



## Hudson Board of Appeals

Town Hall

Hudson, Massachusetts 01749

### Minutes of Meeting—June 11, 2020

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place, the Hudson Board of Appeals conducted a meeting on June 11, 2020 via a remote participation platform.

Chairman Todd Pietrasiak called the meeting to order at 7:05PM. Chairman Pietrasiak noted that the Board is convening remotely under the authority of the Governor's Emergency Declaration relative to COVID-19. Before moving into the public hearings, Chairman Pietrasiak stated that all votes will be taken as roll call voice votes and provided an overview of the flow of the meeting, and how/when members of the public can participate.

Chairman Pietrasiak then called the roll:

Members Present via Zoom Video: Todd Pietrasiak, Chairman, Darja Nevits, Vice Chair; Jill Schafer, Clerk; Jason Mauro, Member; Pamela Cooper, Member; Ronald Sorgman, Associate Member, Justin O'Neil, Associate Member; Matt Russell, Associate Member.

Other Attendees: John Parent, Hudson Board of Selectmen  
Jack Hunter, Planning Director  
Kristina Johnson, AICP, Assistant Planning Director

### Minutes

Chairman Pietrasiak decided to take up the meeting minutes of May 14, 2020 before proceeding with the public hearings.

Vice Chair Nevits moved to approve the May 14, 2020 meeting minutes. Seconded by Jason Mauro. By voice roll call vote: Chairman Todd Pietrasiak: **yea**; Vice Chair Darja Nevits: **yea**; Jill Schafer, Clerk: **yea**; Jason Mauro, Member: **yea**; Pamela Cooper, Member: **yea**; Ronald Sorgman, Associate Member: **yea**; Justin O'Neil, Associate Member: **yea**; Matt Russell, Associate Member: **yea**. 8-0-0. Unanimous.

**Petition #2020- 01 11 Brent Drive (with Vice Chair Nevits acting as Chair)**

Present were: Ryan Cohen, Petitioner  
Scott Buckeley, Petitioner  
Blake Mensing, Mensing Group, LLC, Attorney for the petitioner  
Jospeh Peznola, P.E., Hancock Associates  
Eric Gath, BLW Engineers

Vice Chair Nevits resumed the public hearing for the above-referenced petition and noted that the public hearing had been opened and the right of appeal had been read into the record at the March 12, 2020.

Vice Chair Nevits moved to have the Board acknowledge that they have received and read the additional correspondence that had been sent after the last hearing held on May 14, 2020.

Vice Chair Nevits moved to have the Board acknowledge that they have received and read all of the correspondence listed in the matrix posted on the ZBA page of the Town website relative to this petition. Seconded by Jill Schafer. By voice roll call vote: Vice Chair Darja Nevits: **yea**; Jill Schafer, Clerk: **yea**; Jason Mauro, Member: **yea**; Pamela Cooper, Member: **yea**; Ronald Sorgman: **yea**; Justin O'Neil, Associate Member: **yea**; Matt Russell, Associate Member: **yea**. 7-0-0. Unanimous.

Kristina Johnson screen shared an email sent by Mr. William Posnick and read the contents verbatim into the record.

Ryan Cohen, Co-Founder and owner of Top Shelf Cannaseurs (Top Shelf) thanked the Board and the abutters for their time and diligence throughout the process. He noted that the company is veteran-owned, and expressed his hope that his company will generate revenue and jobs for the local economy. Further, he reiterated the company's commitment to being good neighbors.

Attorney Blake Mensing addressed the Board and the abutters and offered his sincere apologies for remarks that he made at the public hearing on May 14<sup>th</sup>. He apologized for his tone and admitted that he let his emotions get in the way, and he underscored his commitment to the public hearing process. Vice Chair Nevits expressed appreciation for the apology and then requested that the petitioner provide an update on the revised site plans and acoustical report.

Attorney Mensing noted that the site plan has undergone substantial revisions since the last meeting, most notably the relocation of the chiller from the side of the building to the front of the building. Attorney Mensing also explained that a background noise survey

and acoustical analysis was completed, and turned over the floor to Jeffrey Komrover of Noise Control Engineering to discuss the methodology and the results.

Jeffrey Komrover explained in detail the methodology and the results of the acoustical survey. First, Mr. Komrover explained that a background noise level was established by placing a decibel reader approximately at 10 Hummock Way, approximately 65 feet from 11 Brent Drive, and that data was acquired during the hours of 1PM to 9PM from 5/21/2020 to 5/26/2020. Mr. Komrover stated that the results of this survey indicated that daytime (27 dba's ) and evening (32 dbas) noise levels fell way below MassDEP limits for ambient background noise. He went on to further explain how his team built the noise model (based on the background noise levels) to project the future noise levels of the chillers and the monthly maintenance of the generators. He noted that both the operation of the chiller and the monthly maintenance of the generators would generate noise levels below the MassDEP standards.

Joseph Peznola, Hancock Associates provided an overview of the revisions to the site plan. Mr. Peznola noted that both the chiller and the generator have been relocated to the front of the building, parallel and perpendicular to Brent Drive respectively, and meet all of the front setback requirements under the zoning.

Jason Mauro inquired if the modifications to the site plan would need to be approved by the Planning Board, to which Kristina Johnson, Assistant Director stated that the changes would be subject to a minor modification approval by the Planning Board. She further noted that if the Planning Board deemed the changes more substantial in nature, the Planning Board would call for a full public hearing to review.

Vice Chair Nevits pointed out that the petitioner has received a provisional license to operate a Tier 3 cultivation and manufacturing facility, and asked Attorney Mensing to clarify how manufacturing relates to the operation of the cultivation facility. Attorney Mensing noted that the CCC has different categories of licenses and deems "manufacturing" to mean any time a cannabis plant material is turned into something other than its original plant form. Attorney Mensing emphasized that how the operation is categorized is a matter of State licensure. Kristina Johnson provided a follow up explanation and asserted her understanding that any manufacturing or processing is related to the cultivation process. Jason Mauro and Pam Cooper concurred with this interpretation and referenced the definition of cultivation in the zoning by-laws. Both believed manufacturing is within the scope of the petition submitted.

Vice Chair Nevits turned over the virtual floor for public comments and emphasized that comments should be related to the revised plans and/or the acoustical report.

### **Ellen Zimmerman- Sauta Farms Resident**

Ms. Zimmerman questioned the accuracy of the acoustical survey results, as noise levels were collected over Memorial Day weekend and not representative of typical ambient noise levels. She noted that landscaping work was done during the days of the data collection. In relation to the DEP noise regulations, Ms. Zimmerman acknowledged that there is no change of use, but the operation of chillers and HVAC equipment is something the neighborhood has never experienced. Ms. Zimmerman inquired as to the location of the dumpster and whether there would be an odor. Mr. Peznola pointed out the location of the dumpster and Attorney Mensing explained that the plant waste material will be covered in cat litter and will not be smelly. Attorney Mensing further noted that the CCC has strict regulations on the disposal of plant waste resulting from the cultivation process. Ms. Zimmerman expressed her belief that the operation of a marijuana cultivation facility is not compatible with the adjacent neighborhood, and will adversely impact their quality of life with continuous noise and odor.

### **Peter Zimmerman- Sauta Farms Resident**

Mr. Zimmerman offered a follow-up statement to his wife, Ms. Ellen Zimmerman. Mr. Zimmerman stated that he and his neighbors within Sauta Farms are concerned about the continuous noise and odor, and that their quality of life will be diminished. He questioned how the Town could even consider creating such a zoning overlay district. Vice Chair Nevits interjected and stated that the Board of Appeals has no power to change the by-laws, and requested that the speaker provide comments that the Board can consider and act upon. Mr. Zimmerman requested that the Board of Appeals not continue to perpetrate the mistake of the Town.

### **Mark Petrone – Sauta Farms Resident**

Mr. Petrone stated that he has followed the permitting process for Top Shelf, and has listened to all of the presentations to the Planning Board, CCC, and the Board of Appeals. He asserted his belief that the information presented during the permitting process shows irrefutable evidence that the cultivation facility will be detrimental to the health and safety of the adjacent neighborhood. Mr. Petrone expressed serious concerns that there are not setback requirements for such a facility in close proximity to a residential neighborhood like there are for schools, libraries, etc.

### **Lawrence Blacker- Sauta Farms Resident**

Mr. Blacker provided an overview as to why the Board of Appeals should deny the Special Permit. He first pointed out his belief that the reason why the chillers and the generators were moved to the front of the building is because the impact to the neighborhood was known and obvious. Mr. Blacker accepted the result of the acoustical study on its face, but expressed serious concerns that there are no protections in place for odor mitigation. He noted that the cut sheets for the odor mitigation system do not provide any information about the specific odor impacts relative to the cultivation facility.

Attorney Mensing offered concluding remarks about how the petitioner has gone to great lengths to mitigate potential noise and odor impacts, and how the petitioner is committed to being a good neighbor.

Vice Chair Nevits moved to close the public hearing and enter deliberative session.. Seconded by Jill Schafer. By voice roll call vote: Vice Chair Darja Nevits: **yea**; Jill Schafer, Clerk: **yea**; Jason Mauro, Member: **yea**; Pamela Cooper, Member: **yea**; Ronald Sorgman, Associate Member: **yea**; Justin O'Neil, Associate Member: **yea**; Matt Russell Associate Member: **yea**. 7-0-0. Unanimous.

Board members discussed the revised plan, the results of the acoustical study, and the concerns raised by abutters. Members generally agreed that needed more time to digest all of the new information presented at the meeting before delving into a more in-depth deliberative discussion.

Vice Chair Nevits moved to continue the deliberative session until July 9, 2020. Seconded by Jill Schafer. By voice roll call vote: Vice Chair Darja Nevits: **yea**; Jill Schafer, Clerk: **yea**; Jason Mauro, Member: **yea**; Pamela Cooper, Member: **yea**; Ronald Sorgman: **yea**; Justin O'Neil, Associate Member: **yea**; Matt Russell, Associate Member : **yea**. 7-00. Unanimous.

Todd Pietrasiak resumed chairing the meeting.

#### **Petition #2020- 004 11 9 Kane Industrial Drive**

##### ***Petitioner was not present***

Chairman Pietrasiak read aloud the public hearing notice for the above-referenced petition which entails a request for a special permit to operate a marijuana cultivation and Jill Schafer, Clerk read the Right of Appeal.

Chairman Pietrasiak noted that the Board has received a letter from the petitioner, Hudson Growers Alliance requesting a continuance of the public hearing until July 9, 2020, as they did not have their Provisional License from the Cannabis Control Commission. Chairman Pietrasiak read the letter and moved to continue the public hearing without testimony until July 9, 2020. Seconded by Jason Mauro. By voice roll call vote: Chairman Pietrasiak: **yea**; Vice Chair Darja Nevits: **yea**; Jill Schafer, Clerk: **yea**; Jason Mauro, Member: **yea**; Pamela Cooper, Member: **yea**; Ronald Sorgman, Associate Member: **yea**; Justin O'Neil, Associate Member: **yea**; Matt Russell, Associate Member: **yea**. 8-0-0. Unanimous.

## Petition #2020- 005 10 First Street

Present were: Christopher Monsini, Petitioner

Chairman Pietrasiak read aloud the public hearing notice for the above-referenced petition which entails a request for a special permit pursuant to Section 5.1.6.1 of the Town of Hudson Zoning By-laws to enclose a non-conforming deck and a variance pursuant to Section 6.2.2 to construct an 8 x8 foot front porch structure within the front yard setback.

Jill Schafer, Clerk read the Right of Appeal.

***Associate Member Justin O'Neil experienced technical difficulties and was not present for this petition.***

Christopher Monsini provided an overview of his petition. He described his property and the neighborhood context, which is a quiet dead-end street. Mr. Monsini described the nature of his request, which is a special permit to enclose a non-conforming rear deck and a variance to construct a new farmer's porch with an encroachment into the front setback. Mr. Monsini emphasized that these two new features proposed for his home will enhance the curb appeal of the house and the neighborhood.

Chairman Pietrasiak inquired if the petitioner had any evidence to present that would indicate the deck was in existence before the zoning by-laws were enacted, or at least 10 years without any enforcement action. Mr. Monsini stated that he did not know when the rear deck was constructed, but that the Building Commissioner indicated that the structure was non-conforming on the Building Permit Denial Form pursuant to 5.1.6.1.

Chairman Pietrasiak noted that Section 5.1.6.1 is probably not the correct section, and expressed his belief that Section 5.1.6.2 is the more appropriate section for this request. Board members did not object. Jason Mauro indicated that historical images from Google Earth indicated that the structure was in existence over ten years ago.

Chairman Pietrasiak provided an overview of the three (3) findings the Board is required to make in order to grant a variance, and noted that the petitioner has not addressed any of the three findings, especially demonstrating a hardship relative to the soil, shape, and topography of the lot. Mr. Monsini noted that he believes (based on information from his neighbors) that his lot was once part of a conjoined lot many years ago and then was split, causing his lot to be situated more to the right. Tom Dipersio, the surveyor for the Petitioner's plot plan added that the petitioner's lot is significantly smaller than other lots within the SA-8 Zoning District, as this lot was created prior to the existing dimensional requirements of the SA-8 District.

Members of the Board generally agreed that the petition as submitted did not adequately address the hardship relative to the construction of the front porch.

Chairman Pietrasiak stated that the Board could move forward with the issuance of the Special Permit and could continue the variance request to allow the petitioner some time to come back with additional information.

Chairman Pietrasiak seconded by Vice Chair Nevits moved to continue the public hearing for the variance request to July 9, 2020. Seconded by Jill Schafer. By voice roll call vote: Chairman Todd Pietrasiak: **yea** Vice Chair Darja Nevits: **yea**; Jill Schafer, Clerk: **yea**; Jason Mauro, Member: **yea**; Pamela Cooper, Member: **yea**; Ronald Sorgman: **yea**; Justin O'Neil, Associate Member: **not voting** Matt Russell, Associate Member: **yea**. 7-0-0. Unanimous.

Chairman Pietrasiak, seconded by Vice Chair Nevits moved to enter deliberative session. By voice roll call vote: Chairman Todd Pietrasiak: **yea** Vice Chair Darja Nevits: **yea**; Jill Schafer, Clerk: **yea**; Jason Mauro, Member: **yea**; Pamela Cooper, Member: **yea**; Ronald Sorgman: **yea**; Justin O'Neil, Associate Member: **not voting** Matt Russell, Associate Member: **yea**. 7-0-0. Unanimous.

Chairman Pietrasiak, seconded by Vice Chair Nevits moved to approve Petition #202005 and grant a special permit pursuant to Section 5.1.6.3 of the Town of Hudson Zoning By-laws for the alteration and vertical expansion of the nonconforming rear deck into a screened-in porch in accordance with the certified plot plan dated May 20, 2020. By voice roll call vote: Chairman Pietrasiak: **yea**; Vice Chair Darja Nevits: **yea**; Jill Schafer, Clerk: **yea**; Jason Mauro, Member: **yea**; Pamela Cooper, Member: **yea**; Ronald Sorgman: **not voting**; Justin O'Neil, Associate Member: **not voting**; Matt Russell, Associate Member: **not voting** 5-0-0. Unanimous.

Chairman Pietrasiak, seconded by Jason Mauro moved to come out of deliberative session. By voice roll call vote: Chairman Todd Pietrasiak: **yea** Vice Chair Darja Nevits: **yea**; Jill Schafer, Clerk: **yea**; Jason Mauro, Member: **yea**; Pamela Cooper, Member: **yea**; Ronald Sorgman: **yea**; Justin O'Neil, Associate Member: **not voting** Matt Russell, Associate Member: **yea**. 7-0-0. Unanimous.

#### **Petition #2020- 06 Chestnut Street (Countryside Estates)**

Present were: Thomas DiPersio, Engineer for the Petitioner.

Chairman Pietrasiak read aloud the public hearing notice for the above-referenced petition which entails a request for a Special Permit to Section 5.8 (Retirement Overlay District), a special permit pursuant to Section 3.3.10 (Watershed Protection District), and a variance from Section 7.1.4.5 internal driveway dimensions to construct a 64 single family condominium units on a 30.14-acre parcel on Chestnut Street.

Jill Schafer, Clerk read the Right of Appeal.

Thomas DiPersio presented an overview of the petition and the site plan that was approved by the Planning Board. Mr. DiPersio described the layout of the site and the type of units, which will be 64 age-restricted single-family cottage style detached units. Mr. DiPersio noted that the petitioner's attorney Paul Giannetti addressed the compliance with the use regulations of the Watershed Protection District By-Law and the Retirement Community Overlay By-law. Mr. DiPersio further noted that the petitioner is seeking a variance from the internal roadway width requirement of 30 feet pursuant to Section 7.1.4.5 of the Hudson Zoning By-Laws.

Robert D'Amelio provided a comprehensive overview of the Planning Board's review and approval of the site plan for the proposed retirement community

Attorney Giannetti was unable to secure an internet connection to log into the meeting. Thomas DiPersio asked the Board if they would entertain a request to continue the public hearing until the July meeting.

Chairman Pietrasiak moved to continue the public hearing until July 9, 2020. Seconded by Jason Mauro. By voice roll call vote: Chairman Pietrasiak: **yea**; Vice Chair Darja Nevits: **yea**; Jill Schafer, Clerk: **yea**; Jason Mauro, Member: **yea**; Pamela Cooper, Member: **yea**; Ronald Sorgman: **yea**; Justin O'Neil, Associate Member: **not voting**; Matt Russell, Associate Member: **yea**. 7-0-0. Unanimous.

### **Adjournment**

Chairman Pietrasiak seconded by Pamela Cooper moved to adjourn the meeting at 10:20 PM. By voice roll call vote: Vice Chair Darja Nevits: **yea**; Jill Schafer, Clerk: **yea**; Jason Mauro, Member: **yea**; Pamela Cooper, Member: **yea**; Justin O'Neil, Associate Member: **not voting**; Matt Russell, Associate Member: **yea**. 7-0-0. Unanimous.