



# 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 November 12, 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, November 12, 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

**Absent:** J. Bradford Seabury (excused)

##### Alternates

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

##### Alternates

**Absent:** Kevin Houle (excused)

##### 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 midnight then continued at the next meeting.

Mr. Martin seated Mr. Nolin for Mr. Seabury.

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 (11-12-15): Noury Investments, 22 Brady Drive, Hudson, NH, requests a Wetland Special Exception to impact approximately 640 square feet of permanent wetland impact, 6232 square feet of permanent wetland buffer impact, and 2,712 square feet of temporary wetland buffer impact. [Map 105, Lot 017, Zoned G-1; HZO Article IX §334-35, Uses within Wetland Conservation District.]**

Mr. Hebert explained why the matter was before the Board. Mr. Hebert explained he requested the special exception in order to construct the 24 foot wide access driveway for the proposed expansion of self-storage buildings.

Ms. Davis asked to have this matter deferred because the matter was not properly documented for the abutters and in the newspaper. The actual notice is missing the applicant's address and what the actual intent of what the applicant intends to do on the property.

Mr. Martin asked if her decision for the Motion was in light of the recent letter received from the Town's legal counsel. Ms. Davis explained she did take the letter into consideration with regard to her decision.

Mr. Martin asked if there was a second on her Motion; Mr. Nolin seconded Ms. Davis' Motion to Defer.

Ms. Davis further explained the newspaper ad was missing the actual intent of the applicant's plan for the property to allow abutters the opportunity to come before the Board to speak in favor or in opposition of this application. The address on the application provides an incorrect address. The actual address of Noury Investments of 22 Brady Drive when the address is actually in Hollis, NH. The abutters need to know what the intent is to make an informed decision of what the actual intent is. The notice does not say this.

In accordance with the Board's by-laws, that needs to be included, so the abutters can make a reasonable decision if the exception is going to impact them.

The representative from Noury Investments wanted to know why he is just hearing of the improper notification and he is just hearing of this issue now.

Selectman McGrath explained it's unfortunate this is the first time the Noury Investment representative is hearing of this.

Ms. Davis feels that going forward with the hearing puts the Town at risk if the Board moves forward without the proper notification.

Mr. Brackett spoke in favor of Ms. Davis' Motion. Going forward puts the Town at risk and it's his opinion, even though he's not a voting member tonight, the Board should hold off ensuring things are done correctly to save time and money in the long run; in case there is something wrong.

Vote:

Ms. Davis      To defer

Mr. Nolin      To defer  
Mr. Pacocha   To defer  
Ms. Shuman    Not to defer  
Mr. Martin     Not to defer

Decision: With the vote being 3-2 the matter will be deferred until the next Board meeting on December 10<sup>th</sup> to allow proper notification.

**2. Case 182-153 (11-12-15): Maryellen Davis, 14 Nathaniel Drive, Hudson, NH, requests an Appeal of a Zoning Administrative Decision issued by the Zoning Administrator dated 10-1-15, which states that only Site Plan approval from the Planning Board will be required for the proposed change of use to the nonconforming structure located at 38 Library Street, Hudson, NH. [Map 182, Lot 153, Zoned TR; HZO Article III §334-16.1, Site Plan Approval.]**

Mr. Hebert explained Ms. Davis requested an appeal in regard to a Zoning Administrative decision of 38 Library Street to change the zoning from business to residential on the first floor, making the entire structure residential. In the original discussion, Mr. Hebert stated only site plan approval would be necessary; he did not provide information on what other approvals would be necessary because of the non-conforming issue. After speaking with the owner, Mr. Hebert provided a little back history on the building. This nonconforming use has been going on since 1977. Currently the building has one commercial use on the first floor, the second floor has 4 rooms with a small refrigerator and microwave in each room with a shared bathroom, the third floor has 1 room, 1 bathroom with a washer and dryer hook-up.

The building does not have a kitchen. The use of the building is considered a rooming house. The owners' insurance company also has it listed as a rooming house. Mr. Hebert explained that not only is the building non-conforming in the District but it is non-conforming in today's fire codes and standards.

Given that Maryellen Davis filed the appeal she stepped down. Mr. Martin acknowledged Ms. Davis stepping down and seated Mr. Brackett in her stead.

Ms. Davis stepped up to the podium to speak on her appeal in regard to 38 Library Street. She provided a little background that the property is zoned TR; it is serviced by town sewer and town water. The applicant has submitted documentation stating there are currently 4 apartments and a commercial use on the site - a barber shop is located on the first floor, 3 apartments on the second floor and 1 apartment on the third floor. The applicant has requested a change from commercial use on the first floor to another apartment. Documentation and town records indicate a rooming house is being operated; in other words, a multi-family. A multi-family dwelling is not allowed in a TR zone; therefore a variance is required to allow this use together with Planning Board approval as a change of use. Ms. Davis is asking the Board to overturn the original decision noting that a variance is required and the applicant should not be allowed to continue the existing operations at the site pending Zoning Board approval on the decision on whether to allow the use or not.

Mr. Martin asked if anyone in the audience would like to speak in regard to the appeal and no one came forward, therefore the matter was declared before the Board.

Mr. Nolin asked for clarification in regard to TR zone; you cannot have a multi-family in a TR zone without a variance.

Mr. Brackett asked what documentation was in the file and Mr. Hebert explained the only documentation was what he reported at the beginning of the discussion. Ms. Davis stated she did her research and viewed the file. She explained there were many notes in the file, no evidence that the owner ever actually filed for a variance.

Mr. Pacocha gave an example of a prior case. Things have been done under the table in the past and this is an opportunity to correct a wrong.

Mr. Brackett agreed with Mr. Pacocha and it would benefit the owner if he ever wants to sell the property, it would be in his benefit to clear things up. Mr. Brackett agrees with Ms. Davis' appeal.

Mr. Martin agreed with Mr. Brackett, Mr. Pacocha and Ms. Davis.

Mr. Pacocha made a Motion to Reverse the Zoning Administrator's decision; Seconded by Mr. Brackett.

Vote:

Mr. Pacocha To reverse  
Mr. Brackett To reverse  
Ms. Shuman To reverse  
Mr. Nolin To reverse  
Mr. Martin To reverse

Decision: 5-0 the Motion passes

The Chair acknowledged Ms. Davis back to the Board as a voting member and Mr. Brackett returned as an alternate.

#### **IV. REVIEW OF MINUTES**

The Zoning Board reviewed the Minutes from the October 22, 2015 meeting. There were a number of changes; therefore, the Board would like to review the changes to ensure they are correct prior to voting.

Maryellen Davis made a Motion to adjourn; seconded by Mr. Pacocha – all in favor.

The meeting was adjourned at 8:32 PM.

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Normand Martin, Acting Chairman