



TOWN OF HUDSON

Zoning Board of Adjustment

12 School Street
Hudson, New Hampshire 03051

Tristan Dion, Chairman Xen Vurgaropulos, Selectmen Liaison
Tel: 603-886-6008 · Fax: 603-594-1142

MEETING MINUTES – MAY 28, 2026 – Approved

I. CALL TO ORDER

Mr. Dion called the meeting to order at 7:06 PM.

II. PLEDGE OF ALLEGIANCE

Mr. Dion invited all to participate in the Pledge of Allegiance and read through the Chairperson's introduction/order of business and cited housekeeping items.

III. ROLL CALL - ATTENDANCE

Mr. Dion asked the Clerk to call for attendance.

Full members present were: Tristan Dion, Todd Boyer, Tim Lanphear, Dean Sakati

Alternate members present were: Brendon Sullivan, Zachary McDonough (Clerk)

Others present were: Ben Witham-Gradert – Town Liaison, Xen Vurgaropulos (Selectman Liaison)

Remote attendance: Kristan Patenaude – Recording Secretary

IV. SEATING OF ALTERNATES

Alternate Brendon Sullivan was appointed to vote.

V. PUBLIC HEARING OF SCHEDULED APPLICATION BEFORE THE BOARD: DEFERRED HEARINGS:

1. **Case 211-067 (05-28-26)(deferred from 04-23-26):** Hudson Community Food Pantry Corporation, 23 Library Street, Hudson, NH, requests a variance for **72 Burns Hill Road**, Hudson, NH to subdivide a portion of the 25-acre lot to be used for a community food pantry classified as a civic use (D-22) where this use is not allowed in the Residential-Two (R-2) district. [Map 211, Lot 067, Sublot-000; Zoned Residential-Two (R-2); HZO Article V: Permitted Uses; §334-21, Table of Permitted Principal Uses]

Mr. Witham-Gradert read the Case into the record.

Mr. Dion stated that due to personal relationships with the applicants, he recused himself and asked Mr. Boyer to sit as Chair.

Alternate McDonough was appointed to vote for this case.

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Mr. Sakati stated that his son is close friends with Ethan Beals who is the project designer, but this presents no bias for him on this case.

Applicant's Representative Testimony:

Attorney Andrew Prolman, of Prunier & Prolman, PA, 20 Trafalgar Square, Nashua, addressed the Board on behalf of the Hudson Community Food Pantry Corporation. He explained that the applicant is seeking a variance to allow the Food Pantry in the R-2 District on a portion of 72 Burns Hill Road. The Food Pantry is currently operating out of 23 Library Street, which is owned by the Roman Catholic Bishop of Manchester. The RCBM has decided to sell the property and so the Food Pantry needs to find a new home. The owner of 72 Burns Hill Road is very sympathetic to the Food Pantry and has offered up 1.5 acres of their property at a very generous price. If this variance request is successful and is also approved by the Planning Board, the Food Pantry may still never open up at 72 Burns Hill Road for a number of reasons. The project may not pencil out, may not make financial sense, or another property may come up over the course of the many months it takes to get through permitting. Also, the new owner of the church property may keep the Food Pantry on. In the meantime, the applicant is seeking this option as a new home based on the generous offer received.

Leonard Lathrop, 31 Winslow Farm Road, spoke in support the Hudson Community Food Pantry's application for a zoning adjustment to be allowed to build on Burns Hill Road. He was representing the Hudson Community Food Pantry Board of Directors and has been a board member since 2018. The Hudson Pantry is directed and staffed completely by volunteers. There are no paid employees. The Hudson Food Pantry spans over 40 years on Library Street. It is a registered IRS 501(c)(3) and holds a New Hampshire Charitable Foundation registration. The Pantry provides food and supplies to the food insecure of Hudson in multiple ways. The primary program is to support people who have trouble getting enough food for their families. The Pantry serves between 50-60 families each week. Clients come in on Thursday nights between 5:30 PM-7:30 PM for a weekly appointment. Currently, six families come in every 15 minutes. Included in the Board packet is a two-page example menu that families fill out requesting what they need. The menus submitted are the actual ones being used a month ago before the Pantry was deferred. The volunteers take the menus into the building, the food requested is packed into boxes, brought back to the parking lot, and loaded into their cars by volunteers. During the fall and winter times, there is an additional small distribution for elderly clients who cannot drive at night, on Wednesday mornings from 9:00 AM-10:00 AM. The Pantry receives food supplies primarily from three sources of rescue food, which is picked up by volunteers and brought from the Hannaford store to the Food Pantry on Tuesday and Wednesday mornings between 7:00 AM-8:30 AM. These rescue foods include frozen meats, fresh produce, bakery and other products that might not have sold at the store. Food is also picked up once a month from the USDA. Finally, once a week volunteers pick up food from the New Hampshire Food Bank that is operated by Catholic Charities. Both of these organizations are in Manchester. The truck goes to Manchester, picks up the food and comes back, run completely by volunteers. These stable items include spaghettis and soups, canned vegetables, cereals, and many other items that have long shelf expiration dates or best used by dates.

Mr. Lathrop explained that, in addition to the family program, the Pantry hosts the Feed Our Kids program, which is operated in collaboration with the Hudson School District. The program is run through the school's guidance counselor, who requests a specific number of bags for

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children who need support. National Honor Society students from Alvirne come to the Pantry on Wednesday afternoon after school to fill the backpacks and deliver them to the schools. The bags are given to students in need on Fridays to help ensure that all students have sufficient food throughout the weekend, when school lunch and breakfast programs are not operating. Each week, the Pantry distributes approximately 80-100 bags to all the schools, including Alvirne. Holiday Services happen three times a year where the Pantry assists clients for the holidays. This usually occurs on the Saturday prior to Christmas, Thanksgiving, and Easter. The Pantry provides holiday meals, appropriate gifts, and even Easter baskets. On those Saturdays, the Pantry can serve between 90-120 families. There is a greater need during the holidays. Distribution opens at approximately 8:30 AM and finishes by 11:30AM. Other services include working with the Red Cross, Hudson Fire Department, and Hudson Police Department to provide food and necessities for families who have been going through a tragedy, such as a fire or crises. The Pantry provides birthday bags to the children of its clients so they can celebrate like other families. The Pantry also has a backpack program prior to school starting so that the children in need can arrive at school with backpacks. The Pantry's funding is completely from grants and approximately 95% of funding is from donations. The Board would be amazed at the number of \$25 and \$100 checks that come in the mail every month from Hudson citizens. The Pantry works with many grants and other sources, including telethons, but mostly from the generosity of Hudson residents who recognize the needs of their neighbors.

Ethan Beals, project manager at Hayner/Swanson Inc., resident at 29 Chagnon Lane, and member of the Board of Directors for the Hudson Food Pantry, explained that the Pantry is fully run by volunteers. This includes the Board of Directors which does more than simply handing out food. There are a lot of requirements for nonprofits and many regulations related to the food received from local, state, and federal entities. He noted that the average age of the board is approximately 90 years old. He explained that the Board received a draft real menu that clients receive to order food at the Pantry. The first menu is a nonperishable menu, with items such as spaghetti, canned veggies, etc. The second menu is a perishable menu which sets the Pantry apart from others, as it tries to provide clients with prepared meals with fresh produce, meats, and other items that standard food pantries do not offer.

Mr. Beals explained that the conceptual plan, which has been discussed with the landowner, is to subdivide approximately 1.5 acres from the site in order to construct a new two-story, 4,800 s.f. building, including a new driveway off Burns Hill Road. The site will have 17 parking spaces, nine overflow parking spaces and a two-lane driveway that circles the building, creating a traffic pattern for clients. The goal is to get clients off Burns Hill Road as quickly as possible, in order to fill out the menus, fulfill their food order, and get them back onto Burns Hill Road safely. He addressed some of the written comments provided to the Board. First and foremost, the site does pose some engineering challenges. The plan that was submitted today is only at a conceptual level and a formal, detailed survey of the property is currently underway. Much of the in-depth planning and site design happens at the Planning Board level, including things such as a full site plan, traffic study, traffic analysis, stormwater analysis, septic design, etc. There were some written comments regarding the Pantry trying to find a commercially zoned space in Town instead. This specific use is not in the Zoning Ordinance and therefore it is likely that relief would be needed on just about every site in Hudson. He noted that there are not a lot of commercial spaces that fit the Pantry's needs, with a sweet spot of approximately a 5,000 s.f. space. The Pantry frequently reviews commercial spaces that become available in Town and there is not much in the range that would be needed. Also, the Pantry needs a below market rate

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for rent. This better allows the Pantry to use nearly all of its donations and funding sources for its clients and the community. A commercial space in Town, at about half of the space needed of 2,500 s.f., rents for approximately \$4,000-\$5000/month, which is much more than double what the Pantry currently pays. This would include utilities. Other larger spaces, such as the former Walgreens or former Rite Aid, are rented at the tens of thousands of dollars per month rate. A quote received for the Walgreens space was approximately \$17,000 per month plus additional maintenance and utility pieces. The Pantry cannot afford that level of rent and still hope to have sufficient funding to provide food and items for purchase for its clients. In summary, the Pantry provides a valuable community service only to Hudson residents. These clients already exist within the community. The Pantry wants to continue to provide that service for a long time into the future but cannot do so without some semblance of help from the community. The Pantry tried to purchase the church property and continues to actively look every day at new commercial listings but, as a small nonprofit, cannot compete with larger commercial for-profit entities to purchase or rent most properties.

Attorney Prolman explained that the proposed lot is shown on the bottom left of the plans. The immediate neighbor to the north and west of this is the Town of Hudson, as the old landfill site. The immediate neighbor to the east is the current owner, as the remainder tract. Directly across the street from the site is the Provincial Heights condominium common land. The applicant is looking to shoehorn the building onto the site, in order to not have a direct impact upon the residential neighbors. There are residential neighbors close by, but the intention is to design this to minimize any impacts upon the neighborhood. With respect to the concerns from neighbors, many of the letters seem to fall into the categories of routine opposition that this will impact property values, traffic concerns, and concerns about the character of the neighborhood. The applicant respectfully disagrees with those comments and does not believe that harm will be done to the character of the neighborhood. The second set of comments include people who seem to be worried that the Food Pantry being allowed on this site will lead to rezoning of the entire lot toward commercial uses. The Town recently voted to turn this whole lot into R-2. He stated that he does not know what the owner intends to do with this property, but this request is only for the Food Pantry application. The storage facility use which was before the Board some time ago and was denied, cannot come back due to New Hampshire case law. He does not see that there will be a dramatic enough change to allow that application to come back before the Board. The remainder of this property should be built out as residential, but the Food Pantry fits in this area.

Attorney Prolman addressed the variance criteria. 1) The applicant does not believe this proposal would be contrary to the public interest. The Hudson Food Pantry operation does great things at a minimal amount of time. The staff is not on site much. The distribution operation is there for two hours currently every Thursday and a couple of Saturdays before holidays. This will have minimal impact. 2) The proposed use will not harm the character of the neighborhood. With public interest comes the spirit and intent of the ordinance. Case law in New Hampshire states that these two concepts are closely related. The applicant is providing a civic service of a food pantry and doing this in a residential neighborhood will not change the character of that to such a degree that undoes the zoning. The proposal is not violating the spirit of the ordinance as it is providing a much needed service, and staff is only on site approximately ten hours a week. 3) In terms of substantial justice, this weighs in favor of the applicant. The applicant recognizes that this is in a residential neighborhood but, given the benefit that the Food Pantry provides for those in need in Hudson, this outweighs any impact to the neighborhood and to the general rights of the public. 4) The intention is to construct a barn-looking building and install the barn in

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whatever color the boards and neighbors would like to see. Typically, a red barn has a New England feel. This will be designed to have a residential feel. The site will have a parking lot and a two-lane drive aisle, which is not very residential, but this will be addressed with landscaping and lawn areas. The goal is to make this fit as best as possible. The proposed new construction and services on the site will not adversely affect neighboring property values. 5) In terms of hardship, this is a very large lot with wetlands on it. It is a challenging lot for most development. The limited use being proposed does not lead to a fair and substantial relationship to prohibit the proposed use for the Hudson Food Pantry. This is a reasonable use and a much-needed use, given the needs in Town and the services that the Food Pantry provides.

