



TOWN OF HUDSON

Zoning Board of Adjustment



J. Bradford Seabury, Chairman

Ben Nadeau, Selectmen Liaison

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HUDSON ZONING BOARD OF ADJUSTMENT MEETING MINUTES June 19, 2014

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:35pm on Thursday, June 19, 2014, 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, Jim Pacocha, Donna Shuman, and J. Bradford Seabury

Members

Absent: Mike Pitre (Excused)

Alternates

Present: Maryellen Davis, Gary Dearborn, Kevin Houle and Maurice Nolin

Alternates

Absent: Marilyn McGrath (Excused)

Staff

Present: William Oleksak, Zoning Administrator

Recorder: Trish Gedziun

II. SEATING OF ALTERNATES AND ANNOUNCEMENTS

For the benefit of all attendees, Chairman Seabury noted that copies of the agenda for the meeting, as well as an outline of the rules and regulations governing hearings before the Zoning Board of Adjustment, were available at the door of the meeting room. He noted the outline included the procedures that should be followed by anyone who wished to request a rehearing in the event the Board's final decision was not felt to be acceptable.

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Chairman Seabury pointed out that the Board allowed rehearings only if collectively convinced by a written request that the Board might have made an illogical or illegal decision or if there were positive indications of new evidence that for some reason was not available at the hearing.

Chairman Seabury seated Mr. Houle in place of Mr. Pitre, who was excused.

III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. **Case 168-121-000 (06/19/14,) Deferred from 5/22/14: H&B Berggren, LLC, 238 Central Street, Hudson, requests a Variance from the Hudson Zoning Ordinance, Article III of HTC §334.16.C.2d in order to permit a conversion of existing space to two apartments with more than 750 SF per apartment and the continued business use on the second floor. [Map 168, Lot 121, Zoned R2; HZO Article §334-16C.2d, Building Permits.]**

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

Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak replied that the applicant was requesting a change in use from a single use to a dual use and that the Board had deferred hearing the case until a site walk had been conducted by the Board as well as the Fire Department.

Chairman Seabury stated that unfortunately, he had missed the site walk as he had a previously scheduled meeting in Portsmouth but that he had asked the Clerk, Mr. Dearborn to attend and take notes.

Mr. Dearborn read aloud from the notes he had taken summarized as follows:

June 14, 2014 – 10:00 a.m. Site Walk at 238 Central Street, Hudson, NH

Board members in attendance were: Mr. Martin, Mr. Houle, Mr. Pacocha, Mr. Nolin, Mr. Dearborn, and Ms. Davis.

Board members not in attendance were: Mr. Seabury, Ms. Shuman, Mr. Pitre, and Ms. McGrath

Also in attendance were: Mr. Trefethen, the applicant and owner of the property.

Mr. Trefethen showed the Board members the two areas on the ground level where he wished to convert into apartments. Both proposed apartments exceed the minimum square feet requirements of the zoning ordinance. The owner addressed the stipulations required by the fire inspections and stated that he would comply with all of the necessary requirements. At the rear of the building, the parking was reviewed and it was duly noted that it was sufficient to handle

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the additional vehicles. The meeting ended at 10:20 a.m.

Chairman Seabury asked if the applicant, Mr. Steve Trefethen, had additional information to add to his previous testimony. Mr. Trefethen replied that he did not but did comment that he would be in touch with a “sprinkler guy.”

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

Chairman Seabury declared the matter before the Board.

Mr. Pacocha asked if the building ever had a variance for a dual use. Chairman Seabury replied that he did not think so as the unit in the building was an office. He said that the former Town Attorney also had an office there on the first floor.

Ms. Shuman stated that the plan which was submitted indicated that apartment #1 was 836 square feet and that apartment #2 was 852 square feet and that it was to scale. She said that when she did the numbers, it did not quite work out and she was unable to determine what the actual square footage was.

Chairman Seabury asked how Ms. Shuman would suggest that the Board determine that. Ms. Shuman replied that she was not sure but that application required that a certified plot plan be submitted and she had tried to use the applicant’s scale and she could not come up with anything close to the stated square footage.

Mr. Trefethen stated that the square footage for each apartment was accurate.

Ms. Shuman stated that it appeared that the applicant may have included the fire escape in the square footage. Mr. Trefethen replied that was not the case.

Chairman Seabury asked Mr. Oleksak on what basis he decided that the rooms exceeded the requirements. Mr. Oleksak replied that he based his decision on the measurements given to him by the applicant. He further replied that he wasn’t sure if the exact square footage of the proposed apartments was critical to the Board because it was on one floor and it was a protected space.

Ms. Shuman stated that her concern was that if they were less than 750 square feet then there was another issue on the table.

Mr. Trefethen stated that they were not less than 750 square feet. He said that the area was not necessarily where you would envision a residential area with lots of swing sets so the intent was to keep the apartments to a smaller scale.

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Mr. Houle asked Ms. Shuman if any of her calculations were less than 750 square feet. Ms. Shuman replied that there were measurements that were missing on the plan so she had guessed at some of them and that when she used the scale that the applicant had provided she did not come up with the same numbers and she said she felt that was the problem. Ms. Shuman asked if the Board was going to take it on faith or if they were going to make sure that the dimensions were correct.

Chairman Seabury replied that it had been the tradition of the Board to accept the measurements as given unless there was sufficient reason to question it. Chairman Seabury asked Ms. Shuman if she felt she had a sufficient reason to question it. Ms. Shuman replied that she did. She said that the numbers just did not work for her, although she had spent a considerable amount of time trying to come up with the same numbers that the applicant had provided.

Mr. Pacocha stated that by his calculations, the square footage came out to 728 square feet, although he said that he was not sure if that included the fire escape as part of the living area or not.

Mr. Trefethen said that the hallways were considered part of it because there was a doorway going into the right unit and also the kitchen area was a little bit longer. He also said that there were two storage rooms that could have been included if the Board liked to increase the amount of square footage. He said that he would have physically done the measurements if someone had told him to.

Mr. Martin stated that the Board would be making a decision based on incorrect measurements and if something went wrong and a fire happens and people died, who would they come after? He further said that he felt a professional drawing should have been submitted for this type of use. He also said that he understood that the economic times were difficult but that the Board had to make its decision based on life safety. Mr. Martin stated that prior to putting his signature of approval on the application he wanted to make sure the measurements were correct.

Mr. Oleksak stated that the Zoning Board of Adjustment did not vote on safety measures. He said that safety measures were taken up by the Fire Department and that they have reviewed it and looked at it. He further said that the gentleman was going to make the changes that were requested by the Fire Department to take care of any life safety issues. Mr. Oleksak said there was over 2,000 square feet of space which did not include the stairs on the end which was another 88 square feet on each end. He said that there was adequate space and what he thought had happened in this situation was that the space was chopped up and not equal on each side but that by taking the dimensions of the hallways out, it would be above the requirement.

Mr. Martin said that he felt he did have to take life safety into consideration even though he knew that the Fire Department did it but said that the Fire Department could not have done that until the Zoning Board of Adjustment gave their approval. Mr. Martin further stated that prior to his signature of approval he needed to be sure that the dimensions were correct.

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Chairman Seabury stated that while he understood Mr. Martin’s concerns, that whatever decision the Board made did not give the property owner any more rights than he previously had. He said that it seemed to him that the situation called for either one of two things, either someone needed to make a motion requiring the applicant to come back with a plan that was done by an engineer providing the correct measurements, with the additional storage space included if needed, or the Board could have made a determination.

Mr. Martin asked what kind of determination it would be. Chairman Seabury replied that it was before the Board and he could have guessed that Mr. Martin and Ms. Shuman were going to vote no if it got to that point but he was willing to see how it worked out.

Mr. Trefethn stated that, as Mr. Oleksak had pointed out, the floors were 2,000 feet so if the Board wanted to cut it in half, he didn’t have a problem with that. He said that to go out and hire a professional would cost a lot of money and that he was already out four or five months’ rent. He said it was a very costly project for two apartments.

Mr. Martin commented that he was not living in the 1950’s and 1960’s when it was done by a hand drawing. He said that he lived in a day in age where safety was the most important thing and that there were rules for approving the Variance. He also said that the application was that of a business and business’ came before the Board all of the time with professional drawings.

Mr. Martin made a motion to defer the case until an engineered plan was submitted with the exact measurements.

Ms. Shuman seconded the motion.

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

Mr. Martin	To defer
Ms. Shuman	To defer
Mr. Pacocha	Not to defer
Mr. Houle	Not to defer
Mr. Seabury	Not to defer

Chairman Seabury declared that, there having been three votes not to defer the case, and two votes to defer the case, the motion had failed.

Chairman Seabury stated that the original question was still before the Board.

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Mr. Pacocha asked who made up the plan which was before the Board. Mr. Trefethen replied that he did. He said he had experience with drawing up preliminary plans for much bigger projects for architects, although he said not exactly to scale.

Mr. Pacocha asked if he used a tape measure. Mr. Trefethen replied that he did. He said the space was 2,000 square feet and that he did not even measure outside wall to outside wall like he would normally do when he measured space like that. He said that he used the actual apartment sizes because he knew it was residential. He further said that he was trying to keep the units to a minimum because he wanted to keep the use to a minimum.

Ms. Davis stated that she had attended the site walk and it appeared that one of the proposed apartments was a total of 664 square feet and the other apartment was a total of 752 square feet. She further stated that if you took into consideration that there was a hallway that was not included in the measurements, and then the stairwell that led down, that probably made up the difference. Ms. Davis said that she was only pointing out that there was a logical explanation for the apparent discrepancy in the measurements. She said that if the applicant had testified that he would move the wall in the hallway and include that in the living space, it would have made up for the shortfall.

Chairman Seabury stated that he agreed with that and also, that Ms. Davis had been very adamant about getting accurate measurements in the past.

Mr. Martin asked if the Board approved the request and the applicant went to get a building permit, would an engineered plan be needed to obtain that building permit. Mr. Oleksak replied an engineered plan would not be required for what the applicant was proposing to do. Mr. Oleksak also replied that the building was built in 1850 and that the code changed every three years and that it was not reasonable to ask anyone to bring such an old building up to the current code. He said that was why the Fire Department did an inspection and that the key things they looked for was fire separation, egress, and to accommodate the dual use; it would have to be a sprinkler system. Mr. Oleksak said that engineered drawings would be provided for the sprinklers.

Mr. Martin asked what was wrong with having an engineered drawing for the exact measurements. Mr. Oleksak replied that the calculations for the inside of the space would be put on by the sprinkler company but that they would not be stamped by an engineered because it was not required.

Mr. Martin stated that there would be construction taking place. Mr. Oleksak replied that there would be no baring walls moved. He said if baring walls were going to be baring wall then yes, an engineered plan would be required.

Chairman Seabury stated that the applicant had previously indicated that he would have been willing to move the hallway wall. Mr. Trefethen replied that it was not so much the hallway wall but that there was a couple of

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storage rooms there and they could be added to the total square footage and come up with over 900 square feet. Mr. Trefethen also testified that he was willing to use the storage rooms if the Board so desired.

Mr. Houle made a motion to approve the request for a Variance with the stipulation that the storage room space be added to the current measurements.

Mr. Pacocha asked if the applicant had addressed the hardship requirement.

Mr. Trefethen reviewed his Application for a Variance aloud, originally read into the record at the March 27, 2014, meeting as summarized as follows:

- 1. Granting of the requested Variance will not be contrary to the public interest because the area has been residential.*
- 2. The proposed use will observe the spirit of the ordinance because this property is on a Use Variance from a residential. Two residential units would conform to the use that was previously there and help rent the property to pay the bills.*
- 3. Substantial justice would be done to the property owner by granting the Variance because the property is 60% empty and converting the bottom floor would help Steve & Laura pay their bills on this property.*
- 4. The proposed use will not diminish the values of surrounding properties because the property has always enhanced the area and would remain in the same form.*
- 5. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship because the owners have spent thousands of dollars on advertising to rent the property.*

The property is 60% vacant. The owners can no longer pay the taxes and other bills to remain on the property.

Mr. Pacocha stated that he felt it was a big building and it only had a single furnace and a single water heater. Mr. Trefethen replied that there were two furnaces and three central air conditioning units. He also said that the hot water had never been an issue before but that if it became an issue, he would increase the size of the hot water heater.

Chairman Seabury seconded the motion.

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Mr. Houle, speaking on his motion, stated that he felt in today’s economy, the applicant was trying to get a return on his investment, which everyone was entitled to, it was a good use of the facility in light of downturn of renting out office space. I would add the stipulation of the use of the storage space to increase the size of each apartment to appease those members of this Board that have questions about the actual square footage.

Chairman Seabury, speaking on his second, stated that he was not in attendance at the site walk but as he had stated before, the space was where his accountant used to be and he had been in the space many times and he did not feel, particularly after hearing from the Zoning Administrator that the requirements were met, that there would be any problem accommodating two apartments. He said that the only other question he had was whether or not apartments should be allowed in commercial buildings and he said he thought they should.

VOTE: Chairman Seabury asked Clerk Dearborn to poll the Board on the motion to approve the request for the Variance, with the noted stipulation, and to record the members’ votes, which were as follows:

Mr. Houle	To approve
Mr. Seabury	To approve
Mr. Pacocha	To approve
Mr. Martin	To deny
Ms. Shuman	To deny

Chairman Seabury declared that, there having been three votes to approve the request for the Variance, with the noted stipulation, and two votes to deny the case, the motion had carried.

- 2. Case 198-173-000 (06-19-14): Leroy and Denise Thompson, 140 Melendy Road, Hudson, request a Home Occupation Special Exception in order to conduct art lessons out of the existing detached garage [Map 198/ Lot 173, Zoned G; HZO Article VI, §334-24] of the Hudson Zoning Ordinance.**

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

Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak replied that all of home occupations had to be approved by the Zoning Board of Adjustment.

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

Ms. Denise Thompson, the applicant, addressed the Board, and read aloud from the Application for a Home Occupation Special Exception summarized as follows:

A Home Occupation is a sales or service operation for goods produced or services provided

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on-site and is permitted only as a Special Exception upon approval by the Zoning Board of Adjustment. In granting such an Exception, the Board must find the Home Occupation to be in full compliance with the requirements listed below:

- 1. What is the nature of your home business? I will be giving art instruction to small groups of people in a class environment.*
- 2. Is the Home Occupation secondary to the principal use of the home as the business owners' residence? The building at hand is independent of the main home residence.*
- 3. Will the Home Occupation business be carried on within the residence and/or within a structure accessory to the residence? No, the business would only be conducted in this building, not in the home.*
- 4. Other than the signs(s) permitted under Article XII; will there be any exterior display or other exterior indications of the Home Occupation? Will there be any variation from the primarily residential character of the principal or accessory building? I will only put up signage in accordance with the town's laws.*
- 5. Will there be any exterior storage and will it be screened from neighboring views by a solid fence or by evergreens of adequate height and bulk at the time of planting to effectively screen the area? In situations where a combination of existing foliage and/or long distances to neighboring views provide screening, the fencing requirements may be waived at the discretion of the Board. No, there will be no outside storage.*
- 6. Will there be noise, vibrations, dust, smoke, electrical disturbances, odors, heat or glare produced? If so, please describe the frequency. No, there will be no additional noise or disturbances.*
- 7. Will the traffic generated by the Home Occupation activity be substantially greater in volume that would normally be expected in the neighborhood? There will be a minimal increase of traffic generated.*
- 8. Where will the customer/client parking for the Home Occupation be located? There will be spaces on the side and also behind the building for parking.*
- 9. Who will be conducting the Home Occupation? I am the sole proprietor and currently the only staff member.*

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10. Will there be a vehicle(s) for the Home Occupation? Please explain the type and number of vehicle(s). Only my personal vehicle.

Chairman Seabury asked what size classes the applicant was anticipating? Ms. Thompson replied that currently she only had six to eight students in a class and she had no plans to grow the business beyond herself as a teacher.

Chairman Seabury asked the applicant if she understood that she was not allowed to have any employees who did not live in the building. Ms. Thompson replied that the only person who ever provided her with any help was her daughter.

Mr. Dearborn asked which garage the applicant was proposing talking about. Ms. Thompson replied that it was the garage on the road.

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

Mr. Kevin Partridge, 22 Spear Road, addressed the Board and stated that both of his daughters were attending the applicant's art studio on Lowell Road and they really enjoyed the class. He said he felt approving the request would be a further enrichment for all of the applicant's students.

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

Chairman Seabury declared the matter before the Board.

Ms. Shuman stated that it appeared that one of the abutter's was not notified. Chairman Seabury asked who that was. Ms. Shuman replied it was Lot 198-160.

Chairman Seabury said that although it may have sounded like a small problem to the applicant, that it was a real problem. He said that the state required all legal abutters to be notified and apparently, one was not.

Mr. Martin made a motion to defer the case until the next scheduled meeting, July 24, 2014, to enable all of the abutters to be notified.

Mr. Houle seconded the motion.

