



TOWN OF HUDSON

Zoning Board of Adjustment

J. Bradford Seabury, Chairman

Ben Nadeau, Selectmen Liaison



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

HUDSON ZONING BOARD OF ADJUSTMENT MEETING MINUTES November 14, 2013

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:35pm on Thursday, November 14, 2013, in the Paul Buxton Meeting Room in the Town Hall basement. Chairman Seabury then requested Clerk Davis to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

Present: Normand Martin, Jim Pacocha, Mike Pitre, Donna Shuman, and J. Bradford Seabury

Members

Absent: None (all present)

Alternates

Present: Maryellen Davis, Gary Dearborn, and Maurice Nolin

Alternates

Absent: Kevin Houle (Absent) and 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. 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.

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III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. **Case 256-001-000 (11/14/13):** Hudson Realty Trust, 99 River Road, Hudson, NH, requests a Variance to install a freestanding sign at a distance of approximately 20 feet from the property line along River Road, where 25 feet is required. (The sign size will comply with Town regulations.) [Map 256/Lot 001, Zoned G-1; HZO Article XII, Section 334-60, General Requirements, Sub-section E.]

Clerk Davis 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 ordinance, 334-60 (E), required all freestanding signs to be a minimum of 30 feet from the right-of-way. He further stated that the applicant was present to request permission to have a 25-foot setback.

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

Mr. Christopher Rice, Project Manager, TFM Structural Engineers, representing 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 because the proposed sign setback is in keeping with other signs in the surrounding area. A number of existing signs do not meet the required 25-foot setback (such as Ayotte's sign which is approximately 2 ½ feet from the right-of-way, and Mike's Pie sign which appears to be within the right-of-way.)*

We are requesting a sign setback of 19 feet, which will allow the sign height to be reduced from 30 feet to 20 feet tall. We feel that a 20-foot tall sign placed 19 feet from the right-of-way would be more aesthetically pleasing to the public than a 30-foot tall sign placed 25 feet from the right-of-way.

2. *The proposed use will observe the spirit of the ordinance as the purpose of the signage regulations is to encourage the effective use of signage to direct movement, advertise, and inform the public while protecting public safety, preserving the character of the neighborhood, aesthetics, and minimizing visual clutter.*
3. *Substantial justice would be done to the property owner by granting the Variance because the proposed sign setback is in keeping with other signs in the surrounding area.*

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4. *The proposed use will not diminish the values of surrounding properties because again, it is in keeping with other signs in the surrounding area.*
5. *Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship** because the existing site is only approximately 0.5 acres in size, with a lot depth of approximately 150 feet. The proposed building is located at the rear setback line and with the parking and associated access, the landscape island with the sign adjacent to River Road cannot be enlarged.*

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. Dearborn stated that it was his understanding that the proposed sign would be illuminated from within and not electronically. Mr. Rice confirmed that was correct and that it would not be a changing sign.

Ms. Davis asked Mr. Rice to explain why he thought the hardship on the property was the size.

Mr. Rice replied that the lot size was very small and the proposed sign met all of the town's requirements but that that the applicant wanted it to be taller.

Mr. Rice stated that there was a higher possibility of a truck hitting the bottom of the sign if were 20 feet in height.

Mr. Martin asked if the driveway had a double entrance. Mr. Rice replied there was.

Mr. Martin asked if there was an entrance in the back of the property for deliveries. Mr. Rice replied there was not – there was only a side entrance.

Mr. Martin commented that if a truck were coming from the south and entering through the side entrance, it would not be anywhere near the sign.

Chairman Seabury asked if the applicant had authorization to use the side street – Porter Street. Mr. Rice replied that there was an Access Easement.

Mr. Martin commented that he drove by the property every day and never noticed a side entrance. He also commented that he did not feel the proposed sign needed to be 30 feet tall for a truck to clear it.

Mr. Pacocha pointed out that the alternate proposed sign that was 30 feet high with a 25-foot back, did conform to the Hudson Zoning Ordinance. Mr. Rice replied that was correct.

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Mr. Pacocha confirmed that the alternate proposed sign was what would be put up if the current application was denied. Mr. Rice replied that was correct.

Mr. Pacocha stated that basically, they were looking at the possibility of lowering the sign to move it closer to the road. Mr. Rice replied that was correct – 6 feet closer.

Mr. Pacocha asked what the reason for that was. Mr. Rice replied that the applicant’s preference was not to have a sign that tall. He further replied that, if the applicant’s request was denied at this meeting, then the sign that conformed with the Zoning Ordinance would be put in.

Mr. Martin stated that he would support a motion to approve the request for a Variance.

Mr. Pitre made a motion to deny the request for a Variance.

Ms. Shuman seconded the motion.

Mr. Pitre, speaking on his motion, stated that he felt the possibility of a truck hitting the proposed sign was one of the lamest excuses he had ever heard to meet a hardship criteria. He also stated that he did not feel the ordinance needed additional variances on an already very liberal Sign Ordinance.

Ms. Shuman, speaking on her second, stated that she agreed with what Mr. Pitre had said. She further stated that she did not feel the applicant had met the criteria for hardship on the property.

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

Mr. Pitre	To deny
Ms. Shuman	To deny
Mr. Martin	To deny
Mr. Pacocha	To deny
Mr. Seabury	To deny

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

- Case 131-030-000 (11/14/13): James & Sharon Gray, 6 Timothy Lane, Hudson, NH, requests a Home Occupation Special Exception for property located at 6 Timothy Lane to allow a Home Improvements Business to be conducted out of the existing dwelling. [Map 131/Lot 030, Zoned G; HZO Article VI, Section 334-24, Home Occupations]**

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

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

Mr. Oleksak explained that the matter was before the Board because the applicant had an existing home improvement business. He further explained that he had notified the applicant that a special exception was needed in order for the applicant to continue the business. Mr. Oleksak stated that the situation came before him as the result of a complaint.

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

Mr. James Gray, the applicant, addressed the Board, stating that he had three vehicles on the property that were registered to the company – a pick-up truck, a van, and a very small dump trunk.

Mr. Gray stated that there were three employees that worked for him and they arrived at 7:00am and they all left the premises to go to the job site. He said that they returned to the property around 3:30 – 4:00pm. He also said that he wanted the vehicles to be able to be left on the premises while the employees were at the job site.

Mr. Gray stated that there had been a complaint from one of the neighbors with regard to the ladders. He said that he had since removed the ladders from the line of sight and felt there would be no further complaints.

Chairman Seabury asked the applicant if he could move the trucks. Mr. Gray replied that the trucks were located on the left side of his property.

Mr. Gray stated that he was going to get a building permit to construct an addition of a 3-car garage within the next month or so. He further stated that he planned on the addition going right up to the 15-foot setback requirement.

Chairman Seabury asked the applicant if there were any other issues such as noise, vibrations, dust, smoke, odors, electrical disturbances, etc. Mr. Gray replied that there were some materials that were dropped off on the property for a job, but that particular job was directly across the street and it was because the neighbor did not have the room to store the materials on the property. He further replied that most other materials were dropped off directly at the job site.

Chairman Seabury asked if the three employees left their vehicles on the property while they were at the job site. Mr. Gray replied that he picked his employees up every morning and their vehicles did not remain on the property. He further replied that the exception was that, there was one employee over the summer, who picked everyone up and his mini-van was left on the property.

Chairman Seabury stated that the big issue with all of this was the visual appearance of all the activity. Mr. Gray replied that there was a temporary fence there and he was willing to put up a fence if he had to. He also

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mentioned that while there was shrubbery on his side of the property, his neighbor had chosen to cut the shrubbery on their side of the property down.

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

Mr. Richard Lavoie, 5 Timothy Lane, an abutter, addressed the Board, stating that he was present to speak in favor with regard to the application.

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

Attorney Andrew Prolman, from Prunier & Prolman, P.A., representing Walter and Claire Dabrowski, 4 Timothy Lane, abutters of applicant, addressed the Board, and submitted a letter to the Board which described what he said the Dabrowski's saw every day. He also submitted pictures of the site.

Attorney Prolman read aloud from his letter dated November 14, 2013, addressed to the Hudson Zoning Board of Adjustment, summarized as follows:

The Gray's construction business is not a "home occupation" as defined in the ordinance and does not meet the General Requirements for a Special Exception and does not meet the specific requirements of a Home Occupation.

The applicant's construction business is loud and visible, early in the morning and late in the afternoon, Monday through Friday. Employees load their trucks with supplies regularly dropped off by Moore's Lumber. Building supplies such as lumber, plywood, shingles, and siding are left in the front of the house for all to see. Aluminum ladders clank and bang as employees stack and re-stack onto and off of the contracting trucks. The three or four company trucks have "Gray's Contracting" advertising their business services. The excavator and bobcat, while mostly kept out back, are regularly loaded and off-loaded in plain sight of the neighborhood. The same is true for two or three snow plows in the winter.

The Dabrowski's have no objection to the Grays' construction business itself; however, their continued success does not belong in a residential neighborhood to the detriment of their neighbors.

Attorney Prolman stated that this did not meet any of the requirements for a Home Occupation Special Exception. He further stated that this was a construction business and did not belong in a residential neighborhood.

Mr. William Lajoie, 3 Timothy Lane, an abutter, addressed the Board, stating that he was most bothered by the noise that the construction business created. Mr. Lajoie stated that trucks had already been in and out of the property by 5:30am – he also said that this was not an occasional thing, but a constant thing.

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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.

Second Round of Testimony

Chairman Seabury asked if there were anyone present who wished to speak in favor with regard to the application, for the second and final time.

Mr. James Gray, the applicant, stated that there were a couple of things he wanted to address.

Mr. Gray stated that he did have a bob cat that plowed his personal driveway. He also stated that the ladders were loaded on the trucks, maybe once a week, at the end of the day – not in the morning. He said his employees did not bang the ladders.

Mr. Gray stated that trucks did not leave the property at 5:00am. He said that his son did leave for his job between 4:30 – 5:00am but that was the only vehicle that left the property at that time. He also stated that there was another neighbor that had a construction business. He concluded by stating that none of the previous stated noise came from his property.

Chairman Seabury asked if there were anyone else present who wished to speak in favor with regard to the application, for the second and final time. No one else came forward.

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

Mr. Martin commented that he would entertain a motion to deny the request because he did not feel it met the requirements of the ordinance – pointing out that it was not a small business and it was not operated out of the home - but outside of the home.

Mr. Martin also commented that he felt if the Board approved the request, he worried that many other citizens who had a Home Occupation Special Exception would come back to the Board and ask for permission to have employees.

Mr. Martin stated that he felt a Home Occupation was something that was done that was not noticed by anyone in the neighborhood.

Mr. Martin also said he felt that there were many more restrictions with having an outside business.

Chairman Seabury replied that the Board had allowed a Home Occupation Special Exception, with restrictions, but they were using their home as an office and operating outside of the home.

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Mr. Oleksak stated that the Board had approved a Home Occupation Special Exception a few years back for a landscaper/snow plow operator who only had the company's office actually located on the property.

Ms. Shuman asked Mr. Oleksak what district the property was located in. Mr. Oleksak replied the property was located in the General District.

Mr. Pacocha, referring to one of the pictures supplied to the Board, asked Mr. Gray how many of the six vehicles parked on the property belonged to members of the household. Mr. Gray replied that they were all family vehicles.

Mr. Dearborn commented that he saw four trucks and three personal vehicles on the site when he drove by a few days prior. Chairman Seabury asked if that included the bob cat. Mr. Dearborn replied that he did not see a bob cat.

Mr. Dearborn also commented that he was concerned that there was another construction business in the area.

Mr. Oleksak said that he did know that a permit had been pulled a few years back but that he would have to check into it further.

Mr. Pitre asked Mr. Gray if his in-laws lived with him. Mr. Gray replied that they did live with him but that it was not in an Accessory Living Unit.

Chairman Seabury declared the matter before the Board.

Mr. Martin made a motion to deny the request for a Home Occupation Special Exception.

No second being brought forward, Chairman Seabury declared that the motion had failed due to a lack of second.

Mr. Pacocha made a motion to approve the request for a Home Occupation Special Exception, with the following stipulations:

1. That the approval be subject to the applicant follow through with the stated intent of constructing a garage within six months.
2. That the hours of operation be from Monday through Saturday from 7:00am – 5:00pm.

No second being brought forward, Chairman Seabury stated that the motion had failed due to a lack of a second.

Mr. Martin read aloud from the Decision Sheet – Item #5, summarized as follows:

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There shall be no exterior storage unless permitted by special exception. If permitted, it must be screened from neighboring views with a solid fence or evergreens of adequate height and bulk at the time of planting to effectively screen the area, unless the requirement is a waiver by the Board because of the existing foliage. There should not be any objectionable circumstances such as noise, vibrations, dust, smoke, electrical disturbances, odors, heat, or glare produced as a result of the proposed use. Traffic generated by the proposed home occupation should not be substantially greater in volume than would normally be expected in the neighborhood. Parking provided for the home occupation activity and shall be off-street and located outside of the setback areas or the front-yard, in driveways, or paved areas and limited to no more than two vehicles at one time.

Mr. Pitre made a motion to deny the request for a Home Occupation Special Exception.

Mr. Martin seconded the motion.

Mr. Pitre, speaking on his motion, stated that he felt the applicant did not successfully meet the criteria for a home occupation. He also stated the applicant was welcome to come back after the garage was constructed and ask for a different type of request.

Mr. Martin, speaking on his second, stated that he voted to deny the request due to the reasons listed above as well as the fact that there was negative abutter testimony.

VOTE: Chairman Seabury asked Clerk Davis to poll the Board on the motion to deny the request for a Home Occupation Special Exception and to record the members’ votes, which were as follows:

Mr. Pitre	To deny
Mr. Martin	To deny
Ms. Shuman	To deny
Mr. Pacocha	To deny
Mr. Seabury	To deny

Chairman Seabury declared that, there having been five votes to deny the request for a Home Occupation Special Exception, the motion had carried.

- Case 243-007-000 (11/14/13): Wanderlei Venturini, 5 Demery Street, Hudson, NH, requests continued use of an Accessory Living Unit (ALU) located at 5 Demery Street [Map 243/Lot 007, Zoned R-2; HZO Article XIII A, Section 334-73.4, Term of Special Exception Approval, Section B.**

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

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

Mr. Oleksak replied that the applicant had recently purchased the property and wished to continue the use of an existing ALU.

Mr. Martin stated that a signed letter indicating who would reside in the proposed ALU was missing from the packet. Mrs. Venturini submitted a letter to the Board at this meeting with the required information.

Chairman Seabury stated that the applicant had submitted an Application for an Accessory Living Unit and had indicated that he felt he met all of the requirements, and had also initialed the procedural requirements. He also stated that there was no negative abutter testimony.

Mr. Pitre asked how the applicant came to understand that the Board had to approve the continuation. Mrs. Venturini replied that the real estate agent informed them they had sixty days to appear before the Board as soon as they signed the papers.

Mr. Pacocha asked what the two trucks in the driveway were used for. Mrs. Venturini replied that trucks belonged to her husband and father-in-law’s pool business.

Mr. Pacocha made a motion to approve the request for the continued use of the existing Accessory Living Unit.

Mr. Pitre seconded the motion.

Mr. Pacocha, speaking on his motion, stated that he felt the request should be granted because it was a previously approved ALU and there were no negative abutter testimony.

Mr. Pitre, speaking on his second, stated that he also felt the request should be granted because it was a previously approved ALU, and the applicant had submitted a letter indicating who would reside in the ALU.

VOTE: Chairman Seabury asked Clerk Davis to poll the Board on the motion to approve the request for the continued use of the Accessory Living Unit, and to record the members’ votes, which were as follows:

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

Chairman Seabury declared that, there having been five votes to approve the request for the continued use of the Accessory Living Unit, the motion had carried.

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VI. OTHER BUSINESS

Hudson Zoning Board of Adjustment – Case No. 217-005 - 13 Mark Street, Hudson, NH

Attorney Andrew Prolman, Prunier & Prolman, P.A., representing Alan and Theresa Boissonneault, addressed the Board, stating that he had five different lot owners each with different goals in mind.

Attorney Prolman suggested that the Board withdraw the case without prejudice rather than deny the case. He stated that by doing that, the applicants would still be able to activate the case in its current posture in future in they wanted to.

Chairman Seabury asked what would happen to the remand from a legal standpoint in the case of a withdrawal. Attorney Prolman replied that he was not sure if there was much law on point regarding that.

Mr. Pitre asked if the remand would stay in the case of a withdrawal. Attorney Prolman replied that he thought there would have to be an agreement between both parties – the applicant and the Board.

Chairman Seabury stated that he thought Attorney Prolman would have come back to the Board with a new application since he was unable to convince his client to come back under the existing situation.

Attorney Prolman replied that although that was true, he would have wanted the benefit of the Superior Court's orders on the table if he were to come back.

Mr. Martin commented that he was having a difficult time with the option of withdrawing the case and having a remand held over the town's head. He further commented that he felt the Board was obligated to give some kind of answer to the court. He said he would not vote to withdraw the case.

Mr. Pitre stated that he felt the Board was crystal clear with regard to the Decision. Chairman Seabury concurred.

Mr. Pitre asked if there was a time limit on the Remand. Chairman Seabury replied that there was not.

Mr. Pitre made a motion to defer the rehearing of the case, date specific, to the November 13, 2014, meeting.

Mr. Martin seconded the motion.

Attorney Prolman replied that he agreed with that suggestion.

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VOTE: Chairman Seabury asked Clerk Davis to poll the Board on the motion to defer the rehearing of the case, date specific, to the November 13, 2014, meeting, and to record the members’ votes, which were as follows:

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

Chairman Seabury declared that, there having been four votes to defer the rehearing of the case, and one vote not to defer, date specific, to the November 13, 2014, meeting, the motion had carried.

Proposed Agenda for 2014 ZBA Meetings

Chairman Seabury declared that the agenda for the 2014 Zoning Board of Adjustment meetings was accepted, as proposed.

V. APPROVAL OF MEETING MINUTES

The following changes/edits were made to the meeting minutes of the September 26, 2013, meeting minutes:

1. Page 2 – “Chairman Seabury announced at the beginning of the meeting that he was stepping down as he did not feel well, and he turned the gavel over to Mr. Martin” - was added – Seabury
2. Page 2 – The dates on the cases were changed to 9/26/13 – Seabury
3. Page 2 – The last paragraph was deleted – Seabury
4. Page 8, 9th paragraph – was changed to “Mr. Oleksak then stated that after reviewing the records, that there had been a request for a Variance from the setback requirements in 1984” – Seabury
5. Page 12 – last paragraph – the words “no changes” were deleted - Martin

Mr. Martin made a motion to approve the minutes from the September 26, 2013, meeting, as amended by the Board.

Ms. Shuman seconded the motion.

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Chairman Seabury called for a verbal vote, and he then declared that all of the voting Board members were in favor of approving the minutes from the September 26, 2013, meeting, as amended by the Board.

VI. ADJOURNMENT

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

Ms. Shuman seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 9:48pm.

Date: November 22, 2013

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun