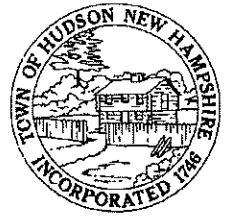


TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Kara Roy, Selectmen Liaison

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

MEETING AGENDA – September 9, 2021

The Hudson Zoning Board of Adjustment will hold a meeting on Thursday, **September 9, 2021 at 7:00 PM** in the Community Development Paul Buxton Meeting Room in the basement of Hudson Town Hall (please enter by ramp entrance at right side). The following items before the Board will be considered:

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

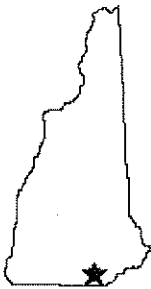
III. PUBLIC HEARING OF SCHEDULED APPLICATION BEFORE THE BOARD:

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].

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

Bruce Buttrick
Zoning Administrator



TOWN OF HUDSON

Land Use Division



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

Zoning Administrator Staff Report

Meeting Date: August 26, 2021

Bk
8-17-21

Case 176-021/022/023 (08-26-21): Bluebird Self Storage, LLC, Attn: Bill Goodison, General Manager 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].

Address: 196/200/202 Central St

Zoning district: Business (B)

Summary:

Applicant requests a variance, after a 3 lot consolidation to allow an indoor self storage warehouse, where such use is not permitted.

Property description:

After lot consolidation will consist of 164,773 sqft., where minimum lot size requirement is 30,000 sqft. With 295.35 ft of frontage where 150 ft is required.

LAND USE HISTORY:

N/A

ASSESSING HISTORY:

N/A

Town in-house review comments:

Town Engr:

Town Planner:

Fire Dept:

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

REQUEST FOR REVIEW/COMMENTS:

Case: 176-021/022/023

Property Location: 196-202 Central Street

For Town Use

Plan Routing Date: 08/12/2021 Reply requested by: 08/16/2021 ZBA Hearing Date: 08/26/2021

I have no comments I have comments (see below)

EZD Name: Elvis Dhima, P.E. Date: 08/13/2021
(Initials)

DEPT:
 Town Engineer Fire/Health Department Town Planner

This will be subject to site plan review

TOWN OF HUDSON
AUG 25 2021

Zoning Department

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

REQUEST FOR REVIEW/COMMENTS:

Case: 176-021/022/023

Property Location: 196-202 Central Street

For Town Use

Plan Routing Date: 08/12/2021 Reply requested by: 08/16/2021 ZBA Hearing Date: 08/26/2021

I have no comments I have comments (see below)

BG _____ Name: Brian Groth Date: 08/25/2021
(Initials)

DEPT. Town Engineer Fire/Health Department Town Planner

1. Regarding the spirit of the ordinance, the description of the Business District does not include "warehousing" therefore it does not conflict with the Table of Uses as asserted by the application.
2. The height limit applies to "occupiable" structures not "habitable" therefore there is no distinction between a residential use and a non-residential use. Regardless, the described building appears to conform to the building height requirement.
3. In my opinion, a denial does not "undermine [...] reasonable investment expectations." There should not be an expectation that a variance would be granted. That position undermines the zoning ordinance itself; it compels the granting of any variance application.
4. The hardship argument seems to be predicated on an incorrect description of the Business District.

ATTACHMENT TO VARIANCE APPLICATION

Bluebird Self Storage, LLC seeks to consolidate three existing lots (Tax Map 176, Lots 21, 22, 23) to develop a state of the art, temperature controlled self-storage facility. The Properties are referred to as 196-202 Central Street, Hudson, New Hampshire (collectively the “Property”). The Property is located in the Business (B) Zoning District.

Bluebird Self Storage, LLC (the “Applicant” or “Bluebird”) seeks to construct a 118,184 square foot indoor storage facility and related parking areas and access drives. Bluebird’s proposed use has been classified as “wholesale, warehouse, self-storage mini-warehouse, or distribution facility; which includes parking of recreational vehicles, buses and/or boat” under the table of uses. While the Business District is expressly established to “provide for the development of general wholesale and retail commercial uses, services, offices uses, industry, warehousing, multifamily dwellings and customary accessory uses and structures,” the Zoning Ordinance prohibits wholesale and warehouse facilities within that zoning district. The Bluebird facility proposed differs from the historic mini-warehouse specifically referenced in the Table of Uses. The buildings are designed as a single purpose specialty building with finishes and detail similar to commercial and retail buildings. Outside storage is not proposed. The majority of Bluebird facilities are located in commercial and retail corridors rather than in industrial parks. The express terms of the Ordinance, particularly the defined purpose and intent of the Business District, conflict with the Table of Uses. The Business District is established to provide for the development of general wholesale and retail commercial uses, services, office, multi-family and customary accessory uses and structures.

The proposed self-storage facility includes towers in which HVAC equipment is to be stored. Bluebird does not believe a variance is required. See, *Bartlett v. City of Manchester*, 164 NH 634 (2013) (ZBA can determine whether a variance is required). However, The Town determined in a prior case the screening tower was a “habitable structure” subject to the 38 foot height restriction. The height of the main structure is 37 feet, 11 inches (37’11”). The height of the screening tower will be 42 feet, 11 inches (42’11”). Accordingly, Bluebird seeks variances from Zoning Ordinance, §§334-20 and 334-21 relative to the use and §334-14 relative to building height with an express reservation of right that the variance is not required.

ARGUMENT-VARIANCES

Pursuant to RSA 674:33, the Board, in the context of a variance or special exception application, may consider whether such relief is required in the first instance. It may make such determination regardless of whether an administrative appeal is filed.

Turning to the use variance for the indoor storage facility, the proposed use was classified as “Wholesale, warehouse, self-storage mini-warehouse, or distribution facility; includes parking of recreational vehicles, buses and/or boat.” In order to be valid, a zoning ordinance must promote the public safety, health or welfare. RSA 674:16. Moreover, “[e]very zoning ordinance shall be made with reasonable consideration to, among other things, the character of the area

involved and its peculiar suitability for particular uses, as well as with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality.” RSA 674:17, II. The Town has determined under the express language of the Zoning Ordinance that the land within the Business District is peculiarly suited for wholesale and warehousing uses. More specifically, the Zoning Ordinance provides that the Business District “is established to provide for the development of general wholesale and retail commercial uses, services, offices uses, industry, multifamily dwellings and customary accessory uses and structures.” Although warehousing was recently removed by amendment, the distinction between a wholesale business, usually associated with a warehouse, and warehousing for purposes other than wholesale has little difference from a health, safety and welfare perspective. As Zoning Ordinance, §334-21, Table of Uses (E)(8) prohibits warehouses and wholesale facilities in the Business District, the same does not make reasonable consideration of the character of the area and its recognized suitability for such uses and, therefore, does not promote any legitimate public purpose. Accordingly, the Table of Uses to the extent it prohibits warehouse and wholesale facilities within the Business District is invalid. Finally, to the extent it is asserted that the Town only intended for certain warehouse uses within the Business District, such an assertion is contrary to the plain language of Zoning Ordinance, and is foreclosed by the Town’s decision to establish a single use classification for all warehouse uses.

Turning to the height variance, the 38 foot height limitation applies to a “habitable structure.” Neither the “towers” housing HVAC equipment specifically, nor an indoor storage facility constitute a “habitable structure.” The Zoning Ordinance does not define “habitable structure” and, as a result, the phrase is afforded its common meaning. While the indoor storage facility is a structure, it is not “habitable.” “Habitable” means capable of being lived in. This notion exists in other related laws. For example, the International Building Code, which is a part of the State Building Code under RSA Chapter 155-A, speaks of “habitable space.”

1. The proposed use would not diminish surrounding property values because:

The Property is located within the Business (B) Zoning District, which allows for a myriad of business, commercial and retail uses. The Table does not specifically allow warehouses or uses as indicated by the express terms of the Ordinance. Surrounding properties are retail, commercial and services businesses that are consistent and compatible with the proposed use. The Bluebird facility, which is a single footprint building, has elevations, construction finishes and details that are consistent with commercial or retail facilities. The appearance and aesthetics are aligned with a retail furniture store yet the traffic impacts, particularly at peak hours, are minimal. The Applicant contends that if the variance is granted, the value of surrounding properties will be enhanced rather than diminished.

2. Granting the variance would not be contrary to the public interest and would not be contrary to the spirit of the ordinance because:

The grant of the requested variance will not be contrary to the public interest and will not

be contrary to the spirit of the ordinance. *Farrar v. City of Keene*, 158 N.H. 684, 691 (2009) (addressing the public interest and spirit of the ordinance elements together). More specifically, the granted variance would not alter the essential character of the area or threaten the public health, safety, or welfare. Bluebird has developed a track record for its operations which are more consistent with a service and retail business than a traditional warehouse or first generation mini-warehouse facility. Allowing the use and height variances will not alter, in a substantial way, the essential character of the neighborhood. Moreover, the proposed use will contribute significant, burden free, revenue to the tax base. Bluebird 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 24 hour security.

3. Denial of the variance would result in unnecessary hardship to the owner owing to the special conditions of the land because:

(A) No fair and substantial relationship exists between the general public purposes of the ordinance and the specific application to the Property.

The Ordinance actually encourages wholesale uses yet the Table of Uses does not provide for any specific wholesale uses. If any type or kind of wholesale warehouse was suited for the Business District, it is a Bluebird facility with finished and details consistent with commercial and retail uses rather than wholesale facilities, trucking terminals and industrial buildings. The conflict in the Table of Uses, allowing wholesale business yet prohibiting warehouses is sufficient alone to establish hardship. The proposed use is cutting edge and differs substantially from first and second generation storage facilities. The business is more akin to a retail business servicing the public at large rather than an isolated segment of the population. Failure to properly classify the proposed use, which is understandable based on its cutting edge design, also results in a hardship.

(B) The proposed use is reasonable.

A single footprint, state of the art, temperature controlled warehouse, with construction design, detail and finishes consistent with a commercial or retail store is a reasonable use.

4. By granting the variance, substantial justice would be done because:

The loss to the applicant, in the event that a variance is denied, outweighs any gain to the general public. Accordingly, substantial justice would be done by granting the requested variance.

A denial of the variance, as suggested above, will not harm the public as similar uses with greater impacts are allowed in the Business District. Bluebird has identified Hudson as an area where market demand exists for state of the art temperature controlled facility. Bluebird's high

end facilities which are visible to consumers and location for convenience and easy access are not suited for industrial parks or industrial areas. The curb appeal is superior to many uses allowed in the Business District. Similarly, the impacts to public health, safety and welfare are minimal when compared to other allowed uses. The grant of the variance will not cause any harm to the public. By contrast, the denial of the variance would result in little, if any, gain to the public.

REMINDER:

**Please bring the following
deferred case application
previously mailed in your**

08/26/21 ZBA Meeting Packet:

**Case 176-021/022/023 (Deferred from 08-26-21):
Bluebird Self Storage, LLC, Attn: Bill Goodison, GM
Variance Application**

Stipulations: _____



2021 Land Use Law Conference

Join NH Municipal Association and the NH Office of Planning & Development Virtual Conference
Saturday, September 18, 2021
9:00 a.m. - 3:55 p.m.
Registration Fee: \$70.00

To provide the best experience for you, NHMA will be using an online event software platform called *Whova*. *Whova* enables active participation and interaction among attendees and speaker and provides up-to-date information, personalized agendas, messages, community board all at your fingertips.

You may register up to five people on one form. Enter information below, then click 'add registrant' to add another person.

Pre-registration is required. If you register and do not attend the virtual workshop, you will be charged the FULL cost of registration.

Questions? Please contact us at 603-230-3350 or nhmregistrations@nhmunicipal.org

Municipality *



Address *

Address Line 1

Address Line 2

City

State



Zip Code

Phone *

Email *

Registrant 1

✕ Registrant 1

Name *

First

Last

Municipal Position *

Email *

Our virtual conference platform, Whova, requires that each attendee have their own email address. Please be sure you are indicating the REGISTRANT'S email address here. Thank you!

Attending the virtual workshop? *

Yes, I will attend the virtual Land Use Law Conference - \$70.00

PROGRAM AGENDA

Please take a few minutes to fill out your session choices below. Your selections are for planning purposes only. You will be free to attend any session you wish during the virtual conference. Some session will be live and some will be pre-recorded ahead of the conference and made available for viewing during the conference.

[View session descriptions here.](#)

9:00 a.m. Welcome Remarks and Introduction to the new OSI: NH Office of Planning & Development
Presented by: Michael A. Klass, Principal Planner, NH Office of Planning & Development

9:10 a.m. An Introduction to the NH Housing Appeals Board
Presented by: Gregory E. Michael, Chair NH Housing Appeals Board

10:40 a.m. - 12:10 p.m. Concurrent Sessions



12:40 p.m. - 2:10 p.m. Concurrent Sessions



2:25 p.m. - 3:55 p.m. Concurrent Sessions



+ Add Registrant

Payment - Please be aware that if you choose 'I will pay by credit card', you will see a Paypal link. This brings you to our portal and you can pay with any credit or debit card. You do NOT need a Paypal account.

I will pay by credit card

I will pay by check

**If you are paying by check: Please make checks payable to the NH Municipal Association and mail to:
NH Municipal Association
25 Triangle Park Drive
Concord, NH 03301**

CANCELLATIONS: Refund of the full registration fee will be made if cancellation notification is received 48 hours in advance. If payment has not been made and cancellation is not received 48 hours in advance, you will be charged the cost of the conference.

Submit



NEW HAMPSHIRE
MUNICIPAL ASSOCIATION

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Conference

Webinars

Workshops

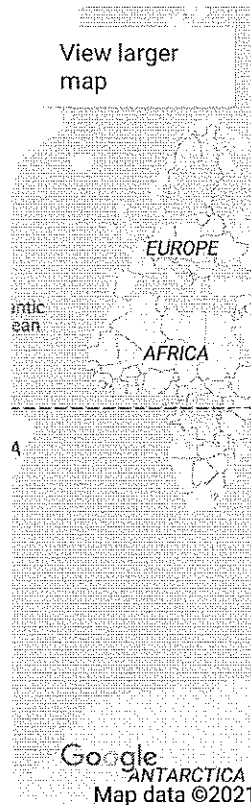
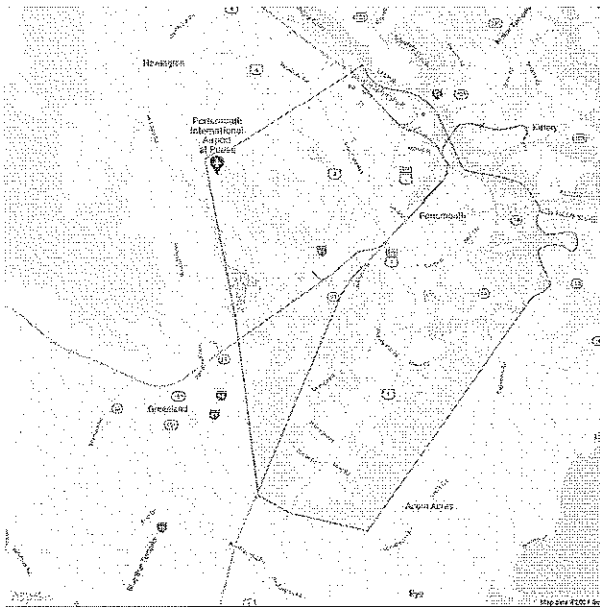
[Home](#) > [Events & Training](#) >

REGISTRATION OPEN: 2021 Municipal Land Use Law Virtual Conference

Saturday, September 18, 2021 - 9:00am to 3:00pm

Cost: \$70.00

**REGISTRATION
NOW OPEN!**



REGISTRATION NOW OPEN!

Full day virtual conference for municipal land use officials including members of planning and zoning boards, planners, land use administrators, select boards, town and city councilors, building inspectors, code enforcement officers and public works personnel. Presentations will focus on the legal authority and procedures these land use boards must understand with content structured to be beneficial to both novice and experienced municipal officials.

2021 MUNICIPAL LAND USE LAW CONFERENCE

9:00 a.m. Welcome Remarks and Introduction to the new OSI: NH Office of Planning & Development

Presented by: Michael A. Klass, Principal Planner, NH Office of Planning & Development

9:10 a.m. An Introduction to the NH Housing Appeals Board

Presented by: Gregory E. Michael, Chair NH Housing Appeals Board

10:25 a.m. BREAK

10:40 a.m. CONCURRENT SESSIONS

Demystifying NH's Workforce Housing Law: How it Works and Examples of its Implementation

This session will seek to clarify the purpose of NH's workforce housing law and provide examples of how it has been implemented and the homes that have been created as a result. Mark Fougere, Fougere Planning and Development will discuss the main points of the law and draw on his work with communities throughout NH that have updated their zoning to comply with the law. Andy Dean, an attorney with Cooper Cargill Chant in North Conway, NH will talk about his work advocating for affordable housing and describe the ordinance Conway voted on to increase the opportunity for workforce housing in Conway. George Reagan, Community Engagement Manager with New Hampshire Housing will moderate the presentation.

Presented by: Andrew A. Dean, Esq., Cooper, Cargill & Chant
Mark Fougere, Fougere Planning & Development
George Reagan, NH Housing

Planning Board Roles and Responsibilities – Part 1

This session is for newer board members, as well as veterans looking for a refresher on Planning Board fundamentals. Topics will include statutory duties (including planning and regulatory roles), board procedure, conflicts of interest and disqualification, meeting conduct, decision making, and more.

Presented by: C. Christine Fillmore, Esq., Drummond Woodsum
Michael A. Klass, Principal Planner, NH Office of Planning & Development
Matthew R. Serge, Esq., Drummond Woodsum

Roles and Responsibilities of the Zoning Board of Adjustment – Part 1

This session will provide a detailed look at the statutory responsibilities of the ZBA including appeals of administrative decisions, special exceptions, and variances. This session will also provide an in-depth discussion of how the case law interprets the five variance criteria. Time will be devoted to participant questions.

Presented by: Christopher L. Boldt, Esq., Donahue, Tucker & Ciandella PLLC, Meredith

12:10 p.m. LUNCH

12:40 p.m. CONCURRENT SESSIONS

Legal Update – Part 1

This session will review recently enacted legislation that affects the responsibilities and authority of municipal planning and zoning boards. Recent New Hampshire Supreme Court decisions involving land use issues and the impact they have on municipal planning and zoning will also be discussed. Participant questions are strongly encouraged!

Presented by: Benjamin D. Frost, Esq., AICP, Managing Director of Policy and Public Affairs, NH Housing, Bedford

Planning Board Roles and Responsibilities – Part 2

This session is for newer board members, as well as veterans looking for a refresher on Planning Board fundamentals. Topics will include statutory duties (including planning and regulatory roles), board procedure, conflicts of interest and disqualification, meeting conduct, decision making, and more.

Presented by: C. Christine Fillmore, Esq., Drummond Woodsum
Michael A. Klass, Principal Planner, NH Office of Planning & Development
Matthew R. Serge, Esq., Drummond Woodsum

Roles and Responsibilities of the Zoning Board of Adjustment – Part 2

This session will provide a detailed look at the statutory responsibilities of the ZBA including appeals of administrative decisions, special exceptions, and variances. This session will also provide an in-depth discussion of how the case law interprets the five variance criteria. Time will be devoted to participant questions.

Presented by: Christopher L. Boldt, Esq., Donahue, Tucker & Ciandella PLLC, Meredith

2:10 p.m. BREAK

2:25 p.m. CONCURRENT SESSIONS

Digging into RSA 155-E

Join Stephanie N. Verdile, Principal Planner at the Office of Planning and Development and Carol Ogilvie, Professional Planning Consultant, for “Digging Into 155-E” a look at the state laws regarding earth excavations. Discussion will include a brief history of 155-E, municipal responsibilities, other state agencies involved in the process, municipal administrative/procedural issues, and a few court cases regarding gravel operations.

Presented by: Carol Ogilvie, Professional Planning Consultant
Stephanie N. Verdile, Principal Planner, NH Office of Planning & Development

Legal Update – Part 2

This session will review recently enacted legislation that affects the responsibilities and authority of municipal planning and zoning boards. Recent New Hampshire Supreme Court decisions involving land use issues and the impact they have on municipal planning and zoning will also be discussed. Participant questions are strongly encouraged!

Presented by: Benjamin D. Frost, Esq., AICP, Managing Director of Policy and Public Affairs, NH Housing, Bedford

Meeting Mechanics of Land Use Boards

Appropriate for beginning members, seasoned veterans, as well as land use administrators, this session will provide an overview on the mechanics of a land use board meeting. Discussion will touch on requirements for legal notice, meeting procedure and conduct, conflicts of interest, Right-to-Know issues, and more.

Presented by: Tim Corwin, Esq., Senior Planner, City of Lebanon
Shawn M. Tanguay, Esq., Drummond Woodsum

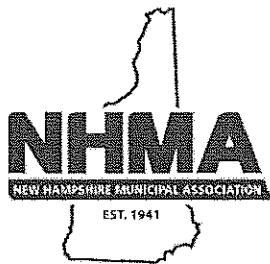


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Workshop



New Hampshire Municipal Association
25 Triangle Park Dr.
Concord, NH 03301
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nhmainfo@nhmunicipal.org

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