

**HUDSON ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
January 23, 2014**

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:35pm on Thursday, January 23, 2014, in the Paul Buxton Meeting Room in the Town Hall basement. Chairman Seabury then requested Clerk Davis to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

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

Members

Absent: Mike Pitre (Excused)

Alternates

Present: Maryellen Davis, Gary Dearborn, and Maurice Nolin

Alternates

Absent: Marilyn McGrath (Excused)

Staff

Present: William Oleksak, Zoning Administrator (Excused)

Recorder: Trish Gedziun

II. SEATING OF ALTERNATES AND ANNOUNCEMENTS

For the benefit of all attendees, Chairman Seabury noted that copies of the agenda for the meeting, as well as an outline of the rules and regulations governing hearings before the Zoning Board of Adjustment, were available at the door of the meeting room. He noted the outline included the procedures that should be followed by anyone who wished to request a rehearing in the event the Board's final decision was not felt to be acceptable. Chairman Seabury pointed out that the Board allowed rehearings only if collectively convinced by a written request that the Board might have made an illogical or illegal decision or if there were positive indications of new evidence that for some reason was not available at the hearing.

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Chairman Seabury seated Ms. Davis in place of Mr. Pitre, who was excused. Chairman Seabury also stated that Mr. Houle would assume the role of Clerk in place of Ms. Davis.

III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. **Case 176-028 & 032 (1/23/14): Mario Plante, Trustee, 222 Central Street, Hudson, requests a Variance from the literal provisions of the Hudson Zoning Ordinance, Article III of HTC, §334.16.C.2 (d) in order to permit the following change or use: Allow conversion of existing space to apartments with less than 750 square feet. [Map 176, Lots 028 & 032, Zoned B, HZO §334-16.C.2 (d), Building Permits.]**

Acting Clerk Houle read aloud the posted notice, as recorded above.

Chairman Seabury explained that the issue before the Board was that the zoning ordinance was approved by the majority of the voters. He said that the voters decided that the minimum size for an apartment was 750 square feet with the single exception of an Accessory Living Unit, which could be 350 square feet.

Chairman Seabury stated that this applicant had previously requested permission to create apartments in the building, which was not an allowed use. He further stated that the Board had issued a Variance which allowed that use. He said that the applicant was presently before the Board to request permission to create even smaller apartments.

Ms. Shuman stated that the application was not signed by all of the owners of the property.

Chairman Seabury asked how many owners there were. Ms. Shuman replied that she did not know because it was a trust but that the tax card showed two trustees. Ms. Shuman stated that she felt it was important for all of the property owners to sign the application, in part, for their own protection.

Mr. Martin commented that he agreed.

Ms. Davis stated that she felt the Board had a discussion regarding that and thought it was decided that in the case trusts, minimally a copy of the page that indicated who the trustees were would be required.

Mr. Martin made a motion to defer the case, date specific, to the February 27, 2014, meeting, so that all property owners could sign the application.

Ms. Shuman seconded the motion.

Mr. Martin, speaking on his motion, stated that he did not have anything to add to his motion.

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Ms. Shuman, speaking on her second, stated that if both of the property owners were in attendance at the meeting and wanted to sign the application, she would have been fine with that.

Chairman Seabury asked the applicants' representative, Mr. Tony A. Marcotte, P.E., if both owners were present. Mr. Marcotte replied that while Mario Plante was present, the other property owner, Denyse Plante, was not present. Mr. Marcotte said that the application had been accepted by the town as complete. Mr. Marcotte suggested that the Board defer hearing the case until after the next case was heard which would enable them the time to contact Mrs. Plante, who lived only ten minutes away.

Chairman Seabury asked if the Board was amenable to that. Chairman Seabury declared that all of the sitting Board members were in agreement of hearing the case after the next case was heard.

2. **Case 151-050-000 (1/23/14): David Dufour, 3 Raven Drive, Hudson, requests a Home Occupation Special Exception for property located at 3 Raven Drive to purchase and sell sporting arms and accessories via catalogue, internet, trade shows, and by appointment only from the in-house office. The in-house office will not include a showroom open to the public. [Map 151, Lot 050, Zoned R-1, HZO Article VI, §334-24, Home Occupations.]**

Acting Clerk Houle read aloud the posted notice, as recorded above.

Chairman Seabury explained that the case was before the Board because a Home Occupation Special Exception had to meet certain requirements to be approved.

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

Mrs. Karen Dufour, the applicant, addressed the Board, and read aloud from the Application for a Home Occupation Special Exception summarized as follows:

A Home Occupation is a sales or service operation for goods produced or services provided on-site and is permitted only as a Special Exception upon approval by the Zoning Board of Adjustment. In granting such an Exception, the Board must find the Home Occupation to be in full compliance with the requirements listed below:

1. *What is the nature of your home business?*
The business will purchase and sell sporting arms and accessories via catalogue, internet, trade shows, and by appointment only from the in-house office. The in-house office will not include a showroom that is open to the public.
2. *Is the Home Occupation secondary to the principal use of the home as the business owners' residence?*

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The primary purpose of the home is for the residential use of the owners. The home office is a secondary use for business mailings and merchandise.

3. *Will the Home Occupation business be carried on within the residence and/or within a structure accessory to the residence?*

The home office will be located in a basement utility room off of the primary residence.

4. *Other than the signs(s) permitted under Article XII, will there be any exterior display or other exterior indications of the Home Occupation? Will there be any variation from the primarily residential character of the principal or accessory building?*

The in-home business does not require a sign since there will be no showroom open to the public.

5. *Will there be any exterior storage and will it be screened from neighboring views by a solid fence or by evergreens of adequate height and bulk at the time of planting to effectively screen the area? In situations where a combination of existing foliage and/or long distances to neighboring views provide screening, the fencing requirements may be waived at the discretion of the Board.*

There will be no exterior storage required.

6. *Will there be noise, vibrations, dust, smoke, electrical disturbances, odors, heat or glare produced? If so, please describe the frequency.*

The in-house business will not generate any emissions.

7. *Will the traffic generated by the Home Occupation activity be substantially greater in volume that would normally be expected in the neighborhood?*

Normal traffic patterns will continue since there will be no public showroom. Normal traffic currently includes normal deliveries from retailers, Federal Express, UPS, and the USPS.

8. *Where will the customer/client parking for the Home Occupation be located?*

The homes driveway provides sufficient parking for occasional business activities which would be by appointment only.

9. *Who will be conducting the Home Occupation?*

David Dufour will be conducting business for DCD Sporting Arms, LLC.

10. *Will there be a vehicle(s) for the Home Occupation? Please explain the type and number of vehicle(s).*

The business does not currently plan to have a dedicated business vehicle.

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Chairman Seabury asked if there were anyone else present who wished to speak in favor with regard to the application. No one else came forward.

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

Mr. Peter O’Neill, 16 Falcon Street, an abutter, addressed the Board, stating that he was definitely opposed to the request. He said he had lived in the neighborhood for over twenty years and felt the neighborhood should stay quiet and not have an increase in traffic. He said he felt the proposed Home Occupation would increase the traffic significantly and did not feel a residential neighborhood was where it should have been located.

Chairman Seabury asked if there were anyone else present who wished to speak in opposition or neutrally with regard to the application. No one else came forward.

Second Round of Testimony

Mrs. Dufour, in response to Mr. O’Neill’s concerns, stated that they had conducted a small poll to find out how many other businesses were being operated in the neighborhood. Mrs. Dufour said that as a result of that poll, they had discovered that there were several businesses located in the neighborhood.

Mrs. Dufour stated that the only time a person (and/or vehicle) would be on the property for any length of time would be the length of time it took to fill out background check information. She also stated that potential customers were required, by law, to fill out that paperwork on-site. She said that not all of the merchandise required a background check and that filling out the paperwork took only a few minutes.

Mrs. Dufour said that there were already plumbing and heating vehicles being parked in neighborhood driveways.

Chairman Seabury recognized that Ms. Linda O’Keefe had arrived late and he allowed her to speak.

Ms. Linda O’Keefe, 8 Raven Drive, an abutter, addressed the Board, stating that she would rather not have neighbors selling things out of their house – especially guns. She said she didn’t want people around that were the type of people that would go and shoot children in a school. She also said she knew if people wanted to buy guns they would find a way to buy them but she did not want to have it on her street.

Chairman Seabury asked if there were anyone else present who wished to speak in favor, in opposition, or neutrally with regard to the application for the second and final time. No one else came forward.

Mrs. Dufour stated that legally they were allowed to keep guns in their own home and that they did. She also stated that if having more guns in the home for retail sales was objectionable, the other option was, as long as

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the background check could be done in the home, they could have delivered the firearms to the customer's home – noting that they would still be in possession of the firearm until it was delivered.

