

**HUDSON ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
March 26, 2009**

**I. CALL TO ORDER**

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:16pm on Thursday, March 26, 2009, in the Community Development Meeting Room in the Town Hall basement. Chairman Seabury then requested Clerk Martin to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

**Members**

**Present:** Maryellen Davis, William McInerney, James Pacocha, Michael Pitre, and J. Bradford Seabury

**Members**

**Absent:** None (All present)

**Alternates**

**Present:** Kevin Houle, Normand Martin, and Donna Shuman

**Alternates**

**Absent:** Marilyn McGrath - Excused

**Staff**

**Present:** William Oleksak, Building Inspector

**Liaison**

**Present:** Roger Coutu, Selectmen's Liaison - Absent

**Recorder:** Trish Gedziun

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### **II. SEATING OF ALTERNATES AND ANNOUNCEMENTS**

For the benefit of all attendees, Chairman Seabury noted that copies of the agenda for the meeting, as well as an outline of the rules and regulations governing hearings before the Zoning Board of Adjustment, were available at the door of the meeting room. He noted the outline included the procedures that should be followed by anyone who wished to request a rehearing in the event the Board's final decision was not felt to be acceptable. Chairman Seabury pointed out that the Board allowed rehearings only if collectively convinced by a written request that the Board might have made an illogical or illegal decision or if there were positive indications of new evidence that for some reason was not available at the hearing.

Chairman Seabury announced that Mr. Houle would be seated in place of Mr. Pitre and Ms. Shuman would be seated in place of Mr. Pacocha for the purpose of reviewing the minutes from the February 19, 2009, meeting as those regular members had not yet arrived.

### **III. APPROVAL OF MEETING MINUTES**

The following edits were made to the minutes of the February 19, 2009, meeting:

1. Page 2, Last paragraph – “the banking department of the State of New Hampshire” was left unchanged. – Seabury
2. Page 3, 9<sup>th</sup> paragraph – “Chairman Seabury pointed out” was changed to “Chairman Seabury confirmed” – Seabury
3. Page 9, 2<sup>nd</sup> paragraph – “March 2, 2009” was changed to “May 2, 2009” - Seabury

Ms. Davis made a motion to approve the minutes from the February 19, 2009, meeting as amended by the Board.

Ms. Shuman seconded the motion.

Chairman Seabury called for a verbal vote and he then stated that all of the Board members were in favor of approving the minutes from the February 19, 2009, meeting.

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Chairman Seabury then declared a break at 7:24pm, calling the meeting back to order at 7:35pm.

Chairman Seabury returned Mr. Houle and Ms. Shuman to their respective seats as non-voting alternate members of the Board as Mr. Pacocha and Mr. Pitre had arrived at the meeting and would be seated in their usual voting positions.

## IV. PUBLIC HEARINGS FOR SCHEDULED APPLICATIONS

1. **Case 168-44 (3/26/09): Maurice & Colleen Thyne, 4 Washington Street, Hudson, NH, requests the following:**

**A. An Equitable Waiver to allow the existing Accessory Living Unit to remain above the attached garage. [Map 168, Lot 44, Zoned R-2, HZO Article XIII A, Sections 334-73.1, Accessory Living Units.]**

**B. An Accessory Living Unit that was previously constructed in 1987 above the attached garage to be occupied by a family member. [Map 168, Lot 44, Zoned R-2, HZO Article XIII A, Sections 334-73.1, Accessory Living Units.]**

Clerk Martin read aloud the posted notice, as recorded above.

Chairman Seabury stated that the unit was **not** an Accessory Living Unit as it had not been approved by the Board as such and it had been constructed prior to 1994, which was the inception of Accessory Living Units. He further stated that it was, and should be referred to, as a “unit” and not an “Accessory Living Unit.”

Ms. Davis asked if a permit was issued at the time the unit was constructed. Mr. Oleksak replied that there was a building permit issued for the unit.

Mr. Martin stated that he felt the unit was built within the legal confines at the time of construction and said he did not understand why an Equitable Waiver was being sought and further, that the Board did not have a copy of the property’s plot plan.

Chairman Seabury asked who was present to speak in favor with regard to the application.

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Mr. Maurice Thyne, the applicant, addressed the Board, stating that he had not realized the unit was a problem until his home was appraised for refinancing.

Mr. Thyne stated that the unit was built for his ailing father 22 years previously and that all the appropriate permits were given and inspections completed.

Mr. Thyne read aloud from his application for an Equitable Waiver, summarized as follows:

- 1. The unit was built in 1987, prior to the town's adoption of Accessory Living Units.*
- 2. The unit blended in nicely with the other properties in the neighborhood – noting that the property had the appearance of a single-family dwelling.*
- 3. The cost would be too great for the applicant to make the necessary changes which would have brought the unit up to the town's current code.*

Mr. Thyne also mentioned that he was hopeful that the Board would grant the Equitable Waiver as he was anxious to re-finance his home.

Chairman Seabury asked if there were anyone else present who wished to speak in favor with regard to the application. No one else came forward.

Chairman Seabury asked if there were anyone present who wished to speak in opposition or neutrally with regard to the application. No one came forward.

Mr. Martin again stated that he felt the unit had been built legally and he did not understand why an Equitable Waiver was needed. He also stated that he felt a Certified Plot Plan was required.

Chairman Seabury declared the matter before the Board.

Ms. Davis asked if there were any code enforcements issued with respect to the property. Mr. Oleksak replied there had been none.

Mr. Thyne, the applicant, testified that there had been no police activity with respect to the property.

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Ms. Davis asked what the Equitable Waiver would be for. Chairman Seabury replied that it would be for the existing non-conforming use of a living space.

Mr. McInerney stated that he had agreed with Mr. Martin's comment that the unit was legal.

Ms. Davis asked who was presently living in the unit. Mr. Thyne replied that his mother was presently living in the unit and that at the time of her passing, his mentally disabled son would reside in the unit. Mr. Thyne further stated that it was never his intention to use the unit for rental income.

Chairman Seabury stated that he was concerned that the term "living space above the garage" did not mean an actual "living unit." Chairman Seabury further stated that it was his interpretation that the "space" was for a playroom or a sleeping space and not for a "living unit."

Chairman Seabury also stated that he felt that, if the Community Development Department had known in 1987, that the "space" was for a separate living unit, that the applicant would have been deferred to the Zoning Board of Adjustment.

Chairman Seabury said that the ALU Ordinance was created for the very reason that the town did not want two-family dwellings in single-family neighborhoods.

Chairman Seabury asked the applicant to explain the types of rooms that were in the unit. Mr. Thyne replied that the 24' x 24' unit had a full kitchen with a gas range, a living room, a bathroom, and a bedroom.

Mr. Thyne stated that there were two separate sets of utilities but they were both in his name. He also stated that the property had town water and a septic system.

Chairman Seabury asked the applicant if there had been any changes to the unit since it was constructed in 1987. Mr. Thyne replied that, although he had to replace the deck, there had been no changes to unit.

Mr. Oleksak read aloud from a copy of the original building permit dated July 8, 1987, as follows:

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*The request was for the addition of a breezeway and two-car garage with living space above.*

Ms. Davis commented that she felt the applicant had exhibited due diligence when the unit was constructed, but she was concerned that, if the property were to ever be sold, it had the potential of becoming a two-family dwelling.

Chairman Seabury asked Mr. Oleksak to explain what changes would be needed to define the property as a two-family dwelling. Mr. Oleksak replied that a firewall would have to be installed, as well as additional work in the garage. Mr. Oleksak also said that those changes would be very costly.

Ms. Davis made a motion to approve the Equitable Waiver, to allow the existing non-conforming use of an attached living space over the existing garage, as it had been in existence for over ten years without any negative abutter testimony and had no code enforcement issues.

Mr. Pacocha seconded the motion and suggested that a stipulation be attached to the motion stating that the unit would have to conform with duplex standards if it were ever to be rented to non-family members.

Ms. Davis agreed that a stipulation should be added but changed the verbiage of that stipulation to “the property remains as a single-family home and any further change of use shall require adherence to the current zoning ordinances.”

Chairman Seabury pointed out that the Assessor’s Office would still assess the home as a two-family dwelling.

Ms. Davis, speaking on her motion, stated that she felt the case was tough to call, that the applicant followed the permitting process, it had been in existence for over ten years without any public or private nuisance, and it was within the spirit of an Equitable Waiver.

Chairman Seabury pointed out to the listening audience that an Equitable Waiver could only be granted to something that had been in existence for ten or more years.

Mr. Pacocha, speaking on his second, stated that he felt it met the criteria for an Equitable Waiver, and the town had issued a building permit and performed the necessary inspections, hence, allowing it to be legally constructed in 1987.

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VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to approve the request for an Equitable Waiver with the noted stipulation, and to record the members' votes, which were as follows:

Ms. Davis	To approve
Mr. Pacocha	To approve
Mr. McInerney	To approve
Mr. Pitre	To approve
Mr. Seabury	To deny

Chairman Seabury declared that the decision having been four votes to approve and one vote to deny, the motion had carried.

Chairman Seabury then stated that as the request for an Equitable Waiver had been approved, the request for an Accessory Living Unit had become moot and would not be addressed by the Board. Mr. Thyne expressed agreement.

- 2. Case 204-73 (3/26/09): Dan Cirnigliaro, 17 Hampshire Road, Unit 7, Hudson, NH, requests a Use Special Exception for property located at 142 Lowell Road, Units 7 and 8 to allow an animal hospital to be located in the Business Zoning District. [Map 204, Lot 73, Zoned Business, HZO Article VI, Section 334-23, General Requirements.]**

Clerk Martin read aloud the posted notice, as recorded above.

Chairman Seabury asked who was present to speak in favor with regard to the application.

