

# TOWN OF HUDSON

## Zoning Board of Adjustment



Gerald Dearborn, Chairman

Marilyn E. McGrath, Selectmen Liaison

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

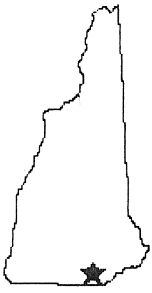
### ZONING BOARD OF ADJUSTMENT MEETING Notice of Date Change to:

**December 17, 2020**

**\*\*postponed from December 10, 2020\*\***

The Hudson Zoning Board of Adjustment has postponed/moved the previously scheduled meeting from Thursday, December 10, 2020 to **Thursday, December 17, 2020** to conduct a public meeting & hearings electronically by remote video & conference call **and physically at the Community Center, 12 Lions Ave, Hudson, NH, starting at 7:00 PM.** Please plan accordingly.

Bruce Buttrick  
Zoning Administrator



# TOWN OF HUDSON

## Zoning Board of Adjustment



Gerald Dearborn, Chairman      Marilyn E. McGrath, Selectmen Liaison

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

### MEETING AGENDA – December 17, 2020 \*\*postponed from December 10, 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 hold a public meeting & hearing electronically by remote video & conference call and physically at the **Hudson Community Center, 12 Lions Ave, on Thursday, December 17, 2020, at 7:00 PM (Postponed from Dec 10, 2020)**. Written comments can be sent in advance either by: 1) Email to [bbuttrick@hudsonnh.gov](mailto:bbuttrick@hudsonnh.gov) prior to 4:30 pm, December 17, 2020; or 2) Mail by December 14, 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 20.

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

The following items before the Board will be considered:

#### II. CALL TO ORDER

#### III. PLEDGE OF ALLEGIANCE

#### IV. PUBLIC HEARING OF SCHEDULED APPLICATION BEFORE THE BOARD:

1. **Case 230-021 (12-17-20) (deferred from 11-12-20):** Joseph G. Deluca, 21 Clement St., Nashua, NH requests an Appeal from an Administrative Decision for **6 James Way**, which deemed an existing dwelling unit above the detached garage as illegal. [Map 230, Lot 021-000; Zoned Residential-Two (R-2); HZO Article V, Permitted Uses, §334-21, Table of Permitted Principal Uses].
2. **Case 239-001 (12-17-20):** James M. Dobens, 4 Eagle Drive; Angela M. and Phillip G. Volk, 15 Fairway Drive; and Scott J. Wade, Trustee of the Scott J. Wade Revocable Trust, 1 Fairway Dr., all represented by Amy Manzelli, Esq. of BCM Environmental & Land Law, PLLC, 3 Maple St., Concord, NH requests an Appeal from an Administrative Decision of a Zoning Determination #20-106, dated October 6, 2020 regarding **43 Steele Road, Hudson, NH** citing the building setback regulation & definitions of building setback and structure per the Hudson Zoning Ordinance. [Map 239, Lot 001-000; Zoned General-One (G-1); HZO Article II, Terminology, §334-6, Definitions and Article VII, Dimensional Requirements, §334-27, Table of Minimum Dimensional Requirements].

#### IV. PUBLIC HEARING: Proposed Bylaw amendments– 1<sup>st</sup> reading.

#### V. REQUEST FOR REHEARING:

Case 152-001: Christopher Porembski, 22 Mallard Dr., Hudson, NH requests a rehearing of a request for a Home Occupation Special Exception previously denied by the ZBA on 10/22/20 to operate an internet sales of firearms business that requires a Federal License and occasional face to face sales/transactions on site. [Map 152, Lot 001-000; Zoned General One (G-1); HZO Article VI, Special Exceptions, §334-24, Home Occupations].

#### VI. REVIEW OF MINUTES:

11/12/20 edited Minutes

#### VII. OTHER:

1. Review 2021 ZBA Meeting Schedule
2. Forms – Home Occupation Special Exception
3. Discussion of Order of Business: Chairman

Bruce Buttrick  
Zoning Administrator

**REMINDER:**

**Please bring the following**  
**deferred Case Application**  
**from 11/12/20 ZBA Meeting:**

Case 230-021 (12-17-20) (deferred from 11-12-20):  
Joseph G. Deluca, 21 Clement St., Nashua, NH  
requests an Appeal from an Administrative Decision  
for **6 James Way**.

\*Supplemental handouts from 11/12/20 ZBA Mtg.—Attached\*

Handbook  
at  
11-12-20

JOSEPH G. DeLUCA  
21 Clement Street  
Nashua, New Hampshire 03060

Telephone (603) 883-7372

Page No. 01 of 01

11-12-2020

Zoning Board of Adjustment  
Town of Hudson New Hampshire  
Land Use Division  
12 School Street  
Hudson, New Hampshire 03051

Re: 06 James Way, Hudson New Hampshire.  
Second Dwelling Unit – legality issue.  
Case 230-021 ( 11-12-20 )  
Request for Deferment.

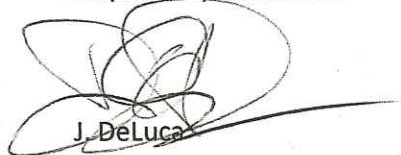
Dear, Zoning Board Members

Due to the matters in this case and upon seeking legal council a request to the zoning board is being made to grant a deferment of this case until the next board meeting scheduled for December 10<sup>th</sup> 2020. This request is due to time needed to file for a variance.

Thank You for your time and consideration regarding this matter it is very much appreciated.

to Boston En

Respectfully Submitted



J. DeLuca

cc: Mrs. Jane F. Belanger, file



Handout  
at 11-12-20

JOSEPH G. DeLUCA  
21 Clement Street  
Nashua, New Hampshire 03060

Telephone (603) 883-7372

Page No. 01 of 01

Zoning Board of Adjustment  
Town of Hudson New Hampshire  
Land Use Division  
12 School Street  
Hudson, New Hampshire 03051

11-12-2020

Re: 06 James Way, Hudson New Hampshire.  
Second Dwelling Unit – legality issue.  
Pursuit to legalize.  
Time line of events leading to appeal.

Dear, Zoning Board

Below please find below a time line that follows up to this Application for Appeal.

- Detached garage was built with second floor room above garage with a permit by previous owners Dubois.  
Permit Date June 26, 1984.
- Property purchased by Mr. Gregory S. Belanger with existing 2<sup>nd</sup> floor in-law apartment finished over garage.  
November 07, 1994 – bought with in-law apartment thought to be legal.
- Violation notice from Town of Hudson Community Development Department addressed to Mr. Gregory S. Belanger regarding illegality.  
January 10<sup>th</sup> 2003 – Date of letter.
- Demise of Mr. Gregory S. Belanger.  
November 29<sup>th</sup> 2018.
- Property inherited by mother Mrs. Jane F. Belanger.  
January 18<sup>th</sup> 2020 - Dated notice to Town of Hudson Pursuant to RSA 554:18-a.
- Property listed for sale with 2<sup>nd</sup> dwelling unit as thought to be legal due to assessment card indicating as MULTI HS.  
September 2020 – month of listing.
- Notice to a buyer's agent from Town of Hudson informing of illegal status of 2nd dwelling, copied and mailed to Mrs. Jane F. Belanger.  
September 21, 2020 - Date of letter.
- Letter by DeLuca to Town of Hudson addressing issue.  
September 30<sup>th</sup> 2020 – Date of letter.
- Notice of Appeal Application by DeLuca.  
October 26, 2020.

Should there be any additional information, or questions, please do not hesitate to ask. Again - Thank You for your time and consideration regarding this matter it is very much appreciated.

Respectfully Submitted



J. DeLuca

cc: Mrs. Jane F. Belanger, file

Handout  
at  
Mtg 11-12-20

JOSEPH G. DeLUCA  
21 Clement Street  
Nashua, New Hampshire 03060

Telephone (603) 883-7372

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11-12-2020

Zoning Board of Adjustment  
Town of Hudson New Hampshire  
Land Use Division  
12 School Street  
Hudson, New Hampshire 03051

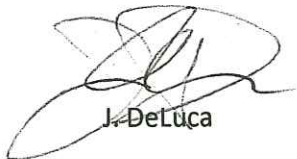
Re: 06 James Way, Hudson New Hampshire.  
Second Dwelling Unit – legality issue.  
Pursuit to legalize.

Dear, Zoning Board

Again would request to go over reasons of hardship and reason for appeal.

- Inherited a situation not created by either buyer Mr. Gregory S. Belanger or mother Mrs. Jane F. Belanger. ( No follow up by Town of Hudson to Dubois, previous owner, in regard to issue.)
- 27 + year in existence as a 2<sup>nd</sup> dwelling unit.
- No safety, environmental, parking – impact issues to surroundings or neighborhood.
- Property listed by Town of Hudson as Multi Housing, listed on market for sale with in-law.
- State of New Hampshire's allowance of in-law apartments.
- Trying to legitimize an inherited situation.
- Have someone interested in purchasing at this time with in-law.
- Working on repairs, at this time, to exterior of building - replacing rotted trim, rusted metal doors, also cleaning and painting .

Respectfully Submitted



J. DeLuca

cc: Mrs. Jane F. Belanger, file

JOSEPH G. DeLUCA  
21 Clement Street  
Nashua, New Hampshire 03060

Telephone (603) 883-7372

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12-01-2020

Mr. Bruce Buttrick  
Town of Hudson New Hampshire  
Land Use Division / Zoning Administrator  
12 School Street  
Hudson, New Hampshire 03051

TOWN OF HUDSON

DEC 01 2020

Zoning Department

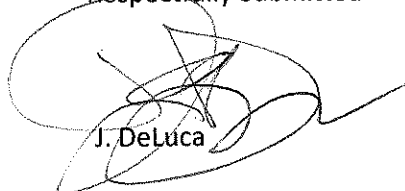
Re: 06 James Way, Hudson New Hampshire.  
Second Dwelling Unit – legality issue.  
Case 230-021 ( 11-12-20 )

Dear Mr. Buttrick

At this time the case, as mentioned above, that of an appeal from an administrative decision is being withdrawn, also at this time no variance will be sought after as well due to the fact that the property's second dwelling unit is now being sold as not being legal in contrary to the assessment card of the Town of Hudson as the property being assessed as multi-housing though code enforcement states it is illegal.

Thank You for your time, consideration and understanding in regard to this matter.

Respectfully Submitted

  
J. DeLuca

cc: Owner- Mrs. Jane F. Belanger  
Town of Hudson; Assessors Department  
File

**HUDSON ZONING BOARD OF ADJUSTMENT**

**REQUEST FOR WITHDRAWAL WORKSHEET**

On **12/17/20**, The Hudson Zoning Board of Adjustment heard case **230-021 (deferred from 11/12/20)**, Being a request by **Joseph G. Deluca, 21 Clement St., Nashua, NH requests a withdrawal for an Appeal from an Administrative Decision for 6 James Way, which deemed an existing dwelling unit above the detached garage as illegal.** [Map 230, Lot 021-000; Zoned Residential-Two (R-2); HZO Article V, Permitted Uses, §334-21, Table of Permitted Principal Uses].

**Y N** Members sitting on the Zoning Board of Adjustment vote to accept this withdrawal request without prejudice.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
Sitting Member of the Hudson ZBA

**\*\*\*NOTE\*\*\***

**The Zoning Administrator will supplement the Staff Report with further information prior to the 12/17/20 ZBA Meeting. The delay is caused by a Family Emergency. A Preliminary Report is provided in this packet.**



**Zoning Administrator's Staff Report:**

BG for BB  
12/10/2020

**Case 239-001 (12-17-20):**

James M. Dobens, 4 Eagle Drive; Angela M. and Phillip G. Volk, 15 Fairway Drive; and Scott J. Wade, Trustee of the Scott J. Wade Revocable Trust, 1 Fairway Dr., all represented by Amy Manzelli, Esq. of BCM Environmental & Land Law, PLLC, 3 Maple St., Concord, NH requests an Appeal from an Administrative Decision of a Zoning Determination #20-106, dated October 6, 2020 regarding **43 Steele Road, Hudson, NH** citing the building setback regulation & definitions of building setback and structure per the Hudson Zoning Ordinance. [Map 239, Lot 001-000; Zoned General-One (G-1); HZO Article II, Terminology, §334-6, Definitions and Article VII, Dimensional Requirements, §334-27, Table of Minimum Dimensional Requirements].

**Summary:**

The applicant is appealing Zoning Determination #20-106 (including a revised version). In short, these determinations found that neither topographical modifications nor fences are subject to building setbacks.

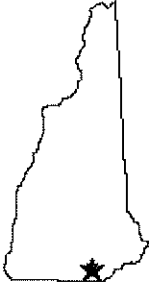
However, this appeal has many references to sections of Hudson's Land Use Regulations and no relevance to the Zoning Determinations #20-106 and #20-106R, which is the subject of appeal to the ZBA.

Many arguments in the appeal are the applicant's interpretations of the Zoning Ordinance, which I do not find to be accurate or consistent with Town practice, and the insertion of Land Use regulations, which have no standing in front of the ZBA for appeal. Only Zoning Ordinance interpretations of Chapter 334 of the Town Code, by which the Zoning Administrator has deemed (opined) in #20-106 and #20-106R are appealable to the ZBA. [*Reference §334-81 and RSA 674:331(a)(1)*].

Those referenced sections in the Land Use Regulations (in this appeal) reside with the Planning Board and the Town Planner to interpret and has no standing to be in front of the ZBA for appeal.

**Attachments:**

- A. Zoning Determination #20-106 & #20-106R1
- B. Zoning Administrator comments on appeal letter
- C. Town Planner comments
- D. Site Plan
- E. Letter from Hillwood representatives



# TOWN OF HUDSON

## Land Use Division



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

### Zoning Determination #20-106

October 6, 2020

Brian Groth – Town Planner  
Town of Hudson  
12 School St  
Hudson, NH 03051

Re: 43 Steele Rd Map 239 Lot 001-000  
**District: General One (G-1)**

Dear Brian,

**Your request:** to please review the Oct 1 2020 letter from Amy Manzelli, attorney from BCN Environmental & Land Law, in respect to her interpretations of certain sections of the Hudson Zoning Ordinance Chapter 334.

#### **Zoning Review / Determination:**

Building setbacks are regulated in Article VII Dimensional Requirements and accompanying Table of Minimum Dimensional Requirements.

Per the definitions in §334-6, regulated structures are mentioned in:

#### **BUILDING SETBACK**

*The minimum distance from the RIGHT-OF-WAY to a FRONT, SIDE or REAR LOT LINE at which a building, driveway or other regulated structure or feature may be set or constructed.*

The “screening elements” she purports to be regulated is not classified as a structure:

#### **STRUCTURE**

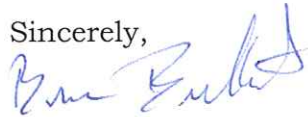
*A combination of materials assembled at a fixed location to give support or shelter, such as, but not limited to, a building, bridge, trestle, tower, framework, retaining wall, tank, tunnel, tent, stadium, reviewing stand, platform, bin, fence, sign, flagpole or portable or temporary canopy or garage.*

Furthermore, a fence is not subject to setback requirements:

§334-12F: *A fence is not subject to setback requirements.*

*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](mailto: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.*



# TOWN OF HUDSON

## Land Use Division



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

### Zoning Determination #20-106R1

November 9, 2020

Amy Manzelli, Esq.  
 BCM Environmental and Land Law, PLLC  
 3 Maple Street  
 Concord, NH 03301

RE: Application for Appeal from an Administrative Decision

Dear Attorney Manzelli:

I am in receipt of your Appeal of an Administrative Decision dated November 4, 2020 ("Appeal"). I am writing to you to offer the following in clarification of my Zoning Determination #20-106 dated October 6, 2020.

My Zoning Determination does not offer any interpretation or opinion regarding anything other than the Hudson Zoning Ordinance ("HZO"). I have not provided any determination regarding the Planning Board's Site Plan, Subdivision, or Administrative regulations.

The "screening elements" to which I was referring in my Zoning Determination are the sound wall and the berm. The sound wall is a "structure" as that term is defined under HZO § 334-6.

I do not have any construction details relative to the sound wall. However, if the sound wall is a fence, it would not be subject to the setback requirements per HZO § 334-12, F. If the sound wall is not a fence, it would be subject to a setback requirement of 15 feet per HZO § 334-27, Table of Minimum Dimensional Requirements. As stated, I do not have any construction details, and therefore, cannot offer any decision on this particular issue at present.

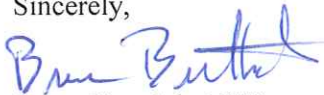
The berm is not a "structure" as that term is defined under HZO § 334-6, and therefore, is not subject to the setback requirements of the Hudson Zoning Ordinance.

Lastly, your Appeal indicates you represent "more than fifty households in Hudson." You need to identify your clients by name and address, and the properties they own in reference to the Hudson Tax Maps/Lot numbers. The information is necessary for the Zoning Board of Adjustment to identify any potential conflicts of interest, as well as, determining whether the individuals in question have standing to Appeal.

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

The missing information will not delay the processing of your Appeal, but I need you to supplement the Appeal with this information as soon as possible.

Sincerely,



*Bruce Buttrick, MCP*

Zoning Administrator/Code Enforcement Officer

(603) 816-1275

[bbuttrick@hudsonnh.gov](mailto:bbuttrick@hudsonnh.gov)

cc: Public Folder  
B. Groth, Town Planner  
D. LeFevre – Town Counsel  
File

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



Zoning Administrator Comments in **bold and boxed.**

Dear Vice-Chair Dearborn and Members of the ZBA:

By way of introduction, I represent more than fifty households in Hudson to oppose the applications for Subdivision, Site Plan & Conditional Use Permit approval (“Applications”) submitted by Hillwood Enterprises, L.P. (“Applicant”) to redevelop the golf course, property identified as Town Tax Map 234, Lot 5 and Tax Map 239, Lot 1 (“Property”) into the proposed Hudson Logistics Center (“Proposed Project”). My clients are very concerned about the redevelopment of a golf course into a high-traffic distribution center and the impact of such redevelopment on the community in Hudson.

I am writing you to appeal an Administrative Determination #20-106 of the Zoning Administrator/Code Enforcement Office, Bruce Buttrick, MCP, dated October 6, 2020, regarding 43 Steele Rd, Map 239 Lot 001-000, District: General One (G-1) (“Zoning Determination”).

***Background***

Leading up to the Zoning Determination at issue, by letter dated August 26, 2020, Mr. Buttrick issued a determination that the properties on the north side of Fairway Drive and Eagle Drive are in the R-1 Zoning District, not the G-1 Zoning District as depicted on the Zoning Map. Mr. Buttrick concluded that a drafting (overlay) mistake/oversight had been made subsequent to the 2001 vote to designate certain parcels as G-1.

On October 1, 2020, in response to this determination, I wrote the Planning Board stating that additional zoning requirements applied to the Application that were not apparent when the Application was submitted due to the inaccurate Zoning Map. Brian Groth, Town Planner for Hudson, then asked Mr. Buttrick to “review the Oct 1 2020 letter from Amy Manzelli, attorney from BCM Environmental & Land Law, in respect to her interpretations of certain sections of the Hudson Zoning Ordinance Chapter 334.” The Zoning Determination at issue followed.

**BB comment 1: “in respect to *her* interpretations of” – not the interpretation made by the Town.**

The referenced October 1, 2020 letter is attached as Exhibit A and will be referred to as the “BCM Letter” throughout this appeal. Brian Groth’s Staff Report to the Planning Board addressing the BCM Letter and the Zoning Determination is attached as Exhibit B and will be referred to as the “Planner’s Report” throughout this appeal. The Zoning Determination is attached to this appeal as Exhibit C.

***Laws at Issue***

Town of Hudson, NH. Land Use General and Administrative Requirements and Definitions

Section 276-11.1 .B(12) (“Setback Regulation”)

**BB comment 2: §276-11.1.B (12) this is a Land Use regulation, and BB made no zoning determination in reference to §276, and has no authority to do so, that resides with the Planning Board and/or Brian Groth.  
The ZBA should not be hearing any appeal of §276.**

(12) The location of all building setback lines as required by Chapter 334, Zoning, or as listed below, **whichever is more stringent**. No buildings, parking or display areas may be located in this setback. (NOTE: For this section, "residential use" shall mean any LOT which either contains a residential dwelling and/or has received SUBDIVISION or SITE PLAN approval for the purpose of constructing residential dwellings.)

(a) In the General (G) and the General-One (G-1) Zoning Districts, where a proposed industrial use abuts or is across a HIGHWAY from a residential use, there shall be a two-hundred-foot distance from the residential property line to **any improved part of the industrial development**. (Emphasis added.)

**BB comment 3: Again, applicant is referencing a Land Use regulation §276, which resides with the Planning Board**

Section 276-9 .D(1)

(D) All permits without a BOARD-approved specific expiration date shall expire after Two years from approval if no active or substantial DEVELOPMENT or construction has occurred.

(1) For subdivision plans that do not include improvements such as roads, utilities or topographical modifications, substantial development is achieved when...

**BB comment 4: Applicant is referencing a Land Use regulation §276, which resides with the Planning Board**

Town of Hudson Zoning Ordinance

Section 334-6

**BUILDING SETBACK** — The minimum distance from the RIGHT-OF-WAY to a FRONT, SIDE or REAR LOT LINE at which a building, driveway or other regulated structure or feature may be set or constructed.

**STRUCTURE** — A combination of materials assembled at a fixed location to give support or shelter, such as, but not limited to, a building, bridge, trestle, tower, framework, retaining wall, tank, tunnel, tent, stadium, reviewing stand, platform, bin, fence, sign, flagpole or portable or temporary canopy or garage.

Section 334-12. Fences and similar enclosures. [Amended 3-14-1995 by Arndt. No. 3; 3-9-2010 by Arndt. No. 6]

All fences, walls and similar enclosures, except trees, shrubs and natural vegetation, are subject to the following restrictions:

- A. No permit shall be required for any fence not exceeding eight feet in height in any residential district.
- B. A permit shall be required for any fence, including sports/ tennis enclosures, exceeding eight feet in height in any residential district.

- C. Any fence exceeding eight feet in height must be installed adjacent to or behind the front corner of the home.
- D. Any fence exceeding eight feet in height must have metal or metal reinforced support posts.
- E. Any fence, sports/tennis enclosure, other than for agricultural uses, exceeding 10 feet in height is subject to Planning Board review.
- F. A fence is not subject to setback requirements.
- G. A fence shall be erected so that the side facing adjacent property owners and/or public rights-of-way presents a reasonable appearance.
- H. No fence, hedge, planting or enclosure wall shall obstruct or interfere with roadway and/or driveway sight distances as determined by the office of the Town Engineer.
- I. Outdoor in-ground swimming pools shall be enclosed by a permanent fence which, by itself or together with other permanent appurtenant structures, surrounds the entire perimeter of the intended pool apron area. Except for intended access gates, no openings in the fence shall exist which would allow a sphere greater than four inches in diameter to pass through.
  - (1) For one-family and two-family residences, fences shall not be less than four feet in height, and access gates shall have latching and locking mechanisms installed on interior surfaces or yoke-type latches with padlock holes.
  - (2) For all other residential and nonresidential uses, fences shall be not less than six feet in height, and access gates shall have mechanisms which automatically latch and lock during off-season and closed hours and when lifeguards are off duty.

*October 1, 2020 BCM Letter*

The BCM Letter outlined the following legal argument about the requirement that a 200-foot setback be maintained between the residential property lines and features of the Proposed Project. The argument is repeated here for clarity and convenience.

**BB comment 5: Applicant is referencing a Land Use regulation §276, which resides with the Planning Board.**

As is typical, the Hudson Zoning Ordinance calls for greater setbacks when a residential district abuts a non-residential district, in recognition of the appropriateness of buffering existing homes.

**BB comment 6: Applicant is referencing a Land Use regulation §276, which resides with the Planning Board**

The applicable setback is 200 feet “from the residential property line to any improved part of the industrial development.” Setback Regulation (“In the ... General-One (G-1) Zoning Districts, where a proposed industrial use abuts ... a residential use, there shall be a two-hundred-foot distance from the residential property line to any improved part of the industrial development” (emphasis added).

**BB comment 7: Applicant is referencing a Land Use regulation §276, Planning Board purview.**

The Hudson Zoning Ordinance applies building setbacks such as this 200-foot setback to buildings, driveways, and other regulated structures or features. *See* Zoning Ordinance Definition of Building Setback.

**BB comment 8: Applicant is referencing a Land Use regulation §276, which resides with the Planning Board. The Zoning Ordinance §334 has no such requirement of 200 ft setback, please refer to both my Zoning Determinations.**

Subdivision Regulations similarly treats roadways, topographical modifications, drainage facilities, culverts, and more, as improvements subject to regulation. *See* Land Use General and Administrative Requirements and Definitions Section 276-9.D(1); Subdivision Regulations Section 289-28.

**BB comment 9: Applicant is referencing Land Use regulations §276 and §289, which resides with the Planning Board**

Given that stormwater runoff, drainage features, the berm and sound wall, and other aspects of the Proposed Project are regulated structures or features, all such aspects of the Proposed Project must be located at least 200 feet from the property lines of the homes on the north side of Fairway Drive and Eagle Drive, now known to be in the R-1 Zoning District.

**BB comment 10: Applicant is making definitions and assumptions not within the Zoning Ordinance §334 and not within my Zoning Determination.**

*October 6,2020 Zoning Determination*

In the brief Zoning Determination, Mr. Buttrick concludes that “the ‘screening elements’ [BGM] purports to be regulated is [sic] not classified as a structure” and refers to the definition of Structure in Section 334-6 of the Zoning Ordinance. He also quotes the definition of “Building Setback” in Section 334-6 of the Zoning Ordinance. He further states that “a fence is not subject to setback requirements” citing Section 334-12(F) of the Zoning Ordinance.

**BB comment 11: the “berm” is part of the topography/rearranged land surface, where a fence/wall is placed/constructed. A berm is not a structure by definition.**

*Extent of Appeal*

The Zoning Determination decides that screening elements are not structures.

The Zoning Determination does not identify what “screening elements” it addresses.

The BCM Letter did not use the terms “screening elements”, “screening”, “screen”, etc,

The BCM Letter identified several features, “stormwater runoff, drainage features, the berm and sound wall, and other aspects of the Proposed Project...” Of those, the berm and sound wall could be considered to be screening elements.

However, this is far from clear on the face of the Zoning Determination.

So, to the extent the Zoning Determination decided that the proposed berm and sound wall are not structures and/or are not subject to the 200-foot setback and/or are like fences, we appeal the Zoning Determination.

**BB comment 12: I didn't mention anything in reference to the 200 ft setback, as that is a land use regulation, and not within 334 (Zoning Ordinance. A berm is not a structure) by definition.**

We understand the Zoning Determination did not render any decision with respect to the rest of the arguments set forth on the BCM Letter, including that stormwater runoff, drainage features, and other aspects of the Proposed Project are subject to the 200-foot setback; or that Section 276-9,D(1) of the Land Use General and Administrative Requirements and Definitions and Section 289-28 of the Subdivision Regulations show that topographical modifications, drainage facilities, and more are improvements.

**BB comment 13: Applicant is referencing Land Use regulations §276 and §289, which resides with the Planning Board, not in front of the ZBA**

We also understand the Zoning Determination did not render any decision with respect to the any of the assertions in the Planner's Report, including that the berm, sound wall, and associated improvements are screening strategies called for and/or subject to Section 275-8.C(a) and (b) of the Site Plan Review Regulations.