Chairman Seabury asked why the background check could not be done on-line. Mrs. Dufour replied that the applicant had to be present and produce valid identification, among other things, for the background check to be completed.

Chairman Seabury declared the matter before the Board and stated that no further comments from the public would be heard unless a Board member had a specific question for a member of the public.

Mr. Martin commented that he owned a gun and had brought it to someone to sell for him. He said the gentlemen had an FFL License and lived in a residential neighborhood in another town. He said that he did not feel anyone would ever notice there were guns being sold out of that residence. He also said that he felt the business would be invisible.

Ms. Davis asked what the proposed hours of operation were, if the applicant was planning on having employees, and what actually took place after the application was filed. She asked if the customer came back to the home and picked up the firearm and if so, how many firearms would be in the home at one time, as well as what the plans were to safeguard them.

Mr. David Dufour, the applicant, addressing Ms. Davis' concerns, replied that he was the sole owner and employee of the company. He said that he had to know when the paperwork for a background check was filled out, which weapon the customer was purchasing. He also said that depending on the weapon, either the FBI or the N.H. State Police would also perform a record check. He said those agencies would then notify him if a firearm could be transferred to the individual customer.

Mr. Dufour said that he would be willing to transfer the firearm to the customer at the customers' home address or at a gun club. He said that the paperwork was the big thing that had to be done on-site. He also said that money did not have to be transferred at the home but that it could be done at the time of transfer.

Mr. Dufour stated that an FFL License required that you had locked facilities. He said that the exterior of the home would be locked, the interior to the room which had the firearms would be locked and within that room, the cabinet that actually contained the guns would be locked. Mr. Dufour stated that he would only anticipate selling one firearm per customer at any given time. He also stated that it was a rare occasion when a customer would even purchase two firearms at the same time. He said that he could also transfer the firearm to the customer via another dealer. Mr. Dufour stated that although he would love to be able to sell 250 firearms per week, which was not going to happen because he was doing it part-time, it was only advertised by word-of-mouth with the exception of catalogue and internet sales. He also stated that the hours of operation would be from 6:00 – 8:00pm at night a few evenings during the week and from 1:00 – 4:00pm on Saturdays. He reiterated that there would be no foot traffic and customers would be on the property by appointment only.

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Chairman Seabury asked which two evenings during the week the business would be open. Mr. Dufour replied it would be Monday through Friday with the exception of Thursday evenings and Saturday afternoons.

Mr. Dearborn asked what type of activity was happening presently relating to the sale of guns. Mr. Dufour replied that there was no business activity related to the purchase or transference of guns at the present time.

Mr. Dufour stated that if a firearm were to be attempted to be delivered via Federal Express, UPS, etc., if he were not home, that it would have to be held for him to pick it up.

Mr. Dearborn asked how potential customers would access the office. Mr. Dufour replied that the entrance was through his garage and he would have to let the customers in.

Mr. Dearborn stated that the Board had approved a similar request the previous year and one of the stipulations was that the applicant had to install an alarm system with a direct link to the Hudson Police Department. Mr. Dufour stated that he had not planned on installing an alarm system but he was willing to investigate what the cost would be for that.

Mr. Dearborn read aloud the five stipulations that were applied to a previous applicant who had been granted a similar request.

- 1. That a non-intrusive inspection shall be performed by the Zoning Administrator or the Zoning Administrator's delegate approximately six months following the posting of the decision, with the Zoning Administrator to provide a report back to this Board with respect to any findings, that this initial and any future subsequent examinations shall be performed by the Town at its' convenience on or after the dates specified, with no impact on the applicant's continuation of business, until such time as this Board receives and responds to any reports (with the understanding that this Board may withdraw this Home Occupation Special Exception or terminate it at that time in the event that any inspection shows a lack of compliance and/or suggests that the operation of this business had produced or was producing damage or potential damage to the environment or to the property values of the surrounding neighborhood.)*
- 2. That a similar inspection shall be performed six months later (i.e., one year following granting of this approval) by the Zoning Administrator or the Zoning Administrator's delegate, and then annually thereafter, until such time as some future Zoning Board of Adjustment declares that these inspections are no longer necessary for this site.*
- 3. That this Conditional-Use Special Exception shall terminate upon sale of the premises to any other party, or in the event that the current applicant becomes a resident of any other dwelling, in or out of Hudson, or following a period of twelve months of non-operation of this business, with the business not to be continued by any other person except by the granting of a new Conditional-Use Special Exception by the Hudson Zoning Board of Adjustment specifically to*

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that person following processing of a new application submitted by that person, including the weighing of the balance of all factors made known to the Board during the hearing(s) pertaining to that process.

4. *An alarm system shall be installed in the home with a direct line to the police station.*
5. *No retail sales shall occur at the home.*

Ms. Davis asked what kind of guns would be for sale. Mr. Dufour replied that he intended to specialize in sporting arms including target rifles and target pistols. He further replied that he was not a great believer in AR-15's and did not feel that the general public needed access to military type weapons.

Mr. Martin stated that he felt the applicant could have an alarm service install sensors on his doors and windows and if the alarm were triggered, the alarm company would be informed first and then the Hudson Police Department.

Ms. Davis asked what accessories the applicant would be selling. Mr. Dufour replied that the accessories were shell bags, shooting glasses, and hats but that he would not be stocking those items at his home. He said most it would be done through an internet transfer house.

Mr. Dearborn asked if ammunition would be included as part of those accessories and if he would be stockpiling it. Mr. Dufour replied that he would not be stockpiling any ammunition.

Ms. Shuman stated she felt another stipulation that was imposed to an applicant with a similar request was that the applicant could not include their home address on the internet. Chairman Seabury replied that while the Board may have talked about it, it was not on the list of stipulations imposed by the Board.

Ms. Davis commented that she was struggling with the fact that the proposed home occupation was in an R-1 neighborhood and R-1 was the highest rating for a neighborhood in Hudson. She said that people chose to live there for a reason; that they didn't want to live in a business or industrial area. She also said she felt it was a violation and struggled with just how much of a violation it was.

Chairman Seabury requested that the Board have some discussion with the applicant's concern with regard to paragraph (F) which stated that "retail sales are an expressly prohibited Home Occupation Special Exception use." Chairman Seabury stated that his major concern was the word "expressly." Is this retail sales? He said his other concern was that the lead in paragraph stated "A home occupation is a sales or service operation for goods produced or services provided on-site and is permitted only by a special exception." Chairman Seabury stated that he felt it sounded like retail sales to him. He said the service that the applicant would be providing was filling out the related paperwork and the Board had to decide if that was enough of a service to warrant an excuse from paragraph (F) and the lead paragraph.

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Mr. Martin stated that his interpretation of on-site retail sales was if he were to walk into a home and the entire basement was full of product and he then purchased something. He said he did not feel that ordering something on the internet was an on-site retail sale.

Ms. Davis commented that she felt the intent of the ordinance was not to have foot traffic going in and out of a home for a product but that customers could go in and out for the service being offered. Ms. Davis also stated that she felt the ordinance was a little dated with the popularity of the internet and needed to be updated.

Mr. Martin made a motion to approve the request for a Home Occupation Special Exception.

Ms. Shuman seconded the motion.

I move to approve the request for a Home Occupation Special Exception for a conditional-use firearm business within the existing dwelling or secondary building in accordance with the plan shown to and described to the Board by the applicant at this meeting, subject to the following stipulations:

- 1. That a non-intrusive inspection shall be performed by the Zoning Administrator or the Zoning Administrator's delegate approximately six months following the posting of the decision, with the Zoning Administrator to provide a report back to this Board with respect to any findings, that this initial and any future subsequent examinations shall be performed by the Town at its' convenience on or after the dates specified, with no impact on the applicant's continuation of business, until such time as this Board receives and responds to any reports (with the understanding that this Board may withdraw this Home Occupation Special Exception or terminate it at that time in the event that any inspection shows a lack of compliance and/or suggests that the operation of this business had produced or was producing damage or potential damage to the environment or to the property values of the surrounding neighborhood.)*
- 2. That a similar inspection shall be performed six months later (i.e., one year following granting of this approval) by the Zoning Administrator or the Zoning Administrator's delegate, and then annually thereafter, until such time as some future Zoning Board of Adjustment declares that these inspections are no longer necessary for this site.*
- 3. That this Conditional-Use Special Exception shall terminate upon sale of the premises to any other party, or in the event that the current applicant becomes a resident of any other dwelling, in or out of Hudson, or following a period of twelve months of non-operation of this business, with the business not to be continued by any other person except by the granting of a new Conditional-Use Special Exception by the Hudson Zoning Board of Adjustment specifically to that person following processing of a new application submitted by that person, including the weighing of the balance of all factors made known to the Board during the hearing(s) pertaining to that process.*

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4. *An alarm system shall be installed in the home with a direct line to the police station.*
5. *No retail sales shall occur at the home. The applicant shall hold all weapons until the buyer can pick it up.*
6. *The hours of business, as specified by the applicant, shall be from 6:00pm to 8:00pm, Monday, Tuesday, Wednesday, and Friday and from 1:00pm to 4:00pm on Saturday by appointment only.*

The stipulations were not made clear – please check to see if this includes ALL of them.

Mr. Martin, speaking on his motion, stated that he felt it was a non-intrusive home occupation and did not feel anything in the neighborhood would change as a result of it. He also said that he felt the applicant had met all of the criteria for a Home Occupation Special Exception and that the applicant has testified what the business hours would be, there would be no employees, and that the applicant was willing to do the transfer of firearms off-site.

Ms. Shuman, speaking on her second, stated that she agreed with everything Mr. Martin had said.

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

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

Chairman Seabury declared that, there having been three votes to approve the request for a Home Occupation Special Exception, with the noted stipulations, and two votes to deny, the motion had carried.

Ms. Davis stated that she voted to deny the request because she felt the hours of operation were very intrusive for a residential neighborhood.

1. **Case 176-028 & 032 (1/23/14): Mario Plante, Trustee, 222 Central Street, Hudson, requests a Variance from the literal provisions of the Hudson Zoning Ordinance, Article III of HTC, §334.16.C.2 (d) in order to permit the following change or use: Allow conversion of existing space to apartments with less than 750 square feet. [Map 176, Lots 028 & 032, Zoned B, HZO §334-16.C.2 (d), Building Permits.]**

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Acting Clerk Houle read aloud the posted notice, as recorded above.

Chairman Seabury stated that the applicant had returned to this night's meeting with the documents properly signed by both owners, Mario Plante and Denyse Plante.

Mr. Martin withdrew his motion to defer.

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

Mr. Tony Marcotte, P.E., from MDP Development, LLC, representing the applicant, addressed the Board, stating that the applicant wished to renovate the second floor of the property to include sixteen units which would vary in size. He said that fourteen of the sixteen proposed units were less than 750 square feet – they ranged in size from 486 square feet to 593 square feet. Mr. Marcotte stated that the proposed plan would be to convert six apartments as Phase 1 of the project and then as other space became available, to convert the other units.

Mr. Marcotte read aloud from the Application for a Variance summarized as follows:

- 1. Granting of the requested Variance will not be contrary to the public interest.
The property is in a commercial area and the residential space is in an existing building. There is a shortage of one bedroom apartments in town and granting this request will allow this space to be utilized effectively. The change in use will result in less overall traffic in the area since residential use is a much lower generator than commercial.*
- 2. The proposed use will observe the spirit of the ordinance.
The overall impact to the neighborhood will be minimized. It will provide housing to an underserved portion of the population.*
- 3. Substantial justice would be done to the property owner by granting the Variance.
Without the need for a second or third bedroom for children, the typical units can have less square footage than what would be required to house a family. If the property owner is required to build larger units, the space will likely go unrented.*
- 4. The proposed use will not diminish the values of surrounding properties.
The surrounding properties are commercial and residential and their values will not be affected by granting this Variance.*
- 5. Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship**.*

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This is an existing building with a fully developed lot. It is not appropriate to have children living on the property due to the traffic. Larger units are to accommodate multiple bedrooms is not a reasonable use for this space, since the units will generally be rented to single people.

Mr. Marcotte stated that John Cashell had indicated his support of this request.

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

Mr. Steve Trefethen, an abutter, addressed the Board, stating that he was having the same type of issue with his property. He said that office space was becoming a little bit obsolete. Mr. Trefethen said that the occupancy in his building had gone from approximately 75% down to 38%. He further said that he was hoping to request the same type of relief for his property.

Chairman Seabury asked if there were anyone else present who wished to speak in favor, in opposition, or neutrally with regard to the application. No one else came forward.

Chairman Seabury declared the matter before the Board.

Mr. Martin commented that he felt it was a good plan and that the state had been pushing for Workforce Housing for a long time. He also commented that he was concerned that some of the proposed apartments did not have a second egress. Mr. Marcotte replied that although the preliminary sketch did not show them, all of the proposed units had windows in both the living rooms and bedrooms.

