



TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Dillon Dumont, Selectmen Liaison

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MEETING MINUTES – November 16, 2023 - approved

The Hudson Zoning Board of Adjustment met on Thursday, November 16, 2023 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 Gary Daddario called the meeting to order at 7:01 PM, invited everyone to stand for the Pledge of Allegiance and read the Preamble (Exhibit A in the Board's Bylaws) regarding the procedure and process of the meeting.

III. ATTENDANCE

Members present were Gary Daddario (Regular/Chair), Tristan Dion (Alternate), Tim Lanphear (Alternate), Normand Martin (Regular/Vice Chair), Marcus Nicolas (Regular), Jim Pacocha (Regular), Dean Sakati (Regular) and Edward Thompson (Alternate/Clerk). Also present were Dillon Dumont, Selectman Liaison, Louise Knee, Recorder (remote), and Chris Sullivan, Zoning Administrator.

IV. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

- 1. Case 101-006 (11-16-23):** Benjamin Bosowski, Mgr, Bosowski Properties, LLC., 40 Temple St., Nashua, NH, requests a Variance for **19 West Rd., Hudson, NH** to allow three (3) multi-tenant buildings with nine (9) Industrial Uses not allowed in the Business District which includes: **(E.2.)** Research laboratories, manufacture of equipment, electronics industry, assembling of electrical appliances; **(E.3.)** Welding shop; **(E.4.)** Machine shop; **(E.6.)** Manufacturing; **(E.8.)** Distribution facility of 100,000 square feet or less; **(E.10.)** Warehouse of 100,000 square feet or less; **(E.12.)** Wholesale; **(E.13.)** Self-storage; includes parking of recreational vehicles, buses and/or boats; **(E.15.)** Contractor's yard or landscaping business. [Map 101, Lot 006-000; Zoned Business (B); HZO Article V: Permitted Uses; §334-21, Table of Permitted Principal Uses.]

Mr. Sullivan read the Case into the record, referenced his Staff Report initialed 11/7/2023 and noted the Town Planner's comment that this site has received Planning Board approval, for a two-lot Subdivision and suggestion that if this Variance is granted, to add a condition for the abandonment of the approved, but not yet recorded Subdivision, and that Site Plan approval would be needed to develop this site. The Town Planner also acknowledged the industrial neighborhood and that the ZORC (Zoning Ordinance Review Committee) has been discussing changing the Zone

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on this side West Street to Industrial. Mr. Martin questioned the validity of adding the abandonment of Planning Board Subdivision approval as part of a ZBA decision.

Atty. Morgan Hollis of Gottesman & Hollis, PA, Pearl Street, Nashua, NH, introduced himself as representing the Property Owner Benjamin Bosowski, Manager of Bosowski Properties, LLC, and noted that this is an unusual application. Atty. Hollis stated that before the finalization of the Subdivision application, the question of Uses arose and resulted in their decision to pursue a Variance for the whole lot for Industrial Uses as the Zone across the street is the Industrial Zone and the neighborhood is all Industrial Uses and the potential Uses allowed in the Business Zone are inappropriate for the neighborhood. Atty. Hollis read the Business Uses from the Table of Permitted Uses.

Atty. Hollis stated that the lot is a large 10.52-acre parcel with the land sloping up towards the rear with an existing ballfield and wetlands at the rear. The plan is to construct three (3) nine thousand square feet (9,000 SF) buildings with dimensions of 150' x 60'.

Atty. Hollis address the Variance criteria. The information shared included:

(1) *not contrary to public interest*

- Public interest is served when there is no conflicting Uses in the neighborhood
- The Industrial Zone is across the Street with existing Industrial Uses and the abutting Uses in the Business zone are industrial in nature
- The area is fully developed
- The Uses which are permitted in the Business Zone are not reasonable Uses for this location and would not be in keeping with the character of the neighborhood
- Allowing the proposed multi-tenant industrial uses, which are permitted in the Industrial Zone, is not contrary to the public interest
- In the case Belanger vs Nashua, the court ruled that reasonable Uses should be available

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

- Lot is zoned Business, which allows for retail sales, not industrial Uses
- Nearly all existing Uses in the neighborhood are industrial Uses, including direct abutters
- The purpose of the Zoning Ordinance is to keep similar Uses together to protect property values and protect against adverse impacts on neighbors
- There will be no harm to the general public or any other individual if the Variance is granted
- The proposed multi-tenant buildings, with industrial Uses, would be in keeping with the essential character of the neighborhood and would not threaten public health, safety or welfare
- There is more than adequate space on the lot for sewage/septic requirements for industrial uses
- There is public (Municipal) water on site
- Denial of this Variance will impose substantial harm to the Applicant that is not outweighed by harm to the public

(3) *substantial justice done*

- No Permitted Uses in the Business District is reasonable for this lot and requiring such Uses while prohibiting Industrial Uses is of great harm to the owner
 - There will be no harm to the general public or any other individual if the Variance is granted to allow multi-tenant industrial uses
 - There is more than adequate space on the lot for sewage/septic requirements for industrial uses
 - There is public (Municipal) water on site
 - Denial will impose substantial harm to the Applicant that is not outweighed by harm to the public
- (4) *not diminish surrounding property values*
- The proposed use is consistent with the neighborhood
 - Granting of the Variance will not cause any real change to the neighborhood
 - There is a fuel storage area to one side of the property and a manufacturer to the other side with industrial Uses across the street
 - There are business Uses to the rear of the property with access by way of other roads not in the vicinity of the proposed access for this property
 - The proposed use will have no adverse effect on the values of the surrounding properties as the proposed Use will be similar in nature to the existing properties accessing from West Road
- (5) *hardship*
- The property is unique in that it is a large parcel (10.52 acres) surrounded by Industrial Uses on West Road in an area fully developed by existing Uses permitted in the Industrial Zone and not in the Business Zone
 - Enforcing the Ordinance to only require Business Uses are not functional for this lot and not allowing the proposed multi-tenant Industrial Uses has no fair and substantial relationship to the purpose of the Zoning Ordinance
 - The Permitted Business Uses do not belong on this lot and Industrial Uses should be permitted to match the character of the neighborhood
 - The [proposed Use is similar to the industrial Uses surrounding it and is a reasonable Use
 - The lot is the sole remaining undeveloped lot in the Zoning district and is surrounded by existing Industrial Uses
 - None of the Permitted Uses in the Business Zone are reasonable due to its size, location and surrounding Uses
 - Relief is necessary and the proposed Use is reasonable

Public testimony opened at 7:32 PM. No one addressed the Board.

Mr. Lanphear questioned where tractor trailers would enter, travel through and park on the proposed plan prepared by Maynard & Paquette Engineering Associates, LLC, dated 8/29/2023. Atty. Hollis responded that those details will be defined during Site Plan Review with the Planning Board.

Mr. Dumont stated that ZORC is looking to extend the Industrial Zone to this side of West Road. Mr. Sakati noted that the Applicant is being held hostage to poor Zoning delineation and questioned whether the Board should consider adding a condition to keep the ballfield and to perhaps add that a tree buffer between the building and the

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ballfield. Mr. Dumont stated that would not be necessary as keeping the ballfield was spoken about in this meeting and is now part of the official record and the Planning Board can require a tree buffer during Site Plan Review.

Mr. Martin made the motion to grant the Variance as requested. Mr. Nicolas seconded the motion. Mr. Martin spoke to his motion noting that allowing industrial Uses in the Business Zone is not something he would usual support, it is reasonable for this parcel in this neighborhood, that it will observe the spirit of the Ordinance and provide substantial justice to the Property Owner, that there was no information presented that the granting of this request would affect surrounding property values, that allowing only Business Uses on this site is contrary to public interest and the proposed Use is a reasonable Use. Mr. Martin voted to grant the motion.

Mr. Nicolas spoke to his second stating that the proposed Use does not conflict with the purpose of the Ordinance and does not greatly affect the character of the neighborhood as the essential character of the neighborhood will not be changed, that the benefit to the Property Owner does not outweigh any harm to the general public, that it is not easy to diminish value of surrounding properties, that the hardship seems to be the current Zoning to the Business District and that it is a reasonable use of the property. Mr. Nicolas voted to grant the motion.

Mr. Sakati voted to grant the motion noting that there is no harm to the public, that it does not observe the spirit of the Ordinance for the Business Zone and that other properties in the neighborhood are industrial, that there is no harm to the public and no diminution to surrounding property values and that the hardship is met with poor Zoning to the Business District on this side of West Road.

Mr. Pacocha voted to grant it as all the criteria have been satisfied.

Mr. Daddario voted to grant and stated that the neighborhood is industrial now, that there would be no harm to the public, that there would be no diminution of surrounding properties as they are all industrial and that the hardship criteria is satisfied by the size, shape and location of the property and surrounding Uses all being industrial, that the Permitted Uses for the Business Zone are not reasonable in the area while the proposed Uses are and that the proposed use is reasonable.

Roll call vote was 5:0. Variance granted. The 30-day Appeal period was noted.

- 2. Case 166-011 (11-16-23):** Todd A. Boyer, Trustee of The Boyer Family Revocable Trust of 2019, 2 Merrill Street, Hudson, NH, requests a Variance for **32 Ledge Rd., Hudson, NH** for a proposed 4-lot subdivision to allow three (3) lots within the R-2 Zone with lot areas of 12,192 SF and 12,401 SF and 21,088 SF where 43,560 square feet is required for each lot. [Map 166, Lot 011-000; Split Zoned Residential-Two (R-2) and Town Residence (TR); HZO Article VII: Dimensional Requirements; §334-27, Table of Permitted Principal Uses.]

Mr. Sullivan read the Case into the record, referenced his Staff Report initialed 11/7/2023, noted that two (2) of the abutters are cemeteries which require a twenty-five setback of their boundaries and that comments were received from the Town

Engineer and Town Planner each referring that the fact that this lot is not serviced by Municipal water or sewer, like the rest of the neighborhood.

Atty. Elizabeth Hartigan of Gottesman & Hollis P.A. in Nashua NH introduced herself as representing the Property Owner, the Boyer Family Revocable Trust of 2019, and introduced Trustee Todd Boyer.

Atty. Hartigan stated that Municipal water and sewer exist on Ledge Road to the abutting lot and only a small extension would be needed to extend the service to the new lots. Atty. Hartigan stated that this 1.3-acre lot is undeveloped and bordered on three (3) sides with cemeteries and is split between the TR (Town Residence) Zone and the R-2 (Residential Two) Zone. The proposed subdivision would have the first lot entirely in the TR Zone, the second lot would be split between the TR and R-2 Zones and the third and fourth lot would be entirely in the R-2 Zone. They are aware that the Board of Selectmen would need to approve the extension of the water and sewer lines to the new lots.

Atty. Hartigan addressed the Variance criteria. The information shared included:

(1) *not contrary to public interest*

- It is in the public interest to have similar lots in a neighborhood
- This lot is at the end of a Town Residence Zoning District neighborhood and is by far the largest residential lot in the immediate neighborhood aside from the cemetery
- It is a split zoned lot between TR and R-2 – however it is not really a part of the R-2 Zoning District
- The lot's only residential abutter is located in the TR Zone
- The requirement to have one-acre lots in the R-2 Zone would not be in keeping with the residential neighborhood
- Granting the Variance will not alter the character of the neighborhood as there would be no visible difference from the current lot sizes in the area
- Allowing the new lots to comply with the TR Zone lot size for this split zoned lot would not be contrary to the public interest and, as Municipal water and sewer will be provided, the granting will not threaten public or private health, safety or welfare

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

- The purpose of the Zoning Ordinance is to keep similar uses together to protect property values and to protect against adverse impacts on neighbors
- Due to the split Zone, the first proposed lot is in the TR Zone that abuts a TR neighborhood and carries a minimum lot size of 10,000 SF. The remainder of the lot in the R-2 Zone carries a minimum lot size of 43,560 SF which would be the largest in the neighborhood. The lot is bordered on three sides by cemetery and has no relationship to the properties in the R-2 Zone after the cemetery
- The proposed subdivision creates lots that fit in the TR Zone and will not alter the essential character of the neighborhood and will not threaten public health, safety or welfare

(3) *substantial justice done*

- The requirement that the remainder of the lot must meet the larger lot size of 43,560 SF is not reasonable when all the residential lots in the immediate neighborhood are in the TR Zone with significantly smaller lot sizes of 10,000 SF
 - If the Variance is granted to meet the TR lot size of the immediate neighborhood there will be no harm to the public or any other individual
 - The proposed lot sizes would be in keeping with the essential character of the neighborhood and would not threaten public health, safety or welfare
 - The lots would be serviced by Municipal water and sewer and will meet the setback requirements and lot size of the TR Zone
 - Denial will impose substantial harm to the Applicant that is not outweighed by harm to the public
- (4) *not diminish surrounding property values*
- The granting of the Variance will not cause any real change to the neighborhood as the only developed residential lots abutting this property are in the TR Zone and have smaller lot sizes than required in the R-2 Zone
 - Allowing the new lots to comply with the existing TR Zone requirements rather than the R-2 Zone will have no adverse effect on the values of the surrounding properties as the proposed use will be similar in nature to the existing properties on Ledge Road before the cemeteries
- (5) *hardship*
- The property is unique in that it is a large parcel surrounded by cemetery and the TR Zone with its primary access through the TR Zone neighborhood
 - Other than the cemetery, which is on three sides of the lot, lots of 10,000 SF are the closest in proximity
 - Enforcing the Ordinance to require that the new lots comply with the R-2 Zone requirements when the abutting residential parcels are smaller and in the TR Zone has no fair and substantial relationship to the purpose of the Zoning Ordinance in that Municipal water and sewer will be available and the neighboring lot sizes are of similar size
 - R-2 residential lot size does not belong in this neighborhood
 - TR lot size match the character of the neighborhood
 - Lot is surrounded by the cemetery and the only residential abutter is in the TR Zone
 - The proposed lot size is similar to the surrounding TR lots and is a reasonable use
 - The lot is the sole remaining undeveloped residential lot in the neighborhood and is surrounded by cemetery and TR lots
 - Requiring the lot to comply with R-2 lot size requirement is not reasonable
 - Relief is necessary and the proposed use is reasonable

Mr. Sakati inquired about the proposed house dimensions as only one of the new lots has identified a 58'x24' structure. Atty. Hartigan responded that all the houses would be of similar size and Mr. Boyer added that they would be of similar sizes as the neighborhood. Mr. Martin noted that the front setback for the R-2 Zone is fifty feet (50') whereas in the TR Zone the front setback is thirty feet (30').

Public testimony opened at 8:02 PM. Marion Dewyngaert, 28 Ledge Road, addressed the Board, stated that she opposes the project, that she has lived in the neighborhood for forty four (44) years, that approximately three (3) years ago a man wanted to build one (1) house on the lot and after the land was cleared and graded the project was abandoned and left the lot in disarray where it once was filled with beautiful pines and lady slippers, that none of her neighbors want four (4) new houses, that they would support two (2) and realize that lots in the R-2 Zone are to be at least one acre in size and that there are wetlands at the end of the lot.

Atty. Hartigan responded that the first lot is entirely in the TR Zone and compliant with all TR requirements. Mr. Boyer stated that he has been a resident of Hudson all his life, runs a business and had issues in the past and added that he could ask for a duplex in the R-2 Zone but that does not fit into the neighborhood, that there will be water and sewer for the new lots and that the wetlands are at the tip of the triangle and not part of the buildable area for the last lot. Atty. Hartigan noted that the Planning Board will deal with the wetlands on site.

Mr. Daddario asked if anyone else wished to address the Board. No one responded. Public testimony closed at 8:15 PM.

Mr. Martin stated that the lot is stuck between the TR and the R-2 Zones, that it almost appears to be spot zoning. Mr. Sullivan stated that what is being asked is the ability to create three (3) smaller lots in the R-2 portion of the property. An aerial view of the site was displayed. Mr. Daddario commented that the proposal is consistent with the abutting neighborhood. Mr. Dion commented that the Applicant has created a self-induced hardship with the request for three (3) lots in the R-2 section of the property. Mr. Dumont disagreed and stated that there is a hardship on this property and noted that they could add a duplex or a large home without the need for a Variance and that would be inconsistent with the neighborhood. Mr. Thompson stated that it would still be compatible if only two (2) lots were proposed in the R-2 section of the property. Mr. Daddario stated that the math appears to show that the proposed lots are consistent with the neighborhood. Mr. Dion stated that the wetland remains and is unbuildable land and the Board must rely on the Planning Board to verify whether three (3) lots are possible after the verification of the wetland and its buffer. Mr. Lanphear asked and received confirmation that the water and sewer extension to the new lots will be paid by the Applicant, that the wetland and buffer will be verified by the Planning Board and that the cemetery setback will not be violated.

Mr. Nicolas made the motion to grant the Variance with the stipulation that the cemetery twenty-five foot (25') setback shall not be violated. Mr. Martin seconded the motion.

Mr. Nicolas spoke to his motion stating that the proposed use will not conflict with the purpose of the Ordinance and will not threaten public safety, health or welfare, that the essential character of the neighborhood will remain unchanged as the new lots will be similar in size to the surrounding area, that property values will not be diminished, that the hardship is satisfied due to the two (2) Zones on the property and that the proposed use seems reasonable. Mr. Nicolas voted to grant.

Mr. Martin spoke to his second stating that the granting of the Variance will not threaten public health, safety or welfare, that it will be keeping in character with the current neighborhood and will observe the character of the neighborhood, that substantial justice would be done to the Property Owner with no harm to the general public, that it will only add value to the existing properties, that the split-zone on the property is causing the hardship and the proposed is a reasonable Use. Mr. Martin voted to grant the Variance with the stipulation that the twenty-five-foot (25') cemetery shall not be violated.

Mr. Pacocha voted to grant with the stipulation noting that the criteria were satisfied, that the proposed use does not conflict with the purpose of the Ordinance, does not alter the character of the neighborhood, that the proposed lot sizes are consistent with the neighborhood, that there is no actual harm to the public, that new construction tends to add value to surrounding properties.

Mr. Sakati voted to deny the Variance as it does conflict with the purpose of the Ordinance and does not observe the spirit of the R-2 Zone, that it may not alter the character of the neighborhood and Abutter submitted a statement signed by thirteen (13) neighbors indicating that it would harm to neighborhood and that hardship is not met as the Applicant has a choice to build four (4) houses or two (2) or three (3) and has chosen the maximum possible. Applicant failed to satisfy criterion 2, 3 & 5.

Mr. Daddario voted to grant the Variance with the stipulation that the cemetery twenty-five foot (25') setback shall not be violated stating that the proposed lots are consistent with the other lots on Ledge Road and are in keeping with the neighborhood, that substantial justice would be done to the Property Owner with no harm brought to the public, that the surrounding property values will not be diminished, that if the Ordinance was strictly enforced it would result in a significant mix-match, the proposed use is a reasonable use as it is the same use as others on the street, that the parcel is odd-shape, oddly located, surrounded on three (3) sides by cemetery and containing two (2) Zoning Districts.

Roll call vote was 4:1 to grant the Variance with the stipulation that the mandatory twenty-five-foot (25') cemetery shall not be violated. Mr. Sakati opposed. The 30-day Appeal period was noted.

- 3. Case 218-024 (11-16-23):** Alan Simoneau, C/O Brett W. Allard, Esq., Shaughnessy Allard, PLLC, 24 Eastman Ave., Suite C3, Bedford NH, requests two (2) Variances for **4 Homestead Lane, Hudson, NH** [Map 218, Lot 024-000; Zoned General One (G-1)] as follows:
- a.** To allow the continued existing (non-permitted) mixed principal uses: **(A.1.)** Residential Use– Single family detached dwelling and **(E.15.)** Industrial Use– Contractor’s yard on the lot where mixed uses on a lot are not permitted in the G-1 district. [HZO Article III: General Regulations; §334-10 **A**, Mixed or dual use on a lot.]
 - b.** To allow the continued accessory use of existing (non-permitted) garaging or parking of heavy commercial vehicles and equipment where these uses are not permitted in the G-1 district if the property is not served by Town water and sewer. [HZO Article V: Permitted Uses; §334-22, Table of Permitted Accessory Uses and HZO Article III: General Regulations; §334-15 B.(2).]

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Mr. Sullivan read the requests into the record and referenced his Staff Report initialed 11/6/2023 and noted that Review Comments have been received from both the Town Engineer and the Town Planner. The Town Engineer expressed concern regarding the driveway, that it appears to be located not entirely on the property or outside the building setback. The Town Planner noted that Site Plan Review (SPR) would be required from the Planning Board (PB) if the Variances are granted and would include the concerns raised by the Town Engineer.

Atty. Brett W. Allard of Shaughnessy Allard, PLLC, 24 Eastman Avenue, Suite C3, Bedford, NH, introduced himself as representing the Applicant Alan Simoneau and Property Owner Earl W. Simoneau. In response to Mr. Daddario's question, both Variances would be presented together and the Board would make a motion of each individually.

Atty. Allard stated that his client was the original developer of this three-lot subdivision, built his single-family home on this long narrow lot in 1988 complete with a septic system and well, and that in 2001 he started parking equipment behind the house and not visible from Homestead Lane. Atty. Allard noted that in 2022 there was a Zoning Amendment to eliminate requiring a Special Exception for Mixed Uses. Mr. Dumont stated that the intent of the Zoning Amendment was to simplify the Mixed-Use process.

Atty. Allard addressed the Variance criteria. The information shared included:

(1) *not contrary to public interest*

- The proposal is not contrary to public interest, does not conflict with the Ordinance and does not threaten public health, safety or welfare
- The purpose of the G-1 District is to “permit a wide diversity of land uses at a density appropriate to the rural nature of the area, the natural constraints of the land and the lack of infrastructure.”
- Contractor's yard is a Permitted Use in the G-1 Zone and the garaging/parking of heavy commercial vehicles and equipment is a reasonably ancillary function
- The equipment and garage are not visible from Homestead Lane
- No customers come to the site
- No work is done on site, with the exception of vehicle and equipment maintenance
- The driveway encroachment onto abutting State of NH property has been resolved, yet remains in the side setback

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

- Granting the Variance will not alter the essential character of the neighborhood
- The site is surrounded by a dense wooded buffer that the Applicant intends to maintain and this wooded buffer shields sight lines into the property from abutting properties
- The proposed Use is compatible with the character of the area and as such, the Applicant's use of the property will remain consistent with the

residential character of the neighborhood and the storage of vehicles and equipment does not in any way threaten public health, safety or welfare

(3) *substantial justice done*

- Substantial justice would be done to the Applicant that is not outweighed by a gain to the general public
- There is no public gain with the denial of the Variances
- Denial would be a loss to the Applicant because he would then be prevented from storing his vehicles and equipment in between jobs on his property that is uniquely situated to support such a use without compromising the character of the area and abutting residential uses
- The vehicles and equipment are stored within the confines of a thick wooded buffer that precludes the storage use from having any visual impact on the surrounding area
- The storage use does not generate any additional traffic than would a solely residential Use

(4) *not diminish surrounding property values*

- The granting of the Variance will not cause any change to the neighborhood or adversely impact property values

(5) *hardship*

- This property is unique in that it is a large 5-acre parcel, more than double the size of the other lots on Homestead Lane, surrounded by a dense wooded buffer and is extremely private with a long driveway and garage located behind the residence opposite the roadside
- This privacy uniquely situates the property in such a way that it can support the Applicant's storage use without interfering with neighboring properties and with sufficient screening to protect sight lines into the property
- Contractor's Yard is a Permitted Use in the G-1 Zone
- The proposed dual Use is a reasonable use

Board reviewed the Site Plan prepared by M.J. Grainger Engineering, Inc. dated 10/20/2022 and several aerial views. Mr. Martin expressed frustration at the lack of dimensions and distances on the Site Plan and questioned if the Applicant could have pursued a Home Occupation Special Exception given that Contractor's yard is a permitted Use in the G-1 District. Mr. Dion questioned how many vehicles and how much equipment is stored on site and Mr. Simoneau responded that it varies, that they come to the site in between jobs, and they get serviced mostly in the garage. Mr. Lanphear asked how it gets to the garage or even the barn without trespassing and Mr. Simoneau responded that his sons are very good drivers and to add to the challenge, they usually reverse the vehicles to the garage.

Case 218-024 Variance a: To allow the continued existing (non-permitted) mixed principal uses: **(A.1.)** Residential Use – Single family detached dwelling and **(E.15.)** Industrial Use – Contractor's yard on the lot where mixed uses on a lot are not permitted in the G-1 district.

Mr. Martin made the motion to grant the Variance to allow the continued existing mixed Principal Uses. Mr. Pacocha seconded the motion.

Mr. Martin spoke to his motion stating that the granting of the Variance is not contrary to public interest, does not threaten public health, safety or welfare, observes the spirit of the Ordinance, does do justice to the Property Owner, been in operation for years and no one has complained about their property values, and although both Uses are permitted in the District, Zoning requires that the property owner go through the Variance process, and it is a reasonable use. Mr. Martin voted to grant the Variance.

Mr. Pacocha spoke to his second stating that the granting would not be contrary to the public interest, would not alter the essential character of the neighborhood, will observe the spirit of the Ordinance and does not conflict with the purpose of the Ordinance, that there is no harm to the general public, that there would be no diminution to surrounding property values, that it is shielded and there are no other properties in the area and that it is a reasonable use. Mr. Pacocha voted to grant the Variance.

Mr. Nicolas voted to grant stating that the granting will not be contrary to public interest, that the character of the neighborhood will not be altered, that no one's rights will be injured, that the benefits to the property owner do not outweigh harm to the general public, that the surrounding properties will not be negatively impacted, that the elongated strange shape of the land is the hardship and the hardship is further exasperated due to the recent change to the Ordinance and that the use is reasonable.

Mr. Sakati voted to grant stating that it is not contrary to public interest, it adheres to the purpose of the Ordinance and does not injure public rights, that justice is done to the property owner, that there is no diminution of surrounding property values, and that the hardship is the contrariness in Zoning.

Mr. Daddario voted to grant stating that it is an extremely secluded lot, that the current building and uses have been there for over twenty (20) years, that there is no harm to the public, testimony presented that amendment to the Zoning Ordinance was intended to make requiring a Variance unnecessary, that there is no harm to the public, that no evidence was presented or reason to presume that there would be any diminution of surrounding property values, that the amendment to the Zoning Ordinance was intended to allow this type of mixed use without needing a Variance, that the proposed use is a reasonable one, and that this is a long lot extremely secluded and greater than twice the size of the others on Homestead Lane.

Roll call vote was 5:0. Variance A to allow continued mixed Principal Uses to exist on site granted. The 30-day Appeal period was noted.

Case 218-024 Variance b: To allow the continued accessory use of existing (non-permitted) garaging or parking of heavy commercial vehicles and equipment where these uses are not permitted in the G-1 district if the property is not served by Town water and sewer.

Mr. Daddario opened the public testimony at 9:26 PM. No one addressed the Board.

Mr. Nicolas made the motion to grant the Variance to allow continued accessory use. Mr. Martin seconded the motion.

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Mr. Nicolas spoke to his motion stating that the granting of the Variance will not be contrary to public interest, that the site is secluded and equipment not visible, that the character of the neighborhood will not be altered, that the benefit to the Applicant doesn't outweigh harm to the general public, that surrounding properties will not be negatively impacted and no property values will diminish, that the recent changes to the Zoning Ordinance brought on the hardship and that the use is a reasonable use. Mr. Nicolas voted to grant.

Mr. Martin spoke to his second stating that it will not be contrary to the public interest and will observe the spirit of the Ordinance and substantial justice will be done, that there will not be diminishment to surrounding property values and that the Zoning Ordinance became explicit that the owner gains a variance for this use, that the proposed use is a reasonable use. Mr. Martin voted to grant.

Mr. Sakati voted to grant stating that it is not contrary to public interest, that the character of the neighborhood is not altered, that it adheres to the purpose of the Ordinance and causes no injury to public rights, that justice is served, that there is no diminution of surrounding property values, and that the hardship is caused by Zoning contradiction.

Mr. Pacocha voted to grant and stated that the granting will not be contrary to public interest and will not alter the essential character of the neighborhood, that it observes the spirit of the Ordinance and does not conflict with the purpose of the Ordinance and does not alter the essential character of the neighborhood, that there is no harm to the general public, that surrounding property values would not diminish, and that hardship is met by the size and shape of the lot and the proposed use is reasonable.

Mr. Daddario voted to grant stating that it is an extremely secluded lot, that the current building and uses have been there for over twenty (20) years, that there is no harm to the public, testimony presented that amendment to the Zoning Ordinance was intended to make requiring a Variance unnecessary, that there is no harm to the public, that no evidence was presented or reason to presume that there would be any diminution of surrounding property values, that the amendment to the Zoning Ordinance was intended to allow this type of mixed use without needing a Variance, that the proposed use is a reasonable one, and that this is a long lot extremely secluded and greater than twice the size of the others on Homestead Lane.

Roll call vote was 5:0. Variance B to allow the continued accessory use of existing garaging or parking of heavy commercial vehicles and equipment on site that is not served by Town water and sewer granted. The 30-day Appeal period was noted.

- 4. Case 167-052 (11-16-23):** Ausama Mohamed Ali & Soukayna El Bouayadi, **135 Highland St., Hudson, NH** requests a Variance to allow a Family group day-care home with a maximum of 12 preschool children and 5 school age children with assistant staff. This is an Accessory Use prohibited in the R-2 Zone. [Map 167, Lot 052-000; Zoned Residential-Two (R-2); HZO Article V: Permitted Uses; §334-22, Table of Permitted Accessory Uses and HZO Article II: Terminology; §334-6, Definitions and NH State RSA 170-E:2, IV(b).]

Mr. Sullivan read the Case into the record, referenced his Staff Report initialed 11/6/2023, stated that the ZBA granted a Home Occupation Special Exception for a Day Care in February 2023 and that comments were received from the Town Engineer and Inspectional Services

Ausama Mohamed Ali & Soukayna El Bouayadi sat at the Applicant's table, introduced themselves and proceeded to address the Variance criteria. The information shared included:

(1) *not contrary to public interest*

- The granting of the Variance will not be contrary to the public interest and poses no threat to public safety, health or welfare or to the neighborhood
- The childcare facility is already licensed by the State of NH demonstrating its compliance with stringent State regulations that prioritize the well being and safety of the children
- Increasing the facility's capacity will not result in any adverse consequences and will help address the growing demand for childcare services in the community
- Granting this Variance will enable us to continue providing quality daycare which is essential for the local community's support and growth

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

- The proposed increase in childcare capacity will observe the spirit of the Ordinance by complying with Zoning laws, safety regulations and licensing requirements
- The expansion of our business directly contributes to the Ordinance's underlying purpose, which is to support the well-being of families in the community
- Increasing the capacity will not alter the essential character of the neighborhood
- The facility will continue to operate within the residential area
- The proposed increase is designed to uphold public health, safety and welfare
- All necessary safety standards and regulations will continue to be followed, including all State regulations, staff-to-child ratios, safety measures, health standards and traffic management
- There is ample parking available
- The requested Variance is in complete alignment with both local regulations and public interest fostering a safer and more inclusive community for all

(3) *substantial justice done*

- Expanding the daycare capacity would provide substantial justice for the property owner by maximizing property utilization, generating economic benefits and enhancing property's value
- Childcare expansion will not harm the general public or other individuals

(4) *not diminish surrounding property values*

- The expansion will not diminish the values of surrounding properties
- Diverse services and improved infrastructure can enhance neighborhood desirability
- Overall, the childcare expansion can contribute positively to a neighborhood's attractiveness and property values

(5) *hardship*

- The special conditions that restrict our house to a family daycare home may not be fair and reasonable because the house has the space to accommodate more children
- The State Licensing Coordinator mentioned at their last visit that the house could qualify to be a family group daycare home
- Special conditions of the property have a significant impact on the reasonableness of increasing our daycare's child capacity
- The special conditions include ample space, suitable safety measures and a welcoming environment
- The spacious setting ensures children have room to play and learn comfortably while the safety measures guarantee their well-being

Ms. Bouayadi stated that her two-year-old son is one of the six (6) pre-school aged children she is licensed for the daycare and even though she has been in business less than a year, she already has a waiting list. Mr. Nicolas asked when she opened for business and Ms. Bouayadi responded that it was this past June after the Board (ZBA) granted her a Special Exception for nine (9) children to be comprised of six (6) pre-school age and three (3) school age children. Ms. Bouayadi stated that she would like to expand to have twelve (12) pre-school aged children and five (5) school aged children and will need to hire one (1) employee.

Mr. Lanphear asked Ms. Bouayadi if she's seen the email of 11/16/2023 from Bernadette Daigle of 127 Highland Street as president of the Highland Street Sewer Association who manages the pump station for seven (7) houses and their concern with excessive use by the daycare. Ms. Bouayadi stated that she spoke with Ms. Daigle that morning and explained that not all the children are potty-trained and that they understand the concern and have no problem paying more. Mr. Martin stated that is a civil matter and should there be a dispute, it would be a civil dispute and not involve the Board. Mr. Daddario asked if there have been any issues or complaints received from the neighbors and Mr. Sullivan responded that he has not heard of any.

Mr. Thompson inquired about the State inspections and Mr. Sullivan responded that according to his knowledge, there is no set schedule for State inspections, they just show up unannounced. Ms. Bouayadi concurred.

Mr. Dion asked if there were to be any changes to the internal floor plan or drop off & pick up plan? Ms. Bouayadi responded that there will be no changes, that she will continue to work with the parents for a smooth transition of drop offs and pick ups.

Public testimony opened at 10:01 PM. No one addressed the Board.

Mr. Martin stated that the Board granted a Home Occupation Special Exception (HO SE) for a Daycare in March 2023, and now the Applicant is looking for a Variance for a business that will increase the number of children and include the hiring of staff, yet a condition of the HO SE, Section 224-24.C, specifically state that there shall be no employees. Mr. Martin suggested deferring the hearing until Town Counsel can be consulted. Mr. Dumont questioned that because if the Applicant had nothing yet there would not have a HO SE and would not need a HO SE. Mr. Martin disagreed and stated that every business needs a HO SE if it is being conducted within a

residence. Mr. Sakati suggested to add consult with the Town Counsel as a condition of approval. Mr. Pacocha asked that if the Applicant is expanding into a business, would they also not need a Variance for a dual use? Mr. Daddario stated that, in his opinion, it would not because it is being conducted in an “occupied residence”. Discussion continued on the fate of the HO SE.

Discussion arose on the definition of a daycare center, a daycare facility, a family daycare, a group child daycare center. Mr. Pacocha asked if the limit is just for one (1) employee. Mr. Sullivan responded that if the facility goes beyond seventeen (17) children is becomes a “center”. Mr. Lanphear questioned how the business is legally characterized and Mr. Ali responded that they have a State ID Number so it is treated like a DBA (Doing Business As).

Mr. Martin noted that the hardship criteria is not satisfied as the land poses no hardship to overcome. Mr. Sakati stated that literal enforcement causes hardship.

Mr. Nicolas made the motion to grant the Variance to allow a family group daycare with a maximum of twelve (12) preschool children and five (5) school age children with an assistant staff. Mr. Sakati seconded the motion.

Mr. Nicolas spoke to his motion stating that it is not contrary to public interest and does not conflict with the purpose of the Ordinance and will not alter the essential character of the neighborhood, that benefit to the property owner does not outweigh harm to the public, that property values won’t diminish and that the hardship lies with classification of the home as literal enforcement will bring about hardship, and the proposed Use seems reasonable. Mr. Nicolas voted to grant the Variance.

Mr. Sakati spoke to his second stating that it is not contrary to public interest, will not alter the character of the neighborhood, that it observes the spirit of the Ordinance, that justice will be done by allowing additional childcare, that there will be no diminution of property values and that literal enforcement would cause unnecessary hardship. Mr. Sakati voted to grant the Variance.

Mr. Pacocha voted to grant stating that it will not be contrary to public interest and does not conflict with the purpose of the Ordinance and serves the purpose of the Ordinance, and justice would be done to the property owner that is not outweighed by harm to the public, that it will not diminish the value of surrounding properties, and that the proposed use is a reasonable one.

Mr. Martin voted not to grant and stated that it will be contrary to the public interest and does not observe the spirit of the Ordinance, that it would provide benefit to the property owner that is not outweighed by harm to the general public, that allowing a larger business in the neighborhood will diminish the values if the surrounding properties, that no hardship exists on the property, and that it is not reasonable turning the family home into a business with an employee.

Mr. Daddario voted to grant stating that there will be no changes to the exterior appearance of the home, that it is an existing use and brings no harm to the public, that there has been no evidence given or reason to presume diminution of surrounding property values with no exterior changes, that a daycare already exists so literal

enforcement does not serve the purpose of the Zoning Ordinance, that the daycare is reasonable and the Ordinance does provide for a family group daycare.

Roll call vote was 4:1. Mr. Martin opposed. Variance granted. The 30-day Appeal period was noted.

- 5. Case 236-020 (11-16-23):** Carl & Debrah Howes, **2 Glenview Dr., Hudson, NH** requests a Variance to build a proposed 12 ft. x 12 ft. deck on the rear of the house which will encroach the rear yard setback approx. 4.5 feet leaving approx. 10.5 feet where 15 feet is required. [Map 236, Lot 020-000, Zoned Residential - Two (R-2); HZO Article VII: Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements.]

Mr. Sullivan read the Case into the record and referenced his Staff Report initialed 11/6/2023 and noted that the Town Planner commented that the lot abuts the Musquash Conservation area but appears to be outside the wetland buffer area.

Carl Howes, property owner, introduced himself, noted that the lot to the rear is not buildable and addressed the Variance criteria. The information shared included:

- (1) *not contrary to public interest*
 - The deck will not be in public view and will not impact the view from existing or any possible future residential abutters
 - It is not contrary to public interest
- (2) *will observe the spirit of the Ordinance*
 - The encroachment into the setback is to the rear property line that abuts an unbuildable back lot
- (3) *substantial justice done*
 - Justice would be done as there is not another possible location for a private deck due to the furnace and water heater direct vents
- (4) *not diminish surrounding property values*
 - The deck is in keeping with residential use and should not diminish any surrounding property values
- (5) *hardship*
 - The setback encroached upon us to an unbuildable lot owned by the Town
 - The house was built in the only feasible location on an unusually shaped lot and the construction allowed for a future deck

Board viewed the aerial view of the lot and Mr. Howes confirmed that the placement of the deck would be in the back on the left hand side.

Public testimony opened at 10:42 PM. No one addressed the Board.

Mr. Martin made the motion to grant the Variance as requested. Mr. Nicolas seconded the motion.

Mr. Martin spoke to his motion stating that the granting will not be contrary to the public interest, that it will observe the spirit of the Ordinance, that substantial justice would be done and is not outweighed by harm to the general public, that it will not diminish surrounding properties and that hardship does exist on this property

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because abutting property has a wetland and it is a reasonable use. Mr. Martin voted to grant the Variance.

Mr. Nicolas spoke to his second stating that it is not contrary to public interest and doesn't alter the essential character of the neighborhood and won't injure public rights, safety or welfare, that the benefit to the homeowner doesn't outweigh harm to the general public, that there will not diminish surrounding property values and that hardship is due to the awkward shape of the land and that the house sits awkwardly on the land and it is a reasonable use. Mr. Nicolas voted to grant the Variance.

Mr. Sakati voted to grant the Variance stating that it is not contrary to public interest, does not threaten public health, safety or welfare, does observe the spirit of the Ordinance and does not alter the character of the neighborhood, that justice is done with the granting of the Variance, that it does not diminish surrounding property values and that literal enforcement would result in unnecessary hardship.

Mr. Pacocha voted to grant the Variance stating that it is not contrary to public interest, does not alter the character of the neighborhood, does observe the spirit of the Ordinance, does not conflict with the purpose of the Ordinance, that justice would be done with no harm to the public, that there would be no diminution to other property values and the placement of the home is in close proximity to a wetland.

Mr. Daddario voted to grant the motion stating that a deck is consistent with the residential character and creates no harm to the public, that it observes the spirit of the Ordinance, that the encroachment is slight and to an unbuildable lot, there is no harm to the public and no evidence or reason to presume it would diminish surrounding property values, that there is no need to enforce a setback to an unbuildable lot, that a rear deck is reasonable and common use at a residence, and the shape and size of the lot and how the house was situated on the lot creates the hardship.

Roll call vote was 5:0. Variance granted. The 30-day Appeal period was noted.

V. REQUEST FOR REHEARING:

No requests were received for Board consideration.

VI. REVIEW OF MINUTES:

10/26/23 edited draft Minutes

Motion made by Mr. Martin, seconded by Mr. Nicolas and unanimously voted to approve the 10/26/2023 Minutes as edited.

VII. OTHER

The December meeting is scheduled for Thursday 12/14/2023 at 7:00 PM.

VIII. ADJOURNMENT

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Motion made by Mr. Martin, seconded by Mr. Sakati and unanimously voted to adjourn the meeting. The 11/16/2023 ZBA meeting adjourned at 10:51 PM.

Respectfully submitted,

Gary M. Daddario, ZBA Chairman