



TOWN OF HUDSON

Zoning Board of Adjustment



J. Bradford Seabury, Chairman

Marilyn McGrath, Selectmen Liaison

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HUDSON ZONING BOARD OF ADJUSTMENT MEETING MINUTES May 28, 2015

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:35 pm on Thursday, May 28, 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: Clerk Gerald Dearborn, Normand Martin, Jim Pacocha, J. Bradford Seabury, Donna Shuman, Maryellen Davis

Members

Absent: None

Alternates

Present: Maurice Nolin, Charles Brackett, Clerk Gary Dearborn

Alternates

Absent: Kevin Houle (excused)

Staff

Present: Kevin Desmond, Zoning Administrator

Recorder: None present, later transcribed by Melissa Mack

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 includes 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 re-hearings 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.

The curfew for the meeting is 11 PM. Chairman Seabury does not anticipate this to be a problem for this session. In the event that a case is not heard by 11 PM, it will be postponed until the next meeting. If a case is in process, it will be heard until midnight then continued at the next meeting.

Chairman Seabury advised there is no smoking inside the building. Please turn off cell phones or put them on vibrate.

New rule requested by Clerk Dearborn and approved by Chairman Seabury. The voting member making a motion with a stipulation(s) must include the stipulation in writing on the decision sheet. In addition, all stipulations must be in writing either by the Clerk or by the person making the motion.

III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THIS BOARD

- 1. Case 176-028 (5-28-15, Deferred from 4-23-15): Mario and Denise Plante, 9 Old Derry Road, Hudson, requests a Variance for the property located at 222 Central Street, Hudson, to allow the conversion of a portion of an existing building from commercial to residential without conforming frontage, 170.56' existing, where 350' are required. [Map 176, Lot 028, Zoned R-2 & B; HZO Article III §334-10(A) 1, Mixed or Dual Use on a Lot.]**

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 this request was previously submitted and approved in 2007 but it expired. The applicant copied and pasted the original request into a new application.

Chairman Seabury advised that at the April 2015 meeting the Board decided a site walk was required in order to move forward with a decision. The site walk took place and minutes were taken and distributed by the Clerk.

Mr. Marcotte, representing Mario and Denise Plante, approached the podium with a new plan of the 2nd floor which shows the space as vacant. It's a clearer plan than the original one submitted. He provided the Board with a copy of the new plan.

Ms. Davis stepped down from the case because she was not at the previous meeting when the majority of the case was discussed. Chairman Seabury appointed Mr. Nolin, in place of Ms. Davis, since he was both at the prior meeting and at the site walk.

Mr. Marcotte was asked to re-word the application. He verbally advised that the application is for a dual use on a lot that does not have enough frontage for dual use. The zoning district is a business district where a multi-family is allowed. They are looking for a Variance from the requirement of double the frontage. They have enough frontage for one use but not for dual use. Mr. Marcotte offered to update the wording in writing on the application.

Chairman Seabury advised that an issue came up at the site walk. The application pertains to a portion of the upstairs, for two apartments. However, it is clear that if the two apartments work out well the intention

is to expand that across the upper floor. Some members of the Board are concerned that they shouldn't pass more than two if they were to vote to approve this. Chairman Seabury advised the Board that whoever makes a motion should stipulate exactly how much of the floor the Variance is being granted for (if the motion is to grant) and that if the applicant wishes to expand beyond that they will need to request a new Variance.

Mr. Pacocha questioned that since residential use is permitted in that zone, isn't this case just relative to frontage size and nothing else? Mr. Marcotte acknowledged that the confusion was probably around the original plan that was submitted; however, the application specifically requested a Variance for nonconforming frontage for dual use.

Mr. Pacocha reiterated his question and Chairman Seabury countered that if what they are asking for is allowed then why are they before the Board in the first place? It's for the frontage issue. The confusion has been alleviated because the only question that should be on the table here is the issue surrounding the nonconforming frontage for dual use. This is exactly what the application is requesting.

Mr. Desmond feels that the only issue that the Zoning Board should be ruling on is the issue related to the frontage. Any issue related to the number of apartments, the size of the apartments, access, egress windows...etc. is the responsibility of the Planning Board to review and rule on. If, in the future, the applicant wishes to expand beyond two apartments they will need to go before the Planning Board again, not the Zoning Board.

Ms. Shuman and Mr. Pacocha suggested isn't this a special exception and not a Variance per Article 334-10A? According to the Article this doesn't even require a Variance. Chairman Seabury and Mr. Martin both agree that they have always considered it a Variance when there is not adequate frontage.

Mr. Pacocha advised that if this is reviewed as a Variance and is denied, there are grounds for appeal because that's not what the Article says. The Article says this is a special exception.

Chairman Seabury asked the Board how they would like to proceed. He wishes to proceed and have someone make a motion to give the applicant a Variance. A Variance is needed because they do not have sufficient frontage. The Board agrees to continue without having Mr. Marcotte re-word the application.

Chairman Seabury asked if the Board had any questions after the site walk.

Mr. Martin re-stated that the Board is there to allow a Variance for the reduced frontage so that they can be allowed dual use. If he were to make a motion, he would not put a stipulation about the number of apartments allowed because that is going to be covered by the Planning Board.

Mr. Nolin re-iterated his concern about the construction of the building should they allow more than two apartments on the 2nd floor. However, he realizes they are there to discuss the frontage issue and not the construction issue.

Mr. Desmond advised that the applicant was before the Board twice in the past, once for undersized apartments and once for the frontage Variance. The undersized apartment application was denied. The original frontage Variance was passed. As far as the number of apartments, they will be built to code. Currently we follow the 2009 IBC code. Depending on the time they put in for their construction permit,

whatever the code is at that time is what will have to be followed. Once they add a 3rd apartment, all the fire code requirements will change (will be stricter).

Chairman Seabury commented that if Mr. Desmond were to leave the job in the future, would the new Zoning Administrator feel constrained by the wording as it currently is? Mr. Desmond advised that no because all the application is requesting is a Variance for the nonconforming frontage.

Chairman Seabury asked the Board what they wanted changed in the wording so that there was no confusion in the future. Mr. Martin suggested changing the wording to “allow dual use of the property without conforming frontage.” There were no objections to this wording. Chairman Seabury asked Mr. Marcotte to update the wording on his application as such.

Mr. Martin recommends allowing dual use of the property without conforming frontage, 170.56’ existing where 350’ feet are required. There are no objections from the Board.

Mr. Martin moves to grant the Variance to allow the dual use of the property without conforming frontage. Mr. Pacocha seconds. There are no stipulations.

Mr. Martin speaks to his motion. Where the property is in business and R2, where residential use in a business district is allowed and that there is not enough frontage on Central St. for the property to have the dual use, it meets all the requirements for the Variance. Thus I vote in favor of this application.

Mr. Pacocha speaks to his second of the motion. He thinks the issue is the frontage requirement. The property has sufficient acreage for the intended use. This type of Variance has been granted in the past.

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 grant
Mr. Pacocha	To grant
Ms. Shuman	To deny
Mr. Nolin	To grant
Mr. Seabury	To grant

Chairman Seabury declared that there having been four votes to one to approve the request, the motion has carried.

- 2. Case 166-010 (5-28-15): Ronald Dewyngaert, 28 Ledge Road, Hudson requests a Variance to allow a shed to be placed within the side-yard setback; 15’ required, 10’ proposed. [Map 166, Lot 101, Zoned TR; HZO Article VII §334-27, Dimensional Requirements.]**

Chairman Seabury notes that Ms. Davis has returned to her seat as a regular member and Mr. Nolin has returned to his seat as a non-voting alternate.

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 advised that the applicant is requesting to place a shed within the 15' side setback of the property. He is placing it inside an area which is chained off and wants to keep it in that same area for ease of access.

Ronald Dewyngaert, 28 Ledge Road, Hudson, approaches the podium. Mr. Dewyngaert advised that his original request was for 5' proposed but the paperwork came back as 10' proposed. He is wondering why. He brought pictures of where he wants to place the shed. If he comes back 10', he will be on the pool lot so he's looking to put the shed as far back in the corner, away from the pool lot as possible. Originally he asked for 5' but now he thinks 6' will be fine.

Mr. Desmond will change to 6' proposed on his copy of the application.

Mr. Martin advised that as long as the application on file is correct and the Board understands what they are voting on then they should continue.

Mr. Dewyngaert was advised by Chairman Seabury to continue. Mr. Dewyngaert is asking for this application because it's in a fenced area within the pool yard, making it more secure. It's the least visible area in the yard. He has already spoken with the neighbor next door and she will not see any of the shed except for the roof. There is a 6' chain link fence with white vertical slats so all she will see is the roof. No one else in the neighborhood will see it.

With regards to items 1, 2, 3, 4 and 5 on the application Mr. Dewyngaert advises that the proposed site is in the least visible area of the property and is in a fenced-in area. Question 2: the view of the shed will be shielded by the existing chain link fence with the white plastic slats, with only the roofline visible. The shed has Reed Ferry's lowest profile roof. The placement of the shed would allow for the storage of lawn equipment, snow blower, patio sets. There is no garage so this is the reason for the shed. Question 4: that is the side of the neighbor's barn where there are no windows. She wouldn't be able to see it from her home, only when she is in the back of the yard. He has already spoken to the neighbor and she has stated no objection to the placement of the shed. The placement of the shed elsewhere in the yard would impede on the pool lot. If he went outside of the pool area, he would have to remove established gardens and would interfere with professional landscaping they had done a few years back. This corner in the pool yard is the least obtrusive and is out of the way.

No one in the audience had any statement in favor of or against the request. Chairman Seabury declares the matter before the Board.

Mr. Pacocha asks if this is a new shed or is he replacing one that is already there.

Mr. Dewyngaert: It's a new shed.

Mr. Brackett: The applicant mentioned that he has pictures of the place where the shed will be placed. He visited the site and it was hard to see from the front. It was a level piece of property and difficult to understand the hardship issues of the land and would like to understand further why he cannot put the shed on a part of the property that would not require a Variance. Re-landscaping does not seem to be a significant hardship.

Marion Dewyngaert approaches the podium. She advised that the proposed spot for the shed is where it would be seen the least. They have a pool and that meets the setback towards the cemetery so they couldn't have it on the back of the pool. On the right hand side of the property, there is an arborvitae hedge that crosses the driveway so they can't put it at the end of the driveway like a garage because the hedge is there. After that there is a big slope and beyond that there is an open area where they sometimes park an extra car and the problem with that is that if they close that section off they have no access to the backyard.

The pictures provided by Mr. Dewyngaert are further reviewed by the Board members.

Mr. Pacocha asks the size of the shed that is already there.

Mr. Dewyngaert: 8' x 16'

Mr. Pacocha asks how close it is to the property line.

Mr. Dewyngaert: 5'

Mr. Pacocha asked if a Variance was obtained for that.

Mr. Dewyngaert advised that the Zoning Administrator at that time did not tell him he needed a Variance. He was told that if the shed was 150 sq. ft. or less it could be placed within 5' of the property line. Anything greater would have to be 15'. He applied for the location and was given a permit in 1990. Chairman Seabury concurred that the Ordinance did state that back then.

Mr. Pacocha: Is the pool completely fenced in?

Mr. Dewyngaert: Yes, it's completely fenced in.

Mr. Martin clarified that this is a shed that is in addition to a shed that is already there.

Ms. Davis doesn't think there is a real hardship on the property. It could be put elsewhere and be less of an intrusion on the setback.

Mr. Brackett still feels that there is room on the side of the property where the slope is to put the shed there, relieving the need to apply for a Variance.

Mr. Pacocha makes a motion to grant with a 6' setback.

There is no second to this motion. The motion dies for lack of a second motion.

Mr. Pacocha states the proposed location of the shed is secluded by the existing shed. There is an existing fence. He does not see what the Board would be accomplishing by forcing the applicant to move the proposed location of the shed.

Mr. Martin agrees with Mr. Pacocha. People on the back property line are not going to complain. The people across the street are not going to complain. The first shed is already there since 1990 so he supports the motion.

Mr. Martin moves to grant the Variance to allow the shed to be located 6' from the property line.

Mr. Pachoca seconds the motion.

Mr. Martin speaks to his motion. The first shed was built in 1990. At the time, there was no issue with it being 5' from the fence and it hasn't been an issue with the neighbors for 25 years. He does not foresee why the Board should force Mr. Dewyngaert to move it to another part of the property. It's not intruding on anyone and the neighbors in the cemetery are not going to complain. The request meets all the requirements for the Variance so he votes to approve the Variance.

Mr. Pacocha speaks to the motion. Nothing would be accomplished by moving the shed. There is already an existing shed there. Allowing the shed to go where it is proposed does not do any harm to the general public.

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 grant
Mr. Pacocha	To grant
Ms. Shuman	To deny
Ms. Davis	To deny
Mr. Seabury	To grant

Chairman Seabury declared that there having been three votes to two to approve the request, the motion has carried.

Chairman Seabury advised that in the unlikely event that a neighbor disagrees with the decision they can always come in and request a rehearing. In the event that happens, the applicant will be stopped until that is resolved. Proceed now at your own risk or wait 30 days to start.

3. Case 177-005-163 (5/28/15): Michaela and Steven Manna 26B Chandler Court, Hudson request a Variance to allow the proposed 12' x 12' deck to be constructed 3 to 4 feet into the rear-yard setback; where 15' is required. [Map 177, Lot 005-163, Zone G; HZO Article VII §334-27, Dimensional Requirements.]

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 the applicant wishes to construct a deck on the back of their condo. They have permission from their condo association. The Board approved the applicant's next door neighbor's deck which is almost an identical infringement into the setback area.

Mr. Pacocha advised that the property in question is not on the tax map. The issue is who owns the property in the back. Mr. Martin advised it's owned by the State of NH and behind them may eventually be part of the proposed circumferential highway. Right now there is nothing there. The prior property that was granted the Variance was 26A.

Chairman Seabury advised that the Board was forewarned when deciding the last case that if the Variance was approved that other condo's in the association would likely request the same Variance. He considered that as part of his thought process and still approved it.

Mr. Brackett asked if an AC unit is considered allowable in a setback. Looking at the property the AC has already been moved into the setback. Chairman Seabury answered that it is an infringement based upon a case that went before the Supreme Court in the Lakes Region. The AC Unit has already been moved into the setback beyond the deck. He suggests that the application for the Variance should be amended to include the AC unit.

Michaela Manna, 26B Chandler Court approaches the podium. They have applied for the Variance because they want to install a deck to enjoy the outside. She thinks it will also be more aesthetically pleasing if all the units in a row have a deck because right now it's an eyesore that it doesn't all match. Ms. Manna presented pictures to the board.

Mr. Dearborn advised that the letter from the condo association approving the deck is typed with no signature. He's concerned that Mrs. Chapman (president of the condo association) may not be aware of what is going on. Ms. Shuman prefers that it be signed as well. It could be added as a stipulation to the motion to get a signed copy for the files.

Chairman Seabury requested that Ms. Manna go over the five Variance requirements.

The association has authorized the construction of decks for each unit. A portion of their deck would extend beyond the setback line. The deck would not be a visual problem if the State of NH ever sold that land behind the unit. It will improve the look because then all condos will have a consistent look. The front of the condo is a busy road so it would be nice to have the back deck to enjoy the space. The deck will increase the value of the property. The family will be able to enjoy the outside. Most of the units don't need a Variance, theirs is one of the only ones. Everyone else just needed a permit. There is nothing behind them except the hill and woods.

Jeff Wood of 28A Chandler Court approached the podium. He is in favor of the deck being built because since he already has a deck lots of times the neighborhood comes to his condo to grill. It will be easier for him if they have their own deck.

Mr. Pacocha asked for the width of their condo unit since they are proposing a 12' deck. Mr. Manna answered their unit is 16' wide.

Mr. Pacocha asked how big the AC units are. Ms. Manna noted 2-3 feet.

Mr. Brackett commented that in terms of the undue hardship, the builder imposed the hardship on the owners by building their particular building adjacent to the woods and a steep hill. The other buildings did not have this issue, thus did not require a Variance for the decks. Mr. Brackett reminded the Board that they've already approved the Variance for other units surrounding them. He agrees with the applicant that the hill renders the yard useless and that the addition of the deck would provide them some relief to enjoy the yard.

Chairman Seabury asks Mr. Desmond what should be done about the AC units.

Mr. Desmond: On 28A, the unit for which the Board granted a Variance, the subject of the AC unit did not come up.

Mr. Martin advised the Chairman that he has a motion which may satisfy him. The Chairman is not yet ready to hear the motion.

Mr. Desmond: The question on the table is whether the applicant should revise the application to include the square footage required for the AC unit.

Mr. Brackett suggests wording such as “up to 16’ for the purpose of supporting the AC unit next to the 12’ deck.”

Mr. Martin advised that his motion would be to grant the Variance for the deck inside the rear setback and to allow the relocation of the AC unit in the rear yard setback to the satisfaction of the Zoning Administrator. That covers the Board and he (Mr. Desmond) will not allow the unit go on top of the hill.

Mr. Martin then was allowed to make his motion as stated above.

Mr. Pacocha seconded the motion.

Mr. Martin spoke to his motion. Because the builder has left the occupants with a hardship to begin with and because the AC unit has to be relocated due to the fact that it needs circulation around it, granting the Variance will not be contrary to the public interest. It will observe the spirit of the Ordinance and substantial justice will be done to the property owner. It will not diminish the values of surrounding properties.

Mr. Pacocha spoke to his second. Agrees with Mr. Martin that the hardship is the result of the developer and the placement of the unit. They could have put the unit in a location that would have allowed the deck without the Variance. There is no general harm to the public. It observes the spirit of the Ordinance. It will not diminish the property values of surrounding units.

Ms. Davis commented that she plans to deny the request for Variance. She believes that the homeowner purchased the property knowing that the land behind it was not very usable. It’s a small lot, the builder maxed out the units. Being hilly is not a hardship.

Chairman Seabury would agree except that when the homeowners purchased the property they were likely told that they could build a deck because most of the units can. They were probably not properly warned.

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 grant
Mr. Pacocha	To grant
Ms. Shuman	To grant
Ms. Davis	To deny
Mr. Seabury	To grant

Chairman Seabury declared that there having been four votes to one to approve the request, the motion has carried.

4. Case 247-103 (5/28/15): Peter Jean, 8 Ireland Street, Hudson requests the following:

A) An Equitable Waiver to allow the existing dwelling to remain within the front-yard setback. [Map 247, Lot 103, Zoned TR, HZO Article VIII, §334-31, Alteration and Expansion of Non-conforming Structures].

B) A Variance to allow the proposed 20' x 22' addition to be constructed within the front-yard setback; 30' are required, 27.1' is proposed. [Map 247, Lot 103, Zoned TR, HZO Article VII §334-31, Dimensional Requirements.]

Chairman Seabury advised he would step down on this case and turned the gavel over to Mr. Martin.

Mr. Martin seats Mr. Brackett in place of Mr. Seabury.

Mr. Martin asked Mr. Desmond to explain why the matter was before the Board.

Mr. Desmond explained that Mr. Jean is requesting a Variance to allow an addition to be constructed within the front yard setback of 30'. Upon review, Mr. Desmond advised that he will also require an Equitable Waiver because the front portion of the house is already within that setback area.

Ms. Davis asked Mr. Desmond about the two sheds and the greenhouse. Mr. Desmond notes that these three structures already exist within the rear and side setbacks. Upon review the Zoning Board is asked to determine if this is a violation or if they can be allowed by means of an Equitable Waiver because they are existing.

Mr. Martin advised that the Board will first hear the application for the Equitable Waiver.

Mr. Brackett read that the setback distances were changed which resulted in the current violation. He is confused because he does not see a plan included in the application. The Board advised that there is a plan and it's included in the other application, the one for the Variance.

Ms. Davis clarified that she believes the house was built prior to the setbacks. Mr. Desmond confirmed.

Mr. Brackett: One of the sheds was existing 15 years ago when the property was purchased and the other shed was built 3-5 years ago and they did not know about the 15' setback.

Peter Jean, 8 Ireland St., Hudson, NH approaches the podium.

Mr. Brackett would like the story on each of the structures in violation and why.

Mr. Jean: When we purchased the home 15 years ago there was no survey on record. He found out that this was the case when he went to see Mr. Desmond and was told that he needed to apply for a Variance. When the house was originally built, the setbacks at that time were 25'. Sometime after that the Town changed the setbacks to 30'. The house was in compliance at the time it was built but no survey was ever done on the property. Prior to filling out the application for the Variance, the property owner had to have the land surveyed. The structure being proposed is a family room off to the side of the house which is one foot further back from the front of the house but the Variance is required because the current building code states they must be 30' back. Regarding the two sheds and the greenhouse - when they bought the house 15 years ago, the shed facing the property on the far left side was already there. The homeowner built the shed on the right corner of the property about 5 years ago. He had no idea he needed a permit to

build it. He was under the impression that if it was a temporary structure and if the sq. footage was less than 12' x 12' that a permit was not needed. He was not aware of the setback laws until the survey was done and that is when Mr. Desmond advised that the two sheds were not in compliance. This is why they needed the Equitable Waiver. The greenhouse was built 4 years ago. He kept it small and repurposed the windows and built a greenhouse so that he and his wife could do gardening. In terms of the surroundings in the back of the house, there is a stockade fence. Neighbors on both sides have sheds in the same proximity as his to the fence. Mr. Jean is present to make things right because he did not know he was not in compliance. They are building the addition because the family is growing. The house is small.

Ms. Shuman comments that she has no issues approving the Equitable Waiver. The issue she has is with the decision sheet because it's saying she has to approve one or the other. If everyone else on the Board is comfortable, she is ok with it.

Mr. Brackett asked if the existing structures (sheds and greenhouse) can be moved.

Mr. Jean: They are heavy and he would have to try to find a way to move them. The greenhouse is on blocks and has no floor. He's afraid moving it would cause the glass in the windows to break.

Mr. Pacocha requested the dimensions of the existing structures.

Mr. Jean: The greenhouse is less than 8' x 12'...maybe 80 sq. ft. and there is 5'-6' between it and the property line.

Mr. Pacocha believes that a structure less than 100 sq. ft is allowed to be within 5' of the property line.

Mr. Jean: The other shed is 8' x 12' he believes but he cannot say for sure without measuring it.

Mr. Brackett believes the applicant made an innocent mistake in the two structures he put in. Gives more latitude on the shed that was already there.

Ms. Davis: Most of the homes in the neighborhood have sheds and such that are close to the property lines. All the lots are small and people have to put their stuff somewhere.

Mr. Brackett: Given the circumstances is inclined to grant the Equitable Waiver.

Ms. Davis makes a motion to grant an Equitable Waiver for the house and the three existing structures based upon the fact that they meet the criteria for equitability. The applicant has testified that it was an innocent mistake. It would be a high correction cost to move some of those buildings and it would be a real disservice to the applicant to move the structures.

Mr. Pacocha seconds the motion.

Ms. Davis noted she had already spoken when she made her motion and has nothing further to add.

Mr. Pacocha speaks to the second. All the criteria for the waiver have been addressed.

VOTE: Mr. Martin 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 grant
Mr. Pacocha To grant
Ms. Shuman To grant
Ms. Davis To grant
Mr. Brackett To grant

Mr. Martin declared that there having been five votes to zero to approve the request the motion has carried for the Equitable Waiver.

Mr. Martin advised that the Board will now hear the application for the Variance.

Mr. Martin asked Mr. Desmond to explain why the matter was before the Board.

Mr. Desmond explained that the addition the applicant wishes to put on goes into the setback. 30' is required and he's asking for 27.1'.

Mr. Jean: Looking to build a family room. The new structure will be one foot back further back from the front of the house. The house is small and the family is growing. The current structure was built within compliance at the time. The setbacks at the time were 25'. The setbacks were since changed. We are now looking to add new construction to be used as a family room. In order to keep the continuity of the addition it necessitates us requesting a Variance so that the new structure can be built. We feel this will increase property values because of the additional square footage of the structure. The changes in the setbacks have resulted in having to apply for a Variance in order to meet the new setback guidelines.

Mr. Pacocha: How old is your house?

Mr. Jean: Built in 1989 so 26 years old.

Ms. Davis: Are there any plans drawn up for the new construction?

Mr. Jean: It's a 20' x 22' family room with no partitions inside. An open room with a bay window in the front, slider on the back. No utilities, no bathroom.

Ms. Shuman: Your home is a 2 story dwelling. Will the addition be 2 story?

Mr. Jean: One story.

Ms. Shuman: Did you look at any other plans to set this back just a bit?

Mr. Jean: Yes, but wanted to stay within the contour of the existing house. If they pushed it back they would be encroaching on the back yard which is small as it is. They also have the septic in the back yard.

Ms. Davis asked about the leach field.

Mr. Jean: the leach field is in the back between the house and the greenhouse.

Mr. Pacocha made a motion to grant.

Ms. Davis seconded the motion.

Mr. Pacocha speaks to his motion. This satisfies the criteria for a Variance. The addition does not encroach any more into the front yard setback. It serves no purpose to try to enforce that part of the Ordinance on that part. Personally, he feels this should be an Ordinance change.

Ms. Davis speaks to her second. It meets the hardship criteria. It is a small lot. In this case, the location of the septic, the leach field and the bulkhead in the back are all drivers to the fact that the applicant needs to be in the setback. From an aesthetic point of view, we'd be setting the applicant up for issues if he were to set the addition back any further.

VOTE: Mr. Martin 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 grant
Mr. Pacocha	To grant
Ms. Shuman	To grant
Ms. Davis	To grant
Mr. Brackett	To grant

Mr. Martin declared that, there having been five votes to zero to approve the request, the motion has carried for the Equitable Waiver.

Chairman Seabury has returned to his seat as chair.

Mr. Martin has resumed his role as a regular member. Mr. Brackett has resumed his role as a non-voting alternate.

Chairman Seabury has a question after-the-fact. The Board did not discuss the applicant's intention to install a bay window.

Discussion ensued and the Board felt the window was no more intrusive than the structure itself.

IV. OTHER BUSINESS DISCUSSION

Mr. Martin commented about the meeting in April; specifically, case 130-007. There are some issues going on with the property located on Old Derry Road. Specifically, that they are not sure that Dr. Gosselin is actually living on the property as he attested he was.

Mr. Desmond advised that they don't know as of yet if Dr. Gosselin was actually living there. He has asked Dr. Gosselin for a letter confirming that he would meet the seven stipulations of the motion. He asked for a letter stating that he would meet the stipulations as well as proof that he'd met three of the four. Mr. Desmond asked if Dr. Gosselin was going to block off the end of the driveway. He had until the 13th to do it but he didn't get it done until the 27th. Mr. Desmond also asked him to assume responsibility for the business. He received a letter from Dr. Gosselin but felt the letter was iffy and non-committal. Mr. Desmond suggested some wording changes. Mr. Desmond also asked for proof that both he and his employee had changed their residence to that address. The stipulation said that they wanted the name of his employee but Mr. Desmond wants proof of residence in the form of NH license or banking record. All that was sent was the name of the employee, no proof of residency.

Mr. Martin advised that he has driven by several times and there is never any activity nor any lights on. Ms. Shuman backed him up. The suggestion is that a motion be made to revisit the case. Mr. Martin wants more proof that Dr. Gosselin is living there because there is no signs of life after work hours.

Ms. Davis asks if there is activity during business hours. Mr. Desmond advised that he is working there.

Chairman Seabury steps down because he was not acting as chair on the original case, Mr. Martin was.

Mr. Martin acts as chair.

Ms. Davis also steps down because she was not an active member on the original case.

Mr. Brackett is seated in place of Mr. Seabury and Mr. Nolin is seated in place of Ms. Davis.

Mr. Martin feels that this case needs to be revisited because he has not shown he's followed the stipulations.

Mr. Brackett asked if a letter is owed to Dr. Gosselin advising that he has not sufficiently met all the stipulations.

Mr. Desmond advised that the original letter was sent on the 5th of May. Dr. Gosselin was given until May 13th on the proof of residency and until the 23rd of May to block off the driveway.

Ms. Shuman: Did Mr. Desmond ask for proof that both he and his employee were living there or just him?

Mr. Desmond: Both. The stipulation asked for just the name but I took it one step further and asked for the proof.

Mr. Brackett: Offer to Dr. Gosselin that the Board is going to reconsider the case because he has not delivered on the seven stipulations of the motion.

Mr. Desmond advised that Ordinance 334-24 Home Occupation, Section N notes the Community Development Director and the Zoning Administrator reserve the right to revoke the Home Occupation Special Exception if all conditions of the special exceptions are not maintained.

Ms. Shuman questions why they even need to reconsider it. If Dr. Gosselin violated it, there is nothing further to discuss.

Mr. Desmond will reach out to Dr. Gosselin and give him a chance to come before the Board at the next meeting.

Mr. Brackett advised that Mr. Desmond give a timeline of what has been done, what has been received and what has not been received.

There will be no motion at this time to reconsider the motion to grant the special exception.

Mr. Seabury returned to his seat as Chairman. Mr. Martin and Ms. Davis have resumed their roles as regular voting members. Mr. Brackett and Mr. Nolin have resumed their roles as non-voting alternates.

V. APPROVAL OF MEETING MINUTES

The Board approved the meeting minutes from February 26th with one exception.

Related to the DeMoulas Supermarket case. Ms. Davis was concerned that the abutters could hear the loading and unloading of the docks but they testified that the docks would not be moved and that the new building would not have any kind of back doors so it's not an issue.

The existing Market Basket building has docks on the back. The new building being proposed will not have any loading docks in the back so increased noise to the abutters is a non-issue.

Ms. Davis was given the minutes and will update them to exactly what was said.

Mr. Martin made a motion to approve the minutes as submitted.

Mr. Pacocha seconded the motion.

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

Chairman Seabury and the Board could not review the minutes from March 12, 2015 because the seated members did not have them.

Chairman Seabury isn't sure what to do with the minutes that have not yet been approved because there are changes to be made and Trish is not available.

Chairman Seabury and the Board reviewed the minutes from the site walk related to case 176-028.

Ms. Davis wanted to know about the firewalls in between each unit. The fire department will require that the entire attic, second floor and first floor have sprinklers installed. Suggests removing number 5 from the minutes.

Mr. Martin made a motion to approve the minutes. Seconded by Mr. Pacocha.

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

Per discussion of the Meeting Minutes, during the September 24, 2014 Zoning Board Meeting, this section is to be removed in its entirety.

VI. ADJOURNMENT

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

Ms. Shuman seconded the motion.

VOTE: All Seated Members voted in favor. The motion passed unanimously.

Chairman Seabury declared the meeting to be adjourned at 10:17 PM.

Date: May 28, 2015

Normand Martin, Acting Chairman