



# 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 September 22, 2011

#### I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:30pm on Thursday, September 22, 2011, in the Community Development 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:** Bill Abbott (Excused)

#### **Staff**

**Present:** Julie Kennedy, Administrative Aide

**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.

Chairman Seabury sat Mr. Houle in place of Mr. Pitre, who was excused.

Chairman Seabury announced that he would step down from hearing this case, as he had not seen the property, and asked Mr. Pacocha to sit in place as Acting Chairman.

Acting Chairman Pacocha seated Ms. Davis in place of Mr. Seabury, who had stepped down.

Recorder's Note: Mr. Seabury took a seat in the audience portion of the room.

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

1. **Case 204-040 (9/22/11): Thomas and Denise Jarrett, 24 Burns Hill Road, Hudson, NH, request the following:**
  - a. **An Equitable Waiver to allow the existing structure to remain within the front-yard setback. [Map 204, Lot 040, Zoned R-1, HZO Article VIII, Section 334-28, Nonconforming Uses, Structures and Lots.]**
  - b. **A Variance to allow the proposed 12' x 12' addition and 30' x 40' garage to be constructed within the front-yard setbacks; 50 feet required, 47.1 feet proposed. [Map 204, Lot 040, Zoned R-1, HZO Article VIII, Sections 334-31, Alteration and Expansion of Nonconforming Structures.]**

**HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes  
September 22, 2011**

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

**A – Discussion with regard to the request for an Equitable Waiver**

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

Mr. Thomas Jarrett, the applicant, addressed the Board, and read aloud from the Application for an Equitable Waiver summarized as follows:

1. ***INNOCENT MISTAKE:*** *The existing structure was built in approximately 1965 - 46 years ago. We are not entirely certain of the circumstances under which the structure was permitted to be built.*
2. ***DISCOVERED TOO LATE:*** *It was discovered in 2009 that the structure is in violation to the ordinance when the property was surveyed to start plans for the proposed addition and garage.*

Acting Chairman Pacocha stated that he felt the house was most likely built to code at the time of construction.

Ms. McGrath asked if the applicant had the house built. Mr. Jarrett replied that he had not.

Acting Chairman Pacocha 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.

Acting Chairman Pacocha declared the matter before the Board.

Mr. Martin asked if the applicant had made any improvements to the home since he had purchased it almost 40 years ago. Mr. Jarrett replied that although some decks were replaced, no major construction projects had been done.

Ms. Davis asked Ms. Kennedy if there were any code enforcement issues with regard to the property. Ms. Kennedy replied that there were none.

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

Mr. Houle seconded the motion.

**HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes**  
**September 22, 2011**

Ms. Davis, speaking on her motion, stated that she felt the applicant had successfully demonstrated that it was a pre-existing condition prior to the Zoning Ordinance requiring a 50-foot setback, there had been no code enforcement issues, and there would be a high correction cost.

Mr. Houle, speaking on his second, stated that he agreed with everything Ms. Davis had said.

VOTE: Acting Chairman Pacocha 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:

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

Acting Chairman Pacocha declared that, there having been five votes to approve the request for an Equitable Waiver, the motion had carried.

**B – Discussion with regard to the request for Variance**

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

Mr. Thomas Jarrett, the applicant, addressed the Board, and read aloud from the Application for a Variance summarized as follows:

- 1. Granting of the requested Variance will not be contrary to the public interest because the proposed addition for a kitchen adjacent to the original kitchen and the attached proposed garage would increase the living space without imposing any extra burden on town services. As well, the proposed addition and proposed attached garage are set back further from the road than the original structure that has been in place for 45 years. Where there has been no impedance on the public way from the existing structure, there could not possibly be from the new addition.*

## HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

September 22, 2011

2. *The proposed use will observe the spirit of the ordinance because granting this variance would allow us to alter a nonconforming structure by adding an addition and garage which would be no closer to the road than the original structure and it will conform to the side and rear setbacks.*
3. *Substantial justice would be done to the property owner by granting the Variance because the existing house does not have a proper dining room. The proposed addition for a new kitchen would allow for the reallocation of the existing kitchen space to make a proper dining room that would accommodate having family and friends for dinner. As well, the proposed addition and attached garage will be set back from the front property line farther than any existing structure abutting the property satisfying a standard of fairness in the neighborhood.*
4. *The proposed use will not diminish the values of surrounding properties because the granting of the variance will allow for an increase in value of the property and thus improving the value to the neighborhood.*
5. *Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship** because not granting the variance would limit our ability to entertain family and friends. Also, we chose to design the proposed addition and attached garage in this manner because it allowed for the new kitchen to be built adjacent to the existing kitchen and helps facilitate the transition from the existing structure to the proposed garage. If we were to be required to abide by the current ordinance, there would be practical difficulties in designing an addition with the required space to serve its purpose. The proposed addition is designed to align with a dividing wall in the existing structure to allow for a more efficient use of the space.*

Acting Chairman Pacocha 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.

Acting Chairman Pacocha declared the matter before the Board.

Mr. Martin asked if the existing garage would remain where it was. Mr. Jarrett replied that the garage would remain where it was.

**HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes**

**September 22, 2011**

Ms. McGrath asked if the location of the driveway would be changed. Mr. Jarrett replied that the location of the driveway would not change.

Ms. Davis asked what would be in the area over the garage. Mr. Jarrett replied that the area over the garage would be used as a storage unit and testified that at no time would it be used as additional living space.

Ms. Davis asked why the stairs would be located on the outside. Mr. Jarrett replied that the decision to place the stairs on the outside was basically to not take up more space on the inside.

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

Ms. Davis seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt the applicant successfully met all of the criteria for a Variance. He also said he felt the changes would be an improvement to the home and was not detrimental to surrounding properties

Ms. Davis, speaking on her second, stated that she too felt the applicant had met all of the criteria for a Variance and the proposed use was a reasonable one.

VOTE: Acting Chairman Pacocha 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
Ms. Davis	To approve
Ms. Shuman	To approve
Mr. Houle	To approve
Mr. Pacocha	To approve

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

Mr. Seabury returned to his seat as Chairman of the Board with Mr. Pacocha returning to his seat as a full voting member of the Board, and Ms. Davis returned to her seat as a non-voting alternate member of the Board.

**September 22, 2011**

**VI. OTHER**

Ms. Davis stated that Chairman Seabury had asked her to make suggested changes to Section VII of the application form with respect to plot plans. The Board collectively discussed the proposed changes which were as follows:

**Proposed changes to Section VII. – Plot Plans**

Requests pertaining to minimal construction or additions of accessory items such as above-ground pools, sheds greater than 120 square feet but less than 320 square feet, decks and/or carports will require a “to scale” drawing of the lot showing setbacks and existing buildings along with the proposed placement of the new construction on the lot so that the Zoning Board may make a reasonable determination of the intent of the applicant and the changes being requested that require zoning relief.

**Proposed changes to Section VII-ii – Plot Plans**

All other requests must include a certified plot plan from a licensed land surveyor. Pictures and construction plans will also be helpful. The plot plan shall include all of the items listed below: (A. through I. inserted here)

Mr. Martin made a motion to approve the change to Section VII of the application form.

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 favoring of approving the proposed changes to Section VII of the application form.

**Proposed changes to the Home Occupation Special Exception Ordinance**

Ms. Shuman stated that Chairman Seabury had asked her to make suggested changes to Section 334-24 - the Home Occupation Special Exception Ordinance. The Board collectively discussed the proposed changes which included verbiage regarding Minor Home Occupations vs. Major Home Occupations.

Ms. Shuman pointed out that Mr. Pitre had additional comments with regard to the changes and felt that his comments should be considered prior to the Board making a final vote.

## **HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes**

**September 22, 2011**

Chairman Seabury suggested that the members of the Board review the proposed changes carefully, stating that the subject would be further discussed at the next meeting.

### **Proposed changes to the Sign Ordinance**

Ms. Kennedy asked the Board to notify Mr. Oleksak of any suggested changes regarding the Sign Ordinance. Ms. Kennedy stated that Mr. Oleksak would pass those suggested changes on to the Planning Board.

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

The following changes were made to the minutes of the July 28, 2011, meeting:

Page 2, last paragraph – stating that the house, “at 12 Alpine Drive” was added - Dearborn

Page 3, 3<sup>rd</sup> paragraph – the word “shed” was changed to “landing” – Houle

Page 6, 1<sup>st</sup> paragraph – “Project Engineer” was changed to “Professional Engineer” – Martin

Mr. Martin made a motion to approve the minutes from the July 28, 2011, meeting as amended by the Board.

Mr. Houle 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 July 28, 2011, meeting as amended by the Board. Note: Ms. Davis abstained, as she had not been present at the July 28, 2011, meeting.



**HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes**  
**September 22, 2011**

**VI. ADJOURNMENT**

All scheduled items having been processed, Ms. McGrath made a motion to adjourn the meeting.

Mr. Martin seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 8:47pm.

Date: October 13, 2011

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J. Bradford Seabury, Chairman

Recorder: Trish Gedziun