



TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Kara Roy, Selectmen Liaison

12 School Street • Hudson, New Hampshire 03051 • Tel: 603-886-6008 • Fax: 603-594-1142

MEETING MINUTES – January 20, 2022 – approved

The Hudson Zoning Board of Adjustment met on Thursday, January 20, 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.

6:30 PM

I. CONSULTATION WITH TOWN COUNSEL (non-public) per RSA 91-A:2 I (b)

Consultation held – no decisions and no motions made.

7:00 PM

II. CALL TO ORDER

III. PLEDGE OF ALLEGIANCE

Chairman Gary Daddario called the meeting to order at 7:03 PM, invited everyone to stand for the Pledge of Allegiance and assigned Normand Martin to Clerk.

Clerk Normand Martin took attendance. Members present were Gary Daddario (Regular/Chair), Normand Martin (Alternate/Clerk), 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 Brian Etienne (Regular) and Marcus Nicolas (Regular). Mr. Daddario appointed the following Alternates to Vote: Mr. Martin for vacant Regular Member seat, Mr. Thompson for Brian Etienne and Mr. Sakati for Mr. Nicolas. Mr. Daddario stated that there would be five (5) Voting Members for this meeting. It was also noted that Town Counsel David Lefevre was present and would be allowed to speak and answer questions.

IV. PUBLIC HEARING OF SCHEDULED APPLICATIONS BEFORE THE BOARD

Case 147-016 (01-20-22): Derry & Webster LLC, c/o Vatche Manoukian, Manager, 253 Main St., Nashua, NH requests the following for 185 Webster St., Hudson, NH [Map 147, Lot 016-000, Zoned Residential-Two (R-2)]:

Mr. Buttrick read each of the six (6) requests (a-f) into the record. Mr. Buttrick stated that this is unique situation in that the Applicant has chosen to parcel out the buildings on one lot and requested a variance specific to each building with the exception of the building at 181 Webster Street which is not before the Board tonight.

Mr. Daddario stated that the Board would proceed in typical fashion and outlined the process as depicted in the Preamble, Exhibit A in the Board's Bylaws, and that each

Not Official until reviewed, approved and signed.

Approved 02/24/2022 as edited.

variance request would be handled independently in the order of the Agenda. Mr. Daddario asked that anyone addressing the Board to utilize the speakers on the Applicant's table and not the lectern.

Attorney Gerald Prunier of Prunier & Prolman, PA, 20 Trafalgar Square, Suite 100, Nashua, NH 03063, introduced himself as representing the Applicant, Vatche Manoukian for the Property Owner, Derry & Webster, LLC, and noted that Vatche Manoukian was present and available to answer questions, and distributed the following additional material to the Board: (1) letter undated from Nick Ackerman, Real Estate Advisor of NAI Norwood Group, 116 South River Road, Bedford, NH 03110, attesting that site has no adverse impact on surrounding property values; (2) Site Plan of the site identifying the buildings and outside storage of various landscape materials; (3) letter dated 6/23/2020 to Vatche Manoukian from Samuel J. Tamposi, Jr., President of Second Generation Properties, LP, attesting that they acquired this site on 4/22/1994 and sold it to Derry & Webster, LLC, on 2/7/2003 and that the property had the same uses as it does now; (4) email dated 8/19/2020 from Leland Makara of 187 Webster Street stating that he has been there since October 1997 and that the activities on the site have not changed; and (5) letter 11/1/2019 to Property Owner from Lee Makara of 3 Holly Lane, Hudson, NH stated that he has been on the site for twenty two (22) years, that he stores only dry goods, that there has always been a store on site, that all vehicles are operational and registered and that he has been asked to clean up the outside area of the building.

Atty. Prunier identified the location and addresses of the site, 181-189 Webster Street, noted that to the 'old timers' in Hudson, this property was known as the Garrison Farm that was run for many years by George Colby and his family until the late 1980's or early 1990's when the farm went out of business and added that the farm existed before the Town was a Town and had Zoning. Atty. Prunier stated that, except for the farmhouse, the majority of the buildings were constructed in the mid to late 1970's for agricultural and warehousing purposes, and that the use of the site as it is now has existed since the farm went out of business. The buildings still exist and their use is still for storage and warehousing but warehousing is only allowed in the Industrial Zone.

- a. A Variance for a Greenhouse Building addressed as **183 Webster Street**—for a proposed use to warehouse material and equipment, with accessory use of garage or parking of two or more light commercial vehicles and heavy commercial vehicles and equipment where these uses are not permitted as Principal nor Accessory Uses in the R-2 Zone. [HZO Article V, Permitted Uses; §334-21, Table of Permitted Principal Uses, Industrial (E-8) and §334-22, Table of Permitted Accessory Uses.]

Atty. Prunier stated that the use has changed. The building is no longer being used as a greenhouse, but it still exists and is currently being used to warehouse material and equipment and the variance also seeks to include accessory uses of garage, parking of two or more light commercial vehicles and heavy commercial vehicles and equipment. Atty. Prunier stated that when the building was built it was permitted and was used as a greenhouse as well as for warehousing but when the farm terminated, it became a non-conforming use.

Atty. Prunier addressed the criteria for the granting of a variance. In brief, the information shared included:

(1) *not contrary to public interest*

- When building was constructed it was utilized for storage as part of the agricultural use of the property by Garrison Farm
- The requested variance would allow the applicant to continue the use of the building for warehousing, just not agricultural warehousing
- Use will not violate the basic zoning objectives because the building was constructed to be a warehouse as well as a greenhouse
- There will be no violation of the essential character of the neighborhood considering that the building has existed since the 1980's

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

- When constructed, greenhouse and warehouse were permitted for agricultural use
- Intent is to continue to use the building as a warehouse, just not necessarily for agriculture

(3) *substantial justice done*

- The proposed use does not adversely impact or harm the abutters or any public rights
- The public will not realize any appreciable gain from denying the variance

(4) *not diminish surrounding property values*

- The buildings will not be altered
- The building has been present for 25 – 30 years
- See Real Estate letter from Norwood Group

(5) *hardship*

- Because the warehouse has existed for a long time (25-30 years), there is a special circumstance that exists
- The building was unique and permitted when constructed
- The building can continue to be used but for different products
- Continued use would allow the applicant reasonable use of its land

Mr. Buttrick stated that warehousing and equipment need to be better defined, especially considering Code Enforcement, noted that garaging or parking of one (1) light commercial vehicle is permitted in the R-2 District and has concerns regarding heavy equipment that is expressly prohibited on the Zoning Ordinance. Atty. Prunier stated that there is no definition of/for warehousing in the Ordinance and added that a condition could be placed on an approval to restrict warehousing to what it is being used for as of today.

Mr. Martin asked and received confirmation from Atty. Prunier that the variance being requested is to allow warehousing of material and equipment within the greenhouse structure and to allow Permitted Accessory uses of garage or parking of two or more light commercial vehicles and heavy commercial vehicles and equipment and added that it is a good use of the building noting that it has been used as a warehouse for 25-30 years and there is no nursery use without the farm.

Public testimony opened at 7:32 PM

Town Counsel Dave Lefevre asked and received confirmation from Atty. Prunier that the building being discussed is the one labeled “Landscape Storage” on the plan and that the structure actually exists. Atty. Lefevre asked if the Regis landscaping use that is already on site. Atty. Prunier stated that the variance seeks to allow warehousing and space would be available to “Joe Public”.

Mr. Buttrick stated that the possibility would then exist to become multi-units within the structure available to “Joe Public” or sublet to others. Vatche Manoukian, Manager for Property Owner Derry & Webster LLC, stated that the building currently has one (1) tenant, for the past twenty-one (21) years, that each unit would have one tenant as multiple tenants within one unit would not be allowed which in turn minimizes the amount of traffic to the site and did not discount the possibility that it could be subdivided into several units.

Public testimony closed at 7:39 PM.

Mr. Buttrick asked the Board to consider a Site Walk.

Mr. Pacocha made the motion to continue the hearing and to schedule a Site Walk. Mr. Thompson seconded the motion. Discussion arose on possible dates for both the continuation and the Site Walk. Dates set. Continuation set to date specific for Thursday 4/14/2022. Site Walk scheduled for Saturday, 4/9/2022, at 9:00 AM. Roll Call vote was 5:0. Case 147-016(a) continued to Thursday 4/14/2022 with Site Walk scheduled for Saturday 4/9/2022 at 9:00 AM.

- b. A Variance for a Residential Building addressed as **185 Webster Street** to allow a third dwelling unit, where three-family (multi-family) dwellings are not permitted in the R-2 Zone. [HZO Article V, Permitted Uses; §334-21, Table of Permitted Principal Uses, Residential (A-3).]

Atty. Prunier stated that this building is the original farmhouse and the actual date of construction could not be found in the Town records. Atty. Prunier stated that it appears that the third unit came about when the farm use was discontinued in the late 1970’s and has existed for 25-30 more years. Mr. Daddario stated that according to the paperwork he has reviewed, it appears the third unit has existed since 1976. Atty. Prunier stated that the current Property Owner has owned the site for twenty-one (21) years and referenced the letter in file from Mr. Tamposi who owned the site for the decade prior and attested to the fact that the third unit existed when he bought the property.

Atty. Prunier addressed the criteria for the granting of a Variance. The information shared included:

- (1) *not contrary to public interest*
 - There has been three (3) units since at least 1976
 - There has been no notices that the third unit threatened public health, safety or welfare during its use
 - A third apartment is a minor use in a multi-family area
 - The Zoning Ordinance allows for two-family homes so the intent of the Ordinance is to allow multi-family use

Not Official until reviewed, approved and signed.

Approved 02/24/2022 as edited.

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

- The existence of the third apartment is not out of character with the neighborhood and does not threaten public health
- It has been used as a rental unit for over 24 years and has not caused a disturbance in the area
- It is a benefit to the general public in allowing for affordable housing

(3) *substantial justice done*

- The benefit of allowing a third unit in the applicant's building is not outweighed by harm to the general public
- The public will not realize any appreciable gain from denying the variance

(4) *not diminish surrounding property values*

- No exterior changes are being proposed to the building
- See Real Estate letter The buildings will not be altered
- The building has been present for 25 – 30 years
- See Real Estate letter from Norwood Group from Nick Ackerman, Real Estate Advisor of NAI Norwood Group, 116 South River Road, Bedford, NH 03110, attesting that site has no adverse impact on surrounding property values

(5) *hardship*

- The State of NH has clearly confirmed the State's respect of individuals to make reasonable of their land
- The NH Courts have recognized that sometimes properties are uniquely situated or especially appropriate for a particular use
- In special cases, the courts have declared a variance appropriate
- In this Case, there has been a third unit in the building for over 24 years
- The use has been reasonable

Mr. Thompson referenced the floor plans of each apartment and asked if each meets Fire Code, egress and life safety. Atty. Prunier could not confirm but added that he does not believe the Town performed any inspection when it was created. Ms. Roy asked Mr. Buttrick if any permits were issued by the Town for the third unit and Mr. Buttrick responded that there was Code Enforcement action of an illegal unit approximately ten to twelve years ago and the Fire Department stated that a fire alarm and sprinkler system were required for a third living unit

Public testimony opened at 7:59 PM.

Town Counsel, David Lefevre, asked as a point of clarification, there was litigation approximately 1990, that within the residence there was an office, a space being utilized for commercial purposes, and the disposition of that case involved the discontinuance of that commercial use and that the building could only be used for residential purposes as permitted by the Zoning Ordinance. Atty. Lefevre stated that it is reasonable to speculate that the office space was converted to a third living unit, probably the one labeled 185A with 420 SF.

Ms. Roy asked and received the answer from Atty. Prunier that his client bought the property on 2/7/2003 and it had three (3) apartments in the building.

Public testimony closed at 8:04 PM.

Mr. Pacocha made the motion to continue the hearing 4/14/2022 and to schedule a Site Walk for Saturday, 4/9/2022 at 9:00 AM. Mr. Thompson seconded the motion. Roll Call vote was 5:0. Case 147-016(b) continued to Thursday 4/14/2022 with Site Walk scheduled for Saturday 4/9/2022 at 9:00 AM.

- c. A Variance for a Small Garage Building addressed as **187 Webster Street**—for a proposed use to warehouse material and equipment, with accessory use of garage or parking of two or more light commercial vehicles and heavy commercial vehicles and equipment where these uses are not permitted as Principal nor Accessory Uses in the R-2 Zone. [HZO Article V, Permitted Uses; §334-21, Table of Permitted Principal Uses, Industrial (E-8) and §334-22, Table of Permitted Accessory Uses.]

Atty. Prunier stated that this is an existing building and according to the Town's tax record it was built in 1975, possibly with a variance for storage of agricultural products, and since the farm went out of business it has been used for warehousing. The building is on a concrete slab and the variance being requested is to allow uses, same as for the Greenhouse building. Atty. Prunier noted that the responses to the Variance criteria are the same as that for the Greenhouse and added that it would yield light traffic.

Mr. Sakati referenced the plan in the packet, noted that it has three (3) uses/tenants and asked if there was internal physical division (wall) between the units. Mr. Manoukian responded that it is a metal building but does not know what the internal walls are made of and that the square footage is approximately six thousand. Mr. Buttrick asked if there are separate electrical services for each unit and Mr. Manoukian responded that he, as the landlord, pays for all the power for all the storage areas.

An aerial view of the site taken in 2020 was posted and it was noted that it has the appearance of a junkyard surrounding the building and was part of the Code Enforcement action taken. Mr. Buttrick stated that the uses need to be identified and whether outside storage would be included and specified for each unit. Mr. Manoukian responded that the outside surrounding the building has been cleared/cleaned up since the picture was taken, that he does have a Site Plan ready for Planning Board review with no outside storage proposed as it is only a warehouse and there is no reason to have anything for outside storage.

Mr. Buttrick expressed concern for the possibility that an Accessory Use could involve use of the outside area of the building and Mr. Sakati asked if a possible Accessory Use would be to the building or to specific units within the building. Mr. Manoukian referenced the plan, noted that there are six (6) parking spaces, three (3) for two units, and a loading dock for the third unit, and he expects them to be honored and can/will impose fines onto a tenant for any violation. Mr. Manoukian stated that there is really no reason for anyone to park there because the first unit is to a person who runs a business off Route 3-A and uses the unit for carpet storage, the second unit, identified as Equipment Storage, is to a man who stores his cars there and the third unit is maintenance for Regis to store such items as his lawnmowers. Mr. Daddario asked and received confirmation from Mr. Manoukian that the tenants have no rights to use an outdoor space except for the Carpet Storage which has a forklift parked outside.

Not Official until reviewed, approved and signed.

Approved 02/24/2022 as edited.

Mr. Buttrick noted that the plan identifies the middle unit as Equipment Storage but if it is being used for storing vehicles, the plan should be properly labeled as Vehicle or Automotive Storage, both to be an accurate reflection and for any future Code Enforcement.

Ms. Roy questioned the building and Mr. Manoukian responded that it is a metal building on a footing (concrete slab), that it has electricity and possibly heat

Public testimony opened at 8:18 PM. No one addressed the Board.

Mr. Pacocha made the motion to continue the hearing 4/14/2022 and to schedule a Site Walk for Saturday, 4/9/2022 at 9:00 AM. Mr. Sakati seconded the motion. Roll Call vote was 5:0. Case 147-016(b) continued to Thursday 4/14/2022 with Site Walk scheduled for Saturday 4/9/2022 at 9:00 AM.

- d. A Variance for a Large Garage Building addressed as **189 Webster Street**—for a proposed use to warehouse material and equipment, with accessory use of garage or parking of two or more light commercial vehicles and heavy commercial vehicles and equipment where these uses are not permitted as Principal nor Accessory Uses in the R-2 Zone. [HZO Article V, Permitted Uses; §334-21, Table of Permitted Principal Uses, Industrial (E-8) and §334-22, Table of Permitted Accessory Uses.]

Atty. Prunier stated that this is an existing building, built in 1975 when the farm was operating and was legally used as a warehouse for agricultural storage, but since then the farm ceased to exist and the current use of the building needs a variance because warehousing is not allowed in the R-2 Zone. Atty. Prunier noted that the responses to the Variance criteria are the same as that for the Greenhouse (a.) and the Small Garage Building (c.)

Mr. Sakati referenced the plan, noted the four (4) different units within the 8800 SF building, and asked if the painted parking lines exist today and Atty. Prunier responded that there are no parking lines painted today but displayed on the plan to show where parking would/should be restricted to in order to future Code enforcement inspections.

Mr. Sakati asked for specifics as to what is included for storage in each unit. Mr. Manoukian responded with the following information:

- (1) the bay marked "Pool Service/Installation" is a renter since 1980 who stores all his dry good materials needed to install and repair pools – see Gunitite Finish letter by Lee Makara – and he has a few employees and when they come to the site to load material into their trucks, they leave their personal vehicles on site during the work day
- (2) the bay marked "Car Storage" is rented by an electrician who also details cars on the side inside his unit
- (3) the bay marked "Storage" is another individual who also details cars inside his unit
- (4) the bay marked "Truck Storage" also does detailing plus window works for cars but there is currently no truck storage today

Not Official until reviewed, approved and signed.

Approved 02/24/2022 as edited.

Mr. Buttrick stated that there is no identification category for vehicle detailing in the Zoning Ordinance Table of Uses, that it could/would fall under D.10, Motor vehicle light service; motor vehicle general and body repair, and cautioned that under the D.10 category could also include oil changes, tune ups etc. and expressed concern, being in the R-2 Zone, with cars revving their engines etc. Mr. Daddario asked if the category of D.13, Car wash, would be more pertinent. Several comments by Board members that D.13 would provide a less slippery slope.

Mr. Pacocha asked and received confirmation that two units operate a business within the units as well as space for storage.

Mr. Sakati questioned whether buffers should be considered to conceal the commercial aspects from the residential neighbors across the street. Mr. Buttrick stated that the Planning Board usually addresses landscaping during Site Plan Review but there is no reason that a condition specifying a buffer requirement could not be attached to the variance. Mr. Manoukian concurred that a buffer is a good idea and added that he developed the residential houses across the street and none have complained to him regarding the commercial activities on this site.

Mr. Thompson inquired about the traffic pattern, whether vehicles can enter from both sides of the building and Mr. Manoukian responded that doors are only on one side of the building, the side where the parking spaces are indicated and added that the cars to be detailed are picked up so the customer does not come to the site and that the building has three (3) man-doors and one overhead door. An aerial view of the site showed a circular path around the building. Mr. Manoukian stated that the overhead door for the unit labeled "Truck Storage" faces Webster Street and is accessed from Webster Street.

Atty. Lefevre suggested that, between now and the April meeting, the applicant provide a list that identifies who the tenants are specifically for each unit and identify what the Land Use is that they are doing in each unit and a more thorough description of the activities that are undertaken in each unit as well as whether they have employees, customers to the site, etc. Atty. Prunier stated that they would provide such a list and asked that before the list is submitted and distributed to the Board, that he would want to review the Land Use categories associated to specific line items in the Table of Uses with Mr. Buttrick. Mr. Buttrick agreed.

Ms. Roy sought clarification on whether the units marked storage that operate a detailing business within actually do have storage. Atty. Prunier stated that it is both, that the challenge is to correlate the uses to a specific line item in the Table of Uses. Mr. Manoukian stated that Gary, an electrician and a Hudson resident who has been renting that space labeled Car Storage for fifteen (15) years to store his collectible cars and where he details his cars, and one day he asked if he could detail other people's cars and I said sure and had no idea that would violate anything or that he would be before the Board and added that he does not detail everyday, that it is not a detailing business, that Gary also stores his snowmobile there too and why it was classified as storage.

Discussion ensued on what is considered warehouse, storage or detailing business and the importance of specifying and assigning all activities within the storage units to the proper line item(s) on/from the Table of Uses.

Mr. Buttrick asked the Board to consider an 'after the fact' inspections of the structure as there is no history of any Permits – no Building Permit, no Electrical Permit, no Plumbing permit – and life safety issues should also be addressed/inspected to insure everything is up to code. Ms. Roy stated that the same scrutiny is needed for the other structures on site.

Public testimony opened at 8:48 PM. No one addressed the Board.

Motion made by Mr. Pacocha and seconded by Mr. Martin to continue the hearing to the 4/14/2022 meeting and to schedule the Site Walk for Saturday, 4/9/2022 at 9:00 AM. Roll call vote was unanimous at 5:0.

Atty. Prunier stated that the next two (2) applications are dependent on the granting of the variances discussed and asked that they be deferred to the April meeting. Mr. Daddario and Atty. Lefevre agreed that it does make sense to defer the next two (2) applications to the 4/14/2022 meeting

- e. A Variance for the parcel known as **185 Webster Street** (Map-147 Lot-016 Sublot-000) to allow mixed uses on a lot in a Residential-Two (R-2) district where mixed uses are only allowed in Business and Industrial Districts. [HZO Article III, General Regulations; §334-10.A, Mixed or dual use on a lot.]

Motion made by Mr. Martin and seconded by Mr. Sakati to defer hearing on this application (Case 147-016e for a Variance to allow Mixed Uses) to the date specific meeting scheduled for 4/14/2022 meeting. Roll Call vote was 5:0

- f. A Special Exception for the parcel known as **185 Webster Street** (Map-147 Lot-016 Sublot-000)– to allow residential use on a single lot with mixed uses which is only allowed by Special Exception in accordance with the general requirements listed in Article VI, § 334-23. Additionally, the mixed or dual uses shall be compatible. [HZO Article III, General Regulations; §334-10.D, Mixed or dual use on a lot.]

Motion made by Mr. Martin and seconded by Mr. Thompson to defer hearing on this application (Case 147-016f) for a Special Exception to allow a residential use on a mixed-use lot to the date specific meeting scheduled for 4/14/2022 meeting. Roll Call vote was 5:0

Recap: the Site Walk scheduled for Saturday 4/9/2020 at 9:00 AM is public and the deferred hearings are to a date specific meeting scheduled for Thursday, 4/14/2022 at 7:00 PM

Motion made by Mr. Martin, seconded by Mr. Pacocha and unanimously voted to adjourn the meeting. The 1/20/2022 ZBA meeting adjourned at 8:55 PM

Respectfully submitted,

Gary M. Daddario, ZBA Chairman