

**HUDSON ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
July 23, 2009**

**I. CALL TO ORDER**

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:00pm on Thursday, July 23, 2009, in the Community Development Meeting Room in the Town Hall basement. Chairman Seabury then requested Clerk Martin to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

**Members**

**Present:** Maryellen Davis, James Pacocha, and J. Bradford Seabury

**Members**

**Absent:** William McInerney – Excused, and  
Michael Pitre - Excused

**Alternates**

**Present:** Normand Martin and Donna Shuman

**Alternates**

**Absent:** Kevin Houle – Excused, and  
Marilyn McGrath - Excused

**Staff**

**Present:** William Oleksak, Building Inspector - Excused

**Liaison**

**Present:** Ben Nadeau - Excused

**Recorder:**

Trish Gedziun - Absent

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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 Mr. Martin would be seated in place of Mr. Pitre who was excused and, Ms. Shuman would be seated in place of Mr. McInerney who was also excused.

### **III. APPROVAL OF MEETING MINUTES**

Chairman Seabury announced that a quorum was present which was sufficient to review the minutes from the May 28, 2009, meeting minutes. Those members currently present were Chairman Seabury, Ms. Davis, and Mr. Pacocha. Those alternate members present were Mr. Martin and Ms. Shuman and were seated in place of Mr. Pitre and Mr. McInerney who were excused.

The following edits were made to the minutes of the May 28, 2009, meeting:

1. Mr. Martin commented that the recorder had not been including Mr. Oleksak's opening remarks at the onset of each case. Chairman Seabury replied that because those remarks were usually repetitive of what was published in the description of each case, that the sentence "the fact that Mr. Oleksak said that the issue was before the Board for the purposes of whatever was described in the published case" would suffice. Chairman Seabury further noted that the recorder should include any commentary by Mr. Oleksak if there was anything was different at the time the case was being heard. – Martin/Seabury
2. Pages 5 & 9 – the word "allowed" was changed to "aloud" – Seabury

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3. Page 11, last paragraph – the paragraph was changed to “Chairman Seabury noted that the handouts in the packet for this meeting included a large number of memos pertaining to signs being pulled from around the town by Mr. Oleksak. Mr. Oleksak explained that while a business was doing actual work at a property, the signs were allowed to remain but should be removed once the work was completed. - Seabury

Mr. Martin made a motion to approve the minutes from the May 28, 2009, meeting as amended by the Board.

Mr. Pacocha seconded the motion.

Chairman Seabury called for a verbal vote and he then stated that four of the five sitting Board members were in favor of approving the minutes from the May 28, 2009, meeting. Chairman Seabury noted that Ms. Davis abstained from the vote as she did not attend the May 28, 2009, meeting.

### **IV. PUBLIC HEARINGS FOR SCHEDULED APPLICATIONS**

1. **Case 117-034 (7/23/09): Joseph Miller, 110 Robinson Road, Hudson, NH, requests a Use Variance to allow a shed to be placed in the front of the main building. [Map 117, Lot 034, Zoned G-1, HZO Article VII, Section 334-27.1 (C), General Requirements.]**

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

Chairman Seabury stated (in Mr. Oleksak’s absence) that the matter was before the Board because there was an existing shed located in front of the home and therefore, was in violation of Article VII, Section 334-27.1 (C) which prohibited that.

Chairman Seabury stated that although the shed was already in place, the Board’s charge was to decide whether or not a shed should be built in that location in the first place – past or present.

Chairman Seabury asked who was present to speak in favor with regard to the application for a Use Variance.

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Mr. Joseph Miller, 110 Robinson Road, Hudson, NH, the applicant, addressed the Board, stating that he was present to request permission to place a shed (already existing) on the side of his property instead of the back of his property due to special circumstances. He further stated that the special circumstances were that there were wetlands on the back of his property.

Mr. Miller also stated the saturation that the wetlands caused was so severe that the area flooded every year, heavy equipment could not be placed in the back of the property, and there had been a beaver infestation five or six years prior.

Mr. Miller read aloud a portion from the Application for a Use Variance as summarized below:

- 1. The zoning restriction of the cited ordinance interferes with the plaintiff's reasonable use of the property because a Use Variance is needed to enable the applicant's use of the property given the special condition of the property. The land surrounding the house in the back and the side yard are wetlands. There is flooding during the spring thaw and heavy rains. The back area of the property has been made useless due to beaver infestation.*
- 2. No fair and substantial relationship exists between the general purposes of the Zoning Ordinance and the specific restriction on the property because of the special circumstance of the backyard which was destroyed by beavers and the ground saturation due to flooding.*
- 3. The variance would not injure the public or private rights of others because the structure is only visible from the road and does not interfere with the rights of others.*
- 4. No diminution in the value of surrounding properties would occur because the shed is of fine quality and will remain in good shape.*
- 5. The proposed use would be compatible with the spirit of the ordinance because the spirit of the ordinance is to have the shed in such a place as to make it usable for the intended purpose. Allowing it to remain would be compatible with that purpose.*

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6. *The proposed use will not be contrary to the public interest because the area the shed has been placed on is used as a parking area and the shed will be used to park a motorcycle.*
7. *Granting the variance would do substantial justice because due to the damage caused by beavers, the back of my property has been made useless. I have a small side-yard which does flood during the spring thaw. Having me place the shed anywhere else would make it useless.*

Chairman Seabury asked the applicant if he wished to add anything to his testimony.

Mr. Miller replied that the property was surveyed and the survey showed the wetlands area as well as a stream.

Mr. Miller also noted that there were two large trees located in front of the shed (“towards the road”) which helped shield the shed.

Chairman Seabury commented that the back portion of the property appeared to have a lot of tree stumps on it.

Mr. Miller replied that many of the previously existing trees had fallen down due to root rot.

Chairman Seabury commented that if the shed were to be located on the back portion of the property, the applicant would have to go before the Conservation Commission to obtain permission to place the shed in the wetlands.

Chairman Seabury also commented that the existing shed appeared to be located in the front-yard setback. Chairman Seabury asked the applicant how far the shed was from the road. Mr. Miller replied the road was approximately 15 feet from the base of the shed.

Mr. Pacocha commented that he felt the black line on the plot plan indicated that the existing shed partially encroached onto the town’s right-of-way.

Chairman Seabury asked the applicant what the foundation of the shed was. Mr. Miller replied that the shed was on cement blocks.

Ms. Davis asked the applicant why the shed could not be located on the opposite side of the property – in front of the where the septic system was located. Mr. Miller replied that there was landfill located on that side of the house.

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Chairman Seabury stated that the shed would have to be moved out of the right-of-way if the Board approved the applicant's request. Chairman Seabury also stated that a portion of the porch was located outside of the buildable area and that should also be addressed by the Board.

Mr. Miller stated that he would be willing to move the shed out of the right-of-way if the Board approved the request.

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. Pacocha asked the applicant how long the shed had been in that location and if he obtained a building permit for it. Mr. Miller replied that it had been there since April, 2009, and he did not obtain a permit because he did not know that he needed one.

Mr. Martin commented that there was no negative abutter testimony and since the applicant was willing to move the shed out of the right-of-way he would be in favor of approving the request.

Mr. Pacocha pointed out that the shed looked like it was located in the wetland buffer and therefore, a Wetland Special Exception should have been requested as well. Chairman Seabury stated the Zoning Administrator needed to determine whether or not a Wetland Special Exception was needed.

Chairman Seabury commented that an Equitable Waiver would also need to be granted because a portion of the applicant's porch was located outside of the buildable area – noting that the porch had been there for over ten years and there had been no complaints about it.

Ms. Davis made a motion to approve the request for the Use Variance contingent upon the following three stipulations:

1. The applicant was to meet with the Building Inspector to determine whether the front-yard setback was within the right-of-way. If the

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Building Inspector did determine that the shed was within the right-of-way, the applicant agreed to move the shed back.

2. The Building Inspector to determine whether the shed was within the wetland buffer. If the Building Inspector determined that the shed was in fact within the wetland buffer, then the Zoning Administrator was to advise the applicant of the process to follow.
3. To grant an Equitable Waiver to allow a portion of the porch to remain within the front portion of the setback because it had been there for over ten years and there had been no complaints or issues to the town.

Mr. Martin seconded the motion.

Ms. Davis, speaking on her motion, stated that she strongly felt the property was located in a unique setting and had specific unique factors surrounding it. She further stated that the property had issues with natural disasters such as flooding and beaver infestation making a good portion of the property unusable and the only logical, safe place to place the shed was exactly where the applicant had placed it.

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

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

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

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

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**V. OTHER BUSINESS**

*The Board's Discussion of the Bylaws*

The Board discussed proposed changes with respect to HTC 143-1 through 143-9, with the consensus of those members present being to apply maximum time limits for all persons appearing before the Board.

**VI. ADJOURNMENT**

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

Mr. Pacocha seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 9:58 pm.

Date: August 11, 2009

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J. Bradford Seabury, Chairman

Recorder: Trish Gedziun