



# TOWN OF HUDSON

## Zoning Board of Adjustment

Charlie Brackett, Chairman      Marilyn E. McGrath, Selectmen Liaison

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### MEETING MINUTES – September 24, 2020 - draft

**I. ATTORNEY-CLIENT (NON-PUBLIC) SESSION per RSA 91-A:3 II(t) begins at 6:30 PM**

Meeting held.

**II. CALL TO ORDER**  
**III. PLEDGE OF ALLEGIANCE**

Chairman Brackett called the meeting to order at 7:12 PM, apologized for the late start due to technical difficulties and invited everyone to stand for the Pledge of Allegiance.

Mr. Brackett 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 Chairman 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.

Clerk Gary Daddario took attendance. Members present were Charlie Brackett (Regular/Chair), Gary Daddario (Regular/Clerk), Gary Dearborn (Regular/Vice Chair), Brian Etienne (Regular), Leo Fauvel (Alternate), Jim Pacocha (Regular) and Ethan Severance (Alternate). Excused were and Marilyn McGrath, Selectman Liaison. Also present were Bruce Buttrick, Zoning Administrator, Louise Knee, Recorder (via audio and visual remote access) and Alternate Selectman Liaison Karen Roy. For the record, the Regular Members voted.

**IV. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:**

**CONTINUED/DEFERRED HEARINGS:**

49  
50 1. Case 175-019 (09-24-20) (deferred from 08-27-20): Joshua P. Lanzetta, Esq.  
51 of Bruton & Berube, PLLC., 601 Central Ave., Dover NH representing  
52 Christopher & Christine Floyd and Rene Joyal, 78 Highland St., Hudson, NH,  
53 requests an Appeal From An Administrative Decision of a Notice of Violation  
54 and Cease & Desist Order dated May 18, 2020 citing violation of the 2009  
55 variance granted by the ZBA and 10 specific violations of the Hudson Zoning  
56 Ordinance. [Map 175, Lot 019-000; Zoned Town Residence (TR); HZO Article  
57 XV, Enforcement and Miscellaneous Provisions, §334-81, Appeals].  
58

59 Clerk Daddario read the Case into the record. Mr. Buttrick stated that this is an  
60 Appeal from his Notice of Violation dated 5/18/2020 and referenced violations noted  
61 from the Variance granted in 2009. Mr. Buttrick referenced his Code Enforcement  
62 Officer's Statement of Facts dated 9/14/2020.  
63

64 Attorney Joshua Lanzetta introduced himself as representing Christopher and  
65 Christine Floyd and sat at the applicant's table with no mask. Atty. Lanzetta first  
66 thanked the Board for conducting the Site Walk Saturday 9/19/2020 and hoped the  
67 Members were able to see that the property was well kept and maintained, and also  
68 thanked Mr. Buttrick for all his help over the past six (6) weeks in this complicated  
69 issue. Atty. Lanzetta stated that there are two (2) components to this Case: (1) the  
70 concept of an expansion of Use; and (2) environmental and wetland issues/violations.  
71

72 Atty. Lanzetta stated that there is potential pending litigation with NHDES (New  
73 Hampshire Department of Environmental Services) for wetland violations; noted that  
74 is it unclear where wetlands are on the property as there are no flags and the use of  
75 GIS software is not accurate; that his clients have hired a Wetland Scientist to survey  
76 their land; and asked the Board to please allow his clients to conclude dealing with  
77 DES before addressing the Zoning violations. The violations cited against Article IX of  
78 the Wetland Conservation District included Sections: 334-34 Definitions; 334-35.A &  
79 B Uses within Wetland Conservation District; and 334-38 Special Provisions.  
80

81 Atty. Lanzetta stated that a Variance was granted in 2009 and recorded at the Registry  
82 of Deeds that allowed four (4) vehicles and one (1) trailer on site and no materials  
83 stored on site. Atty. Lanzetta stated that the Variance did not permit a business *use*  
84 on the property. Atty. Lanzetta stated his client is not operating a landscaping  
85 business at his home, all landscaping business is conducted off-site and that the four  
86 (4) vehicles and trailer permitted by the Variance granted in 2009 move on and off site.  
87 Atty. Lanzetta stated that an expansion of what was permitted by the Variance would  
88 be if there was a fifth vehicle. Atty. Lanzetta added that plows are not vehicles, that a  
89 plow is part of a vehicle, and cannot be considered an expansion.  
90

91 Atty. Lanzetta next addressed the specific violations outlined in Mr. Buttrick's  
92 5/18/2020 Cease and Desist letter. The information shared included:  
93

94 • §334-10 Mixed or Dual Use on lot  
95 There is no mixed or dual use on the property – it is residential with a variance to park  
96 commercial vehicles and a trailer.  
97

98 • §334-13 Junkyards prohibited; outdoor storage

99 The definition of junk and junkyard read into the record. There is no junk on the  
100 property and it has never been a junkyard.  
101

102 • §334-15 Parking

103 Yes, there have been occasions where vehicles were parked in the setback; client now  
104 aware and complying; the back area lot is not paved; the variance permitted four (4)  
105 business vehicles on site; the household has three (3) adults; and there is a distinction  
106 between “invitees” to the home and employees to the home.  
107

108 • §334-16.1 Site Plan approval

109 Works in conjunction with §334-10 Mixed or Dual Use on lot. There is no new *use* on  
110 property, so therefore Site Plan approval not needed.  
111

112 • §334-21 Table of Permitted Uses

113 A landscaping business is not being operated on the property, just the parking of  
114 vehicles.  
115

116 Mr. Buttrick stated that the majority in the list of allegations center on the expansion  
117 of the Variance granted in 2009 and an apparent expansion of business use creating a  
118 Mixed Use, that snow removal/plows were not part of the Variance granted, even  
119 though winter plowing could viewed as a ‘common’ expansion of a landscaping  
120 business, the facts remain that the Variance did not permit seven to eight (7-8) plows  
121 being detached and stored on the property. With regard to parking, Mr. Buttrick  
122 pointed out that the applicant submitted a plan prepared by Jeffrey Land Survey, LLC  
123 with the Variance application that identified the commercial vehicle parking and  
124 trailer parking, see Exhibit B1 of the Code Enforcement Officer’s Statement of Facts  
125 dated 9/14/2020. Mr. Buttrick reported that outdoor storage is one component of  
126 Section 334-13 and yard waste has been seen on site and fill on the slope. Mr.  
127 Buttrick did note that there have been improvements to the site since May 2020.  
128

129 Atty. Lanzetta disputed the outdoor storage on the site and noted that the parking  
130 ‘plan’ has no meets and bounds and just shows a conceptual approximation of where  
131 the four (4) commercial vehicles could be parked.  
132

133 Discussion continued and focused on the number of vehicles parked at the site, as  
134 shown by several aerial views. Again, Atty. Lanzetta raised the distinction between  
135 commercial vehicles from the landscaping business to guests/invitees of the residents  
136 of the home and added that it could arguable and be a reason why the number of  
137 vehicles could exceed what was specified by the Variance. Mr. Brackett stated that at  
138 the Site Walk business vehicles were noted behind the shed so it could be conceivable  
139 that the four vehicles in the front were personal vehicles.  
140

141 Atty. Lanzetta stated that his client submitted six (6) letters of support from his  
142 neighbors.  
143

144 Public testimony opened at 7:52 PM. The following individuals addressed the Board:  
145

- 146 (1) Angela Polizzoti, 84 Highland Street, stated that she has been in the  
147 neighborhood for three (3) years, that the Floyds are good neighbors and  
148 she has no issues.

- 149 (2) Ann Marie Tate 75 Highland Street stated that she lives across the street  
150 since 1983, that the Floyds are good people and an asset to the  
151 neighborhood.
- 152 (3) Geoffrey MacGillivray, 76 Highland Street stated that he has been in the  
153 neighborhood for two (2) years, that the Floyds are the greatest neighbors  
154 and that he appreciates them.
- 155 (4) George Briand, 83 Highland Street stated that he has been in the  
156 neighborhood for thirty three (33) years, that there's been seven (7) trucks  
157 going in and out, that they have wrecked his driveway, that he has filed  
158 complaints, that the operation has been an aggravation, and that they use  
159 the Eversource land which is a dirt way and creates dust all the time.
- 160 (5) Normand Martin, ex-ZBA Member stated that he was on the Board in 2009,  
161 that he made the motion to grant the Variance for four (4) vehicles, that  
162 there was concern then that the business could mushroom and concern  
163 regarding using someone else's land to access the rear of the site, that there  
164 was one dissenting vote, by the Chairman, Mr. Seabury, and that now there  
165 is an expansion of use with seven (7) plows being stowed on site as well as  
166 materials.

167  
168 Being no one else present at the meeting to address the Board, the Board took a five  
169 (5) minute recess so that Mr. Buttrick could attend the phone at 7:59 PM for the  
170 public to call-in. At 8:04 PM, Mr. Buttrick reported that no one had called.

171  
172 Atty. Lazetta addressed the public testimony comments: his client had permission, a  
173 license, to utilize the Eversource corridor in 2009 but access will change in autumn  
174 2020 and his client will use curb cuts approved by the Town of Hudson in the future;  
175 there are materials on site but that is outside of the appeal and highly prejudicial as it  
176 is for personal use and was from a demolished fireplace, which is allowed, and is not  
177 part of the landscaping business and will not be sold; agreed that seven (7) plows is  
178 too many but that was then and his client is now complying; the 2019 Court ruling  
179 did not state that the Variance was exceeded; an expansion of use is strictly regarding  
180 the number of vehicles; his client has vested property rights; and lastly there were  
181 violations that could have happened on a given day but that does not constitute an  
182 expansion of business and his client is willing to pay the fine.

183  
184 Public testimony opened a second time at 8:10 PM and closed at 8:11 PM. No one  
185 addressed the Board.

186  
187 Mr. Brackett stated that the Eversource access is a private matter and not before the  
188 Board for consideration and that the request has been made to pend/defer the cited  
189 wetland violations until a resolution has been attained with NH DES before coming  
190 before the Board.

191  
192 Mr. Fauvel noted that First Choice Landscaping is an LLC and asked if the vehicles are  
193 registered to the LLC. Atty. Lanzetta responded that four (4) vehicles are registered to  
194 the LLC. Mr. Fauvel asked about the backhoes and Atty. Lanzetta stated that they are  
195 on the property to move personal lands and are not part of the business.

196  
197 Mr. Dearborn stated that it is hard to understand four (4) vehicles and seven (7) plows  
198 and asked if the other three (3) plows are contracted out. Atty. Lanzetta agreed and

199 added that there will only be four (4) plows and the site is now in compliance. Mr.  
200 Brackett stated that the Board saw a 'clean property' at the Site Walk.

201  
202 Mr. Dearborn also noted that a new building has been constructed since the Variance  
203 was granted and that at the Site Walk there were four (4) vehicles and one (1) car  
204 parked in front. Atty. Lanzetta stated that there are no limitations on the number of  
205 'invitees' a household member may have. Mr. Dearborn questioned if the vehicles on  
206 site represented residents, invitees and now employee parking too. Atty. Lanzetta  
207 stated that the question was irrelevant. Mr. Brackett stated that testimony and  
208 Minutes that the vehicles are for the landscaping business and questioned whether  
209 snow plowing was part of the landscaping business or an expansion. Atty. Lanzetta  
210 noted that the Variance granted in 2009 has been recorded at the Registry of Deed  
211 and that the only issue before the Board is the number of vehicles.

212  
213 Mr. Severance stated that when he Googled 78 Highland Street, the search revealed  
214 that the LLC is registered to 78 Highland Street. Atty. Lanzetta stated that it is not  
215 uncommon, that there is no separate business address and equipment is stored  
216 offsite. Mr. Buttrick noted that in the Minutes of 2009 the question was raised  
217 whether a Home Occupation should be required and the Board was informed that only  
218 bookkeeping would be out of the house.

219  
220 Mr. Dearborn and Mr. Brackett noted that the 2019 Court ruled against the applicant.  
221 Mr. Etienne stated that it appears the lot is being used as a logistic facility and cited  
222 Finding #4 of the Court Order - "The court hereby finds and rules that the  
223 Respondents have utilized the Property in violation of the HZO and the variance  
224 granted by the ZBA by allowing the parking and storage of seven (7) business vehicles,  
225 two (2) pieces of heavy equipment (backhoes), four (4) business trailers, and two (2)  
226 piles of materials utilized in the business." When asked who owned the backhoes,  
227 Atty. Lanzetta stated that they are owned by the LLC and agreed that on certain days  
228 there were violations but it is not an expansion of the business which can only be  
229 ruled by the number of vehicles allowed by the Variance.

230  
231 Mr. Etienne stated that the site may now be in compliance and questioned if there is a  
232 guarantee that it would continue to remain in compliance. Atty. Lanzetta responded  
233 that has no bearing in tonight's meeting. Mr. Daddario noted that there is a mixed  
234 bag of violations, both to the Zoning Ordinance and to the Variance, and issues and  
235 noted that the applicant has made an effort to clean up the property.

236  
237 Site Walk observations were shared. Mr. Pacocha stated that there was a huge pile of  
238 stone on site. Mr. Etienne stated that a vehicle was also parked in the side yard  
239 setback. Mr. Brackett stated that at the Site Walk it appeared that they complied to  
240 the conditions set in the 2009 Variance.

241  
242 Mr. Brackett stated that the evidence presented clearly shows that violations existed  
243 and asked why the appeal was filed. Atty. Lanzetta stated that the appeal was filed  
244 within the required time frame and before all the evidence was reviewed and that they  
245 are challenging some of the interpretations made and only agree with one of the  
246 citations.

247

248 Motion made by Mr. Daddario and seconded by Mr. Dearborn to: (1) uphold the  
249 Zoning Administrator's Decision of 5/18/2020 because at the time violations existed;  
250 (2) to defer review of the wetlands violations until the issues have been resolved with  
251 NH DES; and (3) in consideration of the efforts made to return to compliance, will not  
252 fine for past notices of violations. Vote was 5:0. Appeal denied.  
253

254 2. Case 111-017 (09-24-20) (continued from 08-13-20): Earl J Sandford of  
255 Sandford Surveying & Engineering representing 4NH Homes, LLC (c/o Mike  
256 Gallo), 597 New Boston Road, Bedford, NH requests a Variance for 151  
257 Robinson Road to build a 28 ft. x 48 ft., two bedroom house with a 25 ft.  
258 front yard setback where 50 ft. is required. [Map 111, Lot 017-000; Zoned  
259 General-One (G-1); HZO Article VII, Dimensional Requirements, §334-27,  
260 Table of Minimum Dimensional Requirements].  
261

262 Clerk Daddario read the Case into the record. Mr. Buttrick stated the reasons for the  
263 continuance and noted that there was supplemental information received that  
264 included an email from the Applicant from 9/24/2020 of an explanation from a  
265 lawyer. Mr. Brackett stated that the Case was heard in August and continued so that  
266 the Board could confer with Town Officials on representations made as the Town owns  
267 the property. Mr. Buttrick stated that he approached the Town Administrator, Steve  
268 Malizia, and he confirmed in writing dated 9/11/2020 that the Town has offered the  
269 property "AS IS" with no warranties or representations and provided a copy of the  
270 Property Disclosure Form. Board took a few minutes to read the new material.  
271

272 Mr. Etienne asked if he should recuse himself as he did not attend the August meeting  
273 when this Case was heard, even though he has read the material and Minutes and is  
274 prepared to sit and vote. Mr. Brackett noted that Mr. Fauvel voted in August. Mr.  
275 Fauvel stated that he has a strong reservation and has a conflict because the Town  
276 owns the lot and if the Board grants this Variance it could be viewed as giving  
277 preferential treatment. Discussion ensued which included the disadvantage of not  
278 having heard testimony, the need for three (3) affirmative votes and the impact if less  
279 than five (5) Members vote on a Case. Mr. Sandford stated that either Member is  
280 acceptable. Mr. Fauvel recused himself. Mr. Etienne voted.  
281

282 Mr. Brackett stated they the Board has received confirmation from the Town and  
283 noted that there has been changes in wetland processing. Mr. Buttrick clarified that  
284 in 2020 the Town voted changed review of wetland issues from the Zoning Board to  
285 the Planning Board (PB) through a Conditional Use Permit (CUP). Mr. Sandford stated  
286 that they were aware of this change and have submitted a CUP application to the  
287 Planning Board.  
288

289 Mr. Sandford recapped: continuance was because there were no Town representatives  
290 at the last meeting, that the Town Administrator clarified the Town's position in his  
291 9/11/2020 letter; that the attorney letter he submitted clearly outlines that hardship  
292 is based on the land and not the property owner; that this lot has clear land based  
293 hardship with the wetland, undersized acreage, boulder field and no buildable  
294 envelope without a variance or wetland buffer impact; that this lot was created by the  
295 Planning Board in 1969 when the front setbacks were much lower and when wetland  
296 protection was not given much consideration; and lastly, noted that the proposed  
297 septic system is 100% compliant.

298

299 Mr. Dearborn asked if the lot is still owned by the Town or if the sale has been  
300 executed. Mr. Sandford noted that a condition of the Purchase and Sale is this  
301 variance and wetland approval by the Planning Board.

302

303 Mr. Brackett stated that the fifty-foot (50') front setback was assigned to arterial roads  
304 to preserve for future potential widening and preservation of the setback avoids  
305 eminent domain and potential destruction of property. Mr. Sandford state that it is  
306 understood and noted from his experience that a road widening does not always keep  
307 to the centerline of the road, that an expansion could occur across the street as there  
308 are several lots on Robinson with structures in the now 50' front setback.

309

310 Mr. Dearborn expressed concern for the house in the front setback and questioned the  
311 deck proposed at the rear that would encroach the wetland setback even more and  
312 asked if it was really necessary. Mr. Sandford stated that the deck would be on sonar  
313 tubes and even though not essential it is a common accessory to a house, especially  
314 one with little to no "yard" and decided to include to prevent the future homeowner to  
315 seek a variance.

316

317 Mr. Buttrick stated that the wetland buffer intrusion is not part of ZBA's review and  
318 that he would have the opportunity to submit Staff input/comments to the Planning  
319 Board when they address the CUP application. Mr. Buttrick noted that there is very  
320 little that can be done on the boulder field. Mr. Sandford concurred and added that  
321 one can walk on a deck but not necessarily over a boulder field.

322

323 Mr. Pacocha stated that lot has been available for approximately sixty (60) years and  
324 the possibility exists that the Town owns it because someone failed to pay taxes on it.  
325 Mr. Sandford did not dispute but stated it was irrelevant because hardship is based  
326 on the land and suggested that it should not be considered in the Board's review as  
327 that would be an appealable offence.

328

329 Mr. Etienne stated that this lot has been available for sixty years and no one has  
330 developed it; that it takes a champion to deal with all its land issues; and commended  
331 the applicant for the design presented with the preservation of the wetland.

332

333 Mr. Etienne made the motion to grant the variance to the front setback as it is in the  
334 public interest to add this lot to the tax base and it is not contrary to public interest,  
335 that it does not alter the character of the neighborhood and does not impact the  
336 wetland and would not diminish surrounding property values and substantial justice  
337 would be done and the land poses the hardship. The motion was not seconded.

338

339 Mr. Brackett asked for review of the Variance criteria. The opinions expressed  
340 included:

341

342 *(1) not contrary to public interest*

343

344 • Mr. Brackett: not met, is contrary, lot created prior to Zoning  
345 requirements

346 • Mr. Dearborn: not met – is contrary to public interest, conflicts with front  
347 / road setback

- 348 • Mr. Pacocha: not met
- 349 • Mr. Etienne: met, town decision to add lot to tax rolls
- 350 • Mr. Daddario: not met – building on this lot requires residence to be too
- 351 close to the road
- 352

353 *(2) spirit of Ordinance observed*

- 354 • Mr. Brackett: not met, purpose of setback is to protect traffic corridor
- 355 • Mr. Dearborn: not met – Ordinance states 50'
- 356 • Mr. Pacocha: not met
- 357 • Mr. Etienne: met, are not impacting wetland, design compatible to
- 358 neighborhood
- 359 • Mr. Daddario: not met – residents too close to the road is a safety issue
- 360

361 *(3) substantial justice done to property owner*

- 362 • Mr. Brackett: not met, property owner is the Town, no hardship
- 363 • Mr. Dearborn: met – property owner is the Town – get lot on tax map
- 364 • Mr. Pacocha: met
- 365 • Mr. Etienne: met, property has hardship due to wetlands and its shape
- 366 • Mr. Daddario: not met – Town owns the lot, need not be sold
- 367

368 *(4) will not diminish surrounding property values*

- 369 • Mr. Brackett: met
- 370 • Mr. Dearborn: met
- 371 • Mr. Pacocha: met
- 372 • Mr. Etienne: met, will not diminish, could improve values
- 373 • Mr. Daddario: met
- 374
- 375

376 *(5) hardship*

- 377 • Mr. Brackett: not met, the property hardship does not overcome the need
- 378 to protect future widening of corridor
- 379 • Mr. Dearborn: met & not met – being an undersized lot is not adequate
- 380 enough to intrude on frontage setback or wetland buffer
- 381 • Mr. Pacocha: not met, lot has existed for years and never developed
- 382 • Mr. Etienne: met – buildable shape and wetland impact
- 383 • Mr. Daddario: met – wetlands, boulder field, overall size
- 384

385 Motion made by Mr. Pacocha and seconded by Mr. Dearborn to deny the variance. Mr.  
 386 Daddario noted that the standard is that each criteria would need to be satisfied in  
 387 order to grant a variance and even if one is not met, the variance cannot be granted.  
 388 Roll call vote was 4:1. Mr. Etienne opposed. Variance denied. The 30-day appeal  
 389 period was noted

390  
 391  
 392 **NEW HEARINGS:**

- 393 3. Case 156-060-001 (09-24-20): Dean Lombardo, 9 Essex Ave., Hudson, NH  
 394 requests a Variance to install an outdoor hot tub 10 feet from the side yard  
 395 property line, where 15 feet is required. [Map 156, Lot 060-001; Zoned  
 396 Business (B); HZO Article VII, Dimensional Requirements, §334-27, Table of  
 397 Minimum Dimensional Requirements].

398

399 Clerk Daddario read the Case into the record. Mr. Buttrick referenced his Staff Report  
400 signed 9/15/2020 and noted that the lot is substandard in size and frontage and  
401 received a Variance to build a single family residence in 2015.

402

403 Dean Lombardo introduced himself and his wife Cheryle. Both sat at the applicant's  
404 table with masks on. Mr. Lombardo stated that their lot is narrow and there is hardly  
405 a backyard with their home situated as far back as possible. The hot tub they selected  
406 is small at 34" in height and 6'8" x 7'4" in length and width. The location they  
407 selected is in the rear and to the left side of the house. There is a 6' fence around the  
408 side and rear of the property so the tub will literally only be seen if someone was in the  
409 backyard and not be seen by any neighbor or passerby.

410

411 Mr. Lombardo addressed the criteria for the granting of a variance. The information  
412 shared included:

413

414 (1) *not contrary to public interest*

415

- 416 • not contrary to public
- 417 • hot tub will not be visible outside the property as back yard is fenced
- 418 • tub will have a locking cover and not be accessible to anyone
- 419 • tub will be a brand new tub and not be audible to neighbors
- 420 • closest abutter is a hardware store – Hudson True Value – and their  
421 loading area faces their property so no customers access the rear of the  
422 hardware store – and closed at night

423 (2) *spirit of Ordinance observed*

424

- 425 • spirit is observed
- 426 • proposed use will not change any neighbor's sight line nor disturb the  
427 peace and tranquility
- 428 • proposed hot tub will not infringe upon any neighbor's space or privacy
- 429 • hot tub will not be seen or heard by any neighbor or passer-by
- 430 • Section 334-2 of the Ordinance allows to enhance quality of life

431 (3) *substantial justice done to property owner*

432

- 433 • substantial justice would be done with the granting of the variance
- 434 • the proposed location would be the most practical for enjoyment and use  
435 of a small yard
- 436 • the current pandemic has caused cancellation of vacation plans
- 437 • as a nurse, healthcare worker and first responder, they hope to utilize  
438 their yard and hot tub to de-stress and relax when all other "normal"  
439 activities and recreation remain hindered

440 (4) *will not diminish surrounding property values*

441

- 442 • will have no affect – tub will not be seen or heard from surrounding  
443 properties, nor will it be accessible due to the fencing and locking cover
- 444 • hot tub is not a permanent structure
- 445 • trying to get the best use of their property

446 (5) *hardship*

447

- property is less than 1/3 acre and very narrow

- 448
- 449
- 450
- 451
- 452
- 453
- 454
- 455
- locating hot tub anywhere else on property would diminish the aesthetics and the practical use and enjoyment of the property
  - would not be fair or reasonable to impose the restriction because the requested location will have absolutely no affect on the space, atmosphere and peace of any surrounding neighbors
  - literal enforcement would be an unnecessary hardship by limiting their enjoyment of their yard and home

456 Public testimony opened at 9:40 PM. No one present to address the Board. Board  
457 took a three-minute recess for call-ins. Mr. Buttrick reported that no phone calls were  
458 received. Public testimony closed at 9:43 PM.

459

460 Mr. Dearborn asked if the Applicant approached their closest abutter, Hudson True  
461 Value, about the hot tub. Mr. Lombardo stated that he did not.

462

463 Mr. Daddario asked if the hot tub could be moved so as not to encroach the setback  
464 and Mr. Lombardo responded that the deck would need to be altered and even at that,  
465 there would be a corner that would still encroach into the setback.

466

467 Motion made by Mr. Dearborn and seconded by Mr. Etienne to grant the variance to  
468 allow the hot tub to encroach five feet into the side yard setback with the condition  
469 that the hot tub be screened behind a privacy partition/fence so as not to be visible  
470 from the street.

471

472 Mr. Dearborn stated that the lot is undersized and the location of the house further  
473 back from the road than other houses in the neighborhood and the nearest  
474 neighbor/abutter is a hardware store that is not open at night. Mr. Etienne  
475 concurred. Mr. Brackett noted that the lot is undersized, received a variance for the  
476 construction of a house with lack of frontage and that other lots in the neighborhood  
477 are similar in size but this one has the largest front yard and no other reasonable  
478 location for a hot tub. Roll call vote was 5:0. Variance granted with one stipulation.  
479 The 30-day appeal period was noted.

480

481 4. Case 241-035 (09-24-20): Marie Mayotte dba Red Brick Clothing, 17 Dracut  
482 Rd., Hudson, NH requests a Variance to allow a sign in the R-2 zone for an  
483 existing non-conforming business use. [Map 241, Lot 035; Zoned Residential-  
484 Two (R-2); HZO Article XII, Signs, §334-60 F, General Requirements].

485

486 Clerk Daddario read the Case into the record. Mr. Buttrick referenced his Staff Report  
487 signed 9/14/2020 and stated that the sign is a “building sign” of sixteen square feet  
488 (16SF) with logo and text.

489

490 Marie Mayotte and husband Jerry Mayotte were both connected on-line and  
491 introduced themselves. A picture of the vinyl sign window was posted. Ms. Mayotte  
492 stated that it is not a “typical” sign but more like “window dressing” and offers more of  
493 an identifier than advertising. The “sign” resembles a large window with partitioned  
494 panes, their logo and the name of the company. Ms. Mayotte stated that they are a  
495 long-standing established business in the R-2 Zone and noted that if they were in the  
496 Business Zone, this sign would be allowed. This particular sign allows them a unique  
497 opportunity to utilize signage material that they use and sell in their business. The

498 sign definitely improves the appearance of the building and makes them better  
499 neighbors. It also benefits them as they have clothing behind the window that gets  
500 exposure from the sun and even though not a criteria for hardship by variance, does  
501 provide them with an added value for improvement.  
502

503 Ms. Mayotte stated that the R-2 Zone actually causes the hardship. Ms. Mayotte  
504 stated that her business occupies a small percentage of the building and even though  
505 in the R-2 Zone, the neighborhood is not residential.  
506

507 Mr. Buttrick stated that this is a unique proposal, that they began the process in  
508 February and his Zoning Determination was issued in July for this existing non-  
509 conforming business use in the Residential-Two Zone. Mr. Buttrick stated that the  
510 applicants do have an existing free-standing sign and that the one proposed is a  
511 building / wall sign and noted that both is allowed if the business is located in the  
512 Business Zone.  
513

514 Ms. Mayotte described the neighborhood. The building itself is owned by her neighbor  
515 next door. On the Avenue side there are power lines and a salvage business and  
516 nothing directly across the street. Mr. Brackett noted that there is a church nearby  
517 and an auto sale sign and other businesses on the adjacent street. Ms. Mayotte added  
518 that there is a hair salon diagonally across the street before the church.  
519

520 Ms. Mayotte added that after the abutter notices were mailed, she did receive one  
521 phone call who was in support of the sign.  
522

523 Public testimony opened at 9:57 PM. No one was present in the audience. The Board  
524 took a three-minute recess for call-ins. Mr. Buttrick reported that there were no  
525 phone calls. Public testimony closed at 10:01 PM.  
526

527 Mr. Etienne asked if there is intention to light the sign at night. Ms. Mayotte  
528 responded no, it is vinyl applied to the inside of the glass and acts like window  
529 dressing. Mr. Mayotte added that the vinyl has little holes to let the light into the  
530 building and when the business is closed, lights are out.  
531

532 Mr. Fauvel asked why this is before the Board if the sign is inside the building and  
533 noted that other business with inside posters/signs do not have to come before the  
534 board. Mr. Brackett responded that this Case is unique. Mr. Buttrick stated that  
535 there were other considerations, like not more than twenty five percent (25%) of a  
536 window area not needing a permit, and decided that the matter should be reviewed  
537 and decided by the Board  
538

539 Mr. Brackett noted that there are a lot of businesses with signs in the neighborhood  
540 and this request is consistent with the area.  
541

542 Motion made by Mr. Dearborn and seconded by Mr. Daddario to grant the Variance as  
543 requested. Mr. Dearborn stated that this is a long standing company in Hudson with  
544 a great reputation, there are other signs in the neighborhood, the sign is actually  
545 inside the building, the sign is not to be lit at night and all the criteria have been  
546 satisfied. Mr. Daddario concurred with Mr. Dearborn and added that there is no  
547 conceivable harm to the public, no opposition presented, improves the appearance and

548 that the hardship criteria has an “or” proposition and this request satisfies the first  
549 half of the criteria because the restriction does not serve a purpose in a fair and  
550 reasonable way, this is a long standing established business with other businesses on  
551 the property and in the neighborhood and the use is reasonable at this location. Roll  
552 call vote was 5:0. Variance granted. The 30-day appeal period was noted.  
553

554 **V. REQUEST FOR REHEARING:**  
555

556 Case 173-012 & 014: Turbo Realty, LLC by Patricia M. Panciocco, One Club  
557 Acre Lane, Bedford, NH requests a rehearing of a request for a Variance at 4  
558 & 14 Tolles St. previously denied by the ZBA on 07/23/20.  
559

560 Clerk Daddario read the request into the record. Mr. Buttrick stated that the basis for  
561 granting a rehearing is either based on (1) new evidence that was not available at the  
562 first hearing or (2) that the Zoning Board made an error in law in making the previous  
563 decision. Board reviewed the material submitted.  
564

565 Mr. Dearborn stated that no new evidence has been submitted that had not previously  
566 been discussed  
567

568 Mr. Brackett stated that his recollection of the original Case and the Case presented  
569 last month, the Board heard discussion and made the decision on 15 & 17 Tolles Road  
570 and at that time asked that 4 & 14 Tolles Road be included and it was the applicant  
571 who adamantly said no then and agreed to present a Site Plan Review application to  
572 the Planning Board within two (2) years and due to sympathy to the applicant  
573 extended submission of a Site Plan Review application to March 2021. Mr. Brackett  
574 stated that at that time the Board did not know if the uses were similar, in fact, 4 &  
575 14 Tolles Street had no buildings. Mr. Brackett also noted that the Board spent many  
576 meeting and workshops reviewing uses, what uses had been and what uses were  
577 current two years ago.  
578

579 Mr. Dearborn stated that he took exception to their request to eliminate the condition  
580 that identified the hours of operation and operation days the Board established until  
581 they had obtained Site Plan approval. Mr. Brackett added the Board was well aware  
582 that the establishment was under the purview of the Planning Board but taking  
583 consideration of the concerns raised by the abutters and the applicant’s needs  
584 established reasonable hours and days. Mr. Brackett stated that, in his opinion, the  
585 Board did nothing wrong and in fact went above and beyond for the applicant.  
586

587 Mr. Dearborn made the motion not to grant a rehearing based on new evidence being  
588 submitted. Mr. Daddario seconded the motion and stated that in addition to what Mr.  
589 Dearborn and Mr. Brackett stated, it also should be pointed out that specific reasons  
590 why these lots need to be looked at on their own and approved on their own and that  
591 some of the uses that involved automobile and off-road vehicle repair and service  
592 should not be allowed to 4 & 14 Tolles Street because testimony was received that the  
593 two lots already suffered environmental contamination. Mr. Daddario stated that the  
594 notion of automatically approving identical uses just does not make sense. Mr.  
595 Brackett concurred.  
596

597 Roll call vote was 5:0. Rehearing request denied.

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**VI. REVIEW OF MINUTES:** 8/27/20 edited Minutes

Board reviewed the edited version presented and made no further changes.

Motion made by Mr. Dearborn and seconded by Mr. Daddario to approve the 8/27/2020 Minutes as edited. Vote was 5:0

**VII. OTHER**

The Land Use Lecture conference is scheduled for 10/31/2020 and will be virtual. Mr. Brackett encouraged the new Members to attend.

Board also inquired about Selectman McGrath and extended their continued wishes for her recovery.

Motion made by Mr. Daddario and seconded by Mr. Pacocha to adjourn the meeting. The 9/24/2020 ZBA meeting adjourned at 10:22 PM.

Respectfully submitted,  
Louise Kn22, Recorder

DRAFT