



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 June 28, 2012

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:35pm on Thursday, June 28, 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, Donna Shuman, and J. Bradford Seabury

Members

Absent: Jim Pacocha (Excused) and Mike Pitre (Excused)

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

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II. SEATING OF ALTERNATES AND ANNOUNCEMENTS

For the benefit of all attendees, Chairman Seabury noted that copies of the agenda for the meeting, as well as an outline of the rules and regulations governing hearings before the Zoning Board of Adjustment, were available at the door of the meeting room. He noted the outline included the procedures that should be followed by anyone who wished to request a rehearing in the event the Board's final decision was not felt to be acceptable. Chairman Seabury pointed out that the Board allowed rehearings only if collectively convinced by a written request that the Board might have made an illogical or illegal decision or if there were positive indications of new evidence that for some reason was not available at the hearing.

Chairman Seabury seated Ms. McGrath in place of Mr. Pitre, who was excused and seated Mr. Houle in place of Mr. Pacocha, who was also excused.

III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. **Case 174-079 (6/28/12): Scott and Linda Campbell, 25 Derry Street, Hudson, NH, requests a Variance to allow the existing lot to be subdivided from one lot into two lots; the proposed second lot would have approximately 11,092 square feet of property with 87.17 feet of frontage off of Haverhill Street, where 90 feet of frontage is required. [Map 174, Lot 079, Zoned TR, HZO Article VII, Section 334-27, Table of Dimensional Requirements.**

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

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

Mr. Richard Maynard, from Maynard & Paquette Engineering, Inc., representing the applicant, read aloud from 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 the creation of the additional residential lot would have no negative impact on the character of the neighborhood as the proposed lot would be consistent with the size and nature of surrounding parcels.*
2. *The proposed use will observe the spirit of the ordinance because the subdivision would create a proposed residential lot, meeting all other requirements per the ordinance, in a neighborhood of similar lots of the same use.*
3. *Substantial justice would be done to the property owner by granting the Variance because granting of the Variance would allow for the opportunity to subdivide off of a piece of unused land presently remote & unutilized from the existing residence.*
4. *The proposed use will not diminish the values of surrounding properties because the proposed lot created by the subdivision of the overall parcel would be consistent with the surrounding parcels in nature and size and would have no adverse impact on those properties.*
5. *Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship** because given the size and shape of the lot and the existing frontage on two roads, subdivision of the parcel to create two useable lots is reasonable. Literal enforcement of minimum frontage requirements when said frontage for each lot exists on two different/opposite roads would create an undue hardship in preventing any subdivision of the overall lot.*

Chairman Seabury asked if there were anyone else present who wished to speak in favor or in opposition or neutrally with regard to the application. No one else came forward.

Chairman Seabury declared the matter before the Board.

Mr. Martin commented that he was concerned that the proposed driveway on Haverhill Street would have a direct line of sight with Vernon Street.

Mr. Maynard replied that he felt the streets in question had relatively low traffic flow and the more important consideration was that there was adequate site distance from the left and right of the proposed driveway as vehicles would exit.

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Mr. Martin asked Mr. Oleksak if the driveway would be included as one of the things the Town Engineer would look at. Mr. Oleksak replied that it would be included.

Ms. Davis said that Mr. Scott Campbell had signed a letter authorizing Mr. Maynard to represent his interests in this case, and she further asked if the other owner of record, Ms. Linda Campbell, had also signed a similar letter. Mr. Maynard replied that Mr. & Mrs. Campbell had recently gone through a divorce and Mr. Campbell was the sole owner. (Mr. Maynard did point out that he did not think that Mr. Campbell's sole ownership was reflected on the deed yet.)

Ms. McGrath asked if this particular case had been before the Board in the past. Mr. Oleksak replied that it had not.

Ms. McGrath asked for confirmation that none of the adjacent buildings encroached onto the lot. Mr. Maynard replied that they did not.

Ms. McGrath also expressed concern for the proposed location of the driveway off of Haverhill Street.

Ms. Davis asked if the intended use on the subdivided lot was for a single-family resident. Mr. Maynard replied that it was.

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

Mr. Houle seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt it was a good use of the property with the stipulations that the adjacent property on Lot 96 did not encroach onto the lot and that the Variance would be subject to approval by the Town Engineer and the Planning Board with respect to the driveway location.

Mr. Houle, speaking on his second, stated that he agreed that it was a good use of the property and it was in character with the neighborhood. He also said that he was concerned with the location of the proposed driveway but felt that the second stipulation listed in the motion covered his concern.

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

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Mr. Martin	To approve
Mr. Houle	To approve
Ms. Shuman	To approve
Ms. McGrath	To deny
Mr. Seabury	To approve

Chairman Seabury declared that there were four votes to approve the request for a Variance, with the noted stipulations, and one vote to deny the request for a Variance, the motion had carried.

2. Case 173-034 (6/28/12): Landmark Crossing, LLC, 11 Northeastern Boulevard, #140, Nashua, NH, requests the following for the property located at 46 Derry Street:

A. A Variance to allow a 57” x 62” expansion to the existing nonconforming freestanding sign. [Map 173, Lot 034, Zoned TR, HZO Article VIII, Section 334-31, Alteration and Expansion of Nonconforming Structures.]

B. A Variance to allow the expanded freestanding sign to be located 11 feet from Derry Street, where 25 feet is required. [Map 173, Lot 034, Zoned TR, HZO Article XII, Section 334-60 (C) and (E), General Requirements.]

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 permission to expand the existing sign on the property located at 46 Derry Street. He noted that the existing sign was already at its maximum size. He also said that the existing sign became closer to the street when the road was widened.

Chairman Seabury stated that the Board would hear the request for a Variance, section (B) first.

Ms. McGrath stated that she served as an alternate member of the Planning Board and that one of her colleagues, who also served as a member of the Planning Board, was a tenant in the property and she felt that did not present a conflict and asked if anyone present disagreed. There was no one present who expressed concern.

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

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Attorney Peter W. Bennett, from Winer and Bennett, LLP, representing the applicant, addressed the Board, stating that there were eight tenants in the building and the existing sign only had space for four tenants. He also stated that the property was located in the TR Zone rather than the Business Zone, which changed the setback requirements from 25 feet to 30 feet. He said that the proposed sign would be approximately 5 feet from the road.

Attorney Bennett read aloud a portion of the Application for a Variance, summarized as follows:

- 1. Granting of the requested Variance will not be contrary to the public interest because it will provide for the expansion of a well-designed sign to permit identification of the tenants in the commercial building on Derry Street. This is consistent with the implicit purpose of the ordinance to provide signs that are of sufficient size to adequately advise the general public as to the use of the building and the identity of the tenants. The expansion of the existing sign would not be inconsistent with the essential character of the neighborhood, as there are numerous other freestanding signs on the owner's property on other sites along Route 102.*
- 2. The proposed use will observe the spirit of the ordinance because the sign will provide a well-designed and more visible sign to permit the better identification of the tenants at the property. The expansion of the sign will have no negative impact on the public health, safety or welfare.*
- 3. Substantial justice would be done to the property owner by granting the Variance because it would provide better visibility for the tenants in the building thus benefiting their businesses. Such benefit would outweigh any possible harm to the general public that would be caused by the expansion of the sign.*
- 4. The proposed use will not diminish the values of surrounding properties because the increase and size of a well-designed freestanding sign will be the same or better quality as other signs in the neighborhood.*
- 5. Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship** because: The owner submits that there is a hardship relating to the special conditions of the property in that the restriction as applied to the property by the ordinance, does not serve the*

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particular purpose of the restriction in a fair and reasonable way. The building is in a neighborhood where several freestanding signs are located on other properties. Because of the location of the building, as well as the location of several other signs in the neighborhood which are closer to Derry Street than the owner's freestanding sign, a larger sign is needed to permit those vehicles proceeding south on Derry Street to be able to identify tenants in the building. The imposition of the restriction is not reasonable under the circumstances because it does not permit the owner to properly and fully display the identification of the tenants in the building with the current sign.

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

Mr. Joseph Fuoco, Manager of the property, addressed the Board, stating that he wanted to stress the visibility of the sign as the hardship and was in favor of the application.

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.

Ms. Davis asked what the sign would look like in its finished state and if it would be any type of electronic sign and how it would be illuminated.

Attorney Bennett replied that it would not be an electronic sign, and it would be externally illuminated.

Mr. Dearborn asked why the proposed addition to the sign could not have been closer to the building instead of the road. Attorney Bennett replied that it would be more visible in the proposed location.

Mr. Dearborn asked what the maximum amount of tenants was. Attorney Bennett replied that the building currently consisted of the maximum amount of eight tenants.

Ms. McGrath commented that she was concerned that a future owner could turn the sign into an electronic sign. She further commented that she would be comfortable if there were a stipulation that guaranteed that would not happen.

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Ms. Shuman stated that the ordinance clearly prohibited electronically changing signs from the TR Zoning District.

Mr. Dearborn asked how close the proposed sign would be to the sidewalk. Attorney Bennett replied that he “assumed the distance would be a couple of feet from the road.”

Chairman Seabury commented that he felt the applicant could greatly enhance the visibility of the existing sign if the shrubbery were removed.

Chairman Seabury also commented that the neighboring existing signs were not approved by the Zoning Board and that he felt the applicant was asking for permission to make an already non-conforming sign more non-conforming.

Ms. McGrath commented that because the building had the appearance of being a duplex, she felt adding a second sign would be more preferable than expanding the existing sign. She further commented that she was not sure if that was allowed.

Mr. Houle commented that he felt moving the sign closer to the road could be a safety issue.

Mr. Houle made a motion to deny the request for a Variance with respect to (B).

Ms. McGrath seconded the motion.

Mr. Houle, speaking on his motion, stated that he felt there were alternate ways to gain more signage rather than moving the sign closer to the road. He also said that he did not agree that there was a hardship on the property.

Ms. McGrath, speaking on her second, stated that she agreed that the property did not have a hardship that necessitated increasing the size of the sign and also felt that the proposed proximity to the road could be pose a safety issue.

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

Mr. Houle	To deny
Ms. McGrath	To deny
Mr. Martin	To deny
Ms. Shuman	To deny

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Page 10, 5th paragraph – “Mrs. Therese C. Boissonneault” was changed to “Mrs. Theresa C. Boissonneault” – Mr. Houle

Mr. Martin made a motion to approve the minutes from the May 24, 2012, meeting, as amended by the Board.

Ms. McGrath 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 May 24, 2012, meeting, as amended by the Board.

V. REQUEST FOR A REHEARING

1. **Case 182-125 (5/24/12): Hudson Library Street Association, LLC, 253 Main Street, Nashua, NH, requests the following for property located at 39 Library Street.**

A. A Variance to allow the change of use from multi-tenant commercial to a multi-family residence. [Map 182, Lot 125, Zoned TR, HZO Article VIII, Section 334-28, Nonconforming Uses, Structures, and Lots.]

Ms. McGrath stated that she would step down from the case and Chairman Seabury seated Mr. Dearborn in her place. Ms. McGrath took a seat in the audience section of the meeting room.

Mr. Martin made a motion to suspend reading the Motion for Rehearing into the record.

Ms. Shuman seconded the motion.

Chairman Seabury called for a verbal vote, and he then stated that three of the five sitting Board members were in favor of suspending the reading.

Recorder’s Note: A portion of the Motion for Rehearing as well as comments made by members of the Board is summarized below:

Hudson Library Street Associates, LLC (the applicant) and through its attorneys, Prunier & Prolman, P.A., states the following:

1. The Applicant requested a Variance to allow a change of use from multi-tenant commercial to a multi-family residence.

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2. The Applicant's request for a Variance was denied by the Hudson Zoning Board of Adjustment on May 24, 2012, and the Applicant requests a rehearing.
3. The notice of denial to the Applicant states that the reason for denial was that the Board had a "feeling" there was no evidence of "hardship."

Comment: Mr. Martin responded that he denied the request because there was no documentation showing that the property was of a town-approved mixed use.

4. The Applicant states that neither at the meeting nor in the meeting minutes was such a "feeling" discussed.

Comment: Chairman Seabury stated that he felt the Board did discuss the fact that there was not any hardship on the property.

5. Nevertheless, the Applicant will address the hardship issue in this Motion for Rehearing.

Comment: Mr. Martin pointed out that the hardship issue was never addressed in the Motion for Rehearing.

6. The evidence presented by the Applicant as to the prior use indicated that it had been used as a mixed use for years, which was recognized by at least one member of the Board. The evidence produced indicated that this mixed use had been on-going for over 20 years.

Comment: Chairman Seabury acknowledged that while there was one member of the Board who agreed with the above statement the Board had never given authorization for a mixed use on the property.

7. This use by the Applicant's predecessor is confirmed by the Town Assessor's records and the records of the Building Department.

Comment: Chairman Seabury replied that he did not agree that the "use" was confirmed by the Building Department and that as Attorney Prunier well knew the Assessor's records are irrelevant.

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8. The Applicant submitted evidence that the surrounding properties on Central Street and Library Street were being used for multi-family uses and/or commercial uses.

Comment: Mr. Martin pointed out that it was not an allowed use whether evidence was presented or not.

9. The Applicant's evidence clearly stated that there had been a change in the neighborhood since the original zoning.

Comment: Mr. Martin pointed out that the change in use had been self-created, and again, was never approved by the Planning Board.

10. In the case of Mary Belanger +a., Vs. The City of Nashua +a, 121 N.H. 389, 393, (1981), the New Hampshire Supreme Court recognized that zoning ordinances had to reflect the character of the neighborhood and upheld a Variance to change the use of a building.

11. Clearly, the Applicant's proposed use was within the character of the neighborhood.

Comment: Mr. Martin acknowledged that there was at least one other property being used as a mixed use, but again, this particular case had not been approved by the Board and was self-created.

12. The Board's vote, in not granting requested the Variance when the use was in conformity with the surrounding area, namely multi-family, was unreasonable and unlawful.

Comment: Chairman Seabury commented that he did not feel that this statement was correct.

Ms. Shuman stated that she did not feel that the Board made an unlawful or unreasonable decision but asked whether or not the actual decision should be clarified in another hearing. Chairman Seabury replied that he did not see the need to do so in this case.

Ms. Davis commented that she had interpreted item #5 on the Motion for Rehearing as being that the intent of the applicant's representative, Attorney Prunier, was to address the hardship piece of the request at the actual rehearing should it be granted. Ms. Davis

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further commented that she did not think there were any members of the Board who questioned the hardship piece of the request.

Mr. Martin stated that he felt Attorney Prunier and Mr. Maynard had given conflicting information at the original hearing and thought it might have been a good idea for the Board to rehear the case.

Mr. Martin made a motion to rehear the case.

Ms. Shuman seconded the motion.

VOTE: Chairman Seabury asked Clerk Houle to poll the Board on the motion to rehear the case, and to record the members' votes, which were as follows:

Mr. Martin	To rehear
Ms. Shuman	To rehear
Mr. Dearborn	Not to rehear
Mr. Houle	To rehear
Mr. Seabury	Not to rehear

Chairman Seabury declared that, there having been three votes to rehear the case, and two votes not to rehear the case, the motion had carried. Chairman Seabury stated that the Board would rehear the case at the next scheduled meeting which was July 26, 2012.

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 9:36pm.

Date: July 10, 2012

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J. Bradford Seabury, Chairman

Recorder: Trish Gedziun