



# TOWN OF HUDSON

## Zoning Board of Adjustment



J. Bradford Seabury, Chairman

Marilyn McGrath, Selectmen Liaison

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### HUDSON ZONING BOARD OF ADJUSTMENT MEETING MINUTES December 10, 2015

#### I. CALL TO ORDER

Acting Chairman Martin called this meeting of the Hudson Zoning Board of Adjustment to order at 7:33 PM on Thursday, December 10, 2015, in the Paul Buxton Meeting Room in the Town Hall basement. Those persons present along with various applicants, representatives and interested citizens were as follows:

##### **Members**

**Present:** Normand Martin, James Pacocha, Maryellen Davis, Donna Shuman

##### **Members**

**Excused:** J. Bradford Seabury

##### **Alternates**

**Present:** Gary Dearborn, Maurice Nolin, Charles Brackett, Kevin Houle

##### **Selectman**

**Liaison:** Marilyn McGrath

##### **Staff**

**Present:** David Hebert, Acting Zoning Administrator

**Recorder:** Elizabeth Garrett

#### II. SEATING OF ALTERNATES AND ANNOUNCEMENTS

For the benefit of all attendees Acting Chairman Martin announced that copies of the agenda for the meeting, as well as an outline of the rules and regulations governing the hearing before the Zoning Board of Adjustment, were available at the door of the meeting room. He stated the outline includes 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.

Acting Chairman Martin pointed out the meeting has a curfew of 11:00 PM. In the event that a case is not heard by 11:00 PM, it will be postponed until the next meeting. If a case is in the process, it will be heard until 11:30 PM then continued at the next meeting.

Mr. Martin asked Mr. Dearborn to read the first case before the Board.

### **III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THIS BOARD**

- 1. Case 105-017 (12-10-15) (Deferred from 11/12/15): Noury Investments, LLC, 17 Elnathans Way, Hollis, NH, requests a Wetland Special Exception for the proposed self-storage expansion located at 22 Brady Drive, Hudson, NH, to impact approximately 640 square feet of permanent wetland impact, 6,232 square feet of permanent wetland buffer impact to construct a 24' wide access driveway that will extend from the existing facility to the expansion and 2,712 square feet of temporary wetland buffer impact to restore the previously permitted buffer impact. [Map 105, Lot 017, Zoned G-1; HZO Article XIII A §334-35, Uses within Wetland Conservation District.]**

Mr. Hebert explained why the matter was before the Board. Noury Investments is proposing to expand the number of self-storage units and build a 24' wide access driveway. Three wetland special exceptions will be required. The first is to impact of approximately 640 square feet of permanent wetland impact. The second is to impact approximately 6232 square feet of wetland proper and the third is to impact approximately 2712 square feet of temporary wetland buffer.

Mr. Martin asked who was here to speak for this case. Brent Cole introduced himself as well as Tony Basso both with Keach Norstrom Associates and representing Noury Investments LLC. Mr. Cole stated the project is a self-storage facility, Hudson Hilltop Self-Storage, and they hope to expand their facility and are seeking a wetland special exception. The self-storage facility is an existing 50,000 square foot self-storage facility located at 22 Brady Drive, Map 105, Lot 017. The final construction of the units has been completed and they are already at full capacity. The parcel that this project exists on is a 43 acre parcel that is bisected by an intermittent stream. Thirty-two of the 43 acres is located across the intermittent stream and that is the area we hope to expand to. We will require a wetland impact because of the access drive to this expansion. The impact we are proposing is 640 square feet permanent and 6232 square feet of wetland buffer impact. We are proposing a box culvert that is sunken one foot and retaining walls to help minimize this impact. The expansion consists of three 9,900 square feet buildings. Also, along with this project is a temporary wetland buffer impact for the rehab of an existing wetland impact that was permitted back in 2010. The wetland impact for that project was to construct a drainage pipe to convey storm water to the storm water ponds that are located to the southwest of the site. This project has been before the Conservation Commission and the Planning Board for ZBA input and approved by both. The operation to these facilities is key because the customer enters on Brady Drive to the gate where the keypad and offices are. This expansion will work with the existing facility because of security and there will not be two separate entrances. We sought a second alternative and that alternative was to use the already permitted impact but found three issues with that:

Issue of having two gates; we also found the wetland buffer would actually be more. By increasing this temporary impact, we would create more of an impact to the buffer than the existing one. The one we have now comes off the confines of the compound and it crosses the narrowest thread of the wetland. The other reason we didn't go with the alternative to the west was because of the drainage pipe that is crossing underneath that wetland. It is extremely hard to install a box culvert with a drainage pipe there and you would have to impact more wetland to install that box culvert.

It was asked who would be addressing the requirements and Mr. Cole stated he would and read through them.

Mr. Martin asked if anyone in the audience would like to step forward to speak in favor of the application. No one stepped forward.

Mr. Martin asked if anyone in the audience would like to speak in opposition or neutrally to this application and Mr. Emile Plunsky of 17 Twin Meadows Drive came forward.

Mr. Plunsky noted that his house is directly connected to this land and he doesn't feel that the wetlands should be used for storage buildings again. His biggest concern about putting these storage facilities in is the value of his property. He bought the land back in September and two months later he is being told that there is going to be storage units in his backyard and he disagrees with this. He knows that wild turkeys roost on the land at the bottom of the hill and he would like to see that continue.

Mr. Martin asked if anyone else from the audience would like to speak. No one stepped forward.

Mr. Martin asked if there were any questions.

Mr. Dearborn noted that there was an excessive amount of construction already at this location. Has any of this wetland or buffer been developed already?

Mr. Cole noted that none of the wetland or buffer has been developed. The only portion of the wetland that has been altered is the portion permitted back in 2010. Mr. Basso came forward and wanted to point out for the record that the area being discussed is actually a stock pile area from the original construction of the self-storage facility. Extra material was brought over, stock piled and then sold. That is why it looks like a construction area.

Ms. Davis asked if this project would be going back to the Planning Board and the answer was yes. She then asked about the parking spaces for recreational vehicles. Asked for an explanation of what they were proposing this would look like and what the ultimate use would be.

Mr. Cole noted the ultimate use for the recreational spots will be for someone to drop off their boat or RV and store it and then come by to pick it up when they are going to use it; individuals who do not have the room at their own home to store them. It would be outside storage.

Ms. Davis asked if the outside storage has any buffers as she is concerned about vehicles going in and out on a 24 hours basis, especially on weekends when most RVs and boats are moved, with headlights shining into the neighborhood that abuts it. She realizes that there is a 100' residential buffer but wants to know how dense that buffer is.

Mr. Basso noted that there is a drop in the area so the zone would be down from the houses; there will actually be a significant slope in the area; also, enhanced planting will be completed. Mr. Cole also noted there would be a 30' grade change between Twin Meadows Drive and the facility's side.

Ms. Davis asked about the operation, how individuals would be coming in and using the facility; also if there were parking spaces.

Mr. Basso stated that individuals would pull in along the building and load and unload items. The unit doors would be opened and they would be parallel to it. They would just pull in, straight in.

Ms. Davis asked straight in and straight out, no backing up? Parking would be an open space acceptable from both ends?

Mr. Cole (at the plan drawing on the display board) – the customer will drive in through here, they'll circle the building and they'll park in these spaces. They will have to back out and then circle the building again to exit. There will be backing out.

Ms. Davis – when RVs or cars with trailers pull in...

Mr. Cole pointing to the plan drawing – from here there is a significant tree buffer and there is also a 10' cut so it is looking at a mound of earth.

Mr. Basso and Ms. Davis confer over the grading plan.

Mr. Martin asks if anyone from the audience would like to speak in favor – no replies from the audience. Anyone from the audience who would like to speak neutrally or in opposition to this application – Mr. Martin recognizes an audience member.

Ms. Leona Plunsky, 17 Twin Meadow Drive came forward to ask about the lighting. Would lighting be illuminating the facility 24 hours a day and even though there is a buffer, will the lights come up into the houses? Also concerned about the type of vehicles being kept there – RVs, boats. She noted that she is a boat owner and knows what facilities look like once they start to fill up. They are not controlled, people just drop-off their old boats “planning to fix it.” Are they going to do something to make sure that doesn't happen because we can look out our windows right now and see where they are going to be put and there is not that much tree buffer between us and where they are talking about.

Mr. Plunsky came to the podium again and noted that at this time of year especially they can hear cars leaving at night from the storage station on the corner of Derry Road and Robinson Road. It is not quiet; it is not as bad in the summer because of the leaves on the trees and the buffer. We are concerned about the amount of noise that will be coming through there.

Mr. Basso noted lighting would be wall pack lighting only; there are no pole mounted lights at all. The wall pack lighting would be down cast so it would not be shining up in the air; similar to the lights currently on the buildings. Regarding being on all night, we would be happy to address that with the Planning Board. He again noted that the lighting would be down cast and only on the buildings, no light poles.

Mr. Martin addressed the audience, encouraging them to attend the Planning Board meeting when the application goes in front of them noting that lighting would be addressed and any concerns could be addressed there.

Mr. Martin declared the matter before the Board; any questions, comments, concerns?

Mr. Martin noted he had a concern regarding when coming over the proposed access road; the very first storage unit, how far away is that from the wetland buffer?

Mr. Cole at the plan drawing – it is 60’.

Mr. Martin – It is my understanding that these storage units are proposed to store regular household items or recreational vehicles, such as off-road vehicles, four wheelers?

Mr. Basso replied that whatever you have to store could be stored in a unit.

Mr. Martin recognizes Mr. Brackett who would like to address the issue of leaving boats or abandoned items at the facility.

Mr. Basso noted any RVs, boats and trailers that would be on the site would have to be registered. It is not a place to abandon vehicles – they have to be registered vehicles. He also noted that he was sure this would be something that the Planning Board would cover in depth.

Ms. Davis asked if the parking spaces were placed behind the units because of the earthen mound and if the spaces were covered or open parking spaces.

Mr. Basso answered they were placed behind the units because it made sense from a design prospective and the spaces are not covered, they are open parking spaces.

Mr. Martin asked if in five years the applicant would be coming back for another wetlands special exception; why did they not do it at the beginning when they were doing their original application.

Mr. Basso noted that their client has no idea that it would take off like this. They really had no plan at the time to expand at all; this has been the result of business going well, better than expected.

Mr. Martin asked if anyone cared to make a motion.

Ms. Davis made a motion to grant the wetland special exception with the comment that it meets the criteria of the ordinance and it’s reasonable and it’s required for the use of the land and we can’t deny an applicant’s use of the land. Some of the items I have raised I realize are Planning Board issues. I personally don’t like the parking spaces and I will give my input to the Planning Board. I just think that is more intrusive than a person coming in say on a weekly or a monthly basis to drop something off and then close the unit. I could see a seasonal type rental of a parking space to leave a boat or RV and then coming to take it every weekend when most people in that neighborhood are at home so that is my issue with it but it has nothing to do with the wetland special exception and this Board, unfortunately.

Mr. Martin, do I have a second to the motion; he recognizes Mr. Brackett.

Mr. Brackett – I agree; the applicant meets the criteria. They did make an attempt to minimize the wetland impact by locating the crossing at the narrowest point.

Mr. Martin asked if any other Board member wished to comment; no replies from other Board members. Mr. Martin noted he had a comment; he is not going to vote in favor of this. The reason being he thinks in 2010 the applicant should have thought this through, that it could be busy or that it would get busy and put these units up with the special exception and did the work to be prepared for the expansion. He believes this is economic based. He noted that there is a pond at the other end that the water drains into and he fears

that some chemicals and other things could potentially spill out into the wetlands and go into the pond that has fish and supports other wildlife. Due to these concerns he will not vote in favor.

Vote:

Ms. Davis To grant and I had my commentary but I would just like to make a final comment that the applicant can't leave this property any worse off than what it is today. He has to mitigate anything that may go into a pond.

Mr. Brackett To grant

Mr. Pacocha To grant

Ms. Shuman To grant

Mr. Martin Not to grant

Vote 4-1 – Special Exception has been granted.

Mr. Basso spoke, referring to the display plans, regarding Mr. Martin's concern about the storm water runoff; the storm water goes into a massive treatment system. There is a primary treatment, secondary treatment and there is retention. It does not go untreated. Everything drains into the primary treatment, then the secondary treatment and then into the wetland. Environmentally, this is all getting taken care of to alleviate that concern. I am unable to help you with the economic concern but these buildings are not draining towards the wetlands, they are draining toward the treatment center which is a state of the art storm water system.

Ms. McGrath made a comment for the abutters – Mr. Brackett serves as an alternate on the Planning Board and I am the Board of Selectmen liaison for the Planning Board as well. You will see either both of us or one of us at the meeting so those concerns will be addressed.

**2. Case 156-060-001 (12/10/15): Grey Fox Realty, LLC, 40 Temple Street, Nashua, NH requests the following for property located at Essex Street, Hudson:**

- a) **An Appeal of a Zoning Administrative Decision issued by the Zoning Administrator dated 10-27-15, which states that a Variance from the Zoning Board will be required to build a single family dwelling in a Business (B) Zoning District, that the proposed lot does not meet the minimum lot area of 30,000 square feet and that the proposed lot does not meet the minimum frontage requirement of 150 feet. [Map 156, Lot 060-001, Zoned B; HZO Article VIII, §334-32, Nonconforming Lots.]**
- b) **A Variance to allow a single family dwelling to be built in a Business (B) Zoning District. [Map 156, Lot 060-001, Zoned B; HZO Article V §334-20 & §334-21, Table of Permitted Principal Uses.]**
- c) **A Variance to allow the lot area of the proposed lot to have 7,624 square feet, where a minimum of 30,000 square feet is required. [Map 156, Lot 060-001, Zoned B; HZO Article VII §334-27, Table of Dimensional Requirements.]**
- d) **A Variance to allow the frontage of the proposed lot to have 73.95 feet, where a minimum of 150 feet is required. [Map 156, Lot 060-001, Zoned B; HZO Article VII §334-27, Table of Dimensional Requirements.]**

Mr. Martin asked Acting Zoning Administrator Hebert to explain the case.

Mr. Hebert stated the comments noted when the case was read were his exact comments and the only additional comment he would like to make is that this appeal of the Administrative Decision came in 39 days after the Zoning Determination went out. He noted he could explain the chain of events if needed.

Mr. Pacocha did not understand why the appeal was filed as the applicant is asking for variances from everything mentioned in the appeal. It seems redundant.

Ms. McGrath asked about the timeframe of the appeal and it was noted it had exceeded the 30 day timeframe.

Ms. Davis made the comment that before discussions are started, she believes item B should really be a special exception for the use and not a variance. We can hear it as a variance but the requirement for a variance is more stringent than a special exception.

Mr. Pacocha noted that the applicant would still need the other two variances.

Ms. Davis, that is correct but I just want the applicant to know that I think that only a special exception is required for the use of a residence in a "B" zone.

Mr. Brackett – just for clarification, I am assuming that the applicant would really like to have Part A overturned and then he wouldn't have to go to B, C and D, is that correct?

Mr. Martin noted that Part B would still need to be addressed.

Mr. Brackett, we should take these in order to determine what we are heading towards in Parts B, C and D. The first question is the 39 days; I understand what Ms. Davis is saying but we can get into that after we decide on the 39 day issue.

Ms. Davis just wanted to verify how much the Board wanted to get into, so Part A will be decided and then the applicant has the choice of deferring Parts B, C and D if he wants to do just a special exception.

Ms. McGrath noted the appeal was not filed in a timely manner and shouldn't be on the agenda.

Mr. Martin noted he had a discussion with the Town Attorney about this and he was comfortable with it being on or off the agenda but he wasn't making the decision to take it off. He forwarded it so the Board could make the decision.

Mr. Brackett noted that it is important that the Board sticks to the rules we are guided by. This case may be one of the easier cases to talk about compared to something that comes down the road later on that could be very difficult but if we have a consistency in how we approach things than it makes it easier for us to be judged by appeals and other things.

Mr. Martin asked if Mr. Brackett's comment was a motion.

Mr. Brackett noted he just wanted to have a discussion first but he would make a motion. Motion to not hear Part A and to not consider before the Board because it wasn't timely.

Ms. Davis seconds the motion.

Mr. Hebert outlines what transpired – letter received from Attorney Morgan Hollis on October 12<sup>th</sup>, thirteen days after the zoning determination requesting that Zoning Administrator Hebert reconsider the zoning determination. He did not respond to the letter at the time due to the fact that in his zoning determination he stated the determination could be appealed within 30 days. The letter from Attorney Hollis did not make any mention of an appeal but to only reconsider. Then a phone call from Attorney Hollis was received on October 27<sup>th</sup> requesting Zoning Administrator Hebert send Attorney Hollis a letter acknowledging the first letter so Attorney Hollis could file for an appeal. Thirty-nine days had passed and Zoning Administrator Hebert did send Attorney Hollis a letter on October 27<sup>th</sup> in good faith stating where Attorney Hollis could obtain the appeal application. After sending the letter to Attorney Hollis, Zoning Administrator Hebert realized that he authorized to extend the appeal timeframe. The zoning ordinance is very clear and states 30 days; it is up to the Board to accept or deny this appeal.

Morgan Hollis an attorney at Gottesman and Hollis introduced himself. He is here to represent the applicant and as Mr. Hebert explained that is exactly what occurred. The only thing he would add is that he had filed the request for the reconsideration of the decision within the 30 day timeframe trying to point out issues that he didn't think Mr. Hebert took into consideration with regard to interpretation. Attorney Hollis was waiting for him to respond to the request for reconsideration prior to filing for an appeal. When he didn't get that determination one way or another, Attorney Hollis called Mr. Hebert and Mr. Hebert courteously sent the letter reaffirming the decision. Attorney Hollis then filed the appeal immediately; which is why it was more than 30 days, he was waiting for a response. Attorney Hollis noted it is for the Board to decide the jurisdiction or not but he wanted the Board to have that understanding. Also as one of the Board members indicated, if Mr. Hebert's decision is overruled then Attorney Hollis doesn't need variances for parts C and D (area and frontage). Attorney Hollis still needs to address the issue of use and the reason a variance was filed was because the determination said he would need a variance. If that determination is not correct, he would be happy to refile. Attorney Hollis would like to proceed forward on the review of the Zoning Administrator's decision and that may remove the issue of the two dimensional variance requirements and may also remove the need to start the process of the appeal again but that is up to the Board.

Mr. Martin asked Mr. Brackett and Ms. Davis if their motion stands. Mr. Brackett said yes, Ms. Davis said she would like to take back her second and give the applicant the benefit of a doubt. The letter requesting reconsideration was filed in a timely manner.

Mr. Brackett decided to withdraw his motion but wanted to make it public that an applicant cannot go back and forth with the Board.

Mr. Martin to Mr. Brackett, motion withdrawn? Mr. Brackett answered, yes. Mr. Martin - Attorney Hollis, we are going to hear your appeal.

Mr. Brackett asked if a motion should be made to that effect.

Mr. Martin noted that Mr. Brackett withdrew the original motion and it is on the docket so the Board can hear it.

Ms. McGrath noted that it might be appropriate to have a motion so that it is clear in the records of why the Board is actually hearing the appeal that was not filed timely.

Mr. Martin – Understood, we will make a motion.



Mr. Brackett makes a motion to hear because of the extenuating circumstances of the case and the doubt that has been brought in from the record of information that has been presented. He does think in a normal case that the Board needs to hold to the strict 30 days and make applicants aware that is what the Board requires irrespective of conversations, etc with Town staff but in this case there are extenuating circumstances and an allowance will be made for it.

Mr. Martin asked if the motion would be seconded.

Ms. Davis seconded the motion.

Vote:

Mr. Brackett	To hear the case
Ms. Davis	To hear the case
Mr. Pacocha	To hear the case
Ms. Shuman	Not to hear the case
Mr. Martin	To hear the case

Mr. Martin – Decision being 4 to 1, we are going to move forward with the hearing. Mr. Hollis, you may continue.

Attorney Hollis explained background information regarding the owner of the property, Grey Fox Realty, LLC and that he is representing them. This property was taxed as a single parcel and his client recognized that their two undersized lots had been merged into one. Town's had adopted ordinances saying if owner's have two undersized lots they could automatically get merged. The NH Legislature after having a number of these cases go to court, in which the court said this could not be done without the permission of the owner, clarified this under Statue 674:39-AA. What that statue stated was that lots on parcels that were involuntarily merged prior to September 18, 2010 by a city, town, village, county, district or any other municipality shall at the request of the owner be restored to their pre-merger status and all zoning and tax maps should be updated to indentify the pre- merger boundaries of said lots or parcels as recorded in the appropriate registry of deeds. It spells out a procedure to go through and have the property separated. Attorney Hollis explained that this is what happened to his client's property some time ago. He has presented the matter to the BOS; he presented the history of the property and the history of the deeds. The BOS made a determination after their review of the documents in the hearing that indeed these two parcels, 60 and 61-1 should not have been combined and were therefore separated into what is described as legal non-confirming lots. This spring a new tax bill was issued identifying the lot as 60-1. The tax bill assessed it as a taxable buildable lot and set a value on it of \$70,000. The applicant wants to proceed forward and do something with the lot. It is in a residential area not withstanding in a business zone. Attorney Hollis' client wants to build a house on it and asked if Attorney Hollis would ask what would be necessary in order to proceed to get a house built and that is how the process was started with Mr. Hebert along with the ruling by Mr. Hebert.

- #1 – It is in a business zone and a variance will need to be obtained for residential use.
- #2 – The lot itself is less than 30,000 square feet and essentially a little more than 7,000 square feet which amounts to .175 acres.
- #3 – It does not have the 150 feet of frontage that everyone else is required to have.

Upon receiving Mr. Hebert's letter, Attorney Hollis wrote back and explained why he disagreed and asked that it be reconsidered and now Attorney Hollis will present why he disagrees.

674:39AA states that if they are merged without the consent of the owner they are essentially unlawfully merged and they shall be restored to their pre-merged state. There is another provision that said the restoration of the lots to their pre-merged status shall not be deemed to cure any non-conformity with existing land use ordinances. There is a provision in your ordinances (334-32) which states a non-conforming lot lawfully exists as the effective date of this chapter or subsequent amendment there to which is not in conformity with all of the provisions of this chapter. Notwithstanding the minimum lot area requirements set forth in section 334-27 - Table of Minimum Dimensional Requirements in any district in which structures are permitted, a structure may be erected on a lot which is a lot of record even though such lot fails to meet the present requirements for frontage or area or both that are applicable for that use in the district allowed. Attorney Hollis explained his interpretation of the Hudson Town Ordinance and the State Statue.

Attorney Hollis' argument is there is no non-conformity because Hudson's local land use ordinances say when you have an undersized lot with lack of frontage and it has been that way for a long time and it predates the ordinance, you have a right to put a structure on it. Attorney Hollis understood what Mr. Hebert was basing his decision on but Hudson has a provision which exempts out those non-conforming lots. This is a non-conforming lot of record right now. It is taxed that way. It is set up that way. It should have been that way for the last 40 years that is has never been built on. Because of that status, under your section of the ordinance, we have a right to build a structure on it. We have to meet the setbacks but we have a lawful right under your ordinance and your ordinance prevails as the Statue says it should prevail. Attorney Hollis thinks the ordinance preserves the right to build on these non-conforming lots and because it does so, it satisfies the concern Mr. Hebert had.

Ms. Davis recognizes that the two lots are separate and she agreed with Attorney Hollis that the lot becomes a pre-existing non-conforming lot and a structure is allowed on that but what our ordinance says is that as long as "it's not a continuous lot with another lot that's owned by the same person." Continuous in my mind is not a joint lot. Continuous is a lot that abuts another lot or shares a boundary with another lot and this particular lot does. It is a continuous lot with lot 60 owned by the same person. She doesn't think it meets the ability to have a structure on it because it is a continuous lot.

Attorney Hollis read the whole provision and explained his interpretation.

Mr. Pacocha noted that if he understood this correctly, Attorney Hollis, you are saying the State RSA is undoing our...

Attorney Hollis noted the State is undoing that portion of the ordinance regarding the involuntary mergers. The State talks about having people willing to merge property but you cannot have involuntary mergers.

Mr. Brackett hears what is being said but is it on the table because it is a business lot not a residential lot? If this was a TR zone or something like that, then we may see a clearer path for saying yes it is now okay because it is pre-existing. The fact is it's pre-existing in size but it's not pre-existing in use so in my mind the best process is to go through the whole thing and consider it at each step to see what we think.

Ms. Davis discussed the need for a special exception and then the need for two variances regarding the footage and frontage.

Attorney Hollis suggested he argue the entirety of the case and then the Board deliberate at the end.

Mr. Brackett noted Attorney Hollis' suggestion but to do that he felt he would have to vote on Part A first so that could be out of the way and then hear the arguments regarding the setback and dimensional variances.

Ms. Davis made a motion to uphold the Acting Code Enforcement Officer's Zoning Administrative Decision that a special exception is required for the use in a "B" zone and a variance is required for the square footage and a variance is required for the front setback.

Mr. Brackett seconds the motion.

Mr. Martin notes a motion by Ms. Davis to uphold the Zoning Administrative Decision and a second by Mr. Brackett.

Ms. McGrath notes the motion stated the zoning determination said a special exception was required however if you read "A" it says the decision was that a variance from the Zoning Board would be required. The motion needs to be correct. The Zoning Administrator's decision was that a variance was required. Ms. Davis had pointed out that she believes a special exception is required and Ms. McGrath agrees with her but the actual determination said a variance. So to be clean and for the record as it is not known where this is going to end up, it needs to be corrected and then it needs to address whether or not the Board acts on the special exception tonight. It must be made clear and noted on the record the reason why you are doing it is because it is the proper avenue; it is less stringent in its requirements than a variance is or defer it until we can get properly notified that it is a special exception request and not a variance.

Ms. Davis noted that the motion is just to uphold the Acting Zoning Administrator's Administrative Decision.

Mr. Brackett noted that for clarity he would offer that the Board change the variance to special exception and ask to have the motion changed.

Ms. Davis noted the motion would be rewritten to note that it is for a special exception on the use and a variance on the square footage and a variance on the frontage.

Mr. Pacocha noted that he reviewed the Table of Permitted Uses and it doesn't say it would be a special exception; it says a single family dwelling is not permitted in a business district on the Table.

Mr. Brackett offered that is case "B" coming up. The Board would just uphold the administrator's decision now and then move to what Mr. Pacocha has brought up.

Vote:

Ms. Davis	To uphold the Zoning Administrative Decision
Mr. Brackett	To uphold the Zoning Administrative Decision
Mr. Pacocha	To uphold the Zoning Administrative Decision
Ms. Shuman	To uphold the Zoning Administrative Decision
Mr. Martin	To uphold the Zoning Administrative Decision

The decision being 5-0, the Zoning Administrative Decision is upheld.

**Part B – A Variance to allow a single-family dwelling to be built in a Business (B) Zoning District –** Attorney Hollis asked the Board to agree on what the next step is; should it be Variance or Special Exception. The Board and Attorney Hollis agreed it would be an application for a Variance.

Attorney Hollis stated his client would like to build a house on the lot and is therefore requesting a Variance. A lot of .175 acres is not of good use for a business; the neighborhood is indeed residential and not business. There are 12 other properties of smaller size with single family homes on them and there are 10 lots that are slightly larger.

A – It would not change the character if you allow a single family house to be built within the setbacks.

B – It would protect the values of the properties surrounding it by clustering similar uses. Allowing this variance will keep this property in a similar use to its immediate neighbors and the ones across the street.

C – Substantial justice would be done to the property owner by granting the variance.

Attorney Hollis read a letter dated November 16, 2015 from Chet Rodgers, it was an opinion letter. Mr. Rodgers wrote the letter to Attorney Hollis and he has submitted it to the Board. He analyzed the above variance request and in his opinion granting the three variances requested to allow a single family residence use of this property will not have a negative effect on the real estate values of the abutters or neighborhood in general. Commercial use would be detrimental to the abutters and neighborhood.

The final point Attorney Hollis made on the variance is the so called hardship argument. In this case, his argument is that it is a very unique lot. It is the last lot, the last open lot in the neighborhood. Not a good location for a business but a good location for a single family home and the applicant asks for a variance for residential use on this property.

Mr. Martin asked if any member of the public wished to speak in favor of this application – no one stepped forward. He then asked if anyone present would like to speak neutrally or in opposition to this application.

Bruce Morse, 4 Essex Avenue noted the property was mislabeled on Town maps – that it should be Essex Avenue not Essex Street. The Town somehow changed the name on the current tax maps to Essex Street but it is actually Essex Avenue. He has a concern because the deeds, Hillsborough County of Deeds, the registry and all the tax maps have this noted as avenue. As for the usage of the lot, it would be preferred to be residential than business.

Discussion regarding the road being called Essex Street and Essex Avenue; Selectman McGrath will address this matter and will take action about it.

Mr. Martin asked if any other members of the audience wished to speak in opposition or neutrally – seeing none, the matter was brought before the Board.

Mr. Brackett provided background information on the zoning map and pointed out where areas were zoned as business but are currently residential. He felt the information would be helpful to the Board.

Ms. Davis stated she is in agreement that the lot should be zoned residential.

Mr. Brackett agreed the lot should be zoned residential.

Mr. Pacocha made a motion to grant the variance. The character of the neighborhood matches the request for a residential building and it would not be contrary to public interest. This conforms to the character of

the neighborhood as it is residential. As far as the hardship, due to the sizes of the lots it would be useless as a business lot.

Ms. Davis seconded the motion, agreeing with Mr. Pacocha that it is within the spirit of the ordinance and the nature of the character of the neighborhood warrants a residential use in a business district. It wouldn't serve any purpose to keep it zoned business because of the size of the lot, there is no adequate use.

Vote:

- Mr. Pacocha To grant
- Ms. Davis To grant
- Ms. Shuman To grant
- Mr. Brackett To grant
- Mr. Martin To grant

Decision being 5-0, the variance has been granted.

**Part C – A Variance to allow the lot area of the proposed lot to have 7,624 square feet where a minimum of 30, 000 square feet is required –**

Attorney Hollis discussed Part C - the size of the lot – noting that in this zone a minimum lot size calls for 30,000 square feet and the lot owned by his client is smaller and there has been some debate regarding the size. The tax map notes the size as .297 acres but this is from when it was a single lot – lot 60 & lot 60-1 – the old tax maps had it as that size. The tax card notes .175 and when Attorney Hollis did the math calculation of the square footage, 7624 square feet, it came out to .175 acres. The lot itself is .175 acres but he'll refer to it as 7264 square feet.

Covering the points of the ordinance, it is not contrary to public interest. Thirty thousand square feet is the proper size for business lots and the purpose of those lots at that size is to have sufficient room for development and use purpose and also to provide adequate buffers for neighbors. Now that the use variance for residential has been granted, we are talking about a completely different set-up. If you allow the variance on the size of the lot, it won't be harming the public interest as the lot will now be considered a lawful residential lot just like other lots in the area. The property is similar to others in the area with regard to lot size. This would not alter the character of the neighborhood because we are going to stipulate that we are only going to use it for a residential use.

Mr. Martin asked if there were any comments from the audience and when no one came forward the discussion was presented before the Board.

Ms. Davis asked for clarification with regard to the actual lot size; Attorney Hollis was able to provide a corrected answer of the size.

Ms. Davis makes a motion to grant the variance for a structure on a lot that does not have the adequate square footage and also would like to add two stipulations to the motion –

1 – That it is residential use only with no accessory uses, meaning no home occupation should be allowed because of the size of the lot and the proximity to the neighbors and the potential that it could be congested in that area.

2 – The proposed building structure needs to meet the side and rear setbacks. It is proposed in the plan but wants to make sure that stipulation is upheld.

Mr. Brackett asked the maker of the motion to be more specific regarding residential - to say only single family house.

Ms. Davis noted “single family residential use only with no accessory uses.”

Mr. Brackett seconded the motion.

Ms. Davis spoke to her motion noting - not contrary to the neighborhood, similar lot size to others in the neighborhood and having a residence there is more conducive to the plan of the neighborhood and business use would not be.

Mr. Brackett speaks to his second, agrees with the maker of the motion; it is consistent with properties in the area.

Vote:

Ms. Davis	To grant with stipulations
Mr. Brackett	To grant with stipulations
Mr. Pacocha	To grant with stipulations
Ms. Shuman	To grant with stipulations
Mr. Martin	To grant with stipulations

Decision being 5-0, the variance is granted.

**Part D – A Variance to allow the frontage of the proposed lot to have 73.95 feet where a minimum of 150 feet is required –**

Attorney Hollis notes a request to allow a variance to the lot to allow frontage of 73.95 feet where 150 feet is required. This would not alter the character as other lots in the neighborhood have similar frontage requirements. No threat to health, safety or welfare, it will be serviced by water and sewer. It is sufficient frontage to allow a driveway and space between the house and driveway. Attorney Hollis stated for the record that his client agrees that this will be for only a single family residential use with no accessory uses.

Mr. Martin asked if there were any comments from the audience and when no one came forward the discussion was presented before the Board.

Mr. Pacocha makes a motion to grant with no stipulations.

Ms. Davis has a concern about once the house is built, how will the driveway go out to Essex Street?

Discussion regarding driveway noting that it would go out onto Hill and that the location of the driveway is determined by the Town Engineer.

Mr. Brackett asks if the maker of the motion would put the same stipulations on this motion as on the previous motion.

Mr. Pacocha – motion to grant with same stipulations as on previous motion.

Ms. Davis seconds the motion.

Mr. Pacocha speaks to his motion. Granting the variance would not be contrary to public interest, does not conflict with the purpose of the ordinance and conforms with the character of the neighborhood.

Vote:

Mr. Pacocha To grant with stipulations  
Ms. Davis To grant with stipulations  
Ms. Shuman To grant with stipulations  
Mr. Brackett To grant with stipulations  
Mr. Martin To grant with stipulations

Decision being 5-0, the variance is granted.

Selectman McGrath asked for a few moments - She personally thanked Mr. Hebert for stepping into the Code Enforcement position which she knows has not been an easy task and she appreciates the work he has done and thinks this Board does as well.

Five minute recess.

Meeting was called back to order at 9:46 PM.

Mr. Martin reviewed the 2016 meeting calendar noting the change to the November meeting to November 10th and the December meeting to December 8<sup>th</sup> due to holidays.

November 2015 minutes reviewed.

Ms. Davis makes a motion to accept the minutes as amended.

Ms. Shuman seconds the motion.

Mr. Martin – all in favor say aye; all opposed, there being none the ayes have it.

Ms. Davis makes a motion to adjourn

Ms. Shuman seconds.

Mr. Martin – all in favor say aye; all opposed, there being none the ayes have it.

Meeting adjourned at 9:55 PM.

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Maryellen Davis, Chairman