



# 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 October 22, 2015

#### I. CALL TO ORDER

Acting Chairman Martin called this meeting of the Hudson Zoning Board of Adjustment to order at 7:30 PM on Thursday, October 22, 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 (excused)

##### **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.

Acting Chairman Martin seated Mr. Brackett for Mr. Seabury.

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

- 1. Case 154-033 (10-22-15) (Deferred from 9-24-15): Stacey Kulas, 22 Sullivan Road, Hudson, NH, requests a Special Exception for an Accessory Living Unit (ALU) to be above the detached garage of the existing single-family dwelling [Map 154, Lot 133, Zoned G-1; HZO Article XIII A §334-73.3, Accessory Living Unit]**

Acting Chairman Mr. Martin requested Mr. Dearborn to read the first case into the record. Mr. Martin apologized for not introducing Zoning Administrator, Mr. Hebert earlier. Mr. Martin explained the Board will refer to Mr. Hebert to explain why each case is before the Board.

Stacy Kulas introduced herself. Mr. Martin asked Ms. Kulas to read her applications and provide the answers she provided to the Board.

Ms. Kulas read from her application that is retained as the record of the case and provided a back history of why she is before the Board. The dwelling was purchased by a family member as an existing multi-family home with two separate units.

Mr. Martin asked if anyone in the audience was present to discuss this matter; when no one came forward he declared the matter was before the Board.

Ms. Davis is concerned with the septic system and the brook.

Ms. Davis asked the applicant if the second unit over the garage fed into the same septic and Ms. Kulas confirmed that the second unit has a separate septic system.

Ms. Davis and Mr. Brackett had a discussion to see if there could be a reasonable solution to apply to divide the lot as two separate lots. This would create two non-conforming lots that would be less of an impact than what the applicant was requesting.

The Board then had a discussion of a code enforcement inspection and what would be required.

The applicant has done everything she was asked to do. Ms. Davis is not concerned with the current property owners abusing the situation or creating a non-conforming situation. The question is re-sale. What happens then? There has been case law before the Supreme Court.

Mr. Brackett agreed with Ms. Davis with regard to the homeowner. Mr. Brackett asked how we stop this from happening going forward.

Ms. Davis noted the unit in question does not meet the criteria of an ALU.

Ms. Davis suggests the approval of the ALU with the stipulation that the ALU ceases at time of sale. There was discussion of how to flag it. Mr. Brackett suggested putting it in the deed.

Ms. Shuman stated if the restriction was put on the property and it's written up on the decision sheet, it is recorded with the title. So when the house is sold and a title search is conducted, the stipulation is recorded and the next person cannot have the ALU.

Mr. Brackett said that the Board is making this decision because the Board feels for the applicant. Perhaps, in the future, the owner can look at going before other Boards to have the lots subdivided. She may want to go before the Planning Board to ask for the lots to be sub-divided or made into a condominium arrangement.

Ms. Shuman suggested making another stipulation that if the owner does go before the Planning Board and requests a sub-division the ALU ceases.

Mr. Pacocha asked what the procedure would be if the matter went before the Planning Board and Mr. Brackett was able to explain it.

Mr. Pacocha asked the owner if the ALU shared a well and she was not able to answer that question. A discussion took place with regard to sub-dividing a lot with a shared well.

Ms. Davis asked if the dwelling could be set up in a condominium situation. Mr. Brackett and Ms. Davis said they did not know the answer to said question but it would be a good idea to present those questions with the Planning Board.

Mr. Martin asked if anyone was willing to make a motion.

Mr. Pacocha asked questions with regard to Planning Board procedure and Mr. Brackett explained the Board is merely making suggestions to assist the owner but the matter before the Board this evening is to make an exception and allow the ALU.

The Board had a discussion about what the conditions of an ALU are and whether they could be met.

Ms. Davis made another comment stating Mr. Hebert's explanation was beneficial in showing the character of the current owners of following the rules. The purpose of this Board is to provide relief and in this matter that is exactly what the Board is doing.

Ms. Shuman stated there is an affidavit the owners of the property would need to sign noting a family member would be living in the ALU. Ms. Kulas agreed she would do it.

Ms. Davis made a motion to allow an ALU in a free standing structure at 22 Sullivan Road with five (5) stipulations:

- allow an ALU only with the current owners
- the ALU ceases at the time of sale
- the ALU is only to be used by the current homeowners and family members by blood or marriage
- Certificate of Occupancy is received prior to moving in

- the owners' affidavit validating who is living in the ALU is received by the Town prior to occupancy

Mr. Brackett added a 6th stipulation, that full detail of Zoning Board of Adjustment with stipulations be filed with the Deed.

Ms. Shuman offered a 7th stipulation, if the applicant successfully sub-divides the lot the ALU ceases.

Mr. Brackett seconded Ms. Davis' motion that now includes seven stipulations.

Ms. Shuman explained this decision doesn't need to be included on a new deed but the application and their decision is recorded at the registry but that the owner doesn't have to go and create a whole new deed.

Ms. Davis speaking on her motion states this does not meet the criteria of an ALU nor does it meet the criteria of two units on one lot. This Board would have never allowed anything like this before but there is past unusual history on the property that caused the homeowners undue hardship by no fault of their own.

Mr. Brackett agreed with Ms. Davis and had every intention of voting no but after hearing the evidence he changed his mind. He commended the applicant for doing the right thing.

VOTE:

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

Motion passes with a vote of 5-0

Mr. Martin explained there is a 30 day appeal period so asked the home owners to hold off on any construction until after the 30 days.

- 2. Case 248-008 (10/22/15): Kenneth Kirkpatrick, 10 Williams Drive, Hudson, NH, requests a Special Exception for an Accessory Living Unit (ALU) to be constructed within the garage addition attached to the existing dwelling. [Map 248, Lot 008, Zoned G-1; HZO Article XIII A §334-73.3, Accessory Living Unit.]**

Mr. Kenneth Kirkpatrick the homeowner came forward. He was asked to read the application and at that point introduced his father-in-law as being present and he would be the occupant of the ALU. Mr. Kirkpatrick then read through the application.

Mr. Kirkpatrick explained he worked with the Town and Builder to make sure the rules and regulations would be met.

Ms. Davis asked how they will get from the existing home into the ALU. Mr. Kirkpatrick explained they are taking out a shower unit in the existing house as an entry way.

Mr. Pacocha asked for clarification with regard to entering into the existing home and ALU from the outside. Mr. Kirkpatrick was able to answer the question.

Ms. Davis said she likes the idea of the ALU going through the shower. Mr. Kirkpatrick explained they are going to put a door there with two locks. The Board explained there cannot be any locks as it creates a fire hazard (between the ALU and the primary residence.)

Ms. Davis motion to grant; Mr. Pacocha seconded.

Ms. Davis explained it meets all the criteria.

VOTE:

Ms. Davis Grant  
Mr. Pacocha Grant  
Ms. Shuman Grant  
Mr. Brackett Grant  
Mr. Martin Grant

Motion passes with a vote of 5-0.

Mr. Martin explained there is a 30 day appeal period so asked the home owners to hold off on any construction until after the 30 days.

Mr. Martin declared a recess at 8:40 PM. Mr. Martin declared the meeting back to order at 8:42 PM.

3. **Case 231-053 (10-22-15): Richard Wojcik, 90 Gowing Road, Hudson, NH requests the following:**
- a) **Wetland Special Exception to allow the construction of a portion of a storm water management facility consisting of drainage ways, swales, rip-rap and storm water detention basins within the 50' wetland buffer of the Wetland Conservation District. [Map 231, Lot 053, Zoned R-2; HZO Article IX §334-35B (2), Uses within Wetland Conservation District.]**
  - b) **Wetland Special Exception to allow the construction of a roadway at the intersection with Gowing Road within the 50' wetland buffer of the Wetland Conservation District. [Map 231, Lot 053, Zoned R-2; HZO Article IX §334-35B (2), Uses within Wetland Conservation District.]**

Attorney Jeffrey Zall from Nashua represents Mr. Wojcik. Attorney Zall introduced Jeffrey Brem, Project Engineer.

Attorney Zall explained on 9-22-15 they met before the Conservation Board and they recommended the ZBA grant this exception. They also met before the Planning Board who also recommended the ZBA grant these exceptions.

Mr. Brem came forward and introduced himself to the Board. He then presented an outline of the plans outlining the exceptions before the Board.

Attorney Zall went through the conditions of the special exception request before the Board.

Mr. Martin asked if there was anyone present who would like to come forward and discuss this matter before the Board.

Heidi Jakoby, 94 Gowing Road, came forward. She questions if the basin location is in the best place. The intersection is a very odd turn and is often a place that freezes over and asks that the Board look at this area more closely not only for this matter but in general.

No one else came forward so the discussion was opened to the Board.

Mr. Brackett asked for clarification on the stipulations from the Conservation Committee. Mr. Brem explained the stipulations were taken into consideration and the number in the application changed to meet the requirement.

Attorney Zall addressed concerns of the abutter. Stating it really is a balancing act, at one point this was a suggested 19 lot subdivision and due to discussions reduced the amount to 16 lots; if the encroachment moves a few feet into an existing buffer, not a wetland but a buffer. The factors of this road have been looked at and it really is the best location as its impacts the project the least and is the least expensive, due to discussions at the Planning Board.

Attorney Zall stated if Ms. Jakoby has issues with the traffic she should perhaps meet with the Planning Board and not the Zoning Board as traffic decisions do not fall under the jurisdiction of the ZBA.

Mr. Martin agreed with Attorney Zall with regard to the matter being addressed to the Planning Board. He wanted to make sure Attorney Zall and Mr. Brem have looked at the roads freezing as the abutter is familiar with this area as she lives there. She rides the road every day. The Zoning Board members do not so has freezing/weather been taken into consideration.

Mr. Brem explained yes, they did look at freezing road issues and there are indeed concerns and therefore there are two catch basins to reduce the freezing.

Mr. Martin asked about lot 10 and Mr. Brem was able to answer the question by pointing out there is a hill on Lot 10.

Mr. Dearborn asked questions about wetlands. Mr. Brem was able to show the distance with the wetlands and there is quite a distance.

Ms. Davis asked about the size of the cul-de-sac but an exception has been received so the matter is moot. She asked if Lot 10 or Lot 9 could be removed.

Ms. Davis asked for clarification with regard to the existing driveway being 10 feet. Ms. Davis states she has heard a number of times the statement of "only the buffer"; the buffer is extremely important so using the statement "only the buffer" is an under-statement.

Mr. Martin asked if anyone in the audience would like to come forward.

Laurie Brown at 90 Gowing Road noted her biggest concern was the brook; it's a big pond which does dry out during the summer. It's fragile and where are the houses going to be in conjunction of the brook.

Gordon Smith, 3 Beaver Path, he's not sure he understands the plans.

Mr. Brem took out the plans and was able to answer his questions.

Mr. Martin declared the matter is before the Board. Mr. Pacocha and Mr. Martin asked about the concern of the water in the brook. Mr. Brem showed on the maps where the water line and buffers were within the feet of the water. He further explained the Conservation Committee asked for proof of these locations.

Ms. Davis asked for clarification of the lot size because when people move in the first thing they want to build is a deck and a shed. She wants to make sure the ZBA will not run into problems with people having to obtain special exceptions due to the wetland exception. Mr. Brem showed Ms. Davis the lot sizes and the wetlands on the map and proved the lot sizes were large enough to allow decks and sheds.

Mr. Pacocha had questions about the maps as he was having a difficult time reading the maps. Mr. Brem was able to answer his questions and provide him with further explanations.

The flood line is inside the wetland

Mr. Pacocha made a motion to grant and Mr. Brackett second.

Wetlands special exception to allow construction within the wetland buffers as noted in application request.

Ms. Davis believes applicant could eliminate lots 9 and 10 to pull the basin around so she is voting not to grant.

VOTE:

Mr. Pacocha	Grant
Mr. Brackett	Grant
Ms. Davis	Not to Grant
Ms. Shuman	Grant
Mr. Martin	Grant

The Motion passes with a Vote of 4-1.

Wetlands special exception to allow roadway.

Mr. Pacocha made a motion to grant; Mr. Brackett - Seconded

Mr. Pacocha	Grant
Mr. Brackett	Grant
Ms. Davis	Grant with comment
Ms. Shuman	Grant
Mr. Martin	Grant

Attorney Zall complimented the Board on making the right decision with regard to Case 1.

Mr. Martin declared a 10 minute recess at 9:40 PM.

The meeting was called back to Order at 9:55 PM.

Mr. Brackett noted the Planning Board was meeting to discuss zoning ordinance changes.

Mr. Martin stated his concerns with regard to not having enough time; Mr. Brackett said they're not going to have it on March ballot.

Ms. Davis asked Mr. Hebert a question in regard to 38 Library Street; 5 tenants and currently a barber shop on the first floor. Dual use - doesn't have any approvals. So he has to come before the Zoning Board.

Mr. Pacocha Motion to Adjourn; Mr. Brackett second – all in favor; motion carried.

The Board approved to adjourn at 10:27 PM.

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Normand Martin, Acting Chairman