



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 January 24, 2013

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:35pm on Thursday, January 24 2013, in the Paul Buxton Meeting Room in the Town Hall basement. Chairman Seabury 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, Jim Pacocha, Mike Pitre, Donna Shuman, and J. Bradford Seabury

Members

Absent: None (All present)

Alternates

Present: Gary Dearborn, Kevin Houle, and Maurice Nolin

Alternates

Absent: Maryellen Davis and Marilyn McGrath (Both excused)

Staff

Present: Julie Kennedy, Administrative Aide

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.

III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. **Case 182-056 (1/24/13): RPNT Properties, LLC, 22 Brady Drive, Hudson, NH, requests the following for property located at 36 Central Street, Hudson, NH:**
 - A. A Variance to allow a mixed use of a chiropractic medical office on the first floor and a residence on the second floor. [Map 182, Lots 056, Zoned TR, HZO Article III, Section 334-10, Mixed or Dual Use on a lot.]
 - B. A Variance to allow a chiropractic medical office within the TR Zoning District. [Map 182, Lots 056, Zoned TR, HZO Article V, Section 334-20, Allowed Uses Proved in Tables.]
 - C. A Variance to allow a freestanding sign to be located within the TR Zoning District. [Map 182, Lots 056, Zoned TR, HZO Article XII, Section 334-60, General Requirements.]

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

Mr. Martin made a motion for the Board to hear the case out of order as follows: Request (B), Request (A), & Request (C). He said that if the Board did not approve the request for a Variance (B), then the requests for Variances (A) and (C) would have become moot.

Ms. Shuman seconded the motion.

Chairman Seabury called for a verbal vote and he then stated that all of the sitting Board members were in favor of hearing the request for a Variance (B) first.

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Chairman Seabury explained that the matter was before the Board because the applicant was requesting three things that by a strict reading of the Zoning Ordinance, was not allowed. He said that the Residential Zoning District had been created to protect the small neighborhoods in the town.

Chairman Seabury read aloud a letter dated January, 2013, addressed to the Zoning Board of Adjustment, from Ms. Valerie Harnadek and Mr. Gary Webster, Officers of the American Legion, summarized as follows:

I have spoken to Dr. Roger Gosselin regarding his proposal to convert the existing property containing a two-family dwelling located at the above mentioned address into a professional office with residential living space above, and to also create an abutting single-family house lot. I was able to view his conceptual design and I have no objections to his re-development of this property. I believe it is a good use of this building and land, especially given its location.

Chairman Seabury read aloud a letter dated January 23, 2013, addressed to the Zoning Board of Adjustment, from Mr. Richard A. Maynard, from Maynard & Paquette Engineering Associates, LLC, summarized as follows:

We have been engaged by Ernest and Constance Dion, the abutters at 28 Central Street, Hudson, NH, to represent their concerns and interests with regard to the various proposals to develop the property at 36 Central Street at the corner of Chase Street. The latest proposal is a ZBA application for several variances to convert the existing house into a chiropractic office and doctors residence and to also subdivide off a 10,000 square feet building lot as indicated on the latest revised attached plan, dated January 4, 2013, revised January 22, 2013. The revisions that we especially appreciate include:

- 1. The removal of pavement within the setback along the westerly (common) property line at 28 Central Street plus the planting screen of at least 8 evergreen trees with a minimum of 6 feet vertical high.*
- 2. The elimination/removal of the continuous driveway across the property from Central Street to Chase Street by removal of the 1,368 square feet of pavement at the northwest corner of the garage/barn.*

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The commercial doctor's office traffic is now totally separated from the residential traffic to the proposed upstairs doctor's apartment.

Some of the concerns about the proposal of Dr. Roger Gosselin remain as follows:

- 1. The medical practice whether it is chiropractic, medical or dental be restricted to one full-time licensed practitioner and a maximum of 6 assistants/support staff. This would keep traffic to a reasonable amount now and in the future.*
- 2. The practice area shall be limited to the 1,200 square feet first floor of the building. The barn/garage building is to be limited to residential use and not the professional practice.*
- 3. The hours of operation are not noted. We suggest 9:00am – 7:00pm Monday through Friday; 9:00am – 1:00pm on Saturday; and perhaps one evening per week with a 9:00pm maximum.*
- 4. The upstairs residence shall be occupied by the family of the professional licensed practitioner operating the practice. The upstairs unit/apartment shall not to be a separate rental unit.*

With the above noted concerns incorporated into the proposals as stipulations of approval, the requested dual use (Variance) should have little to no impact. I, along with my clients, would have no objections granting the requested Variances with the stipulations as noted above.

(B) Discussion regarding the Request for Variance

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

Attorney Andrew Prolman, from Prunier & Prolman, Nashua, NH, addressed the Board, stating that the packet of information before the Board contained a new plan which he was submitting at this meeting. He said that the new plan, as referenced in Mr. Maynard's letter, prepared by Brown Engineering & Surveying, LLC, came about as a result of conversations with Mr. Maynard and some of the neighboring abutters.

Attorney Prolman said that the revised plan reflected the reduction of existing parking in the side setback to be replaced with the installation of a row of trees, and a portion of the

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connecting driveway from Central to Chase Streets would be taken out to accommodate the proposed two Uses of the property.

Attorney Prolman stated that there were two separate plans “up on the board”, The Gosselin ZBA Plan, and The RPNT Subdivision Plan. He said that he wanted the Board to know that a proposed three-lot subdivision plan was currently before the Planning Board but that if the Gosselin Plan were approved at this meeting, the RPNT Subdivision Plan would be pulled. He also said that the proposed subdivision plan had met all of the ZBA requirements and expected the proposed plan to be approved at the February 27, 2013, Planning Board meeting.

Mr. Pacocha asked what the existing use on the property was. Attorney Prolman replied that there was an existing vacant house on the property.

Attorney Prolman stated that the applicant used to operate his chiropractic business out of 37 Library Street, also known as Sophie’s Place. He also stated that the applicant currently operated his chiropractic business in Nashua but that he was interested in returning to Hudson.

Attorney Prolman said that the property would support the applicant’s wish to operate his business as well as have his residence in the same building. He said that the proposed first floor would consist of the medical office and the proposed second and third floors would consist of the residence.

Attorney Prolman said that the first floor would consist of approximately 1,200 square feet and would house the chiropractic medical office and reception area.

Attorney Prolman stated that the chiropractic office consisted of Dr. Roger Gosselin, and five part-time staff – three (physical) therapists and two administrative/clerical staff. He said typically, Dr. Gosselin would be working at the office with two or three other staff members.

Attorney Prolman stated that the proposed hours of operation would be as follows:

Monday	7:30am – 7:00pm
Tuesday	9:00am – 5:00pm – Administrative Day/No Patients
Wednesday	7:30am – 7:00pm
Thursday	9:00am – 5:00pm – Administrative Day/No Patients
Friday	7:30am – 4:30pm
Saturday	7:30am – 12:00pm
Sunday	No Office Hours

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Attorney Prolman stated that the house itself would stay as is except for cosmetic improvements and landscaping.

Attorney Prolman said that the applicant may or may not sub-divide the lot (creating a Lot #2) in the future and wanted the Board to know that it might be a possibility.

Attorney Prolman stated that the Board had a copy of a letter from Mr. Rick Cardinal, from Century 21, which indicated that he had discussed the plan at length and had given input with respect to the neighboring property values.

Attorney Prolman also stated that Board had a copy of a letter indicating support of the application signed by twenty six neighbors.

Attorney Prolman, speaking to the hardship criteria, stated that the lot was very unique in nature for the area. He further stated that the lot was an oversized town residential lot, with exposure on both Central and Chase Streets, and much of the neighboring properties were multi-family.

Chairman Seabury asked the Board if they wished to accept the revised plan. Chairman Seabury stated that all of the sitting Board members were in favor of accepting the revised plan.

Chairman Seabury noted that one of the changes in the revised plan was the number of parking spaces. Attorney Prolman stated that the Town of Hudson's Sub-Division and Site Plan Regulations required one parking space per every 300 square feet of medical office space. He further stated that under those regulations, the applicant was required to have four parking spaces but that the applicant did not feel that was enough. He said the applicant was proposing a total of eight customer/patient parking spaces in addition to the applicant's parking space on the residential side of the property, and two parking spaces for staff members in the rear of the building.

Attorney Prolman stated that granting the Variance would not alter the character of the neighborhood, nor would it have a negative effect on the public's health, safety, or welfare. He said that the applicant would be providing medical, chiropractic services, and the house would be lived in again with the addition of cosmetic updates. He also said that he did not feel that approving the applicant's request would decrease the surrounding property values.

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Attorney Prolman stated that he felt the applicant was proposing a reasonable use – the residential use would remain on-site with a proposed small medical office being added.

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. Pacocha asked how many employees/patients would be at the proposed office at any one given time.

Dr. Roger Gosselin, the applicant, addressed the Board, stating that some of his employees were licensed massage therapists, some were occupational therapists, and some were physical therapists. Dr. Gosselin said that, in addition to himself, he could have up to three or four clinicians, each having their own patient, at any one time. He said he did not feel the entire “yard” would be full at any one time.

Mr. Pacocha commented that there could be one patient waiting for each clinician in addition to the patient already being seen. Dr. Gosselin replied that was correct.

Mr. Pacocha asked if there would be any provision for staff parking on the residential side of the property. Dr. Gosselin replied that he would prefer not to.

Mr. Pacocha asked what would be the worst case scenario in terms of parking. Dr. Gosselin replied that he could not answer that in the absolute. He said that he had no control over weather, car accidents, or patients being late for appointments. He said there were simply too many variables involved.

Mr. Pacocha stated that the concern was that potential patients would park on Chase and Central Streets and they were very busy. Dr. Gosselin replied that he would discourage patients from parking on the street.

Mr. Dearborn stated that he agreed with Mr. Pacocha’s concern.

Mr. Martin commented that he felt Central Street was wide enough to accommodate parking on both sides but agreed that Chase Street was very heavily traveled.

Chairman Seabury commented that parking was not the providence of the Zoning Board of Adjustment.

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Chairman Seabury also commented that if the Board had a lot of concerns with respect to parking, perhaps it was because businesses were not an allowed use in a residential district.

Chairman Seabury stated that he felt situations like this one should be determined by the voters of the town in the form of a Warrant Article.

Mr. Pacocha asked how many of the twenty six neighbors that signed the letter of support owned the property. Attorney Prolman replied that he did not know. Dr. Gosselin replied that most of the people he spoke to did not own the property.

Ms. Shuman asked what size the lot would be after the sub-division. Attorney Prolman replied that the proposed Lot 1 was 28,000 square feet (0.65 acres) and the back lot was 10,000 square feet (.23 acres). Attorney Prolman added that the lot was one lot at the present time.

Ms. Shuman asked if the proposed lot sizes were large enough to accommodate the mixed use. Attorney Prolman replied that they were not but he had planned on discussing that as part of his testimony for the next Variance request.

Mr. Dearborn asked if there were parking allowed on Chase Street. Attorney Prolman replied that he did not know.

Mr. Martin commented that he was not prepared to approve something that may open a “Pandora’s Box.” He also commented that he felt it was a safety issue.

Mr. Pitre commented that he felt each case should be determined on its own merit.

(B) Motion regarding the Request for Variance

Mr. Pacocha made a motion to approve the request for a Variance, with the stipulations that the property shall remain owner occupied and the hours of operation shall be as Attorney Prolman testified to.

Mr. Pitre seconded the motion.

Mr. Pacocha, speaking on his motion, stated that he felt the applicant had met all of the criteria for a Variance.

Mr. Pitre, speaking on his second, stated that he felt the property was located in an area in town that had a high activity. He also stated that there were no abutters that expressed opposition to the application.

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VOTE: Chairman Seabury asked Clerk Houle to poll the Board on the motion to approve the request for a Variance (for Use), with the noted stipulations, and to record the members’ votes, which were as follows:

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

Chairman Seabury declared that, there having been three votes to deny the request for a Variance, and two votes to approve the request, the motion had failed.

Chairman Seabury stated that the motion had failed for lack of approval and asked if there were any other Board members who wished to make a different motion.

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

Ms. Shuman seconded the motion.

Mr. Martin, speaking on his motion, stated that he did not feel it was safe to allow the use on a property with such a high traffic use. He also stated that he felt the property was currently being used to its’ full potential, allowing a mixed use would diminish the surrounding property values, and he did not feel there were any special conditions on the property to allow a Variance.

Ms. Shuman, speaking on her second, stated that she agreed with what Mr. Martin had said. She said she did not feel there were any special conditions on the property to allow a Variance and agreed with the safety and traffic concerns as well.

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

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

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

Chairman Seabury stated that the applicant’s representative, Attorney Prolman, requested (in writing) to withdraw the remaining two requests without prejudice.

Mr. Martin made a motion to accept the request for withdrawals without prejudice.

Ms. Shuman seconded the motion.

VOTE: Chairman Seabury asked Clerk Houle to poll the Board on the motion to withdraw the remaining two requests without prejudice, and to record the members’ votes, which were as follows:

Mr. Martin	To accept the withdrawal without prejudice
Ms. Shuman	To accept the withdrawal without prejudice
Mr. Pacocha	To accept the withdrawal without prejudice
Mr. Pitre	To accept the withdrawal without prejudice
Mr. Seabury	To accept the withdrawal without prejudice

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

2. **Case 203-090 (1/24/13): Roger and Louise Roy, 6 Tamarack Street, Hudson, NH, requests the following:**

- A. A Variance to allow the proposed addition to be constructed within the front-yard setback; 30 feet required, 29 feet proposed. [Map 203, Lot 090, Zoned TR, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]
- B. An Accessory Living Unit to be located within the proposed addition. [Map 203, Lot 090, Zoned TR, HZO Article XIII A, Section 334-73.1, Accessory Living Units.]

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

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

Mr. Charles Okorie, representing the applicant, addressed the Board, stating that he had been commissioned by Mr. & Mrs. Roy to design an addition to the property.

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Mr. Okorie said that the person who was supposed to construct the addition said that the design was denied due to the fact that it encroached into the setback by one-foot.

Mr. Okorie said that the drawings clearly showed the esthetic enhancements to the property and would maintain its residential and single-family character. He also said that he felt the surrounding property values would be increased.

Mr. Okorie stated that he accommodated all of the requirements and that the applicant's mother would be occupying the proposed ALU.

Chairman Seabury stated that the applicant had filled out an Application for an Accessory Living Unit and indicated full compliance with all of the requirements.

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. Pacocha asked if the kitchen were being added along with the additional bedroom. Mr. Okorie replied that was correct.

(A) Motion regarding the Request for Variance

Mr. Pacocha made a motion to approve the request for a Variance to allow the one-foot intrusion into the setback.

Mr. Pitre seconded the motion.

Mr. Pacocha, speaking on his motion, stated that he felt granting the Variance would not be contrary to the public interest, and the applicant had met all of the criteria for a Variance. He also said that he felt that the hardship on the property was the existing location of the sunroom.

Mr. Pitre, speaking on his second, stated that he felt the applicant had successfully met all of the criteria for a Variance and it was in the spirit of the ordinance.

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

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

(B) Motion regarding the Request for an Accessory Living Unit

Mr. Martin made a motion to approve the request for an Accessory Living Unit.

Ms. Shuman seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt the applicant had met all of the requirements for an Accessory Living Unit and it would provide substantial justice to the applicant.

Ms. Shuman, speaking on her second, stated that she felt the applicant had successfully met all of the criteria for an Accessory Living Unit.

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

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

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

IV. OTHER BUSINESS

Mr. Martin made a motion to request that the Board of Selectmen appoint Attorney David LeFevre as a legal representative for the Zoning Board of Adjustment.

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Mr. Pitre seconded the motion.

Chairman Seabury called for a verbal vote, and he then stated that four of the sitting Board members were in favor of the motion and one Board member was not in favor. (Vote 4-1)

V. REORGANIZATION OF THE BOARD

Election of Officers (January, 2013)

Mr. Martin made a motion to seat a non-voting alternate member of the Board in place of Mr. Seabury for the purpose of electing a Chairman.

Mr. Pitre seconded the motion.

Chairman Seabury called for a verbal vote, and he then stated that all of the sitting Board members were in favor of seating a non-voting alternate member of the Board, in place of Mr. Seabury, for the purpose of electing a Chairman.

Mr. Dearborn assumed the role as Chairman in place of Mr. Seabury.

Mr. Dearborn asked if there were any nominations for the position of Chairman of the Board.

Mr. Pitre nominated Mr. Seabury for the position of Chairman of the Board.

Acting Chairman Dearborn called for a verbal vote and he then stated that all of the sitting Board members were in favor of electing Mr. Seabury for the position of Chairman of the Board. (Mr. Seabury abstained.)

Mr. Seabury returned to his seat as Chairman.

Chairman Seabury asked if there were any nominations for the position of Vice Chairman of the Board.

Mr. Martin nominated Mr. Pitre for the position of Vice Chairman of the Board.

Chairman Seabury called for a verbal vote and he then stated that all of the sitting Board members were in favor of electing Mr. Pitre for the position of Vice Chairman of the Board. (Mr. Pitre abstained.)

Chairman Seabury asked if there were any nominations for the position of Clerk of the Board.

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Mr. Pacocha nominated Ms. Davis for the position of Clerk of the Board. Chairman Seabury asked if there were any other nominations for the position of Clerk of the Board.

Mr. Martin nominated Mr. Dearborn for the position of Clerk of the Board.

Chairman Seabury called for a verbal vote, and he then stated that three of the five sitting Board members were in favor of electing Ms. Davis for the position of Clerk of the Board, breaking the tie. (3-2)

VI. APPROVAL OF MEETING MINUTES

The following changes were made to the minutes of the December 13, 2012, meeting:

Page 5 – “Mr. Randy Turmell” was changed to “Mr. Randy Turmel” – Mr. Dearborn

Page 12 – “however, ensured” was changed to “she assured the Board and her neighbors” – Seabury

Mr. Martin made a motion to approve the minutes of the December 13, 2012, meeting, as amended by the Board.

Ms. Shuman seconded the motion.

Chairman Seabury 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 December 13, 2012, meeting, as amended by the Board.

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 10:09pm.

Date: February 5, 2013

J. Bradford Seabury, Chairman

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Recorder: Trish Gedziun