



TOWN OF HUDSON

Zoning Board of Adjustment



Charlie Brackett, Chairman Marilyn E. McGrath, Selectmen Liaison

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

MEETING AGENDA – September 24, 2020

COVID-19 Meeting Procedure

In response to the NH State of Emergency Order #12 Pursuant to Executive Order 2020-04 regarding COVID-19, The Hudson Zoning Board of Adjustment will conduct a virtual and public meeting & hearings electronically by remote video & conference call and physically at the Community Center, 12 Lions Ave, Hudson on Thursday, September 24, 2020, at 7:00 PM. Written comments can be sent in advance either by: 1) Email to bbuttrick@hudsonnh.gov prior to 5:00 pm, September 24, 2020; or 2) Mail by September 21, 2020 to ZBA, c/o Bruce Buttrick, Hudson Town Hall, 12 School St., Hudson, NH 03051. For the public to participate and comment, please follow the instructions on the town website: <https://www.hudsonnh.gov/bc-zba/page/public-hearing-process> or call (603) 886-6008 prior to the date of the meeting. Applications on the agenda may be viewed online at: <https://www.hudsonnh.gov/bc-zba> (click: View Agendas, Minutes, Packets & Videos). The meeting will be streamed live on Hudson Community Television, Cable Channel 22 or online at: <http://hudsonctv.com/CablecastPublicSite/watch/2?channel=3>.

I. ATTORNEY-CLIENT (NON-PUBLIC) SESSION per RSA 91-A:3 II(f) begins at 6:30 PM

Public hearings for applications will begin at 7:00 PM, normally being heard in the order listed below.

II. CALL TO ORDER

III. PLEDGE OF ALLEGIANCE

IV. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

CONTINUED/DEFERRED HEARINGS:

1. Case 175-019 (09-24-20) (deferred from 08-27-20): Joshua P. Lanzetta, Esq. of Bruton & Berube, PLLC., 601 Central Ave., Dover NH representing Christopher & Christine Floyd and Rene Joyal, 78 Highland St., Hudson, NH, requests an Appeal From An Administrative Decision of a Notice of Violation and Cease & Desist Order dated May 18, 2020 citing violation of the 2009 variance granted by the ZBA and 10 specific violations of the Hudson Zoning Ordinance. [Map 175, Lot 019-000; Zoned Town Residence (TR); HZO Article XV, Enforcement and Miscellaneous Provisions, §334-81, Appeals].
2. Case 111-017 (09-24-20) (continued from 08-13-20): Earl J Sanford of Sanford Surveying & Engineering representing 4NH Homes, LLC (c/o Mike Gallo), 597 New Boston Road, Bedford, NH requests a Variance for 151 Robinson Road to build a 28 ft. x 48 ft., two bedroom house with a 25 ft. front yard setback where 50 ft. is required. [Map 111, Lot 017-000; Zoned General-One (G-1); HZO Article VII, Dimensional Requirements, §334-27, Table of Minimum Dimensional Requirements].

NEW HEARINGS:

3. Case 156-060-001 (09-24-20): Dean Lombardo, 9 Essex Ave., Hudson, NH requests a Variance to install an outdoor hot tub 10 feet from the side yard property line, where 15 feet is required. [Map 156, Lot 060-001; Zoned Business (B); HZO Article VII, Dimensional Requirements, §334-27, Table of Minimum Dimensional Requirements].
4. Case 241-035 (09-24-20): Marie Mayotte dba Red Brick Clothing, 17 Dracut Rd., Hudson, NH requests a Variance to allow a sign in the R-2 zone for an existing non-conforming business use. [Map 241, Lot 035; Zoned Residential-Two (R-2); HZO Article XII, Signs, §334-60 F, General Requirements].

V. REQUEST FOR REHEARING:

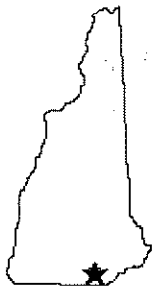
Case 173-012 & 014: Turbo Realty, LLC by Patricia M. Panciocco, One Club Acre Lane, Bedford, NH requests a rehearing of a request for a Variance at 4 & 14 Tolles St. previously denied by the ZBA on 07/23/20.

VI. REVIEW OF MINUTES: 8/27/20 edited Minutes

VII. OTHER

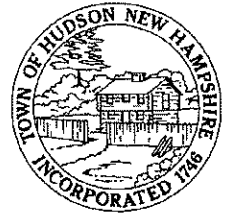


Bruce Buttrick
Zoning Administrator



TOWN OF HUDSON

Zoning Board of Adjustment



Charlie Brackett, Chairman

Marilyn E. McGrath, Selectmen Liaison

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

SITE WALK AGENDA – SEPTEMBER 19, 2020

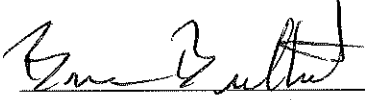
The Hudson Zoning Board of Adjustment will hold a Special Site Walk on Saturday, September 19, 2020, at 78 Highland Street, Hudson, NH, beginning at 9:00 AM.

The following item before the Board will be considered:

I. SITE WALK OF SCHEDULED APPLICATION BEFORE THE BOARD

Case 175-019 (09-24-20) (deferred from 08-27-20): Joshua P. Lanzetta, Esq. of Bruton & Berube, PLLC., 601 Central Ave., Dover NH representing Christopher & Christine Floyd and Rene Joyal, 78 Highland St., Hudson, NH, requests an Appeal From An Administrative Decision of a Notice of Violation and Cease & Desist Order dated May 18, 2020 citing violation of the 2009 variance granted by the ZBA and 10 specific violations of the Hudson Zoning Ordinance. [Map 175, Lot 019-000; Zoned Town Residence (TR); HZO Article XV, Enforcement and Miscellaneous Provisions, §334-81, Appeals].

***** The Case above will be heard on September 24, 2020 during a public meeting *****



Bruce Buttrick
Zoning Administrator

Posted: Town Hall, Library, Hudson Community Center, Post Office

9-14-20

Code Enforcement Officer's Statement of Facts:

RE: **Administrative Appeal** of violations at 78 Highland St (Map175-Lot 019)
Case # 175-019 (9-24-20)

Violation of the 2009 variance granted by the ZBA:

The variance was for the **parking** of (4) vehicles and one (1) trailer in support of a landscaping business. The variance did not grant a variance for **the operation** of a landscaping business (which now includes snow removal) **and** with the parking of the vehicles and trailer.

***Exhibit "A"**

This property use has expanded to include snow removal operations as well as ongoing landscaping business. Snow removal is a type of "expansion" from the original approval (lawn care) that needs new and additional ZBA approval as required in the 2009 ZBA variance conditions of approval.

***Exhibit "B"**

2019 – Town sued Owner in Hillsborough County Superior Court, and was granted a Permanent Injunction barring any future utilization of property in violation of the HZO and the 2009 Variance.

***Exhibit "C"**

Because of this expansion beyond what was granted in 2009, the following violations have occurred:

334-10 mixed or dual use on lot.

There is a residential use and a commercial use beyond what was permitted by variance, (was for parking, not operation of business).

334-21 Table of permitted uses.

A contractor's yard or landscaping business (E-10) is not a permitted use in the TR zone in which this lot is located.

334-13 junkyards prohibited; outdoor storage.

Outdoor storage of landscaping refuse has occurred on this lot (B-2).

334-15 Parking

There is parking in the front yard setback on this lot (A-3). In the rear of the lot, commercial vehicles are parked within the side yard setback (A-3). These parking areas are not paved (A-1).

334-16.1 Site plan approval

A new use has commenced on this lot without site plan approval from the Planning Board.

***Exhibit "D" – shows violations of:**

Article IX Wetland Conservation District:

334-34 Definitions

There is encroachment within the 50 foot wetland buffer on this lot.

334-35 Uses within Wetland Conservation District

The uses within the wetland buffer have not received Conditional Use Permit by the Planning Board.

334-35 Uses within Wetland Conservation District

Construction activity is expressly prohibited in wetlands and the district unless a Conditional Use permit has been issued by the Planning Board, construction activity has occurred in the wetland and wetland buffer.

334-38 Special Provisions.

The aggregate disturbance of wetland areas may be in excess of 1,000 sq ft, requiring compensatory wetland mitigation.

Conclusion: There is and has been expansion from the original granted variance in 2009 that has created several violations of the Hudson Zoning Ordinance as well as violating the variance granted in 2009.

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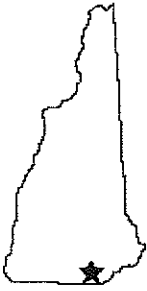
Side note:

Effective end of August 2020,

Eversource has sent 78 Highland St a letter of intent to fence off and eliminate access on and through Eversource property.

This will affect 78 Highland St access into and onto the rear of property to “park” the vehicles and trailer.

***Exhibit “E”**



TOWN OF HUDSON

Land Use Division

12 School Street · Hudson, New Hampshire 03051 · Tel: 603-886-6008



Notice of Violation of ZBA Approval for Use Variance
Cease and Desist

May 18, 2020

Certified 7018 2290 0001 3001 3188
and USPS 1st class

Rene P. Joyal & Christopher W. Floyd
78 Highland Street
Hudson, NH 03051

c/o Christine Floyd

Re: 78 Highland Street Map 175 Lot 019-000
District: Town Residence (TR)

Your property located at 78 Highland Street ("Property") is being used in violation of the Hudson Zoning Ordinance ("Zoning Ordinance") and the terms and conditions of a variance granted by the Hudson Zoning Board of Adjustment ("ZBA") on June 6, 2009, Case 175-019. Specifically, there is "expanded" use of the Property not allowed under the Zoning Ordinance, as the ZBA granted a limited use variance to permit the parking of four (4) business vehicles and the parking of one (1) business trailer, per the plans submitted and the representations made to the ZBA. The variance approved, requires that there be no expansion of that use without approval of the ZBA, that there be no landscaping material dumped on the property, and there be no outside storage of materials.

I find you in violation of the 2009 variance granted by the ZBA:

We have received numerous complaints that this property use has expanded to include snow removal operations as well as ongoing landscaping business. Snow removal is a type of "expansion" from the original approval that needs new and additional ZBA approval as required in the 2009 ZBA conditions of approval.

The original use variance was for the parking/storage of 4 (landscaping) vehicles and (1) 20'x 8-1/2' enclosed trailer w/equipment.

From the minutes "...requesting permission to park vehicles on the back portion of the property", There is no mention as to winter snow removal operations. The current use has expanded into a year round operation with snow removal operations occurring: meaning that trucks are leaving the property and coming back not on usual landscaper hours but any hours of the day/night. Furthermore the applicant testified in the minutes as to the equip being typical lawn care

Within thirty (30) days of receipt of this Order you may appeal this decision to the ZBA pursuant to Zoning Ordinance § 334-81.

equip/tools. Based on the facts above, the owner has expanded the use variance previously granted by the ZBA, and is now in violation of the stipulation granted requiring future and/or further ZBA approval for any expansion.

In addition to the expansion of use noted above, this property is also in violation(s) of the Town of Hudson Zoning Ordinance, specifically:

334-10 mixed or dual use on lot.

There is a residential use and a commercial use beyond what was permitted by variance, (was for parking, not operation of business).

334-21 Table of permitted uses.

A contractor's yard or landscaping business (E-10) is not a permitted use in the TR zone in which this lot is located.

334-13 junkyards prohibited; outdoor storage.

Outdoor storage of landscaping refuse has occurred on this lot (B-2).

334-15 Parking

There is parking in the front yard setback on this lot (A-3). In the rear of the lot, commercial vehicles are parked within the side yard setback (A-3). These parking areas are not paved (A-1).

334-16.1 Site plan approval

A new use has commenced on this lot without site plan approval from the Planning Board.

Article IX Wetland Conservation District:

334-34 Definitions

There is encroachment within the 50 foot wetland buffer on this lot.

334-35 Uses within Wetland Conservation District

Operation of a landscaping & snow removal business not a permitted use within the district.

334-35 Uses within Wetland Conservation District

The uses within the wetland buffer have not received Conditional Use Permit by the Planning Board.

334-35 Uses within Wetland Conservation District

Construction activity is expressly prohibited in wetlands and the district unless a Conditional Use permit has been issued by the Planning Board, construction activity has occurred in the wetland and wetland buffer.

334-38 Special Provisions.

The aggregate disturbance of wetland areas may be in excess of 1,000 sq ft, requiring compensatory wetland mitigation.

ORDER:

You are hereby ordered to cease and desist any and all illegal and unpermitted uses of the Property immediately.

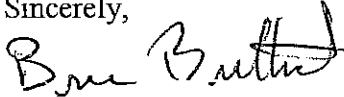
You are required to show compliance with the 2009 ZBA use variance, and apply to the ZBA for change of use variances for the expanded use and to correct violations currently occurring on this property by **June 25, 2020**.

Within thirty (30) days of receipt of this Order you may appeal this decision to the ZBA pursuant to Zoning Ordinance § 334-81.

Please be aware that should you fail to comply with this Order, the Town could seek a Contempt of Court Order against you for violation of the Superior Court Final Order # 226-2019-CV-00260 issued May 14, 2019.

Furthermore, pursuant to RSA § 676:17, you shall be subject to civil fines and penalties of \$275.00 for the first offense, and \$550.00 for subsequent offenses, for each day that the violations continue, and reimbursement of the Town's costs and reasonable attorney's fees actually expended in pursuing legal action.

Sincerely,



Bruce Buttrick, MCP

Zoning Administrator/Code Enforcement Officer

(603) 816-1275

bbuttrick@hudsonnh.gov

encl: 6/25/09 ZBA Notice of Decision

cc: Public Folder

B. Groth – Town Planner

File

Within thirty (30) days of receipt of this Order you may appeal this decision to the ZBA pursuant to Zoning Ordinance § 334-81.

**ZONING ADMINISTRATOR REQUEST FOR INTER DEPARTMENT REVIEW
TOWN OF HUDSON, NEW HAMPSHIRE**

REQUEST FOR REVIEW/COMMENTS:

Case: 175-019 (08-27-20)

Property Location: 78 Highland Street

For Town Use

Plan Routing Date: 08/14/2020 Reply requested by: 08/18/2020 ZBA Hearing Date: 08/27/2020

I have no comments I have comments (see below)

EZD Name: Elvis Dhima Date: 08/17/2020
(Initials)

DEPT:
 Town Engineer Fire/Health Department Town Planner

There has been numerous issues at this location and it is clear that the current operations taking place have outgrown this location.



TOWN OF HUDSON

Land Use Division



12 School Street • Hudson, New Hampshire 03051 • Tel: 603-886-6008 • Fax: 603-816-1291

TO: Bruce Buttrick, Zoning Administrator
FROM: Brian Groth, Town Planner
DATE: August 19, 2020
RE: 78 Highland Street – Appeal of Administrative Decision

Relief Requested

I will start with the concluding remarks of the appeal letter sent to the ZBA by Bruton & Berube, PLLC dated August 11, 2020, section IV “Relief Requested.” From what I understand, this section makes two requests:

1. For the Board to find that there is no violation, and,
2. For the Board to grant any relief necessary relative to any violation.

There may be a nuance unknown to me, as I am not an attorney, but this appears to me as circular logic. If there is no violation, no relief is necessary. If there is relief, then there must be a violation. Granting the second request is the only way to be able to grant the first request. Further, relief from the ZBA would be in the form a variance, for which there is no request. Therefore I do not understand how the ZBA can grant the applicant’s request, even in a hypothetical example.

Parking

From my observations in the field, it is my opinion that the applicant built a parking lot for four vehicles within the front yard setback of this residential property. It is my belief that the vehicles parked here are employees for the business that is illegally operating from the site. Employee parking, in my opinion, constitutes “business vehicles.” Beyond the employee parking I have observed “First Choice” landscaping vehicles and equipment on the site.

Landscaping

As recently as an hour prior to writing this memorandum, I observed at least one large pile of material at the rear of the site. It did not appear to me to be mulch and was not located in the vicinity of the applicant’s residence or yards, but in the back amongst the unpermitted business operations.

Snow Plows

Upon reviewing the minutes, the applicant represented their business as a landscaping business, therefore I reject the argument that it was not specified in the decision. The applicant's testimony is substantive to the variance.

Conclusion

I fully support the findings of your Administrative Decision contained in your Notice of Violation & Cease and Desist letter date May 18, 2020.

EXHIBIT "A"

**06/25/2009 ZBA Notice Of Decision for Use Variance,
ZBA Roll call summary sheet, and
ZBA minutes**

Hudson Town Hall
Hudson Zoning Board
12 School Street
Hudson, NH 03051

A 43

FEES:	14-44
SURCHARGE:	2-
CASH:	0

Town of Hudson
Zoning Board of Adjustment

Decision to Grant a Use Variance

On **6/25/09**, the members of the Hudson Zoning Board of Adjustment, as part of its regular public meeting for that date, heard **Case 175-019**, concerning a request by **Chris Floyd, 78 Highland Street, Hudson**, for a Use Variance to allow a mixed use on the property. [Map 175, Lot 019, Zoned TR; HZO Article V, Section 334-20, Permitted Uses and Section 334-10, Mixed or dual use on a lot.]

Following review of the testimony and deliberation, a majority of the members of this Zoning Board voted that the variance should be granted with the following stipulations:

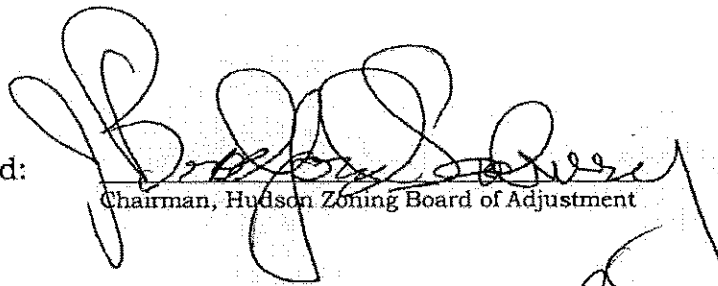
1. Parking of four business vehicles and one trailer only is allowed; any expansion of that use would have to come back before the Zoning Board of Adjustment.
2. No landscape material is to be dumped on this property.
3. No outside storage of landscaping materials.

For details of specific discussion relative to this decision, please consult the public minutes recorded during this hearing.

All representations of fact or intention made by the applicant or any applicant's representative(s) during testimony before the Zoning Board of Adjustment relative to the obtaining of this Variance permit shall be considered conditions of the Variance, regardless of the fact that such

facts or intentions may not have been specifically stated as stipulations of the motion to grant.

In the event that the requested use subsequently is found by the Hudson Zoning Administrator to demonstrate deliberate or preventable lack of compliance with any applicable stipulation or restriction, including the verbally specified restrictions described in the preceding paragraph, such use shall be held to be in violation of the covenant made with the Board, and corrective action(s) will be enforced under N.H. R.S.A. 676:17, Fines and Penalties, which allows a civil penalty of \$275 for the first offense and \$550 for subsequent offenses for each day that such violation is found to continue, as well as recovery of costs and reasonable attorney's fees.

Signed: 
Chairman, Hudson Zoning Board of Adjustment Date: 7-24-09

Signed: William A. Olschick
Zoning Administrator Date: 7-24-09

TOWN OF HUDSON
ZONING BOARD OF ADJUSTMENT

Applicant: Chris Floyd

Case # 175-019

Address: 78 Highland Street

Date: 6/25/09

Type of Appeal: Use Variance

<u>Sitting Members</u>	<u>Attendance</u>	<u>Members</u>	<u>Roll Call</u>
<u>X</u>	<u>P</u>	J. Bradford Seabury, Chairman	<u>NTG</u>
<u>2</u>	<u>P</u>	Maryellen Davis	<u>2 TG</u>
<u> </u>	<u>P</u>	Bill McInerney	<u> </u>
<u> </u>	<u> </u>	James Pacocha	<u> </u>
<u>X</u>	<u>P</u>	Michael Pitre	<u>TG</u>
<u> </u>	<u> </u>	Marilyn McGrath, Alt.	<u> </u>
<u>X</u>	<u>P</u>	Normand Martin, Alt.	<u>1 TG</u>
<u> </u>	<u> </u>	Kevin Houle, Alt.	<u> </u>
<u>X</u>	<u>P</u>	Donna Shuman, Alt.	<u>TG</u>

Motion: To Grant with

① Use variance to allow parking of business vehicles only, any expansion of this use needs to come back to the Zoning Board for approval

4-1 Motion Granted.

② No landscape material is to be dumped on this property

③ No outside storage of landscaping materials.

KEY

A	- Absent	TG	- To Grant	TR	- To Rehear
P	- Present	NTG	- Not To Grant	NTR	- Not to Rehear
E	- Excused	TD	- To Deny	1	- Maker of Motion
SD	- Member Stepped Down	NTD	- Not to Deny	2	- Individual Seconding the Motion

**HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes
June 25, 2009**

Mr. Pitre	To deny
Ms. Shuman	To deny
Mr. Seabury	To deny

Chairman Seabury declared that the decision having been five votes to deny the Use Variance, the motion had carried.

Chairman Seabury then declared a break at 8:40pm, calling the meeting back to order at 8:44pm.

- 3. Case 175-019 (6/25/09): Chris Floyd, 78 Highland Street, Hudson, NH, requests a Use Variance to allow a landscape business within the TR Zoning District and to allow a mixed use on the property. [Map 175, Lot 019, Zoned TR, HZO Article V, Section 334-20, Permitted Uses and Section 334-10, Mixed or Dual Use on a lot.]**

Clerk Martin read aloud the posted notice, as recorded above.

Chairman Seabury read aloud a letter from the applicant's abutters, addressed to the Zoning Board of Adjustment, dated June 23, 2009, as follows:

We are writing collectively as residents of the Highland Street area which abuts 78 Highland Street/First Choice Landscaping, LLC. Since the business began operating there has been no negative impact including: no increased traffic flow, no disruption in traffic flow patterns, or any increase in noise disturbance. The location of 78 Highland Street merely houses the landscaping equipment so there is no disruption at all during the days, nights, or weekends.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes
June 25, 2009

Unlike other businesses, no business is conducted out of the 78 Highland Street dwelling therefore the impact for abutters is obsolete. The owner and operator of First Choice Landscaping, LLC, Christopher Floyd has demonstrated great consideration, reverence, and respect to all of his abutting neighbors. We all have no issues or reservations about First Choice Landscaping, LLC continuing to function the way it always has. Below are the official signatures of all direct abutting property owners.

Signed,

Robert and Diane Pelkey – 73 Highland Street

Mr. & Mrs. Richard E. Germain – 75 Highland Street

Mr. & Mrs. John Walsh – 76 Highland Street

Chairman Seabury asked who was present to speak in favor with regard to the application.

Mr. Christopher Floyd and Mrs. Christine Floyd, the applicants, addressed the Board, stating that they were requesting permission to park vehicles on the back portion of the property.

Mrs. Floyd read aloud from the Application for a Use Variance as summarized below:

- 1. The zoning restriction of the cited ordinance interferes with the plaintiff's reasonable use of the property because the property had been a catering business for over thirty years and a variance was granted for a childcare facility in 2004.*
- 2. No fair and substantial relationship exists between the general purposes of the Zoning Ordinance and the specific*

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes
June 25, 2009

restriction on the property because the applicant wanted to park a total of four trucks on the property.

3. No diminution in the value of surrounding properties would occur because nothing on the property would change except the parking of four vehicles and storing some landscaping equipment in a trailer.

4. The proposed use will not be contrary to the public interest because the parking area is in the rear of the business and would not intrude on anyone else's property.

5. Granting the variance would do substantial justice because it would enable three people to keep their jobs and allow our neighbors to have a landscaper for their homes. It would also allow the property to remain a business.

Chairman Seabury asked if there were anyone else present who wished to speak in favor with regard to the application. No one else came forward.

Chairman Seabury asked if there were anyone present who wished to speak in opposition or neutrally with regard to the application. No one came forward.

Chairman Seabury declared the matter before the Board.

Chairman Seabury asked the applicant to testify that the only request was to park four vehicles and store equipment in a trailer on the lot. The applicant testified that was the only request and the trailer was an enclosed trailer that was 20 x 8 ½ feet in size. He further testified that the trailer housed tools such as hand tools, blowers, weed-wackers, and lawn mowers.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

June 25, 2009

Chairman Seabury asked why the landscaping materials needed for the business were not stored on the applicant's property. Mr. Floyd replied that any and all materials were shipped directly to the job site. Mr. Floyd further replied that any materials stored on his property were used for his personal use.

Mr. Martin asked if the business would require a Home Occupation Special Exception. The applicant replied that there was no aspect (aside from bookkeeping) of the business operating out of the home.

Mr. Martin asked the applicant if the dirt path located on the property was used to gain access to the backyard. Mr. Floyd replied that it was being used and that PSNH had been contacted about the possibility of using that dirt path as a right-of-way.

Ms. Davis asked if the dirt path was considered a second driveway. The applicant replied that it was not because he did not own the dirt path. Chairman Seabury commented that although the applicant did not "own" it, the applicant was still "using it."

Mr. Oleksak informed the applicant that Mr. John Cashell, Town Planner for the town should be contacted for further information regarding the dirt path which was being used as a makeshift driveway.

Mr. Oleksak asked the applicant where the yard waste was dumped. Mr. Floyd replied that although he used to dump the waste in his backyard, that presently the waste was dumped at Regis Landscaping in Hudson, NH.

Mr. Pitre asked the applicant to clarify how many employees there would be. Mr. Floyd replied that the company's employees consisted of himself and two other employees.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes
June 25, 2009

Mr. Martin made a motion to approve the request for the Use Variance with the following stipulations:

- 1. That the approval of the Use Variance is limited to allow for the parking of four landscape business vehicles and one trailer and any further expansion to the use or business would require ZBA approval.*
- 2. No landscaping material is allowed to be dumped on the property.*
- 3. No outside storage of landscaping material that is used for the business is allowed.*

Ms. Davis seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt it was a good use for the property and there was no negative abutter testimony.

Ms. Davis, speaking on her second, stated that she felt the request met the criteria of the ordinance, there was no negative abutter testimony, and there was actually positive abutter testimony.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to approve the request for a Use Variance, with the noted stipulations, and to record the members' votes, which were as follows:

Mr. Martin	To approve
Ms. Davis	To approve
Mr. Pitre	To approve
Ms. Shuman	To approve
Mr. Seabury	To deny

EXHIBIT "B"

Plot plans

B1 – May 2009 for variance

B2 – Oct 3 2014 for garage

Google Earth pictures

B3 – 2019

B4 - 2017

B5 - 2014

B6 - 2009

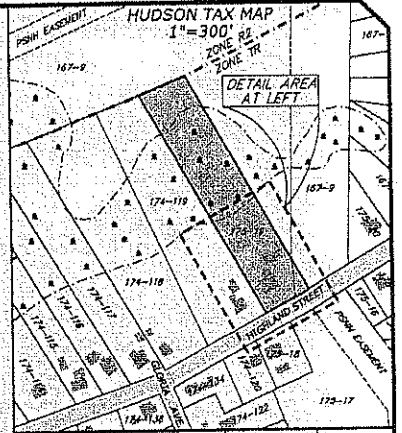
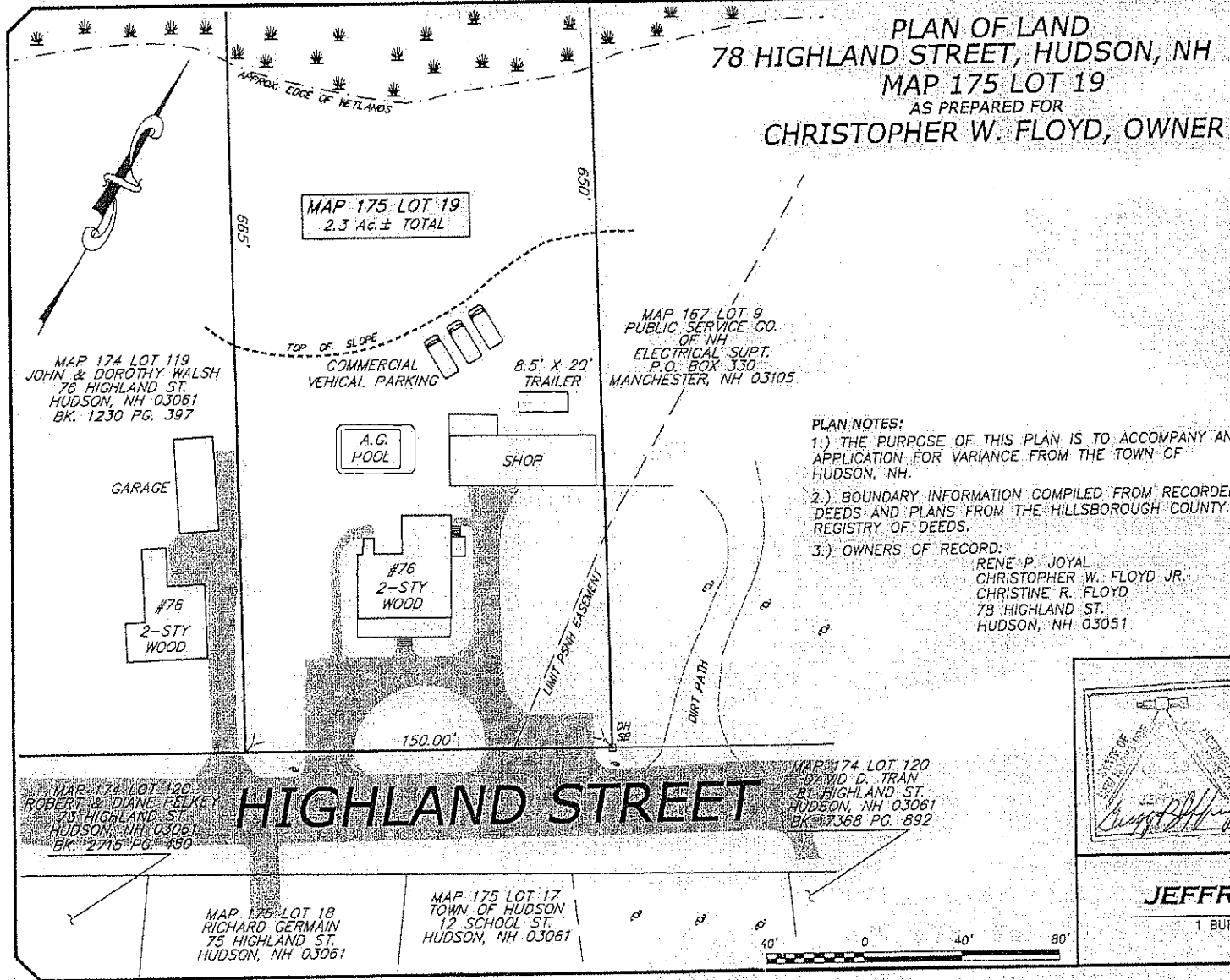
GIS 2020 aerial

B7 – 2020 showing snowplows, shed, and 8 vehicles

4/30/2020 Code Enforcement picture

B8 – showing 4 vehicles out back

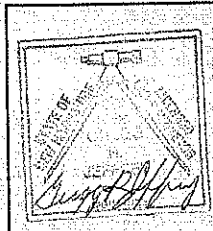
PLAN OF LAND
78 HIGHLAND STREET, HUDSON, NH
MAP 175 LOT 19
 AS PREPARED FOR
CHRISTOPHER W. FLOYD, OWNER



REV. 2 BY:
 REV. 1 BY:

PLAN NOTES:
 1.) THE PURPOSE OF THIS PLAN IS TO ACCOMPANY AN APPLICATION FOR VARIANCE FROM THE TOWN OF HUDSON, NH.
 2.) BOUNDARY INFORMATION COMPILED FROM RECORDED DEEDS AND PLANS FROM THE HILLSBOROUGH COUNTY REGISTRY OF DEEDS.
 3.) OWNERS OF RECORD:
 RENE P. JOYAL
 CHRISTOPHER W. FLOYD JR.
 CHRISTINE R. FLOYD
 78 HIGHLAND ST.
 HUDSON, NH 03051

ZONING DISTRICT: TR
REQUIRED SETBACKS:
 FRONT - 30 FEET
 SIDE - 15 FEET
 REAR - 15 FEET
 DEED REF: BK. 7758 PG. 2612
 PLAN SCALE: 1"=40'
 DATE: MAY 2009
 JOB REF.: 009-015-FIRS



I HEREBY CERTIFY:
 THAT THIS PLAN IS THE RESULT OF AN INSTRUMENT SURVEY AND THAT ALL MEASUREMENTS HEREON ARE TO BE CONSIDERED TRUE AND ACCURATE.

JEFFREY LAND SURVEY, LLC
 1 BURGESS DRIVE, LITCHFIELD, NH 03052
 (803) 424-4089



B1

RECEIVED

OCT - 3 2014

HUDSON FIRE DEPT
INSPECTORIAL SERVICES DIVISION

MAP 175 LOT 19
2.3 Ac.± TOTAL

BLDG. ENVELOPE
= 23,800 SF±

TOP OF SLOPE

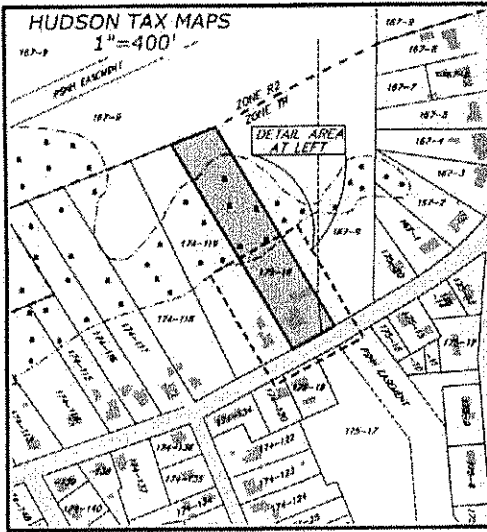
PROP. ADDITION
1,184 SF±

A.G.
POOL

EXIST. SHOP

#78
2-STY
WOOD

#76
2-STY
WOOD



CERTIFIED PLOT PLAN 78 HIGHLAND STREET, HUDSON, NH MAP 175 LOT 19

REV. 2		BY:
REV. 1		BY:

ZONING DISTRICT: TR
REQUIRED SETBACKS:

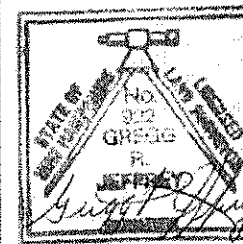
FRONT - 30 FEET
SIDE - 15 FEET
REAR - 15 FEET

DEED REF: BK. 7758 PG. 2612

PLAN SCALE: 1"=40'
DATE: MAY, 2009

JOB REF.: 009-015-FIRS

ORIGINAL IS A RED STAMP PLAN



I HEREBY CERTIFY:

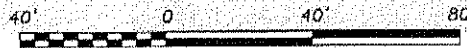
THAT THIS PLAN IS THE RESULT
OF AN INSTRUMENT SURVEY
AND THAT ALL MEASUREMENTS
HEREON ARE TO BE CONSIDERED
TRUE AND ACCURATE.

JEFFREY LAND SURVEY, LLC

1 BURGESS DRIVE, LITCHFIELD, NH 03052
(603) 424-4089




HIGHLAND STREET




B-2

Legend

 78 Highland St

N42°46'17.76"

 78 Highland St

6/2019: note number of vehicles on property

B3



Legend

📍 78 Highland St

N42°46'17.76"

📍
78 Highland St

4/14/17 ongoing operations

B4



Legend

📍 78 Highland St

N42°46'17.76"

📍
78 Highland St

9/27/14 ongoing operations

BS



Legend
📍 78 Highland St

N42°46'17.76"

📍
78 Highland St

W 71°25'3"

7/04/09 in the beginning
B6

Google Earth

Image USDA Farm Service Agency



300 ft

78 Highland St



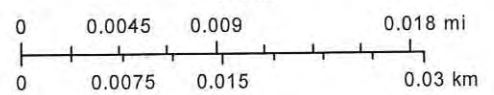
June 26, 2020

Legend

Parcels - Aerials

Parcels

1:559



B7





78 Highland St B8

EXHIBIT "C"

5/14/2019 – Final Order from Hillsborough County Superior Court, granting a Permanent Injunction barring any future utilization of property in violation of the HZO and the 2009 Variance.

Return to:
Tarbell & Brodich, P.A.
45 Centre Street
Hudson, NH 03301

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH
Southern Judicial District

SUPERIOR COURT

Town of Hudson

v.

Rene P. Joyal, Christopher W. Floyd, Jr., and Christine R. Floyd

Docket No. 226-2019-CV-00260

Final Order

The matter before the Court involves a Petition for Preliminary and Permanent Injunction to Enjoin Zoning Ordinance Violations brought by the Petitioner, Town of Hudson ("Hudson"), against the Respondents, Rene P. Joyal, Christopher W. Floyd, Jr., and Christine R. Floyd, owners of the property located at 78 Highland Street, Hudson, NH, which is further identified in reference to the Hudson Tax Maps as Map 175, Lot 019 ("Property"). The case was scheduled for a temporary hearing on May 14, 2019. By agreement of the parties, the Court hereby enters the following Final Order, and finds and rules as follows:

1. The Property is located in the Town Residence ("TR") Zoning District according to the Hudson Zoning Ordinance ("HZO").
2. The zoning violations complained of involve the parking of motor vehicles and trailers utilized in a business, First Choice Landscaping, LLC, as well as, storage of materials utilized in that business, contrary to HZO § 334-20, HZO § 334-21, HZO § 334-15, and the terms and conditions of a variance approved by the Hudson Zoning Board of Adjustment ("ZBA"), which was approved by the ZBA on June 25, 2009, and is recorded at the Hillsborough County Registry of Deeds at Book 8135, Page 1393.

3. Specifically, the commercial use of the Property in the TR Zone is expressly prohibited, except as provided by the variance granted by the ZBA. The variance only permits parking of four (4) business vehicles and one (1) business trailer, in the locations permitted by the variance. No storage of materials is permitted by the variance. The variance prohibits any expansion of the business or commercial use of the Property without further ZBA approval.

4. The Court hereby finds and rules that the Respondents have utilized the Property in violation of the HZO and the variance granted by the ZBA by allowing the parking and storage of seven (7) business vehicles, two (2) pieces of heavy equipment (backhoes), four (4) business trailers, and two (2) piles of materials utilized in the business.

5. The Respondents are hereby permanently enjoined from any future utilization of the Property in violation of the HZO and the June 25, 2009 variance granted by the ZBA. Any expansion of the commercial or business use of the Property is prohibited without the approval from the ZBA.

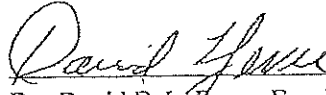
6. As of the date of this Final Order, the Respondents have complied with the foregoing permanent injunction.

7. Pursuant to RSA 676:17, I (b), the Respondents are subject to civil fines and penalties of \$275.00 per day for first offenses and \$550.00 per day for second offenses, for each day the zoning violations continued, commencing February 1, 2019, which is the date the Respondents first received notice of the potential civil fines and penalties. By agreement of the parties, the imposition of civil fines and penalties against the Respondents is to be withheld, provided that, the Respondents comply with this Final Order. In the event that the Respondents fail to comply with this Final Order, the Town of Hudson may bring the matter forward for a further hearing for purposes of assessment of civil fines and penalties.

8. Pursuant to RSA § 676:17, II, the Respondent is ordered to reimburse the Town's costs and legal fees incurred in this legal action in the amount of \$1,845.00. Respondent shall tender payment directly to the Town of Hudson..

9. This Final Order may be recorded at the Hillsborough County Registry of Deeds and shall constitute a lien against the Property until the judgment is paid in full.

Town of Hudson,
By and through its attorneys,
TARBELL & BRODICH, P.A.



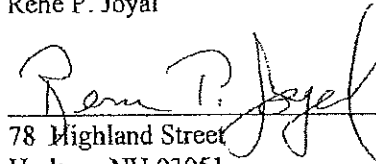
By: David E. LeFevre, Esq. BNH #13811
45 Centre Street

Concord, New Hampshire 03301
(603) 226-3900

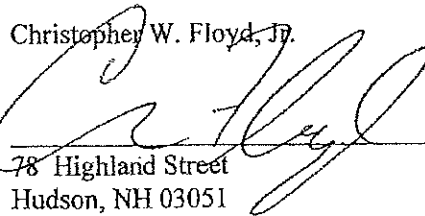
Dated: 5/14/19

Dated: 5/13/19

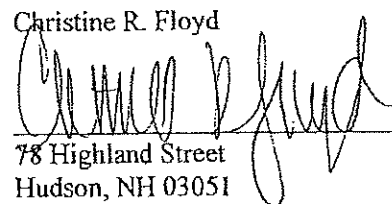
Rene P. Joyal


78 Highland Street
Hudson, NH 03051

Dated: 5/13/19

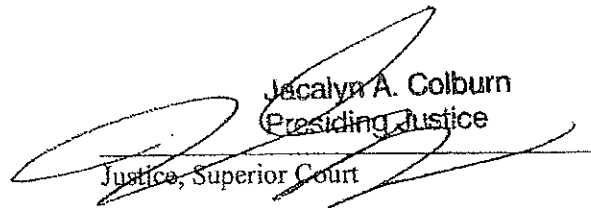
Christopher W. Floyd, Jr.

78 Highland Street
Hudson, NH 03051

Dated: 5/13/19

Christine R. Floyd

78 Highland Street
Hudson, NH 03051

So ordered.

Dated: 5/14/19


Jacalyn A. Colburn
Presiding Justice
Justice, Superior Court

Clerk's Notice of Decision
Document Sent to Parties
on 05/14/2019

EXHIBIT "D"

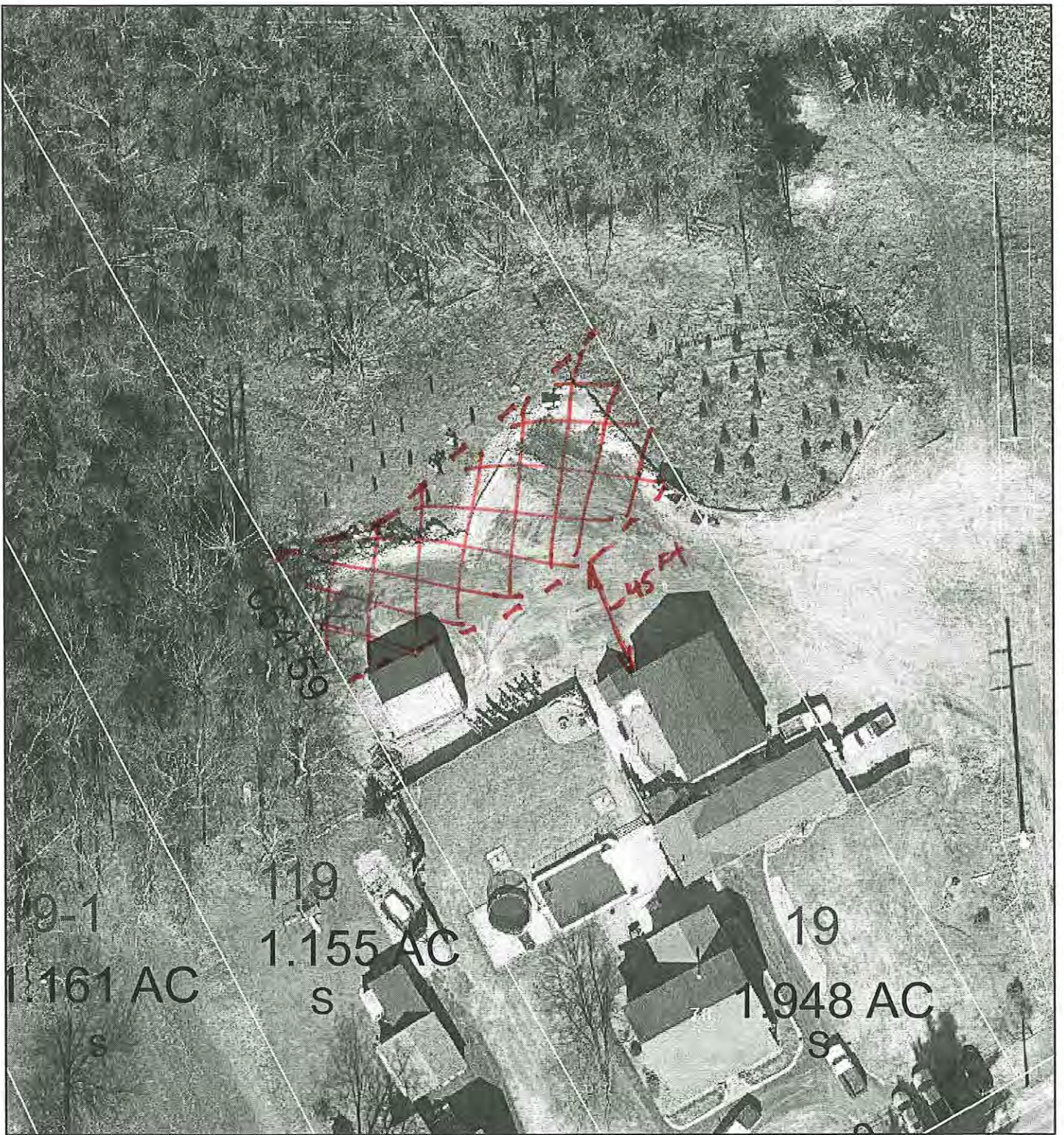
D1 - GIS and Google timeline pictures of the Wetland Buffer infractions

D2 – NH DES Sept 18, 2017 Letter of Deficiency

D3 – NH DES Dec 5, 2017 lack of voluntary compliance letter

D4 – NH DES June 22, 2018 Administrative Order

wetland buffer




19-1
1.161 AC
S


119
1.155 AC
S

19
1.948 AC
S

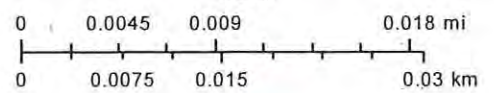
September 13, 2020

Legend

 Parcels - Aerials

 Parcels

1:559



D.



MAP 175 LOT 19
2.3 Ac.± TOTAL

BLDG. ENVELOPE
= 23,800 SF±

665'

650'

13'±

TOP OF SLOPE

28'
40'
EXIST. FOUND.
1,120 SF±

16.2'

17.3'

A.G. POOL

EXIST. SHOP

MAP 174 LOT 119

#76
2-STY WOOD

BUILDING SETBACKS (TYP.)

#78
2-STY WOOD

LIMIT PSNH EASEMENT

MAP 167 LOT 9

150.00'


DH
SB

DIRT PATH


HIGHLAND STREET



Legend

 78 Highland St

N42°46'17.76"

 78 Highland St

4/22/18 note the storage shed and the wetland buffer filled area.



Legend

78 Highland St

N42°46'17.76"

78 Highland St

W171°25'3"

7/04/09 in the beginning, please note the uncleared area behind the pool.





The State of New Hampshire

Department of Environmental Services



Robert R. Scott, Commissioner

LETTER OF DEFICIENCY
LRM 17-46

Christopher W. Floyd
78 Highland Street
Hudson, NH 03051



September 18, 2017

RE: Land Resources Management File #2017-01662, 78 Highland Street, Hudson, Tax Map: 175, Lot: 19

Dear Mr. Floyd:

On May 22, 2018, personnel from the New Hampshire Department of Environmental Services (NHDES) Land Resources Management Program conducted an inspection of the above-referenced property. The purpose of the inspection was to determine compliance with RSA 482-A and the applicable Administrative Rules under this statute.

During the inspection, NHDES personnel observed the following:

1.) Approximately 2,000 square feet of wetlands were filled without receiving authorization from NHDES.

NHDES has no record that a permit was issued for the impacts observed on the property. In accordance with RSA 482-A:3, 1(a), No person shall excavate, remove, fill, dredge, or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from the department. The impacts, as observed, are not permissible.

NHDES requests the deficiencies be corrected by taking the following action(s):

1. By **September 25, 2017**, retain a New Hampshire Certified Wetland Scientist (CWS) and notify NHDES of the name, address, and telephone number of the CWS retained.
2. By **October 25, 2017** submit a restoration plan to NHDES for review and approval. Please have the restoration plan prepared and stamped by your CWS and include provisions for restoration and stabilization of wetland impacts on the property. Please submit the following with the restoration plan:
 - a. A plan with dimensions, drawn to scale, showing:
 - i. Existing conditions with wetland boundaries delineated in accordance with the *U.S. Army Corps of Engineers Wetlands Delineation Manual* and the *2009 Interim Regional Supplement: Northcentral and Northeast Region*, specifically Chapter 5; and

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
(603) 271-3503 • Fax: 271-7894 TDD Access: Relay NH 1-800-735-2964

D₂

CERTIFIED MAIL: 7012 0470 0001 6069 6197

cc: NHDES Legal Unit
Hudson Conservation Commission ✓
Hudson Board of Selectmen

cc: Rene Pelletier, Asst. Director, Water Division
Jeffrey Blecharczyk, Compliance Supervisor



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



December 5, 2017

Rene P. Joyal
Christopher W. Floyd, Jr.
78 Highland Street
Hudson, NH 03051

COPY

**Re: NHDES Letter of Deficiency No. LRM 17-46
LRM File No. 2017-01662 – 78 Highland Street, Hudson, NH**

Dear Gentlemen:

The New Hampshire Department of Environmental Services issued Letter of Deficiency (“LOD”) No. LRM 17-46 to Christopher Floyd as co-owner of the referenced property on September 18, 2017. As you know, DES staff inspected the referenced property in May, and observed and documented that approximately 2,000 square feet of wetlands were filled without a permit from NHDES.

The proposed deadlines for requested actions in LOD #LRM 17-46 have passed, and I am informed that voluntary compliance with the department’s requests has not yet been achieved. More specifically, NHDES requested that Mr. Floyd retain the services of a New Hampshire Certified Wetlands Scientist (“CWS”) and notify the department of name, address and telephone number of the CWS retained by September 25, 2017. NHDES also requested that Mr. Floyd submit to the department a wetlands restoration plan for the property, prepared by a CWS, by October 25, 2017, for review and approval. The actions requested are based on the requirements under NH RSA 482-A, and NH CODE ADMIN. RULES Env-Wt 100 *et seq.* (the “Wetlands Rules”), and compliance is ultimately required.

Failure to comply with RSA 482-A, and the Wetland Rules, may result in administrative fines, civil penalties, and/or criminal penalties under NH RSA 482-A:13, and RSA 482-A:14. At our next regularly scheduled enforcement meeting, I will be recommending that the department issue an administrative order requiring compliance with the requested actions, or that NHDES refer this matter to the New Hampshire Department of Justice for enforcement.

Please contact me directly at 603-271-7509, or by email at kerry.barnsley@des.nh.gov, to discuss the actions requested in LOD #LRM 17-46.

Sincerely,

COPY
Kerry D. Barnsley
DES Compliance Attorney

cc: K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
Public Information Officer, DES PIP Office
Hudson Select Board & Conservation Commission
Jason Aube, Wetlands Bureau LRM/DES

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
(603) 271-3503 • TDD Access: Relay NH 1-800-735-2964

D3



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

First Choice Landscaping, LLC
78 Highland Street
Hudson, NH 03051

Rene P. Joyal
78 Highland Street
Hudson, NH 03051

Christopher W. Floyd, Jr.
78 Highland Street
Hudson, NH 03051

Re: Wetlands Bureau File No. 2017-01662

**ADMINISTRATIVE ORDER
No. 18-011 WD**

June 22, 2018

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division, to First Choice Landscaping, LLC, Rene Joyal, and Christopher Floyd, Jr. under the authority of RSA 482-A:6. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division, is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive in Concord, New Hampshire.
2. First Choice Landscaping, LLC ("First Choice Landscaping") is a New Hampshire limited liability company having a mailing address of 78 Highland Street, Hudson, NH 03051. First Choice Landscaping is listed as "Not in Good Standing" in records maintained by the New Hampshire Secretary of State. Christopher West Floyd is a member and manager of First Choice Landscaping.
3. Rene P. Joyal is an individual having a mailing address of 78 Highland Street, Hudson, NH 03051.
4. Christopher W. Floyd, Jr. is an individual having a mailing address of 78 Highland Street, Hudson, NH 03051.
5. First Choice Landscaping, Rene Joyal, and Christopher Floyd may be collectively referred to, at times, hereinafter as "the Responsible Parties."

C. STATEMENTS OF FACTS AND LAW

1. RSA 482-A authorizes the Department of Environmental Services (“DES”) to regulate dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. The Commissioner of DES has adopted NH CODE ADMIN. RULES Env-Wt 100 *et seq.* (the “Wetland Rules”) to implement this program, in accordance with RSA 482-A:11, I.
2. Rene Joyal and Christopher Floyd, Jr. are the owners of real property located at 78 Highland Street in Hudson, New Hampshire; more particularly described on Town of Hudson Tax Map 175, as Block/Lot 19 (the “Property”).
3. Mr. Joyal and Mr. Floyd are apparently operating a landscaping business out of the home on the Property.
4. On April 20, 2017, the Town of Hudson Code Enforcement Officer inspected the Property and observed and documented the disturbance of a wetland and wetland buffer on, or near, the Property described as filling and regrading.
5. RSA 482-A:3, I, states that “[no] person shall excavate, remove, fill, dredge, or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES].”
6. On April 26, 2017, the Town of Hudson issued a Notice of Violation to Messrs. Joyal and Floyd, citing local zoning ordinances and ordering the individuals to cease the illegal activity, stabilize the slopes and institute erosion control methods.
7. On May 22, 2017, DES staff inspected the Property, and observed and documented that approximately 2,000 square feet of wetlands on, or near, the Property were impacted by the deposit of fill within the wetlands, apparently for the purpose of increasing the useable storage area for the landscaping business.
8. On June 12, 2017, DES sent a Notice of Findings (“NOF”) to Rene Joyal. In the NOF, DES noted the violation observed on the Property, and requested that Mr. Joyal retain a New Hampshire Certified Wetlands Scientist (“CWS”) to submit to DES a restoration plan for the wetlands on the Property by July 15, 2017.
9. On September 18, 2017, DES issued Letter of Deficiency (“LOD”) No. LRM 17-46 to Christopher Floyd. In LOD #LRM 17-46, DES noted the violation observed on the Property, and requested that Mr. Floyd retain a CWS by September 25, 2017; and submit to DES a restoration plan for the wetlands on the Property, prepared by the CWS, by October 25, 2017.
10. According to the United States Postal Service return receipt, Chris Floyd signed for the LOD on September 30, 2017.
11. On December 5, 2017, DES sent a letter to Messrs. Joyal and Floyd. In the letter, DES noted the violations observed on the Property, that the requested deadlines in the LOD had passed, and that compliance had not been achieved. DES requested that Mr. Joyal, or Mr. Floyd contact DES staff to discuss the actions requested in LOD #LRM 17-46 before the next step in the department’s enforcement process was considered. DES has no record of a response to the letter from the Responsible Parties.

12. On February 5, 2018, DES staff telephoned Christopher Floyd to discuss the violation observed on the Property, and the actions requested by DES. DES staff left a voicemail message for Mr. Floyd, requesting a return phone call. DES has no record of a return call from the Responsible Parties.

13. On March 15, 2018, DES staff inspected the Property, and observed and documented that the previously observed fill remained in wetlands jurisdiction on, or near, the Property.

14. RSA 482-A:14, III, provides that “[f]ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A.”

D. DETERMINATION OF VIOLATIONS

The Responsible Parties have violated RSA 482-A:3, I, by filling wetlands on, or near, the Property without a permit from DES.

E. ORDER

Based on the above findings and determinations, DES hereby orders the Responsible Parties as follows:

1. The Responsible Parties shall **immediately cease and desist** all unpermitted work in wetlands and surface waters on the Property.
2. **Within 30 days of the date of this Order**, the Responsible Parties shall submit a restoration plan to DES for review. The restoration plan shall be prepared and stamped by a CWS and include provisions for removal of fill and restoration of the wetlands on the Property to its original condition. The following, at a minimum, shall be submitted with the restoration plan:
 - a. A plan with dimensions, drawn to scale, showing:
 - i. existing conditions on the site, with wetland boundaries delineated in accordance with Section F of the U.S. Army Corps of Engineers Wetlands Delineation Manual (1987) and the 2009 Regional Supplement: Northcentral and Northeast Region, Chapter 5, where necessary; and
 - ii. Proposed conditions after reestablishing jurisdictional areas;
 - b. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc.) and stabilization of the restoration areas;
 - c. A detailed description of the proposed planting plan for the stabilization and re-vegetation of the restoration areas and control of invasive species such as purple loosestrife (*Lythrum salicaria*) and common reed (*Phragmites australis*);
 - d. A description of the proposed construction sequence and methods for accomplishing restoration and anticipated restoration compliance dates; and
 - e. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum monitoring progress reports for two successive growing seasons after the completion of the restoration project. A monitoring report shall be submitted to DES at the completion of the restoration, but no later than **August 30, 2018**. Subsequent monitoring reports for two successive

growing seasons shall be submitted to DES on **September 30, 2019**, and **September 30, 2020**.

3. The Responsible Parties shall **implement** the restoration plan only after receiving written approval from, and as conditioned by, DES according to the approved schedule.
4. The Responsible Parties shall send **all** correspondence, data, reports, and other submissions made in connection with this Administrative Order, *other than appeals*, to DES as follows:

Jay Aube, Wetlands Compliance Specialist, Wetlands Bureau
Land Resources Management program
DES Water Division
P.O. Box 95, Concord, NH 03302-0095
Fax: (603) 271-4056
E-mail: Jason.aube@des.nh.gov

F. APPEAL

Any person aggrieved by this Order may appeal the Order to the N.H. Wetlands Council ("Council") by filing an appeal that meets the requirements specified in RSA 482-A:10, RSA 21-O:14, and the rules adopted by the Council, Env-WtC 100-200. The appeal must be filed **directly with the Council within 30 days** of the date of this decision and must set forth fully **every ground** upon which it is claimed that the decision complained of is unlawful or unreasonable. Only those grounds set forth in the notice of appeal can be considered by the Council.

Information about the Council, including a link to the Council's rules, is available at <http://nhec.nh.gov/> (or more directly at <http://nhec.nh.gov/wetlands/index.htm>). Copies of the Council's rules also are available from the DES Public Information Center at (603) 271-2975.

G. OTHER PROVISIONS

Please note that RSA 482-A:13, and RSA 482-A:14, provide for administrative fines, civil penalties, and/or criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. The Responsible Parties remain obligated to comply with all applicable requirements, in particular RSA 482-A and the Wetland Rules. DES will continue to monitor compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Hillsborough County Registry of Deeds so as to run with the land.



Robert R. Scott, Commissioner
Department of Environmental Services

- cc: DES Legal Unit
- ec: Public Information Officer, DES PIP Office
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
Hudson Select Board, Code Enforcement Officer, and Conservation Commission
Jay Aube, Wetlands Compliance Specialist, LRM/DES
Jeff Blecharczyk, Enforcement Supervisor, LRM/DES

EXHIBIT "E"

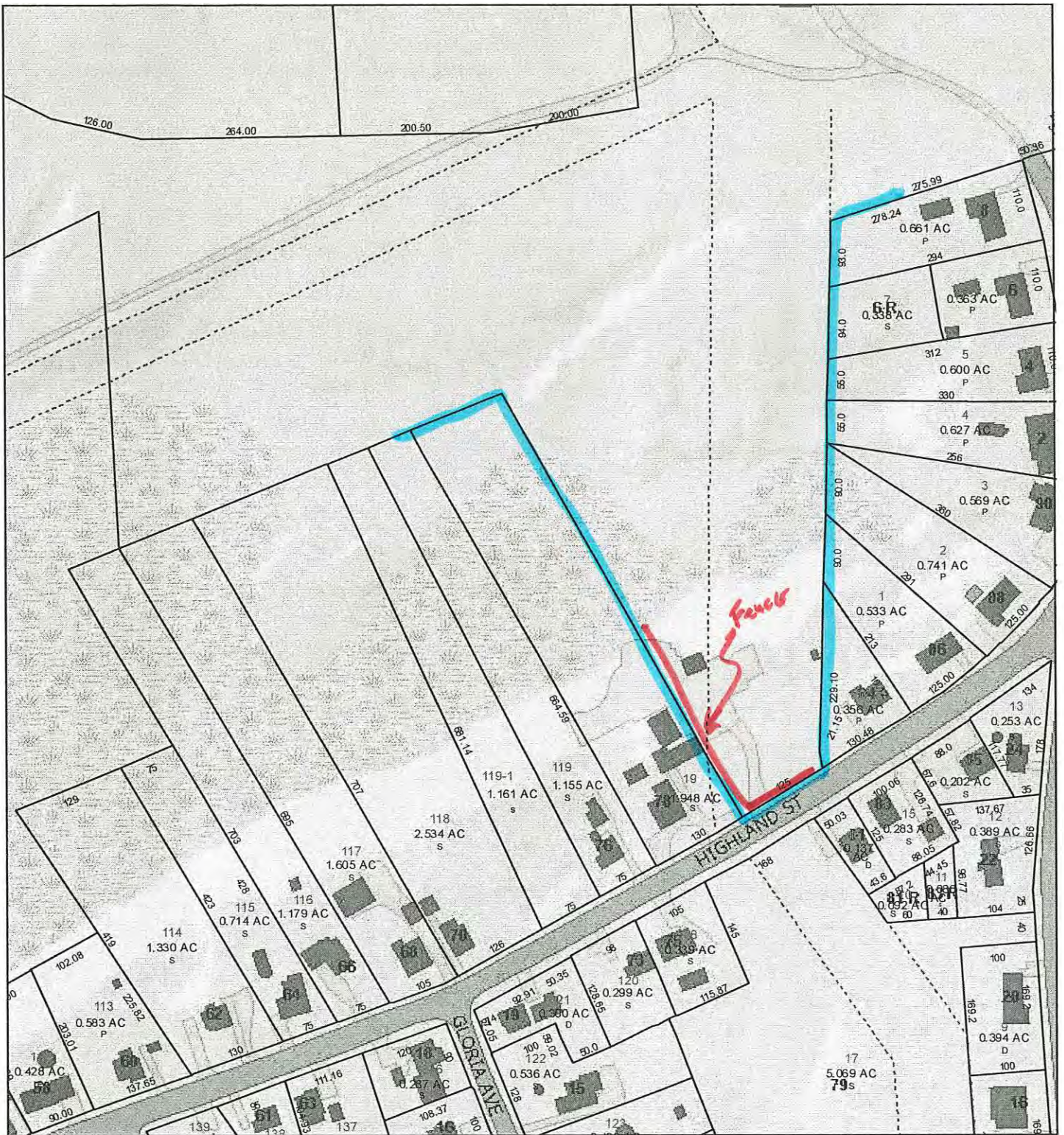
E1 - GIS of proposed fence in relation to 78 Highland St

E2 – GIS aerial of 78 Highland St and property bounds

**E3 – July 7 2020 demand letter to 78 Highland St
regarding erection of fence to halt trespass.**

E4 – Floyd trespass timeline from Eversource

Eversouce property (fence)



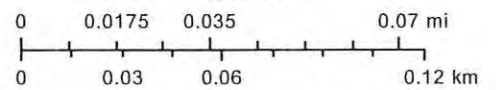
June 26, 2020

1:2,238

Legend

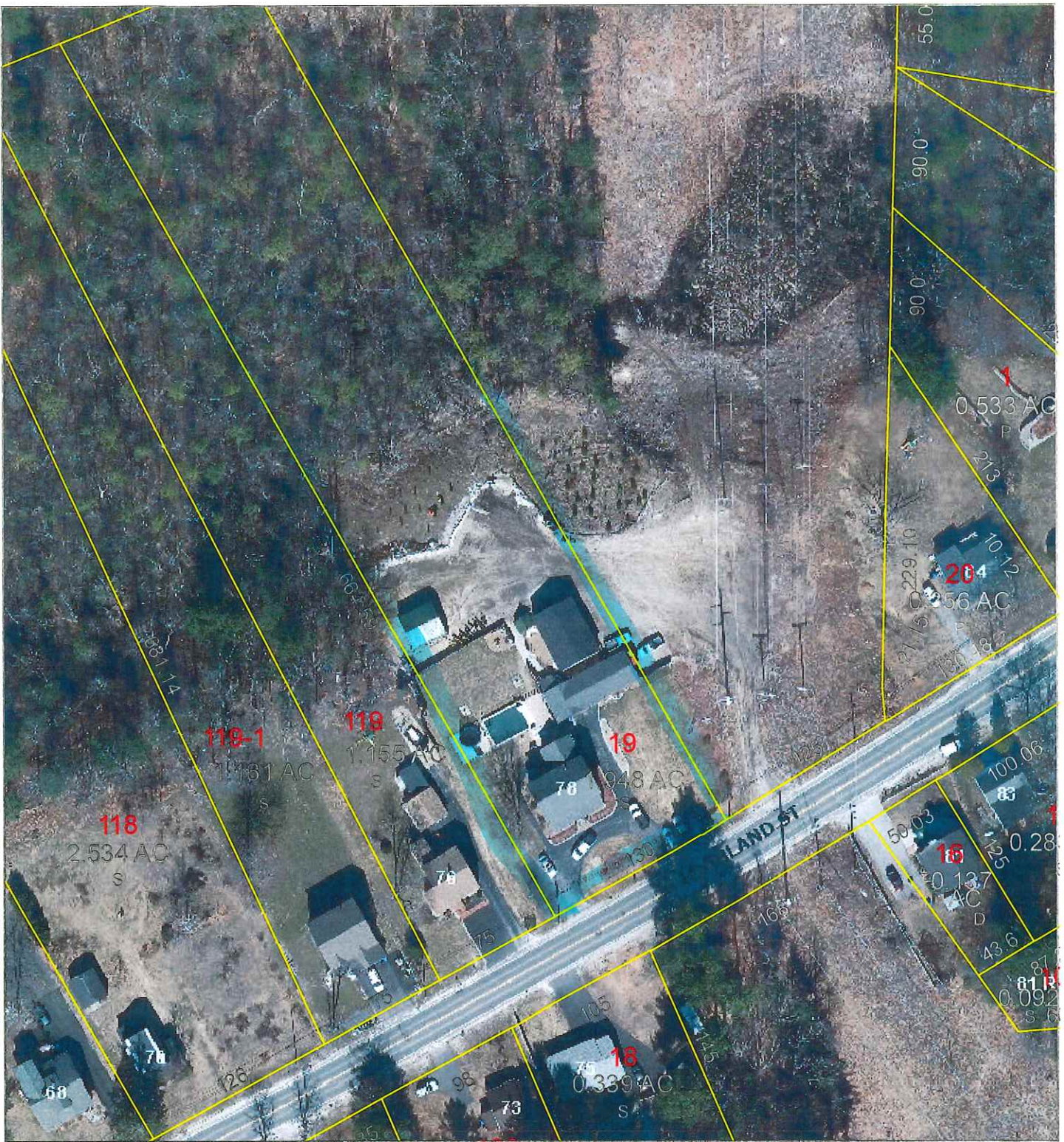
----- Easement_Lines

▭ Parcels



E

78 Highland St - current access through Eversource



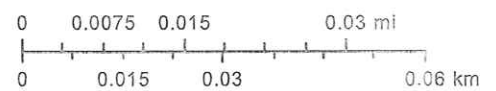
June 26, 2020

1:1,119

Legend

 Parcels - Aerials

 Parcels



E₂



TOWN OF HUDSON
JUL 09 2020
Zoning Department



July 7, 2020

Certified Mail-Return Receipt Requested

Mr. Rene Joyal
Mr. Christopher W. Floyd
Ms. Christine R. Floyd
78 Highland Street
Hudson, NH 03051

Re: Notice of Removal of Personal Property from Eversource Property, Hudson Tax Map 167, Lot 009-000

Dear Messrs. Joyal and Floyd, and Ms. Floyd:

As you are aware, Public Service Company of New Hampshire, d/b/a Eversource owns the above referenced property ("Eversource Property") abutting the easterly side of your property at 78 Highland Street, Hudson. Eversource has previously notified you of your unlawful trespass upon and illegal wetland fill and contamination to the Eversource Property, which trespass continues to the present time in conjunction with the operation of your business known as First Choice Landscaping LLC.

This letter serves as 30 days' notice that Eversource will be fencing the perimeter of the Eversource Property where the trespass has occurred and posting the Eversource Property against entry to prevent further unauthorized use and trespass. The 30 calendar days will commence upon the date of your receipt of this letter. Eversource grants you a permissive license for said 30-day period only to relocate any vehicles or equipment from the rear of your property to a different location, which will otherwise be inaccessible once the fencing is installed and which action shall be undertaken upon the Eversource Property under this license at your sole risk and expense.

This 30-day permissive license is also provided for the removal of any and all equipment, vehicles, materials, fences or other property owned by you that may now remain on the Eversource Property. This demand is also undertaken at the request of the Town of Hudson, which has separately notified you of zoning violations that have resulted in part due to your unauthorized use of the Eversource property. Should you refuse to comply with these demands, Eversource reserves the right to take such action as it deems necessary or advisable to ensure the safety and reliability of the electric system and to enforce Eversource's property rights.

Thank you for your cooperation.

Russell Maille
Right of Way Specialist
Eversource
780 North Commercial Street
Manchester, NH 03101
P 603 634-2477
russell.maille@eversource.com

CC: Jay Aube, Compliance Specialist, Wetlands Bureau, NH Department of Environmental Services
Bruce Buttrick, Zoning and Code Enforcement, Town of Hudson, NH

E3

Floyd Trespass Timeline R. Maille 06-24-2019

5/14/2009 Anne Sommer forwards customer (Floyd) inquiry to Jenny. Floyd is requesting to use PSNH fee land to access the rear of their property. Jenny presumes this request is the result of a call to the Town. Floyd is also requesting that PSNH block access to the fee corridor due to ATV trespass on his property.

6/17/2009 I conduct a site visit to review Floyd requested access. Found access presents real risks to PSNH infrastructure, vehicles are driving under guy wires in the fee transmission corridor. Photos taken.

6/23/2009 After conferring with Jim Jiottis , Jenny crafts letter to Floyd explaining that the current access is unacceptable but that PSNH would consider a license to allow a much smaller scale access which would involve the removal of sections of encroaching fence and some trees.

7/7/2009 Jim Arrington and I pay a site visit to discuss with Floyd requirements of possible PSNH licensed access to the rear of the Floyd property and the removal of fence, trees, etc. Photos taken.

7/8/2009 Per Jenny Snyder notes: "Waiting to hear from customer, need to send follow up".

8/24/2009 Per Jenny Snyder notes: "No response from customer", presumably waiting for a plan for relocated access per earlier discussion.

11/23/2009 I conducted a site visit to see if any progress has been made toward relocating access, found no change since earlier visits. Photos taken.

04/22/2010 Dan Troy, Sam Eames and I make an "unscheduled" return to Floyd property to again see if any progress has been made and finding none. Without speaking to anyone on site, Dan and Sam stake approximate property boundary for Floyd's reference. Photos taken.

04/22/2010 I am aware of no further communication or activity involving Floyd and Eversource until 2017.

04/12/2017 I am contacted by an abutter to our fee property in Hudson with a complaint about Floyd use of our land.

04/14/2017 I enter into discussion with Town officials about encroachments I see on Google Earth that did not exist in 2010 including apparent structures.

04/17/2017 Bruce Buttrick, Code Enforcement Officer in Hudson informs me of other complaints about heavy truck traffic and likely wetland filling by Floyd.

04/20/2017 Justin Hatch, Bruce Buttrick and I conduct a morning site visit to the Floyd/Eversource properties. The ES property is being used heavily by Floyd for a variety of storage purposes and illegal structures are identified. Also this visit reveals an ongoing large scale wetland fill on both the ES and Floyd property by Floyd. The Hudson Town Engineer also arrives to join the conversation. Photos taken.

05/03/2017 ES receives an NOV from the Town for illegal structures and wetland filling on company property.

05/09/2017 Town grants ES a 60-day extension on NOV for wetland fill.

05/22/2017 NHDES conducts inspection of site to determine compliance with wetland regulations on ES property abutting Floyd property. A wetland violation was identified on ES property and was the result of filling authorized by Mr. Floyd on his property, spilling over on ES property. Floyd was attempting to increase the usable space on his property.

11/15/17 Restoration of approximately 1700 square feet of wetland on ES property completed per NHDES requirements. Cost to ES approximately \$150,000.

Timeline Dennis Moreau 11/14/2018

4/17/2018 Site visit - photos

4/18/2018 Certified Letter of Trespass – Received 4/20/2018 Chris Floyd signature

9/11/2018 Site visit – photos, met employee Nick, on site. Gave him copy of Letter of Trespass dated 4/18/2018. Site cleared of debris documented in 4/17 visit.

11/05/2018 Site visit – photos, landscape soil removed from Eversource property. Spoke with Bruce Buttrick, Zoning Adm./Code Enforcement Officer Bruce Buttrick. Building on property meets required setbacks.

Received copy of Zoning Board Meeting Agenda, Zoning Decision to Grant Use Variance; recorded September 18, 2009, Book 8135 Page 1393 at Hillsborough County Registry of Deeds, and DES Administrative Order No. 18-011 WD dated June 22, 2018.

Granting of Use Variance to allow mixed use on the property

1. Parking of 4 business vehicles and 1 trailer.
2. No Landscape material is to be dumped on this property.
3. No outside storage of landscaping materials.

2/1/2019 ES receives copy of Cease and Desist order issued by Town to Floyd for uses of property that are violations of existing variance parameters.

4/1/2019 ES receives notification from Town that Town plans to file suit in Superior Court against Floyd for continued violations.

HUDSON ZONING BOARD OF ADJUSTMENT
APPEAL OF ADMINISTRATIVE DECISION WORKSHEET

On **09/24/20**, the Hudson Zoning Board of Adjustment heard **Case 175-019**, pertaining to a request filed by **Joshua P. Lanzetta, Esq. of Bruton & Berube, PLLC., 601 Central Ave., Dover NH representing Christopher & Christine Floyd and Rene Joyal, 78 Highland St., Hudson, NH**, to appeal an Administrative decision **issued by the Zoning Administrator, of a Notice of Violation and Cease & Desist Order dated May 18, 2020 citing violation of the 2009 variance granted by the ZBA and 10 specific violations of the Hudson Zoning Ordinance. [Map 175, Lot 019-000; Zoned Town Residence (TR); HZO Article XV, Enforcement and Miscellaneous Provisions, §334-81, Appeals].**

Members sitting on the Zoning Board of Adjustment for this hearing are to vote to determine if they would make the same decision as the Zoning Administrator.

Y N

I would have made the same decision and/or interpretation based on the evidence presented.

Signed: _____ Date _____
 Sitting Member of the Hudson ZBA

REMINDER:

Please bring the following

2 continued/deferred cases
from previous ZBA Meetings:

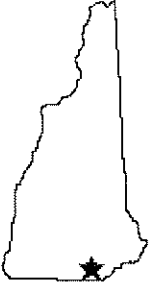
Case 175-019 (09-24-20) (deferred from 08-27-20):

78 Highland St- Appeal from an Administrative

Decision

Case 111-017 (09-24-20) (continued from 08-13-20):

151 Robinson Rd- Variance



TOWN OF HUDSON

Land Use Division



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

Zoning Administrator Staff Report Meeting Date: September 24, 2020 *BA 9-11-20*

Case 111-017 (09-24-20) continued from 08-13-20: Earl J. Sanford of Sanford Surveying & Engineering representing 4NH Homes, LLC (c/o Mike Gallo), 597 New Boston Road, Bedford, NH requests a Variance for 151 Robinson Road to build a 28 ft. x 48 ft., two bedroom house with a 25 ft. front yard setback where 50 ft. is required. [Map 111, Lot 017-000; Zoned General-One (G-1); HZO Article VII, Dimensional Requirements, §334-27, Table of Minimum Dimensional Requirements].

Address: 151 Robinson Rd
Zoning district: General One (G-1)

Summary:

Applicant requests a variance to construct a SFR in the front setback, leaving 25 ft where 50 ft is required.

Property description:

This is a vacant existing non-conforming lot of record.

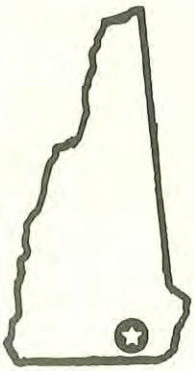
ZBA requested a continuance:

From the ZBA 8/13/20 minutes:

“Mr. Dearborn made the motion to continue the hearing to 9/24/2020 so the ZBA can be briefed by the Town and its representation of the property. Mr. Pacocha seconded the motion. Roll call vote was 5:0.”

Attachments:

“A” Sept 11, 2020 Memo from Town Administrator as to why the property is for sale/history.



TOWN OF HUDSON
Office of the Town Administrator
12 School Street
Hudson, New Hampshire 03051



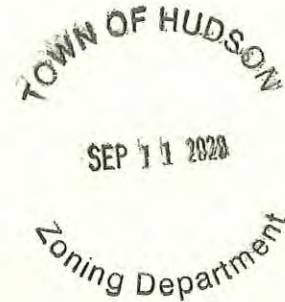
Stephen A. Malizia, Town Administrator – smalizia@hudsonnh.gov – Tel: 603-886-6024 Fax: 603-598-6481

To: Bruce Buttrick, Zoning Administrator

From: Steve Malizia, Town Administrator

Date: September 11, 2020

Re: 151 Robinson Road



At their meeting on April 24, 2018, the Board of Selectmen voted to sell Town owned, tax deeded properties located at 149 and 151 Robinson Road. The properties were acquired by tax deed in 1978. An abutter to one of properties (149) inquired as to whether the property was available for sale. After the properties were determined to be surplus to the Town's needs, the Selectmen voted to sell the properties to put them back on the tax rolls as it is in the Town's best interest to facilitate the lot being added back onto the tax rolls. The property located at 149 Robinson Road sold on October 17, 2018 for \$86,000. The property located at 151 Robinson Road is currently under an offer to purchase. As part of the Purchase and Sales Agreement, the Town has offered the property "As Is" with no warranties or representations. Buyers are encouraged to do their own due diligence in arriving at their decision to buy the property. I am attaching a copy of the Property Disclosure form for your information.

Should you have any questions or need additional information, please feel free to contact me. Thank you.

A,

PROPERTY DISCLOSURE - LAND ONLY
New Hampshire Association of REALTORS® Standard Form



TO BE COMPLETED BY SELLER

1. **SELLER:** Town of Hudson, NH
2. **PROPERTY LOCATION:** 151 Robinson Rd, Hudson, NH 03051
3. The following answers and explanations are true and complete to the best of SELLER'S knowledge. This statement has been prepared to assist prospective BUYERS in evaluating SELLER'S property. This disclosure is not a warranty of any kind by SELLER, or any real estate broker or salesperson representing SELLER, and is not a substitute for any inspection by BUYER. SELLER'S authorize the Listing Broker in this transaction to disclose the information in this statement to other real estate agents and to prospective BUYERS of this property.

4. **NOTICE TO SELLER(S): COMPLETE ALL INFORMATION AND STATE NOT APPLICABLE OR UNKNOWN AS APPROPRIATE. IF ANY OF THE INFORMATION IN THIS PROPERTY DISCLOSURE FORM CHANGES FROM THE DATE OF COMPLETION, YOU ARE TO NOTIFY THE LISTING FIRM PROMPTLY IN WRITING.**

5. **WATER SUPPLY (Please answer all questions regardless of type of water supply)**
- a. TYPE OF SYSTEM: None Public Private Seasonal Unknown
 Drilled Dug Other _____
- b. INSTALLATION: Location: _____ Installed By: _____
 Date of Installation _____ What is the source of your information? _____
- c. USE: Number of Persons currently using the system: _____
 Does system supply water for more than one household? Yes No
- d. MALFUNCTIONS: Are you aware of or have you experienced any malfunctions with the (public/private/other) water systems?
 Pump: Yes No N/A Quantity: Yes No Unknown
 Quality: Yes No Unknown
 If YES to any question, please explain in Comments below or with attachment.
- e. WATER TEST: Have you had the water tested? Yes No Date of most recent test _____
 If YES to any question, please explain in Comments below or with attachment.
 To your knowledge, have any test results ever been reported as unsatisfactory or satisfactory with notations? Yes No
 IF YES, are test results available? Yes No
 What steps were taken to remedy the problem? _____
- f. COMMENTS: _____

6. **SEWAGE DISPOSAL SYSTEM**
- a. TYPE OF SYSTEM: Public: Yes No Community/Shared: Yes No
 Private: Yes No Unknown: Yes No
 None: Yes No Septic/Design Plan in Process? Yes No
 Septic Design Available? Yes No
- b. IF PUBLIC OR COMMUNITY/SHARED:
 Have you experienced any problems such as line or other malfunctions? Yes No
 What steps were taken to remedy the problem? _____
- c. IF PRIVATE:
 TANK: Septic Tank Holding Tank Cesspool Unknown Other _____
 Tank Size 500 Gal. 1,000 Gal. Unknown Other _____
 Tank Type Concrete Metal Unknown Other _____
 Location: _____ Location Unknown Date of Installation: _____
 Date of Last Servicing: _____ Name of Company Servicing Tank: _____
 Have you experienced any malfunctions? Yes No Comments: _____
- d. LEACH FIELD: Yes No Other _____
 IF YES: Size _____ Location: _____ Unknown
 Date of installation of leach field: _____ Installed By: _____
 Have you experienced any malfunctions? Yes No
 Comments: _____
- e. IS SYSTEM LOCATED ON "DEVELOPED WATERFRONT" as described in RSA 485-A? Yes No Unknown
 IF YES, has a site assessment been done? Yes No Unknown
 SOURCE OF INFORMATION: _____
 COMMENTS: _____
 FOR ADDITIONAL INFORMATION THE BUYER IS ENCOURAGED TO CONTACT THE NH DEPARTMENT OF ENVIRONMENTAL SERVICES SUBSURFACE SYSTEMS BUREAU

SELLER(S) INITIALS SJW BUYER(S) INITIALS /

A₂

PROPERTY DISCLOSURE - LAND ONLY
New Hampshire Association of REALTORS® Standard Form



TO BE COMPLETED BY SELLER

PROPERTY LOCATION: 151 Robinson Rd, Hudson, NH 03051

7. **HAZARDOUS MATERIAL**

UNDERGROUND STORAGE TANKS - Current or previously existing:

Are you aware of any past or present underground storage tanks on your property? YES NO UNKNOWN

IF YES: Are tanks currently in use? YES NO

IF NO: How long have tank(s) been out of service? _____

What materials are, or were, stored in the tank(s)? _____

Age of tank(s): _____ Size of tank(s): _____ Owner of tank(s): _____

Location: _____

Are you aware of any problems, such as leakage, etc.? Yes No Comments: _____

Are tanks registered with the Department of Environmental Services (D.E.S.)? YES NO UNKNOWN

If tanks are no longer in use, have tanks been abandoned according to D.E.S.? YES NO UNKNOWN

Comments: _____

8. **GENERAL INFORMATION**

a. Is this property subject to Association fees? YES NO UNKNOWN

If YES, Explain: _____

If YES, what is your source of information? _____

b. Is this property located in a Federally Designated Flood Zone? YES NO UNKNOWN

c. Are you aware of any liens, encroachments, easements, rights-of-way, leases, restrictive covenants, special assessments, right of first refusal, life estates, betterment fees or attachments on the property? YES NO UNKNOWN

If YES, Explain: _____

d. What is your source of information? _____

e. Are you aware of any landfills, hazardous materials or any other factors, such as soil, flooding, drainage or any unusual factors? YES NO UNKNOWN

If YES, Explain: _____

f. Are you receiving a tax exemption or reduction for this property for any reason including but not limited to current use, land conservation, etc.? YES NO UNKNOWN

IF YES, Explain: MUNICIPAL OWNED PROPERTY

g. How is the property zoned? G-1 Source: TOWN RECORDS

h. Has the property been surveyed? YES NO UNKNOWN If YES, is the survey available? YES NO

i. Has the soil been tested? YES NO UNKNOWN If YES, are the results available? YES NO

j. Has a percolation test been done? YES NO UNKNOWN If YES, are the results available? YES NO

k. Has a test pit been done? YES NO UNKNOWN If YES, are the results available? YES NO

l. Have you subdivided the property? YES NO UNKNOWN

m. Are there any local permits? YES NO UNKNOWN Please explain: _____

n. Are there attachments explaining any of the above? YES NO UNKNOWN

o. Septic/Design plan available? YES NO UNKNOWN

p. Methamphetamine Production: Do you have knowledge of methamphetamine production ever occurring on the property?

(Per RSA 477:4-g) YES NO If YES, please explain: _____

9. **NOTE TO PURCHASER(S): PRIOR TO SETTLEMENT YOU SHOULD EXERCISE WHATEVER DUE DILIGENCE YOU DEEM NECESSARY WITH RESPECT TO ADJACENT PARCELS IN ACCORDANCE WITH THE TERMS AND CONDITIONS AS MAY BE CONTAINED IN PURCHASE AND SALES AGREEMENT. YOU SHOULD EXERCISE WHATEVER DUE DILIGENCE YOU DEEM NECESSARY WITH RESPECT TO INFORMATION ON ANY SEXUAL OFFENDERS REGISTERED UNDER NH RSA CHAPTER 651-B. SUCH INFORMATION MAY BE OBTAINED BY CONTACTING THE LOCAL POLICE DEPARTMENT.**

SELLER(S) INITIALS SA-1

BUYER(S) INITIALS _____

A₃

PROPERTY DISCLOSURE - LAND ONLY
New Hampshire Association of REALTORS® Standard Form



TO BE COMPLETED BY SELLER

SELLER(S) MAY BE RESPONSIBLE AND LIABLE FOR ANY FAILURE TO PROVIDE KNOWN INFORMATION TO BUYER(S).

ACKNOWLEDGEMENTS:

SELLER ACKNOWLEDGES THAT HE/SHE HAS PROVIDED THE ABOVE INFORMATION AND THAT SUCH INFORMATION IS ACCURATE, TRUE AND COMPLETE TO THE BEST OF HIS/HER KNOWLEDGE. SELLER AUTHORIZES THE LISTING BROKER TO DISCLOSE THE INFORMATION CONTAINED HEREIN TO OTHER BROKERS AND PROSPECTIVE PURCHASERS.

SELLER Town of Hudson, NH 04/30/2018 SELLER DATE

BUYER ACKNOWLEDGES RECEIPT OF THIS PROPERTY DISCLOSURE RIDER AND HEREBY UNDERSTANDS THE PRECEDING INFORMATION WAS PROVIDED BY SELLER AND IS NOT GUARANTEED BY BROKER/AGENT. THIS DISCLOSURE STATEMENT IS NOT A REPRESENTATION, WARRANTY OR GUARANTY AS TO THE CONDITION OF THE PROPERTY BY EITHER SELLER OR BROKER. BUYER IS ENCOURAGED TO UNDERTAKE HIS/HER OWN INSPECTIONS AND INVESTIGATIONS VIA LEGAL COUNSEL, HOME, STRUCTURAL OR OTHER PROFESSIONAL AND QUALIFIED ADVISORS AND TO INDEPENDENTLY VERIFY INFORMATION DIRECTLY WITH THE TOWN OR MUNICIPALITY.

BUYER _____ DATE _____ BUYER _____ DATE _____

**HUDSON ZONING BOARD OF ADJUSTMENT
Variance Decision Work Sheet (Rev 11-06-18)**

On **09/24/20**, the Zoning Board of Adjustment heard Case **111-017**, being a case brought by **Earl J. Sanford of Sanford Surveying & Engineering representing 4NH Homes, LLC (c/o Mike Gallo), 597 New Boston Road, Bedford, NH** for a Variance at **151 Robinson Road to build a 28 ft. x 48 ft., two bedroom house with a 25 ft. front yard setback where 50 ft. is required.** [Map 111, Lot 017-000; Zoned General-One (G-1); HZO Article VII, Dimensional Requirements, §334-27, Table of Minimum Dimensional Requirements].

After reviewing the petition, hearing all of the evidence, and taking into consideration any personal knowledge of the property in question, the undersigned member of the Zoning Board of Adjustment sitting for this case made the following determination:

Y **N** **1.** Granting of the requested variance will not be contrary to the public interest, since the proposed use does not conflict with the explicit or implicit purpose of the ordinance and does not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure “public rights.”

Y **N** **2.** The proposed use will observe the spirit of the ordinance, since the proposed use does not conflict with the explicit or implicit purpose of the ordinance and does not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure “public rights.”

Y **N** **3.** Substantial justice would be done to the property-owner by granting the variance, and the benefits to the property owner are not outweighed by harm to the general public or to other individuals.

Y **N** **4.** The proposed use will not diminish the values of surrounding properties.

Y **N** **5.** Special conditions exist such that literal enforcement of the ordinance would result in **unnecessary hardship**, either because the restriction applied to the property by the ordinance does not serve the purpose of the restriction in a “fair and reasonable” way *and also* because the special conditions of the property cause the proposed use to be reasonable, or, alternatively, there is no reasonable use that can be made of the property that would be permitted under the ordinance, because of the special conditions of the property.

Member Decision: _____

Signed: _____ Date _____
 Sitting member of the Hudson ZBA

Stipulations: _____

REMINDER:

Please bring the following

2 continued/deferred cases
from previous ZBA Meetings:

Case 175-019 (09-24-20) (deferred from 08-27-20):
78 Highland St- Appeal from an Administrative
Decision

Case 111-017 (09-24-20) (continued from 08-13-20):
151 Robinson Rd- Variance



TOWN OF HUDSON

Land Use Division



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

Zoning Administrator Staff Report Meeting Date: September 24, 2020

BB
9-15-20

Case 156-060-001 (09-24-20): Dean Lombardo, 9 Essex Ave., Hudson, NH requests a Variance to install an outdoor hot tub 10 feet from the side yard property line, where 15 feet is required. [Map 156, Lot 060-001; Zoned Business (B); HZO Article VII, Dimensional Requirements, §334-27, Table of Minimum Dimensional Requirements].

Address: 9 Essex Ave
Zoning district: Business (B)

Summary:

Applicant requests a variance to install a hot tub resulting with a side yard encroachment of 5 ft, leaving 10 of side yard setback.

Property description:

Residential lot (7,624 sqft) and frontage (73.95 ft) and use (Residential) as a result of a 2015 Variance.

In-House review/comments:

Fire Dept: Non Received
Planner: Non Received
Engineering: No Comments

HISTORY:

2015 ZBA Notice of Decision to Grant Variance.

Attachments:

“A” Assessing record.
“B” 2015 ZBA Notice of Decision.
“C” Minutes of 2015 ZBA Variance.

Previous Assessments

Year	Code	Building	Yard Items	Land Value	Acres	Special Land	Total
2020	101 - ONE FAMILY	215,300	0	82,800	0.18	0.00	298,100
2020	101 - ONE FAMILY	215,300	0	82,800	0.18	0.00	298,100
2019	101 - ONE FAMILY	215,300	0	82,800	0.18	0.00	298,100
2019	101 - ONE FAMILY	215,300	0	82,800	0.18	0.00	298,100
2018	101 - ONE FAMILY	215,300	0	82,800	0.18	0.00	298,100
2018	101 - ONE FAMILY	215,300	0	82,800	0.18	0.00	298,100
2017	101 - ONE FAMILY	81,600	0	82,800	0.18	0.00	164,400
2017	101 - ONE FAMILY	70,000	0	79,000	0.18	0.00	149,000
2017	101 - ONE FAMILY	81,600	0	82,800	0.18	0.00	164,400
2016	130 - VAC RESD	0	0	71,100	0.18	0.00	71,100
2016	130 - VAC RESD	0	0	71,100	0.18	0.00	71,100
2015	130 - VAC RESD	0	0	71,100	0.18	0.00	71,100
2015	130 - VAC RESD	0	0	71,100	0.18	0.00	71,100
2014	130 - VAC RESD	0	0	0	0.00	0.00	0

Hudson Town Hall
Hudson Zoning Board
12 School Street
Hudson, NH 03051

Town of Hudson

Zoning Board of Adjustment

Decision to Grant a Variance

On **12/10/15**, the members of the Hudson Zoning Board of Adjustment, as part of its regular public meeting for that date, heard **Case 156-060-001**, pertaining to a request by **Grey Fox Realty, LLC, 40 Temple Street, Nashua, NH** for a Variance to allow the lot area of the proposed lot, **Essex Avenue, Hudson, NH, to have 7,624 square feet, where a minimum of 30,000 square feet is required.** [Map 156, Lot 060-001, Zoned B; HZO Article VII, Section 334-27, Table of Dimensional Requirements.]

Following review of the testimony and deliberation, a majority of the members of this Zoning Board voted that the variance should be granted with the following stipulations:

1. **Single Family Residential use only with no accessory uses.**
2. Proposed building plan to meet side and rear setbacks.

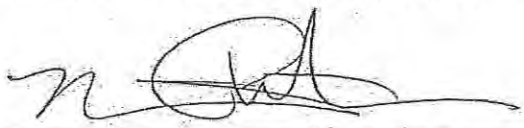
For details of specific discussion relative to this decision, please consult the public minutes recorded during this hearing.

All representations of fact or intention made by the applicant or any applicant's representative(s) during testimony before the Zoning Board of Adjustment relative to the obtaining of this Variance permit shall be

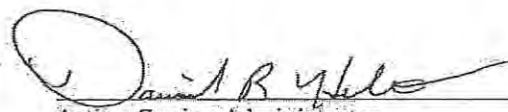
B.

considered conditions of the Variance, regardless of the fact that such facts or intentions may not have been specifically stated as stipulations of the motion to grant.

In the event that the requested use subsequently is found by the Hudson Zoning Administrator to demonstrate deliberate or preventable lack of compliance with any applicable stipulation or restriction, including the verbally specified restrictions described in the preceding paragraph, such use shall be held to be in violation of the covenant made with the Board, and corrective action(s) will be enforced under N.H. R.S.A. 676:17, Fines and Penalties, which allows a civil penalty of \$275 for the first offense and \$550 for subsequent offenses for each day that such violation is found to continue, as well as recovery of costs and reasonable attorney's fees.

Signed: 
Acting Chairman, Hudson Zoning Board of Adjustment

Date: 12/21/2015

Signed: 
Acting Zoning Administrator

Date: 12/28/2015

B₂

the neighborhood as it is residential. As far as the hardship, due to the sizes of the lots it would be useless as a business lot.

Ms. Davis seconded the motion, agreeing with Mr. Pacocha that it is within the spirit of the ordinance and the nature of the character of the neighborhood warrants a residential use in a business district. It wouldn't serve any purpose to keep it zoned business because of the size of the lot, there is no adequate use.

Vote:

Mr. Pacocha	To grant
Ms. Davis	To grant
Ms. Shuman	To grant
Mr. Brackett	To grant
Mr. Martin	To grant

Decision being 5-0, the variance has been granted.

Part C – A Variance to allow the lot area of the proposed lot to have 7,624 square feet where a minimum of 30,000 square feet is required –

Attorney Hollis discussed Part C - the size of the lot – noting that in this zone a minimum lot size calls for 30,000 square feet and the lot owned by his client is smaller and there has been some debate regarding the size. The tax map notes the size as .297 acres but this is from when it was a single lot – lot 60 & lot 60-1 – the old tax maps had it as that size. The tax card notes .175 and when Attorney Hollis did the math calculation of the square footage, 7624 square feet, it came out to .175 acres. The lot itself is .175 acres but he'll refer to it as 7264 square feet.

Covering the points of the ordinance, it is not contrary to public interest. Thirty thousand square feet is the proper size for business lots and the purpose of those lots at that size is to have sufficient room for development and use purpose and also to provide adequate buffers for neighbors. Now that the use variance for residential has been granted, we are talking about a completely different set-up. If you allow the variance on the size of the lot, it won't be harming the public interest as the lot will now be considered a lawful residential lot just like other lots in the area. The property is similar to others in the area with regard to lot size. This would not alter the character of the neighborhood because we are going to stipulate that we are only going to use it for a residential use.

Mr. Martin asked if there were any comments from the audience and when no one came forward the discussion was presented before the Board.

Ms. Davis asked for clarification with regard to the actual lot size; Attorney Hollis was able to provide a corrected answer of the size.

Ms. Davis makes a motion to grant the variance for a structure on a lot that does not have the adequate square footage and also would like to add two stipulations to the motion –

1 – That it is residential use only with no accessory uses, **meaning no home occupation** should be allowed because of the size of the lot and the proximity to the neighbors and the potential that it could be congested in that area.

2 – The proposed building structure needs to meet the side and rear setbacks. It is proposed in the plan but wants to make sure that stipulation is upheld.

C₁

Mr. Brackett asked the maker of the motion to be more specific regarding residential - to say only single family house.

Ms. Davis noted "single family residential use only with no accessory uses."

Mr. Brackett seconded the motion.

Ms. Davis spoke to her motion noting - not contrary to the neighborhood, similar lot size to others in the neighborhood and having a residence there is more conducive to the plan of the neighborhood and business use would not be.

Mr. Brackett speaks to his second, agrees with the maker of the motion; it is consistent with properties in the area.

Vote:

- Ms. Davis To grant with stipulations
- Mr. Brackett To grant with stipulations
- Mr. Pacocha To grant with stipulations
- Ms. Shuman To grant with stipulations
- Mr. Martin To grant with stipulations

Decision being 5-0, the variance is granted.

Part D – A Variance to allow the frontage of the proposed lot to have 73.95 feet where a minimum of 150 feet is required –

Attorney Hollis notes a request to allow a variance to the lot to allow frontage of 73.95 feet where 150 feet is required. This would not alter the character as other lots in the neighborhood have similar frontage requirements. No threat to health, safety or welfare, it will be serviced by water and sewer. It is sufficient frontage to allow a driveway and space between the house and driveway. Attorney Hollis stated for the record that his client agrees that this will be for only a single family residential use with no accessory uses.

Mr. Martin asked if there were any comments from the audience and when no one came forward the discussion was presented before the Board.

Mr. Pacocha makes a motion to grant with no stipulations.

Ms. Davis has a concern about once the house is built, how will the driveway go out to Essex Street?

Discussion regarding driveway noting that it would go out onto Hill and that the location of the driveway is determined by the Town Engineer.

Mr. Brackett asks if the maker of the motion would put the same stipulations on this motion as on the previous motion.

Mr. Pacocha – motion to grant with same stipulations as on previous motion.

Ms. Davis seconds the motion.

C2

**HUDSON ZONING BOARD OF ADJUSTMENT
Variance Decision Work Sheet (Rev 11-06-18)**

On **09/24/20**, the Zoning Board of Adjustment heard Case **156-060-001**, being a case brought by **Dean Lombardo, 9 Essex Ave., Hudson, NH** for a Variance **to install an outdoor hot tub 10 feet from the side yard property line, where 15 feet is required.** [Map 156, Lot 060-001; Zoned Business (B); HZO Article VII, Dimensional Requirements, §334-27, Table of Minimum Dimensional Requirements].

After reviewing the petition, hearing all of the evidence, and taking into consideration any personal knowledge of the property in question, the undersigned member of the Zoning Board of Adjustment sitting for this case made the following determination:

Y **N** **1.** Granting of the requested variance will not be contrary to the public interest, since the proposed use does not conflict with the explicit or implicit purpose of the ordinance and does not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure “public rights.”

Y **N** **2.** The proposed use will observe the spirit of the ordinance, since the proposed use does not conflict with the explicit or implicit purpose of the ordinance and does not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure “public rights.”

Y **N** **3.** Substantial justice would be done to the property-owner by granting the variance, and the benefits to the property owner are not outweighed by harm to the general public or to other individuals.

Y **N** **4.** The proposed use will not diminish the values of surrounding properties.

Y **N** **5.** Special conditions exist such that literal enforcement of the ordinance would result in **unnecessary hardship**, either because the restriction applied to the property by the ordinance does not serve the purpose of the restriction in a “fair and reasonable” way *and also* because the special conditions of the property cause the proposed use to be reasonable, or, alternatively, there is no reasonable use that can be made of the property that would be permitted under the ordinance, because of the special conditions of the property.

Member Decision: _____

Signed: _____ Date _____

Stipulations: _____

APPLICATION FOR A VARIANCE

AUG 27 2020

To: Zoning Board of Adjustment
Zoning Department Town of Hudson

Entries in this box are to be filled out by
Land Use Division personnel
Case No. 156-060-001(09-24-20)
Date Filed 8/27/20

Name of Applicant Dean Lombardo Map: 156 Lot: 60-01 Zoning District: B
060-001

Telephone Number (Home) (781) 820-4881 (Work) _____

Mailing Address 9 Essex Ave Hudson, NH 03051

Owner Cheryle St. Armand-Lombardo and Dean Lombardo

Location of Property 9 Essex Ave. Hudson, NH 03051
(Street Address)

[Signature] _____ Date 8/25/20
Signature of Applicant

[Signature] _____ Date 8/25/20
Signature of Property-Owner(s)

NOTE: Fill in all portions of the Application Form(s) as appropriate. This application is not acceptable unless all required statements have been made. Additional information may be supplied on a separate sheet if space provided is inadequate. If you are not the property owner, you must provide written documentation signed by the property owner(s) to confirm that the property owner(s) are allowing you to speak on his/her/their behalf or that you have permission to seek the described variance.

