



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 May 26, 2011

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:31pm on Thursday, May 26, 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, Mike Pitre, and Donna Shuman

Members

Absent: None (All present)

Alternates

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

Alternates

Absent: None (All present)

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 HEARING FOR PROPOSED AMENDMENT OF ZBA BYLAWS (HTC §143)

Chairman Seabury asked if there were any members of the public present who had questions or comments with regard to the proposed amendment. No one came forward.

Chairman Seabury stated that the matter would be discussed at the next scheduled meeting in June which would allow the Board time to review the proposed changes already made.

IV. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. **Case 150-008-001 (5/26/11): Frederick R. Greaves, 6A Sunshine Drive, Hudson, NH, requests a Variance to allow a shed to be placed to the front of the main building. [Map 150, Lot 008-001, Zoned G, HZO Article VII, Section 334-27, 1C, General Requirements.]**

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

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Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak replied that the applicant had asked him where he thought the best place to put a shed would be due to the unique layout of his land. He stated that he informed the applicant that he felt the best place to put a shed was in front of the main building and that would require a Variance from the Board.

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

Mr. Greaves, 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 shed would have no effect on any owners of abutting properties. The proposed location of the shed would be over 100 feet from the front of the property on Sunshine Drive.*
- 2. The proposed use will observe the spirit of the ordinance because it would not alter the essential character of the neighborhood; threaten public health, safety, or welfare. The proposed location of the shed would be more than fifteen feet from the property line. It would not detract from the aesthetics of the property or neighborhood.*
- 3. Substantial justice would be done to the property owner by granting the Variance because the property had no garage and no other outside storage buildings. I currently have no place to put my snow blower, lawn mower, weed trimmer, tools, ladders, and other items. A shed would give me a place to store these items. My property is a duplex and it is important for me to have a place to store items used in maintaining the property.*
- 4. The proposed use will not diminish the values of surrounding properties because the shed would be placed far away from the front of the property. It would also look good since I am going with Reed's Ferry. The siding, roofing, and shutters will match that of my house. My property would also look neater and not cluttered with property maintenance equipment.*
- 5. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship because locating the shed in the backyard was not an option, the septic system is on the side-yard, and space*

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constraints affected the right side of the backyard. Putting the shed in the front-yard is the only reasonable place to put the shed.

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

Ms. Davis asked if the proposed shed would be located in front of the applicant’s unit. Mr. Greaves replied that it would be located in front of the unit he was currently living in. He also said that eventually he did plan to condex and sell the units.

Chairman Seabury declared the matter before the Board.

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

Mr. Pitre seconded the motion.

Mr. Martin, speaking on his motion, stated that he had looked at the property and he felt that all of the criteria were met, and not granting the variance would create a hardship for the applicant.

Mr. Pitre, speaking on his second, stated that he felt the applicant had successfully met the criteria for hardship and it would provide the applicant with due justice.

Chairman Seabury commented that he felt it was a strangely configured lot that probably should not have been approved in the first place. He said he felt the house could have been configured in such a way that there could have been room for a shed.

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 deny

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

2. **Case 210-006 (5/26/11): Jay and Michelle Shattuck, 175 Lowell Road, Hudson, NH, request a Variance to allow the installation of an electronic changing sign that will be less than 200 feet from a residential dwelling. [Map 210, Lott 006, Zoned B, HZO Article XII, Section 334-64, Free-standing business and industrial signs.]**

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 proposed sign met all of the criteria except that it would have been within 200 feet of a residential dwelling and therefore, required a Variance.

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

Mr. Fred Pinaeult, from Barlo Signs, representing the applicant, addressed the Board, and 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 residential dwelling in question is not an abutter - it is on the applicants' property. The proposed sign meets the Sign Ordinance in every other way – the public affected is the applicant.*
2. *The proposed use will observe the spirit of the ordinance because the intent or spirit of the ordinance is to prohibit electronic changeable signs from encroaching residential properties. Whereas the residential dwelling in question is part of the applicants' property, there is no conflict.*
3. *Substantial justice would be done to the property owner by granting the Variance because the sign as proposed, meets the ordinance in every way – but for the distance to a residential dwelling provision. There is no harm to the public by granting a Variance.*

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4. *The proposed use will not diminish the values of surrounding properties because the property in question is an established retail property. Updating its current signage with a more modern sign will not diminish surrounding property values.*

5. *Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship** because while the strict guidelines with regard to electronic changeable signs are beneficial to the community, the unique conditions which exist on the property warrant a Variance.*

The residential dwelling on the property is occupied by office space, and a part-time grounds keeper - seasonally. An unnecessary hardship exists in that Country Brook Farms is being prevented from updating their sign, due to their own residential dwelling.

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

Mr. Jay Shattuck, the applicant, addressed the Board, stating that he felt the property had a unique situation and that no one **not** affiliated with Country Brook Farms would ever live in the residence on the property.

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

Mr. Dearborn asked what the proposed hours of operation (of the sign) would be. Mr. Shattuck replied that he had imagined that the sign would go off when the ice cream stand shut down for the evening. Chairman Seabury informed the applicant that the sign could only be on during the hours of operation and it could not display temperature or time.

Ms. McGrath asked what the height of the existing sign was. Mr. Shattuck replied the proposed sign would be the same height as the existing sign, which was 25 feet.

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Ms. McGrath asked if the sign would be illuminated on both sides. Mr. Pineault replied the reader board would be illuminated and the top section of the sign would be externally illuminated with spot lights.

Ms. McGrath asked if the site plan provided to the Board at this meeting was the most current and up-to-date site plan. Mr. Oleksak replied that it was.

The Board had some discussions as to whether or not other residences on Lowell Road fell within 200 feet of the proposed sign. It was determined that there were none.

