

**HUDSON ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
April 22, 2010**

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:00pm on Thursday, April 22, 2010, in the Community Development Meeting Room in the Town Hall basement. Chairman Seabury then requested Acting Clerk Shuman to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

Present: Normand Martin, Jim Pacocha, Donna Shuman, and J. Bradford Seabury

Members

Absent: Mike Pitre (Excused)

Alternates

Present: Kevin Houle and Marilyn McGrath

Alternates

Absent: None (All present)

Staff

Present: William Oleksak, Zoning Administrator

Liaison

Present: Ben Nadeau (Excused)

Recorder: Trish Gedziun

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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 Ms. McGrath would be seated in place of Mr. Pitre, who was excused.

III. APPROVAL OF MEETING MINUTES

Chairman Seabury announced that Mr. Houle would be seated in place of Mr. Pacocha for the purpose of reviewing the meeting minutes, as he had not yet arrived.

The following edits were made to the minutes of the February 25, 2010, meeting:

1. Page 4, 1st paragraph – “with five members’ sitting.” was deleted.
– Seabury
2. Page 6, 5th paragraph – “Mr. Martin made a motion to approve the request for the extension” was changed to “Mr. Martin made a motion to approve the request for a one-year extension” – Seabury
3. Page 10, 1st paragraph – “Ms. Susan Snyder” was changed to “Ms. Susan Snide” – McGrath
4. Page 14, 6th paragraph – was changed to “No second being brought forward, Chairman Seabury declared the motion invalid for lack of a second.”
5. Page 15, 11th paragraph – was changed to “Chairman Seabury stated that the applicant had filled out the application for an

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Accessory Living Unit saying she would satisfy the requirements.”

- Seabury

Ms. McGrath made a motion to approve the minutes from the February 25, 2010, minutes 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 February 25, 2010, meeting as amended by the Board.

The following edits were made to the minutes of the March 25, 2010, meeting:

1. Page 5, 6th paragraph – “Mr. Freitas replied that drove to Boston, MA everyday and wholesaled produce.” was changed to “Mr. Freitas replied that he drove to Boston, MA every day and purchased wholesaled produce.” – Seabury
2. Page 23, 6th paragraph – “Chairman Seabury replied that he would convey those comments to the Board of Selectmen.” was changed to “Chairman Seabury replied that he would convey those comments to Attorney LeFevre.” - Seabury

Ms. McGrath made a motion to approve the minutes from the March 25, 2010, minutes 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 March 25, 2010, meeting as amended by the Board.

Chairman Seabury announced that Mr. Houle had returned to his seat as a non-voting alternate member of the Board, with Mr. Pacocha having arrived.

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IV. PUBLIC HEARINGS FOR SCHEDULED APPLICATIONS

1. **Case 176-028 (4/22/10):** 222 Central Plaza Associates Realty Trust, 222 Central Street, Hudson, NH, requests a Variance to allow parking of a seafood concession trailer to sell seafood. [Map 176, Lot 028, Zoned B, HZO Article V, Section 334-20, Table of Permitted Uses.]

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 he had originally felt that the applicant needed a Variance to allow for the parking of a seafood concession trailer.

Mr. Oleksak further stated that he had since had a different opinion after discussing the matter with the Board.

Chairman Seabury, addressing the applicant, Mr. James McGowan, stated that it was felt that he needed to appear before the Board of Selectmen to obtain a Hawker's and Peddler's License.

He further stated that the Zoning Administrator's concern was that the applicant wanted to park the proposed seafood concession trailer in the Business Zoning District and concession trailers of any type were only allowed in the Industrial Zoning District.

Chairman Seabury also stated that the Zoning Board of Adjustment was a Land/Use Board and one of the criteria that had to be met for to approve a Variance was to define what the hardship on the land was. Chairman Seabury further stated that he and Mr. Oleksak did not feel the applicant could prove any hardship on the land.

Ms. McGrath made a motion for the applicant to appear before the Board of Selectmen and for the Town to return the related fees that were paid to the applicant. Ms. McGrath also stated that the Board of Selectmen should also be advised that there was a potential requirement that a revised site plan might be needed to allow the proposed use on the property. Ms. McGrath further stated that she felt the Board of Selectmen should be made aware of the potential traffic concerns.

Mr. Martin seconded the motion.

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VOTE: Chairman Seabury asked Clerk Houle to poll the Board on the motion to approve the request to return the fees to the applicant, send the applicant to the Board of Selectmen, to advise the Board of Selectmen that Planning Board action may be necessary due to traffic impacts and potential site plan revision, and to record the members' votes, which were as follows:

Ms. McGrath	To return the fees and send to the Board of Selectmen
Mr. Martin	To return the fees and send to the Board of Selectmen
Mr. Pacocha	To return the fees and send to the Board of Selectmen
Ms. Shuman	To return the fees and send to the Board of Selectmen
Mr. Seabury	To return the fees and send to the Board of Selectmen

Chairman Seabury declared that the decision having been five votes to approve the request to return the fees to the applicant, send the applicant to the Board of Selectmen, and to advise the Board of Selectmen that Planning Board action may be necessary due to traffic impacts and potential site plan revision, the motion had carried.

2. **Case 183-028 (4/22/10): Jay and Theresa Lafond, 38 Adelaide Street, Hudson, NH, requests following:**

A. An Equitable Waiver to allow the existing dwelling to remain within the setbacks. [Map 183, Lot 028, Zoned TR, HZO Article VIII, Section 334-31, Alteration and expansion of non-conforming structures.]

B. A Variance to allow the alteration of an existing non-conforming structure.

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 the applicant was present for the reason stated in the posted notice, as recorded above.

A. Discussion with regard to the Equitable Waiver

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

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Mr. Jay Lafond and Mrs. Theresa Lafond, the applicants, addressed the Board, stating that they wished to construct a dining room on the side of their house, as they had a very small kitchen. Mr. Lafond also stated that the proposed addition would be located within the side-yard setbacks but not within the front-yard setbacks.

Mr. Lafond stated that the house was built in 1944 and was constructed too close to the road.

Chairman Seabury stated that the issue was not a nuisance and confirmed with Mr. Oleksak that there had been no complaints on the property and there would clearly be a high correction cost to move the entire home out of the side-yard setbacks.

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.

Ms. McGrath asked the applicant if the stairs shown on the plot plan were located on the street side. Mr. Lafond replied that the stairs shown were located on the street side – he further replied that the street was a “paper street.”

Chairman Seabury declared the matter before the Board.

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

Ms. McGrath seconded the motion.

Mr. Pacocha, speaking on his motion, stated that he felt the applicant had met the criteria for an Equitable Waiver, including the fact that the structure had existed for over ten years.

Ms. McGrath, speaking on her second, stated that she agreed with everything Mr. Pacocha had said and she also said she felt that the house was one of the many homes in that neighborhood in the same category.

VOTE: Chairman Seabury asked 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:

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

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

B. Discussion with regard to the Variance

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

Mr. Jay Lafond and Mrs. Theresa Lafond, the applicants, addressed the Board and read aloud a portion 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 a small addition would increase living space without imposing any extra burden to town services.*
- 2. The proposed use will observe the spirit of the ordinance because granting this variance would allow us to alter a non-conforming structure by adding an addition 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 this variance would allow a place for family and friends for dinner since our small kitchen cannot accommodate more than two people.*
- 4. The proposed use will not diminish the values of surrounding properties because the granting of the variance will allow us to increase the value of the property thus improving the value to the neighborhood.*
- 5. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship because not allowing the variance would limit our ability to entertain family and friends.*

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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.

Chairman Seabury declared the matter before the Board.

Ms. McGrath asked if the applicant chose the proposed location of the addition because it would have been adjacent to the kitchen. Mr. Lafond replied that location was chosen because it was adjacent to the kitchen.

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

Ms. McGrath seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt it was a good use, it would provide the applicant with substantial justice, and the applicant had successfully met all of the criteria for a Variance.

Ms. McGrath, speaking on her second, stated that she felt that the Variance was a reasonable request because an Equitable Waiver was needed and the addition did not encroach further into the front-yard setback. Ms. McGrath further stated that she felt a hardship did exist and there would be no diminution of surrounding property values.

VOTE: Chairman Seabury asked 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
Ms. McGrath	To approve
Mr. Pacocha	To approve
Ms. Shuman	To approve
Mr. Seabury	To approve

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

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3. **Case 177-012 (4/22/10):** Joseph Brunelle, 55 Kimball Hill Road, Hudson, NH, requests a Variance to allow the existing shed to remain to the front portion of the building. [Map 177, Lot 012, Zoned G, HZO Article VII, Section 334-27.1 (C) General Requirements.]

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 the applicant was present for the reason stated in the posted notice, as recorded above.

Mr. Martin, prior to hearing any testimony pertaining to the case, stated that it appeared that the town had sent two certified letters regarding to the case to the same abutter at 60 Kimball Hill Road and the abutter at 54 Kimball Hill Road had not been notified at all. Mr. Martin further stated that he felt the case should be deferred until all of the abutters were notified.

Chairman Seabury addressed the applicant, Mr. Joseph Brunelle, and explained that an automatic rehearing might have happened if the Board did not defer the case until all of the abutter's were notified.

Chairman Seabury also stated that the town would pay for the re-notification fees.

Mr. Martin made a motion to defer the case until the next available meeting, date specific of May 27, 2010.

Ms. McGrath seconded the motion

VOTE: Chairman Seabury asked Clerk Houle to poll the Board on the motion to defer the case, date specific of May 27, 2010, and to record the members' votes, which were as follows:

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

Chairman Seabury declared that the decision having been five votes to approve the request to defer the case, date specific of May 27, 2010, the motion had carried.

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- 4. Case 175-039 (4/22/10): Trendezza, LLC., 7 Colby Court, Suite 211, Bedford, NH, requests a Variance to allow the existing structure to be replaced within the front and rear property lines located at 1 Sunflower Path, Hudson, NH (aka 142 Ferry Street). 30-foot front-yard setback required, 24 feet proposed, 15 feet side-yard setback required, 10 feet proposed. [Map 222, Lot 039, Zoned R-2, HZO Article VII, Section 334-37, Table of Dimensional Requirements.]**

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 explained that the property had been abandoned in excess of ten years. Mr. Oleksak stated that the property owner, with whom he had dealt with for a number of years, lived in the Midwest.

Mr. Oleksak also said that the property owner's daughter had occasionally visited the property but other than a couple of yard sales, nothing had been done to the property.

Mr. Oleksak stated that, since the house had been abandoned, there were all kinds of animals living in and under the home.

Mr. Oleksak also said that he had received numerous complaints from neighbors regarding the condition of the property and his next move would have been to condemn it and have it ripped down had it not been purchased.

Mr. Oleksak stated that the ideal conception was for the property to be torn down and replaced with a small home with two bedrooms.

Mr. Martin, prior to hearing any testimony or discussion regarding the case, stated that if a property owner was not going to be present at a meeting there was usually a signed statement authorizing another person to represent the owner.

Chairman Seabury asked the applicant, Mr. Robert Pace, Jr., to submit a hand-written note giving Mr. Jeffrey Burd, P.E., permission to represent himself and his partner, Mr. Jon Lariviere. (Note: Mr. Lariviere was not present at the meeting)

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

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Mr. Jeffrey Burd, P.E., addressed the Board, stating that the applicant had recently purchased the ¼ acre non-conforming lot which was located in the Business Zoning District.

Mr. Burd stated that the applicant originally purchased the property to renovate it but had subsequently concluded that the building was beyond repair.

Mr. Burd further stated that the existing house was located entirely within the front-yard setback; and the proposed house would be partially located in the front-yard setback and partially located in the rear-yard setback.

Mr. Burd read aloud a portion of the Application for a Variance as summarized as follows:

- 1. Granting of the requested variance will not be contrary to the public interest because granting the variance will have a substantial positive impact on the neighborhood and benefit the public interest. It would allow the property to be significantly improved while retaining the same use. The requested variance is consistent with the essential character of the neighborhood.*
- 2. The proposed use will observe the spirit of the ordinance because the proposed home will improve the current property, increase the setback from Ferry Street (a collector road) and will not alter the existing character of the neighborhood. The property is serviced by public water and a new septic system will be constructed.*
- 3. Substantial justice would be done to the property-owner by granting the variance because granting the requested variance is a reasonable means to accomplish modest improvement goals and provide substantial justice to all parties. Several alternatives were investigated prior to the decision on the split level design. This house is the best fit and least impact to the site with a footprint area of approximately 1,250 square feet less than the existing 1,340 square feet home. The proposed home would be orientated and located in the best practical manner to minimize encroachments in the setback requirements.*
- 4. The proposed use will not diminish the values of surrounding properties because the proposed home is consistent with the surrounding properties*

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within and around the neighborhood. The new home will be a significant improvement to the property and should increase property values in this and other nearby sub-divisions. The improvement keeps pace with other property improvements in the neighborhood.

