



# 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 January 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, January 26, 2012, in the Paul Buxton Meeting Room in the Town Hall basement. Chairman Seabury then requested Clerk Davis to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

#### **Members**

**Present:** J. Bradford Seabury, Normand Martin, Jim Pacocha, and Donna Shuman

#### **Members**

**Absent:** Michael Pitre (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. Dearborn in place of Mr. Pitre, who was excused.

Ms. Shuman stated that she would step down from the first case, as she was not present at the November 10, 2011, meeting when it was originally before the Board. Chairman Seabury seated Ms. McGrath in place of Ms. Shuman.

Mr. Martin stated that although he was not present at the November 10, 2011, meeting, he was comfortable hearing the case, as he had thoroughly reviewed the minutes from that meeting.

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

1. **Case 217-005 (1/26/12), Deferred from (11/10/11): Alan and Theresa Boissonneault Living Trust, P.O. Box 2431, 1016 Yates Road, Oak Harbor, WA, requests 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 Davis 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 case was before the Board for the same reason described in the case notification, as repeated above.

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Chairman Seabury stated that the applicant had previously been before the Board requesting both a Variance and a Wetland Special Exception.

Chairman Seabury stated that the request for a Variance was deferred to this meeting (January 26, 2012) to enable sufficient time for the Board to consult with the Town Attorney.

He further stated that the Board had approved the request for a Wetland Special Exception with the noted stipulations of the Conservation Commission as well as the stipulation that the approval of the Wetland Special Exception shall be concurrent with the pending approval of the Variance.

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 from the Application for a Variance as follows:

- 1. Granting of the requested Variance will not be contrary to the public interest because it is a proposed single-family home in a residential neighborhood.*
- 2. The proposed use will observe the spirit of the ordinance because the proposed reduced frontage and house lot will not create over-crowding of the neighborhood and allows the use of the lot to be as it was originally intended.*
- 3. Substantial justice would be done to the property owner by granting the Variance because it provides the only access to the lot for the applicants who have owned the house lot since 1970. The proposed house is remote and set back. The lot will support a house, septic system and well that meet all current environmental regulations of the Town of Hudson and all regulations of the State of New Hampshire. There will be no harm to neighbors or the general public.*
- 4. The proposed use will not diminish the values of surrounding properties because the proposed new 4-bedroom house will have an expected sale price of approximately \$300,000 - \$400,000 and will be in character with the surrounding neighborhood. There will be no negative impact to the neighborhood. There will be clean-up and monitoring of the end of cul-de-sac.*

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5. *Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship** because strict application of the 120' frontage requirement would not be fair and reasonable as applied to this site because the lot has no other access than the 50.49' as shown on the plan. The "1970" Mark Street dead ends directly at the Boissonneault lot, but only provides 50.49' of frontage. The proposed driveway off of the 50.49' of frontage is the only way to use the lot. Given the unique Mark Street lay out, this application meets both hardship definitions of RSA 674:33, I (B) (5) (A) and (B).*

Attorney Prolman stated that he felt the applicant had met the hardship requirement, as the lot was very unique in that the two Mark Streets did not line up. He also stated that the lot was residential in use and comparable to the surrounding area.

Attorney Prolman referred to what he called the Robinson Condition and said that the Board had stated that "if and when the Mark Street Extension was built, the property owner of record shall pay a pro-rata share of the cost of construction the extension." Attorney Prolman stated that he did not feel that condition pertained to the applicant, because access was not being a cut-off to the Robinson's driveway – pointing out that access would be coming off of the existing Mark Street.

Attorney Prolman stated that, if the request for a driveway was approved, and the Mark Street Extension was built out, it would not take the driveway off of the cul-de-sac due to some existing wetland issues.

Attorney Prolman said that the two Mark Streets could not possibly connect without a portion of the applicants' lot. Attorney Prolman further suggested that, if the Board were to approve the request, the applicants' pro-rata share could be a future donation of the portion of the lot needed to connect the two Mark Streets.

Attorney Prolman said that he felt, without addressing the pro-rata share, it created an unknown lien on the property and he felt that nobody would want to use the property with that type of uncertainty.

Attorney Prolman stated that he did not want the Board to lose sight of the fact that he felt the applicant had a very good case for a Variance in spite of the Robinson case.

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

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

Chairman Seabury declared the matter before the Board.

Mr. Dearborn asked if the applicants' intent was to build specifically for their own use. Attorney Prolman replied that it would not be for the applicants' own use but that it was planned on being built out as a three or four bedroom home.

Mr. Martin asked if the extension (of pavement) off of Mark Street was built to town standards. Attorney Prolman replied that he did not know but there was still a 50 foot right-of-way, whether it was built to town standards or not.

