



# TOWN OF HUDSON

## Zoning Board of Adjustment



J. Bradford Seabury, Chairman      Ben Nadeau, Selectmen Liaison

12 School Street    Hudson, New Hampshire 03051    Tel: 603-886-6000    Fax: 603-594-1142

### HUDSON ZONING BOARD OF ADJUSTMENT MEETING MINUTES December 11, 2014

#### I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:30pm on Thursday, December 11, 2014, 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:** J. Bradford Seabury, Normand Martin, and Jim Pacocha

##### **Members**

**Absent:** Mike Pitre (Excused) and Donna Shuman (Excused)

##### **Alternates**

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

##### **Alternates**

**Absent:** Kevin Houle (Excused)

##### **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 and Ms. McGrath in place of Ms. Shuman, who were both excused.

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

1. Case 177-005-164 (12/11/14): Jeffrey E. Wood, Jr., 28A Chandler Court, Hudson, requests a Variance from the literal provisions of the Hudson Zoning Ordinance Article VIII of HTC §334-31 (Alteration and expansion of nonconforming structures) to permit an 11' x 12' deck to be built on the back of the unit with the deck encroaching 3'-4' into the 15-foot long rear setback. [Map 177, Lot 005, Zoned B; HZO Article VIII, §334-31.]

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

Chairman Seabury

Mr. Desmond, would you please explain why this matter is before the Board?

Mr. Desmond

Mr. Wood is attempting to add a deck to the back of his unit and he is already very close to the 15' setback. The land behind which abuts his area is owned by the town proposed for the circumferential highway. He would like to build into that area.

Ms. McGrath

Would the deck that he is requesting actually encroach upon the property owned by the Town of Hudson?

Mr. Desmond

It will not cross our line; it will only cross the 15' setback.

Ms. McGrath

How close will it be to the property owned by the town?

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Mr. Desmond

I believe it was only 11' to 12'.

Chairman Seabury

Who is present to speak with regard to this application?

Mr. Jeffrey E. Wood, Jr., 28 A Chandler Court

I was coming here to answer any other questions you may have and to reiterate what I put in the application. The condominium association has approved everyone to be able to put either a deck or a patio on the rear of their units. I think this is the only building in the whole neighborhood that is that close to the property line. I thought it was owned by the State of New Hampshire and not the Town of Hudson.

Mr. Desmond

Yes, it is owned by the state.

Mr. Wood

I do know that due to the way the property is, I don't think it would be an eye sore. There is a hill there and even though I would encroach 3' to 4' into the 15' setback line it would not be an eyesore. I do know that the previous tenant did not need a Variance and I know that they would have extended into that property line as well and somehow it was missed when they put the deck on when they applied for their permit.

Ms. McGrath

So they are within the setback?

Mr. Desmond

That deck is within the setback, yes.

Mr. Wood

Our developer has caused us a lot of problems.

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Ms. McGrath

You talked about your application – I tried my best but I could not read what you wrote with the exception of a couple of words here and there. Can you please read your application out loud?

Mr. Wood

1. Granting of the requested Variance will not be contrary to the public interest. The condo association approved everyone the ability to create a deck or patio on the rear of their units. As such, everyone who lives in that neighborhood are starting to put these decks or patios on to enjoy their summer months. In addition, due to the existing hill, if the State of New Hampshire were to ever sell the property; if anything were to be built back there it would not be an eyesore to any new homeowners or business owners. We already pay for the upkeep of that state owned land.
2. The proposed use will observe the spirit of the ordinance. It would allow us the ability to enjoy our backyards during the summer months.
3. Substantial justice would be done to the property owner by granting the Variance. If we get this it comes back to use enjoying our summers and increasing the quality of life and improve the value of the homes.
4. The proposed use will not diminish the values of surrounding properties. The state still owns the vacant lot and right behind that is a patch of woods so having decks out there isn't going to ruin any property. If the state were to sell it and build properties they would be high up looking down into our homes.
5. Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship**. There is already a deck that is in the setback that wasn't caught. We shouldn't punish the remaining seven townhouse owners in not allowing them to put a deck or patio on their place. By denying this or telling the person who already has a deck in the setback to remove it would cost them more money to remove the deck and lowering out quality of life to enjoy our summer months.

Chairman Seabury

Is there anyone else present who wishes to speak in favor, in opposition, or neutrally with regard to the application? Seeing none, do members of the Board have any questions?

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Mr. Pacocha

Does anybody know how accurate this diagram is? I don't know if it was done by a licensed surveyor or not.

Mr. Wood

I got that from Mr. Desmond.

Mr. Pacocha

There is a series of small decks and steps into the back of the houses. There are three of them that are already in the setback.

Chairman Seabury

That's true.

Mr. Pacocha

Did you measure the other deck that is already there?

Mr. Wood

I didn't but I know it's an 11' x 12' deck. It is 12' out and 11' along the width.

Mr. Pacocha

It's the same way you are proposing your deck.

Chairman Seabury

You are planning on 15', right?

Mr. Wood

No, it's 11' x 12'. In different units they allow 15' but that's in a different section.

Mr. Pacocha

Is that a condominium by-law?

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Mr. Wood

Yes, it is.

Chairman Seabury

One concern I have is that the way the notification process is set up, you have notified the Association.

Mr. Wood

I notified the Association and I added the address for the State of New Hampshire and my neighbors.

Chairman Seabury

I did not see the one for your neighbors. Can you guarantee that your neighbors are aware of what you are proposing?

Mr. Wood

Oh yes. One of my neighbors wanted to come and speak in favor of the proposal but she is at gymnastics with her daughter.

Ms. McGrath

Does she have a deck on her unit yet?

Mr. Wood

No but she wants to put one on.

Ms. McGrath

That explains why she would come to speak on your behalf.

Mr. Wood

Correct.

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Chairman Seabury

The applicant warned us in his presentation that he feels that if he is allowed to have this deck it would entice his neighbors to do the same and I think we have to keep that in mind.

Mr. Martin

My concern is how did the first deck get put on with a building permit?

Chairman Seabury

I am not going to ask about the past.

Mr. Pacocha

It looks like the existing deck is about 3' into the setback but you are asking for 3' to 4'.

Mr. Martin

Do you know if the deck that was allowed to be built by the town, is that a current owner that's in there or has it sold.

Mr. Wood

They have since moved and sold it.

Mr. Martin

Apparently there was not an issue for anyone getting a mortgage because all of the building permits were given by the town. It should have required an Equitable Waiver prior to that unit being sold.

Chairman Seabury

Probably but we don't know how the purchase was made or how carefully it was examined.

Ms. McGrath

The other point to remember about that is that it wasn't flagged as being in violation. It was given a permit, erroneously or not, a valid building permit was issued. I don't think a mortgage company would see any violations so therefore an Equitable Waiver would not have been applied for.

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Ms. Davis

I would like the applicant to explain what the hardship is on the property. I realize that he said he could not go out and enjoy the summer months but that is not a hardship on the property. The other thing is the intention of setbacks is not only to prevent overcrowding but also to provide access and they would be within 11' of the actual property line for the State of New Hampshire and that could potentially pose a future problem with access depending on what was put there.

Mr. Wood

The way the property is even when some firefighters have had to come to fight some forest fires when kids have started them in the back, they can't come down because the hill prevents it. You can't get a vehicle down there as there is no access.

Ms. Davis

That's now because the hill is there. In the future there could be development and the hill could be moved.

Mr. Wood

They will not be able to move the hill; it's made of granite rock. You can't blast that close to residences.

Mr. Dearborn

I was reading the Shepherd's Hill Condominium Association letter and the managing agent did not sign the letter.

Mr. Wood

I think the hardship on the property comes from the fact that every other person in the condominium is going to be able to put a deck on except for our building. It will be harder for us to sell our units without a deck.

Ms. Davis

Not all of the other units would have their deck located in the setback.

Ms. McGrath

Can you reduce the size of your deck so that you don't encroach so far into the setback?

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Mr. Wood

It wouldn't be worth it.

Mr. Nolin

Your proposal is for an 11' x 12' deck. Could you make it 12' x 11' so that there would be 1' less of encroachment into the setback?

Mr. Wood

The issue is that we have to do what the condo association says with regard to enough space to our neighbors. All of the dryer vents are in back of the property and they can't be blocked.

Mr. Nolin

I saw plenty of space looking at the drawing. Your neighbor encroaches about 1' less than you do.

Ms. McGrath

Concerning the hardship issue and the property that is currently owned by the State of New Hampshire, we can't predict whether or not the State of New Hampshire is ever going to sell that property. If they did, the new owners would have to meet the zoning conditions. I don't think we should hold a "what if the state ever sells it" to the homeowner. As far as hardship on the property, I can see one. I'm not crazy about this application and I do have some concerns but I can see one hardship that is inherent with the property and that is the granite that they can't get around.

Chairman Seabury

Traditionally, I think the concern regarding putting decks in has been that it would interfere with the comfort of the neighbors. I don't think the state is ever going to sell this property although eventually there will be a circumferential. The State of New Hampshire is never going to spend the money to tear that hill down. The other concern is will the emergency vehicles be able to have access and I don't think they can. I don't think it's going to bother anybody. The developer should not have put the building where he put it. The only concern I have is that if the Board allows this it will entice his neighbors to do the same.

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Mr. Martin

Seeing that the town already allowed one deck to be put on, if this Board says no and the applicant wanted to pursue it, the judge would just remand it back to us and it would be granted anyway. I think it's not an unreasonable request.

Ms. McGrath

The other part that makes this more acceptable in my opinion is that there are not any wetlands. To Mr. Martin's argument; whether we deny this or not, whether the applicant seeks to pursue it and whether a judge remands it back to us, we can't base our decision on any of that. The issuance of the building permit for the existing deck was a mistake.

Mr. Martin

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

Mr. Pacocha

Mr. Pacocha seconded the motion.

Chairman Seabury

Would you speak to your motion, Mr. Martin?

Mr. Martin

I feel the proposal is a good use for the applicant, it is not going to diminish the value of the surrounding homes and the existing hill is a hardship on the property.

Chairman Seabury

Would you speak to your second, Mr. Pacocha?

Mr. Pacocha

I think the applicant has met all of the criteria for a Variance except for the hardship. I am not too happy with the applicant's response on the hardship. In my mind the hardship is based on location on the property. The owners are extremely limited as to what they can do with their property.

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Ms. McGrath

I am going to vote in favor of this despite my misgivings for one reason only and that's because I think that there is a hardship that is inherent with the property that would prohibit the homeowner from enjoying the property as he desires.

Ms. Davis

My comment is that I will vote in the negative on this. I think the applicant has reasonable use of the property as designed, there is no hardship, and there are other alternatives such as building a patio.

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

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

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

Chairman Seabury

Mr. Dearborn, will you please read the next case into the record.

2. Case 173-013 (12-11-14): Paul Dinoto/Ricardo Santos, 6 Tolles Street, Hudson, request a Variance from the literal provisions of the Hudson Zoning Ordinance Article IV of HTC Section 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, Section 334-18(C).]

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

Chairman Seabury

Mr. Desmond, can you please tell us why this case is before the Board?

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Mr. Desmond

The applicant wishes to set up an auto sales business in the TR Zoning District and since it is a residential zone, special permission has to be obtained.

Ms. McGrath

On the application for a Variance the applicant had written in that it was to change from a residential to a commercial zone. I am concerned about that because we are not going to change a zone. They are asking for a variance. In the event that this request is approved I would suggest that the applicant fill out another application properly.

Ms. Davis

If the applicant is seeking a dealer's license then they do have to have their business in a commercial zone. They would need to go before the town on a Warrant Article to change the zone. They also have to understand that once you do that you can't live in the home.

Mr. Desmond

I believe it is going to be strictly internet sales by appointment only.

Ms. Davis

Are you going to be registered with the state as a dealer?

Chairman Seabury

It seems to me that we have allowed similar things in the past and I don't recall any kickback from the state saying that you can't do that. Perhaps the best thing to do at this point is to defer the case and allow the applicant to fix the application and to check with the state to ensure that a Variance would be sufficient as opposed to a zoning change.

Ms. McGrath

Changing the paperwork would demonstrate that the applicant understands that it is a request for a Variance and not a request for a zoning change. I am also going to suggest that Mr. Desmond contact the state to find out what their expectation is.

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Mr. Desmond

Absolutely.

Ms. Davis

I will add that Christina Dinoto is also a property owner and she should sign the application as well. Also, it looks like 10 cars will be stored on the property. Where are you going to park them, it's a very small lot.

Mr. Santos

In 2015 the law is going to be changed. The state only requires 900 square feet, a bath, hot water, and a driveway; that's all you need to get a license from the State of New Hampshire.

Ms. McGrath

The applicant also has to go before the Planning Board with a site plan and the Planning Board may require a lot more than what the state does.

Chairman Seabury

If the use is approved by this Board you will have to appear before the Planning Board because the property will be changing to a commercial use.

Mr. Dearborn

Are there any repairs going on in that garage?

Mr. Santos

There are no repairs going on, just polishing and cleaning.

Mr. Dearborn

Will you be parking the cars for the proposed business on the grass area?

Mr. Santos

No.

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Ms. McGrath

The applicant has 15 cars on the application but testified that there would only be 10 and the Board needed to know what the maximum number of vehicles would be.

Mr. Pacocha

What do you plan on doing with the existing house?

Mr. Santos

It will be used as an office.

Ms. McGrath

Ms. McGrath made a motion to defer the case.

Ms. Davis

Ms. Davis seconded the motion.

Chairman Seabury

Would you speak to your motion, Ms. McGrath?

Ms. McGrath

The wording on the application has to be correct. It is a request for a Variance and not for a change in the zoning.

Chairman Seabury

Would you speak to your motion, Ms. Davis?

Ms. Davis

I think deferring the case will allow the applicant the time to correct the application.

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VOTE: Chairman Seabury asked Clerk Dearborn to poll the Board on the motion to defer the case, date specific to the January 22, 2015, meeting and to record the members' votes, which were as follows:

Ms. McGrath	To defer
Ms. Davis	To defer
Mr. Pacocha	To defer
Mr. Martin	To defer
Mr. Seabury	To defer

Chairman Seabury declared that, there having been five votes to defer the case, date specific to the January 22, 2015, meeting, the motion had carried.

Ms. McGrath

Where are the cars coming from?

Mr. Santos

Star Auto.

Chairman Seabury

I would recommend that you consult with John Cashell, the Town Planner.

### IV. ADJOURNMENT

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

Ms. McGrath 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: December 30, 2014

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J. Bradford Seabury, Chairman

Recorder: Trish Gedziun