Ms. Davis asked if the applicant had any data that would support that one bedroom apartments attracted single people. Mr. Marcotte replied that if one of the apartments did attract a married couple it would have probably been a couple who were struggling working in the service industry. He further replied that he would not anticipate any families there because of the commercial aspect of the building.

Ms. Davis commented that she felt she remembered the same applicant had said that it was a reasonable place for children to live when they were before the Board for a previous request regarding frontage. Mr. Marcotte replied that they were not trying to exclude families from the property but that it was a more suitable location for people without children.

Ms. Davis asked if the applicant had any data that would support a shortage of one bedroom apartments. Mr. Marcotte replied that he did not have any actual data but that the trend seemed to be that one bedroom apartment rentals were the first to get rented.

Ms. Davis asked what the expected rent would be and if they were designated to be Section 8. Mr. Marcotte replied that they were not designated to be Section 8 and the typical rent for a one bedroom apartment was

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about \$1.00 per square foot per month. He further replied that the applicant would expect between \$500.00 and \$800.00 per month for the apartment rentals.

Ms. Davis asked the applicant to reiterate what the hardship on the property was. Mr. Marcotte replied that second floor office spaces were very difficult to rent and there was a lot of competition. He also said that building larger units would not attract the rent because they felt it was not an appropriate place for children and it would go unrented.

Mr. Dearborn commented that fourteen of the sixteen proposed apartments were undersized. He further commented that of those, four were 60% of the required size and another four were 70% of the required size. He asked if the applicant could have reduced the number of apartments to twelve to make them more in compliant. He asked if the younger people would be impacted by the fact that two of the establishments in the building sold liquor and also, what kind of noise impact there would be. Mr. Marcotte replied that most of the businesses below the proposed apartments were operated during the day he did not feel having liquor nearby would corrupt the younger generation.

Mr. Martin commented that he felt the proposal was a good use for that end of town.

Ms. Davis commented that she failed to see the hardship on the property and that the applicant was currently enjoying the reasonable use. She further commented that she felt it was a self-created hardship due to the number of apartments that were being proposed.

Chairman Seabury commented that he felt there were some things in the ordinance that were like a brick wall. He further commented that he felt the best thing to do was not to ask for a Variance but to get the ordinance changed. He also commented that he agreed that he did not see the hardship on the property and he felt there was a lot that could have been done to the property to make the building more attractive.

Ms. Davis made a motion to deny the request for a Variance.

Ms. Shuman seconded the motion.

Ms. Davis, speaking on her motion, stated that she did not feel there was a hardship on the property, that the applicant was enjoying its reasonable use and that there could have been a better plan that would be less intrusive - so that each individual apartment would comply with the ordinance.

Ms. Shuman, speaking on her second, stated that she did not feel the applicant satisfied the hardship criteria.

Mr. Martin commented that he too did not feel the applicant had met the hardship criteria even though he did think it was a good use.

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Chairman Seabury commented that he did not think the applicant had met the hardship criteria and he felt it was specifically contrary to the ordinance. He said the Board bent the ordinance a lot when Variances were issued and that he felt the right way to go about this was to have the people in the town vote on it and agree to it.

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

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

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

VI. OTHER BUSINESS

1. James & Sharon Gray, 6 Timothy Lane, Hudson – Request for Re-Hearing for a Home Occupation Special Exception (Letter received on 12/16/13.)

Mr. Martin made a motion to suspend reading the letter from James & Sharon Gray into the record.

Chairman Seabury stated that the motion failed due to the lack of a second.

Chairman Seabury read aloud a letter addressed to the Zoning Board of Adjustment, from James & Sharon Gray, received on December 16, 2013. RE: Permit Denial for Grays Contracting. (Recorder's note: This letter is on-file at the Community Development Department and is a matter of public record) (My opinion is that it should be noted in the minutes that this letter is attached to the original set of minutes as Attachment A???)

Ms. Davis stated that although she was present at the November 14, 2013, meeting and heard the testimony, she did not sit on the case.

Chairman Seabury acknowledged a letter addressed to the Zoning Board of Adjustment, from Attorney J. Bradford Westgate, dated January 14, 2014, in which it stated that he was prepared to work with the applicants and that they had initially appeared before the Board without the benefit of legal counsel.

