



TOWN OF HUDSON

Zoning Board of Adjustment



J. Bradford Seabury, Chairman

Marilyn McGrath, Selectmen Liaison

12 School Street · Hudson, New Hampshire 03051 · Tel: (603) 886-6008 · Fax: (603)594-1142

HUDSON ZONING BOARD OF ADJUSTMENT MEETING MINUTES June 25, 2015

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:30 pm on Thursday, June 25, 2015, in the Paul Buxton Meeting Room in the Town Hall basement. Chairman Seabury then requested Clerk Dearborn to call the roll. Those persons present along with various applicants, representatives and interested citizens, were as follows:

Members

Present: Normand Martin, J. Bradford Seabury, Maryellen Davis, Donna Shuman

Members

Absent: Jim Pacocha (excused), Mr. Pitre (Resigned)

Alternates

Present: Charles Brackett, Maurice Nolin, Clerk Gerald Dearborn, Kevin Houle

Alternates

Absent: None mentioned

Staff

Present: Dave Hebert, Town Liaison (Acting Code Enforcement Officer), Marilyn McGrath, Selectman Liaison

Recorder: None present, later transcribed by Melissa Mack

II. SEATING OF ALTERNATES AND ANNOUNCEMENTS

Chairman Seabury seated Ms. Davis in place of Mr. Pitre. Ms. Shuman will step down from the 1st case and Kevin Houle will be seated in her place. Mr. Dearborn was also seated as a voting member in place of Mr. Pacocha.

Ms. McGrath advised that she will participate in the discussion but cannot be a voting member. She also noted that Ms. Davis is now a member in place of Mr. Pitre.

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 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.

Chairman Seabury pointed out that the Board allowed re-hearings 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.

The curfew for the meeting is 11 pm.

Chairman Seabury advised there is no smoking inside the building. Please turn off cell phones or put them on vibrate.

III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THIS BOARD

- 1. No Case #217-005 (6-25-15): Alan and Theresa Boissonneault Living Trust, PO Box 2431, 1016 Yate Road, Oak Harbor, WA, requests a Use Variance for property to be designated as 13 Mark Street, to allow access to the proposed lot without the proper frontage; 120' required, 0' proposed. [Map 217, Lot 005, Zoned R-2, HZO Article VII, Section 334-27, Table of Dimensional Requirements]. [Note, this request was originally denied on March 22, 2012, but has been remanded by the court for rehearing on the grounds that it was not clear why the Board denied the request. This is a matter before the Board. There will be no public input.]**

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

Ms. McGrath: As a member of the Board of Selectman and as a Liaison, thought it was appropriate to get a legal opinion concerning the timeliness of the reconsideration of this case, whether there was a time constraint. Attorney Steve Buckley from Hage Hodes is representing the Town. On July 1st we will transition to Attorney Dave Lefevre. We received an opinion from the attorney at Hage Hodes that we could rehear the case, there is no timing issue. However, it can't go on indefinitely.

Chairman Seabury: This Board has already extended the period twice at the request of Attorney Prolman who was trying to work something out with the abutters to the property concerned. Not even sure it was legal for the Board to do that but were given no real input what to do when a judge remands a case.

Ms. McGrath: Mr. Malizia received an email from Attorney Lefevre which was confirmed by Chief Buxton that the recommendation from him would be to accept a withdrawal with prejudice. For the record, Mr. Lefevre is not officially the Town Attorney until July 1st.

Chairman Seabury: The Board has received a letter for Attorney Prolman dated June 25th reading "The Alan and Theresa Boissonneault Living Trust respectfully withdraws its Variance and Wetlands Special Exception applications with prejudice. The Board's March 22, 2012 decision stands subject to the Hillsboro County Superior Court's remand order dated February 21, 2013 and its April 25, 2013 order on the Town of Hudson's reconsideration motion."

Mr. Martin will support a motion to allow the withdrawal of the motion with prejudice but the remand for the court was for this Board. The Board was not clear on why it denied the Variance and that's what the judge wanted... to be clearer about why the application was denied, so that it can be documented for the future and be presented to the court. Suggests removing the subsection.

Chairman Seabury advised that his understanding of why that subsection is in the letter is because Attorney Lefevre recommended it to Attorney Prolman. Attorney Lefevre is going to be the Town's Attorney for the foreseeable future and the Board generally can't go wrong following its attorney's advice. Chairman Seabury advised he doesn't understand why a remand would be in effect after a withdrawal either but is willing to take the case up again should it be necessary.

Mr. Brackett asked if the Board is concerned that, if the case were to move forward, they would not be able to get the original Board members that sat on the case. Suggests making a list of the reasons now as to why the original request was denied so that it can be documented for future and presented to the court.

Ms. McGrath suggests that it would be ok for the Board to wait until Attorney Lefevre is officially the Town Attorney on July 1, 2015.

Mr. Martin agrees with the recommendation because to make a fair decision about the case we should be following the advice of the Town Attorney.

Mr. Brackett asked if the Board could meet with Attorney Lefevre to discuss the case.

Mr. Martin advised that no one appealed the judge's decision to remand the case back to the Zoning Board. In the courts eyes, the case is closed.

Mr. Martin made a motion to allow the Variance and Wetlands Special Exception applications to be withdrawn with prejudice. However, the motion was withdrawn.

Mr. Martin made a motion to defer the decision to the July 23rd meeting.

Mr. Dearborn seconded the motion. He would like to get a legal opinion even though it may be contrary to the Board's thinking.

VOTE: Chairman Seabury asked Clerk Dearborn to poll the Board on the motion to defer the request and to record the members' votes, which were as follows:

Mr. Houle	To defer
Mr. Martin	To defer
Mr. Dearborn	To defer
Ms. Davis	To defer
Mr. Seabury	To defer

Chairman Seabury declared that there having been five votes to zero, the motion is deferred.

Mr. Martin made a motion to have the Town Attorney come in for a client-attorney session at 7 pm on Thursday, July 23rd.

Ms. Davis seconded the motion.

VOTE: Chairman Seabury asked Clerk Dearborn to poll the Board on the motion to request an attorney-client session and to record the members' votes, which were as follows:

Mr. Houle To approve
Mr. Martin To approve
Mr. Dearborn To approve
Ms. Davis To approve
Mr. Seabury To approve

Chairman Seabury declared that there having been five votes to zero, the motion is approved.

Attorney Prolman approached the podium to thank the Board for their support during this case.

2. Case 144-005 (6-25-2015): Lisa Harrington, 47 Taft Avenue, Lexington, MA requests a Use Variance for the property located at 19 Robinson Road, Hudson to allow conversion of existing duplex to a multi-family home. [Map 144, Lot 005, Zone R-2; HZO Article V §334-21, Table of Permitted Principal Uses.]

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

Chairman Seabury notes that Mr. Houle has returned to his seat as an alternate and Ms. Shuman has returned to her seat as a voting member. Mr. Dearborn is resuming his role as a non-voting alternate and Mr. Nolin is seated for Mr. Pacocha.

Ms. Shuman noted that she works for a company that may have an interest in the property and therefore may present a conflict of interest for Ms. Shuman. Furthermore, Ms. Shuman asked if this required that she step down from the case. Chairman Seabury polled the Board and audience to ensure no one had a problem with this and no one did.

Chairman Seabury asked Mr. Hebert to explain why the matter was before the Board.

Mr. Hebert explained that the applicant wants the Variance to allow access to the lot without the minimum required frontage. It's in an R2 zone. The Table for Permitted Use is for residential, we allow single and two family dwellings. The original building permit was issued August 26, 1983 for a 60 x 26 duplex. The four units are constructed at this point. The original septic system was approved in October 1983 for a 4-bedroom duplex. The septic system failed April 14, 1992 and a new one was approved October 8, 2007 for (2) 2-bedroom units and (2) 1-bedroom units. No building permits were applied for or issued for the additional two units. On October 5, 2009 the Fire Department performed an inspection on the multi-family dwelling containing four units and found numerous safety violations. No re-inspections were ever performed. They do have sufficient frontage.

Ms. McGrath questioned if the dwelling complies with the Zoning Ordinance and Mr. Hebert confirmed it does not. At this moment they are in violation of the code even if they were not cited.

Lisa Harrington approached the podium. 47 Taft Avenue, Lexington, MA, daughter of the late Phyllis Bujnowski who owned the property; also the trustee and executor. There was confusion going back 30 years ago to when the house was built. As far as she knows the house was built from the ground up to be a multi-family. There are three separate electric meters which requires approval from the Town. The building plans and inspection shows clearly a sunroom which acts as the entrance to the 3rd apartment. Her mother built the house for herself with the intent of getting rental income; was not intentionally trying

to hide anything from the Town. They are not looking to convert the duplex to a multi-family, rather to get it properly classified as a multi-family because that was the intended use all along.

Chairman Seabury advised that the Board will hear the application as if the dwelling were not there yet, even though it is already there. What is being requested is for permission to put in multi-family housing so the Board is ignoring the fact that there already exists multi-family housing.

Lisa Harrington advised that granting the requested Variance will not be contrary to public interest. There has not been nor do they expect in the future any threat to public safety or welfare. In the 30 years it's been occupied as a multi-family, there have been no issues with the abutters or the town. The property has the appearance of a duplex thus fits in with the neighborhood. It's situated on 5+ acres and sits far back off the road. The proposed use will observe the spirit of the Ordinance. The property has been operated as a multi-family since its existence, built by her mother in 1983, including 3 separate entrances, 3 electric meters. There have been no issues with neighbors or the Town. The property fits in nicely with the surrounding neighborhood and characteristics. Substantial justice would be done if the Variance were granted. The property was built on family land in 1983 by her mother as a 3-family. We seek only to ratify what has existed for decades. Doing so creates no adverse impact as is consistent with the experience of the last several decades. The proposed use will not diminish the values of surrounding properties and there will be no ill effect on the welfare or the public. The property maintains the integrity of the neighborhood. As per the original intent of the owner, the children of the deceased wish to keep the property in the family. The family is not able to afford the property without the income generated by the tenants. If the property is not allowed to be kept as a multi-family they would be forced to sell in the open market. In addition, the tenants would be forced to move.

Chairman Seabury clarified that hardship, as looked at by the Zoning Board, pertains not to the financial situation of the owners of the property but at the nature of the property itself. There has to be a hardship of the property that makes it different compared to other similarly located properties in the area that it behooves the Board to allow the Variance for your property, which it would not do for your neighbors.

Kevin Bujnowski approached the podium. He is the son of the deceased owner and an abutter to the home. Wondering how the confusion started in the first place. There are three electric meters at the dwelling and Town permission is required for that. The missing pieces seem to be on the side of the Town. There is no documentation about his mother's apartment. It was there and had to have been inspected. There is a permit to put an electric meter in for her apartment. Somewhere along the line it was inspected. It's been running for 30 years. They want to leave it that way; they don't want to change anything. They want to keep operating is exactly the way it is. The family is willing to have a fire inspection done on the home if that is requested.

Chairman Seabury advised that there is a law being broken because multi-family housing is not allowed on that property.

Mr. Bujnowski recognizes that but somehow when the house was built it fell through the cracks.

Ms. Bujnowski advised that the Assessor has always had the house marked as a 4-unit dwelling so it's confusing why one department has it down as a multi-family but another does not.

Chairman Seabury advised this is common.

Ms. Davis advised that she had the tax records in front of her and the dwelling is listed as a 1900 sq. ft. home. The other units must be below ground.

Mr. Bujnowski advised that the leach bed failed (date unknown). A contractor was brought in. They went to the Town and were told they could not replace the leach bed as it existed; it needed to be upgraded to a multi-family. A leach bed design was done and sent to the Town and to the State and the leach bed was updated accordingly.

Kathy Bujnowski approached the podium. She is the daughter-in-law of the deceased owner. She is restating that the house has been taxed as a multi-family dwelling and they are not asking to change the house. The mother was a very honest woman and would never have done anything to hide the fact that this is a multi-family house. If the house is reverted back to a duplex, it would have to be sold because no one in the family can afford it without the tenant income.

Mr. Nolin noted that the Bujnowski's stated there are three meters and is wondering about the electric meter for the 4th unit.

Mr. Bujnowski admitted that the 4th unit was made without permission but can easily be eliminated if needed. He acknowledges it should not be there. It was done so that an Uncle could live with the mother.

Ms. Davis commented that there are structural deficiencies on the property itself and they impact the Variance application. The way the structure is designed now could be a public safety concern. In addition, none of the testimony has addressed the criteria for getting a Variance. The Board has yet to hear what the hardship is that makes this request unique to allow for the Variance to be granted.

Ms. Bujnowski advised that the structural deficiencies were related to carbon monoxide and fire extinguishers and that these had been addressed. The carbon monoxide detectors were hardwired and extinguishers are in all the apartments. Regarding the hardship on the property Ms. Bujnowski asked for an example of what a hardship would be.

Ms. Davis gave an example of a hardship (if someone wanted to build an addition but the property dropped off so they needed a Variance because they had to build in the setback). In the case of this home, the land is designed and zoned for a duplex. There is nothing that is restricting you from using your property the way it is intended (which is as a duplex).

Ms. Bujnowski is unable to come up with a hardship under these circumstances.

Mr. Martin commented that 30 years is a long time. The Fire Department has been there, the Assessor's Office has been there, a new, larger septic system was approved by the Town, and yet it wasn't caught until recently that there is a multi-family dwelling on that property. It's likely because the property can't be seen from the street. From the outside it looks like a single family property. This is bad government because they are allowing this to go on without approvals. Now the Board is stuck because there is no hardship to allow this. However, bad government for 30 years never saw this even though they were in the building and nothing was ever said that we know of. Therefore, he feels obligated to approve this use because of all the Town Officials that have been in that building.

Ms. Davis makes a motion to deny.

Ms. Shuman seconds the motion.

Ms. Davis speaks to her motion. She agrees with Mr. Martin that this has been going on for 30 years, although she has nothing to document that. We do know that as of 2007 at least it's a multi-family. There is a disconnect because a previous code enforcement officer never associated what was allowed on the property vs. what is actually there. Regardless of the previous history and how long it's been going on, it's not ok for the Board to approve something just because it's been there. It doesn't meet the requirements of the Variance. There is no hardship on the property and there is question as to whether it would devalue surrounding properties. People live in R2 and R1 neighborhoods because they assume single family dwellings or at most a duplex. They did not buy into a neighborhood that is authorized to have multi-family dwellings.

Ms. Shuman speaks to her second. She agrees with Ms. Davis that the hardship issue has not been satisfied.

VOTE: Chairman Seabury asked Clerk Dearborn to poll the Board on the motion to deny the request for the variance and to record the members' votes, which were as follows:

Ms. Davis	To deny
Ms. Shuman	To deny
Mr. Martin	Not to deny
Mr. Nolin	Not to deny
Mr. Seabury	To deny

Chairman Seabury declared that, there having been three votes to two, the motion to deny is approved and the Variance will not be granted.

Chairman Seabury reminded the applicants that they have 30 days to appeal in writing.

IV. APPROVAL OF MEETING MINUTES

Chairman Seabury commented that the agenda says to review the minutes from 3/12; however, those were already approved by the Board and submitted to Mr. Desmond.

Ms. McGrath commented that she asked that the minutes for the Boissonneault case be provided to the Board.

V. CLOSING DISCUSSIONS

Mr. Brackett asked how the Town will ensure that the multi-dwelling in Case 2 is turned back into a duplex. We should take positive action so that this doesn't go on for another 30 years.

Chairman Seabury thinks that now they have come before the Board, the Code Assessment Office has something to hang their hat on.

Mr. Brackett reiterated that they should take positive action to ensure that the applications conform.

Ms. Davis commented that Code Enforcement will send a letter to start the process.

Per Chairman Seabury, the Board wishes to get some satisfactory report from the Town that something is being done to ensure that this property either reverts to its legal status or that other avenues are being pursued.

Ms. McGrath expects that would happen regardless. However, the Board also needs to honor the 30 day appeal period. Can't run out tomorrow and inspect it tomorrow.

Ms. Davis raises another topic for discussion. This town has a lot of smart people and we should be able to get some sort of a report from the tax records (maybe Mr. Michaud?) of any properties listed as multi-family and the associated zoning code. The tax map has the dwelling in Case 2 as a 4-family in R2. We should be able to pull up all the properties that have that.

Ms. McGrath believes that Mr. Michaud, the Assessor, has been identifying the properties that don't meet code. She will talk to him about pulling such a report.

Ms. Davis advised that the applicant in Case 2 is a developer in Town and he knows that people in Town are setting up apartments without permits. For those properties that have been inspected for assessing purposes, they may have knowledge of this.

Ms. McGrath advised that there are some property owners who do not allow the Assessor to go inside. If there are units being utilized in those houses, the Assessing Department may not know about it.

Rob Buxton, Fire Chief in Hudson, approaches the podium. He agrees with Ms. Davis and knows that Mr. Michaud works diligently to communicate with them if he finds something that is not appropriate with the tax map. He thinks one of the key points to look at tonight is that we are talking about a home built in 1983 and what the communication tree was that took place. His department routinely hears from Assessing on a lot of items that are sent to Code Enforcement and that is how a lot of the information came about at this meeting tonight. Communication between departments is a priority and is getting better.

Mr. Deaborn commented that he agrees with Mr. Martin about this having gone on for 30 years and now they are forced to punish the applicants for it. It's unfortunate, but it's a case where someone dropped the ball.

Mr. Brackett commented that we don't know who did what. The applicants built a 4th unit when they were only approved for 2 so it's on the burden of the applicant to prove the hardship.

Ms. Davis reminded that Board they are there to make decisions about land use only.

Ms. McGrath commented that code enforcement has been a problem for over 30 years. She doesn't know how to rectify it other than to keep on top of it, which she has tried to do and has pushed for. She wasn't in a position (is now, though) to ensure that code enforcement is a top priority. Fairness is a hallmark of good code enforcements. It's good for the Town and the residents because everyone knows they are being treated fairly and equally. She believes when that pattern becomes consistent that code enforcement will be reduced. The Zoning Board is obligated to deny a request if it does not meet the criteria.

Ms. Davis commented that if the Board feels there should be multi-family housing in certain sections of the Town then we need to change the zoning map and that is done via a ballot vote.

Ms. McGrath advised that the Planning Board, in conjunction with members of the Zoning Board and other staff, will be doing a re-write of some if not all sections of the Zoning Ordinance. It will not all be done this year, rather in sections so that it's easier to make the changes and present them to the voters. That said, the voters also can petition to have a zoning change. When that is done, they get a hearing before the Planning Board and they make a decision whether to recommend or not recommend and then it goes on the ballot along with the recommendation of the Planning Board.

Ms. Shuman asked when the Board selection will review the Zoning Ordinances. Mr. Seabury advised it will be in July.

VI. ADJOURNMENT

Mr. Martin makes another motion to adjourn.

Ms. Shuman seconds the motion.

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

Chairman Seabury declared the meeting to be adjourned at 9:00 PM.

Date: June 25, 2015

Normand Martin, Acting Chairman