

**HUDSON ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
March 22, 2012**

**I. CALL TO ORDER**

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:35pm on Thursday, March 22, 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, Mike Pitre, Donna Shuman, and J. Bradford Seabury

**Members**

**Absent:** Jim Pacocha (Excused)

**Alternates**

**Present:** Maryellen Davis, Gary Dearborn, Kevin Houle, and Marilyn McGrath

**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 Mr. Houle in place of Mr. Pacocha, who was excused.

Ms. McGrath stated that she would step down from the first case as she was a sitting member of the Planning Board when the matter of the Mark Street subdivision in 1980 was heard. (Recorder's Note: Ms. McGrath left the table and took a seat in the audience section of the room and no one was seated in her place as she was serving as an alternate member of the Board at that time.)

Ms. Shuman stated that she would also step down from the first case as she was not present at the November 10, 2011, meeting when it was originally before the Board. She also stated that she had stepped down from hearing the cases at the January 26, 2012, and the February 23, 2012, meetings for the same reason. Chairman Seabury sat Mr. Dearborn in place of Ms. Shuman. (Recorder's Note: Ms. Shuman left the table and took a seat in the audience section of the room.)

## **III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD**

1. **Case 217-005 (03/22/12), Deferred from (02/23/12): Alan and Theresa Boissonneault Living Trust, P.O. Box 2431, 1016 Yates Road, Oak Harbor, WA, request a Variance for property located at 13 Mark Street, to allow access to the proposed lot without the proper frontage; 120 feet required, 50.49 feet proposed. [Map 217, Lot 005, Zoned R-2, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**

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

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Chairman Seabury stated that the Board had before this meeting been in a non-public session with Attorney LeFevre, who would remain present through the first case with the possibility of returning to a non-public session.

Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak replied that, as stated, the required frontage for a lot was 120 feet. He further replied that the lot in question did not have the required frontage except through a piece of land to the extent of 50.49 feet proposed. He said that the applicant was before the Board to ask for a Variance for the difference between the 120 and the 50.49 feet.

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

Attorney Andrew Prolman, from Prunier & Prolman, PA, Nashua, NH, representing the applicant, addressed the Board, and read aloud a portion of a memorandum addressed to the Zoning Board of Adjustment summarized as follows:

### Title

*We researched three chains of title: the Mark Street Stub, the Montanile Lot (217-32) and the McNeill Lot (217-31). The Town of Hudson owns the Mark Street Stub by virtue of a Right-of-Way conveyance from the original developer (Lehoullier) to the town. The metes and bound description includes the stub. (HCRD Book 2604, Page 588 recorded 5/4/78 (attached.) This conveyance was labeled as a Right-of-Way and was “granted to the Town of Hudson in common with others for all purposes of a street and cul-de-sac.” There have been no conveyances out from the town.*

*The Montanile and McNeill Lots are similar in that they both derive from the original developer (Lehoullier to FXQ, Inc. to the homeowners.) We found these two abutting lots had no rights in the Mark Street Stub. Specifically, we did not find any conveyance of the Stub, any Petition to Discontinue the road, adverse possessive claims, centerline claims, any physical encroachment, or any other abutter rights or color of title to the Stub.*

### Road Status

*It is our opinion that the Mark Street Stub is a Class VI road as defined under RSA 229:5, VII, and can be used as frontage access to the Boissonneault Lot provided (1) the frontage Variance is granted, and (2)*

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*the Boissonneault's comply with RSA 674:41, which may require Board of Selectmen approval of building on the lot.*

*The Mark Street Stub (along with the rest of Mark Street and cul-de-sac) was proposed as a road and approved by the Planning Board. See HRCD Plan #'s 11142 and 13466. It is considered a "dedicated" road since it was shown on plans as approved by the Planning Board. Although not part of the "paper" Mark Street subdivision, the Lehoullier plans clearly intended the Mark Street Stub provide access to the paper Mark Street property. The Planning Board discussed the future access, and the Mark Street Stub was actually built – cleared, culvert installed, paved, etc.*

*As I've said at prior meetings, the proposed driveway would not cut off access to the other Mark Street lots because we've proposed to offer the triangular piece of land at the eastern portion of the Boissonneault Lot for future road access to allow the two Mark Streets to line up. Without this small triangular parcel, the four other lots would be land-locked, assuming they could not take access off of Wason Road.*

*In this case, RSA 674:41 would allow access in one of two ways: Under either 674:41(b) or (c), the latter of which would require the Board of Selectman to approve a building permit off of a Class VI road. See attached statute.*

Attorney Prolman stated that he felt the stub was a roadway and dedicated to the town as a roadway. He also stated that he felt the "legal limbo" was created by the fact that Mark Street was only accepted up to the cul-de-sac.

Chairman Seabury asked if there was 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 commented that he did not feel any property owner could just assume that their frontage was where the house faced the street. He also commented that it was his understanding that the frontage was in front of the property or where there was access. He also stated that he felt the applicant's access would have come off of the Mark Street Extension portion that was built on the Wason Heights Subdivision. He said he did not feel there was frontage on the property to Mark Street.

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Attorney Prolman, addressing Mr. Martin's comments, stated that the Boissonneaults purchased the lot in 1970, prior to either of the *Lehoullier* plans being presented to the town. He further stated that the argument was that when the Boissonneaults purchased the lot, they had the expectation that the paper Mark Street would have provided frontage and it would not have been fair to assume that the frontage would have come from Mark Street. He also said that the Planning Board had approved "the stub" twice intending that there would be access to the Ledoux subdivision.

Ms. Davis asked how the design would look with the applicant's driveway coming off of the stub if the Mark Street Extension were to be built out. Attorney Prolman replied that the Boissoneault's driveway would simply be shortened by approximately 50 or 60 feet so that it would be coming off of the new Mark Street.

Chairman Seabury asked the members of the Board if it was felt that there should be further discussion with Attorney LeFevre. Members of the Board expressed a desire to do so.

Chairman Seabury declared that the Board would go into a non-public session and all of the members of the public left the room at 7:59pm.

Chairman Seabury declared the non-public session over at 8:17pm and the members of the public were invited back into the meeting room.

Chairman Seabury asked if there were any members of the Board who had further questions or comments.

Mr. Pitre asked if Attorney Prolman could be more descriptive regarding the "sliver of land." Attorney Prolman replied that the Boissoneaults were offering a right-of-way for all future easements of an approximately three to four thousand square-foot triangular piece of land which would allow the two Mark Streets to connect. He noted that this offer would stand whether the Mark Street Extension was built or not.

Mr. Dearborn asked if the Boissonneaults' offer was in lieu of their potential future fair share of cost if the Mark Street Extension was built out. Attorney Prolman replied that was correct.

Mr. Martin commented that he did not feel the property was intended as part of the original subdivision and did not feel there was legal frontage to the Mark Street.

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Mr. Houle commented that he felt it was a win/win situation - noting that there would be an increase in property tax without putting too much of a burden on the town.

Mr. Pitre made a motion to approve the request for a Variance with the following stipulations:

- 1. If and when the Mark Street Extension is built, the property owner of record shall contribute a pro-rata share of the cost for the construction of the Mark Street Extension.*
- 2. Prior to the issuance of a building permit, the property owner of record shall furnish a septic approval permit or similar permit or approval from the New Hampshire Department of Environmental Services.*
- 3. The Town of Hudson neither assumes responsibility for maintenance of Mark Street, nor liability for any damages resulting from the use of Mark Street. Prior to the issuance of a building permit, the property owner of record shall produce evidence that notice of the limits of municipal responsibility and liability has been recorded in the Hillsborough County Registry of Deeds.*
- 4. The sliver of land (as defined on the Meridian Land Services, Inc. – August 31, 2011) on the east side of the property, approximately 4,000 square feet, shall be presented to the town as a land easement for the future development of the Mark Street Extension.*
- 5. The decision of the Zoning Board of Adjustment shall not be construed as any determination regarding legal access to the property via Mark Street.*

Mr. Houle seconded the motion.

Mr. Pitre, speaking on his motion, stated that he felt the original property owners were looking to develop it and believed that the “stub” was meant for the extension even though the two maps did not line up. He also said that he felt granting the Variance would allow some possibility of the home owners to have access to their land in the future.

Mr. Houle, speaking on his second, stated that he agreed with everything that Mr. Pitre had stated and that he felt it was a reasonable use for the land owner to get out of a jam and be able to use their property.

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Mr. Martin commented that he would vote in the negative because he did not feel the piece of property was attached to the original subdivision of Mark Street and he felt the land owner had access on the Wason Road side.

Chairman Seabury commented that he agreed with Mr. Martin. He further commented that he did not accept it as having frontage on a town road and did not feel it would be equitable to all of the property owners of the Mark Street extension properties.

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:

Mr. Pitre	To approve
Mr. Houle	To approve
Mr. Martin	To deny
Mr. Dearborn	To deny
Mr. Seabury	To deny

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

Chairman Seabury asked if there were any other members of the Board who wished to make a motion of a different sort.

Mr. Martin made a motion to deny.

Mr. Dearborn seconded the motion.

Mr. Martin, speaking on his motion, stated that he did not feel the piece of property had legal frontage.

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

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:

Mr. Martin	To deny
Mr. Dearborn	To deny
Mr. Pitre	To approve





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*principal dwelling does not personally reside. This site will conform to this requirement by: The ALU is occupied by one person – the owner’s mother, Margaret LaFrance.*

- 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 ALU is above the garage and the external front appearance is of a single-family dwelling.*
- 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: The common interior access is between the family room and the kitchen area above the garage. A second egress is off of the kitchen to the deck stairs.*
- 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: There are no separate utility service connections.*
- 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: The off street parking is provided by a two-car garage and a driveway with ample parking.*
- 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 living area is 484 square feet.*
- 9. A Building Permit for an ALU must be approved and issued prior to the construction of an ALU. The ALU 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 has an interconnected smoke alarm as well as a carbon monoxide detection system.*

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Chairman Seabury stated that the applicant had initialed the remaining paragraphs on the application indicating that the information in those paragraphs was understood and had submitted a floor plan of the entire dwelling.

Mr. Pitre asked if the door connecting the main dwelling and the ALU had a lock on it. Ms. Banks replied that it did not. Mr. Pitre also asked if there were stairs off of the ALU's deck. Ms. Banks replied that there were stairs.

Ms. Davis asked Mr. Oleksak if there were any zoning violations or complaints on the property. Mr. Oleksak replied that there were none.

Ms. McGrath asked if the applicant could change the words "sample kitchen" to "existing kitchen" on the plan to ensure the paperwork was correct. Ms. Banks made the requested correction.

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.

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

Mr. Martin seconded the motion.

Mr. Pitre, speaking on his motion, stated that he felt the applicant had successfully met all of the criteria for an ALU and had done due diligence.

Mr. Martin, speaking on his second, stated that he agreed with everything Mr. Pitre had said.

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

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3. **Case 118-003 (3/22/12): Scott and Ginella Cann, 32 Kienia Road, Hudson, NH, requests an Equitable Waiver to allow the existing dwelling that was constructed in 1976 to remain within the front-yard setback; 30 feet required, 28 feet remain. [Map 118, Lot 003, Zoned G-1, HZO Article VIII, Section 334-28, Nonconforming Uses, Structures and Lots.]**

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 applicants were in the process of selling their home and the bank was requesting that the matter of the intrusion into the setback be cleared up prior to the sale of the home.

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

Mr. Scott Cann, the applicant, addressed the Board, and stated that the house was built in 1976 under unknown circumstances. Mr. Cann also said that the discrepancy had been discovered in 2012 and was presently before the Board to request an Equitable Waiver.

Chairman Seabury asked Mr. Oleksak if there had been any zoning enforcements on the property. Mr. Oleksak replied that there had been none.

Chairman Seabury stated that the house had been in existence for over 10 years without nuisance and quite clearly, there would be a very high correction cost if the applicant were asked to move the house.

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

Mr. Houle seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt it was a perfect situation in which an Equitable Waiver should be granted.

Mr. Houle, speaking on his second, stated that he agreed with what Mr. Martin had said.

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

Mr. Martin	To approve
Mr. Houle	To approve
Mr. Pitre	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 Equitable Waiver, the motion had carried.

### IV. APPROVAL OF MEETING MINUTES

The following changes were made to the minutes of the January 26, 2012, meeting:

Page 2 – The header throughout the document was changed from “October 27, 2011, to January 26, 2012” - Shuman

Ms. Shuman made a motion to approve the minutes from the January 26, 2012, meeting, as amended by the Board.

Mr. Martin 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 January 26, 2012, meeting, as amended by the Board.

### V. OTHER BUSINESS

Chairman Seabury stated that the following case and decision had been discussed with Attorney LeFevre at the non-public session prior to this meeting.

#### CASE

*Case 199-009 (2/23/12): Robert N. Dumont, 60 Pelham Road, Hudson, NH, request 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.]*

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Chairman Seabury seated Mr. Dearborn in place of Mr. Martin and seated Ms. Davis in place of Mr. Pitre for the following discussion:

Mr. Dearborn made a motion to rehear the case as he had been unaware that retail sales were not a permitted use as part of a Home Occupation Special Exception.

Ms. Shuman seconded the motion.

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

Mr. Dearborn	To rehear
Ms. Shuman	To rehear
Ms. Davis	To rehear
Mr. Houle	To rehear
Mr. Seabury	To rehear

Chairman Seabury declared that, there having been five votes to rehear the request for a Home Occupation Special Exception, the motion had carried.

Chairman Seabury commented that he would draft a letter to Mr. Dumont, the applicant, and noted that this decision was made within the 30-day window which allowed the Board to reconsider a case.

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**V. ADJOURNMENT**

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

Mr. Pitre seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 9:22pm.

Date: April 2, 2012

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J. Bradford Seabury, Chairman

Recorder: Trish Gedziun