



TOWN OF HUDSON

Zoning Board of Adjustment



J. Bradford Seabury, Chairman

Ben Nadeau, Selectmen Liaison

12 School Street • Hudson, New Hampshire 03051 • Tel: 603-886-6000 • Fax: 603-594-1142

HUDSON ZONING BOARD OF ADJUSTMENT MEETING MINUTES July 26, 2012

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:35pm on Thursday, July 26, 2012, 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: Maryellen Davis, Gary Dearborn, Kevin Houle, Marilyn McGrath, and Maurice Nolin

Alternates

Absent: None (All present)

Staff

Present: Bill 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.

III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

The following minutes for Case 182-125 were transcribed verbatim.

1. **Case 182-125 (7/26/12, Rehearing):** Hudson Library Street Associates, LLC., 253 Main Street, Nashua, NH, requests a Variance to allow the change of use from multi-tenant commercial to a multi-family residence for property located at 39 Library Street, Hudson, NH. [Map 182, Lot 125, Zoned TR, HZO Article VIII, Section 334-28, Nonconforming Uses, Structures, and Lots.]

The above notice was read into the record by Clerk Houle.

Ms. McGrath: Mr. Chairman, as I have done in the past, I am going to be stepping down on this case.

Chairman Seabury: Ms. McGrath will be stepping down and taking a seat in the audience.

Chairman Seabury: Who is here to speak for this case?

Attorney Gerald Prunier: I am Attorney Gerald Prunier from Prunier & Prolman in Nashua, NH, representing the applicant and with me this evening is Richard Maynard, the Project Engineer.

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We are here this evening asking for a Variance to change a building located at 39 Library Street from a commercial non-conforming use in the TR Zone to a multi-family residential building. We seek this Variance because at the present time, we feel that the area has significantly changed from when it was zoned TR. TR residential under the Zoning Ordinance for the Town of Hudson indicates that the district was intended to permit the continued use, maintenance, and vitality of the unique residential areas protecting their residential character while simultaneously limiting the expansion of the neighborhoods into adjacent undeveloped areas. The undeveloped land of that particular area does not apply – it's all been developed. So, when this happened, this TR District was for single-family residential. This area, as Mr. Maynard is passing out to you -- a schedule that he has prepared indicates that this is a multi-family. So we take the position that, under the Belanger v. Nashua case, that the neighborhood has changed and the zoning has not. So that, the Zoning Ordinance, in of itself, presents a hardship to our particular applicant. Also, the fact that the area's character has changed from a long time ago when – before the TR Ordinance went into effect -- from the single families to now the multi-families as well as some business aspects. Also, the intersection of Library Street has turned that whole area, with the signalization, into a very busy district. This has changed over the past twenty years and has caused a very major hardship on my client.

The granting of the Variance will not be against the public interest but more in line with the multi-tenant character of the area. As you can see from the list that's been provided to you, most of the buildings in the surrounding or close to the vicinity are multi-tenant.

The proposed use will observe the residential character of the ordinance. Removing it from the commercial aspect to multi-residential at least brings back the residential character of the neighborhood.

Substantial justice would be done to the property owner by granting the Variance because it would allow a use that the surrounding properties are using their properties for, in being in conformance with the present use of those pieces of property.

The proposed use will not diminish the values of surrounding properties, because it would be bringing back the residential character and the upgrading of the properties.

The special conditions that exist in the area are as indicated -- the intersection, and the changing of all of the other buildings in the surrounding area.

Are there any questions, before Mr. Maynard gives his speech?

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Chairman Seabury: No, sir.

Mr. Richard Maynard: For the record, Richard Maynard, Professional Engineer with Maynard & Paquette in Nashua. The New Hampshire Supreme Court case, Belanger v. Nashua and the simplex case talks about hardship and character of the neighborhood. This neighborhood is supposed to be a TR Residential Zone with single-family homes on small lots. This neighborhood contains numerous multi-unit and multi-family residential buildings as well as other non TR Zone uses. In the immediate vicinity of our property, there are fourteen non TR Zone type uses. The property before you is a multi-unit building. The request before you is to make it all multi-family residential which would be in character with the neighborhood. A residential use will make the building less non-conforming in this TR Residential Zone. Thank you.

Chairman Seabury: Mr. Maynard, you have given us a list which you describe as indicating that the neighborhood is not...is what you want it to be, instead of what it ought to be?

Mr. Maynard: That is an indication of what exists out - - - for non TR Zone uses.

Chairman Seabury: Now, I don't...I can't make an easy, quick comparison with what you have listed here but it looks to me as though there is at least one case here that isn't true.

Mr. Maynard: Which one is that, Mr. Chairman?

Chairman Seabury: Lot #4 – right across the street from your place.

Mr. Maynard: And what do you think that is?

Chairman Seabury: I think that is a two-family. The reason I think that is because the gentlemen that owns it has been before this Board three times attempting to make it a multi-family and we have denied it.

Mr. Maynard: I will tell you – and I can't remember specifically, but when I make my surveys, I look at electric meters, mailboxes, and front doors with addresses and that likely had three mailboxes if not three electric meters.

Chairman Seabury: It very possibly did, because...

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Mr. Maynard: Therefore, it is an existing use. Forget whether it is legal or not, it is an existing use.

Chairman Seabury: There's nobody living there, Mr. Maynard. If you go look through the window, as I have, you will find that the rooms are empty, vacant, bare, and dusty.

Mr. Maynard: We are all not allowed to do that kind of stuff, you know -- including you.

Mr. Oleksak: I was in there. It is a two-family building. It was modified, there was a lot of construction done in there. It was done via a permit and I was in there with the gentleman that owns it several times during the inspections. It is a two-family.

Mr. Maynard: Regardless, it is not a TR Zone use.

Chairman Seabury: It is important, because sitting here tonight I can't evaluate all of the others on the list.

Mr. Maynard: I beg to differ.

Chairman Seabury: The other issue is...

Mr. Maynard: I beg to differ.

Chairman Seabury: ...that I know of at least one, possibly on this list, but in the neighborhood, that is multi-family by action of this Board but that was an entirely different situation. The others have not been authorized by this Board. The fact that they exist is irrelevant.

Mr. Maynard: That's totally wrong, Mr. Chairman. The fact that you granted a Variance is irrelevant. It's the actual use. Legal/illegal, nonconforming/conforming, it's the character of the neighborhood – the actual use! It has nothing to do with whether you approved it, granted Variances or whatever. It's the character of the neighborhood, no more, no less.

This list has been with you folks for six weeks. It's the same one I gave you two months ago.

Chairman Seabury: I do not see this list of eight addresses as indicating that the majority of the homes are what you described.

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Mr. Maynard: I didn't say majority.

Chairman Seabury: How do you define the character of the neighborhood?

Mr. Maynard: I'm telling you that all these different uses are not TR Zone uses - that's all I'm telling you. It's a mixed neighborhood and not truly a TR Zone.

Chairman Seabury: Thank you.

Mr. Martin: I have an issue with Lot #3 on Central Street which is a big parcel - like 7 acres or something like that. It says that 4 to 5 residential units are in there. That is a single-family home, there's an elderly gentleman and an elderly woman that live in there and there's no other families. I travel that road all of the time, I walk down by it, because I live in this neighborhood, well, a little bit beyond, but I live in the neighborhood. It is a single-family home, it looks like a multi-unit but it is a single family home. There's one car or two cars that they own – so that's a single-family home. And then...

Chairman Seabury: Yes, and as I recall, its own private golf course in the back.

Mr. Martin: Okay. And then, 122 Central Street, we have here listed as a law office. That's a home occupation approved by this Board. It's not a multi-use and is very low impact, because I never see anyone going in or out of there.

Chairman Seabury: You will also find that that attorney very hard to get on the telephone.

Mr. Martin: To label the church and rectory as a multi-residential – well, I don't think the priests are staying at that rectory. I think the church, I'm not sure, I can look at it, has been there a lot longer than the building that we are talking about and it's an approved use. Whether it's approved or not, I think even though it's the character of neighborhood, I don't think that we can allow this use to happen on this property.

Chairman Seabury: Don't get ahead of the matter. What you are saying is that you, like me, do not accept this list as significant as was indicated.

Mr. Maynard: Well, right or wrong, the character of the neighborhood is what you see from the street.

Chairman Seabury: I thought you sat down.

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Mr. Maynard: I did? I finished talking to you.

Chairman Seabury: You started walking away. Okay.

Mr. Maynard: Regardless, whether they are legal, approved, Variances, or whatever. The character of the neighborhood is what the neighborhood appears to be. And this list tells you that this neighborhood is not a TR Zone, it's a mixed zone of numerous types of....

Chairman Seabury: What dictionary did you find that in?

Mr. Maynard: Read a few cases, Brad. Again, instead of twenty years ago, ok?

Chairman Seabury: Richard, I've been sitting here for over thirty years.

Mr. Maynard: When was the last time you read Belanger v. Nashua?

Chairman Seabury: The last time I read that was about three years ago.

Mr. Maynard: It talks about character of the neighborhood.

Chairman Seabury: Yes, it does.

Mr. Maynard: That's the argument here, the character of the neighborhood. It's a multi-unit building that's legal and we want to convert it to multi-residential instead of multi-unit. That's all this Variance is about.

Chairman Seabury: We may have a slight difference of opinion as to what the character of the neighborhood is.

Mr. Maynard: That's the matter before the Board.

Chairman Seabury: Let's go through the normal procedure, first. Is there anyone else present who wants to speak in favor, in opposition, or neutrally with question or comment with respect to this application?

Seeing none – I'll declare the matter before the Board. Ms. Davis?

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Ms. Davis: The only question I have is for the applicants, Mr. Chairman, and I would like them to address the criteria for the Variance. And most particular, I would like them to explain what they perceive the hardship on the property to be.

Chairman Seabury: I think a request would be particularly appropriate in view of the somewhat strange request for a rehearing, in which they said they were going to discuss the hardship in the Motion for Rehearing but didn't. So - I'm hoping I'll hear it tonight.

Attorney Prunier: I discussed it at the hearing. If you look at the Belanger case, what it says is...

Chairman Seabury: Excuse me, this is a new hearing, we are hearing new evidence.

Attorney Prunier: When a particular area in a neighborhood changes and it doesn't reflect what the Zoning Ordinance requires – like in this case, it's single-family versus what many of the units are - multi-family. That in of itself is a hardship for the use of that particular property. In addition thereto, I say that the changing of the intersection, the traffic that happened at the intersection of Central and Library Streets and the neighborhood as well as itself. All those things make it a unique piece of property, because it's at the central point of those two streets and the hardship is on that particular piece of property – for all of those reasons.

Chairman Seabury: Okay. Sir, in your Motion for Rehearing, you made a great issue about the fact that the Decision Statement had this statement that the Board felt there was no hardship and you talked about there not having been any discussion of “feeling” which I think is arrant nonsense. Four members of the Board who signed the Decision Sheets made statements about the hardship. What more could you ask?

Attorney Prunier: Your view over what that means and my view may be different. I presented what my view of that meaning was in my Request for a Rehearing. This would not be the first time that you and I have disagreed over the thirty one plus years that we have known each other. I don't think in those thirty one years that you and I were in any way dishonest with each other, and -- I was not dishonest with this Board when I said, based upon what I heard that evening, that the question of hardship was a problem. In fact, some of the members I heard that – say there was a hardship on this particular piece of property.

Chairman Seabury: I don't recall that.

Attorney Prunier: That's fine.

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Chairman Seabury: I do recall that one person did not find that there was a hardship but it seems to me – and he'll probably be testifying for himself in a moment, so I won't put words in his mouth, but it seems to me that he was testifying under a different concept.

Attorney Prunier: Everyone has their own understanding and I don't object. I don't disagree. That's what I heard.

Chairman Seabury: Okay, you have said everything you want to say about hardship in response to the request.

Attorney Prunier: Yes

Chairman Seabury: It has to do with your feelings that this neighborhood satisfies the same requirements as the Belanger v. Nashua case did.

Attorney Prunier: If I may -- I just want to read one little thing.

Chairman Seabury: Absolutely.

Attorney Prunier: I'm not going to be very long, but I just want to state what the Supreme Court said. This is a paragraph from page 397. This comes out of McLaughlin's book.

Both the Superior Court and the Supreme Court reversed the Board, noting that while the court recognized the desired interrelationship between the establishment of a plan for Community Development and Zoning, municipalities have an obligation to leave their Zoning Ordinance to reflect current characters of the neighborhood.

That's all I have to say.

Chairman Seabury: Thank you, sir. And, it is exactly for that reason that this Board periodically harasses the Zoning Administrator about what they feel is perhaps an insufficient amount of code enforcement, because they are concerned that exactly this type of situation will come up. If things are allowed to happen or not challenged, this issue comes up with an attorney standing before us saying that Belanger v. Nashua, therefore, we are all wrong.

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I'm a little concerned about the fact that nothing has been said about the Board's feeling that the uses that have been there were not allowed in the first place. It seems to me, that's a situation that must be considered also. I have not heard any testimony as to exactly what is being proposed and I'd like to hear that. Mr. Maynard, would you like to tell us what you are putting in the big house, what's in the small house, and how these things came about?

Mr. Maynard: Well, you have a site plan in your packet that shows this particular property. The plan was done by my office. There are two properties on the plan – the one with the building in question – the one where we are looking for a change from multi-unit to multi-residential, and then the other parcel is a single building with a single use in which a Variance had been granted many years ago for professional offices.

The proposal before you on the single building - the residential use eventually proposed when I go to the Planning Board would be totally conforming to the TR Zone. That's not necessarily before you tonight, it is a permitted use on that lot, it is the proper size, and meets all of the zoning criteria.

We are talking about the other larger building, the older building, otherwise known as Sophie's house.

Chairman Seabury: That's the way I know it.

Mr. Maynard: And, what's listed on the plan is four units of multi-family residential is what we would like. That's the number of units that are essentially in that building today – separate units went in that building. That's the particular request today. We would be amenable to going down to three units if that were the case, but that's what we are asking for -- three or four multi-family residential as opposed to three or four multi-units.

Chairman Seabury: But, the four units were never authorized, and you are telling us that doesn't make a difference.

Mr. Maynard: Well, the units are authorized.

Chairman Seabury: Not four.

Mr. Maynard: The number is indistinct. It was allowed for professional offices.

Chairman Seabury: You keep saying multi and in this town, multi means three or more.

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Mr. Maynard: No, we are in a TR Zone, so it is two or more, alright?

Chairman Seabury: In the TR Zone there should be one.

Mr. Maynard: Yes, but when you are in the TR Zone that only allows one unit, anything beyond that is considered multi – two, or three, or four.

Chairman Seabury: No, I won't accept that.

Mr. Maynard: I'm not using the so-called multi-family three or more definition. I'm using "multi" -- meaning "more than one." This building is an allowed multi-unit professional offices and it has five distinct units in it. The plan before you asks to be able to convert that to four residential units. To convert the units that are there into residential which is more conforming to the residential zone of TR – otherwise known as making this use less non-conforming – and that's the request before you.

Chairman Seabury: Thank you. I asked; and I got it. Mr. Martin?

Mr. Martin: Mr. Oleksak, do you currently have the approved 1984 site plan for this property on file?

Mr. Oleksak: 1984. It's in here...

Mr. Houle: It is in your packet.

Mr. Martin: The reason why I ask for that is because I've looked at the Registry of Deeds extensively on-line, and I found a drawing indicating that the property has two Variances in there for Area, not Use and it's signed by Dr. Sarris. It doesn't say specifically, it says, a Variance on setback and a Variance on lot size. There's no Variance...I didn't see a Variance to allow residential use within the mixed commercial use, and now we hear testimony that it was approved as mixed professional use.

Mr. Maynard: Excuse me, I never said that. I said multi-unit.

Mr. Martin: OK, multi-unit. What does "multi-unit" mean? I don't know. But, the residential uses on this property, for me, in my opinion, are self-created. Actually, you did say "multi-unit professional," so in that instance, where does the residential or apartments come in for this property - so it's a self-created problem -- and I'll say it -- from Dr. Sarris in 1984 – twenty eight years ago. So, because it's self-created, I feel I

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can't vote to continue to allow a residential use, when it was never approved and it is not allowed in this zone to begin with. It's self-created, and the argument that the intersection has changed – the intersection hasn't changed – there's a few little configurations and lights – the lights were added for safety, if I recall, and they had to stop that because there was asbestos in the area. So, the light doesn't make...I don't think the lights and the changes in the configuration, because they didn't lose any land there, doesn't qualify as part of a hardship.

“Character of the neighborhood” – each case is different. I feel that I had a hard time understanding that Belanger v. Nashua case because these judges or attorneys, which they were before, write such big words that you can't understand half the stuff they're saying. I don't feel that the hardship is the character of the neighborhood – that's a real bad hardship in my eyes, but the use was self-created so I couldn't vote tonight to approve a multi-residential use in the TR Zone.

Chairman Seabury: Any other questions or comments from members of the Board? Mr. Pitre!

Mr. Pitre: Ms. Davis.

Ms. Davis: It doesn't matter, I just have a comment. Currently, the property is enjoying a reasonable use – it has tenants and it has commercial. Whether it was approved by the town or not, it's enjoying the current use and it's reasonable. What the applicant is doing is trying to change that use to make it more intrusive on the property and hasn't demonstrated that there is a hardship for that particular use that would not allow the property to have its use. There's nothing here -- they haven't stated anything that says they don't have reasonable use of their property in the literal enforcement of the Zoning Ordinance.

Chairman Seabury: I agree completely.

Does that conclude your comment?

Ms. Davis: Yes, it was just a comment.

Mr. Pitre: I'm always in favor of residential units – most of the time. The list provided of the abutting properties and the spirit might be questioned, I agree 100%. I think there are some, at least two-family dwellings, quite a few in that area, but that's beside the point.

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Whether the pre-existing business use or mixed use was approved by the Board or not – we can't fix that at this point so talking about that stuff to me doesn't make any sense. We have to look at what's in front of us today and address what's there if we don't move forward with this current case - personal opinion.

The Motion for the Rehearing really had a lot of comments about the hardship criteria which I haven't heard, to be quite frank. The only hardship that I do see, and it's kind of funny, there's only one zone in the entire town that you can do a multi-family dwelling in anyway – the Business Zone only. I mean, that's kind of tough on the zoning as well as far as multi-family buildings and the people. Just moving forward, as we get smaller and smaller, multi-family buildings are going to be more and more prevalent in the future. So, just an observation on my part - you can't build anyplace else. They really haven't answered the hardship criteria, in my opinion.

Chairman Seabury: Are there other comments from members of the Board?

Mr. Pacocha: I guess I'd like a review of the property. I believe that this was granted a Variance for commercial use but not residential – is that correct?

Chairman Seabury: Yes, to the best of my knowledge. I don't even recall that we allowed two. I do recall that they were before us to allow a commercial use – where “commercial” at that time was anything that wasn't residential.

Mr. Pacocha: Well, I know at one point there was an electrolysis business in there, years ago. I wasn't aware of any others at the time.

Chairman Seabury: To me, as I said before when Mr. Maynard was speaking, it was Sophie's house -- one elderly woman lived there; it was a single-family home. My wife and I together, on several occasions, found her walking back from the super market and drove her home because she was carrying a bag of groceries. She was a town character. When she passed on, her heirs decided to attempt to get more income from the property. They came before us and I haven't looked up what the request was at that time. It might be, as Mr. Maynard has indicated that it was may have been for two businesses, I don't recall that there were for two. There certainly wasn't any discussion about apartments being upstairs. The building behind it came in and asked for, if I recall, it was something like a wellness center. Now it looks to me like it's a duplex which the Board most likely would have never authorized if it was before us as a request.

Mr. Pacocha: It gets to the point that apparently, over the time from when it was approved as a commercial use that somehow apartments started popping up in there. None of this was done through this Board or through any other legal channels.

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Chairman Seabury: No, it wasn't and Mr. Maynard is making the argument that that is irrelevant, and I don't really accept that irrelevancy, but he certainly can express his views.

Mr. Pacocha: The way I see is that you are rewarding deceitful people if you allow this to continue and I don't think that is a healthy practice for our community because...

Chairman Seabury: I don't think we need to accuse them of deceit; rather, that they might not have been aware. The situation is that it wasn't allowed – or requested.

Mr. Pacocha: Well, maybe my word was a little harsh, but nevertheless, it was done without the approval as it should have been. I don't feel that just because it's been gotten away with for a certain number of years that it should be rewarded for that type of activity. And being the fact that the zone doesn't even allow that many units - I just don't fathom it.

Chairman Seabury: Are there any other questions or comments?

Mr. Pacocha: And another thing, as far as the character of the neighborhood, is that if we go in and allow this, all it's going to do is encourage more and more people to do this type of activity and, the neighborhood will defiantly transition, rather than going after enforcement and correcting the situation.

Chairman Seabury: Absolutely, and there's a way to do that -- it's not by coming to the Zoning Board and asking for Variances -- it's by going to the Planning Board and asking them to re-zone the property to allow what you think should be there.

Mr. Pacocha: Yes, that's the process that should be.

Chairman Seabury: As it happens, last night there was a Planning Board meeting and a resident of the town who was standing there haranguing the Planning Board by saying they should not allow additional residential uses to commend because this was inevitably going to lead to expansion of the schools. The schools that exist, perhaps to build a new school, to staff them, both for instruction and maintenance, and he felt that was an unreasonable burden on the taxpayers. I see something similar here.

Mr. Pacocha: It would also be a bigger burden on the utilities, too.

Chairman Seabury: I also have a question on my mind. The very concept of four residences in that building -- where are they going to park?

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Mr. Pacocha: Well, I don't know how many cars would be involved, but I know, it was approved by the Planning Board when a Variance was granted for a commercial use, wasn't it? It should have been.

Chairman Seabury: For a commercial use, and a parking lot was allowed.

Mr. Pacocha: And the parking lot had to be of an adequate size for the business that was in there.

Chairman Seabury: The Planning Boards concept of what was required for parking for businesses has changed radically since then.

I parked in that parking lot this afternoon with my little Element, which is not a very large car and it seemed to me that I was taking up an awful lot of the parking lot.

Mr. Pacocha: Well, that would be an issue for the Planning Board. I would think even if this Board should approve this multi-unit, it would have to go to the Planning Board for approval.

Chairman Seabury: Absolutely.

Does anyone else have any questions or comments?

Ms. Davis: The only other comment I have and I'm sure Attorney Prunier would agree – Attorney LeFevre told me a very, very long time ago that just because one piece of property is in violation doesn't mean that it is OK for another piece of property to do the same thing.

Chairman Seabury: And I think that gets multiplied if there are several properties that are illegal. That doesn't mean that the whole neighborhood should be allowed to be that way. That's my way of thinking.

Mr. Pacocha: The unit across the street that they're claiming, that was denied and was kept at two ... I mean, this would create another law suit on behalf of the Town.

Chairman Seabury: Absolutely, they'd be coming right in next month saying hey, you allowed four across the street and denied me three, and I've got more property.

Mr. Pacocha: And I think they wanted four in that property at one time.

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Chairman Seabury: I don't recall that; I just remember three – repeatedly. Does the Board -- since the question was raised that the Board didn't discuss hardship, I want to make sure that the Board has discussed hardship to their hearts content. Does anyone have anything to say about the hardship that's being testified to here?

To me, as indicated by Ms. Davis, the hardship has to be something, amongst other things, that indicates you can't use the property appropriately, and I see no such hardship at all. Of course, my idea is that it would be a single-family house and there's certainly no question of hardship there.

If there are two businesses allowed, depending on what the parking situation is, and I don't recall precisely, but I think there's maybe five or six parking spots on that side.

Mr. Pitre: It shows six on the plan.

Mr. Pacocha: In my mind, for the majority of its existence, that home was a single-family home. I think it was built back in the 1930's.

Chairman Seabury: You're absolutely right. It was there when I came, that's all I know. Was that a corollary?

Mr. Martin: 1900

Chairman Seabury: Are there any other questions or comments?

Seeing none. Is anyone on the Board prepared to make a motion?

Mr. Martin: Mr. Chairman, I will move to deny the request.

Chairman Seabury: I have a motion. Is there a second?

Mr. Pacocha: I would be willing to second that motion.

Chairman Seabury: Would you speak to your motion please, Mr. Martin?

Mr. Martin: First of all, I'd like to say that the argument for the hardship on the property was for the character of the neighborhood and the changing of the intersection in reference to Belanger v. Nashua. From what I can understand of that from reading it, it was an extension of a non-conforming use and I don't see that here. There's no hardship on this property to show me that we should allow this multi-family. Number 1 on the Decision Sheet is Granting of the requested Variance will not be contrary to the public

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interest – threaten the public health, safety, or welfare. I feel that if we allow a multi-family use there near that major intersection, there could be some safety issues with traffic and the way they drive through there. Somebody could easily drive off the road and hit that building – people could be in there sleeping – I’ve seen it happen in Nashua many times. So, there are some safety concerns for me.

I don’t feel it observes the spirit of the ordinance by allowing a multi-family use. Substantial justice would probably be done for the property owner by granting the Variance but by us allowing it, we would be violating our own Zoning Ordinance by allowing that use, because it is not an allowed use in that zone. I also feel that the property values of the surrounding single-family homes would be diminished by allowing this use. That’s why I vote to deny this Variance.

Chairman Seabury: Thank you, Sir. Would you speak to your second, Mr. Pacocha.

Mr. Pacocha: Let’s see; I ought to address the zoning.

Mr. Maynard: I can’t hear him.

Chairman Seabury: Probably the world can’t, either. Mr. Pacocha, would you turn your microphone, a little toward you instead of toward Mr. Martin?

Mr. Pacocha: Unfortunately, I didn’t pay any attention to how the microphone went. “Granting the Variance will not be contrary to public interest since the proposed use does not conflict with the explicit or implicit purpose of the ordinance and does not alter the essential nature of the neighborhood.” It certainly does; it is in conflict. It is contrary to the Ordinance, in that this is a TR Zone, which is a single-family zone. “The proposed use will observe the spirit of the ordinance.” I would have to say “No.” I would have to say that the proposed use would not observe the spirit of the ordinance. The ordinance specifically calls for single-family homes in the TR Zone. I do think it would not outweigh the harm to the general public, because it would be encouraging others in this neighborhood to pursue the same route, and you would end up with extremely overcrowded neighborhoods. I feel that the diminution of surrounding properties could be a little subjective; I wouldn’t say one way or the other...And, as far as the hardship goes, this property has been used as a single-family residence for the majority of its existence, and I don’t see any fathomable way of claiming that there is a hardship on this particular property by not being able to convert it to multi-units. It’s just illogical to me.

Chairman Seabury: And, as often happens, I agree with everything you said.

Does any other member of the Board wish to comment? Seeing none, Mr. Houle would you poll the Board on the motion, please.

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

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

Chairman Seabury: There having been five votes to deny the request for a Variance, the motion carried.

End of verbatim transcription of minutes for Case 182-125.

Chairman Seabury stated that Ms. McGrath had returned to her seat as a non-voting alternate member of the Board.

2. **Case 247-088 (7/26/12):** James and Donna Monty, 2 Cherry Street, Hudson, NH, request a Variance to allow the existing shed to remain within the side and rear setbacks. The shed is located 7 feet from the side-yard setback and 10 feet from the rear-yard setback, where 15 feet is required in both cases. [Map 247, Lot 088, Zoned TR, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]

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

Chairman Seabury stated that he would step down from the case and Vice Chairman Pitre was seated in his place. Mr. Seabury took a seat in the audience section of the room.

Ms. Davis stated that she too would step down from the case as she was a personal friend of the applicant.

Acting Chairman Pitre seated Ms. McGrath in place of Mr. Seabury, who had stepped down.

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

Mr. James Monty, the applicant, addressed the Board, and read aloud a portion of the Application for a Variance summarized as follows:

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1. *Granting of the requested Variance will not be contrary to the public interest because we are on a small lot. All of the sheds in the area are on the corners of their lots.*
2. *The proposed use will observe the spirit of the ordinance because it looks normal in that location.*
3. *Substantial justice would be done to the property owner by granting the Variance because it would provide for easy access and use.*
4. *The proposed use will not diminish the values of surrounding properties because the shed will only enhance the property and the surrounding neighborhood.*
5. *Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship** because without the Variance I will not be able to store my yard/seasonal equipment safely and neatly.*

Acting Chairman Pitre 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 Pitre declared the matter before the Board.

Mr. Pacocha asked why the applicant could not put the shed on the opposite corner of the lot. Mr. Monty replied that the opposite corner was sloped and had numerous trees.

Mr. Pacocha asked if the existing shed was a permanent structure. Mr. Monty replied that it was on blocks and not permanent.

Mr. Pacocha asked how long the shed had been on the property. Mr. Monty replied that it had been there since February of 2012 and he had been under the impression that the company that installed the shed had pulled a permit.

Mr. Martin asked if there were anywhere else on the property that the shed could be placed. Mr. Monty replied that there was not.

Mr. Martin asked if the shed were visible from Philbrick Street. Mr. Monty replied that it was somewhat visible but that it would be less visible once the existing shrubbery grew.

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Acting Chairman Pitre asked what company installed the shed. Mr. Monty replied that it was Reeds Ferry.

Mr. Dearborn asked Mr. Oleksak why the building permit was denied. Mr. Oleksak replied that it was denied because it did not meet the setbacks. He also said that it had not been discovered that a building permit was not originally issued until the applicant had later requested an electrical permit.

Ms. McGrath commented that she felt it was unfortunate that the company that installed the shed had not been clearer on what permits needed to be pulled.

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

Ms. McGrath seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt the applicant had successfully addressed the criteria for a Variance, it was a reasonable use for the property, and the shed was adequately hidden by the existing shrubbery.

Ms. McGrath stated that she wished to amend her second to the motion by adding the stipulation that the existing screening of shrubbery be maintained. Mr. Martin agreed to the addition of the stipulation as did Mr. Monty.

Ms. McGrath, speaking on her second, stated that she felt the property had an inherent hardship because of its size and moving the shed would not be feasible. Ms. McGrath also stated that she felt the added stipulation would ensure adequate screening of the shed.

VOTE: Acting Chairman Pitre asked Clerk Houle to poll the Board on the motion to approve the request for a Variance, with the noted stipulation, and to record the members' votes, which were as follows:

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

Acting Chairman Pitre declared that, there having been five votes to approve the request for a Variance, with the noted stipulation, the motion had carried.

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Mr. Seabury returned to his seat as Chairman, with Mr. Pitre returning to his regular seat as a full voting member of the Board.

Chairman Seabury stated that both Ms. Davis and Ms. McGrath returned to their respective seats as non-voting alternate members of the Board.

- 3. Case 253-061 (7/26/12): John Foley, 72 Schaeffer Circle, Hudson, NH, requests an Accessory Living Unit (ALU) to be located within a proposed 24' x 28' addition. [Map 253, Lot 061, Zoned R-1, HZO Article XIII A, Section 334-73.3, Accessory Living Units.]**

Clerk Houle 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 applicant had requested a building permit to construct an ALU. He said that the applicant had decided not to construct a kitchen in the proposed addition, but to only have a bedroom and a living area. Mr. Oleksak said that a building permit had been granted for the construction of a bedroom and living area only.

Mr. Oleksak stated that subsequent to the issuance of the building permit, the applicant had again changed his mind and wanted to construct a full kitchen as part of the addition.

Mr. Oleksak then issued a Stop Work Order for the construction that had already started and advised the applicant to apply for an Accessory Living Unit.

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

Mr. John Foley, the applicant, addressed the Board, and read aloud from the Application for an Accessory Living Unit summarized as follows:

- 1. An ALU is allowed only in one-family dwellings. An ALU is not allowed in a two-family or multi-family dwelling, or any non-residential uses. An ALU is expressly prohibited in an Open Space Development. This site will conform to this requirement by: The ALU will be part of a single-family dwelling.*
- 2. An ALU is not allowed as a free-standing, detached structure or as part of any structure which is detached from the principal dwelling (submit pictures or drawings.) This site will conform to this requirement by: The ALU will be attached to the principal dwelling.*

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3. *An ALU is to be occupied only by immediate family members (by blood or marriage) of the owner of record of the principal dwelling. An ALU is not allowed in any principal dwelling in which the owner of record of the principal dwelling does not personally reside. This site will conform to this requirement by: The ALU will be occupied by me and my wife and the main house will be occupied by my son's family.*
4. *The front face of the principal dwelling structure is to appear as a one-family dwelling after any alterations to the structure are made to accommodate an ALU (submit pictures or drawings.) This site will conform to this requirement by: The front face of the building shall not change.*
5. *At least one common interior access between the principal dwelling unit and an ALU must exist. A second means of egress from an ALU must exist and be located at the side or rear of the structure. This site will conform to this requirement by: There will be a door to the principal dwelling and an exit door in the rear of the ALU.*
6. *Separate utility service connections and/or meters for the principal dwelling unit and an ALU shall not exist. (This does not preclude using a type of heating system for an ALU different from the type for the principal dwelling unit.) This site will conform to this requirement by: The ALU shall share electrical service, septic system, and well.*
7. *Off-street parking shall be provided to serve the combined needs of the principal dwelling unit and an ALU. This site will conform to this requirement by: There is a driveway with parking spaces and a three-car garage.*
8. *The gross living area (GLA) of an ALU shall not be less than 350 square feet, and shall not exceed fifty percent of the principal structure or 1,000 square feet, whichever is less. The above-grade GLA of the principal dwelling shall not be reduced to less than 850 square feet in order to accommodate the creation of an ALU. This site will conform to this requirement by: The ALU will be less than 1,000 square feet. The total living area of the ALU shall be 930 square feet.*

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9. *A Building Permit for an ALU must be approved and issued prior to the construction of an ALU. The ALUL shall have an interconnected smoke alarm per Section R313.2.1 of the 2009 IRC Building Code. This site will conform to this requirement by: The ALU shall have an interconnected smoke alarm system.*

Mr. Foley also read aloud the next five paragraphs indicating that he understood them.

Mr. Martin commented that for the record that the first paragraph should be stricken from the record, as it was no longer accurate.

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 asked if there were a pool on the property. Mr. Foley replied that there had been a pool on the property but that it had been removed several years ago.

Mr. Pitre asked if the existing structure above the garage consisted of two rooms. Mr. Foley replied that it did consist of two rooms.

Mr. Pitre asked what type of door would be between the family room and the living room. Mr. Foley replied that the door would be a six-panel unlocked door.

Ms. Davis asked if there would be a living area in any of the three garages. Mr. Foley replied that the garages would not have a living area but would be used for parking and storage.

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

Mr. Pacocha seconded the motion.

Mr. Pitre, speaking on his motion, stated that this ALU was exactly how the Board envisioned an ALU should be. He said that he did not feel the ALU would change the character of the neighborhood, it would have two separate entrances, and it was well designed.

Mr. Pacocha, speaking on his second, stated that the applicant had successfully met all of the criteria for an ALU.

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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. Pitre	To approve
Mr. Pacocha	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 an Accessory Living Unit, the motion had carried.

- 4. Case 179-007 (7/26/12): Robert Laroche, 114 Kimball Hill Road, Hudson, NH, requests an Equitable Waiver to allow the existing garage to remain within the wetland setback. [Map 179, Lot 007, Zoned G-1, HZO Article IX, Section 334-33, Wetland Special Exception.]**

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

Mr. Seabury stated that he would step down from the case and Vice Chairman Pitre would be seated in his place. Mr. Seabury took a seat in the audience section of the room.

Acting Chairman Pitre seated Ms. Davis in place of Mr. Seabury, who had stepped down from the case.

Acting Chairman Pitre asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak replied that the case was before the Board because the property had been for sale and a realtor had telephoned him requesting what the location of the garage was with respect to the wetlands.

Mr. Oleksak further explained that he had discovered old plans which showed that the Planning Board had approved a lot that was cut out from the original property in 1996 "with no objections to the original location of the existing things on the plan." He said that he discovered plans that dated back even further, including one that showed the location of a septic system in addition to the location of the garage and well.

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Mr. Oleksak said that this property had been before “Boards” a couple of times and permits were issued for the structures. He also said that, after consulting with Mr. Seabury, it was decided that granting an Equitable Waiver was the only way to really clean up the non-conformity.

Mr. Dearborn asked if the wetlands could have expanded over the years. Mr. Oleksak replied that it was possible that they had and there had been more beaver activity.

Mr. Dearborn asked how far the existing garage was from the wetland. Mr. Oleksak replied that the garage was approximately 20 feet away from the wetland.

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

Mr. Robert Laroche, the applicant, addressed the Board, stating that over the years the wetlands had encroached onto his property. He said that he had trees on his property that were now in the water which were not 18 years ago when he had purchased the property.

Mr. Laroche stated that the issue of the garage being too close to the wetlands had never come up in 18 years despite the fact that he had pulled an electrical permit and had his lot subdivided.

Application for an Equitable Waiver

1. INNOCENT MISTAKE. The structure was built when I purchased the property in July, 1994. I was never told and was not aware that any structure was in violation.
2. DISCOVERED TOO LATE. On 7-9-12 a potential buyer of property discovered the violation and backed out of the contract to buy my home.

Mr. Martin asked if a portion of the house was also too close to the wetlands. Mr. Oleksak agreed that it was.

Acting Chairman Pitre 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.

Mr. Pacocha asked if there were any excess oils or gases being stored in the garage other than the gasoline in the car. Mr. Laroche replied that there was not.

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Mr. Pacocha made a motion to approve the request for an Equitable Waiver.

Ms. Davis seconded the motion.

Mr. Pacocha, speaking on his motion, stated that he felt the applicant had successfully addressed the criteria for an Equitable Waiver, the structure had been in existence for more than ten years, and there had been no code enforcement issues.

Ms. Davis, speaking on her second, stated that she felt the record should reflect that the Board had decided that the Equitable Waiver should cover both the garage and the corner of the house. Ms. Davis also stated that in both instances, the applicant had demonstrated that the structures had been in existence for more than ten years, there had been no code enforcement issues, and bringing the structures into conformity would have a high correction cost.

VOTE: Acting Chairman Pitre asked Clerk Houle to poll the Board on the motion to approve the request for an Equitable Waiver, for both the corner of the house and the garage, and to record the members' votes, which were as follows:

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

Acting Chairman Pitre declared that, there having been five votes to approve the request for an Equitable Waiver for both the corner of the house and the garage, the motion had carried.

Mr. Seabury returned to his seat as Chairman, with Mr. Pitre returning to his seat as a full voting member of the Board.

Chairman Seabury noted that Ms. Davis also had returned to her seat as a non-voting alternate member of the Board.

IV. APPROVAL OF MEETING MINUTES

The following changes were made to the minutes of the June 28, 2012, meeting:

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Page 5, 7th paragraph – “That she felt that did not present a conflict and asked if anyone present disagreed” was added to the last line of the paragraph – McGrath

Page 6, 3rd paragraph – “on other sites along Route 102” was added to the last line of the paragraph – Seabury

Page 9, 3rd paragraph – “Mr. Martin moved to accept the withdrawal without prejudice. Ms. McGrath seconded the motion.” This text was added to the last line of the paragraph – Martin

Page 10 – The case was identified under V. Request for Rehearing – McGrath

Page 10 – under sub-paragraph 3 – “Mr. Martin responded that he denied the request because there was no documentation showing that the property was of a mixed use” was changed to “Mr. Martin responded that he denied the request because there was no documentation showing that the property was of a town approved mixed use” – Davis

Page 11, under sub-paragraph 9 – “approved by the Planning Board.” was added to the end of the sentence - Davis

Mr. Martin made a motion to approve the minutes from the June 28, 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 from the June 28, 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 9:55pm.

Date: October 5, 2012

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J. Bradford Seabury, Chairman

Recorder: Trish Gedziun