Mr. Martin commented that it was a cul-de-sac and technically, should not be there. He further commented that he did not feel the lot was an end lot - therefore, he did not think there would be enough frontage.

Ms. McGrath asked if the Town Engineer had been consulted regarding the project. Mr. Oleksak (as well as Attorney Prolman) answered in the negative.

Ms. McGrath commented that she felt it would be prudent to have the Town Engineer look at the plan and advise the Board.

Mr. Dearborn asked how many other properties would have to bear the burden of approving the street if the request were approved. Chairman Seabury replied that there would be three properties.

Ms. Davis commented that she felt the sliver of land was not buildable. Attorney Prolman replied that it was not the ideal piece of land, but it was buildable.

Mr. Martin commented that he was not 100% satisfied that it was a town road.

Mr. Dearborn made a motion to defer the case so that the Town Engineer could be consulted.

Ms. McGrath seconded the motion.

VOTE: Chairman Seabury asked Clerk Davis to poll the Board on the motion to defer the case, date specific, to the February 23, 2012, meeting (which would allow the Town Engineer to be consulted) and to record the members' votes, which were as follows:

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Mr. Dearborn	To defer
Ms. McGrath	To defer
Mr. Martin	Not to defer
Mr. Pacocha	Not to defer
Mr. Seabury	To defer

Chairman Seabury declared that, there having been three votes to defer the case, date specific to the February 23, 2012, meeting, (which would allow the Town Engineer to be consulted) and two votes not to defer the case, the motion had carried.

- 2. Case 191-133 (1/26/12, Deferred from 12/8/11): Norman Boyer, 65 Plateau Ridge Road, Loudon, NH, requests a Variance for property located at 7 Bay Street, to allow the existing nonconforming single-family dwelling to be replaced with a two-family dwelling, which is not an allowed use within the Business Zoning District. The proposed two-family dwelling will conform to all setbacks. [Map 191, Lot 133, Zoned B, HZO Article VIII, Section 334-29, Extension or Enlargement of Nonconforming Uses and Section 334-30, Changes to or Discontinuance of Nonconforming Uses.**

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

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

Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak replied that the case was before the Board for the same reason described in the case notification, as repeated above.

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

Mr. Tony Basso, from Keach-Nordstrom Associates, Inc., representing the applicant, stated that there was an existing single-family home on the property that was approximately 6 feet off of the existing right-of-way. Mr. Basso stated that the proposal included knocking down the existing structure and replacing it with a new duplex.

Mr. Basso read aloud a portion of the Application for a Variance as summarized as follows:

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1. *Granting of the requested Variance will not be contrary to the public interest because the existing neighborhood is primarily residential with a mixture of single and multi-family homes. The proposal for this lot is to demolish the existing structure and build a new duplex on the site that will comply with the existing required setbacks. The current house is located almost entirely within the front-yard setbacks.*
2. *The proposed use will observe the spirit of the ordinance because the ordinance is in place to keep similar uses together and provide for minimum dimensional requirements. The neighborhood is predominantly residential, so to use this lot for business would mix dis-similar uses. A duplex would be appropriate given the surrounding uses. Additionally, although the lot does not have the required lot area for any use, it is larger than most of the lots used as a single-family house lot.*
3. *Substantial justice would be done to the property owner by granting the Variance because this lot abuts a multi-family complex and therefore, would be more appropriately developed as a duplex creating a transition from the existing multi-family to a single-family.*
4. *The proposed use will not diminish the values of surrounding properties because the existing building located within the building setbacks would be removed and a new construction duplex would be constructed using the latest technology and located using the appropriate building setback creating a more appealing appearance from the street.*
5. *Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship** because the property is located in the business zone. The size and shape of the property limit its viability as a commercial business lot. Additionally, the lot is surrounded by residential uses necessitating buffers to dis-similar uses if we were to develop the lot as commercial. The lot is currently utilized as a residential lot with an old single-family home occupying the property. The lot abuts multi-family developments on three sides. Multi-family developments are an allowed use in the business zone however it is not completely compatible with the single-family use. Because the lot is larger than many, we think it is an appropriate transitional use between the multi-family developments. The duplex use is more compatible with both uses and is therefore, appropriate for this lot.*

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

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

Chairman Seabury declared the matter before the Board.

Mr. Dearborn asked Mr. Basso to explain the easement for the proposed driveway, as it encroached onto another lot. Mr. Basso replied that the driveway was a shared driveway with the abutting lot to the north.

Mr. Pacocha asked if the applicant owned the abutting lot as well. Mr. Basso replied that the applicant did not own the abutting lot.

Ms. McGrath stated that an easement would remain in effect for “all time” except in the case where the receiver of the easement was willing to give it up.

Mr. Basso stated that all potential buyers were supposed to be made aware that the property was “encumbered” when a title search was done.

Mr. Martin stated that he had a problem with the fact that the driveway would be a shared driveway.

Chairman Seabury commented that he did not feel the applicant had enough room for a single-family home much less a multi-family home in the Business Zoning District.

Mr. Pacocha asked if the property were on town water and sewer. Mr. Basso replied that it was.

Ms. Davis asked if the house were being planned as a side-by-side dwelling. Mr. Basso replied that it was and that both units would be located on the same side of the driveway.

Mr. Norman Boyer, the applicant, addressed the Board, stating that he had been in negotiations with the owner of 5 Bay Street, the abutter, Mrs. Byrd. He further stated that he had offered to compensate Mrs. Byrd if she relinquished her portion of the right-of-way located on his property, which would allow him to install a separate driveway.

Mr. Martin made a motion to approve the request for a Variance with the stipulation that the shared driveway shall be discontinued and a separate driveway would be created by a private land swap.



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Mr. Pacocha seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt the applicant had met all the criteria for a Variance and it would provide substantial justice to the neighborhood, particularly with the property having a separate driveway.

Mr. Pacocha, speaking on his second, stated that he felt it would be a good transition of the property based on the condition it was presently in.

VOTE: Chairman Seabury asked Clerk Davis 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
Mr. Pacocha	To approve
Ms. Shuman	To approve
Mr. Dearborn	To approve
Mr. Seabury	To deny

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

Chairman Seabury declared a break at 9:15pm, calling the meeting back to order at 9:21pm.

- Case 157-035 (1/26/12): Charles and Rita Boucher, 9 Wagner Way, Hudson, NH, request an Accessory Living Unit (ALU), granted to a previous owner in October, 2009, to remain within the existing dwelling. [Map 157, Lot 035, Zoned R-1, HZO Article XIII A, Section 334-73.1, Accessory Living Units.]**

Clerk Davis 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 case was before the Board for the same reason described in the case notification, as repeated above.

Chairman Seabury stated that the applicant had submitted an application stating that they would be in compliance with everything required and had also initialed the document indicating that the information was understood. Chairman Seabury further stated that the members of the Board had had ample time in which to review it. Chairman Seabury

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noted that all of the Board members were in agreement to waive the requirement of asking the applicant to read the application into the record.

Mr. Pacocha asked if the applicant had been made aware of the requirement when he purchased the house. Mr. Boucher replied that he was not, and in fact, was told that it was an acceptable “in-law” apartment.

Chairman Seabury said that all future Decision Sheets would list the restrictions regarding an Accessory Living Unit.

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

Mr. Pacocha seconded the motion.

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

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

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

### **IV. OTHER BUSINESS**

Chairman Seabury stated that he would send a response to Mr. Lemieux regarding the second letter he had sent to the Board. He further stated that all of the Board members’ agreed with that decision.

### **V. APPROVAL OF MEETING MINUTES**

The following changes were made to the minutes of the November 10, 2011, meeting:  
Page 14, 3rd paragraph – the word “conservations” was changed to “conversations” –  
Seabury

Mr. Martin made a motion to approve the minutes from the November 10, 2011, meeting, as amended by the Board.

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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 November 10, 2011, meeting, as amended by the Board.

The following changes were made to the minutes of the December 8, 2011, meeting:

Page 5, 5<sup>th</sup> paragraph – “easterly” was changed to “westerly” - Dearborn

Mr. Martin made a motion to approve the minutes from the December 8, 2011, 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 December 8, 2011, meeting, as amended by the Board.

## **VI. REORGANIZATION OF THE BOARD**

### **Election of Officers**

Mr. Martin nominated Mr. Seabury for the position of Chairman of 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 electing Mr. Seabury for the position of Chairman of the Board. (Mr. Seabury abstained.)

Mr. Dearborn nominated Mr. Pitre for the position of Vice Chairman of 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 electing Mr. Pitre for the position of Vice Chairman of the Board.

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

Ms. Shuman seconded the motion.

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Mr. Pacocha nominated Ms. Davis for the position of Clerk of the Board.

Mr. Dearborn seconded the motion.

Chairman Seabury also nominated Mr. Houle for the position of Clerk of the Board, breaking the tie. (3-2)

Chairman Seabury called for a verbal vote and he then stated that all of the sitting Board members were in favor of electing Mr. Houle for the position of Clerk of the Board.

### **VII. ADJOURNMENT**

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

Mr. Pacocha seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 10:11pm.

Date: February 21, 2012

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J. Bradford Seabury, Chairman

Recorder: Trish Gedziun