

**HUDSON ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
February 25, 2010**

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:00pm on Thursday, February 25, 2010, in the Community Development Meeting Room in the Town Hall basement. Chairman Seabury then requested Clerk Houle to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

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

Members

Absent: Mike Pitre (Excused)

Alternates

Present: Kevin Houle

Alternates

Absent: Marilyn McGrath (Excused)

Staff

Present: Julie Kennedy, Administrative Aide

Staff

Absent: William Oleksak (Excused)

Liaison

Present: Ben Nadeau

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. Julie Kennedy, Administrative Aide for the Community Development Department, would sit in place of Mr. Oleksak, who was excused.

Chairman Seabury announced that the Board of Selectmen had appointed Ms. Donna Shuman to serve as a full voting member of the Board.

Chairman Seabury also announced that the position of Clerk was again open and usually held by an alternate member of the Board.

Mr. Martin made a motion to approve a nomination for Mr. Houle to assume the role of the Clerk of the Board.

Ms. Shuman seconded the motion.

Chairman Seabury called for a verbal vote and he then announced that all of the Board members were in favor of approving the nomination for Mr. Houle assuming the role as the Clerk of the Board.

III. APPROVAL OF MEETING MINUTES

The following edits were made to the minutes from the January 14, 2010, minutes:

1. Page Two, Section 143-10 – “The Board concurred and decided to continue looking for possible changes.” was added – Seabury

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2. Page 6 – The word “adjounment” was changed to the “adjournment” – Martin

Mr. Martin made a motion to approve the minutes from the January 14, 2010, minutes as amended by 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 January 14, 2010, meeting as amended by the Board.

Chairman Seabury then declared a break at 7:21pm, calling the meeting back to order at 7:31pm.

IV. PUBLIC HEARINGS FOR SCHEDULED APPLICATIONS

1. **Case 200-40 (2/25/10, Deferred from 1/28/10): Denise True, 81 Bush Hill Road, Hudson, NH, requests the following:**
 - A. **An extension of an un-activated Area Variance to allow subdivision of one lot into two lots. One lot would be conforming, comprising 1.2 acres and containing 150 feet of frontage. The other lot would be non-conforming, comprising of 4.5 acres and containing 36 feet of frontage, where 150 feet of frontage is required. [Map 200, Lot 40, Zoned General, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**
 - B. **An extension of an un-activated Wetland Special Exception to fill approximately 690 square feet of wetlands and approximately 3,250 square feet of wetland buffer to allow the driveway for the proposed 4.5 acre lot. [Map 200, Lot 40, Zoned General, HZO Article IX, Section 334-33, Wetland Conservation District.]**

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

Chairman Seabury noted that Ms. Shuman had indicated that she would be stepping down from the first case in order to avoid a possible perception of a conflict of interest, which would leave only four members available to sit. He noted that the Board's bylaws stated that an applicant would be offered the choice of being heard with less than five members

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sitting or deferring to the next meeting in expectation that more members would be present at that meeting--adding that in this case the applicant for the first case also could ask to be deferred until later in the evening, in case Mr. Pacocha arrived. Mr. Pacocha arrived at this time, however, and Chairman Seabury noted that the meeting could continue.

Chairman Seabury announced that Mr. Houle would be seated in place of Mr. Pitre, who was excused.

A. Discussion & Vote on the Area Variance

Chairman Seabury asked Mr. Martin to tell the Board what he had observed when he had done a site walk on the applicant's property.

Mr. Martin replied that he had taken pictures of the property and observed the location of the proposed driveway. He further replied that he felt it was a good plan that was minimally intrusive and felt it should be approved.

Mr. Martin read aloud a portion of a letter addressed to the Zoning Board of Adjustment, dated February 17, 2010, from Ms. Wendy Royston, 82 Bush Hill Road, Hudson, NH, as summarized as follows:

Denise True, our neighbor at 81 Bush Hill Road, is subdividing her property into two lots, one of which would be a 4.5-acre parcel. She is also applying for a Wetland Special Exception to allow a driveway to service a proposed home built on that new lot. We understand that the existing house will be on a separate, smaller lot.

We have no objection to either the Area Variance or the Wetland Special Exception and hope that you approve them. We do not think that the new lot or a new house would have any adverse affect on our property value.

Mr. Martin stated that he had a letter addressed to the Zoning Board of Adjustment, dated February 17, 2010, from Mr. Robert E. Pfingston, which also stated that he had no objections to either of the applicant's requests.

Mr. Martin also read aloud a portion of a letter addressed to Ms. Denise Jones (True), the applicant, dated February 9, 2010, from Ms. Carol R. Droznick from Harmony Real Estate as summarized as follows:

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Ms. Denise Jones is the owner of record of the property located at 81 Bush Hill Road, Hudson, NH, 03051. Ms. Jones is proposing to subdivide/divide off a +/- 4.5 acre lot which would leave her existing residence with a +/- 1.25 acre lot. In my opinion, this subdividing should not have a negative impact on surrounding properties which contain similar sized lots.

Chairman Seabury asked if the applicant had anything further to add. Ms. True replied that she did not.

Mr. Michael Grainger, P.E., from M.J. Grainger Engineering, Inc., stated that he had nothing to add, but that he was also present to favorably represent the applicant.

Mr. Martin commented that he was further satisfied in that Mr. Marc Jacobs, Wetland & Soil Scientist, had sent a letter stating that he had performed a site walk on the property on February 10, 2010, and had found no significant changes to the wetlands since the original delineation had been completed in 2006.

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.

Mr. Martin made a motion to approve the request for the extension of an un-activated Area Variance for a period of one year.

Mr. Pacocha seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt that the applicant was doing the right thing, everything had stayed the same, and the Board's granting of the variance would meet what the applicant was asking for.

Mr. Pacocha, speaking on his second, stated that he did not see any changes in the conditions since the Board had originally approved the variance, and the criteria for hardship was met – noting that he felt the biggest hardship was the amount of land that the state had taken.

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VOTE: Chairman Seabury asked Clerk Houle to poll the Board on the motion to approve the extension for an un-activated Area Variance for a period of one year, and to record the members' votes, which were as follows:

Mr. Martin	To approve
Mr. Pacocha	To approve
Mr. Houle	To approve
Mr. Seabury	To approve

Chairman Seabury declared that, the decision having been four votes to approve the request for the extension of an un-activated Area Variance for a period of one year, the motion had carried.

B. Discussion & Vote on the Wetland Special Exception

B. An extension of an un-activated Wetland Special Exception to fill approximately 690 square feet of wetlands and approximately 3,250 square feet of wetland buffer to allow the driveway for the proposed 4.5 acre lot. [Map 200, Lot 40, Zoned General, HZO Article IX, Section 334-33, Wetland Conservation District.]

Mr. Martin made a motion to approve the request for a one-year extension of an un-activated Wetland Special Exception.

Mr. Pacocha seconded the motion.

Mr. Martin, speaking on his motion, stated that his comments were the same as in Section A.

Mr. Pacocha, speaking on his second, stated that he felt granting the extension was essential to the reasonable use of the land, there was no reasonable alternative, and the Conservation Commission had provided a favorable recommendation.

Chairman Seabury pointed out that the stipulations applied when the request was originally granted would remain applicable.

VOTE: Chairman Seabury asked Clerk Houle to poll the Board on the motion to approve the request for the extension of an un-activated Wetland Special Exception, with

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the previously noted stipulations, and to record the members' votes, which were as follows:

Mr. Martin	To approve
Mr. Pacocha	To approve
Mr. Houle	To approve
Mr. Seabury	To approve

Chairman Seabury declared that, the decision having been four votes to approve the request for the extension of an un-activated Wetland Special Exception, with the previously noted stipulations, the motion had carried.

Ms. Shuman returned to her seat as a full voting member of the Board. Chairman Seabury pointed out that there were presently five sitting Board members.

- 2. Case 154-016 (2/25/10): Mike Lashua, 12 Hartson Circle, Hudson, NH, requests an Appeal from an Administrative Decision issued by the Zoning Administrator, dated November 30, 2009, which states there are no zoning violations at the property located at 10 Hartson Circle, Hudson, NH. [Map 154, Lot 016, Zoned R-1, HZO Article VII, Section 334-27.1, General Requirements.]**

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

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

Mr. Mike Lashua, the applicant, addressed the Board, stating that the property owners at 10 Hartson Circle had placed a shed in the front of their home. He further stated that the ordinance clearly prohibited sheds from being placed in front of homes.

Mr. Lashua stated that the shed did not look appealing to him and felt that it degraded his property value. Mr. Lashua also stated that he did not feel a permit was provided for the shed.

Mr. Lashua stated that the town had forced a different neighbor to remove a shed for the same reason and he said he did not feel it was fair to allow the shed in question to remain.

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.

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

Ms. Susan Watkins, 10 Hartson Circle, the abutter, addressed the Board, and read aloud a portion of a letter addressed to her, dated July 22, 2009, from Mr. Bill Oleksak, as summarized as follows:

It was a pleasure sitting down with you to discuss the possible violation that might have existed on your property.

I have determined after speaking with you and reviewing the past records, I find that there is no violation. This matter had been cleared twice before, by two previous Code Enforcement officials of the town. This letter will be placed in your file for future reference should this ever surface again.

Ms. Watkins stated that the present complaint was the fourth one brought forward by Mr. Lashua regarding the shed. She further stated that the first complaint was brought forward on July 20, 1999, and was adjudicated by Warren Welch, the Code Enforcer at that time.

Ms. Watkins read aloud a portion of that complaint as follows:

Mr. Lashua said that 10 Hartson Circle built a shed 8 feet from the property line and built it in front of the house. I have no permit for this as it is a year old, if not less.

Ms. Watkins stated the shed was actually located 18 feet from the property line.

Ms. Watkins said that she put up a fence in 2003 to secure their property line. She stated that Mr. Lashua again complained about the shed in 2004. She further stated that Rob Sousa, the Code Enforcer at that time, had adjudicated the complaint in 2004.

Ms. Watkins stated that the next complaint from Mr. Lashua was brought forward on June 1, 2009, in which he had complained about the shed and the porch, as well as on-going improvements being made to the front of the home. She said that Mr. Oleksak had visited her property and had subsequently sent her a letter stating that there was no violation.

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Ms. Watkins stated that Mr. Lashua submitted yet another complaint in November, 2009, not only complaining about the shed, but about how many cars were owned, as well as various other things. Ms. Watkins again stated that Mr. Oleksak had not found any violations.

Ms. Watkins stated that she felt the complaints were brought forth with malice and spite and felt it was time an end was put to it.

Ms. Watkins stated that she did not understand how the shed would decrease Mr. Lashua's property value.

Mr. Martin asked Ms. Watkins when the shed was put in. Ms. Watkins replied that it was installed in either 1998 or 1999 to replace a previously existing shed that had been there since 1980.

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

Chairman Seabury asked Mr. Lashua if he wished to add anything to his testimony.

Mr. Lashua stated that he did not like how the shed looked. He also stated that he had pulled all of the necessary permits when he built the addition to his home and he didn't feel it was right that the owner of the shed had not received the necessary permits.

Chairman Seabury asked if there were anyone else present who wished to speak in favor with regard to the application for the second and final time. No one else came forward.

Chairman Seabury asked if there were anyone else present who wished to speak in opposition or neutrally with regard to the application for the second and final time.

Ms. Susan Watkins, 10 Hartson Circle, the abutter, addressed the Board, stating that Mr. Lashua could not see very much of the shed due to the 6-foot fence that was installed on her property.

Mr. Pacocha asked if the shed was located in the front of the yard. Ms. Watkins replied that the shed was located "towards" the front of the yard and that Ms. Susan Snide, a

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previous Zoning Administrator, had told her that she could locate the shed where it was presently because the zoning laws pertaining to it were grand-fathered.

Chairman Seabury asked if there were anyone else present who wished to speak in favor, opposition, or neutrally with regard to the application for the second and final time. No one else came forward.

Chairman Seabury declared the matter before the Board.

Mr. Pacocha commented that he did not feel the Board could enforce something that was built prior to the existence of the zoning ordinance.

Mr. Martin commented that he felt that one of the abutting properties, Lot 12, was very “busy” and did not feel that the shed would de-value surrounding property values.

Mr. Martin made a motion to uphold the Zoning Administrator’s determination.

Mr. Pacocha seconded the motion.

Mr. Martin, speaking on his motion, stated that he did not feel that the shed would de-value the applicant’s home and that he did not feel that the Board could enforce the zoning ordinance when the shed was built prior to its existence.

Mr. Pacocha, speaking on his second, stated that it was a non-conforming use and therefore it was allowed.

VOTE: Chairman Seabury asked Clerk Houle to poll the Board on the motion to uphold the Zoning Administrator’s determination and to record the members’ votes, which were as follows:

Mr. Martin	To uphold
Mr. Pacocha	To uphold
Ms. Shuman	To uphold
Mr. Houle	To uphold
Mr. Seabury	To uphold

Chairman Seabury declared that, the decision having been five votes to uphold the Zoning Administrator’s decision, the motion had carried.

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- 3. Case 154-014 (2/25/10): Mike Lashua, 12 Hartson Circle, Hudson, NH, requests an Appeal from an Administrative Decision issued by the Zoning Administrator, dated November 30, 2009, which states that there are no zoning violations at the property located at 14 Hartson Circle, Hudson, NH. [Map 154, Lot-014, Zoned R-1, HZO Article III, Section 334-16, Building Permits.**

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

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

Mr. Mike Lashua, the applicant, addressed the Board, stating that the owners at 14 Hartson Circle put up a shed without obtaining a permit and he said he felt that his driveway access was used to put the shed in.

Mr. Lashua said that a permit for the shed was obtained in July, 2009. He also said that the space above the abutter's garage was finished off in either 2003 or 2004 and was used for a real estate business – again with no permits or inspections. Mr. Lashua expressed concern as to whether or not it was “fire coded” and “safe.”

Mr. Lashua also said that the abutter's breezeway, which was supposed to be open, was actually a closed in, heated living space that was not being taxed.

Chairman Seabury asked Mr. Lashua why he thought the breezeway was supposed to be open. Mr. Lashua replied that the Assessor's Report had it listed as “an open space” or “open breezeway.”

Mr. Lashua pointed out that when his additions were constructed, the Assessor's office had taxed him on a finished basement and an attic when the attic was not actually finished.

Mr. Lashua stated that he did not feel it was “just” that the abutter was not being taxed on the total amount of living space when he was.

Chairman Seabury replied that the function of the Zoning Board of Adjustment was not to define justice – that it was a land/use control Board.

Chairman Seabury asked Mr. Lashua about his comment regarding an in-law apartment.

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Mr. Lashua replied that he felt his abutter had an existing in-law apartment in the basement.

Chairman Seabury stated that an in-law apartment was not reflected on the Assessor's Card. Mr. Lashua concurred that the Assessor's Card did not reflect an in-law apartment.

Chairman Seabury asked Mr. Lashua if he had an explanation for that. Mr. Lashua replied that he did not.

Chairman Seabury commented that if Mr. Lashua did not have an explanation for it, he was not sure why it was felt that the Board should have had an explanation as they could only go by what they actually saw. Chairman Seabury further commented that the Zoning Board of Adjustment were not code enforcers.

Mr. Lashua stated that it was presumed that the property had been inspected but that it had not been and no permits were filed.

Chairman Seabury replied that the Board had a statement from Mr. Oleksak indicating that it had been inspected. He further replied that he did not see how he could have produced the statement unless he had inspected it. Chairman Seabury also said that he did not see how the Assessor's Office could have produced an Assessment Card if it had not been inspected.

Mr. Lashua stated that he felt his abutter was tax evading.

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. Tim Remp, 14 Hartson Circle, the abutter, addressed the Board, stating that Mr. Oleksak had visited the property and he had had a permit for the shed since July, 2009.

Chairman Seabury asked Mr. Remp if he were using the room over the garage as an office. Mr. Remp replied that he was not using it as an office, but for storage purposes only.

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Mr. Pacocha asked Mr. Remp how long he had owned the property. Mr. Remp replied that he had owned the property since 1996.

Mr. Houle asked Mr. Remp if the room used for storage above the garage was finished. Mr. Remp replied that the room was sheet rocked, carpeted and painted.

Mr. Houle explained to Mr. Remp that those modifications as defined made the room “finished.”

Mr. Martin asked Mr. Remp to address the second driveway on the property. Mr. Remp replied that there were presently rocks on that driveway and all cars were parked in the main driveway. He further testified that he had ceased utilizing the second driveway.

Second Round of Testimony

Chairman Seabury asked Mr. Lashua if he wished to add anything to his testimony.

Mr. Lashua stated that his biggest complaint was that the Community Development Department had instructed him to appear before the Zoning Board of Adjustment with his complaints regarding building permits.

Mr. Martin asked Mr. Lashua when he knew the abutter was using the space above the garage as an office and if there were any proof of that in the form of advertisement. Mr. Lashua replied that he believed it was in 2004 and although he did not see any signs, he did see plenty of “real estate vehicles.” He further replied that he felt the business had been in existence until last year.

Mr. Lashua stated that he felt that the abutter installed a fence approximately 8 inches onto his property.

Mr. Pacocha commented that most of Mr. Lashua’s complaints were not within the Zoning Board of Adjustment’s jurisdiction. Chairman Seabury commented that he agreed.

Chairman Seabury asked if there were anyone else present who wished to speak in favor with regard to the application for the second and final time. No one else came forward.

Chairman Seabury asked if there were anyone else present who wished to speak in opposition or neutrally with regard to the application for the second and final time.

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Mr. Remp, 14 Hartson Circle, the abutter, addressed the Board, stating that his property had been surveyed by a New Hampshire licensed land surveyor complete with equipment on the ground as well as via satellite. He further testified that the 6-foot fence was installed solely on his property and not on the applicant's.

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

Chairman Seabury declared the matter before the Board.

Mr. Martin commented that the Assessor's Card clearly indicated that Mr. Remp's entire property was being taxed – including the breezeway and the room over the garage.

Mr. Martin made a motion to uphold the Zoning Administrator's determination.

No second being brought forward, Chairman Seabury declared the motion invalid for lack of a second.

Ms. Shuman made a motion to uphold the Zoning Administrator's determination.

Mr. Martin seconded the motion.

Ms. Shuman, speaking on her motion, stated that she did not feel there were any violations on the property based on the testimony given and felt the Zoning Administrator had done his job and had made the appropriate determination.

Mr. Martin, speaking on his second, stated that he felt the Zoning Administrator had made the appropriate determination.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to uphold the Zoning Administrator's determination, and to record the members' votes, which were as follows:

Ms. Shuman	To uphold
Mr. Martin	To uphold
Mr. Pacocha	Not to uphold
Mr. Houle	To uphold
Mr. Seabury	To uphold

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Chairman Seabury declared that, the decision having been four votes to uphold the Zoning Administrator's determination, and one vote not to uphold, the motion had carried.

Chairman Seabury then declared a break at 8:57pm, calling the meeting back to order at 9:07 pm.

- 3. Case 165-029 (2/25/10): Elizabeth S. Ellison, 20 Campbello Street, Hudson, NH, requests an Accessory Living Unit within the existing addition to be occupied by a family member. [Map 165, Lot 029, Zoned R-2, HZO Article XIII A, Section 334-73.1, Accessory Living Units.]**

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

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

Ms. Elizabeth Ellison, the applicant, addressed the Board, stating that she wished to install a sink and a stove for her mother's use. Ms. Ellison stated that the entire house was occupied by family members.

Ms. Ellison stated that although she would need to hire a licensed plumber to do the installation, that there would be no construction needed to complete the project.

Chairman Seabury confirmed that the applicant was not going to make any changes to the actual building. Ms. Ellison testified that nothing was going to change.

Ms. Ellison stated that there was only one power source.

Chairman Seabury asked what type of connection was between the main house and the proposed Accessory Living Unit. Ms. Ellison replied that there was an open hallway with a door at the end of it. She further replied that the door did not have a lock on it.

Chairman Seabury stated that the applicant had filled out the application for an Accessory Living Unit saying she would satisfy the requirements and understood the requirements.

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.

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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. Pacocha made a motion to approve the request for an Accessory Living Unit.

Mr. Martin seconded the motion.

Mr. Pacocha, speaking on his motion, stated that the applicant had successfully addressed all of the requirements.

Mr. Martin, speaking on his second, stated that he agreed with Mr. Pacocha’s statement.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to approve the request for an Accessory Living Unit and to record the members’ votes, which were as follows:

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

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

V. DISCUSSION OF CORRESPONDENCE BEFORE THE BOARD

Chairman Seabury noted that the Board was in receipt of a request for an expedited hearing from Mr. James D. McGowan, Jr., but that the request had subsequently been withdrawn via a letter addressed to the Zoning Board of Adjustment, dated February 17, 2010.

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VI. ADJOURNMENT

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

Ms. Shuman seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 9:30pm.

Date: March 15, 2010

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun