



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 April 25, 2013

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:40pm on Thursday, April 25, 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, J. Bradford Seabury

Members

Absent: Jim Pacocha (Excused)

Alternates

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

Alternates

Absent: Kevin Houle (Excused)

Staff

Present: William Oleksak, Zoning Administrator

Recorder: Trish Gedziun

II. SEATING OF ALTERNATES AND ANNOUNCEMENTS

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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. Dearborn in place of Mr. Pacocha, who was excused.

III. PRESENTATION BY THE TOWN ATTORNEY

Presentation by the Town Attorney – Attorney Stephen Buckley

Attorney Stephen Buckley, from Hage Hodes Law Firm, representing the Town of Hudson, addressed the Board, stating that he felt he had a good understanding of the Town of Hudson's Zoning Ordinance.

Attorney Buckley stated that Attorney David LeFevre, who had been representing the Zoning Board of Adjustment, was no longer with the firm. Attorney Buckley said that he or another equally qualified attorney would represent the Zoning Board in the future.

Ms. Davis commented that she felt it would be beneficial for the Board to meet any other potential attorneys from the Hage Hodes Law Firm that may represent the Board.

Ms. McGrath asked if Attorney Buckley would still represent the Planning Board. Attorney Buckley replied that he would represent both the Planning Board as well as the Zoning Board of Adjustment.

Attorney Buckley stated that Chairman Seabury had asked if an applicant could submit applications with an electronic signature rather than a handwritten signature. Attorney Buckley then stated that he did not think it would be a good idea to accept electronic signatures unless the Board formally adopted a policy.

Ms. McGrath asked if an e-mail giving another person(s) permission to represent them should be allowed. Attorney Buckley replied that, as a rule, an unsigned e-mail should not be accepted.

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IV. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

2. **Case 256-001 (4/25/13, Deferred from 2/28/13):** Hudson Realty Trust, 22 Long Drive, Westborough, MA, requests a Variance to allow a mixed use of a convenience store on the first floor and a one-bedroom residence on the second floor for the property located at 99 River Road, Hudson. [Map 256, Lot 001, Zoned G-1, HZO Article III, Section 334-10, Mixed or dual use of a lot.] **(The applicant has requested a Withdrawal.)**

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

Ms. McGrath commented that although she did not actually sit on the case, she had participated in the discussions pertaining to this case when it was before the Planning Board. Chairman Seabury and Ms. McGrath both stated that they did not feel there was any need for her to step down from the case.

Chairman Seabury stated that at the last meeting, the Zoning Board had decided to ask the Planning Board to provide input with regard to this case. He further stated that, the Planning Board was not in agreement with the applicant's proposal and as a result, the applicant and his attorney had produced the following letter from Mr. Christopher Rice, Project Manager, TFMoran, Inc., as summarized below:

On behalf of my client, Hudson Realty Trust, we hereby withdraw the application for a Variance for a dual use without prejudice.

Mr. Dearborn made a motion to accept the request for a withdrawal without prejudice.

Mr. Pitre seconded the motion.

VOTE: Chairman Seabury asked Clerk Davis to poll the Board on the motion to approve the request for the withdrawal without prejudice, and to record the members' votes, which were as follows:

Mr. Dearborn	To approve the request for withdrawal
Mr. Pitre	To approve the request for withdrawal
Ms. Shuman	To approve the request for withdrawal
Mr. Martin	To approve the request for withdrawal
Mr. Seabury	To approve the request for withdrawal

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Chairman Seabury declared that, there having been five votes to approve the request for a withdrawal without prejudice, the motion had carried.

4. **Case 200-040-001 (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 doggie 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.]

Chairman Seabury asked if there were any members’ of the Board who had an issue with respect to case #4 – 200-040-001 because the application for the Home Occupation Special Exception had been signed with an electronic signature.

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

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

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

Mr. Martin stated that he did not feel the electronic signature was adequate and the 200 foot abutters list was missing at least one person.

Mr. Martin made a motion to defer the case until the next available meeting. He added that the signed application should be notarized if the form was to be mailed and reiterated that the abutters list had to be updated.

Mr. Dearborn seconded the motion.

VOTE: Chairman Seabury asked Clerk Davis to poll the Board on the motion to defer the case to the next available meeting, with the noted stipulations, and to record the members’ votes, which were as follows:

Mr. Martin	To defer
Mr. Dearborn	To defer
Mr. Nolin	To defer
Ms. McGrath	To defer
Mr. Seabury	To defer

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Chairman Seabury declared that, there having been five votes to defer the case to the next available meeting, with the noted stipulations, the motion had carried.

Subsequent conversation between the applicant and the Board revealed that the abutter's list was correct and did not have to be re-submitted.

Mr. Martin made a motion for the Board to hear Case 200-040-001 date specific, to Thursday, May 9, 2013.

Mr. Dearborn seconded the motion.

Mr. Martin withdrew his previous motion.

Mr. Martin made a motion for the Board to move its next scheduled meeting to May 9, 2013, at 7:30pm.

Ms. McGrath seconded the motion.

VOTE: Chairman Seabury asked Clerk Davis to poll the Board on the motion to approve the Board moving the next scheduled meeting to May 9, 2013, at 7:30pm, and to record the members' votes, which were as follows:

Mr. Martin	To approve
Ms. McGrath	To approve
Mr. Dearborn	To approve
Mr. Nolin	To approve
Mr. Seabury	To approve

Chairman Seabury declared that, there having been five votes to approve the Board moving the next scheduled meeting to May 9, 2013, at 7:30pm, the motion had carried.

Mr. Martin made a motion to defer case 200-040-001, date specific, to May 9, 2013, with the stipulation that the application form be signed by the property owner via a hand-written signature in the presence of the zoning staff, or if mailed, with a notarized signature.

VOTE: Chairman Seabury asked Clerk Davis to poll the Board on the motion to defer the case to the next scheduled meeting of May 9, 2013, with the noted stipulations, and to record the members' votes, which were as follows:

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Mr. Martin	To defer
Ms. McGrath	To defer
Mr. Dearborn	To defer
Mr. Nolin	To defer
Mr. Seabury	To defer

Chairman Seabury declared that, there having been five votes to defer the case to the next scheduled meeting of May 9, 2013, with the noted stipulations, the motion had carried.

Chairman Seabury declared a break at 8:00pm, calling the meeting back to order at 8:35 pm.

- Case 182-011 (4/25/13): Domingo Rivera, 2 Chapin Street, Hudson, NH, requests a Variance to allow the existing pool to remain within the rear-yard setbacks; 15-foot rear-yard setback required, 1.5-foot rear-yard setback exists. [Map 182, Lot 011, Zoned TR, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**

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

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

Mr. Martin asked if a drawing had been submitted when the building permit was issued on June 17, 2011. Mr. Oleksak replied that a drawing had been submitted.

Mr. Martin stated that he felt it was not fair for the town to ask the applicant to request a Variance when the town had issued a building permit in the first place.

Mr. Oleksak explained that he discovered the property had not been inspected when the department was purging the building permits. He said the town had not received a request for an electrical inspection. He further explained that the pool was not installed in the same place as the drawing had indicated – which is what he relied upon to issue a permit.

Ms. McGrath asked if the shed, which was too close to the property line, should be addressed at this meeting as well. Mr. Oleksak replied that he felt it should be brought up at this meeting.

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

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Mr. Domingo Rivera, the applicant, addressed the Board, stating that he did not have a plot plan to go by when the pool was installed. Mr. Rivera stated that he had subsequently obtained a plot plan – and that it was then that he realized how close the pool was to the rear-yard setback. He further stated that he wanted to keep the pool where it was.

Chairman Seabury asked how long the fence had been on the property. Mr. Rivera replied that the fence was installed at the same time the pool had been installed.

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

Mr. Jacques Poulin, an abutter, 15 Reed Street, addressed the Board, stating that he had told the applicant where to put the fence, thinking it would be in compliance.

Mr. Oleksak stated that there was 20-foot wide piece of land behind the applicant's property (titled 15R) that was owned by the town. He also said that people had been using that property as an entrance to their properties since the 1980's.

Mr. Dearborn asked if Mr. Rivera had installed the pool himself. Mr. Rivera replied that a pool company, NAMCO, had installed it.

Mr. Rivera read aloud a portion of the Application for a Variance summarized as follows:

- 1. We are on a small lot and all pools in the area are also located on the back lots.*
- 2. The pool is placed in the back of the house. It will look normal in its location.*
- 3. Due to the land layout, the house sits too far back on the lot. Granting the Variance would allow me (the owner) to keep the pool in its location for my family to enjoy during the hot summer months.*
- 4. The pool will enhance the property value in the area and the neighborhood.*
- 5. Based on the location where the house was built, I will not be able to keep the pool in my yard without the Variance.*

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Mr. Rivera also said that removing the pool would cause a financial hardship.

Ms. McGrath suggested that Mr. Rivera also include a request to keep the existing 10' x 10' shed in its present location as part of the Variance. Mr. Rivera indicated that he would like to do that and he added that request to the application – in writing.

Mr. Pitre asked if the Board had any concerns with the fence. Chairman Seabury replied that Mr. Oleksak had indicated that the fence was located on someone else's property but that the Zoning Board did not have the authority to grant permission for something to be on someone else's property.

Ms. McGrath commented that the applicant may have to move the fence if there was a complaint. Mr. Rivera replied that he understood that.

Ms. McGrath asked how big the existing pool was. Mr. Rivera replied that it was an 18' round, above-the-ground pool.

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. Pitre asked when the pool and shed were installed. Mr. Rivera replied that the shed was installed in 2008 and the pool was installed in 2011.

Ms. McGrath asked if the electrical inspection had been done. Mr. Oleksak replied that the electrical inspection would be done if the Variance was granted.

Mr. Dearborn made a motion to approve the request for a Variance to allow the existing pool to remain within the rear-yard setback and to allow the existing shed to remain in its current location in the rear-yard and side-yard setbacks.

Mr. Pitre seconded the motion.

Mr. Dearborn, speaking on his motion, stated that the pool had been installed prior to the applicant obtaining a plot plan, there was no other reasonable location to place the pool, and there were no opposing abutters present.

Mr. Pitre, speaking on his second, stated that he felt granting the Variance would not be contrary to the public interest, the pool and the shed had been in existence for a few

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years, the proposed use would not diminish the value of surrounding property values, and there was a hardship on the property. (The hardship being that the property was burdened by having such a small lot.)

VOTE: Chairman Seabury asked Clerk Davis to poll the Board on the motion to approve the request for a Variance for the existing pool and shed to remain within the rear-yard and side-yard setbacks, and to record the members' votes, which were as follows:

Mr. Dearborn	To approve
Mr. Pitre	To approve
Ms. Shuman	To approve
Mr. Martin	To approve
Mr. Seabury	To deny

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

V. 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 9:20pm.

Date: May 15, 2013

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun