



# TOWN OF HUDSON

## Zoning Board of Adjustment



J. Bradford Seabury, Chairman

Ben Nadeau, Selectmen Liaison

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### MEETING MINUTES July 28, 2011

#### I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:30pm on Thursday, July 28, 2011, in the Community Development Meeting Room in the Town Hall basement. Chairman Seabury then requested Acting Clerk McGrath to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

##### Members

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

##### Members

**Absent:** Jim Pacocha (Excused) and Michael Pitre (Excused)

##### Alternates

**Present:** Bill Abbott, Gary Dearborn, and Marilyn McGrath

##### Alternates

**Absent:** Maryellen Davis (Excused) Kevin Houle (Absent)

##### Staff

**Present:** William Oleksak, Zoning Administrator

**Recorder:** Trish Gedziun

#### 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 sat Mr. Abbott in place of Mr. Pacocha and Mr. Dearborn in place of Mr. Pitre, who were both excused.

Chairman Seabury stated that Ms. McGrath would assume the role of clerk as Ms. Davis was excused.

### **III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD**

- 1. Case 175-091 (7/28/11): Leo and Karen Graham, 12 Alpine Avenue, Hudson, NH, requests an Equitable Waiver to allow the existing deck, garage, and single-family dwelling to remain within the setbacks. [Map 175, Lot 091, Zoned R-2, HZO Article VIII, Section 334-28, Nonconforming Uses, Structures and Lots.]**
- 2. Case 175-090 (7/28/11): Roger and Janet Belhumeur, 6 Alpine Avenue, Hudson, NH, requests an Equitable Waiver to allow the existing 5' x 5' landing and steps to remain within the setback. [Map 175, Lot 090, Zoned R-2, HZO Article VIII, Section 334-28, Nonconforming Uses, Structures and Lots.]**

Acting Clerk McGrath read aloud the posted notices, as recorded above.

#### **Discussion with regard to Case 175-091 (7/28/11) and Case 175-090 (7/28/11)**

Chairman Seabury explained that the applicant had previously appeared before the Board to request an Equitable Waiver. He further explained that the Board decided that the situation applied to both properties located at 12 and 6 Alpine Avenue, therefore the applicant was present with a revised plan.

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

Mr. Michael Grainger, from MJ Grainger Engineering, representing both applicants (at 12 and 6 Alpine Avenue) addressed the Board, stating that the house, at 12 Alpine Avenue, built in 1955, was approximately 20 feet off of the property line. He said that the garage encroached approximately 3 feet into the 30-foot setback, and the deck which was added to the property in the early 1990's, encroached approximately 6 feet into the setback.

Mr. Grainger stated that the existing 8' x 10' shed located at 12 Alpine Drive would be moved into compliance.

Mr. Grainger further stated that the 5' x 5' landing located at 6 Alpine Avenue encroached approximately 11 feet into the setback.

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. Alan Garside, an abutter, had a question with regard to the lot-line relocation. Chairman Seabury informed Mr. Garside that the lot-line relocation would be handled by the Planning Board and not the Zoning Board of Adjustment.

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.

Chairman Seabury declared the matter before the Board.

Ms. McGrath asked Mr. Grainger if building permits were issued for the garage and deck located at 12 Alpine Avenue. Mr. Grainger replied that permits were issued for both the garage and the deck.

Mr. Dearborn asked if the existing shed located at 12 Alpine Drive had been moved into compliance. Mr. Grainger replied that it had not yet been moved but the plan was to move it 15 feet from the back lot-line.

Chairman Seabury asked Mr. Grainger why the applicant was requesting the lot-line relocation. Mr. Grainger replied that the fence was initially installed in the

wrong location and that the two property owners decided to obtain a lot-line relocation rather than taking down the fence.

Ms. McGrath asked Mr. Grainger if there were any plans for additional buildings to be constructed on either lot. Mr. Grainger replied that there were not.

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

**Motion with regard to Case 175-091 (7/28/11)**

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

Mr. Abbott seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt the structure had existed for over 10 years with no code enforcement issues and there would be a high correction cost to rectify the situation.

Mr. Abbott, speaking on his second, stated that he agreed with Mr. Martin's remarks.

VOTE: Chairman Seabury asked Acting Clerk McGrath 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:

Mr. Martin	To approve
Mr. Abbott	To approve
Ms. Shuman	To approve
Mr. Dearborn	To approve
Mr. Seabury	To approve

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

**Motion with regard to Case 175-090 (7/28/11)**

Mr. Martin made a motion to approve the request for an Equitable Waiver with the stipulation that the shed shall be moved prior to the approval of the lot-line relocation by the Planning Board.

Mr. Abbott seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt there would be a high correction cost, it was not a nuisance, and the shed would be moved into a compliant area.

Mr. Abbott, speaking on his second, stated that he agreed with what Mr. Martin had said.

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

Mr. Martin	To approve
Mr. Abbott	To approve
Ms. Shuman	To approve
Mr. Dearborn	To approve
Mr. Seabury	To approve

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

Chairman Seabury stated that the Board would hear Case numbers 110-039, 110-037 & 110-38 at the same time.

- 3. Case 110-039 (7/28/11): Steven L. Chasse, 8 Christine Drive, Hudson, requests an extension of an un-activated Variance previously granted by the Zoning Board of Adjustment on August 26, 2010, to allow expansion of an existing non-conforming (manufacturing) use. [Map 110, Lot 39, Zoned Business, HZO Article VII, Section 334-29, Expansion or enlargement of non-conforming uses.]**
- 4. Case 110-037 & 038 (7/28/11): B & D Land Development, 70 Old Derry Road, Hudson, requests an extension of an un-activated Variance previously granted by the Zoning Board of Adjustment on August 26, 2010, for lot 38 to permit a proposed 12,000 square foot manufacturing/bulk storage building in the Business zoning district on property located at 10 & 14 Christine Drive. Manufacturing is not a permitted use in the Business zoning district. Lot 37 will contain parking for the manufacturing/bulk storage use taking place on lot 38. [Map**

**110, Lots 37 & 38, Zoned B, HZO Article V, Section 334-21,  
Table of Permitted Principal Uses.]**

Acting Clerk McGrath read aloud the posted notices, as recorded above.

Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak explained that both applicant's had previously been before the Board requesting extensions for un-activated Variances. He further explained that the applicants were present to request that the previous approvals be extended.

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

Mr. Patrick Colburn, Professional Engineer, from Keach-Nordstrom Associates, Inc., representing the applicants, addressed the Board, stating that the Zoning Board had initially approved both requests for Variances in March, 2008, and that approvals were granted by the Planning Board in June and September of the same year. (2008)

Mr. Colburn stated that the applicants' goal was to expand his existing business – S.L. Chasse Welding & Fabricating. He further stated that the proposed expansion would include a building addition of approximately 13,800 square feet as well as a stand-alone 12,800 square foot light industrial/storage building.

Mr. Colburn explained that the first request would allow for the expansion of an existing non-conforming use and the second request would allow for the construction of a manufacturing use in the Business Zone with the stipulation that all three lots would be merged into one.

Mr. Colburn stated that he had successfully received extensions from the Board in July/August, 2009 as well and July/August, 2010. He also said that all of the state approvals remained valid.

Mr. Colburn said that the Mr. Chasse, the applicant, was still very much interested in moving forward with the expansion but had been negatively impacted by the poor economy.

Chairman Seabury stated that Mr. Colburn would not read the Application for a Variance into the record as it had already been read into the record multiple times.

Chairman Seabury asked if there were anyone else present who wished to speak in favor with regard to the application.

Mr. William Tate, 271 Nashua Road, Londonderry, NH, addressed the Board, stating that he fully supported the applicants' request.

Chairman Seabury asked if there were anyone else present who wished to speak in favor of 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 asked Mr. Oleksak if there were any complaints or issues regarding the property. Mr. Oleksak replied that there were not. Chairman Seabury declared the matter before the Board.

Ms. McGrath asked if there had been any changes to the wetlands near the property that would cause further review by the Conservation Commission. Mr. Colburn replied that he was not aware of any changes.

Ms. McGrath commented that she was in favor of granting both requests for extensions.

Mr. Dearborn asked if Mr. Chasse felt business was picking up. Mr. Colburn replied that Mr. Chasse felt that each year "would be the year" he would be able to complete the expansion but that the economy had not supported that to date.

Mr. Dearborn asked if there were any stipulations put on the past approvals. Chairman Seabury replied that there were three stipulations:

1. Upon conveyance of the property, the used cars, debris and junk shall be promptly removed from the site in accordance with Community Development regulations.
2. The landscaping for the site shall be installed as shown and maintained to the satisfaction of the Town Planner.
3. All three lots #37, #38 & #39 shall be consolidated to create one lot.

**Motion with regard to Case 110-039**

Mr. Dearborn made a motion to approve the request for a one-year extension of an un-activated Variance with the noted stipulations – effective August 26, 2011.

Mr. Martin seconded the motion.

Mr. Dearborn, speaking on his motion, stated that he felt the application did not differ from the original application and he saw no objection to allow a one-year extension.

Mr. Martin, speaking on his second, stated that he felt there were no changes to the property or the surrounding wetlands and he felt the town would benefit from the expansion.

VOTE: Chairman Seabury asked Acting Clerk McGrath to poll the Board on the motion to approve the request for a one-year extension of an un-activated Variance, with the noted stipulations, and to record the members' votes, which were as follows:

Mr. Dearborn	To approve
Mr. Martin	To approve
Ms. Shuman	To approve
Mr. Abbott	To approve
Mr. Seabury	To approve

Chairman Seabury declared that, there having been five votes to approve the request for a one-year extension of an un-activated Variance, with the noted stipulations, the motion had carried.

**Motion with regard to Case 110-037 & 110-038**

Mr. Martin made a motion to approve the request for a one-year extension of an un-activated Variance, subject to the same three stipulations as noted above, effective August 26, 2011.

Mr. Dearborn seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt there were no changes made to the property and there was a good faith effort presented on the part of the business owner.

Mr. Dearborn, speaking on his second, stated that he agreed with everything Mr. Martin had said.

VOTE: Chairman Seabury asked Acting Clerk McGrath to poll the Board on the motion to approve the request for a one-year extension of an un-activated Variance, with the noted stipulations, and to record the members' votes, which were as follows:

Mr. Martin	To approve
Mr. Dearborn	To approve
Ms. Shuman	To approve
Mr. Abbott	To approve
Mr. Seabury	To approve

Chairman Seabury declared that, there having been five votes to approve the request for a one-year extension of an un-activated Variance, with the noted stipulations, the motion had carried.

- 5. Case 134-025 (7/28/11): Bruce C. Atwood and Margery Harris, 35 Hazelwood Road, Hudson, NH, requests a Wetland Special Exception to allow installation of a 8' x 12' floating platform, a 6' x 30' seasonal dock, and a path to the water within the wetland buffer. [Map 134, Lot 025, Zoned R-1, HZO Article IX, Section 334-33, Wetland Conservation District.]**

Acting Clerk McGrath read aloud the posted notices, as recorded above.

Chairman Seabury announced that he would step down from the case and appointed Mr. Martin to assume the role of Chairman. (Recorder's Note: Mr. Seabury took a seat in audience)

Acting Chairman Martin asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak explained that the applicants' requests required a Wetland Special Exception from the Zoning Board of Adjustment.

Acting Chairman Martin sat Ms. McGrath in place of Mr. Seabury, who had stepped down.

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

Ms. Margery Harris, the applicant, addressed the Board, stating that her house was tucked behind trees and shrubbery. She said that the proposed path, as designed, would have the absolute minimalist impact on the property.

Ms. Harris stated that the requested permit was somewhat less than what was normally allowed by the “wetland people and agencies that we had to go through and was a lot less than what had been done there and grandfathered in the past.”

Ms. Harris further stated that the impact to the root system would be minimized by putting the materials on stakes which would be supported above the ground.

Acting Chairman Martin 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 Martin 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 Martin declared the matter before the Board.

Acting Chairman Martin read aloud the Motion to Recommend a Wetlands Special Exception from the Conservation Commission, dated July 11, 2011, summarized as follows:

*Description of Work to be performed:*

- *Path to lake, wood, on solid ground; dock in the water (6' x 30') swim float (12' x 8")*

*Motion: Favorable: 7*

*Unfavorable: 0*

*Abstain: 0*

*Motion was to approve a favorable recommendation with the following stipulations:*

1. Restorations will comply with: **BEST MANAGEMENT PRACTICES TO CONTROL NON-POINT SOURCE POLLUTION: A GUIDE FOR CITIZENS AND TOWN OFFICIALS** (NH DEPT. OF ENVIRONMENTAL SERVICES – Latest Issue.)
2. This motion is based on the Wetlands Plan submitted by the applicant. Additional impacts that may be the result of impervious surfaces or relocation of structures have not been addressed. It is recommended that if these conditions occur, the plan should be sent to the Conservation Commission for further review.
3. Recommend approval of wooden path to lake. Map 134, Lot 25, Zoned RI presented by Bruce Atwood and Margery Harris, 35 Hazelwood Road, Hudson, NH, 03051.
4. All work to be done by hand, no excavating machinery in the wetlands shall be allowed. All cutting of wood to be done outside the wetland buffer.

Mr. Dearborn asked who would have use of the path and swimming dock. Ms. Harris replied that other than her and Mr. Atwood, the path and dock would occasionally be used by family members.

Mr. Martin asked if the applicant was planning on clearing any other part of the property. Ms. Harris replied that she was not.

Ms. McGrath asked Mr. Oleksak if there were any criteria or regulations for swimming docks. Mr. Oleksak replied that he had not researched that.

Ms. McGrath asked the applicant how the swimming dock would be anchored. Ms. Harris replied that a 25 pound anchor would likely be used.

Ms. McGrath asked if the Conservation Commission had questioned what type of wood would be used in the water – noting that she did not think pressure treated wood should be an option due to the chemicals in it. Ms. Harris replied that they would be happy to use a non-pressure treated wood.

Ms. McGrath asked what material the actual swimming dock would be made of. Ms. Harris replied that it would be made out of a specially formulated plastic material.

Mr. Dearborn asked Mr. Oleksak if there was anything on record which dictated when or if seasonal docks had to be removed from the water. Mr. Oleksak replied that there was nothing that dictated a specific date for removal.

Mr. Oleksak suggested that the applicant use a product called “Big Feet.” Ms. Harris replied that she would be happy to use the product.

Ms. McGrath made a motion to approve the request for a Wetland Special Exception with the following stipulations:

1. That all wood to be used shall be of a grade that shall not pose a danger to the wetlands or Robinson Pond, and shall not be pressure treated wood.
2. That the floating dock shall be removed by October 1<sup>st</sup> of any given year.
3. That the previously noted stipulations of the Conservation Commission of July 11, 2011, be included.

Mr. Dearborn seconded the motion.

Ms. McGrath, speaking of her motion, stated that she felt the request was a reasonable request for the property, it would not adversely affect the wetlands, and it met all of the criteria for a Wetland Special Exception.

Mr. Dearborn, speaking on his second, stated that he agreed with everything that Ms. McGrath had said.

VOTE: Acting Chairman Martin asked Acting Clerk McGrath to poll the Board on the motion to approve the request for a Wetland Special Exception, with the noted stipulations, and to record the members’ votes, which were as follows:

Ms. McGrath	To approve
Mr. Dearborn	To approve
Ms. Shuman	To approve
Mr. Abbott	To approve

Mr. Martin

To approve

Acting Chairman Martin declared that, there having been five votes to approve the request for a Wetland Special Exception, with the noted stipulations, the motion had carried.

Mr. Seabury returned to his seat as Chairman, Mr. Martin returned to his seat as a full voting member of the Board, and Ms. McGrath returned to her seat as a non-voting alternate member of the Board.

#### **IV. OTHER BUSINESS**

Chairman Seabury stated that the Board had received a letter from Mr. Robert Lemieux, 155 Highland Street, Hudson, NH, dated July 5, 2011. Chairman Seabury further stated that he would not read the letter into the record as all of the Board members had ample time in which to read the letter.

Mr. Martin quoted a portion of RSA 674:33 (V) summarized as follows:

*Any Zoning Board of Adjustment may grant a Variance from the terms of the Zoning Ordinance without finding a hardship arising from the condition of a premises subject to the Ordinance when reasonable accommodations are necessary to allow a person with a recognized physical disability to reside in or regularly use the premises provided that:*

- a) Any Variance granted under this paragraph shall be in harmony with the general purpose and intent of the Zoning Ordinance.*
- b) In granting any Variance pursuant to this paragraph, the Zoning Board of Adjustment may provide in a finding included in the Variance that the Variance shall survive only so long as the particular person has a continuing need to use the premises.*

Mr. Martin further commented that he felt the above applied to Mr. Lemieux. He said that he felt the carport was necessary and felt Mr. Lemieux should submit an Application for a Variance to allow it.

Ms. McGrath commented that she agreed with Mr. Martin and felt it was unfortunate that the situation had escalated to the point it had. She also said that

she felt Mr. Lemieux would receive a fair hearing and a just decision should he decide to appear before the Board.

Mr. Martin asked if there was a simple way to waive the application fee if need be. Chairman Seabury replied that the Board had waived fees in the past on a case-by-case basis.

Mr. Martin stated that he felt the application fee should be waived because a previous Zoning Administrator had told Mr. Lemieux that the carport was allowed.

Ms. McGrath stated that she felt the Board needed to treat all applicants fairly and needed to be careful not to set a precedent.

Mr. Martin felt that Chairman Seabury should reply to Mr. Lemieux and advise him to apply for a Variance.

Mr. Dearborn commented that he knew Mr. Lemieux personally and was aware of the benefit of the carport.

Mr. Abbott commented that he agreed with Mr. Martin but did not feel the Board should anticipate Mr. Lemieux's financial status.

Chairman Seabury stated that he would send Mr. Lemieux a letter accordingly.

The Board discussed correspondence associated with 93 Highland Street and decided that a Certified Plot Plan would be required.

Mr. Martin made a motion for the Zoning Administrator to inform the requestor at 93 Highland Street, that the requirement for a Certified Plot Plan was mandatory for the desired work to be done in the wetland buffer.

Mr. Dearborn seconded the motion.

Chairman Seabury stated that he would vote in opposition of the motion because he felt that a carefully hand drawn sketch subject to verification should be sufficient.

VOTE: Chairman Seabury asked Acting Clerk McGrath to poll the Board on the motion for the Zoning Administrator to inform the requestor at 93 Highland Street,

that the requirement for a Certified Plot Plan was mandatory for the desired work to be done in the wetland buffer, and to record the members' votes, which were as follows:

Mr. Martin	To require a Certified Plot Plan
Mr. Dearborn	To require a Certified Plot Plan
Ms. Shuman	To require a Certified Plot Plan
Mr. Abbott	To require a Certified Plot Plan
Mr. Seabury	Not to require a Certified Plot Plan

Chairman Seabury declared that, there having been four votes to require a Certified Plot Plan, and one vote not to require a Certified Plot Plan, the motion had carried.

## **V. APPROVAL OF MEETING MINUTES**

The following changes were made to the minutes of the June 23, 2011, meeting:

Page 3, 3<sup>rd</sup> paragraph, 1<sup>st</sup> sentence – “within the setbacks” was added – McGrath

Page 3, 6<sup>th</sup> paragraph, 2<sup>nd</sup> sentence – “within” was changed to “not less than” - Dearborn

Mr. Martin made a motion to approve the minutes from the June 23, 2011, meeting as amended by the Board.

Mr. Dearborn seconded the motion.

Chairman Seabury called for a verbal vote, and he then stated that all of the sitting Board members were in favor of approving the minutes from the June 23, 2011, meeting as amended by the Board.

Mr. Oleksak asked for guidance with regard to a resident who wished to have a horse on their land as a secondary use. (i.e. – to house the horse and transport it to shows)

The Board collectively felt that it was at Mr. Oleksaks' discretion but that the size of the lot in question and the area in which the lot was located needed to be considered.

**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 9:53pm.

Date: August 15, 2011

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J. Bradford Seabury, Chairman

Recorder: Trish Gedziun