



# TOWN OF HUDSON

## Zoning Board of Adjustment

Gary M. Daddario, Chairman

Kara Roy, Selectmen Liaison

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

### MEETING MINUTES – March 09, 2023 – approved

#### I. CALL TO ORDER

#### II. PLEDGE OF ALLEGIANCE

Acting Chair Normand Martin called the meeting to order at 7:13 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 Tristan Dion (Alternate), Tim Lanphear (Alternate), Normand Martin (Regular/Vice Chair/Acting Chair), Marcus Nicolas (Regular), Jim Pacocha (Regular), and Edward Thompson (Alternate/Clerk). Also present were Bruce Buttrick, Zoning Administrator, Louise Knee, Recorder (remote) and Kara Roy, Selectman Liaison. Excused were Gary Daddario (Regular/Chair) and Dean Sakati (Regular)

Alternate Lanphear was appointed to vote in Mr. Daddario's absence.  
Alternate Dion was appointed to vote in Mr. Sakati's absence.

#### IV. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

1. **Case 101-004 (03-09-23):** Vital Delivery Solutions LLC, represented by Mateusz Kozlowski, Manager, 57 Harvey Rd., Londonderry, NH requests a Variance for **21 West Rd., Hudson, NH** to allow a warehouse use in the Business Zone where it is not an allowed use. [Map 101, Lot 004-000; Zoned Business (B); HZO Article V: Permitted Uses; §334-21, Table of Permitted Principal Uses (E-8).]

Mr. Buttrick read the Case into the record, referenced his Staff Report, noted that the Planning Board (PB) approved Site Plan Review (SPR) on 12/19/2000 for a Warehouse and that in 2010 there was a change from storage/warehousing to manufacturing/machine shop and that both the Fire Department and Town Planner provided comments. In brief, the Town Planner stated to define specific Use as there is a proposed Zoning Amendment to delineate Use Code E8 into four (4) specific categories. The Fire Marshal made two comments. In Brief they were: (1) any storage in excess of 12' in height shall require a sprinkler system & (2) need a description of what is to be stored as the storage of any hazardous, combustible materials or flammable liquids or solids would require additional review.

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Approved 4/27/2023 as edited.

Carl Dubay of The Dubay Group, Inc., introduced himself and Matt Kozlowski, Manager of Vital Delivery Solutions LLC. Mr. Kozlowski stated that the property is under a Purchase and Sales Agreement contingent upon getting this variance and site plan approval from the Planning Board to expand his operation which has its main operation at 57 Harvey Road, Londonderry, NH, and has 15,000 SF of warehouse capability for their clients and they are in need of additional warehousing space for one of their major clients, Cabot Mac and Cheese.

Mr. Dubay stated that non-hazard material is stored. Mr. Dubay stated that the site is in the Business District, but, just across the street is the Industrial District and the proposed site is surrounded by commercial businesses and industrial uses, with two (2) warehouses just across the street. The site underwent Planning Board (PB) Site Plan Review (SPR) for warehouse use in the year 2000 and in the year 2010 the occupant changed to a machine shop and today the plan is to revert the 11,000 SF building back to warehouse use, which is considered a change-of-use, so they will need to go back to the Planning Board. Mr. Dubay stated that there are no changes proposed for the building except for the elimination of the machine shop to return it back to open space.

Mr. Dubay next addressed the variance criteria. The information shared included:

(1) *not contrary to public interest*

- The use fits with the current uses of the abutting properties
- There will be no physical changes to this property
- Warehouse use was the original intent when property was initially developed

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

- The spirit of the Ordinance is to keep certain uses separated
- This use fits in with the neighborhood
- The two properties across the street are in the Industrial Zone and their uses listed as “warehouse” – see Exhibit A
- Granting of this variance would maintain the similar separation of uses as currently exists

(3) *substantial justice done*

- Substantial justice would be done to the property owner because the current site was approved and constructed based on site plans approved by the Planning Board stating that the proposed use would be “warehouse/general light industrial (no showroom/retail use)”. See Note 3 on recorded Site Plan, Exhibit B

(4) *not diminish surrounding property values*

- The proposed use will be consistent with the other uses in the neighborhood and therefore not have a negative effect on abutting parcels

(5) *hardship*

- The building was built as a warehouse and the removal of the current machine shop would revert the use back to what it was originally approved, recorded and built in accordance with the Site Plan the Planning Board approved
- With the exception of a small concrete pad that will be used in conjunction with an allowed use, there are no changes proposed to the property

Public testimony opened at 7:36 PM. No one addressed the Board.

Mr. Lanphear questioned the concrete pad and noted that holiday times could require more inventory and if any of that inventory would be hazardous. Mr. Dubay stated that the concrete pad would be addressed with the Planning Board during Site Plan Review. Mr. Kozlowski stated that he spoke with the Fire Marshal and that there would be no flammable materials at this site. Mr. Thompson noted that Vital Delivery Solutions is headquartered in Londonderry and questioned if this site would be just for the storage of food. Mr. Kozlowski stated that the site has potential for many uses and added that the primary motivator to obtaining it is to provide their service to their customer, Cabot. Both Mr. Dion and Mr. Nicolas questioned whether any other Vital storage sites store any flammables and Mr. Kozlowski responded that there are no hazardous materials stored in any of his sites and there is no dealings with hazmat. Mr. Kozlowski added that Cabot popcorn is coming out soon but that is not hazardous in storage and is an example of Cabot's growth and their need for ever-growing inventory requiring storage.

Ms. Roy stated that the Fire Marshal's other comment pertained to the need for a sprinkler system if there is any storage of material greater than twelve feet (12') in height. Mr. Kozlowski stated that he also discussed this with the Fire Marshal and their storage is less than twelve feet (12') in height, so a sprinkler system will not be needed. Ms. Roy asked how many employees would be at this site and Mr. Kozlowski responded that there is only one (1) employee needed at this site to move the inventory.

Mr. Lanphear asked the hours of operation for this site. Mr. Kozlowski stated that it would be standard business hours, 9:00 AM – 5:00 PM Monday through Friday.

Mr. Buttrick asked about the number of trips planned to/from this site. Mr. Kozlowski responded that it is anticipated that there will be one tractor-trailer to this site every other week to receive inventory and smaller delivery trucks to local supermarkets going out one to two (1-2) times per day.

Mr. Nicolas made the motion to grant the variance with two stipulations: (1) If there is to be storage of any hazardous, combustible or flammable and/or liquids, additional review and approval will have to be required from the Fire Marshal before continuing with storage; and (2) storage racks to be kept under twelve feet (12') in height, else a sprinkler system shall be installed. Mr. Lanphear seconded the motion.

Mr. Nicolas stated that the proposed use is not contrary to public interest, that the area is currently being used for such industrial use, that the proposed use does not conflict with explicit or implicit purpose of the Ordinance or alter the character of the neighborhood, that the benefits to the property owner are not outweighed by harm to the general public, that surrounding property values will not be diminished and that there is no unnecessary hardship and the site will be used as originally intended and approved.

Mr. Lanphear agreed with Mr. Nicolas and added that it is in an industrial area and works well in the neighborhood, there is no impact on surrounding property values and will not bring high traffic to the area.

Mr. Pacocha voted to grant the Variance with the two (2) stipulations as it is not contrary but compatible with the abutting properties, substantial justice would be done because the benefits to the property owner are not outweighed by harm to the general public, surrounding property values will not be diminished and special conditions do exist as there is current use established in the neighborhood that is not allowed.

Mr. Dion voted to grant with the two (2) stipulations noting that it is in an industrial area and is a warehouse and will not harm the neighborhood or create any safety concerns or impact surrounding property values, it is already a warehouse with only a slight alteration to the parking, and it was initially built as a warehouse from an approved Site Plan and that it is good that it maintain its original purpose.

Mr. Martin voted to grant with the two (2) stipulations stating that no public rights will be injured, that it is compatible with surrounding properties and will observe the spirit of the Ordinance, will not diminish surrounding property values and the use is going to revert back to the original and approved use, that the hardship is satisfied as the Zone change in the Zoning Ordinance is now requiring a variance.

Vote was 5:0 to grant the Variance with two (2) stipulations. The 30-day Appeal period was noted along with the need for Site Plan review with the Planning Board.

2. **Case 216-026 (03-09-23):** David Doherty, **8 Hunter Lane, Hudson, NH** requests a Home Occupation Special Exception to operate a machine shop as an accessory use in his detached garage to fabricate firearms and accessories for a class 7 Federal Firearms License (FFL). [Map 216, Lot 026-000; Zoned Residential-Two (R-2); HZO Article V: Permitted Uses; §334-22, Table of Permitted Accessory Uses and HZO Article VI: Special Exceptions; §334-24, Home Occupations.]

Mr. Buttrick read the Case into the record, referenced his Staff Report, and that the Fire Marshal listed five (5) items in his 2/28/2023 letter regarding outstanding items on the detached garage building permit (BP) issued 2/8/2021: (1) the BP is still open and needs a final inspection yet to be scheduled or performed; (2) no electrical permit applied for or issued for the garage; (3) no electrical inspection performed or approved; (4) no propane tank permit applies for or issued for the garage; and (5) no gas boiler inspection scheduled or performed

Mr. Buttrick noted that DTB Fabrication LLC was registered on 2/2/2020 as a domestic limited liability (LLC) type with an address of 8 Hunter Lane without benefit of having received a Home Occupation Special Exception to use this address. Mr. Buttrick stated that he received a telephone call that afternoon from an abutter who expressed concern if there was going to be any firing of firearms on site and suggested that any test firing be done in a gun range and not in the neighborhood.

David Doherty introduced himself and stated that there is no retail involved, no gun storage, just prototyping and noted that ATF makes no distinction between a hobby

and business and treats everything as a business. Mr. Doherty stated that he has a full time job, three children and this is just his hobby with a hope to maybe sell an idea or get a patent.

Mr. Doherty addressed the criteria for the granting of a Special Exception and the information shared included:

*(1) Proposed use for services provided on-site*

- Prototyping, designing and machining of firearms and accessories of very small custom quantity – maybe 4-5 a year
- Following all laws pertaining to ATF regulations and registration – and pursuing Class 7 Federal Firearms License

*(2) Proposed use shall be secondary to principal residential use*

- Yes, house is his primary residence

*(3) Proposed use shall be conducted within the residence*

- Proposed use will be conducted inside detached 36'40' detached garage

*(4) There shall be no exterior indication of the proposed use*

- There will be no sign or any exterior indication of proposed use

*(5) There shall be no exterior storage unless*

- There will be no exterior storage

*(6) There shall be no objectionable circumstances such as noise, odors, dust*

- No noise, vibrations, dust, smoke or disturbances of any kind will be produced

*(7) Traffic in the neighborhood shall not be substantially increased*

- There will be no traffic

*(8) Off-street parking required*

- Off street parking is available as there are 3 parking spaces in front of the detached garage
- Expectation would be no more than 1 car per month
- Hours of operation would be afternoons & Saturdays from 8AM - 3PM

*(9) Home occupation shall be conducted only by residents*

- Only the Applicant/Property Owner will be involved – David Doherty

*(10) Any vehicles required for Home Occupation?*

- There will be no vehicles needed for the proposed use

Public testimony opened at 8:05 PM. No one addressed the Board.

Mr. Roy asked what the largest caliber would be involved and Mr. Doherty responded that it could be a 50 caliber which is approximately a half inch (1/2") wide for a suppression and added that there would be no test firing on site.

Mr. Lanphear inquired about the Fire Marshal's comments. Mr. Doherty stated that he was unaware of these outstanding items, that he hired professionals to construct the garage and just assumed they did what needed doing, but apparently not, and added that he would address, now that he knows.

Mr. Thompson stated that the site is located in a short cul-de-sac and when he drove by he noticed a commercial truck in the driveway. Mr. Doherty stated that vehicle is a company truck from his employer. Mr. Thompson inquired if the weight of the vehicle is an issue. Mr. Buttrick checked the Zoning Ordinance and the limit is 13,000 GVW (Gross Vehicle Weight) for Home Occupations, but this vehicle is not for the Home Occupation. Mr. Doherty stated that the truck is greater than 13K GVW.

Mr. Pacocha asked and received confirmation that there would be no customers coming to the site.

Mr. Martin asked if the operation is just fabrication and Mr. Doherty confirmed that it is just machining and welding. Mr. Pacocha asked if and Mr. Doherty confirmed that involved creating a functional weapon. Mr. Dion asked about the Class 7 Federal Firearms License and Mr. Doherty explained that any assembly greater than 80% is classified a firearm and what he receives is already 80% so the minute he touches it, it gets classified as a firearm.

Mr. Lanphear asked if the machinery is loud. Mr. Doherty responded that it is not, that the legs are self-leveling and the sound cannot be heard at his home.

Mr. Martin asked how testing would be accomplished. Mr. Doherty stated that he will not test a weapon on site, that he is a member of Nashua Fish and Game or he can go to his brother's land (75 +/- acres) to test.

Mr. Pacocha made the motion to grant the Home Occupation Special Exception (HO SE) as all the criteria have been satisfied. Mr. Lanphear seconded the motion stating that the criteria have been met, that the Applicant Is sincere and the operation will not affect the neighborhood.

Mr. Nicolas voted to grant the HO SE as the criteria have been satisfied and the Applicant has testified that the firearms would be discharged offsite.

Mr. Dion voted to grant the HO SE as the criteria have been satisfied and the restrictions by ATF is why it is before the Board even though it is purely a hobby.

Mr. Martin voted to grant for the same reasons, noted that this HO SE is more of a service than sales and the Applicant has testified that the outstanding issues regarding the detached garage Building Permit will be dealt with.

Vote was 5:0. HO SE granted. The 30-day Appeal Period was noted.

3. **Case 168-018 (03-09-23):** Michael Pruitt, **20 Madison Dr., Hudson, NH** requests two (2) Equitable Waivers of Dimensional Requirement [Map 168, Lot 018-000; Zoned Residential-Two (R-2)] as follows:

Mr. Buttrick read both requests into the record, referenced his Staff Report and noted that the violations were discovered when the certified plot plan accompanied Building Permit #2022-01319 to construct an ADU (Accessory Dwelling Unit)

- a. To allow a 240 SF pavilion structure to remain, which encroaches 12 ft. into the side yard setback leaving 3 ft. where 15 ft. is required. [HZO Article VII: Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements.]

Michael Pruitt introduced himself and stated that about five (5) years ago he decided to place an outdoor kitchen in his back yard and went ahead and did it, without having any idea about setbacks or that an open space pavilion would be considered a building. The outdoor kitchen sits on a six inch (6") concrete slab measuring twenty feet by twelve feet (20'x12') with an island grill and four (4) sonotubes for the six inch (6") posts to hold up the roof.

Mr. Pruitt addressed the four (4) criteria for Option 1 of the Equitable Waiver of Dimensional Requirement. The information shared included:

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(a) *Discovered too late*

- Was totally unaware of any setbacks until I had a certified plot plan done for an addition to my home and the surveyor informed me that both the pavilion and the shed are in the setback

(b) *Innocent mistake*

- Did not believe I needed any permit for the outdoor kitchen because the structure would be open on all sides and not considered a permanent structure

(c) *No nuisance*

- The entire backyard is fenced in with 6' vinyl fencing and the only thing visible to my neighbors is the roof and that does not block any views or access to their property
- We have had many of our neighbors compliment on the work we have done to our house/property over the years and never received any complaint or negative comment about the outdoor kitchen

(d) *High correction cost*

- It would be costly to bring in multiple pieces of equipment to even attempt to move it, if at all possible
- Some of the material would not be salvageable, like the island grill which is glued and mortared together and the post and beam construction

Mr. Martin asked and received confirmation that the fence is a six foot (6') high vinyl fence and the grill is under/inside the pavilion. Mr. Pacocha asked when the pavilion was built, how close to the property line the pavilion is and whether there have been

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Approved 4/27/2023 as edited.

any neighbor complaints. Mr. Pruitt stated that he built it about five (5) years ago and has never received a complaint. Mr. Buttrick stated that according to the surveyed plot plan the pavilion is three feet (3') from the property line.

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

Ms. Roy asked if there is any power and water to the pavilion. Mr. Pruitt stated that there is power but no water. In response to Ms. Roy's next question, Mr. Buttrick stated that there was no Electrical Permit issued for the pavilion. Mr. Dion asked the source of the water in the pavilion and Mr. Pruitt responded that it comes from the irrigation system.

Mr. Buttrick read the provisions for Equitable Waivers and Variances and noted that RSA 674:33-a,I provides two options : (1) that the error occurred over ten (10) years ago or (2) that the infraction meet all four (4) criteria

Mr. Lanphear made the motion to grant the Equitable Waiver of Dimensional Requirement with the stipulation that the property owner shall obtain the necessary Building and Electrical Permits. Mr. Pacocha seconded the motion.

Mr. Lanphear spoke to his motion noting the excessive cost to correct, that it was an innocent mistake discovered too late and has not been a nuisance. Mr. Pacocha spoke to his second noting that is was discovered too late after it was constructed, that the mistake was wanting it in a convenient position, that it is not a nuance especially with the six foot high fence around the yard and the high cost of correcting.

Mr. Dion voted to grant with the stipulation as it was discovered too late, there is no going back, that it was an innocent mistake and has not been a nuisance, that there have been no complaints received and the high correction cost. Mr. Nicolas voted to grant with the stipulation as all the criteria have been met. Mr. Martin voted to grant with the stipulation stating that after five (5) years it is too late, that it hasn't been a nuisance and that maybe it was an innocent mistake but that doesn't outweigh the high cost to correct.

Vote was 5:0 to grant the Equitable Waiver of Dimensional Requirement with one stipulation. The 30-day Appeal period was noted

- b. To allow an approx. 224 SF shed structure to remain which encroaches 15 ft. into the rear yard setback leaving 0 ft. and approx. 4 ft. into the side yard setback leaving approx. 11 ft. where 15 ft. is required in both setbacks. [HZO Article VII: Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements.]

Mr. Pruitt stated that when he bought the property there was a shed in that back corner and at one point there was also a playhouse, which is no longer there. When the shed started to rot out, he built a new one behind the old one and added that he inadvertently caused some damage to the new shed when he

demolished the rotted one. GIS pictures were displayed showing the corner with both the old shed and the new shed and the shift in position was noted.

Mr. Pruitt addressed the four (4) criteria for Option 1 of the Equitable Waiver of Dimensional Requirement. The information shared included:

*(a) Discovered too late*

- Was totally unaware of any setbacks until I had a certified plot plan done for an addition to my home and the surveyor informed me that both the pavilion and the shed are in the setback

*(b) Innocent mistake*

- The shed was built to replace an old rotting shed that was on the property when purchased in 2001
- The original shed had always been along the right-side property line.
- The new shed was built behind the old shed
- Was under the impression that I did not need a building permit as the new shed is under 200 SF

*(c) No nuisance*

- The entire backyard is fenced in with 6' vinyl fencing and the only thing visible to my neighbors is the roof and that does not block any views or access to their property
- A shed has always been in that back corner, only now it is new and in better condition

*(d) High correction cost*

- The cost would be expensive to move as the fencing would have to come down to gain access with a machine to move it, there would be damage to my fairly new lawn irrigation system and it would have to be located 25' from the fire pit to meet the Town's requirement as a safe distance to a combustible structure

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

Mr. Dion asked if there was any power or water to the shed. Mr. Pruitt responded that there is one (1) outlet and one (1) bulb in the shed. Mr. Buttrick noted that a Building Permit and an Electrical Permit are needed for this shed.

Mr. Pacocha made the motion to grant the Equitable Waiver of Dimensional Requirement with the stipulation that the property owner obtain the necessary Building and Electrical Permits. Mr. Lanphear seconded the motion.

Mr. Pacocha spoke to his motion noting that the criteria have been satisfied, that it was an innocent mistake, it was discovered too late and has not posed a nuisance and that the cost is too high to relocate it. Mr. Lanphear spoke to his second noting that the criteria have been met and added that there is a necessity to maintaining a twenty five foot (25') from the fire pit. Mr. Nicolas, Mr. Dion and Mr. Martin all voted to grant the request with the stipulation as the criteria outlined in RSA 674:33-a have all been met.

Vote to grant with stipulation was 5:0.

Vote to grant the Equitable Waiver of Dimensional Requirement with one stipulation was 5:0. The 30-day Appeal period was noted.

**V. OTHER**

Mr. Roy reminded everyone to vote next week

**VI. ADJOURN**

Motion made, seconded and unanimously voted to adjourn the meeting. The 3/9/2023 ZBA meeting adjourned at 8:54 PM.

Respectfully submitted,

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Normand G. Martin, Acting Chairman