



# 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 December 8, 2011

#### I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:47pm on Thursday, December 8, 2011, 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, Michael Pitre, and Donna Shuman

#### **Members**

**Absent:** None (all present)

#### **Alternates**

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

#### **Alternates**

**Absent:** Bill Abbott (Excused)

#### **Staff**

**Present:** William Oleksak, Zoning Administrator

**Recorder:** Trish Gedziun

## **II. SEATING OF ALTERNATES AND ANNOUNCEMENTS**

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

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

- 1. Case 133-035 (12/8/11): Louis and Suzanne Muttu, 17 Pinewood Road, Hudson, NH, requests the following:**
  - a. A Variance to allow the existing 14' x 20' screened porch to be located 12.9 feet into the side-yard setback, where 15 feet is required. [Map 133, Lot 035, Zoned R-1, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**
  - b. A Variance to allow the existing 15' x 24' above ground pool and 8 foot deck to be located 8 feet into the side-yard setback, where 15 feet is required. [Map 133, Lot 035, Zoned R-1, 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 explained that the matter was before the Board for the same reason described in the case notification, as repeated above.

### *Discussion with regard to request A - a Variance*

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

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Attorney Thomas J. Leonard, from Welts, White & Fontaine, P.C., representing the applicant, addressed the Board, stating that the problem started back in 1995 when the applicant purchased the property.

Attorney Leonard said that the applicant received a “mortgage plot plan” at the closing for the purchase of the property. He also said that the plot plan identified the house as being 35 feet from the property line – pointing out that the applicant had no reason to believe the plot plan was incorrect and maintained the property with that understanding in mind. (Plot Plan identified as Exhibit F)

Attorney Leonard stated that in 2006 the applicant wanted to construct a 14’ x 20’ screened porch and that led them to fill out an application for a building permit - supplying the town with a copy of the plot plan obtained at the closing. He further stated that the town had approved the request for a Building Permit and the porch was subsequently built. He said the applicant was under the impression that the porch was 21 feet from the property line (according to the plot plan provided to them in 1995.)

Attorney Leonard stated that in 2007 the applicant installed an above-the-ground pool along with an extension to the existing deck which connected the pool to the deck. He said that a building permit was not requested in this instance because the applicant did not know that one was needed.

Recorders’ Note: Attorney Leonard passed around pictures of the deck and pool to the members of the Board.

Attorney Leonard stated that the Assessors’ Card noted all of the improvements and additions to the property.

Attorney Leonard also stated that in the spring of 2011, a neighboring abutter to the west had a survey done, which showed the applicant’s house closer to the westerly property line than they had initially believed.

Attorney Leonard read aloud from a portion of a letter dated September 29, 2011, addressed to Louis and Suzanne Mutty, the applicants, from William Oleksak summarized as follows: (Identified as Exhibit E)

*It has been brought to our attention the existing three season porch is encroaching into the side setback; this is a violation of the HZO. A variance is required. Also, a pool has been installed without permits.*

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Attorney Leonard stated that once the above letter was received, actions were taken in an attempt to rectify the situation – one of which was the applicant having a survey done of their own. He noted that that survey confirmed that the porch was encroaching into the setback.

Attorney Leonard also stated that the applicant had asked an engineer to take a look at the land. (Identified as Exhibit B)

Attorney Leonard pointed out that the wetland and the septic system were located in the front of the applicants' property. He further pointed out that there were two retaining walls located in back of the property.

Attorney Leonard also pointed out that, in addition to the stone walls and the slopes leading up to the rear of the property, there was also a well.

Attorney Leonard said that the applicants were advised to apply for a Variance as well as to request a building permit for the pool. He said that both of those requests were denied based on the intrusion into the side-yard setbacks.

Attorney Leonard commented that he did not feel the Hudson Zoning Ordinance was clear with regard to the setbacks.

Attorney Leonard stated that the applicant had actually moved one of the retaining walls in an effort to keep it on the correct side of the property.

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

- 1. Granting the requested Variance will not be contrary to the public interest because to allow the infringement on the side-yard setback as proposed, would not adversely impact any of the stated purposes. This lot is in a neighborhood of lots where there is ample open space, and where the buildings are sufficiently separated for all purposes.*
- 2. The proposed use will observe the spirit of the ordinance because the proposed use is consistent with other residential uses in the neighborhood. The proposed Variance will not harm surrounding landowners nor will it prevent the accomplishment of the purpose of the zoning scheme.*

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3. *Substantial justice will be done to the property-owner by granting the Variance because the proposed Variance allows a porch which is consistent with other uses in the area and does not propose a threat to the abutters.*
4. *The proposed use will not diminish the values of surrounding properties because the proposed use is otherwise permitted in the district. The intrusion into the side yard is unnoticeable to the general public. There will be no effect on the values of surrounding properties. The porch has added value to the subject property.*
5. *Special conditions exist such that the literal enforcement of the ordinance results in unnecessary hardship because:*
  - a. *The property is a lot in a subdivision where the minimal lot size is one acre. The subject lot is a unique and unusual shape in that it is elongated with its side lot lines narrowing as you move from the front of the lot to the back of the lot. The building envelope is restricted as you move to the back of the lot. The front of the lot has a substantial wetland area. The back of the lot also has a significant slope rising to the rear of the lot that requires two retaining walls in close proximity to the building. Additionally, there is an existing septic system in the front of the home and an existing well to the rear of the lot.*
  - b. *The lot is in an established neighborhood where the single-family homes all have substantial yards and substantial separation. The lot line which is the subject of the setback at issue relates to the westerly lot line. The building on the lot which is east of the subject lot is substantially removed and separate from the common lot line. There is substantial separation and open space such that granting the variance will be insignificant and unnoticeable. The particular fifteen foot side-yard setback as applied to this property in the context of this neighborhood will not serve the purpose of the Zoning Ordinance in any fair and reasonable way. Density and open space is not an issue, there are no fire hazards, no obstructions to traveled ways, and all properties have ample space for yards. This is an*

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*established residential neighborhood and this Variance will not impact the character of the neighborhood.*

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

Attorney Leonard stated that along with the applicants', Louis and Suzanne Mutty, abutters Ms. Karen Zielinski, 15 Pinewood Road, and Ms. Christine Fortin, 13 Pinewood Road, were present representing a favorable recommendation of the application.

Mr. Frank Grzegorzewski, 20 Pinewood Road, an abutter, addressed the Board, stating that he felt it would be unfair of the town to ask the applicant to tear down the screened porch as they (the town) allowed it to be built in the first place and it would decrease the property value of the surrounding properties as well as the applicants'.

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.

Mr. Michael Daniele, 19 Pinewood Road, an abutter, addressed the Board, stating that he was the neighbor that shared the property line with the applicant.

Mr. Daniele stated that in July of 2011, he had his property surveyed prior to taking down a substantial amount of trees. He further stated that the property line discrepancy was discovered at that point.

Mr. Daniele stated that he had informed the applicant of where he presumed the property line was prior to the improvements made by the applicant. He also stated that he felt it fell upon the person actually doing the improvements to ensure where their property lines were – noting that a survey had not been performed on that property.

Mr. Daniele said that while he never filed a formal complaint, he suspected that the town (the Community Development Department) had notified the applicant of the Variances needed to bring the property into compliance.

Mr. Daniele commented that while he did not feel the applicant needed to move the screened porch (as it was only encroaching by two or three feet) he did feel that the deck and the pool should be moved into compliance.

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

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

Chairman Seabury stated that the Zoning Board of Adjustment had always considered pools, whether in-ground or above-the-ground, a structure.

Chairman Seabury also pointed out that it had been the policy in the State of New Hampshire that when an applicant requested permission for something that had already been done, the Board should not be relying on sympathy or empathy for the property owner or abutters, but on whether or not the request would be allowed in the future.

Ms. McGrath stated that it was noted in Attorney Leonard's testimony that the Town's Assessor had been to the property and noted the upgrades and asked Mr. Oleksak if the Assessors' Department ever notified the Community Development Department of upgrades/changes on properties. Mr. Oleksak replied that the Community Development Department was not always made aware of upgrades/changes noted by the Assessors' Department.

Ms. McGrath asked if the existing pool and deck were within the wetland boundary. Attorney Leonard replied that both structures were not within the wetland boundary. He said that most of the wetlands were located on 17 Pinewood Road.

Ms. McGrath stated that there appeared to have been some trees cut down on the westerly side of the property (as shown in Exhibit F) and asked if Attorney Leonard knew who had them taken down. Attorney Leonard replied that the trees were cut down on the neighboring property.

Mr. Oleksak stated that there was an addendum to the original plan in 1988 which re-defined where the wetlands were located on the lot – noting that re-definition reduced the wetlands to a “puddle” located in front of the property.

Ms. McGrath asked if it were typical for a property owner to have a boundary survey done once the property was purchased. Attorney Leonard replied that most homeowners went by something called a “mortgage plot plan” which was not necessarily accurate.

Mr. Martin commented that he felt the GIS Map suggested that the house was built too close to the setbacks. He further commented that he would support the applicants' request

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for a Variance for the screened porch as the town had issued a building permit for it in the first place. He also commented that he would not support the applicants' request for a Variance for the pool and deck to remain where they were because a permit had not been requested.

Mr. Dearborn asked if there were any consideration for a lot-line readjustment on behalf of both parties to simplify the situation. Attorney Leonard replied that although that consideration had been attempted, it did not work out.

### Second Round of Testimony

Chairman Seabury asked if there were anyone present who wished to speak for the second and final time, in favor of the application.

Attorney Leonard reiterated that the applicant did not know that a permit was needed to install the pool and the deck.

Attorney Leonard stated that all of the structures were permitted uses and he did not feel that an encroachment of only a few feet would adversely affect property values.

Chairman Seabury asked if there were anyone present who wished to speak for the second and final time, in opposition or neutrally with regard to the application.

Mr. Michael Daniele, an abutter, addressed the Board, again stating that he was in opposition 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.

No other questions being brought forward, Chairman Seabury declared the matter before the Board.

Mr. Martin commented that he felt this was a perfect case which reflected why a Certified Plot Plan was needed.

### Motion with regard to request A - a Variance

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

Mr. Pitre seconded the motion.



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Mr. Martin, speaking on his motion, stated that the town had issued a building permit in 2006 and said he felt the applicant could not be faulted for the something the town had approved of.

Mr. Pitre, speaking on his motion, stated that he concurred that the property owner was not in error in this situation. He also stated that he felt approving the request for the Variance would provide the applicant with substantial justice.

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

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

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

### Discussion with regard to request B - a Variance

Chairman Seabury asked if there were any members' of the Board who had questions or comments with regard to request B.

Ms. McGrath asked what the cost of relocating the pool would be. Attorney Leonard replied that it would be "expensive" and he was not even sure if it could be moved because of the location of the well.

Ms. McGrath asked what size the pool was. Attorney Leonard replied that it was 15' x 24'.

Attorney Leonard pointed out that the shed located on the applicants' property was not in question at this meeting as it was in compliance with the ordinance.

### Motion with regard to request B - a Variance

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

Chairman Seabury declared that the motion had died due to the lack of a second.

Mr. Pacocha requested to look at the pictures presented by Attorney Leonard again.

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Mr. Pacocha made a motion to deny the request for a Variance.

Mr. Martin seconded the motion.

Mr. Pacocha, speaking on his motion, stated that his decision to deny the request for a Variance was based on that of a new application and not on what had already been done which was not permitted. He also said that he did not feel the applicant met the criteria for a Variance.

Mr. Martin, speaking on his motion, stated that he agreed with what Mr. Pacocha had said.

VOTE: Chairman Seabury asked Clerk Davis 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. Pacocha	To deny
Mr. Martin	To deny
Ms. Shuman	To deny
Mr. Pitre	To deny
Mr. Seabury	To deny

Chairman Seabury declared that, there having been five votes to deny the request for a Variance, the motion had carried.

Chairman Seabury declared a break at 9:35pm, calling the meeting back to order at 9:42pm.

- Case 191-133 (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 V, Section 334-21, Table of Permitted Principal Uses.]**

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 he felt the case had been brought forth under the incorrect provisions and the abutters needed to be re-notified. He said that the case should be notified as Article VIII - Section 334-29 Extension or Enlargement of Nonconforming

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Uses and Section 334-30 Changes to or Discontinuing Uses of a Nonconforming Lot. He further said that the existing single-family home could not be added onto.

Mr. Anthony Basso, from Keach-Nordstrom, representing the applicant, stated that he had originally applied for the application under Sections 334-29 and 334-30. He further stated that he did not feel that Section 334-21 applied to this case as was notified.

Chairman Seabury stated that the Board, as well as Mr. Oleksak, agreed with Mr. Basso and the case would be re-notified at the towns' expense.

Mr. Martin made a motion to re-notify the case at the towns' expense and to defer the case until the next available meeting, date specific of January 26, 2012.

Mr. Pacocha seconded the motion.

Chairman Seabury called for a verbal vote and he then declared that all of the voting Board members were in favor of re-notifying the case at the towns' expense and deferring the case until the next available meeting, date specific of January 26, 2012.

### **IV. OTHER BUSINESS**

Chairman Seabury stated that the Board agreed with the proposed meeting dates for 2012.

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

The following changes were made to the minutes of the October 27, 2011, meeting:

Page 1, 1<sup>st</sup> paragraph - "Community Development Meeting Room" was changed to "Paul Buxton Meeting Room" – Martin

Page 4, 2<sup>nd</sup> paragraph – "garage to be used for storage" was changed to "garage to be used for storage and parking" – Davis

Page 5, 5<sup>th</sup> paragraph – "Chairman Seabury expressed agreement" was added to the end of the paragraph – Seabury

Page 7, 7<sup>th</sup> paragraph – "the word construct" was changed to "install" - Dearborn

Page 9, 2<sup>nd</sup> paragraph – "due to extensive natural foliage growth" was added - Davis

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Page 9, last paragraph – “Chairman Shuman” was changed to “Chairman Seabury” - Martin

Mr. Martin made a motion to approve the minutes from the October 27, 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 October 27, 2011, meeting as amended by the Board.

### **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 10:14pm.

Date: January 4, 2012

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J. Bradford Seabury, Chairman

Recorder: Trish Gedziun