

**HUDSON ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
May 22, 2008**

I. CALL TO ORDER

Acting Chairman Maryellen Davis called this meeting of the Hudson Zoning Board of Adjustment to order at 7:00pm on Thursday, May 22, 2008, in the Community Development Meeting Room in the Town Hall basement. Acting Chairman Davis 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, William McInerney, James Pacocha, and Michael Pitre

Members

Absent: J. Bradford Seabury, Excused

Alternates

Present: Kevin Houle, Normand Martin, and Marilyn McGrath

Alternates

Absent: None

Staff

Present: Sean Sullivan, Community Development Director

Liaison

Present: Roger Coutu, Member, Board of Selectmen

Recorder: Trish Gedziun

II. SEATING OF ALTERNATES AND ANNOUNCEMENTS

Ms. Davis announced that Mr. J. Bradford Seabury was excused from the meeting and as the Vice Chairman; she would sit in his place. Acting Chairman Davis then seated Mr.

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Martin in her vacant seat and seated Mr. Houle in place of Mr. Pacocha who had not yet arrived at the meeting.

For the benefit of all attendees, Acting Chairman Davis 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. She 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. Acting Chairman Davis pointed out that the Board allowed rehearings only if collectively convinced by a written request that the Board might have made an illogical or illegal decision or if there were positive indications of new evidence that for some reason, was not available at the hearing.

III. APPROVAL OF MEETING MINUTES

The following edits were made to the minutes from the March 27, 2008, meeting:

Other than a small number of grammatical changes, there were no changes made to the minutes from the March 27, 2007, meeting.

Mr. Martin made a motion to approve the minutes from the March 27, 2008, meeting.

Mr. Houle seconded the motion.

Acting Chairman Davis called for a verbal vote, and she then stated that all of the Board members were in favor of approving the minutes from the March 27, 2008, meeting as amended.

The following edits were made to the minutes from the April 10, 2008, meeting:

Page 1 – “Maryellen Davis” was added to members present.

Page 7 – “Hillendale” was changed to the correct spelling of “Hilindale”.

Page 20, last paragraph – “Chairman Davis” was changed to “Chairman Seabury”

Page 21, 3rd paragraph – “Mr. Grainer” was changed to the correct spelling of “Mr. Grainger”.

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Page 24, 3rd and last paragraph – “Mr. Couto” was changed to the correct spelling of “Mr. Coutu”.

Mr. Houle made a motion to approve the minutes from the April 10, 2008, meeting.

Mr. Martin seconded the motion.

Acting Chairman Davis called for a verbal vote, and she then stated that all of the Board members were in favor of approving the minutes from the April 10, 2008, meeting as amended.

IV. PUBLIC HEARINGS FOR SCHEDULED APPLICATIONS

Mr. Pacocha having arrived at the meeting, Acting Chairman Davis returned Mr. Houle to his seat as a non-voting alternate member of the Board. Acting Chairman Davis also returned Mr. Martin to his seat as Clerk and non-voting alternate member of the Board.

Acting Chairman Davis announced that she would seat Ms. McGrath in place of herself for the first case. (Ms. McGrath replaced Ms. Davis’ vacant seat as a regular member of the Board)

1. **Case 192-6 (5/22/08): Robert & Carol Iannaco, 7 Hilindale Drive, Hudson, NH, requests an Area Variance to allow construction of a garage within the side-yard setback, 15 feet required, 2 feet proposed. [Map 192, Lot 6, Zoned G, HZO Article VII, Sections 334-27, Table of Dimensional Requirements.]**

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

Acting Chairman Davis stated that she would step down from the case as she personally knew the applicant. Acting Chairman Davis then seated Mr. Pacocha in her place as Acting Chairman as he was the next senior member in line.

Mr. Houle also stated that he would step down from the case as he personally knew the applicant.

Acting Chairman Pacocha seated Mr. Martin in place of Ms. Davis.

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

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Mr. Robert Iannaco, the applicant, addressed the Board, stating that he was present to discuss the proposed garage he wished to construct on his property.

Mr. Iannaco also stated that the Board had a copy of a letter from the nearest abutter, Mr. Jack Bollen, 9 Hilindale Drive, which specified that he was in favor of the applicant.

Mr. Iannaco then read aloud a portion of his application for an Area Variance as summarized below:

- 1. The restriction interfered with the plaintiff's reasonable use because there was no other reasonable place to construct the garage.*
- 2. The variance would not injure the public or private rights of others because it would be on a hill set back from the street and it would abut another garage.*
- 3. The proposed use would be compatible with the spirit of the ordinance because the applicant was the only resident on Hilindale Drive that did not have a garage.*
- 4. The proposed use would not be contrary to the public interest because it would only be used for parking cars and storage.*
- 5. Granting the variance would do substantial justice because the garage would protect the applicant's expensive equipment such as cars, snow blowers, and lawn mowers.*

Ms. Maryellen Davis, 14 Nathaniel Drive, addressed the Board, stating that she felt the property was unique in nature because there were very little buildable areas.

Acting Chairman Pacocha asked if there were anyone else present who wished to speak in favor with regard to the application. No one else came forward.

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

Acting Chairman Pacocha declared the matter before the Board.

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Ms. McGrath asked the applicant why the garage could not have been placed on the opposite side of the property which would have allowed for a lesser impact to the side-yard setback.

Mr. Iannaco replied that unless he cleared out a large portion of the wooded area and did a lot of construction, that there was not enough room for the garage on the opposite side.

Acting Chairman Pacocha commented that the proposed two feet between the applicants' garage and the abutters' property did not leave much room for maintenance and that he felt it would have been difficult to do any type of work without encroaching onto the abutting property.

Mr. Iannaco reiterated that his neighbor was in favor of the request.

Ms. McGrath commented that she was having a difficult time with the proposed two feet between the properties – noting that she may have felt more comfortable if there were minimally five feet between them.

Ms. McGrath also commented that although the abutter, Mr. Bollen, was presently in agreement with the applicant, that at some point in the future, he might not own the property and perhaps the future owner(s) would not be in agreement.

Mr. Pitre stated that he agreed with Ms. McGrath in that he was not comfortable with only two feet between the properties. Mr. Pitre also stated that he did not feel there was a hardship on the property.

Mr. Martin also stated that he agreed that two feet was too close.

Ms. McGrath asked if the applicant would be willing to find another location for the garage and return with a less intrusive plan. Mr. Iannaco replied that the proposed location was the only place he was willing to put the garage.

Ms. McGrath made a motion to deny the request for an Area Variance.

Mr. Martin seconded the motion.

Ms. McGrath, speaking on her motion, stated that she did not feel the applicant met the criteria as specified to warrant a variance. Ms. McGrath also stated that she felt there

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would be a diminution in the surrounding property values and that it was not in the public's best interest.

Mr. Martin, speaking on his second, stated that he agreed with everything Ms. McGrath had said and he also stated that doing any type of maintenance two feet off the property line would be extremely difficult without having to encroach onto the abutting property.

VOTE: Acting Chairman Pacocha asked the Clerk to poll the Board on the motion to deny the Area Variance, and to record the members' votes, which were as follows:

Ms. McGrath	To deny
Mr. Martin	To deny
Mr. McInerney	To approve
Mr. Pitre	To deny
Mr. Pacocha	To deny

Acting Chairman Pacocha reported that, there having been four votes to deny the Area Variance and one vote to approve, the motion had carried.

Ms. Davis then returned to her seat as Chairman, Mr. Pacocha returned to his seat as a full voting member of the Board, and Mr. Houle and Mr. Martin returned to their seats as non-voting alternate members of the Board.

- 2. Case 223-39 (5/22/08): John Greenleaf, 14 Tanglewood Road, Merrimack, NH, requests an extension of an Area Variance previously granted by the Zoning Board of Adjustment on June 28, 2007, to allow construction of a single-family dwelling on property located at 5 Gregory Street, Hudson, NH, without the required amount of frontage. 150 feet of frontage required, 25.70 feet of frontage proposed. [Map 223, Lots 39, Zoned R-2 HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**

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

Attorney John Cronin, legal representative for the applicant, addressed the Board, stating that after the Area Variance was granted on June 28, 2007, the applicant had attempted to hire a builder to construct the single-family home on Gregory Street but in part, due to economic conditions was unsuccessful.

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Attorney Cronin stated that there had been no changes regarding the case in the one year since the Board had originally approved the variance, and he was simply present to request an extension for an additional year.

Acting Chairman Davis stated for the record that since nothing had changed regarding this case since the Board's prior decision at the original hearing, Attorney Cronin would not present testimony for this hearing to extend that decision.

Mr. Martin commented that the applicant had come in prior to the variance actually lapsing and he felt the applicant should be commended for that.

Acting Chairman Davis asked if there were anyone else present who wished to speak in favor with regard to the application. No one else came forward.

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

Acting Chairman Davis then declared the matter before the Board.

Acting Chairman Davis stated that she felt stipulation number two on the previous Decision to Grant an Area Variance should have been changed to “No further subdivision is to take place on this lot nor shall the lot be used as an access to any surrounding lots”. The members of the Board collectively stated that they were in agreement with that change.

Ms. McGrath made a motion to approve the request for a one-year extension of the Area Variance that was originally granted on June 28, 2007, with the following stipulations:

1. Only a single-family dwelling is permitted in keeping with the spirit of the neighborhood.
2. No further subdivision is to take place on the lot nor shall the lot be used as an access to any surrounding lots.
3. Initial construction and any future expansion of the initial construction needs to be outside the wetland buffer.

Mr. Pacocha seconded the motion.

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Ms. McGrath, speaking on her motion, stated that she felt it was a reasonable request and there had not been any substantial changes on the property.

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

VOTE: Acting Chairman Davis asked the Clerk to poll the Board on the motion to approve the request for a one-year extension of the Area Variance that was originally granted on June 28, 2007, with the noted stipulations, and to record the members' votes, which were as follows:

Ms. McGrath	To approve
Mr. Pacocha	To approve
Mr. McInerney	To approve
Mr. Pitre	To approve
Ms. Davis	To approve

Acting Chairman Davis reported that, there having been five votes to approve the request for a one-year extension of the Area Variance, the motion had carried.

3. Case 173-7 & 173-8 (5/22/08): Susanne Lindquist, Trustee, 44 Webster Street, Hudson, NH, requests the following:

- A. A Use Variance to allow residential uses of four proposed building lots within the Business Zoning District for property located at 50 and 58 Webster Street, Hudson, NH. [Map 173, Lots 7 and 8, Zoned Business and Town Residence, HZO Article V, Section 334-21, Table of Permitted Principal Uses.]**

- B. An Area Variance for the proposed creation of four residential building lots within the Business Zoning District to have dimensional deficiencies of less than 150 feet of frontage for proposed lots 1, 2, and 4 and less than 30,000 square feet of buildable area within proposed lots 1, 2, and 4 for property located at 50 and 58 Webster Street, Hudson, NH. Proposed buildable area of lot 1 is 15, 924 square feet with 90 feet of frontage, lot 2 is 25,157 square feet with 120.58 feet of frontage, and lot 4 is 19,052 square feet with 95.04 feet of frontage. [Map 173, Lots 7 and 8, Zoned Business and Town Residence, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**

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

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Ms. McGrath stated that she would step down from the case as she was a full voting member of the Planning Board and if the case were approved by the ZBA, it would have to go before that Board.

Acting Chairman Davis sat Mr. Houle in place of Ms. McGrath.

The Board collectively decided to hear the case in its entirety and then vote on items A and B separately at the conclusion of the presentation.

Mr. Tony Basso of Keach-Nordstrom Associates, representing the applicant, addressed the Board, stating that the land was currently two lots of record which consisted of approximately 4.6 acres – noting that one lot consisted 1.6 acres and the other lot consisted of 3 acres.

Mr. Basso stated that the zoning line on the property was split 60/40 – noting that the road frontage on Webster Street was the larger lot which was located in the Business Zoning District and the smaller lot was located in the TR Zoning District.

Mr. Basso stated that the neighborhood was predominantly residential and he said he felt that what the applicant was requesting was in good keeping with the neighborhood.

Mr. Basso stated the larger lot that was located in the Business Zoning District of Webster Street would not be conducive for a business because of the travel time constraints on that street.

Mr. Basso stated that there was less than 150 feet but, more than 90 feet of frontage for the proposed lots 1, 2, and 4. He also stated that there was less than 30,000 square feet but, more than 10,000 square feet of buildable area within the proposed lots 1, 2, and 4.

Mr. Basso further stated that the proposed development would not be in the wetlands, in the wetland buffers, and it would not be near the Merrimack River.

Mr. Basso then read aloud a portion of the Application for a Use Variance as summarized as follows:

- 1. The zoning restriction interferes with the plaintiff's reasonable use of the property, because property is split zoned Business and TR. The portion of the property zoned as TR is primarily wetland area. The Business Zone is*

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not located in a suitable area for the uses typically located with the Business Zone.

- 2. No fair and substantial relationship exists between the general purposes of the Zoning Ordinance and the specific restriction(s) on the property, because failure to grant the requested variance would contradict the general purpose of the ordinance, to encourage the most appropriate use of the land, again, given the general character of the Webster Street area.*
- 3. No diminution in value of surrounding properties would occur, because the site is located within a residential neighborhood surrounded by residential uses.*
- 4. The proposed use would be compatible with the spirit of the ordinance, because the property does not lend itself to a retail use, or other uses typically found within the Business Zone.*
- 5. The proposed use would not be contrary to the public interest, because in this case, due to the predominately residential character of Webster Street, traditional Business Zone uses such as retail would bring unwanted traffic volumes to the area.*
- 6. Granting the variance would do substantial justice, because again, in this case, due to the predominately residential character of Webster Street, traditional Business Zone uses such as retail would bring unwanted traffic volumes to the area.*

Mr. Basso then read aloud a portion of the Application for an Area Variance as summarized as follows:

- 1. The zoning restriction interferes with the plaintiff's reasonable use of the property, because the property is split zoned Business and TR. The portion of the property zoned as TR is primarily in a wetland area. The special conditions on the property include its location in a long-standing established neighborhood with lot sizes that are consistent with those required by the TR Zone.*

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2. *No fair and substantial relationship exists between the general purposes of the Zoning Ordinance and the specific restriction(s) on the property, because failure to grant the requested variance would contradict the general purpose of the ordinance -- to encourage the most appropriate use of the land, again, given the general character of the Webster Street area.*
3. *No diminution in value of surrounding properties would occur, because the site is located within a residential neighborhood surrounded by residential uses.*
4. *The proposed use would be compatible with the spirit of the ordinance, because the property does not lend itself to a retail use, or other uses typically found within the Business Zone.*
5. *The proposed use would not be contrary to the public interest, because in this case, due to the predominately residential character of Webster Street, traditional Business Zone uses such as retail would bring unwanted traffic volumes to the area.*
6. *Granting the variance would do substantial justice, because again, in this case, due to the predominately residential character of Webster Street, traditional Business Zone uses such as retail would bring unwanted traffic volumes to the area.*
7. *The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue other than an Area Variance because the buildable portion of the property is in the Business Zone and does not conform to the minimum dimensional standards of the zone.*

Acting Chairman Davis asked if there were anyone else present who wished to speak in favor with regard to the application. No one else came forward.

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

Acting Chairman Davis then declared the matter before the Board.

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Mr. Pacocha asked why the frontages were not equally divided. Mr. Basso replied that it was because of the power company easement between lots one and two and that he needed to keep a decent building envelope on lot two.

Mr. Coutu asked if the existing structure would remain on the property. Mr. Basso replied that it would.

Mr. Coutu asked Mr. Basso to clarify that the applicant's intention was to subdivide the lot to build three additional homes. Mr. Basso replied that was correct.

Mr. Pitre asked if the 50-foot wetland setback would be delineated and if so, how it would be marked. Mr. Basso replied that they would be marked with the Conservation Commission's symbols at 100 foot intervals.

Mr. Pitre commented that the ZBA had recently met with the Conservation Commission and it was decided that it would be more appropriate to mark the lot line at 50 foot intervals as opposed to every 100 intervals. Mr. Basso replied that the applicant would be happy to comply with that.

Mr. Pitre asked if the shed that would be on the proposed lot three, which was in the setback, would remain there. Mr. Basso replied that the applicant would move the shed out of the setback and that the applicant would have no problem with the Board placing that removal as a stipulation.

Acting Chairman Davis commented that she was struggling with the Area Variance portion of the application because while she understood the special conditions on the property, she was not clear why the applicant could not combine lots one and two which would have been less intrusive. Acting Chairman Davis also stated that she was unclear as to why the applicant wanted to max out the property with the four lots.

Mr. Basso replied that given the nature of the neighborhood, he did not feel it was intrusive.

A. Motion on the Use Variance

Mr. Pacocha made a motion to approve the Use Variance.

Mr. Pitre seconded the motion.

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Mr. Pacocha, speaking on his motion, stated that the majority of the neighborhood was residential in use and he felt it was appropriate.

Mr. Pitre, speaking on his second, stated that he felt the spirit of the neighborhood was residential and the applicant had successfully met the criteria for Simplex.

VOTE: Acting Chairman Davis asked the Clerk to poll the Board on the motion to approve the Use Variance, and to record the members' votes, which were as follows:

Mr. Pacocha	To approve
Mr. Pitre	To approve
Mr. McInerney	To approve
Mr. Houle	To approve
Ms. Davis	To approve

Acting Chairman Davis reported that, there having been five votes to approve the Use Variance, the motion had carried.

B. Motion on the Area Variance

Mr. Pitre made a motion to approve the Area Variance with the following stipulations:

1. To delineate the corner lot line intersections and the wetlands at 50 foot intervals with the Conservation Commission's markers.
2. Move the shed on lot three to inside the building envelope.
3. Move the small shed on the newly created lot four to inside the building envelope.
4. No further variances shall be granted for any additional structures within the rear or side setbacks on any of the lots.
5. No further subdivision shall be done on the newly created lot three.

Mr. Pacocha seconded the motion.

VOTE: Acting Chairman Davis asked the Clerk to poll the Board on the motion to approve the Area Variance, with the noted stipulations, and to record the members' votes, which were as follows:

Mr. Pitre	To approve
Mr. Pacocha	To approve

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Mr. McInerney	To approve
Mr. Houle	To approve
Ms. Davis	To deny

Acting Chairman Davis reported that, there having been four votes to approve and one vote to deny the Area Variance, the motion had carried.

Acting Chairman Davis, speaking on her denial, stated that she did not feel the applicant presented the best, least intrusive plan.

V. OTHER BUSINESS

- Mr. Sullivan informed the Board that an investigation with regard to a Home Occupation Special Exception, (a child care provider) was on-going. Mr. Sullivan stated that a written update on that investigation was included in the Board's packets.
- Ms. McGrath requested that Mr. Sullivan send copies of all correspondence relative to any non-compliance complaints to the state.
- Mr. Sullivan stated that the next meeting would be on June 26, 2008.
- Mr. Coutu stated that he would contact the Board of Selectmen to schedule a joint workshop between the Zoning Board of Adjustment and the Board of Selectmen.
- Ms. Davis noted that the question of who issued a permit for a second driveway at a property on Ferry Street was still an outstanding issue.
- Ms. Davis asked Mr. Sullivan to look into people using the emergency only access road into Abbott Farms as a cut through to avoid traffic.

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VI. ADJOURNMENT

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

Mr. Pitre seconded the motion.

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

Acting Chairman Davis declared the meeting to be adjourned at 10:03pm.

Date: June 5, 2008

Maryellen Davis, Acting Chairman

Recorder: Trish Gedziun