



TOWN OF HUDSON

Zoning Board of Adjustment



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

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MEETING MINUTES – December 17, 2020 – approved

****postponed from December 10, 2020****

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

Session held as scheduled.

II. CALL TO ORDER

III. PLEDGE OF ALLEGIANCE

Chairman Gary Dearborn called the meeting to order at 7:02 PM and invited everyone to stand for the Pledge of Allegiance.

Mr. Dearborn 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. Dearborn 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. Dearborn noted that specific instructions for meeting access was included in both the Applicant Notification and the Abutter Notification and were posted on the website.

Mr. Daddario 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 Etienne took attendance. Members present were Gary Daddario (Regular/Vice Chair), Gary Dearborn (Regular/Chair), Brian Etienne (Regular/Clerk), Leo Fauvel (Alternate), Ethan Severance (Alternate and remote), and Jim Pacocha (Regular). Also present were Bruce Buttrick, Zoning Administrator, Louise Knee, Recorder (via remote access) and Kara Roy, Interim Selectman Liaison. Excused was Marilyn McGrath, Selectman Liaison. For the record, Alternate Fauvel was seated as a Voting Member.

IV. PUBLIC HEARING OF SCHEDULED APPLICATION BEFORE THE BOARD:

1. **Case 230-021 (12-17-20) (deferred from 11-12-20):** Joseph G. Deluca, 21 Clement St., Nashua, NH requests an Appeal from an Administrative Decision for **6 James Way**, which deemed an existing dwelling unit above the detached garage as illegal.

Not Official until reviewed, approved and signed.

Approved 01/28/2021 as edited.

[Map 230, Lot 021-000; Zoned Residential-Two (R-2); HZO Article V, Permitted Uses, §334-21, Table of Permitted Principal Uses].

Mr. Buttrick read the Case into the record, noted that it was deferred at the last meeting and that the Applicant has since decided not to pursue a Variance. Motion made by Mr. Daddario, and seconded by Mr. Pacocha to accept the withdrawal without prejudice. Roll call vote was 5:0. Withdrawal without prejudice granted.

2. **Case 239-001 (12-17-20):** James M. Dobens, 4 Eagle Drive; Angela M. and Phillip G. Volk, 15 Fairway Drive; and Scott J. Wade, Trustee of the Scott J. Wade Revocable Trust, 1 Fairway Dr., all represented by Amy Manzelli, Esq. of BCM Environmental & Land Law, PLLC, 3 Maple St., Concord, NH requests an Appeal from an Administrative Decision of a Zoning Determination #20-106, dated October 6, 2020 regarding **43 Steele Road, Hudson, NH** citing the building setback regulation & definitions of building setback and structure per the Hudson Zoning Ordinance. [Map 239, Lot 001-000; Zoned General-One (G-1); HZO Article II, Terminology, §334-6, Definitions and Article VII, Dimensional Requirements, §334-27, Table of Minimum Dimensional Requirements].

Mr. Buttrick read the Case into the record. Mr. Severance recused himself. Amy Manzelli, Esq. from BCM Environmental and Land Law, PLLC in Concord, NH, introduced herself as representing SaveHudsonNH of which the three (3) Applicants are direct Abutters and presented their concerns.

Atty. Manzelli stated that the earth berm would be approximately two thousand feet (2K') in length with sound wall heights varying from fifteen feet (15') to thirty-five (35') and some areas as tall as forty eight (48') and noted that would be greater than if forty (40) houses were placed end-to-end.

Atty. Manzelli stated that she wrote to the Planning Board on 10/1/20 as their concern is with the two hundred foot (200') setback which is actually governed in Section 276.11.B.12 which falls under Planning Board authority and the Zoning Administrator made no determination regarding Section 276, because he has no authority, and was only in reference to Section 334.

At 7:19 PM Mr. Dearborn noted that there were people connected remotely and in the audience and called for a five-minute recess for others to call in. At 7:24 PM, the meeting was called back to order and Mr. Buttrick reported that several were received. Mr. Dearborn asked that there be no repetition in the testimony. The following addressed the Board

- (1) Dean Sakati, 11 Fairway Drive, stated that he was just listening and has nothing to say
- (2) James Dobens, 4 Eagle Drive, stated he had nothing to say, just listening
- (3) John King, 21 Fairway Drive, stated he had nothing to say, just listening
- (4) Philip & Angela Volk, 15 Fairway Drive, stated they were just listening
- (5) Justin Pasay, Atty. from Donahue, Tucker & Ciandella, PLLC and co-counsel for the Hillwood Project expressed concern with the presentation and the voluminous amount of paperwork that accompanied this appeal and *if* he heard Atty. Manzelli just say that her concern is within Chapter

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276 and under the Planning Board and not the ZBA and that Mr. Buttrick did not make a determination for Chapter 276, then he finds himself in agreement with Atty. Manzelli.

- (6) James Crowley, 4 Fairview Drive, sat at the table and stated that a berm is a foundation, is being called a foundation to the sound wall, and foundations are not allowed in the setback and added that drainage would not be needed if there was no berm.
- (7) Brian Groth, Town Planner, came to the table at the request of Mr. Dearborn to address the impact to the Town if this project passes. Mr. Groth stated that he heard that the Appeal should be withdrawn, that he is perplexed as to what is being asked, that the focal point seems to be the two hundred foot setback and what can or cannot be allowed but that determination rests with the Planning Board and not the Zoning Board, and caution is needed so as not to render many lots non-conforming in Town and forcing the need for obtaining a Variance.

Public testimony concluded at 7:35 PM.

Mr. Buttrick stated that what is before the Board tonight is to decide whether to uphold his determination or not, noted that it is based solely on Chapter 334 with no reference or comment to Chapter 276, and added that the two hundred foot setback is not part of the Zoning Ordinance, that it is with Site Plan Review under the authority of the Planning Board and made no determination regarding that because he is not authorized. Mr. Etienne asked why this is even before the Board as they just heard Atty. Manzelli agreeing there is no issue with the Determination. Atty. Manzelli stated that when they originally reviewed the Determination it was unclear and impossible to interpret that the two-hundred-foot setback did not apply to the sound wall and they were just looking for clarity. Mr. Pacocha stated that the berm is not a foundation, it is a formation of earth and noted that Walmart put up a berm with plantings in the setback and that provides both a sound and a visual barrier.

Atty. Pasay asked for clarification on the procedure for this process as there is no allegation or error per RSA 676.5, ZBA has no authority to make a judgment on Site Plan Chapter 276, ZBA cannot advise or render an opinion and that, in his opinion, the Appeal should be denied or Atty. Manzelli should withdraw it. Mr. Dearborn stated that the Board (ZBA) is to judge the Zoning Administrator's determination and not to interpret, to decide whether they agree and if not deny it

Mr. Daddario stated that considering that the Zoning Determination pertains to just Chapter 334 and not Chapter 276, and made the motion to uphold the Zoning Determination as there was no error. Mr. Etienne seconded the motion. Roll call vote was 5:0. Appeal denied.

Mr. Dearborn declared a five-minute recess at 7:48 and called the meeting back to order at 7:54 PM and noted that Mr. Severance was no longer recused.

IV. PUBLIC HEARING: Proposed Bylaw amendments– 1st reading.

Mr. Buttrick read the item into the record, noted that it is the first of two (2) Public Hearings required for the amendment to the Bylaws to add a section for Officer vacancies. Mr. Dearborn opened the Public Hearing at 7:54 PM.

Board reviewed the new Section 143.5B and offered no amendments.

Mr. Dearborn brought the Board's attention to page 5, Section 143.7.5 regarding recusing oneself from a Case, noted that it is customary for the recused Member to vacate the Board table before the Public Hearing and that the words "if they so choose" seems redundant. Mr. Etienne stated that the words could be stricken. Mr. Buttrick noted that change would require re-notification and require two (2) Public Hearings. Ms. Roy stated that, in her opinion, a recused Member does not have to leave the Board table, that it is not specifically required and that the words "if they so chose" should remain. Mr. Buttrick added that by removing themselves from the Board table, they can address the Board as J.Q.Public during Public Testimony.

Mr. Fauvel questioned Section 143.6.4 regarding the participation allowed for Alternate Members and stated that, in his opinion, Alternates should be allowed to engage in deliberations. Mr. Dearborn stated that when the Chairman announces that a Case is "before the Board" then there is to be no Alternate or Selectmen Liaison input. Mr. Fauvel disagreed as an Alternate could have something to offer. Mr. Buttrick stated that a definition for "deliberations" may also be in order.

Mr. Daddario stated that Town Counsel should be consulted as there could be a legal requirement(s). Mr. Dearborn asked Mr. Buttrick to discuss with Town Counsel.

Public Hearing closed at 8:08 PM.

V. REQUEST FOR REHEARING:

Case 152-001: Christopher Porembski, 22 Mallard Dr., Hudson, NH requests a rehearing of a request for a Home Occupation Special Exception previously denied by the ZBA on 10/22/20 to operate an internet sales of firearms business that requires a Federal License and occasional face to face sales/transactions on site. [Map 152, Lot 001-000; Zoned General One (G-1); HZO Article VI, Special Exceptions, §334-24, Home Occupations].

Mr. Buttrick read the request into the record. Board reviewed the material submitted. Mr. Etienne stated that he found nothing new in the material. Mr. Dearborn stated that he has concerns with item #3 "the only exception is if it (the sale) is local". Mr. Buttrick noted that "retail sale" is not defined in the Ordinance and added that it is also not enforceable.

Mr. Etienne made the motion to deny the request for a rehearing as no new evidence has been submitted and the Board made no error in its judgment. Mr. Dearborn seconded the motion for discussion. Mr. Pacocha stated that he was not present for the hearing but, in his opinion, it appears that the criteria have been met/satisfied. Mr. Buttrick stated that the Zoning Ordinance specifically prohibits 'retail sales', see 334.24 item F, and noted that the prohibition of retail sales is not part of the Home Occupation Special Exception Application Form and should be addressed, see Agenda

item VII.2. Mr. Dearborn added many of the neighbors expressed concern for this activity in their neighborhood. Mr. Buttrick stated that there was testimony of approximately twelve (12) on site sale transactions per year.

Roll call vote was taken. Those in favor to deny the rehearing request were: Mr. Dearborn, Mr. Etienne and Mr. Fauvel. Those in favor of granting a rehearing were Mr. Daddario and Mr. Pacocha. Vote was 3:2 to deny the rehearing request based on no new information submitted for consideration.

VI. REVIEW OF MINUTES:

11/12/20 edited Minutes

Mr. Etienne made the motion to approve the 11/12/2020 Minutes as edited. Mr. Dearborn seconded the motion. Vote was 4:0:2 with Mr. Daddario and Mr. Fauvel abstaining as they had not attended the meeting.

VII. OTHER:

1. Review 2021 ZBA Meeting Schedule

Noted.

2. Forms – Home Occupation Special Exception –

It was noted that retail sales is not on the form and that the updating of the form is an administrative function and the Board asked Mr. Buttrick to work up a revised Home Occupation Special Exception Form that will include mention of retail sales on site prohibited.

3. Discussion of Order of Business: Chairman

The importance was noted for consistency and equal treatment. The example of questioning whether an application has a Regional Impact was cited as an example.

Mr. Dearborn announced that this was his last meeting, that he has served the ZBA for nine (9) years and is confident the Members will continue to serve the Town well. Selectman Roy presented a Certificate of Appreciation to Mr. Dearborn and thanked him for his years of service.

Motion made by Mr. Daddario and seconded by Mr. Pacocha and unanimously voted to adjourn the meeting. The 12/17/2020 ZBA meeting adjourned at 8:30 PM

Respectfully submitted,

Gary M. Daddario, Chairman