



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 October 27, 2011

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:30pm on Thursday, October 27, 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, and Donna Shuman

Members

Absent: Michael Pitre (Excused)

Alternates

Present: Bill Abbott, Maryellen Davis, Gary Dearborn, and Marilyn McGrath

Alternates

Absent: Kevin Houle (Absent)

Staff

Present: Bill Oleksak, Zoning Administrator

Recorder: Trish Gedziun (Excused)

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 sat Mr. Dearborn in place of Mr. Pitre, who was excused.

III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. **Case 176-049 (10/27/11)**: VSH Realty, Inc., 100 Crossing Blvd., Framingham MA, request the following for property located at 189 Central Street, Hudson (Cumberland Farms):
 - a. A Variance to allow an electronic sign to be located within the required 200-foot setback to any residential dwellings. [Map 176, Lot 049, Zoned B, HZO Article XII, Section 334-64 C (6), Free-standing business and industrial signs.]
 - b. A Variance to allow the proposed electronic sign to have the text be 24 inches in height where a maximum of 10 inches in height is allowed. [Map 176, Lot 049, Zoned B, HZO Article XII, Section 334-64 C (3), Free-standing business and industrial signs.]

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

Chairman Seabury stated that the case would have to be deferred to the next meeting as three of the direct abutters had not been notified.

Mr. Martin made a motion to defer the case until the next scheduled meeting, date specific of November 10, 2011.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

October 27, 2011

Ms. Shuman seconded the motion.

VOTE: Chairman Seabury asked Clerk Davis to poll the Board on the motion to defer the case until the next scheduled meeting, date specific of November 10, 2011, and to record the members' votes, which were as follows:

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

Chairman Seabury declared that, there having been five votes to approve the request to defer the case until the next scheduled meeting, date specific of November 10, 2011, the motion had carried.

2. **Case 217-036 (10/27/11):** Walter Mahan, 69 Burns Hill Road, Hudson, NH, requests a Wetland Special Exception to allow construction of a proposed detached garage within the wetland buffer; 50 feet required, 28 feet proposed. [Map 217, Lot 036, Zoned R-2, HZO Article IX, Section 334-33, Wetland Conservation District.]

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.

Mr. Martin read aloud from a Motion to Recommend a Wetlands Special Exception from the Conservation Commission dated September 12, 2011, summarized as follows:

Motion: Motion to Recommend a Wetlands Special Exception

Vote: 4 – 0 – 0 in Favor

With Stipulations:

1. *Restoration will comply with: BEST MANAGEMENT PRACTICES TO CONTROL NON-POINT SOURCE POLLUTION: A GUIDE FOR CITIZENS AND TOWN OFFICIALS (NH DEPARTMENT OF ENVIRONMENTAL SERVICES – Latest Issue.)*
2. *This motion is based on the wetlands plan submitted by the applicant. Additional impacts that may be the result of impervious surfaces or*

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

October 27, 2011

relocation of structures have not been addressed. It is recommended that if these conditions occur, the plan be sent to the Conversation Commission for further review.

- 3. Move Petrol Products to the garage upon completion.*

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

Mr. Walter Mahan, the applicant, addressed the Board, stating that he wanted to construct a 24' x 24' garage to be used for storage and parking.

Mr. Mahan read aloud from the Application for a Wetland Special Exception summarized as follows:

Please describe the proposed use, indicating the impact to the wetland and its buffer.

Use of the garage is for storage and parking.

Mr. Mahan then read aloud from the Wetlands Special Exception Proposed Use Statement summarized as follows:

Existing Conditions/National Wetland Inventory

The area where the garage is going to be built is currently grass. There is a small pitch down to the wetlands where the water runs off. There are no wetlands in the area under discussion. (Photos of where the proposed garage will be built are attached.)

Proposed Project Description

Project will consist of the construction of a 576 square foot garage and grading to be even with the existing driveway. The project is estimated to take approximately 2 weeks to complete. The purpose of the garage is for parking and storage.

Impact to Wetlands and/or Buffers

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

October 27, 2011

There will be no direct impact to the existing wetlands. The required buffer in Hudson is currently 50', however, with the construction of the garage there will only be a 28' buffer on one side and a 33' buffer on the other side. We feel that even though we do not have the current required 50' buffer, the land is even and there will be no effect on to the wetlands.

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.

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

Mr. Martin asked Chairman Seabury if an Equitable Waiver were needed because half of the applicant's house, deck and shed were located within the 50' setback. Chairman Seabury expressed agreement.

Chairman Seabury asked what year the house was built. The applicant replied that the house was built in 1984.

Chairman Seabury suggested that the applicant request an Equitable Waiver in writing. The applicant then requested an Equitable Waiver.

Mr. Martin made a motion to accept the applicants' request for an Equitable Waiver to allow the rear end of the house, the deck, and the shed to remain within the 50' setback.

Mr. Pacocha seconded the motion.

VOTE: Chairman Seabury asked Clerk Davis 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. 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 Equitable Waiver, the motion had carried.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

October 27, 2011

Chairman Seabury asked if there were any members of the Board who had questions or comments with respect to the applicants' request for a Wetland Special Exception.

Mr. Martin asked the applicant if the proposed location of the garage was the only reasonable place in which to put it.

Mr. Mahan replied that the proposed location was the only logical place to construct the garage.

Ms. Davis commented that she felt due diligence was done on behalf of the applicant, there was no other reasonable place to put the garage, there was no negative abutter testimony, and there was a favorable vote from the Conservation Commission.

Mr. Martin made a motion to approve the request for a Wetland Special Exception with the following three stipulations:

1. Restoration will comply with: BEST MANAGEMENT PRACTICES TO CONTROL NON-POINT SOURCE POLLUTION: A GUIDE FOR CITIZENS AND TOWN OFFICIALS (NH DEPARTMENT OF ENVIRONMENTAL SERVICES – Latest Issue.)
2. This motion is based on the wetlands plan submitted by the applicant. Additional impacts that may be the result of impervious surfaces or relocation of structures have not been addressed. It is recommended that if these conditions occur, the plan be sent to the Conversation Commission for further review.
3. Move Petrol Products to the garage upon completion.

Mr. Dearborn seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt the applicant had done due diligence, the location of the proposed garage was a good one, the applicant had met all of the criteria for a Wetland Special Exception, and there was a favorable recommendation from the Conservation Commission.

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

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

October 27, 2011

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

Mr. Martin	To approve
Mr. Dearborn	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 Wetland Special Exception, with the noted stipulations, the motion had carried.

3. **Case 117-004 (10/27/11):** Leona L. Shanholtz, 99A Robinson Road, Hudson, NH, requests a Variance to allow a proposed 10' x 14' shed to be located to the front of the main building. [Map 117, Lot 004, Zoned G-1, HZO Article VII, Section 334-27.1 C, General 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.

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

Ms. Leona Shanholtz, the applicant, addressed the Board, stating that she wished to install a 10' x 14' shed in a space to the side – but in front of her house.

Ms. Shanholtz read aloud a portion of the Application for a Variance summarized as follows:

1. *Granting of the requested Variance will not be contrary to the public interest because the structure is an asset to the property. The shed is attractive and will be properly landscaped. The structure will enhance the site and not detract from the neighborhood.*
2. *The proposed use will observe the spirit of the ordinance because the structure will be used to store lawn and snow removal equipment. It will be more accessible – therefore making property up-keep more efficient.*

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

October 27, 2011

3. *Substantial justice would be done to the property owner by granting the Variance because the previous metal shed was located at the back of the property – it was crushed by heavy snow and ice last winter. It was in a space difficult to reach. The new Reeds Ferry wood shed will be easily reached.*
4. *The proposed use will not diminish the values of surrounding properties because the Reeds Ferry fence is attractive and keeps with the architecture of the home. It will enhance the value of the home as well as the neighborhood.*
5. *Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship** because the owner will have easy access to the tools and equipment located in the shed.*

The shed will be located next to an existing paved area of the driveway making it easier to access the equipment and maintain the yard.

This will enhance neighboring property values.

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

Ms. Joanne Orme, 11 Robinson Road, Hudson, NH, an abutter, addressed the Board, stating that she was in favor of the applicants' request.

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.

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

Mr. Martin asked if the applicant owned the entire property. Ms. Shanholtz replied that she did. Mr. Martin asked when the existing garage was installed. Ms. Shanholtz replied that it was installed sometime in the 1980's.

Mr. Martin asked if the existing garage was in fact 15 feet from the property line. Mr. Oleksak replied that it was.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

October 27, 2011

Mr. Martin asked why the proposed shed could not be installed in another “open area.” Ms. Shamholtz replied that “open area” had too much of a steep incline to allow a shed to be installed.

Mr. Dearborn commented that he had driven by the applicants’ property and that he agreed that it was very “hilly.”

Mr. Dearborn asked if there would be any excavating needed prior to the installation of the shed. Ms. Shamholtz replied that there would not.

Chairman Seabury asked why the applicant could not install the proposed shed adjacent to the existing garage. Ms. Shamholtz replied that it would be easier to get in and out of the proposed shed from the paved driveway. She also said that she wanted to keep a little bit of a grassy, level area for her tenants’ children to play in.

Ms. Davis asked why the applicant could not place the proposed shed in the same location that the previous shed was - that was destroyed by heavy snow and ice. Ms. Shamholtz replied the landscaping had changed considerably due to extensive natural foliage growth and the location of the previous shed was no longer accessible.

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

Mr. Pacocha seconded the motion.

Mr. Dearborn, speaking on his motion, stated that he felt the Variance should be approved, given the “hilly” landscaping of the property.

Mr. Pacocha, speaking on his second, stated that he felt the applicant had successfully met all of the criteria for a Variance and the shed would not be visible from the street.

Chairman Seabury commented that the sloped landscaping on the property presented a particular hardship. He also commented that he felt the shed would be an attractive value in the neighborhood.

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

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

October 27, 2011

The proposed structure is a garage and will not be out of character with other homes in the neighborhood because all the other homes have garages.

The proposed structure will not hinder the use or view of other land owners or the public.

- 2. The proposed use will observe the spirit of the ordinance, because the structure shall not interfere with emergency service if any was needed to access the back of the property.*

The proposed structure will not look oddly shaped or be unsightly in nature.

The proposed structure will not interfere with any easements.

- 3. Substantial justice would be done to the property owner by granting the Variance, because the addition of the garage would allow the family to have a location for recreational use and storage.*

The second floor of the proposed structure will allow for additional living space as the existing living space is becoming overcrowded.

The proposed new structure will allow for additional value to the home as well as surrounding properties.

- 4. The proposed use will not diminish the values of surrounding properties because adding a garage would not typically be looked at as diminishing the value of a home in this neighborhood.*

The proposed structure will not diminish the values of other property owners, because it will blend in with the existing homes in the neighborhood.

The proposed structure will not diminish the value of the property because the intended use will be residential.

- 5. Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship**, because the lot lines are oddly shaped. This piece of property is long and narrow with lot lines having sharp and unmanageable setbacks when adding structures. The placement for the*

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

October 27, 2011

garage would only fit on the side of the home because of the narrow lot access. The front of the garage will not need a Variance, but because of the sharp angle of the side lot line, the rear of the garage does need a Variance.

In my opinion, adding a garage in front of the house to meet the setbacks would look unsightly. Having a garage in front of the house would take up too much of the driveway and is not feasible. The only way for this property to have a garage, fit to the structure and make the best use of the property would be for the Board to grant a Variance.

Chairman Seabury asked the applicant why the proposed garage would be 28 feet wide. Mr. Buja replied that he had consulted with an architect and it had been suggested that anything less than 28 feet would make fitting two vehicles too tight.

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 asked where the egress would be from the “living area” of the second floor of the proposed garage.

Mr. Buja replied that he wanted to get permission to build the garage prior to hiring an architect to finalize the exact design plans. He further replied that his hope was to put in a bedroom, a closet, and perhaps a small bathroom.

Mr. Pacocha asked if the applicant had considered purchasing a portion of the adjacent vacant lot which was owned by the town. Mr. Buja replied that was not a consideration at the present time.

Ms. McGrath asked if it were truly going to be an attached garage – noting that the abutter notification indicated that it was going to be a detached garage. Mr. Buja replied that the proposal was for an attached garage.

Mr. Abbott asked if the Variance that had previously been granted was also for a detached garage. Chairman Seabury replied that it was.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

October 27, 2011

Ms. McGrath asked if the error in the abutter notification could have any adverse effect on any decisions that the Board made at this meeting. Chairman Seabury replied that he did not think there would be a problem – noting that there were no abutters present.

Ms. Davis commented that she was relieved to hear that the applicant had testified that the living space portion in the proposed garage was going to be for personal use only, consisting of a master bedroom/bathroom.

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

Mr. Pacocha seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt it was a good use for the property, there was no negative abutter testimony, and the applicant had met all of the criteria for a Variance.

Mr. Pacocha, speaking on his second, stated that he felt the applicant had successfully met all of the criteria for a Variance.

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. Pacocha	To approve
Mr. Dearborn	To approve
Mr. Abbott	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.

V. APPROVAL OF MEETING MINUTES

The following changes were made to the minutes of the August 25, 2011, meeting:

Page 4, #4 – the word “any” was changed to the word “all” – Dearborn

Page 6, 5th paragraph – the word “staircase” was changed to the word “lift” – Davis

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

October 27, 2011

Page 9, last paragraph – the following sentence was added - “Ms. Davis stated the she would propose a revision in writing at the next meeting to the application form to cover the agreed-upon list of requirements.” - Seabury

Mr. Martin made a motion to approve the minutes from the August 25, 2011, 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 August 25, 2011, meeting, as amended by the Board.

The following changes were made to the minutes of the September 22, 2011, meeting:

Page 6, 3rd paragraph – the word “motion” was changed to “request” – Martin

Page 6 & 7, – “Ordinance – Plot Plans” was changed to “application form with respect to plot plans.” – Seabury

Mr. Martin made a motion to approve the minutes from the September 22, 2011, meeting, as amended by the Board.

Mr. Pacocha 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 September 22, 2011, meeting, as amended by the Board.

VI. 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 9:25pm.

Date: November 11, 2011

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes
October 27, 2011

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun