



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 February 28, 2013

I. CALL TO ORDER

Acting Chairman Martin called this meeting of the Hudson Zoning Board of Adjustment to order at 7:35pm on Thursday, February 28, 2013, in the Paul Buxton Meeting Room in the Town Hall basement. Acting Chairman Martin then requested Clerk Houle to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

Present: Normand Martin and Donna Shuman

Members

Absent: Mike Pitre, Jim Pacocha, & J. Bradford Seabury (All excused)

Alternates

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

Alternates

Absent: Maryellen Davis (Excused)

Staff

Present: Julie Kennedy, Administrative Aide

Recorder: Trish Gedziun

II. SEATING OF ALTERNATES AND ANNOUNCEMENTS

For the benefit of all attendees, Acting Chairman Martin 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. Acting Chairman Martin pointed out that the Board allowed rehearsals 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.

Acting Chairman Martin seated Mr. Nolin in place of Mr. Pitre, and seated Mr. Dearborn in place of Mr. Pacocha, who had both been excused.

Acting Chairman Martin stated that Mr. Houle would also be sitting as a full voting member of the Board for this meeting. He also said that Mr. Houle would assume the role of Clerk for this meeting in place of Ms. Davis, who had been excused.

Recorder's Note: Mr. Martin assumed the role of Chairman of the Board in place of Mr. Seabury, who was excused.

III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. **Case 200-040 (2/28/13): Denise True, 81 Bush Hill Road, Hudson, NH, requests the following:**
 - A. An extension of an un-activated Variance (previously granted on February 25, 2010) to allow the subdivision of one lot into two lots. One lot would be conforming, comprising 1.2 acres and containing 150 feet of frontage. The other lot would be non-conforming, comprising of 4.5 acres and containing 36 feet of frontage, where 150 feet of frontage is required. [Map 200, Lot 040, Zoned General, HZO Article VII, Section 334-27, Table of Dimensional Requirements.
 - B. An extension of an un-activated Wetland Special Exception (previously granted on February 25, 2010) to fill approximately 690 square feet of wetlands and approximately 3,250 square feet of wetland buffer to allow the driveway for the proposed 4.5-acre lot. [Map 200, Lot 040, Zoned General, HZO Article IX, Section 334-33, Wetland Conservation District.]

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

Ms. McGrath stated, for the record, that she heard this case (as a sitting member) when it was presented before the Planning Board. She said she would not step down from the case, but that she would not participate in any of the discussions regarding it.

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

Acting Chairman Martin informed Ms. True that as Ms. Shuman had stepped down, there would only be four sitting members on the Board to hear the case. He also informed her that, because there were only four sitting members, she had the right to request that the Board defer the case until such a date when there would be a full Board.

Ms. True stated that she wished to move forward and asked the Board to hear the case at this meeting. She further stated that she was present to request the two noted above extensions – for an un-activated Variance and an un-activated Wetland Special Exception.

Ms. True stated that all of the criteria had been previously met for both requests and that nothing had changed on the property. She further stated that the real estate market had finally turned around and she had a potential buyer for the property.

Mr. Nolin asked why the applicant let the extensions expire. Ms. True replied that the real estate market was very slow and the land just did not sell.

Mr. Dearborn asked if the extensions granted in 2010 were for one-year or two years. Ms. True replied that the town had told her the extension was for a period of two years. Ms. Kennedy replied that the Decision Sheet did not indicate that the extension was granted for a period of two years but that there was a letter from an attorney which explained why the extension was for two years.

Mr. Martin said that the minutes from the February 25, 2010, meeting stated that the extension was granted for a period of one-year.

Mr. Houle stated that he felt the Board had previously granted a two-year extension due to the economy.

(A) Motion on the request for an extension of the un-activated Variance

Mr. Dearborn made a motion to approve the request for an extension of the un-activated Variance for a period of one-year.

Mr. Houle seconded the motion.

Mr. Dearborn, speaking on his motion, stated that he felt granting the Variance would “help the applicant out.” He also said that the potential buyer of the property would have

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to go through the entire process again if the sale went through and this extension were not granted.

Mr. Houle, speaking on his second, stated that he had no additional comments.

VOTE: Acting Chairman Martin asked Clerk Houle to poll the Board on the motion to approve the request for an extension of the un-activated Variance for a period of one-year and to record the members' votes, which were as follows:

Mr. Dearborn	To approve
Mr. Houle	To approve
Mr. Nolin	To approve
Mr. Martin	To approve

Acting Chairman Martin declared that, there having been four votes to approve the request for an extension of the un-activated Variance for a period of one-year, the motion had carried.

(B) Motion on the request for an extension of the un-activated Wetland Special Exception

Mr. Dearborn made a motion to approve the request for an extension of the un-activated Wetland Special Exception for a period of one-year.

Mr. Nolin seconded the motion.

Mr. Dearborn, speaking on his motion, stated that he felt nothing had changed on the property and it would benefit the applicant.

Mr. Nolin, speaking on his second, stated that he agreed with what Mr. Dearborn had said.

VOTE: Acting Chairman Martin asked Clerk Houle to poll the Board on the motion to approve the request for an extension of the un-activated Wetland Special Exception for a period of one-year and to record the members' votes, which were as follows:

Mr. Dearborn	To approve
Mr. Nolin	To approve
Mr. Houle	To approve
Mr. Martin	To approve

Acting Chairman Martin declared that, there having been four votes to approve the request for an extension of the un-activated Wetland Special Exception for a period of one-year, the motion had carried.

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Acting Chairman Martin stated that Ms. Shuman had returned to her seat as a full voting member of the Board.

2. **Case 161-040 (2/28/13):** Town of Hudson, 12 School Street, Hudson, NH, requests a Wetland Special Exception to grade approximately 5,800 square feet of the wetland buffer and to construct the proposed retaining wall (4 to 10 feet in height by 125 feet in length) within the wetland buffer for property located at 9 Industrial Drive, Hudson, NH. [Map 161, Lot 040, Zoned I, HZO Article IX, Section 334-35, Uses within the Wetland Conservation District.]

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

Acting Chairman Martin read aloud a letter dated January 14, 2013, from the Conservation Commission as summarized below:

Motion to recommend the request for a Wetland Special Exception: 4-0-0

Stipulations:

1. *Construction and restoration shall comply with: **Best Management Practices to Control Non-Point Source Pollution: A Guide for Citizens and Town Officials (NH Department of Environmental Services – Current Issue.)***
2. *During construction and restoration erosion control barriers shall be installed and maintained to the satisfaction of the Town Engineer.*
3. *Disturbed and re-graded Wetland Buffer slopes shall be stabilized with the most natural materials appropriate for this use.*
4. *Use of mechanical equipment within the buffer shall be minimized to the greatest extent possible to the satisfaction of the Town Engineer.*

Acting Chairman Martin read aloud a letter dated January 25, 2013, from the Planning Board, summarized as follows:

At its January 23, 2013, meeting, the Planning Board voted to forward the following “Input Only” recommendation to the ZBA, concerning the Zachary Thompkins Memorial Field, located at 9 Industrial Drive.

The Planning Board has no concerns with the planned retaining wall encroachment into the wetland buffer, nor the proposed 2:1 slopes planned at each end of the football field and along the south side of the parking lot; provided that said changes are implemented

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using proper construction standards and result in a stable retaining wall and stable landscaped slopes.

Acting Chairman Martin stated that the applicant had filled out a form for a Standard Special Exception rather than a form for a Wetland Special Exception. Acting Chairman Martin stated that the majority of the Board did not have a problem with the incorrect form being filled out.

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

Mr. Richard Maynard, Project Engineer, from Maynard & Paquette Engineering, LLC, representing the applicant, addressed the Board, stating that the buffer disturbance was temporary and the intrusion was minimal.

Mr. Maynard stated that he felt the applicant had successfully met all of the conditions and criteria for a Wetland Special Exception. He also said that there was an asbestos remediation project in place.

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

Mr. Leonard Lathrop, 41 Winslow Farm Road, Hudson, NH, addressed the Board stating that he was in favor of the application.

Acting Chairman Martin 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.

Acting Chairman Martin declared the matter before the Board.

Mr. Dearborn stated that he was in favor of the application and felt it would only benefit the town.

Mr. Nolin stated that he had been concerned with the asbestos problem but was satisfied with the suggested remedy.

Acting Chairman Martin asked if the bleachers were temporary or permanent. Mr. Maynard replied that they were permanent and were not located in the wetland buffer.

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Mr. Dearborn made a motion to approve the request for a Wetland Special Exception with the noted stipulations of the Conservation Commission and the Planning Board.

Mr. Nolin seconded the motion.

Mr. Dearborn, speaking on his motion, stated that he felt it was a very civic endeavor and was proud to approve the request.

Mr. Nolin, speaking on his second, stated that he too thought the project was beneficial to the town.

VOTE: Acting Chairman Martin asked Clerk Houle to poll the Board on the motion to approve the request for the Wetland Special Exception, with the noted stipulations, and to record the members' votes, which were as follows:

Mr. Dearborn	To approve
Mr. Nolin	To approve
Mr. Houle	To approve
Ms. Shuman	To approve
Mr. Martin	To approve

Acting Chairman Martin declared that, there having been five votes to approve the request for a Wetland Special Exception, with the noted stipulations, the motion had carried.

Acting Chairman Martin declared a break at 8:05pm; calling the meeting back to order at 8:10pm.

3. **Case 256-001 (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 property located at 99 River Road, Hudson, NH. [Map 256, Lot 001, Zoned G-1, HZO Article III, Section 334-10, Mixed or Dual use of a lot.]

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

Acting Chairman Martin read aloud an e-mail dated January 30, 2013, from the owner of the property, Mr. Ajay Patel, addressed to Mr. Chris Rice as summarized below:

As I am currently out of the country, and as required as part of the application, this e-mail is intended to notify the Zoning Board of Adjustment that I, owner of the property at 99 River Road in Hudson, NH, hereby authorize Chris Rice of TF Moran, Inc., to act on my behalf and present before any Town Planning Board or Zoning Board as necessary.

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Acting Chairman Martin stated that the e-mail was not signed and that was a requirement of the Board. He further stated that he would prefer that the letter of authorization be notarized.

Ms. McGrath stated that she too felt the document should have been signed, the e-mail heading was from “Frank Patel” and the closing name was from “Ajay Patel,” and the Planning Board had requested to provide input to the ZBA prior to a decision being made.

Mr. Chris Rice, representing the applicant, addressed the Board, stating that if his request was approved at this Zoning Board of Adjustment meeting, he had planned on appearing before the Planning Board for a site plan adjustment.

Ms. McGrath replied that if the Zoning Board approved the request, the property would be allowed to be used as a dual use. She further replied that the Planning Board wanted to have input prior to the property being able to be used for more than a single use.

Mr. Nolin stated that he felt the case should be deferred.

Ms. Shuman also stated that she felt the case should be deferred.

Mr. Dearborn made a motion to defer the case pending Planning Board input and appropriate owner notarized signatures were received.

Mr. Nolin seconded the motion.

VOTE: Acting Chairman Martin asked Clerk Houle to poll the Board on the motion to defer the case pending Planning Board input and appropriate owner notarized signatures were received, and to record the members’ votes, which were as follows:

Mr. Dearborn	To defer
Mr. Nolin	To defer
Mr. Houle	To defer
Ms. Shuman	To defer
Mr. Martin	To defer

Acting Chairman Martin declared that, there having been five votes to defer the case, the motion had carried.

4. **Case 160-105 (2/28/13):** William Tate, 72 Old Derry Road, Hudson, NH, requests the following for property located at 297 Central Street:

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- A. An extension of an un-activated Variance (previously granted April 20, 2011) to allow construction of five parking spaces, a loading space, dumpster pad and a shallow retaining wall within the Wetland Conservation District. [Map 160, Lot 105, Zoned I, HZO Article IX, Section 334-35, Uses within Wetland Conservation District.]
- B. An extension of an un-activated Wetland Special Exception (previously granted April 20, 2011) to allow the impact of 10,300 square feet of the wetland buffer for construction of a storm water infiltration basin, tree box filter, five parking spaces, and a retaining wall. [Map 160, Lot 105, Zoned I, HZO Article IX, Section 334-33, Wetland Conservation District.]

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

Ms. McGrath stated that although she would not step down from the case, she had heard this case as a sitting member of the Planning Board and would not participate in any of the discussions pertaining to it.

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

Mr. Tony Basso, from Keach-Nordstrom Associates, representing the applicant, addressed the Board, stating that the economic climate had negatively impacted the ability to start the project. He also stated that nothing had changed on the property.

Acting Chairman Martin 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.

Acting Chairman Martin declared the matter before the Board.

Mr. Dearborn asked why there was a “For Sale” sign on the property. Attorney Basso replied that the applicant had the property permitted for a restaurant and he was actively marketing it to people interested in that type of business.

Mr. Nolin asked if the Board could approve the request with the stipulation that only a restaurant could be built on the property. Mr. Basso replied the applicant would have to go through the entire process again if anything else were to be built or if the use changed.

(A) Motion on the request for an extension of the un-activated Variance

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Ms. Shuman made a motion to approve the request for an extension of an un-activated Variance for a period of one-year.

Mr. Houle seconded the motion.

VOTE: Acting Chairman Martin asked Clerk Houle to poll the Board on the motion to approve the request for an extension of the un-activated Variance for a period of one-year, and to record the members’ votes, which were as follows:

Ms. Shuman	To approve
Mr. Houle	To approve
Mr. Dearborn	To approve
Mr. Nolin	To approve
Mr. Martin	To approve

Acting Chairman Martin declared that, there having been five votes to approve the request for an extension of the un-activated Variance for a period of one-year, the motion had carried.

(B) Motion on the request for an extension of an un-activated Wetland Special Exception

Mr. Houle made a motion to approve the request for an extension of an un-activated Wetland Special Exception for a period of one-year.

Ms. Shuman seconded the motion.

VOTE: Acting Chairman Martin asked Clerk Houle to poll the Board on the motion to approve the request for an extension of the un-activated Wetland Special Exception for a period of one-year, and to record the members’ votes, which were as follows:

Mr. Houle	To approve
Ms. Shuman	To approve
Mr. Dearborn	To approve
Mr. Nolin	To approve
Mr. Martin	To approve

Acting Chairman Martin declared that, there having been five votes to approve the request for an extension of the un-activated Wetland Special Exception for a period of one-year, the motion had carried.

IV. APPROVAL OF MEETING MINUTES

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The following changes were made to the minutes of the January 24, 2013, meeting:

Page 9 – “Mr. Martin, speaking on his motion, stated that he did “**not**” feel it was safe....the word “**not**” was added – Dearborn

Mr. Dearborn made a motion to approve the minutes of the January 24, 2013, meeting, as amended by the Board.

Mr. Nolin seconded the motion.

Acting Chairman Martin called for a verbal vote, and he then stated that all of the sitting Board members were in favor of approving the minutes of the January 24, 2013, meeting, as amended by the Board.

V. ADJOURNMENT

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

Ms. Shuman seconded the motion.

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

Acting Chairman Martin declared the meeting to be adjourned at 8:46pm.

Date: March 7, 2013

Normand Martin, Acting Chairman

Recorder: Trish Gedziun