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VOTE: Chairman Seabury asked Clerk Dearborn to poll the Board on the motion to defer the case to the next scheduled meeting, July 24, 2014, and to record the members' votes, which were as follows:

Mr. Martin	To defer
Mr. Houle	To defer
Mr. Pacocha	To defer
Ms. Shuman	To defer
Mr. Seabury	To defer

Chairman Seabury declared that, there having been five votes to defer the case until the next scheduled meeting, July 24, 2014, the motion had carried.

Mr. Martin stated that the garage appeared to be in the Right-of-Way so that an Equitable Waiver may have been required as well. Chairman Seabury agreed and suggested that the applicant also apply for an Equitable Waiver when she returned.

Ms. Davis suggested that the applicant address what the parking would be for the six to eight students would be and the drop off and pick up of any students that would not be parking on the property. Chairman Seabury stated that the ordinance only allowed for two customer vehicles to be parked on the property at any one time and that Ms. Thompson should be prepared to address that at the next meeting.

3. **Case 184-031-000 (06-19-14): B. Richard Bailey, 117 Belknap Road, Hudson, request the following:**
 - a. **An Equitable Waiver to allow the existing dwelling to remain within the front-yard setback [Map 184/Lot 031, Zoned R2, HZO Article VIII, §334-31, Alteration and Expansion of Non-Conforming Structures.**
 - b. **A Variance from the literal provisions of the Hudson Zoning Ordinance Article VIII of HTC §334-31 Alteration and Expansion of Non-Conforming Structures in order to permit the following change or use: To add a 16 x 20' room on the rear of the house and convert the adjoining room to a bathroom. [Map 184/ Lot 031, Zoned R2; HZO Article VIII, §334-31].**

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

Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak explained that the applicant had requested a building permit for the addition on his house and after examination of the paperwork; it became clear that the current house was in the 50-foot setback and to allow for the expansion of a non-conforming structure. He said that he had informed the applicant that an Equitable Waiver and a Variance would be required.

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Equitable Waiver

Mr. Martin asked if the Equitable Waiver should include the existing garage which was in the front-yard and side-yard setbacks. Mr. Oleksak replied that the garage should be included.

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

Mr. Richard Bailey, the applicant, addressed the Board and read aloud from the Application for a Variance summarized as follows:

1. *Granting of the requested Variance will not be contrary to the public interest. The public interest is the infrastructure of the road now and in the future. While the home is within the required setback, because of its age, it always has been. Prior changes to the road and infrastructure have always taken that into consideration. A second part of the public interest is the look and “feel of the neighborhood.” The proposed addition will be in the back of the house. The character of the home and of the neighborhood, if anything, will be enhanced.*
2. *The proposed use will observe the spirit of the ordinance. The spirit of the ordinance is observed because the proposed addition is in the rear of the residence. The current setback has not changed since the road was straightened in 1970; and before that, for at least sixty years. The view from the street will not essentially change.*
3. *Substantial justice would be done to the property owner by granting the Variance. This addition is to be a downstairs master bedroom with a new bathroom. Currently, the other bathroom is upstairs. Without the Variance, no improvements can be made to the home.*
4. *The proposed use will not diminish the values of surrounding properties because it enhances the value of our property and by doing so, improves the value of the surrounding neighborhood.*
5. *Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship**. The house was built in approximately 1910 before the zoning code came into effect and was likely never 50 feet from the road. A literal enforcement of the ordinance would mean that no improvements could be made to the home. The house cannot be moved. Without the request Variance, we will have an un-improvable, and in the future, an unsellable home.*

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

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Chairman Seabury declared the matter before the Board.

Mr. Martin made a motion to approve the request for an Equitable Waiver.

Ms. Shuman seconded the motion.

Ms. Davis asked if there were any code enforcement issues on the property. Mr. Oleksak replied that there were not.

Mr. Martin, speaking on his motion, stated that he felt the applicant had demonstrated that the house had been in existence for over ten years and was not a nuisance and that it would a high correction cost to move it. He also said that the approval for the Equitable Waiver was for both the house and the garage.

Ms. Shuman, speaking on her motion, stated that she agreed with everything that Mr. Martin had said.

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

Mr. Martin	To approve
Ms. Shuman	To approve
Mr. Pacocha	To approve
Mr. Houle	To approve
Mr. Seabury	To approve

Chairman Seabury declared that, there having been five votes to approve the request for the Equitable Waiver, the motion had carried.

Variance

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

Chairman Seabury declared the matter before the Board.

Mr. Martin made a motion to approve the request for a Variance.

Mr. Pacocha seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt the applicant had met all of the criteria for a Variance and denying the application would cause an unnecessary hardship on the property.

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Mr. Pacocha, speaking on his second, also stated that the applicant had met all of the criteria for a Variance.

VOTE: Chairman Seabury asked Clerk Dearborn to poll the Board on the motion to approve the request for a Variance and to record the members’ votes, which were as follows:

Ms. Martin	To approve
Mr. Pacocha	To approve
Ms. Shuman	To approve
Mr. Houle	To approve
Mr. Seabury	To approve

Chairman Seabury declared that, there having been five votes to approve the request for a Variance, the motion had carried.

- 4. Case 175-142-000 (06-19-14): Lynn C. White and Ann M. White, Trustees of the Lynn C. White and Ann M. White Revocable Trust, 119 Ferry Street, Hudson, request a Variance from the literal provisions of the Hudson Zoning Ordinance Article VII of HTC §334-27 Table of Minimum Dimensional Requirements, to permit portions of improvements and renovations to an existing building to be within the fifty foot (50’) front-yard setback. [Map 175/Lot 142, Zoned B].**

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

Mr. Martin stated that he would step down from the case as he was the Director of the Hudson Girls Softball League and the owner of Dairy Queen was a sponsor.

Chairman Seabury seated Ms. Davis in place of Mr. Martin, who was excused.

Chairman Seabury stated that he would step down from the case.

Mr. Pacocha assumed the role of Chairman and appointed Mr. Nolin to be seated in Mr. Seabury’s place.

Acting Chairman Pacocha asked Mr. Oleksak why the matter was before the Board. Mr. Oleksak replied that Dairy Queen was going to be doing some renovations to their new corporate image and part of that expansion would encroach onto the front 50-foot setback so that approval was needed by the Zoning Board of Adjustment.

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

Attorney J. Bradford Westgate, from Winer and Bennett, LLP, representing the applicant, addressed the Board and stated that the property was about 1.1 acres and that the applicant also owned a piece of property across the street on Ridge Avenue. He said that the Dairy Queen was serviced by municipal sewer and water and it had

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frontage on three roads; Ferry Street, Adelaide, and Ridge Avenue. He further said that Mr. White had purchased the property in 1989 and had owned and operated the Dairy Queen since that time. Attorney Westgate stated that a 50-foot setback was required in the business district and that the applicant wanted to make some exterior and interior improvements to the building and increase its footprint and meet the new corporate prototype that the Dairy Queen franchise was promoting nationwide. He said that the applicant would need site plan approval from the Planning Board if the Zoning Board of Adjustment approved the request.

Mr. Tony Basso, P.E., from Keach-Nordstrom Associates, Inc., addressed the Board, stating that the existing building was currently in the front-yard setback on Ferry Street and just outside the side-setback on Ridge Avenue. Mr. Basso said that the building addition gave Mr. White the economic engine to make some improvements on the site that really needed to be done. He said that one of the big deals with the site was that it had a very serpentine drive-through type of thing that goes through the parking lot. He said the entrance to that and the entrance to the site was in very close proximity to Adelaide so that what ended up happening was when people put on their signal to turn before Adelaide, people in the other direction did not know if they were turning right onto Adelaide or right into Dairy Queen. He said the applicant was proposing to close that entrance and put it on the side street and create a dedicated drive-thru lane, and to increase the amount of parking on the site to 37. He said he knew that the applicant needed site plan approval to do that. Mr. Basso said that the whole front of the site sloped down and there was a wood retaining wall there. He said it was paved and that people sat out there but it wasn't ideal. He further said that the applicant wanted to fence that in and create an outdoor area that was more appropriate. Mr. Basso stated that the addition would include some restaurant seating which was really more of a winter time thing to do in an effort to make it more of a year-round business. The addition will also include handicapped accessible bathrooms. Mr. Basso said that the configuration of the proposed addition had to go on the end which was proposed. Mr. Basso also pointed out that the right-of-way and the road were not where you would typically see it. He said the right-of-way was offset from where the actual road is and that added to the tightness. Mr. Basso said that he wanted to mention all of the proposed improvements because it was important to safety, parking, and general maintenance.

1. *Granting of the requested Variance will not be contrary to the public interest. The variance is to permit an existing, longstanding commercial building to be upgraded and renovated to the new and modern prototype facility, on the same parcel of land that has housed a business for over 30 years, which land is located in the Business (B) District.*

A Dairy Queen has existed on the property since approximately 1965. It has previously upgraded to meet the then store standard(s) or prototype(s). The continued vitality of such businesses is dependent on their ability to be upgraded and modernized.

2. *The proposed use will observe the spirit of the ordinance. Renovating and upgrading an existing business, on property in the Business (B) District, encourages efficiency and economy in the process of development and the most appropriate use of land.*

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3. *Substantial justice would be done to the property owner by granting the Variance. Permitting an existing business to continue at the same site in a new, modern building, consistent with the national franchisor's new prototype, enabling the business to provide modern, upgraded services to its customer base (and thus the town residents) in the same location it has done so for nearly 50 years.*
4. *The proposed use will not diminish the values of surrounding properties. The property has been used as a Dairy Queen (a non-residential use) for nearly 50 years. The property is located in the Business (B) District.*
5. *Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship** because the proposed use is a reasonable one.*

Attorney Westgate submitted a letter from Mr. Randy Trumel, from Keller-Williams Realty, which summarized his opinion of the effect the application would have on neighboring properties values. Mr. Trumel concluded that he did not feel the proposed addition would have a negative effect on the surrounding property values.

Attorney Westgate stated the Mr. White, the owner, had notified his customers of what his plans were (including a floor plan and an elevation plan) and he submitted a document which listed the signatures of those customers who were in favor or not in favor of the renovations he planned to make. He said that the majority of the people who responded were residents of Hudson.

Attorney Westgate stated that the three abutters on 56, 58, & 60 Adelaide Street, all were on the signatories on the sign-up sheet as being in favor of the proposed upgrade.

Mr. Dearborn asked Mr. Basso if there were any plans to improve the shrubbery on Adelaide Street. Mr. Basso replied that he agreed that the shrubbery was overgrown and presented a possible danger and that a completely new landscaping design would be presented to the Planning Board.

Mr. Pacocha asked if the plan contained existing and proposed conditions. Mr. Basso replied that was correct. Mr. Pacocha asked how he could distinguish from both. Mr. Basso replied that the existing conditions were represented on the plan as being a little bit lighter in color.

Mr. Nolin asked if the ultimate plan was in effect to close off the Ferry Street entrance. Mr. Basso replied that was correct.

Ms. Davis asked if on the side of the building where the proposed addition was; if the existing parking spaces would be taken from that side to use for the building. Mr. Basso replied that was correct.

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Ms. Davis also asked if the four parking spaces next to the dumpster would also be going away. Ms. Davis said that she was aware that was a Planning Board issue but stated that her concern was how narrow it was in that location. Mr. Basso replied that it would meet all of the Planning Board requirements. Ms. Davis asked if the proposed addition would make it worse. Mr. Basso replied that it certainly would not make it worse.

Mr. Dearborn asked if there would be any interruption of business during the proposed renovations. Attorney Westgate replied that there would be some shut-down of the business to accommodate the proposed renovations.

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

Mr. Peter Lanzillo, a resident of the neighborhood from Blackstone Street, addressed the Board, stating that every time Mr. White had made changes to the property, he had made the property better. He said that Mr. White had turned properties that were an eye sore in the neighborhood into very nice, respectable properties. He further said that he was very much in favor of the application.

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

Acting Chairman Pacocha asked if there were anyone present who wished to speak in opposition or neutrally with regard to the application.

Ms. Patricia Manning, 57 Adelaide Street, an abutter, addressed the Board, stating that she had been a resident there for twenty years. She said that the applicant was proposing to change the entrance from Ferry Street to Adelaide Street and that it was in her front yard. She further said that she did not understand how the Board could have seen that as a safer venue and that it was a heavily traveled pass through road. Ms. Manning said there were numerous accidents and people on bicycles that had been hit. She said that the White's rented the property on Ridge Avenue and that they did not live there. Ms. Manning said the applicant's proposal would greatly affect her and she had already had two realtors tell her that it would negatively affect her property. She said that the abutters that the applicant had contacted on Adelaide Street have all just recently moved in and did not know what the neighborhood was like. She said she was all for the applicant's improving the property but was very much opposed to having the entrance on Adelaide Street. Ms. Manning said she would fight the application "tooth and nail."

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

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Second Round of Testimony

Mr. Basso replied that he would address the concerns briefly as it really was not a matter that was the purview of the Zoning Board of Adjustment. He said that the entrance was a Planning Board matter and it would be taken up with that Board. He further said that the applicant felt it was an improvement because when you pull out of Adelaide Street and a car has their directional signal on, it was difficult to know where they were turning into. Mr. Basso stated that as a practice, you look to close curb cuts on busy roads and that Traffic Engineers did recommend that on a regular basis. He said he felt the proposed improvements would make a difference in the safety of the intersection itself. He also said that a traffic study would be done at the Planning Board level. Mr. Basso said that Adelaide Street was a cut through street and it did have volume but that the problem was not the volume it was confusion. He also said that this was not a postage stamp lot and that there was enough room for the proposed improvements and that the problem was that the building had front-yard setbacks on three sides and that was very unusual circumstance.

Attorney Westgate stated that as the Board was well aware, the applicant was before them strictly for the Variances for the front-yard setbacks. He said that all of the abutters, for and against, would have the opportunity to express their opinions at the Planning Board level. Attorney Westgate stated that, regarding the property value issue, the property was in a business zone and it had to be modernized, otherwise it would have become obsolete. He said the obsolescence was not good for neighboring properties, business or residential.

Ms. Davis asked if it was correct that the applicant was proposing 44 feet to Ferry Street and 37.8 to Ridge Street. Attorney Westgate replied that was what was on the plan but that the application was 36 feet and 42 feet just because they were not sure precisely how the Planning Board would...he said in other words, he didn't want the Planning Board to say he was 1-foot off.

Acting Chairman Pacocha asked for the second and final time if there were anyone else present who wished to speak in favor, in opposition, or neutrally with regard to the application.

Acting Chairman Pacocha declared the matter before the Board.

Ms. Davis made a motion to approve the request for a Variance.

Mr. Nolin seconded the motion.

Ms. Davis, speaking on her motion, stated that she first wanted to be clear that the applicant was before the Zoning Board of Adjustment for a Variance to allow a proposed addition to the existing building which would leave approximately 42 feet front facing Ferry Street and 36 feet side facing Ridge Avenue. She said it was a Variance and that the Variance was required to allow the proposed building. Ms. Davis said she felt that the applicant had met all of the criteria for the Variance; the proposed building portion of it was not contrary to the public interest, it was minimally intrusive to the existing footprint of the building, and that it was within the

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spirit of the ordinance in as much as the proposed addition really wouldn't injure the public's safety or the public's health. She also said that she felt substantial justice would be done to the applicant and it would not be an overburden to the general public. Ms. Davis said she felt it met the criteria of the hardship because simply because the lot itself required frontage on all three roads and that the existing building was set a little bit funny within the existing footprint of the building but that the building had been in existence for a number of years. She further stated that she was sure that the zoning requirements were different in the past thirty to fifty years.

Mr. Nolin, speaking on his second, stated that he agreed with what Ms. Davis had said. He also said that he felt the Board went a little bit overboard in discussing what was the Planning Board's purview and that he felt the Variance should be granted.

VOTE: Acting Chairman Pacocha asked Clerk Dearborn to poll the Board on the motion to approve the request for a Variance, and to record the members' votes, which were as follows:

Ms. Davis	To approve
Mr. Nolin	To approve
Ms. Shuman	To approve
Mr. Houle	To approve
Mr. Pacocha	To approve

Acting Chairman Pacocha declared that, there having been five votes to approve the request for a Variance, the motion had carried.

Acting Chairman Pacocha stated that Mr. Seabury had returned to his seat as Chairman of the Board and Ms. Davis and Mr. Nolin had returned to their seats as non-voting alternate members of the Board.

IV. OTHER BUSINESS

Chairman Seabury stated that Attorney Daniel D. Crean of Hage Hodes PA Attorneys at Law; was the new attorney representing Alan and Therese Boissoneault regarding the "so-called" Mark Street Extension. Chairman Seabury stated that the Board had put it off until September but that because there was a new attorney involved, he thought that the Board would accept it prior to September. Chairman Seabury stated that he and Mr. Pacocha would not be in attendance at the September meeting. He further stated that Attorney Crean's letter indicated that because of the availability of some of the Board members in September that he expected to schedule a hearing in October. Chairman Seabury asked if any of the Board members had any issue with that. None of the sitting Board members expressed any issue with that.

Recorder's Note: Mr. Martin returned to his seat as a full voting member of the Board.

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VII. ADJOURNMENT

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

Mr. Houle seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 10:09 pm.

Date: June 30, 2014

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun