



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 May 9, 2013

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:33pm on Thursday, May 9, 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, Mike Pitre, Donna Shuman, and J. Bradford Seabury

Members

Absent: Jim Pacocha (Excused)

Alternates

Present: Maryellen Davis, Gary Dearborn, Kevin Houle, Marilyn McGrath, & Maurice Nolin

Alternates

Absent: None (All Present)

Staff

Present: William Oleksak, Zoning Administrator

Recorder: Trish Gedziun

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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.

Chairman Seabury seated Mr. Nolin in place of Mr. Pacocha, who was excused.

III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. **Case 200-040-001 (5/9/13; Deferred from 4/25/13): Denise True, 81 Bush Hill Road, Hudson, NH, requests a Home Occupation Special Exception for property located at 83 Bush Hill Road to allow a dog daycare to be conducted out of the existing dwelling. [Map 200, Lot 040-001, Zoned G-1, HZO Article VI, Section 334-24, Home Occupations.]**

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 matter was before the Board for the same reason as notified above.

Mr. Pitre stated that he would step down from the case as the applicant was a personal friend of his.

Ms. Shuman also stated that she would step down from the case as she was an abutter.

Chairman Seabury seated Mr. Dearborn in place of Mr. Pitre and Mr. Houle in place of Ms. Shuman, who had both stepped down from the case respectively.

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Chairman Seabury confirmed with Mr. Oleksak that Ms. True had signed the application and a copy was in the file. Mr. Oleksak confirmed that she had.

Chairman Seabury read aloud the following letter dated April 24, 2013, from Eric and Karen Crivac, an abutter at 159-A Wason Road, summarized as follows:

Thank you for the notification regarding this hearing, unfortunately, we will not be able to attend the hearing in person but would like to ask clarifying questions and get reassurances regarding this request.

In the past, we have had two dogs (Golden Retrievers) from this address (81 Bush Hill Road) visit our property and animals on numerous occasions. The Hudson Animal Control Officer and Hudson Police have both addressed the unleashed dogs running through the neighborhood. We would like to know how the owners of the proposed business will ensure that the dogs kept at the dog daycare will be secured and not allowed to run freely. If dogs do get out and end up here on our property, what recourse will we have?

The other concern we have is regarding noise. Many of our neighbors have dogs and the occasional barking is not an issue. What reassurances can the business owners give that the barking of the day care guest will be controlled?

We would kindly ask the Zoning Board to address these two concerns (noise and security) prior to issuing this special exception.

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

Ms. Sandra Laguerra, addressed the Board, stating that she was present to request a Home Occupation Special Exception for a dog daycare business at 83 Bush Hill Road.

Ms. Laguerra supplied the Board with a letter from an abutting neighbor, closest to the property, in support of the application.

Chairman Seabury read aloud from that letter dated May 4, 2013, from Mr. Del E. Stroud, an abutter at 14 Bear Path Lane, summarized as follows:

This letter is in regard to our neighbor, Sandy Laguerra, 16 Bear Path Lane, Hudson, NH and her Countryside Canine Doggie Daycare.

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We have been living next to Sandy for eleven years and she is the best neighbor that you could ask for. We never hear any noise from the doggie daycare and she keeps the dogs under control and well behaved at all times. I have never seen the dogs get out of the fenced area.

Ms. Laguerra stated that the dogs would be supervised the entire time they were outside and the barking would be controlled.

Ms. Laguerra stated that the proposed business would be located in one of the three garage stalls.

Ms. Laguerra stated the dog daycare provided dogs with a safe place to play and socialize. She further stated that the dogs would spend much of the day outdoors in a fenced in area between the hours of 9:00am – 3:00pm with a one-hour break in the middle of the day. She said the dogs would always be monitored while they were outside.

Chairman Seabury stated that the applicant had indicated that she was familiar with the requirements for a Home Occupation Special Exception and said she felt she met all of them.

Chairman Seabury asked if the dogs were ever left outside unsupervised. Ms. Laguerra replied that other than a two-minute bathroom break, she was outside with the dogs.

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. Nolin asked how long the applicant had been in business. Ms. Laguerra replied that she had been in business for six years. Mr. Nolin also asked how high the proposed fence would be. Ms. Laguerra replied that the height of the proposed PVC-coated wire fence would be 5 feet.

Mr. Dearborn asked how many dogs would be on the property at any one time. Ms. Laguerra replied that her permit allowed for a maximum of 15 dogs.

Mr. Dearborn asked if a sign would be used at the proposed new location. Ms. Laguerra replied she would not use a sign.

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Ms. McGrath asked if any of the dogs at the dog daycare would have the ability to jump over the 5-foot fence. Ms. Laguerra replied that she would use verbal commands and distraction methods if a dog's body language were to suggest they wanted to jump over the fence.

Ms. McGrath asked if any of the dogs were aggressive in nature. Ms. Laguerra replied there would be no aggressive dogs in her care.

Mr. Martin asked the applicant if the business hours would remain from 7:30am – 5:00pm. Ms. Laguerra replied the hours would remain the same.

Chairman Seabury asked Mr. Oleksak if there had been any zoning violations on the property. Mr. Oleksak replied that there were none.

Mr. Martin made a motion to approve the request for a Home Occupation Special Exception for a conditional-use dog daycare business within the existing dwelling or secondary building in accordance with the plan shown to and described to the Board by the applicant at this meeting, subject to the following stipulations:

1. That a non-intrusive inspection shall be performed by the Zoning Administrator or the Zoning Administrator's delegate approximately six months following the posting of the decision, with the Zoning Administrator to provide a report back to this Board with respect to any findings, that this initial and any future subsequent examinations shall be performed by the Town at its' convenience on or after the dates specified, with no impact on the applicant's continuation of business, until such time as this Board receives and responds to any reports (with the understanding that this Board may withdraw this Home Occupation Special Exception or terminate it at that time in the event that any inspection shows a lack of compliance and/or suggests that the operation of this business had produced or was producing damage or potential damage to the environment or to the property values of the surrounding neighborhood.)
2. That a similar inspection shall be performed six months later (i.e., one year following granting of this approval) by the Zoning Administrator or the Zoning Administrator's delegate, and then annually thereafter, until such time as some future Zoning Board of Adjustment declares that these inspections are no longer necessary for this site.
3. That this Conditional-Use Special Exception shall terminate upon sale of the premises to any other party, or in the event that the current applicant becomes

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a resident of any other dwelling, in or out of Hudson, or following a period of twelve months of non-operation of this business, with the business not to be continued by any other person except by the granting of a new Conditional-Use Special Exception by the Hudson Zoning Board of Adjustment specifically to that person following processing of a new application submitted by that person, including the weighing of the balance of all factors made known to the Board during the hearing(s) pertaining to that process.

4. The hours of business, as specified by the applicant, shall be from 7:30am to 5:00pm, Monday through Friday.

In addition, the applicant expressed understanding that the sign permitted for this business would be no greater than three square feet, located at least 15 feet behind the front lot-line, with only the basic information and the street address (no additional banner work).

Mr. Nolin seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt the applicant had met all of the requirements for a Home Occupation Special Exception.

Mr. Nolin, speaking on his second, stated that the applicant had been in business for six years without complaint and felt the applicant had met all of the requirements.

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

Mr. Martin	To approve
Mr. Nolin	To approve
Mr. Dearborn	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 Home Occupation Special Exception, with the noted stipulations, the motion had carried.

Chairman Seabury stated that Mr. Pitre and Ms. Shuman had returned to their seats as full voting members of the Board with Mr. Dearborn and Mr. Houle returning to their seats as non-voting alternate members of the Board.

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2. **Case 228-002 (5/9/13): 257 Lowell Road, LLC c/o Digital Federal Credit Union, 220 Donald Lynch Blvd., Marlboro, MA, requests a Variance for property located at 257 Lowell Road to allow a 3' 5" x 7' 3" electronic changing sign to be installed onto the existing pylon sign. [Map 228, Lot 002, Zoned G-1, HZO Article XII, Section 334-60 (H), General Requirements.]**

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 matter was before the Board for the same reason as notified above.

Mr. Dearborn, Ms. Davis, Mr. Martin, and Mr. Pitre all stated that they were members of the Digital Federal Credit Union. There was no one present who felt that would be a conflict.

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

Mr. Richard A. Westergren, Regional Vice President, Poyant Signs, representing the applicant, addressed the Board, stating that the request was part of DCU's new marketing program.

Mr. Westergren 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 electronic changing signs are permitted as a right in a Business Zone. Site is located in a General-1 Zone which is totally business oriented and cannot even be viewed by any Residential Zone. This sign will promote public safety and messages which can promote the health and welfare of the public.*
2. *The proposed use will observe the spirit of the ordinance because the proposed sign will promote health and safety and within the spirit of its business neighborhood.*
3. *Substantial justice would be done to the property owner by granting the Variance because the proposed EMC sign will permit DCU to speak (figuratively) to potential customers via electronic means. Instant*

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message recognition without elaborate advertising means. A clean messaging system which benefits the general public.

4. *The proposed use will not diminish the values of surrounding properties because proposed electronic changing signs are state-of-the-art and add economic value to the already existing commercial uses of this immediate area.*
5. *Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship** because literal interpretation of this neighborhood is a business use. To not allow a commercial electronic changing sign in this area would be a hardship for a competing business.*

The client fully intends to follow published rules for use of electronic changing signs. We fully comply with the rules and regulations including more than 200 feet away from any residential unit.

The sign will remain in a fixed period for no less than 15 minutes.

The sign will also conform to all brightness levels and self-monitoring and dimming controls.

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 stated that he had concerns with the main office, which was located in Massachusetts, controlling the sign. Mr. Westergren replied that any and all problems with the sign would be handled in a timely fashion by a real person and not an automated system.

Mr. Dearborn asked what the proposed hours of operation of the sign would be. Mr. Westergren replied that the proposed hours of operation would be the same as when the actual business was open.

Ms. McGrath read aloud a portion of RSA 334-64; sub-section (C) item #7 summarized as follows:

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*The portion of a free-standing sign that contains an electronic changing sign component shall be operated **during** the hours the business associated with the electronic changing sign is open.*

Ms. McGrath asked how tall the existing sign was. Mr. Westergren replied it was 25 feet to the top of the sign.

Ms. McGrath asked if the proposed double-sided electronic changing sign would be added to the existing sign. Mr. Westergren replied that was correct.

Mr. Martin read aloud a portion of RSA 334-64; sub-section (C), summarized as follows:

Electronic changing signs are allowed only as a component of a free-standing sign.

Mr. Martin said that his interpretation of that was that the applicant could add an electronic changing portion to the existing sign.

Chairman Seabury pointed out that the applicant had submitted a picture of the existing DCU sign in Manchester, NH – not of the one in Hudson, NH.

Ms. McGrath read aloud a portion of RSA 334-64; sub-section (C), summarized as follows:

*Electronic changing signs shall not exceed 50% of an area of a free-standing sign or 50 square feet, whichever is smaller. Electronic changing signs shall be **restricted** to a maximum of four lines of text or message display and text shall be **restricted** to a maximum of 10 inches in height.*

Ms. McGrath stated that the proposed sign showed graphics and asked how that complied with the ordinance.

Chairman Seabury commented that the ordinance had not been worded correctly and it, unfortunately, did not indicate that graphics were not allowed on electronic changing signs.

Ms. McGrath stated that she felt the proposed sign would diminish the look and quality of the property. She also stated that she felt if the application were to be approved it would

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open a “Pandora’s Box,” and she did not feel the question of hardship had been addressed.

Ms. Davis also commented that she felt the existing sign did a more than adequate job of identifying the business and she did not feel there was a hardship on the property.

Mr. Westergren replied that the property was located in a commercial zone and he felt that the credit union had the right to advertise its business. He also said that the applicant wanted to take advantage of this technology which he felt was here to stay.

Mr. Westergren stated that the applicant was willing to re-submit the application so that it conformed to the allowable size.

Chairman Seabury commented that the town had to define whether or not the total square footage of a free-standing sign allowed for one or both sides of the sign.

Mr. Martin made a motion to approve the request for a Variance with the stipulation that the overall sign shall be no larger than 100 square feet and the electronic changing portion of the sign would be abutted to the larger sign.

Chairman Seabury stated that the motion had died due to a lack of a second.

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

Ms. Shuman seconded the motion.

Mr. Pitre, speaking on his motion, stated that he did not feel the applicant had addressed the hardship criteria, the proposed sign was larger than what the ordinance allowed, and he did not feel it was in the spirit of the ordinance.

Ms. Shuman, speaking on her second, stated that she agreed with what Mr. Pitre had said.

Mr. Martin commented that he felt the Board was very resistant to allow any electronic changing signs in the town.

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

Mr. Pitre	To deny
Ms. Shuman	To deny

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Mr. Nolin	To deny
Mr. Martin	To approve
Mr. Seabury	To deny

Chairman Seabury declared that, there having been four votes to deny the request for a Variance, and one vote to approve the request, the motion had carried.

Mr. Westergren suggested that the Board table the discussion until the next meeting, which would allow him time to re-submit the application. Mr. Pitre replied that he would not be in favor of that suggestion and Ms. Shuman agreed.

Chairman Seabury declared a break at 9:00pm, calling the meeting back to order at 9:06pm.

IV. APPROVAL OF MEETING MINUTES

Chairman Seabury stated that the review of the meeting minutes from the February 28, 2013, meeting, would be deferred to the next scheduled meeting.

V. OTHER BUSINESS

Chairman Seabury asked Ms. Davis and Ms. Shuman to work together on a policy with regard to electronic signatures.

VI. ADJOURNMENT

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

Mr. Pitre seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 9:45pm.

Date: May 20, 2013

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun