



TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Kara Roy, Selectmen Liaison

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MEETING MINUTES – September 22, 2022 – approved

The Hudson Zoning Board of Adjustment met on Thursday, September 22, 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.

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

Acting Chairman Jim Pacocha called the meeting to order at 7:00 PM and invited everyone to stand for the Pledge of Allegiance.

Acting Clerk Brian Etienne read the Preamble (Exhibit A in the Bylaws) into the record describing the procedure for the meeting and took attendance.

Members present were Brian Etienne (Regular), Tim Lanphear (Alternate), Jim Pacocha (Regular/Vice Chair), Dean Sakati (Alternate) and Edward Thompson (Alternate). Also present were Bruce Buttrick, Zoning Administrator, Louise Knee, Recorder (remote) and Kara Roy, Selectman Liaison. Excused were Gary Daddario (Regular/Chair), Normand Martin (Alternate/Clerk), Marcus Nicolas (Regular). For the record, all Members present voted.

Mr. Buttrick stated that a request has been received to hear the third Case (#173-029 a-c) first. Mr. Etienne made the motion to take the Agenda out-of-order and address the third Case first. Mr. Lanphear seconded the motion. No discussion. Vote was unanimous.

III. PUBLIC HEARING OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

3 Case 173-029 a-c (09-22-22): Meghan Lerman, Manager of Burr Signs, 2 Karen Dr., Ste. 4, Westbrook, ME requests three (3) Variances for **56 Derry St., Hudson, NH** [Map 173, Lot 029-000; Zoned Business (B)] as follows:

- a. To locate a proposed free-standing Pylon sign (reference #1), within the required front setback of 25 ft. leaving 12.5 ft. of setback. [HZO Article XII, Signs; §334-60.C, General requirements]
- b. To locate one (1) additional, 22.25 sq. ft. wall sign on the building south side (reference# 2), in addition to the permitted wall sign on the east side

of the building. [HZO Article XII, Signs; §334-63, Business and industrial building signs]

- c. To locate two (2) directional signs (reference #4 and #5), within the required front setback of 25 ft. leaving 12.5 ft. of setback. [HZO Article XII, Signs; §334-60.C, General requirements and §334-58 B(3), Permit required; exemptions]

Mr. Buttrick read all three (3) Variances into the record and referenced his Staff Report initialed 9/13/2022 noting that the Planning Board approved the Site Plan 9/8/2022 and that both the Town Planner and Town Engineer have submitted their comments. Mr. Pacocha asked if the Applicant should present a global presentation and then the Board could apply individual motions per sign or if each Variance should be presented individually. The general consensus was to address each individually.

- a. To locate a proposed free-standing Pylon sign (reference #1), within the required front setback of 25 ft. leaving 12.5 ft. of setback. [HZO Article XII, Signs; §334-60.C, General requirements]

Drew Serbin, President of Burr Signs, introduced himself, noted that his Manager, Meghan Lerman, has been directly involved with this project and working with Bruce Buttrick, who has been very helpful, noted that they have received Site Plan Review (SPR) approval from the Planning Board with the location of the Pylon sign on the final plan. The site is a stand-alone drive-thru location. The Pylon pole stands thirteen feet (13') tall with a width of eight inches (8") and the Aroma Joe's drive-thru sign located eight inches (8") below the top of the pole with dimensions of seven feet six inches wide by three feet in height (7'6" x 3') and offset by one foot six inches (1' 6") towards the road. The Pylon is placed in the culvert, ahead of the drain line and addresses the safety issue by not being in the line of sight for vehicles exiting the site.

Mr. Serbin addressed the criteria that must be met in order to grant a Variance. The information shared included:

- (1) *not contrary to public interest*
 - The requested change does not affect the essential character of the neighborhood and addresses issues related to such a small site.
- (2) *will observe the spirit of the Ordinance*
 - The proposed use will observe the ordinance because the property owner is simply looking for minor relief due to the setback challenges and the fact that the store is a drive thru location only
- (3) *substantial justice done*
 - Substantial justice would be done to the property owner because the movement of the pylon removes it from being in the traffic pattern
- (4) *not diminish surrounding property values*
 - The proposed use will not diminish the values of surrounding properties because the requested changes are in keeping with what is reasonable to expect from any business and what signage they typically install roadside
- (5) *hardship*

- Special conditions exist at this property and create a hardship because of the way the ordinance stipulates that the sign be set back 25' from the ROW (Right-of-Way), it would put the pylon in the drive thru exit lane
- The conditions of the property make the proposed use reasonable because both the lot and building size are small making this a drive thru only location
- Request is reasonable for greater vehicular visibility and for dimensional set back due to ordinance obstruction.

Public testimony opened at 7:20 PM. No one addressed the Board

Mr. Etienne inquired why the location was selected and whether there are any utilities below the selected site. Mr. Serbin responded that the location is as per the approved Site Plan and that there are no utilities. Ms. Roy asked if Mr. Serbin has seen the comments/concerns from the Town Engineer and Town Planner and his response to them. Mr. Serbin responded that he has seen them and assured the Board that they consult Dig Safe and confirmed that the Engineer who designed the drainage system would be present when the holes are augured in the location approved by the Planning Board. Mr. Sakati asked if the proposed location of the pylon sign was considered during Planning Board review. Mr. Serbin responded that it is a detention "pond" with no leading pipe and the footing would occur in the pond. Mr. Buttrick asked that if the variance is granted that it have the condition that it be reviewed and approved by the Site Engineer to testify that drainage, as designed, would not be impacted.

Mr. Sakati asked if there would be any impact to traffic. Mr. Serbin stated that only the poles would be visible as the sign is above, approximately a foot below the top of the pole.

Mr. Thompson stated that he went and viewed the site and noted that the right turn exit lane is tight to the pond. Mr. Etienne asked if the sign could be moved to the first designated parking spot to avoid setback encroachment and potential snow plowing issues. Mr. Serbin responded that another location could be okay and he could check with the owner but would hesitate because the Site Pan has already been approved and, in his experience, an after-the-fact change is not favorable. Mr. Buttrick noted that the amount of parking spaces is specified based on calculations from the square footage on the Site Plan as #12 in the Notes and Note #18 states that it is unlawful to change convert or alter without PB approval. Mr. Lanphear questioned other possible locations.

Mr. Thompson inquired about the location of the walk-up window and seating. Mr. Etienne noted that there is significant walking traffic on Derry Street. The walk-up window was identified on the plan as well as the outdoor seating area. It was noted that when parked, a customer would have to traverse two (2) lanes of exiting vehicles. Mr. Thompson stated that the left exit turn lane could experience a long queue and questioned if sight would be impacted with the pylon sign to which Mr. Serbin responded that it would not interfere as the pole would be behind the exiting vehicle.

Mr. Etienne made a motion to grant the waiver with the stipulation that the Civil (site) Engineer of Record review, approve and observe the installation of the pylon sign so that it does not interfere with the drainage. Mr. Thompson seconded the motion. Roll

Call vote was 5:0. Variance granted with stipulation. Mr. Etienne noted that 30-day Appeal period.

- b. To locate one (1) additional, 22.25 sq. ft. wall sign on the building south side (reference# 2), in addition to the permitted wall sign on the east side of the building. [HZO Article XII, Signs; §334-63, Business and industrial building signs]

Mr. Buttrick reread the Case into the record, referenced his Staff Report initialed 9/13/2022 and noted that neither the Town Engineer nor the Town Planner provided any comment.

Mr. Serbin stated that the front of the building faces south onto Derry Street and a sign can be when traveling south but not when traveling north so they are requesting another sign for/on the south side of the building. The dimension of the proposed sign is 21" x 96" with the modified apostrophe extending a bit higher, by approximately 10", for a total of 20.25 SF.

Mr. Serbin addressed the criteria that must be met in order to grant a Variance. The information shared included:

(1) *not contrary to public interest*

- The requested change does not affect the essential character of the neighborhood and addresses issues related to such a small site and addressing the need for better visibility.

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

- The proposed use will observe the ordinance because the property owner is simply looking for minor relief due to the layout.
- The addition of the south facing sign will help combat how the building had to be placed on the property

(3) *substantial justice done*

- Substantial justice would be done to the property owner because the second sign will allow for visibility for northbound traffic on Derry Street

(4) *not diminish surrounding property values*

- The proposed use will not diminish the values of surrounding properties because the requested changes are in keeping with what is reasonable to expect from a coffee shop
- Many other coffee/fast food establishments have the same amount of wall signs as that being proposed

(5) *hardship*

- Special conditions exist at this property and create a hardship because of the size of the property and the nature of the location only having a drive thru makes it critical to attract vehicular traffic from both directions
- The conditions of the property make the proposed use reasonable because it is within expectation that a business of this nature have more than one sign as many surrounding establishments have.

Public testimony opened at 7:53 PM. No one addressed the Board.

Mr. Etienne asked and received confirmation that the pylon sign would be double sided and illuminated. Mr. Thompson questioned how this additional sign was not discussed with the Planning Board during SPR review. Mr. Sakati expressed concern with setting a precedent if Variance granted. Mr. Etienne stated that the Board has faced this type of situation before and have not granted the variance with one exception and that was passed because of the construction of the building obscuring the view-shed. Mr. Lanphear asked and received confirmation that two (2) thru windows are proposed, one as a drive thru and one as a walk thru.

Mr. Etienne made the motion to not grant the Variance based on not satisfying the criteria, that historically a third (3rd) is not allowed and the site has a dual sided pylon sign seen driving up or down Derry Street. Mr. Lanphear seconded the motion for the same reasons and noted that currently the adjacent site is not developed, but one it is the sign would no longer be visible. Roll call vote was 4:1 not to grant the Variance. Mr. Thomson voted to grant the Variance. Variance not granted. The 30-day Appeal period was noted.

- c. To locate two (2) directional signs (reference #4 and #5), within the required front setback of 25 ft. leaving 12.5 ft. of setback. [HZO Article XII, Signs; §334-60.C, General requirements and §334-58 B(3), Permit required; exemptions]

Mr. Buttrick reread the Case into the record, referenced his Staff Report initialed 9/13/2022 and noted that both the Town Engineer and the Town Planner provided comment and concern for sight distance for exiting vehicles.

Mr. Buttrick's Zoning Determination dated 6/10/2022 identified the applicable Zoning Ordinance Articles that limit directional signs to be not greater than three square feet (3 SF) and not located greater than fifty percent (50%) into the setback.

Mr. Serbin stated that the original enter/exit sign design had the branding and was sized at 18" in height and 36" in length but that exceeded to allowed square footage, so the branding was eliminated and the dimension of the signs being proposed is 12" high by 36" length and would be aligned to the pylon sign. The proposed signs would be 48" above the ground, could possibly be reduced to 40" or 36" but it does need to be kept above the snow line.

Mr. Serbin addressed the criteria that must be met in order to grant a Variance. The information shared included:

- (1) *not contrary to public interest*
 - The requested change does not affect the essential character of the neighborhood and addresses issues related to such a small site and flow of traffic.
- (2) *will observe the spirit of the Ordinance*
 - The proposed use will observe the ordinance because the property owner is simply looking for minor relief due to the setback challenges and the fact that the store is a drive thru only location.
- (3) *substantial justice done*

- Substantial justice would be done to the property owner because directional signs will provide traffic safety way finding.
- (4) *not diminish surrounding property values*
- The proposed use will not diminish the values of surrounding properties because the requested changes are in keeping with what is reasonable to expect from any drive thru location.
- (5) *hardship*
- Special conditions exist at this property and create a hardship because of the size of the property and the nature of the location only having a drive thru.
 - The conditions of the property make the proposed use reasonable because with a constant flow of traffic in and out of this location, it is more safety based than aesthetics.

Mr. Buttrick referred to the Town comments received, specifically the Town Planner's comment that standard eye sight in a passenger car is 3'6" from the ground level and the proposed sign face spans 3' to 4' vertically from the ground level and the Town Engineer's request that the Applicant shall provide plan and profile for sight distance to clearly show it is not compromised. A GIS street view was posted. Mr. Serbin stated that a condition of approval could be that the top of the sign cannot be higher than 40".

Public testimony opened at 8:14 PM. No one addressed the Board.

Mr. Thompson asked at what point does the Highway Safety committee get involved with regard to the line of sight safety element, stated that the sign being proposed shows the 48" at top of the sign and with 12" for the wording leaves 36" for visibility (which could be reduced with snow) and noted that there is also a guardrail to keep in mind. Mr. Pacocha stated that a driver could see over the sign. Mr. Etienne stated that a low lying car could not and noted that directional signs are not required at all, that businesses in New England usually have their paved areas plowed and sanded before their business day begins and that if the pavement directional in/out arrows would be visible. Mr. Pacocha added that a second pavement arrow to the right would be better for traffic flow into the site and asked if a divider is proposed between the in/out lanes. No divider is proposed. Other possible locations were considered and dismissed.

Motion made by Mr. Lanphear to deny the Variance as it does not satisfy the hardship criteria. Mr. Etienne seconded the motion for the same reason stating that it excessive. Mr. Thompson stated that if the Variance is denied, then there would be no vertical directional signage on site. Roll call vote was 5:0 not to grant. Per Decision Worksheet, only Criteria 4, proposed use will not diminish values of surrounding properties, received majority vote as having been satisfied. Variance denied. The 30-day Appeal period was noted

1. **Case 242-064 (09-22-22):** Shawn & Brianna Leite, **2 Somerset Dr., Hudson, NH** requests a Variance to build a proposed 8 ft. x 36 ft. farmers porch that will encroach the front yard setback 4.9 feet leaving 25.1 feet where 30 feet is required. [Map 242, Lot 064-000; Zoned Residential-Two (R-2); HZO Article VII,

Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements]

Mr. Buttrick read the Case into the record, referenced his Staff Report initialed 9/13/2022 noting that it is a corner lot of record, that there were no in-house review comments/concerns received and that an Abutter email was placed in the Supplemental Meeting folder.

Shawn and Brianna Leite introduced themselves and stated that they would like to construct a farmer's porch to the front of their home. Ms. Leite addressed the Variance criteria and the information shared included:

(1) *not contrary to public interest*

- The requested variance will not be contrary to the public interest because it will add value to the home and add to the aesthetics of the neighborhood which in turn will increase the value of the homes in the neighborhood

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

- The proposed farmers porch will observe the ordinance because it will be an open concept single level construction that will not impede on any neighbor's view
- The farmers porch will increase the value of the home without affecting the health, safety or welfare of the Town.
- The farmers porch will not affect parking or traffic flow
- The farmer's porch will allow ability to connect with community on a regular basis

(3) *substantial justice done*

- The proposed farmers porch will add value to the home and improve the aesthetics of the neighborhood
- Substantial justice would be done to the property owner without any harm to the general public.

(4) *not diminish surrounding property values*

- The proposed farmers porch will not diminish the value of the surrounding properties, in fact it would add value to the home and neighborhood
- There are other homes in the neighborhood that have similar farmers porches
- There are other homes with farmers porches within the community that are built within the 30' setback
- This farmers porch will allow the occupants of the property to enjoy more of their property as well as be more connected to the community

(5) *hardship*

- The enforcement of the Ordinance would not be "fair and reasonable"
- The proposed farmers porch will sit closer to the house than the existing walkway
- The farmers porch will improve the lives of those living within the home as well as improve the aesthetics and sense of community within the neighborhood

- The proposed farmers porch will not affect the public health, safety or welfare in any way

Public testimony opened at 8:39 PM. No one addressed the Board. Mr. Etienne read into the record the email from Thomas and Paula DeAngelis dated 9/19/22 stating that they have no objections.

Mr. Etienne stated that he drove through the neighborhood and noticed many homes had farmers porches and this request would be in character of the neighborhood.

Mr. Etienne made the motion to grant the variance as requested noting that the Variance criteria were satisfied. Mr. Sakati seconded the motion for the same reasons. Roll call vote was 5:0. Variance granted. The 30-day appeal period was noted.

2. **Case 182-169 (09-22-22):** Nick Couture of Crossroads Contracting, 15 Londonderry Rd., #6, Londonderry, NH requests a Variance for **3 Oakwood St., Hudson, NH** to demolish an existing garage and shed and build a new proposed 24 ft. x 26 ft. garage that will encroach the side yard setback 7 feet leaving 8 feet where 15 feet is required. [Map 182, Lot 169-000; Zoned Town Residence (TR); HZO Article VII, Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements]

Mr. Buttrick read the Case into the record and referenced his Staff Report initialed 9/13/2022 and noted that the lot is an existing non-conforming lot due to insufficient frontage and that the Town Planner noted that the existing setback encroachment would be reduced with the proposed plan.

Nick Couture of Crossroads Contracting introduced himself as representing the Property Owners, Peter and Amanda Sanborn, stated that they were present and available to answer questions and noted that the demolition of the existing shed at the property line allows for the gain of a setback by eight feet (8').

Mr. Couture addressed the criteria that must be met in order to grant a Variance. The information shared included:

- (1) *not contrary to public interest*
 - Granting the request will allow owner to replace a worn down garage with a new one more in character with the neighborhood
 - Granting will not threaten public health, safety or welfare
 - Granting will reduce an existing nonconformity and significantly improve its character
- (2) *will observe the spirit of the Ordinance*
 - Spirit of the Ordinance is observed since the request does not include rebuilding the attached shed which will reduce the encroachment by 8'
- (3) *substantial justice done*

- Granting this variance would allow for improved use of property, increase the home's value and improve curb appeal
 - It will also be consistent with surrounding properties while reducing an existing encroachment.
- (4) *not diminish surrounding property values*
- The existing garage is old and run down with poor curb appeal
 - Proposed garage will improve curb appeal and the property value and thus improve the property values of surrounding homes
- (5) *hardship*
- The existing lot configuration makes it unique
 - The lot is a long rectangle with a total of 15,644 SF (square feet), which is 50% of the required 10,000 SF
 - The TR Zone has the smallest frontage requirement at 90 linear feet. This property has only 70 linear feet which is about 25% less than required
 - These factors make the side setback requirement significantly more difficult to maintain
 - Having a garage next to the house is typical and makes this a reasonable request, especially since the requested garage is to replace an existing run down garage and will reduce the existing encroachment more than 50%

Public testimony opened at 8:51 PM. Peter Sanborn, 3 Oakwood Street, stated that he is the Property Owner and supports the variance request. Mr. Sakati read the 9/19/22 letter received from Gregory Putnam, 7 Oakwood Street, into the record that supports the project and requested that the water run off issue that currently exists between their two properties be addressed. Public testimony closed at 8:55 PM.

Mr. Etienne asked if gutters and runoff were considered in the design. Mr. Couture stated that they were not considered. Discussion arose that considered option to address the drainage concern and one option for water runoff included gutters to direct water into a drywell as a method to mitigate both the water runoff and snow melt.

Mr. Etienne inquired about the setback requirement for driveways. Mr. Buttrick responded that driveway permits are handled by the Town's Civil Engineer and are also in the Town Code, Section 193-10 and that any deviation from the Code would require a waiver from Planning Board. Ms. Roy noted that the property was purchased in 2021. Mr. Buttrick stated that in 2017, based on review of GIS aerial, the driveway was in front of the house.

Mr. Etienne made a motion to grant the waiver with a stipulation that a gutter system and accompanying drywell drainage system shall be provided. Mr. Sakati seconded the motion noting that all five (5) criteria were satisfied and agreed with the stipulation that addresses the needed water mitigation. Roll call vote was 5:0. Variance granted with stipulation.

IV. REQUEST FOR REHEARING:

No requests were presented for Board consideration.

V. REVIEW OF MINUTES: 08/25/22 edited Draft Minutes

Mr. Etienne apologized to the Board, stated that he has not yet reviewed the Minutes and made the motion to defer accepting them until the next meeting. Mr. Sakati seconded the motion stating that he has a few edits to add. Vote was 5:0. Motion passed.

VI. OTHER:

Mr. Buttrick noted the following three (3) upcoming events and encouraged everyone to attend:

- 1) ZBA **in-house** Training/Workshop- *ZBA Decision Making Process* on Oct 13, 2022 @ 7:00 PM
- 2) Saturday Oct 15, 2022 NHMA “Virtual” Training seminar
- 3) Superior Court Hearing 12/09/22 – 8 Washington Dr. appeal- Attendee(s) invite.

Motion made by Mr. Etienne, seconded by Mr. Sakati and unanimously voted to adjourn the meeting. The 9/22/2022 ZBA Meeting adjourned at 9:06 PM

Respectfully submitted,

Gary M. Daddario, ZBA Chairman