

**HUDSON ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
January 22, 2009**

**I. CALL TO ORDER**

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:32pm on Thursday, January 22, 2009, in the Community Development Meeting Room in the Town Hall basement. Chairman Seabury then requested Ms. Shuman to serve as Acting Clerk and to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

**Members**

**Present:** William McInerney, James Pacocha, Michael Pitre, and J. Bradford Seabury

**Members**

**Absent:** Maryellen Davis, Excused

**Alternates**

**Present:** Kevin Houle, Marilyn McGrath, and Donna Shuman

**Alternates**

**Absent:** Normand Martin, Excused

**Staff**

**Present:** William Oleksak, Building Inspector

**Liaison**

**Present:** Roger Coutu, Selectmen's Liaison

**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 Ms. Davis.

Chairman Seabury also announced that the minutes from the October 23, 2008, meeting would be reviewed at the next scheduled meeting.

### **III. PUBLIC HEARINGS FOR SCHEDULED APPLICATION**

1. **Case 175-80 (1/22/09): Lynn and Ann White, 6 Ridge Avenue, Hudson, NH, request an Area Variance for property located at 11 Burnham Road, Hudson, NH, to allow the replacement of an existing single-family house and attached porch with garage within the 50-foot front-yard setback, where the new house and garage will be set back approximately 23 feet from Burnham Road and approximately 23 feet from Alpine Avenue, with the new house and garage being no closer to the property line than the existing structure. [Map 175, Lot 80, Zoned Business, HZO Article VII, Sections 334-27, Table of Dimensional Requirements.]**

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

Chairman Seabury asked Mr. Oleksak to explain why he felt an Area Variance was being requested rather than a Use Variance. Mr. Oleksak responded that it was an existing non-conforming structure that was going to be replaced with another non-conforming structure.

Ms. McGrath asked if both an Area and Use Variance should have been requested because the property was located in the Business Zone. Chairman Seabury replied that

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the applicant was not requesting a change of use on the property. He further replied that the use would continue to be a residential use and not a commercial use.

Ms. McGrath commented that, if the Board decided to approve the request, she felt it should be made very clear that the use on the property would remain residential.

Ms. McGrath also commented that the second paragraph on page two of the attachment to the application erroneously read “my letter of November 12, 2006” and that it should have read “my letter of November 12, 2008”.

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

Attorney J. Bradford Westgate, from Winer & Bennett, LLP, Nashua, NH, representing the applicant, addressed the Board, stating that the property consisted of four lots as reflected on Plan #122, dated 1904, obtained from the Registry of Deeds.

Attorney Westgate stated that the replacement structure would be a two-bedroom, single family home with a detached garage and that the 23 foot front-yard setback would remain the same – pointing out that the driveway would remain in “essentially” the same location. Attorney Westgate also stated that the rear and side-yard setbacks would remain in compliance with the ordinance.

Attorney Westgate said that the applicant had submitted two different plans. The first was a plan that represented the existing conditions (noting that the existing shed would be removed) and the second was a proposed plan that represented what the new house would look like on the property.

Attorney Westgate stated that the 7,600 square foot property was serviced by town water and had an on-site septic system.

Attorney Westgate stated that the septic system would be replaced and that DES had already issued a permit and a copy of that permit was included in applicant’s application.

Attorney Westgate then read aloud from the application for an Area Variance, summarized as follows:

- 1. An Area Variance is needed to enable the applicant’s proposed use of the property given the special condition of the property. In this case, an Area*

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*Variance is needed from the 50-foot setback requirements from Burnham Road and Alpine Avenue to allow the new house and garage to replace the existing structures and be within 23 feet from each street.*

- 2. The special conditions of the property include its historic nature as a single family structure located within the 23-foot setbacks, its corner lot status, the longstanding non-conforming use of the property as a residence in the Business Zone, and its inability to expand or otherwise accommodate greater setback requirements.*
- 3. 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. The Interim Zoning Administrator made an Administrative Decision that the variance is necessary. Consequently, no administrative route remains open/no other method is permitted.*
- 4. No diminution in the value of surrounding properties would occur, because although the property is located in the Business Zone, it contains a single-family house constructed or installed over 50 years ago. It is near other residential properties and will be replaced by a new, modern dwelling that is no closer to the street.*

Attorney Westgate read a letter aloud dated January 19, 2009, from Randy Turmel of Keller Williams Realty, summarized as follows:

*I have carefully reviewed the applicant's request to construct a single-family dwelling with an attached garage at 11 Burnham Road.*

*It is my professional opinion that the removal of the existing structures (which appear to be functionally obsolete) and the construction of a new home would not diminish the property values in the immediate area. I strongly believe the construction of a new home and its related improvements would greatly enhance the immediate properties and their values.*

Chairman Seabury asked if there were any members of the Board who had questions or comments.

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Mr. Pitre asked Attorney Westgate if the new septic system would be placed directly over the existing septic system. Attorney Westgate replied that it would be placed closer to where the corner of where Burnham Road and Alpine Avenue met.

Mr. Pitre asked Mr. Oleksak where the sewer system started on Ferry Street. Mr. Oleksak replied that there was a new pumping station installed just past Dairy Queen on Ferry Street.

Mr. McNerney asked who the present owner of 11 Burnham Road was. Attorney Westgate replied that the present owners were Raymond and Donna Freeman.

Mr. McNerney asked if the property were under agreement between the Freemans (the owner) and the Whites (the applicant). Attorney Westgate replied that the property was not under agreement but that the two parties had known each other for a long time and they had an “understanding.” (Note: Mr. & Mrs. Freeman were not present at the meeting.)

Mr. McNerney asked if the property had a basement and Attorney Westgate replied that the existing property did not have a basement but that the new property would have a basement.

Mr. McNerney asked if the property were considered personal property or real estate. Attorney Westgate replied that the property was taxed as real estate.

Ms. McGrath asked if the four lots on the property had been consolidated. Attorney Westgate replied that they had not been as an instrument of record but that they had been by the zoning ordinance.

Ms. McGrath asked if action was needed by the Planning Board. Chairman Seabury replied that the Planning Board did not have to take any action.

Ms. McGrath commented that she felt that the plans that were submitted were sub-standard.

Ms. McGrath asked if the new driveway would enter from the same location as the existing driveway. Attorney Westgate replied that the driveway would enter from the same location, aside from a few slight possible modifications.

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Ms. McGrath asked Mr. Oleksak if a driveway permit would be required from the Engineering Department. Mr. Oleksak replied that a permit would be required and he would follow-up with the Engineering Department to ensure the permit would be issued.

Ms. McGrath commented that her concern was that a sub-standard plan had been submitted to the Board and said she felt that made it difficult to make decisions.

Ms. McGrath also commented that she felt the lot numbers should be referenced on the proposed plan as well as the existing conditions plan.

Ms. McGrath noted that Attorney Westgate had used words such as “essentially” and “approximately” and she requested that he confirm that the setback would not be any greater than 23 feet. Attorney Westgate complied with the request.

Ms. McGrath asked Attorney Westgate to explain what the word “appurtenances” referred to in the application. Attorney Westgate replied that he was referring to utilities and not another shed or outbuilding.

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 made a motion to approve.

Ms. McGrath seconded the motion with the following stipulations:

1. The septic system location is to be shown on the plan.
2. The driveway location is to be shown on the plan.
3. The lot numbers are to be shown on the plan.
4. A driveway permit is to be obtained from the town’s Engineering Department.

Mr. Pacocha stated that he was in agreement with the above stipulations.

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Mr. Pacocha, speaking on his motion, stated that he felt it was a substantial improvement to the property, the property fit the hardship criteria, it was compatible with the spirit of the ordinance, and there would be no diminution of surrounding property values.

Ms. McGrath, speaking on her second, stated that she agreed with everything Mr. Pacocha had said, there were no adverse abutter testimony, and the stipulations that were imposed would adequately correct the record for the future. Ms. McGrath further added that the Board did not feel that a Use Variance should have been needed because although the lot was located in the Business Zone, it was a replacement home and the use would not change.

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

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

Chairman Seabury reported that, there having been four votes to approve and one vote to deny, the request for an Area Variance, with the noted stipulations, the motion had carried.

**IV. OTHER BUSINESS**

- Chairman Seabury stated that a copy of the text for the Annual Report was included in the packets which were mailed to the members of the Board. Ms. McGrath commented that her title at BAE Systems was that of a Financial Analyst and not a Project Manager.
- RE: Application for a License to Sell Firearms – Shumsky, Michael – 010609: Mr. Pitre commented that he felt it was important to have a letter of approval to sell firearms from the Hudson Police Department. Chairman Seabury suggested that in the future, the Board should obtain documentation from any and all departments regarding the application and

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the applicant could be asked to return in the event the Board was not satisfied with the provided documentation.

- RE: R&S Brakes~n~More – Stowell, Helen & Ralph – 112108: Ms. McGrath commented that the applicant would have to go before the Planning Board to request that the imposed stipulation be relieved.
  
- RE: Car Sales – Tate, Wesley – 112608: Ms. McGrath commented that a change of use may have been appropriate and that would have required site plan approval from the Planning Board. Mr. Oleksak stated that he would watch the activity on the property carefully.

### V. RE-ORGANIZATION OF THE BOARD

#### **Position: Chairman of the Board**

Ms. McGrath made a motion to appoint J. Bradford Seabury as Chairman of the Board.

Mr. Pacocha seconded the motion.

Ms. McGrath moved to close the nominations.

All present voted in favor.

#### **Position: Vice Chairman of the Board**

Ms. McGrath made a motion to appoint Maryellen Davis as Vice Chairman of the Board.

Mr. McInerney seconded the motion.

Ms. McGrath moved to close the nominations.

All present voted in favor.

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**Position: Clerk**

Ms. McGrath made a motion to appoint Normand Martin for the position of Clerk.

Mr. McInerney seconded the motion.

Ms. McGrath moved to close the nominations.

All present voted in favor.

**VI. ADJOURNMENT**

All scheduled items having been processed, Ms. McGrath made a motion to adjourn the meeting.

Mr. Pitre seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 8:55pm.

Date: January 30, 2009

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J. Bradford Seabury, Chairman

Recorder: Trish Gedziun