



TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Dillon Dumont, Selectmen Liaison

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MEETING MINUTES – July 13, 2023 – approved

The Hudson Zoning Board of Adjustment met on Thursday, July 13, 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
- III. ATTENDANCE

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.

Members present were Gary Daddario (Regular/Chair), Tristan Dion (Alternate), Tim Lanphear (Alternate), Normand Martin (Regular/Vice Chair), Jim Pacocha (Regular), Dean Sakati (Regular) and Edward Thompson (Alternate/Clerk). Also present were Dillon Dumont, Selectman Liaison (arrived 7:13 PM), Louise Knee, Recorder (remote), and Chris Sullivan, Zoning Administrator. Excused was Marcus Nicolas (Regular) and it was noted that he would have recused himself as he is an abutter to the Case before the Board. Alternate Dion was appointed to vote.

IV. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

DEFERRED HEARINGS:

Case 147-016 (07-13-23) (deferred from 05-25-23): Derry & Webster LLC, c/o Vatche Manoukian, Manager, 253 Main St., Nashua, NH requests four (4) Variances for **181 B Webster St., Hudson, NH** [Map 147, Lot 016-000; Zoned Residential-Two (R-2)] as follows:

- a. To allow an existing (non-permitted) landscaping business to remain/continue where landscaping use is not permitted in the R-2 district. [HZO Article V: Permitted Uses; §334-21, Table of Permitted Principal Uses.]
- b. To allow an existing (non-permitted) landscaping business to continue to sell retail landscaping products where this use is not permitted in the R-2 district. [HZO Article V: Permitted Uses; §334-21, Table of Permitted Principal Uses.]
- c. To allow the continued use of existing (non-permitted) garaging or parking of commercial vehicles and equipment where the garaging or parking of two or more light commercial vehicles or heavy commercial vehicles and equipment are not permitted in the R-2 district. [HZO Article V: Permitted Uses; §334-22, Table of Permitted Accessory Uses.]

Not Official until reviewed, approved and signed.

Approved as edited and amended 8/24/2023

- d. To allow the continuation of additional mixed uses on the lot where mixed uses on a lot are not permitted in the R-2 district. [HZO Article III: General Regulations; §334-10A, Mixed or dual use on a lot.]

Mr. Sullivan read the Case and the four (4) separate Variances into the record and noted that it was deferred from the May 25, 2023 meeting and that a Site Walk was held Saturday July 8, 2023 at 9:00 AM. Mr. Daddario stated that regardless of whether the Applicant presents each Variance request separately or provides the general overview, the Board will need to address the five (5) criteria required to be satisfied for each of the four (4) Variances being requested.

Atty. Andrew Prolman of Prunier & Prolman, PLLC introduced himself as representing the Property Owner Derry & Webster LLC and noted that Vatche Manoukian, Manager of Derry & Webster LLC, Tony Basso, PE of Keach-Nordstrom, Inc. and Mike Regis of Regis Landscaping were also present, thanked the Board for the Site Walk held last Saturday (7/8/2023), and submitted two (2) letters from nearby neighbors, one from Laurie Greer of 28 Derry Lane dated 5/25/2023 stating that Regis Landscaping was there when she bought the property fourteen (14) years ago and stated that she has no issue with the landscaping business and one from Steven Manna of 34 Mansfield Drive dated 5/24/2023 stated that he lives 0.7 miles from Regis Landscaping and he hears no noise from any hour coming from them. Atty. Prolman provided some history of the site noting that it was once part of the Garrison Farm, that was farmed by the Colby family, that the office of Regis Landscaping is in part of the convenient store building with the farm stand, that there has been historical presence and consistent use of landscaping businesses on site – from Sherwood Excavation, then the site was sold to Tamposi in 1988 with Tamarack Landscaping, then sold to Second Generation Properties in 1996 and then sold to Derry & Webster in 2003 with Regis Landscaping. Atty. Prolman referenced Samuel Tamposi letter dated 6/23/2020 attesting that the site has the same uses then as now and re-dated the letter 5/22/2023 (1994 – 2023).

Atty. Prolman provided a letter from Nick Ackerman Real Estate Advisor from NAI Norwood Group attesting that the uses on the site have had no adverse impact on surrounding property values and provided actual sales numbers and average sale prices from 2019 – 2023. Atty. Prolman added that there were eighteen (18) sales from Sparkling River between 10/2/2021 to 6/28/2022.

Atty. Prolman acknowledged their awareness that their next step is to the Planning Board for Site Plan Review and dealing with the wetland encroachments noticed at the Site Walk. Atty. Prolman stated that at the Site Walk Mike Regis stated that he would be amenable to erect a fence, provide a tree buffer and relocate the screener.

Mike Regis of Regis Earth Products and Landscaping joined Atty. Prolman at the Applicant's table. Mr. Regis stated that he has been in the landscaping business for thirty (30) years and in Hudson for twenty (20) years; that he has twelve (12) employees now but prefers fifteen (15); that his business hours are 7:00AM – 6:00 PM Monday through Friday, 8:00 AM – 4:00 PM Saturdays during peak season then reducing closing time to 1:00 PM and closed on Sundays; that their season ends in October; that they keep no chemicals on site; that there are no sales in the wintertime and that they only do commercial plowing in wintertime; and that he has more than ten thousand (>10,000) customers and submitted Regis Earth Products Contact List

as of May 22, 2023 that consisted of thirty (30) pages of single spaced contact information.

Atty. Prolman noted that this site was originally part of Garrison Farms and the use has been consistent for decades, that the surrounding area was all farmland and that the area around this site has been developed with full knowledge that this site with its mixed uses was in existence.

The Board reviewed the correspondence received to date. Mr. Dumont asked and received confirmation from Mr. Sullivan that no other correspondence has been received. Mr. Dion asked and received confirmation from Mr. Regis that he has received no complaints from Village Reeds Brook Condominium, Shoreline Drive, Scenic Lane residents and noted that they do masonry work but the development across the street has their own landscaper.

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

- (1) *not contrary to public interest*
 - There has been a landscaping business at this site for decades
 - Allowing existing landscaping business on this lot to continue will not alter the character of the neighborhood nor threaten the public health safety or welfare of the neighborhood nor the Town of Hudson
- (2) *will observe the spirit of the Ordinance*
 - Allowing Regis Landscaping to continue on this large lot will not harm any public rights nor alter the character of the neighborhood
 - Indeed, a landscaping business on this lot have been going on so long that it is part of the character of the neighborhood
- (3) *substantial justice done*
 - Regis Landscaping is an ongoing business providing services to residences and businesses in the Town of Hudson and surrounding communities and maintains many employees through the year
 - Allowing Regis to continue is a significant benefit to Regis, its employees, and the property owner with no adverse impact to the Town.
 - The balancing test of substantial justice criteria weighs in favor of the applicant
- (4) *not diminish surrounding property values*
 - We know there has been no impact to surrounding property values because of the successful build-out of nearby developments
- (5) *hardship*
 - The property is unique and unusual given its history with multiple mixed uses
 - There are large area wetlands at the rear of the property which must be respected
 - Given the successful use of a landscaping business on the property for many many years, the restriction of prohibiting landscaping businesses at this site is not fair and reasonable to the applicant nor Regis Landscaping
 - Regis's operation is a benign commercial operation, as opposed to heavy industrial uses
 - Regis's business provided provides services to residential customers

- Allowing the long time landscaping operation to continue is a reasonable use of this lot
- There is a fundamental fairness to be obtained with the granting of this variance

Mr. Daddario asked if there were any changes in the Zoning Ordinance and Atty. Prolman responded that the Zone was changed to R2 after Garrison Farm ceased operating. Mr. Lanphear commented that the surrounding houses have been built since 2005. Board reviewed aerial views from 2005 and 2020 for comparisons. Atty. Prolman stated that the driveway off Derry Lane has been abandoned and Mr. Regis stated that he could beautify the front. Mr. Dion referenced the prior Code Enforcement action taken in 1989 and the 1990 Consent Order. Mr. Sakati referenced the court docket and Mr. Dumont stated that it predates complaints received.

