



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 April 26, 2012

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:30pm on Thursday, April 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, J. Bradford Seabury, and Donna Shuman

Members

Absent: Jim Pacocha (Excused) & Michael Pitre (Excused)

Alternates

Present: Maryellen Davis, Gary Dearborn, and Kevin Houle

Alternates

Absent: Marilyn McGrath (Excused)

Staff

Present: Bill Oleksak, Zoning Administrator

Recorder: Trish Gedziun

April 26, 2012

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 Mr. Dearborn in place of Mr. Pacocha, who was excused, and seated Ms. Davis in place of Mr. Pitre, who was also excused.

III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. **Case 199-009 (4/26/12, Rehearing): Robert N. Dumont, 60 Pelham Road, Hudson, NH, requests a Home Occupation Special Exception to allow the sale of firearms within the existing home. [Map 199, Lot 009, Zoned G, HZO Article VI, Section 334-24, Home Occupations.]**

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

Chairman Seabury explained that the Board had made a decision to allow this Home Occupation Special Exception at the February 23, 2012, meeting. He further explained that he had subsequently asked the Town Attorney how the Board should handle future requests involving "house sales." Chairman Seabury stated that the Town Attorney's response was that such an exception was not allowed at all. He said that, following that discussion, the Board had decided to reconsider the case – pointing out that the Board was within its right to reconsider cases within the allowed thirty day time period.

Chairman Seabury read aloud from a letter dated April 20, 2012, addressed to the Zoning Board of Adjustment, from Denise Babcock, 59 Pelham Road, summarized as follows:

*RE: Case 199-009 – Rehearing – Robert N. Dumont
Home Occupation Special Exception to Allow Sale of Firearms within
Existing Home*

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 26, 2012

This letter serves as an abutter comment for this case, as I will not be able to attend the rehearing. Due to prior work commitments, I was also unable to attend the first hearing so I wanted to inform the committee in writing that not all abutters are in favor of allowing this exemption.

I am extremely upset at the thought that a significant number and style of firearms might be stored and sold from this residential home. The fact that the committee initially approved this request with the stipulation of a home security system did not make me feel any safer, or more secure in my own home that I've lived in for over twenty years. I firmly believe that access to guns is a growing problem in this state and the country (not the guns themselves) and needs more regulation. In my opinion, breaking and entering into a local residential home to steal weapons is far easier than in a commercially-secured establishment. The recent spate of home break-ins in the area makes me very aware of this possibility.

I do not want to cause a financial hardship for a neighbor, or anyone else for that matter, and in this instance, I don't believe denying this exception would cause a financial difficulty because the homeowner is free to open a secure gun shop store in a commercial area with commercial-grade security systems in place.

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

Mr. Robert N. Dumont, the applicant, addressed the Board, and stated that he was present to ask for “a Variance to a Home Occupation Special Exception which enables me to have a home-based FFL.” (Federal Firearms License)

Chairman Seabury clarified that the applicant was or should have been asking for a Home Occupation Special Exception and not a Variance.

Mr. Dumont asked if it were the wrong time to ask for a Variance. Chairman Seabury replied that the applicant had not applied for a Variance and the case would have to be re-notified if that was the intended request. He also added that there was an entirely different set of requirements for a Variance.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 26, 2012

Mr. Dumont stated that it was his understanding that retail sales were an allowed use in the district that he lived in – District G. Chairman Seabury replied that retail sales were not allowed as part of a Home Occupation Special Exception.

Mr. Dumont stated that he wanted to obtain a Variance.

Mr. Dumont stated that he did not wish to waste anyone's time and said if the Board had just denied the request at the initial meeting on February 23, 2012, he would not have wasted \$5,000.00 preparing for his home occupation.

Chairman Seabury replied that the issue was that the Zoning Ordinance specifically prohibited allowing any home sales as part of a home occupation. He further stated that the town did not want houses to turn into stores.

Chairman Seabury informed Mr. Dumont that he had the right to request a Variance from that requirement.

Chairman Seabury said that the Board could not grant permission to sell anything (out of the home) that was not produced, manufactured or modified on-site. Mr. Dumont stated that he had planned on offering a gunsmith service out of his home and that he had stated that at the last meeting. Mr. Dumont noted that he was presently taking courses to become a gunsmith.

Mr. Dumont read aloud from the Home Occupation Special Exception Application as follows: *“A home occupation is a sales or service operation for goods produced or services provided on-site and is permitted only as a special exception upon approval by the Zoning Board of Adjustment.”*

Mr. Dumont questioned why the application read as “goods produced or services provided on-site.” He further stated the intent of a providing a Home Occupation Special Exception was to allow the growth and development of a small in-home business while maintaining the character of residential area. Mr. Dumont maintained that he did not live in a residential neighborhood.

Mr. Dumont also quoted from the application that *“the applicant acknowledges that if the business grows and no longer meets the list of requirements, the business shall be moved to an appropriately zoned location such as a business, general or industrial area.”*

Chairman Seabury commented that what Mr. Dumont was pointing out was that the application form was flawed.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 26, 2012

Mr. Dumont commented that he had picked up the application at the Building Department and there was nothing on it that indicated firearms could not be sold out of the home.

Chairman Seabury said that section 334.24 from the Hudson Zoning Ordinance stated that *“On-site retail sales are an expressly prohibited Home Occupation Special Exception use.”*

Chairman Seabury said that he felt he should have asked Mr. Dumont to read through his entire application at the February 23, 2012, meeting – as was the usual practice of the Board. He said that may have sparked further conversation on behalf of the Board.

Mr. Dumont commented that he had no intention of becoming a big store such as a Wal-Mart. He said that most of the sales would be via the internet or gun shows and he was not going to have people lining up in front of his house to purchase firearms.

Chairman Seabury commented that the Board was “stuck” because of the ordinance.

Mr. Martin suggested allowing the applicant to withdraw his request for a Home Occupation Special Exception without prejudice and apply for a Variance.

Chairman Seabury said he was not aware if Mr. Dumont knew the requirements for a Variance.

Mr. Dumont said there were approximately eight to ten nearby properties that were selling products and/or services from their residences. Chairman Seabury said he would not argue that point but replied that the Board could only address cases/people that were before the Board.

Mr. Dumont pointed out that the Board had approved similar requests in the past to other residents. Chairman Seabury replied that the only past request that he remembered involved the services of a gun smith and not the sale of firearms.

Mr. Dumont stated that he had expended quite a bit of time and money after the Board had initially approved his request.

Mr. Martin suggested that Mr. Oleksak should research the case in which a similar request was granted on Boyd Road in the year 2000. Ms. Davis stated that the ordinance had changed multiple times since then and she was not sure if the requirements from 2000 would still be applicable today.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 26, 2012

Mr. Tony Basso, from Keach-Nordstrom Associates, who was not representing the applicant, addressed the Board, stating that he felt he had a good solution to the problem. He said that the restriction cited a home sales proponent and that the Board could grant the Home Occupation Special Exception for all of the other components (except for the home sales component) that the applicant was asking for (i.e. Internet Sales and the gunsmith component) and to allow the applicant to request a Variance for the home sale component.

Mr. Dearborn asked Mr. Dumont to confirm that he would still have to have a safe to store firearms as well as an alarm system even if he were to only sell firearms at gun shows. Mr. Dumont confirmed that.

Ms. Davis commented that she did not feel the applicant met criteria E for a Home Occupation Special Exception in addition to the home sales restriction. She further stated that she felt that having forty guns in a home was not typical.

Mr. Oleksak asked Mr. Dumont if all sales of firearms sold via the internet or gun shows would be clearly documented and evident if a Home Occupation audit was conducted. Mr. Dumont replied that it would be clear. He also noted that the ATF performed yearly inspection visits and had the ability to pull his license if it was felt necessary.

Chairman Seabury asked Ms. Davis if Mr. Oleksak's question to the applicant satisfied her concern. Ms. Davis replied that she was just not comfortable with the inordinate amount of firearms that would be stored at the applicant's residence. She further commented that she was not comfortable with the nature of the business.

Mr. Oleksak pointed out that the nearest school was almost 3,000 feet away from the applicant's home.

Mr. Dumont stated that he would be utilizing a website called www.gunbroker.com and that he never gave out his personal information including his address.

Mr. Martin stated that he was prepared to rehear the case with the condition that home retail sales would not be included if the request for a Home Occupation Special Exception were to be granted.

Mr. Dumont stated that he had a security system installed in his home, he had purchased a refrigerator sized safe, and the ATF had performed a site walk of his property since the last meeting was held on February 23, 2012.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 26, 2012

Mr. Dumont read aloud a portion of the Application for a Home Occupation Special Exception summarized as follows:

1. *Please explain the nature of your home business. The proposal is for a home based FFL (Federal Firearms License) to buy and sell firearms via the internet, gun shows, and occasional transfers.*
2. *Is the home occupation secondary to the principal use of the home as the business owners' residency? Yes, I live there with my wife and daughter.*
3. *Will the home occupation business be carried on within the residence and/or within a structure accessory to the residence? It will be in a room in the basement of my home. No longer applicable.*
4. *Other than the sign(s) permitted under Article XII, will there be exterior display or other exterior indications of the home occupation? Will there be any variation from the primarily residential character of the principal or accessory building? No, there will not be any signs.*
5. *Will there be any exterior storage. No, all storage will be in a large safe inside the room in the basement.*
6. *Will there be noise, vibrations, dust, smoke, electrical disturbances, odors, heat or glare produced? No, none at all.*
7. *Will the traffic generated by the home occupation activity be substantially greater in volume than would normally be expected in the neighborhood? No, I do not believe so. We will only be open from 4:00 – 8:00pm and by appointment on the weekends when there are no shows. – No longer applicable.*
8. *Where will customer/client parking for the home occupation be located? I have a 150' driveway with auxiliary dirt driveway. – No longer applicable.*
9. *Who will be conducting the home occupation? Robert N. Dumont.*
10. *Will there be a vehicle(s) for the home occupation? Yes – 1 Chevy Tahoe.*

Mr. Dumont added that he viewed this Home Occupation as a stepping stone – his hope was to open a store front in a commercial zone someday.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 26, 2012

Chairman Seabury asked Mr. Dumont what the nature of the basement was and how it was accessed. Mr. Dumont replied that it was a split cape and could be accessed directly after entering the front door of the home. He pointed out that there was a second, private entrance which led to the room where the firearms would be kept. Ms. Davis pointed out that customers having access to the proposed office was no longer applicable.

Mr. Martin pointed out that the applicant would still be storing firearms in his residence even though he would not be conducting retail sales.

Ms. Davis asked what the point of the Home Occupation Special Exception was if there would not be any retail sales and no advertising directing potential customers to the home. Mr. Oleksak replied that the ATF required a home to be registered.

Mr. Martin made a motion to approve the request for the Home Occupation Special Exception with the stipulation that there be no retail sales at 60 Pelham Road.

Mr. Dearborn seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt the applicant had gone to great lengths to purchase a home security system and an additional safe for storage of the firearms. He also stated that the applicant required the approval to get a license from the ATF and that all of the requirements for a Home Occupation Special Exception had been met – except for the retail sales portion.

Mr. Dearborn, speaking on his second, stated that he agreed with Mr. Martin's comments – noting that he "stressed" the importance of the stipulation that no retail sales would be permitted.

Chairman Seabury asked Mr. Dumont to explain the safeguards that would be in place while transporting firearms to and from gun shows. Mr. Dumont replied that most of the firearms would be stored in a foot locker. He further replied that by law, every weapon had to be in his sight when not located in his home.

Mr. Dearborn asked Mr. Dumont if ammunition would be transported to gun shows. Mr. Dumont replied that there would not.

Chairman Seabury asked Mr. Dumont if he had any plans on pursuing accommodations for a firing range. Mr. Dumont replied that he did not.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 26, 2012

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

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

Chairman Seabury declared that, there having been three votes to approve the request for a Home Occupation Special Exception, with the noted stipulation, and two votes to deny the request, the motion had carried.

2. **Case 216-001 & 002 (4/26/12): Merrimac Real Estate Investors, 10605 Boca Pointe Drive, Orlando, FL, requests the following for property located at 203 & 205 Lowell Road, Hudson, NH.**

A. **An extension of an un-activated Variance previously granted by the Zoning Board of Adjustment on October 22, 2009, to allow construction of a building and parking lot within 763 square feet of the wetland and 20,979 square feet of the wetland buffer. [Map 216, Lots 001 & 002, Zoned B, HZO Article IX, Section 334-33, Wetland Conservation District.]**

B. **An extension of an un-activated Wetland Special Exception previously granted by the Zoning Board of Adjustment on October 22, 2009, to allow construction of a building and parking lot within 763 square feet of the wetland and 20,979 square feet of the wetland buffer. [Map 216, Lots 001 & 002, Zoned B, HZO Article IX, Section 334-33, Wetland Conservation District.]**

C. **An extension of an un-activated Variance previously granted by the Zoning Board of Adjustment on March 25, 2010, to allow expansion of an existing nonconforming structure within the front-yard setback, 50 feet required, 45.02 feet proposed. [Map 216, Lots 001 & 002, Zoned B, HZO Article VII, Section 334-27, Table of Dimensional Requirements and Article VIII, Section 334-31, Alteration and Expansion of Nonconforming Structures.]**

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 asked for extensions of the previously

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 26, 2012

approved Variances because the Planning Board's time limit was running out – as of May 11, 2012.

Chairman Seabury stated that the applicant had been before the Planning Board on April 25, 2012, at which point, the Town Planner had testified that there had been no zoning or building regulation changes that affected the application. Mr. Oleksak stated that he concurred with that statement.

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

Mr. Tony Basso, from Keach-Nordstrom Associates, representing the applicant, addressed the Board, and stated that there was no difference in the application but that it had taken quite a bit of time to get approval from the Planning Board.

Mr. Basso stated that the Planning Board approved the application in May, 2011, and that he had received a one-year extension from the Planning Board on April 25, 2012.

Mr. Basso stated that the reason the project had not gotten very far was because there was a lot of facilities planning involved in how the new addition would connect to the existing building. He also stated that he believed that component had been completed, but it was an extremely long process and one year simply was not enough time to complete the project.

Mr. Basso stated that the applicant's goal was to break ground with the nursing home addition in the fall of 2012, with the assisted living facility to follow.

Ms. Davis asked how long the entire project would take to complete. Mr. Basso replied that the nursing home portion of the project would take minimally 18 months to complete with the assisted living facility being closer to two years for completion.

Ms. Davis asked what type of disruptions, if any, there would be on Lowell Road. Mr. Basso replied that he did not expect any disruptions. He pointed out however, that the applicant was in discussions with the surrounding neighbors to install a lighted intersection that may cause some traffic disruptions during the installation.

Mr. Martin made a motion to approve all three requests.

Ms. Davis seconded the motion.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 26, 2012

Mr. Martin, speaking on his motion, stated that he felt nothing had changed, it would be a nice improvement to the property, and the application met all of the criteria for the Variances as well as the Special Exception.

Ms. Davis, speaking on her second, stated that she agreed with everything Mr. Martin had said and added that there had been no changes to the ordinance.

VOTE: Chairman Seabury asked Clerk Houle to poll the Board on the motion to approve all three requests for a one-year extension - A, B, & C (with all of the original stipulations) and to record the members' votes, which were as follows:

Mr. Martin	To approve all three extensions
Ms. Davis	To approve all three extensions
Ms. Shuman	To approve all three extensions
Mr. Dearborn	To approve all three extensions
Mr. Seabury	To approve all three extensions

Chairman Seabury declared that, there having been five votes to approve all three requests for a one-year extension – A, B, & C (with all of the original stipulations), the motion had carried.

Chairman Seabury declared a break at 8:55pm, calling the meeting back to order at 9:01pm.

Mr. Dearborn stated that he would step down from case 161-020 and Chairman Seabury seated Mr. Houle in his place. Mr. Dearborn took a seat in the audience section of the room.

- 3. Case 161-020 (4/26/12): Donald N. Simard, 72 Windham Road, Hudson, NH, requests an Appeal from an Administrative Decision for property located at 74 Windham Road, Hudson, issued by the Zoning Administrator dated March 7, 2012, which states the existing dwelling is only approved for a two-family dwelling, not a multi-family dwelling – Site Plan approval is needed. [Map 161, Lot 020, Zoned G-1, HZO Article III, Section 334-16.1, Site Plan approval and 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 one of the members of the Board had inquired as to whether the property located at 72 Windham was a single-family or two-family dwelling. Mr.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 26, 2012

Oleksak stated that upon inspection, he had determined that the property was a two-family dwelling.

Mr. Oleksak said that although a few minor changes had to be made to satisfy the Fire and Building Departments, the property did meet the criteria for a two-family dwelling.

Mr. Oleksak said that a neighboring property located at 74 Windham Road appeared as a three-family home. He further said that three-family homes could only be approved by going through a site plan process with the Planning Board. He said the building permit was applied for in 1978, and at the time the criteria for area was 55,000 square feet, 150 feet of frontage, and public water & sewer – anything else was not permitted.

Mr. Oleksak stated that the applicant had applied and was issued a building permit for a duplex dwelling in 1978. He said that a Certificate of Occupancy was granted in December of 1978.

Mr. Oleksak said that he had informed the applicant that he did not have any paperwork which justified the property being a legal three-family house. He said that the applicant replied that Mr. Richard Millard, the Building Inspector at the time, had approved it.

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

Mr. Donald Simard, the applicant, addressed the Board, and stated that he had lived at 72 Windham Road for over 45 years. He further stated that at some point, he had taken one acre out of a four acre lot and had it zoned so he could put a building there at some future time.

Mr. Simard said that he did pursue a permit for a duplex but he ran into some circumstances that changed the direction of the duplex. For personal reasons, he said he decided to put in a one-bedroom unit on the lower level. He said as this was happening, Mr. Millard had been coming in periodically to do electrical, plumbing and structural inspections. He also said that Mr. Millard had promised to help him re-classify the dwelling into a three-family dwelling.

Mr. Simard stated that the letter he received from the Hudson Community Development Department had come as a surprise to him because the first sentence in the letter charged him with creating a one-bedroom apartment (the third unit) at 74 Windham Road between the evaluation of the property in 1992 and the next evaluation in 2001. He further stated that he informed Mr. Oleksak that the apartment was constructed in 1978

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 26, 2012

and also inspected in 1978 by Mr. Millard. (Noting that it was the same time as apartment A & B were created.)

Mr. Simard stated that he received a Certificate of Occupancy for all three units. He also stated that PSNH had assigned three meters to the property. He further stated that he had a signed letter from Mr. Richard Kucij, the owner of the property from 1982 through 1992 in which he indicated that there were three rental properties on the property when he purchased it. (Copies of the letter from PSNH and Mr. Kucij were provided to the Board.)

Mr. Simard stated that he felt he should be exempt from having to chase the necessary paperwork and present it to the Planning Board because of the expense involved as well as the fact that he was issued a Certificate of Occupancy.

Chairman Seabury pointed out that a Certificate of Occupancy permit was not included in the documentation given to the Board and Mr. Simard replied that he had sold the property twice and probably had thrown some paperwork out in the time span of 33 years. He said he was surprised that the town office did not have a copy of the permit.

Mr. Simard stated that the Tax Assessors card indicated that 74 Windham Road was a three-family dwelling.

Mr. Simard also said that there would be a terrible financial impact if he were to lose the income from the third apartment.

Chairman Seabury stated three-family dwellings were not allowed in 1978. He further stated that as of 1980, the ordinance read that *“single-family dwelling units may utilize the basement area for supplemental living area but not as a full dwelling unit. Multi-family dwellings are only allowed in the Business Zoning District.”* *“All multi-family apartment buildings will have a minimum foundation area of 2,500 square feet.”*

Chairman Seabury commented that Mr. Millard and the Zoning Board of Adjustment had had quite an adversarial relationship back then. He further stated that in-law apartments did not legally exist in the Town of Hudson until 1994 and he said he was not sure why Mr. Millard had said what he had said but that he did not have the authority to approve a three-family dwelling.

Mr. Martin said that the applicant had made a statement in his testimony that PSNH would not have installed a meter without the proper paperwork which would have

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 26, 2012

included a Certificate of Occupancy. Mr. Oleksak replied that the third meter could have been a house meter.

Mr. Martin commented that he did not feel that Mr. Simard's conversations with Mr. Millard could be verified.

Mr. Martin asked Mr. Oleksak if there were any paperwork regarding the final inspection of the property. Mr. Oleksak replied that the town had documentation of the application for a Building Permit, the actual Building Permit and the Certificate of Occupancy on file.

Ms. Davis asked if the town still had a "Planning Board Light Process?" (A process that would allow an applicant to appear before the Planning Board with minimal expense.) Chairman Seabury replied that the process was still available, however, the applicant still had to satisfy certain requirements and he was not at all sure that this application would meet them.

Mr. Martin said he wanted to know how long the applicant was paying taxes on a three-family dwelling. He also said that he did not agree with the Zoning Administrator's Decision, because the third unit had existed since 1979, not the time frame of 1993 – 2001 as written in the letter dated March 7, 2012.

Mr. Oleksak said that he had referenced the Assessors Cards to assist in making his decision. He further stated that, if the Board decided to agree to allow the three-family dwelling, the applicant would have to bring the dwelling up to current building codes.

Ms. Davis commented that she was in agreement with Mr. Oleksak's decision. She further commented that she was trying to think of a way to correct the issue.

Chairman Seabury commented that he did not comprehend how it could become an allowable use when it was simply not allowed in that zone.

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

Ms. Kim Michaud, Mr. Simard's daughter, addressed the Board, asking what constituted a Business Zoning District. Chairman Seabury replied that the Business Zoning District was established by the Planning Board, defined on the zoning map, and confirmed by the voters of the town.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 26, 2012

Ms. Davis commented that the Board could not even grant a relief by special exception, because it was not an allowed use. She further commented that she felt the unit had to “go” because there was no relief. Chairman Seabury commented that he agreed with Ms. Davis.

Mr. Houle asked why the case was brought before the Board if the Zoning Board of Adjustment had no authority to rule for or against the applicant.

Mr. Oleksak, referring to microfiche documents, stated that Mr. Simard had signed an application for a Building Permit for a duplex dwelling on March 15, 1978. He further stated that the dimensions of the foundation were 28’ x 60’ with a living floor area of 1,800 square feet. He said the permit was issued and signed by Mr. Richard Millard and the septic design was for a four bedroom house approved by the State of New Hampshire. He also said that the Occupancy Permit was issued on December 15, 1978, but also mentioned that it did not indicate whether it was a duplex or a triplex type of dwelling.

Mr. Simard stated that he did not expect an answer at this meeting and was willing to do whatever he had to do to reach an amicable resolution to the problem. He said he wanted to be cooperative in every way but did not want to lose his investment.

Chairman Seabury replied that he did not see a solution except to convert the dwelling into a duplex.

Chairman Seabury asked Mr. Oleksak if there was any way he “felt” that the Planning Board could approve a site plan for this application. Mr. Oleksak stated that he could not answer that question and would have to confer with Mr. John Cashell, the Town Planner.

Ms. Davis asked if the applicant could petition for a Warrant Article to change the ordinance to allow multi-family dwellings as an allowed use in that zone. Chairman Seabury replied that although that was a possibility, nothing could be done about it until next March.

Ms. Davis made a motion to uphold the decision of the Zoning Administrator.

Ms. Shuman seconded the motion.

Ms. Davis, speaking on her motion, stated that she felt it was a multi-family dwelling that was not an allowed use and according to the ordinance, a site plan approval would be needed. However, the Planning Board would also deem it not an allowed use. She

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 26, 2012

further stated that the only option would be to convert the dwelling into a duplex, which was an allowed use.

Ms. Shuman, speaking on her second, stated that she agreed with everything Ms. Davis had said and added that the use was not allowed in 1978 when the third unit was added.

Mr. Martin commented that he did not agree with the wording of the letter given to the applicant on March 7, 2012.

VOTE: Chairman Seabury asked Clerk Houle to poll the Board on the motion to uphold the Zoning Administrator's decision, and to record the members' votes, which were as follows:

Ms. Davis	To uphold the Zoning Administrator's Decision
Ms. Shuman	To uphold the Zoning Administrators' Decision
Mr. Martin	Not to uphold the Zoning Administrator's Decision
Mr. Houle	To uphold the Zoning Administrator's Decision
Mr. Seabury	To uphold the Zoning Administrator's Decision

Chairman Seabury declared that, there having been four votes to uphold the Zoning Administrator's Decision, and one vote not to uphold the Zoning Administrator's Decision, the motion had carried.

Chairman Seabury stated that Mr. Dearborn had returned to his seat as a voting alternate member of the Board with Mr. Houle returning to his 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 February 23, 2012 meeting:

1. Page 2, 3rd paragraph - the word "non-voting" was added – Davis
2. Page 4, 5th paragraph – the following was added after 8:45pm, "for the purpose of allowing the Board members to review the easement documentation." – Seabury
3. Page 4, 1st paragraph – "81 feet from the applicants' property line and the edge of the approved Mark Street Cul-de-Sac." – Seabury

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 26, 2012

4. Page 10 – 9th paragraph – “Mr. McGrath” was changed to “Ms. McGrath” – Dearborn
5. Page 10 – last paragraph – the word “or” was added – Davis
6. Page 11 – 3rd paragraph – the word “Spirit” was changed to “requirement” – Davis
7. Page 12 – 6th paragraph – the words “text for the ZBA portion of the” were added – Seabury
8. Page 12, under Adjournment – “Mr. Davis” was changed to “Ms. Davis” - Dearborn

Ms. Davis made a motion to approve the minutes from the February 23, 2012, meeting, as amended by the Board.

Ms. Shuman 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 approving the minutes from the February 23, 2012, meeting, as amended by the Board. Mr. Martin abstained from voting.

The following changes were made to the minutes of the March 22, 2012, meeting:

1. Page 3, 1st paragraph – the word “was” was changed to “had before this meeting been” – Seabury
2. Page 4, last paragraph – “the road” was changed to “Mark Street” – Martin
3. Page 5, 3rd paragraph – “Members of the Board expressed a desire to do so.” – Seabury
4. Page 5, 7th paragraph – “square-foot” was added after four thousand – Seabury
5. Page 5, last paragraph – the word “Extension” was deleted – Martin
6. Page 7, 2nd paragraph – the word “properties” was changed to “property owners of the Mark Street Extension properties.” – Seabury

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 26, 2012

7. Page 12, next to last paragraph – the word “at” was changed to “prior to” –
Seabury

Mr. Martin made a motion to approve the minutes from the March 22, 2012, meeting, as amended by the Board.

Mr. Dearborn 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 March 22, 2012, meeting, as amended by the Board.

V. REQUEST FOR REHEARING

1. Case 217-005 – 13 Mark Street, Hudson, NH

Chairman Seabury seated Mr. Houle in place of Ms. Shuman, who had stepped down from the case.

Chairman Seabury stated that the Board had received a letter dated April 13, 2012, from Attorney Andrew Prolman, requesting a Motion for Rehearing with regard to Case: 217-005.

Chairman Seabury stated that Attorney Prolman would be out of the country on April 26, 2012. Mr. Oleksak stated that he had informed Attorney Prolman that he would not be allowed to testify on behalf of the case at the Board’s consideration of the Request for a Rehearing and that Attorney Prolman had indicated that he had no problem with the request being discussed in his absence.

Mr. Martin commented that he had reviewed the Request for a Rehearing with a “fine toothed comb.” He further commented that the site plan dated July 20, 1977, entitled Edward Lehoullier, showed the stub and the Boissonneaults lot, but that the Boissonneaults lot was not mapped out in like the rest of the lots were. He said that was an indication to him that this lot was not intended for that subdivision.

Mr. Martin commented that one of the reasons he had decided to deny the request for a Variance was because he did not know if there were discussions with the Lehoulliers of which he was unaware, and the other reason was that he did not feel applicants could arbitrarily say that frontage existed automatically on their property line. He said that the

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 26, 2012

lot line in question was a side property line and not a front property line, and to the best of his knowledge the only properties that had dual frontage, if they had the proper frontage, were lots that existed as a corner lot -- that is, bound by two streets. He also said that the front of the property was on the Mark Street Extension and that by approving the variance, the rest of the properties would be landlocked.

Mr. Martin stated that he did not feel there was any new evidence presented that showed him that there was frontage on that 50.49 foot piece of roadway.

Chairman Seabury pointed out that Attorney Prolman's letter listed the RSA requirements and contended that "the statue was presented by the applicant but not discussed or decided by the Board."

Mr. Martin replied that he did not feel the Board was there to discuss NH RSA 674:41; but rather to address the requirements of the Variance.

Mr. Martin noted that Attorney Prolman also had objected to the failed motion to grant and all of its stipulations.

Chairman Seabury said that he had asked Attorney Prolman whether, if the land swap went through, there would still be an acre of property, and that Attorney Prolman's response had been "No." Chairman Seabury stated that Attorney Prolman was now rejecting that comment.

Chairman Seabury stated that Attorney Prolman's argument was that it was inappropriate to apply both the Robinson condition and the land swap condition.

Mr. Martin replied that he felt that the Robinson condition had to be applied.

Chairman Seabury reminded the Board that the Town Attorney had said that he felt this case was exactly the same as the Robinson case.

Chairman Seabury said that the Town Attorney was willing to submit a memo indicating his opinion, but the Board could not accept any further documentation unless there was a rehearing.

Mr. Martin made a motion to rehear the case.

Mr. Houle seconded the motion.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 26, 2012

Mr. Martin, speaking on his motion, stated that he only voted to rehear the case because he wanted to get the Town Attorney’s written opinion regarding the case. He said he wanted it to be clear that he did not feel that any new evidence had been presented.

Mr. Houle, speaking on his second, stated that he agreed with what Mr. Martin had said and felt that the Board should rehear the case.

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

Mr. Martin	To approve the Request for a Rehearing
Mr. Houle	To approve the Request for a Rehearing
Ms. Davis	To approve the Request for a Rehearing
Mr. Dearborn	To approve the Request for a Rehearing
Mr. Seabury	To approve the Request for a Rehearing

Chairman Seabury declared that, there having been five votes to approve the Request for a Rehearing, the motion had carried.

VI. 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 11:23pm.

Date: May 4, 2012

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun