



TOWN OF HUDSON

Zoning Board of Adjustment



J. Bradford Seabury, Chairman Ben Nadeau, Selectmen Liaison

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HUDSON ZONING BOARD OF ADJUSTMENT MEETING MINUTES January 22, 2015

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:30pm on Thursday, January 22, 2015, in the Paul Buxton Meeting Room in the Town Hall basement. Chairman Seabury then requested Clerk Dearborn to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

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

Members

Absent: Mike Pitre (Absent)

Alternates

Present: Maryellen Davis, Gary Dearborn, Kevin Houle, Marilyn McGrath, and Maurice Nolin

Alternates

Absent: None

Staff

Present: Kevin Desmond, 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.

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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 seated Ms. Davis in place of Mr. Pitre, who was absent.

III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. **Case 173-013 (01/22/15) (Deferred from 12/11/14):** Paul Dinoto/Ricardo Santos, 6 Tolles Street, Hudson, requests a Variance from the literal provisions of the Hudson Zoning Ordinance Article IV of HTC §334-18(C) Town Residence (TR) to allow for “Business” usage in the TR Zoning District. [Map 173, Lot 013, Zoned TR; HZO Article IV, §334-18(C).] **(The applicant has requested a withdrawal.)**

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

Chairman Seabury read aloud from an e-mail letter received from the applicants summarized as follows:

To whom this may concern,

The State of New Hampshire requires that the location to run a car dealership has to be in a commercial zone so with the request of the Variance not being enough, with that having been said, we are no longer going any further with the application! Thank you so much, Kevin; you really helped us a lot. I am still looking at other properties in the area. Hopefully it will work out.

Mr. Martin made a motion to accept the withdrawal with prejudice because of the way the Variance request was worded. He said it was worded as if the Board were being asked to rezone the property. He further said that he would have liked it to be withdrawn with prejudice so that the applicant did not come back with the same wording for a Variance.

Chairman Seabury stated that the applicant had worded it incorrectly and that they probably had contributed to their own misfortune.

Mr. Desmond stated that the application had originally come in incorrectly worded as rezoning the property when a Variance is what was needed. He said that was the reason why the case was deferred to this meeting. Mr. Desmond said that he had explained that they needed to reword the application and that it would then be reviewed by the Board. He said at that point the applicant said no and that the state had told them that it would not work so they were just going to look at other properties.

Mr. Martin withdrew his motion.

Mr. Martin then made a motion to accept the withdrawal without prejudice.

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Ms. Davis asked if the owner of the property was Christina Vianna because that was where the request for a withdrawal came from but the application came from Paul Dinoto and Ricardo Santos.

Mr. Desmond replied that the property owner was Ricardo Santos but that he had used his girlfriend's e-mail to send it.

Ms. McGrath suggested that a note be put on the e-mail that it was based on a discussion between Mr. Desmond and Mr. Santos and that he was using a friend's e-mail to send the request.

Ms. Davis seconded the motion.

VOTE: Chairman Seabury asked Clerk Dearborn to poll the Board on the motion to withdraw the case without prejudice, and to record the members' votes, which were as follows:

Mr. Martin	To withdraw without prejudice
Ms. Davis	To withdraw without prejudice
Mr. Pacocha	To withdraw without prejudice
Ms. Shuman	To withdraw without prejudice
Mr. Seabury	To withdraw without prejudice

Chairman Seabury declared that, there having been five votes to withdraw the case without prejudice, the motion had carried.

2. **Case 175-132 (01/22/15): Jeanne G. Cossette, 4 Chatham Street, Hudson, requests a Variance from the literal provisions of the Hudson Zoning Ordinance Article VII of HTC §334-27 to allow a shed to remain, encroaching 2 ½ feet into the side and rear setbacks. [Map 175, Lot 132, Zoned TR; HZO Article VII, §334-27.]**

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

Chairman Seabury asked Mr. Desmond to explain why the matter was before the Board. Mr. Desmond explained that the applicant wanted to place a shed within the setback area and that the yard was about .23 acres, which was fairly small. He also said that the yard was fenced off and there were trees and other objects in there but the shed would bring it back 2 ½ feet in the side and rear setbacks.

Mr. Martin asked Mr. Desmond in what circumstance the application came to the Community Development Department. Mr. Desmond replied that Ms. Cossette would be the best person to answer that whereas it had to do with neighbors.

Mr. Martin asked if there was a written complaint on file. Mr. Desmond replied that there was not.

Mr. Nolin stated that he felt the case should have been noticed as 12 ½ feet into the setback.

Chairman Seabury read aloud an e-mail from Ms. Alison Wright, summarized as follows:

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My name is Alison Wright and I am the owner of 6 Chatham Street in Hudson. I received a letter from you to appear for a hearing this week regarding 4 Chatham Street. I am unfortunately unable to attend this hearing due to being out of town in Florida but wanted to e-mail you regarding the issue you are addressing. The issue as I understand is being questioned is that the shed in the backyard at 4 Chatham Street is too close to the neighbor's property lines. This is not true. I feel that the shed is perfect right where it is and that it gives me more privacy in my backyard and so do the other two neighbors behind 4 Chatham Street on Travers Street, who also have no issues with this shed. The person who petitioned you this issue of being too close to the property line have no leg to stand on. She lives on Blackstone Street and some of her backyard abuts 4 Chatham Street. The shed in question is not even close to her property line nor is it in any way an eye sore for her or any of us who actually see the nicely built and clean shed. I believe this shed is a great addition to 4 Chatham Street. If you have any questions and would like to call me or e-mail me please do.

Mr. Dearborn asked what year the shed was built. Ms. Cossette's son replied that the shed was built this year.

Mr. Dearborn asked if the applicant had approached Town Hall for a building permit. He also said that he was aware that one was not required. Ms. Cossette's son replied that all four of the abutters were approached.

Mr. Dearborn said that his question was how the applicant knew that a building permit was not required.

Mr. Martin called for a point of order and asked if the conversation could wait until the case was formally before the Board.

Ms. McGrath asked Mr. Desmond if he knew if the staff required a copy of Ms. Cossette's driver's license along with the pictures of the shed that were submitted as part of the applicant's package. Mr. Desmond replied that he had never seen that before. Ms. McGrath suggested that all copies of the driver's license should be shredded for privacy purposes. Ms. Davis said that she felt the copies of the applicant's checks should also be shredded or returned to the applicant.

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

Ms. Jeanne Cossette, the applicant, addressed the Board and read aloud from her application for a Variance summarized as follows:

1. Granting of the requested Variance will not be contrary to the public interest because there are sheds in every yard in the neighborhood. The shed my son built is well built and nice looking and in no way does it change the character of the neighborhood.
2. The proposed use will observe the spirit of the ordinance because the shed was built to hold tools and yard equipment. There will not be any trash or anything that would smell. There would be no threat to the public health or safety.

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3. Substantial justice would be done to the property owner by granting the Variance because I am 83 years old and live on social security and a small pension. It cost me a lot of money to build the shed. It will cost a lot more to move the shed and I don't have the extra money for that.
4. The proposed use will not diminish the values of surrounding properties because my son built the shed for me and he assured me that I would be happy with it and I certainly am. It is the nicest shed in the neighborhood.
5. Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship** because the grade of the land in my backyard is very uneven. There isn't enough land to build anything on. If the shed has to be moved 2 ½ feet then it would be over where my two dogs are buried. Please don't do that!

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. Nicolas Palmer, 17 Blackstone Street, addressed the Board stating that there were some misconceptions as to what had just been said. He said that he had applied for a license and a Variance to put a shed in their side yard and the town had said no so it was now set back the proper amount. Mr. Palmer said that was the only reason why he was in attendance. He said the shed was located on the right rear corner of his property. Mr. Palmer said that he felt the applicant did not follow the process and that he had and was told no by the town. He said that he did not feel it would be fair to allow one and not the other.

Ms. Georgia Palmer, 17 Blackstone Street, addressed the Board stating that she had requested a Variance and put up a Reeds Ferry shed. She said she had letters from her neighbors that indicated support of the shed and that it had upgraded the value of her property. She further stated that the only people who objected to it were the Cossettes. Ms. Palmer stated that her request had been denied. She said the properties in the neighborhood were very small and there was not a lot of room for a shed and that she also had an in-ground pool. She further said that because she was denied she had to make two separate grades in her yard and build a stone wall. Ms. Palmer stated that while Reeds Ferry was building the shed the Building Inspector had to come out to measure the setback because the Cossettes had accused them of not meeting the requirements. She said the Building Inspector found them to be within the setbacks.

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

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Ms. Cossette stated that she never called anyone regarding the Palmers' shed.

Chairman Seabury declared the matter before the Board.

Mr. Dearborn asked if the shed was encroaching by 2 ½ feet or by 12 ½ feet.

Mr. Martin, referring to the ordinances, stated that sheds fell under §334.27; Table of Dimensional Requirements. He further stated that he felt sheds fell under §334.27.1(C); Accessory Storage Structure and shall be placed to the rear of the main building.

Chairman Seabury said that he thought there was another one that said 100 square feet shed could be closer but even then it had to be 5 feet away from the lot line.

Mr. Martin commented that the TR Zones were postage stamp lots. Mr. Martin said that he lived in a TR Zone and that his shed was as close to his neighbor's fence as the applicant's was. He further said that he did not think that a building permit had to be pulled for a 120 square foot shed and it also did not need to be inspected. He said if the law did not require a building permit and it was built, he did not understand why it was a problem.

Chairman Seabury replied that it was a problem because of the way the ordinance was worded.

Ms. McGrath commented that the previous Zoning Administrator had suggested that she pull a building permit when she wanted to put in an 100 square foot shed; 10' x 10', on her property; but that the requirement for obtaining a building permit was 120 square feet, 12' x 10'.

Mr. Dearborn stated that when he had first read this case he was a little bit concerned about the cost of moving a 10' x 12' shed and discovered that it was not exuberant. He also said that he viewed the property and felt if the applicant moved the shed to the 15' setback, it would have almost become part of the house.

Mr. Martin stated that §334.16(A); Building Permits, Exemptions; Building permits shall not be required for the following: Accessory structures such as mailboxes, dog houses, bird baths, ornamental landscaping, swing sets, fences 8' in height or less, and other similar types of structures as determined by the Building Inspector not to require a permit.

Chairman Seabury stated that the Belanger vs. Nashua case said, from a judge, that if these things exist in the neighborhood, it did not make sense to have an ordinance that says you cannot do it. He further stated that he felt in this case the town had outgrown one of its zoning ordinances for certain zones.

Mr. Martin made a motion to approve the request for a Variance.

Ms. Davis seconded the motion.

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Mr. Martin, speaking on his motion, stated that he felt the applicant had met all of the criteria for a Variance including the criteria for hardship because it was on a small lot. He said this was not the only TR Zone in the town that had the same problem. He also stated that he felt voting in favor of the Variance would not be hurting anyone and the character of the neighborhood outweighed the negative aspect of it because it was really difficult to place a shed anywhere on such a small lot.

Ms. Davis, speaking on her second, stated that she felt the applicant had met all of the criteria of the ordinance, moving the shed would pose a financial hardship on the applicant, and the applicant had also testified that the topography of the backyard did not lend itself to move the shed to any other appropriate area. She also said that she felt it had a minimum impact on the surrounding properties. She stated that although it did not make it right, other properties in the area had the exact same situation and that she also believed that the TR Zone had outlived the ordinance when it came to accessory structures based on the size of all of the lots.

Chairman Seabury stated that the Board might want to consider rewording that ordinance in the future.

Ms. Davis commented that if she were to vote in the negative she would have to insist that the Code Enforcement Officer place a violation on everyone that had the same situation in the neighborhood.

Chairman Seabury commented that although he would vote in favor of the application, he still felt it was a clear violation of the ordinance but also was thinking that the Zoning Board of Adjustment could not have granted a Variance if it caused a reduction of value of adjoining properties and that he did not feel that was the case. He further commented that his concern with this case was that it was the Belanger vs. Nashua case all over again. He said he felt the case would come back to the Zoning Board of Adjustment if it went to court.

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

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

Chairman Seabury declared that, there having been five votes to approve the request for a Variance, the motion had carried.

IV. RE-ORGANIZATION OF THE BOARD

Chairman Seabury handed the gavel over to Mr. Desmond, Zoning Administrator.

Mr. Desmond asked for nominations for the position of Chairman of the Zoning Board of Adjustment.

Ms. Davis nominated Mr. Seabury for the position.

Mr. Desmond asked if there were any other nominations. There were none.

Mr. Desmond closed the nominations.

Mr. Desmond returned the gavel to Chairman Seabury.

Chairman Seabury asked for nominations for the position of Vice Chairman of the Zoning Board of Adjustment.

Ms. Shuman nominated Mr. Martin for the position.

Chairman Seabury asked if there were any other nominations. There were none.

Ms. Davis made a motion to close the nominations.

Chairman Seabury asked if there were any nominations for the position of Clerk of the Zoning Board of Adjustment.

Ms. Davis nominated Mr. Dearborn for the position.

Chairman Seabury asked if there were any other nominations. There were none.

Mr. Martin made a motion to close the nominations.

V. APPROVAL OF MEETING MINUTES

The following changes/edits were made to the meeting minutes of the October 23, 2014, meeting minutes:

1. Page 3, 3rd paragraph, 2nd sentence – the word “that” was added - Martin
2. Page 7, 6th paragraph - “\$300,000 from his letter that \$500,000” was changed to “\$300,000 to \$500,000” – Dearborn
3. Page 7, 2nd to last paragraph – the word “Surface” was changed to “Service” – Martin

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4. Page 8 “Acting Chairman Martin - I will declare the matter before the Board” was deleted – Shuman
5. Page 10, 3rd paragraph, 3rd sentence – the word “singd” was changed to “signed” – Dearborn
6. Page 18, 2nd paragraph – the word “inches” was changed to “feet” – Dearborn
7. Page 18, 3rd paragraph – the word “form” was changed to “from” – Dearborn
8. Page 18, 4th paragraph, last sentence – the word “ask” was added - Martin

Mr. Martin made a motion to approve the minutes from the October 23, 2014, meeting, as amended by the Board.

Ms. Davis seconded the motion.

Chairman Seabury called for a verbal vote, and he then declared that all of the voting Board members were in favor of approving the minutes from the October 23, 2014, meeting, as amended by the Board.

There were no changes made to the minutes from the November 13, 2014, meeting.

Mr. Martin made a motion to approve the minutes from the November 13, 2014, meeting.

Ms. Davis seconded the motion.

Chairman Seabury called for a verbal vote, and he then declared that all of the voting Board members were in favor of approving the minutes from the November 13, 2014, meeting.

The following changes/edits were made to the meeting minutes of the December 11, 2014, meeting minutes:

1. Page 13 & on – “Ricardo” was changed to “Santos” - Davis

Mr. Martin made a motion to approve the minutes from the December 11, 2014, meeting, as amended by the Board.

Ms. Davis seconded the motion.

Chairman Seabury called for a verbal vote, and he then declared that all of the voting Board members were in favor of approving the minutes from the December 11, 2014, meeting, as amended by the Board.

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VI. ADJOURNMENT

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

Ms. Davis seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 8:59 pm.

Date: February 4, 2015

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun