



TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Kara Roy, Selectmen Liaison

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MEETING MINUTES – March 24, 2022 – approved

The Hudson Zoning Board of Adjustment met on Thursday, March 24, 2022 at 7:00 PM in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall, 12 School St., Hudson, NH.

CALL TO ORDER

I. PLEDGE OF ALLEGIANCE

Chairman Gary Daddario called the meeting to order at 7:01 PM and invited everyone to stand for the Pledge of Allegiance.

Clerk Normand Martin took attendance. Members present were Gary Daddario (Regular/Chair), Gary Dearborn (Regular), Normand Martin (Alternate/Clerk), Marcus Nicolas (Regular), Jim Pacocha (Regular/Vice-Chair), and Edward Thompson (Alternate). Also present were Bruce Buttrick, Zoning Administrator, Kara Roy, Selectman Liaison and Louise Knee, Recorder (remote). Excused were Brian Etienne (Regular) and Dean Sakati (Alternate). Mr. Daddario appointed Mr. Thompson to vote and noted that there would be five (5) Voting Members.

Mr. Daddario read the Preamble into the record (Exhibit A in the Bylaws), noted that the Agenda was amended 3/21/2022 and copies were available in the meeting room.

II. PUBLIC HEARING OF SCHEDULED APPLICATION BEFORE THE BOARD:

Case 136-001 (03-24-22): Joseph A Miara, Jr., Tr., authorized representative of Granite Realty Trust, **12 Bockes Road, Hudson, NH** requests a Variance to erect an 80 ft. x ~79 ft. 'hoop' structure attached by 4 (four) 40 ft. ocean containers used as a base with a proposed location in the rear of the property. This is an expansion of an existing, non-conforming use, not permitted in the R-2 Zone. [Map 136, Lot 001-000, Zoned Residential-Two (R-2); HZO Article VIII, Nonconforming Uses, Structures and Lots; §334-29, Extension or enlargement of nonconforming uses]

Mr. Buttrick read the Case into the record, noted that informational resources from the OSI Handbook about "Expansion of Non-Conforming Uses" had been included in the Meeting Packet, and referenced his Staff Report signed 3/15/2022 noting the previous activity with both the Planning Board (PB) and Zoning Board of Adjustment (ZBA) and that the non-conforming Use status of the lot came into being in 1985 when the area was rezoned to the R-2 District. Mr. Buttrick also stated that earlier in the day, an email was received from an abutter opposing the Case and that a copy was shared with the Applicant.

Mr. Daddario stated that he was formerly engaged in the practice of law with Atty. Westgate but is no longer and that their practice together had nothing to do with this Case, that he does not feel prejudiced in voting on the Case and asked whether he should recuse himself. No Board Member asked for his recusal.

Atty. J. Bradford Westgate of Winer and Bennett, LLP, in Nashua, NH introduced himself as representing the Applicant, stated that he has no opposition with Mr. Daddario sitting on the Case, introduced Anthony Basso, LLS of Keach Nordstrom Associates, Inc. in Bedford, NH and noted that the Applicant/Owner, Mr. Joseph A. Miara, Jr. Trustee of Granite Realty Trust was present in the audience and available to answer any questions.

Atty. Westgate addressed the application and the information shared included:

- Location of the site (very near Route 111) and size (9.2 acres)
- Site developed when zoned industrial/commercial in 1884
- Zone change to residential (R-2) in 1985 rendering site a non-conforming Use
- Variance now needed for an Expansion of Use
- Previous owner was ABC Moving and Storage Company
- Northeast to the site is a deep lot (Map 136, Lot 2) with a duplex toward the front close to Bockes Road that was constructed in 1989 after ABC Moving received its Certificate of Occupancy
- Abutting property to the northwest is an Open Space parcel for a residential subdivision and contains a 150' wide Public Service Company easement
- The south half of the property, approximately 200' in width, is undeveloped, generally wet and wooded, that provides a substantial buffer to the houses abutting the southern property line
- In 2016 ZBA granted Variance to expand Use and a Wetland Special Exception and Planning Board (PB) later granted Site Plan Review (SPR) for the improved maneuverability on site and construction of additional buildings
- Currently three (3) buildings exist on property: (1) warehouse storage 23,188 SF (square feet); (2) a two-story building attached to warehouse; and another stand-alone one-story building.
- The Phase II Maintenance Building has not yet been constructed
- Miara Transportation operates a specialty moving and storage business that primarily deals in specialty and contract shipping that requires a number of specialty and often different and unique flatbed trailers and box trailers
- Miara Transportation is unlike a transportation and storage company that ships general goods and is more like a specialty moving contractor that transports manufacturing and industrial material all over the country and as a result there is not much in/out traffic at the site
- Proposed "hoop" building would be located in the westerly side of the property in an area that was permitted with the Wetland Special Exception – so no new Wetland permit needed
- Purpose of the 'hoop' building is to back-in or park trailers and/or tractor trailers under a roof and better enable Miara personnel to clean snow

and ice off the rooftops of the vehicles and containers as required by Jessica's Law

- Size / dimension of 'hoop' building 80' x 90' x 34' in height
- The 'hoop' building will not have a foundation so no excavation needed
- Shipping containers will hold/anchor down the metal arch framework and become the 'walls' of the 'hoop' building – four (4) forty foot (40') ocean containers
- The metal arches will be covered with white vinyl tarp to create the roof for weather resistant space for storage

Mr. Basso referenced the site plan prepared by Keach-Nordstrom Associates, Inc., dated 2/9/2022 that contained his LLS stamp, stated that the site has a single driveway and parking lot, three existing buildings, the proposed maintenance building that has not yet been constructed and the proposed location for the 'hoop' building at the rear of the site on an area previously approved for use and added that drainage is to the south into the wooded and wet area and noted that across the street is the G-1 Zone and directly across the site is a VFW building. Atty. Westgate added that if the variance is granted it would be a modification to their Site Plan and would also require Planning Board approval

Atty. Westgate next addressed the variance criteria necessary to satisfy and the information included:

(1) *not contrary to public interest*

- Not contrary to allow installation and use of 'hoop' building to improve operations and aid in compliance to Jessica's Law
- Site developed when lot was in commercial/industrial zone
- Proposed location in western section of lot that abuts open space parcel for a residential development and has a 150' wide power line easement through it

(2) *will observe the spirit of the Ordinance*

- Observes the spirit of the Ordinance
- Will permit a reasonable improvement to better facilitate operations in that portion of the property

(3) *substantial justice done*

- Granting the variance would allow an upgrade to the facility and compliance to Jessica's Law
- If variance denied, the general public would realize no appreciable gain
- Is a modest expansion of the non-conforming use and does not increase the land area being used to operate the business

(4) *not diminish surrounding property values*

- The proposed lot will not diminish property values
- The proposed location is many hundreds of feet from the duplex at 16 Bockes Road and the residential properties along the southern property line

(5) *hardship*

- The property is relatively large
- When property developed it was a permitted use but in 1984 the Zone changed to residential and the site then became a Non-conforming Use and now requires a variance to expand/grow

- Site has existed for over 30 years as a developed moving and storage facility
- If site was located across Bockes Road it would be in the G-1 Zone where its use would be permitted and a variance would not be needed
- Lot has good onsite buffering in its southerly half and buffering to the west
- The 'hoop' building will be integral to Miara Transportation's operation and aid in compliance with Jessica's Law and will be located at the rear of the site where tractor trailers and box trailers and other equipment and vehicles currently reside, but not under cover

Atty. Westgate restated that if the variance is granted that they will need to go to the Planning Board for a Modification to their Site Plan as well as obtain other Permits.

Mr. Dearborn referenced the picture of a sample 'hoop' building and asked about the height of the storage containers and whether there would be storage other than vehicles and equipment in the 'hoop' building and whether buffer screening is possible for the building. Mr. Miara stated that no decision has been made yet as to what would be stored under/in the building and that the height at the peak of the proposed 'hoop' building will be thirty four feet (34') and that, if desired, the canvas rooftop could also cover the anchor containers. Atty. Westgate stated that these questions would all be addressed by the Planning Board during Site Plan Review (SPR).

Mr. Daddario stated that he had the same questions and asked the height of the existing metal frame building, was informed that it is approximately thirty feet (~30') and then deduced that the proposed 'hoop' structure would have approximately four feet (~4') of visibility from Bockes Road. Mr. Dearborn asked the height of the existing tree buffer and was informed that the trees are in the seventy to eighty foot range (~70' - ~80') range. Mr. Buttrick posted aerial and street level views of the site from Google.

Ms. Roy asked and was informed that the back/rear of the proposed 'hoop' building would be to the west. Mr. Pacocha asked what the height would be of the Phase II maintenance building when constructed. Answer: unknown. Mr. Dearborn asked the life expectancy of the vinyl rooftop and was informed it is approximately fifteen (15) years. Mr. Daddario asked if there are any options regarding the height and was informed that the height selected would allow tractor trailers to park close to the 'wall' and not hit the 'roof' and that if the 'hoop' building is not allowed, all the trailers would be visible.

Public testimony opened at 8:04 PM. The following individuals addressed the Board:

- (1) James Weaver, 27 Rollins Woods Drive, stated that he is neither for nor against the proposal and noted that as shown on the GIS pictures, the site can be seen in winter and that he would prefer view a structure instead of scattered trailers and equipment and asked if the color of the proposed rooftop could be earth/buff color instead of white.
- (2) Peter Morris, 16 Bockes Road, stated that some neighbors to the north and northwest did not receive notice and noted that the proposed 'hoop' structure is approximately three (~3') higher yet trailers are much lower but even though it is a direct eyesore he understands that it would be easier to shovel the trailers. Mr. Buttrick checked the abutters' list and noted that

the notice went to the Rolling Woods Home Owner Association and not to the individual homes and added that James Weaver received notice because he is the contact person for the Association.

- (3) Email received 3/24/2022 from Peter and Tammy Morris, 16 Bockes Road opposing variance in a residential neighborhood and that, if allowed, could affect their property value.

Atty. Westgate stated that line of sight, buffering etc. will be addressed at the Planning Board.

Public testimony closed at 8:11 PM.

Mr. Buttrick stated that what is before the ZBA is a request for the expansion of a now Non-conforming Use. Mr. Martin stated that he likes the fact that the trailers would be covered and noted that the Jessica Law is very strict and that it is a good gesture to protect the drivers. Mr. Martin added that criteria 1-4 have been satisfied and that the hardship criteria is as well because the Town caused the hardship when it changed Zones.

Mr. Nicolas made the motion to grant the Variance with two (2) stipulations: (1) that the canvas/vinyl tarp roof material be earth tone color, not white, and be extended to cover the outside of the storage container anchors; and (2) that the ZBA input/comments be forwarded to the Planning Board. Mr. Dearborn seconded the motion. Roll call vote was 5:0. Variance granted with two (2) stipulations. The 30-day appeal period was noted.

Board recessed at 8:22 PM and resumed at 8:33 PM.

IV. REQUEST FOR REHEARING: Case 168-020 (02-24-22): Robert M. Shepard, Attorney of Smith-Weiss Shepard Kanakis & Spony, P.C., 47 Factory St., Nashua, NH representing Paul & Sandra O'Sullivan, 8 Washington Drive, Hudson, NH requests a rehearing of a request for a Variance which was reheard and denied on 02/24/22 to build a 9 ft. x 20 ft. covered porch on the front of an existing non-conforming structure (house), which encroaches the front yard setback an additional 9.3 feet, leaving 14.8 feet where 30 feet is required.

Mr. Buttrick read the request into the record, noted that it was hand-delivered and received 3/18/2022 after the Meeting Packets were mailed but within the 30-day Appeal Period, that a copy of Atty. Shepard's letter was placed in the Supplemental Folder, and that, at the last meeting questions were raised regarding the Rehearing Decision Worksheet and it has been revamped and also placed in the Supplemental Meeting Folder.

Mr. Dearborn stated that Atty. Shepard is his family's attorney and asked if that was grounds for recusal. Mr. Daddario asked if that relationship would bias him in any way and Mr. Dearborn stated that it does not. No one asked for Mr. Dearborn's recusal. It was noted that Mr. Martin voted on the Case that was denied. Mr. Daddario appointed Mr. Martin as a voting Member on the Rehearing Request and unseated Mr. Thompson.

Mr. Pacocha stated that the Board has already heard the Case on 1/27/2022, held a Rehearing on the Case on 2/24/2022 and asked why it is back before the Board and has not gone to Court? Mr. Buttrick stated that any and all ZBA decisions can be appealed within thirty (30) days, and re-asked as well, and that statutorily if a rehearing is denied, then the next step is to Court. Board reviewed RSA 677:2 and RSA 677:3.II.

Mr. Dearborn stated that there was no new evidence provided in Atty. Shepard's letter to warrant a rehearing. Mr. Daddario agreed that, even though the letter is well written, there is no new evidence presented and stated that there is also no error and no procedural error identified and there appears to be a mischaracterization of the decision statements.

Board discussion ensued. Mr. Nicolas stated that the hardship criteria is not satisfied. Mr. Daddario stated that reasonable use of the property is part of the hardship criteria as is the nature of the property and he has had heard nothing on how this Case meets hardship. Mr. Dearborn stated that a nine foot (9') wide front porch is excessive for access to the home, that six feet (6') might be better, and the possibility exists that a nine foot wide porch could be closed up and become another room to the house. Mr. Daddario concurred and added that all the other homes in the area with front porches do not encroach the front setback.

Motion made by Mr. Nicolas and seconded by Mr. Martin to decline the request for a second Rehearing based on the fact that there has been no new evidence presented nor procedural error identified and neither did the ZBA make an error in law or was unlawful or unreasonable in making their original decision and no good reason stated in the applicant's motion as the reasons in the request had been addressed at the two (2) hearings held. Roll call vote was 5:0. Request for second Rehearing denied.

Board took a five minute recess at 8:55 PM. Board reconvened at 9:00 PM and Mr. Daddario noted that Mr. Thompson was back as the fifth voting Member.

UPCOMING REQUEST FOR REHEARING: Email request dated 3/24/2022 received from Atty. Patricia Panciocco for a Rehearing of Case 166-031 for Variance denied to create new lot from 8 Lindsay Street. Request placed in Supplemental Meeting Folder along with the Decision Sheets from the 2/24/2022 denial.

V. REVIEW OF MINUTES: 02/24/22 edited Minutes

Mr. Buttrick referenced the Rehearing letter received from Atty. Panciocco stating that the Minutes, although not intended to be verbatim, was missing information. Mr. Nicolas stated that the video of the meeting is available if anyone has any questions and Mr. Buttrick agreed and added that the recording, however, does not become part of the certified record. Ms. Knee attested that the recording of the meeting was reviewed before the draft Minutes were issued and added that the Minutes generally do not contain duplicate statements. Mr. Daddario asked the Members if anyone found anything missing from the Minutes. No one answered.

Motion by Mr. Nicolas to adopt the 2/24/2022 Minutes as edited, was seconded by Mr. Dearborn and unanimously voted.

VI. OTHER:

1. Continued discussion of proposed ZBA Bylaws amendments: alternate status, recusals and Clerk position/duties, etc.

Board reviewed the draft changes made in track-change mode and discussed. Recap of the proposed changes and discussion points included:

143-5.C – Clerk – removed “read cases into the record”. Discussion points included that a Clerk should be appointed for a full year, that rotating Clerks by meeting will not yield consistent results, that there is a conflict when the Clerk is appointed to vote so an Alternate Clerk could be identified and that it should be specified that the Clerk restate the motion prior to a vote being taken

143-5.2.C – consensus reached to keep statement

143-7.E(3) – recusal – eliminate “as he/she so chooses” and keep “shall” to step away from the table

143-7.F(4) and (7) – the Chairman assigns Alternate to vote and the Zoning Administrator shall read the Cases into the record

143-9.D – Decision Process – Vertical (by Member) versus Horizontal (by Category) – Mr. Buttrick cited an example of the difference and noted that the Board adopted the Vertical approach when Mr. Brackett was Chairman

Attachment A – change appeal to a 30 day time period, not 35

Appendix B – discussion arose on “abstaining” and several voiced sentiment that no Member should abstain on a Case, on Minutes, okay

Discussion to continue.

Motion made by Mr. Pacocha, seconded by Mr. Nicolas and unanimously voted to adjourn the meeting. The 3/24/2022 ZBA meeting adjourned at 10:05 PM

Respectfully submitted,

Gary M. Daddario, Chairman