



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

MEETING MINUTES February 24, 2011

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:10pm on Thursday, February 24, 2011, in the Community Development Meeting Room in the Town Hall basement. Chairman Seabury then requested Acting Clerk Houle to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

Present: Normand Martin, Donna Shuman, J. Bradford Seabury, and Jim Pacocha (arrived at 7:32pm)

Members

Absent: Mike Pitre (Excused)

Alternates

Present: Bill Abbott, Gary Dearborn, and Kevin Houle

Alternates

Absent: Maryellen Davis (Excused) and Marilyn McGrath (Excused)

Staff

Present: William Oleksak, Zoning Administrator

Liaison

Present: Ben Nadeau (Excused)

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 announced that Mr. Houle would assume the role as Clerk in place of Ms. Davis, who was excused.

Chairman Seabury announced that Mr. Abbott would be seated in place of Mr. Pacocha, who had not yet arrived and Mr. Dearborn would be seated in place of Mr. Pitre, who was excused.

III. APPROVAL OF MEETING MINUTES

The following edits were made to the minutes of the December 9, 2010, meeting:

1. Page 4, 1st paragraph – “because the Board did not file the appropriate denial sheet within the allotted 150 days” was changed to “because the Board had determined that the decision was not made correctly.” - Seabury
2. Page 9, 2nd paragraph – the word “request” was changed to the word “motion.” - Seabury
3. Page 14, 5th paragraph – the sentence "noting that the first complainant had complained about the brightness and the flashing but could not recall what was being advertised, indicating that the sign was not very effective." was added - Seabury

Mr. Martin made a motion to approve the minutes from the December 9, 2010, 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 Board members were in favor of approving the minutes from the December 9, 2010, meeting as amended by the Board.

The following edits were made to the minutes of the January 27, 2011, meeting:

1. Pages 1 & 2 – “Gerry” Dearborn was changed to “Gary” Dearborn – Dearborn
2. Page 9, 1st paragraph – “reported that he had” was added after the address. - Seabury
3. Page 15, 11th paragraph – “Chairman Seabury said he would prefer to leave the text as it was written” - Seabury

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

Mr. Martin seconded the motion.

Chairman Seabury called for a verbal vote and he then stated that all of the Board members were in favor of approving the minutes from the January 27, 2011, meeting as amended by the Board.

Chairman Seabury suggested that the future review of past meeting minutes should be done at the end of meetings rather than at the beginning. The consensus of the Board was in agreement with this change.

Mr. Martin made a motion to have a public hearing for the review of amended by-laws at the March 24, and April 28, 2011, meetings.

Ms. Shuman seconded the motion.

Chairman Seabury called for a verbal vote and he then stated that all of the Board members were in favor of having a public hearing for the amended by laws at the March 24, and April 28, 2011, meetings.

Chairman Seabury pointed out that a copy of the Zoning Board of Adjustment's 2009-2010 Annual Report were included in the member's packets.

Chairman Seabury recognized Mr. Pacocha having arrived, saying Mr. Pacocha would be seated as a regular member, with Mr. Abbott returning to his position as a non-voting alternate member of the Board.

IV. PUBLIC HEARINGS FOR SCHEDULED APPLICATIONS

Mr. Pacocha stated that he would step down from the first case as he had not been present for the previous meeting, and Chairman Seabury re-seated Mr. Abbott in his place.

1. **Case 182-186 (2/24/11): Mike Horadan, 6 Elizabeth Court, Amherst, NH, requests the following:**
 - a. **(Deferred from 1/27/11) A Variance to allow a Farmer's Porch to be constructed within the front-yard setback at property located at 27 Hurley Street, Hudson, NH. 30 feet required, 27.6 feet proposed. [Map 182, Lot 186, Zoned TR, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**
 - b. **An Equitable Waiver to allow the existing garage to remain within the side-yard setbacks. [Map 182, Lot 186, Zoned TR, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**

Acting Clerk Houle read aloud the posted notice, as recorded above.

A. Discussion with regard to the request for a Variance

Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board and Mr. Oleksak replied that the applicant needed a Variance to construct a Farmer's Porch because it would have encroached into the front-yard setback. He said that the encroachment into the side-yard setback would be rectified by a land swap (to be approved by the Planning Board) with the applicant's neighbor. He

also said that the applicant needed an Equitable Waiver to allow the existing garage to remain within the side-yard setback.

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

Mr. Mike Horadan, the applicant, addressed the Board stating that he had previously read his presentation into the record with regard to the Variance at the January 27, 2011, meeting.

Mr. Horadan stated that the side-yard encroachment would be rectified by a land swap between himself and his neighbor.

Chairman Seabury asked if the land swap would be of equal acreage. Mr. Horadan replied that the swap would be square foot for square foot.

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 declared the matter before the Board.

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

Mr. Abbott seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt the applicant met all of the requirements for a Variance and the applicant had displayed a good faith effort.

Mr. Abbott, speaking on his second, stated that he agreed with everything Mr. Martin had said.

VOTE: Chairman Seabury asked Acting Clerk Houle 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. Abbott	To approve
Mr. Dearborn	To approve
Ms. Shuman	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.

B. Discussion with regard to the request for an Equitable Waiver

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 declared the matter before the Board.

Mr. Abbott made a motion to approve the request for an Equitable Waiver.

Mr. Martin seconded the motion.

Mr. Abbott, speaking on his motion, stated that he felt the garage had been there for a very long time and he felt it was a reasonable request.

Mr. Martin, speaking on his second, stated that he also felt it was a reasonable request.

Ms. Shuman stated that she felt the front portion of the existing dwelling should be added to the Equitable Waiver.

Chairman Seabury agreed with Ms. Shuman and stated that the Equitable Waiver would be extended to include the front portion of the dwelling. Mr. Abbott and Mr. Martin both said that they had agreed with Ms. Shuman's suggestion as well, making it a friendly amendment.

VOTE: Chairman Seabury asked Acting Clerk Houle 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. Abbott	To approve
Mr. Martin	To approve
Mr. Dearborn	To approve
Ms. Shuman	To approve
Mr. Seabury	To approve

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

Mr. Pacocha returned to his seat as a full voting member of the Board with Mr. Abbott returning to his seat as a non-voting alternate member of the Board.

2. **Case 184-032 (2/24/11): K&M Developers, LLC, 46 Lowell Road, Hudson, NH, requests a Wetland Special Exception to allow the installation of storm water systems that will impact 29,195 square feet of the wetland buffer for property located at 109 Belknap Road, Hudson, NH. [Map 184, Lot 032,**

Zoned R-2 and G-1, HZO Article IX, Section 334-33, Wetland Conservation District.

Acting Clerk Houle 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, any impact to the wetlands or wetland buffer had to be pre-approved by the Board.

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

Mr. Tony Basso of Keach-Nordstrom Associates, Inc., representing the applicant, addressed the Board, stating that the proposed four wetland buffer impacts were for storm water management only and not for development.

Acting Clerk Houle read aloud a letter dated January 31, 2011, addressed to the Zoning Board of Adjustment, from the Planning Board, summarized as follows:

At its January 26, 2011, meeting, the Planning Board voted to forward correspondence to the Zoning Board of Adjustment citing that the Planning Board concurs with the recommendation of the Conservation Commission, re proposed 29,195 square feet of wetland buffer impact associated with a proposed 100-unit 55 years or older residential community.

Acting Clerk Houle also read aloud a letter dated December 13, 2010, from the Conservation Commission as summarized as follows:

Description of work to be performed: Wetlands Special Exception to disturb 29,195 square feet of buffers at four locations to provide/install storm water management and treatment devices per plan provided.

Motion: To recommend a Wetlands Special Exception with the following stipulations:

- 1. Restoration will comply with Best Management Practices to Control Non-Point Source Pollution: A Guide for Citizens and Town Officials (NH Dept. 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 should be sent to the Conservation Commission for further review.*
- 3. Property south of the tree line on the map will be put into a Conservation Easement on the deed.*
- 4. A bottomless arch will be used from the vernal pool to the drainage area to the south under Brody Lane.*
- 5. Seeding in the buffer areas will be with a conservation mix.*
- 6. Maintenance of the retention pool areas will be restricted to sediment: No mowing allowed.*
- 7. Three parking spots adjacent to Unit #88 will be removed.*

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

- a. Proposed use is essential to the reasonable use of land outside the Wetlands Conservation District because the proposed buffer impacts are essential to the land located outside of the Wetland Conservation District. Existing topography ranges widely across the site. Six wetlands encumber all the low elevation areas on the*

site. Utilizing the land outside of the Wetland Conservation District results in the need to construct a storm water management system.

- b. There is no reasonable alternative to the proposed use that does not adversely affect the Wetland Conservation District because the wetlands*

are located in areas on the property that have the lowest elevations. As a result, storm water run-off currently drains/flows to these low lying areas. The proposed storm water management systems need to be constructed

directly adjacent to these low elevations, in order to reduce the potential for erosion at the discharge point, and to maintain the conductivity of on-site drainage patterns.

- c. Design, construction, and maintenance methods shall be prepared by a Professional Engineer (PE) and shall include restoration of the site, as nearly as possible, to its original grade and condition because the design, construction, and maintenance methods for the project, including those involving the wetland buffer impacts, have been designed by a Professional Engineer.*

All proposed wetland buffer impacts will be loamed and seeded following the completion of construction, resulting in restoration and stabilization of the disturbed buffers.

- d. The proposed use within the Wetland Conservation District is not based primarily on economic considerations because the proposed wetland buffer impact is the result of adhering to current storm water design standards, using acceptable engineering practices as it relates to limiting the potential for short-term and long-term erosion control problems, preserving the functions of the existing wetlands areas, and maintaining existing storm-water drainage patterns.*

- e. Provision is made for wildlife access corridors to promote the free migration of wildlife along the length of the Wetland Conservation District because promotion for the free migration of wildlife is included in the design on the proposed condominium community.*

Of the 58 acres that form the tract of land for this project, approximately 22 acres (38%) of the overall tract area will be dedicated in a Conservation Easement. The Conservation Easement will cover two wetlands, including one vernal pool, and will span the south and east property boundary. In addition, a wildlife crossing is proposed at station 13+00 of Brody Lane, allowing mobilization of wildlife between the central wetland and proposed conservation land to the south.

Chairman Seabury asked if there were anyone else 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. Martin made a motion to approve the request for a Wetland Special Exception with the noted stipulations of the Conservation Commission.

Mr. Pacocha seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt the proposed impacts would not be for any of the proposed buildings, which was unusual, that it met all of the criteria for a Wetland Special Exception, and that he felt it was a great plan for the Town of Hudson.

Mr. Pacocha, speaking on his second, stated that he felt the applicant adequately addressed the criteria for a Wetland Special Exception, the proposed impacts would not be for any of the proposed buildings, there had been favorable recommendations from the Conservation Commission and the Planning Board, and the Conservation Easement showed good faith on behalf of the applicant.

VOTE: Chairman Seabury asked Acting Clerk Houle 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. Pacocha	To approve
Mr. Dearborn	To approve
Ms. Shuman	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 136-009 (2/24/11): Judy Vankleef, 3 McCrady Drive, Hudson, NH, requests the following:

- a. **A Variance to allow the lot size to be less than 2 acres; 2 acres required, 0.811 acres will remain. [Map 136, Lot 009, Zoned G-1, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**
- b. **A Variance to allow the lot to have less than 200 feet of frontage; 200 feet required; 149.48 feet will remain. [Map 136, Lot 009, Zoned G-1, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**

4. Case 136-008 (2/24/11): Dana Ordway, 5 McCrady Drive, Hudson, NH, requests the following:

- a. **A Variance to allow the lot to have less than 200 feet of frontage; 200 feet required, 160.39 feet to remain. [Map 136, Lot 008, Zoned G-1, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**
- b. **A Variance to allow the existing garage to remain within the side-yard setback; 15 feet required, 12.5 exists. [Map 136, Lot 008, Zoned G-1, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**

Acting Clerk Houle read aloud the posted notices for cases 3 and 4 (136-009 & 136-008) as recorded above.

Discussion: Case 136-009 (2/24/11): Judy Vankleef, 3 McCrady Drive, Hudson, NH, requests the following:

Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak replied that a problem had been going on for a while between the two neighbors and that Mr. Grainger had been hired to rectify the

situation. He further stated that the owner of 5 McCrady Drive, Mr. Dana Ordway, had done some construction without knowing where the lot-lines were.

Mr. Oleksak stated that the two neighbors had agreed on a lot-line readjustment but that by doing so, it would shrink one of the lots which meant a Variance was needed because it affected the side-yard setback.

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

Mr. Mike Grainger, of M.J. Grainger Engineering, Inc., representing the applicant, stated that had been hired by Ms. Judy Vankleef to survey 3 McCrady Drive. He said that, in doing so, he found that the lot-line went right through the garage and barn located at 5 McCrady Drive.

Mr. Grainger said that Mr. Ordway, the owner of 5 McCrady Drive, had initially questioned the validity of the survey because he had always thought that the fence indicated where the property line was.

Mr. Grainger stated that Ms. Vankleef had extended her fence by 150 feet to try to “solidify” the property line. He also stated that there was no new construction being done, there was nothing being done to the driveways, and the property would look the same after the lot-line readjustment was done.

Mr. Grainger read aloud from the Application for a Variance as summarized as follows:

- 1. Granting of the requested Variance will not be contrary to the public interest because it does not affect the property boundaries of my surrounding neighbors and will have virtually no impact. The existing fence will now be the new property line.*
- 2. The proposed use will observe the spirit of the ordinance because the requested Variance will not affect the property boundaries of my surrounding neighbors and will have no impact on the neighborhood and environment.*
- 3. Substantial justice would be done to the property-owner by granting the variance because, by denying the Variance, I will continue to pay taxes on approximately 4,300 square feet of my property that my neighbor has been using. Also, if I were to decide to sell my home, I would be unable to do so until this Variance is approved.*

4. *The proposed use will not diminish the values of surrounding properties because both lots are single family homes. There are no changes in use. The lot-line readjustment will make both lots more conforming.*

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

Ms. Judith Vankleef, the applicant, addressed the Board, stating she had resided in her home for five years and she had been paying taxes on 4,300 square feet of her land that was being used by her neighbor. She said when she had her property surveyed she learned that her neighbor's garage and barn sat on her property, plus a portion of his driveway which he had been using to access his barn. After much discussion with her neighbor, they had both agreed to an adjustment boundary line between the two homes. Ms. Vankleef stated that she installed a 6-foot fence on the agreed boundary line between the two homes and that it would not be feasible for her neighbor to move his garage or barn off of her land. She said she had spent over \$7,000.00 on legal fees, installed a fence that cost \$5,000.00, and felt it would serve no purpose to deny this 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.

Chairman Seabury declared the matter before the Board.

Mr. Martin made a motion to approve the request (a) for a Variance. (Case 136-009)

Mr. Pacocha seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt the applicant had met all of the criteria for a Variance, and the Variance would correct an existing problem.

Mr. Pacocha, speaking on his second, stated that he felt it would not be contrary to the public interest, and it would make the property conforming.

VOTE: Chairman Seabury asked Acting Clerk Houle to poll the Board on the motion to approve the request (a) for a Variance (Case 136-009), and to record the members' votes, which were as follows:

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

Mr. Martin, speaking on his second, stated that he felt it met all of the criteria for a Variance and it would do substantial justice for the applicant.

Mr. Dearborn, speaking on his second, stated that he felt this case went hand-in-hand with the previous case and to deny this case would serve as an injustice.

VOTE: Chairman Seabury asked Acting Clerk Houle to poll the Board on the motion to approve the request (a) for a Variance (Case 136-008), 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 (a) for a Variance (Case 136-008), the motion had carried.

Mr. Martin made a motion to approve the request (b) for a Variance (Case 136-008)

Ms. Shuman seconded the motion.

Mr. Martin, speaking on his motion, stated that the Variance would correct an existing problem and it would provide justice to the applicant.

Ms. Shuman, speaking on her second, stated that she concurred with what Mr. Martin had said.

VOTE: Chairman Seabury asked Acting Clerk Houle to poll the Board on the motion to approve the request for (b) a Variance (Case 136-008), and to record the members' votes, which were as follows:

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

Chairman Seabury declared that there having been four votes to approve the request for (b) a Variance (Case 136-008), and one vote to deny, the motion had carried.

V. ADJOURNMENT

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

Mr. Dearborn seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 9:05pm.

Date: February 28, 2011

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun