

Dear Hudson Planning Board Members, I hope this message finds you well.

I wanted to thank you again for your offer to reevaluate the potential for a Public Hearing on the Colarusso Dock Conditional Use Permit.

As a very close neighbor to the dock we are extremely concerned about the consequences this decision will have on our work and hopes for the future of Hudson's waterfront.

Our businesses (Kitty's, Grapefruit Wines, The Caboose, The Wick, Robert Taylor House restoration and soon to come Kaz redevelopment) have grown considerably over the last few years. It's hard to believe but **we currently have over 82 full time employees (with plans for significantly more), and almost 4m in payroll in 2024, not to mention the hundreds of thousands of dollars in Hudson property tax we gladly pay.**

To that end, we wanted to share a memo that may provide additional insights into the Conditional Use Permit for Colarusso dock operation discussed in previous meetings.

This **memo outlines specific considerations established by court rulings regarding the authority of the planning board** to impose limitations on the dock operation.

As you'll see, counter to what the city attorney represented at the last meeting, this memo shows definitively that the court rulings authorized the Planning Board to impose significant conditions on the entire dock operation, not just the bulkhead.

'additional conditions on such [continued] use [of the dock] as may be necessary to protect the health, safety and welfare of residents living in close proximity to commercial docks and the public while recreating and using public facilities adjacent to commercial docks'

Examples of conditions:

Section 325-17.1(F)(2) imposes special conditions for commercial dock operations. These are mandatory conditions that a commercial dock operation subject to a conditional use permit must

comply with. The Planning Board can certainly impose conditions that facilitate and flesh out these conditions.

Such mandatory conditions include:

- Dust, smoke, gas, odor or air pollution shall not adversely affect the surrounding area
 - o The Planning Board could impose conditions requiring dust suppression
 - o The Planning Board could impose limits on the use of the dock for receipt of odor emitting materials (e.g., noxious chemicals, solid waste)
- Compliance with the City Noise Ordinance o Control measures including barriers, landscaping, and low volume back-up warnings on heavy equipment could be required
- Limits on hours for loading and unloading from dock and truck arrival and departure times (i.e., 7am to 7pm set in Code)
- Truck engine idling is prohibited
- Light sources shall not be visible beyond the lot lines (subject to lighting necessary for safety)
 - o The Planning Board could require certain types of down facing, dark sky compliant lighting
- Visual impacts shall be minimized and direct views from public locations protected. Outdoor storage of goods and materials shall be screened
 - o Could require barriers or landscape plantings to block views
 - o Could require construction of a building to screen storage of goods and materials.
- Public access to and from the river shall be incorporated
 - o Could require pedestrian safety and access measures on the property if needed
- Preservation of natural features, wetlands, wildlife.

Thank you for your attention to this important issue.

Warmest regards,

Ben Fain

WILLIAM F. DEMAREST III
Demarest@RuppPfalzgraf.com

MEMORANDUM

Date: February 13, 2025

Re: Conditions City of Hudson Planning Board can impose on Colarusso Dock?

This memorandum addresses whether the prior Court decisions limit the scope of conditions that the City of Hudson Planning Board can impose on a conditional use permit for the Colarusso dock. As discussed below, the Court decisions do not support a limit on such conditions and, therefore, this memorandum also outlines the types of conditions that are required under the City of Hudson Zoning Code and those that would be within the Planning Board's authority if found to be "necessary to protect the health, safety and welfare."

The Court Decisions Establish that the Conditional Use Permit is for all Dock Activities

In *Matter of A. Colarusso & Son, Inc. v. City of Hudson* (Index No. 17-906091), the Court clearly established that the vested rights to use the dock were lost when the bulkhead repair was made without approval.

The Court explicitly stated that pursuant to City of Hudson Code § 325-17.1(D) "**As soon as the owner/operator sought to make an improvement, enhancement, expansion or change, the right to operate as a nonconforming use ceased.**" Consequently, the Court upheld the City's determination that the "repair project was one of the 'actions or events specified in [the code]' triggering the termination of petitioners' right to continue to operate the commercial dock without conditional use permit". Notably, the Court denied Colarusso's request for an order "prohibiting [the City Planning Board] from further **regulating the intensity of [Colarusso's] use of their commercial dock** and haul road" and "declaring that [Colarusso's] use of their commercial dock is permissible under the Code of the City and Hudson **and that [the City Planning Board] may not lawfully further regulate the intensity of such use.**" This implicitly establishes the right of the City to limit such use. See *Matter of A. Colarusso & Son, Inc. v. City of Hudson* (Index No. 17-906091), Decision and Order and Judgment dated January 23, 2019 (J. Melkonian) (emphasis added).

In *A. Colarusso & Son, Inc. v. City of Hudson Planning Board* (Index No. E012021017875), the Court clearly held that the Planning Board is authorized to issue conditions to the full extent of the Zoning Code. It further clearly held that the conditional use permit is not limited to the repairs of the bulkhead already made.

While the Court decision limited the scope of SEQRA review to just the bulkhead, it clearly distinguished the scope of review under SEQRA from that under the Town Code for the use of the dock. As to the review of the conditional use permit, the Court stated “as [the City of Hudson Planning Board] correctly argues, as per Zoning Code 325-17.1(D), because part of the dock was being “rebuilt,” the conditional use permit requirement of the Code was triggered and **the Board is now authorized to impose certain conditions as specified in the Code, along with ‘additional conditions on such [continued] use [of the dock] as may be necessary to protect the health, safety and welfare of residents living in close proximity to commercial docks and the public while recreating and using public facilities adjacent to commercial docks’ Zoning Code 325-17.1(D)(1).**” The Court explicitly denied Colarusso’s argument that the conditional use permit was simply “a permit to *nunc pro tunc* authorize the repairs already made, but rather, a permit for continued use of the dock **with such conditions as the Board may impose consistent with law.**” The Court dismissed Colarusso’s other causes of action which, according to an earlier order, included a request for “a declaration that they have obtained constitutionally protected vested rights to the continued operations of the . . . dock operations.”

The Court certainly did not rule that the conditions imposed must be limited to the repairs of the bulkhead. In a footnote the Court states: “The court notes that **what conditions may or may not be permissibly applied to the project under Zoning Code 325-17.1(D) is not before the court** and the court does not purport to pass upon that legally distinct question by its decision here today. Indeed, the court does not believe that question is ripe for review, as it does not appear that any conditions as per 325-17.1(D) have yet been imposed.” The Court remanded the conditional use permit application under Zoning Code 325-17.1(D) back to the Planning Board “for **whatever** further proceedings and actions may be required **in accordance with said provision**”. See *A. Colarusso & Son, Inc. v. City of Hudson Planning Board* (Index No. E012021017875), Decision & Order dated July 12, 2024 (J. Rivera) (emphasis added). Thus, the Court was not limiting the scope of conditions to a subset of what is permitted under Code § 325-17.1(D).

These decisions, which are binding on both Colarusso and the City, clearly establish that the conditional use permit is for the entire use of the dock pursuant to Code § 325-17.1(D) and that no vested rights to use the dock survive. Therefore, the Planning Board is authorized and required to “**impose certain conditions as specified in the Code, along with ‘additional conditions on such [continued] use [of the dock] as may be necessary to protect the health, safety and welfare of residents living in close proximity to commercial docks and the public while recreating and using public facilities adjacent to commercial docks’.**”

The Code Sets Forth Required Conditions and Grants Authority for Additional Conditions.

As noted by the Court, § 325-17.1(D) provides: “**in addition to** the provisions of Article VIII, and as more fully set forth in § 325-17.1F(2), the Planning Board shall impose additional conditions on such use as may be necessary to protect the health, safety and welfare of residents living in close proximity to commercial docks and the public while recreating and using public facilities adjacent to commercial docks as authorized in the Local Waterfront Revitalization Program.” This creates broad authority for the Planning Board to regulate and impose conditions on the commercial dock facilities and activities.

Section 325-17.1(F)(2) imposes special conditions for commercial dock operations. **These are mandatory conditions** that a commercial dock operation subject to a conditional use permit must comply with. The Planning Board can certainly impose conditions that facilitate and flesh out these conditions. Such mandatory conditions include:

- Dust, smoke, gas, odor or air pollution shall not adversely affect the surrounding area
 - The Planning Board could impose conditions requiring dust suppression
 - The Planning Board could impose limits on the use of the dock for receipt of odor emitting materials (e.g., noxious chemicals, solid waste)
- Compliance with the City Noise Ordinance
 - Control measures including barriers, landscaping, and low volume back-up warnings on heavy equipment could be required
- Limits on hours for loading and unloading from dock and truck arrival and departure times (i.e., 7am to 7pm set in Code)
- Truck engine idling is prohibited
- Light sources shall not be visible beyond the lot lines (subject to lighting necessary for safety)
 - The Planning Board could require certain types of down facing, dark sky compliant lighting
- Visual impacts shall be minimized and direct views from public locations protected. Outdoor storage of goods and materials shall be screened
 - Could require barriers or landscape plantings to block views
 - Could require construction of a building to screen storage of goods and materials.
- Public access to and from the river shall be incorporated
 - Could require pedestrian safety and access measures on the property if needed
- Preservation of natural features, wetlands, wildlife.

Article III sets forth the criteria for site plan and conditional use approval by the Planning Board. Section 325-34 provides that **“the Planning Board ‘may prescribe appropriate conditions and safeguards as may be required in order that the result of its action may, to the maximum extent possible, further the expressed intent of this chapter.’”** Section 325-34 and § 325-35(H)(2) sets forth the standard for approval and intent of the chapter. **Optional conditions for “public health safety and welfare”** under § 325-17.1(D)(1) and 325-34 and 325-35(H)(2) include:

- Limits on the character and scale of use
 - Limit the number of barges being loaded and unloaded at 1 time
 - The Planning Board probably can prohibit convoying of trucks (i.e., the receipt or exiting of multiple trucks at one time) due to safety and noise concerns
- Require the alteration of the access location if needed for safety of pedestrians and vehicular traffic

- Require landscaping for screening, strengthening visual corridors
- Require or limit the size of walls and fences
- The Planning Board probably could impose conditions on new buildings
- Limit hours of operation before and after the dock operations are permitted (e.g., the Facility shall be closed except in the case of emergency or for security purposes between the hours of 8pm and 6am and no trucks shall be permitted to enter or leave the site during that period).

These are not an exhaustive list of possible conditions so long as the condition “may be necessary to protect the health, safety and welfare.”