Mr. Thompson stated that back in 2020, the Planning Board (PB) declined Site Plan Review and Mr. Dumont stated that the reason was their determination that ZBA action was necessary before presentation to the Planning Board. Mr. Basso stated that the application to the PB in 2020 was for the store and the deli's ability to make food on site.

Mr. Thompson stated that when he drove by the site he was able to see through the arborvitae and saw lots of logs onsite. Mr. Regis stated that he sells cordwood but is not a processing center. Mr. Daddario questioned the splitter on site and Mr. Regis stated that he could enclose the area for a sound buffer. Mr. Martin stated that cutting during the day is "normal" noise, whether splitting or chain sawing, to which Mr. Dumont stated that the normal hours of operation is 7:00 AM - 5:00 PM, Saturdays 8:00 AM - 4:00 PM in April, May and June and Sundays 9:00 AM - 2:00 PM. Discussion arose. It was noted that hours of operation is considered and defined by the PB during Site Plan Review.

Mr. Sakati stated that there is a lot of dust at, on and around the site and referenced the Town Planner's review comment #5 - material stockpiles approximately 20'-30' in height without any buffering or sufficient screening - and attributed the lack of enforcement over the years to be a contributing factor. Mr. Regis stated that they do screening on site to make loam, and yes it does create dust and Mr. Regis stated that that he has water tank on site that he could use to dampen the dust.

Mr. Dion asked if Regis Landscaping keeps any chemicals, hydro feed or fertilizers on site and noted that chemicals and fertilizers are kept in the greenhouse on site. Mr. Regis responded that he buys as needed for his jobs but does not store any.

Mr. Dumont asked if there is any paving proposed and Atty. Prolman responded that the area of/for the eight (8) parking spaces would be paved.

Mr. Lanphear questioned the wetland encroachment. Atty. Prolman confirmed that it is their intent to preserve the wetland buffer. Mr. Dumont noted that it is a man-made wetland and questioned its value. Mr. Martin stated that it was 'created' in the 1980's to handle drainage from Webster Street and Derry Lane, and, in his opinion, should have never been allowed.

Public testimony opened at 8:40 PM. No one addressed the Board.

a. To allow existing Landscaping business to remain

Mr. Martin made the motion to grant the Variance. Mr. Pacocha stated that he would seconded the motion if a stipulation could be added – specifically, that all unregistered vehicles and inoperable/unusable equipment be removed from site. Mr. Martin agreed to add the stipulation to his motion. Mr. Pacocha seconded the motion to grant with the stipulation

Mr. Martin spoke to his motion stating that this project will not be contrary to public interest; the property has had landscaping activity for decades, before the homes were constructed in the area; it observes the spirit of the Ordinance and does not injure public or private rights; substantial justice would be done to the property owner and Regis Landscaping; the Applicant provided testimony that surrounding property values will not be diminished; hardship is met because the Zone changes since the property was in use, the houses surrounding this site were constructed in the last decade or so, that there's no negative abutter testimony from the whole, just a scattered few from the general area and this is a reasonable use for this property.

Mr. Pacocha agreed with Mr. Martin stating that this property has existed in its present state for over twenty (20) years and defined the character of the neighborhood over that time period and observes the spirit of the Ordinance and does no harm to the public; the Applicant demonstrated that surrounding property values have continued have continued to rise over time; and that hardship criteria is satisfied with the change in Zone from G (General) to R2 (Residential 2) which in essence amounts to estoppel; and the proposed use is reasonable and has existed for over twenty (20) years.

Mr. Daddario stated that this is a tough case, that the business existed and operated prior to the residences being built, that even though the next step is to go to the Planning Board for Site Plan Review, it is this Board's responsibility to strike a balance which, in his opinion, requires more stipulations and suggested three (3) more: (2) that the discontinuance of the Derry Lane driveway, even though proclaimed by the Applicant, should be stipulated along with the requirement to create a landscape buffer along Derry Lane and to Webster Street also; (3) that dust maintenance be defined with the use of water wetting the area; and (4) that hours of operation be declared that would also define which hours the chainsaw can be used. Board discussed. Mr. Martin agreed to add stipulation (2) and (3) to his motion but not (4) and suggested that the roadside beautification be its own stipulation. Mr. Pacocha agreed to second the motion with the three (3) additional stipulations for a total of four (4) – removal of inoperable, unusable and unregistered vehicles and equipment; discontinuance of Derry Lane driveway; roadside buffers; and dust maintenance.

Roll call vote taken. Mr. Daddario voted to grant with the four (4) stipulations noting that it is not contrary to public interest, that the use predates the developments around it, that the business serves the community that includes a depository of grass clippings and selling of cord wood, that there is no conflict or injury, that it allows the property owner to continue to make long standing use and does not create harm to the general public, that the only evidence presented supports that there is no negative impact to surrounding property values, that the specific application of the Use Table is unreasonable with respect to this property at this time, the use has been on this property for decades and is part of the character of the neighborhood, and it is reasonable for this property, the lot has been designed and situated for this use and business has been conducted in this form for many years.

Mr. Sakati voted not to grant the variance as it is contrary to the purpose of the Ordinance and does not comply with the spirit of the Ordinance, that the property suffers from several decades of ignored zoning, that the size of the material piles and dust created on site diminishes neighboring property values, the character of the neighborhood cannot be defined by one property, that special conditions related to the property do not exist and it is not reasonable in the R2 Zone. Only criteria 3 satisfied.

Mr. Dion voted not to grant the variance as the business does not fit the character of the neighborhood and the complaints of the neighborhood cannot be ignored; thereby criteria 1 and 2 not satisfied.

Roll call vote was 3:2 with Mr. Dion and Mr. Sakati opposed. Variance granted with the following stipulations:

- (1) Any vehicles not registered and inoperable equipment shall be removed from property
- (2) Driveway from Derry Lane to be discontinued
- (3) Buffer to be added to front of property on Webster Street and to be similar to buffer off Derry Lane and to be approved by the Planning Board
- (4) Dust control mitigation to be made when necessary with wetting by water truck spraying

The 30-day Appeal period was noted.

Board took a five (5) minute break at 9:07 PM.

b. To allow Regis Landscaping to continue to sell retail landscaping products

Atty. Prolman stated that the retail products include mulch and topsoil. Mr. Regis added that compost and loam are produced on site

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

- (1) *not contrary to public interest*
 - There has been a landscaping business at this site for decades
 - Regis Landscaping provides services off site and sells retail landscaping products from 187 Webster Street. In that regard Regis is conducting itself like any other landscaping business
 - Allowing the sale of landscaping products on this lot to continue will not alter the character of the neighborhood, nor threaten the public health safety or welfare of the neighborhood or the Town of Hudson
- (2) *will observe the spirit of the Ordinance*
 - Allowing the sale of landscaping products to continue on this large lot will not harm any public rights nor alter the character of the neighborhood
 - Indeed, the retail sales on this site have been going on so long that they are the character of the neighborhood
- (3) *substantial justice done*
 - Regis Landscaping is an ongoing business providing services to residences and businesses in the Town of Hudson and surrounding communities and maintains many employees through the year

- Allowing Regis to continue its current operations is a significant benefit to Regis, its employees and the property owner with no adverse impact to the Town
 - The balancing test of substantial justice criteria weighs in favor of the applicant
- (4) *not diminish surrounding property values*
- We know there has been no impact to surrounding property values because of the successful build-out of nearby developments
- (5) *hardship*
- The property is unique and unusual given its history with multiple mixed uses
 - There are large area wetlands at the rear of the property which must be respected
 - Given the successful use of a landscaping business of the property for so many years, the restriction of prohibiting retail sale of landscaping products is not fair and reasonable to the applicant nor Regis Landscaping
 - Regis's operation is a benign commercial operation, as opposed to heavy industrial uses
 - Regis's business provides services to residential customers
 - Allowing the long time landscaping operation to continue is a reasonable use of this lot

Mr. Regis stated that in the winter they do plowing and provide snow deicers. Mr. Thompson asked if the twelve (12) employees include the store. Mr. Regis responded that it does and added that there is also a part-timer in the office on weekends. Mr. Regis stated that pre-Covid they had approximately thirty (30) employees with sixty (60) in the wintertime for the shovelers. Mr. Dumont asked if the garage up the road had retail and Mr. Regis responded that they do not. Mr. Dion asked approximately how many customers come to the site during peak season and Mr. Regis responded that maybe twenty-five to fifty (25-50) people on a Saturday and maybe five to ten (5-10) people during the week.

Public testimony opened at 9:31 PM. No one addressed the Board.

Board discussion ensued. Mr. Martin stated that, in his opinion, the change from the G Zone to the R-2 Zone constitutes Municipal estoppel. Mr. Dumont stated that the original court Order allowed retail sales, Mr. Daddario stated that it relates to incidental sales and Mr. Lanphear added that he was in the landscaping business for sixteen (16) years and can attest that mulch and compost are part of the business. Mr. Sakati read the Court Order into the record.

Motion made by Mr. Martin and seconded by Mr. Pacocha to grant the variance with no stipulations. Mr. Martin spoke to his motion noting that because the use has existed for decades, it is not contrary to public interest and does observe the spirit of the Ordinance, that substantial justice would be done to the property owner and the landscaping business, that there has been no evidence presented to show use would diminish surrounding property values, and that changes to the Zone from G to R-2 caused this site to be in violation of the Zoning Ordinance and the use is a reasonable use. Mr. Pacocha spoke to his second noting that allowing the retail sale of landscaping products will not alter the essential character of the neighborhood,

threaten public health, safety welfare or public rights, that the request does not do harm to others that outweigh the benefit to the applicant, that the applicant has presented material that property values have not been diminished and that the hardship criteria is because of the change of Zone from G to R-2, which in effect amounts to estoppel, and it is directly related to the business.

Mr. Sakati voted to deny the Variance as it conflicts with the purpose of the Zoning Ordinance for the R-2 Zone and does not observe the spirit of the Ordinance, that justice is done to the property owner with no harm to the general public, that selling landscaping product does not diminish property values, and there is no hardship related to special conditions to the land.

Mr. Dion voted to grant the Variance as it is not contrary to public interest and is consistent with surrounding business and the business has existed for decades and does not effect the surrounding neighborhood and has not slowed growth of the neighborhoods and has continued to increase surrounding property values and the property has been used for landscaping for a considerable amount of time and this reasonable use became noncompliant with the change in Zone.

Mr. Daddario voted to grant the variance for the same reasons cited in granting the Variance to allow the landscaping business to remain.

Roll call vote was 4:1 to grant the Variance for retail sales of landscaping products with no stipulations. Mr. Sakati opposed. The 3-day Appeal period was noted.

c. To allow the continued garaging or parking of commercial vehicles and equipment

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

(1) *not contrary to public interest*

- There has been a landscaping business at this site for decades and a successful landscaping business inherently has multiple commercial vehicles
- Allowing Regis's commercial vehicles to continue using this lot will not alter the character of the neighborhood, nor threaten the public health safety or welfare of the neighborhood or the Town

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

- Allowing multiple commercial vehicles to continue on this large lot will not harm any public rights nor alter the character of the neighborhood
- Indeed, the landscaping business on this lot has been going on so long that they it is part of the character of the neighborhood

(3) *substantial justice done*

- Regis Landscaping is an ongoing business providing services to residences and businesses in the Town of Hudson and surrounding communities and maintains many employees through the year
- Allowing Regis to continue its current operations is a significant benefit to Regis, its employees and the property owner with no adverse impact to the Town
- The balancing test of substantial justice criteria weighs in favor of the applicant

(4) *not diminish surrounding property values*

- We know there has been no impact to surrounding property values because of the successful build-out of nearby developments
- (5) *hardship*
- The property is unique and unusual given its long history with multiple mixed uses
 - There are large area wetlands at the rear of the property which must be respected
 - Given the successful use of a landscaping business of the property for so many years, the restriction of prohibiting multiple commercial vehicles is not fair and reasonable to the applicant nor Regis Landscaping
 - Regis's operation is a benign commercial operation, as opposed to heavy industrial uses
 - Regis's business provided provides services to residential customers
 - Allowing the long time landscaping operation to continue is a reasonable use of this lot

Mr. Regis stated that not all his equipment require a CDL license and he does not have any that are heavier the 26,000 GVW (Gross Vehicle Weight) and shared that he has a one-yard loader with a bucket in front, a three-yard loader, skid steers, a mini excavator and a three quarter-yard excavator, several pick-up trucks, a screener for loam compost, three (3) bobcats but he's about to sell one, three (3) three quarter (3/4) ton pickup trucks but one is his personal truck, six (6) one-ton pick-up trucks.

In-depth discussion ensued. Mr. Daddario and Mr. Dion proposed specifying exactly what and how many should be included in the variance, similar to the NOD granted to 185 Webster Street. Mr. Dumont cautioned and advised to set no list or limit to avoid creating a code enforcement issue in the future. Mr. Thompson agreed if a condition could be made that all vehicles on site need to be registered and equipment operational. Discussion continued and explored growth of the business. Mr. Regis stated that he has no plans to grow his business. Atty. Prolman stated that a significant and material change to Regis Landscaping would constitute an expansion of business and they would be required to go back to the Planning Board to modify their Site Plan.

Public testimony opened at 10:34 PM. No one addressed the Board.

Motion made by Mr. Martin and seconded by Mr. Pacocha to grant the Variance as requested. Mr. Martin spoke to his motion stating that the business already exists on the site and is not contrary to public interest and does observe the spirit of the Ordinance and substantial just would be done to the property owner and the landscaping business owner, that there is no diminution of surrounding properties, that the hardship is due to the change in the Zone which forced this business to be in violation of the Ordinance as this is a reasonable use. Mr. Pacocha spoke to his second stating that the garaging or parking of commercial vehicles is essential to operating a landscaping business and does not alter the character of the neighborhood or threaten public health safety or welfare or injure public rights, that justice would be done to the property owner that is not outweighed by harm to the public, that demonstrated by the sales history provided by the Applicant there is no diminution to surrounding property values and that the hardship occurred due to the rezoning of the property from the G Zone to the R-2 Zone when the use, when established, was an allowed use and that the use is reasonable for the business type.

Mr. Sakati voted to deny the variance as it is contrary to the purpose of the Ordinance for the R-2 Zone and does not observe the spirit of the Ordinance and character of the neighborhood, that substantial justice would be done to finalize the conduct of the business, that it is not consistent with the R-2 Zone or surrounding property values and that there are no special property conditions that provide a hardship. Criteria 1, 2, 4 and 5 were not met.

Mr. Dion voted to deny the variance stating that equipment and heavy trucks do not match the aesthetics of the neighborhood, that sound complaints and noise pollution and dust cannot be ignored, that trucks coming in and out do not match the neighborhood character, that trucks idling late into the evening can be a nuisance, that the public has been living with the location, that there has been no diminution of surrounding property values as they are continuing to rise and even though it is a reasonable use, there is no unique conditions of the property to satisfy the hardship criteria. Criteria 1, 2 and 5 not met.

Mr. Daddario voted to grant the variance with the same rationale provided with the first and second variance and with the understanding that a significant change to the business would require additional relief from the Planning Board and possibly ZBA.

Roll call vote was 3:2. Variance granted with no stipulations. The 30-day Appeal period was noted.

d. To allow the continuation of additional mixed uses on the lot

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

(1) *not contrary to public interest*

- There has been a landscaping business at this site for decades
- Allowing the mixed uses on this lot to continue will not alter the character of the neighborhood, nor threaten the public health safety or welfare of the neighborhood or the Town

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

- Allowing multiple uses to continue on this large lot will not harm any public rights nor alter the character of the neighborhood
- Indeed, the mixed uses on this lot has been going on so long that they are the character of the neighborhood

(3) *substantial justice done*

- Regis Landscaping is an ongoing business providing services to residences and businesses in the Town of Hudson and surrounding communities and maintains many employees through the year
- Allowing Regis to continue its current operations is a significant benefit to Regis, its employees and the property owner with no adverse impact to the Town
- The balancing test of substantial justice criteria weighs in favor of the applicant

(4) *not diminish surrounding property values*

- We know there has been no impact to surrounding property values because of the successful build-out of nearby developments

(5) *hardship*

- The property is unique and unusual given its long history with multiple mixed uses
- There are large area wetlands at the rear of the property which must be respected
- Given the successful use of the property, the restriction of prohibiting mixed uses is not fair and reasonable to the applicant nor Regis Landscaping
- Regis's operation is a benign commercial operation, as opposed to heavy industrial uses
- Regis's business provides services to residential customers
- Allowing the long time landscaping operation to continue is a reasonable use of this lot

Mr. Pacocha noted that this variance is similar to previous variance granted and Mr. Daddario noted that the previous Variance excluded Regis Landscaping.

Public testimony opened at 10:34 PM. No one addressed the Board.

Motion made by Mr. Martin and seconded by Mr. Pacocha to grant the Variance as requested. Mr. Martin spoke to his motion stating that this business has been in operation for twenty plus (20+) years so the granting of this request will not be contrary to public interest, that the proposed use will observe the Ordinance, that substantial justice would be done to the property owner and the business owner, that it will not diminish values of surrounding properties, that the use is a reasonable and that hardship is due to the change in Zone. Mr. Pacocha spoke to his second stating that his reasoning is the same for the first four criteria as it was for the second variance granted this meeting, that hardship exists due to the rezoning from the G Zone to the R-2 Zone resulting in estoppel and that the business use with sales of accessories is a reasonable use.

Mr. Dion voted to deny the variance request stating that the property interferes with public health, the sound pollution, noise pollution and dust complaints by public cannot be ignored, that the use effects public health and happiness and character of the neighborhood, that surrounding property values continue to increase, that it is a reasonable use but there are no specific nuances to the property creating a hardship. Criteria 1, 2 & 5 were not satisfied.

Mr. Sakati voted to deny the variance stating that the request conflicts with the purpose of the Ordinance for the R-2 Zone and does not observe the spirit of the Ordinance, that substantial justice would be done because the landscaping business has operated for over twenty (20) years, that the usage changes the character in the R-2 Zone and hardship does not exist. Criteria 1, 2, 4 & 5 were not satisfied.

Mr. Daddario voted to grant the variance with the same reasoning he voiced for the first variance heard and granted.

Roll call vote was 3:2. Variance granted with no stipulations. The 30-day Appeal period was noted.

Atty. Prolman thanked the Board. Mr. Regis walked around the Board table and shook every hand and said thank-you.

V. REQUEST FOR REHEARING:

No requests were presented for Board consideration.

VI. REVIEW OF MINUTES:

6-22-23 edited Draft Minutes

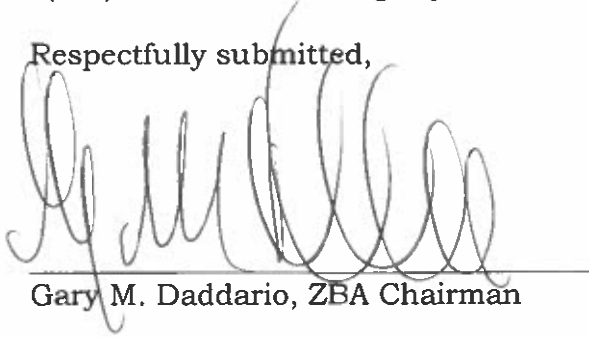
Board reviewed and made no changes. Motion made by Mr. Martin, seconded by Mr. Pacocha and unanimously voted to approve the 6/22/2023 Minutes as edited.

VII. OTHER:

No other business was presented.

Motion made, seconded and unanimously voted to adjourn the meeting. The 7/13/2023 ZBA meeting adjourned at 10:51 PM.

Respectfully submitted,



A handwritten signature in black ink, appearing to read 'Gary M. Daddario', is written over a horizontal line. The signature is cursive and somewhat stylized.

Gary M. Daddario, ZBA Chairman