Board Questions:

Mr. Lanphear asked if most of the existing food storage at the Pantry is in the basement. Mr. Beals stated that the rent number given was based on half of the space that the Pantry needs for its use. The sweet spot is approximately 5,000 sq. ft. and the active market for approximately 2,200- 2,500 sq. ft. is more than double what the Pantry currently pays. The majority of food operations are in the basement, as it is easier to keep cool and there is significant investment in pest control for the use. Every inch of the upper floors is also utilized. The Pantry receives donations, including toy donations, year-round and needs places to store them. Currently, every room of the existing space is filled with storage boxes and other donations. The Pantry knows it needs to downsize somewhat, but the current space is approximately 8,500 sq. ft. To provide the necessary storage, food and otherwise, the new building needs to be approximately 5,000 sq. ft. range to be cost effective.

Mr. Boyer asked to receive public comment either in favor, neutral or opposed from the public at 7:40 PM.

Public Comments in Favor:

Carlos Pestana, 50 Bear Path Lane and Vice President of the Community Food Pantry, stated that this is one of the largest food pantries in the State. The pantry is crucial in providing food to Hudson residents and students that may be suffering from food insecurity. The Town needs the Pantry, and the hope is that the Board looks favorably on the request.

Leona Shanholtz, 99 Robinson Road, stated that this is one of the few food pantries that provides Christmas gifts for adults as well as children. People from Buttercup and other housing places around Town received their first Easter basket ever from the Food Pantry. That program was started by Pauline to meet the needs of the people in the community. The Feed Our Kids program is integral, involved with the schools. Teachers have told the Pantry that once the Feed Our Kids program went into effect, they noticed that children on Monday mornings who had been given eight meals over the weekend came into school more alert and responsive in their classrooms. The Pantry receives phone calls from special services at the School Department when there are emergency situations with families. The Pantry is intricately involved with the welfare of many people in Town. She has been a volunteer for 25 years and she believes this kind of a facility is needed for the community. This is 100% for Hudson residents and provides a service that is necessary in the community.

Pauline Boisvert, 36 A Street, stated that she has been a volunteer for a number of years. She pointed out that if someone is going to be hungry, they better be hungry in Hudson because the citizens of Hudson will take good care of them.

Joyce Nadeau, 11 Pelham Road, stated that she has been a volunteer for at least 15 years. She finds that it helps everyone very much. People in Hudson like to give. She knows her back is covered if something happens because the Food Pantry is available. This is important for the Town and children and should not fall through the cracks.

Timothy Lyko, 8 Daniel Webster Drive, stated that he has been volunteering for a couple of months and it is incredible what can be accomplished with volunteers and hard work. It is difficult to find a new place to rent, as the Pantry is a non-profit and does not have money to compete with. The Pantry has industrial sized refrigerators and freezers that cannot go on an average floor. It would be nice to design the building with a nice circular driveway, as the Pantry needs, where no one has to back out. This location and project will help the Pantry a lot. The Pantry loves to be a good neighbor and will make the property look nice.

Mr. Witham-Gradert explained that the Board received letters of support from the New Hampshire Food Bank, Hudson School District, NH Hudson Lions Club, Greater Hudson Chamber of Commerce, Hannaford Supermarkets, Hudson Memorial VFW Post 5791, General Federation of Women's Clubs Hudson Women's Club, Hudson/Litchfield Rotary Club, Hudson Historical Society, Service Credit Union, and First Baptist Church Food Pantry of Hudson, NH. The full letters have been provided to the Board in its package which is posted online for the public.

Public Comments Opposed:

Laurie Jennings, 2 Wildwood Terrace, stated that she believes in food pantries and has volunteered at food pantries many times. She believes in the people who run them, the volunteers who show up every week, and the families who depend on them. Food insecurity is real in this community and, as an active member of Saint Kathryn's Parish, she supports the Food Pantry through weekly donation. She believes in helping vulnerable members of the community. She asked the Board to understand that her opposition to the variance is not opposition to the Hudson Community Food Pantry or the mission it serves. It is not opposition to feeding people, and it is not indifference to hunger. It is a conviction to do the right thing in finding a permanent, stable, properly zoned location for the Food Pantry in Hudson, without asking the residents of Burns Hill Road and the surrounding neighborhoods to bear the cost of it. The pantry deserves a home. She and her neighbors deserve to have their neighborhood protected. She asked the Board to find a way to honor both of these things by denying the variance and sending the application toward a solution that does not require anybody to lose. She submitted a packet about the case in April. She has read all 11 support letters from some of the most noble organizations in Town but not one addresses the legal standard before the Board. The Board must evaluate the land in question and what will happen if the Food Pantry has to downsize or outgrows the building. There is a question as to what would then happen on the site. It is not the Board's job to decide if the pantry is a good organization; they obviously are. But it is the Board's job to decide if this specific parcel of land meets the high legal standard for a variance. In reviewing the letters, these organizations are endorsing the Pantry search for a home somewhere in Hudson, not 72 Burns Hill Road. She agrees with them. They belong in a General or Business District where the use is

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already permitted without a legal issue. Also, the application claims that staff is only on site for ten hours, but the letters from Hannaford and others prove otherwise. Her concern is that the Hudson voters deliberately rezoned this parcel to R-2 in March 2024. This is not an old forgotten ordinance. It is a fresh expression of the community's will, less than two years old. Overriding a recent Town-wide vote via a variance sets a dangerous precedent. It tells voters that their ballot box decisions can be undone by the next application that comes along. This is concerning. The balancing test favors the neighborhood. The Pantry's inconvenience is a real estate search. It is a solvable problem. The harm to the residential character of Burns Hill Road is permanent and irreversible. The Pantry has the institutional goodwill to succeed anywhere in Hudson. They do not need a variance, just the right site. She works from home most days and her desk overlooks Burns Hill Road. She sees speeding cars and the risks that she and her neighbors face when walking anywhere outside. There is trash and this road is a dangerous place. She asked that a traffic study be done if this is even to be considered. She asked the Board to protect the integrity of the R-2 Zone, uphold the voters' choice, and deny Case 211-067.

Donald Crawford, 15 St Mary Drive, stated that this is a true residential neighborhood, which is what voters wanted in making it R-2. Any kind of an industrial/retail building in that neighborhood would truly change it. His concerns are for the neighborhood and with Burns Hill Road itself. Hudson is growing like crazy. Burns Hill Road from Wason Road is one of the most dangerous intersections in Town. Nottingham West, on the other end, does not need any more traffic. That road is a cut through and a challenge for the Town. The Town has been dealing with the traffic in this area. Traffic comes from the crest of Burns Hill Road with trucks and 200 or so families trying to pull out onto Burns Hill Road. This building is proposed in the most dangerous spot on that road, at that crest of the hill. The Police are there constantly and do a great job. This is due to the speeding cars at the crest of the hill. Now the Town is being asked to allow a variance that would increase traffic for a building that the area is not zoned for. This does not make sense when there are other places in Town for it. Her is not anti-food pantry. It appears there is a real estate issue, but he does not understand that. The proposed location is not relatively convenient, considering Lowell Road, Central Street, or other locations where a food pantry could go and serve its clients. This is a true residential neighborhood. He is strongly opposed to this. He does not see a hardship of the owner as they could build residential uses on the site. The site has 25 acres, which is a lot of room for residential houses. He is not anti-growth, but would like to see common sense growth. There are traffic concerns and this would change the look of the neighborhood forever.

Robinson Smith, 48 Burns Hill Road, stated that that food banks provide a vital service to the community and are of high value. However, having a food pantry on Burns Hill will not be conducive to the area, especially with the residential designation. There are no businesses in that area. The applicant stated that they only provide services for Hudson residents, but he usually finds this is a misnomer for food pantries. For example, the Nashua Soup Kitchen and other pantries provide services to anybody that shows up. It is not specifically for the community. Southern New Hampshire has an advantage because there is no sales tax. Thus, a large population of people come up from Lowell and use the Market Basket, Walmart, Sam's Club, etc. If there is a food pantry in this area, they will likely use it to pick up their excess needs. This will likely increase traffic from outside of the community. This is a big problem. Also, food banks receive their funding through federal and state grants, along with local businesses, charities, private donations, etc. They are incentivized to expand their services to increase revenue and funding. For example, the Nashua Soup Kitchen provides hot meals for 200+ people

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twice a day, or 400+ people in total. They also have an upstairs area set aside to provide shelter services, showing an expansion of services or scope creep, which could also occur that the proposed Pantry's location in the future. This is a concern. Further adding to the issue, the Pantry, surrounded by woods and undeveloped land, will be a perfect environment to foster homeless encampments similar to the homeless communities along the highway, in Lowell, MA, Mines Falls Park in Nashua, and along the Merrimack River and railroad tracks in Manchester, NH. He personally witnessed in Lowell, MA, syringes discarded on downtown sidewalks, homeless passed out, fights breaking out, and homeless rummaging through residential trash cans and dumpsters looking for cans, bottles, and anything they can find of value and placing them in shopping carts. There are living encampments behind parking garages all located a stone's throw from the Community College downtown. He asked if Hudson has the appropriate infrastructure, necessary social workers, additional police, fire and rescue services, to manage these potential encampments. He asked how the residents of the Burns Hill and the surrounding area will manage these issues moving forward. He asked how approving this variance will impact existing abutters and property owners. The Hudson Police recently caught a person stealing items out of vehicles in the Burns Hill area. These types of crimes will trend up due to a food pantry being built in a residential area and will potentially increase the homeless population. For all these reasons, he asked that the Board deny the applicant's request for a variance.

David Morin, Burns Hill Road, stated that he moved to Burns Hill Road specifically because he valued the quiet residential nature of the R-2 Zone, the very character that this variance seeks to change. He formally opposed the variance request for 72 Burns Hill Road. The applicant bears the burden of proving they meet all five legal criteria and this application falls short on every account. First, the public interest and spirit of the ordinance. The public interest was clearly defined in March 2024 when Hudson citizens voted to keep this land residential, R-2. The Town also came together to oppose the building of storage units on occasions last year. Granting a variance would disregard that democratic mandate and voice of the residents. The spirit of the ordinance for R-2 is to protect the peace and safety of the neighborhood. A facility projecting 55 cars in a two-hour window, per the applicant's own filing, is a high intensity use that clashes with the residential vibe of the community. In terms of an unnecessary hardship, a variance requires a hardship to be unique to the land. No such hardship exists. The land is perfectly suitable for residential homes. If the applicant claims that the land is safe for high volume traffic and delivery trucks, then it is certainly safe for a residential driveway. Furthermore, a 3,000 sq. ft. facility does not require the destruction of a 25-acre forest. This use belongs in any of Hudson's existing move-in ready commercial spaces that already have the infrastructure and better community access. The Trojan Horse and substantial justice requires that the benefit to the applicant not outweigh the harm to the public. There is a glaring disproportion. He asked why the Board would break the zoning of a 25-acre forest for a building that is only 3,000 sq. ft. This looks like a Trojan horse designed to establish a nonresidential precedent on the land. Variances run with the land, and granting this request would effectively reclassify the property, allowing for future commercial development on the remaining 23-24 acres. If the project proves financially unfeasible for nonprofit, the landowner is left with a subdivided nonresidential beachhead (*building*) for the very industrial uses this Board already denied in 2024 and 2025. Developing the land, clearing the forest, and installing a commercial grade septic and building from scratch is a multimillion-dollar undertaking. Regarding diminished property values, the established zoning protects home investments. If the R-2 seal is broken for a project that could easily fit in a commercial zone, it sets a precedent that no residential neighborhood in Hudson is secure. This creates a creeping commercialization that permanently reshapes the neighborhoods

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and negatively impacts property values. He also noted safety and infrastructure concerns in terms of traffic safety, fire suppression, and engineering. In conclusion, the law requires the Board to judge the land use, not the mission. A charitable label is not a legal substitute for the five-point test. As the land is usable for other purposes that are correctly zoned and because this project creates a permanent harm to the neighborhood, he asked the Board to deny the variance.

Rita Banatwala, 29 Fairway Drive, stated that she is a strong advocate for the food pantry. She has volunteered there, and her kids have volunteered there. This is not the issue. The issue is about the location. She asked the Board to consider if the land should be rezoned. The voters already voted recently in the past couple of years to not change this. She asked if the Board has the right to change it now. Probably not. She asked if the proposal would diminish nearby property values. Yes, based on the abutters that have already spoken. She stated that she would not buy her current property if it was next door to a food pantry. Changing residential zoning areas is driving people out of Town. She asked if this is what the Board wants to do.

Monica Kiernan, 11 Wildwood Terrace, stated that it is interesting to hear testimony regarding how many people are served by the Food Pantry. She likes supporting this, as does her business. Burns Hill Road has been already designated in a 2025 study by the Hudson Police as having one of the top ten most dangerous intersections in Town. Traffic there will be increased monumentally by the proposal at a traffic pattern that is already dangerous and there has already been a fatality on Wason Road. The food pantry cannot be in her neighborhood. As mentioned, volunteers come to stock the pantry at 7:30AM-8:00 AM, which is a prime driving time. People are already stuck behind school buses, and this will now be impacted again. There is another high traffic time scheduled after school for volunteers to come back to the site. She loves volunteerism, but not at this site and not at that time. This is not an imperative emergency. The Hudson Food Pantry, which is currently on the Church property, has not been kicked out. A variance for another use at 72 Burns Hill Road was already denied and now another variance is being requested 18 months later because the owner of the property would like this as a business. She cannot support this as a resident. This will change the entire neighborhood. She thought the owner would be a bit more invested in the Hudson community than turning this bedroom community into a blight like the golf course. If this can happen anywhere in Hudson, nowhere left is safe. She asked the Board to deny the variance and allow the community, at least these neighborhoods and houses to remain intact and beautiful.

Ed Thompson, 22 Burns Hill Road, stated that this parcel was before the Board twice last year - once for a variance for a different non-permitted use, which was denied, and again for a rehearing, which was also denied. On each occasion the Board made the right decision, and upheld the zoning bylaws, namely the table of permitted uses under Section 334-21, as the five criteria were not met. He believes the only reason this variance request is before the Board is for the property owner to attempt to target the heartstrings of the Board members in order to gain a variance approval, thus setting the camel's head inside the tent and subsequently provide an avenue for future commercial development on the parcel. Under NH zoning law, a variance runs with the land. This means that the relief is permanently attached to a specific parcel. As stated, a variance is not for the individual who has applied for it, nor the specific builder or the project they proposed. This would set a bad precedence, not only for this parcel but for many other parcels in Town. The owner of this parcel sits on the Planning Board, Mr. Hurd, and he should know the zoning laws very well and should not be asking for them to be broken. As land use Board members, it is imperative that these individuals be held to the highest standards. He

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reviewed the five criteria. Regarding that granting the requested variance will not be contrary to public interest, this is a food pantry, not a home. By definition it is out of character with the neighborhood and, thus, not included in the zoning district under permitted uses. The traffic generated by a food pantry, even at 50-100 trips per day, is certainly not in the public interest on a road that has seen approximately a 50% increase in traffic in the last five years. Regarding that the proposed use will observe the spirit of the ordinance, the applicant states that this will not alter the essential character of the neighborhood. The existing character of the neighborhood is represented by single-family homes. A food service use for food and personal items would change that. A quick search on the web states that the Hudson Community Food Pantry is currently serving more than 80 families per week. This number represents a significant increase from recent months when demand was 45-55 families per week. Although the pantry currently is open only on Tuesday and Wednesday from 7:00 AM-10:00 AM for workers to take donations, and distribution to occur on Thursday nights from 5:30PM-7:30 PM, these times are all during peak AM and PM commuter hours. This is a food pantry, not a single-family home, so it is out of character with the neighborhood and thus not included in the zoning district, R-2. Regarding that substantial justice would be done to the property owner by granting this variance, the benefit gained by the applicant must not be outweighed by the harm to the general public or individual neighbors. The only justice would be to the landowner while causing harm and injustice to the general public and neighbors. This would set a scenario for the property owner to certainly come back and request more variances on the remaining 23 acres of land. Regarding that, the proposed use will not diminish values of surrounding properties, although it has not been proven that property values will diminish, selling prices on a road with higher than normal traffic will not help prices, especially those nearest the nonresidential use pantry. Finally, regarding hardship and special conditions that exist so that literal enforcement of the ordinance would result in unnecessary hardship, there is no hardship. There could be a reasonable use of the land as it is currently zoned. The owner was aware of the wetlands on the property when it was purchased. The owner can freely build what is listed in the table of permitted uses without having to break the current zoning laws. Finally, he noted that none of the emails and letters in support of the food pantry mentioned that the proposed site for a relocation would be in the middle of an established, quiet residential neighborhood on a busy collector road in town. The applicant does not meet the five criteria and thus the variance should be denied.

Debra Putnam, 59 Rangers Drive, stated that should the ZBA grant a variance for even a piece of the greater property to civic use D-22, this would send a message to all voters and residents of the Town that their vote does not matter. By extension, all Warrant Articles approved through the legal voting process would be null and void.

Gretchen Whiting, 22 Glen Drive, stated that she is torn. She completely supports and donates to the food pantry. She recognized and thanked the pantry board for all of the research it provided to the Board. She also acknowledged that the food pantry is requesting the zoning variance, not the owner of the 25 acres, and it is only being requested for one acre of the site. She also noted that hardships on the neighborhood from this proposal. Traffic in the area is bad and there have been at least ten accidents along the road per year. Increasing traffic near the corner will be very difficult, especially in the timing of the proposed hours. The proposal would be adjacent to the old Burns Hill dump. Burns Hill is known for having asbestos issues, with some residents having asbestos in their yards. If construction were started and asbestos was found, she asked what this would do to the neighborhood. She noted that everything from the top of Burns Hill flows downhill. The wetlands go down Burns Hill toward Glen Drive. Regarding power, she stated that

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she does not know if there is enough power to supply the pantry's needs for refrigeration. She stated that she does not know if the applicant will tie into the sewer system or use their own septic system. There is a pump house on Glen Drive, and she asked if this would be able to support the applicant's use. She noted that there is trash on Burns Hill and Wason along the road. Increasing people along the road will also increase that trash. She collects trash every Thursday when walking the road. She asked the Board to reject the variance, mainly due to the hardship against the neighbors. She supports what the pantry wants to build and why it wants to build it, but she is not convinced that this specific site is right for it.

Robert Nunes, 12 St Mary Drive, stated that the proposed location is horrible because it does downhill, and will be quite tricky to take a left. This is zoned R-2, and it is unclear who would want a residential house right next to a food pantry. Though, nothing against food pantries. There have to be better locations in Town for this. He opposes the variance.

Larry Martone, 8 Saint Anthony Drive, stated that he lives a couple hundred yards from the proposed location. This is a residential neighborhood. The closest businesses are on Lowell Road, where they belong, Meineke and Market Basket. It needs to stay that way and he opposes this variance.

Mr. Witham-Gradert read a synopsis of the letters sent in opposition. In terms of the abutter comments submitted: Fred Brough, 75 Burns Hill Rd.; Dave Morin plus addendum, 67 Burns Hill Rd.; Catherine Morin, 67 Burns Hill Rd.; and Tammy Eaton, 69 Burns Hill Rd. In terms of non-abutter comments: Keith McGilvery, 27 Richmond Dr.; Suzanne Roark, 5 Gloria Ave.; Timothy Hennighausen, 14 Cedar St.; John Hone, 27 Sheffield St.; John and Kathy Hesse, 6 Pinewood Rd.; Robinson Smith Sr., 48 Burns Hill Rd.; Laurie Jennings, 2 Wildwood Terrace; Christopher Thatcher, 15 Parkhurst Dr.; Michael LaBonte, 14 Glen Dr.; Pete and Joanne Radziewicz, 49 Burns Hill Rd.; Christine Nevins, 18 Burns Hill Rd.; Anthony and Catherine Janko, 33 Saint Anthony Dr.; Donna Dufour, 4 Madison Dr.; Janice L. Degulis, 45 1/2 Burns Hill Rd.; Kristen Brown, Hudson address not listed; Donna Boucher, 8 Windham Rd.; and Monica Kiernan, 11 Wildwood Terrace. The Board also received a letter with 48 signatures which is available as part of the public record. He noted that seven of those signatures are redundant to those who sent in individual letters, leaving a remaining 41 signatures of independent people who did not provide written comments elsewhere. All letters have all been provided to the Board in advance. Staff received three additional letters after the submission period had ended which were provided to the Board but are not part of the memo.

Public Comments Neutral: None at this time.

Seeing no additional comments at this time, Mr. Boyer closed the public comment period at 8:26 PM.

Applicant's Representative Rebuttal to Public Comments:

Mr. Beals stated that it is clear the Hudson community largely supports the Hudson Community Food Pantry and he hopes this will always be the case in the future. Regardless of what happens tonight, he hopes people will show the same enthusiasm they showed in speaking tonight to help support the food pantry, its mission, and its future location. He stated that there is no question that this is not the perfect site. If he was engineering a site and the cost did not matter, this likely would not be the site that he would choose. However, in all honesty, the landowner has offered

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the Pantry about 1.5 acres for effectively what he pays in taxes for that area. That is simply too valuable for the Pantry to pass up. He hopes that someone else may be generous enough to offer land to the Pantry for that price to continue to fulfill its mission. In terms of specific traffic issues, Burns Hill Road has existing traffic issues which he looks forward to studying further. At this point in time, a traffic study has not been completed, and a traffic analysis comes through the Planning Board process. The applicant plans on doing an in-depth analysis for the existing traffic and proposed traffic for the use. If the study proves that improvements are needed, the applicant will partner with the Town to try to make improvements to intersections or roadways, as any project does in the Town. He stated that he takes exception to the comments regarding the Pantry's client base. Any new client has to demonstrate proof of residency in Hudson. This is reviewed on a continuing rotating basis. People are asked for tax bills, stamped mail pieces addressed to them, etc. as a requirement for proof of residency. The Pantry absolutely does not serve people from outside the community, nor would it change that mission. The dedication as the Hudson Community Food Pantry continues to be to serve the people of Hudson, NH. He cannot speak to other communities, such as Lowell, Manchester, Nashua, etc. and potential homeless encampments there. This is not the Pantry's experience. It is not looking to open a shelter. It is looking to find a permanent home for the existing operations. The Pantry does not have an eviction letter in hand, but a property for sale will likely be purchased by a developer or a business owner to be reutilized. It is likely that the Pantry will not have a permanent home there. This creates a lot of uncertainty for the Pantry and its client base which relies on the Pantry for its food insecurities. Other issues such as traffic, asbestos, stormwater, septic/sewer, etc., are Planning Board items. Asbestos is not as prevalent here in southern New Hampshire and there are ways to handle it which do not prohibit people from working on their property.

Attorney Prolman stated that comparing a full-blown residential development to the limited operations of the food pantry, would likely see traffic. He believes the applicant has met the criteria for the variance and he appreciates the neighbors' opposition and professionalism.

Board Questions:

Mr. Lanphear noted that, if this variance is approved, it could be 3-9 months before it is determined that this project will move forward and another 6-12 months to build the structure. This is almost 1.5-2 years for the project, and he asked what would happen to the Pantry is evicted 3 months from now. Mr. Beals stated that this exact scenario keeps every volunteer and board member up at night. There are weekly meetings to develop contingency plans such as making a smaller location work until building a permanent home. Simply ceasing services would drastically impact the lives of all the clients and is not an acceptable alternative. There are contingency plans in place and there have been generous offerings, such as from another church in Hudson with stopgap ideas. It is not simple to move significant refrigeration into the second floor of a church. This would have to be well thought through. Thousands of cans have a lot of weight to them. The applicant is working with several real estate agents to try to find a better property in Town. There has been discussion regarding if there is a town-owned property that could be used or a location in an industrial park. However, it is difficult for the applicant to compete in buying a piece of land at market value or renting an appropriately sized space for market value. The applicant is not financially equipped to do so, unfortunately. Mr. Lanphear suggested an industrial space. Mr. Beals stated that many industrial spaces are approximately 50,000 sq. ft.-75,000 sq. ft. and most do not want to divide off 5,000 sq. ft. within the building, impacting the rest of the space. The needed size and use are unique.

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Attorney Prolman stated that he spoke to the listing broker today and there are 2-3 offers at this time for the Roman Catholic Bishop of Manchester property. The property is not under contract yet, but it probably will be in the next month or so. Mr. Beals stated that, with the maximum bid the Pantry could offer, it was told that it is out of the bidding for the property. Attorney Prolman noted that the statute under which the Board works, authorizes the Board to add conditions of approval to any application. He suggested that the Board could limit the variance to a food pantry. This may help alleviate concerns that other commercial uses could come to the site.

Mr. Boyer asked to receive public comment either in favor, neutral or opposed from the public at 8:37 PM.

Public Comments in Opposition-Rebuttal:

Ed Thompson, 22 Burns Hill Road, verified that the Board received a signed petition from the neighborhood. Mr. Witham-Gradert stated that it had.

Seeing no additional comments at this time, Mr. Boyer closed the 2nd public comment period at 8:38 PM.

Board Discussion and Deliberations:

Mr. Vurgaropoulos stated that this is a very unique situation. It includes people pulling at heart strings, the law, and everything else. He is not opposed to the food pantry and believes they do amazing work and are 100% essential to the Town. He is not a fan of the proposed location based on the traffic and the shape of the road. If this was a straight road, high traffic might be a bit different, but this is a windy road and there have been many accidents along it. Adding unnecessary additional traffic and requesting a variance for that is not appropriate in his opinion.

Mr. Sakati thanked the volunteers for their work and agreed that this pulls at the heartstrings. He also thanked the residents who put together an incredibly thoughtful analysis, addressing the five criteria in a professional way. The Planning Board recently recommended new zoning and the Town approved it. He would be very uncomfortable reversing the new zoning or making an exception from it, as much as he would like to support the purpose and the benefit of the food pantry. This speaks to the spirit of the ordinance. Reversing a recent decision of the Town's position on this would come close to spot zoning to deciding on a case by case basis, which he does not feel comfortable with. The Town's zoning is relatively liberal in general.

Mr. Boyer stated that the first variance criteria is if the proposal is contrary to public interest. This location is undeniably a neighborhood. The applicant is a 501(c)(3) business, as it has a tax ID number. If it were approved for this location, it would be similar to saying that the Goodwill store could go there because they identify the exact same way. The proposal does not pass the first criteria test. Regarding an unnecessary hardship, the applicant has not described that something else could not be done with the property the way it is currently zoned. He believes something else could be done with that property under the current zoning and the applicant has not said otherwise. The proposal would not pass the test for criterion 5.A.(1) There is the hardship of this pulling at the heartstrings, but he does not believe it will be able to pass the other criteria to be granted.

Mr. Lanphear moved to deny a variance, duly seconded by Mr. Sakati:

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Board Speaking on Each Variance Criterion:**1. Granting this variance will not be contrary to the public interest**

Mr. Lanphear stated that the proposal would definitely be out of character of the neighborhood and the safety of the people that live in the neighborhood. This is an R-2 District and trying to put a business in an R-2 district is a very far bend.

2. The proposed use will observe the spirit of the ordinance

Mr. Lanphear stated that it does not observe the spirit of the ordinance. It conflicts with the purpose of the ordinance which was changed a couple years ago to an R-2 District so it will change the neighborhood.

3. Substantial justice would be done to the property owner by granting this variance

Mr. Lanphear stated the benefit to the applicant in approval of this variance is not outweighed by the disruption to the public and the use of the R-2 District.

4. The proposed use will not diminish the value surrounding properties

Mr. Lanphear stated that he is not a professional real estate analyst to say that it would diminish values but believes the proposal will change the character of the neighborhood and so could impact values.

5. Ordinance results in unnecessary hardship

A1) Mr. Lanphear stated he does not see the hardship for the special conditions of the property.

A2) While the proposed use is reasonable, it may not be the best use for this property. For all the public comment received, whether positive or negative, it is an R-2 Zone is what it boils down to.

Mr. Lanphear – to deny**1. Granting this variance will not be contrary to the public interest**

Mr. Sakati stated that adding a commercial, D-22 civic use to an R-2 Zone would be in conflict with the implicit purpose of the ordinance.

2. The proposed use will observe the spirit of the ordinance

Mr. Sakati stated that the spirit of the ordinance is reinforced through the recent zoning changes and this application seeks to contradict that change.

3. Substantial justice would be done to the property owner by granting this variance

Mr. Sakati stated that the owner could build something on the property within the table of permitted uses.

4. The proposed use will not diminish the value surrounding properties

Mr. Sakati stated (like Mr. Lanphear) that it's somewhat unclear what it would do to the surrounding values but as he thought that through, he guards that position only because there is space on each side of the proposed use. If that space were to be developed, there could be an impact and diminishment of value.

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5. Ordinance results in unnecessary hardship

Mr. Sakati stated there is not a hardship because the owner can build residentially within compliance of the table of (permitted) uses. He makes this decision with a heavy heart, knowing that it is no consolation to the volunteers working hard to support the food pantry and those who are food insecure.

Mr. Sakati – to deny**1. Granting this variance will not be contrary to the public interest**

Mr. McDonough stated that the proposal would go against the character of the neighborhood and it could create safety issues due to the peak traffic issues noted by the applicant and brought up by the public.

2. The proposed use will observe the spirit of the ordinance

Mr. McDonough stated that the proposed use would go against the spirit of the ordinance, which was explicitly voted on by the Town.

3. Substantial justice would be done to the property owner by granting this variance

Mr. McDonough stated that the property owner could build within the R-2 Zone for a different use and there is no hardship that would necessitate building this property as proposed.

4. The proposed use will not diminish the value surrounding properties

Mr. McDonough stated that building of this space could potentially diminish values of the surrounding properties or reduce values of any R-2 built buildings on the property afterwards.

5. Ordinance results in unnecessary hardship

Mr. McDonough stated that he did not see a proven hardship for the land. The food pantry has obviously come under hardship but that does not overrule the use of the land and so the proposed use is unreasonable.

Mr. McDonough – to deny**1. Granting this variance will not be contrary to the public interest**

Mr. Brendon Sullivan stated that the variance is contrary to the public interest.

2. The proposed use will observe the spirit of the ordinance

Mr. Brendon Sullivan stated that the variance goes against the spirit of the ordinance and will alter the character of the neighborhood.

3. Substantial justice would be done to the property owner by granting this variance

Mr. Brendon Sullivan stated that the harm to the general public outweighs the benefit of the variance.

4. The proposed use will not diminish the value surrounding properties

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Mr. Brendon Sullivan stated that it is difficult to speak to diminishing values of properties, but this would undoubtedly impact the area.

5. Ordinance results in unnecessary hardship

Mr. Brendon Sullivan stated that this does not meet the criteria for the hardship and is an unreasonable one.

Mr. Brendon Sullivan – to deny

1. Granting this variance will not be contrary to the public interest

Mr. Boyer stated that granting the variance is completely contrary to the public's interest. It is contrary to place a business in a residential area.

2. The proposed use will observe the spirit of the ordinance

Mr. Boyer stated that the Pantry is registered as a nonprofit organization with a tax ID number. The ordinance is designed for residential use and that is what the residents of Hudson voted for. Therefore, the variance would be against what the spirit of the ordinance is.

3. Substantial justice would be done to the property owner by granting this variance

Mr. Boyer stated that substantial justice would be done to the general public and the residents of Hudson by denying this request. There are no special conditions given of the property that would invoke the substantial justice criteria within the regulations.

4. The proposed use will not diminish the value surrounding properties

Mr. Boyer stated that the food pantry exists currently. There is a brand new constructed house right beside it that has been there for over 12 months and is priced right but has not sold. He can only speculate but if the house was built in the neighborhood off Burns Hill Road, maybe it would have already sold.

5. Ordinance results in unnecessary hardship

Mr. Boyer stated that the land is zoned R-2. It is a large parcel of land. The zoning regulations allow for several different housing developments within that district, and the applicant has not shown that a different use could not be placed on the land.

Mr. Boyer – to deny

Vote: 5-0-0 motion carried unanimously to deny the variance.

Mr. Boyer reviewed the 30-day appeal period with the Applicant.

The Board took a ten minute recess at 8:53PM.

The Board resumed the meeting at 9:05PM.

Mr. Dion resumed his seat as Chair. Mr. McDonough was no longer seated as a voting member.

2. **Case 245-012 (05-28-26) (deferred from 04-23-26):** Bradford Baker, Sr., 23 Fairway Dr., Hudson, NH requests a variance to allow a proposed concrete slab foundation with a metal garage to encroach on the side yard setback by 2 feet, leaving 13 feet of side yard setback where 15 feet is required. [Map 245, Lot 012, Sublot-000; Zoned Residential-One (R-1); HZO Article VI: Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements]

Mr. Witham-Gradert read the Case into the record.

Mr. Sakati stated that he lives at 11 Fairway Drive and is not a direct abutter. He does not believe he needs to recuse. A Google search showed the distance of his property being between 1,000-1,600' away. The state of California, which has strictest laws, defines abutters as within 500'. He does not have any biases in this case. Mr. Lanphear stated that he believes Mr. Sakati will take a neutral hand in this case. There was no opposition from the Board.

Applicant's Testimony:

Bradford Baker, Sr., applicant, explained that the circumstances for this application have changed over time. They used to include a front setback waiver request, but that issue has been eliminated. The issue at this time includes the side setback, as the property goes from 2' to 1' at the side setback and it is not perfectly parallel with the lot line. At the rear of the foundation there is only a 1' setback encroachment and at the front there is a 2' setback encroachment. This was the result of a contractor error and modifications have been made to the building to eliminate the front setback issue. If the Board does not vote to resolve this, he will move the building elsewhere on the lot. This will cost him about \$25,000-\$30,000 and take more time. He has not had any pushback from his neighbor who is closest to the side setback. Anyone else in the neighborhood would be impacted by him moving the structure closer to them, if the variance is denied. Denying the variance would move the structure approximately 2' closer to other people in the neighborhood. The person at 21 Fairway Drive, who would be most impacted by this side setback issue, does not have an issue with it. He would like to have this resolved immediately and either move the structure over or receive the proper permitting for the setback as is. The garage will be done by the end of the summer regardless.

Mr. Baker addressed the variance criteria. He stated that there is a very minor overhang to the side setback. It is less than 22" at the rear. This is a residential garage for personal use. It will be used for parking cars, motorcycles, and storage of other garage items. He was victimized by a contractor who did not do good work in the beginning. He wishes he had better oversight of the job. This was a mistake that was made and he has to deal with it. The proposal will not diminish the value of any properties because the intention is to shift approximately 20" to the left and this will not change the actual visual appearance of the garage. If he has to shift the building over and pour more concrete, he will end up undoing changes made to the length of the building because he will be pouring the concrete anyway. Thus, the building will become bigger than it currently is proposed to be. He has taken 9' off the front of the building from what was originally proposed in order to not have the front setback issue. This was verified by Chris Sullivan, Code Enforcement and reviewed on site. He noted that moving the structure will cost a lot of money only to relocate it 2' over. This will be a lot of money, time and disruption. Some people in the neighborhood complained about visibility of the building, but he believes it is less visible where it currently is and moving it 2' over closer to the driveway will make it more visible, though only

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by a small amount. There is plenty of distance between his house and the property at 21 Fairview Drive and he has agreed to install landscaping on the property line. This was a personal agreement made with the owner of 21 Fairview Drive, to put in some hedging and bushes which have already been prepared to go in and paid for.

Board Questions:

Mr. Dion asked if the building is already in place. Mr. Baker explained that the initial ribs that support the building were installed. That was part of the issue when it was first done. It would have been a lot simpler to fix the concrete if the support structure wasn't up. The concrete will cost the same if the structure needs to be removed and relocated. I procured some equipment to make it easier to take the pieces up and down if needed. It's a bit of a safety issue when you're down to taking the last few pieces down. There is a crane involved, so that's a little harder. It made it easier to trim the front to take the pieces off the front. To be clear, there was an issue of misunderstanding with the permitting. As soon as I realized what happened, I contacted the Town and that's how this ended up here, working with Chris (Sullivan) for the better part of two years.

Mr. Dion asked if the structure will be 9' shorter off the front, than originally proposed, if the variance is approved. If the variance is denied, the applicant's plan is to have the structure shifted over the 9' within proper setbacks and that additional 9' will be added to it. Mr. Baker agreed. The structure will be larger if the variance is denied. Mr. Dion explained that the Board has seen some complaints regarding the size of the structure based on the 9' being removed and he would like this point to be clear.

Mr. Boyer stated that the applicant paid for an obtained a certified foundation plan. The applicant has removed the concrete outside of the setbacks. Mr. Baker agreed and stated it took two days to jackhammer it out. Mr. Boyer asked the monetary value spent to make the front in compliance. Mr. Baker stated that this was approximately a few thousand dollars. Mr. Boyer stated that, if the 2' variance is not granted, the applicant plans to move the foundation into the setbacks and build the structure. Mr. Baker agreed.

Mr. Sakati asked about the proposed landscaping. Mr. Baker stated that this will be on the side property line as decided with 21 Fairway Drive and include a hedge of blackberry bushes. There will also be some landscaping in the front of the building though this is not fully decided on yet. The use of the structure has changed since this was initially proposed as he no longer has the vehicles he was planning to store in it. It will now be used for storage of his truck. Mr. Sakati asked about the front façade of the garage. Mr. Baker stated that it will be horizontal barn board with windows and glass doors. Mr. Sakati stated that the Board has to review based on the criteria, including any descriptions. Mr. Baker stated that he initially planned on sliding glass doors, windows, and horizontal barn board. Removal of the 9' will add some depth to the structure and so the front may not be completely flush, but the materials will not change. The sides will be a two-tone paint. Mr. Sakti asked if the façade choices have been run by the neighbors. Mr. Baker stated that he did outreach at first, but he has only spoken to the owner of 21 Fairway Drive recently. Mr. Sakati stated that he has recently seen a tie on the left corner anchored by something. Mr. Baker stated that a rake may be leaning on this but there is not a tie buckle or anything else.

Mr. Vurgaropoulos asked about the façade. Mr. Baker stated that the garage doors will face his house to the rear.

Mr. Witham-Gradert stated that a copy of the applicant's discussion with the owner of 21 Fairway Drive regarding the landscaping and structure were received and provided to the Board.

Mr. Dion asked to receive public comment either in favor, neutral or opposed from the public at 9:14 PM.

Public Comments in Favor: None at this time.

Public Comments Neutral or Opposed:

Ed Thompson, 22 Burns Hill Road, stated that he believes a variance is usually applied for before something is built on a property. He asked why this is not an equitable waiver application. This parcel is in the R-1 Zone, which has some of the tightest requirements for residential in Hudson. This area of Hudson had, at one time, a 20-year covenant with very strict requirements. He stated that there is an existing industrial structure on this property which does not look like a garage. It looks like something that was used on a farm to store hay or for a highway department to store sand or salt. This structure failed originally because it was in the front setback and now the request is for a 2' side setback. This is not about the money or the 2', it is that the proposal does not meet the first criterion, which is that it cannot be contrary to the public interest. This has altered the essential character of that neighborhood. If he lived across the street from this, he believes his property value would be diminished. He feels bad for the homeowner, as there has been a lot of money spent. He cannot understand why the garage was not built attached to the house. CAD systems today can design a lot on a parcel this size. The cost seems to be spiraling. The neighborhood contains other attached and detached garages that look like the existing homes, but this does not.

James Crowley, 4 Fairway Drive, asked why the applicant has not required the original installer/contractor of the concrete slab to fully correct the slab's location rather than asking the Town to address the issue through a requested variance. Requiring the responsible contractor to correct the work is the most practical way to resolve the current zoning issue. The current variance request ignores many of the facts brought forth in the previous case, 25-089 for an equitable waiver. The applicant has already stated that if this variance is denied, he will move the structure and rebuild it within the setback area. He addressed the variance criteria. In terms of this not being contrary to the public interest, the currently proposed location versus the relocated location will not look different to the human eye other than the building size. The Board should rule that the variance is contrary to public interest if it would significantly change the neighborhood's character. Importantly, the Board should note that this criterion is not limited to determining whether the proposed zoning use is acceptable, but it introduces visual impacts inconsistent with the neighborhood's established characters. The subdivision has 80 dwellings in it, most with attached garages and some with standalone garages. The style of those garages fit the neighborhood. He displayed photos of the existing 23 Fairway Drive structure before the 9' was removed from the front and a picture of what it looks like now. There are concerning visual impacts for this variance. The trees do not go the full length of the structure to shield it visually when traveling westward on Fairway Dr. The trees offer no shielding whatsoever of the visual impact. The architectural plan that was provided for the front elevation shows the top of the front

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elevation being painted to blend with the existing homes. However, he doubts the two-tone paint job and a metal roof as proposed tonight will blend in. Even with the 9' removed, this structure will still have a tremendous visual impact. In terms of the spirit of the ordinance, the applicant provides that there is only a minor infringement, but the Board must evaluate if the proposed scale, intensity, and appearance are consistent with the area. Also, if there will be no meaningful change to noise, traffic, lighting, or visual character. This is a tremendously high structure and definitely out of scale. The structure is out of scale with existing detached garages in the neighborhood. He does not understand how the Board will satisfactorily perform a balancing test between the applicant and the neighborhood, because if the variance is denied, the applicant will build the full structure elsewhere on the lot and the neighborhood will have to absorb the structure. The structure is supposed to be within the character of the neighborhood. He does not understand why the contractor is not on the hook for this, not the homeowner. In terms of the values of surrounding properties not being diminished, the applicant provided the Board only speculative consideration and no proof that this is a valid conclusion. An application for previous relief which was denied by the Board saw the applicant provide a traditional appraisal that there would be no negative market impact. The validity of that report was shown to be incorrect because the two examples given to prove no impact were flawed and not consistent with the Fairway Dr. neighborhood. The examples to prove no negative market impact were on higher traffic count, collector roads. Fairway Dr. is not. There is one way entrance to this 80 lot subdivision and one way out. The burden is on the applicant to show that the surrounding property values will not be diminished, and the Board must rely on competent evidence, not speculation. Tonight's packet of materials does not include any new reports from the applicant on property value impacts with comparable sales or how the proposed garage appearance will not affect marketability of residential homes in this neighborhood. The applicant proposes only that there will be no value impact which is only speculative. In terms of unnecessary hardship, the applicant has chosen to make the variance request based on special conditions of the property. This is a 1+ acre lot similar to those around it. The applicant states that the variance would unreasonably interfere with the reasonable use of the property because of the lot conditions. He asked how the applicant can simply move the whole structure elsewhere on the lot, if this is denied. The contractor should be held accountable.

Board Questions:

Mr. McDonough asked if Mr. Crowley prefers denying the variance and allowing for the structure that is 9' longer. Mr. Crowley stated that there are no winners in this case. The zoning ordinance does not protect the neighborhood regarding architecture. He believes the Board should not grant a variance. The structure could be placed elsewhere on the lot or more adequately screened. The applicant has a security installation business, and he asked if business equipment will be stored in the structure. This is a residential neighborhood.

Mr. Witham-Gradert stated that, in terms of an equitable waiver, as modification was done to the infringement at the time while knowing, this would not by definition be an equitable waiver which requires an honest and genuine mistake made without knowing. In trying to bring this closer to compliance, it is transformed into a variance instead. This changes the criteria. Regarding the concern about business, business uses are not permitted in this zone. If, for example, he wanted to start or propose a company operating out of there, that would be either a mixed use or a home occupation before the Board.

Public Comments Neutral or Opposed:

Rita Banatwala, 29 Fairway Drive, stated that on January 23, 2025, the equitable waiver of dimensional requirement for the foundation which encroaches both the side and front yard setbacks was denied. She asked why this is before the Board again. She feels bad for Mr. Baker and is anxious for the structure to be painted or something because she can see the sun shine off of through her windows and she is three houses away. This is because the structure is so high because Quonset huts are high. The original use proposed was for a tractor and equipment that he's using to clear and farm in his backyard, but now it appears to be a garage for the applicant's truck and maybe another car. She does not understand why the applicant would go through the cost of pouring more foundation for parking a couple of cars because 4-6 cars can already fit. The Town should never have approved this. The Building Inspector stated that this was a gambrel, but it is not. She reviewed the definition of a gambrel with him. This item was already denied on the issues and does not understand why the Board is reviewing the exact same thing that was previously denied. There was a promise for landscaping on the streetside which was included on the plans. She asked when this would be completed or torn down, especially as the original use is no longer proposed.

Mr. Vurgaropoulos explained that this is back before the Board due to substantial changes to the plan. The removal of 9' allows this to come back. Mr. Witham-Gradert explained that NH case law, *Dover v. Fisher* stated that boards may not rehear cases unless there is a substantive change. The substantive change proposed in this case is removing 87% of the total encroachment. The Board can vote to determine if this application passes the *Dover v. Fisher* test. This was not suggested within the staff report as it seems to be a clear mathematical difference. Ms. Banatwala noted that there was 0% change to the side setback request which was part of the equitable waiver. 50% of the structure is not proposed to have any change.

Mr. Dion paused public comment and asked the Board to consider the *Dover v. Fisher* test. Mr. Boyer stated that seeing the entire front of the structure cut off and hearing that the applicant has gone through the effort to do that, makes him believe that this passes the test that a substantial change has taken place. Mr. Lanphear agreed that the front setback is now 100% correct, which is 80% of the total improvement that was in the setbacks in terms of linear feet. That leaves only 13% of the side setback and he sees this as a major change. Mr. Sakati stated that *Dover v. Fisher* states that this should not be retried, but the packet of information for a variance changes his view to think of the structure as proposed, not established. Through the lens of this being proposed, there is a different view.

Mr. Lanphear moved to continue moving forward with this case, as the criteria for *Dover v. Fisher* have been met to hear the case, duly seconded by Mr. Boyer.

Board Speaking on the Vote:

Mr. Lanphear – to move forward

Mr. Boyer – to move forward

Mr. Sakati – to not move forward and apply the strict standard in *Dover v. Fisher*; the front and the back need to be in compliance

Mr. Sullivan – to not move forward as this does not meet the standard as previously discussed

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Mr. Dion – to move forward, as the current proposal has changed enough with the entire front of the structure being removed. This is not an equitable waiver for something that has already happened and so the scope has been changed. The front half was the focus when this was originally heard, such as it infringing on the public's right based on its location to the street. This aspect has been removed, changing the outlook and scope of the case itself.

Vote: 3-2-0 motion carried.

Public Comments Neutral or Opposed:

Debra Putnam, 59 Rangers Drive, stated that a lack of planning on the applicant's part does not demand a solution on the Town's part.

Applicant's Testimony-Rebuttal

Mr. Baker stated that the side setback will be reduced with the removal of the 9' from the front. His business is located in Hudson. It is run out of a building five times the size of this garage. It's in Century Park and has been there for years. He is not trying to reduce his business into a garage-based home business.

Mr. Sakati asked what will be done in the notch carved out of the façade. Mr. Baker stated that this will be filled in with material. There was a track there that had to be popped out to chip away the concrete without ruining the track. The façade will be made uniform.

Mr. Boyer stated that the piece cannot cross over the setback when it is replaced. Mr. Baker agreed. He stated that he added a buffer when he cut it out of the setback. He wasn't trying to make it right on the setback. Chris came out, we added extra inches, measured, chalk lined and double & triple checked. The panels are two feet wide and the setback encroachment was off so, we had to take off the full number of panels ending up with a greater than needed reduction.

Mr. Lanphear asked about the shininess of the building and the two-tone color that some of the neighbors do not seem to enjoy. Mr. Baker stated that he will paint the building whatever color is appropriate. He was trying to give the appearance of depth. The building will be earth tones, and he wanted to blend in the colors with the woods, brownish with maybe some green. The front will be barn board. The second story is to let light into the building.

Public Comments In Favor, Neutral, or Opposed:

Seeing no additional comments at this time, Mr. Dion closed the public comment period at 9:51 PM.

Board Discussion and Deliberation:

Mr. Boyer stated that the garage can be placed in this location, even if it is within the setbacks. In terms of being contrary to the public interest, the Board needs to consider whether or not it blends with the neighborhood. If there was no variance required, the applicant could build whatever he wanted in his front yard. It is difficult for him to deny a variance and the applicant to then build the garage in the front yard to the dislike of all the neighbors. The Board could

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grant him the variance for the setback that he currently has and take the opportunity to throw in a stipulations that the applicant stick to his word regarding the barn board façade on the front and painting on the sides in an attempt to blend in with the neighborhood.

Mr. Dion stated that the zoning ordinance does not protect on architecture. If the structure had been placed within the setbacks, it would not have come before the Board. The neighbors would have to deal with a Quonset hut essentially as it sits. He does not believe the visual of the structure impacts the character of the neighborhood. The Board has to focus on it being 2' over and how that affects the character of the neighborhood. On the flip side, the Board has to consider the fact that this is no longer an equitable waiver of dimension. This is a brand-new variance request for a new plan. It is harder to prove that there is some sort of unnecessary hardship when it has been very clearly stated that the applicant could easily move this into the setback. There has to be some sort of hardship with the land itself that makes it unique or is different from the neighbors which is forcing the applicant to keep it in this spot.

Mr. Lanphear stated that in the original design, the applicant was going to store a couple of his vehicles in the garage. The current proposal is a major improvement as it includes a grass area and proposed trees. The applicant might block the view of some of this stuff. The applicant is also talking about painting the structure. This has come a long way. The applicant has spent tons of money cleaning up the structure and this is his hardship. The Board could make him rip it all apart and start over again, but it is possible that the applicant did not understand how a certified foundation plan worked in the beginning. Maybe it was not explained to him correctly. The Board cannot be the judge of that. All the Board knows is that this was a big mistake when installed. The hardship is the 2'. The Board has granted other people in the town a 2' allowance because the foundation was into a setback. The applicant removed 87% of the issue. The applicant stated that he will add barn board and install windows. He will paint it similar to the earth tones of his house. These are good stipulations that could be added to the variance.

Mr. Witham-Gradert stated that the Board has mentioned the design and the intent of the architecture. Some towns have full architectural guidelines and standards by which their zoning board could then reference but Hudson does not. Unfortunately, that makes the ZBA's task more difficult as the question of character becomes far more nebulous in nature. There is not a written list of architectural guidelines to go off of. In lieu, the inherent non-conformance is the thing. That is the character is being evaluated.

Mr. Sakati stated that one of the criteria is if the building matches the character of the neighborhood. Based on the proposed size, color, and style, he does not believe it matches. He has seen structures like this to help prevent fires, but they do not usually blend in with the neighborhood. He stated that he has been considering if he would approve the proposal if nothing was in place and he would not. The applicant has stated that it can be moved and made larger, showing that there are other locations on the lot where it could be placed. The hardship does not deal with money spent. The hardship is about the use of the land. In other words, is there something about the land that says I have to build it here? We are not confronted with that.

Mr. Boyer stated that this proposal would not have come before the Board as a new item because it could be placed within the setbacks. He is weighing the property owner's rights and keeping the rest of the neighborhood happy. If a variance is granted for 2', the Board can impose stipulations which the applicant has agreed to, in hopes of protecting the neighborhood character.

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If the variance is denied, the applicant can make the structure larger right in front of his house without any stipulations. Granting the variance could make the best of the situation.

Mr. McDonough asked if the neighborhood would have the same feelings if the structure was wood framed garage instead of a metal structure. Mr. Sakati suggested that he would ask the applicant to push the garage as closer to the house as possible. Mr. McDonough stated that he views the 2' issue more to the material design than the setback issue. Mr. Dion stated that the Board could consider only the proposed location within the setback without knowing what the structure would look like. The Board does not control the look of the structure. Mr. Sakati stated that one of the criteria to get the approval to construct something, deals with having to comply with similar color, materials, etc. Mr. Witham-Gradert stated that the building permit requirements are rooted in the building code. The discussion is usually around standardization of materials and come from the Building Department requirements and the Health and Safety Code, which trumps most other requirements. Mr. Lanphear stated that this is a garage and will be used as such. Mr. McDonough stated that the Board could consider the quantitative impact to the neighborhood. The applicant will have traditional materials on some of the building and the question could be when the metal structure becomes closer to the character of the neighborhood. Mr. Dion stated that, if this was placed within the setback, the Board would not discuss what the structure looks like at all.

Mr. Witham-Gradert encouraged discussion of stipulations prior to formally taking the vote to be laid out as part of the motion. He cautioned the wording of the stipulations if the Board has something in mind to discuss them because there are limits to how much can be stipulated and restricted. Some items, for example, the NH Code does allow the ZBA explicitly to regulate, such as a restriction to a one-story structure. But as the Board gets into the design characteristics, to think carefully as to how it is worded as to not be too specific as it can become an overstep of bounds potentially. Mr. Lanphear asked Mr. Witham-Gradert for some of his recommendations that would be the proper way of wording the stipulations. He stated the way he would go about the stipulations as follows: 1) Restrict to one story (as the applicant stated and as concern raised by some folks in the audience); 2) No business; 3) Enclosed structure, and painting/rendering the structure non-reflective to make it presentable to the neighborhood/in similar colors to the neighborhood (so that he can still exercise his right to paint his structure how he wants). If the concern is "shiny metal structure", the Board could state that as a general item. It is up to the Board to determine exactly how they want to word those but just wanted to, while discussing that caution, to not get too super fine drill as that may run afoul and may be an overstep to consider. - Mr. Lanphear then suggested stipulations regarding painting the building to be non-reflective, one-story, no business, barn board facia, and windows only for light. Mr. Witham-Gradert suggested that this could be listed as in line with the character of the building outlined by the applicant's testimony.

Mr. Dion asked to receive public comment at 10:25 PM.

Mr. Baker stated that he knows he is accountable to the stipulations on record. He will finish the front with barn board, windows, and paint. Both sides of the building will be fully encapsulated. The entire structure will be painted, with finished trim, and siding on the front and back. There will also be landscaping.

Mr. Dion asked for any other comments for the applicant . There were none. He closed public comments at 10:27 PM and the matter went before the Board for deliberation and motions.

Mr. Lanphear moved to grant a variance, with the stipulations as agreed to by the applicant on the record: this will be a one-story structure, without a business use, the character and design of the building as agreed to by the applicant, and landscaping per the applicant's testimony, as duly seconded by Mr. Boyer:

Board Speaking on Each Variance Criterion:

1. Granting this variance will not be contrary to the public interest

Mr. Lanphear stated that the proposal will not be contrary to the public interest. The applicant has done all he can to get the structure as close as possible to being compliant, with minimal impact to the setbacks. This will not threaten the public, health, or safety.

2. The proposed use will observe the spirit of the ordinance

Mr. Lanphear stated that the proposed use will observe the spirit of the ordinance. It will not threaten the public health, safety, or welfare. In the end, it will be a better project.

3. Substantial justice would be done to the property owner by granting this variance

Mr. Lanphear stated substantial justice will be done to the property owner. The applicant has corrected the major front setback issue and has been going through this process for two years. He has done his due diligence and done it correctly.

4. The proposed use will not diminish the value surrounding properties

Mr. Lanphear stated that there should be no change to the value of surrounding properties.

5. Ordinance results in unnecessary hardship

Mr. Lanphear stated that the unnecessary hardship to the applicant was the error made by the contractor at the beginning, which he has corrected by removing 87% of the major setback issue in total, with 100% of the front setback issue being fixed. The proposed use is a reasonable one.

Mr. Lanphear – to grant with the stipulations

1. Granting this variance will not be contrary to the public interest

Mr. Boyer stated that granting the variance is not contrary to the public interest. There are stipulations in place that are designed to work with the public's interest.

2. The proposed use will observe the spirit of the ordinance

Mr. Boyer stated that the spirit of the ordinance will be observed. The spirit of the ordinance is being met by including special stipulations in the variance.

3. Substantial justice would be done to the property owner by granting this variance

Mr. Boyer stated that substantial justice will be done to the property owner because the owner will be able to finally finish the project/garage which he has been trying to do for the past two years.

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4. The proposed use will not diminish the value surrounding properties

Mr. Boyer stated the proposal will not diminish the values of the surrounding properties. He believes the applicant will do everything possible to make the structure look neighborly as the applicant does not want his property value to go down.

5. Ordinance results in unnecessary hardship

Mr. Boyer stated that literal enforcement of the ordinance would be an unnecessary hardship. Removing the 2' that this is encroaching into the setback is an unnecessary hardship especially as the applicant has already done substantial work to come into compliance. Granting the variance is covering the unnecessary hardship.

Mr. Boyer – to grant with stipulations**1. Granting this variance will not be contrary to the public interest**

Mr. Sakati stated that the request will not be contrary to the public interest. This is in the side setback, and side setbacks are intended to protect established development patterns in neighborhoods. The applicant has an existing shed in the side setback, and the direct neighbor has stated that the encroachment is okay. The applicant has agreed to install landscaping along that line.

2. The proposed use will observe the spirit of the ordinance

Mr. Sakati stated that the proposed use will not observe the spirit of the ordinance. The encroachment on the setback was not necessary. There is space to install the structure elsewhere on the property. The applicant could have chosen other spots.

3. Substantial justice would be done to the property owner by granting this variance

Mr. Sakati stated yes, that substantial justice would be done to the property owner. It's not because he's getting justice but because the public suffers either way. The structure cannot be unseen. The public is harmed in either way.

4. The proposed use will not diminish the value surrounding properties

Mr. Sakati stated that the direct abutters will be affected by the structures' size and type.

5. Ordinance results in unnecessary hardship

Mr. Sakati stated that a hardship pertains to the land, not financial or anything else. The hardship in this case is self-imposed and not a result of the land. The structure could be built in other locations.

Mr. Sakati – to deny**1. Granting this variance will not be contrary to the public interest**

Mr. Brendon Sullivan stated that the variance is not contrary to the public interest within the stipulations.

2. The proposed use will observe the spirit of the ordinance

Mr. Brendon Sullivan stated that the applicant observes the spirit of the ordinance, after reviewing the stipulations.

3. Substantial justice would be done to the property owner by granting this variance

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Mr. Brendon Sullivan stated that the variance will allow the applicant to finish the project within stipulations.

4. The proposed use will not diminish the value surrounding properties

Mr. Brendon Sullivan that the stipulations will mitigate any factors that would diminish value to surrounding properties.

5. Ordinance results in unnecessary hardship

Mr. Brendon Sullivan stated that the project will be within the stipulations and the ordinance guidelines. The proposed use is a reasonable one.

Mr. Brendon Sullivan – to grant with stipulations

1. Granting this variance will not be contrary to the public interest

Mr. Dion stated that, in terms of the 1'-2' encroachment, this will not frustrate the purpose of the ordinance. It will not threaten the public safety or injure public rights.

2. The proposed use will observe the spirit of the ordinance

Mr. Dion stated that the proposal does not conflict with the purpose of the ordinance. It does not threaten the character of the neighborhood or public health, safety, or welfare. He is trying to look at this in a vacuum, not counting the structure itself or what it looks like. He is purely looking at the foundation or what could theoretically be placed on the site. He stated that he is treating this as a new thing.

3. Substantial justice would be done to the property owner by granting this variance

Mr. Dion stated that substantial justice would be granted to the property owner if they can have it where they want it. There is not any public harm from it breaching the 1'-2'.

4. The proposed use will not diminish the value surrounding properties

Mr. Dion that there was not any testimony given on this item and the applicant has not provided any testimony regarding if a structure being 1'-2' into the setback would harm values.

5. Ordinance results in unnecessary hardship

Mr. Dion stated that he does not see an unnecessary hardship and does not believe the properly meets this criterion. This is a self-inflicted hardship in the sense that this is a theoretical thing that could be done. There was a plan put in place by the applicant as to how to remedy the situation based on the first pass at this and he does not believe the remedy was enough. It was made very clear by the applicant that they could remediate this fully to be within the setback, regardless that it would be 9 feet longer. You can discount that. You have to look at this from the pure variance perspective. There was not a reason given for it to be in this exact location. He does believe the proposed use is reasonable.

Mr. Dion – to deny

Vote: 3-2-0 motion carried to grant the variance with stipulations

Stipulations-

1. Single story building
2. No business use
3. The character and design as described by the applicant's testimony which included horizontal barn board on the front, windows and sliding glass doors; side of the structure will be a two-tone paint to match with trees (possible a brown color)
4. Landscaping as described by the applicant to include tall blackberry bushes for hedging and bushes in side yard abutting neighbor at 21 Fairway Dr. Landscaping will also be done in the front.

Mr. Dion reviewed the 30-day appeal period with the Applicant.

NEW HEARINGS:

1. **Case 198-012 (05-28-26)**: Jay Hall, Esq. duly authorized for Colbea Enterprises, LLC, 695 George Washington Highway, Lincoln, RI, requests an **extension/renewal** of each of the following **three (3) variances** granted on 6/27/2024 for **91-97 Lowell Road**, Hudson, NH [Map 198, Lots 011, 012, 014, 015, 016]:
 - a. **Wall Signs**: A **variance** to allow three (3) Business and Industrial wall signs where only one (1) is permitted. [HZO Article XII: Signs; §334-63, Business and industrial building signs]
 - b. **Free-Standing Signs**: A **variance** to allow a 146.9 SF freestanding "pylon" sign where a maximum size of 100 SF is permitted **and** to allow five (5) freestanding signs where each individual site may have no more than one (1) freestanding pole or ground sign. [HZO Article XII: Signs; §334-64A and §334-64, Freestanding business and industrial signs].
 - c. **Directional Signs**: A **variance** to allow several directional and directory signs to be larger than three (3) SF where no greater than three (3) SF in area is permitted and do not contain any additional advertising or messages other than incidental corporate or institutional symbols or logos. [HZO Article XII: Signs; §334-68, Directional and directory signs]

Mr. Witham-Gradert read the Case into the record. He stated that, in terms of extension requests, the Board has previously gone through the entire case as a matter of caution. In discussing with colleagues, this is not necessary. In granting an extension, the Board is not rehearing the case but instead weighing if an extension is warranted based on circumstances presented by the applicant. The Board will move to either grant an extension or not but does not need to reevaluate the hardship of the case.

Mr. Boyer disclosed that he sits on the Planning Board and that this applicant has come before the Planning Board, but at that time he was not a seated member and did not vote on that plan. He believes he can sit on the ZBA for this case and be unbiased.

Applicant's Testimony

Chris Drescher, representing the applicant/owner, introduced Chris Rice, Engineer for the project and Attorney Jay Hall, in-house counselor for the applicant/owner, Colbea Enterprises, LLC. He explained that the legal standard for an extension is if there has been a large change in circumstances. The proposal is to renew three variances, all of which deal with signage for the

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project. The applicant sought these variances in May/June 2024, all of which were granted unanimously. The applicant then proceeded to site plan review before the Planning Board. The first iteration was ultimately rejected and denied without prejudice in the face of much abutter opposition. Rather than appeal, the applicant went back to the drawing board and submitted a subsequent application for site plan review, which was approved with a few changes. The abutters had concerns regarding noise, traffic, etc., mostly to do with the originally proposed car wash. The case wash was removed from the second iteration. The second plan was approved and all of the circumstances that were applicable to the variance requests the first time are still in place, except that the car wash and some of the associated signage have been removed. He explained that an Exhibit 1 and an Exhibit 2 were provided for each variance application. Exhibit 1 shows the existing conditions and Exhibit 2 shows the items proposed to be removed from the plans. The current proposal will lead to the site being more compliant, with less signage than originally proposed.

Mr. Drescher explained that the first variance is for signage on the building which requests three signs where the ordinance allows one. The next item is for the menu board for the drive-through, electric vehicle charging station free standing signs, and a canopy sign with the gas logo above the pumps. Finally, the signs above the gas pumps happen to be 1 square inch larger than the ordinance allows but these are manufactured by Shell, which leads to the hardship. In creating a second iteration of the plan, the applicant listened to the Planning Board and the abutters and made efforts to reach out to all abutters. The applicant ended up receiving many blessings in the end. The applicant is hoping to start construction as soon as possible but is approaching the deadline for the two years for the variances that were granted in 2024 and is trying to be proactive to obtain the necessary extensions.

Mr. Witham-Gradert explained that normally, when a variance is granted and other board approvals are required, the State law puts a hold on the timer for the variance while stuck in the process as it works its way through other boards. But for the two months that the plan was being worked on, it was no longer under this hold and so the clock started ticking for the variances again. This is basically being heard due to a technicality in NH State law. Also, a technical review by the Zoning Administrator of the signs determined that they are equal or lesser than what was originally granted for the variance.

Board Questions:

None at this time.

Public Comments In Favor, Neutral, or Opposed:

Mr. Dion opened the public comment period at 10:54 PM.

Seeing no comments at this time, Mr. Dion closed the public comment period at 10:55 PM.

Board Discussion and Deliberation:

Mr. Lanphear moved to grant an extension/renewal for variance a, granted on 6/27/2024, to February 28, 2028, as duly seconded by Mr. Boyer:

Public Comments In Favor, Neutral, or Opposed:

Mr. Drescher requested an extension for variance a. for two years.

Seeing no additional comments at this time, Mr. Dion closed the public comment period at 10:58 PM.

Board Vote:

Mr. Lanphear – to grant

Mr. Boyer – to grant

Mr. Sakati – to grant

Mr. Sullivan – to grant

Mr. Dion – to grant

Vote: 5-0-0 motion carried unanimously to grant the extension.

Public Comments In Favor, Neutral, or Opposed:

Mr. Drescher requested an extension for variance b. two years.

Seeing no additional comments at this time, Mr. Dion closed the public comment period at 10:59 PM.

Mr. Lanphear moved to grant an extension/renewal for variance b. granted on 6/27/2024, to February 28, 2028, as duly seconded by Mr. Boyer:

Board Vote:

Mr. Lanphear – to grant

Mr. Boyer – to grant

Mr. Sakati – to grant

Mr. Sullivan – to grant

Mr. Dion – to grant

Vote: 5-0-0 motion carried unanimously to grant the extension.

Public Comments In Favor, Neutral, or Opposed:

Mr. Drescher requested an extension for variance c. for two years.

Seeing no additional comments at this time, Mr. Dion closed the public comment period at 11 PM.

Mr. Lanphear moved to grant an extension/renewal for variance c. granted on 6/27/2024, to February 28, 2028, as duly seconded by Mr. Boyer:

Board Vote:**Mr. Lanphear – to grant****Mr. Boyer – to grant****Mr. Sakati – to grant****Mr. Sullivan – to grant****Mr. Dion – to grant****Vote: 5-0-0 motion carried unanimously to grant the extension.**

2. **Case 173-033 (05-28-26):** Robert B. Thomson, & Maria Stratakis, Trustees, **53 Derry St.**, Hudson, NH requests a variance to allow multifamily dwellings (A-3) in the Town Residence (TR) Zone where this use is not permitted. [Map 173, Lot 033, Sublot-000; Zoned Town Residence (TR); HZO Article V: Permitted Uses; §334-21, Table of Permitted Principal Uses]

Mr. Dion moved to accept the hearing of a case after 11PM, as duly seconded by Mr. Sakati:**Vote: 5-0-0 motion carried unanimously.**

Mr. Witham-Gradert read the Case into the record.

*Mr. Boyer recused himself from this case. Mr. McDonough was seated as a voting member for this case.***Applicant's Testimony**

Katie Weiss, 1 Verona St., Nashua, of Bedford Design Consultants, Manchester, explained that the request is for a use variance for a proposed multifamily project. Surrounding this property, there are residential properties off Nellie Court and Abbott Street. There are also nearby commercial uses in the business zone., with an Aroma Joes located directly across the street, a pizza place to the right, and a car wash to the left. There are office buildings on the same side of the road as this property. There are residential areas to the north and a dentist office to the south, along with a duplex and another office building. There are power lines running through the area and that seems to be a district definition for the TR Zone. The TR Zone is located across the street and is a business zone. There are multifamily uses across the street and in the area. There is another multifamily building off Liberty Street, which is also in a TR Zone, but located across from a business district. There are also duplex units nearby. The property in question is located on Route 102 split between the Business Zone and the TR Zone. The proposal is for eight residential units in two separate blocks. The buildings will be 30'x30' and three stories tall. The first floor of the buildings would house the garage, with two stories above. The applicant is proposing stormwater on the site and there is access to water, sewer and electrical. The plan shows a turnaround for fire trucks and meets those requirements. The units each have private yards.

Ms. Weiss reviewed the variance criteria. 1) This use variance does not threaten the neighborhood character because the users across the street and to the south are business uses and are not keeping in with the TR Zone. Many of the nearby buildings are not residential in size or

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shape. There are large parking lots and pavement areas surrounding them. The public health, safety, and welfare will not be harmed with this residential use because the site has water, sewer, stormwater drainage, and electricity available and will meet the strict standards of the Town's site plan process. The residential units will add to the Town's tax base. 2) The Town Residence Zone is meant to protect established residential neighborhoods. The proposed use does not conflict with underlying Zoning because this area of roadway is mostly developed as a business zone. The business zone is located across the street with the Aroma Joes, Royal Pizza, and an office building. There are also business zoned uses to the south, even though this portion of the roadway is zoned TR. 3) The guiding factor for substantial justice is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. The general public would gain additional housing units in Town, tax revenue on eight housing units, and the minimal fiscal impact from the project. Substantial justice is also done if the proposed use is consistent with the present use of the surrounding area. As mentioned, there are businesses uses to the south and west of the site. There are several multifamily projects to the west of Webster Street, one with 56 units and another totaling 34 units. There was also a small multifamily project on Library Street, at the triangle, with six units, which is also zoned TR and directly across from the business zone. 4) Values of surrounding properties will not be diminished because the current property tax card has the land assessed at \$151,300 for 0.96 acres with no building. Similarly, the duplex to the south is assessed with two units at \$422,000 and \$365,000 for a total land and building appraisal of \$787,000. The addition of that duplex increased the property value to almost twice that of a single-family home. There is no reason to believe that additional residential units along Route 102 would diminish neighboring residential property values. 5A1) Because the property is located across from the Business Zone and properties to the south of the lot are also zoned Town Residence are business uses, the use restriction on the property does not serve the purpose of maintaining the New England town development pattern because the pattern has already been disturbed in this section of the roadway. 5A2) The proximity to the Business Zone and other business uses makes this lot appear to be zoned business, not TR. In the business zone, multifamily (use) is allowed. Since the underlying zones' main objective is no longer maintained, this makes the use a reasonable one that will not alter the character of the businesses surrounding it on Route 102/Derry Street.

Board Questions:

Mr. Lanphear asked about the proposed stormwater location. Ms. Weiss stated that the site slopes up, so the stormwater has to be located to the front of the site. These will be a small dip. Mr. Lanphear expressed concern that water in this area could seep under the ground of Route 102. Mr. Witham-Gradert stated that the Town's stormwater requirements do not allow water to escape the site. Water into a detention basin has to sink down into the ground on the property. When the final plans are submitted, the Town Engineer and Fuss & O'Neill will review them.

Mr. Lanphear asked the height of the buildings. Ms. Weiss stated that they will be under the 38' maximum allowed by the Town. Mr. Witham-Gradert noted that the crest of the roofline is the limit.

Mr. Lanphear stated that this will be fairly high density for eight units on one acre.

In response to a question from Mr. Dion, Mr. Witham-Gradert stated that the minimum driveway width is 24'. This is for entrance/exit to the site.

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Public Comments In Favor, Neutral, or Opposed:

Mr. Dion asked to receive public comment either in favor, neutral or opposed from the public at 11:05 PM.

Mr. Witham-Gradert stated that a letter of public comment was received in opposition from the owners of 22 Abbot Street.

Seeing no additional comments at this time, Mr. Dion closed the public comment period at 11:06 PM.

Board Discussion and Deliberation:

Mr. Witham-Gradert explained that the site's final layout is subject to the Planning Board's review. The ZBA should discuss the proposed use and intensity of said use.

Mr. Vurgaropulos asked about the proposed turnaround that breaches the rear setback. Mr. Witham-Gradert stated that Planning Board regulations have some rules around pavement within the setbacks. This layout is likely subject to change based on review by the Fire Marshall.

Mr. Dion echoed concerns regarding access to the site due to the proposed density of the site. Various properties along Derry Street are already difficult to access.

Mr. McDonough stated that it is a strange scenario based on the location of the nearby districts. Mr. Dion stated that the definition of the TR Zones should be considered. This is established with smaller lots than standard and with setbacks and use densities reflecting traditional New England town or village lot development patterns. The district is intended to permit the continued use, maintenance, and vitality of these unique residential areas, protecting their residential character while simultaneously limiting the expansion of these neighborhoods into adjacent developed lands. It seems as though the purpose to keep small New England lots and to maintain the character of these neighborhoods as best as possible. It is unclear if turning a sub one acre lot into eight units maintains the character.

Mr. Lanphear asked if the decision allows the applicant to build multifamily units on the property, which could then allow two units or 12 units? Mr. Witham-Gradert stated that the ZBA may limit the degree of nonconformance and could propose a limit of no more than a certain number of units. He explained that the applicant mentioned a multifamily use but did not provide a number of units and so this was not included in the Board's packet. He encouraged the Board to discuss with the applicant what appropriate number would be. He noted that in the Business Zone, multifamily uses are subject to a square footage requirement of 53,560 s.f. for three units and an additional 5,000 s.f. required per additional unit. That does not apply here as this is in the TR Zone. If this parcel and proposal were in the Business Zone, it would be non-conforming for dimensional reasons. It is not non-conforming in this instance because it is in the TR Zone. In the most basic terms, zero units are allowed because multifamily is not allowed at all in this Zone. The applicant is requesting to allow multifamily in the first place. Normally, the minimum lot size within the TR Zone is 10,000 s.f.

Mr. Lanphear stated that the density allowed on the property is a good guideline to use.

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Mr. McDonough asked if Route 102 is too active to support a single-family use and so the only allowable use for the property could be multifamily use. A driveway close to the road in order to maximize the backyard could lead to safety issues. This could create a bubble of precedent in the TR Zone for multifamily use. Mr. Lanphear stated that there are other multifamily uses along Route 102. Mr. Sakati stated that additional allowable units in the TR Zone should be established by the Planning Board and not done through spot zoning. Mr. Witham-Gradert noted that the ZBA is not a precedent setting board.

Mr. McDonough stated that he believes Route 102 may be too busy for other residential uses. This seems to be a hardship of the property. Mr. Dion stated that he feels oppositely regarding placing additional traffic accessing the road. Mr. Lanphear stated that single family houses can now have ADUs, leading to additional people on a property. The question is what the right unit count is for this property. The state still has housing needs. He believes four units is a good fit for the site.

Mr. Sakati stated that there is an abutter behind the property zoned TR and there could be an impact on that property due to the proposed density. Mr. Dion agreed that there are other residential backyards in the area, and the proposed density seems to change the character of the area.

Public Comments In Favor, Neutral, or Opposed:

Mr. Dion reopened public comment.

Robert Thompson, 11 Nellie Court and applicant, stated that there is a backyard on the rear abutting property that abuts the property in question. It is his home that would see the units proposed to be built. The property was purchased because his property backs onto the Derry Street property. Derry Street is very busy at this time. The intention was to place a duplex on the property but there is not an easy place to back out onto Derry Street. People are looking for smaller starter homes. The homes on the property are proposed to be turned to allow for privacy. It is difficult to find reasonably priced homes in Town that are not along the highway. These would have garages underneath. Eight seemed like a comfortable number for the site, with each having a bit of a yard. Natural gas, water, and sewer are all available for the property.

Mr. Lanphear expressed concern that people could begin buying the single-family homes in this area of the Zone and build multifamily uses. Mr. McDonough asked the number at which the project becomes infeasible. Mr. Thompson stated that it will become financially infeasible at less than six units likely. These will be 900 s.f. livable spaces with three bedrooms each. Water and sewer are across the street and so lines will need to be run to the property, creating a financial hardship. He has spent \$20,000 digging out an old septic system and foundation.

Mr. Lanphear asked if these will be sold as condos. Mr. Thompson stated that he believes he would have to. Mr. Witham-Gradert explained that this would be worked out through the Planning Board process.

There was discussion regarding water lines and sewer proposed for the property. The water lines have to be connected via the road, per the Town Engineer.

Seeing no additional comments at this time, Mr. Dion closed the public comment period at 11:45 PM.

Board Discussion and Deliberation:

Mr. Lanphear stated that he would recommend four units on this property in this Zone and for the acreage. The Town needs smaller houses based on today's population. Mr. Witham-Gradert explained that approval of any number of houses over one single family house will disallow ADUs on the lot, as these are only permitted on single family lots being used as such.

Mr. McDonough stated that he would be okay with six units on the lot. Mr. Dion stated that he would be okay with four, as this would allow for more green space between the units. This will also be more in keeping with the neighborhood. Mr. McDonough stated that the neighborhood consists of a coffee shop across the street and a grocery store down the street. This is more than the applicant could get in the Business Zone. Mr. Sakati expressed concern with the letters in opposition from abutters received. Mr. Sullivan agreed that four seems realistic.

Mr. Lanphear moved to grant a variance, with a stipulations of a maximum of four units, as duly seconded by Mr. Sakati:

Public Comments In Favor, Neutral, or Opposed:

Mr. Dion reopened public comment.

Mr. Dion asked the applicant about the proposed stipulation. Ms. Weiss stated that his client would like to defer the application at this time in order to run costs based on the proposed stipulation.

Seeing no additional comments at this time, Mr. Dion closed the public comment period at 11:52 PM.

Mr. Lanphear rescinded his previous motion.

Mr. Lanphear moved to defer the application to June 25, 2026, as duly seconded by Mr. Sakati:

Vote: 5-0-0 motion carried unanimously to defer the application.

Mr. Boyer retook his seat. Mr. McDonough returned to his seat as an alternate.

VI. REVIEW OF MINUTES:

04/23/2026 edited draft Meeting Minutes

Mr. Lanphear moved to approve the meeting minutes of 04/23/2026, as edited, duly seconded by Mr. Boyer.

Vote: 5-0-0 motion carried unanimously to approve the meeting minutes.

VII. OTHER BUSINESS:

Mr. Witham-Gradert stated that the full revision of the Land Use Code is moving forward, both planning and zoning. There will be a joint meeting for this purpose at a future date. ZBA members are welcome to send in feedback in the meantime.

VIII. ADJOURNMENT:

Motion made by Mr. Sakati, duly seconded by Mr. Boyer and unanimously voted to adjourn the 05/28/2026 ZBA Meeting at 12:06 AM.

Vote: 5-0-0 motion carried to adjourn the meeting.

Respectfully submitted,
Kristan Patenaude, Recording Secretary

Tristan Dion, ZBA Chairman