Ms. Davis asked if the proposed sign would replace all other signs on the property. Mr. Shattuck replied that the only other sign was one that read “Ice Cream Open.” He added that the proposed sign could certainly replace that sign if need be.

Ms. Davis commented that the proposed sign may be smaller in square footage, but may be more intrusive illumination wise.

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

Ms. Jenn Robichaud, from Barlo Signs, commented that she felt it was very unique case and she was in favor of the application.

Chairman Seabury declared the matter before the Board and asked if there were any comments or questions.

Mr. Pitre commented that he was struggling with the hardship aspect of it.

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

Mr. Martin seconded the motion.

Mr. Pacocha, speaking on his motion, stated that he felt the residence was part of the property and the applicant had the right to modernize and improve the business.

Mr. Martin, speaking on his second, stated that he felt granting the Variance would do substantial justice to the applicant.

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:

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

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

- 3. Case 223-039 (5/26/11): John and Kathleen Greenleaf, 14 Tanglewood Way, Merrimack, NH, request an extension of an un-activated Variance previously granted by the Zoning Board of Adjustment on May 27, 2010, to allow construction of a single-family dwelling on property located at 5 Gregory Street, Hudson, NH, without the required amount of frontage. 150 feet of frontage required, 25.70 feet of frontage proposed. [Map 223, Lot 39, 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 applicant had appeared before the Board on several occasions. He further replied that the applicant was requesting an additional extension of a previously granted un-activated Variance.

Chairman Seabury stated that the Town Attorney had advised him that the Board should not put limitations on granting extensions - especially, if nothing on the property had changed.

Ms. McGrath asked if the Board could grant extensions for a two-year period as opposed to a one-year period due to the economic condition. Chairman Seabury replied that the Board could do that but he advised against it. He said “what we have works.”

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

Attorney John Cronin, from Cronin & Bisson, representing the applicant, addressed the Board, stating that the applicant had done their very best to sell the property. He said that he had advised the applicant that perhaps auctioning the property was the best thing to do.

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He further stated the applicant followed his advice and actually entered into a Purchase & Sales Agreement with a potential buyer. Attorney Cronin stated that the potential buyer changed their mind after signing the contract and the matter was tied up in litigation. He further stated that he would be happy if the Board granted a one-year extension.

Mr. Houle commented that the site plan was outdated and pointed out that the wetlands could have changed over the course of 5 years.

Chairman Seabury asked if there was 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 and asked if there were any members who had questions or comments.

Mr. Martin made a motion to approve the request for an un-activated Variance previously granted by the Zoning Board of Adjustment for a period of two years with the following stipulations:

1. Only a single-family dwelling is permitted in keeping with the spirit of the neighborhood.
2. No further sub-division is to take place on the lot nor should the lot be used as an access to surrounding lots.
3. Initial construction and any future expansion of that construction should be outside of the wetland buffer.
4. The extension to the Variance will expire on May 26, 2013.

Mr. Pitre seconded the motion.

Mr. Seabury commented that he would vote against the approval because in effect, he felt the Board was changing the Zoning Ordinance.

Mr. Martin, speaking on his motion, stated that he felt the Board had made the same decision for other applicants and should continue to make the same decision for future applicants - on a case-by-case basis.

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Mr. Pitre, speaking on his second, stated that he felt it was appropriate to grant the extension for a period of two years.

VOTE: Chairman Seabury asked Clerk Davis to poll the Board on the motion to approve the request for an un-activated Variance for a period of two years, with the noted stipulations, 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 deny
Mr. Seabury	To deny

Chairman Seabury declared that, there having been three votes to approve the request for an un-activated Variance, with the noted stipulations, as previously cited, and two votes to deny the request, the motion had carried.

Chairman Seabury declared a break at 9:04pm, calling the meeting back to order at 9:14pm.

VII. APPROVAL OF MEETING MINUTES

The following edits were made to the minutes of the March 24, 2011, meeting:

Page 8, 6th paragraph – the word “stipulation” was changed to “amendment” – Seabury

Page 9 – Section VI – “no input or comments were brought forward” was added to the end of the paragraph - Seabury

Chairman Seabury noted that the final edit to the March 24, 2011, meeting would be heard at the next meeting pending the addition of verbiage with regard to density and hardship on Page 8.

The following edits were made to the minutes of the April 28, 2011, meeting:

Page 1, 1st paragraph – “Chairman Seabury” was changed to “Acting Chairman Pitre” – Seabury

Page 1 – “Mr. Pacocha arrived at 7:30pm” was added. – Mr. Dearborn

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Page 3, 1st paragraph – “with Ms. Davis resuming her role as a non-voting alternate.” was added – Seabury

Page 6, 11th paragraph – “Clerk Houle” was changed to “Clerk Davis” – Dearborn

Page 7, 2nd paragraph – “as previously cited,” was added after the words Conservation Commission. - Seabury

Page 10, 2nd paragraph – “Hillendale” was changed to “Hilindale” – Abbott

Page 12, 9th paragraph – “Mr. Martin” was changed to “Mr. Pacocha” – Seabury

Page 14 – “Mr. Martin stepped down from the case” was added. – Seabury

Page 17 -4th & 5th paragraphs – “Acting Chairman” was changed to “Acting Chairman Pitre” – Dearborn

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

VIII. OTHER BUSINESS

Chairman Seabury stated that the Planning Board had an upcoming workshop and asked the members of the Board to consider potential topics that could be discussed at that workshop. (i. e. elder care regulations, commercial storage containers, signs, cell phone towers, and types of sheds in terms of what is allowed and not allowed)

VIII.ADJOURNMENT

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

Ms. Shuman seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 10:15pm.

Date: June 8, 2011

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun