



# TOWN OF HUDSON

## Zoning Board of Adjustment



Gary A. Dearborn, Chairman      Marilyn E. McGrath, Selectmen Liaison

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### **MEETING MINUTES – September 24, 2020 – approved**

#### **I. ATTORNEY-CLIENT (NON-PUBLIC) SESSION per RSA 91-A:3 II(1) 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 was Marilyn McGrath, Selectman Liaison. Also present were Bruce Buttrick, Zoning Administrator, Louise Knee, Recorder (via audio and visual remote access) and Alternate Selectman Liaison Kara Roy. For the record, the Regular Members voted.

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

#### **CONTINUED/DEFERRED HEARINGS:**

Not Official until reviewed, approved and signed.  
Approved 10/22/2020, as edited.

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

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

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

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

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

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

- §334-10 Mixed or Dual Use on lot

There is no mixed or dual use on the property – it is residential with a variance to park commercial vehicles and a trailer.

- §334-13 Junkyards prohibited; outdoor storage

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

- §334-15 Parking

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

- §334-16.1 Site Plan approval

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

- §334-21 Table of Permitted Uses

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*(1) not contrary to public interest*

- Mr. Brackett: not met, is contrary, lot created prior to Zoning requirements
- Mr. Dearborn: not met – is contrary to public interest, conflicts with front / road setback
- Mr. Pacocha: not met

- Mr. Etienne: met, town decision to add lot to tax rolls
- Mr. Daddario: not met – building on this lot requires residence to be too close to the road

(2) *spirit of Ordinance observed*

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

(3) *substantial justice done to property owner*

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

(4) *will not diminish surrounding property values*

- Mr. Brackett: met
- Mr. Dearborn: met
- Mr. Pacocha: met
- Mr. Etienne: met, will not diminish, could improve values
- Mr. Daddario: met

(5) *hardship*

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

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

**NEW HEARINGS:**

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



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

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

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

*(1) not contrary to public interest*

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

*(2) spirit of Ordinance observed*

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

*(3) substantial justice done to property owner*

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

*(4) will not diminish surrounding property values*

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

*(5) hardship*

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

- 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **V. REQUEST FOR REHEARING:**

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

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

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

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

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

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

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

**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,

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G. A. Dearborn, ZBA Chairman