 approved in that time frame.

Discussion continued and focused on Uses. Mr. Buttrick stated that the next ZBA meeting is scheduled for 8/27/2020. Mr. Brackett stated a workshop meeting could be held with the Applicant to discuss Uses. Atty. Panciocco stated that they propose no new Uses; that there are no buildings yet on 4 & 14 Tolles Street; that 15 & 17 Tolles Street have already been merged into one (1) lot; and the plan is to consolidate 4 & 14 Tolles Street as well. Mr. Dearborn stated that he did a drive-by and, in his opinion, there seems to be more vehicles and piles of assorted materials than in 2018. Mr. Daddario noted that the units on 15 & 17 Tolles Street were permitted parking and storage on 4 & 14 Tolles Street.

Atty. Panciocco read the 2018 Commercial and Industrial Uses approved for 15 & 17 Tolles Street into the record. Mr. Brackett stated that those Uses had a history and were current Uses in 2018 at 15 & 17 Tolles Street and the proposal to merge the four (4) lots together under the same ownership does not mean that the Uses have to be the same and questioned the historical Uses on 4 & 14 Tolles Street and how 4 & 14 Tolles Street satisfies the hardship criteria.

Atty. Panciocco stated that considering the historical use, some of which were toxic that resulted in groundwater contamination to the point that people do not drink the water from the ground in that vicinity even though it has since been remediated, and the fact that the site has been cleaned up considerably by her client and that there is industrial Use to the north of 15 Tolles Street, and the rezoning of the area to TR (Town Residence) making the current use of the site non-conforming all apply to the hardship imposed on this site. Atty. Panciocco addressed the remaining Variance criteria stating that the Uses proposed for 4 & 14 Tolles Street are identical to those previously approved for 15 & 17 Tolles Street, that the lots will all be merged under one common ownership, that it is not contrary to public interest, that the Spirit of the Ordinance is met, especially with the toxic Uses abandoned, that the change to TR Zone occurred after Commercial and Industrial Uses were established on the site, that substantial justice would be done as there is no public gain with the denying of the Variance and it would be unjust to deny the Variance, that there is no harm to the public, the site would be better organized and have new construction and would have no adverse impact to surrounding property values.

Mr. Pacocha asked if the property to the south of the site was residential and Mr. Buttrick responded that south to 4 Tolles Street is not residential. Mr. Buttrick also stated that the Board received an email letter dated 7/23/2020 from abutters Edward and Pam McNulty, 8 Campbello Street. Mr. Brackett asked that it be read into the

record. Mr. Buttrick complied and the information shared included complete support of the project, no complaints, no noise violation, and appreciation for all the clean up that has been done to date.

Mr. Daddario noted that there are two (2) Cases before the Board. The first Case originally was to modify Condition #3, abdicating Hours of Operation to the Planning Board, and to extend Condition #6 for ninety-days (90 days); however, after the first meeting in May 2020, it was modified to request a one-year extension to submit a *complete* Site Plan Review application to the Planning Board. Mr. Brackett questioned if the “complete” Site Plan applies to just 15 & 17 Tolles Street or does it include 4 & 14 Tolles Street too. Mr. Daddario referenced the Town Planner’s comment that 15 & 17 Tolles Street should proceed to the Planning Board.

Mr. Daddario stated that the second Case requests the same Uses for 4 & 14 Tolles Street that were granted, by Variance, to 15 & 17 Tolles Street in 2018 and is, in his opinion, the more difficult request because: (a) regardless of common ownership, there does not appear to be any compelling reason beyond convenience for the Property Owner that the Uses have to be identical; and (b) cursory review of some of those Uses could add more risk to an already contaminated lot; and (c) that it is okay if the Uses compliment one another without being identical, and the Uses should be reviewed individually by the Board. Mr. Brackett concurred as some of the Uses could be contrary to public interest.

Mr. Buttrick confirmed that with regard to the first Case, the Variance criteria was met in 2018 and the Board is only acting on the extension request to Condition #6.

Mr. Daddario made the motion to grant relief from Condition #6 of the 2018 Variance for nine (9) months, until 3/31/2021, with the stipulation that a complete Site Plan Review application be submitted to the Planning Board for 15 & 17 Tolles Street. Mr. Dearborn seconded the motion. Both Mr. Daddario and Mr. Dearborn thought a year was too long, especially since two (2) months have already passed. Mr. Brackett stated that amidst Covid-19, a nine-month extension is appropriate. Mr. Pacocha stated that it is a proper motion. Mr. Etienne stated that he is in agreement with the nine (9) month extension; however, in his opinion and in support of the testimony, the Site Plan application should be for all the parcels and if the applicant is not ready by the deadline, the applicant should consider withdrawal. It was noted that the request only applied to 15 & 17 Tolles Street. Roll call vote was 5:0. Motion granted for a nine (9) month extension to Condition #6 of the 2018 approval.

Board next addressed the second Case, Variance to extend the Uses granted for 15 & 17 Tolles Street to 4 & 14 Tolles Street. Mr. Dearborn stated that the Board should postpone and schedule a Site Walk followed by a workshop to review the Uses. Mr. Daddario asked a procedural question, specifically whether it would be okay to grant some but not all the requested Uses or whether to deny because the Uses need not be identical. Mr. Brackett stated that there is no history, no buildings, no hardship, no past Uses and that, in his opinion, satisfying the public interest criteria is a stretch and that some of the Uses could be considered and some possibly existed in its history but does not agree that all the Uses should just be extended without individual review. Mr. Daddario added that the prior environmental impact should be looked at closely

and not exacerbated, and recognized the convenience to the Property Owner to have all the same Uses on all the parcels, but cannot endorse a blanket extension of Uses.

Mr. Brackett suggested review of the individual Variance criteria. In summary, the criteria and comments expressed included:

*(1) not contrary to public interest*

Mr. Brackett: not met, some of the proposed Uses never were 4 & 14 Tolles street  
Mr. Daddario: is a threat to public health and safety  
Mr. Dearborn: could be contrary, don't want to blindly expand  
Mr. Pacocha: would be contrary, conflicts with Zoning Ordinance  
Mr. Etienne: not met, would be contrary

*(2) spirit of Ordinance observed*

Mr. Brackett: Uses are not identical to 15 & 17 Tolles Street – 4 & 14 Tolles Street has been used in other ways  
Mr. Daddario: problem is that the list is too broad for TR Zone  
Mr. Dearborn: spirit not met  
Mr. Pacocha: spirit not met  
Mr. Etienne: not met, it is in TR Zone by Town vote, spirit is to plan for the future

*(3) substantial justice done to property owner*

Mr. Brackett: asking for additional Uses  
Mr. Daddario: industrial Uses requested, could be harmful to public and potential environmental harm, convenience factor to the property owner does not outweigh potential harm, 4 & 14 Tolles Street could have different Uses  
Mr. Dearborn: affects general public  
Mr. Pacocha: have those Uses happening on 15 & 17 Tolles Street, could harm public if expanded  
Mr. Etienne: what justice is there?

*(4) surrounding property values not diminished*

Mr. Brackett: improving looks of property will have some impact, not sure if criteria met, especially for TR Zone  
Mr. Daddario: hard to imagine 4 & 14 Tolles Street becoming residential – commercial and industrial uses on 4 & 14 Tolles Street should not be as extensive as 15 & 17 Tolles Street  
Mr. Dearborn: as it stands now, would not diminish, but if expanded, could impact  
Mr. Pacocha: it's a wash  
Mr. Etienne: hard, there are risks, one neighbor complaining, one supporting

*(5) hardship*

Mr. Brackett: case not made  
Mr. Daddario: by statutory definition and hardship definition, criteria not met - special conditions not presented except proximity to 15 & 17 Tolles Street  
Mr. Dearborn: no comment – not met



Mr. Pacocha: not sure what could be done with property, it is not suited for residences  
Mr. Etienne: don't see hardship, just convenience for economic reasons

Mr. Daddario made the motion to not grant the motion. Mr. Etienne seconded the motion. Mr. Dearborn stated that he thought the Board should first conduct a Site Walk and conduct a workshop meeting prior to a decision. Roll call vote was 4:0:1, Mr. Dearborn abstained. Variance denied. The 30-day appeal period was noted.

### **III. REQUEST FOR REHEARING:**

No requests were presented for Board consideration.

### **IV. REVIEW OF MINUTES: 06/25/20 & 07/09/20**

#### Minutes of 6/25/2020:

Board reviewed the edited Minutes presented and made not further changes. Motion made by Mr. Dearborn, seconded by Mr. Pacocha and unanimously voted 5:0 to approve the 6/25/2020 Minutes as edited and presented.

#### Minutes of 7/9/2020:

Board reviewed the edited Minutes presented and made not further changes. Motion made by Mr. Dearborn, seconded by Mr. Pacocha and unanimously voted 5:0 to approve the 7/9/2020 Minutes as edited and presented.

### **V. OTHER**

#### Bylaws - Preamble:

Mr. Buttrick referenced the mark-up of the Board's Preamble to their By-Laws that include the reference made at the last meeting to identify the role of the Selectmen Liaison and the ability to participate in Board discussion but has no vote on ZBA Cases; asked each Member to review for discussion at the next meeting; and noted that, per the By-Laws, two (2) public hearings are required.

Motion made by Mr. Dearborn, seconded by Mr. Daddario and unanimously voted 5:0 to adjourn the meeting. The ZBA 7/23/2020 meeting adjourned at 10:23 PM.

Respectfully submitted,

Charles J. Brackett, Chairman