- 5. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship because the variance is required to enable the applicant's proposed use of the property given the special conditions of the property. The subject property is of such size and dimension that strict adherence to the current setback requirements is not possible. The benefit sought by the applicant therefore, cannot be achieved by some other method reasonably feasible for the applicant to pursue.*

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. Peter Webster, 144 Ferry Street, Hudson, NH, a rear abutter, addressed the Board and stated that he was not sure if the owner had purchased the home with the intent to renovate the existing dwelling it or to re-build it for resale.

Mr. Webster further stated that, he was concerned that, if the owner's intent were to re-build the home, it may have had impacts to his property, such as decrease of natural lighting, as well as decreasing the value of his property.

Ms. Jeanine Ulliani, 7 Iris Path, Hudson, NH, an abutter, addressed the Board, stating that she was concerned with the proposed home and wanted to know more information about it.

Ms. Mary Paquette, 4 Iris Path, Hudson, NH, an abutter, addressed the Board, stating that she felt the proposed dwelling would impact the natural lighting on her property the most. She further stated that the proposed dwelling would not be the same type of home as the other homes in the neighborhood which were primarily bungalows.

Chairman Seabury then declared a break at 8:33pm, to allow time for the abutters to examine the plans, calling the meeting back to order at 8:40pm.

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Chairman Seabury asked that the abutters to address the Board and reiterate their comments and concerns.

Ms. Mary Paquette, 4 Iris Path, Hudson, NH, an abutter, addressed the Board, stating that her main concern was that a business would be built on the property - not a home. She further stated that she was concerned with the issue of where the animals would go when the existing property was demolished.

Mr. Peter Webster, 144 Ferry Street, Hudson, NH, a rear abutter, addressed the Board and stated that he too did not have an issue with a home being built on the property but was worried about the critter control problem.

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

Second Round of Testimony

Mr. Martin asked the applicant to address the issue of asbestos abatement.

Ms. McGrath asked if the deck and cinder block stairs would remain, if the deteriorating tree would be removed, and who owned the collapsing fence to the rear of the property and if it would be repaired or replaced.

Ms. McGrath also asked the applicant to address the issue of pest control.

Mr. Burd testified that the applicant would have the property fumigated prior to the demolition of the existing home.

Mr. Oleksak stated that a licensed professional critter control company would have to be called – noting that the animals would have to be caught and removed from the premises rather than chased out because they would just find their way back in or relocate to some other nearby dwelling.

Mr. Burd stated that the laws were very clear with regard to the removal of asbestos (located in the siding of the property) and the applicant would follow those laws.

Mr. Burd also said that the existing deck, stairs, and tree would all be removed.

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Mr. Pace, the applicant, stated that he would repair the fence if it were on his property, adding that, if it were on the abutter's property, then he and Mr. Webster (the rear abutter) would ensure that it was repaired.

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.

Ms. McGrath made a motion to approve the request for a Variance with the following stipulations:

1. The cinder block stairs located at the front of the property on the Ferry Street side are to be removed.
2. The deck located on the south side of the property on Sunflower Path is to be removed with the land to be re-seeded and/or landscaped.
3. The tree that has been removed of all limbs shall be removed entirely from the property.
4. Appropriate asbestos removal shall be required for the siding of the house prior to demolition.
5. An appropriate and licensed pest control service shall be required to oversee pest removal from the property prior to demolition with advice and assistance from Hudson Animal Control. Additionally, Mr. Oleksak shall be provided with a satisfactory plan with regard to the pest removal from Hudson Animal Control prior to the demolition of the existing home.

Mr. Pacocha seconded the motion.

Ms. McGrath, speaking on her motion, stated that she felt the proposed home was a far better use of the property than what currently existed. She also stated that the existing dwelling encroached further into the setbacks than the proposed home, granting the variance would provide the applicant with substantial justice, and the proposed building would add to the property values as opposed to diminishing them.

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Mr. Pacocha, speaking on his second, stated that he agreed with what Ms. McGrath had said, adding that he felt granting the variance would observe the spirit of the ordinance, and that the hardship criteria had been met.

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

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

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

VI. ADJOURNMENT

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

Ms. McGrath seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 9:07pm.

Date: May 3, 2010

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun