



## Hudson Board of Appeals

Town Hall

Hudson, Massachusetts 01749

### Minutes of Meeting—August 10, 2017

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The Hudson Board of Appeals met in the Selectmen's Hearing Room, 2<sup>nd</sup> Floor, Town Hall, Hudson, Massachusetts. At 7:00 PM, Lawrence Norris called the meeting to order.

Members Present: Lawrence Norris, Chairman  
Todd Pietrasiak, Vice Chairman  
Dorothy Risser, Clerk  
Jill Schafer, Associate Member  
Jason Mauro, Associate Member  
Pamela Cooper, Associate Member

Staff: Kristina Johnson, AICP, Assistant Director of Planning and Community Development

Chairman Norris convened the meeting at 7:00 PM, and read through the sequencing of the petitions for the evening.

#### **Petition #2017-11; 19 Lakeshore Drive, *Special Permit (Continuance)***

Present were: Attorney Nelson Luz Santos, representing the petitioner

Chairman Norris received a letter from petitioner, Fletcher Tilton. Chairman Norris read the letter into the record which requested a continuance to the hearing to allow for more time to gather information that was requested at the July 13, 2017 meeting.

Attorney Nelson Santos' request to continue was needed to gather plans needed in order to submit them all at the same time.

Chairman Norris moved to approve the request for a continuance of the public hearing for the above-referenced petition to the September 14, 2017 meeting of the Zoning Board of Appeals. Seconded by Dorothy Risser. 6-0-0. Unanimous.

#### **Petition #2017-12; 181 Main Street, *Special Permit (Continuance)***

Present were: Attorney Arthur Bergeron representing the petitioner  
Robert Chrusciel, Engineer, Hancock Associates  
Mohamed Eldordu, Petitioner

Chairman Norris went over what had occurred at the last meeting for the Board members.

Attorney Arthur Bergeron stated that with him tonight is a traffic engineer to answer any questions the Board may have about traffic issues associated with the petition. Attorney Bergeron stated that the meeting was continued to allow the Board an opportunity to visit the site.

Chairman Norris summarized the potential conditions discussed at last month's meeting including: monitoring by the Police Chief and the ability to better sequence the traffic signals at the Main Street Street/Broad Street intersection with the Main Street /Vila do Porto intersection. Chairman Norris stated that he did visit the Leominster location owned by the petitioner and did not notice any traffic issues.

Chairman Norris moved to enter deliberative session. Seconded by Dorothy Risser. 5-0-0.Unanimous.

Chairman Norris stated that the Board spent quite a bit of time at the last meeting going over the details of the traffic flow through the property and stated that he has no issue with the proposed plans. Chairman Norris went on to state that with the condition to allow police details monitoring, lane closure and traffic light sequence at Main and Broad Streets it is the best use for the property.

Ms. Risser stated that she would like to see Condition #5 from the Planning Board's Site Plan Approval added to the conditions for the ZBA's Special Permit approval. Said condition states the site plan approval does not apply to a drive-through window as part of a fast-food preparation and sale business that is related to a nationally advertised brand, including but not limited to Dunkin Donuts or Starbucks.

Mr. Mauro stated that he was not in favor of the condition as it specifically prohibits named businesses.

Ms. Risser withdrew her request to add the condition.

Chairman Norris recommended that all of the conditions from the Site Plan decision dated June 27, 2017 continue to apply to this petition and the execution thereof.

Chairman Norris moved to grant the special permit under section 5.1.6.1 of the Zoning Bylaws to allow for the demolition of a 733 square foot car wash and adjacent canopy and the construction of a 604 square foot drive through coffee shop as allowed per Section 9.2.26. With the Following Condition: all of the conditions in the Site Plan Review decision dated June 27, 2017 will continue to apply to this petition and the execution thereof.

Seconded by Dorothy Risser. 5-0-0. Unanimous.

**Petition #2017-10; 10-12 Arlington Street, Special Permit (Continuance)**

Present were: Attorney Jose Moreira, representing the petitioner  
Robert Vorbach, Architect

Chairman Norris stated that the best way to move forward with the petition is to start from the beginning and have the presentation given for the site since at the last meeting did not get far.

Chairman Norris furnished to Attorney Jose Moreira—the petitioner’s representative—a copy of a legal opinion prepared by Town Counsel Aldo Cipriano regarding the applicability of the Deadrick v. Chatham case. Attorney Jose Moreira requested that record reflect his objection to receiving the Town Counsel’s legal opinion without sufficient time to craft a response. He then went on

Attorney Moriera then stated that the architect for the project is present at the meeting and requested that the Board allow him to present the proposed plan.

Mr. Robert Vorbach, Vorbach Architecture, discussed the access for the site which is located on Franklin Street, but noted that the address for the property is 10-12 Arlington Street. Mr. Vorbach went over the existing conditions of the site, which includes an existing two unit- buildings at Arlington Street and another two unit building on a neighboring property on Franklin Street. The proposal is to construct another two unit townhouse style building on an adjacent grass area. There are currently 10 parking spaces on site that will be reconfigured as part of this plan. The proposed two-unit building will be stand-alone and not connected to the existing units. Mr. Vorbach noted that the many of surrounding buildings have multiple units, and that the overall design is intended to be more of an urban project overall design is to blend in with the neighborhood.

Chairman Norris asked if the units will be connected as the plans seem to show that they are. Mr. Vorbach reiterated that the buildings area not connected. He then stated that the units are more upscale with clapboard siding. Finally, he noted that the setbacks meet the requirements in the Intensity Schedule of 10 feet from the property line; however, the Board expressed concern about the access to the lot being on Franklin Street and what piece of the lot is the actual front property line.

Pamela Cooper asked about corner lot having thirty foot setback. Kristina Johnson reminded the Board that the Section 6.2.22.of the bylaw states a 30 foot front setback is required. Mr. Vorbach then stated that from Franklin Street they are about 25 feet back from the streets and lines up to the existing structure. Attorney Moreira noted that Section of the bylaw allows a new structure in line with existing structures.

Chairman Norris stated that he is concerned with the proposal of constructing a second building, and noted that a permit has never been issued by the Board to expand a pre-existing nonconforming use via the construction of a second, stand-alone structure. Chairman expressed his belief that 5.1.6.1 that the expansion is predicated on the use of an existing structure, not the expansion of a use via a stand-alone structure.

Attorney Moreira stated his understanding that the Board has never entertained this type of proposed expansion of a pre-existing non-conforming use. He noted that a that a similar project was proposed for the adjacent property owned by his client that was ultimately withdrawn. Attorney Moreira stated that an iteration showed the building attached, but the Internal Traffic Committee expressed serious concerns about fire protection and general access to the site.

Chairman Norris stated that he does not feel that Section 5.1.6.1 allows for the expansion of use via new structure; but rather, he feels that there should be a relationship to the existing footprint. Attorney Moreira expressed his belief that based on that definition it would be difficult to convince the Board otherwise, and then he read the aloud the contents. Chairman Norris and Attorney Moreira engaged in an in-depth discussion about the intent of Section 5.1.61 of the Zoning Bylaws and how it relates to this proposal.

Chairman Norris stated for the record that Town Counsel has reviewed the plans and examined the applicability of the Deadrick v. Chatham Case, and whether a dimensional variance would be required. Attorney Cipriano recommended that Chairman Norris read aloud the legal opinion into the record. Attorney Moreira requested that his objection to the reading of this opinion be noted in the record, as he has little time to adequately prepare a response. Chairman Norris proceeded to read the legal opinion into the record.

Ms. Risser asked if there are any other properties have two multifamily buildings on a single non-conforming lot in this neighborhood. Attorney Moreira stated that he did not know of any in this neighborhood, but stated that there is one on Central Street. Further discussion amongst the Board occurred as to why the design includes two multifamily detached homes, and why the previous Special Permit was never executed.

Attorney Moreira requested additional time in order to prepare a response to the Town Counsel's legal opinion. Ms. Johnson inquired if the Board would be accepting public testimony at the next meeting, to which Chairman Norris said yes.

Chairman Norris moved to approve the request for a continuance of the public hearing for the above-referenced petition to the September 14, 2017 meeting of the Zoning Board of Appeals. Seconded by Vice Chairman Pietrasiak. 6-0-0. Unanimous.

**Petition #2017-15; 17 Dean Street, Variance**

Present were: Jessica and Michael Hennessey, petitioners

***Jill Schafer recused herself from this petition.***

Chairman Norris read the public hearing notice for the above-referenced petition, requesting Request for a Variance pursuant to Section Section 6.2.1. to construct a breezeway and two-car garage within the side yard setback. The subject property is located at 17 Dean Street Assessors' Map 20 Parcel 124 in the SB Zoning District.

Dorothy Risser read the right of appeal.

Prior to turning over the floor to the petitioner, Chairman Norris explained the meetings logistics, and the level detailed required for the Board to make a finding relative to the issuance of a variance. The petitioner then proceeded to provide an overview of the proposed project, and address the uniqueness (soil, shape, and topography) relative to the other lots in the neighborhood.

Chairman Norris asked the petitioner to restate the number of feet they are encroaching into the setback, to which Ms. Hennessey said 2.5 feet. He then questioned exactly why the 2.5 feet is necessary, and whether there was a design alternative that would avoid the encroachment.

Vice Chairman Pietrasiak stated that the ADA regulations require a 5-foot hallway, and felt the design with the closet is a very limiting factor. He questioned whether the petitioner had completed an iteration to attempt to meet the by-laws, or whether the encroachment was discovered after the fact. Ms. Hennessey stated that they did not really take a hard look at the dimensional requirements, and that their focus was getting a survey completed and where the structures would be located.

The Board and petitioner engaged in a discussion about various design options, and whether it would be possible to develop an alternative iteration that avoids encroachment into the setback.

Chairman Norris moved to continue the petition until September 14, 2017 with the understanding that the petitioner may develop a design solution in the interim that avoids the need for a dimensional variance. Seconded by Vice Chairman Pietrasiak. 6-0-0. Unanimous

**Assistant Director's Report**

Kristina Johnson introduced Heather Hampson, who has recently been engaged by the Planning Department to prepare Zoning Board and Planning Board minutes.

**Minutes**

Chairman Norris seconded by Vice Chairman Pietrasiak , moved to approve the minutes of the July 13, 2017 meeting.

Vote: 6-0-0, Unanimous

### **Adjournment**

At 8:40 PM, Chairman Norris seconded by Dorothy Risser, moved to adjourn.

Vote: 6-0-0, Unanimous