



# TOWN OF HUDSON

## Zoning Board of Adjustment

Gary M. Daddario, Chairman

Kara Roy, Selectmen Liaison

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### **WORKSHOP MEETING MINUTES – October 13, 2022 - approved**

#### **I. CALL TO ORDER**

#### **II. PLEDGE OF ALLEGIANCE**

Mr. Daddario called the meeting to order at 7:01 PM, invited everyone to join in the Pledge of Allegiance and took attendance.

Members present were Gary Daddario (Regular/Chair), Tim Lanphear (Alternate), Jim Pacocha (Regular/Vice Chair), 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), Normand Martin (Alternate/Clerk), Marcus Nicolas (Regular) and Dean Sakati (Alternate).

At 7:02 PM Board went into non-public session for legal consult. At 7:04 PM, Board resumed meeting

#### **III. ZBA TRAINING/WORKSHOP:**

Stephen C. Buckley, Legal Services Counsel from the NH Municipal Association has scheduled an On-Demand presentation: *ZBA Decision Making Process* for the ZBA training. Steve will also touch upon the new requirements resulting from the recent passage of House Bill 1661 and what local Land Use Boards need to know.

Mr. Buckley was introduced and welcomed. Mr. Buckley distributed a printout of the power point presentation and invited questions during the presentation. The information shared and discussed included:

- The Right-to-Know (RTK) comes from the NH Constitution and is covered in RSA 91-A
- The role of the ZBA was established in the 1920s
- A public meeting constitutes a gathering of 3 Members
  - A public meeting requires public notice, public access and minutes prepared and accessible to the public

- Draft Minutes are **not** required to be posted, but do need to be available within a timely fashion as per RSA
- Members should avoid any and every discussion on an open case before the Board – and that includes telephone conversations, texting – in fact, any and all social media
- Conflict of interest
  - See Ethics in RSA 673:14 and 500-A:12
  - If recusing, should leave the Board table and not participate in any Board discussion but can address the Board during intake of public testimony
  - If you are an indirect abutter and if you are directly affected, then you have ‘standing’ and should recuse yourself
- Recusal versus Abstain
  - There’s never a good reason to abstain
  - If a case goes to Court and the vote was 2:2:1, the Court infers the abstaining vote to have been in favor of the motion which in effect makes the vote 3:2
  - Can stipulate ‘no abstaining’ in the Board’s Rules for Procedure
- The effect of an Appeal to the ZBA places the decision into abeyance until the ZBA reviews and decides
  - The requestor of an appeal need not be present for the Board to determine whether to hear the appeal as it is based on submitted facts of record, notice of error or new information to be considered
- Every ZBA Notice of Decision (NOD) decision must be based on Findings of Fact
  - Historically, only required to give the reason(s) why a request was denied – specific to which criteria failed
  - HB 1661 now requires, as of 8/23/2022, that the Findings of Facts must also be stated for the granting of an Approval.
  - Findings of Facts also justifies condition(s) as applied to a motion (Decision)
  - Board can specify whether the denial is “with” or “without prejudice”
  - “Without prejudice” means the same plan could be resubmitted to the Board
  - “With prejudice” means a new/different plan must be submitted
  - Remember, every Case is unique and considered individually applied to a motion
  - There is no real need to consider “setting a precedence”
- Developments of Regional Impact (DRI) can be the result of size, proximity, emissions, aquifers, schools, waste etc. RSA 36:55 is specific as to what constitutes DRI.
- Cumulative Impact versus Setting Precedent
  - Closely related but not identical – every Case is unique and time changes impact

- Example: Variance is valid for 2 years and if not exercised/activated, it expires – a resubmission for the same variance cannot be extended without review because Zoning may have changed and/or the cumulative effect in a region may be different
- Decisions and Decision Sheets
  - There doesn't seem to be enough time for Members to complete, without rushing, during the meeting – one possibility is to continue to the next meeting (not practical) or Chairman can announce the reason for the delay and wait before continuing
  - Chairman should ask each Member during the meeting their determination on each criterion – this also helps to determine if conditions/stipulations are needed
  - But Hudson ZBA elected a Vertical Voting method (per Member not per Criteria) – no problem – by asking each Member during meeting may help in the completion of the Decision Sheets and each Member votes according to their determination on each criteria
  - Vertical / Horizontal decision making is specified in the Board's Rules of Procedure and if a voting method change is elected, must wait 60 days before implementing (per RSA)
- ZBA Handbook (2021 edition from the NH Department of Business and Economic Affairs) – keep it handy – every Member has one

Board thanked Mr. Buckley.

#### **IV. ADJOURN 9:10pm**

Respectfully submitted,

Gary M. Daddario