



TOWN OF HUDSON

Planning Board



Vincent Russo, Chairman

Rick Maddox, Selectmen Liaison

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HUDSON PLANNING BOARD MEETING MINUTES May 11, 2011

I. CALL TO ORDER

Chairman Russo called this Planning Board meeting to order at 7:00 p.m. on Wednesday, May 11, 2011, in the Community Development meeting room in the Hudson Town Hall basement.

II. PLEDGE OF ALLEGIANCE

Chairman Russo asked Selectman Coutu to lead the assembly in pledging allegiance to the Flag of the United States of America.

III. ROLL CALL

Chairman Russo asked Mr. Malley to serve as Acting Secretary in the absence of Mr. van der Veen and to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

Present: James Barnes, Glenn Della-Monica, George Hall, Tim Malley, Vincent Russo, and Richard Maddox (Selectmen's Representative).

Members

Absent: Ed van der Veen (excused).

Alternates

Present: Irene Merrill, Stuart Schneiderman, Jordan Ulery, and Roger Coutu (Selectmen's Representative Alternate).

Alternates

Absent: None. (All present.)

VII. CORRESPONDENCE

Town Planner Cashell said he had some correspondence to be taken up later in the meeting, saying he would provide a handout at that time.

VIII. PERFORMANCE SURETIES

No **Performance Sureties** items were addressed this evening.

IX. ZBA INPUT ONLY

No **ZBA Input Only** items were addressed this evening.

X. PUBLIC HEARINGS

XI. OLD BUSINESS/PUBLIC HEARINGS

**A. 99 River Road Site Plan
SP# 11-10**

**Map 256/Lot 001-00
99 River Road**

Purpose Of Plan: To construct a 2,120 sq. ft. convenience store with associated access drive and parking. Existing building on-site (former landscape supply business) to be demolished. Hearing. Deferred Date Specific from the March 23, 2011 Planning Board Meeting.

Chairman Russo read aloud the published notice, as repeated above.

Selectman Coutu stepped down from his nonvoting alternate position.

Town Planner Cashell noted that the Tyngsboro permit for the parking had been provided with the staff report.

Mr. Christopher Rice, from TF Moran, 48 Constitution Drive, Bedford NH 03110, project manager for this project, noted that he was accompanied by Atty. Westgate, the applicant's legal representative, and Robert Duval, the traffic engineer. He provided a summary overview of the past discussions, noting that all waiver requests had been granted except one, and he commented on changes that had been made to the plan. He noted that an agreement had been reached with Mr. Porter, and he provided copies to the Board members. He said the bollards had been shifted, as had been requested by Mr. Della-Monica. He noted that the 100-foot waiver was needed, as a commercial property could not be approved on this site without that waiver being granted. He then submitted photographs of other properties in the area, commenting on details shown in each one. He noted that he had spoken with a nearby resident, who had no objections to the proposal, while another nearby building was a duplex rental, with no objections

being expressed by the residents. He said the intent of providing the photographs was to show that it was a mixed-use area, so he was requesting the waiver request for the 100-foot buffer be reheard, saying he had talked with the neighbors, as had been requested by the Board, and had found they had no concerns.

Chairman Russo read aloud Mr. Porter's letter, which stated that Mr. Porter had no objection to the project and was aware of the location of the proposed septic system and the 100-foot buffer requirement and recognized that parking and other improvements would be located in that 100-foot buffer setback area—noting that the letter was signed by both John and Nancy Porter.

Chairman Russo opened the meeting for public input and comment, in favor. No one coming forward to speak in favor, he asked if there were anyone who wished to speak in opposition or with question.

Mr. Joe Robitaille, of Ayotte's Stateline Smokin' Joe store, said he thought he had missed a meeting. He said he was not in opposition to the store but was concerned about safety. He asked if there had been a sitewalk; Chairman Russo answered in the negative. Mr. Robitaille expressed concern about the traffic, saying people came up from Massachusetts at a very high speed, and he was concerned about traffic coming in and out right across the street from his site. He said he would guarantee there would be problems with traffic, such as when 19-wheelers were trying to get in and out. Chairman Russo said this aspect had not been discussed. Mr. Robitaille suggested someone spend some time there during the evening peak-hour traffic flow, noting that they were on an inside curve of the road.

Selectman Maddox noted that Mr. Robitaille had been there before, and he asked how many running feet of coolers were in Mr. Robitaille's establishment. Mr. Robitaille estimated that he had probably 40 feet, plus some on rollers. Selectman Maddox asked about parking spaces; Mr. Robitaille said he had 80, with the handicapped.

Mr. Hall noted that this was a State road and the development had been required to get a State driveway permit pertaining to access, saying most of the control and improvements were under the control of the State, and the Hudson Planning Board did not usually get involved in these things for a State road. Mr. Robitaille noted that there had been two deaths on this road, both being pedestrians struck while walking across the road. He expressed a belief that the Planning Board should be concerned about safety, noting that the proposed project only had 11 parking spaces, and he suggesting that there would be issues with vehicles having to go around vehicles waiting to make a left turn across the southbound traffic.

Mr. Rice said the project had been reviewed by the traffic consultant and also by the Town of Tyngsboro, both of which had agreed. He stated that the accident date for the past few years had been just one fender-bender.

Mr. Roger Coutu, 10 Rita Avenue, said he had not intended to speak but he did not like misrepresentation. He said there had been a head-on collision there last year, involving a near-death situation with a driver who was absolutely drunk right in front of Mr. Robitaille's store, and there had been another accident also involving a drunken driver. He said the two deaths described by Mr. Robitaille had occurred within the past

20 years—adding that he was selling his own store, so he had no interest. He said one could view the traffic and see that pedestrian crossing was accident prone. He said Mr. Rice should have gotten statistics from both towns. He then expressed a belief that members of the Board needed to go down and view this site, as Mr. Robitaille had suggested, noting there were numerous children in the area, one of whom had been struck while riding on his bicycle last year. He concluded by stating that there would be competing traffic, adding that he resented the misleading representation obtained by speaking with tenants.

Mr. Robitaille said the accident referenced by Mr. Coutu had been because of someone trying to access his store, noting that the Town had made him take down ENTRANCE and EXIT signs just before the accident. He said the majority of the parking lot was in Massachusetts and the two deaths that he had referenced were south of the Tyngsboro line, explaining that most of his parking lot was in Tyngsboro. He noted that he had put in a painted crosswalk but still had a death. He pointed out details on the site plan, saying the Winslow Farm Road intersection was not shown and also stating that people continued to back out into the street from the Pines Restaurant, and he said the Board would be remiss in not checking and visiting the site.

Mr. Hall said he had heard comments that the Board should go look; he asked if anyone had any advice as to what the applicant should do different. Mr. Robitaille said the road should be widened or the speed limit should be reduced, in order to slow the traffic down. He noted that his own business was predicated on drivers from Massachusetts turning right, whereas the proposed store would have people turning left, across traffic.

Mr. Hall said those suggestions had been discussed, saying he felt this applicant had no control to do what was being suggested. He said the turn lane would have to be 1,000 to 2,000 feet long, requiring coordination by both Massachusetts and New Hampshire, affecting a number of properties on both sides of the road, and he expressed a belief that putting in a very short turning lane would be more dangerous than what it was now. He expressed doubt that changing the speed limit would be effective, saying that all would be a super-big project and would really not be practical for “a little dinky operation” like this.

Selectman Maddox questioned Mr. Halls’ reference to a “little dinky operation.”

Chairman Russo noted that Mr. Robitaille obviously had a very successful business. He asked when he was the busiest on weekends and during the week. Mr. Robitaille said during the week the busy times were lunchtime and at five o’clock, with the weekend peak being Friday night and all-day on Saturday. He noted that he had been in business there for 25 years, and had not been affected by other developments in the interim, saying he was not here tonight because of fear of competition but out of concern about safety. He warned the Board members that they were dealing with people’s lives in this matter. He then concluded by saying he was a little put off by the argument that it would cost too much to fix the situation; if it could not be done right, he suggested, the Board should deny the plan.

Mr. Della-Monica asked if Mr. Robitaille had observed that the traffic came in bunches—saying he had sat there and observed that traffic came in blocks from the

traffic light down at the Tyngsboro bridge, with a lot of dead time in between, so that people could look and see when it would be clear to walk across the street. Mr. Robitaille said he had noticed that since the bridge had been shut down—but that the traffic was nonstop.

Selectman Maddox said the arrows on the plan were not working, as he had sat on Mr. Robitaille's lot and watched the traffic. He noted that this place would have 50 feet of coolers and 11 parking spots, and he questioned why the Zoning Board of Adjustment had approved this plan on such a small site, saying this had not been retail for a while and this use should not have been allowed—adding that it was beyond his comprehension why approval had been granted for this operation on a half-acre lot when two acres was required.

Mr. Hall said his comment pertained to the size of the lot had been in relation to the other developments, which had significantly more traffic. He said this development was relatively insignificant, and he did not think the Town had the right to tell people they could not use the property they paid taxes on. He noted that the access to River Road was being eliminated, and he pointed out that the Ayotte's Stateline Smokin' Joe store lot had been improved compared to how it had been before.

Town Planner Cashell said it would help for the Town to work with the Department of Transportation to slow down the traffic in that corridor, and it was not inconceivable to slow it down to 30 miles per hour, which he thought would be a good idea.

Mr. Rice said the speed was really a Town enforcement issue, out of his client's control. He said he had not tried to misrepresent anything, saying he had received the accident data from 2007-2009 from the N H-DOT, with no accidents reported in that interval except for the one fender-bender, and it was his understanding that all towns were supposed to report to that organization. He said everything they had done had been in good faith, trying to address the comments that were made, and he thought they had done everything they could. Referring to Selectman Maddox's comment about zoning, he said no variance had been needed, as this was an existing nonconforming lot. He noted that his traffic engineer was present.

Selectman Maddox said the business would be enlarged from what had been there, so he felt under HTC §334-29 a variance was required, because a use should not be extended or enlarged except by variance.

Atty. J. Bradford Westgate, of the firm of Winer and Bennett, LLP, 111 Concord Street, Nashua NH, legal representative for the applicant, said there was no pending issue pending nonconforming use, saying the state of the property was as before, and noting that the Zoning Administrator had checked off the application, indicating here were no zoning issues. He noted that Town Planner Cashell had reported before that it was a lot of record and could be developed for a permitted use. He said this was not an issue.

Mr. Robert Duval, an engineer with TF Moran, said he wanted to clarify some points that had been brought up. He said the numerical incidence of accidents was low, even though they might be of high severity. He noted that speed and driver-impairment issues had been involved in the latest severe accident, which could happen on open

roadways, and he was encouraged to see that the accident rate was low. He said the traffic increase tended to decrease the speed. With respect to left-turns, he said, that was usually a problematic movement, saying 55 seconds was level of service F, but the left turn movement here was 0.4 seconds, which was an "A" rating. He noted that 73 total trips were predicted, with 61% being pass-by trips, with eight coming from Hudson and sixteen coming from Massachusetts. He said this was a very low impact, being 3% of the peak-hour volume there now.

Mr. Duval said the length of cooler was not the trip-generation criteria, and he cited figures for the other stores in the area. He said the trip generation for the Ayotte's Stateline Smokin' Joe store was 206, so they had used the higher ITT figures to calculate the 73 trips associated with the proposal, but they expected slightly less. He said he thought the traffic values were in line. He noted that this roadway was controlled by the State, which was very diligent, and the NH-DOT had issued the permit without question, saying no left-turn lane was warranted in this case. He described how the plots for turn-lane warrants were determined, showing how this project was far below the volume warranting a turning lane, and was not anywhere near a border-line case. He said the traffic volume would have to be doubled, or something like 80 left turns would be needed, to warrant a turning lane. He said there was a wide shoulder on this section, so there was an opportunity to get around cars waiting to turn without impeding the traffic flow.