**BB comment 14: Applicant is referencing Land Use regulations §275 and site plan reg's, which resides with the Planning Board not in front of ZBA.**

To the extent that ZBA agrees that the Administrative Determination did not render any decision with respect to the issues presented in the preceding paragraph, we do not request any action on the part of the ZBA and we will proceed accordingly with respect to these issues with the Planning Board.

**BB comment 15: correct.**



On the contrary, to the extent that the ZBA concludes that the Administrative Determinative did render any decision with respect to any of the issues presented in the preceding paragraph, we appeal those decisions.

**BB comment 16: Only what was rendered within the Zoning Determination(s) can be appealed.**

*Legal Argument*

A, Standard of Review is *De Novo*

The ZBA is authorized to decide this appeal by RSA 676:5 and 674:33.

**BB comment 17: Only within the Zoning Ordinance, no Land Use Regulations/interpretations, that would be within the Planning Board jurisdiction.**

In particular, the ZBA may “may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from ...” RSA 674:33, II.

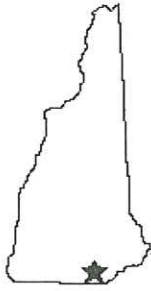
**BB comment 18: In regards to a Zoning Ordinance (determination), which is not being appealed.**

The statute continues that the ZBA “may make such order or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken.” RSA 674:33, II.

**BB comment 19: The ZBA may act as the Zoning Administrator and his authority, to interpret the Zoning Ordinance**

Based on that part of the statute, the New Hampshire Supreme Court has decided that a ZBA should review decisions using the *de novo* standard of review. See *e.g.*, *Ouellette v. Town of Kingston*, 157 N.H. 604, 612 (2008) (holding that the standard of review for a ZBA to decide an appeal from a historic commission pursuant to , RSA 674:33, II and 6756:5 was *de novo*). The *de novo* standard mean reviewing decisions anew, without any deference to the Administrative Determination.

**Final Comment 20: The remainder of the appeal letter, item “B,” in not within the purview of the ZBA input as these are land use regulations.**



# 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, AICP, Town Planner *BG*

DATE: December 9, 2020

RE: Case 239-001, Appeal of Administrative Decision

The following are my comments on the appeal made by James M. Dobens, 4 Eagle Drive; Angela M. and Phillip G. Volk, 15 Fairway Drive; and Scott J. Wade, Trustee of the Scott J. Wade Revocable Trust, 1 Fairway Dr., all represented by Amy Manzelli, Esq. of BCM Environmental & Land Law, PLLC., of an Administrative Decision of a Zoning Determination #20-106, dated October 6, 2020 regarding 43 Steele Road, Hudson, NH.

Please also refer to my letter dated October 8, 2020, which was included as Exhibit B in the appeal. I reiterate some of the points made in that letter.

### Summary

I fully concur with your Zoning Determination and find the following with respect to the appeal:

1. You did not make any determination of the applicability of the 200-foot setback found in the Land Use Regulations.
2. The extent of the appeal as described in the application appeals a determination that you did not make.

With respect to other aspects of the appeal:

1. The appeal asserts Land Use Regulations as part of the Zoning Ordinance, which they are not. Further, Land Use Regulations are under the purview of the Planning Board, not the Zoning Board of Adjustment.
2. As you and I have previously discussed, the definition of Building Setback is poorly worded.
3. The appeal incorrectly suggests that features commonly found within setbacks, are not allowed within setbacks.

### **Definition of Building Setback**

The current definition of Building Setback is poorly worded, an issue we discussed as early as the Fall of 2018 and for which we have proposed an amendment for the Planning Board's consideration.

**BUILDING SETBACK** — The minimum distance from the RIGHT-OF-WAY to a FRONT, SIDE or REAR LOT LINE at which a building, driveway or other regulated structure or feature may be set or constructed.

Observations:

1. Driveways cannot possibly be excluded from the front yard setback, it is contrary to the very nature of a driveway.
2. "Other regulated structure or feature" is ambiguous. Note that the word "structure" is lower-case, meaning it is not referencing a defined term. Therefore, the definition of structure is irrelevant to this discussion.
3. The right-of-way and front lot line are the same line; there is no distance between them. The distance between the right-of-way and a side or rear lot line creates a front yard setback only, meaning side and rear setbacks would be zero.

Simply put, the intent of building setbacks is to regulate the distance of buildings from property lines.

### **Other Regulated Features**

It appears that the appeal is arguing that if either the Land Use Regulations or Zoning Ordinance mentions a feature, it is a "regulated feature." Many things are mentioned in these documents that are not subject to building setbacks.

Specifically, the appeal refers to a passage in §276 of the Land Use Regulations, Administrative Requirements and Definitions. This section regulates the length of time an approved plan is valid.

The appeal refers to a portion of subsection 9.D, however does not include the full text. When observing the full text it is clear that there is no relationship to setbacks (emphasis is added with underline):

- D. All permits without a BOARD-approved specific expiration date shall expire after two years from approval if no active or substantial DEVELOPMENT or construction has occurred.
- (1) For subdivision plans that do not include improvements such as roads, utilities or topographical modifications, substantial development is achieved when:
- (a) The plan is recorded and MONUMENTATION is bonded or set; or
  - (b) The threshold levels of work specified by the BOARD at the time the permit is granted are met.

Roads, utilities, topographical modifications and monumentation ALL regularly occur in right-of-ways, property lines and/or setbacks.

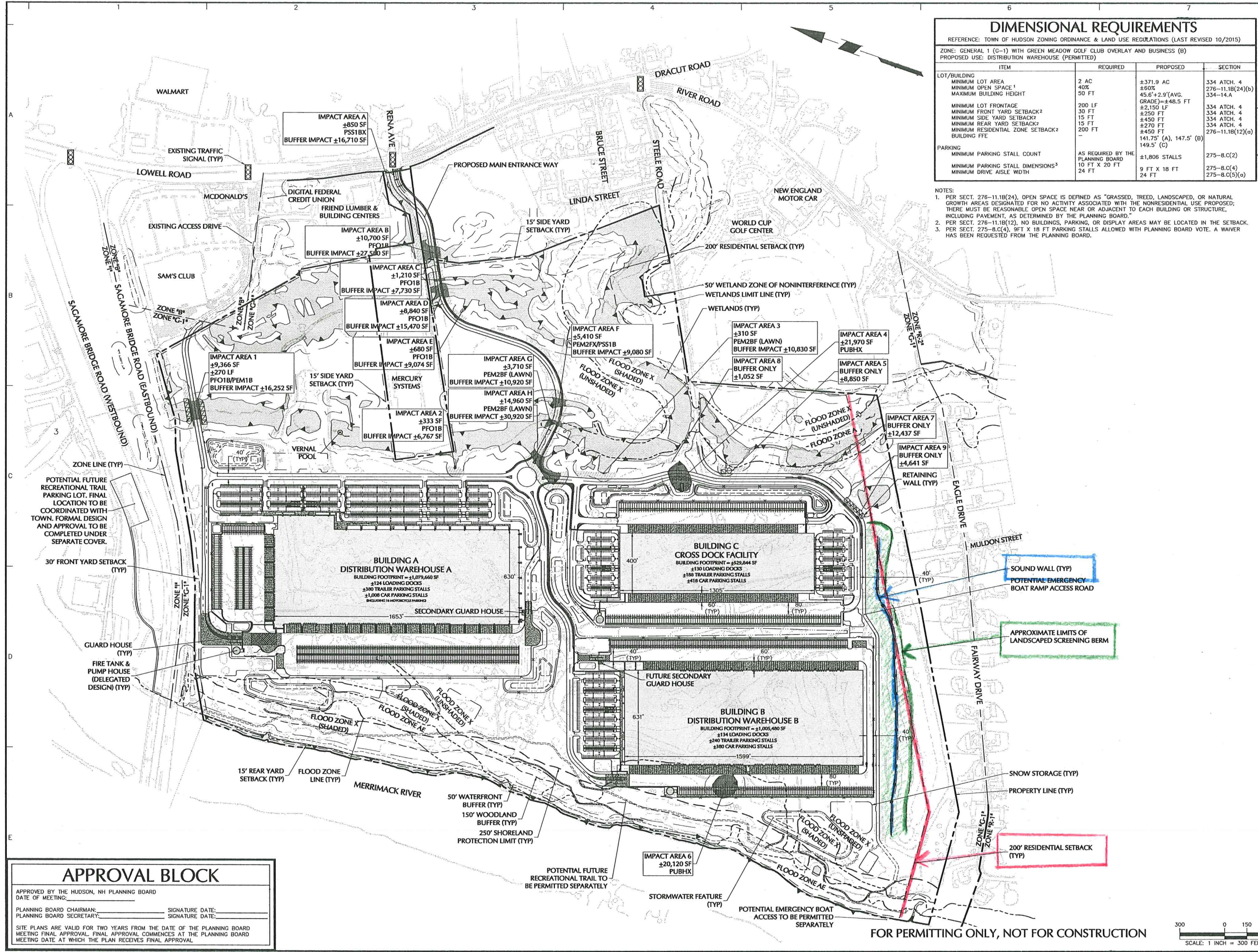
Allowing these features in setbacks is essential to basic infrastructure. Under the interpretation put forth by the appeal, every single lot in Hudson would be non-conforming and all new development activity would require a variance.

**Conclusion**

The application appeals a judgement that was not part of your Zoning Determination.

In my October 8, 2020 letter, I made a recommendation to the Planning Board that a formal determination be made on the applicability of the 200-foot setback to screening features. In my opinion, the intent of the setbacks between incompatible uses is to provide screening and buffering between them. I expect the Planning Board to address this in December.



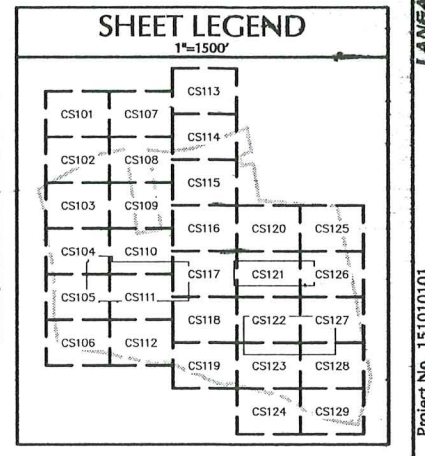


### DIMENSIONAL REQUIREMENTS

REFERENCE: TOWN OF HUDSON ZONING ORDINANCE & LAND USE REGULATIONS (LAST REVISED 10/2015)  
 ZONE: GENERAL 1 (G-1) WITH GREEN MEADOW GOLF CLUB OVERLAY AND BUSINESS (B)  
 PROPOSED USE: DISTRIBUTION WAREHOUSE (PERMITTED)

ITEM	REQUIRED	PROPOSED	SECTION
LOT/BUILDING			
MINIMUM LOT AREA	2 AC	±371.9 AC	334 ATCH. 4
MINIMUM OPEN SPACE <sup>1</sup>	40%	±60%	276-11.1B(24)(b)
MAXIMUM BUILDING HEIGHT	50 FT	45.6'+2.9'(AVG. GRADE)=±48.5 FT	334-14.A
MINIMUM LOT FRONTAGE	200 LF	±2,150 LF	334 ATCH. 4
MINIMUM FRONT YARD SETBACK <sup>2</sup>	30 FT	±250 FT	334 ATCH. 4
MINIMUM SIDE YARD SETBACK <sup>2</sup>	15 FT	±450 FT	334 ATCH. 4
MINIMUM REAR YARD SETBACK <sup>2</sup>	15 FT	±270 FT	334 ATCH. 4
MINIMUM RESIDENTIAL ZONE SETBACK <sup>2</sup>	200 FT	±450 FT	276-11.1B(12)(c)
BUILDING FFE	-	141.75' (A), 147.5' (B), 149.5' (C)	
PARKING			
MINIMUM PARKING STALL COUNT	AS REQUIRED BY THE PLANNING BOARD	±1,806 STALLS	275-B.C(2)
MINIMUM PARKING STALL DIMENSIONS <sup>3</sup>	10 FT X 20 FT	9 FT X 18 FT	275-B.C(4)
MINIMUM DRIVE AISLE WIDTH	24 FT	24 FT	275-B.C(5)(a)

- NOTES:
- PER SECT. 276-11.1B(24), OPEN SPACE IS DEFINED AS "GRASSED, TREED, LANDSCAPED, OR NATURAL GROWTH AREAS DESIGNATED FOR NO ACTIVITY ASSOCIATED WITH THE NONRESIDENTIAL USE PROPOSED; THERE MUST BE REASONABLE OPEN SPACE NEAR OR ADJACENT TO EACH BUILDING OR STRUCTURE, INCLUDING PAYMENT, AS DETERMINED BY THE PLANNING BOARD."
  - PER SECT. 276-11.1B(12), NO BUILDINGS, PARKING, OR DISPLAY AREAS MAY BE LOCATED IN THE SETBACK.
  - PER SECT. 275-B.C(4), 9 FT X 18 FT PARKING STALLS ALLOWED WITH PLANNING BOARD VOTE. A WAIVER HAS BEEN REQUESTED FROM THE PLANNING BOARD.



Date	Description	No.
11/30/20	CON. COMM. / PLANNING BOARD COMMENT RESPONSE	4
09/14/20	AOT COMMENT RESPONSE	3
09/04/20	NHDES DREDGE & FILL PERMIT RESPONSE	2
07/13/20	COMMENT RESPONSE	1

Revisions

JOHN D. IPLANTE  
 NH P.E. Lic. No. 14072

## LANGAN

Langan Engineering and Environmental Services, Inc.  
 888 Boylston Street, Ste 510  
 Boston, MA 02199

T: 617.824.9100 F: 617.824.9101 www.langan.com

Project

## HUDSON LOGISTICS CENTER

MAP No. 239, LOT No. 1  
 HUDSON

HILLSBOROUGH NEW HAMPSHIRE

Drawing Title

## OVERALL SITE PLAN

Project No.	151010101	Drawing No.	CS100
Date	04-21-2020		
Drawn By	CLR		
Checked By	NLK		

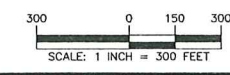
### APPROVAL BLOCK

APPROVED BY THE HUDSON, NH PLANNING BOARD  
 DATE OF MEETING: \_\_\_\_\_

PLANNING BOARD CHAIRMAN: \_\_\_\_\_ SIGNATURE DATE: \_\_\_\_\_  
 PLANNING BOARD SECRETARY: \_\_\_\_\_ SIGNATURE DATE: \_\_\_\_\_

SITE PLANS ARE VALID FOR TWO YEARS FROM THE DATE OF THE PLANNING BOARD MEETING FINAL APPROVAL. FINAL APPROVAL COMMENCES AT THE PLANNING BOARD MEETING DATE AT WHICH THE PLAN RECEIVES FINAL APPROVAL.

FOR PERMITTING ONLY, NOT FOR CONSTRUCTION







CELEBRATING OVER 30 YEARS OF SERVICE TO OUR CLIENTS

**Please Respond to the Portsmouth Office**

9 December 2020

Gerald Dearborn, Chairman  
 Town of Hudson Zoning Board of Adjustment  
 Attn: Bruce Buttrick  
 12 School Street  
 Hudson, NH 03051

Re: Appeal of Administrative Decision, Case 239-001

Dear Mr. Dearborn and Members:

This firm serves as co-counsel to Hillwood Enterprises, L.P. ("Hillwood") which is proposing the redevelopment of the Greenmeadow Golf Club into the Hudson Logistics Center on property identified as Town Tax Map 234, Lot 5 and Map 239, Lot 1 (the "Property") (the "Project") and which currently has a Site Plan Review Application, Subdivision Application, and Conditional Use Permit Application pending before the Town of Hudson's Planning Board (the "Planning Board"). The purpose of this letter is to register our objection to the Appeal of Administrative Decision dated 4 November 2020 which was filed by Attorney Amy Manzelli in the above referenced Zoning Board of Adjustment ("ZBA") case (the "Appeal").

**Executive Summary**

The Appeal revolves around interpretation and application of §276-11.1(B)(12) of the Town of Hudson's Administrative Requirements and Definitions (the "Administrative Requirements") which imposes a 200-foot buffer when a proposed industrial use abuts or is across a highway from a residential use. This requirement is not a part of the Zoning Ordinance and has not been interpreted by the Zoning Administrator in this case. Resting on this faulty premise, the Appeal conflates the Zoning Ordinance with the Administrative Requirements, conflates the authority of the ZBA with that of the Planning Board, and requests that the ZBA entertain argument and make decisions beyond the scope of the ZBA's narrow appellate jurisdiction under New Hampshire law. The ZBA has no authority to interpret, construe or apply §276-11.1(B)(12) of the Administrative Requirements, or any of the Town's Land Use Regulations, to the Project. That authority is within the exclusive purview of the Planning Board. Further, the Project complies with the building setbacks contained within the Zoning Ordinance. As such, the Appeal's arguments regarding the nature of certain Project components as "structures" or "screening" are irrelevant. The Appeal should be denied for these reasons.

DONAHUE, TUCKER & CIANDELLA, PLLC

16 Acadia Lane, P.O. Box 630, Exeter, NH 03833

111 Maplewood Avenue, Suite D, Portsmouth, NH 03801

Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253

The Planning Board will interpret and construe §276-11.1(B)(12) of the Administrative Requirements in accordance with the applicable rule of law and in the due course.

### **Factual Context and Administrative Decisions**

On 1 October 2020 Attorney Manzelli filed a letter with the Town's Planning Board which included an argument regarding the "setback" requirements applicable to the Property's southern boundary. Citing Chapter 276 of the Town Code, which is part of the Town's Land Use Regulations and not the Zoning Ordinance, Attorney Manzelli argued "[t]he applicable setback is 200 feet 'from the residential property line to any improved part of the industrial development.'"<sup>1</sup> Attorney Manzelli then concluded that given the "stormwater runoff, drainage features, [] berm and soundwall" she alleged to be within 200' of the southern property line, Hillwood's applications "do not comply" and said applications must either be denied, redesigned, or variance relief must be obtained.<sup>2</sup> To support this conclusion, Attorney Manzelli referred to the definition of "building setback" within the Zoning Ordinance, and to two unrelated provisions within the Administrative Requirements and the Town's Subdivision Regulations.<sup>3</sup>

In response to the 1 October Letter, the Town's Zoning Administrator/Code Enforcement Officer (the "Zoning Administrator") issued a Zoning Determination.<sup>4</sup> That Administrative Decision is the basis for this Appeal, and includes the following determinations:

- Building Setbacks are regulated by Article VII of the Zoning Ordinance.
- "Building Setback" is defined in the Zoning Ordinance as "[t]he minimum distance from the RIGHT-OF-WAY to a FRONT, SIDE or REAR LOT LINE at which a building, driveway or other regulated structure or feature may be set or constructed."
- The "screening elements" Attorney Manzelli refers to in her 1 October Letter are not structures based on the definition of "structure" in the Zoning Ordinance.
- Fences are not subject to setback requirements per §334-12(F) of the Zoning Ordinance.

On 8 October 2020, the Town Planner responded to Attorney Manzelli's 1 October Letter and in a letter to The Planning Board.<sup>5</sup> The Town Planner's Response stated the following in relevant part:

- The 200-foot buffer contained within the Administrative Requirements and Definitions "has been shown on the plans since the original submittal on April 21, 2020."
- Building setbacks apply to buildings, driveways and other regulated features.
- The screening elements found within the 200' Buffer on Hillwood's proposed plan are not subject to building setbacks pursuant to the Administrative Decision.

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<sup>1</sup> See Attorney Manzelli Letter dated 1 October 2020 (the "1 October Letter"). Hillwood submits its Project has complied with this requirement and has depicted the 200-foot buffer on its proposed site plans since its initial filing in April 2020. See also Administrative Requirements, §276-2 (defining "Land Use Regulations" as "[t]he Town of Hudson, NH, Land Use Regulations, consisting of Chapter 193, 200, 275, 276, and 290 of the Hudson Town Code").

<sup>2</sup> *Id.* at pg. 3.

<sup>3</sup> *Id.*

<sup>4</sup> See Zoning Determination #20-106 (the "Administrative Decision").

<sup>5</sup> See Brian Groth, AICP, Letter dated 8 October 2020 ("Town Planner Response").

- Attorney Manzelli's reliance on provisions of the Administrative Requirements and Subdivision Regulations is misplaced.
- Bounds monumentation, drainage facilities and culverts are typically located within or on the property line, setbacks and rights-of-way.
- The Town's Site Plan Review Regulations require screening between two incompatible uses.
- The berm, "sound wall" and associated improvements are screening strategies pursuant to §275-8(C)(8)(b) of the Site Plan Review Regulations, which specifically permit new plantings, grade separations, fences and other similar features.
- Landscaping, fences and other screening features are commonly permitted within the building setbacks.<sup>6</sup>

In response to the Appeal, the Zoning Administrator clarified his Administrative Decision via letter to Attorney Manzelli on 9 November 2020.<sup>7</sup> The Clarified Administrative Decision states the following:

- The Zoning Administrator's Administrative Decision does not offer any interpretation or opinion regarding anything other than the Hudson Zoning Ordinance.
- The Zoning Administrator has not provided any determination regarding the Planning Board's Site Plan Review Regulations, Subdivision Regulations, or Administrative Requirements.
- The "screening elements" referred to by the Zoning Administrator in the Administrative Decision are the "sound wall and the berm."
- The sound wall is a structure under §334-6 of the Zoning Ordinance.
- If the sound wall is a fence, it is not subject to the setback requirements of the Zoning Ordinance pursuant to §334-12(F).
- If the sound wall is not a fence, it is subject to the 15-foot setback requirement in §334-27, Table of Minimum Dimensional Requirements.
- The berm is not a structure under the Zoning Ordinance and therefore not subject to the setback requirements of the Zoning Ordinance.

### **Appeal of Administrative Decision**

Attorney Manzelli defines the extent of the Appeal as follows:

[T]o the extent the [Administrative Decision] decided that the proposed berm and sound wall are not structures and/or are not subject to the 200-foot setback and/or are like fences, we appeal the [Administrative Decision].<sup>8</sup>

The Appeal advances two express arguments as outlined in the "Legal Argument" section of the same:

- "The 200-Foot Setback Applies to Berm and Sound Wall"; and

<sup>6</sup> See Town Planner Response, pgs. 2, 3.

<sup>7</sup> See Zoning Determination #20-106R1 (the "Clarified Administrative Decision").

<sup>8</sup> We note that the Appeal also references other arguments raised by Attorney Manzelli to include interpretations of the Administrative Requirements, Subdivision Regulations and Site Plan Review Regulations. These arguments are plainly beyond the purview of the ZBA as explained below.

- “Berm and Sound Wall Subject to 200-Foot Setback Even If They Are Screening”

The first argument relies on an interpretation of §276-11.1(B)(12) of the Administrative Requirements to conclude that the berm and sound fence are structures and an “improved part of the industrial development.” The Appeal concludes that §276-11.1(B)(12)’s express application to “buildings, parking or display areas” is “irrelevant” and the 200-foot buffer under §276-11.1(B)(12) applies to the Project.<sup>9</sup>

The second and final argument contained within the Appeal also exclusively focuses on the application of the 200-foot buffer requirement of §276-11.1(B)(12), referenced by Attorney Manzelli in the Appeal as “the operative section here.”<sup>10</sup> Specifically, the second argument concludes that even if the berm and sound fence are screening elements, as referenced in the Administrative Decision and the Town Planner Response, they are still subject to the 200-foot buffer provision within the Administrative Requirements.

### **ZBA Authority and Standard of Review**

The ZBA’s jurisdiction in this case is narrowly defined under New Hampshire law. ZBA’s have the power to “[h]ear and decide appeals if it is alleged there is an error in any order, requirement, decision, or determination made by an administrative official in the enforcement of *any zoning ordinance* adopted pursuant to RSA 674:16.”<sup>11</sup> This articulation of the applicable standard is consistent with the Town of Hudson’s Zoning Ordinance.<sup>12</sup> The ZBA has no authority to interpret or apply the Town’s Administrative Requirements, Site Plan Review Regulations, or Subdivision Regulations. The authority of the Planning Board is exclusive in New Hampshire in the areas of site review and subdivision.<sup>13</sup>

While ZBAs have broad authority on subjects within their jurisdiction, they are created by statute and have only those powers that are expressly conferred upon them by statute or necessarily implied by those statutory grants.<sup>14</sup> The statutory jurisdiction vested in the ZBA to hear administrative appeals is an appellate jurisdiction, not original jurisdiction.<sup>15</sup> In this case, the ZBA’s authority is limited to reviewing alleged errors by the Zoning Administrator in his construction, interpretation or application of the *Zoning Ordinance*, and nothing more.<sup>16</sup> The ZBA has no authority to render advisory opinions regarding the Zoning Ordinance or any of the

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<sup>9</sup> See Appeal, pgs. 6, 7.

<sup>10</sup> See Appeal, pg. 8.

<sup>11</sup> RSA 674:33, I(a)(1). See also RSA 676:5, I (appeals to the ZBA must relate “matters within the [ZBA’s] powers as set forth in RSA 674:33”).

<sup>12</sup> Zoning Ordinance, §334-81 (“Any person aggrieved by a decision of the Zoning Administrator or other officer of the Town charged *with administering this chapter* may appeal to the ZBA”)(emphasis added). See also Town of Hudson Zoning Board of Adjustment’s By-Laws, §143.8(1)(b)(“Appeals from an administrative decision taken under RSA 676:5 shall be filed within 30 days . . .”).

<sup>13</sup> 15 Loughlin, New Hampshire Practice, Land Use Planning and Zoning, §22.02 (4<sup>th</sup> Ed.)*Id.* citing Levesque v. Hudson, 106 N.H. 470 (1965); Sklar Realty, Inc. v. Merrimack, 125 N.H. 321 (1984); See also RSA 677:15.

<sup>14</sup> See Peabody v. Town of Windham, 142 N.H. 488, 492 (1997); Dembiec v. Town of Holderness, 167 N.H. 130, 135 (2014).

<sup>15</sup> 15 Loughlin, §22.02; 47 Residents of Deering v. Town of Deering, 151 N.H. 795, 799 (2005) (quoting RSA 675:5, II(b)).

<sup>16</sup> RSA 676:5, II(b).

Town's Land Use Regulations or any decision that did not construe, interpret or apply the terms of the Zoning Ordinance.<sup>17</sup>

In exercising its authority regarding appeals of administrative decisions, the ZBA has all the powers of the administrative official from whom the appeal is taken, but no more.<sup>18</sup> The ZBA is authorized to "step into the shoes of the administrative official" and can grant or deny the relief requested . . . or modify the relief granted or denied by the official."<sup>19</sup>

### **Argument**

#### **1) The ZBA is without authority to interpret the Town's Administrative Requirements and the Appeal should be denied on this ground alone.**

The entirety of the Appeal revolves around interpretation and application of §276-11.1(B)(12) of the Town's Administrative Requirements which is not a part of the Zoning Ordinance and has not been interpreted by the Zoning Administrator.<sup>20</sup> As the ZBA has no jurisdiction or authority to do so under the law, the Appeal should be denied on this ground alone.

The Appeal's first argument is that the 200-foot buffer requirement of §276-11.1(B)(12) applies to the berm and sound fence. The Appeal's second argument is that the berm and sound fence are subject to the 200-foot buffer requirement of §276-11.1(B)(12) even if they are screening.<sup>21</sup>

Adjudication of these arguments necessarily requires one to construe, interpret and apply the terms of the Administrative Requirements and Site Plan Review Regulations, not the Zoning Ordinance. Specifically, one must interpret whether the berm and sound fence are "buildings, parking or display areas" and whether such features are an "improved part of the industrial development", interpretations which must be made pursuant to §276-11.1(B)(12) of the Administrative Requirements. One must also consider whether certain Project components constitute "screening" such that they should not be considered "improved parts of the industrial development," which are interpretations which must be made pursuant to the Town's Site Plan Review Regulations.<sup>22</sup>

The Administrative Requirements and Site Plan Review Regulations referenced above are not provisions of the Zoning Ordinance. They are part of the Town's Land Use Regulations which also include the Town Code Chapters regulating driveways (Chapter 193), excavation of soil (Chapter 200), subdivision of land (Chapter 289) and stormwater management (Chapter 290).<sup>23</sup> Like the other Land Use Regulations, the Administrative Requirements and Site Plan Review Regulations were adopted and are amended by the Planning Board itself pursuant to

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<sup>17</sup> 15 Loughlin, §22.02.

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> See Clarified Administrative Decision ("My Zoning Determination does not offer any interpretation or opinion regarding anything other than the Hudson Zoning Ordinance").

<sup>21</sup> See Appeal.

<sup>22</sup> See Town Planner's Response, pg. 3; Town's Site Plan Review Regulations, §275-8(C).

<sup>23</sup> See Administrative Requirements, §276-2.

RSA 675:6, and not by the Town's Legislative Body at Town Meeting pursuant to RSA 674:16, as is the case with the Zoning Ordinance.<sup>24</sup> Relief from any requirement contained within the Administrative Requirements, including §276-11.1(B)(12)(a), or Site Plan Review Regulations is provided via waiver from the Planning Board, not, as Attorney Manzelli suggests, via variance from the ZBA.<sup>25</sup>

As neither the Administrative Requirements nor the Site Plan Review Regulations are the Zoning Ordinance, the ZBA has no authority or jurisdiction to interpret any provision of the same.<sup>26</sup> Further, the Zoning Administrator made no interpretation of the Administrative Requirements and the ZBA is without authority to issue advisory opinions regarding the same.<sup>27</sup> The ZBA's jurisdiction is narrow and appellate in nature, not original.<sup>28</sup>

The Appeal does not address this issue or provide any basis or precedent supporting the ZBA's authority to interpret the Administrative Requirements, because none exists. The ZBA simply has no authority to interpret the Administrative Requirements or Site Plan Review Regulations, and the Appeal should be denied on this ground alone.

**2) The Project complies with the building setback requirements within the Zoning Ordinance and the Appeal's arguments regarding the nature of certain Project components as "structures" or "screening" are irrelevant.**

All components of the Project comply with the only building setback requirements contained within the Zoning Ordinance. As a result, the issues raised and arguments advanced in the Appeal regarding the status of certain Project components as "structures" under the Zoning Ordinance or "screening" under the Site Plan Review Regulations, are irrelevant.

In the Clarified Administrative Decision, the Zoning Administrator states that the applicable building setback requirement in the G-1 Zoning District is 15 feet.<sup>29</sup> The Zoning Administrator states further that the sound wall is a structure within the meaning of the Zoning Ordinance but that if the sound wall is a fence, it is not subject to the 15-foot setback requirement.<sup>30</sup> Finally, the Zoning Administrator states that the berm is not a structure under the Zoning Ordinance and therefore not subject to the Zoning Ordinance's setback requirements.<sup>31</sup>

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<sup>24</sup> See Administrative Requirements, §276-10; Site Plan Review Regulations, §275-2.

<sup>25</sup> See Administrative Requirements, §276-7 ("Any or all requirements of the Town of Hudson, NH, LAND USE REGULATIONS may be waived *at the sole discretion of the Planning Board . . .*") (emphasis added); See also 1 October Ltr (Attorney Manzelli improperly concludes "[a]lternatively, the Applicant has the right to pause or withdraw the Applications to seek variance from the Town of Hudson Zoning Board of Adjustment").

<sup>26</sup> See RSA 674:33; 676:5.

<sup>27</sup> See Clarified Administrative Decision ("My Zoning Determination does not offer any interpretation or opinion regarding anything other than the Hudson Zoning Ordinance"); RSA 676:5.

<sup>28</sup> 15 Loughlin, §22.02.

<sup>29</sup> See Clarified Administrative Decision. Also, Hillwood assumes for the sake of argument the applicability of the building setback to the southern boundary of the Property though it notes that by the plain language of its Zoning Ordinance definition, "building setbacks" apply to "the minimum distance from the RIGHT-OF-WAY to a FRONT, SIDE or REAR LOT LINE at which a building, driveway or other regulated structure or feature may be set or construed" and Hillwood notes further that there is no applicable right-of-way at issue in this case.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

The only building setback requirements contained within the Zoning Ordinance, and therefore the only building setback requirements subject to the ZBA's review, are located within Attachment 4 to the Zoning Ordinance.<sup>32</sup> The Table of Minimum Dimensional Requirements imposes a 15-foot side and rear building setback requirement within the G-1 Zoning District, where the Property is located. The Appeal advances no argument that the Project does not comply with the Zoning Ordinance's building setbacks because it plainly does, as confirmed by the Planning Board's peer review. These conclusions are beyond dispute.

The ZBA has no authority regarding the issue as to whether and to what extent the 200-foot buffer requirement contained within §276-11.1(B)(12)(a) of the Administrative Requirements applies to the Project because, as noted above, that requirement is not within the Zoning Ordinance. As a result, the status of certain Project components as "structures" is irrelevant, because the Project complies in all respects with the applicable 15-foot setback requirement under the Zoning Ordinance. Similarly, the issue of whether or not certain Project components constitute "screening" under the Site Plan Review Regulations such that they are not "improved parts of industrial development" under the Administrative Requirements, is totally outside the jurisdiction of the ZBA. It is the Planning Board's exclusive role to make these determinations. Should the Planning Board determine that any portion of the Project violates §276.11.1(B)(12), Hillwood will have to pursue a waiver of same.

These assertions are consistent with principles of regulatory interpretation. Courts in New Hampshire construe land use regulations according to their plain and ordinary meaning.<sup>33</sup> They interpret legislative or administrative intent from the rule as written and will not consider what the legislature or administrative agency might have said or add language that the legislature or administrative agency did not see fit to include.<sup>34</sup> When language of a regulation is plain and unambiguous, New Hampshire Courts do not look beyond the regulation for further indications of legislative or administrative intent.<sup>35</sup>

In this case, the Zoning Ordinance's building setback requirements are clear and unambiguous. They impose a 15-foot side yard setback in the G-1 Zoning District.<sup>36</sup> No one is alleging that the Project does not comply with them. Had the Town of Hudson's Legislative Body intended to incorporate the 200-foot buffer requirement contained within §276-11.1(B)(12)(a) of the Administrative Requirements into the Zoning Ordinance, it would have done so. It did not. As such, there is no legitimate argument that the ZBA has any authority to interpret, construe or apply §276-11.1(B)(12) of the Town's Administrative Requirements or the application of the same to various Project components, regardless of whether such Project components constitute "structures" under the Zoning Ordinance or "screening" under the Site Plan Review Regulations.

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<sup>32</sup> See Zoning Ordinance, Table of Minimum Dimensional Requirements.

<sup>33</sup> Girard v. Town of Plymouth, 172 N.H. 576, 582 (2019).

<sup>34</sup> Id.

<sup>35</sup> Id.

<sup>36</sup> See Zoning Ordinance, Table of Minimum Dimensional Standards.

**3) The Appeal's interpretation of §276-11.1(B)(12) of the Administrative Requirements defies common sense and would lead to absurd results.**

Though firmly beyond the scope of the ZBA's authority in this case as argued above, it deserves mentioning that the Appeal's interpretation of §276-11.1(B)(12) of the Administrative Requirements defies common sense and would lead to absurd results.

Section 276-11.1(B)(12) of the Town's Administrative Requirements establishes a 200-foot buffer where a proposed industrial use abuts or is across a highway from a residential use. If adopted by the Planning Board, which has the exclusive jurisdiction on the issue, Attorney Manzelli's interpretation of §276-11.1(B)(12) would completely prohibit any disturbance or activity whatsoever, to include driveways, boundary monuments, culverts, drainage features, etc., within the frontage area of individual lots across Hudson that far exceeds the applicable building setback provisions of the Zoning Ordinance. The very clear spirit and intent of this requirement is to establish an insulated buffer and screening between industrial and residential uses. To prohibit such screening from being sited within the buffer, as Attorney Manzelli insists should be the case, would defeat the very purpose of §276-11.1(B)(12). This interpretation is inconsistent with the Town's historic interpretation of this regulation, defies common sense, and would lead to an absurd result.<sup>37</sup> Clearly, this is not the spirit and intent of the regulation.

Hillwood will advance this argument with the Planning Board, which has exclusive jurisdiction over this issue.

**Conclusion**

We look forward to discussing our response to the Appeal at the ZBA's hearing on 17 December 2020 in accordance with the ZBA's By-Laws,<sup>38</sup> and we thank you for the Board's time and attention in this matter. Please do not hesitate to contact me with any comments or questions.

Very truly yours,

**DONAHUE, TUCKER & CIANDELLA, PLLC**



Justin L. Pasay

JLP/lmh

cc: Hillwood Enterprises, L.P. (email only)  
John Smolak, Esq. (email only)  
Brian Vaughan, Esq. (email only)

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<sup>37</sup> Girard, 172 N.H. at 582 ("We construe all parts of a [] regulation together to effectuate its overall purposes and to avoid absurd or unjust results").

<sup>38</sup> See ZBA By-Laws, §143.8(3).



TOWN OF HUDSON

NOV 10 2020

Zoning Department

APPLICATION FOR APPEAL FROM AN ADMINISTRATIVE DECISION

Zoning Board of Adjustment  
Town of Hudson

Entries in this box are to be filled out by Land Use Division personnel  
Case No. 239-001  
Date Filed 11/10/20

Name of Applicant SaveHudsonNH by BCM Law Map: 234/239 Lot: 5,34,35/1 Zoning District: G-1

Telephone Number (Home) (603) 225-2585 (Work) \_\_\_\_\_

Mailing Address BCM Environmental & Land Law, PLLC, 3 Maple Street, Concord, NH 03301

Owner Greenmeadow Golf Club Inc.

Location of Property 43 and 11 Steele Rd (lots 239-1 and 234-5) and 267 and 273 Lowell Rd (lots 234-35 and 234-34)  
(Street Address)

[Signature] \_\_\_\_\_ November 4, 2020  
Signature of Applicant Date

Not applicable \_\_\_\_\_  
Signature of Property-Owner(s) 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 appeal from an administrative decision.

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

<b>COST:</b>		Date received: <u>11/10/20</u>
Application fee:	\$130.00	
<u>43</u> Direct Abutters x \$4.10 =	<u>176.30</u>	
<u>8</u> Indirect Abutters x \$0.55 =	<u>4.40</u>	
<b>Total amount due:</b>	<b>\$ <u>310.70</u></b>	Amt. received: \$ <u>310.70</u>
		Receipt No.: <u>618,046</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

chk#  
4331

# 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
AM	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>
AM	Before making the 13 copies, please review the application with the Zoning Administrator or staff.	<u>TG</u>
AM	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>
N/A	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.)	11/12/20 pending per B. Buttrick
AM	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>
AM	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>
AM*	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. *The decision appealed from is attached.	<u>TG</u>
N/A	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>





December 4, 2020



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

RE: 2020-11-04 Appeal to Zoning Board of Adjustment

Dear Vice-Chair Dearborn and Members of the ZBA:

Enclosed for filing in the above-referenced matter please find four (4) original Application forms signed by each of Angela Volk, Phil Volk, Jim Dobens, and Scott Wade, respectively. Please add these Applications to our previously-submitted materials.

If you have questions or concerns, please do not hesitate to contact us.

Very truly yours,

Nicole M. Manteau  
Firm Administrator  
(603) 225-2585  
[manteau@nhlandlaw.com](mailto:manteau@nhlandlaw.com)

/nmm  
Enclosures

TOWN OF HUDSON  
 DEC 08 2020  
 Zoning Department

APPLICATION FOR APPEAL FROM AN  
 ADMINISTRATIVE DECISION

To: Zoning Board of Adjustment  
 Town of Hudson

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

Case No. \_\_\_\_\_

Date Filed \_\_\_\_\_

Name of Applicant Angela & Phil Volk, Jim Dobens, and Scott Wade Map: 234/239<sup>5,34,</sup> Lot: 35/1 Zoning District: G-1

Telephone Number (Home) (603) 225-2585 (Work) \_\_\_\_\_

Mailing Address BCM Environmental & Land Law, PLLC, 3 Maple Street, Concord, NH 03301

Owner Greenmeadow Golf Club, Inc.

Location of Property 43 and 11 Steele Rd (lots 239-1 and 234-5) and 267 and 273 Lowell Rd (lots 234-35 and 234-34)  
 (Street Address)

Angela M. Volk  
 Signature of Applicant

11/19/20  
 Date

\_\_\_\_\_  
 Signature of Property-Owner(s)

\_\_\_\_\_  
 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 appeal from an administrative decision.

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

**COST:**

Application fee:	<u>\$130.00</u>	Date received: _____
____ Direct Abutters x \$4.05 =	_____	
____ Indirect Abutters x \$0.55 =	_____	
<b>Total amount due:</b>	<u>\$ _____</u>	Amt. received: \$ _____
		Receipt No.: _____

Received by: \_\_\_\_\_

By determination of the Zoning Administrator or Building Inspector, the following Departmental review is required:

\_\_\_\_\_ Engineering    \_\_\_\_\_ Fire Department    \_\_\_\_\_ Health Officer    \_\_\_\_\_ Planner

**PLOT PLAN-**

- N/A 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)        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.**

Angela M. Volk  
Signature of Applicant(s)

11/19/20  
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.

TOWN OF HUDSON

DEC 08 2020

Zoning Department

APPLICATION FOR APPEAL FROM AN ADMINISTRATIVE DECISION

To: Zoning Board of Adjustment  
Town of Hudson

Entries in this box are to be filled out by Land Use Division personnel  
Case No. \_\_\_\_\_  
Date Filed \_\_\_\_\_

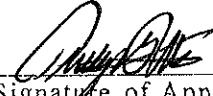
Name of Applicant Angela & Phil Volk, Jim Dobens, and Scott Wade Map: 234/239 Lot: 35/1 Zoning District: G-1 5,34,

Telephone Number (Home) (603) 225-2585 (Work) \_\_\_\_\_

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(Street Address)

  
Signature of Applicant

11/19/2020  
Date

Signature of Property-Owner(s)

Date

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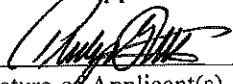
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Application fee:	<u>\$130.00</u>	
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		Receipt No.: _____
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- i)        The plot plan shall indicate all parking spaces and lanes, with dimensions.

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

  
Signature of Applicant(s)

11/19/2020  
Date

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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.

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TOWN OF HUDSON  
 DEC 08 2020  
 Zoning Department

APPLICATION FOR APPEAL FROM AN  
 ADMINISTRATIVE DECISION

To: Zoning Board of Adjustment  
 Town of Hudson

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

Case No. \_\_\_\_\_

Date Filed \_\_\_\_\_

Name of Applicant Angela & Phil Volk, Jim Dobens, and Scott Wade Map: 234/239 Lot: 35/1 <sup>5,34,</sup> Zoning District: G-1

Telephone Number (Home) (603) 225-2585 (Work) \_\_\_\_\_

Mailing Address BCM Environmental & Land Law, PLLC, 3 Maple Street, Concord, NH 03301

Owner Greenmeadow Golf Club, Inc.

Location of Property 43 and 11 Steele Rd (lots 239-1 and 234-5) and 267 and 273 Lowell Rd (lots 234-35 and 234-34)  
 (Street Address)

Jim M. Dobens  
 Signature of Applicant

11/17/2020  
 Date

\_\_\_\_\_  
 Signature of Property-Owner(s)

\_\_\_\_\_  
 Date

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<b>COST:</b>		Date received: _____
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_____ Direct Abutters x \$4.05 =	_____	
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<b>Total amount due:</b>	<u>\$</u> _____	Amt. received: \$ _____
		Receipt No.: _____
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**PLOT PLAN-**

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- 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.**

James M. Dolan  
Signature of Applicant(s)

11/17/2020  
Date

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TOWN OF HUDSON  
 DEC 08 2020  
 Zoning Department

APPLICATION FOR APPEAL FROM AN  
 ADMINISTRATIVE DECISION

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

Case No. \_\_\_\_\_

Date Filed \_\_\_\_\_

To: Zoning Board of Adjustment  
 Town of Hudson

Name of Applicant Angela & Phil Volk, Jim Dobens, and Scott Wade Map: 234/239 Lot: 35/1 <sup>5,34,</sup> Zoning District: G-1

Telephone Number (Home) (603) 225-2585 (Work) \_\_\_\_\_

Mailing Address BCM Environmental & Land Law, PLLC, 3 Maple Street, Concord, NH 03301

Owner Greenmeadow Golf Club, Inc.

Location of Property 43 and 11 Steele Rd (lots 239-1 and 234-5) and 267 and 273 Lowell Rd (lots 234-35 and 234-34)  
 (Street Address)

Scott Wade  
 Signature of Applicant

11/16/2020  
 Date

\_\_\_\_\_  
 Signature of Property-Owner(s)

\_\_\_\_\_  
 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 appeal from an administrative decision.

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

**COST:**

Application fee:	<u>\$130.00</u>	Date received: _____
_____ Direct Abutters x \$4.05 =	_____	
_____ Indirect Abutters x \$0.55 =	_____	
<b>Total amount due:</b>	<u>\$ _____</u>	Amt. received: \$ _____
		Receipt No.: _____

Received by: \_\_\_\_\_

By determination of the Zoning Administrator or Building Inspector, the following Departmental review is required:

\_\_\_\_\_ Engineering \_\_\_\_\_ Fire Department \_\_\_\_\_ Health Officer \_\_\_\_\_ Planner

**PLOT PLAN-**

- N/A 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) 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)

11/14/2020  
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.

# 43 Steele Rd Abutters

Map 239 Lot 001 Sublot 000

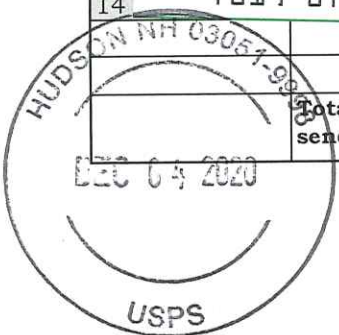
Revised Abutters List  
Notices mailed 12/4/20

Direct/ Indirect	ParcelID	Str Num	Str Name	Owner1	Owner2	Owner3	Billing Address	City	State	Zip
D	239-001-000	43	STEELE RD	GREENMEADOW GOLF CLUB INC			55 MARSH ROAD	HUDSON	NH	03051
D	234-005-000	11	STEELE RD	GREENMEADOW GOLF CLUB INC			55 MARSH ROAD	HUDSON	NH	03051
D	228-004-000	7	WAL-MAR	SAM'S RE BUSINESS TRUST	C/O WAL-MART PROP TAX DEPT.		PO BOX 8050 MS 0555	BENTONVILLE	AR	72716-8050
I	228-001-000	261	LOWELL RD	M.R.J. REALTY TRUST	JAFFE,MARK/LAMPERT, ALAN TRSTS		261 LOWELL ROAD	HUDSON	NH	03051
D	234-035-000	267	LOWELL RD	267 LOWELL RD HUDSON, LLC	C/O RAM MANAGEMENT CO., LLC		200 US ROUTE ONE SUITE 200	SCARBOROUGH	ME	04070
D	240-006-000	12	EAGLE DR	DIPILATO, JOSEPH M.	DIPILATO, LAUREN E.		12 EAGLE DRIVE	HUDSON	NH	03051
D	240-005-000	10	EAGLE DR	NOONE, BRIAN C.			10 EAGLE DRIVE	HUDSON	NH	03051
D	240-004-000	8	EAGLE DR	FONTAINE, JONATHAN	FONTAINE, LAURA L.		8 EAGLE DRIVE	HUDSON	NH	03051
D	240-003-000	6	EAGLE DR	PROULX, CRAIG C.	PROULX, COURTNEY M.		6 EAGLE DRIVE	HUDSON	NH	03051
D	240-002-000	4	EAGLE DR	DOBENS, JAMES M.	DOBENS, MARIE A.		4 EAGLE DRIVE	HUDSON	NH	03051
D	240-001-000	2	EAGLE DR	WALSH, JOANNE E			2 EAGLE DRIVE	HUDSON	NH	03051
D	240-013-001	33	RIVER RD	DWARKAMAI, INC			1167 LAKEWOOD CIR.	NAPERVILLE	IL	60540
D	246-041-000	1	FAIRWAY I	WADE, SCOTT J., TR.	SCOTT J. WADE REVOCABLE TRUST		1 FAIRWAY DRIVE	HUDSON	NH	03051
D	246-040-000	3	FAIRWAY I	MARSCH, WILLIAM H., TR	MARSCH, MARTHA E., TR	MARSCH FAMILY TRUST	3 FAIRWAY DRIVE	HUDSON	NH	03051
D	246-039-000	5	FAIRWAY I	MULLIGAN, CHRISTOPHER D.	SORGENFREI, DIANE K.		5 FAIRWAY DRIVE	HUDSON	NH	03051
D	246-038-000	7	FAIRWAY I	UBELE, SCOTT M.	UBELE, KIMBERLY M.		7 FAIRWAY DR.	HUDSON	NH	03051
D	246-037-000	9	FAIRWAY I	GOSELIN, DAVID R.	BATES-GOSSELIN, SUSAN		9 FAIRWAY DRIVE	HUDSON	NH	03051
D	246-036-000	11	FAIRWAY I	SAKATI, SURRI D.	SAKATI, KATHLEEN M.		11 FAIRWAY DRIVE	HUDSON	NH	03051
D	245-017-000	13	FAIRWAY I	MONK, TIMOTHY A.	MONK, MU-JANE L.		13 FAIRWAY DR.	HUDSON	NH	03051
D	245-016-000	15	FAIRWAY I	VOLK, PHILLIP G.	VOLK, ANGELA M.		15 FAIRWAY DRIVE	HUDSON	NH	03051
D	245-015-000	17	FAIRWAY I	COSTELLO, ROBERT J.	COSTELLO, BARBARA		17 FAIRWAY DRIVE	HUDSON	NH	03051
D	245-014-000	19	FAIRWAY I	LEONE, LEONARD J.	LEONE, JOHANNAH M.		19 FAIRWAY DRIVE	HUDSON	NH	03051
D	245-013-000	21	FAIRWAY I	KING, JOHN	KING, SAMANTHA		21 FAIRWAY DRIVE	HUDSON	NH	03051
D	245-012-000	23	FAIRWAY I	LEBOURDAIS, RICHARD R.	LEBOURDAIS, AUDREY S.		23 FAIRWAY DRIVE	HUDSON	NH	03051
D	234-001-000	9	RIVER RD	STEELE FARM LLC			2 FRIEL GOLF ROAD	HUDSON	NH	03051
D	240-013-000	27	RIVER RD	BRACCIO, VINCENT F.	BRACCIO, DEBRA		27 RIVER RD.	HUDSON	NH	03051
Applicant Rep.				Amy Manzelli, Esq.	BCM ENVIRONMENTAL & LAND LAW, PLLC		3 MAPLE STREET	CONCORD	NH	03301

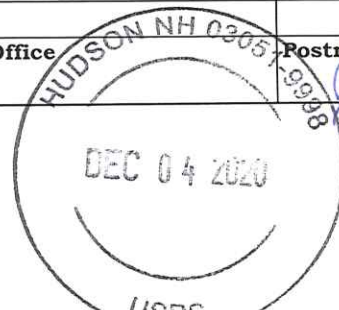
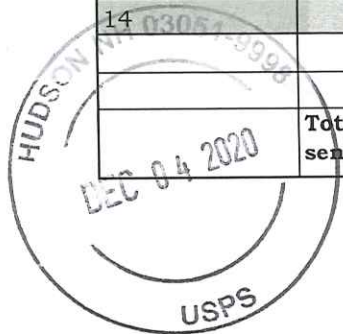
	#	cost	
Direct-Certified	25	\$4.10	\$102.50
Indirect-1st class	1	\$0.55	\$0.55
Applicant-Certified	1	\$4.10	\$4.10
Application Fee			\$130.00
<b>Total</b>			<b><u>\$237.15</u></b>



SENDER:	TOWN OF HUDSON 12 SCHOOL STREET HUDSON, NH 03051	US POSTAL SERVICE - CERTIFIED MAIL	Case# 239-001 Appeal Admin. Decision 43 Steele Rd Map 239/Lot 001-000 1 of 2
	ARTICLE NUMBER	Name of Addressee, Street, and post office address	12/17/2020 ZBA Meeting
1	7019 0700 0000 2994 7577	✓ BCM ENVIRONMENTAL & LAND LAW, PLLC 3 MAPLE STREET, CONCORD, NH 03301	APPLICANT NOTICE MAILED
2	7019 0700 0000 2994 7591	✓ SAM'S RE BUSINESS TRUST; C/O WAL-MART PROP TAX DEPT. PO BOX 8050 MS 0555, BENTONVILLE, AR 72716-8050	ABUTTER NOTICE MAILED
3	7019 0700 0000 2994 7683	✓ 267 LOWELL RD HUDSON, LLC; C/O RAM MANAGEMENT CO., LLC 200 US ROUTE ONE SUITE 200, SCARBOROUGH, ME 04070	ABUTTER NOTICE MAILED
4	7019 0700 0000 2994 7782	✓ DIPILATO, JOSEPH M. & LAUREN 12 EAGLE DRIVE, HUDSON, NH 03051	ABUTTER NOTICE MAILED
5	7019 0700 0000 2994 7584	✓ NOONE, BRIAN C. 10 EAGLE DRIVE, HUDSON, NH 03051	ABUTTER NOTICE MAILED
6	7019 0700 0000 2994 7690	✓ FONTAINE, JONATHAN & LAURA L. 8 EAGLE DRIVE, HUDSON, NH 03051	ABUTTER NOTICE MAILED
7	7019 0700 0000 2994 7799	✓ PROULX, CRAIG C. & COURTNEY 6 EAGLE DRIVE, HUDSON, NH 03051	ABUTTER NOTICE MAILED
8	7019 0700 0000 2994 7607	✓ DOBENS, JAMES M. & MARIE 4 EAGLE DRIVE, HUDSON, NH 03051	Applicant ABUTTER NOTICE MAILED
9	7019 0700 0000 2994 7706	✓ WALSH, JOANNE E. 2 EAGLE DRIVE, HUDSON, NH 03051	ABUTTER NOTICE MAILED
10	7019 0700 0000 2994 7805	✓ DWARKAMAI, INC. 1167 LAKEWOOD CIR., NAPERVILLE, IL 60540	ABUTTER NOTICE MAILED
11	7019 0700 0000 2994 7614	✓ WADE, SCOTT J., TR.; SCOTT J. WADE REVOCABLE TRUST 1 FAIRWAY DRIVE, HUDSON, NH 03051	APPLICANT ABUTTER NOTICE MAILED
12	7019 0700 0000 2994 7713	✓ MARSCH, WILLIAM H., TR; MARSCH, MARTHA E., TR; MARSCH FAMILY TRUST 3 FAIRWAY DRIVE, HUDSON, NH 03051	ABUTTER NOTICE MAILED
13	7019 0700 0000 2994 7812	✓ MULLIGAN, CHRISTOPHER; SORGENFREI, DIANE K. 5 FAIRWAY DRIVE, HUDSON, NH 03051	ABUTTER NOTICE MAILED
14	7019 0700 0000 2994 7621	✓ UBELE, SCOTT & KIMBERLY 7 FAIRWAY DRIVE, HUDSON, NH 03051	ABUTTER NOTICE MAILED
Total Number of pieces listed by sender 14		Total number of pieces rec'vd at Post Office 14	Postmaster (receiving Employee) <i>[Signature]</i>



SENDER:	TOWN OF HUDSON 12 SCHOOL STREET HUDSON, NH 03051	US POSTAL SERVICE - CERTIFIED MAIL	Case# 239-001 Appeal Admin. Decision 43 Steele Rd Man 239/Lot 001-000 2 of 2
ARTICLE NUMBER		Name of Addressee, Street, and post office address	12/17/2020 ZBA Meeting
1	7019 0700 0000 2994 7720	✓ GOSSELIN, DAVID R.; BATES-GOSSELIN, SUSAN 9 FAIRWAY DRIVE, HUDSON, NH 03051	ABUTTER NOTICE MAILED
2	7019 0700 0000 2994 7829	✓ SAKATI, SURRI; SAKATI, KATHLEEN 11 FAIRWAY DRIVE, HUDSON, NH 03051	ABUTTER NOTICE MAILED
3	7019 0700 0000 2994 7638	✓ MONK, TIMOTHY & MU-JANE 13 FAIRWAY DR., HUDSON, NH 03051	ABUTTER NOTICE MAILED
4	7019 0700 0000 2994 7737	✓ VOLK, PHILLIP & ANGELA 15 FAIRWAY DR., HUDSON, NH 03051	APPLICANT ABUTTER NOTICE MAILED
5	7019 0700 0000 2994 7836	✓ COSTELLO, ROBERT & BARBARA 17 FAIRWAY DR., HUDSON, NH 03051	ABUTTER NOTICE MAILED
6	7019 0700 0000 2994 7645	✓ LEONE, LEONARD & JOHANNAH 19 FAIRWAY DR., HUDSON, NH 03051	ABUTTER NOTICE MAILED
7	7019 0700 0000 2994 7744	✓ KING, JOHN & SAMANTHA 21 FAIRWAY DR., HUDSON, NH 03051	ABUTTER NOTICE MAILED
8	7019 0700 0000 2994 7843	✓ LEBOURDAIS, RICHARD & AUDREY 23 FAIRWAY DR., HUDSON, NH 03051	ABUTTER NOTICE MAILED
9	7019 0700 0000 2994 7652	✓ STEELE FARM LLC 2 FRIEL GOLF ROAD, HUDSON, NH 03051	ABUTTER NOTICE MAILED
10	7019 0700 0000 2994 7751	✓ BRACCIO, VINCENT & DEBRA 27 RIVER RD., HUDSON, NH 03051	ABUTTER NOTICE MAILED
11	7019 0700 0000 2994 7874	GREENMEADOW GOLF CLUB INC 55 MARSH ROAD, HUDSON, NH 03051	ABUTTER NOTICE MAILED
12			
13			
14			
Total Number of pieces listed by sender 11		Total number of pieces rec'vd at Post Office 11	Postmaster (receiving Employee)





<b>SENDER:</b>	TOWN OF HUDSON 12 SCHOOL STREET HUDSON, NH 03051	US POSTAL SERVICE - FIRST CLASS MAIL	Case# 239-001 Appeal Admin. Decision 43 Steele Rd Map 239/Lot 001-000 1 of 1
	<b>ARTICLE NUMBER</b>	<b>Name of Addressee, Street, and post office address</b>	<b>12/17/2020 ZBA Meeting</b>
1	Mailed First Class	M.R.J. REALTY TRUST; JAFFE, MARK/LAMPERT, ALAN TRSTS 261 LOWELL ROAD, HUDSON, NH 03051	ABUTTER NOTICE MAILED
2			
3			
4			
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11			
12			
13			
14			
15			
	<b>Total Number of pieces listed by sender 1</b>	<b>Total number of pieces rec'vd at Post Office</b>	<b>Postmaster (receiving Employee)</b>



For any appeal, the application form must be properly filled out. The application form is intended to be self-explanatory, but be sure that you show:

1. Who owns the property? If the applicant is not the owner, please include a statement from the owner that you have permission to speak on his/her behalf.
2. Where the property is located.
3. What you propose to do. Supply twelve copies of an 8.5" x 11" or 11" x 17" scale plan which gives lot area, frontage, side and rear lot lines, natural features, existing and proposed structures, alteration to the lot, and distance to lot lines or wetlands. Pictures and construction plans are helpful.
4. Why your proposed use requires an appeal. Please fill out the attached appeal forms completely. Include why the appeal should be granted.
5. List of abutters, per NH RSA 672:3. This includes property and the name(s) of the owner(s) of properties which physically touch the subject property, across the street and kitty-corner to the subject property.

Prepare a list of all abutting property owners using the Assessing Office records, and attach it to your application. **The accuracy of the list is your responsibility. If the list is found to be incorrect, you may be required to appear before the ZBA a second time, at your expense.**

6. Deliver the completed application, with all attachments, to the office of the Zoning Administrator. A fee is charged sufficient to cover the cost of preparing and mailing the legally required notices. If paying by check, make the check payable to the Town of Hudson and submit with your application.

The Zoning Office will schedule a public hearing within thirty (30) days of receipt of your **properly-completed** application. Applications are scheduled on a first come, first serve basis. **Only completed applications will be scheduled for a hearing.** Public notice of the hearing will be posted and printed in a newspaper, and a notice will be mailed to you, all abutters and other parties whom the Board may deem to have an interest.

After the public hearing, the Board will reach a decision. You will be sent a Notice of Decision.

If you believe that the Board's decision is wrong, you have the right to appeal. Any party affected has the right to appeal the decision of your case. To appeal, you just first ask the Board for a rehearing; this motion for rehearing may be in the form of a letter to the Board. The motion must be made within thirty (30) days of 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 its' opinion, good reason is stated in the motion. 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.

See **NH RSA Chapter 677** for more detail on rehearing and appeal procedures.

Requests before the Board may require connection to the municipal sewer system. Please contact the Town Engineer prior to submittal of this application to determine if connection is required, and the procedures for such application.

APPEAL FROM AN ADMINISTRATIVE DECISION

Relating to the interpretation and enforcement of the provisions of the Zoning Ordinance.

Decision of the Zoning Administrator to be reviewed:

Please see accompanying letter.

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DATE: \_\_\_\_\_ ARTICLE: \_\_\_\_\_ SECTION: \_\_\_\_\_

of the Zoning Ordinance in question:

Please see accompanying letter.

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**NOTE: If you are appealing an Administrative Decision, a copy of the decision appealed must be attached to your application.**

November 4, 2020

Via Email & FedEx  
Town of Hudson Zoning Board of Adjustment  
12 School St.  
Hudson, NH 03051  
bbuttrick@hudsonnh.gov  
tgoodwyn@hudsonnh.gov

**RE: Hudson Logistics Center Subdivision, Site Plan & Conditional Use Permit; SB# 11-20, SP# 04-20, CU# 02-20; Lowell & Steele Road - Map 234/Lots 5, 34 & 35, Map 239/Lot 1; Appeal of Zoning Administrator Decision on Setbacks**

Dear Vice-Chair Dearborn and Members of the ZBA:

By way of introduction, I represent more than fifty households in Hudson to oppose the applications for Subdivision, Site Plan & Conditional Use Permit approval (“Applications”) submitted by Hillwood Enterprises, L.P. (“Applicant”) to redevelop the golf course, property identified as Town Tax Map 234, Lot 5 and Tax Map 239, Lot 1 (“Property”) into the proposed Hudson Logistics Center (“Proposed Project”). My clients are very concerned about the redevelopment of a golf course into a high-traffic distribution center and the impact of such redevelopment on the community in Hudson.

I am writing you to appeal an Administrative Determination #20-106 of the Zoning Administrator/Code Enforcement Office, Bruce Buttrick, MCP, dated October 6, 2020, regarding 43 Steele Rd, Map 239 Lot 001-000, District: General One (G-1) (“Zoning Determination”).

### ***Background***

Leading up to the Zoning Determination at issue, by letter dated August 26, 2020, Mr. Buttrick issued a determination that the properties on the north side of Fairway Drive and Eagle Drive are in the R-1 Zoning District, not the G-1 Zoning District as depicted on the Zoning Map. Mr. Buttrick concluded that a drafting (overlay) mistake/oversight had been made subsequent to the 2001 vote to designate certain parcels as G-1.

On October 1, 2020, in response to this determination, I wrote the Planning Board stating that additional zoning requirements applied to the Application that were not apparent when the Application was submitted due to the inaccurate Zoning Map. Brian Groth, Town Planner for Hudson, then asked Mr. Buttrick to “review the Oct 1 2020 letter

from Amy Manzelli, attorney from BC[M] Environmental & Land Law, in respect to her interpretations of certain sections of the Hudson Zoning Ordinance Chapter 334.” The Zoning Determination at issue followed.

The referenced October 1, 2020 letter is attached as Exhibit A and will be referred to as the “BCM Letter” throughout this appeal. Brian Groth’s Staff Report to the Planning Board addressing the BCM Letter and the Zoning Determination is attached as Exhibit B and will be referred to as the “Planner’s Report” throughout this appeal. The Zoning Determination is attached to this appeal as Exhibit C.

### *Laws at Issue*

#### Town of Hudson, NH, Land Use General and Administrative Requirements and Definitions

##### Section 276-11.1.B(12) (“Setback Regulation”)

- (12) The location of all building setback lines as required by Chapter 334, Zoning, or as listed below, **whichever is more stringent**. No buildings, parking or display areas may be located in this setback. (NOTE: For this section, "residential use" shall mean any LOT which either contains a residential dwelling and/or has received SUBDIVISION or SITE PLAN approval for the purpose of constructing residential dwellings.)
- (a) In the General (G) and the General-One (G-1) Zoning Districts, where a proposed industrial use abuts or is across a HIGHWAY from a residential use, there shall be a two-hundred-foot distance from the residential property line to **any improved part of the industrial development**. (Emphasis added.)

##### Section 276-9.D(1)

- (D) All permits without a BOARD-approved specific expiration date shall expire after Two years from approval if no active or substantial DEVELOPMENT or construction has occurred.
- (1) For subdivision plans that do not include improvements such as roads, utilities or topographical modifications, substantial development is achieved when...

#### Town of Hudson Zoning Ordinance

##### Section 334-6



**BUILDING SETBACK** — The minimum distance from the RIGHT-OF-WAY to a FRONT, SIDE or REAR LOT LINE at which a building, driveway or other regulated structure or feature may be set or constructed.

**STRUCTURE** — A combination of materials assembled at a fixed location to give support or shelter, such as, but not limited to, a building, bridge, trestle, tower, framework, retaining wall, tank, tunnel, tent, stadium, reviewing stand, platform, bin, fence, sign, flagpole or portable or temporary canopy or garage.

Section 334-12. Fences and similar enclosures. [Amended 3-14-1995 by Amdt. No. 3; 3-9-2010 by Amdt. No. 6]

All fences, walls and similar enclosures, except trees, shrubs and natural vegetation, are subject to the following restrictions:

- A. No permit shall be required for any fence not exceeding eight feet in height in any residential district.
- B. A permit shall be required for any fence, including sports/ tennis enclosures, exceeding eight feet in height in any residential district.
- C. Any fence exceeding eight feet in height must be installed adjacent to or behind the front corner of the home.
- D. Any fence exceeding eight feet in height must have metal or metal reinforced support posts.
- E. Any fence, sports/tennis enclosure, other than for agricultural uses, exceeding 10 feet in height is subject to Planning Board review.
- F. A fence is not subject to setback requirements.
- G. A fence shall be erected so that the side facing adjacent property owners and/or public rights-of-way presents a reasonable appearance.
- H. No fence, hedge, planting or enclosure wall shall obstruct or interfere with roadway and/or driveway sight distances as determined by the office of the Town Engineer.
- I. Outdoor in-ground swimming pools shall be enclosed by a permanent fence which, by itself or together with other permanent appurtenant structures, surrounds the entire perimeter of the intended pool apron area. Except for intended access gates, no openings in the fence shall exist which would allow a sphere greater than four inches in diameter to pass through.
  - (1) For one-family and two-family residences, fences shall not be less than four feet in height, and access gates shall have latching and locking mechanisms installed on interior surfaces or yoke-type latches with padlock holes.
  - (2) For all other residential and nonresidential uses, fences shall be not less than six feet in height, and access gates shall have mechanisms which

automatically latch and lock during off-season and closed hours and when lifeguards are off duty.

***October 1, 2020 BCM Letter***

The BCM Letter outlined the following legal argument about the requirement that a 200-foot setback be maintained between the residential property lines and features of the Proposed Project. The argument is repeated here for clarity and convenience.

As is typical, the Hudson Zoning Ordinance calls for greater setbacks when a residential district abuts a non-residential district, in recognition of the appropriateness of buffering existing homes.

The applicable setback is 200 feet “from the residential property line to any improved part of the industrial development.” Setback Regulation (“In the ... General-One (G-1) Zoning Districts, where a proposed industrial use abuts ... a residential use, there shall be a two-hundred-foot distance from the residential property line to any improved part of the industrial development”) (emphasis added).

The Hudson Zoning Ordinance applies building setbacks such as this 200-foot setback to buildings, driveways, and other regulated structures or features. *See* Zoning Ordinance Definition of Building Setback. Subdivision Regulations similarly treats roadways, topographical modifications, drainage facilities, culverts, and more, as improvements subject to regulation. *See* Land Use General and Administrative Requirements and Definitions Section 276-9.D(1); Subdivision Regulations Section 289-28.

Given that stormwater runoff, drainage features, the berm and sound wall, and other aspects of the Proposed Project are regulated structures or features, all such aspects of the Proposed Project must be located at least 200 feet from the property lines of the homes on the north side of Fairway Drive and Eagle Drive, now known to be in the R-1 Zoning District.

***October 6, 2020 Zoning Determination***

In the brief Zoning Determination, Mr. Buttrick concludes that “the ‘screening elements’ [BCM] purports to be regulated is [sic] not classified as a structure” and refers to the definition of Structure in Section 334–6 of the Zoning Ordinance. He also quotes the definition of “Building Setback” in Section 334–6 of the Zoning Ordinance. He further states that “a fence is not subject to setback requirements” citing Section 334–12(F) of the Zoning Ordinance.



### *Extent of Appeal*

The Zoning Determination decides that screening elements are not structures. The Zoning Determination does not identify what “screening elements” it addresses. The BCM Letter did not use the terms “screening elements”, “screening”, “screen”, etc. The BCM Letter identified several features, “stormwater runoff, drainage features, the berm and sound wall, and other aspects of the Proposed Project...” Of those, the berm and sound wall could be considered to be screening elements. However, this is far from clear on the face of the Zoning Determination. So, to the extent the Zoning Determination decided that the proposed berm and sound wall are not structures and/or are not subject to the 200-foot setback and/or are like fences, we appeal the Zoning Determination.

We understand the Zoning Determination did not render any decision with respect to the rest of the arguments set forth on the BCM Letter, including that stormwater runoff, drainage features, and other aspects of the Proposed Project are subject to the 200-foot setback; or that Section 276-9.D(1) of the Land Use General and Administrative Requirements and Definitions and Section 289-28 of the Subdivision Regulations show that topographical modifications, drainage facilities, and more are improvements. We also understand the Zoning Determination did not render any decision with respect to the any of the assertions in the Planner’s Report, including that the berm, sound wall, and associated improvements are screening strategies called for and/or subject to Section 275-8.C(a) and (b) of the Site Plan Review Regulations.

To the extent that ZBA agrees that the Administrative Determination did not render any decision with respect to the issues presented in the preceding paragraph, we do not request any action on the part of the ZBA and we will proceed accordingly with respect to these issues with the Planning Board. On the contrary, to the extent that the ZBA concludes that the Administrative Determinative did render any decision with respect to any of the issues presented in the preceding paragraph, we appeal those decisions.

### *Legal Argument*

#### A. Standard of Review is *De Novo*

The ZBA is authorized to decide this appeal by RSA 676:5 and 674:33. In particular, the ZBA may “may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from ...” RSA 674:33, II. The statute continues that the ZBA “may make such order or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken.” RSA 674:33, II. Based on that part of the statute, the New Hampshire Supreme Court has decided that a ZBA should review decisions using the *de novo* standard of review. *See e.g., Ouellette v. Town of Kingston*, 157 N.H. 604, 612 (2008) (holding that the standard of review for a ZBA to decide an appeal from a historic commission pursuant to

RSA 674:33, II and 6756:5 was *de novo*). The *de novo* standard mean reviewing decisions anew, without any deference to the Administrative Determination.

#### B. The 200-Foot Setback Applies to Berm and Sound Wall

The proposed berm and sound wall are subject to the 200-foot setback set forth in the Setback Regulation because they are each “an improved part of the industrial development.” Though difficult to gauge precise dimensions from the Application, it appears the berm could be approximately 150-foot wide, 2,100-foot long, and 30-foot tall. Further, the berm is proposed to have on top of it a sound wall with additional height and heft, though the details of the revised plan for the sound wall have not been provided yet. The berm and sound wall are larger than several houses combined. It strains credulity to imagine such a structure could be located along the property line of residential lots.

The plain language of the Setback Regulation is not ambiguous.

First, it applies to the “building setback” which is a defined term and means the “minimum distance from the right-of-way to a front, side, or rear lot line at which a building, driveway or other regulated structure or feature may be set or constructed.” See Zoning Ordinance Section 334-6 (emphasis added). Thus, on its face, the “building setback” clearly applies not only to buildings, but also to any “other regulated structure or feature.”

The berm and sound wall are structures. A structure is a defined term and means “a combination of materials assembled at a fixed location to give support or shelter ...” The berm and sound wall would be assembled from a combination of various earthen and geotextile materials and concrete or similar. They would be assembled at a fixed location. The berm would support the sound wall. The berm and the sound wall would provide shelter between the abutting residential and industrial uses.

The definition of the word structure also contains a non-exhaustive list of examples of structures, “such as, but not limited to, a building, bridge, trestle, tower, framework, retaining wall, tank, tunnel, tent, stadium, reviewing stand, platform, bin, fence, sign, flagpole or portable or temporary canopy or garage.” The canon of statutory interpretation *ejusdem generis* (Latin for of the same kind) means that things of the same kind in a non-exhaustive list are also included. A berm and a sound wall are like a retaining wall, platform, fence, though significantly larger than what is commonly proposed in Hudson. Accordingly, this part of the definition underscores that the berm and sound wall are structures.

The berm and sound wall are subject to several types of regulation. For example, both the State Dept. of Environmental Services, the Conservation Commission, and the Planning Board will need to consider the water resources impacts associated with the berm



and sound wall. Additionally, the Planning Board will need to consider whether the berm and sound wall sufficiently buffer the industrial use, how they impact the character of the area, and more.

Accordingly, the berm and sound wall are each a “regulated structure or feature” and therefore subject to the building setback.

Second, the Setback Regulation says that the most stringent setback applies as between either: (1) the ones required in the Zoning Ordinance; (2) 200-feet between the property line of residential uses and “any improved part of the industrial development.” See Setback Regulation.

The Applicant agrees the 200-foot setback is the most stringent and therefore applies to the Proposed Project because the Applicant has depicted the 200-foot setback line on its plan set.

The berm and sound wall are improved parts of the industrial development. Without the Proposed Project, they would not exist. If the Proposed Project were approved and built, the berm and sound wall would be added to so the site. That makes the berm and sound wall improved parts of the industrial development. The definition of the word improvement supports this conclusion.

Improvement or similar words are not defined in Hudson’s laws. “Improvement” is defined as an “addition to property, usually real estate, whether permanent or not; especially, one that increases its value or utility or that enhances its appearance.” Black’s Law Dictionary (11<sup>th</sup> ed. 2019). The berm and sound wall are additions to the property. As a consequence, they are improvements according to the definition.

Lastly, the part of the Setback Regulation that says “No buildings, parking or display areas may be located in this setback” is irrelevant to the issue so long as the Applicant’s plans continue to not call for any buildings, parking, or display areas inside the 200-foot setback.

Applying the 200-foot setback to the berm and sound wall is consistent with the general principle that homes should be significantly protected from industrial uses.

**C. Berm and Sound Wall Subject to 200-Foot Setback Even If They Are Screening**

The Zoning Determination is in error because it focuses only on whether “screening elements” are subject to the 200-foot setback requirement. The focus on “screening elements” is misplaced. First, the Zoning Ordinance does not define “screening elements” or state that they are not subject to the setback requirements. Thus, even if the proposed berm wall and sound wall are considered “screening elements,” the Zoning

Ordinance is silent as to whether these are excluded from the 200-foot setback requirement.

Assuming for the sake of argument that the proposed berm and sound wall may be categorized as screening, such categorization does not mean they are not subject to the 200-foot setback.

First, nothing in any of Hudson's laws indicates that a berm and sound wall of the magnitude suggested by the Proposed Project would be regulated the same as screening elements more commonly proposed and approved such as fencing of six to ten feet in height; shrubs or trees planted at grade; or even shrubs or trees planted at six to ten feet on top of grade.

Second, simply being categorized as screening in no way means the berm and sound wall cannot also be subject to the 200-foot setback. Nothing in any of Hudson's laws suggests that an aspect of any project must be either screening or subject to setbacks but not both. Aspects of projects can be both screening and subject to setbacks. Furthermore, Section 276-11.1.B(12), the operative section here, does not include any exemptions to the 200-foot setback much less an exclusion for "screening elements." Rather, it unambiguously states that the 200-foot setback requirement applies to "any improved part of the industrial development." (Emphasis added.)

The fact that fences are not subject to setbacks is irrelevant. The exemption from setbacks for fences is in the Zoning Ordinance. The Zoning Ordinance does not apply with respect to setbacks if the 200-foot setback is more stringent. *See* Setback Regulation.

### ***Conclusion***

The berm and the sound wall are subject to the 200-foot setback. This is the conclusion compelled by the plain language of Hudson's laws and the one that makes sense given the magnitude of the proposed berm and sound wall.

Very truly yours,



Amy Manzelli, Esq.  
*Licensed in New Hampshire*  
(603) 225-2585  
manzelli@nhlandlaw.com

Cc:  
Clients



October 1, 2020

VIA EMAIL

Town of Hudson Planning Board  
Attn: Brian Groth, Town Planner  
12 School St.  
Hudson, NH 03051  
*bgroth@hudsonnh.gov*  
*planning@hudsonnh.gov*

**RE: Hudson Logistics Center Subdivision, Site Plan & Conditional Use  
Permit  
SB# 11-20, SP# 04-20, CU# 02-20  
Lowell & Steele Road- Map 234/Lots 5, 34 & 35, Map 239/Lot 1**

Dear Chair Malley and Members of the Planning Board:

As you know, I represent more than fifty households in Hudson. The vast majority of my clients' homes abut or are across the street from the Green Meadow Golf Course. My clients continue to oppose the applications for Subdivision, Site Plan & Conditional Use Permit approval ("Applications") submitted by Hillwood Enterprises, L.P. ("Applicant") to redevelop the golf course, property identified as Town Tax Map 234, Lot 5 and Tax Map 239, Lot 1 ("Property") into the proposed Hudson Logistics Center ("Proposed Project").

This letter addresses several legal issues, including procedural issues, associated with the current Planning Board proceedings on the Applications. Please make this letter and attachments to it a part of your record in this matter.

As a summary of this letter, first, I provide an update as to the status of retaining consultants. Second, I discuss the recent determination that some abutters are in the R-1 Zoning District and the implications of that status for the Applications. Third, I respectfully request that behavior seeking to impugn my clients cease immediately. Fourth, I respectfully request that public participation be improved to satisfy constitutional due process right. Lastly, I thank the Board for its continued efforts with respect to the Applications.

### *1. Update on Consultants*

As an update from my last letter to the Board, I have now retained three consultants and am in the process of retaining at least two others to assist my clients and I in the review and assessment of the Applications. The consultants are underway reviewing the various, voluminous materials that comprise the Applications. Some of the consultants await further information from the Applicant. As the consultant's work products are completed, I will be sure to share them with the Board and be in contact to arrange for their opportunity to address the Board.

### *2. Golf Course Side of Fairway and Eagle Drives are Residential Zones; Stricter Zoning Requirements Apply*

By letter dated August 26, 2020, the Town of Hudson Zoning Administrator/Code Enforcement Office, Bruce Buttrick, MCP, issued a determination that the properties on the north side of Fairway Drive and Eagle Drive are in the R-1 Zoning District, not the G-1 Zoning District as depicted on the Town of Hudson Zoning Map. *See Letter*, attached as **Exhibit A**. Mr. Buttrick concluded that a drafting (overlay) mistake/oversight had been made subsequent to the 2001 vote to designate certain parcels as G-1.

Understandably, when the Applicant prepared the Applications, it relied on the Town of Hudson Zoning Map to determine what Zoning District these abutting residences were in and then tried to design the Proposed Project accordingly. However, now that we know these residences are in the R-1 Zoning District instead of the G-1 Zoning District, additional zoning requirements apply.

In particular, the Proposed Project is subject to increased setback requirements. As is typical, the Hudson Zoning Ordinance calls for greater setbacks when a residential district abuts a non-residential district, in recognition of the appropriateness of buffering existing homes.

The applicable setback is 200 feet "from the residential property line to any improved part of the industrial development." Town of Hudson Zoning Ordinance § 276-11.1(12)(a) ("In the ... General-One (G-1) Zoning Districts, where a proposed industrial use abuts ... a residential use, there shall be a two-hundred-foot distance from the residential property line to any improved part of the industrial development") (emphasis added).

The Hudson Zoning Ordinance applies building setbacks such as this 200-foot setback to buildings, driveways, and other regulated structures or features. *See Town of Hudson Zoning Ordinance Definition of Building Setback*. Town of Hudson Subdivision Regulations similarly treats roadways, topographical modifications, drainage facilities,



culverts, and more, as improvements subject to regulation. *See* Town of Hudson Subdivision Regulations §§ 276-9(D)(1); 289-28.

Given that stormwater runoff, drainage features, the berm and sound wall, and other aspects of the Proposed Project are regulated structures or features, all such aspects of the Proposed Project must be located at least 200 feet from the property lines of the homes on the north side of Fairway Drive and Eagle Drive, now known to be in the R-1 Zoning District.

The current Applications do not comply with these requirements. As a consequence, the Applications must either be denied or must be redesigned so as to comply. Alternately, the Applicant has the right to pause or withdraw the Applications to seek variance relief from the Town of Hudson Zoning Board of Adjustment.

### ***3. Hudson Residents' Public Participation***

Over the past few months, Applicants, representatives of the Friel Family, and others have made many disparaging comments about my clients and have accused my clients of spreading misinformation. For example, at the Board's meeting on September 9, 2020, Attorney Leonard referred to the SaveHudson.org group in pejorative way as an "activist group". False statements have also been made that the group is importing any warm body it can instead of actually being comprised of mostly Hudson residents. We would like to respectfully request that this treatment cease immediately.

My clients are doing nothing more than appropriately exercising their constitutional rights to participate in public proceedings. During meetings, they act respectfully by being quiet and still and not speaking when it is not their turn, affording these proceedings the decorum they merit. In their materials, they take great care to fact check their statements, many times directly using statements and/or materials created by the Applicants. My clients have wisely invested in professional assistance, both legal and for other subject matters, recognizing this is a complicated matter that requires technical analysis. They are opposing this Proposed Project precisely as the law encourages.

Above all, my clients recognize that this case is about the facts and the law. It is not about any person associated with Hillwood or about the Friels or about any of my clients. It is only about whether the Applications satisfy the legal requirements. Behavior seeking to impugn anyone involved in support of, against, or otherwise associated with these Applications distracts from what we should all be focused on. My clients and I will look forward to a more professional reaction to their rightful participation.

#### ***4. Better Public Participation Requested to Meet Due Process***

New Hampshire law recognizes the important role of the public in land use proceedings. *See 1808 Corp. v. Town of New Ipswich*, 161 N.H. 772, 774 (2011) (affirming the decision of a Zoning Board of Adjustment that included the statement “[g]iven the significant change of use, the abutters and other interested parties are due the opportunity to participate in the due process offered through the variance and special exception application process”).

Members of the public have a constitutional right to due process in the Planning Board’s proceedings on the Applications. *See Appeal of Lathrop*, 122 N.H. 262, 265 (1982) (citing U.S. Const. amends. V and XIV; N.H. Const. pt. 1, art. 35; *In re Murchison*, 349 U.S. 133, 136 (1955); *Withrow v. Larkin*, 421 U.S. 35, 46 (1975); *Gibson v. Berryman*, 411 U.S. 564, 579 (1973); *In re Jack O’Lantern, Inc.*, 118 N.H. 445, 449 (1978); *N.H. Milk Dealers’ Ass’n v. Milk Control Board*, 107 N.H. 335, 337-38 (1966)).

The two cornerstones of due process are notice and an opportunity to be heard. *See e.g. Starr v. Governor*, 154 N.H. 174, 180 (2006) (holding that the New Hampshire legislature satisfied due process requirements because members of the public were provided adequate notice to be able to attend hearings at which they had and used their opportunity to speak).

Here, as a consequence of: (1) the Proposed Project possibly being the single-largest use ever sought to be permitted in one fell swoop in the history of New Hampshire; and (2) the fact that the Applications were filed and the proceedings are occurring in the midst of the worst global pandemic in many of our lifetimes, the process has frustrated, if not violated, the due process rights of the public, including my clients. Fortunately, the proceedings are not yet concluded. Ample time is available to adjust the proceedings, as follows, to satisfy the public’s constitutional right to due process. We acknowledge this may add time to the overall proceedings, but that is reasonable given the exceedingly large scale of the Proposed Project, over which the public has no control, and the nature of what constitutional due process requires so as to not jeopardize the validity of the Board’s decision.

1. Sufficient Notice of Application Materials. It would seem that two weeks advance availability on the Town’s website of any materials to be addressed at a subsequent meeting would be sufficient advance notice to comport with constitutional due process rights. To date, the Applicant has submitted materials up to the time of and during any given hearing, which has not been sufficient (or any) advance notice to satisfy due process.
2. Opportunity to be Heard on Each Subject. The Planning Board has wisely broken up the various subjects of the Applications. It would seem that affording the public



an opportunity to speak after each subject was presented would be sufficient opportunity to be heard to comport with constitutional due process rights. To date, the public has not been provided the opportunity to speak after the Applicant's presentation of each subject, which has not been sufficient opportunity to be heard to satisfy due process.

Similarly, we note that, despite the wise breaking up of subjects, the Board also seems to not be having meaningful opportunity to discuss, question, and consider each of the subjects following the Applicant's presentations of them.

Addressing points 1 and 2 together, we would respectfully request that future meetings proceed as follows:

- a. At least 14 calendar days prior to the meeting, all materials to be considered at the meeting are made available on the Town website.
  - b. During the meeting:
    - a. The Applicant present on the subject using only materials submitted as noted above;
    - b. The Board have its peer review consultant (if any) and/or applicable Town staff (if any) similarly present;
    - c. The Board take up the subject; and
    - d. The public be afforded an opportunity to be heard.
  - c. The Board would move on to a different/next subject only after each of these four components were completed, and if they were not completed within the time allotted for the meeting, the next meeting would pick back up wherever the steps had been left off.
3. Opportunity to Attend Meetings. The Planning Board has also wisely followed current health guidance for social distancing during its meetings. Understandably, this results in meeting space permitting less occupancy compared to before the pandemic when chairs could be spaced immediately next to each other. This has resulted in members of the public not fitting inside the meeting space. To date, the Planning Board has addressed this overflow of public by having a large television screen outside of the building with a canopy covering the screen so that members of the public who could not fit inside could watch the proceedings from outside. Additionally, during some of the public comment opportunities, Town staff has walked to the members of the public outside to facilitate their entering the building so they can speak to the Board.

While this arrangement bordered on acceptable during the warmer months, it does not comport with due process requirements in colder weather. I understand the Town has no other meeting space that is bigger than the current meeting space. However, it seems that the location within the meeting space where the Board is

stationed can be relocated back towards the rear wall, which would allow more inside seating for more members of the public.

In addition to that, it does not seem that the Board has been maximizing the utility of its COVID protocol. The Board has not been recessing prior to opening public comment to receive emails from those members of the public participating remotely and wishing to provide real-time comments by phone connection. As the cool weather prevents meaningful participation from outdoors, it seems this option will become more important and useful.

#### 5. *Conclusion*

My clients and I thank you in advance for your attention to this letter and for your continued attention to these Applications.

Very truly yours,



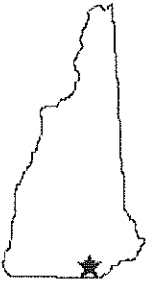
Amy Manzelli, Esq.  
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cc: Clients

# EXHIBIT A

## TOWN OF HUDSON

### Land Use Division



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

### Zoning Determination #20-071

August 26, 2020

Philip Volk  
15 Fairway Drive  
Hudson, NH 03051

Re: 15 Fairway Dr Map 245 Lot 016-000  
**District: General One (G-1)**

Dear Mr. Volk,

**Your request:** You believe your property as well as all the properties to the north of Fairway and Eagle Dr. is mis-zoned as G-1 and should be R-1, has been reviewed.

#### **Zoning Review / Determination:**

My responsibility per the Zoning Ordinance is as follows (for interpretations):

**“§ 334-19 Interpretation of Zoning Map and Zoning District Boundaries.**

*Where appropriate and unless otherwise indicated, zoning district boundaries shown on the Zoning Map are the center lines of streets, power line rights-of-way, the middle of the channel of waterways or other bodies of water or the Town boundary line. Where a boundary is so indicated that it parallels the center line of a street, such boundary shall be considered to be parallel thereto at the distance therefrom shown on the Zoning Map. Any boundary within 10 feet of a property line shall be considered to coincide with such property line. Where no distance is stated on the Zoning Map, the distance shall be determined by the use of the scale on the map. In any instance where there is doubt as to the location of a zoning district boundary, the Zoning Administrator shall determine the location of such boundary, consistent with the intent of this chapter and the Zoning Map. Boundaries defined by the overlay Wetland District are excluded from this section.”*

According to the current zoning map, your property is located in the G-1 Zoning District. It appears to me that the intent when the Town voted in 2001 (Article 4) was to exclude previous zoned R 1 parcels into the new G-1 zone, as stated: “*by creating a new zoning district, General-One (G 1) and designating that all parcels not specifically zoned as being R-1, R-2, B or I and which are located outside of the right-of-way of the proposed Circumferential Highway shall be within the new G 1 District*”. I would agree with you that the earlier Zoning Map (1994) indicates the properties north of Fairway and Eagle Dr as being R-1, but outside of the right-of-way of the proposed Circumferential Highway, thus they were not to be included in the new G-I district.

I do agree with your history and documentation submitted, that it appears that a drafting (overlay) mistake/oversight has been made in regards to these properties north of Fairway and Eagle Dr.

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

I will submit this Zoning Determination Request to the Planning Board for their consideration to correct this mistake/oversight on the Zoning Map.

Sincerely,



*Bruce Buttrick, MCP*

Zoning Administrator/Code Enforcement Officer

(603) 816 1275

[bbuttrick@hudsonnh.gov](mailto:bbuttrick@hudsonnh.gov)

cc: Public File  
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.*





# TOWN OF HUDSON

## Land Use Division



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

TO: Chairman Tim Malley and members of the Planning Board

FROM: Brian Groth, AICP, Town Planner *BIG*

DATE: October 8, 2020

RE: October 1, 2020 Letter from BCM Environmental & Land Law, PLLC

CC: Amy Manzelli, Esq., BCM Environmental & Land Law, PLLC

On Thursday, October 1, 2020, the Planning Department received via email a letter from Amy Manzelli, attorney from BCM Environmental & Land Law (BCM), in representation of residents primarily from the neighborhood abutting Green Meadow Golf Course. As staff to the Planning Board, I feel obligated to provide this memorandum to accompany this letter, as I believe there are several points that require clarification and/or correction.

This memorandum provides staff comment at each of the five points within Attorney Manzelli's letter.

### *1. Update on Consultants*

BCM plans to retain, or has already retained, up to five (5) consultants to review Hillwood's application to the Planning Board. It would be appropriate for the Board to accept written reports that may result from the work of these consultants. Depending on the extent of technical information provided in these reports, peer review by the Town's consultant may be appropriate.

### *2. Stricter Zoning Requirements*

BCM correctly identifies a known error on the Town's Zoning Map. As the Board may recall, we have retained the services of the Nashua Regional Planning Commission (NRPC) to assist in rectifying errors and other inconsistencies in our Zoning Ordinance and Land Use Regulations. NRPC is also the custodian of Hudson's Zoning Map. Additionally, town staff has been performing this research, which resulted in the Zoning Determination attached to BCM's letter from Bruce Buttrick, Zoning Administrator: All

lots on Fairway Drive, Eagle Drive, Par Lane, Muldoon Drive and Birdie Lane are zoned R-1.

However, the distinction between these parcels being G-1 or R-1 has no effect on the applicability of the 200-foot setback required under §276-11.1.B (12) (a), since this regulation establishes the setback from a residential use, not zone. Thus, the setback would be applicable even if Fairway Drive had been zoned G-1. The 200-foot setback has been shown on the plans since the original submittal on April 21, 2020.

Building setbacks apply to buildings, driveways and other regulated features. See Exhibit A of this memorandum, a Zoning Determination from Mr. Buttrick for his interpretation of the applicability of building setbacks. In brief, the screening elements found in the proposed plan are not subject to building setbacks.

BCM makes reference to Hudson's Subdivision Regulations, contending that they "similarly treats topographical modification, drainage facilities, culverts and more, as improvements subject to regulation."

§276-9(D)(1) reads as follows:

D. All permits without a BOARD-approved specific expiration date shall expire after two years from approval if no active or substantial DEVELOPMENT or construction has occurred.

- (1) For subdivision plans that do not include improvements such as roads, utilities or topographical modifications, substantial development is achieved when:
  - (a) The plan is recorded and MONUMENTATION is bonded or set; or
  - (b) The threshold levels of work specified by the BOARD at the time the permit is granted are met.

This regulation is related to plan and permit validity, and active and substantial completion.

§289-28 reads as follows:

**Requirements.**

The following improvements shall be installed and constructed by the SUBDIVIDER to the satisfaction of the PLANNING BOARD and under its supervision, either before submission of the final plat, or the SUBDIVIDER together with the final PLAT shall file a bond or make other suitable arrangements as contained in § 289-10.

For the list of items, please refer to the original text. In brief, this regulation is related to the requirements of establishing a new road in a subdivision to the satisfaction of the Town. It mentions several features, such as property bounds monumentation, drainage

facilities and culverts, which are typically located within or on the property line, setbacks or right-of-way.

In conclusion, staff does not agree with BCM's interpretation of the Zoning Ordinance or Land Use Regulations presented in item #2 of the letter.

Although not called out in BCM's letter, I do advise the Board to address the interpretation of portions of §276-11.1.B (12) emphasized below:

(12) The location of all building setback lines as required by Chapter 334, Zoning, or as listed below, whichever is more stringent. ***No buildings, parking or display areas may be located in this setback.***

- (a) In the General (G) and the General-One (G-1) Zoning Districts, where a proposed industrial use abuts or is across a HIGHWAY from a residential use, there shall be a two-hundred-foot distance from the residential property line ***to any improved part of the industrial development.***

The introductory text of (12) reiterates that setbacks apply to buildings and regulated features such as parking and display areas. Section 12(a) goes on to say that no part of the industrial development shall be within the 200-foot setback. The matter for the Board's interpretation here is whether or not screening between the industrial development and the abutting residential use is considered part of the industrial development.

Another regulation to consider when making this interpretation is found in §275-8.C, which adds requirements to site plan application. In particular, subsection 8, which reads as follows:

***Screening shall be provided for visual separation of incompatible uses.***

Screening shall be required between parking or loading areas and, if present, an abutting residential zone. Screening may also be required between abutting nonresidential sites. Where screening is required, it shall provide a reasonable effective visual buffer by:

- (a) Use of existing vegetation and terrain where possible; or
- (b) ***New plantings (type, size and spacing to be approved by the PLANNING BOARD), grade separations, fences or similar features.***

Screening is required to be placed between two incompatible uses. The berm, sound wall and associated improvements are identified as screening strategies in subsection (b). While recognizing the scale of this proposal is different than any other in Hudson, landscaping, fences and other screening strategies are commonly permitted within the building setbacks.

A question for the Planning Board is: Is screening considered part of the industrial use, or, a feature in between two incompatible uses?

### ***3. Hudson Residents' Public Participation***

I agree that statements & behavior by all parties should be respectful and professional; and that all parties remain focused on the factual merits of the application. No other staff comment.

### ***4. Better Public Participation Requested to Meet Due Process***

#### **A. Sufficient Notice of Application Materials**

I am unaware of any legal authority that supports the request for two weeks advance availability of any materials to be addressed at a subsequent meeting. By way of background, I accepted Attorney Manzelli's suggestion made during a phone call, and incorporated it into my recommendation to the Board on September 9, 2020. That suggestion was that the "applicant make every best effort" to provide relevant materials two weeks in advance of the meeting, but no less than one week. Further, this request provides the Planning Department with no time to review the material or prepare a staff report, and is impractical from an administrative perspective.

#### **B. Opportunity to be Heard on Each Subject**

With regard to the assertion that the board has not provided the public with adequate opportunity to be heard, I bring the following timeline to the board's attention:

**May 27, 2020, 7:00pm** – The first public meeting was held, during which the Planning Board accepted jurisdiction over the application and conducted a public hearing. The public comment portion of the meeting began at approximately 9:00pm and ended shortly after 11:00pm with 34 people offering questions and comments. The Planning Board did not have the opportunity to speak at this meeting.

**June 13, 2020, 9:00am** – Site Walk. Golf carts were provided for all public participants. Public input is not opened during site walks.

**June 24, 2020, 7:00pm** – The application was deferred to the July 22, 2020 meeting.

**July 22, 2020, 7:00pm** – The second meeting was held, during which the applicant provided a status update on their plan revisions and additional studies and the Planning Board began their deliberation. The Planning Board decided to move forward with topic-based meetings. The meeting ended at 11:00pm per Town ordinance, and was continued to August 12, 2020.

**August 12, 2020, 7:00pm** – The topic of this meeting concerned financial impacts: property values analyses and the fiscal impact to the Town. Two analyses of property



value impacts were presented. The Town's peer review consultant on the subject, Applied Economic Research provided preliminary feedback and commentary on these studies. The Planning Board asked questions and made comments, and then public comment was opened at 10:15pm during which 10 people spoke and closed at meeting curfew, 11:00pm. Those wishing to speak on the financial impacts but did not have time were placed on a list to speak at the next meeting. The meeting was continued to August 26, 2020.

*Note: This meeting was run in the manner requested by BCM on page 5 of their letter, item 2.b. It was also the subject of a phone conversation prior to the meeting between Attorney Manzelli and I in which we agreed that this meeting format would achieve due process.*

**August 26, 2020, 7:00pm** – The meeting was deferred at applicant's request due to scheduling conflict, to September 9.

**September 9, 2020, 7:00pm** - Continuance of financial impacts topic from August 12. The applicant presented their Fiscal Impact Study. Public comment was continued from the August 12th meeting, hearing 7 speakers. Public comment was put in advance for this meeting to ensure they were not delayed again. The Planning Board then asked questions. The meeting was continued to October 21, 2020 to address traffic.

*Note: I discussed this meeting format with Attorney Manzelli prior to the meeting, who indicated agreement.*

Last in addition to the opportunities to be heard during meetings, the Planning Board has received over 378 pages of written comments as of October 6, 2020.

### C. Opportunity to Attend Meetings

The intent of the Planning Board's meeting protocol was to maximize the public's opportunity to participate in the process. People may participate physically, or remotely. Written comments are also accepted. There are more opportunities to participate than prior to the pandemic, therefore it does not seem to me that our process is limiting opportunity.

When the pandemic first hit, Planning Board's in the area were publishing public Zoom meeting links to comply with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04. Resultantly, many of these meetings were being bombarded with unruly pranksters, forcing premature adjournment. Therefore, we established a process with a means to effectively manage the meeting while still being able to have public participation with a hybrid model.

I have put in requests for a software package that allows the facilitator to "call on" speakers, much as one would in a normal meeting setting. This is an upgrade from our

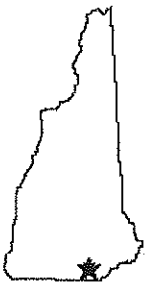
current Go To Meeting platform, called Go To Meeting Seminar. Having this ability may improve the user experience for remote participants.

Utilizing the remaining space within the community center is estimated to provide an additional six seats. I will investigate ways to maximize the capacity of the Community Center. At the last meeting on this proposal, I observed several empty seats.

## ***5. Conclusion***

It is recommended the Planning Board:

1. Discuss how BCM's consultant reports are viewed in the context of this application.
2. Articulate its interpretation of the 200-foot buffer: if it allows for screening.
3. Determine if it would like to formally request Go To Meeting Seminar and additional technology as required.



# TOWN OF HUDSON

## Land Use Division



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

### Zoning Determination #20-106

October 6, 2020

Brian Groth – Town Planner  
Town of Hudson  
12 School St  
Hudson, NH 03051

Re: 43 Steele Rd Map 239 Lot 001-000  
**District: General One (G-1)**

Dear Brian,

**Your request:** to please review the Oct 1 2020 letter from Amy Manzelli, attorney from BCN Environmental & Land Law, in respect to her interpretations of certain sections of the Hudson Zoning Ordinance Chapter 334.

**Zoning Review / Determination:**

Building setbacks are regulated in Article VII Dimensional Requirements and accompanying Table of Minimum Dimensional Requirements.

Per the definitions in §334-6, regulated structures are mentioned in:

**BUILDING SETBACK**

*The minimum distance from the RIGHT-OF-WAY to a FRONT, SIDE or REAR LOT LINE at which a building, driveway or other regulated structure or feature may be set or constructed.*

The “screening elements” she purports to be regulated is not classified as a structure:

**STRUCTURE**

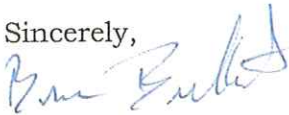
*A combination of materials assembled at a fixed location to give support or shelter, such as, but not limited to, a building, bridge, trestle, tower, framework, retaining wall, tank, tunnel, tent, stadium, reviewing stand, platform, bin, fence, sign, flagpole or portable or temporary canopy or garage.*

Furthermore, a fence is not subject to setback requirements:

§334-12F: *A fence is not subject to setback requirements.*

*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](mailto: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.*





# TOWN OF HUDSON

## Land Use Division



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

### Zoning Determination #20-106R1

November 9, 2020

Amy Manzelli, Esq.  
BCM Environmental and Land Law, PLLC  
3 Maple Street  
Concord, NH 03301

RE: Application for Appeal from an Administrative Decision

Dear Attorney Manzelli:

I am in receipt of your Appeal of an Administrative Decision dated November 4, 2020 ("Appeal"). I am writing to you to offer the following in clarification of my Zoning Determination #20-106 dated October 6, 2020.

My Zoning Determination does not offer any interpretation or opinion regarding anything other than the Hudson Zoning Ordinance ("HZO"). I have not provided any determination regarding the Planning Board's Site Plan, Subdivision, or Administrative regulations.

The "screening elements" to which I was referring in my Zoning Determination are the sound wall and the berm. The sound wall is a "structure" as that term is defined under HZO § 334-6.

I do not have any construction details relative to the sound wall. However, if the sound wall is a fence, it would not be subject to the setback requirements per HZO § 334-12, F. If the sound wall is not a fence, it would be subject to a setback requirement of 15 feet per HZO § 334-27, Table of Minimum Dimensional Requirements. As stated, I do not have any construction details, and therefore, cannot offer any decision on this particular issue at present.

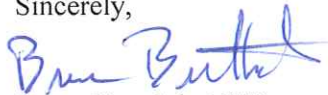
The berm is not a "structure" as that term is defined under HZO § 334-6, and therefore, is not subject to the setback requirements of the Hudson Zoning Ordinance.

Lastly, your Appeal indicates you represent "more than fifty households in Hudson." You need to identify your clients by name and address, and the properties they own in reference to the Hudson Tax Maps/Lot numbers. The information is necessary for the Zoning Board of Adjustment to identify any potential conflicts of interest, as well as, determining whether the individuals in question have standing to Appeal.

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

The missing information will not delay the processing of your Appeal, but I need you to supplement the Appeal with this information as soon as possible.

Sincerely,



*Bruce Buttrick, MCP*

Zoning Administrator/Code Enforcement Officer

(603) 816-1275

[bbuttrick@hudsonnh.gov](mailto:bbuttrick@hudsonnh.gov)

cc: Public Folder  
B. Groth, Town Planner  
D. LeFevre – Town Counsel  
File

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

November 10, 2020

Via Email  
Town of Hudson Zoning Board of Adjustment  
12 School St.  
Hudson, NH 03051  
bbuttrick@hudsonnh.gov

**RE: Hudson Logistics Center Subdivision, Site Plan & Conditional  
Use Permit; SB# 11-20, SP# 04-20, CU# 02-20; Lowell & Steele  
Road - Map 234/Lots 5, 34 & 35, Map 239/Lot 1;  
Appeal of Zoning Administrator Decision on Setbacks - Supplement**

Dear Vice-Chair Dearborn and Members of the ZBA:

This letter responds to a letter from Mr. Buttrick to me, dated November 9, 2020, with heading “Zoning Determination #20-106R1”, and which requested certain information (“Zoning Clarification”). The Zoning Clarification responded to the appeal I filed on November 4, 2020 of Mr. Buttrick’s Administrative Determination #20-106, dated October 6, 2020, regarding 43 Steele Rd, Map 239 Lot 001-000, District: General One (G-1) (“Zoning Determination”).

The Zoning Clarification requested that I supplement the appeal with identification of my clients by name and address, and the properties they own because that information is necessary for the Zoning Board of Adjustment to identify potential conflicts of interest, as well as, determining whether the individuals in question have standing to appeal.

With respect to standing, I identify the following as part of my client group.

James M. Dobens  
4 Eagle Drive  
Parcel ID 240-002-000

Angela M. and Phillip G. Volk  
15 Fairway Drive  
Parcel ID 245-016-000


Scott J. Wade, Trustee of the Scott J. Wade Revocable Trust  
1 Fairway Drive  
Parcel ID 246-041-000

Each of these clients owns a home abutting the subject property. If approved, the berm and sound wall would run parallel to their rear property lines. Their circumstances satisfy the factors the New Hampshire Supreme Court set forth to meet standing. See *Weeks Restaurant Corp. v. City of Dover*, 119 N.H. 541, 544-45 (1979).

With respect to identification of conflicts of interest, I am responding on that issue to the Town's legal counsel.

The Zoning Clarification also clarified Mr. Buttrick's opinion. While we appreciate the clarification and believe it will make the consideration of this appeal clearer, it does not change our legal position. We continue to assert that both the sound wall and the berm are subject to the 200-foot setback, for the reasons described in my November 4, 2020 filing.

Very truly yours,



Amy Manzelli, Esq.  
*Licensed in New Hampshire*  
(603) 225-2585  
manzelli@nhlandlaw.com

Cc:

Clients

Tracy Goodwyn, Zoning Administrative Aide, via email to [tgoodwyn@hudsonnh.gov](mailto:tgoodwyn@hudsonnh.gov)



239 001 000  
MAP LOT SUB

1 of 2 COMMERCIAL  
CARD Hudson

APPRaised: 1,632,500 / 4,048,800  
USE VALUE: 1,632,500 / 4,048,800  
ASSESSed: 1,632,500 / 4,048,800



**PROPERTY LOCATION**

No	All No	Direction/Street/City
43		STEELE RD, HUDSON

**OWNERSHIP**

Owner 1:	GREENMEADOW GOLF CLUB INC
Owner 2:	
Owner 3:	
Street 1:	55 MARSH ROAD
Street 2:	
Twn/City:	HUDSON
St/Prov:	NH Cntry
Postal:	03051 Type:

**PREVIOUS OWNER**

Owner 1:	
Owner 2:	
Street 1:	
Twn/City:	
St/Prov:	Cntry
Postal:	

**NARRATIVE DESCRIPTION**

This parcel contains 346.047 ACRES of land mainly classified as GOLF with a LODGE Building built about 1964, having primarily CONC BLOCK Exterior and 2675 Square Feet, with 1 Unit, 6 Baths, 0 3/4 Bath, 0 HallBath, 0 Rooms, and 0 Bdrm.

**OTHER ASSESSMENTS**

Code	Descrip/No	Amount	Com. Int

**PROPERTY FACTORS**

Item	Code	Description	%	Item	Code	Description
Z	G1	GENERAL		water	3	TOWN WATE
				Sewer	0	SEPTIC
				Electri		
				Exmpt		
D				Topo	9	VARIED
s				Street		
t				Gas:		

**LAND SECTION (First 7 lines only)**

Use Code	Description	LUC Fact	No of Units	Depth / Price/Units	Unit Type	Land Type	LT Factor	Base Value	Unit Price	Adj	Neigh	Neigh Infl	Neigh Mod	Infl 1	%	Infl 2	%	Infl 3	%	Appraised Value	All Class	%	Spec Land	J Code	Fact	Use Value	Notes
380	GOLF		1		SITE ACRE	SITE		0	110,000.	1.00	RE									110,000						110,000	
380	GOLF		345.047		ACRES	EXCESS		0	4,750.	0.72	RE			TOPO	-20					1,180,061						1,180,100	TOPO

**IN PROCESS APPRAISAL SUMMARY**

Use Code	Land Size	Building Value	Yrd Items	Land Value	Total Value	Legal Description	User Acct
380	346.047	271,200	71,200	1,290,100	1,632,500		5251
							GIS Ref
							GIS Ref
							Insp Date
							01/10/20
							1740!

**PREVIOUS ASSESSMENT**

Tax Yr	Use	Cat	Bldg Value	Yrd Items	Land Size	Land Value	Total Value	Asses'd Value	Notes	Date
2020	380	FV	505,700	2253000	346.047	1,290,100	4,048,800	4,048,800	Year End Roll	8/27/2020
2020	380	JB	505,700	2253000	346.047	1,290,100	4,048,800	4,048,800	Year End Roll	5/6/2020
2019	380	FV	505,700	2073000	346.047	1,290,100	3,868,800	3,868,800	Year End Roll	9/16/2019
2019	380	JB	505,700	2073000	346.047	1,290,100	3,868,800	3,868,800	Year End Roll	5/8/2019
2018	380	FV	505,700	2073000	346.047	1,290,100	3,868,800	3,868,800	Year End Roll	8/27/2018
2018	380	JB	505,700	2073000	346.047	1,290,100	3,868,800	3,868,800	Year End Roll	5/9/2018
2017	380	FV	505,700	2073000	346.047	1,290,100	3,868,800	3,868,800	Year End Roll	10/26/2017
2017	380	PV	505,700	2073000	346.047	1,290,100	3,868,800	3,868,800	Year End Roll	8/28/2017

**SALES INFORMATION**

Grantor	Legal Ref	Type	Date	Sale Code	Sale Price	V	Tst	Verif	Notes
	TEST-1		1/1/1900			No	No		

**BUILDING PERMITS**

Date	Number	Descrip	Amount	C/O	Last Visit	Fed Code	F. Descr	Comment
9/23/2020	2020-00199	PLACE OF						
5/8/2019	2019-00254	PLACE OF						
3/22/2019	2019-00211	MECHANIC	7,000					
4/26/2017	2017-00324	PLACE OF						
1/18/2013	2013-00034	ELECTRIC	1,000					REPL METER CAN

**ACTIVITY INFORMATION**

Date	Result	By	Name
1/10/2020	Meas/Inspect	18	KRT1
6/19/2017	Field Review	9	PVA
2/24/2017	I&E Mailed	7	DC
3/28/2013	Permit Visit	12	TECH ASMNT
5/18/2012	Field Review	9	PVA
3/1/2012	I&E Mailed	1	CHIEF ASSESS
4/5/2007	Meas/Inspect	9	PVA
8/10/2006	New Maps	7	DC
3/4/2002	I&E Mailed	0	PATRIOT

Sign: VERIFICATION OF VISIT NOT DATA

Total AC/HA: 346.04700	Total SF/SM: 15073807	Parcel LUC: 380 GOLF	Prime NB Desc RES AVG	Total: 1,290,061	Spl Credit	Total: 1,290,100
------------------------	-----------------------	----------------------	-----------------------	------------------	------------	------------------

Disclaimer: This Information is believed to be correct but is subject to change and is not warranted. Database: AssessPro - Hudson amym 2019

**EXTERIOR INFORMATION**

Type: 69 - LODGE  
 Sty Ht: 1 - ONE STY  
 (Liv) Units: 1 Total: 2  
 Foundation: 1 - CONCRETE  
 Frame: 1 - WOOD  
 Prime Wall: 21 - CONC BLOCK  
 Sec Wall: %  
 Roof Struct: 4 - FLAT  
 Roof Cover: 4 - TAR/GRAVEL  
 Color: BROWN  
 View / Desir: %

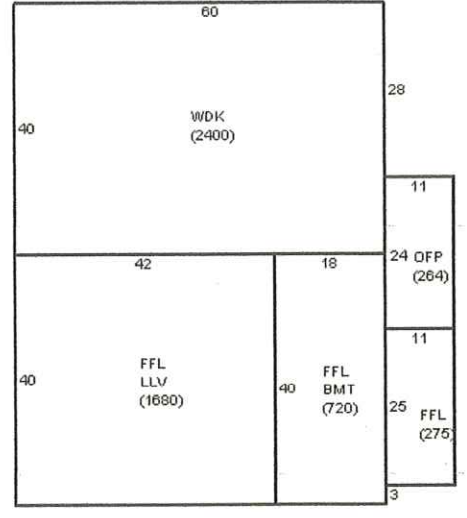
**BATH FEATURES**

Full Bath: 6 Rating: AVERAGE  
 A Bath: Rating:  
 3/4 Bath: Rating:  
 A 3QBth: Rating:  
 1/2 Bath: Rating:  
 A HBth: Rating:  
 OthrFix: Rating:

**COMMENTS**

RESTRM,CLUB REP,40X42 FFF  
 RESTRNT,40X18 FFF PRO SHP,6 BTHS=18  
 FIXT,INT GOOD,36 HOLES,SHP-1 DRVNG  
 RANGE SHOP,INT GOOD,SHOP-3 NOW  
 STORAGE,GAS HT/\$32-\$39/ROUND AND CART.  
 1/20 GREEN MEADOW GOLF COURSE-36 HOLE

**SKETCH**



**GENERAL INFORMATION**

Grade: C - AVERAGE  
 Year Bilt: 1964 Eff Yr Bilt:  
 Alt LUC: Alt %:  
 Jurisdct: Fact:  
 Const Mod:  
 Lump Sum Adj:

**OTHER FEATURES**

Kits: Rating:  
 A Kits: Rating:  
 Frpl: Rating:  
 WSFlue: Rating:

**CONDO INFORMATION**

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

**RESIDENTIAL GRID**

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

**REMODELING**

Exterior:  
 Interior:  
 Additions:  
 Kitchen:  
 Baths:  
 Plumbing:  
 Electric:  
 Heating: 2019  
 General:

**RES BREAKDOWN**

No Unit	RMS	BRS	FL
Totals			

**INTERIOR INFORMATION**

Avg H/VFL: STD  
 Prim Int Wal: 1 - DRYWALL  
 Sec Int Wal: %  
 Partition: T - TYPICAL  
 Prim Floors: 05 - LINO/MINYL  
 Sec Floors: 04 - CARPET 50 %  
 Bsmnt Fir: 12 - CONCRETE  
 Subfloor:  
 Bsmnt Gar:  
 Electric: 3 - TYPICAL  
 Insulation: 2 - TYPICAL  
 Int vs Ext: S  
 Heat Fuel: 1 - OIL  
 Heat Type: 1 - FORCED AIR  
 # Heat Sys:  
 % Heated: 100 % AC: 100  
 Solar HW: NO Central Vac: NO  
 % Com Wal: % Sprinkled

**DEPRECIATION**

Phys Cond: AV - Average 40. %  
 Functional: %  
 Economic: D - DEMAND 10. %  
 Special: %  
 Override: %  
 Total: 46 %

**CALC SUMMARY**

Basic \$ / SQ: 119.00  
 Size Adj.: 1.09906542  
 Const Adj.: 1.00500000  
 Adj \$ / SQ: 131.443  
 Other Features: 27875  
 Grade Factor: 1.00  
 NBHD Inf: 1.00000000  
 NBHD Mod:  
 LUC Factor: 1.00  
 Adj Total: 502149  
 Depreciation: 230989  
 Depreciated Total: 271161

**COMPARABLE SALES**

Rate	Parcel ID	Type	Date	Sale Price

WIAv\$/SQ: AvRate: Ind.Val  
 Juris. Factor: Before Depr: 131.44  
 Special Features: 0 Val/Su Net: 35.04  
 Final Total: 271200 Val/Su SzAd 101.38

**SUB AREA**

Code	Description	Area - SQ	Rate - AV	Undepr Value
FFL	FIRST FLOOR	2,675	131.440	351,609
WDK	WOOD DECK	2,400	11.230	26,963
LLV	LOWER LEVEL	1,680	41.080	69,007
BMT	BASEMENT	720	26.290	18,928
OFP	OPEN PCH	264	29.420	7,767
Net Sketched Area:		7,739	Total: 474,273	
Size Ad		2675	Gross Area	7739
			FinArea	2675

**SUB AREA DETAIL**

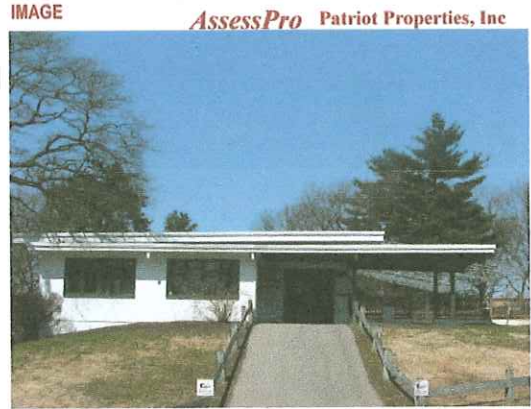
Sub Area	% Usbl	Descrip	% Type	Qu	# Ten
LLV	100	FLA	100	AV	

**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	JFact	Juris. Value	
15	SHOP	D	Y		1 720	AV	AV	1964	25.78	T	40	380			11,100			11,100	
2	SHED-WOOD	D	Y		1 100	AV	AV	1964	24.82	T	79.5	380			500			500	
2	SHED-WOOD	D	Y		1 192	AV	AV	1964	23.26	T	79.5	380			900			900	
41	IMPL SHED	D	Y		1 120	AV	AV	1964	13.75	T	79.5	380			300			300	
15	SHOP	D	Y		1 220	AV	AV	1964	34.93	T	40	380			4,600			4,600	
85	PAVING-ASPH	D	Y		1 140000	AV	AV	1964	1.54	T	75	380			53,800			53,800	
More: N				Total Yard Items:				71,200				Total Special Features:						Total: 71,200	



239 001 000  
MAP LOT SUB

2 of 2 SMALL COM  
CARD Hudson

APPRaised: 2,416,300 / 4,048,800  
USE VALUE: 2,416,300 / 4,048,800  
ASSESSed: 2,416,300 / 4,048,800



PROPERTY LOCATION

Table with columns: No, Alt No, Direction/Street/City, Unit #, Owner 1, Owner 2, Owner 3, Street 1, Street 2, TwN/City, St/Prov, Cntry, Own Occ, Postal, Type.

IN PROCESS APPRAISAL SUMMARY

Table with columns: Use Code, Land Size, Building Value, Yard Items, Land Value, Total Value, Total Card, Total Parcel, Source, Market Adj Cost, Total Value per SQ unit /Card, /Parcel.

Table with columns: Legal Description, Entered Lot Size, Total Land, Land Unit Type.

Table with columns: User Acct, GIS Ref, Insp Date.

PREVIOUS OWNER

Table with columns: Owner 1, Owner 2, Street 1, TwN/City, St/Prov, Cntry, Postal, Type.

PREVIOUS ASSESSMENT

Table with columns: Tax Yr, Use, Cat, Bldg Value, Yrd Items, Land Size, Land Value, Total Value, Asses'd Value, Notes, Date.

SALES INFORMATION

Table with columns: Grantor, Legal Ref, Type, Date, Sale Code, Sale Price, V, Tst, Verif, Notes.

TAX DISTRICT

PAT ACCT.

NARRATIVE DESCRIPTION: This parcel contains 346.047 ACRES of land mainly classified as GOLF with a REPAIR GAR Building built about 1966, having primarily CONC BLOCK Exterior and 11000 Square Feet, with 1 Unit, 1 Bath, 0 3/4 Bath, 1 HalfBath, 0 Rooms, and 0 Bdrm.

OTHER ASSESSMENTS

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

PROPERTY FACTORS

Table with columns: Item, Code, Description, %, Item, Code, Description, Census, Flood Haz, D, s, t, Exmpt, Topo, Street, Gas.

BUILDING PERMITS

Table with columns: Date, Number, Descrip, Amount, C/O, Last Visit, Fed Code, F. Descrip, Comment.

ACTIVITY INFORMATION

Table with columns: Date, Result, By, Name.

LAND SECTION (First 7 lines only)

Table with 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.

Sign: VERIFICATION OF VISIT NOT DATA

Total AC/HA: 0.00000 Total SF/SM: 0 Parcel LUC: 380 GOLF Prime NB Desc RES AVG Total: Spl Credit Total:



**EXTERIOR INFORMATION**

Type:	39	- REPAIR GAR
Sty Ht:	1	- ONE STY
(Liv) Units:	1	Total: 2
Foundation:	6	- SLAB
Frame:	1	- WOOD
Prime Wall:	21	- CONC BLOCK
Sec Wall:		%
Roof Struct:	1	- GABLE
Roof Cover:	1	- ASPH SHING
Color:	YELLOW	
View / Desir:		

**GENERAL INFORMATION**

Grade:	D	- FAIR
Year Blt:	1966	Eff Yr Blt:
Alt LUC:		Alt %:
Jurisdct:		Fact: .
Const Mod:		
Lump Sum Adj:		

**INTERIOR INFORMATION**

Avg Ht/FL:	STD		
Prim Int Wal:	5	- MINIMAL	
Sec Int Wall:		%	
Partition:	T	- TYPICAL	
Prim Floors:	12	- CONCRETE	
Sec Floors:		%	
Bsmnt Flr:			
Subfloor:			
Bsmnt Gar:			
Electric:	3	- TYPICAL	
Insulation:	2	- TYPICAL	
Int vs Ext:			
Heat Fuel:	1	- OIL	
Heat Type:	10	- NOT DUCTED	
# Heat Sys:	1		
% Heated:	50	% AC:	
Solar HW:	NO	Central Vac:	NO
% Com Wal:		% Sprinkled	

**MOBILE HOME**

**SPEC FEATURES/YARD ITEMS**

Make:	Model:	Serial #	Year:	Color:												
<b>PARCEL ID</b> 239-001-000																
Code	Description	A Y/S Qty	Size/Dim	Qual	Con	Year	Unit Price	D/S	Dep	LUC	Fact	NB Fa	Appr Value	JCod	JFact	Juris. Value
31	BARN	D Y	1 4100	AV	AV	1966	22.66	T	76.5	380			21,800			21,800
92	GOLF HOLES	D Y	1 36	AV	AV	1966	75,000.00	M	20	380			2,160,000			2,160,000

More:	N	Total Yard Items:	2,181,800	Total Special Features:	
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**BATH FEATURES**

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

**OTHER FEATURES**

Kits:	Rating:
A Kits:	Rating:
Frpl:	Rating:
WSFlue:	Rating:

**CONDO INFORMATION**

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

**DEPRECIATION**

Phys Cond:	AV	- Average	40.	%
Functional:				%
Economic:	D	- DEMAND	10.	%
Special:				%
Override:				%
Total:			46.	%

**CALC SUMMARY**

Basic \$ / SQ:	68.00
Size Adj.:	0.80000001
Const Adj.:	0.90382677
Adj \$ / SQ:	49.168
Other Features:	2000
Grade Factor:	0.80
NBHD Inf:	1.00000000
NBHD Mod:	
LUC Factor:	1.00
Adj Total:	434280
Depreciation:	199769
Depreciated Total:	234511

**COMMENTS**

REPAIR BARN, CEMENT BLOCK, 4100 SQ FT BARN IS QUONSET STYLE, 9.9 AC TAKEN FOR STATE HY. 1/20 AVG COND FOR AGE. AVG MAINT. ONE BUILDING UNSOUND-N/V.

**RESIDENTIAL GRID**

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

**REMODELING**

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

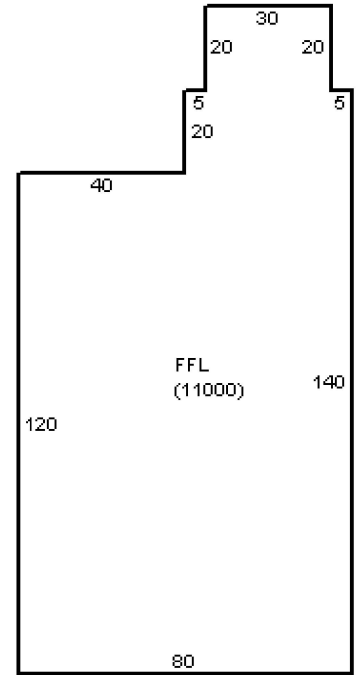
**RES BREAKDOWN**

No Unit	RMS	BRS	FL
<b>Totals</b>			

**COMPARABLE SALES**

Rate	Parcel ID	Typ	Date	Sale Price
WtAv\$/SQ:	AvRate:	Ind.Val		
Juris. Factor:		Before Depr:	39.33	
Special Features:	0	Val/Su Net:	21.32	
Final Total:	234500	Val/Su SzAd	21.32	

**SKETCH**



23

**SUB AREA**

**SUB AREA DETAIL**

Code	Description	Area - SQ	Rate - AV	Undepr Value	Sub Area	% Usbl	Descrip	% Type	Qu	# Ten
FFL	FIRST FLOOR	11,000	49.170	540,850						
Net Sketched Area:		11,000	Total:	540,850						
Size Ad	11000	Gross Area	11000	FinArea	11000					

**IMAGE**

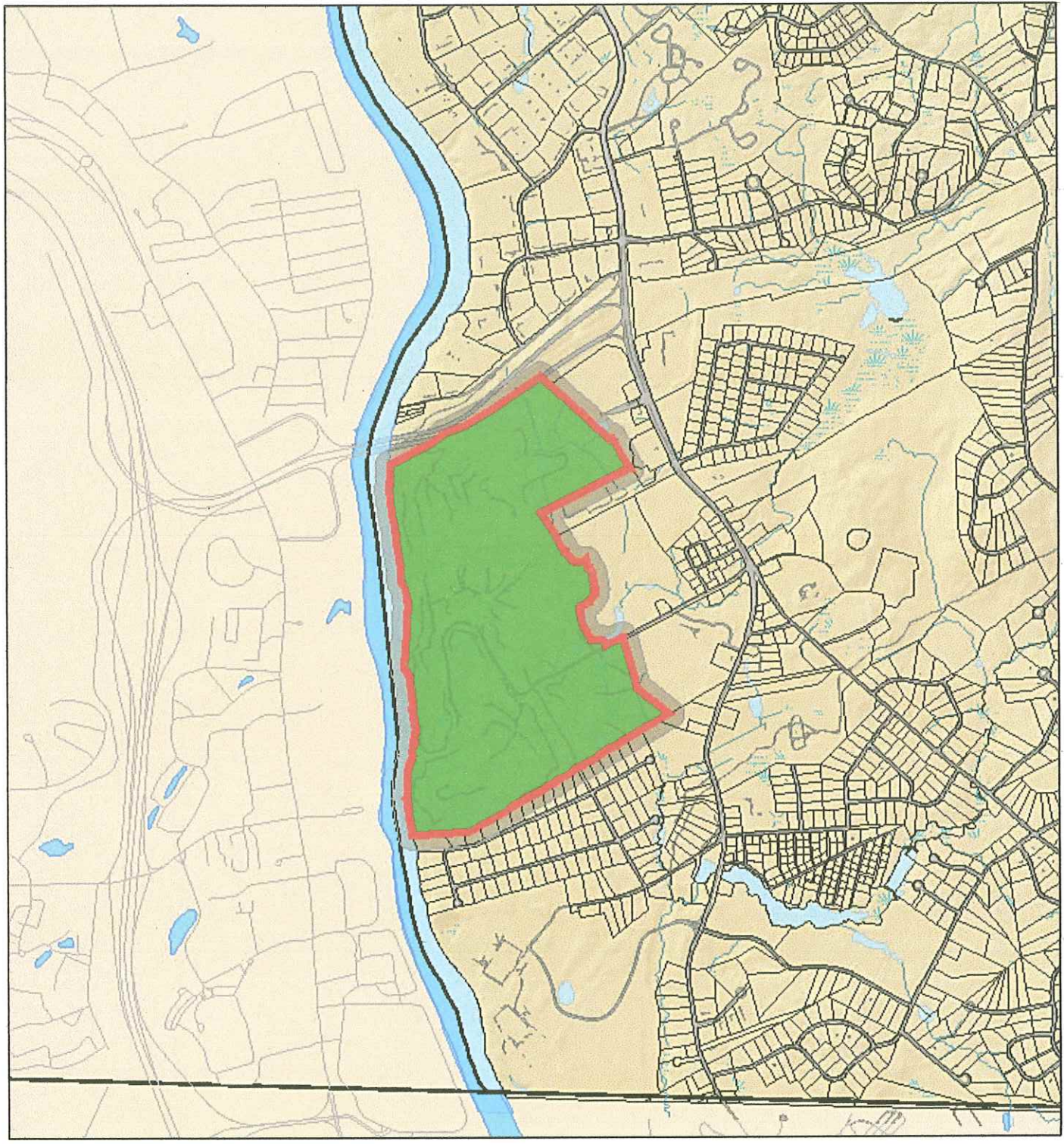
AssessPro Patriot Properties, Inc



Total:	2,181,800
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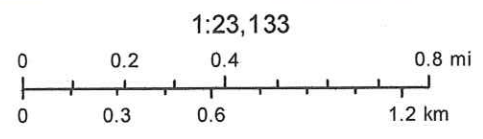


# 43 Steele Rd ( Map/Lot 239-001-000)



November 3, 2020

Legend  
[ ] Parcels



Printed  
11/10/2020  
4:25PM  
Created  
11/10/2020  
4:22 PM

**Transaction Receipt**  
**Town of Hudson, NH**  
12 School Street  
Hudson, NH 03051-4249

Receipt# 618,046  
tgoodwyn

	Description	Current Invoice	Payment	Balance Due
1.00	Zoning Application- Steel & Lowell Rds. Map/Lots 239-001, 234-005, 234-035, 234-034 Appeal Admin Decisio	0.00	310.7000	0.00
			<b>Total:</b>	<b>310.70</b>

Remitter	Pay Type	Reference	Tendered	Change	Net Paid
BCM Environmental & Land Law, PLLC	CHECK	CHECK # 4331	310.70	0.00	310.70
			<b>Total Due:</b>		<b>310.70</b>
			<b>Total Tendered:</b>		<b>310.70</b>
			<b>Total Change:</b>		<b>0.00</b>
			<b>Net Paid:</b>		<b>310.70</b>

**BCM ENVIRON & LAND LAW, PLLC**

11/4/2020 Town of Hudson

**4331**  
Check # 4331

Date	Type	Payee	Description	Payment
11/4/2020	Check	Town of Hudson	Appeal of Admin Decision - Filing Fee	310.70

Trust Account NH

310.70

HUDSON ZONING BOARD OF ADJUSTMENT  
APPEAL OF ADMINISTRATIVE DECISION WORKSHEET

On **12/17/20**, the Hudson Zoning Board of Adjustment heard **Case 239-001**, pertaining to a request filed by **James M. Dobens, 4 Eagle Drive; Angela M. and Phillip G. Volk, 15 Fairway Drive; and Scott J. Wade, Trustee of the Scott J. Wade Revocable Trust, 1 Fairway Dr.**, all represented by **Amy Manzelli, Esq. of BCM Environmental & Land Law, PLLC, 3 Maple St., Concord, NH**, to appeal an Administrative decision issued by the **Zoning Administrator, of a Zoning Determination #20-106, dated October 6, 2020 regarding 43 Steele Road, Hudson, NH citing the building setback regulation & definitions of building setback and structure per the Hudson Zoning Ordinance. [Map 239, Lot 001-000; Zoned General-One (G-1); HZO Article II, Terminology, §334-6, Definitions and Article VII, Dimensional Requirements, §334-27, Table of Minimum Dimensional Requirements].**

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



## Buttrick, Bruce

---

**From:** Buttrick, Bruce  
**Sent:** Friday, November 13, 2020 4:31 PM  
**To:** 'cmpandsons@gmail.com'  
**Subject:** RE: Chris Porembski - Re-Hearing Request

This request works. As needs to be submitted w/in 30 days from Oct 22.

I'll forward this to the Board at Dec 10 meeting.

They will consider whether to consider a re-hearing on Dec 10, you will get a response as to their decision.

If they decide to grant a re-hearing then you'll refile an application all over again.

If denied, the you could possibly submit a variance to that Z.O. section about "retail sales on site being prohibited".

Regards,

Bruce

*Bruce Buttrick, MCP*  
*Zoning and Code Enforcement*

---

*Town of Hudson*



Land Use Division  
12 School Street  
Hudson, NH 03051  
Ph: (603) 886-6008  
F: (603) 594-1142

---

**From:** cmpandsons@gmail.com <cmpandsons@gmail.com>  
**Sent:** Friday, November 13, 2020 4:03 PM  
**To:** Buttrick, Bruce <bbuttrick@hudsonnh.gov>  
**Subject:** Chris Porembski - Re-Hearing Request

---

**EXTERNAL: Do not open attachments or click links unless you recognize and trust the sender.**

Good Afternoon Bruce,

I spoke with Brian this afternoon and he mentioned he spoke with yourself. No need to return my call as he provided the guidance I was seeking.

I would like to request a re-hearing of my case (case 152-001). I would like to take the opportunity to clarify the nature of my operations based on the feedback from the meeting.

1. There will be no 'Retail Sales' as meaning, no window shopping or stored inventory.



## Buttrick, Bruce

---

**From:** cmpandsons@gmail.com  
**Sent:** Friday, November 13, 2020 4:03 PM  
**To:** Buttrick, Bruce  
**Subject:** Chris Porembski - Re-Hearing Request

---

**EXTERNAL: Do not open attachments or click links unless you recognize and trust the sender.**

Good Afternoon Bruce,

I spoke with Brian this afternoon and he mentioned he spoke with yourself. No need to return my call as he provided the guidance I was seeking.

I would like to request a re-hearing of my case (case 152-001). I would like to take the opportunity to clarify the nature of my operations based on the feedback from the meeting.

1. There will be no 'Retail Sales' as meaning, no window shopping or stored inventory.
2. There will be no exchange of money on the premises. All exchanges will occur electronically or by traditional method of mailing a check.
3. The only exception, is if a sale is local, where shipping is not practical. I expect this to be extremely limited, perhaps no more than 12 times per year.
4. The nature of my operation is more of a broker than retail. Individuals will contact me in the search of difficult to find items, especially those of antiques. Through my network, I will search for them and conduct 'drop shipping' after payment is received. Meaning that someone asks for X, I locate it, receive payment, and have the item shipped directly to them. In some situations, the item will be delivered to me via USP/FedEx and then I would ship to them, unless, as mentioned, they are local.
5. As mentioned during the meeting, there will no sale of ammunition or the discharging of firearms, testing or for any other purpose, on the premises.
6. Lastly, I will be inspected by the ATF prior to any operations for the purposes of security, abidance to laws and regulations, and proper documentation.

Could you please advise on how to move forward? Is this email sufficient for the request, or is something additional you may need. Please keep me informed.

I appreciate your help and guidance as this is the first time I have gone through this process.

Thank You,

Chris Porembski  
22 Mallard Dr.  
Hudson NH

Send recorded copy to:

TOWN OF HUDSON  
ZONING BOARD OF ADJUSTMENT  
12 School Street, Hudson, New Hampshire 03051

**NOTICE OF DECISION**

**Map 152, Lot 001-000, Zone G-1 (General-One), Case # 152-001**

**ZBA Decision 10/22/2020**

**Home Occupation Special Exception – DENIED**

Property Owner & Address: Christopher M. Porembski, 22 Mallard Drive, Hudson, NH 03051

Property Location: **22 Mallard Drive, Hudson, NH 03051**

Action sought: Home Occupation Special Exception to operate an internet sales of firearms business that requires a Federal License and occasional face to face sales/transactions on site.

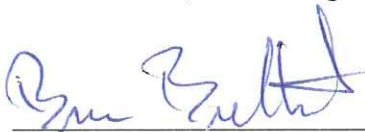
Zoning Ordinance Article: VI, Special Exception, §334-24, Home Occupations

Action granted: After review of the testimony, the criteria for the granting of a Home Occupation Special Exception and with consideration of the concerns expressed by the neighbors, motion made, seconded and voted 4:1 to deny the relief sought.

NOTE: All representations of fact or intention made by the applicant during testimony before the Zoning Board of Adjustment relative to the obtaining of this relief shall be considered conditions of this approval, regardless of the fact that such facts or intentions may not have been specifically stated as stipulations of the motion. For details of specific discussion relative to this decision, please consult the public minutes recorded during this hearing.

  
G. A. Dearborn, ZBA Acting Chairman

11-10-2020  
Date

  
Bruce Buttrick, Zoning Administrator

11/6/20  
Date

TOWN OF HUDSON

SEP 24 2020

Zoning Department

APPLICATION FOR A HOME OCCUPATION SPECIAL EXCEPTION

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

Case No. 152-001 (10-22-20)

Date Filed 9/24/20

Name of Applicant Christopher Porembski Map: 152 Lot:001-000 Zoning District: G-1

Telephone Number (Home) (603) 880-6804 (Work) (603) 247-6804

Mailing Address 22 Mallard Dr. Hudson, NH 03051

Owner Christopher Porembski

Location of Property 22 Mallard Dr. Hudson, NH 03051 (Street Address)

Signature of Applicant [Handwritten Signature]

Date 9/23/20

Signature of Property-Owner(s) [Handwritten Signature]

Date 9/23/20

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 home occupation special exception.

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

COST:

Application fee: \$130.00
7 Direct Abutters x \$4.05 = 28.35
4 Indirect Abutters x \$0.55 = 2.20
Total amount due: \$160.55

Date received: 9/24/20

Amt. received: \$ 160.55

Receipt No.: 613,260

Received by: [Handwritten Signature: TSG]

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>CP</u>	The applicant must provide <sup>12</sup> 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>CP</u>	Before making the 13 copies, please review the application with the Zoning Administrator or staff.	<u>TG</u>
<u>CP</u>	A separate application shall be submitted for each request, with a separate application fee for each request i.e.: Variance, Special Exception, <u>Home Occupation Special Exception</u> , 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>CP</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>N/A</u>
<u>CP</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>CP</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>
	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>N/A</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

**PLOT PLAN-**

N/A

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) 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.

N/A

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

9/23/20

Signature of Applicant(s)

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
151	059-000	Helen Stabler	5387 Anvil Dr Camillus, NY 13031
151	041-000	Thomas Fincher	20 Mallard Dr. Hudson, NH 03051
152	003-000	Vickie Gaffney	115 Barretts Hill Rd Hudson, NH 03051
152	002-000	Gail Tulipani	23 Mallard Dr. Hudson, NH 03051
161	002-000	Richard Lechner	21 Mallard Dr Hudson, NH 03051
161	001-000	Elaine Gentile	19 Mallard Dr Hudson, NH 03051
152	001-100	Christopher Porembski	22 Mallard Dr Hudson, NH 03051

**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
151	040-000	Jesse Ciancetta	18 Mallard Dr. Hudson, NH 03051
152	004-000	Conrad <del>Gaffney</del> <sup>Gauthier</sup> (TB)	113 Barretts Hill Rd. Hudson, NH 03051
161	004-000	Stanley Yost	84 Meeting House Rd Windham, NH 03087
160	078-000	Steven Haime	17 Mallard Dr. Hudson, NH 03051

For any appeal, the application form must be properly filled out. The application form is intended to be self-explanatory, but be sure that you show:

1. Who owns the property. If the applicant is not the owner, please include a statement from the owner that you have permission to speak on his/her behalf.
2. Where the property is located.
3. What you propose to do. Supply twelve copies of an 8.5" x 11" or 11" x 17" scale plan which gives lot area, frontage, side and rear lot lines, natural features, existing and proposed structures, alteration to the lot, and distance to lot lines or wetlands. Pictures and construction plans are helpful.
4. Why your proposed use requires an appeal. Please fill out the attached appeal forms completely. Include why the appeal should be granted.
5. List of abutters, per NH RSA 672:3. This includes property and the name(s) of the owner(s) of properties which physically touch the subject property, across the street and kitty-corner to the subject property.

Prepare a list of all abutting property owners using the Assessing Office records, and attach it to your application. **The accuracy of the list is your responsibility. If the list is found to be incorrect, you may be required to appear before the ZBA a second time, at your expense.**

6. Deliver the completed application, with all attachments, to the office of the Zoning Administrator. A fee is charged sufficient to cover the cost of preparing and mailing the legally required notices. If paying by check, make the check payable to the Town of Hudson and submit with your application.

The Zoning Office will schedule a public hearing within thirty (30) days of receipt of your **properly-completed** application. Applications are scheduled on a first come, first serve basis. **Only completed applications will be scheduled for a hearing.** Public notice of the hearing will be posted and printed in a newspaper, and a notice will be mailed to you, all abutters and other parties whom the Board may deem to have an interest.

After the public hearing, the Board will reach a decision. You will be sent a Notice of Decision.

If you believe that the Board's decision is wrong, you have the right to appeal. Any party affected has the right to appeal the decision of your case. To appeal, you just first ask the Board for a rehearing; this motion for rehearing may be in the form of a letter to the Board. The motion must be made within thirty (30) days of 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 its' opinion, good reason is stated in the motion. 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.

See **NH RSA Chapter 677** for more detail on rehearing and appeal procedures.

Requests before the Board may require connection to the municipal sewer system. Please contact the Town Engineer prior to submittal of this application to determine if connection is required, and the procedures for such application.



APPLICATION FOR A HOME OCCUPATION SPECIAL EXCEPTION

A home occupation is a sales or service operation for goods produced or services provided on-site and is permitted only as a special exception upon approval by the Zoning Board of Adjustment. In granting such an exception, the Board must find the home occupation to be in full compliance with the requirements listed below.

Please explain, in detail, the nature of your home business.

My home business, rather a hobby, that requires a Federal License, will be that of providing a service to those that want to proper, legally and in full compliance with state and federal law, dispose of firearms. This business will be primarily internet sales with little or no inventory. Transactions will occur between licensed individuals. Face to face transactions will require background checks via the NH State Police or the FBI.

Is the home occupation secondary to the principal use of the home as the business owners' residence? Please explain.

Yes, the residence is primarily my home, the secondary utilizes only a small office space.

Will the home occupation business be carried on within the residence and/or within a structure accessory to the residence? Please explain.

Only within the residence.

Other than the sign(s) permitted under Article XII, will there be exterior display or other exterior indications of the home occupation? Will there be any variation from the primarily residential character of the principal or accessory building? Please explain.

There will be no exterior display or any variation from the primarily residential character of the principal building

APPLICATION FOR A HOME OCCUPATION SPECIAL EXCEPTION (CONTINUED)

Will there be exterior storage and will it be screened from neighboring views by a solid fence or by evergreens of adequate height and bulk at the time of planting to effectively screen the area? In situations where a combination of existing foliage and/or long distances to neighboring views provide screening, the fencing requirements may be waived at the discretion of the Board. Please explain how you will comply.

There will be no exterior storage

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Will there be noise, vibrations, dust, smoke, electrical disturbances, odors, heat or glare produced? Please explain, and if there will be electrical disturbances, describe the frequency.

There will be no noise, vibrations, dust, smoke, electrical disturbances, odors, heat or glare produced.

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Will the traffic generated by the home occupation activity be substantially greater in volume that would normally be expected in the neighborhood? Please explain the expected traffic to your business. As this business proposal is primarily internet there will not be any substantially greater volume of traffic

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Where will customer/client parking for the home occupation be located? Please explain.

No, current parking is satisfactory for the minimal usage

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Who will be conducting the home occupation? Please explain.

Only myself

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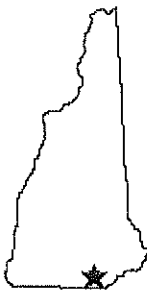
Will there be a vehicle(s) for the home occupation? Please explain the type and number of vehicle(s).

No

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# TOWN OF HUDSON

## Land Use Division



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

### Zoning Determination #20-094R

September 3, 2020

Chris Porembski  
22 Mallard Dr  
Hudson, NH 03051

Re: 22 Mallard Dr Map 152 Lot 001-000  
**District: General One (G-1)**

Dear Mr. Porembski,

This is a revision to my earlier Zoning Determination. As you indicate there may be some face to face sales on site.

**Zoning Review / Determination:**

Your primary principal use allowed is residential per the Zoning Ordinance Table of Permitted Uses §334-21 and the zone district you are in.

The additional use as a home occupation of on-line sales of firearms, with some face to face on site sales/transactions is permitted as an Accessory Use per §334-22, and would need a Home Occupation Special Exception from the Zoning Board of Adjustment per §334-24.

Sincerely,

*Bruce Buttrick, MCP*  
Zoning Administrator/Code Enforcement Officer  
(603) 816-1275  
[bbuttrick@hudsonnh.gov](mailto:bbuttrick@hudsonnh.gov)

encl: Home Occupation Special Exception application  
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.



# TOWN OF HUDSON

## Land Use Division



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

### Zoning Determination #20-094

September 3, 2020

Chris Porembski  
22 Mallard Dr  
Hudson, NH 03051

Re: **22 Mallard Dr Map 152 Lot 001-000**  
**District: General One (G-1)**

Dear Mr. Porembski,

Your request if you can operate an "on-line" business at this address, has been completed.

**Zoning Review / Determination:**

Your primary principal use allowed is residential per the Zoning Ordinance Table of Permitted Uses §334-21 and the zone district you are in.

The additional use as a home occupation (on line sales of firearms) is permitted as an Accessory Use per §334-22, and would need a Home Occupation Special Exception from the Zoning Board of Adjustment per §334-24.

Sincerely,

*Bruce Buttrick, MCP*

Zoning Administrator/Code Enforcement Officer

(603) 816-1275

[bbuttrick@hudsonnh.gov](mailto:bbuttrick@hudsonnh.gov)

encl: Home Occupation Special Exception application

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.



#20-094



COMMUNITY DEVELOPMENT DEPARTMENT  
12 School Street  
Hudson, NH 03051  
(603)886-6005  
[www.hudsonnh.gov](http://www.hudsonnh.gov)



Town of Hudson

REQUEST FOR ZONING and/or PLANNING INFORMATION / DETERMINATION

Date of request 09/02/2020

Property Location 22 Mallard Dr Hudson NH

Map 152 Lot 001-000

Zoning District if known G-1

Type of Request

- Zoning District Determination
- Use Determination
- Set-Back Requirements
- Process for Subdivision/ Site Plan if required
- Other

Description of request / determination: (Please attach all relevant documentation)

I am in the process of applying for a Federal Firearms License for the primary purpose of disposing/selling of firearms. This home business is personal and will be primarily Internet sales between Federal Firearms License holders. There may be an occasional face to face transaction at the address below, however there will be no store front, traffic or routine visits. I would be happy to discuss further via phone if needed. Are there any forms, permits, etc. required for the above activity?

**Applicant Contact Information:**

Name: Chris Porembski  
Address: 22 Mallard Dr Hudson NH 03051  
Phone Number: 603-247-6804

*For Office use*

ATTACHMENTS: TAX CARD | GIS

NOTES: \_\_\_\_\_

ZONING DETERMINATION LETTER SENT || DATE: \_\_\_\_\_

MAP LOT SUB

CARD

Hudson

APPRAISED: 362,000 / 362,000
USE VALUE: 362,000 / 362,000
ASSESSED: 362,000 / 362,000



Patriot Properties Inc

PROPERTY LOCATION

Table with columns: No, Alt No, Direction/Street/City. Row 1: 22, MALLARD DR, HUDSON

MEMBERSHIP

Table with columns: Owner Name, Unit #, Address, City, State, Zip. Owners: POREMBSKI, CHRISTOPHER M., POREMBSKI, ALEXA G.

PREVIOUS OWNER

Table with columns: Owner Name, Address, City, State, Zip. Owners: SHUTT, WILLIAM T., SHUTT, MIRIAM G.

PROPERTY DESCRIPTION

Parcel contains .998 ACRES of land mainly classified as ONE FAMILY with a SPLIT CAPE Building built about 1989, featuring primarily CLAPBOARD Exterior and 2243 Square Feet, including 1 Unit, 1 Bath, 1 3/4 Bath, 1 HalfBath, 6 Rooms, and 3 ms.

PAST ASSESSMENTS

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

PROPERTY FACTORS

Table with columns: Item Code, Description, %, Item Code, Description. Includes items like water, Sewer, Electric, Topo, Street, Gas.

LAND SECTION (First 7 lines only)

Table with columns: Parcel ID, Description, LUC, No of Units, Depth/Price/Units, Unit Type, Land Type, LT Factor, Base Value, Unit Price, Adj, Neigh, Neigh Inflow, Neigh Mod, Inflow 1-3, Appraised Value, Alt Class, Spec Land, J Code, Fact, Use Value, Notes.

IN PROCESS APPRAISAL SUMMARY

Table with columns: Use Code, Land Size, Building Value, Yard Items, Land Value, Total Value, Legal Description, User Acct, GIS Ref, Entered Lot Size, Total Land, Land Unit Type.

PREVIOUS ASSESSMENT

Table with columns: Tax Yr, Use, Cat, Bldg Value, Yrd Items, Land Size, Land Value, Total Value, Asses'd Value, Notes, Date.

SALES INFORMATION

Table with columns: Grantor, Legal Ref, Type, Date, Sale Code, Sale Price, V, Tst, Verif, Notes.

BUILDING PERMITS

Table with columns: Date, Number, Descr, Amount, C/O, Last Visit, Fed Code, F. Descr, Comment.

ACTIVITY INFORMATION

Table with columns: Date, Result, By, Name. Includes activities like Measured, Sale Data VI, Permit Visit, Meas/Inspect, Inspected.

Sign: VERIFICATION OF VISIT NOT DATA

Total AC/HA: 0.99800 Total SF/SM: 43473 Parcel LUC: 101 ONE FAMILY Prime NB Desc RES VG Total: 134,919 Spl Credit Total: 134,900

Type:	16 - SPLIT CAPE
Sty Ht:	1T - 1.75 STY
Units:	1 Total: 1
Foundation:	1 - CONCRETE
Frame:	1 - WOOD
Time Wall:	02 - CLAPBOARD
Sec Wall:	
Roof Struct:	1 - GABLE
Roof Cover:	1 - ASPH SHING
Color:	GREEN
W/Desir:	

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

<b>OTHER FEATURES</b>	
Kits:	1 Rating: AVERAGE
A Kits:	
Fprl:	1 Rating: AVERAGE
WSFlue:	
<b>CONDO INFORMATION</b>	
Location:	
Total Units:	
Floor:	
% Own:	
Name:	

<b>DEPRECIATION</b>	
Phys Cond:	GD - Good 27.2%
Functional:	
Economic:	
Special:	
Override:	
Total:	27.2%

<b>ERIOR INFORMATION</b>	
avg Ht/FL:	STD
Int Wal:	1 - DRYWALL
Ext Wal:	
Partition:	T - TYPICAL
Int Floors:	04 - CARPET
Ext Floors:	03 - HARDWOOD 25%
Basmt Flr:	12 - CONCRETE
Subfloor:	
Basmt Gar:	2
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

<b>BILE HOME</b>	Make:	Model:	Serial #:	Year:	Color:
------------------	-------	--------	-----------	-------	--------

<b>EC FEATURES/YARD ITEMS</b>																		
Code	Description	A	Y/S	Qty	Size/Dim	Qual	Con	Year	Unit Price	D/S	Dep	LUC	Fact	NB Fa	Appr Value	JCod	JFact	Juris. Value
	SHED-WOOD	D	Y	1	119x8	AV	AV	2010	23.26	T	50	101			1,800			1,800

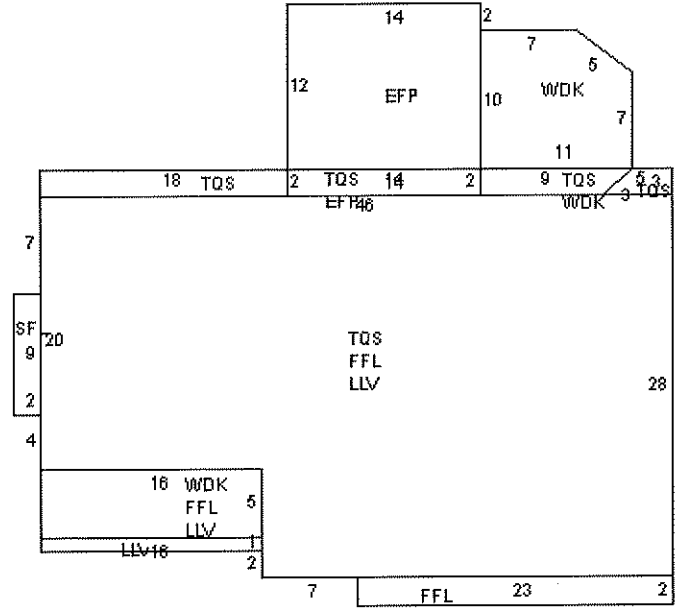
XTRA FIX=2ND SINK IN 3/4 BATH.

<b>RESIDENTIAL GRID</b>								
1st Res Grid:	Desc:	CONV	# Units:	1				
Level:	FY LR DR D K FR RR BR FB HB L O							
Other:								
Upper:								
Lvl 2:								
Lvl 1:								
Lower:								
Totals:	RM:	6	BR:	3	Bath:	1	HB:	1

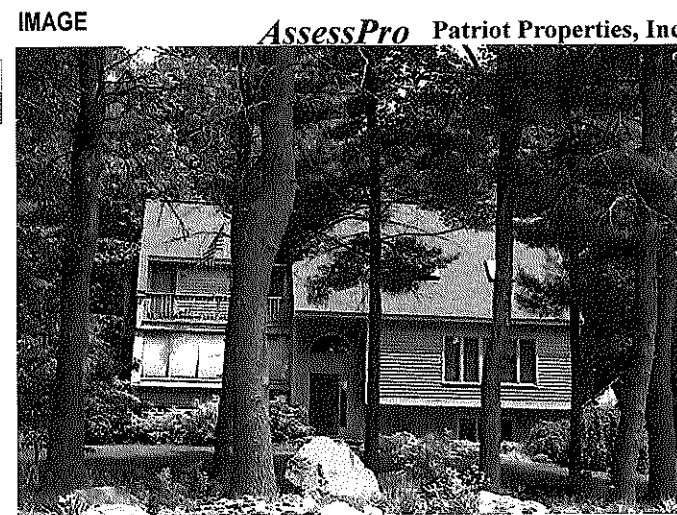
<b>REMODELING</b>		<b>RES BREAKDOWN</b>			
Exterior:		No Unit	RMS	BRS	FL
Interior:		1	6	3	M
Additions:					
Kitchen:					
Baths:					
Plumbing:					
Electric:					
Heating:					
General:					
Totals:		1	6	3	

<b>CALC SUMMARY</b>					<b>COMPARABLE SALES</b>				
Basic \$ / SQ:	101.00	Rate	Parcel ID	Typ	Date	Sale Price			
Size Adj.:	0.90124834								
Const Adj.:	0.98490000								
Adj \$ / SQ:	89.652								
Other Features:	14111								
Grade Factor:	1.20								
NBHD Inf:	1.00000000								
NBHD Mod:									
LUC Factor:	1.00								
Adj Total:	309489								
Depreciation:	84181								
Depreciated Total:	225308								

WtAv\$/SQ:	AvRate:	Ind.Val	Juris. Factor:	Before Depr:	107.58	
			Special Features:	0	Val/Su Net:	57.78
			Final Total:	225300	Val/Su SzAd:	100.45



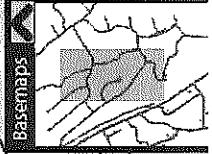
<b>SUB AREA</b>					<b>SUB AREA DETAIL</b>				
Code	Description	Area - SQ	Rate - AV	Undepr Value	Sub Area	% Usbl	Descrip	% Type	Qu #1
FFL	FIRST FLOOR	1,286	89.650	115,292					
LLV	LOWER LEVEL	1,256	22.410	28,151					
TQS	3/4 STORY	939	89.650	84,183					
WDK	WOOD DECK	204	16.070	3,279					
EFP	ENC PORCH	196	57.550	11,279					
SFL	SECOND FLR	18	89.650	1,614					
Net Sketched Area:		3,899	Total:	243,798					
Size Ad	2243	Gross Area	4212	FinArea	2243				



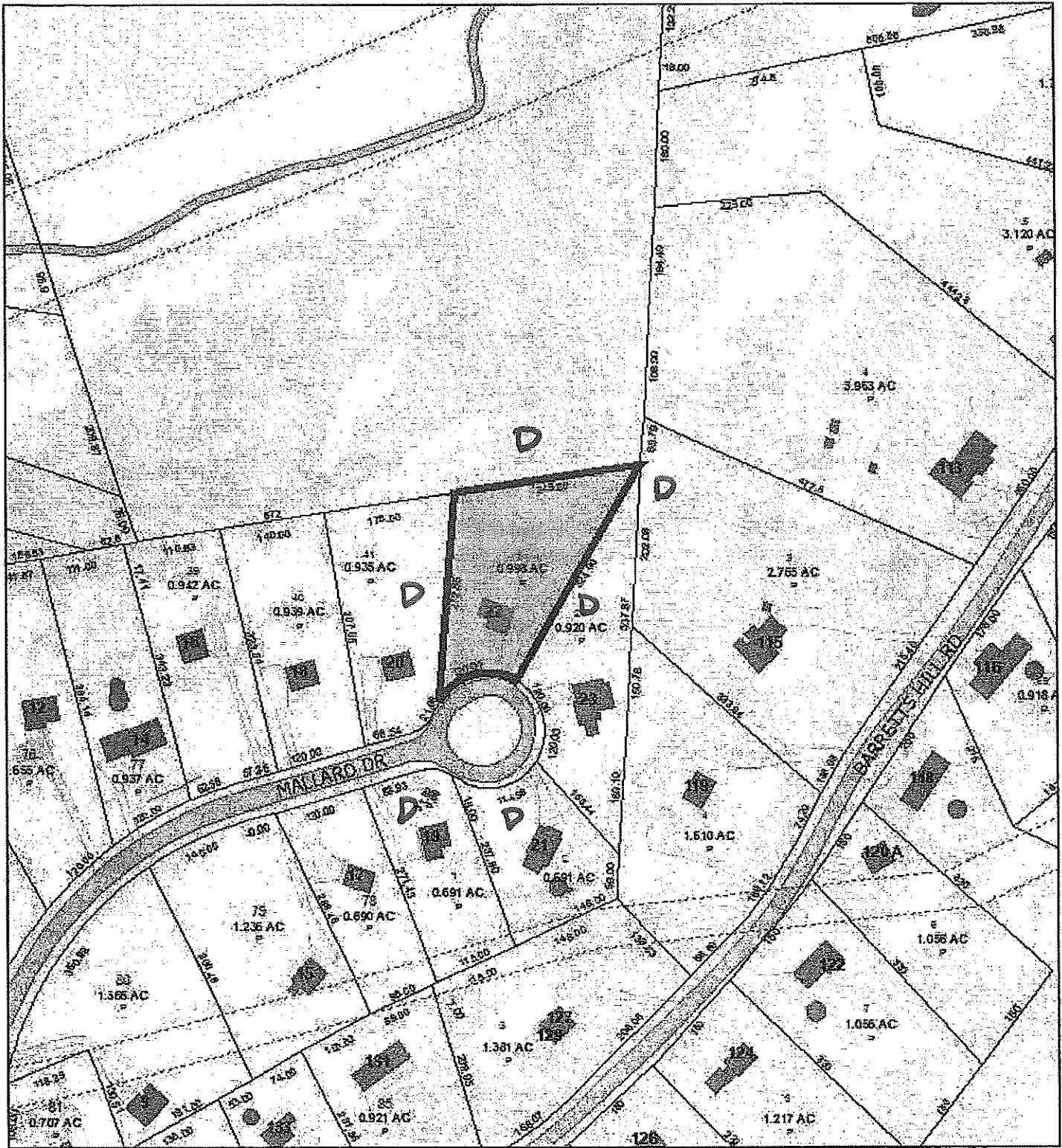
2 mallard dr

\*Advanced Search >>

Search Results		Selection Results	
Clear	Zoom to selection	Export	
Parcel ID ▲	Address ▲	Owner ▲	
1-059-000	75 BARRETT'S HILL RD	STABLER, HELEN C.	
1-041-000	28 MALLARD DR	FINCHER, THOMAS G., JR.	
1-040-000	18 MALLARD DR	CIANCETTA, JESSE	
1-034-000	119 BARRETT'S HILL RD	SAUTHIER, CONRAD	
1-003-000	115 BARRETT'S HILL RD	GAFFNEY, VICKIE L.	
1-002-000	23 MALLARD DR	INGRAM, RICHARD L.	
1-001-000	22 MALLARD DR	POREMSKI, CHRISTOPHER M.	
1-004-000	119 BARRETT'S HILL RD	YOST, STANLEY J.	
1-002-000	21 MALLARD DR	LECHNER, RICHARD P.	
1-001-000	19 MALLARD DR	GENTILE, ELAINE D.	
1-078-000	17 MALLARD DR	HAIME, STEVEN E.	



# 22 Mallard



September 22, 2020

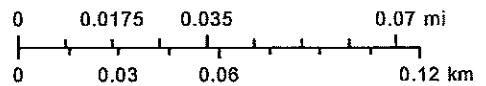
1:2,220

Legend

----- Easement\_Lines

□ Parcels

D = Direct  
I = Indirect





Printed  
9/28/2020  
3:58PM  
Created  
9/28/2020  
3:45 PM

# Transaction Receipt

Receipt# 613,260  
tgoodwyn

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

	<u>Description</u>	<u>Current Invoice</u>	<u>Payment</u>	<u>Balance Due</u>
1.00	Zoning Application-ZBA Meeting 10/22/20 22 Mallard Drive Map/Lot 152-001-000 Home Occupation SE	0.00	160.5500	0.00
			<b>Total:</b>	<b>160.55</b>

<u>Remitter</u>	<u>Pay Type</u>	<u>Reference</u>	<u>Tendered</u>	<u>Change</u>	<u>Net Paid</u>
Christopher & Alexa Porembski	CHECK	CHECK # 1953	160.55	0.00	160.55
			<b>Total Due:</b>		<b>160.55</b>
			<b>Total Tendered:</b>		<b>160.55</b>
			<b>Total Change:</b>		<b>0.00</b>
			<b>Net Paid:</b>		<b>160.55</b>

**HUDSON ZONING BOARD OF ADJUSTMENT**

**REHEARING REQUEST WORKSHEET**

On **12/17/20**, The Hudson Zoning Board of Adjustment heard case **152-001**, Being a request by **Christopher Poremski, 22 Mallard Dr., Hudson, NH requests a rehearing for a previously denied request for a Home Occupation Special Exception to operate an internet sales of firearms business that requires a Federal License and occasional face to face sales/transactions on site.** [Map 152, Lot 001-000; Zoned General One (G-1); HZO Article VI, Special Exceptions, §334-24, Home Occupations].

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

Town of Hudson, New Hampshire Bylaws

Zoning Board of Adjustment

Proposed 12-17-20

Chapter 143

- 143.1 History
- 143.2 Authority
- 143.3 Purpose
- 143.4 Amendments
- 143.5 Officers
- 143.5A Recorder
- 143.6 Members and Alternates
- 143.7 Meetings
  - 1. Regular Meetings
  - 2. Quorum
  - 3. Disqualification
  - 4. Order of Business
- 143.8 Application Process
  - 1. Applications
  - 2. Forms
  - 3. Public Notice
  - 4. Public Hearing
- 143.9 Decision Process
- 143.10 Deferment and Withdrawal
- 143.11 Reconsideration by the Board
- 143.12 Motions for Rehearing
- 143.13 Records
- 143.14 Waivers
- 143.15 Joint Meetings and Hearings

### 143.1 History

12-14-1978: Adopted by the Zoning Board of Adjustment of the Town of Hudson

06-23-1988: Amended in its entirety,

06-23-2011: Amended again in its entirety.

Subsequent amendments noted where applicable.

10-12-17: Amended in entirety.

04-11-19: Subsequent amendments noted where applicable.

09-26-19: Added Recorder; revised Clerk; unexcused absences; order of business; pledge of allegiance, introduction and 11:00pm curfew; 30 day re-hearing note and attachment "A".

xx-xx-21: ~~A~~added section [143.5B](#) on succession of officers, ~~and members.~~

### 143.2 Authority

These bylaws of the Hudson Zoning Board of Adjustment, hereinafter referenced simply as the Board, are adopted under the Authority of NH-RSA (New Hampshire Revised Statutes Annotated) 676:I. In the event of a difference between these bylaws and the applicable NH-RSAs, the NH-RSAs take precedence over these Bylaws.

### 143.3 Purpose

The purpose of these bylaws is to ensure an orderly procedure in the execution of the duties of the Board.

### 143.4 Amendments

These bylaws may be amended by a majority vote of the voting members at a regular meeting of the Board provided such amendments are read at two successive public meetings.

### 143.5 Officers

1. A Chairman shall be elected annually by a majority vote of the Board at the first meeting in the month of January.

The Chairman shall preside over all meetings and hearings, appoint such committees as directed by the Board and shall affix his/her signature in the name of the Board.

2. A Vice-Chairman shall be elected annually by a majority vote of the Board at the first meeting in the month of January.

The vice-Chairman shall preside in the absence of the Chairman and shall have the full powers of the Chairman on matters which come before the Board during the absence of the Chairman.

3. A Clerk shall be elected annually by a majority vote of the Board at the first meeting in the month of January.

The clerk shall take attendance, read cases into the record, and process the member decision

sheets for a summary of decision made. [9-26-19]

4. All officers shall serve for one year and shall be eligible for re-election.

#### 143.5A Recorder

The Recorder is not a Member or Alternate. The Recorder shall transcribe the minutes and notices of decisions in accordance with State RSA requirements. The Recorder shall have minutes available for members to accept. The Recorder shall have notice of decisions available for the Chairman and Zoning Administrator. [9-26-19]

#### 143.5B Officer vacancies

1. In the event that the un-expired term of Chairman becomes vacant, the Vice-Chairman will fill the vacancy until the 1st meeting in January of the following year at which time the voting members will elect a new Chairman.

2. In the event that the un-expired term of Vice-Chairman becomes vacant, the voting members will vote to fill the vacancy at their next regular scheduled meeting.

3. In the event that the un-expired term of Clerk becomes vacant, the voting members will vote to fill the vacancy at their next regular scheduled meeting. [xx-xx-21]

#### 143.6 Members and Alternates

1. Five Regular Members shall be appointed by the Board of Selectmen attend all meetings, and sit as voting members

2. Five Alternate Members shall be appointed by the Board of Selectmen, attend all meetings to familiarize themselves with the workings of the Board and stand ready to serve whenever a regular member of the Board is unable to fulfill his/her responsibilities.

3. A Selectman Liaison may be appointed by the Board of Selectman to act as a liaison between the two Boards and should attend all meetings but shall have no voting powers nor the ability to sit in place of any regular member not in attendance.

4. At meetings of the Board, alternates who are not activated to fill the seat of an absent or recused member or who have not been appointed by the Chairman to temporarily fill the unexpired term of a vacancy may participate with the Board in a limited capacity. During a public hearing, alternates may sit at the table with the regular members and may view documents, listen to testimony, ask questions and interact with other Board members, the applicant, abutters and the public. Alternates shall not be allowed to make or second motions. Once the Board moves into deliberations, alternates shall remove themselves from any further deliberations with the Board. During work sessions or portions of meetings that do not include a public hearing, alternates may fully participate, exclusive of any motions or votes that may be made. At all times, the Chairman shall fully inform the public of the status of any alternate present and identify the members who shall be voting on the application.

5. All members and alternates must reside in the community and are expected to attend each meeting of the Board to exercise their duties and responsibilities. Any member unable to attend a meeting shall notify the Chairman as soon as possible. Members, including the Chairman and all officers, shall participate in the decision-making process and vote to





# 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 – November 12, 2020 – As edited

- I. CALL TO ORDER
- II. PLEDGE OF ALLEGIANCE

Chairman Gary Dearborn called the meeting to order at 7:03 PM and invited everyone to stand for the Pledge of Allegiance.

Mr. Dearborn 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. Dearborn 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. Dearborn 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, Zoning Administrator, 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 Etienne took attendance. Members present were Gary Dearborn (Regular/Chair), Brian Etienne (Regular/Clerk), Ethan Severance (Alternate), and Jim Pacocha (Regular). Also present were Bruce Buttrick, Zoning Administrator, and Louise Knee, Recorder (via remote access) and Kara Roy, Interim Selectman Liaison. Excused were Gary Daddario (Regular/Vice Chair) and Marilyn McGrath, Selectman Liaison. Absent was Leo Fauvel (Alternate). For the record, Alternate Severance was seated as a Voting Member.

Mr. Dearborn stated that with only four (4) voting Members present, the option to defer hearing of a Case to the next meeting is available and noted that should a vote be cast as 2:2, the item would be defeated.

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

1. Case 176-007 (11-12-20): Travis Spaulding of Spaulding Investment Properties, LLC, 37 Ponemah Road, Amherst, NH requests a Variance for 184 Central Street to construct a vacuum station with 3 vacuums which

48 encroaches the side yard setback leaving 4.9 ft. where 15 ft. is required and  
49 encroaches the front yard setback leaving 37.3 ft. where 50 ft. is required.  
50 [Map 176, Lot 007-000; Zoned Business (B); HZO Article VII, Dimensional  
51 Requirements, §334-27, Table of Minimum Dimensional Requirements].  
52

53 Mr. Buttrick read the Case into the record. Mr. Dearborn asked if they wished to  
54 present their Case or defer it to next meeting. Both the Property Owner and his  
55 representative agreed to proceed with the hearing.  
56

57 Brent Cole, PE, Granite Engineering, LLC, introduced himself and the new Property  
58 Owner, Travis Spaulding of Spaulding Investment Properties, LLC. Mr. Cole identified  
59 the location, stated that the site has been a carwash since it received Planning Board  
60 approval in 1984 and noted that there exists two (2) separate vacuum stations on site,  
61 each within the setbacks – one being 4.9’ from the side property line and the other  
62 being 37.3’ from the front property line. Mr. Cole stated that his client purchased the  
63 site approximately one year ago and has been renovating, received Planning Board  
64 approval in September 2020 for the addition of an automated carwash bay and the  
65 consolidation of the vacuum stations. Mr. Cole stated that the location for the  
66 vacuum stations was selected for traffic flow to allow for the cueing while providing  
67 safety for the users of the vacuums. Mr. Cole posted the Site Plan that showed the  
68 new approved automatic wash bay and the proposed location of the three (3) vacuum  
69 ~~stations~~ on an existing concrete foundation.  
70

71 Mr. Cole stated that the vacuum stations are considered a structure in the Ordinance  
72 and are before the ZBA seeking a Variance to place the vacuums into the front and  
73 side setbacks. Mr. Cole addressed the Variance criteria and the information shared  
74 included:  
75

76 (1) *not contrary to public interest*

- 77 • carwash has existed in this neighborhood since 1984
- 78 • two separate vacuum locations/stations will be consolidated into one
- 79 station which will help public health and welfare by providing a safer
- 80 area for public to wash their car
- 81

82 (2) *spirit of Ordinance observed*

- 83 • principal use is the carwash and vacuums are a typical accessory use
- 84 • location selected to allow cars to maneuver and queue through the
- 85 carwash while another is vacuuming
- 86 • the two existing vacuums were approved and located closer to the
- 87 property line, and will be removed, consolidated and repositioned to be
- 88 less non-conforming
- 89 • fencing and landscaping along the property line to be installed and
- 90 provide a visually appealing barrier to the abutter
- 91

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

- 93 • will allow property owner to update and existing business
- 94

95 (4) *will not diminish surrounding property values*

- 96 • site has been a carwash since 1984

- 97                   • overall project will include new landscaping, fencing, façade, sign and  
98                   pavement which will improve property value and should enhance  
99                   surrounding neighborhood property values  
100

101                   (5) *hardship*

- 102                   • the addition of an automated carwash bay requires additional queue  
103                   length and maneuvering space and has forced the relocation of the  
104                   existing vacuum stations for safety sake  
105                   • existing building structure limits options and the option to relocate the  
106                   vacuum stations out of the setback is not possible  
107                   • the relocation of the vacuums will impede the setback less than what  
108                   was approved in 1984  
109

110 Mr. Dearborn declared a five-minute recess at 7:20 PM for the public to call-in. No  
111 one called. Mr. Dearborn opened public testimony and no one addressed the Board.  
112

113 Mr. Etienne stated that the hardship criteria is based on the land and noted that the  
114 wetlands would not be impacted with the proposed location of the vacuum stations,  
115 and that, in his opinion, is good and satisfies the criteria. Mr. Pacocha questioned  
116 other possible locations for the vacuum stations and Mr. Cole explained the impact to  
117 queuing. Mr. Pacocha noted that the vacuum picture on the plan shows more than  
118 three (3) stations. Mr. Cole responded that the picture represents the type of vacuum  
119 and demonstrates the openness of the area and that only three (3) vacuum stations  
120 ~~(total six vacuums)~~ is-are proposed for this site.  
121

122 Mr. Dearborn questioned the fence and noted that to the right of the site is a large  
123 commercial building. Mr. Cole stated that it would be a split-rail fence, that the  
124 carwash has existed since 1984, and that there will be no more noise produced than  
125 what occurs today. Mr. Spaulding stated that there used to be a two-foot brick wall,  
126 that he is not aware of any complaints regarding noise from the site and added that  
127 that new machines will be much quieter than the machines currently in use.  
128

129 Mr. Etienne made the motion to grant the Variance as requested with no stipulations.  
130 Mr. Pacocha seconded the motion. Mr. Etienne spoke to his motion stating that all the  
131 conditions have been met, that traffic flow improvement considered and wetland  
132 avoided. Mr. Pacocha stated that the variance will not be contrary to public interest, it  
133 does observe the spirit of the Ordinance as vacuums is accessory to carwashes,  
134 substantial justice is done, that there will be no impact to property surrounding  
135 values and hardship is met with the avoidance of the wetland and limited physical  
136 options. Roll call vote was 4:0. Motion passed. Variance granted. The 30-day appeal  
137 period was noted.  
138

- 139                   2. Case 234-041 (11-12-20): Michael McKeown, 28 Winding Rd., Bedford, NH  
140                   requests a Variance for 288 Lowell Rd., to allow one (1) additional 32 sf.  
141                   building mounted sign for a total of two (2) building mounted signs (64 sf.  
142                   total) where one wall sign is permitted. [Map 234, Lot 041-000; Zoned  
143                   Business (B); HZO Article XII, Signs, §334-63, Business and industrial  
144                   building signs].  
145

146 Mr. Buttrick read the Case into the record and noted that the Zoning Board approved  
147 a Special Exception to redevelop the site on 3/12/2020 and the Planning Board  
148 approved the Site Plan on 5/13/2020; that one (1) building sign of a maximum of 124  
149 SF (Square Feet) is allowed and that the Applicant seeks two (2) building signs for a  
150 total of 64 SF.

151  
152 Mr. Etienne declared, in the light of full disclosure, that his veterinarian is Dr.  
153 Komma, that he feels he can vote impartially on the Case and asked if he should  
154 recuse himself. Michael McKeown, Applicant's representative, stated that he has no  
155 objection to Mr. Etienne voting.

156  
157 Michael McKeown of Dennis Mires, PA, The Architects, introduced himself, identified  
158 the location of the property and displayed several pictorial views of the building and  
159 noted that the design of the building, with its pointed front, would prevent a single  
160 sign from being seen when driving in one direction. Mr. McKeown stated that the  
161 Ordinance, based on the square footage of the front of the building would allow for a  
162 single sign of approximately one hundred twenty four square feet (124 SF) and what is  
163 proposed is to allow two (2) building thirty two square feet (32 SF) signs, on either side  
164 of the pointed front, and noted that the total of sixty four square feet (64 SF) of signage  
165 is approximately half of a single sign that is allowed.

166  
167 Mr. McKeown addressed the criteria for the granting of a Variance. The information  
168 shared included:

169  
170 *(1) not contrary to public interest*

- 171 • request is not contrary to public interest, health, safety or character of  
172 the neighborhood
- 173 • proposal is for approximately half of the square footage allowed by the  
174 Ordinance for an exterior building sign
- 175 • proposed signage is more contiguous with the exterior building design
- 176 • proposed sign is more characteristic of residential signage and keeps the  
177 character of the residential neighborhood

178  
179 *(2) spirit of Ordinance observed*

- 180 • proposed signage is approximately half of what is allowed in Ordinance

181  
182 *(3) substantial justice done to property owner*

- 183 • main public entrance to the building does not run parallel to Route 3A
- 184 • allowing a small building mounted sign on each of the angular faces of  
185 the main entrance will allow fair and just visibility from both northbound  
186 and southbound traffic pathways

187  
188 *(4) will not diminish surrounding property values*

- 189 • smaller and well placed building mounted signage provides a desirable  
190 and thoughtful exterior building design characteristic of residential style  
191 signage and be in character with the neighborhood

192  
193 *(5) hardship*

- 194 • main building entrance is not parallel to Route 3A and placement of just  
195 one sign inhibits visibility from one travelway

- 196                   • strategically placed signs for maximum visibility with less SF than  
197                   allowed by the Zoning Ordinance  
198

199 Mr. Dearborn declared a five-minute recess at 7:40 PM for the public to call-in. No  
200 one called. Mr. Dearborn opened public testimony and no one addressed the Board.  
201

202 Mr. Pacocha asked how the size of a sign is calculated and Mr. McKeown responded  
203 that the square footage is based on the size of the street facing façade and for this  
204 building that yields an allowable size of 124 SF. Mr. Severance noted that what is  
205 being requested totals to just over half of what the Ordinance would allow. Mr.  
206 Dearborn questioned the size of the proposed signs. Mr. McKeown responded that  
207 they are circular with a diameter of 6'4" to yield a square footage of 32 SF each and  
208 with two (2) identical signs being proposed the total square footage of the building  
209 mounted signs is 64 SF.  
210

211 Mr. Etienne asked if the signs would be illuminated. Mr. McKeown responded that the  
212 signs would be backlit. Mr. Etienne noted the residential setting and asked if the  
213 signs would be continuously lit or set on a timer. Mr. McKeown stated that the signs  
214 would be connected to an automatic timer and set to turn off when the building is  
215 closed and added that the business closes at 6:00 PM.  
216

217 Mr. Pacocha inquired if the two proposed signs would be the only signs for the  
218 business. Mr. McKeown responded that there is a free standing sign on site. Mr.  
219 Etienne confirmed that it is on the right side and is difficult to see and asked if it  
220 would be decommissioned. Mr. McKeown stated that he was not sure. Mr. Buttrick  
221 noted that the freestanding sign is there, is allowed and is approved and that no relief  
222 is required for it. Mr. Etienne stated that the business would then have a free  
223 standing sign and two (2) signs up on the building.  
224

225 Mr. Pacocha made the motion to grant the Variance as requested and with no  
226 stipulations. Mr. Etienne seconded the motion. Mr. Pacocha spoke to his motion  
227 noting that it would not be contrary to public interest, the issue is the Zoning  
228 Ordinance only allowing one building mounted sign but this building is unique, that  
229 the plan proposed is pleasing and better fits the neighborhood and will not diminish  
230 property values, that justice to the applicant is done with no harm to others and that  
231 the hardship is caused by the design of the building. Mr. Etienne concurred and  
232 added that with regard to hardship, the view shed is blocked. Roll call vote was 4:0.  
233 Variance granted. The 30-day appeal period was noted.  
234

- 235                   3. Case 230-021 (11-12-20): Joseph G. Deluca, 21 Clement St., Nashua, NH  
236                   requests an Appeal from an Administrative Decision for 6 James Way, which  
237                   deemed an existing dwelling unit above the detached garage as illegal. [Map  
238                   230, Lot 021-000; Zoned Residential-Two (R-2); HZO Article V, Permitted  
239                   Uses, §334-21, Table of Permitted Principal Uses].  
240

241 Mr. Buttrick read the Case into the record and noted that the appeal is in regard to  
242 the illegal dwelling unit above the detached garage.  
243

244 Mr. Dearborn asked the Applicant if he wished to present his Case at this meeting  
245 with only four (4) Voting Members or request deferment to the December meeting in



246 hopes of having a full Board present. Mr. Deluca stated that he has spoken with legal  
247 counsel and he understands that his options are either to defer or seek a variance  
248 and stated that he has additional material to share with the Board. Mr. Buttrick  
249 stated that if the Applicant intends to submit a Variance application, the Appeal  
250 could be withdrawn instead of deferred. It was noted that a variance had been denied  
251 for this dwelling unit in the past and unless something has changed a second  
252 variance may not be possible. Mr. Deluca asked for a deferment. Mr. Dearborn  
253 stated that additional material could be submitted. Mr. Deluca submitted material.  
254

255 Side discussion occurred on the Date of the December meeting – see Agenda item  
256 VI.1. Mr. Buttrick stated that at the time the Agenda was created, the Budget  
257 Committee claimed this meeting room and thought to offer the alternate date of  
258 December 17<sup>th</sup>; however, the School Board has claimed this meeting room on that  
259 date. December 10<sup>th</sup> is the scheduled date. The 12/10/2020 ZBA will have to be  
260 held in the Buxton Room at Town Hall, 12 School Street.  
261

262 Mr. Severance made the motion to grant the request to defer the hearing to the  
263 December 10, 2020 meeting. Mr. Etienne seconded the motion. Roll call vote was  
264 4:0. Motion passed. Case deferred.  
265

#### 266 **IV. REQUEST FOR REHEARING:**

267  
268 No requests were presented for Board consideration.  
269

#### 270 **V. REVIEW OF MINUTES:**

##### 271 10/22/20 edited Minutes

272  
273  
274 Motion made by Mr. Etienne, seconded by Mr. Severance and unanimously voted to  
275 approve the 10/22/2020 Minutes as edited.  
276

#### 277 **VI. OTHER:**

##### 278 279 1. Dec 10th vs 17<sup>th</sup> ZBA meeting schedule?

280  
281 The option for the 17<sup>th</sup> was offered with the hope that the large meeting room would be  
282 available to easily accommodate social distancing due to Covid-19; however it is not.  
283 Consensus reached to keep the schedule as published. It was noted that the next  
284 meeting on December 10, 2020 will be held at the Town Hall in the Buxton Room at  
285 12 School Street. Mr. Etienne stated that he would not be at the 12/10/2020 meeting  
286

##### 287 2. 2020 Virtual Land Use Law Conference recap/material

288  
289 Mr. Buttrick stated that he attended and has reference materials to share with  
290 Members and could provide links.  
291

##### 292 3. Bylaws- order of succession of the Officers

293  
294 Board reviewed, discussed and amended the proposed addition of item 143.5B Officer  
295 Vacancies. Mr. Dearborn added the word “unexpired” prior to the word ‘position’. Ms.  
296 Roy noted that the ZBA has no “Co-Chairman” but a “Vice Chair”. Mr. Buttrick asked

297 to make the changes and post for its first of two required public hearings on the  
298 December 10, 2020 Agenda.

299

300 4. Forms – Home Occupation Special Exception

301

302 Board reviewed the current Application Form and noted that all the criteria in the  
303 Zoning Ordinance were not on the Form – specifically Retail Sales, criteria 334-34.F.  
304 Discussion arose on the need to have “Retail Sales” defined in the Ordinance. Mr.  
305 Buttrick noted that all changes to the Ordinance must come from the Planning Board.  
306 Mr. Dearborn noted that the postal rate is subject to change and Mr. Buttrick  
307 responded that the current rate is automatically updated and added that only the  
308 Selectmen have the authority to set the Application Fees.

309

310 5. Town Email Addresses

311

312 Mr. Buttrick provided an update on who has requested a Town email address.

313

314 6. NH RSA 673:3-a Training

315

316 Mr. Buttrick offered/noted that ZBA training is available for new Members

317

318

319 Motion made by Mr. Severance, seconded by Mr. Etienne and unanimously voted to  
320 adjourn the meeting. The 11/12/2020 ZBA Meeting adjourned at 8:30 PM.

321

322 Respectfully submitted,

323 Louise Knee, Recorder

324

ASSED



# TOWN OF HUDSON

## Zoning Board of Adjustment



Gerald Dearborn, Chairman      Marilyn McGrath, Selectmen Liaison

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

## YEAR 2021 ZBA MEETING SCHEDULE

The Town of Hudson Zoning Board of Adjustment regularly meets on the **fourth Thursday** of every month until further notice physically at the **Hudson Community Center, 12 Lions Ave., Hudson, NH** or virtually via GoTo Meeting. \*\*\*The November and December meetings will be held on an alternate Thursday of the month due to the Thanksgiving and Christmas Holidays. All meetings begin at 7:00 p.m. at the above location unless otherwise noted. Applications are due by 12:00 p.m. on the Application deadline.

### Year 2021 ZBA Schedule

Day	Time	Meeting Date	Application Deadline (12:00 Noon)
Thursday	7:00 p.m.	<b>January 28<sup>th</sup></b>	January 12 <sup>th</sup>
Thursday	7:00 p.m.	<b>February 25<sup>th</sup></b>	February 9 <sup>th</sup>
Thursday	7:00 p.m.	<b>March 25<sup>th</sup></b>	March 9 <sup>th</sup>
Thursday	7:00 p.m.	<b>April 22<sup>nd</sup></b>	April 6 <sup>th</sup>
Thursday	7:00 p.m.	<b>May 27<sup>th</sup></b>	May 11 <sup>th</sup>
Thursday	7:00 p.m.	<b>June 24<sup>th</sup></b>	June 8 <sup>th</sup>
Thursday	7:00 p.m.	<b>July 22<sup>nd</sup></b>	July 6 <sup>th</sup>
Thursday	7:00 p.m.	<b>August 26<sup>th</sup></b>	August 10 <sup>th</sup>
Thursday	7:00 p.m.	<b>September 23<sup>rd</sup></b>	September 7 <sup>th</sup>
Thursday	7:00 p.m.	<b>October 28<sup>th</sup></b>	October 12 <sup>th</sup>
Thursday	7:00 p.m.	<b>November 18<sup>th</sup> ***</b>	November 2 <sup>nd</sup>
Thursday	7:00 p.m.	<b>December 9<sup>th</sup> ***</b>	November 23 <sup>rd</sup>

\*Pending Approval-12/17/21 ZBA Meeting

**APPLICATION FOR A HOME OCCUPATION  
SPECIAL EXCEPTION**

To: Zoning Board of Adjustment  
Town of Hudson

<p><b>Entries in this box are to be filled out by Land Use Division personnel</b></p> <p>Case No. _____</p> <p>Date Filed _____</p>
---

Name of Applicant \_\_\_\_\_ Map: \_\_\_\_\_ Lot: \_\_\_\_\_ Zoning District: \_\_\_\_\_

Telephone Number (Home) \_\_\_\_\_ (Work) \_\_\_\_\_

Mailing Address \_\_\_\_\_

Owner \_\_\_\_\_

Location of Property \_\_\_\_\_  
(Street Address)

-----  
Signature of Applicant \_\_\_\_\_ Date \_\_\_\_\_

-----  
Signature of Property-Owner(s) \_\_\_\_\_ 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 home occupation special exception.**

<b>Items in this box are to be filled out by Land Use Division personnel</b>	
<b>COST:</b>	Date received: _____
Application fee: <u>\$130.00</u>	
_____ Direct Abutters x \$4.05 = _____	
_____ Indirect Abutters x \$0.55 = _____	
<b>Total amount due:</b> <u>\$</u>	Amt. received: \$ _____
	Receipt No.: _____
Received by: _____	
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
	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)	
	Before making the 13 copies, please review the application with the Zoning Administrator or staff.	
	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.	
	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). ( <b>NOTE:</b> if such an authorization is required, the Land Use Division will not process the application until this document has been supplied.)	
	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. ( <b>NOTE:</b> 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.)	
	A copy of both sides of the assessor's card shall be provided. ( <b>NOTE:</b> these copies are available from the Assessor's Office)	
	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.	
	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.	



**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):
- a)\_\_\_\_\_ The plot plan shall be drawn to scale on an 8 ½” 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)

\_\_\_\_\_  
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.





For any appeal, the application form must be properly filled out. The application form is intended to be self-explanatory, but be sure that you show:

1. Who owns the property. If the applicant is not the owner, please include a statement from the owner that you have permission to speak on his/her behalf.
2. Where the property is located.
3. What you propose to do. Supply twelve copies of an 8.5" x 11" or 11" x 17" scale plan which gives lot area, frontage, side and rear lot lines, natural features, existing and proposed structures, alteration to the lot, and distance to lot lines or wetlands. Pictures and construction plans are helpful.
4. Why your proposed use requires an appeal. Please fill out the attached appeal forms completely. Include why the appeal should be granted.
5. List of abutters, per NH RSA 672:3. This includes property and the name(s) of the owner(s) of properties which physically touch the subject property, across the street and kitty-corner to the subject property.

Prepare a list of all abutting property owners using the Assessing Office records, and attach it to your application. **The accuracy of the list is your responsibility. If the list is found to be incorrect, you may be required to appear before the ZBA a second time, at your expense.**

6. Deliver the completed application, with all attachments, to the office of the Zoning Administrator. A fee is charged sufficient to cover the cost of preparing and mailing the legally required notices. If paying by check, make the check payable to the Town of Hudson and submit with your application.

The Zoning Office will schedule a public hearing within thirty (30) days of receipt of your **properly-completed** application. Applications are scheduled on a first come, first serve basis. **Only completed applications will be scheduled for a hearing.** Public notice of the hearing will be posted and printed in a newspaper, and a notice will be mailed to you, all abutters and other parties whom the Board may deem to have an interest.

After the public hearing, the Board will reach a decision. You will be sent a Notice of Decision.

If you believe that the Board's decision is wrong, you have the right to appeal. Any party affected has the right to appeal the decision of your case. To appeal, you just first ask the Board for a rehearing; this motion for rehearing may be in the form of a letter to the Board. The motion must be made within thirty (30) days of 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 its' opinion, good reason is stated in the motion. 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.

See **NH RSA Chapter 677** for more detail on rehearing and appeal procedures.

Requests before the Board may require connection to the municipal sewer system. Please contact the Town Engineer prior to submittal of this application to determine if connection is required, and the procedures for such application.

APPLICATION FOR A HOME OCCUPATION SPECIAL EXCEPTION

A home occupation is a sales or service operation for goods produced or services provided on-site and is permitted only as a special exception upon approval by the Zoning Board of Adjustment. In granting such an exception, the Board must find the home occupation to be in full compliance with the requirements listed below.

Please explain, in detail, the nature of your home business.

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Is the home occupation secondary to the principal use of the home as the business owners' residence? Please explain.

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Will the home occupation business be carried on within the residence and/or within a structure accessory to the residence? Please explain.

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Other than the sign(s) permitted under Article XII, will there be exterior display or other exterior indications of the home occupation? Will there be any variation from the primarily residential character of the principal or accessory building? Please explain.

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APPLICATION FOR A HOME OCCUPATION SPECIAL EXCEPTION (CONTINUED)

Will there be exterior storage and will it be screened from neighboring views by a solid fence or by evergreens of adequate height and bulk at the time of planting to effectively screen the area? In situations where a combination of existing foliage and/or long distances to neighboring views provide screening, the fencing requirements may be waived at the discretion of the Board. Please explain how you will comply.

---

---

---

Will there be noise, vibrations, dust, smoke, electrical disturbances, odors, heat or glare produced? Please explain, and if there will be electrical disturbances, describe the frequency.

---

---

---

Will the traffic generated by the home occupation activity be substantially greater in volume than would normally be expected in the neighborhood? Please explain the expected traffic to your business.

---

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---

Where will customer/client parking for the home occupation be located? Please explain.

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---

Who will be conducting the home occupation? Please explain.

---

---

---

Will there be a vehicle(s) for the home occupation? Please explain the type and number of vehicle(s).

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