

TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Kara Roy, Selectmen Liaison

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MEETING MINUTES – April 14, 2022 – approved

The Hudson Zoning Board of Adjustment met on Thursday, April 14, 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

Chairman 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), Brian Etienne (Regular), Normand Martin (Alternate/Clerk) and Jim Pacocha (Regular/Vice Chair). Also present were Bruce Buttrick, Zoning Administrator, Louise Knee, Recorder (remote) and Kara Roy, Selectman Liaison. Excused were Dean Sakati (Alternate) and Edward Thompson (Alternate) and recused was Marcus Nicolas (Regular) as he is an abutter. Mr. Daddario appointed Mr. Martin to vote and noted that there would be five (5) voting Members for this meeting.

Mr. Daddario read the Preamble, Exhibit A in the ByLaws, into the record on the proceedings for the meeting.

Mr. Daddario stated that there was one Applicant on the Agenda with six (6) Applications and directed everyone's attention to Agenda Item e. for a Variance request to allow Mixed Uses.

III. PUBLIC HEARING OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

Case 147-016 (04-14-22) (deferred from 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)]:

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.]

Mr. Buttrick read the Case into the record and referred to his Revised Staff Report signed 4/13/2022 and noted that it included the findings of the task ZBA assigned to

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him at 1/20/2022 meeting to work with the Applicant in identifying the current existing Uses on the site and match them to the Table of Uses, whether Principal Use or Accessory Use, and the observations that resulted from the Site Walk that was held Saturday 4/9/2022.

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. Both were seated at the Applicant's table.

Atty. Prunier stated that his understanding from the last meeting was that item E. and F. would be held in forbearance until the individual Variances were addressed as those determinations would define which specific Uses would be included in the Variance for Mixed Uses.

Mr. Daddario stated that the Variance for Mixed Uses applies to the whole site and the Board has a different perspective because if the Mixed Use Variance is not granted, then the specific Uses requested for each building would be moot. Mr. Daddario stated he agreed that the Special Exception being requested in Item F could be held in abeyance and maybe rendered moot if Mixed Uses get permitted.

Atty. Prunier referred to the meeting held in January where the history of this piece of property was reviewed since the 1970's when it was an operating farm site and how the land and buildings became used after the farm went out of business. The existing buildings had been used for the operation of the farm, whether products the farm generated or equipment and machinery necessary to the operation of the farm. The buildings remained when the farm went out of business and then became used for other products and machinery and equipment. The buildings non-farm use has been occurring for the past twenty-five to thirty (25-30) years.

Atty. Prunier addressed the five (5) criteria necessary to be met for the granting of a Variance. The information shared included:

(1) *not contrary to public interest*

- The property went from an agricultural use to its present use
- The property was in agricultural use for over 75 years
- Zoning has changed
- The buildings remain with various uses – retail, store, warehouse etc.
- The character of the neighborhood has changed, but not this property in the past several years
- The character of the neighborhood will not be changed with continued use of these buildings

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

- The proposed use has been present for years as a dual use under agricultural as well as the Ordinance that existed at that time
- The Ordinance allows for dual use, just not in this Zone; however, the use existed before the present Ordinance

(3) *substantial justice done*

- The property has been in its present state for years

- The owner purchased the property as it currently exists
 - The public has existed with the uses and has not been harmed
 - The owner would be seriously harmed if not able to use the property as it presently exists
 - The public will not realize any appreciable gain from denying the variance
- (4) *not diminish surrounding property values*
- The buildings will not be altered – they will stay as they presently are with no exterior changes, just some clean up and landscaping
 - An opinion of value was submitted that attested that there is no adverse impact to surrounding property values – see Real Estate letter from Norwood Group by Nick Ackerman, Real Estate Advisor of NAI Norwood Group, 116 South River Road, Bedford, NH 03110
- (5) *hardship*
- To not allow the property to have mixed uses would substantially disturb the uses on the property and cause substantial harm to the property owner.
 - The dual uses have existed for a long time – over 20 years – and have not caused any harm to the Town of Hudson
 - 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

Public testimony opened at 7:15 PM. No one addressed the Board.

Mr. Pacocha asked if this Variance was for the entire piece of property and, if so, would that then be approving all the other Variances being sought. Mr. Buttrick stated that this Variance would allow for Mixed Uses on the property but does not specify which Uses and that the individual Variances being sought under Agenda items a-d identify which specific Uses are being sought by specific building. Question arose on the Greenhouse Variance (Agenda item a) for a single greenhouse but at the Site Walk that there was reference made that there could be two (2) green house buildings with the covering/roofing of the open-aired hoop structure. Mr. Buttrick and Atty. Prunier agreed that the second greenhouse could not be addressed at this meeting because it was not “noticed” and Atty. Prunier added that there will be no second greenhouse as his client’s intent is to continue with its demolition.

Mr. Dearborn referred to the Site Walk and stated that he went there with the intent of viewing the warehousing aspect and the only warehousing he saw was one (1) by Carpet Creations that has its retail store on Lowell Road and observed a number of other business being operated on-site and was surprised at the amount of “junk” littered throughout the property – storage of tires, rims, unused/unusable equipment – and the grading coming into the property – with the swimming pool and the deep hole in the pavement between the two main building that were filled with water and was surprised by the lack of maintenance over a number of years. Mr. Dearborn asked to have the Applicant’s thoughts with these concerns.

Vatche Manoukian, 6 Powers Road, Hollis, NH, stated that with regard to the low grade between the two buildings where water accumulates is a concern that the State of NH owns Route 3 and paved the road a few years ago but would not allow them to

connect a pipe to aid with drainage until the pavement had seasoned for a few years, but it has now been about five (5) years and they will again approach the State for permission to cut the road and install a drainage pipe.

Mr. Dearborn asked Mr. Buttrick if there are any wetland violations on the property and added that he had not observed any on the Site Walk. Mr. Buttrick stated that there were some violations in the past that have been rectified, that even though some meet the State criteria, the Town of Hudson has wetland buffers that are not met, and that there is also a man-made wetland that will be addressed at Site Plan with the Planning Board (PB) and that, per Superior Court mediator, the Applicant will first seek specific Variances on the Uses prior to going to the PB. Ms. Roy asked if the needed cleanup of the site was/is part of the Court decision. Mr. Buttrick responded that it is part of the Code Violations cited and added that there has been some cleanup, particularly in the last month, that the landscape business has registered their vehicles, that overall progress has been made but there is still much more that is needed.

Mr. Martin asked if the Regis Landscaping business is part of the Mixed-Use Variance being sought. Mr. Buttrick responded that it is not. Mr. Martin asked why not because the Use is happening and this particular Variance applies to the whole site and it should, in his opinion, be included. Mr. Etienne stated that the landscaping is an Accessory Use to the Nursery. Mr. Buttrick stated that the landscaping business there today is not close to the nursery on site. Atty. Prunier stated that the existing Regis Landscaping business is not part of this Mixed Use Variance application and would remain part of the Code Violations cited and that what is before the Board are the Uses in the four (4) buildings.

Discussion ensued. Concerns were expressed on how to exclude the existing Regis Landscaping business on-site from the Mixed-Use Variance. Mr. Buttrick stated the perspective is to correlate the Uses as identified in the Table of Uses and not by businesses. Board reviewed the other Variances being requested and the description of what is being requested as it relates to the Table of Uses – E.8, D.10 – the distinction between warehousing and garaging. Concerns were expressed on how to grant a Mixed Use Variance to the entire property yet require Regis Landscaping to also require a Variance to exist in the R-2 Zone. Ms. Roy and Mr. Daddario pointed out that landscaping is not a specific Use being requested in the applications before the Board. Mr. Buttrick added that the other Variances before the Board are to specific buildings. Mr. Pacocha asked if Agenda item e is granted whether Board action is needed on the other Variances being requested - Agenda items a-d. Mr. Daddario stated that if the Board is not willing to allow Mixed Uses, then there would be no reason to address the other Agenda Items.

Mr. Etienne made a motion to not grant the Mixed Use Variance. Mr. Dearborn seconded the motion. Mr. Etienne stated as a result of the Site Walk and actually viewing the site, it is his opinion that it is not in the Town's best interest to grant this Variance. Mr. Dearborn stated that there are too many mixed uses on this property, that they have not all been identified, that there are multiple violations on this property that has been going on for years and the current Zoning Laws should be adhered. Mr. Martin stated that he cannot support this motion because the property has been in use for years and years and a developer has built across the street from

this property and there has been no negative impact on those property values, there's been no negative abutter testimony and he remembers from his childhood that there was always some sort of landscape business on site. Mr. Daddario stated that if the variance is not granted to allow Mixed Use, then the residential building could remain but one of the units would need to be removed because a three-family residential building is not permitted in this Zone. Roll call vote was 2:3 with Mr. Daddario, Mr. Pacocha and Mr. Martin opposed. Motion failed.

Mr. Daddario stated that the Variance criteria has been met, that the hardship criteria is satisfied because the Mixed-Use was in play before the Zone was changed and that even though he would support the granting of a Mixed-Use to the property it does not necessarily mean he supports the specific Uses being requested in the other variance requests.

Mr. Martin made the motion to grant the Mixed-Use. Mr. Pacocha seconded the motion. Mr. Martin stated that granting the Variance will not be contrary to the public interest, that there has been no negative testimony received, that the property is already a mixed use and will not alter the character of the neighborhood or threaten the public health, safety or welfare of the general public, that there is no negative impact to property values and to not grant the variance would/could force the property owner to remove existing buildings, and that even though there is no hardship from the land itself, there is hardship imposed by the Town when it changed the Zone on this property that has been in use for over seventy (70) years. Mr. Pacocha concurred and added that to deny the Variance would deny the Property Owner reasonable use of his property. Mr. Daddario stated that mixed uses on this property existed before the prohibition of mixed uses occurred in the Ordinance and suggested that a stipulation be added to the motion to include just the Uses currently on the site in specific buildings as prepared by Mr. Buttrick and the Applicant and as modified subsequent to the 4/9/2022 Site Walk and as presented as Attachment A in Mr. Buttrick's Staff Report signed 4/13/2022. Both Mr. Martin and Mr. Pacocha agreed with the stipulation.

Stipulation: Modified Attachment A

Building Address	Building Description	Unit(s)	Land Use Description	Land Use Code(s) Principal & Accessory
183 Webster St	Greenhouse		Landscape Equipment Storage	E-8 Not applicable
185 Webster St	House	A & B	Two-family	A-2 Not applicable
187 Webster St	Small Garage	A	Carpet Storage	E-8 Fork truck (N/A)
		B	Off season garaging	E-8 Not applicable
		C	Mechanical maintenance	D-10 Not applicable
189 Webster St	Large Garage	A	Truck Repair & Storage (garaging)	D-10/E-8 Not applicable
		B	Off-season Storage (garaging)	E-8 Not applicable
		C	Car-detailing & Storage (garaging)	D-10/E-8 Not applicable
		D	Pool Service/Install	E-10 Not applicable

* Modified after 4/9/22 ZBA Site Walk and 4/14/22 Meeting discussion and Decision

It was noted that any change in Use would require a Variance. Roll call vote was 3:2 with Mr. Dearborn and Mr. Etienne opposed. Variance granted with one (1) stipulation. The 30-day Appeal period was noted.

Board took a five-minute break at 8:15 PM.

- 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.]

Mr. Buttrick read the Case into the record, stated that a Site Walk was held on 4/9/2022 and noted that existing uses were identified that included dry storage of carpets (Use code E.8). Mr. Dearborn stated that Regis Landscaping appears to also be using the Greenhouse for equipment repair and possibly storage and noted that he saw their weed whackers, lawnmowers and tractors parked in front of the building at the Site Walk and asked if that should be considered because in the prior Case, it was noted that Regis Landscaping was not before the Board at this time. Mr. Buttrick stated that at the meeting tasked by the ZBA on 1/20/2022, the name of a tenant was not considered in the defining of what would be included for storage with this Variance, but the Use and its correlation to the Table of Uses. Mr. Buttrick referred to the Application request submitted and the observations made at the Site Walk and noted discrepancies – for example, weed whackers are they to be stored and what is their condition. Are they in need of maintenance/repair? Mr. Pacocha asked if the Application only refers to items classified as Use Code E.8 and whether there should be further restriction/description as to what is included in the Variance request. It was also noted and confirmed that the application refers to one (1) structure and that the other structure referenced at the Site Walk would be demolished.

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

- (1) *not contrary to public interest*
 - The buildings outlined as storage were originally utilized as storage as part of the agricultural use of the property by Garrison Farm.
 - When the farm terminated, these buildings still existed but became non-conforming, but their use did not
 - The use of this building for storage will not violate the basic zoning objective because they were constructed to be warehouses
 - There will be no violation of the essential character of the neighborhood as the buildings have existed since the 1980's and before the Zone changed and before the residential development occurred across the street
 - The character of the neighborhood will not be changed with continued use of these buildings
- (2) *will observe the spirit of the Ordinance*

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- The warehouses existed before zoning ordinance as warehouses and the intent is to continue to use them as warehouses, just not necessarily for agriculture
- (3) *substantial justice done*
- The warehouses can be kept and used as such.
 - The use does not adversely impact or harm the abutters or any public right
 - The public will not realize any appreciable gain from denying the variance
 - The owner would be seriously harmed if not able to use the property as it presently exists
- (4) *not diminish surrounding property values*
- The buildings will not be altered – they will stay as they presently are with no modernization and landscaping
 - See opinion of value submitted by the Norwood Group that attested there is no adverse impact to surrounding property values
- (5) *hardship*
- Because these warehouses have existed for a long time, special circumstances exist
 - These buildings were unique when constructed for agricultural purposes.
 - These buildings can continue to be used, only for different products
 - The continued use would allow the applicant reasonable use of its land
 - To not allow the property owner the use of the building would cause substantial harm to the property owner.

Atty. Prunier stated that they worked with Mr. Buttrick to identify what can be / what is desired to be stored in the warehouses and each has been assigned their correlating Use Code from the Ordinance Table of Uses – see Attachment A attached to Mr. Buttrick’s Staff Report

Public testimony opened at 8:30 PM. No one addressed the Board.

In response to Mr. Pacocha’s question, Mr. Buttrick stated that the assignment to Warehousing, Use Code of E.8, was the closest and best category and as Town Counsel suggested, the specificity of what can be stored should be clearly identified in the variance. Mr. Manoukian stated that as of today, the storage is rented for landscaping small engines, such as lawnmowers and weed whackers but that could change if the landscaper moves out and the unit rented to another renter.

Plans were posted to identify the specific building in question and it has been labeled both as “Greenhouse Frame” and “Landscape Storage” for three thousand nine hundred square feet (3,900 SF). Mr. Dearborn stated this is the glass building seen at the Site Walk, and he noticed that there were broken glass panes. Mr. Manoukian stated that the front of the building is waterproof and the back of the building does need repair and will not be glass but plexi-glass to avoid breakage. Mr. Dearborn read the Application request into the record “To allow warehousing of material and equipment ... allow permitted Accessory Uses of garage or parking of two or more light commercial vehicles and heavy commercial vehicles and equipment” and asked for clarification. Mr. Manoukian stated that when they met with Mr. Buttrick, this warehouse category allows for the parking and garaging so it was included in their request. Mr. Dearborn asked, and Mr. Manoukian agreed, that if the variance is

granted, a condition could be added that it does not include the permitted Accessory Uses.

Mr. Etienne stated that he had the same concerns and is prepared to make a motion. Mr. Daddario asked if the Applicant had anything further to add and invited anyone in the public who wished to speak on the application. There was no response.

Mr. Etienne noted the disrepair of the back portion of the building and the fact that trees were noticed growing inside the building branching outside the roofline and asked Mr. Buttrick if a Certificate of Occupancy would be required that acknowledges that the building is safe to enter the building and for its use. Mr. Buttrick noted that the liability is upon the owner, that a Building Permit should be obtained to add a roof to the back of the structure and decisions made whether the building should provide electricity and bathroom facility.

Mr. Etienne made the motion to grant the variance with two (2) stipulations:

- (1) that the structure be repaired and meet all applicable building codes and standards as prescribed by the Town for requested occupancy use and
- (2) that there be no parking of vehicles greater than one thousand pounds (1,000 #).

Mr. Dearborn seconded the motion. Roll call vote was 5:0 to grant the variance with two (2) stipulations. It was noted that any Change in Use will require a Variance. The 30-day Appeal period was noted.

- 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).]

Mr. Buttrick read the Case into the record, referenced his Staff Report signed 4/13/2022 and noted that multi-family residences are only allowed in the Business Zone.

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

- (1) *not contrary to public interest*
 - The R-2 District allows two (2) units and the applicant is requesting three (3)
 - There has been 3 units in the building since at least 1976
 - There has not been any notices that the third unit threatened public health, safety or welfare during its use
 - With the R-2 Zone allowing 2 units, the intent of the Ordinance is to allow multi-family use
 - A third apartment is a minor use in a multi-family area
 - The character of the neighborhood will not be changed with continued use of the third apartment
- (2) *will observe the spirit of the Ordinance*
 - The existence of the third unit is not out of character with the neighborhood or threaten public health

- This has been used as a rental unit for over 24 years and has not caused a disturbance in the area
 - The units also provide reasonable housing in an area that is in demand
- (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 use of the third apartment is a benefit to the general public in allowing affordable housing
- (4) *not diminish surrounding property values*
- There are no exterior changes being proposed.
 - See opinion of value submitted by the Norwood Group that attested there is no adverse impact to surrounding property values
- (5) *hardship*
- The State of NH has clearly confirmed the State's respect for individuals to make reasonable use of their land
 - NH Courts have recognized that sometimes properties are uniquely situated or especially appropriate for a particular use.
 - The several 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.

Public testimony opened at 8:52 PM. No one addressed the Board.

Mr. Pacocha asked if the units are serviced with municipal water and sewer. Mr. Etienne responded that he asked that question at the Site Walk and the apartments are serviced with municipal water and sewer.

Ms. Roy stated that of all the variances before the Board this evening, this one concerns her the most and if the Board decides to approve it to please require that an Occupancy Permit be obtained including all the necessary permits and inspections.

Mr. Dearborn concurred and asked Mr. Buttrick about which Permits have been filed. Mr. Buttrick stated and agreed that if the variance is granted a stipulation that it meets Life Safety Code would be a prudent condition.

Mr. Daddario asked if a three-family building was ever permitted and did become non-conforming when the Zone was changed to R-2. Mr. Buttrick referenced the 1990 Consent Decree that stated that it was to be used as a two-family residential, convenience store and a nursery. Mr. Etienne added that the Consent Decree would also not allow the third apartment to revert back to an office. Mr. Dearborn stated that it is his understanding that a three-unit apartment building requires a sprinkler system and asked what fire safety codes are needed and whether installed already.

Public testimony reopened at 8:59 PM. No one addressed the Board.

Mr. Etienne asked if there are any other three-family units in the area and if there was a floor plan of the three apartments. Mr. Buttrick stated that he is not aware of any three-family buildings in the area and posted the floor plan of the units that was submitted with the application. It was noted that there were no measurements for the

rooms, just the overall square feet for each unit. It was also noted that the smaller unit could not become an ADU (Accessory Dwelling Unit) because ADUs are only allowed to be attached to single-family homes. The Assessors Cards were reviewed to try to determine room dimensions. Mr. Manoukian stated that he would be willing to install fire sprinklers in each unit.

Mr. Etienne made the motion to not grant the Variance because it would set a poor precedent in the R-2 District to allow a third unit which is outside the spirit and intent of the Ordinance which is to strategically and intentionally serve the R-2 District with two-unit residential homes. Mr. Pacocha seconded the motion. Mr. Pacocha stated that multi-family residences are only allowed in the Business Zone and should not be introduced into the R-2 Zone and the inclusion of the third residential unit was done without permit or permission and it cannot be expected to be rewarded and receive an after-the-fact blessing. Roll call vote was 5:0. Mr. Daddario stated that there is an issue that there are not any other three-family structures in the neighborhood so it is out-of-character with the neighborhood; it also does not serve the Spirit of the Ordinance as it was designed to allow up to two-family residences and this lot has never been in a Zone that allowed three-family structures; substantial justice would not be done by the granting of this variance because even without it, the residential structure can still be used for two (2) different residences; with regard to affecting surrounding property values, the residences were constructed surrounding this lot and there was evidence submitted that their property values are not affected by this lot; and the hardship is not met, there is no physical evidence that the land is causing a hardship, there's been no physical evidence that the Town permitted the third unit and this is not the same as the other variances where the Zone change caused nonconformity as three-family residences have never been allowed in this area. The 30-day appeal period was noted.

- 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.]

Mr. Buttrick read the Case into the record, stated that the Site Walk was held 4/9/2022 and referenced his Staff Report signed 4/13/2022 that had as Attachment A the Uses that are to be considered per the meeting with Applicant, Town Counsel and himself. The three (3) storage units are labeled and their corresponding Use assigned included: (A) carpet storage, Use code E-8, warehousing with a potential for a forklift; (B) Equipment storage is actually off-season garaging/car storage, Use code E-8; and (C) Regis storage is actually mechanical repair, Use code D-10, automotive service and repair

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

- (1) *not contrary to public interest*

- The buildings outlined as storage were originally utilized as storage as part of the agricultural use of the property by Garrison Farm
 - After agricultural uses were terminated, the buildings became nonconforming, but the use was not
 - The use will not violate the basic zoning objectives and are not contrary to public interest because they were constructed to be warehouses
 - There will be no violation of essential character of the neighborhood as the buildings have existed since the 1980's
 - The character of the neighborhood will not be changed with continued use of the storage units
- (2) *will observe the spirit of the Ordinance*
- The warehouses existed before zoning ordinance as warehouses
 - Intent is to use them as warehouses, just not for agriculture
- (3) *substantial justice done*
- The warehouses can be kept and used as such
 - The 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 – they will remain the same with some modernization and landscaping
 - No exterior changes being proposed
 - See opinion of value submitted by the Norwood Group that attested there is no adverse impact to surrounding property values
- (5) *hardship*
- The warehouse has existed for a long period of time
 - There is a special circumstance that exists – the Zone changed rendering the building non-conforming and the agricultural use ceased
 - These buildings were unique when constructed for agricultural purposes
 - The buildings can continue to be used, only for different products
 - The continued use would allow the applicant reasonable use of its land

Atty. Prunier stated that when they first prepared their applications, their thinking was to be as broad as possible; however, after the January meeting and the subsequent meeting ZBA assigned with Town Counsel and Mr. Buttrick, they have been able to refine and define and assign specific Use codes, as shown on Attachment A of Mr. Buttrick's Staff Report.

Public testimony opened at 9:18 PM. No one addressed the Board

Mr. Pacocha asked if "n/a" on Attachment A stood for "not applicable" or "not allowed"? Mr. Buttrick responded that it means "not applicable" as in during their meeting they were not using the Accessory Table, that some of the Primary Uses have their own accessory uses associated with them and offered the example that if it was manufacturing, it is understood that the warehousing is associated with manufacturing and that it is not a permitted table of accessory uses. Mr. Buttrick stated that at the Site Walk there was no outside parking observed.

Mr. Daddario asked about the last Unit C for 'mechanical repair' as it has the potential to branch out into different territory. Mr. Manoukian stated that the tenant there is

the landscaper and he does mechanical work in there like changing the tires for winter, putting salt bins on the truck and general maintenance on his trucks. Mr. Dearborn stated that technically that is not storage and Mr. Daddario stated that is why Mr. Buttrick's list has it as "mechanical repair". Mr. Buttrick stated that at the Site Walk there was no outside parking noted and asked if there was/is any intent for that and added that after their meeting, the units were more accurately labeled as Unit A for carpet storage with a forklift parked outside on the side of the building that faces the residence building; Unit B for off-season car storage; and Unit C for mechanical repair by the landscape company. Mr. Buttrick stated that if the Variance is granted, it would include just these uses with their associated uses (forklift).

Mr. Dearborn stated that he sees parking lines on the larger storage building but non for this building and asked why or if any are proposed and read from the application request that the Variance was to include "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."

Atty. Prunier stated that the parking was added to the Plan that was submitted to the Planning Board (PB) because they knew PB would require it to show that there is space available for parking, but PB did not accept the plan. Mr. Dearborn asked and received confirmation from Atty. Prunier, that there will be assigned parking spaces for each unit, space dedicated to the unit. Mr. Buttrick stated that the plan shows six (6) spaces on the backside of the building and noted that is a detail usually performed by PB during SPR (Site Plan Review).

Mr. Dearborn stated that this building is then a mixed-use building, in addition to the lot being approved for mixed-use. Mr. Pacocha checked the Assessor's cards for dimensions of the units and was only able to determine the entire "small" garage building's dimensions as 40' x 92'.

Public testimony opened at 9:28 PM. No one addressed the Board.

Mr. Etienne stated that in his opinion what was requested is too broad and that narrowing would be prudent, even with the parking.

Mr. Etienne suggested that a motion to grant the variance should be restricted to allowing for materials and equipment in line with the specified uses as outlined on Attachment A of the Staff Report and to limit the accessory uses for the parking at the building to no more than two (2) light commercial vehicles and no more than two (2) heavy commercial vehicles at any one time.

Mr. Pacocha asked if there is any reason for overnight parking to be considered. Atty. Prunier stated that there was no intent to allow anything but daylight parking. Mr. Manoukian stated that the only exception would be the carpet forklift left outside on the side of the building, not in the designated parking area.

Mr. Daddario stated that with regard to the unit proposed for 'mechanical repair', it makes sense to place limitations. Mr. Daddario noted that all of this has grown out of what was once an operating farm and being cognizant of the fact that we don't want the Applicant hurt by the fact that Zoning has changed and are allowing the

continuance of many uses that have been at play for a long time, since the termination of the farming operation. Mr. Daddario expressed concern with the type of repair, especially with regard to any fluids or substances necessary for the equipment or vehicles and that branches into hazardous substances and potential contamination of the grounds is to be taken seriously. Mr. Daddario stated that there is comfort with the changing of tires, removal/installation of plows, salters etc. but there is concern if repairs also included oil changes

Mr. Buttrick pointed out that these uses have come about without any approvals or authorization in the sense of permits, sub-permits including electrical, inspections and with regard to mechanical repair is there any provision for hazardous material disposal etc. and the question of minimum life safety standards should be taken into consideration, especially since this is all “after-the-fact” consideration. Mr. Daddario stated that one condition that could be applied is to state that the buildings must comply to all applicable standards relative to whatever uses are being approved.

Mr. Etienne recapped the stipulations mentioned: (a) building would have to be in compliance with all applicable Town Codes including the disposal of any hazardous materials; (b) limit the parking for the building to two (2) light commercial vehicles and two (2) heavy commercial vehicles at any one time.

Mr. Etienne made the motion to grant the Variance for the Small Garage Building for the Uses outlined in Modified Attachment A of the Staff Report for material storage and warehousing and maintenance versus repair as follows:

- Unit A Carpet Storage with a forklift that can be parked outside on side of unit that faces
- Unit B Off Season Garaging and no applicable Accessory Uses
- Unit C Mechanical Maintenance (modified from Mechanical Repair) and no applicable

and with two (2) stipulations:

- (1) building would have to be brought into compliance with all applicable Town Codes including the disposal to of any hazmat materials; and
- (2) limit the parking for the building to two (2) light commercial vehicles and two (2) heavy commercial vehicles at any one time.

Mr. Martin seconded the motion. Roll call vote was 4:1 with Mr. Dearborn opposed. The 30-day Appeal period was noted as well that any Change in Use will require a Variance.

- 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.]

Mr. Buttrick read the Case into the record, noted that the Site Walk was held and referenced his Staff Report signed 4/13/3022. Mr. Buttrick stated that as a result of the meeting tasked by ZBA on 1/20/2022, Unit A is labeled as Truck Storage & Repair

(garaging) and correlates to Use Code D-10 and Use Code E-8 and no outside storage or parking was observed at the Site Walk; Unit B is labeled Off-season Storage (garaging) and correlates to Use Code E-8 and no outside storage or parking was observed at the Site Walk; Unit C is Car Detailing and Storage (garaging) and correlates to Use Code D-10 and E-8 and no outside storage or parking was observed at the Site Walk; Unit D labeled as Pool Service/Installation correlates to Use Code E-10 and it has associated trucks with this use.

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

- (1) *not contrary to public interest*
 - The buildings outlined as storage were originally utilized as storage as part of the agricultural use of the property by Garrison Farm
 - After agricultural uses were terminated, the buildings became nonconforming, but the use was not
 - The use will not violate the basic zoning objectives and are not contrary to public interest because they were constructed to be warehouses
 - There will be no violation of essential character of the neighborhood as the buildings have existed since the 1980's
 - The character of the neighborhood will not be changed with continued use of the storage units
- (2) *will observe the spirit of the Ordinance*
 - The warehouses existed before zoning ordinance as warehouses
 - Intent is to use them as warehouses, just not for agriculture
- (3) *substantial justice done*
 - The warehouses can be kept and used as such
 - The 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 – they will remain the same with some modernization and landscaping
 - No exterior changes being proposed
 - See opinion of value submitted by the Norwood Group that attested there is no adverse impact to surrounding property values
- (5) *hardship*
 - The warehouse has existed for a long period of time
 - There is a special circumstance that exists – the Zone changed rendering the building non-conforming and the agricultural use ceased
 - These buildings were unique when constructed for agricultural purposes
 - The buildings can continue to be used, only for different products
 - The continued use would allow the applicant reasonable use of its land

Public testimony opened at 9:52 PM. No one addressed the Board.

Mr. Pacocha inquired about the parking and whether the lines were painted. Atty. Prunier responded that they are not painted and were included on the plan to show parking availability. Mr. Pacocha asked how many parking spaces are planned/required and Mr. Buttrick stated that sixteen (16) spaces are shown on the

plan. Mr. Pacocha noted the lack of dimensions for the building and the four (4) Units. Atty. Prunier stated that the measurements, even though not on the plan, are accurately represented as the plan was surveyed by a Licensed Land Surveyor to provide this Existing Condition Plan.

Mr. Etienne noted that this building is closer to the street (Webster Street) than the others and asked Mr. Buttrick how many driveways exist on this parcel. Mr. Buttrick stated that driveway permits were not found, that typically there is one (1) driveway approved per lot, but this is a morphed application of the uses on the lot. The aerial view indicates three (3) "driveways" off Webster Street and no discernable travel pattern on site. At the Site Walk it was noticed that the doors into the Units occur on the side of the building where parking is indicated.

Mr. Martin asked if driveways to this property are State controlled or Town controlled seeing as how Webster Street is also NH Route 3-A. Mr. Buttrick stated that the Engineering Department would have that answer, but considering it is a State Road, the State would govern. Mr. Roy stated that she noticed a driveway to both sides of the building and asked if there is a setback requirement to the neighbor's driveway. Mr. Buttrick stated that there is a driveway setback, generally fifteen feet (15'). Mr. Daddario asked if driveways have to be paved. Atty. Prunier noted that this site was originally farmland, without paved access ways and that it be would be going to the Planning Board for Site Plan Review.

Board reviewed the proposed Uses for each unit and Attachment A. Mr. Buttrick stated that more information may be needed as to what is involved with "car detailing" (Unit C) and outside storage and parking. Mr. Daddario stated that it might be prudent to have a restriction that customers do not visit the site and that there is no retail transaction to occur on site.

Mr. Dearborn stated that if employees go to the site, to either pick up material or leave their personal vehicle while driving off in a company vehicle, then the use is not warehousing because a business is being operated at the site. Mr. Dearborn stated that Mixed Use was granted for the site, and if these Units are being used for more than warehousing, it should be so noted. Mr. Buttrick stated that all the units are involved in a business, but it is the intensity of that Use that needs to be taken into consideration – is it just one or two employees, are trucks coming into the site regularly creating traffic etc. Mr. Dearborn stated that he is of the opinion that warehousing is intermediate to another place but detailing occurs on this site. Mr. Daddario stated that he had the same concerns with regard to the car detailing but the Applicant has testified, both at the January meeting and at the Site Walk, that customers do not come to the site, the business owner goes and gets the cars to be detailed and perhaps it should be stipulated as a condition that customers do not come to the site. Mr. Buttrick concurred that the concern is customer retailing on site. Mr. Daddario asked if a condition could be that each Unit occupant have a principal business address elsewhere. Mr. Etienne suggested that the condition could be that there is to be no funds exchanged onsite, no money transactions to occur on site. Discussion noted that enforcement could easily become problematic and would only occur as a result of a complaint being filed. Atty. Prunier stated that no customers or the general public shall be allowed to visit the tenants.

Mr. Etienne made the motion to grant the Variance for the Large Garage Building for the Uses outlined in the modified Attachment A of the Staff Report for material storage and warehousing and car detailing with five (5) stipulations:

- (1) that the building satisfy all applicable Codes for applicable occupancy/use, including storage and disposal of hazmat material;
- (2) that the Uses conform to the Uses specified in Attachment A of the Zoning Administrator’s Staff Report signed 4/13/2022 as follows:
 - Unit A Truck Repair & Storage (garaging) and no Accessory Uses
 - Unit B Off-season Storage (garaging) and no Accessory Uses
 - Unit C Car-detailing & Storage (garaging) and no Accessory Uses
 - Unit D Pool Service/Install and no Accessory Uses
- (3) that retail transactions shall not be conducted onsite
- (4) that there shall be no access by the customers or general public onto site
- (5) that parking shall be limited to eight (8) light commercial vehicles (two (2) light commercial vehicles per Unit) and three (3) heavy commercial vehicles at any one time or per approved Site Plan.

Mr. Martin seconded the motion. Roll call vote was 4:1. Mr. Dearborn opposed. Variance conditionally granted. The 30-day appeal period was noted as well as any change in Use will require a Variance.

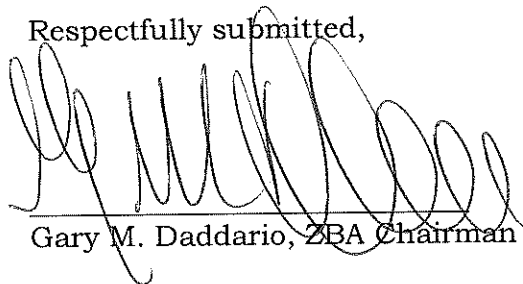
Atty. Prunier thanked the Board and Town Staff for all the hard work and understanding that went into this project.

~~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.]~~

Case f. was not heard as it was deemed moot due to the Mixed-Use Variance that was granted in Case e. Application withdrawn

Mr. Etienne made the motion to adjourn. Mr. Martin seconded the motion. Vote was unanimous. The 4/14/2022 ZBA meeting adjourned at 10:36 PM

Respectfully submitted,



Gary M. Daddario, ZBA Chairman