



TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Kara Roy, Selectmen Liaison

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MEETING MINUTES – September 9, 2021 – approved

The Hudson Zoning Board of Adjustment met Thursday, September 9, 2021 at 7:00 PM in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall.

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

Chairman Daddario called the meeting to order at 7:02 PM, invited everyone to stand for the Pledge of Allegiance and read the structure of the meeting from the Preamble found in Exhibit A of the Board's Bylaws.

Clerk Etienne took attendance. Members present were Gary Daddario (Regular/Chair), Brian Etienne (Regular/Clerk), Leo Fauvel (Regular) and Jim Pacocha (Regular/Vice Chair). Also present were Bruce Buttrick, Zoning Administrator, Louise Knee, Recorder (remote) and Kara Roy, Selectman Liaison. Absent were Marcus Nicolas (Regular) and Ethan Severance (Alternate).

Mr. Daddario stated that there were only four (4) Members present and therefore only four (4) Voting Members and offered to the Applicant the option to defer the hearing to the next meeting in the hopes that there would be five (5) members present.

Atty. John Cronin of Cronin, Bisson & Zalinsky, P.C., representing the Applicant, asked and received a moment to consult with his client then responded that they were willing to proceed with just four (4) Voting Members. Mr. Daddario stated that three (3) votes are required to pass a motion and explained that if a vote of 2:2 is cast then the application's motion would fail. Atty. Cronin stated that he would then ask to withdraw the application and re-file

III. PUBLIC HEARING OF SCHEDULED APPLICATION BEFORE THE BOARD:

1. **Case 176-021/022/023 (09-09-21) (Deferred from 08-26-21)**: Bluebird Self Storage, LLC, Attn: Bill Goodison, General Manager, 125 Ocean Rd, Greenland, NH requests a Variance for a proposed 3 lot consolidation of **196, 200 & 202 Central St., Hudson, NH** to allow a proposed 3 story, 40,000 sqft footprint building for an indoor self-storage warehouse where the use is not permitted in the Business District. [Map 176, Lots 021-000 & 022-000 & 023-000; Zoned Business (B); HZO Article V, Permitted Uses; §334-21, Table of Permitted Principal Uses].

Not Official until reviewed, approved and signed.
Approved 10/28/2021 as edited

Mr. Buttrick read the Case into the record, noted that a revised argument was received from the Applicant's attorney and has been placed in the supplemental folder along with two (2) letters of support for the application: (1) Stephen Chase, President of Chase Steel, 8 Christine Drive, Hudson; and (2) Raymond Brayton, President/COO, Barlo Signs International, Inc.

Atty. John Cronin stated that his office focuses primarily on land use law, introduced Tony Basso, LLS (Licensed Land Surveyor) from Keach-Nordstrom Associates, Inc. seated to his right, and Bill Goodison, principal for the Applicant who was present in the audience.

Atty. Cronin stated that Bluebird Self Storage made an effort to develop property at 270 Lowell Road approximately four or five years ago but were denied primarily because it bordered on a residential community section of Town and received a lot of opposition. Bluebird went to develop elsewhere and to date they have seven (7) locations in NH – Epping, Hooksett, Manchester, Bedford, Rochester, Londonderry plus one more. Atty. Cronin stated that some have been so successful, that additions have been made to the Rochester and Epping locations and they are currently doing an additional building in Hooksett.

Atty. Cronin stated that the challenge has been to counter the historical self storage image, the long corrugated steel metal buildings with metal roofs and orange garage doors with a gated entrance allowed only in the off beaten paths, like Industrial Zones, and over time, some self storage facilities began to offer temperature control.

Atty. Cronin stated that Bluebird has taken a different track and likes to think of themselves more like a retail operation with a building designed to have curb-appeal and referenced the pictures of one of their facilities, noting that it resembles a shopping mall and has great appeal. Visibility is important to Bluebird as well as accessibility. It is virtually a burden free tax generator providing on average a hundred thousand dollars in property taxes and poses no burden on the school systems as no one lives in the facility and there is minimal burden on police and fire.

Atty. Cronin stated that after their previous application, the Zoning Ordinance was changed to pull warehousing out of this District and even though this particular District has pulled warehousing, the Use being requested is nor per se warehousing, it does provide for wholesale and most wholesale facilities do have a warehouse component. Atty. Cronin stated that even though a warehouse could enter this District without requiring a Variance relief it would not provide the same curb appeal as Bluebird or the same tax generation or provide the same service to the public.

Atty. Cronin stated that the definition of the Business District in the Zoning Ordinance is “to provide for the development of general wholesale and retail commercial uses, services, office uses, industry, warehousing, multifamily dwellings and customary accessory uses and structures.” [Article IV Section 334-18.D] and it contradicts itself in the Table of Permitted Principal Uses by not permitting wholesale, warehouse or self-storage mini-warehouse in the Business District and is therefore “invalid”. Atty. Cronin stated that this contradiction creates the hardship to/for his client and the land within the Business District is “peculiarly” suited for wholesale and warehousing

uses; referenced the business model; and noted single footprint heat controlled building has elevations, construction finished and details consistent with commercial or retail facilities and the appearance and aesthetics are aligned with a retail furniture store yet the traffic impacts, particularly at peak hours are minimal.

With regard to the five (5) Variance criteria, Atty. Cronin stated that the first two (2) criteria (*not contrary to public interest* and *observes the spirit of the Zoning Ordinance*) can be combined, per *Farrar v. City of Keene, 158 NH 684, 691 (2009)*, and the granting of the Variance would not alter the essential character of the neighborhood nor threaten public health, safety or welfare as the proposed use will not place children in public schools or place demands on public services as the facility will meet or exceed life safety standard and is subject to twenty-four hour security.

With regard to the third (3rd) Variance criteria (*substantial justice to the property owner*), Atty. Cronin stated that denial outweighs any gain to the general public and would undermine Bluebird's reasonable investment expectations with respect to the development of its proprietary storage structure. With regard to the fourth (4th) Variance criteria (*not diminish surrounding property values*), Atty. Cronin stated that the surrounding properties are retail, commercial and services businesses that are consistent and compatible with the proposed use and those businesses would be enhanced rather than diminished with Bluebird as Bluebird is more akin to a retail business servicing the public at large.

With regard to the fifth (5th) Variance criteria (*hardship*), Atty. Cronin stated that it is met by the conflict in the Zoning Ordinance with the Definition of the Business District encouraging warehouse uses and the Table of Permitted Uses not permitting warehouse use in the District. Atty. Cronin stated that the proposed use is cutting edge and differs substantially from first and second generation storage facilities and the failure of Hudson to properly classify the proposed use, which is understandable based on its cutting edge design, also results in a hardship.

Atty. Cronin concluded his presentation with a dissertation of *Simplex vs Boccia*, noted that unlike their previous application there has been no opposition raised to this location and added that granting the variance would not cause harm to the public and, by contrast, denying the variance would result in little, if any, gain to the public.

Mr. Fauvel questioned the storage of buses and boats and whether there would only be indoor storage with the proposed facility. Atty. Cronin confirmed that there would only be indoor storage and that outdoor storage would not be allowed. In response to Mr. Etienne question regarding the storage facility on the other side of the road, Mr. Basso responded that it was created in 1995 and noted that the site is split zoned located partially in the G (General) District that does allow for storage facilities. Mr. Goodison confirmed that the two (2) existing houses on the site would be demolished when the Variance is granted.

Mr. Pacocha questioned the reference made to wholesale and the amendment to the application and asked how the hardship criterion was satisfied. Atty. Cronin stated that the reference to wholesale was a misnomer and he should have said warehouse but both were in reference to the Description of the Business District in the Zoning Ordinance and noted that this is a unique use that wasn't thought of twenty-five (25)

years ago when self-storage units consisted of long metal buildings located off beat in industrial areas; that what is being proposed has the aesthetics belonging in the Business Zone with easy access; and that the satisfaction of the hardship criterion can be found on Page 3 of his submission. Mr. Fauvel commented that it is then not a land-based hardship and Atty. Cronin confirmed. Mr. Pacocha stated that the argument presented does not meet *Simplex*, in his opinion,

Public testimony opened at 7:42 PM. Todd Boyer, 2 Merrill Street, stated that he is a direct abutter to 194 Central Street and has been in Hudson for forty (40) years, that Bluebird would be a great addition to Hudson at this location with its clean new building, well kept maintenance, manicured landscape and low traffic and asked the Board to look at Bluebird as a business, because business is defined as the exchange of money for goods and service and Bluebird would be providing a service. Being no one else to address the Board, public testimony closed at 7:45 PM.

Mr. Fauvel asked about the hours of operation, access to the building and staffing. Mr. Goodison stated that the building would be accessible Monday through Friday from 6:00 AM to 8:00 PM, Saturday from 6:00 AM to 6:00 PM and Sunday from 6:00 AM to 4:00 PM and that staff would be on site everyday from 8:00 AM to closing and that the building cannot be accessed outside the posted hours.

In light of the new information, Mr. Daddario opened public testimony at 7:46 PM. No one addressed the Board.

Mr. Pacocha stated that, in his opinion, the site of the proposed building is overwhelming for the neighborhood and added that the existing storage facility across the street is barely noticeable from the road. Mr. Etienne stated that the size seems normal to him and agreed that it would change the neighborhood.

Mr. Daddario suggested that the Board review each criteria by roll call in order to give the applicant a sense of where the Board is leaning in case they wish to take action before a motion is made.

(1) not contrary to public interest or spirit of the Ordinance

Mr. Daddario: would be an improvement to the site, is 'raising the bar', have received public support and two letters of support with no dissention expressed, would like a condition that there be no other business be allowed to operate within building

Mr. Pacocha: subjective – does alter the essential character of the neighborhood

Mr. Fauvel: attractive building, the residences in the neighborhood do not belong in the Business district and there has been no opposition

Mr. Etienne: met

(2) will observe spirit of the Ordinance & not alter character of neighborhood

Mr. Daddario: met – observing the spirit of the Ordinance; Ordinance allows wholesale business and normally wholesale businesses have a warehouse component, proposed use is less intrusive than a wholesale business

Mr. Pacocha: criteria not met, does not observe the spirit of the Ordinance and does alter the essential character of the neighborhood

Mr. Fauvel: met and agree, but with conditions added

Mr. Etienne: criteria met for the property owner

(3) *substantial justice to property owner*

Mr. Daddario: met – no opposition received, less traffic, no harm to public

Mr. Pacocha: this is a “wash”

Mr. Fauvel: met

Mr. Etienne: met

(4) *will not diminish values to surrounding property properties*

Mr. Etienne: met – this will improve surrounding property values

Mr. Daddario: met

Mr. Pacocha: is no expert but agrees it will not diminish values

Mr. Fauvel: met – this is a Business Zone and the proposed building adds character to the neighborhood

(5) *hardship*

Mr. Etienne: hardship is based on land variants but there are no wetlands, no land uses but it is a fair and reasonable use, is pleased that there will be no outside storage and will not provide 24 hour/7 day availability so it does not behave like a traditional storage facility and the granting of the Variance can be considered fair and reasonable

Mr. Daddario: agreed with Mr. Etienne, this is a hardship of a different type because it has been caused by the Zoning Ordinance with the disparity between the Definition of the District and the Table of Uses and the proposed Use should be able to exist in the Business District and added that the Town Engineer confirmed this proposal requires Site Plan Review by the Planning Board and is only before the ZBA for the Use

Mr. Pacocha: hardest criteria to meet and the Applicant is citing the Ordinance as the cause for a hardship, which in his opinion does not – not met

Mr. Fauvel: it is benefiting the area with a nice building, there is a Use hardship, the six to seven houses in the neighborhood now but could be gone in the future and the granting of this Variance, with conditions, provides a benefit to take care of future hardship

Mr. Etienne made the motion to grant the Variance with two (2) stipulations: (1) that there shall be no outside storage on the premise; and (2) that no other business shall operate on/in site while the structure is being used as an indoor storage facility. Mr. Daddario seconded the motion. Vote was 3:1. Mr. Pacocha opposed. Variance granted. Mr. Buttrick noted the 30-day Appeal period. Atty. Cronin thanked the Board

Board took a five-minute recess at 8:13 PM. Mr. Daddario called the meeting back to order at 8:19 PM

IV. **OTHER:**

1. Reminder- Registration Now Open: 2021 Municipal Land Use Law Virtual Conference- Saturday, 9/18/2021 from 9:00 AM- 3:00 PM

Mr. Daddario read the item into the record. Mr. Buttrick noted that the virtual information will be available for six (6) months so that, in essence, one can attend every session and added that there is always something to learn. Mr. Buttrick stated that registration is now open on-line and advised everyone who signs up to notify himself or Ms. Goodwyn so that the Town can produce a Purchase Order.

2. September meeting attendance

Mr. Etienne advised that his plans have changed and that he will now be able to attend the 9/23/2021 meeting. Mr. Pacocha advised that he would not be able to attend September's meeting.

3. Alternate Members – still need!

Motion made by Mr. Etienne and seconded by Mr. Daddario and unanimously voted to adjourn the meeting. The 9/9/2021 ZBA meeting adjourned at 8:26 PM

Respectfully submitted,

Gary M. Daddario, ZBA Chairman