Mr. Della-Monica said traffic studies did not usually take into account the difference between two gas stations opposite each other, requiring people to make decisions as to which one to go to. He said people would come around the curve, 900 feet south, and be looking to see who had the best price for whatever they were looking for. Mr. Duval responded that this was a safe situation, saying 900 feet was certainly enough distance—adding that he did not think the described situation had any effect on the traffic flow. Mr. Della-Monica questioned this, describing the decision-making process that was involved. Mr. Duval said he had seen no published data involving such a situation—noting that neither of these businesses sold gas, and the sight distances were good—adding that they were not actually opposite each other. Mr. Della-Monica said they were four seconds apart. Mr. Duval said four seconds was good, saying he could not offer an opinion on how safety would be affected, but he saw good geometry in this plan.

Selectman Maddox referenced the September 4th study, noting an error in designating "in" and "out." He said the Ayotte's Stateline Smokin' Joe store was doing a lot of business, saying he was having a lot of trouble accepting this plan, as this would be a magnet for people looking for cigarettes and beer, and he expected more traffic than had been predicted. Mr. Duval said his figures were what the ITE suggested for this size of store, adding that the actual traffic survey for the Ayotte's Stateline Smokin' Joe store showed a smaller number.

Mr. Robitaille questioned the 4-second time, asking what it came from. Mr. Della-Monica said it would take about four seconds to make a decision as to whether to turn into the Ayotte's Stateline Smokin' Joe store's southern driveway or the new one. Mr. Robitaille asked how it was known that was a safe count. Mr. Duval said the four seconds was not from the study but from the discussion. At 40 mph, he said, that

would be about 240 feet, and four seconds was sufficient time to make a decision, noting that two seconds was often considered sufficient for such decisions. He said this was a specific-point issue, for which no published data was available in his experience, but he felt this was good volume and geometry at reasonable speeds, making it a good proposal.

Mr. Robitaille said the wide shoulder was the entrance/exit area for his delivery trucks. He said he could bring data showing how the customer traffic increased in June, July, and August.

Mr. Ulery said traffic lights said three seconds was what was considered safe to clear an intersection at 40 mph. Mr. Robitaille said he disagreed, saying this was why he felt a sidewalk was needed.

Mr. Barnes noted that the traffic report stated the count was conducted on Thursday, December 17, 2009, and Sunday, January 10, 2010—and that the figures had then adjusted upward by factors of 14% and 29% to account for seasonal variation.

Mr. Barnes said what was in front of the Board was a waiver request that had not been approved at the last meeting. Unless at least two members changed their votes, he said, the Board needed to go into a situation of denying the plan.

Atty. Westgate said Mr. Rice had visited the abutting property not in the context of the traffic analysis but in the concern about the 100-foot buffer—adding that those abutters had been receiving notice from the get-go about the hearing but were not here tonight, which he felt was telling. He noted that none of the neighbors had come to express concern about traffic and safety in the area. He suggested that the Board had gone off into speculative analysis about what-ifs about certain traffic scenarios, which could not have bearing on an engineering approach, involving traffic analysis that had then been analyzed by CLD (Costello, Lomasney, and deNapoli, Inc.), the Board's engineering consultants. He said the curbcut permits had been issued, CLD was in concert, and the Town of Tyngsboro had no objections. He asked where it would go to have lay people go stand on the site and observe traffic, which would not change the engineering approach that had been given or modify what had already been approved, so there was no rational connection between theorized improvements and actual data—hence enhancements could not be imposed.

Selectman Maddox asked Atty. Westgate, hypothetically, if the Board could seek redress if turning traffic increased and three accidents occurred in the first year—arguing that the Board had to do due diligence before the fact. Atty. Westgate replied that he was not sure what the redress would be, saying the Board certainly would not revoke a site plan approval that was not conditioned on a certain number of accidents not occurring.

Mr. Della-Monica said he would be far more inclined to approve the waiver if there were a couple conditions, such as having the developer pay for signs saying NO PARKING on the road, as well as limiting the size of signs to reduce the problem if it occurred. He suggested the Town should reserve the right to address the issue if it should become a problem. Atty. Westgate said the 100-foot waiver had nothing to do with the traffic issue, saying the issue with the waiver was that the abutters had no

objection, so he felt the buffer issue was resolved and there was no reason it should not be granted. He said the signage issue was too complex and was an unenforceable arrangement; adding that he thought it was beyond site-plan approval.

Ms. Merrill said she had had concerns about the 12 parking spaces with 18-wheelers coming in and out, and she still had them, with associated concerns about safety.

Chairman Russo noted that there was a draft motion for the requested waiver. Ms. Merrill asked for explanation, asking if the site plan would be passed if the waiver were approved. Chairman Russo said approving the waiver did not approve the plan, saying the Board would have to see if this were a safe, viable plan.

Town Planner Cashell said the Board had voted this request down at the last meeting, so someone on the prevailing side would have to move to reconsider, if the Board wished to do that.

Mr. Hall objected, saying the waiver was not denied but that a motion to grant the waiver had been denied, so he did not think it had to be reconsidered. Mr. Utery asked if the Board were operating under Robert's Rules. Town Planner Cashell said Robert's Rules was used as a guide. Mr. Utery asked what rule was being followed. Selectman Maddox said the Board's bylaws said the Board followed Robert's Rules. Chairman Russo said the Town Attorney had said they did not have to follow Robert's Rules. Mr. Utery suggested that the motion to reconsider would be the most applicacious manner. Chairman Russo asked if anyone wished to revisit the waiver motion, which had failed as of the last vote. Mr. Della-Monica said a motion to revisit would give a straw vote.

Chairman Russo said he was looking for a motion to reconsider. Selectman Maddox so moved; Mr. Della-Monica seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion to reconsider. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7-0).

Chairman Russo asked for a motion with respect to the waiver request. Selectman Maddox moved to grant the requested waiver from the requirements of HTC §275-8 B (12) (b), 100 ft. Residential Buffer, citing the reason for doing so as being because the specific terms and conditions of approval for this project shall safeguard any residential abutters who might otherwise be adversely impacted by the activities associated with this project—and, as such, the granting of this waiver was not contrary to the spirit and intent of the Site Plan regulations.

Mr. Della-Monica seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7-0).

Selectman Maddox moved to defer further review, to June 8m 20911, to allow for members, if they so desired, to visit the site, as well as for legal opinion. Mr. Della-Monica seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion. Being unsure of the result, he then asked for a hand vote on the motion. Selectman Maddox, Mr. Della-Monica and Ms. Merrill voted in favor; Mr. Barnes, Mr. Hall, and Mr. Malley voted in opposition. Noting that the vote stood 3–3, Chairman Russo commented that he had not been down there to watch the traffic; he then voted against the motion, saying he did not feel an additional visit would change things, and deferring this would just prolong the inevitable. Chairman Russo then declared the motion to have failed (3–4).

Mr. Hall moved to approve the Site Plan entitled ***Hudson Realty Trust, Ramanbhati K. Patel Trustee, Retail Development, 99 River Road, Hudson, NH, Tax Map 256/Lot 001***, prepared by TFM Engineers, 48 Constitution Drive Bedford, NH 03110, dated Nov. 5, 2010, latest revision May 1, 2011, consisting of Sheets 1 through 10, L1, A1, E1, and 1-4, and Notes 1 through 17 on Sheet 4 of 10, in accordance with the following terms and conditions:

1. All stipulations of approval shall be incorporated into the Development Agreement, which shall be recorded at the Hillsborough County Registry of Deeds, together with the Site Plan-of-Record.
2. Prior to the Planning Board endorsement of the Site Plan, the Development Agreement and easement document concerning the future widening of River Road shall be favorably reviewed and recommended on by Town Counsel.
3. All improvements shown on the Site Plan-of-Record, including Notes 1 through 17, shall be completed in their entirety and at the expense of the Applicant or his assigns.
4. The calculated CAP fee of \$9,928.00, prepared in accordance with the 2010 CAP Fee Matrix, shall be submitted to the Town prior to the issuance of the Certificate of Occupancy.

Discussion arose at this point concerning a stipulation in the draft motion pertaining to a contribution to be requested of the applicant with respect to improvements on River Road. Mr. Hall noted that the Board had not discussed this. Town Planner Cashell said he did not expect any road improvements were intended in that area over the next six years, saying the money would have to be given back at that time, and he then suggested this stipulation could be removed. Mr. Hall concurred, saying he would not include that stipulation. Mr. Barnes subsequently noted that this change would also necessitate a change in subsequent reference to numbered stipulations.

5. After the issuance of foundation permit for the structure and prior to the issuance of framing permit, the applicant shall submit to the Hudson Community Development Department a foundation "As-Built" plan on a transparency and to the same scale as the approved site plan. The foundation

"As-Built" plan shall include all structural dimensions and lot line setback measurements to the foundation and shall be stamped by a licensed land surveyor. Any discrepancy between the approved site plan and foundation "As-Built" plan shall be documented by the applicant and be part of the foundation "As-Built" submission.

6. Prior to the issuance of a final certificate of occupancy, an LLS-certified "As Built" site plan shall be provided to the Town of Hudson Community Development Department, confirming that the site conforms with the Planning Board approved site plan.
7. Onsite landscaping shall be provided for in accordance with the plant and tree species specified on Sheet 7 of 10 of the Site Plan.
8. Construction activities on the site shall be limited to between 7:00 a.m. and 7:00 p.m. Monday through Saturday. No construction activities shall occur on Sundays.
9. This approval shall be subject to final engineering review.
10. The applicant or his assigns, at his/her expense, shall be responsible for repairing all construction cuts on River Road, and this work shall be properly bonded with the Town of Hudson and the State of New Hampshire.
11. The daily hours of operation shall not exceed the hours between 6:00 a.m. and 10:00 p.m.
12. Hours for refuse removal shall be exclusive to the hours between 7:00 a.m. and 7:00 p.m., Monday through Saturday.
13. Existing Plan Note 17 shall be deleted and replaced with above conditions 11 & 12, which shall then become Notes 17 & 18 on the Plan. The foregoing note amendments shall be made to the said Plan prior to Planning Board endorsement of same.
14. Prior to issuance of Certificate of Occupancy, and at the owner's expense, two "NO PARKING" signs shall be placed along the southerly side of Porter Road (a private way), abutting the development parcel—and, if allowed by NH-DOT, two "NO PARKING" signs shall be installed in front of the said parcel along River Road (Rte. 3-A).

Mr. Barnes seconded the motion.

Mr. Barnes said he had thought about this for a long time, saying he did not know how it was going to work to add another convenience store when there were already three such stores in the immediate vicinity and another less than two miles away, adding that he felt the site would be more successful as a dentist office or something similar, but approval of the present plan meant there would be a site plan of record that could be enforced, rather than a wide-open site, which was an improvement, and he would vote for it.

VOTE: Chairman Russo then called for a verbal vote on the motion. Finding himself unsure of the results, he called for a hand vote. All members present voted in favor except for Selectman Maddox, Ms. Merrill, and Mr. Russo, who voted in

opposition, and Chairman Russo declared the motion to have carried (4–3).

Selectman Maddox suggested that the Board take its usual break at this time. Chairman Russo expressed agreement but noted that the Board was not going to be able to address all of the remaining items this evening, because of the time. He then asked for a motion to defer the Brook Plaza/T-Mobile Wireless applications to the June 8th meeting. Selectman Maddox so; moved; Mr. Barnes seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7–0).

Town Planner Cashell advised that anyone in the audience out of consideration of that item should come back to the June 8th meeting, saying it would be the first item to be heard that evening. Chairman Russo subsequently requested that all Board members keep their copy of the documentation provided in the information packet for this meeting, so that Town Planner Cashell would not have to send out new copies for the June 8th meeting.

Chairman Russo declared a break at 8:40 p.m., calling the meeting back to order at 8:59 p.m., and noting at that time that Selectman Coutu had left the meeting, as he was embarking on a trip to New York.

**B. Fairview Nursing Home LLA
SB# 01-11**

**Map 216/Lots 1 & 2
203 & 205 Lowell Road**

Purpose Of Plan: Lot Line Adjustment between Lots 1 & 2 to facilitate the proposed site plan, also prepared by this office, currently before the Planning Board. Hearing. Deferred Date Specific from the April 13, 2011 Planning Board Meeting.

Chairman Russo read aloud the published notice, as repeated above.

Mr. Tony Basso, of the firm of Keach-Nordstrom Associates, Inc., Bedford, New Hampshire, appearing before the Board as the engineering representative of the property owner, noted that Tim Beaulieu, the principal; Atty. Morgan Hollis, and GPI traffic consultant Heather Monticup were also present. Mr. Pat Colburn, also of the firm of Keach-Nordstrom Associates, Inc., affixed two plans on the wall: ***Lot Line Adjustment Plan, Fairview Nursing Home, Map 216/Lots 1 & 2, 203 & 205 Lowell Road, Hudson, New Hampshire***, Sheet 1 Of 2, dated January 4, 2011, Rev 1 dated 04-20-11, prepared by Keach Nordstrom Associates, Inc., 10 Commerce Park North, Suite 3B, Bedford NH 03110, and ***Non-Residential Site Layout Plan, Fairview Nursing Home, Map 216/Lots 1 & 2, 203 & 205 Lowell Road, Hudson, New Hampshire***, Sheet 1 Of 2, dated June 2010, Rev 5, dated 04-20-11, prepared by Keach Nordstrom Associates, Inc., 10 Commerce Park North, Suite 3B, Bedford NH 03110.

Mr. Basso said he wanted to discuss the nursing home first, addressing the lot-line relocation plan later. Recapping things that had been stated at the previous hearing, Mr. Basso discussed changes that had been made in the plan in response to the Board's comments at that meeting, saying they had eliminated some parking on the assisted living side and moved the building, so that there was a 15-foot setback on either side of the line, increasing the snow storage capacity. He said the parking spaces in the setback area had been eliminated, noting that the notes separated the green space and the parking between the two facilities, so that each lot now stood alone—adding that both lots met all requirements of the regulations.

Mr. Basso said the revised plan had been reviewed by CLD (Costello, Lomasney, and deNapoli, Inc.), the Board's engineering consultant, which had made two comments, one saying that the fire lane should be run by the Fire Department, which was fine, and the other saying that alteration of the terrain were needed because of the amendments, which was true.

He said the lot line was being moved a little north to give room for the nursing home expansion and parking on that side, so that Lot 1 would have 2.67 acres and Lot 2 would have 3.4 acres. He then offered to answer any questions—noting that a declaration of covenants and easements had been filed for the two properties, to allow cross-access, so that employees and visitors could leave via Hampshire Drive. He also added that the drainage now was being carried to the public system, to avoid runoff to the steep embankment at the rear, which was another reason for the cross-access easements.

Chairman Russo opened the meeting for public input and comment, in favor or opposition. No one coming forward to provide input, despite two requests by the chairman for comment for or against, Chairman Russo declared the matter before the Board and asked if any members of the Board had any questions or comments.

Ms. Merrill asked if she understood correctly that the two facilities could be separate under different owners if sold. Mr. Basso said they were currently two lots of record and would remain two lots of record, so they could be sold separately in the future, but that was not the plan at this time.

Mr. Barnes asked for discussion of the traffic circulation plan, particularly with respect to traffic coming in from Hampshire Drive and wanting to park in front but finding all the spaces filled. Mr. Basso said the lanes were 24-feet wide and the drivers could circle around the building. He noted that the front entrance would remain as the main entrance, saying the Hampshire Drive access was secondary.

Mr. Della-Monica asked if both sites now had sufficient parking for their own use. Mr. Basso said each site met the requirements and had adequate parking.

Selectman Maddox asked if all the parking would be resolved by this plan. Mr. Basso answered in the affirmative. Selectman Maddox noted that the Board of Selectmen was deeply concerned about Lowell Road, saying he was deeply concerned about having two driveways on Lowell Road. Mr. Basso referenced the lot-line plan, identifying what signage would be placed where, as well as how the accesses had been designed to discourage people from going the wrong way.

Selectman Maddox asked about the sign for the new facility. Mr. Patrick Colburn identified it on the plan. Selectman Maddox expressed a desire to try to direct people not to cross Lowell Road. Mr. Basso expressed agreement, saying the left turn would be allowed but there would be a sign advising people to use the signaled intersection, he expressed a belief that this would be a much safer situation than a retail establishment.

Mr. Ulery said he liked this solution.

Mr. Hall asked how many parking spots had been lost by shifting the buildings. Mr. Colburn said it was about 25 spaces, from the south side. Mr. Hall said it looked as though a few others had been gained. Mr. Basso expressed agreement, saying the net loss was about "twentyish"—adding that they exceeded the core requirement. Mr. Hall noted Mr. Basso had previously said they needed as much parking as they could get. Mr. Basso pointed out that the number of units had been reduced from 90 to 73.

Mr. Hall said he would also like to vote for this, thinking it was a good thing for the town, but he was strongly opposed to having one site plan with two lots that could be sold to different parties. He said the town had site plan regulations to minimize potential conflicts, and this would be ignoring that intent, and he had to presume that the two lots would be owned by different parties at some time in the future, so he could not vote for this.

Mr. Ulery asked how the drainage and traffic could be handled without having two sites on one plan. Mr. Hall said it was originally designed to have two buildings on one site, but it was now up to the town to ensure that the easements were worded properly. He noted that usually one owner had a vested interest, but in this case the Board had to assume that the applicant was protecting the other landholder, and he did not think the Town should be in that situation.

Mr. Basso said this was not the only site plan that had drainage set up ahead of time, such as for an industrial park—saying he had brought some before the Board himself, in which multiple lots were owned by one owner. He pointed out that the plans would be reviewed by the Town Attorney. He noted that the self-storage he had permitted not too long ago had similar cross-access elements. He said these lots met all of the requirements that could stand alone, and there was a plan that stood alone for the zoning for each lot, and these had been thoroughly reviewed. He said he had been hoping to get an opinion on this matter from the Town Attorney, but he was not allowed to know, as the legal opinion had been marked CONFIDENTIAL, so he had come back with a best effort plan to separate the two lots. He said the cross-access easements were standard in the industry, noting that it was true of many of the store sties in Nashua and not an unusual concept—adding that this was the first tie he had heard it raised as an issue at the Planning Board level.

Atty. Morgan Hollis, legal representative for the applicant, said the explanation of how they got here was most important as to why they were asking for one site plan, noting that it had been going to be one site. He said the normal process would be to have a site plan, then have it amended to show a separate lot—but they had carried through with a single plan on two sites, saying it affected their issues as well as the Town's—noting that the owners of either facility would have to get permission from the

owners of the other site if it were two sites, but having them tied together meant that one should not be able to make changes without getting permission from the owner of the other property, so they had decided to keep it on a single plan so that one party could not make a change without consulting the other.

Town Planner Cashell noted that he had been thinking about this since Mr. Hall had brought the issue up at the previous hearing, but he felt the Board should take into consideration that these two sites should be looked at as Siamese twines, that should not be separate—so keeping them on one site plan would make it easier for the Town to manage in the future. He said future owners would be obligated to live by the requirements of the one site plan, so the Town would have better control over the traffic issues, to get the traffic to use the Hampshire Drive access to the signal-controlled intersection.

Mr. Della-Monica said the owner of one site, if it were two separate plans, could modify one adversely impacting the other, but this way neither could do anything unless both agreed. Mr. Cashell expressed agreement.

Selectman Maddox said he did not see any sign detail for the sign that had been described. Mr. Basso said it would match the existing sign—a ground-mounted granite post sign with wood in between.

Chairman Russo asked if there were something that could be done in the southernmost driveway, and possibly the central driveway, as people would come out and then make a decision. He asked if narrowed curbing or something could be provided to guide people earlier on. Mr. Basso said he would rather do it with paint, saying curbing would be a maintenance nightmare. Chairman Russo said an island would give them a place to put a sign. Mr. Basso said he would have to expand the driveway a little—maybe 20 feet in length, three feet wide. He said he could do that.

Mr. Della-Monica said curbs with reflectors might work, but the island would be better—adding that a tail could be put on the island as well.

Chairman Russo said he liked the plan and was inclined to go with it, saying it was a good business plan for Hudson, with good jobs, and the engineers had done what they could to work with the Board. He Selectman Maddox moved to approve the **Lot Line Adjustment Plan, Fairview Nursing Home, Map 216; Lots 1 & 2, 203 Lowell Road, Hudson, NH**, prepared by Keach-Nordstrom Associates, Inc. dated: January 4, 2011, revised through April 20, 2011, consisting of a Cover Sheet and Sheets 1 & 2 and Notes 1 through 9, in accordance with the following terms and conditions:

1. All stipulations of approval shall be incorporated into the Decision of Approval, which shall be recorded at the Hillsborough County Registry of Deeds, together with the Plan.
2. All monumentation shall be set or bonded prior to the Planning Board endorsing the Plan-of-Record.

Mr. Barnes seconded the motion.

Selectman Maddox said he had concerns like Mr. Hall's but the only option would be to have the applicants start all over again and come in with two separate plans, and they would still have to have the same cross-easements.

Mr. Malley noted discrepancies in the numbering of notes. Mr. Cashell expressed agreement. Mr. Barnes demurred, saying there were more notes in the center of the page. Mr. Cashell said the sheet that would be recorded would be Sheet 1 of 2.

VOTE: Chairman Russo called for a verbal vote on the motion to approve the lot-line adjustment plan. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7-0).

**C. Fairview Nursing Home (Expansion)
SP# 04-10**

**Map 216/Lots 1 & 2
203/205 Lowell Road**

Purpose of Plan: to construct an expansion to the existing Fairview Nursing Home facility to include 31 additional beds, and a new facility (23,000 square foot footprint). The proposed new facility will consist of a three-story building, which will include 73 units of assisted living and ancillary facility space. Hearing. Deferred Date Specific from the April 13, 2011, Planning Board Meeting.

Selectman Maddox asked if the waivers had been done. Mr. Cashell answered in the negative.

Mr. Della-Monica moved to grant the requested waiver from the requirements of HTC §193-10 G, Multiple Driveways on a Single Lot, citing the reason for doing so as being because, as determined by the Town's Traffic Consultant Engineer and Police Department, the proposed driveways shown on the plan provided safe and adequate sight distance in accordance with the distance required in the Planning Board's Driveway regulations—and, as such, the granting of this waiver was not contrary to the spirit and intent of the said Driveway regulations.

Mr. Barnes seconded the motion.

Selectman Maddox said he would vote for this only because enough safeguards had been put in to push as many vehicles as possible to the signalized intersection.

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7-0).

Mr. Della-Monica moved to grant the requested waiver from the requirements of HTC §193-10 (I), Shared Driveways, citing the reason for doing so as being because the shared driveways shown on the Site Plan provided safe and efficient means of vehicular ingress/egress for this development; taking into consideration the following

proposed driveway design features: (1) the northernmost driveway, intersecting with Lowell Road, provided ingress and egress only, (2) the second and southernmost driveway provided only southbound Lowell Road ingress/egress, and (3) the third and final driveway designed for this development provided ingress/egress to a secondary road (Hampshire Drive), with this latter driveway providing direct access for the majority of traffic associated with this development via the signalized intersection of Hampshire Drive and Lowell Road—and, as such, the said driveways, with their aforementioned design features, in the aggregate provided the basis for the Board to determine that the granting of this waiver was not contrary to the spirit and intent of the Driveway regulations.

Mr. Barnes seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7–0).

Mr. Della-Monica moved to grant the requested waiver from the requirements of HTC §275-8 (30), Off-Street Loading Spaces, citing the reason for doing so as being because the designated loading areas for each of the two buildings provided sufficient loading/offloading capacity for the delivery of products associated with the uses to be served by the same—and, as such, the granting of this waiver was not contrary to the spirit and intent of the Site Plan regulations.

Mr. Barnes seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7–0).

Mr. Della-Monica moved to grant the requested waiver from the requirements of HTC §275-9 C, Noise Study, citing the reason for doing so as being because the projected noise levels associated with this project shall be restricted to those provided within the Town Code's Noise Ordinances—and, as such, the granting of this waiver was not contrary to the spirit and intent of the Site Plan regulations.

Mr. Barnes seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7–0).

Mr. Della-Monica moved to grant the requested waiver from the requirements of HTC §275-9 D, Fiscal & Environmental Impact Study, citing the reason for doing so as being because the said study, in addition to the submitted plans, traffic study, CAP fee and other submitted application materials, was unnecessary relative to evaluating the fiscal and environmental impacts posed upon the Town by this development—and, as

such, the granting of this waiver was not contrary to the spirit and intent of the Site Plan regulations.

Mr. Barnes seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7-0).

Chairman Russo noted that all of the waivers had been covered.

Selectman Maddox asked if a waiver were needed for driveways in the setback. Town Planner Cashell deferred to Mr. Basso, who said the driveway regulations, HTC §193-10 H, said driveways were prohibited in the setback unless a shared access was required by the Planning Board. Mr. Della-Monica expressed agreement, saying the Planning Board was requiring it by having the traffic use Hampshire Drive.

Mr. Della-Monica moved to approve the **Site Plan entitled Site Plan, Fairview Nursing Home, Map 216; Lots 1 & 2, 203 Lowell Road, Hudson, NH**, prepared by Keach-Nordstrom Associates, Inc., dated: June 2010, last revised April 20, 2011, consisting of Sheets 1 through 18 and Notes 1 through 31, in accordance with the following terms and conditions:

1. All stipulations of approval shall be incorporated into the Development Agreement, which shall be recorded at the Hillsborough County Registry of Deeds, together with the Site Plan-of-Record.
2. Prior to the Planning Board endorsement of the Site Plan, the Development Agreement and all easement documents, including drainage, shared driveways and shared parking, shall be favorably reviewed and recommended on by Town Counsel.
3. All improvements shown on the Site Plan-of-Record, including Notes 1 through 31, shall be completed in their entirety and at the expense of the Applicant or his assigns.

Mr. Hall said he found it interesting that both buildings had the same CAP fee designation; he asked what would happen if one of the buildings did not get built. Mr. Cashell said he could determine the appropriate CAP amount for each building. Mr. Hall said it should be the correct amount. Mr. Della-Monica agreed to the change, leaving it up to Town Planner Cashell to establish the correct numbers (as reflected in the following).

4. A cost allocation procedure amount of \$27,869.00 shall be paid prior to the issuance of a Certificate of Occupancy, with half of said sum (\$8,360.70) paid prior to the issuance of the certificate of occupancy involving the addition to the nursing home, and the remainder (\$19,508.30) paid prior to the issuance of the certificate of occupancy for the assisted living facility.
5. After the issuance of the foundation permit for each of the structures included in this Site Plan, and prior to the issuance of each framing permit, the applicant shall submit to the Hudson Community Development Department foundation

“As-Built” plans on a transparency and to the same scale as the approved site plan. Both foundation “As-Built” plans shall include all structural dimensions and lot line setback measurements to the foundation and be stamped by a licensed land surveyor. Any discrepancy between the approved site plan and foundation “As-Built” plans shall be documented by the applicant and be part of the foundation “As-Built” submissions, and in addition, shall be submitted in Electronic Form PDF.

6. Prior to the issuance of a final certificate of occupancy for the second of the two buildings, an LLS-certified “As-Built” site plan shall be provided to the Town of Hudson Community Development Department, confirming that the site conforms with the Site Plan-of-Record.

Mr. Basso requested discussion on the draft stipulation pertaining to allowed hours of construction, saying it had always been that Saturday construction would be allowed. Mr. Beaulieu, the principal, asked if there had to be any time restrictions on work done inside the buildings, as they had contractors coming in to paint or put down tile all night. Chairman Russo said the limitation could be made for exterior activities, but he expressed concern about the Sunday inside work; Mr. Della-Monica and Mr. Barnes expressed no problem with inside work.

7. Exterior construction activities on the site shall be limited to between 7:00 A.M. and 7:00 p.m., Monday through Saturday; no construction activities shall occur on Sunday.
8. This approval shall be subject to final engineering review, including approval of the Stormwater Pollution Prevention Plan.
9. The applicant or his assigns, at his/her expense, shall be responsible for repairing all construction cuts, on Lowell Road (Route 3-A), and this work shall be properly bonded with the Town of Hudson.
10. The south entrance/island shall be extended to an additional 20 feet by 2 feet.
11. Signage shall be installed at both Lowell Road intersections indicating primary access to facility via the signalized intersection ahead.

Selectman Maddox asked if the maker of the motion would agree to add stipulation 12 in accordance with Note 31 on the plan, stating that the owners agreed to amend their employee service manual to require use of Hampshire Road. Mr. Della-Monica agreed to add that.

12. The management staff at the existing Fairview Nursing Home and proposed Fairview Assisted Living Facilities agree to amend their employee service manuals to require that all staff members entering or exiting the site northbound utilize the Hampshire Drive intersection with Lowell Road.

Selectman Maddox seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion. All members present voted in favor except for Mr. Hall, who voted in opposition, and Chairman Russo declared the motion to have carried (6-1).

Inc., 74 Northeastern Blvd., Unit 10A, Nashua, NH, dated March 18, 2011, revised thru April 29, 2011, consisting of Sheets 1 through 4, and Planting and Supplemental Plans (1 sheet each), prepared by Jennifer DiNovo, RLA, and dated March 25 and April 27, 2011, respectively, and Notes 1 through 19, in accordance with the following terms and conditions:

1. All stipulations of approval shall be incorporated into the Decision of Approval, which shall be recorded at the Hillsborough County Registry of Deeds, together with the Amended Site Plan-of-Record.
2. All improvements shown on the Site Plan-of-Record, including Notes 1 through 19, shall be completed in their entirety and at the expense of the Applicant or his assigns.
3. The calculated CAP fee of \$1,236.80, prepared in accordance with the 2011 CAP Fee Matrix, shall be submitted to the Town prior to the issuance of the Certificate of Occupancy. (Note: the said CAP Fee amount and term of approval shall be inscribed on the Plan-of-Record prior to Planning Board endorsement of the same.)
4. Prior to the issuance of a final certificate of occupancy, an LLS-certified "As Built" site plan shall be provided to the Town of Hudson Community Development Department, confirming that the site conforms with the Planning Board approved site plan.
5. Construction activities on the site shall be limited to between 7:00 a.m. and 7:00 p.m. Monday through Saturday; no business-related exterior work shall occur on Sundays.
6. If development involves blasting and/or ramming of bedrock materials, said activities shall be limited to the hours between 8:00 a.m. and 5:00 p.m. Monday through Friday only. Said blasting/ramming activities shall be prohibited on Saturday and Sunday.

Selectman Maddox expressed a belief that not allowing retail should be on the notes. Ms. DiNovo said she did not recall that having been discussed. Chairman Russo asked if she would be opposed to adding a note saying there would not be any retail sales, explaining that they were trying to protect the neighbors in case the property was sold in the future. Ms. DiNovo asked about flowers or a small farmstand; Selectman Maddox and Chairman Russo said that would be retail. Ms. DiNovo agreed to such a note, which Mr. Ulery added, as follows:

7. A note shall be added to plan: "No retail sales allowed on site".

Mr. Barnes seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7-0).

Mr. Malley returned to his regular seat, with Mr. Ulery resuming his role as a nonvoting alternate.

XII. DESIGN REVIEW PHASE

No **Design Review Phase** items were addressed this evening.

XIII. CONCEPTUAL REVIEW ONLY

No **Conceptual Review Only** items were addressed this evening.

XIV. NEW BUSINESS/PUBLIC HEARINGS

**A. Van Kleef & Ordway Lot Line Plan
SB# 06-11**

**Map 136/Lots 8 & 9
3 & 5 McCrady Drive**

Purpose Of Plan: Relocation of the lot line between Lot 9 and Lot 8 on Tax Map 136. The new area of Lot 8 is to be 111,338 ft² and the new area of Lot 9 is 35,322 ft². No new construction at this time. The existing property line runs through the garage and barn of lot 8. Application Acceptance & Hearing.

Chairman Russo read aloud the published notice, as repeated above.

Town Planner Cashell said the plan was ready for Application Acceptance. Mr. Hall so moved; Mr. Della-Monica seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion to grant Application Acceptance. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7-0).

Mr. Michael Grainger, of Grainger Engineering, representing the applicant, who was also present, said it had been discovered that the lot line went through the garage, adding that they had gone before the Zoning Board of Adjustment, which had granted a variance. He said the previously existing fence between the properties had not been on the property line, and there was now a fence on the proposed lot line. He said no new construction was proposed.

Chairman Russo opened the meeting for public input and comment, in favor or opposition. No one coming forward to provide input, despite two requests by the chairman for comment for or against, Chairman Russo declared the matter before the Board and asked if any members of the Board had any questions.

Town Planner Cashell said the Board might want to require that the actual distance of the lot line was the closest to the barn. Saying said he had been presumptuous about that waiver, he then presented the waiver request.

This hearing was deferred to the June 8th meeting earlier in the meeting, as discussed on Page 12.

XV. OTHER BUSINESS

Town Planner Cashell reported that the coming week was National Telecommuting Week. He then distributed handouts, saying the community could get points if people cooperated.

XVI. ADJOURNMENT

All scheduled items having been addressed, Selectman Maddox moved to adjourn; Mr. Barnes seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor.

Chairman Russo then declared the meeting to be adjourned at 10:35 p.m.

Date: May 14, 2011

Vincent Russo, Chairman

J. Bradford Seabury, Recorder

Timothy Malley Acting Secretary

These minutes were accepted as amended following review at the 09-14-11 Planning Board meeting.

-- FILE COPY --

**HUDSON PLANNING BOARD Meeting Minutes
May 11, 2011**

Page 25

The following changes were made to the draft copy in accordance with review comments at the Planning Board meeting of 09-14-11:

Page 4, 3rd paragraph, 1st line — corrected misspelling "Ayotts" to get correct name of "Ayotte's Stateline Smokin' Joe" store.

Page 6, 2nd full paragraph, 5th line — corrected misspelling "Ayotts" to get correct name of "Ayotte's Stateline Smokin' Joe" store.

Page 7, 1st full paragraph, 2nd line — corrected misspelling "Ayotts" to get correct name of "Ayotte's Stateline Smokin' Joe" store.

Page 7, 2nd paragraph from bottom, 2nd line — corrected misspelling "Ayotts" to get correct name of "Ayotte's Stateline Smokin' Joe" store.

Page 7, 2nd paragraph from bottom, 6th line — corrected misspelling "Ayotts" to get correct name of "Ayotte's Stateline Smokin' Joe" store.

Page 7, last paragraph, 3rd line — corrected misspelling "Ayotts" to get correct name of "Ayotte's Stateline Smokin' Joe" store.