Mr. Tony Basso, of Keach-Nordstrom Associates, Inc., representing the applicant, addressed the Board, and read aloud from the application for a Use Special Exception as summarized as follows:

- 1. The proposed use meets all of the requirements established in the chapter.*
- 2. The proposed use does not require any additional relief from any of the requirements of the chapter.*

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3. *The proposed use is a reduction in the required number of on-site parking spaces therefore, ensuring the prior approval of Nottingham Square remains in conformance with the requirements of the chapter.*
4. *The proposed use is consistent with the proposed intent of the district.*
5. *The proposed use will be located within the interior of an existing retail building and will not create a discoverable appearance other than the signage to denote its' location.*
6. *The surrounding properties to the north and south were utilized for commercial purposes.*

Chairman Seabury asked if there were anyone else present who wished to speak in favor with regard the application.

Dr. Dan Cirnigliaro, the applicant, addressed the Board, stating that he was in favor with regard to the application.

Chairman Seabury asked if there were anyone else present who wished to speak in favor with regard the application. No one else came forward.

Chairman Seabury asked if there were anyone present who wished to speak in opposition or neutrally with regard to the application. No one came forward.

Chairman Seabury declared the matter before the Board.

Mr. Pitre asked if units #7 and #8 were occupied and Mr. Basso replied that they were not currently occupied.

Mr. Pitre asked if the applicant was also the owner of the pet food supply store located in the same plaza. Mr. Basso replied that the applicant was not the owner of that establishment.

Ms. Davis asked where units #7 and #8 were located in relation to Valentino's Restaurant. Chairman Seabury replied that the units were right next to the proposed location of the veterinary hospital.

Ms. Davis asked if there were any type of nuisance that could be created by the veterinary hospital and also asked what activities, if any, would take place overnight.

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Ms. Davis commented that she could not think of any veterinary hospital that was located in a plaza type setting. She further stated that she felt such veterinary hospitals were usually located in stand alone buildings.

Mr. Basso, addressing Ms. Davis's questions, stated that Valentino's Restaurant was located in units #1, #2, #3, and unit #4 served as the function hall. He noted that there was a gap between Valentino's Restaurant and the proposed veterinary hospital.

Mr. Basso further replied that the facility would have to meet all of the health codes prior to obtaining a building permit. Mr. Basso said that the location was inside a concrete block structure that was located hundreds of feet away from any residential building.

Mr. Pitre asked what the intended hours of operation would be and Mr. Basso replied that the hours of operation would be Monday through Friday from 8:30am – 6:30pm and 8:30am – 12:30pm on Saturdays.

Mr. Pitre asked how many employees the applicant had intended on employing and Dr. Cirnigliaro replied that he would employ anywhere from five to eight employees.

Mr. Pitre asked how many pets (patients) the applicant would see each day. Dr. Cirnigliaro replied that three to four animals would be seen per hour – noting that there would be an additional two to three surgical patients per day.

Dr. Cirnigliaro testified that he was licensed by the State of New Hampshire to be a veterinarian and also said that he followed the state's standards as well as the standards of the Drug Enforcement Agency.

Dr. Cirnigliaro also stated that he used a licensed calling service located in Peterborough, NH, for medical waste. Dr. Cirnigliaro testified that medical waste was not flushed down toilets, sinks, or thrown out in the regular trash.

Ms. Davis asked if there would be a large number of animals kept at the facility on an overnight basis. Dr. Cirnigliaro replied that if an animal were extremely ill, his first choice would be to send the animal to an area clinic where they had doctors staffed on a 24-hour basis. Dr. Cirnigliaro commented that the animals that would be kept overnight were predominantly feline.

Dr. Cirnigliaro also stated that there were times, in the case of an emergency, that he might have to stay at the clinic after 6:30pm.

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Ms. Davis made a motion to approve the request for a Use Special Exception.

Mr. Pitre seconded the motion.

Ms. Davis, speaking on her motion, stated that she felt it was a good use for the environment, there would be minimal traffic, and Dr. Cirnigliaro had testified that he had been operating a veterinary clinic at a different location in Hudson without incident.

Mr. Pitre, speaking on his second, stated that he felt the case met all of the applicable requirements and it was in keeping with the character of the building, because there was a pet food supply store in close proximity to the proposed location.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to approve the request for a Use Special Exception with the stipulation that the normal hours of operation would be from 8:30am to 6:30pm, and to record the members' votes, which were as follows:

Ms. Davis	To approve
Mr. Pitre	To approve
Mr. McInerney	To approve
Mr. Pacocha	To approve
Mr. Seabury	To approve

Chairman Seabury declared that the decision having been five votes to approve, the motion had carried.

**V. OTHER BUSINESS**

- Mr. Oleksak stated that he was continually working on fine-tuning the policies and procedures of the Community Development Department.

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**VI. ADJOURNMENT**

All scheduled items having been processed, Mr. Pitre made a motion to adjourn the meeting.

Mr. McInerney seconded the motion.

VOTE: All members voted in favor. The motion passed unanimously.

Chairman Seabury declared the meeting to be adjourned at 8:55pm.

Date: April 8, 2009

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J. Bradford Seabury, Chairman

Recorder: Trish Gedziun