Items in this box are to be filled out by Land Use Division personnel

COST:		Date received: <u>8/27/20</u>
Application fee:	\$130.00	
<u>7</u> Direct Abutters x \$4. ^{<u>10</u>} =	<u>28.70</u>	
<u>10</u> Indirect Abutters x \$0.55 =	<u>5.50</u>	
Total amount due:	<u>\$ 164.20</u>	Amt. received: \$ <u>164.20</u>
		Receipt No.: <u>609,617</u>
Received by: _____	<u>[Signature]</u>	
By determination of the Zoning Administrator or Building Inspector, the following Departmental review is required:		
_____ Engineering	_____ Fire Department	_____ Health Officer _____ Planner

TOWN OF HUDSON, NH NOTICE TO APPLICANTS

The following **requirements/checklist** pertain to the Town of Hudson, NH, Zoning Board of Adjustment applications, as applicable:

Applicant Initials		Staff Initials
<u>PL</u>	The applicant must provide 13 copies including the original of the filled-out application form, together with this checklist and any required attachments listed. (Paper clips, no staples)	<u>TG</u>
<u>DL</u>	Before making the 13 copies, please review the application with the Zoning Administrator or staff.	<u>TG</u>
<u>DL</u>	A separate application shall be submitted for each request, with a separate application fee for each request i.e.: Variance, Special Exception, Home Occupation Special Exception, Wetland Special Exception, Appeal from an Administrative Decision, and Equitable Waiver but only one abutter notification fee will be charged for multiple requests. If paying by check, make the check payable to the Town of Hudson.	<u>TG</u>
<u>DL</u>	If the applicant is not the property owner(s), the applicant must provide to the Town written authorization, signed and dated by the property owner(s), to allow the applicant or any representative to apply on the behalf of the property owner(s). (NOTE: if such an authorization is required, the Land Use Division will not process the application until this document has been supplied.)	<u>TG</u> <u>N/A</u>
<u>DL</u>	Provide two (2) sets of mailing labels from the abutter notification lists (Pages 4 & 5) prepared by applicant, with the proper mailing addresses, must be dated within (30) thirty days of submittal of the application. The abutter lists can be obtained from the assessor's office. (NOTE: the Land Use Division cannot process your application without the abutter lists. It is the applicant's responsibility to ensure that the abutter lists are complete and correct. If at the time of the hearing any applicable property owner is found not to have been notified because the lists are incomplete or incorrect, the Zoning Board will defer the hearing to a later date, following notification of such abutters.)	<u>TG</u>
<u>DL</u>	A copy of both sides of the assessor's card shall be provided. (NOTE: these copies are available from the Assessor's Office)	<u>TG</u>
<u>DL</u>	A copy of the Zoning Administrator's correspondence confirming either that the requested use is not permitted or that action by the Zoning Board of Adjustment is required must be attached to your application.	<u>TG</u>
<u>DL</u>	For a Wetland Special Exception, a letter or a copy of the relevant decision from the Hudson Conservation Commission shall be attached to the application for existing single-family and duplex residential uses. All other Wetland Special Exceptions (multifamily, commercial, or industrial uses) must have letters both from the Conservation Commission and from the Planning Board.	<u>N/A</u>

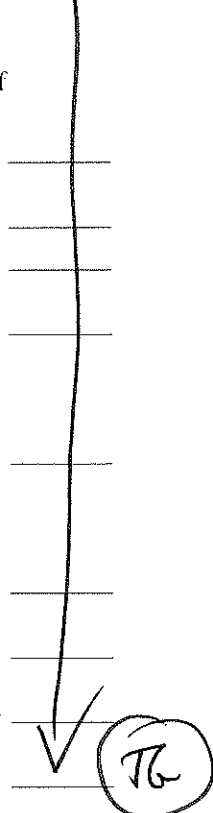
N/A - Please see attached GIS Map with location and dimensions

PLOT PLAN-

_____ Except for requests pertaining to above-ground pools, sheds, decks and use variances, the application must include a copy of a certified plot plan from a licensed land surveyor. The required plot plan shall include all of the items listed below. Pictures and construction plans will also be helpful. (NOTE: it is the responsibility of the applicant to make sure that all of the requirements are satisfied. The application may be deferred if all items are not satisfactorily submitted):

N/A

- a) _____ The plot plan shall be drawn to scale on an 8 1/2" x 11" or 11" x 17" sheet with a North pointing arrow shown on the plan.
- b) _____ The plot plan shall be up-to date and dated, and shall be no more than three years old.
- c) _____ The plot plan shall have the signature and the name of the preparer, with his/her/their seal.
- d) _____ The plot plan shall include lot dimensions and bearings, with any bounding streets and with any rights-of-way and their widths as a minimum, and shall be accompanied by a copy of the GIS map of the property. (NOTE: copies of the GIS map can be obtained at the Land Use Division.)
- e) _____ The plot plan shall include the location and dimensions of existing or required services, the area (total square footage), all buffer zones, natural features, any landscaped areas, any recreation areas, any safety zones, all signs, streams or other wetland bodies, and any drainage easements.
- f) _____ The plot plan shall include all existing buildings or other structures, together with their dimensions and the distances from the lot lines, as well as any encroachments.
- g) _____ The plot plan shall include all proposed buildings, structures, or additions, marked as "PROPOSED," together with all applicable dimensions and encroachments.
- h) _____ The plot plan shall show the building envelope as defined from all the setbacks required by the zoning ordinance.
- i) _____ The plot plan shall indicate all parking spaces and lanes, with dimensions.



The applicant has signed and dated this form to show his/her awareness of these requirements.

Signature of Applicant(s)

8/25/20
Date

The Land Use Division will schedule a public hearing at the next available meeting of the Hudson Zoning Board of Adjustment for your properly-completed application. Applications are scheduled on a first-come, first-served basis. Public notice of the hearing will be posted on public bulletin boards in the Town Hall, the Post Office, and the Rogers Library and also printed in a newspaper, and a notice will be mailed to the applicant, all abutters, and any other parties whom the Board may deem to have an interest.

After the public hearing, the Board will deliberate and then reach a decision either to grant the request (perhaps with stipulations to make it palatable) or to deny the request—or to defer final action to another meeting, or perhaps to accept a request for withdrawal. You will be sent a Notice of Decision during the following week.

If you believe that the Board's decision is wrong, you have the right to appeal. In addition, any third party/parties affected by the decision also has/have the right to appeal the decision of your case. To appeal, you must first ask the Board for a rehearing; this motion for rehearing may be in the form of a letter to the Board. The rehearing request must be made in writing within thirty (30) days following the Board's decision, and must set forth the grounds on which it is claimed the decision is unlawful or unreasonable.

The Board may grant such a rehearing if, in the Board's opinion, good reason is stated in the motion. In general, the Board will not allow a rehearing unless a majority of its sitting members conclude either that the protested decision was illegal or unreasonable or that the request for rehearing demonstrates the availability of new evidence that was not available at the original hearing. The Board will not reopen a case based on the same set of facts unless it is convinced that an injustice would be created by not doing so. Whether or not a rehearing is held, you must have requested one before you can appeal the decision to the Court(s). When a rehearing is held, the same procedure is followed as for the first hearing, including public notice and notice to abutters.

Please refer to NH RSA Chapter 677 for more detail on rehearing and appeal procedures.

ALL DIRECT ABUTTERS

List name(s) and mailing addresses of the owner(s) of record of the property and all direct abutters as of the time of the last assessment of taxation made by the Town of Hudson, including persons whose property is either contiguous or separated from the subject tract of land by a street or stream. If at the time of your hearing any applicable property owner is found not to have been notified because your lists are incorrect or incomplete, the Zoning Board will defer your hearing to a later date, following notification of such abutters. (Use additional copies of this page if necessary)

MAP	LOT	NAME OF PROPERTY OWNER	MAILING ADDRESS
156	60-1	Cheryle St. Armand-Lombardo Dean Lombardo	9 Essex Ave. Hudson, NH 03051
156	61	Mark Coddon Lam Truong	23 Clearview Dr. Nashua, NH 03062
156	55	Danielle Tomkowicz	2 Hill St. Hudson, NH 03051
156	62	Hudson Hardware Inc.	114 Derry St. Hudson, NH 03051
165	120	Bruce Morse	4 Essex Ave. Hudson, NH 03051
165	121	Colleen Tyler	5 Grand Ave. Hudson, NH 03051
156	60	Vassilios ILIOPoulos IOULIA ILIOPoulos	PO Box 274 Salem, NH 03079

ALL INDIRECT ABUTTERS WITHIN 200 FEET

List name(s) and mailing addresses of all indirect abutters (those whose property is not contiguous but is within 200 feet from the property in question) as of the time of the last assessment of taxation made by the Town of Hudson. If at the time of your hearing any applicable property owner is found not to have been notified because your lists are incorrect or incomplete, the Zoning Board will defer your hearing to a later date, following notification of such abutters. (Use additional copies of this page if necessary)

MAP	LOT	NAME OF PROPERTY OWNER	MAILING ADDRESS
156	54	Mak Trust c/o Rosa Chan	Po Box 1023 Hudson, NH 03051
156	59	Leonard Leach Frances Leach	108 Derry St. Hudson, NH 03051
156	58	Arthur Shepherd, TR. Reta Shepherd, TR Shepherd Family Rev. Trust	1 Hill St. Hudson, NH 03051
156	53	Lawrence Leclerc	113 Derry St. Hudson, NH 03051
156	57	Lounh Khammanivong Chen Liang	5 Hill St. Hudson, NH 03051
165	105	Kenneth Underwood Kimberly Underwood	4 Hill St. Hudson, NH 03051
165	106	Lisa Marie Haven	6 Hill St. Hudson, NH 03051
165	119	Lisa Daigle	11 Grand Ave Hudson, NH 03051
165	154	Car Development Corp.	Po Box 370 Hudson, NH 03051-0370
156	63	Elmwood Condominium Assoc.	1 Elmwood Dr. Hudson, NH 03051

APPLICATION FOR A VARIANCE

This form constitutes a request for a variance from the literal provisions of the Hudson Zoning Ordinance Article VII of HZO Section(s) 334-27 in order to permit the following change or use:

For the placement of an outdoor hot tub to be 10 ft. from sideyard property line, where 15 ft. is required.

You must attach to this application a copy of some form of determination that the proposed change or use is not permitted without a variance, consisting of a denial in writing of a building permit or use authorization by the Zoning Administrator, with the reasons for the denial being cited thereon.

FACTS SUPPORTING THIS REQUEST:

The power to grant variances from the local zoning ordinances is established in NH RSA 674:33 I (b), as follows:

- I. "The Zoning Board of Adjustment shall have the power to:
 - (b) Authorize upon appeal in specific cases a variance from the terms of the zoning ordinance if:
 - (1) The variance will not be contrary to the public interest;
 - (2) The spirit of the ordinance is observed;
 - (3) Substantial justice is done;
 - (4) The values of surrounding properties are not diminished; and
 - (5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
 - (A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:
 - (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
 - (ii) The proposed use is a reasonable one.
 - (B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The definition of "unnecessary hardship" set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction of use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

New Hampshire case law has established, on the basis of the preceding statute and/or its precedent versions, that all of the following requirements must be satisfied in order for a Zoning Board of Adjustment to grant a variance. You must demonstrate by your answers in the following blanks that you do or will meet each and every requirement; do not presume or say that a requirement does not apply, or your request will be disqualified. Note that your answers here can be summary in nature, and you can provide additional testimony at the time of your hearing.

1. Granting of the requested variance will not be contrary to the public interest, because:
(Explain why you feel this to be true—keeping in mind that the proposed use must not conflict with the explicit or implicit purpose of the ordinance and that it must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure “public rights.”)

The hot tub will not be visible from outside my property, as my yard is fenced. The hot tub will use a locking cover. It is a new tub, and will not be audible to neighbors.

2. The proposed use will observe the spirit of the ordinance, because:
(Explain why you feel this to be true—keeping in mind that, as detailed above, the proposed use must not conflict with the explicit or implicit purpose of the ordinance and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure “public rights.”)

The proposed use will not change any neighbor's sight line, nor disturb the peace and tranquility. Use of the proposed hot tub will not infringe upon any neighbor's space or privacy. The hot tub will not be seen, heard or accessible by any neighbor or passer-by.

3. Substantial justice would be done to the property-owner by granting the variance, because:
(Explain why you believe this to be true—keeping in mind that the benefits to the applicant must not be outweighed by harm to the general public or to other individuals.)

The proposed location of the hot tub would be the most practical for enjoyment and use of a small yard. In a year when the pandemic caused us to cancel vacation plans, we decided to invest in our home enjoyment. As a healthcare worker and a 1st responder, we hope to utilize our yard and hot tub to destress and relax, when all other “normal” activities and recreation remain hindered.

4. The proposed use will not diminish the values of surrounding properties, because:
(Explain why you believe this to be true—keeping in mind that the Board will consider expert testimony but also may consider other evidence of the effect on property values, including personal knowledge of the members themselves.)

The hot tub will not be seen or heard from surrounding properties, nor will it be accessible due to fencing and a locking cover. The improvement to our yard may actually increase the value of our home.

Also, the hot tub is not a permanent structure, and can easily be moved or removed in future.

5. Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship**, because:

(Explain why you believe this to be true—keeping in mind that you must establish that, because of the special conditions of the property in question, the restriction applied to the property by the ordinance does not serve the purpose of the restriction in a “fair and reasonable” way *and also* that you must establish that the special conditions of the property cause the proposed use to be reasonable. Alternatively, you can establish that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance.)

My property is less than 1/3 acre. There is little space in the yard, and placing the hot tub in any other position would diminish the aesthetics and the practical use and enjoyment of the property. There would still be a 10 ft space from the tub to the fence. Beyond the fence is an approximate 12 ft berm, then at least another 40 ft until the hardware store leading door. The width of my yard is similarly narrow on all sides of the house, making the proposed location of the hot tub the best possible spot. I do not feel that 5 additional feet would make any difference in keeping with the spirit of the ordinance. It would not be fair or reasonable to impose the restriction because the requested hot tub location will have absolutely no effect on the space, atmosphere and peace of any surrounding neighbors. Literal enforcement of the ordinance would be an unnecessary hardship on my family by limiting our enjoyment of our yard and home.

Thank you for your consideration.

Requests before the Zoning Board of Adjustment may require connection to the municipal sewer system. Please contact the Town Engineer's Office prior to submittal of this application to determine if connection is required or will be allowed, together with the procedure for such application.



TOWN OF HUDSON

Land Use Division



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

Zoning Determination #20-090

August 27, 2020

Dean Lombardo
9 Essex Ave
Hudson, NH 03051

Re: 9 Essex Ave Map 156 Lot 060-001
District: Business (B)

Zoning Review / Determination:

You propose to install a hot tub 10 ft from your rear and side setback, where 15'-0" is required per Zoning Ordinance Article VII, §334-27 Table of Minimum Dimensional Requirements. You would need a variance from this Section of the Zoning Ordinance to place this as you propose.

This use is an allowed accessory use per Table 334-22 Table of Permitted Accessory Uses.

Sincerely,

Bruce Buttrick, MCP

Zoning Administrator/Code Enforcement Officer

(603) 816-1275

bbuttrick@hudsonnh.gov

cc: Public File
File

NOTE: this determination may be appealed to the Hudson Zoning Board of Adjustment within 30 days of the receipt of this letter.

156 060 001
MAP LOT SUB

1 of 1 RESIDENTIAL
CARD Hudson

Total Card / Total Parcel
APPRAISED: 298,100 / 298,100
USE VALUE: 298,100 / 298,100
ASSESSED: 298,100 / 298,100



PROPERTY LOCATION

Table with 3 columns: No, Alt No, Direction/Street/City. Row 1: 9, , ESSEX AVE, HUDSON

OWNERSHIP

Table with columns: Owner 1, Owner 2, Owner 3, Street 1, Street 2, Twn/City, S/Prov, Cntry, Own Occ, Postal, Type. Includes owner ST. ARMAND-LOMBARDO, CHERYLE and LOMBARDO, DEAN.

PREVIOUS OWNER

Table with columns: Owner 1, Owner 2, Street 1, Twn/City, S/Prov, Cntry, Postal. Includes owner ESSEX STREET, LLC -

NARRATIVE DESCRIPTION

This parcel contains .175 ACRES of land mainly classified as ONE FAMILY with a COLONIAL Building built about 2017, having primarily VINYL Exterior and 1600 Square Feet, with 1 Unit, 1 Bath, 1 3/4 Bath, 1 HalfBath, 6 Rooms, and 3 Bdrms.

OTHER ASSESSMENTS

Table with 4 columns: Code, Descrip/No, Amount, Com. Int.

PROPERTY FACTORS

Table with columns: Item, Code, Description, %, Item, Code, Description. Includes factors like BUSINESS, water, Sewer, Electri, Exmpt, Topo, Street, Gas.

LAND SECTION (First 7 lines only)

Table with 20 columns: Use Code, Description, LUC Fact, No of Units, Depth / PriceUnits, Unit Type, Land Type, LT Factor, Base Value, Unit Price, Adj, Neigh, Neigh Infl, Neigh Mod, Infl 1, %, Infl 2, %, Infl 3, %, Appraised Value, Alt Class, % Spec Land, J Code, Fact, Use Value, Notes.

IN PROCESS APPRAISAL SUMMARY

Table with 6 columns: Use Code, Land Size, Building Value, Yard Items, Land Value, Total Value. Includes Total Card and Total Parcel values.

PREVIOUS ASSESSMENT

Table with 11 columns: Tax Yr, Use, Cat, Bldg Value, Yrd Items, Land Size, Land Value, Total Value, Asses'd Value, Notes, Date. Shows assessment history from 2017 to 2020.

SALES INFORMATION

Table with 10 columns: Grantor, Legal Ref, Type, Date, Sale Code, Sale Price, V, Tst, Verif, Notes. Shows sales to ESSEX STREET, L, GREY FOX REALTY, and BOSOWSKI, BENJA.

BUILDING PERMITS

Table with 9 columns: Date, Number, Descrip, Amount, C/O, Last Visit, Fed Code, F. Descrip, Comment. Lists various building permits from 2016 to 2017.

ACTIVITY INFORMATION

Table with 4 columns: Date, Result, By, Name. Shows activity like Inspected, Measured, Info Fm Plan.

Sign: VERIFICATION OF VISIT NOT DATA

Total AC/HA: 0.17500 Total SF/SM: 7623 Parcel LUC: 101 ONE FAMILY Prime NB Desc RES AVG Total: 82,775 Spl Credit Total: 82,800

EXTERIOR INFORMATION

Type: 06 - COLONIAL
 Sty Ht: 2A - 2 STY/ATTIC
 (Liv) Units: 1 Total: 1
 Foundation: 1 - CONCRETE
 Frame: 1 - WOOD
 Prime Wall: 04 - VINYL
 Sec Wall: %
 Roof Struct: 1 - GABLE
 Roof Cover: 1 - ASPH SHING
 Color: grey
 View / Desir:

GENERAL INFORMATION

Grade: C+ - AVG/GOOD
 Year Blt: 2017 Eff Yr Blt:
 Alt LUC: Alt %:
 Jurisdct: Fact:
 Const Mod:
 Lump Sum Adj:

INTERIOR INFORMATION

Avg Ht/FL: STD
 Prim Int Wal: 1 - DRYWALL
 Sec Int Wal: %
 Partition: T - TYPICAL
 Prim Floors: 03 - HARDWOOD
 Sec Floors: 04 - CARPET 45%
 Bsmnt Fir: 12 - CONCRETE
 Subfloor:
 Bsmnt Gar:
 Electric: 3 - TYPICAL
 Insulation: 2 - TYPICAL
 Int vs Ext: S
 Heat Fuel: 2 - GAS
 Heat Type: 1 - FORCED AIR
 # Heat Sys: 1
 % Heated: 100 % AC: 100
 Solar HW: NO Central Vac: NO
 % Com Wal: % Sprinkled

MOBILE HOME

Make: Model: Serial # Year: Color:

SPEC FEATURES/YARD ITEMS

Code	Description	A	Y/S	Qty	Size/Dim	Qual	Con	Year	Unit Price	D/S	Dep	LUC	Fact	NB Fa	Appr Value	JCod	UFact	Juris. Value
03	SHED-PLASTIC	D	Y		14X6	AV	EX	2017	0.00	T	0.5	101						

More: N Total Yard Items: Total Special Features: Total:

BATH FEATURES

Full Bath: 1 Rating: GOOD
 A Bath: Rating:
 3/4 Bath: 1 Rating: GOOD
 A 3QBth: Rating:
 1/2 Bath: 1 Rating: GOOD
 A HBth: Rating:
 OthrFix: Rating:

OTHER FEATURES

Kits: 1 Rating: GOOD
 A Kits: Rating:
 Frpl: 1 Rating: AVERAGE
 WSFlue: Rating:

CONDO INFORMATION

Location:
 Total Units:
 Floor:
 % Own:
 Name:

DEPRECIATION

Phys Cond: GD - Good 1.7%
 Functional: %
 Economic: %
 Special: %
 Override: %
 Total: 1.7%

CALC SUMMARY

Basic \$ / SQ: 94.00
 Size Adj.: 1.06250000
 Const Adj.: 0.99077994
 Adj \$ / SQ: 98.954
 Other Features: 19600
 Grade Factor: 1.10
 NBHD Inf: 1.00000000
 NBHD Mod:
 LUC Factor: 1.00
 Adj Total: 218993
 Depreciation: 3723
 Depreciated Total: 215270

COMMENTS

per BOS vote of 7/8/2014 unmerged this lot from Map 156 Lot 60/plan 38318.

RESIDENTIAL GRID

1st Res Grid Desc: Line 1 # Units 1
 Level FY LR DR D K FR RR BR FB HB L O
 Other
 Upper
 Lvl 2
 Lvl 1
 Lower
 Totals RMs: 6 BRs: 3 Baths: 1 HB 1

REMODELING

Exterior:
 Interior:
 Additions:
 Kitchen:
 Baths:
 Plumbing:
 Electric:
 Heating:
 General:

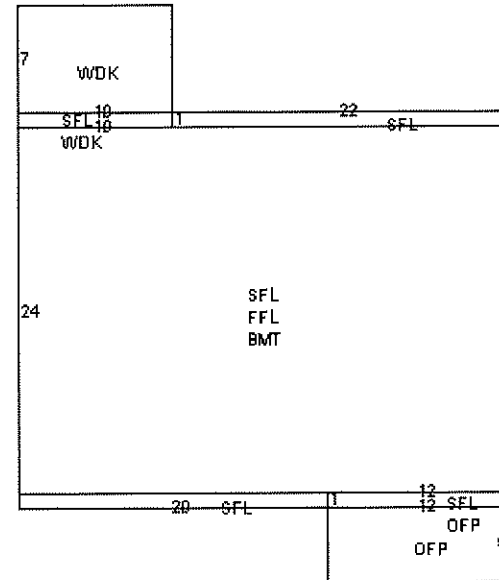
RES BREAKDOWN

No Unit	RMS	BRS	FL
1	6	3	m
Totals			
1	6	3	

COMPARABLE SALES

Rate	Parcel ID	Typ	Date	Sale Price
WtAv/SQ:	AvRate:	Ind.Val		
Juris. Factor:	Before Depr:	108.85		
Special Features: 0	Val/Su Net:	85.44		
Final Total: 215300	Val/Su SzAd	134.56		

SKETCH



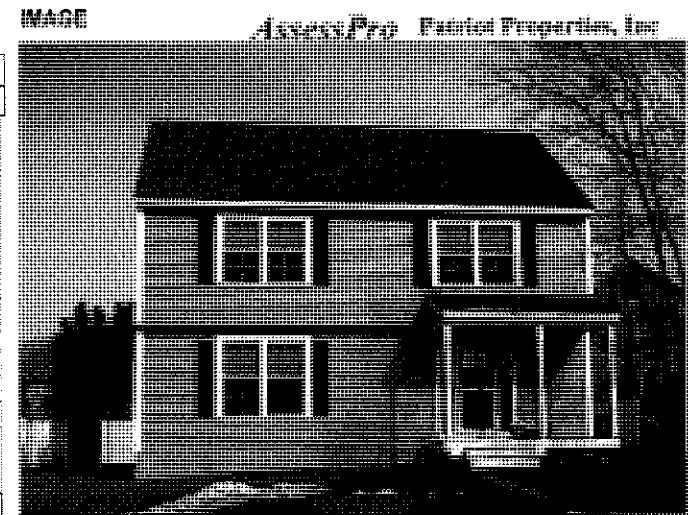
SUB AREA

Code	Description	Area - SQ	Rate - AV	Undepr Value
SFL	SECOND FLR	832	98.950	82,330
BMT	BASEMENT	768	19.790	15,199
FFL	FIRST FLOOR	768	98.950	75,997
WDK	WOOD DECK	80	24.270	1,941
OFF	OPEN PCH	72	55.800	4,018

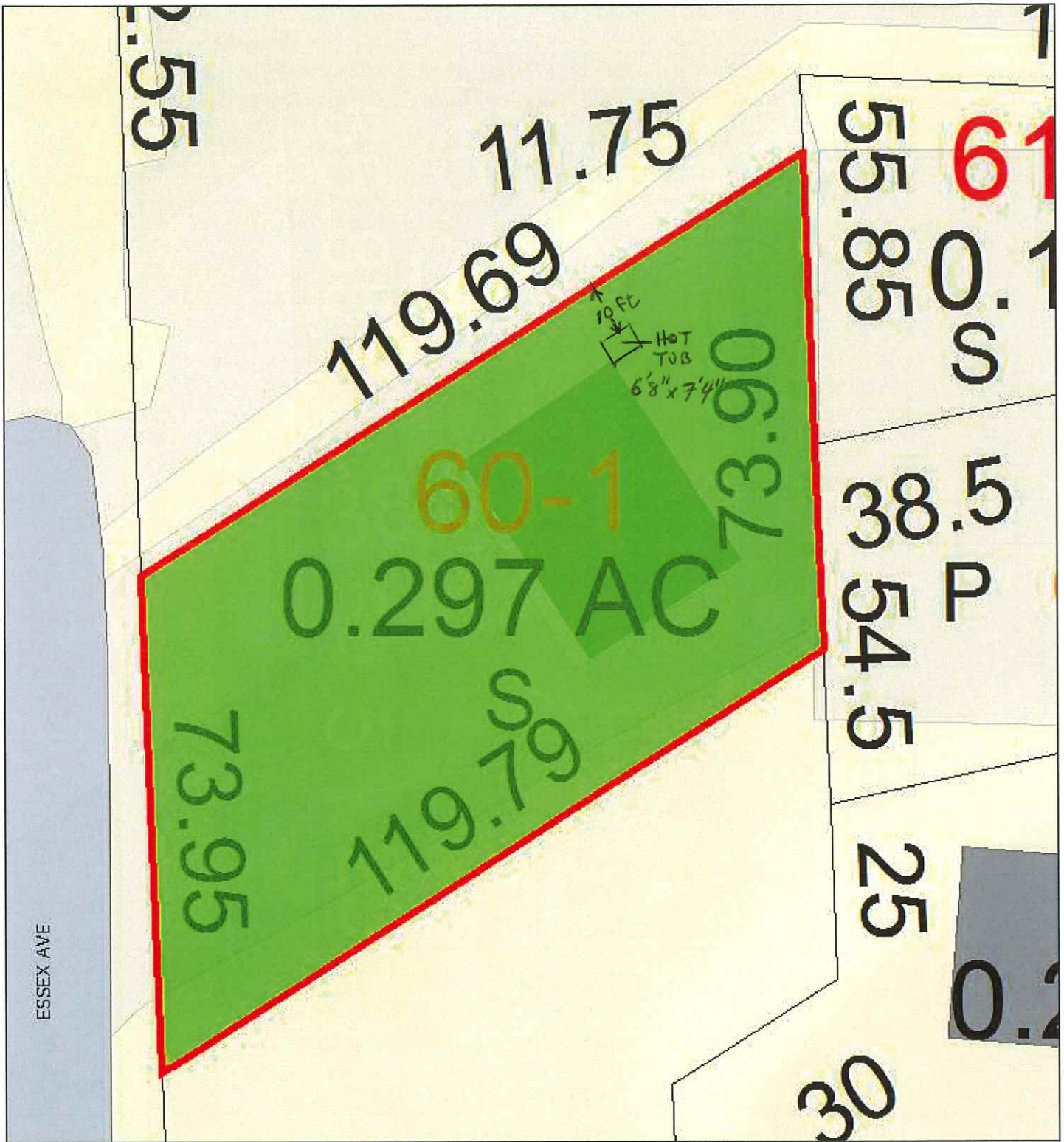
Net Sketched Area: 2,520 Total: 179,485
 Size Ad 1600 Gross Area 2520 FinArea 1600

SUB AREA DETAIL

Sub Area	% Usbl	Descrip	% Type	Qu	# Ten
SFL		SECOND FLR			
BMT		BASEMENT			
FFL		FIRST FLOOR			
WDK		WOOD DECK			
OFF		OPEN PCH			



9 Essex Ave (Map/Lot 156-060-001)

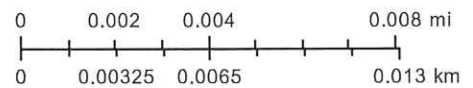


August 26, 2020

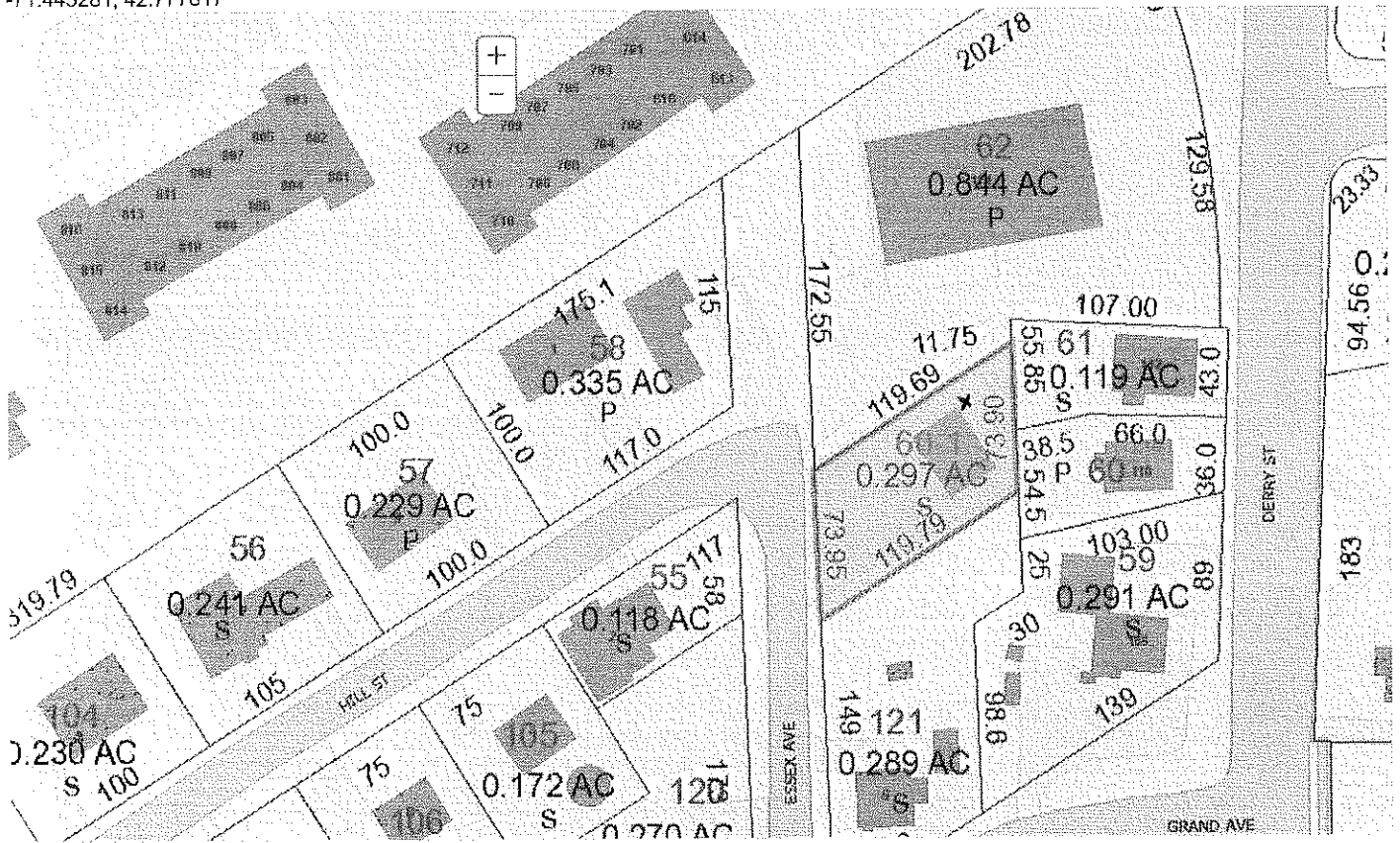
Legend

 Parcels

1:258



-71.445281, 42.777817



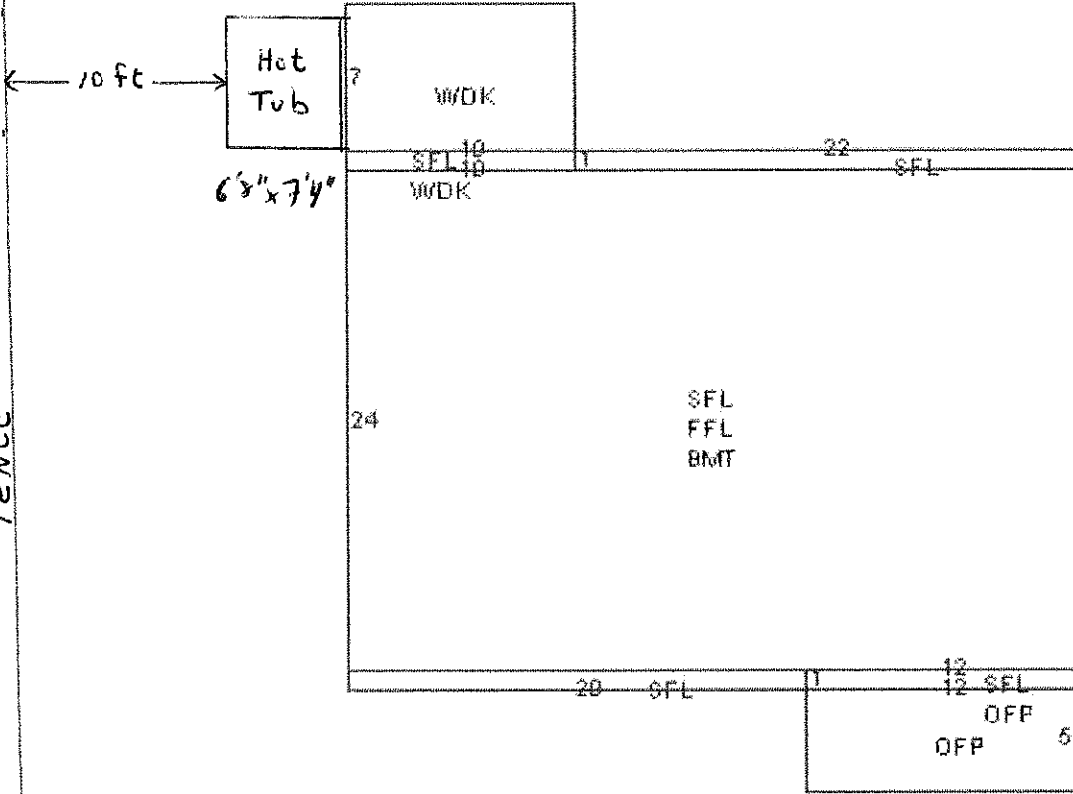
Town of Hudson, NH - GIS

QUICKMAPS **LAYERS**

- Map
- Layers
- Acreage
- Text
- Text Scale
- Text_Area_PM_AREA
- Text_Area_PM_AREA-SCALE
- Parcel Map (Default)
- Dimensions
- Dimension
- Frontage
- Dimension_PM_PL-DIM
- Dimension_PM_PL-DIM-FRONT
- Number
- Par Lot Number
- NRPC.DBO.Parcel_Text_LotNum_PM_LOT-NUM
- Parcel Misc Text
- Parcel Misc Text Anno
- NRPC.DBO.Parcel_Text_Misc_PM_TEXT
- Parcel Source

0 35 66ft

FENCE





Standard Dimensions (W x L x H)	6' 8" x 7' 4" x 34"
Metric Dimensions (W x L x H)	2.03m x 2.24m x .86m
Seating Capacity	6
Water Capacity (to normal fill line)	314 Gallons (1189 Liters)
*Dry/Maximum Filled Weight (includes Cover)	575 lbs./4285 lbs. (261 kg/1944 kg)
High-Performance Industrial 56-Frame Pumps	One 2.5 HP/4.8 BHP/240V

Printed
8/27/2020
4:13PM
Created
8/27/2020
4:07 PM

Transaction Receipt

Town of Hudson, NH
12 School Street
Hudson, NH 03051-4249

Receipt# 609,617
tgoodwyn

	Description	Current Invoice	Payment	Balance Due
1.00	Zoning Application-ZBA 9 Essex Ave Map/Lot 156-060-001 Variance App	0.00	164.2000	0.00
			Total:	164.20

Remitter	Pay Type	Reference	Tendered	Change	Net Paid
Cheryle Ann St Armand Lombardo	CHECK	CHECK # 2119	164.20	0.00	164.20
			Total Due:		164.20
			Total Tendered:		164.20
			Total Change:		0.00
			Net Paid:		164.20



TOWN OF HUDSON

Land Use Division



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

Zoning Administrator Staff Report

Meeting Date: September 24, 2020

BR
9-14-20

Case 241-035 (09-24-20): Marie Mayotte dba Red Brick Clothing, 17 Dracut Rd., Hudson, NH requests a Variance to allow a sign in the R-2 zone for an existing non-conforming business use. [Map 241, Lot 035; Zoned Residential-Two (R-2); HZO Article XII, Signs, §334-60 F, General Requirements].

Property description:

Our records show this is a developed lot of record, with an existing non-conforming use of light manufacturing/office in the R-2 district.

Zoning Administrator Summary:

Applicant requests a variance to allow and install a window “building sign” of 16 sqft of logo and text in the R-2 zone, where signs are not allowed.

In-house (Town) review/comments:

Fire Dept: none received
Engineering: no comments
Town Planner: none received

HISTORY:

Assessing: Listed as industrial warehouse
Building: Sign permit #2004-464 issued 06-2004

Attachments:

“A” Assessing record.
“B” Sign permit #2004-464

Previous Assessments

Year	Code	Building	Yard Items	Land Value	Acres	Special Land	Total
2020	401 - IND WAREHSE	280,100	4,900	305,800	2.24	0.00	590,800
2020	401 - IND WAREHSE	280,100	4,900	305,800	2.24	0.00	590,800
2019	401 - IND WAREHSE	280,100	2,000	305,800	2.24	0.00	587,900
2019	401 - IND WAREHSE	280,100	2,000	305,800	2.24	0.00	587,900
2018	401 - IND WAREHSE	280,100	2,000	305,800	2.24	0.00	587,900
2018	401 - IND WAREHSE	280,100	2,000	305,800	2.24	0.00	587,900
2017	401 - IND WAREHSE	280,100	2,000	305,800	2.24	0.00	587,900
2017	401 - IND WAREHSE	300,500	1,800	229,300	2.24	0.00	531,600
2017	401 - IND WAREHSE	280,100	2,000	305,800	2.24	0.00	587,900
2016	401 - IND WAREHSE	300,500	1,800	229,300	2.24	0.00	531,600
2016	401 - IND WAREHSE	300,500	1,800	229,300	2.24	0.00	531,600
2015	401 - IND WAREHSE	300,500	1,800	229,300	2.24	0.00	531,600
2015	401 - IND WAREHSE	300,500	1,800	229,300	2.24	0.00	531,600
2014	401 - IND WAREHSE	300,500	1,800	229,300	2.24	0.00	531,600
2014	401 - IND WAREHSE	300,500	1,800	229,300	2.24	0.00	531,600
2013	401 - IND WAREHSE	300,500	1,800	229,300	2.24	0.00	531,600
2013	401 - IND WAREHSE	300,500	1,800	229,300	2.24	0.00	531,600
2012	401 - IND WAREHSE	300,500	1,800	229,300	2.24	0.00	531,600
2012	401 - IND WAREHSE	321,600	1,500	229,300	2.24	0.00	552,400
2011	401 - IND WAREHSE	321,600	1,500	229,300	2.24	0.00	552,400
2011	401 - IND WAREHSE	321,600	1,500	229,300	2.24	0.00	552,400
2010	401 - IND WAREHSE	321,600	1,500	229,300	2.24	0.00	552,400
2010	401 - IND WAREHSE	321,600	1,500	229,300	2.24	0.00	552,400
2009	401 - IND WAREHSE	321,600	1,500	229,300	2.24	0.00	552,400
2008	401 - IND WAREHSE	321,600	1,500	229,300	2.24	0.00	552,400
2008	401 - IND WAREHSE	321,600	1,500	229,300	2.24	0.00	552,400
2007	401 - IND WAREHSE	321,600	1,500	248,500	5.97	0.00	571,600
2007	401 - IND WAREHSE	357,600	1,300	159,700	5.97	0.00	518,600
2006	401 - IND WAREHSE	366,100	1,300	169,700	5.97	0.00	537,100
2006	401 - IND WAREHSE	366,100	1,300	169,400	5.80	0.00	536,800
2005	401 - IND WAREHSE	366,100	1,300	169,400	5.80	0.00	536,800
2005	401 - IND WAREHSE	366,100	1,300	169,400	5.80	0.00	536,800
2004	401 - IND WAREHSE	366,100	1,300	169,400	5.80	0.00	536,800
2004	401 - IND WAREHSE	383,900	2,800	150,300	5.80	0.00	537,000
2003	401 - IND WAREHSE	371,000	2,800	150,300	5.80	0.00	524,100
2003	401 - IND WAREHSE	470,500	2,800	150,300	5.80	0.00	623,600
2002	401 - IND WAREHSE	470,500	2,800	150,300	5.80	0.00	623,600
2002	401 - IND WAREHSE	470,500	2,800	150,300	5.80	0.00	623,600
2001	401 - IND WAREHSE	334,300	0	132,700		0.00	467,000
2000	CI - N/A	310,800	23,500	132,700	5.80	0.00	467,000

"A"

Sign Permit

Date 06-Apr-2004 Permit# 2004-464

Applicant Jerry Mayotte

17 Dracut Road

Contractor's License

Permit To Sign

0 Story Commercial

of Dwelling Units 0

At (Location) 17 Dracut Road

Zoning District

Between Lowell Road

And River Road

Subdivision

Map 8

Lot 64

Sublot

Lot Size 0

Building is to be

0 ft. Wide by

0 ft. Long by

0 ft. in Height and Shall Conform in Construction

to Type Other

Use Group

Foundation Type

Remarks All construction must conform to Hudson Town Codes.

Install 1.5' x 2.7' wall sign and a 13' x 8' freestanding sign. The proposed freestanding sign shall

not exceed 100 square feet in size nor be located any closer to the Road than the existing sign

Area or Volume

0 Estimated Cost \$

\$0.00

Permit Fee \$

\$95.00

Owner

Chad Golen

Approved

William A. O'Brien

Address

17 Dracut Road, Hudson, NH 03051

Date

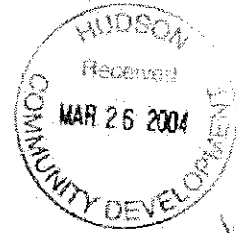
APR - 6 2004

B1



Sign Application

Town of Hudson, New Hampshire



2004-464

PLEASE PRINT

(NH) (241-035)

Address: <u>17 DRACUT ROAD</u>		Map: <u>8</u>
Store/Company name: <u>RED BRICK CLOTHING CO</u>		Lot: <u>64</u>
Unit #: _____	Mall name: _____	Zone: _____
Owner: <u>CHAD GOLEN</u>		Applicant: <u>JERRY MAYORSE</u>
Mailing address: <u>17 DRACUT ROAD</u> <u>HUDSON N.H. 03051</u>		Mailing address: <u>17 DRACUT RD</u> <u>HUDSON N.H. 03051</u>
Daytime telephone #: <u>603-886-3800</u>		Daytime telephone #: <u>603-882-4100</u>
Cell telephone #: _____		Cell telephone #: <u>603-635-9500</u>
Contractor <u>GATH SIGN</u>	Mailing Address <u>509 MAIN ST</u> <u>TOWNSHAMPTON MA</u>	
Daytime phone # <u>978-851-4373</u>	Cell phone # _____	
Wording of sign (ATTACH DRAWING) <u>RED BRICK CLOTHING.</u>		
Type of sign:		
Awning <input type="checkbox"/> Banner <input type="checkbox"/> Temporary <input type="checkbox"/>		
Directional <input type="checkbox"/> Freestanding <input type="checkbox"/> From _____ to _____		
Directory <input type="checkbox"/> Business or Industrial <input checked="" type="checkbox"/>		
Size: Applications for any permanent or temporary sign shall be accompanied by structural details of sign framing and anchorage along with a photo; large signs and pylon signs shall be designed by a professional. Attach these plans to the application form. A plot plan showing the proposed sign location drawn by a registered surveyor shall be supplied and must depict all applicable zoning setbacks from the leading edge of the sign to the side of the road and lot lines.		
Height <u>1</u> feet <u>5</u> inches		
Width <u>2</u> feet <u>7</u> inches		
Location: <u>ON BUILDING, OVER DOOR</u>		
Distance from ground to bottom of sign:		<u>8</u> feet
Distance from ground to top of sign:		<u>9.5</u> feet
Lot frontage along which sign will be facing:		<u>400</u> feet
Building length along which sign will be placed:		<u>340</u> feet
Proposed setback(s) from property line(s) Attach location map		
_____ feet	from <u>Does NOT APPLY</u> (name) Street	
_____ feet	from _____ (name) Street	
Lighting:		
Non-illuminated <input checked="" type="checkbox"/> Internally illuminated <input type="checkbox"/> Externally illuminated <input type="checkbox"/>		
Incandescent <input type="checkbox"/> Fluorescent <input type="checkbox"/> Neon <input type="checkbox"/>		
A separate electrical permit is required to wire the electrical sign. You must call for an electrical inspection of the sign prior to installation if the sign is to be electrified. All electrical signs shall be UL listed.		

B2

Existing Signs:

Are there existing signs on or within the property lot, building or development? No Yes
If yes, describe the number, type, size and location of signs. Attach a photo of the existing signs

I hereby attest to the accuracy of the information submitted herein, including any attachments, and acknowledge that any inaccuracies or omissions can result in revocation of this permit and loss of my vested rights to this sign.

G. G. Mayotte
Name of applicant (print)

GERALD G. MAYOTTE
Signature of applicant

Chris Nolan
Signature of owner or authorized agent*

3/24/04
Date

*If not the owner of the property, written permission from the owner must be presented indicating authorization to apply for the permit.

APPROVALS:

Cost \$ 50

BUILDING & ZONING OFFICIALS:

Approved Denied

MSullivan
Building official

4-6/04
Date

Comments:

COMMUNITY DEVELOPMENT DIRECTOR:

Approved Denied

Sean T. Sullivan
Community Development Director

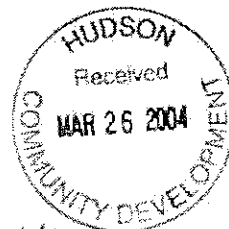
4/2/04
Date

This sign permit is issued subject to the following additional requirements or stipulations:

Comments:



Sign Application



Town of Hudson, New Hampshire

PLEASE PRINT

New 241-835

Address: <u>17 DRAZUS ROAD</u>		Map: <u>8</u>
Store/Company name: <u>GOLEN ENGINE</u>		Lot: <u>64</u>
Unit # _____	Mall name: _____	Zone: _____
Owner: <u>CHAD GOLEN</u>	Applicant: _____	
Mailing address: <u>17 DRAZUS RD.</u> <u>HUDSON NH, 03051</u>	Mailing address: _____	
Daytime telephone #: <u>603-886-3800</u>	Daytime telephone #: _____	
Cell telephone #: _____	Cell telephone #: _____	
Contractor <u>GATH SIGNS</u>	Mailing Address <u>509 MAIN ST</u> <u>TOWNS BURY MA</u>	
Daytime phone # <u>978-851-4373</u>	Cell phone # _____	
Wording of sign (ATTACH DRAWING)		
Type of sign:		
Awning <input type="checkbox"/> Banner <input type="checkbox"/> Temporary <input type="checkbox"/>		
Directional <input type="checkbox"/> Freestanding <input checked="" type="checkbox"/> From _____ to _____		
Directory <input type="checkbox"/> Business or Industrial <input type="checkbox"/>		
Size: Applications for any permanent or temporary sign shall be accompanied by structural details of sign framing and anchorage along with a photo; large signs and pylon signs shall be designed by a professional. Attach these plans to the application form. A plot plan showing the proposed sign location drawn by a registered surveyor shall be supplied and must depict all applicable zoning setbacks from the leading edge of the sign to the side of the road and lot lines.		
Height <u>13'</u> feet <u>0</u> inches		
Width <u>8'</u> feet <u>0</u> inches		
Location:		
Distance from ground to bottom of sign: <u>3</u> feet		
Distance from ground to top of sign: <u>13</u> feet		
Lot frontage along which sign will be facing: <u>400</u> feet		
Building length along which sign will be placed: <u>240</u> feet		
Proposed setback(s) from property line(s) Attach location map		
_____ feet from <u>NO CHANGE FROM EXISTING</u> (name) Street		
_____ feet from _____ (name) Street		
Lighting:		
Non-illuminated <input type="checkbox"/> Internally illuminated <input type="checkbox"/> Externally illuminated <input checked="" type="checkbox"/>		
Incandescent <input type="checkbox"/> Fluorescent <input type="checkbox"/> Neon <input type="checkbox"/>		
A separate electrical permit is required to wire the electrical sign. You must call for an electrical inspection of the sign prior to installation if the sign is to be electrified. All electrical signs shall be UL listed.		

B4

Existing Signs:

Are there existing signs on or within the property lot, building or development? No Yes

If yes, describe the number, type, size and location of signs. Attach a photo of the existing signs

THE SIGN FRAME FROM THE PREVIOUS BUSINESS IS EXISTING, WE WILL USE SAME POST.
THEREFOR NO CHANGE IN SET BACKS

I hereby attest to the accuracy of the information submitted herein, including any attachments, and acknowledge that any inaccuracies or omissions can result in revocation of this permit and loss of my vested rights to this sign.

Chad Golen
Name of applicant (print)

Signature of applicant

Chad Golen
Signature of owner or authorized agent*

3/24/04
Date

*If not the owner of the property, written permission from the owner must be presented indicating authorization to apply for the permit.

APPROVALS:

Cost \$ 35-

BUILDING & ZONING OFFICIALS:

Approved Denied

[Signature]
Building official

4/6/04
Date

Comments:

COMMUNITY DEVELOPMENT DIRECTOR:

Approved Denied

[Signature]
Community Development Director

4/2/04
Date

This sign permit is issued subject to the following additional requirements or stipulations:

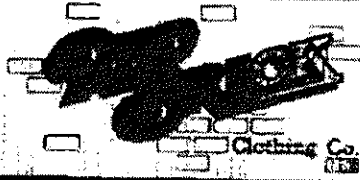
Comments:

B5

96"

17

DRACUT ROAD



Embroidered & Screen Printed
Apparel

Promotional Products

803-882-4100

RedBrickClothing.com

Golen Engines

Tenant

4' CHANGEABLE COPY MESSAGE BOARD



609 MAIN STREET
TEWKSBURY, MA 01876
(978) 851-4373 FAX (978) 851-3174

GARTH SIGN CO.

TEL: 1-978-851-3174

MAR 24, 04

19:58 No. 003 P. 01

Bc

Google Maps

14 Dracut Rd

Current existing free standing sign



Image capture: Aug 2019 © 2020 Google

Hudson, New Hampshire

Google

Street View



B7

**HUDSON ZONING BOARD OF ADJUSTMENT
Variance Decision Work Sheet (Rev 11-06-18)**

On **09/24/20**, the Zoning Board of Adjustment heard Case **241-035**, being a case brought by **Marie Mayotte dba Red Brick Clothing, 17 Dracut Rd., Hudson, NH** for a Variance **to allow a sign in the R-2 zone for an existing non-conforming business use**. [Map 241, Lot 035; Zoned Residential-Two (R-2); HZO Article XII, Signs, §334-60 F, General Requirements].

After reviewing the petition, hearing all of the evidence, and taking into consideration any personal knowledge of the property in question, the undersigned member of the Zoning Board of Adjustment sitting for this case made the following determination:

Y **N** **1.** Granting of the requested variance will not be contrary to the public interest, since the proposed use does not conflict with the explicit or implicit purpose of the ordinance and does not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure “public rights.”

Y **N** **2.** The proposed use will observe the spirit of the ordinance, since the proposed use does not conflict with the explicit or implicit purpose of the ordinance and does not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure “public rights.”

Y **N** **3.** Substantial justice would be done to the property-owner by granting the variance, and the benefits to the property owner are not outweighed by harm to the general public or to other individuals.

Y **N** **4.** The proposed use will not diminish the values of surrounding properties.

Y **N** **5.** Special conditions exist such that literal enforcement of the ordinance would result in **unnecessary hardship**, either because the restriction applied to the property by the ordinance does not serve the purpose of the restriction in a “fair and reasonable” way *and also* because the special conditions of the property cause the proposed use to be reasonable, or, alternatively, there is no reasonable use that can be made of the property that would be permitted under the ordinance, because of the special conditions of the property.

Member Decision: _____

Signed: _____

Sitting member of the Hudson ZBA

Date

Stipulations: _____

TOWN OF HUDSON

AUG 31 2020

Zoning Department

Zoning Board of Adjustment
Town of Hudson

APPLICATION FOR A VARIANCE

Entries in this box are to be filled out by
Land Use Division personnel
Case No. 241-035
Date Filed 8/31/20

Name of Applicant Marie Mayotte dba Red Brick Clothing Map: 241 Lot: 035-000 Zoning District: R-2
Telephone Number (Home) 603-882-4100 (Work) 603-882-4100
Mailing Address 17 Dracut Rd Hudson NH 03051
Owner Chad Golen

Location of Property 17 Dracut Rd. Hudson, NH 03051
(Street Address)

Marie F. Mayotte
Signature of Applicant
[Signature]
Signature of Property-Owner(s)

6/23/2020
Date
6/23/2020
Date

NOTE: Fill in all portions of the Application Form(s) as appropriate. This application is not acceptable unless all required statements have been made. Additional information may be supplied on a separate sheet if space provided is inadequate. If you are not the property owner, you must provide written documentation signed by the property owner(s) to confirm that the property owner(s) are allowing you to speak on his/her/their behalf or that you have permission to seek the described variance.

Items in this box are to be filled out by Land Use Division personnel

COST:			Date received: <u>8/31/20</u>
Application fee:	<u>4.10</u>	<u>\$130.00</u>	
<u>6</u> Direct Abutters x \$4.05 =		<u>24.60</u>	
<u>3</u> Indirect Abutters x \$0.55 =		<u>1.65</u>	
Total amount due:		<u>\$156.25</u>	Amt. received: \$ <u>156.25</u>
			<u>01</u> cash.
			Receipt No.: <u>610,054</u>
Received by: _____	<u>(TSG)</u>		
By determination of the Zoning Administrator or Building Inspector, the following Departmental review is required:			
_____ Engineering	_____ Fire Department	_____ Health Officer	_____ Planner



17 Dracut Road
Hudson, New Hampshire 03051
603-882-4100

RED BRICK CLOTHING CO.

— DONE RIGHT. ON TIME. EVERY TIME. —

www.RedBrickClothing.com

I agree to allow Marie Mayotte dba Red Brick Clothing to apply for a variance for signage on the building that is owned by 117 Dracut Rd., LLC, Chad Golen.



Signature Chad L. Golen Date 8/1/2020

TOWN OF HUDSON, NH

NOTICE TO APPLICANTS

The following **requirements/checklist** pertain to the Town of Hudson, NH, Zoning Board of Adjustment applications, as applicable:

Applicant Initials		Staff Initials
<u>mfm</u>	The applicant must provide ¹⁰ 13 copies including the original of the filled-out application form, together with this checklist and any required attachments listed. (Paper clips, no staples)	<u>TG</u>
<u>mfm</u>	Before making the ¹⁰ 13 copies, please review the application with the Zoning Administrator or staff.	<u>TG</u>
<u>mfm</u>	A separate application shall be submitted for each request, with a separate application fee for each request i.e.: Variance, Special Exception, Home Occupation Special Exception, Wetland Special Exception, Appeal from an Administrative Decision, and Equitable Waiver but only one abutter notification fee will be charged for multiple requests. If paying by check, make the check payable to the Town of Hudson.	<u>TG</u>
<u>mfm</u>	If the applicant is not the property owner(s), the applicant must provide to the Town written authorization, signed and dated by the property owner(s), to allow the applicant or any representative to apply on the behalf of the property owner(s). (NOTE: if such an authorization is required, the Land Use Division will not process the application until this document has been supplied.)	<u>TG</u>
<u>mfm</u>	Provide two (2) sets of mailing labels from the abutter notification lists (Pages 4 & 5) prepared by applicant, with the proper mailing addresses, must be dated within (30) thirty days of submittal of the application. The abutter lists can be obtained from the assessor's office. (NOTE: the Land Use Division cannot process your application without the abutter lists. It is the applicant's responsibility to ensure that the abutter lists are complete and correct. If at the time of the hearing any applicable property owner is found not to have been notified because the lists are incomplete or incorrect, the Zoning Board will defer the hearing to a later date, following notification of such abutters.)	<u>TG</u>
<u>mfm</u>	A copy of both sides of the assessor's card shall be provided. (NOTE: these copies are available from the Assessor's Office)	<u>TG</u>
<u>mfm</u>	A copy of the Zoning Administrator's correspondence confirming either that the requested use is not permitted or that action by the Zoning Board of Adjustment is required must be attached to your application.	<u>TG</u>
<u>mfm</u>	For a Wetland Special Exception, a letter or a copy of the relevant decision from the Hudson Conservation Commission shall be attached to the application for existing single-family and duplex residential uses. All other Wetland Special Exceptions (multifamily, commercial, or industrial uses) must have letters both from the Conservation Commission and from the Planning Board.	<u>N/A</u>

PLOT PLAN-

- mf Except for requests pertaining to above-ground pools, sheds, decks and use variances, the application must include a copy of a certified plot plan from a licensed land surveyor. The required plot plan shall include all of the items listed below. Pictures and construction plans will also be helpful. (NOTE: it is the responsibility of the applicant to make sure that all of the requirements are satisfied. The application may be deferred if all items are not satisfactorily submitted):
- a) mf The plot plan shall be drawn to scale on an 8 1/2" x 11" or 11" x 17" sheet with a North pointing arrow shown on the plan. N/A
- b) mf The plot plan shall be up-to date and dated, and shall be no more than three years old. N/A
- c) mf The plot plan shall have the signature and the name of the preparer, with his/her/their seal. # see attached Building Graphic Mock-up"
- d) mf The plot plan shall include lot dimensions and bearings, with any bounding streets and with any rights-of-way and their widths as a minimum, and shall be accompanied by a copy of the GIS map of the property. (NOTE: copies of the GIS map can be obtained at the Land Use Division.) TG ✓
- e) mf The plot plan shall include the location and dimensions of existing or required services, the area (total square footage), all buffer zones, natural features, any landscaped areas, any recreation areas, any safety zones, all signs, streams or other wetland bodies, and any drainage easements.
- f) mf The plot plan shall include all existing buildings or other structures, together with their dimensions and the distances from the lot lines, as well as any encroachments.
- g) mf The plot plan shall include all proposed buildings, structures, or additions, marked as "PROPOSED," together with all applicable dimensions and encroachments.
- h) mf The plot plan shall show the building envelope as defined from all the setbacks required by the zoning ordinance. TG
- i) mf The plot plan shall indicate all parking spaces and lanes, with dimensions. ✓

The applicant has signed and dated this form to show his/her awareness of these requirements.

Marie F. Mayotte
Signature of Applicant(s)

7/24/2020
Date

The Land Use Division will schedule a public hearing at the next available meeting of the Hudson Zoning Board of Adjustment for your properly-completed application. Applications are scheduled on a first-come, first-served basis. Public notice of the hearing will be posted on public bulletin boards in the Town Hall, the Post Office, and the Rogers Library and also printed in a newspaper, and a notice will be mailed to the applicant, all abutters, and any other parties whom the Board may deem to have an interest.

After the public hearing, the Board will deliberate and then reach a decision either to grant the request (perhaps with stipulations to make it palatable) or to deny the request—or to defer final action to another meeting, or perhaps to accept a request for withdrawal. You will be sent a Notice of Decision during the following week.

If you believe that the Board's decision is wrong, you have the right to appeal. In addition, any third party/parties affected by the decision also has/have the right to appeal the decision of your case. To appeal, you must first ask the Board for a rehearing; this motion for rehearing may be in the form of a letter to the Board. The rehearing request must be made in writing within thirty (30) days following the Board's decision, and must set forth the grounds on which it is claimed the decision is unlawful or unreasonable.

The Board may grant such a rehearing if, in the Board's opinion, good reason is stated in the motion. In general, the Board will not allow a rehearing unless a majority of its sitting members conclude either that the protested decision was illegal or unreasonable or that the request for rehearing demonstrates the availability of new evidence that was not available at the original hearing. The Board will not reopen a case based on the same set of facts unless it is convinced that an injustice would be created by not doing so. Whether or not a rehearing is held, you must have requested one before you can appeal the decision to the Court(s). When a rehearing is held, the same procedure is followed as for the first hearing, including public notice and notice to abutters.

Please refer to NH RSA Chapter 677 for more detail on rehearing and appeal procedures.

ALL DIRECT ABUTTERS

List name(s) and mailing addresses of the owner(s) of record of the property and all direct abutters as of the time of the last assessment of taxation made by the Town of Hudson, including persons whose property is either contiguous or separated from the subject tract of land by a street or stream. If at the time of your hearing any applicable property owner is found not to have been notified because your lists are incorrect or incomplete, the Zoning Board will defer your hearing to a later date, following notification of such abutters. (Use additional copies of this page if necessary)

MAP	LOT	NAME OF PROPERTY OWNER	MAILING ADDRESS
241-	035-000	117 Dracut Rd., LLC c/o Golen Engine Service	17 Dracut Rd Hudson NH 03051
235-	011-000	Monahan-Fortin Properties II, LLC	20 Trafalgar Sq. Suite 610 Nashua, NH 03063
241-	037-000	"	"
240-	021-000	Miguel J. Quintal	28 River Rd Hudson NH 03051
241-	035-001	Chad L. Golen c/o Golen Engine Service	15 Dracut Rd. Hudson, NH 03051
235			
240-	023-000	Leboeuf, Gerard L Tr. Leboeuf, Lorette E Tr. Leboeuf Revocable Trust	30 River Rd Hudson, NH 03051
		Marie Mayotte dba Red Brick Clothing	17 Dracut Rd Hudson NH 03051

Bldg
owner
17 Dracut
Rd.
20 Dracut
Rd

Applicant

APPLICATION FOR A VARIANCE

This form constitutes a request for a variance from the literal provisions of the Hudson Zoning Ordinance Article XII of HZO Section(s) 334-60F in order to permit the following change or use:

Allow a sign in the R-2 zone for an existing non-conforming use (business)

You must attach to this application a copy of some form of determination that the proposed change or use is not permitted without a variance, consisting of a denial in writing of a building permit or use authorization by the Zoning Administrator, with the reasons for the denial being cited thereon.

FACTS SUPPORTING THIS REQUEST:

The power to grant variances from the local zoning ordinances is established in NH RSA 674:33 I (b), as follows:

I. "The Zoning Board of Adjustment shall have the power to:

(b) Authorize upon appeal in specific cases a variance from the terms of the zoning ordinance if:

- (1) The variance will not be contrary to the public interest;**
- (2) The spirit of the ordinance is observed;**
- (3) Substantial justice is done;**
- (4) The values of surrounding properties are not diminished; and**
- (5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**

(A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and**
- (ii) The proposed use is a reasonable one.**

(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The definition of "unnecessary hardship" set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction of use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

New Hampshire case law has established, on the basis of the preceding statute and/or its precedent versions, that all of the following requirements must be satisfied in order for a Zoning Board of Adjustment to grant a variance. You must demonstrate by your answers in the following blanks that you do or will meet each and every requirement; do not presume or say that a requirement does not apply, or your request will be disqualified. Note that your answers here can be summary in nature, and you can provide additional testimony at the time of your hearing.

1. Granting of the requested variance will not be contrary to the public interest, because:
(Explain why you feel this to be true—keeping in mind that the proposed use must not conflict with the explicit or implicit purpose of the ordinance and that it must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure “public rights.”)

This building-assis improvement is technically a sign, but not in the normal sense of what is a sign. This is more "window dressing" and so more of an identifier than advertising.

This property is a longstanding, established business in the R-2 zone.

2. The proposed use will observe the spirit of the ordinance, because:
(Explain why you feel this to be true—keeping in mind that, as detailed above, the proposed use must not conflict with the explicit or implicit purpose of the ordinance and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure “public rights.”)

Signage is not allowed in the R-2 zone per zoning ordinance, but we are an existing business use in the R-2 zone. This would be an allowed use if was otherwise in the B-zone

3. Substantial justice would be done to the property-owner by granting the variance, because:
(Explain why you believe this to be true—keeping in mind that the benefits to the applicant must not be outweighed by harm to the general public or to other individuals.)

This signage allows us a unique use of signage material for incorporating into building window treatment. It definitely improves the appearance of the building, and so it makes us better neighbors.

4. The proposed use will not diminish the values of surrounding properties, because:
(Explain why you believe this to be true—keeping in mind that the Board will consider expert testimony but also may consider other evidence of the effect on property values, including personal knowledge of the members themselves.)

This signage is actually an added value/benefit as a building improvement.

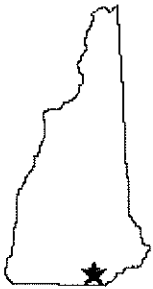
5. Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship**, because:

(Explain why you believe this to be true—keeping in mind that you must establish that, because of the special conditions of the property in question, the restriction applied to the property by the ordinance does not serve the purpose of the restriction in a “fair and reasonable” way *and also* that you must establish that the special conditions of the property cause the proposed use to be reasonable. Alternatively, you can establish that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance.)

The zoning district of R-2 causes the hardship, as the signage is prohibited for this longtime existing business to use to utilize as would be allowed in a business zone.

The special conditions are that the zone (R-2) this business is in does not allow what would be otherwise allowed in a business zone.

Requests before the Zoning Board of Adjustment may require connection to the municipal sewer system. Please contact the Town Engineer’s Office prior to submittal of this application to determine if connection is required or will be allowed, together with the procedure for such application.



TOWN OF HUDSON

Land Use Division



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

Zoning Determination #20-026R

July 17, 2020

Keith Mayotte
Red Brick Clothing
17 Dracut Road
Hudson, NH 03051

Re: **17 Dracut Rd** **Map 241 Lot 035-000**
District: Residential Two (R-2)

Dear Mr. Mayotte,

Your request: Are you able to install a window “building sign” of 16 sqft of logo and text?

Zoning Review / Determination:

Our records show this is a developed lot of record, with an existing non-conforming use of light manufacturing/office in the R-2 district.

The sign section within the zoning ordinance 334-60F: “*No sign shall be erected in a residential district, except as allowed in § 334-67, Home occupation signs,*” Your business (use) is in the R-2 district (residential).

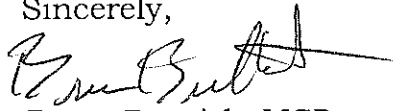
Furthermore §334-60I states: “*Nonconforming signs and signs associated with non-conforming uses are governed by Article VIII, Nonconforming Uses, Structures and Lots.*”

Therefore, Article VIII section §334-29 Extension or enlargement of nonconforming uses states: “*A nonconforming use shall not be extended or enlarged, except by variance.*”

A variance from section §334-60F of the Zoning Ordinance would be required from the Zoning Board of Adjustment to install this sign.

NOTE: this determination may be appealed to the Hudson Zoning Board of Adjustment within 30 days of the receipt of this letter.

Sincerely,



Bruce Buttrick, MCP

Zoning Administrator/Code Enforcement Officer

(603) 816-1275

bbuttrick@hudsonnh.gov

cc: Public Folder
B. Groth – Town Planner
File

NOTE: this determination may be appealed to the Hudson Zoning Board of Adjustment within 30 days of the receipt of this letter.

MAP LOT SUB

MAP CARD Hudson

APPRAISED: 590,800 / 590,800
 USE VALUE: 590,800 / 590,800
 ASSESSED: 590,800 / 590,800



USER DEFINED
 Prior Id # 1: 0008
 Prior Id # 2: 0064
 Prior Id # 3: 0000
 Prior Id # 1:
 Prior Id # 2:
 Prior Id # 3:
 Prior Id # 1:
 Prior Id # 2:
 Prior Id # 3:
 ASR Map:
 Fact Dist:
 Reval Dist:
 Year:
 LandReason:
 BldReason:
 CivilDistrict:
 Ratio:

PRINT
 Date Time
 06/09/20 11:10:42
LAST REV
 Date Time
 12/04/19 09:56:39
 krt
 893

IN PROCESS APPRAISAL SUMMARY

Use Code	Land Size	Building Value	Yard Items	Land Value	Total Value
401	2.242	280,100	4,900	305,800	590,800
Total Card	2.242	280,100	4,900	305,800	590,800
Total Parcel	2.242	280,100	4,900	305,800	590,800
Source: Market Adj Cost	Total Value per SQ unit /Card: 38.10		/Parcel: 38.10		

Legal Description
 Entered Lot Size
 Total Land: 2.242
 Land Unit Type: AC

User Acct
 2451
 GIS Ref
 GIS Ref
 Insp Date
 11/08/19

PROPERTY LOCATION

No	Alt No	Direction/Street/City
17		DRACUT RD, HUDSON

MEMBERSHIP
 Unit #:
 Member 1: 117 DRACUT ROAD, LLC
 Member 2: C/O GOLEN ENGINE SERVICE
 Member 3:
 Street 1: 17 DRACUT ROAD
 Street 2:
 City: HUDSON
 State/Prov: NH Country: Own Occ:
 Postal: 03051 Type:

PREVIOUS OWNER

Member 1: DYER, JANE V. -
 Member 2: -
 Street 1: 3 SOUTH PARISH ROAD
 City: LONDONDERRY
 State/Prov: NH Country:
 Postal: 03053-2880

PREVIOUS ASSESSMENT

Tax Yr	Use	Cat	Bldg Value	Yrd Items	Land Size	Land Value	Total Value	Asses'd Value	Notes	Date
2020	401	JB	280,100	4900	2.242	305,800	590,800	590,800	Year End Roll	5/6/2020
2019	401	FV	280,100	2000	2.242	305,800	587,900	587,900	Year End Roll	9/16/2019
2019	401	JB	280,100	2000	2.242	305,800	587,900	587,900	Year End Roll	5/8/2019
2018	401	FV	280,100	2000	2.242	305,800	587,900	587,900	Year End Roll	8/27/2018
2018	401	JB	280,100	2000	2.242	305,800	587,900	587,900	Year End Roll	5/9/2018
2017	401	FV	280,100	2000	2.242	305,800	587,900	587,900	Year End Roll	10/26/2017
2017	401	PV	280,100	2000	2.242	305,800	587,900	587,900	Year End Roll	8/28/2017
2017	401	JB	300,500	1800	2.242	229,300	531,600	531,600	Year End Roll	5/10/2017

SALES INFORMATION

Grantor	Legal Ref	Type	Date	Sale Code	Sale Price	V	Tst	Verif	Notes
DYER, JANE V.,	7094-1979	1	10/14/2003		670,000	No	No		
	5285-1073		9/30/1991			No	No		

PROPERTY DESCRIPTION

Parcel contains 2.242 ACRES of land mainly classified as WAREHSE with a IND-LIGHT Building built about 1957, featuring primarily CORR STEEL Exterior and 15506 Square ft, with 3 Units, 0 Bath, 0 3/4 Bath, 12 HalfBaths, 0 Rooms, 0 Bdrm.

OTHER ASSESSMENTS

Code	Descrip/No	Amount	Com. Int

PROPERTY FACTORS

Form	Code	Description	%	Item	Code	Description
	G1	GENERAL	45	water	9	PRIV WATER
	R2	RES2 TWO	55	Sewer	0	SEPTIC
				Electri		
				Exmpt		
				Topo	1	LEVEL
				Street		
				Gas:		

BUILDING PERMITS

Date	Number	Descrip	Amount	C/O	Last Visit	Fed Code	F. Descrip	Comment
2/18/2015	2015-00126	MECHANIC		C				FURNACE
8/28/2014	2014-00608	ROOF	15,000	C				FRONT BLDG RUBBER

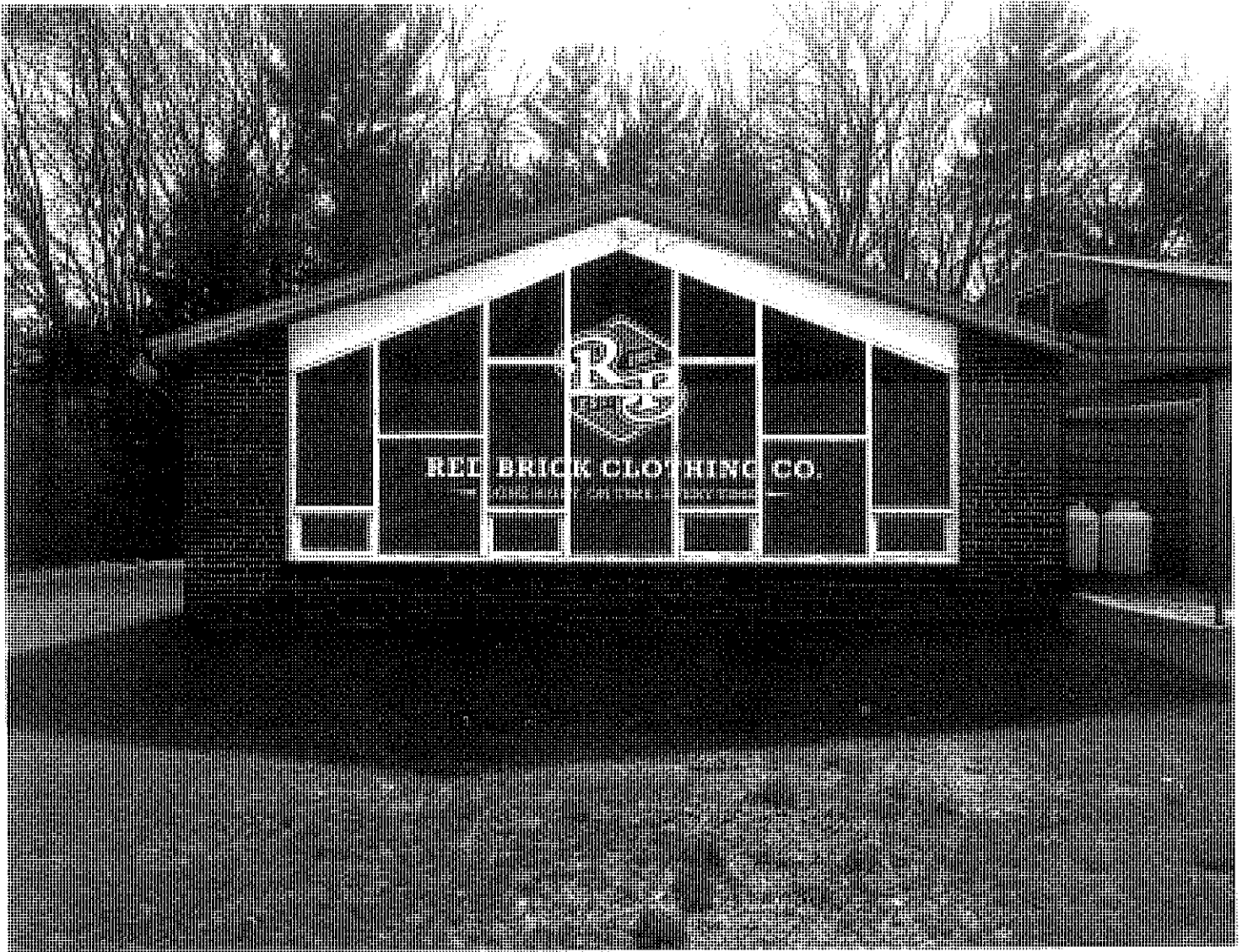
ACTIVITY INFORMATION

Date	Result	By	Name
11/8/2019	Meas. Denied	18	KRT1
11/8/2019	Entry Denied	18	KRT1
6/19/2017	Field Review	9	PVA
4/5/2017	I&E Returned	7	DC
2/24/2017	I&E Mailed	7	DC
2/18/2015	Permit Visit	12	TECH ASMNT
5/18/2012	Field Review	9	PVA
3/1/2012	I&E Mailed	1	CHIEF ASSESS
3/12/2007	Meas/Inspect	9	PVA

LAND SECTION (First 7 lines only)

Section	Description	LUC Fact	No of Units	Depth / PriceUnits	Unit Type	Land Type	LT Factor	Base Value	Unit Price	Adj	Neigh	Neigh Influ	Neigh Mod	Inf1	%	Inf2	%	Inf3	%	Appraised Value	Alt Class	Spec Land %	J Code	Fact	Use Value	Notes
01	IND WAREHS		1.5		SITE ACRE	SITE		0 200,000.	1.00	IG										300,000					300,000	
01	IND WAREHS		0.742		ACRES	EXCESS		0 20,000.	0.39	IG			TOPO	-50						5,776					5,800	TOPO/ESMNTS

Total AC/HA: 2.24200 Total SF/SM: 97662 Parcel LUC: 401 IND WAREHSE Prime NB Desc IND-GENERAL Total: 305,776 Spl Credit Total: 305,800





MORAHAN-FORTIN FIRM
141 MAIN STREET
NASHUA, N.H. 03060
BK. 8088 PG. 584

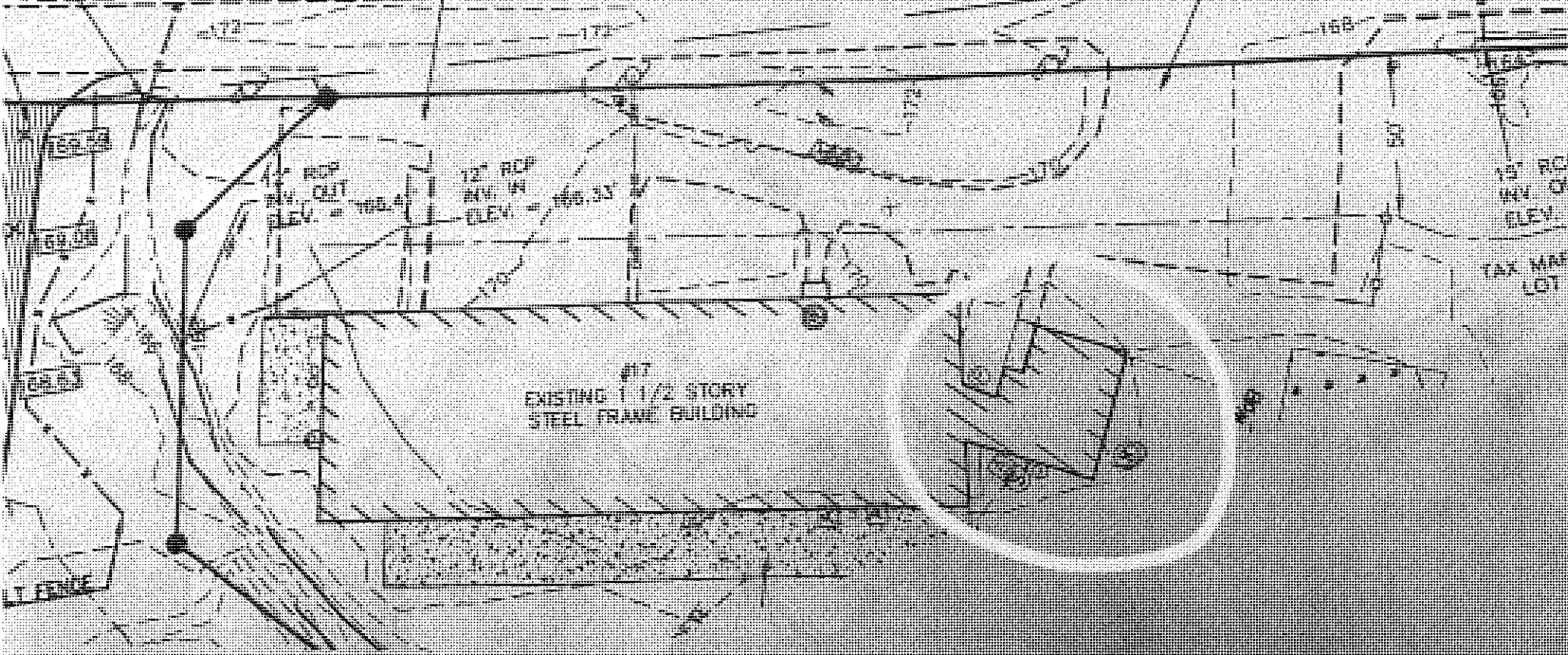
RCP
OUT
1" = 164.76'
24" RCP
INV. IN
ELEV. = 165.07

EXISTING
DRIVEWAY ENTRANCE

GROU

SIGHT LINE RIGHT
(400.0')

EXISTING
DRIVEWAY ENTRANCE



PLAN
1" = 50'

Printed
8/31/2020
3:36PM
Created
8/31/2020
3:31 PM

Transaction Receipt

Town of Hudson, NH
12 School Street
Hudson, NH 03051-4249

Receipt# 610,054
tgoodwyn

	Description	Current Invoice	Payment	Balance Due
1.00	Zoning Application-ZBA 17 Dracut Rd Map/Lot 241-035-000 Variance App	0.00	156.2500	0.00
			Total:	156.25

Remitter	Pay Type	Reference	Tendered	Change	Net Paid
Red Brick Clothing	CHECK	CHECK 5175	156.24	0.00	156.24
	CSH	CASH	0.01	0.00	0.01

Total Due: 156.25
Total Tendered: 156.25
Total Change: 0.00
Net Paid: 156.25

HUDSON ZONING BOARD OF ADJUSTMENT

REHEARING REQUEST WORKSHEET

On **9/24/20**, The Hudson Zoning Board of Adjustment heard case **173-012 & 014**, Being a request by **Turbo Realty, LLC by Patricia M. Panciocco, One Club Acre Lane, Bedford, NH requests a rehearing for a previously denied request for a Variance at 4 & 14 Tolles St., Hudson, NH to be allowed to extend the same uses to Lots 173-012 & 014 as were granted by the ZBA on June 7, 2018 for three (3) variances at 15 & 17 Tolles St.** [Map 173, Lot 012-000 and Lot 014-000; Zoned Town Residence (TR); HZO Article V, Permitted Uses, §334-21, Table of Permitted Principal Uses].

Members sitting on the Zoning Board of Adjustment for this rehearing are to vote to determine if:

Y **N** The applicant presented new evidence not available at the first hearing.

Y **N** The Zoning Board of Adjustment made an error in law in making their previous decision regarding this case.

Signed: _____ Date: _____
Sitting Member of the Hudson ZBA

PANCIOCCO LAW, LLC



PATRICIA M. PANCIOCCO
ADMITTED IN NH & ME

ONE CLUB ACRE LANE,
BEDFORD, NH 03110
PAT@PANCIOCCOLAW.COM

TEL: 603-518-5370
FAX: 603-206-5946

August 24, 2020

VIA EMAIL ONLY

Chairman Charlie Brackett
Town of Hudson Zoning Board of Adjustment
12 School Street
Hudson, NH 03051

**Re: Request for Rehearing – Tax Lots 173-012 & 014 (“Property”)
Turbo Realty, LLC Case 173-012 & 014 (5-28-20) (“Application”)**

Dear Mr. Chairman & Members of the Board:

This letter respectfully requests the Hudson Zoning Board of Adjustment (“ZBA”) rehear the above referenced case. The rehearing process allows the board of adjustment to correct errors of fact or law in its proceedings when new evidence is introduced to ensure a just outcome. RSA 677:2; Fisher v. Boscawen, 121 N.H. 438,439 (1981). A variance is the statutory safety valve which allows the board to correct maladjustments and inequities created by the strict enforcement of a particular ordinance as to a specific property to avoid a confiscatory taking, provided the relief granted does not violate the basic objectives of the ordinance. Metzger v. Brentwood, 117 N.H. 497 (1977). Zoning’s basic objective, also known as its spirit and intent, is to organize uses to create uniformity and to protect the public interest. However, when an individual property has been misused or abused for a long time, strict zoning enforcement against a successor owner who has gone to great lengths to remedy those issues, becomes complicated as it has here.

It is undisputed the Property which is the subject matter of the Application is located in the TR Zone. The only permitted uses for this particular Property are: (a) single-family homes; (b) housing for older persons and assisted living; (c) municipal utilities and service buildings; (d) schools; and (e) a seasonal produce stand. Prior to being rezoned to TR in 1994, the Town reports the Property was located in the R-1 District which is striking due to its well documented misuse.

Reports prepared by Geoserve, Inc. (“Reports”) attached as Exhibit A since 2003 confirm the Town began documenting the Property’s past uses on or about 1974. The Reports also confirm its prior occupants up to the early 1990’s included Earl’s Rubbish Removal, TTE Express, Morenco Transportation, John Peabody Paving, Modern Recyclers, LTD Trucking, Allard Sand Blasting, Crisp Contracting, Rainbow Auto, Giza and Professional Paving. The Reports also state the Town often cited the Property as

violating the Town's Junkyard Ordinance but it appears nothing much changed until the 1990's when its clean up began. However, contamination of the Property then left its groundwater quality a question which bears directly on its residential use as does its location abutting two (2) preexisting commercial uses.

The Application referenced above requested a variance to permit the uses approved by the ZBA in 2018 for 15/17 Tolles Street to be permitted on the Property and eventually be consolidated with 15/17 Tolles under one site plan. We understand and accept the ZBA did not agree with that approach and appeal only the Application referenced above. However, what was missed by the ZBA was that this Application did not rely upon documentation which confirmed the Property's prior nonconforming uses because unlike 15/17 Tolles Street we do not have documentation showing the exact location of each commercial tenant, the term of their occupancy and what type of use they engaged in as we did for 15/17 Tolles. For this reason, and contrary to statements appearing in the ZBA's minutes, we did not request the ZBA recognize and rely upon prior nonconforming uses of the Property, but the ZBA's minutes suggest we did.

Although we lack prior nonconforming use documentation, we do know the Property was used in a similar manner as 15/17 Tolles over the years based upon the Reports attached as Exhibit A. In addition, the Property suffered the same abuses and resulting contamination as evidenced by the large fill pile, buried barrels, buried tires and solvents detailed in the Report which has left the quality of the groundwater for residential use a question.

The Reports also confirm 14 Tolles was occupied by Allard Construction, which is now occupied by a plumbing contractor. The Reports also show TDD Earth Tech operated a materials yard on the Property as further confirmed by numerous photos attached as Exhibit B, but do not have specific information as to how long those tenants occupied the Property. We also know the soil contamination has been substantially cleaned as shown by Exhibit C, and groundwater monitoring remained ongoing presume the Property would continue to be used commercially.

Exhibits A through C are submitted because the ZBA's minutes stated there was no evidence the Property had been used in a manner similar to 15/17 Tolles Street which is factually untrue. It was those uses which caused the contamination documented in the Report throughout the entire site, leaving the Property unsuitable for residential use. When this contamination is coupled with its location in between two (2) commercially used properties, the Property's hardship is crystal clear and for this reason, we request the ZBA review this information and reopen the public hearing to renew its discussion regarding the merits of the Application. It will still take more time for the Property to heal from these past abuses.

In addition to the above reasons, this Request for Rehearing also requests the ZBA confer with Town Counsel relative to whether it may impose conditions on the existing Application, or perhaps engage in a workshop to discuss the uses permitted at 15/17 Tolles the Board finds to be a problem to allow our engineer to respond before the

ZBA makes a decision, or conditions for a particular use to be excluded from any potential approval.

My client has invested substantially in the rehabilitation of this site and would like to continue moving forward with the Town's blessing and my hope is the ZBA will reconsider its decision regarding this Application and reopen the public hearing to continue a discussion of its merits to hopefully bring the entire site into compliance.

Sincerely yours,

Pat Panciocco

Patricia M. Panciocco

Enclosures

Cc: Client; Brenton Cole, Granite State Engineering, LLC

Exhibit A

INITIAL SITE INVESTIGATION

**COMMERCIAL/RESIDENTIAL PROPERTY
4-17 TOLLES STREET
HUDSON, NEW HAMPSHIRE**

GEOSERVE PROJECT NO: 03-09-05-001

SEPTEMBER 2003

**PREPARED FOR:
MR. JIM PRATT
FIRST COLEBROOK BANK
100 LOUDON ROAD
CONCORD, NEW HAMPSHIRE 03301**

GEOSERVE INCORPORATED

ENVIRONMENTAL ENGINEERS • MANAGERS • SCIENTISTS • CONSULTANTS • LICENSED SITE PROFESSIONALS

September 4th, 2003

Mr. Jim Pratt
First Colebrook Bank
100 Loudon Road
Concord, New Hampshire 03301

RE: 4-17 Tolles Street
Hudson, New Hampshire

Project No: 03-09-05-001

Dear Mr. Pratt:

The purpose of this letter report is to present the findings of our preliminary file review, site visit, and analytical data relative to groundwater samples collected at the site.

The site property has had a long history of commercial and residential usage. The New Hampshire Department of Environmental Services (NHDES) had an extensive file relative to the site. The site has had drums removed, Underground Storage Tanks (UST's) removed, and environmental issues relative to the use and storage of blasting sand and used items. I have enclosed copies of some of the pertinent sections of the NHDES files for your review.

The results of the file review coupled with my site visit which found unplugged floor drains, oil spillage on the floor of Building No.1 operated by TTE Express, and a former tire burial area, led me to recommend that the three existing on site monitoring wells be sampled prior to the expenditure of additional funds to complete a full Phase I Environmental Site Assessment (ESA).

The results of the groundwater analyses found concentrations of chlorinated solvents above the NHDES standards. In MW-2, concentrations of tetrachloroethene (46 ppb) and trichloroethene (210 ppb) as detected which exceeded the Ambient Groundwater Quality Standards (AGQS) for both of these compounds, which is 5 ppb.

NHDES File Review

Personnel from Geoserve Inc. went to the NHDES offices in Concord, New Hampshire to review files relative to the site. Copies of some of the files are attached to this letter report for review purposes. The site had an extensive file with the NHDES. The general area of the site was developed into commercial properties in the 1950's. The files included a variety of environmental issues to include; complaints relative to discharge of an on site dry well in 1992, UST removals in 1999, drum removal, contaminated soil removal, and sand blasting grit removal have all occurred at the site. Mr. Greenwood also stated that a large quantity of previously buried tires had also been removed from the site.

Site Visit

Geoserve Inc. initiated a site visit on August 15th, 2003. An inspection of Building No.1 as displayed on the attached Figure 1 was performed. This building is occupied by TTE Express who utilizes it for automotive and truck repairs. The building had two floor drains, which were reportedly sealed. Observation of the drains indicated that they were in fact not sealed and appeared to discharge to the rear of the building. TTE Express had a waste oil furnace within the garage and had eight 275-gallon Aboveground Storage Tanks (AST's) used to store waste oil. There were puddles of waste oil present on the concrete floor slab underlying the AST's. It could not be determined if the oil present on the floor was from spillage during handling or from a leaking AST.

15 Tolloes
←

At this point, I recommended to Mr. Greenwood that the inspection cease due to unanswered questions relative to the current status of the floor drains and waste oil tanks. I recommended that Geoserve Inc. sample and analyze the three on site wells prior to initiating additional work and incurring more cost.

Groundwater Sampling

The three on site wells were all located and appeared to be capable of providing viable sampling points. The wells were purged and sampled via the use of a peristaltic sampling pump. The samples were placed in appropriately preserved laboratory containers, labeled, logged onto a Chain of Custody sheet, and placed in a cooler for transport to Chemserve of Milford, New Hampshire.

Groundwater Analytical Results

The groundwater analytical data is attached to this report. The samples were analyzed for Volatile Organic Compounds (VOC's) via EPA Method 8260B. The results of the analyses found excessive concentrations of chlorinated solvents in monitoring well MW-2. Concentrations of tetrachloroethene (46 ppb) and trichloroethene (210 ppb) were detected which exceeded the NHDES AGQS standard of 5 ppb for both compounds.

Conclusions

The property currently displays several environmental issues, which are unresolved. The following items are of concern and would require additional investigation or reporting.

- 1) The concentrations of chlorinated solvents in MW-2 exceed the NHDES standards and represent a reportable condition.
- 2) An on site drinking water well services the site. This well should be tested for VOC's as soon as possible.

SUBSURFACE INVESTIGATION

**TOLLES STREET
HUDSON, NEW HAMPSHIRE**

GEOSERVE PROJECT NO: 04-09-16-002

APRIL 2006

**PREPARED FOR:
MR. SKIP KELLEY
170 BRIDGE STREET
MANCHESTER, NEW HAMPSHIRE 03104**

GEOSERVE INCORPORATED

ENVIRONMENTAL ENGINEERS • MANAGERS • SCIENTISTS • CONSULTANTS • LICENSED SITE PROFESSIONALS

April 27th, 2006

Mr. Skip Kelley
170 Bridge Street
Manchester, New Hampshire 03104

RE: Subsurface Investigation
Tolles Street
Hudson, New Hampshire

Project No: 04-09-16-002

Dear Mr. Kelley:

The following report presents the results of a subsurface exploration and sampling plan completed for the above referenced location. The proposed scope of work was outlined in our proposal dated January 17th, 2005.

Geoserve Inc. observed and logged the excavation of nineteen test pits across the portion of the site to the south of Tolles Street. Duplicate soil samples collected from each test pit were field screened for Total Volatile Organic Vapor (TVOV) concentrations and a total of five soil samples were submitted for chemical analyses. Wooden debris and two drums were encountered at the location of test pit TP-15. One drum, which contained liquid, was sampled and submitted for chemical analyses.

The results of the chemical analyses of the soils for total RCRA metals, Total Petroleum Hydrocarbons (TPH) Diesel Range Organics (DRO), and Volatile Organic Compounds (VOC's) detected no concentrations in excess of the Method 1 Soils 1 (NHS-1) soil standards. However, during the excavation of test pit location TP-15, an area, which displayed a large concentration of buried tree debris as well as two drums, was discovered. One drum contained \pm twenty gallons of liquid which was sampled and submitted for VOC analyses. The analyses indicated that the drum contained what appeared to be parts cleaner, which was utilized to clean parts, which contained diesel fuel. High concentrations of chlorinated solvents and petroleum related compounds were found to be present in the liquid contents of the drum.

The wooden debris and drums appeared to have been placed in an excavation and covered with backfill. Geoserve Inc. would conclude that the source of the chlorinated solvents detected in the groundwater in the downgradient monitoring wells is likely the result of leakage from the buried drums. Geoserve Inc. would recommend that the entirety of the burial site be excavated. The wood and any drums should be taken off-site for proper disposal. All contaminated soil should be stockpiled on-site for analyses and off-site disposal. The removal of this potential point source should result in the reduction of chlorinated solvents in the downgradient groundwater at the locations of MW-2 and MW-3.

History of the Site

The general area of the site is displayed on Figure 1. The area of the site was cut up into small camp lots during the 1950's. Earl and Melba Burton purchased the site lots and abutting lots 23 and 13 at various times in the 1960's. Earl Burton developed the property for commercial use in the 1960's and constructed all of the buildings currently occupying the site. The site was sold to J&J Realty Trust in 1986 but was foreclosed on by Melba Burton for non-payment of the mortgage in 1992. The various site lots are displayed on Figure 2, the *Tax Map*. The Hudson Department of Health and Building had files relative to the site dating back to 1974, when Earl's Rubbish Removal occupied Building #1 of the site. Other commercial occupants noted in the file included; John Peabody Paving, Modern Recyclers, LTD Trucking, Allard Sand Blasting, Rainbow Auto, Giza, and Professional Paving. From the early 1990's, the Town had problems at the site in regards to violations of the Town of Hudson Junkyard Ordinance relative to the stockpiling of used automobile and equipment parts and disposal and storage of construction debris, recyclables, and old tires. Various cleanups occurred at the site in the mid to late 1990's. The New Hampshire Department of Environmental Services (NHDES) oversaw these cleanups.

The site had an extensive file with the NHDES. The general area of the site was developed into commercial properties in the 1960's. The files included a variety of environmental issues to include; complaints relative to discharge of an on-site dry well in 1992, as well as Underground Storage Tank (UST) removals in 1999, drum removal, contaminated soil removal, and sand blasting grit removal have all occurred at the site. It was also stated that a large quantity of previously buried tires had also been removed from the site.

A copy of a letter from NHDES to Melba Burton documents the remedial activities at the site in 1999 relative to the drum removal. However, the letter also documents that four fifty-five gallon steel drums appeared to have had their contents dumped at the site. These drums were the property of Moreco Transportation Inc. A copy of the letter is attached to this report.

A letter report relative to the drum and soil cleanup at the property was issued by GeoInsight on February 29th, 2000. Eighteen drums, consisting of sixteen drums of asphalt emulsifier, one drum of adsorbents, and one drum of frozen asphalt emulsifier were removed from the site for disposal in December of 1999. Four additional drums, which reportedly contained waste oil, were also located and transported off-site for disposal.

Soil beneath the former drum location was excavated on December 2nd, 1999. Sand blasting grit was also excavated for disposal. Confirmatory soil samples collected following the remedial excavation displayed TPH concentrations in excess of the S-1 soil standards at two locations (Drum Area #1 and Drum Area #2). The drum locations are displayed on a Figure in the attached GeoInsight report.

April 9th, 2007

Mr. Skip Kelley
170 Bridge Street
Manchester, New Hampshire 03104

RE: Site Investigation Report (SIR)
15 Tolles Street
Hudson, New Hampshire
DES Site No: 199805041
Project No: 7970

Project No: 06-08-15-001

Dear Mr. Kelley:

The purpose of this report is to document the various remedial activities, which have been completed at the site, and to present the findings of the investigation. The remedial activities and cleanup at the site were completed in July and August of 2006. These activities were performed in accordance with a letter received from the New Hampshire Department of Environmental Services (NHDES) dated May 24th, 2006 and prepared by H. Keith DuBois. A Scope of Work was submitted to NHDES in July of 2006. A response to the Scope of Work was not received until March 9th, 2007. Subsequently, all remedial activities and cleanup were completed prior to the receipt of this letter.

The buildings were inspected and are currently undergoing renovation. Recent excavation around Building #1 and #2 have revealed no dry wells. Permanently closed floor drains were observed in Building #1. No floor drains were observed elsewhere. Documentation of the floor drain closure is present in the NHDES files.

The central fill pile was excavated and was found to consist of asphaltic concrete, bricks, concrete, metallic automobile parts, glass, plastic sheeting, tires, and wooden debris to include stumps and telephone poles. The contents of the pile were segregated by group and transported off-site for disposal or recycling. No stained soils or drums were found in the excavation of the central fill pile. There was very little soil present in the fill pile. Following removal of the various components of the fill pile, no soils for stockpiling or re-grading were present.

The area of TP-15 was erroneously identified by NHDES as being within the central fill pile. It was however adjacent to the mounded fill pile and not within it. The area in the vicinity of TP-15 was excavated. The tree debris was stockpiled and disposed of off-site. The soil was excavated until acceptable Total Volatile Organic Vapor (TVOV) readings were obtained. The sidewalls and bottom of the remedial excavation were sampled for Volatile Organic Compounds (VOC's) and found to satisfy the applicable risk and soil cleanup standards. The soil stockpile was analyzed for total RCRA metals, Total Petroleum Hydrocarbons (TPH), Base Neutral Organics, Polycyclic Aromatic Hydrocarbons (PAH's), Poly Chlorinated Biphenyls (PCB's), and VOC's. The only compound found to exceed the applicable soil standards was Trichloroethylene (TCE). The 228.82 tons of soils was transported to Environmental Soil Management Inc. (ESMI) for treatment and recycling.

Asbestos Containing Materials (ACM's) found in a roll-off container as well as liquid wastes contained in fifty-five gallon drums were tested and transported off-site for disposal. No additional drums of liquid waste are currently present at the site. Disposal Receipts are attached to this report. The firebrick noted adjacent to TP-15 was tested and found to be non-ACBM.

There are currently five wells existing at the site. Originally there were three wells. MW-4 and subsequently MW-4A locations were added by Geoserve Inc. MW-5 was placed in the remedial excavation by Geoserve Inc. Sampling of the wells has produced fairly consistent contamination of MW-2 and replacement well MW-2A with the chlorinated solvents TCE and Tetrachloroethylene (PCE). Monitoring well MW-3 has displayed contamination by TCE. The concentrations of these contaminants exceed the Ambient Groundwater Quality Standards (AGQS) in MW-2A and MW-3. Other sampling of MW-4 and the drinking water well found no excessive contaminants. MW-1, which is outside of the garage door of Building #1, did display gasoline related contaminants in excess of the AGQS. However, these results were not consistent with two previous rounds of samples collected at this location and may be an anomaly resulting from cleanup operations of the garage floor in Building #1. The groundwater directional flow was determined to be in a general west to southwesterly direction towards the Merrimack River. Thus, MW-4A, MW-2A, and MW-3 are all downgradient wells along the lower property line. MW-1 and MW-5 would be considered upgradient wells.

↳ Based on the findings of the investigation and remedial activities completed, it is Geoserve's findings that remedial concentrations of chlorinated solvents exist in the subsurface soils below the groundwater table. While a potential point source has been eliminated, it is our opinion that the prolonged use of the site in automotive and truck repair has resulted in the release of small quantities of parts cleaner, engine cleaner, and other solvent containing products used in automotive repair to the environment. These small incidental releases have resulted in a residual concentration of chlorinated solvents, which are slowly dissolved and transported via the groundwater. No additional remedial activities appear to be warranted at the site at this time. Additional groundwater sampling should be performed on a yearly basis until the AGQS is satisfied. Since the proposed use of the property will continue as commercial, no new residential risk factors would be relevant.

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I. Site Description and Location

The site consists of six parcels of land located at 4, 8, 10, 14, 15, and 17 Tolles Street in the Town of Hudson, County of Hillsborough, State of New Hampshire. The general location of the site is displayed on Figure 1, the *Site Location Plan*. The longitude and latitude of the site are 71° 26' 56" and 42° 46' 16", respectively. The Universal Transverse Mercator (UTM) coordinates are 299647.651 east and 4738101.23 north in Zone 19. The site consists of Lots 22, 18, 14, 15, 16, and 12 as displayed on the Town of Hudson Tax Assessor's Map 173. Figure 2 displays copies of the Town of Hudson Tax Assessor's Map 165 and 173, which displays the site and abutting lots. Site Lot 12 contains ± 0.90 acres and contains a residential structure on Tolles Street. The residential structure has an address of 4 Tolles Street and consists of 1.75 story wood frame structure with a building footprint of 600 square feet with an attached 133 square feet enclosed porch. The main portion of the house is founded on concrete footings, foundation walls, and floor slab and has a full basement. The building has aluminum siding on its exterior walls with a gable roof covered with what appears to be asphalt shingles. Municipal sewer services the building. The remainder of the lot to the southwest is now vacant but was formerly used to store disabled vehicles, to stockpile materials and asphaltic concrete (central fill pile), and as a burial area for automobile tires. Site Lot 15 contains ± 0.904 acres and is a mostly vacant parcel used for parking and trailer storage. There is one small lean to type building which was formerly used to store snowplows and other equipment. Site Lot 16 contains ± 0.197 acres and contains a small garage which is in use by the Allard Construction Company to store and maintain equipment. Site Lot 22 contains ± 0.569 acres and supports two commercial garage buildings. Site Lot 18 contains ± 0.497 acres and is a vacant parcel used for parking. The southwest end of this lot was previously used to store roll-off containers. Site Lot 14 contains 0.100 acres and is currently vacant but was used for storage of disabled autos, etc. Thus, the site under investigation contains ± 2.267 acres.

The site lots are located on the north and south sides of the most western portion of Tolles Street. Bank Street is displayed on Tax Map 173 but is a paper road and is not present on the land. Arrangements are currently underway to transfer ownership of Bank Street from the Town of Hudson to the current owner of the site lots. Lot 17 is currently owned by the Town of Hudson and is not part of the site. Lots 23 and 13 are occupied by residential structures and not part of the site under investigation. Lot 11 is occupied by a water well company and is not part of the site. All of the site lots are entered off of Tolles Street. The site contains three commercial structures. The building on site Lot 22 with an address of 15 Tolles Street is a one-story metal building, which is currently vacant (Bldg #1). The second commercial building has two sections. The southerly section of the building fronting on Tolles Street is currently vacant. The northern section of the building is occupied by HacTak Auto Body (Bldg #2). Both buildings 1 and 2 are located on site Lot 22. The third commercial building (Bldg #3) is located on site Lot 16 with an address of 14 Tolles Street and is occupied by Allard Construction.

Building #1 has recently been rehabilitated with a new metal panel outer shell. This building is a steel frame building with metal panel siding and roofing. The building was constructed using slab on grade construction techniques and has no basement. The building is founded on concrete foundation walls and floor slab and has a building footprint of 10,010 square feet. The building is one-story in height and has a mezzanine on the west end of the building. The building has a two bay garage, which is accessed via overhead garage doors. The mezzanine has five offices, which are currently not in use. The lower level beneath the mezzanine has four offices, a kitchenette and two bathrooms. The garage is currently vacant and consists of one large open area with an attached bathroom. There were two floor drains present in the concrete floor of the garage. All of the floor drains were permanently sealed with concrete. Photographs of the closed floor drains are attached to this report. Building #1 is to be heated via three separate overhead Liquefied Propane Gas (LPG) fired heaters. The LPG tanks have not yet been installed but will be located behind the building. The building was previously heated with a waste oil furnace which has been removed. This building is connected to the Town of Hudson municipal sewer line. Recent excavation at the site has indicated that the sewer line exists on the northern face of the building, runs in a general southeasterly direction parallel to the building, turns southeasterly and runs between Buildings #1 and #2 and attaches to the sewer line located in the center of Tolles Street. The sewer line was recently replaced in the same location. Building #1 and #2 have potable water, which is provided by an on-site well located at the northern end of the area between the two buildings. The approximate location of the well is displayed on Figure 3. During the excavation of the area along the northern and western faces of Building #1, no dry wells or any type of drain outlets were encountered. Photographs of the area are attached to this report.

The second commercial building on site Lot 22 (Bldg #2) is accessed via three overhead garage doors on the south face of the building and one overhead garage door on the west face of the building. The southern portion of the building, which contains the three overhead garage doors, is currently vacant. HacTak Auto Body is located in the northern portion of the building. This building was constructed using slab on grade construction techniques and has no basement. The building is founded on concrete foundation walls and floor slab. There were no floor drains present in either portion of the building. The building was recently attached to the on-site well. Previously water was run over the ground via a hose from Building #1 to Building #2. This building has one toilet, which is in the process of being connected to a new sewer line. HacTak Auto Body has no running water or toilet facilities in their portion of Building #2. HacTak Auto Body is not listed as a hazardous waste generator. The HacTak portion of the building is heated via a No.2 fuel oil fired forced hot air furnace. The oil is stored in a 275-gallon Aboveground Storage Tank (AST).

The third commercial building (Bldg #3) present on the site is located on site Lot 16 at 14 Tolles Street. It is a one-story wood frame structure constructed using slab on grade construction techniques and has a building footprint of 1,372 square feet. The garage also has an attached carport which contains \pm 300 square feet. The building is founded on concrete foundation walls and a floor slab. Access to the interior of this building could not be attained during our site visit. However, looking in from the overhead garage door, no floor drains were observed. This building has no toilet facilities or running water. It also appeared that this building was heated with a wood fueled radiant heater. The physical features of the site are displayed on Figure 3, the *Site Plan*.

The site lots are accessed directly off of Tolles Street. The majority of the site lots not covered by buildings are vacant. Portions of Lot 18, 15, and 14 are paved with asphaltic concrete. Prior to the site cleanup, a pile of telephone poles, roll-off containers, and trailer boxes were present on site Lot 18. Site Lot 15 and 12 contained roll-off containers, trailer boxes, disabled automobiles and trucks, a variety of truck and auto parts, and a large central fill pile of miscellaneous materials. The location of the central fill pile is displayed on Figure 3.

The site is serviced by public utilities, which include electricity, sewer, and telephone. The water for the site Building #1 and #2 comes from an on-site well, which was previously discussed. The pump, which supplies both buildings, is a jet shallow well pump located in Building #1 adjacent to the bathroom. The use of this type of pump would suggest that the on-site well was constructed using dug well or driven point techniques.

There were no catch basins observed on the site. The runoff water from the site either runs overland to Tolles Street and directly into the Merrimack River or percolates into the sandy soils of the site. The site is in the Merrimack River Drainage Basin. There are no wetlands present on the site lots. The nearest surface water with associated wetland areas is to the east of the site. These wetlands are associated with Reed's Brook. Reed's Brook flows in a general southerly direction and discharges to the Merrimack River \pm 900 feet to the southeast of the site.

Observation of the community panel 330110092-005B indicated that the portion of the site along the riverbank was within the 100-year floodplain with the remainder of the site being within the 500-year floodplain of the Merrimack River.

Observation of the USGS map of the general area of the site (Nashua North Quadrangle) indicated that the elevation of the site lots sloped gradually from \pm 110 feet on the northeastern portions of the site to \pm 100 feet in proximity to the Merrimack River. Thus, the ground surface sloped gradually in a general west to southwesterly direction towards the Merrimack River. Since groundwater flow often mimics the surficial topography, the groundwater would be predicted to be flowing in a general west to southwesterly direction towards the Merrimack River.

Observation of the *Soil Survey of Hillsborough County – Eastern Part* indicated that the site was underlain by Occum fine sandy loam, high bottom. This soil is nearly level and well drained. It is on floodplains. Typically, the surface layer is dark brown fine sandy loam about nine inches thick. The subsoil is yellowish brown fine sandy loam sixteen inches thick. The substratum is yellowish brown loamy fine sand to a depth of sixty inches or more.

The *Bedrock Geologic Map of New Hampshire* by John B. Lyons, Wallace A. Bothner, Robert H. Moench, and James B. Thompson Jr. (1997) indicated that metasedimentary and metavolcanic rocks of the Merrimack Trough underlie the site. The Berwick Formation underlies the site, which is composed of purple biotite-quartz-feldspar granofels or schist and interbeds of calc-silicate granofels and minor metapelites.

The *Hydrogeology of Stratified-Drift Aquifers and Water Quality in the Nashua Regional Planning Commission Area South-Central New Hampshire* as prepared by Kenneth W. Toppin – Water Resources Investigation Report (WRIR) 86-4358. The report indicated that the groundwater elevation ranged from 100 feet to 110 feet across the site. The groundwater was depicted as flowing in a general west to southwesterly direction toward the Merrimack River, as was previously predicted. The site was underlain by a stratified drift aquifer whose saturated thickness ranged from ten to twenty feet and had a transmissivity of less than 2,000 feet squared per day. The material composing the aquifer was listed as fine-grained stratified drift comprised of sorted sediments deposited by or in glacial melt waters. Materials ranged principally from clay to fine sand. The Merrimack River was depicted as serving as a point of groundwater discharge and would thus be considered a geohydrological barrier relative to the movement of subsurface contaminants off of the site to the west bank of the Merrimack River.

II. History of the Site

The *1858 and 1892 Old Maps of Hillsborough County* displayed the area of the site as being undeveloped land. The land comprising the site was composed of lots, which were created as camp lots. Earl and Melba Burton purchased the site lots and abutting Lots 23 and 13 at various times during the 1960's. Earl Burton developed the property for commercial use in the 1960's and constructed all of the buildings currently occupying the site. The property has been in the Burton family since the early 1960's. The property was sold to J & J Realty Trust in 1986 but was foreclosed on by Melba Burton for non-payment in 1992. Melba Burton sold the property to Tolles Riverside LLC in July of 2005. The Town of Hudson owns Lot 17.

III. Environmental History Records Review

A. Federal Files Databases

The site was not listed on the National Priority List (NPL), Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS), Resource Conservation and Recovery Information System (RCRIS), Treatment Storage and Disposal (TDS) facility, or corrective action databases. There are no current occupants of the site that have a RCRA generator number. The RCRIS does list one former occupant, Moreco Trucking, at 15 Tolles Street as a hazardous waste transporter. Moreco was a general freight trucking company, which hauled some hazardous waste. Moreco had an Environmental Protection Agency (EPA) Identification Number of NHD5000018825. The current whereabouts of Moreco Trucking is not known.

No listings relative to the site were found on a review of the Emergency Release Notification System (ERNS), spills, leaking Underground Storage Tanks (UST's), or solid waste landfill databases reviewed.

B. New Hampshire State Files Databases

1. State Files for the Site

The site had a state file, which was listed on the database as being closed. This would indicate that all necessary remedial activities at the site had been completed as far as that specific environmental issue was concerned. The New Hampshire state files were reviewed at the NHDES offices by Geoserve Inc. The site had an extensive file with the NHDES. The general area of the site was developed into commercial properties in the 1960's. The files included a variety of environmental issues to include; complaints relative to discharge of an on-site dry well in 1992, as well as UST removals in 1999, drum removal, contaminated soil removal, and sand blasting grit removal have all occurred at the site. It was also stated that a large quantity of previously buried tires had also been removed from the site.

A copy of a letter from NHDES to Melba Burton documents the remedial activities at the site in 1999 relative to the drum removal. However, the letter also documents that four fifty-five gallon steel drums appeared to have had their contents dumped at the site. These drums were the property of Moreco Transportation Inc. A copy of the letter is attached to this report.

A letter report relative to the drum and soil cleanup at the property was issued by GeoInsight on February 29th, 2000. Eighteen drums, consisting of sixteen drums of asphalt emulsifier, one drum of adsorbents, and one drum of frozen asphalt emulsifier were removed from the site for disposal in December of 1999. Four additional drums, which reportedly contained waste oil, were also located and transported off-site for disposal.

Soil beneath the former drum location was excavated on December 2nd, 1999. Sand blasting grit was also excavated for disposal. Confirmatory soil samples collected following the remedial excavation displayed TPH concentrations in excess of the S-1 soil standards at two locations (Drum Area #1 and Drum Area #2). The drum locations are displayed on a Figure in the attached GeoInsight report.

GeoInsight issued another letter report on August 28th, 2000 relative to additional soil excavation relative to the drums, which were previously removed. Confirmatory soil samples were collected following additional soil removal from Drum Area #2 and Drum Area #4. Two VOC's, TCE at a concentration of 0.13 mg/kg, and PCE at a concentration of 0.06 mg/kg, were detected in the confirmatory soil sample from former Drum Area #2 which was below the Method 1 S-1 soil standards. The report also states that the floor drains in the building were closed. Copies of the GeoInsight letter reports are attached to this report. The NHDES files indicated that the only compounds found in the soil, which exceeded the applicable standards were VOC's. No records of any findings of excessive quantities of RCRA metals, PCB's, or PAH's other than those associated with asphalt or oils was reported at the site.

2. *Registered UST's*

The site was listed as previously having had UST's present. The site lot at 15 Tolles Street had previously contained a 10,000-gallon gasoline tank and a 10,000-gallon diesel fuel tank. These tanks were both single wall steel tanks. The 10,000-gallon diesel tank was removed and the 10,000-gallon gasoline tank was filled in-place in December of 1999. No contamination associated with these tanks was documented in the Tank Closure Report. There was confusion relative to which tank was closed in-place. Mr. Tom Biledieau of the NHDES reviewed the files and found an error in the initial reporting. The UST closed in-place was the gasoline tank which was adjacent to Building #1. Currently all UST's previously present at the site are listed as permanently closed. No active UST's are currently present at the site.

3. *Local File Reviews*

The Town of Hudson Assessor's Department provided tax map and property records which were utilized in this report. No records of UST's or any other environmental conditions were found listed on the tax assessment card. The assessment card did indicate that municipal sewer serviced the site. The Hudson Fire Department was interviewed relative to emergency responses, spills, fires, etc. in relation to the site and abutting properties. No files or recollection of any environmental problems on the site or abutting properties were on file with the fire department. A copy of the file review letter from the fire department is attached to this report. The Hudson Department of Health and Building had files relative to the site dating back to 1974, when Earl's Rubbish Removal occupied Building #1 of the site. Ear's Rubbish Removal was operated by Earl Burton who was the original developer of the site lots. Other commercial occupants noted in the file included; TTE Express, Moreco Transportation, John Peabody Paving, Modern Recyclers, LTD Trucking, Allard Sand Blasting, Crisp Contracting, Rainbow Auto, Giza, and Professional Paving. From the early 1990's, the Town had problems at the site relative to violations of the Town of Hudson Junkyard Ordinance relative to the stockpiling of used automobile and equipment parts, disposal and storage of construction debris, recyclables, and old tires. Various cleanups occurred at the site in the mid to late 1990's. These cleanups were overseen by the NHDES and are described in the New Hampshire State Files Section of this report.

IV. Subsurface Remediation

A. **Excavation and Sampling**

Geoserve Inc. and Tardiff Construction were present on the site on July 6th, 2006 and July 7th, 2006 to excavate the contaminated area in the vicinity of TP-15. This area is where two drums and a large deposit of wooden and some metallic debris was noted. Tardiff Construction excavated the area in the vicinity of TP-15 in a northerly direction until the wooden debris ceased to be present. Tardiff Construction then excavated in a southerly direction until the debris ceased to be present. The soil, which was intermixed with the wooden debris, displayed a slight solvent odor and the TVOV readings obtained with the Thermo Environmental Instrument Company Model 580B Organic Vapor Meter (OVM) ranged from 25 to 100 ppm.

**DES Waste Management Division
29 Hazen Drive; PO Box 95
Concord, New Hampshire 03302-0095**

**SURFACE SOIL SAMPLING PLAN/REVISION NO.1
Former Melba Burton Property
15 Tolles Street
Hudson, New Hampshire 03051**

**NHDES Site No: 199805041-H-001
Project Type: Surface Soil Sampling Plan
Geoserve Project No: 12-04-23-001**

**Prepared For:
Tolles Street LLC
170 Bridge Street
Manchester, New Hampshire 03104
Phone No: 603-669-4049
Contact Name: Skip Kelley
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April 20th, 2013

1. History of the Site

Earl and Melba Burton purchased the various site lots and adjacent lots at various times in the 1960's. Earl Burton developed the property for commercial use in the 1960's and constructed all of the buildings currently occupying the site. In the early 1970's, Earl's Rubbish Removal occupied Building No.1 and was a residential waste disposal company. From the 1960's to the present the site buildings have been occupied by numerous commercial companies including Earl's Rubbish Removal, Rainbow Auto, Giza Truck Repair, Modern Recycling, TTE Express, Acme Pressure Washing, HacTak Autobody, LTD Trucking, Joe Naples Trucking, Allard Sand Blasting, John Peabody Paving, Professional Paving, Crisp Construction, TDD Earth Tech Inc, and Moreco Transportation. None of these occupants were listed as hazardous waste generators. Moreco Transportation was listed as a general freight hauler who occasionally transported regulated wastes and had a hazardous waste transporters listing of NHD500001882/TR. Thus, the site has been occupied by several paving companies, auto and truck repair companies, recycling and trash disposal companies, and trucking companies. The paving companies often had hot asphaltic concrete from on going projects which was placed over the surface of the gravel parking areas of the site with their pavers. This asphaltic concrete was to serve as a base course material for future placement of a top course. Over time, the base course has deteriorated in some areas due to heavy trucking activity in the parking lots and roadway. The occupants of the site stored equipment, vehicles, and materials at various locations across the site. The site is under a constant state of flux dependent upon the tenants and what they store or utilize in their operations. The NHDES files for the site included complaints relative to discharge of an on-site drywell in 1992, Underground Storage Tank (UST) removals in 1999 and drum removal, contaminated soil removal, and sand blasting grit removal in 1999. The floor drains were closed under NHDES oversight and no drywell was found in a 2006 excavation of the north face of Building No.1. Thus, this is not an issue and no contamination was ever documented relative to the floor drain/drywell system. The UST's were removed in accordance with NHDES requirements and are listed as closed. No contamination was documented in the Tank Closure Reports. The 1999 remediation of on site drums and blasting sand was performed by GeoInsight under the oversight of the NHDES.

The eighteen drums removed from the site by GeoInsight in 1999 contained asphalt emulsifier and adsorbents contaminated with asphalt emulsifier. Asphalt emulsion is utilized by paving companies to assure adherence of hot asphaltic concrete to a cold asphaltic concrete joint, existing asphaltic concrete pavement, or concrete. Also, four drums of waste oil were removed from the site for off-site disposal. Soil from beneath the drum locations was excavated on December 2nd, 1999. The confirmatory soils samples collected for the drum storage area displayed Total Petroleum Hydrocarbons (TPH) in excess of the S-1 soil standards. Additional soil was excavated by GeoInsight on August 11th, 2000. Confirmatory soil samples following excavation for TPH and Volatile Organic Compounds (VOC) detected low concentrations of Trichloroethylene (TCE) and Tetrachloroethylene (PCE) below the NHS-1 soil standards.

GEOSERVE INCORPORATED

ENVIRONMENTAL ENGINEERS • MANAGERS • SCIENTISTS • CONSULTANTS • LICENSED SITE PROFESSIONALS

April 20th, 2013

New Hampshire Department of Environmental Services (NHDES)
Waste Management Division
PO Box 95
29 Hazen Drive
Concord, New Hampshire 03302-0095

RE: Response to NHDES letter relative to
Surficial Soils Sampling Plan Comments
Tolles Riverside LLC Property
15 Tolles Street
Hudson, New Hampshire
DES No: 199805041 Project No: 7970

Project No: 12-04-23-001

To Whom It May Concern:

Tolles Riverside LLC has requested that Geoserve Inc. amend its initial Surficial Soils Sampling Plan relative to the above referenced site location which was dated July 25th, 2008. In 2011, Geoserve Inc. contacted the NHDES relative to the possibility of scheduling a meeting to discuss the issues presented by NHDES relative to the Surficial Soil Sampling Plan submitted by Geoserve Inc. No response from NHDES was forthcoming. Thus, I will outline Geoserve's concerns relative to the NHDES comments and await a timely response in order that the proposed plan submitted under a separate cover can be finalized and the work completed. The comments below will be presented as outlined in the NHDES letter of January 23rd, 2009.

A. **Surficial Soils Sampling Plan (Plan 1)**

I. *Section II*

Section II of the Soils Sampling Plan as prepared by Geoserve Inc. does not say only petroleum contaminants were the primary contaminants of concern, it says that Volatile Organic Compounds (VOC's) are considered the primary contaminants of concern and lists the contaminants identified at the site as emulsified asphalt, waste oil, and a parts cleaner/waste oil mixture. The parts cleaner/waste oil mixture contained chlorinated VOC's as documented in analyses of drum contents performed by Geoserve Inc. and is consistent with groundwater analyses conducted at the site from 2003 to the latest rounds of samples on April 4th, 2012 and December 19th, 2012. Numerous groundwater samples, confirmatory soil samples, investigatory soil samples, disposal soil samples, as well as drum contents samples since 1999 have revealed no excessive metals concentrations or Polychlorinated Biphenyls (PCB) concentrations in the soil, groundwater, or liquid or solid wastes removed from the site for disposal. At a minimum, PCB's should be excluded from surficial soil sampling since no historic or analytical data exists which would indicate the on site generation, storage, or the existence of PCB's in the soil, groundwater, or solid or liquid wastes disposed of from the site.

The groundwater samples collected on December 29th, 2006 by Geoserve Inc. were erroneously reported as not being filtered prior to metal analysis. Geoserve Inc. contacted Rebecca Lawrence of NHDES relative to this issue and informed her that the samples were collected in December of 2006 during cold weather when filtering groundwater samples outside is not possible due to freeze up of the pump lines. The samples were collected in unfiltered and unpreserved containers, placed on ice, and transported to the laboratory within hours of collection where they were filtered and preserved. Thus, the groundwater samples analyzed for metals were appropriately handled. It should also be noted that even if they weren't filtered, the samples would be biased towards higher metals results and not the lower results which were detected. All other groundwater samples analyzed for metals were field filtered. No concentrations of RCRA drinking water metals have ever been detected in any of the groundwater samples analyzed from the on site monitoring and drinking water wells. All monitoring wells were tested for metals in the round of samples collected on December 19th, 2012 with no exceedances of the AGQS standards.

Three soil samples collected from test pits excavated at the site as well as from a soil stockpile created during remediation of the area of TP-14 and TP-15 were all tested for metals and no exceedances of the remediation standards were detected.

The required Polycyclic Aromatic Hydrocarbon (PAH) surface soil sample analysis serves no demonstrable purpose. There is asphaltic concrete present in the surficial soils of the site. The site has a historical usage as a base of operations for several asphalt paving companies. The asphaltic concrete which was dumped in piles was dumped in the central soil pile and has been removed from the site for disposal. Asphaltic concrete placed on the remainder of the site area were applied with a paver as a sub base material which is consistent with background usage (Item C).

The paved areas are displayed on the attached Figure 1, the Grid Soil Sampling Plan, and Figure 2, the Site Plan. It should also be noted that Buildings No.2 and No.3 were heated with wood and coal. The ashes from these heating devices were utilized in both paved and unpaved areas for ice control during the winter months also consistent with background usage (Item A). The entirety of the site has been utilized to store vehicles and trucks since the development of the site in the 1960's. Petroleum residues that are incidental to normal operation of motor vehicles are also considered background.

Most recently TDD Earth Tech Inc. who occupies a portion of the site, currently stores gravel and a large stockpile of broken asphalt for grinding and reuse at other locations. The grinding results in fine materials which are now distributed across the site. Recently, Sara Johnson of the Small Business Technical Assistance Program visited the site in May of 2010 and issued a letter to TDD Earth Tech Inc. which indicated that storage of gravel and other material outside appeared to be appropriate. Grinding and reuse of spent asphaltic concrete goes on across the site. PAH analyses at this site are a waste of time and money and will provide no useful information relative to the groundwater contamination issues present at the site. A copy of the letter from the NHDES to Mr. Tom Dinsmore of TDD Earth Tech Inc. is attached for review purposes.

In 1999, GeoInsight performed the removal of drums and blasting sand at the site. Mr. John Liptak of NHDES inspected the site and issued a letter relative to site remediation on December 14th, 1999. Mr. Liptak reported that he noted that four fifty-five gallon drums were upside down with the contents dumped on the ground. The drums were found located behind some trailer units to the south of the main garage. Reportedly, three drums were left unaccounted for based on Liptak's original inspection on December 2nd, 1999. However, a report issued by GeoInsight dated February 29th, 2000 noted that the area where these drums were located by Mr. Liptak (noted as area Drum-4) actually contained three partially full drums whose contents were transferred to one drum for testing and disposal by Total Waste Management (TWM). Thus, all drums contents were accounted for.

The eighteen drums removed from the site by GeoInsight in 1999 contained asphalt emulsifier and adsorbents contaminated with asphalt emulsifier. Also, four drums of waste oil were removed from the site for off-site disposal. A copy of the GeoInsight Site Plan is attached to this report for general reference only, since it is not to scale and provides no definitive information relative to actual locations or structural dimensions. The four drum locations all had soil excavated and transported off site for disposal on December 2nd, 1999. Sand blasting grit from Building No. 3 was also removed for off-site disposal. The black grit was excavated until clean sand was encountered. No confirmatory soil samples were collected. Confirmatory soil samples were collected from the excavated area of Drum 1 to Drum 4. The soil samples were analyzed for VOC's, Total Petroleum Hydrocarbons (TPH), and PAH. Drum 1 and Drum 3 areas displayed no detectable VOC's. VOC's were detected in Drum 2 and Drum 4 areas. All concentrations were below the applicable soil standards. No PAH's were detected in any of four drum areas tested. TPH was detected in the Drum 1, Drum 2, and Drum 4 areas. However, only the TPH concentrations detected in soil samples Drum 2 and Drum 4 were above the applicable soil standards for TPH of 10,000 mg/kg.

GEOSERVE INCORPORATED

ENVIRONMENTAL ENGINEERS • MANAGERS • SCIENTISTS • CONSULTANTS • LICENSED SITE PROFESSIONALS

August 7, 2018

Mr. Tom Walsh
Turbo Realty
15 Tolles Street
Hudson, New Hampshire

RE: Historical Review and Investigative Conclusions
Property referred to as the Former Melba Burton Property
Tolles Street in Hudson, New Hampshire

To Whom it May Concern:

The purpose of this brief letter report is to relate my involvement and observations as an environmental consultant at the above reference property. In 2003, Geoserve Inc. performed an Initial Site Investigation (ISI) for the First Colebrook Bank. The ISI indicated that Earl Burton had purchased all of the exiting site lots in the 1950's and gradually converted the properties to commercial usage as Earl's Rubbish Removal, as well as some residential structures. When Earl Burton died, Ms. Melba Burton became an absentee landlord who leased or rented the three buildings located on the site lots.

Geoserve Inc. worked for Ms. Burton and discovered groundwater contamination by Volatile Organic Compounds (VOC's) at the site. Ms. Burton sold the site to Tolles Riverside operated by Skip Kelly in 2006. Geoserve Inc. performed a Subsurface Investigation in 2006 and a comprehensive cleanup of the site discussed in a Site Investigation Report in 2007. A groundwater Management Permit was applied for in 2008. Tolles Riverside had the majority of the disabled cars, trucks, and miscellaneous debris removed from the site and continued to sample the five on site groundwater wells as required by the permit.

The permit was periodically renewed and modified by the New Hampshire Department of Environmental Services (NHDES). By the time Turbo Realty purchased the property in 2015, the groundwater sampling was reduced to monitoring wells MW-2A and MW-3 in April and September of each year. In 2016, The well sampling was cut to MW-2A only on the same twice a year interval. The last well sampling was collected in October 2017.

The current conditions at the site are the best that I have observed in all of the years which I have worked at the site. I supervised all cleanup and sampling performed at the site since 2003. Monitoring well MW-2A still displays concentrations of Tetrachloroethene and Trichloroethene above Ambient Groundwater Quality Standards (AGQS). MW-2A is located on a parcel of land owned by the Town of Hudson. Originally MW-2 was located on the property line in a roadway area but was destroyed. Permission to advance the replacement well, MW-2A, on the Town of Hudson lot was granted in 2008.

Geoserve Inc. did additional soils sampling in 2013 around the building adjacent to MW-2A. Test pits around the building displayed no visible contamination and soil samples displayed no soil results in excess of the applicable soil standards.

Based on my fifteen years of observations at the site coupled with a large quantity of soils and groundwater analytical data collected from the site would indicate that no further remedial activities will be required. Sampling of groundwater at MW-2A on the Town of Hudson lot will be required until two rounds of samples display VOC results which satisfy the AGQS. At that point, the GMP would be terminated.

Very truly yours,

GEOSERVE INC.

Edward M. Cobbett / mpm

Edward M. Cobbett
PG No. 482

EMC/mpm

EXHIBIT B















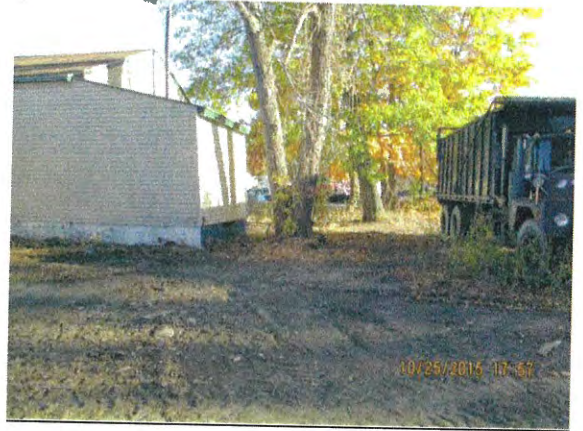
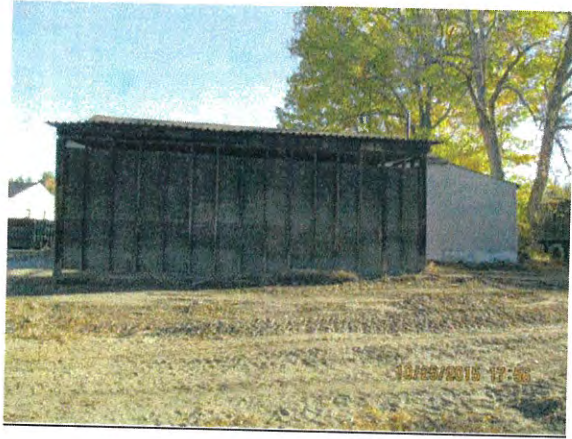








EXHIBIT C







TOWN OF HUDSON

Zoning Board of Adjustment



Charlie Brackett, Chairman Marilyn E. McGrath, Selectmen Liaison

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

MEETING MINUTES - July 23, 2020 - approved

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

Chairman Charlie Brackett called the meeting to order at 6:58 PM and read the Covid-19 meeting procedure that in conformance with the NH State of Emergency Order #12 confirmed the following: (a) providing public access to meeting by telephone and video access; (b) provided public notice on how to access the meeting; (c) mechanism to advise if there is a problem with accessing meeting and (d) should there be an issue with accessibility, the meeting will need to be adjourned and rescheduled; and (e) that voting would be by roll call vote. Mr. Brackett stated that the Board would go into recess so that the public could call in their questions or concerns during public testimony and added that if anyone cannot gain access, that the meeting would need to be adjourned. Mr. Brackett noted that specific instructions for meeting access was included in both the Applicant Notification and the Abutter Notification and were posted on the website.

Vice Chair Gary Dearborn read the Preamble into the record, identified as Attachment A of the Board's Bylaws, which included the procedure and process for the meeting, and the importance of the 30-day time period for appeal.

Mr. Brackett invited everyone to stand for the Pledge of Allegiance.

Clerk Gary Daddario took attendance. Members present were Charlie Brackett (Regular/Chair), Gary Daddario (Regular/Clerk), Gary Dearborn (Regular/Vice Chair), Brian Etienne (Regular, connected via audio and visual remote access), Leo Fauvel (Alternate) and Jim Pacocha (Regular). Excused was Marilyn McGrath, Selectman Liaison. Also present were Bruce Buttrick, Zoning Administrator, Tracy Goodwyn, Zoning Administrative Aide to handle the call-ins, and Louise Knee, Recorder (via audio and visual remote access). For the record, the Regular Members voted. Mr. Brackett disclosed that Town Counsel received a letter from the Board's newest Member that led to an education session, as Cases are not discussed out of a public meeting.

III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

1. Case 116-075 (07-23-20): Diane Bean, 13 Stoney Lane, requests a Home Occupation Special Exception for a home care and staffing agency business from her primary residence. Staffing will be conducted off-site at client's

homes or businesses. [Map 116, Lot 075-000; Zoned Residential-One (R-1); HZO Article VI, Special Exceptions, §334-24, Home Occupations].

Clerk Daddario read the Case into the record. Mr. Buttrick referenced his Staff Report dated 7/23/2020, noted that the Fire/Health Department expressed no concerns and the Town Engineer noted that the Applicant would need to satisfy any State of NH licensing requirements and obtain a Building Permit from the Town, if needed.

Wearing a mask, Diane Bean sat at the presenter's table, introduced herself as the property owner and stated that she seeks a Home Occupation Special Exception to start a home care and staffing agency from her home for elderly clients in their own homes and/or temporary staffing to licensed nursing facilities. Ms. Bean stated that she only requires a computer and a telephone to run the business and that there would be no employees or clients coming to her home.

In review of the Home Occupation Special Exception criteria, the following information was shared:

- Their home is their primary and only residence and this use would be a secondary use only
- All business activities will be carried out within the home utilizing their daughter's bedroom as an office for a desk, computer and printer
- No signs are proposed
- No alterations will be made to the home
- No exterior storage will be required
- No noise, vibrations, dust, etc. will be produced
- With no clients or employees or deliveries coming to her home there will be no increase in traffic
- No additional vehicles are needed, just her personal vehicle

Mr. Buttrick stated that he received an email from an abutter with a letter to the Board and that there was another abutter on the phone waiting to speak during public testimony.

Public testimony opened at 7:10 PM.

- (1) Barbara Doyle, 12 Stoney Lane, emailed Mr. Buttrick 7/21/20 expressing support of and best wishes to her neighbor in this endeavor.
- (2) Barbara Doyle, 12 Stoney Lane, letter to the Board dated 7/21/20 was read into the record by Mr. Buttrick. In summation, cited her knowledge of the home care operation, expressed positive support to Ms. Bean and asked the Board to grant the Special Exception.
- (3) Darlene Parkhurst, 14 Stoney Lane telephoned and stated that she lives across the street and has no problem with the proposal, noted that there will be no change to the neighborhood and wished Ms. Bean success.

Mr. Brackett called for a five-minute recess at 7:14 PM to allow anyone else wishing to call in and speak on this Case. Meeting called back to order at 7:19 PM. Mr. Buttrick reported that no additional calls were received. Public testimony closed at 7:19 PM.

Mr. Dearborn noted that the request would be completely invisible to the neighborhood and that nothing negative has been expressed. Mr. Etienne concurred and added that he is shocked to be here hearing this Case and that the Town should consider some changes in the post Covid-19 world. Mr. Brackett applauded that Applicant for coming to the Board and agreed with Mr. Etienne.

Mr. Dearborn made the motion to approve the Home Occupation Special Exception with no stipulations. Mr. Pacocha seconded the motion. Mr. Dearborn spoke to his motion stating that it would be completely invisible, that it is not often a Home Occupation Special Exception is so *not* impacting and commended the applicant for coming before the Board. Mr. Pacocha stated that all the criteria are met. Roll call vote was 5:0. Home Occupation Special Exception granted. The 30-day appeal period was noted.

2. Case 173-022 (07-23-20) (deferred from 07-09-20): Turbo Realty, LLC by Patricia M. Panciocco, One Club Acre Lane, Bedford, NH requests to amend the Variance application heard on the 5/28/20 ZBA meeting for 15 Tolles St., Hudson, NH to request a one-year extension from the previously imposed June 7, 2020 deadline, to submit a complete site plan application to the Hudson Planning Board. [Map 173, Lot 022-000; Zoned Town Residence (TR); HZO Article V, Permitted Uses, §334-21, Table of Permitted Principal Uses].

3. Case 173-012 & 014 (07-23-20) (deferred from 07-09-20): Turbo Realty, LLC by Patricia M. Panciocco, One Club Acre Lane, Bedford, NH requests a Variance at 4 & 14 Tolles St., Hudson, NH to be allowed to extend the same uses to Lots 173-012 & 014 as were granted by the ZBA on June 7, 2018 for three (3) variances at 15 & 17 Tolles St. [Map 173, Lot 012-000 and Lot 014-000; Zoned Town Residence (TR); HZO Article V, Permitted Uses, §334-21, Table of Permitted Principal Uses].

Clerk Daddario read both Cases into the record. Via remote visual and audio connection, Atty. Patricia Panciocco of Bedford, NH introduced herself as representing the Property Owner and noted that her client, Thomas Walsh, was on the telephone and available to answer questions as they arise, and that Brent Cole, PE of Granite Engineering was also connected via remote audio and visual access. Mr. Brackett stated that the Cases were continued from the May 28, 2020 meeting after Public Testimony had been received due to the hour and again from the June 25, 2020 meeting due to technical issues.

Mr. Buttrick stated that the first Case seeks a modification to the Variance granted on 6/17/2018, specifically to: Condition #3 regarding the hours of operation requesting it to be deferred to the Planning Board during Site Plan Review; and to Condition #6 that a Site Plan Review application be filed with the Planning Board within a two-year period. Mr. Buttrick noted that the original extension request was for a ninety-day period but was amended after the 5/28/2020 meeting to a full year extension (June 2021) so that a singular Site Plan could be prepared that would encompass the entire site (4 & 14 Tolles Street with 15 Tolles Street). The second Variance request seeks to have the same Uses for 4 & 14 Tolles Street that were approved in June 2018 for 15 & 17 Tolles Street.

Atty. Panciocco stated that the reason for the hours of operation request is to avoid any potential conflict with the hours of operation that would be set by the Planning Board during Site Plan Review and added that it is her client's intent to honor the hours condition until defined by the Planning Board and to avoid another visit to the ZBA. The hours of operation were written as "shall be". Mr. Buttrick noted that the ZBA conducted an interim "soft" Site Plan Review when they considered the Variance for the Uses, pending official Site Plan Review by the Planning Board. Mr. Brackett stated that he'd prefer to leave the Condition in place, as is, until, and if, the Planning Board approves a Site Plan and sets the hours of operation.

Mr. Brackett stated that he asked Town Counsel for guidance as the Board did approve specific Uses two (2) years ago by Variance and that Variance expired 6/7/2020 for failing to meet Condition #6 but understands that there were extenuating circumstances and asked Atty. Panciocco to address. Atty. Panciocco stated that the site was surveyed and preliminary engineering work was begun shortly after receiving the Use Variance and then a catastrophe occurred in one of the larger rental units in autumn 2018 that took until January 2020 to resolve and repair and then COVID-19 occurred and the State of NH went into emergency quarantine for the pandemic.

Mr. Dearborn noted that back in 2018 the Board was liberal in setting the Uses to better serve both the property owner and the neighbors. Mr. Etienne asked a question regarding procedure and the extension to 2021. Mr. Brackett responded that it is his interpretation that the extension is to also include the other parcels, 4 & 14 Tolles Street. Mr. Brackett added that back in 2018, in his opinion, that only "half the loaf" was presented and should have included 4 & 14 Tolles Street as well. Mr. Dearborn questioned if a year extension was really necessary and whether it would solve the problem.

Atty. Panciocco stated that the meetings in 2018 focused on the existing Uses in the buildings at 15 & 17 Tolles Street; that there were no buildings on 4 & 14 Tolles Street; that outside storage and parking for the units at 15 & 17 Tolles Street were granted across the street on 14 Tolles Street; that there already was and still is a 'spilling' of Uses from 15 & 17 Tolles Street onto 4 & 14 Tolles Street; that the Property Owner wants to unify all the parcels into one (1) parcel; and that the Property Owner desires that the Uses previously approved for 15 & 17 Tolles Street to be allowed on 4 & 14 Tolles Street.

Mr. Buttrick recapped the two (2) separate requests before the Board: (1) the extension for submitting a Site Plan Review application to the Planning Board for 15 Tolles Street (Condition 6); and (2) the extension of the Uses approved for 15 & 17 Tolles Street to 4 & 14 Tolles Street. Mr. Brackett agreed that the extension for Condition 6 needs immediate consideration but, in his opinion, the Board should deal with Uses to 4 & 14 Tolles Street separately now.

Atty. Panciocco disagreed and noted that the parking approved on 14 Tolles Street is subordinate to 15 & 17 Tolles Street; that when the Site Walk was done in 2018 the whole site was considered/walked; that it is better to bring one (1) Site Plan to the Planning Board; that all parcels were included in the survey; and added that the

immediate issue in 2018 was to identify the Uses because each time there was a new tenant a delay was encountered as the Town required a Change of Use / Variance.

Mr. Dearborn asked Mr. Cole, PE, for his estimate to finalize the Site Plan. Mr. Cole responded twelve (12) months is reasonable and noted that the permitting process with Shoreland Protection, NH DOT (Department of Transportation) and others would be extensive and time consuming.

Discussion continued. Mr. Brackett questioned why, two years later, Site Plan application was not prepared by 6/7/2020 for 15 & 17 Tolles Street. Atty. Panciocco restated that there were a lot of issues in 2019, the delay that occurred in autumn 2018 with the catastrophe in one of the units that was an unexpected expense her client had to incur that was not resolved until January 2020, and that S&H land surveyors were hired to survey the land and then Brent Cole, PE, was brought in for the engineering and added that it will cost her client between thirty to forty thousand dollars (\$30K - \$40K) for a full site plan. Mr. Brackett suggested that separate meetings should be set up for potential Uses for 4 & 14 Tolles Street and that 15 & 17 Tolles Street should proceed to the Planning Board for Site Plan. Atty. Panciocco stated that there were diverse land uses at the site and some of them were 'pretty ugly' and that both the property owner and the Board worked hard to identify and limit the Uses in 2018 to the benefit of the Town, the property owner and the neighbors, and added that the industrial and commercial uses pre-existed Zoning and continued to exist before the Zone was changed to TR (Town Residence).

Mr. Daddario asked if the reluctance is the extension request for a full year. Mr. Dearborn stated that the Board spent many hours deliberating and identifying which Commercial and Industrial Uses were to be allowed at 15 & 17 Tolles Street. Mr. Brackett polled the Board Members.

- Mr. Dearborn: should have meeting(s) to discuss Uses for 4 & 14 Tolles Street before *any* decision is made.
- Mr. Daddario: understands the issues for 4 & 14 Tolles Street and that it is acceptable, in his opinion, to grant an extension to 15 & 17 Tolles Street and treat the entire site in two (2) phases.
- Mr. Pacocha: 15 & 17 Tolles Street have buildings and the Board reviewed Uses for within those buildings; 4 & 14 Tolles were and are still predominantly vacant lots and the Board did not discuss Uses for 4 & 14 Tolles, just allowed usage from 15 & 17 Tolles Street to utilize a small portion across the street side on 14 Tolles Street for parking and outside storage. Buildings are proposed for 4 & 14 Tolles Street. Uses within those buildings need to be discussed. Should hear the requests separately.
- Mr. Etienne: best to go back to the drawing board and proceed with a more comprehensible plan; two years is a long time; and is inclined to deny an extension.

Mr. Brackett asked if the time frame could be reduced to three to six (3-6) months to submit a Site Plan Review application to the Planning Board for 15 & 17 Tolles Street and noted that the review of Uses for 4 & 14 Tolles Street could be identified in that same period to be followed by a second Site Plan for 4 & 14 Tolles Street to the Planning Board. Atty. Panciocco asked if shortening the time period was the central

issue. Mr. Cole joined the discussion and asked for a compromise, as it is better to present one (1) Site Plan to the Planning Board. Atty. Panciocco stated that there have been no violations and no enforcement issues since 2018 with the Town and noted that Site Plan deals with the *outside* aspects of the overall plan.

Mr. Dearborn suggested a nine (9) month time frame, until 3/31/2021, to submit a Site Plan to the Planning Board for 4 & 14 and 15 & 17 Tolles Street. Mr. Etienne stated he could support that compromise. Mr. Buttrick noted that would assume Uses for 4 & 14 Tolles Street would be addressed in that time frame. Mr. Daddario also agreed and noted that it is the Applicant's responsibility to get Uses for 4 & 14 approved in that time frame.

Discussion continued and focused on Uses. Mr. Buttrick stated that the next ZBA meeting is scheduled for 8/27/2020. Mr. Brackett stated a workshop meeting could be held with the Applicant to discuss Uses. Atty. Panciocco stated that they propose no new Uses; that there are no buildings yet on 4 & 14 Tolles Street; that 15 & 17 Tolles Street have already been merged into one (1) lot; and the plan is to consolidate 4 & 14 Tolles Street as well. Mr. Dearborn stated that he did a drive-by and, in his opinion, there seems to be more vehicles and piles of assorted materials than in 2018. Mr. Daddario noted that the units on 15 & 17 Tolles Street were permitted parking and storage on 4 & 14 Tolles Street.

Atty. Panciocco read the 2018 Commercial and Industrial Uses approved for 15 & 17 Tolles Street into the record. Mr. Brackett stated that those Uses had a history and were current Uses in 2018 at 15 & 17 Tolles Street and the proposal to merge the four (4) lots together under the same ownership does not mean that the Uses have to be the same and questioned the historical Uses on 4 & 14 Tolles Street and how 4 & 14 Tolles Street satisfies the hardship criteria.

Atty. Panciocco stated that considering the historical use, some of which were toxic that resulted in groundwater contamination to the point that people do not drink the water from the ground in that vicinity even though it has since been remediated, and the fact that the site has been cleaned up considerably by her client and that there is industrial Use to the north of 15 Tolles Street, and the rezoning of the area to TR (Town Residence) making the current use of the site non-conforming all apply to the hardship imposed on this site. Atty. Panciocco addressed the remaining Variance criteria stating that the Uses proposed for 4 & 14 Tolles Street are identical to those previously approved for 15 & 17 Tolles Street, that the lots will all be merged under one common ownership, that it is not contrary to public interest, that the Spirit of the Ordinance is met, especially with the toxic Uses abandoned, that the change to TR Zone occurred after Commercial and Industrial Uses were established on the site, that substantial justice would be done as there is no public gain with the denying of the Variance and it would be unjust to deny the Variance, that there is no harm to the public, the site would be better organized and have new construction and would have no adverse impact to surrounding property values.

Mr. Pacocha asked if the property to the south of the site was residential and Mr. Buttrick responded that south to 4 Tolles Street is not residential. Mr. Buttrick also stated that the Board received an email letter dated 7/23/2020 from abutters Edward and Pam McNulty, 8 Campbello Street. Mr. Brackett asked that it be read into the

record. Mr. Buttrick complied and the information shared included complete support of the project, no complaints, no noise violation, and appreciation for all the clean up that has been done to date.

Mr. Daddario noted that there are two (2) Cases before the Board. The first Case originally was to modify Condition #3, abdicating Hours of Operation to the Planning Board, and to extend Condition #6 for ninety-days (90 days); however, after the first meeting in May 2020, it was modified to request a one-year extension to submit a *complete* Site Plan Review application to the Planning Board. Mr. Brackett questioned if the “complete” Site Plan applies to just 15 & 17 Tolles Street or does it include 4 & 14 Tolles Street too. Mr. Daddario referenced the Town Planner’s comment that 15 & 17 Tolles Street should proceed to the Planning Board.

Mr. Daddario stated that the second Case requests the same Uses for 4 & 14 Tolles Street that were granted, by Variance, to 15 & 17 Tolles Street in 2018 and is, in his opinion, the more difficult request because: (a) regardless of common ownership, there does not appear to be any compelling reason beyond convenience for the Property Owner that the Uses have to be identical; and (b) cursory review of some of those Uses could add more risk to an already contaminated lot; and (c) that it is okay if the Uses compliment one another without being identical, and the Uses should be reviewed individually by the Board. Mr. Brackett concurred as some of the Uses could be contrary to public interest.

Mr. Buttrick confirmed that with regard to the first Case, the Variance criteria was met in 2018 and the Board is only acting on the extension request to Condition #6.

Mr. Daddario made the motion to grant relief from Condition #6 of the 2018 Variance for nine (9) months, until 3/31/2021, with the stipulation that a complete Site Plan Review application be submitted to the Planning Board for 15 & 17 Tolles Street. Mr. Dearborn seconded the motion. Both Mr. Daddario and Mr. Dearborn thought a year was too long, especially since two (2) months have already passed. Mr. Brackett stated that amidst Covid-19, a nine-month extension is appropriate. Mr. Pacocha stated that it is a proper motion. Mr. Etienne stated that he is in agreement with the nine (9) month extension; however, in his opinion and in support of the testimony, the Site Plan application should be for all the parcels and if the applicant is not ready by the deadline, the applicant should consider withdrawal. It was noted that the request only applied to 15 & 17 Tolles Street. Roll call vote was 5:0. Motion granted for a nine (9) month extension to Condition #6 of the 2018 approval.

Board next addressed the second Case, Variance to extend the Uses granted for 15 & 17 Tolles Street to 4 & 14 Tolles Street. Mr. Dearborn stated that the Board should postpone and schedule a Site Walk followed by a workshop to review the Uses. Mr. Daddario asked a procedural question, specifically whether it would be okay to grant some but not all the requested Uses or whether to deny because the Uses need not be identical. Mr. Brackett stated that there is no history, no buildings, no hardship, no past Uses and that, in his opinion, satisfying the public interest criteria is a stretch and that some of the Uses could be considered and some possibly existed in its history but does not agree that all the Uses should just be extended without individual review. Mr. Daddario added that the prior environmental impact should be looked at closely

and not exacerbated, and recognized the convenience to the Property Owner to have all the same Uses on all the parcels, but cannot endorse a blanket extension of Uses.

Mr. Brackett suggested review of the individual Variance criteria. In summary, the criteria and comments expressed included:

(1) not contrary to public interest

Mr. Brackett: not met, some of the proposed Uses never were 4 & 14 Tolles street
Mr. Daddario: is a threat to public health and safety
Mr. Dearborn: could be contrary, don't want to blindly expand
Mr. Pacocha: would be contrary, conflicts with Zoning Ordinance
Mr. Etienne: not met, would be contrary

(2) spirit of Ordinance observed

Mr. Brackett: Uses are not identical to 15 & 17 Tolles Street – 4 & 14 Tolles Street has been used in other ways
Mr. Daddario: problem is that the list is too broad for TR Zone
Mr. Dearborn: spirit not met
Mr. Pacocha: spirit not met
Mr. Etienne: not met, it is in TR Zone by Town vote, spirit is to plan for the future

(3) substantial justice done to property owner

Mr. Brackett: asking for additional Uses
Mr. Daddario: industrial Uses requested, could be harmful to public and potential environmental harm, convenience factor to the property owner does not outweigh potential harm, 4 & 14 Tolles Street could have different Uses
Mr. Dearborn: affects general public
Mr. Pacocha: have those Uses happening on 15 & 17 Tolles Street, could harm public if expanded
Mr. Etienne: what justice is there?

(4) surrounding property values not diminished

Mr. Brackett: improving looks of property will have some impact, not sure if criteria met, especially for TR Zone
Mr. Daddario: hard to imagine 4 & 14 Tolles Street becoming residential – commercial and industrial uses on 4 & 14 Tolles Street should not be as extensive as 15 & 17 Tolles Street
Mr. Dearborn: as it stands now, would not diminish, but if expanded, could impact
Mr. Pacocha: it's a wash
Mr. Etienne: hard, there are risks, one neighbor complaining, one supporting

(5) hardship

Mr. Brackett: case not made
Mr. Daddario: by statutory definition and hardship definition, criteria not met - special conditions not presented except proximity to 15 & 17 Tolles Street
Mr. Dearborn: no comment – not met

Mr. Pacocha: not sure what could be done with property, it is not suited for residences
Mr. Etienne: don't see hardship, just convenience for economic reasons

Mr. Daddario made the motion to not grant the motion. Mr. Etienne seconded the motion. Mr. Dearborn stated that he thought the Board should first conduct a Site Walk and conduct a workshop meeting prior to a decision. Roll call vote was 4:0:1, Mr. Dearborn abstained. Variance denied. The 30-day appeal period was noted.

III. REQUEST FOR REHEARING:

No requests were presented for Board consideration.

IV. REVIEW OF MINUTES: 06/25/20 & 07/09/20

Minutes of 6/25/2020:

Board reviewed the edited Minutes presented and made not further changes. Motion made by Mr. Dearborn, seconded by Mr. Pacocha and unanimously voted 5:0 to approve the 6/25/2020 Minutes as edited and presented.

Minutes of 7/9/2020:

Board reviewed the edited Minutes presented and made not further changes. Motion made by Mr. Dearborn, seconded by Mr. Pacocha and unanimously voted 5:0 to approve the 7/9/2020 Minutes as edited and presented.

V. OTHER

Bylaws - Preamble:

Mr. Buttrick referenced the mark-up of the Board's Preamble to their By-Laws that include the reference made at the last meeting to identify the role of the Selectmen Liaison and the ability to participate in Board discussion but has no vote on ZBA Cases; asked each Member to review for discussion at the next meeting; and noted that, per the By-Laws, two (2) public hearings are required.

Motion made by Mr. Dearborn, seconded by Mr. Daddario and unanimously voted 5:0 to adjourn the meeting. The ZBA 7/23/2020 meeting adjourned at 10:23 PM.

Respectfully submitted,

Charles J. Brackett, Chairman



TOWN OF HUDSON

Zoning Board of Adjustment

Charlie Brackett, Chairman Marilyn E. McGrath, Selectmen Liaison

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

Meeting Minutes – August 27, 2020 – as edited

I. CALL TO ORDER
II. PLEDGE OF ALLEGIANCE

Chairman Charlie Brackett called the meeting to order at 7:0 PM and invited everyone to stand for the Pledge of Allegiance. Mr. Brackett read the COVID-19 meeting procedure that in conformance with the NH State of Emergency Order #12 confirmed the following: (a) providing public access to meeting by telephone and video access; (b) provided public notice on how to access the meeting; (c) mechanism to advise if there is a problem with accessing meeting and (d) should there be an issue with accessibility, the meeting will need to be adjourned and rescheduled; and (e) that voting would be by roll call vote. Mr. Brackett stated that the Board would go into recess so that the public could call in their questions or concerns during public testimony and added that if anyone cannot gain access, that the meeting would need to be adjourned. Mr. Brackett noted that specific instructions for meeting access was included in both the Applicant Notification and the Abutter Notification and were posted on the website.

Mr. Buttrick read the Preamble into the record, identified as Attachment A of the Board’s Bylaws, which included the procedure and process for the meeting, and the importance of the 30-day time period for appeal.

Clerk Gary Daddario took attendance. Members present were Charlie Brackett (Regular/Chair), Gary Daddario (Regular/Clerk), Brian Etienne (Regular via audio and visual remote access), Leo Fauvel (Alternate), Jim Pacocha (Regular via audio and visual remote access) and Ethan Severance (Alternate). Excused were Gary Dearborn (Regular/Vice Chair) and Marilyn McGrath, Selectman Liaison. Also present were Bruce Buttrick, Zoning Administrator and Louise Knee, Recorder (via audio and visual remote access). For the record, Alternate Fauvel was appointed to vote with the Regular Members.

III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

1. Case 163-024 (08-27-20): Andrew Worcester, 7 Telo~~l~~ian Dr., Hudson NH, requests a Variance to allow a driveway to a garage with an encroachment of 9.0 ft. into the side yard setback leaving- 6.0 ft. where 15 feet is required. [Map 163, Lot 024-000; Zoned General One (G-1); HZO Article II, §334-6, Terminology, Definition; Building Setback; HZO Article VII, §334-27, Table of Minimum Dimensional Requirements].

48
49 Clerk Daddario read the Case into the record. Property Owners Andrew Worcester and
50 Kristina Young introduced themselves, sat at applicant's table, stated that they want
51 to construct a garage/workshop in their backyard and extend their driveway to access
52 the garage/workshop. The driveway currently ends in front of the garage and the
53 extension would need to go into the sideyard setback nine feet (9'). The
54 garage/workshop would not be visible from the road. The area is well wooded. The
55 driveway extension would only be seen by one neighbor, Thomas and Kristin
56 Couturier, 9 Telollian Drive, who were not at the meeting but did submit a letter,
57 signed and dated 8/15/202, supporting the variance to encroach the side yard
58 setback.

59
60 Mr. Worcester next addressed the Variance criteria. The information shared included:

61
62 (1) *not contrary to public interest*

- 63 • proposed driveway will not be generally visible from the other properties
- 64 • proposed driveway location is already flat so there is no need to grade the
65 land and is clear so no trees will need to be cut

66
67 (2) *spirit of Ordinance observed*

- 68 • neighbor's house is approximately fifty feet (50') from property line
- 69 • there's a large wooded area between proposed driveway and neighbor's
70 residence

71
72 (3) *substantial justice done to property owner*

- 73 • due to slopes and wetlands on property, the proposed location of the
74 garage/workshop is the only possible location and allows use of large
75 section of back lot ~~lot~~
- 76 • substantial justice done to allow access to only possible location of
77 garage/workshop

78
79 (4) *will not diminish surrounding property values*

- 80 • proposed driveway would generally be not visible from any of the
81 surrounding properties since the area is heavily wooded and the houses
82 are well separated

83
84 (5) *hardship*

- 85 • slopes and wetlands on property dictate location of proposed
86 garage/workshop
- 87 • literal enforcement would prevent construction of the proposed
88 garage/workshop

89
90 Public testimony opened at 7:13 PM. No one in the audience addressed the Board.
91 Mr. Buttrick reported that there were no call-ins. Public testimony closed at 7:17 PM.
92 It was noted that the letter received from the abutter was submitted into the record.

93
94 Mr. Daddario noted that there is some discrepancy in the documentation submitted
95 and, to be clear for the record, the encroachment would leave six feet(6') to the
96 property line. Mr. Pacocha noted that the applicant testified that the land would not
97 need to be graded for the driveway, yet the plan by Maynard & Paquette Inc dated
98 October 1985 attached to the Staff Report would indicate otherwise. Mr. Brackett

99 stated that the plan prepared by Jeffrey Land Survey, LLC, submitted with the
100 application would prevail and noted that it carries the PE (~~Physical-Professional~~
101 Engineer) stamp. Mr. Brackett added that there has been no opposition to the
102 proposed driveway encroachment and noted that it is well hidden and out of the way.
103

104 Mr. Daddario made the motion to grant the Variance as requested with two
105 stipulations: (1) that a driveway permit be obtained; and (2) that the driveway profile
106 plan be signed and stamped by a Physical Engineer (PE). Mr. Fauvel seconded the
107 motion. Mr. Daddario spoke to his motion, noted that all Variance criteria have been
108 satisfied, that a driveway is a normal use, that there is no negative impact and that
109 the hardship criteria was met properly based on the land with its wetland and steep
110 slope. Mr. Fauvel stated that his initial concern was with regard to the neighbor, but
111 that has been addressed with the letter they submitted. Mr. Fauvel stated that his
112 only other concern was that the State of NH requires Fire Department access and that
113 should be addressed in the driveway permitting process. Mr. Buttrick noted that the
114 stipulations would be addressed during the driveway permitting process and are
115 redundant. Mr. Brackett stated that the stipulations may be redundant and noted
116 that their inclusion as stipulations emphasizes their importance. Roll call vote was
117 5:0. Variance granted with two (2) stipulations. The 30-day appeal period was noted.
118

119
120 Mr. Brackett directed the Board's attention to Agenda III.#3.
121

122 3. Case 175-019 (08-27-20): Joshua P. Lanzetta, Esq. of Bruton & Berube,
123 PLLC., 601 Central Ave., Dover NH representing Christopher & Christine
124 Floyd and Rene Joyal, 78 Highland St., Hudson, NH, requests an Appeal
125 From An Administrative Decision of a Notice of Violation and Cease & Desist
126 Order dated May 18, 2020 citing violation of the 2009 variance granted by
127 the ZBA and 10 specific violations of the Hudson Zoning Ordinance. [Map
128 175, Lot 019-000; Zoned Town Residence (TR); HZO Article XV, Enforcement
129 and Miscellaneous Provisions, §334-81, Appeals].
130

131 Clerk Daddario read the Case into the record. Mr. Buttrick stated that the applicant's
132 representative emailed 8/19/2020 requesting a continuance to the 9/24/2020
133 meeting as the applicant mistakenly provided an incomplete copy of the Notice of
134 Violation dated 5/18/2020. Mr. Buttrick asked the Board to schedule a Site Walk.
135

136 Atty. Joshua Lanzetta, 601 Central Avenue, Dover, NH, introduced himself as
137 representing the applicant, confirmed the deferral and stated that there are no
138 objections to holding a Site Walk prior to or on 9/24/2020.
139

140 Mr. Daddario made the motion to grant the applicant's request to defer the Case to
141 9/24/2020. Motion seconded by Mr. Fauvel. Mr. Buttrick stated that there is a caller
142 waiting to speak to this Case and asked to check before a vote was taken. Board
143 recessed for two minutes. Mr. Buttrick reported that the caller had disconnected. Roll
144 call vote was 5:0. Case deferred to 9/24/2020. Mr. Buttrick to schedule the Site
145 Walk prior to 9/24/2020.
146

147 Mr. Brackett directed the Board's attention to the second item on the Agenda (III.2).
148

149
150 ~~1.~~ 2. Case 246-002 (08-27-20): John and Frederick Sullivan, 53 River Rd., Hudson
151 NH, requests a Variance to allow a newly installed 8' x 12' shed to remain in the
152 front yard setback 22'-10" where 50'-0" setback is required. [Map 246, Lot 002-
153 000; Zoned Residential Two (R-2); HZO Article VII, Dimensional Requirements,
154 §334-27, Table of Minimum Dimensional Requirements and §334-27.1 C, General
155 requirements].

156
157 Clerk Daddario read the Case into the record. Mr. Buttrick referenced his Staff Report
158 signed 8/19/2020 and stated that the Case is before the Board because sheds are not
159 allowed in the front setback per the Zoning Ordinance.
160

161 John W. Sullivan sat at the applicant's table and introduced himself as the property
162 owner and stated that the other property owner, his brother, Bill Sullivan, could not
163 be at the meeting due to his disabilities. Mr. Sullivan stated that they live on a State
164 (of NH) road, Route 3A, and that his house was constructed before Route 3A existed
165 and Route 3A is a busy road. His house has been hit twice by vehicles, was broken
166 into in January 2020 and added that there have been other calamities and that he is
167 also not in good health. The shed is to house the snow blower and lawn mower and
168 its location allows him to avoid having to go onto Route 3A. He also noted the incline
169 in the property and that the shed has a six-foot (6') ramp. The shed actually replaces
170 an old dilapidated metal shed and cannot be moved further from the road on account
171 of the septic system. In fact, Mr. Sullivan stated that the front of the house does not
172 face Route 3A and the shed is actually to the side of the house.
173

174 Mr. Sullivan next addressed the Variance criteria. The information shared included:
175

176 *(1) not contrary to public interest*

- 177 • the shed is placed behind 100-year old trees
- 178 • the shed has the same siding as the house
- 179 • the shed will have no impact on the essential character of the
180 neighborhood and will not physically or visually infringe on any private
181 or public rights
- 182 • the shed will not pose a threat to public health, safety or welfare

183
184 *(2) spirit of Ordinance observed*

- 185 • metal shed collapsed and was an eyesore before that, this shed is a
186 better replacement, and is in the same location
- 187 • did research at the library – the road (River Road/Route 3A) was first laid
188 in 1910 and the first deed to his house is 1880
- 189 • the front of his house does not face River Road, it faces the stream that
190 feeds into pond (Eayrs) and he has trees that are greater than three
191 hundred fifty years old (>350 y/o).
- 192 • River Road is to the side of his house
- 193 • His house is in the fifty-foot (50') setback
- 194 • The replacement shed does not conflict with the character of the
195 neighborhood, which is now mixed use with Pioneer Auto and Lockheed
196 •

197 *(3) substantial justice done to property owner*

- 198 • the closest residence is the house on the other side of the pond that the
199 owner wanted to put a chiropractic office on River Road that was before
200 the Board a few months ago
201 • the owners, who are both elderly, would be able to conveniently access
202 the shed from the existing driveway
203 • the shed cannot be moved further away from the road because of the
204 septic system
205
206 (4) *will not diminish surrounding property values*
207 • any new construction would add value to the neighborhood
208 • the shed is a relatively small structure that would blend in with the
209 surrounding landscape
210 • the tin shed was an eyesore
211
212 (5) *hardship*
213 • the existing location of the septic system prevents moving the shed
214 further away from the road
215 • the lot is long and narrow with slopes and contours; the house is in the
216 fifty foot (50') setback; and the wetland buffer to Eayrs Pond leaves little
217 room for locating the shed
218 • both property owners are elderly, he is a veteran and sick and his
219 brother is disabled
220

221 Mr. Sullivan stated that when he checked with the Assessor's Office he was told he did
222 not need a permit for any shed less than one hundred square feet (<100 SF) and
223 seeing as how this is a replacement shed, they went ahead and installed it in the same
224 location and now he is before the Board asking to keep it where it has always been.
225 Mr. Buttrick stated that if he checked with Inspectional Services (Building
226 Department) he would have been informed that a shed less than 200 square feet does
227 not need a permit but must conform with Zoning.
228

229 Public testimony opened at 7:49 PM. No one addressed the Board. Board went into
230 recess so Mr. Buttrick could check for call-ins. At 7:53 PM, Mr. Buttrick reported that
231 there were no calls. Public testimony closed at 7:54 PM.
232

233 Mr. Brackett asked if there were two issues with regard to the front setback and the
234 front of the house. Mr. Buttrick responded that it would be a stretch and that the
235 Zoning Ordinance is specific that a shed should not be in the front setback. Mr.
236 Brackett agreed that the issue is the front setback along River Road, that one purpose
237 of the setback is for potential further future road widening and noted that the majority
238 of the existing house is in the front setback. Mr. Brackett stated that the Board is
239 protective of the front setback, noted that in a recent Case the Board insisted an
240 applicant move the chiropractic office out of the front setback to avoid future road
241 widening leading to an eminent domain issue and cited Mr. Sullivan's testimony that
242 vehicles have already accidentally driven into his house and is inviting the same to
243 happen to the shed being so close to the road.
244

245 Mr. Daddario inquired if an Equitable Waiver could be considered for where the shed
246 has been placed and Mr. Buttrick responded that it does not apply as there was no
247 permit pulled and its placement was not the result of an innocent error.

248
249 Mr. Daddario noted that the shed cannot be pushed back further into the property
250 due to the location of the septic system and asked why the shed couldn't be placed at
251 the end of the driveway and closer to the house for easier access, ~~especially~~
252 ~~considering the ages of the applicants.~~ An aerial view of the property was posted and
253 discussed. It was noted that the structure at the end of the driveway and to the left is
254 a screened patio. The camper currently parked could be moved and the shed placed
255 there. Other potential shed locations were also noted. The ideal location for the shed
256 is not across the driveway by the road.

257
258 Motion made by Mr. Etienne to deny the Variance request. Mr. Daddario seconded the
259 motion. Mr. Etienne stated that it would alter the character of the neighborhood, that
260 it sets a bad precedent and that there are other locations on the property for the shed.
261 Mr. Daddario agreed that there are safer alternatives closer to the driveway and away
262 from the road and the request fails to meet any of the criteria. Roll call vote was 5:0.
263 Variance denied. The 30-day appeal period was noted. Mr. Sullivan asked what his
264 next step should be and Mr. ~~Haekett Brackett~~ suggested he discuss options with Mr.
265 Buttrick.

266
267 Mr. Brackett directed the Board's attention to Agenda item IV

268
269 ~~2. Case 175-019 (08-27-20): Joshua P. Lanzetta, Esq. of Bruton & Berube,~~
270 ~~PLLC., 601 Central Ave., Dover NH representing Christopher & Christine~~
271 ~~Floyd and Rene Joyal, 78 Highland St., Hudson, NH, requests an Appeal~~
272 ~~From An Administrative Decision of a Notice of Violation and Cease & Desist~~
273 ~~Order dated May 18, 2020 citing violation of the 2009 variance granted by~~
274 ~~the ZBA and 10 specific violations of the Hudson Zoning Ordinance. [Map~~
275 ~~175, Lot 019-000; Zoned Town Residence (TR); HZO Article XV, Enforcement~~
276 ~~and Miscellaneous Provisions, §334-81, Appeals].~~

277
278 ~~Clerk Daddario read the Case into the record. Mr. Buttrick stated that the applicant's~~
279 ~~representative emailed 8/19/2020 requesting a continuance to the 9/24/2020~~
280 ~~meeting as the applicant mistakenly provided an incomplete copy of the Notice of~~
281 ~~Violation dated 5/18/2020. Mr. Buttrick asked the Board to schedule a Site Walk.~~

282
283 ~~Atty. Joshua Lanzetta, 601 Central Avenue, Dover, NH, introduced himself as~~
284 ~~representing the applicant, confirmed the deferral and stated that there are no~~
285 ~~objections to holding a Site Walk prior to or on 9/24/2020.~~

286
287 ~~Mr. Daddario made the motion to grant the applicant's request to defer the Case to~~
288 ~~9/24/2020. Motion seconded by Mr. Fauvel. Mr. Buttrick stated that there is a caller~~
289 ~~waiting to speak to this Case and asked to check before a vote was taken. Board~~
290 ~~recessed for two minutes. Mr. Buttrick reported that the caller had disconnected. Roll~~
291 ~~call vote was 5:0. Case deferred to 9/24/2020. Mr. Buttrick to schedule the Site~~
292 ~~Walk prior to 9/24/2020.~~

293
294 ~~Mr. Brackett directed the Board's attention to the second item on the Agenda.~~

295
296 **IV. REQUEST FOR REHEARING:**

297
Not Official until reviewed, approved and signed.
As edited [GD1, GD2, es, BB]

298 Mr. Buttrick stated that a request for rehearing has been received for 4-14 Tolles
299 Street and will appear on the 9/24/2020 Agenda.

300

301 **V. PUBLIC HEARING – ByLaws amendment (2nd reading)**

302

303 Public Hearing opened at 8:21 PM. Mr. Buttrick noted the correction made from the
304 8/13/2020 meeting and that this is the second reading. No one was present in the
305 audience and there were no phone calls. Public Hearing closed at 8:23 PM. Motion
306 made by Mr. Daddario and seconded by Mr. Etienne to approve the ByLaws as
307 amended 8/13/2020. Roll call vote was 5:0. ByLaws amended.

308

309 **VI. REVIEW OF MINUTES: 8/13/20**

310

311 The edited version was presented and no further changes were made. Motion made by
312 Mr. Daddario and seconded by Mr. Etienne to approve the 8/13/2020 Minutes as
313 edited. Roll call vote was 5:0.

314

315 **VII. OTHER**

316

317 1. Site Walk for Case #175-019 at 78 Highland Street – before 9/24/2020

318

319 Mr. Buttrick stated that Town Counsel has been asked to consult with the Board at
320 6:30 PM on 9/24/2020 and suggested the Site Walk be scheduled before that date.
321 Mr. Etienne expressed his flexibility and his desire to have the Site Walk as early in
322 the morning as possible. Mr. Buttrick to coordinate.

323

324

325 Motion made by Mr. Daddario, seconded by Mr. Pacocha and unanimously voted to
326 adjourn the meeting. The ZBA 8/27/2020 meeting adjourned at 8:26 PM.

327

328 Respectfully submitted,
329 Louise Knee, Recorder