



Town of Hudson

Zoning Board of Appeals

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Zoning Board of Appeals Meeting Minutes — April 13, 2023

Chair Schafer called The Town of Hudson Zoning Board of Appeals meeting to order at 7:01 PM., who met in the Selectman's Meeting Room, 2nd Floor, Town Hall.

Board Members Participating:

Jill Schafer, Chair
Jason Mauro, Vice Chair
Matt Russell, Clerk
Darja Nevits, Member
Antonio Mancini, Jr., Member
Ronald Sorgman, Associate Member
David Campbell, Associate Member
Justin Maillet, Associate Member

Staff Members Participating:

Kristina Johnson, Director of Planning and
Community Development
Katie Evangelisti, Administrative Manager of
Planning and Community Development

Chair Schafer stated they are switching the order of agenda, 20 Old Bolton Road to be heard first, then pick back up with the 17 School Street hearing, the next item on the agenda.

Public Hearing – Petition 2023-02 – 20 Old Bolton Road (cont'd from 3/9/2023)

Chair Schafer reopened the public hearing and read the public hearing notice into the record. At this time the Board of Appeals will hear the request of Wanderley and Marellen DePaula requesting a Special Permit pursuant to Section 5.3.2.1 (i) to convert an existing single-family dwelling into a two-family dwelling. The subject property is located at **20 Old Bolton Road** in the SA-8 Single Family Zoning District Assessors' Map 5 Parcel 26.

Chair Schafer read into the record an email, dated March 23, 2023:

*"Good Afternoon,
We respectfully request a withdrawal without prejudice of Petition 2023-02 for Old Bolton Road.
We appreciate the Zoning Board of Appeals' consideration of this request. Thank you for your
time and cooperation.
Kind regards,*

Wanderley and Maryellen De Paula”

A motion was made by Chair Jill Schafer, seconded by Clerk Matt Russell, to accept the withdrawal without prejudice and noted filing fees to be waived if a new petition was filed for an ADU. 5-0-0. **Unanimous**

Chair Schafer noted the next matter to be heard would be 17 School St., which Darja Nevits would sit as Acting Chair for.

Public Hearing – Petition 2022-13 – 17 School Street (Continued from 3/9/2023)

Acting Chair Nevits reopened the public hearing reiterating the need for a Special Permit and a Variance and how it fits under the Zoning By-laws. She referenced the revised plans asking for only new details on the petition. The floor was turned over to Engineer Joe Peznola, Hancock Associates.

Mr. Peznola reviewed the revised plans dated April 6, 2023, proposing a conversion from a commercial restaurant to a residential four (4) unit building. The plans reflected the new square footage, stairs being moved, the parking across the street, and the required crosswalk being removed, and mentioned a meeting with Planning Director Kristina Johnson and DPW Director Eric Ryder where all revisions were reviewed. (A memorandum reflecting the updates, outcome of the staff meeting findings, and how the Variance requirements were being affected, was sent by Ms. Johnson to the board.) Acting Chair Nevits asked the petitioners about a change to porches, then reiterated the burden of justifying the need for the Variance is now on them.

The attorney for the Petitioner, Jose (Joe) Moreira, Esq. addressed the board, to discuss the need for the Variance. He went on to further provided case law that would support the board's approval. After raising prior points about the neighborhood and similar properties he was reminded that was not new information. Chair Jill Schafer ask Attorney Moreira to review for the board the three findings for the variance. Attorney Moreira went on to reiterate the structure size on the lot is a hardship and raised the neighboring condos which were granted a variance. After Acting Chair Nevits expressed the need for new information Mr. Peznola provided the board with further details and state statutes that speak to the uniqueness of the structure being 6,000 square feet on a lot that is 12,000 square feet is the hardship. He further stated that relating directly to finding #1 "...soil conditions, shape, or topography of such land **OR structures**" literal enforcement of the by-laws is a hardship. Chair Schafer agreed with this further stating the only actual way to comply with zoning and obtain the desired property the building would have to be demolished and rebuilt. Attorney Moreira then mentioned to the board that two (2) units would not be financially viable given the size and cost of renovations. Member Mancini, Mr. Peznola, and Chair Schafer further discussed whether the lack of return on investment was or was not a hardship. Mr. Peznola tried to explain to the board again that literal enforcement of the conversion while complying with zoning is a hardship. Both Chair Schafer, Mr. Mancini, and Ms. Johnson agreed that there is case law proving a difference between construction hardship (deficiencies in side/back yard) versus economic/financial – that not being able to realize the maximum return on investment for a project does not constitute a financial hardship to issue a variance.

With no further questions and no public questions, Acting Chair Nevits made a motion, seconded by Vice Chair Jason Mauro, to go into a deliberative session. 5-0-0 **Unanimous**.

The board discussed each finding of the variance and agreed that the Special Permit requirements were met at the prior meeting. Acting Chair Nevits, seconded by Vice Chair Mauro to approve the Special Permit. 5-0-0 **Unanimous**. Acting Chair Nevits, seconded by Vice Chair Mauro to approve the Variance, with all standard conditions. 5-0-0 **Unanimous**.

Acting Chair Nevits, seconded by Clerk Russell, made a motion to exit the deliberative session. 5-0-0 **Unanimous**.

Acting Chair Nevits concludes being Chair.

Petition 2023-03 569 Main Street (cont'd from 3/9/2023)

Chair Schafer reopened the public hearing of Most Noble LLC to amend a Special Permit issued on May 14, 2015, to construct a 14,000-square-foot, single-story expansion to the existing 18,000-square-foot building pursuant to Section 3.3.10.1 of the Hudson Zoning By-laws (Watershed Protection District) and a variance from Section 6.2.1.3 of the Hudson Zoning By-laws for the reduction in the minimum open space requirement. The subject property is located at **569 Main Street** in the M-6 Industrial District, Assessors' Map 35 Parcel 36.

Chair Schafer read into the record a letter from counsel, Attorney Peter Barbieri, Fletcher Tilton, to withdraw the application for a Variance, as there were revisions made to the site plan, which were approved by Director of Planning, Kristina Johnson, and Department of Public Works Director, Eric Ryder. Attorney Barbieri explained that with these site plan revisions, the petitioner can meet the required open space percentage; therefore, a variance is no longer required. Notwithstanding this withdrawal, the petitioner still needs a Special Permit for use within the Watershed Protection District. Vice Chair Mauro requested the petitioner to review the revisions to the plan. Robert Parente, Civil Engineer for the petitioner explained that there was a reduction in the turning radius, approved by the Fire Chief, and the catch basin upgrade was approved by the DPW. Mr. Parente noted that the Board of Health will address the septic tank if there are any further issues raised.

With no further questions from the board or public, Chair Schafer motioned to move into the deliberative session, it was seconded by Member Nevits. Chair Schafer suggested that the 2015 Special Permit conditions apply to this Special Permit; however, it was noted that most of those conditions were either addressed or are no longer applicable. It was suggested and agreed that any applicable conditions from the 2015 permit, standard conditions, and "Dotty" conditions would be reflected in the decision. Vice Chair Mauro, seconded by Member Nevits, motioned to accept the withdrawal of the variance. **5-0-0. Unanimous**. Chair Schafer, seconded by Member Mancini, motioned to grant the Special Permit with the conditions as discussed. **5-0-0. Unanimous**. Chair Schafer, seconded by Member Nevits, motioned to come out of the deliberative session. **5-0-0. Unanimous**.

Petition 2023-05 60 School Street (new public hearing)

Chair Schafer opened the public hearing by reading the public hearing notice into the record. At this time the Board of Appeals will hear the request of Marcio DeLima, requesting a Special Permit to construct an accessory dwelling unit pursuant to Section 5.2.6 of the Town of Hudson Protective Zoning By-Laws. The subject property is located at **60 School Street** in the C-2 Commercial Zoning District, Assessors' Map 29, Parcel 245. The Board may consider any action deemed necessary relative to the subject petition. Clerk Russell read the right of appeal.

Chair Schafer reviewed the process with the petitioner. Member Nevits questioned the location of the stairs to the proposed ADU and inquired as to a second door. Thai Khuong Lima - 32 Thompson Rd., Webster, MA, on behalf of the petitioner, advised the board of the stairs and that the exterior of the building would have no additional changes, except for the stairs to the proposed ADU. Member Nevits proceeded to question the location of the driveway for the required parking. The petitioner advised the board that the neighboring house (58A School Street), to the rear of the applicable property, shared a driveway with their property so that the ADU could access and parking in the rear of the building. Vice Chair Mauro inquired as to the multiple different addresses within the application, none of which were the property, and advised the petitioner they would need an affidavit of residency. Ms. Evangelisti advised the board she had already dealt with that, but if there was additional verbiage required by the board we would obtain a new affidavit. Vice Chair Mauro requested a plot plan or legal description that provides 60 School Street with legal standing to utilize that driveway. There was time spent reviewing google maps, accessor maps, and MA GIS maps to attempt to locate the legal description or plan that provides this access. The petitioner was requested to provide a plan that reflected the access and parking for the ADU.

With no further questions from the board public testimony was opened. Kristen Ryder – 58A School St. – addressed the board to advise them that they are not allowed access, it is not a shared driveway, they do not have an agreement for 60 School Street to utilize the driveway, the tenant(s) that are currently living in an “illegal apartment” are parking on via their (58A School Street) property, and at no point was there an agreement or easement for legal use. Ms. Ryder advised the board she has made complaints to the Building Commissioner and doesn't feel anything has been addressed.

The petitioner was asked to prepare a new plan that reflects the location of the “shared” driveway and either a plot plan or survey and recorded legal description or easement that provides 60 School Street access and the right to the driveway. Vice Chair Mauro, seconded by Member Nevits, motioned to continue the hearing until May 11, 2023, which is the next public hearing of the Zoning Board of Appeals. 5-0-0. **Unanimous.**

Petition 2023-06 540 Main Street (new public hearing)

Chair Schafer opened the public hearing by reading the public hearing notice into the record. At this time, the Board of Appeals will hear the request of EHP Realty Corp. for a Special Permit to construct a 7,200 square-foot steel commercial building, with associated parking at 540 Main Street within a Watershed Protection District pursuant to Section 3.3.10 of the Town of Hudson Protective Zoning By-Laws. The subject property is located at 540 Main Street within the M-6 Industrial District, Assessors' Map 34 Parcel 21. Clerk Russell read the right of appeal.

Engineer of the project Tom DiPersio, Thomas Land Surveyors & Engineering Consultants, on behalf of the petitioner/owner David Kelly addressed the board. Mr. DiPersio advised the board that this petition has already been through Site Plan Review which was approved by the Planning Board. He went on to review the petition, the traffic study, and the peer review. Mr. DiPersio reviewed the Watershed Protection District conditions noting intended use for office and garage space therefore he was not concerned with the conditions not being met.

With no further questions from the board, the public testimony was opened. Paul Tarves – 553 Main Street – addressed Mr. DiPersio regarding the location of the septic system. Mr. Tarves

states he has an artesian well on his property and wants to ensure the septic system at 540 Main Street is placed outside of the applicable required area to not contaminate his well. Mr. DiPersio and the board agreed that the Board of Health would have to review when the permit was pulled for the septic tank.

Chair Schafer, seconded by Member Nevits, motioned to enter deliberative session. With no discussion or additional comments Chair Schafer, seconded by Member Nevits, motioned to approve the Special Permit application with all standard conditions, Board of Health and Department of Public Works comments to be addressed, and “Dotty” conditions. Member Nevits mentioned and it was agreed that BOH would address the artesian well. **5-0-0. Unanimous.**

Approval of 3/9/2023 Minutes

Motion made by Member Nevits, seconded by Chair Schafer, to table the March 9, 2023 minutes until the next meeting so that additionally requested details regarding the 17 School Street petition were added. **5-0-0. Unanimous.**

Adjournment

Chair Schafer, seconded by Member Nevits, motioned to adjourn at 8:57 p.m. **5-0-0. Unanimous.**