Mr. Martin, commenting on the letter from Mr. & Mrs. Gray, said that Mr. Pitre was a sales manager and it was quite possible that he did not even recognize Mr. Gray. He also said that Mr. Gray obviously recognized Mr. Pitre and he should have said that he knew him.

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Mr. Martin stated that many of the complaints listed in the letter requesting a rehearing were Code Enforcement issues and not the purview of the Zoning Board of Adjustment. He further stated that the only new piece of information was the fact that Mr. Pitre should have recused himself from the case. Mr. Martin said that he did not think that this fell into the category of a Home Occupation Special Exception because it there were employees.

Mr. Dearborn stated that he had visited the property that morning and saw multiple vehicles and trucks. He also stated that the dumpster that was located at 8 Timothy Lane was no longer there.

Ms. Davis stated that no one knew the details with regard to Mr. Pitre's prior acquaintance with the applicant and he was not present to defend himself one way or another. She further stated that she felt a serious accusation had been made and that she felt the Board should re-hear the case.

Ms. Davis made a motion to re-hear the case.

Mr. Martin seconded the motion.

Ms. Davis, speaking on her motion, stated that Mr. Pitre had made the motion and there was some question as to whether his decision was ethical or not.

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

VOTE: Chairman Seabury asked Acting Clerk Houle to poll the Board on the motion to approve the Request for a Re-Hearing and to record the members' votes, which were as follows:

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

Chairman Seabury declared that, there having been five votes to approve the Request for a Re-Hearing, the motion had carried.

2. Appeal of Century Park, LLC – Tax Map 170-38/25 Constitution Drive. Reference letter dated 12/13/13 from Cleveland, Waters, and Bass, P.A.

Chairman Seabury stated that the Board had received a letter informing them that the above applicant's request had been withdrawn – pointing out that it was not in the form of a request but as a directive.

Mr. Martin made a motion to accept the withdrawal of the Request for an Administrative Appeal with prejudice.

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Ms. Davis seconded the motion.

Mr. Martin did not have anything to add to his motion.

Ms. Davis commented that she was happy it was withdrawn with prejudice because if it came back to the Board, it would have had to be substantially different.

VOTE: Chairman Seabury asked Acting Clerk Houle to poll the Board on the motion to accept the withdrawal of the Request for an Administrative Appeal with prejudice, and to record the members’ votes, which were as follows:

Mr. Martin	To accept the withdrawal with prejudice
Ms. Davis	To accept the withdrawal with prejudice
Mr. Pacocha	To accept the withdrawal with prejudice
Ms. Shuman	To accept the withdrawal with prejudice
Mr. Seabury	To accept the withdrawal with prejudice

Chairman Seabury declared that, there having been five votes to accept the withdrawal of the Request for an Administrative Appeal with prejudice, the motion had carried.

3. Appeal of ZBA Decision for Case 165-145 & 146 – Motion for Rehearing. [Reference letter dated 01/07/14 from Wadleigh, Starr & Peters, P.L.L.C.]

Chairman Seabury read aloud a letter addressed to the Zoning Board of Adjustment, from Attorney James D. Kerouac, dated January 7, 2014. RE: Case 165 - 145 &146 (Recorder’s note: This letter is on-file at the Community Development Department and is a matter of public record) (My opinion is that this should be attached to the original minutes as Attachment B ?????)

Chairman Seabury stated that Ms. Shuman and Mr. Pacocha would step down from the case as they were not present when the case was initially heard. Chairman Seabury sat Mr. Houle in place of Ms. Shuman and Mr. Nolin in place of Mr. Pacocha, who had both stepped down.

Ms. Davis stated for the record, that the members sitting on this case were Mr. Martin, Mr. Nolin, Mr. Dearborn, Mr. Houle, and Mr. Seabury.

Chairman Seabury stated that all five of the sitting Board members had approved the applicant’s request for a Wetland Special Exception but that the Variance was 3 to 2 – to deny.

Mr. Martin stated that he did not see any new evidence presented for either request that was not available at the initial hearing.

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Mr. Martin also said that Attorney Kerouac had stated that that the increase in traffic on Derry Road would have required a traffic study and that was a matter for the Planning Board, not the Zoning Board of Adjustment.

Mr. Dearborn stated that he voted in favor of the Wetland Special Exception based on testimony he heard that night saying that the wetland was a seasonal created wetland and was primarily run-off from the car wash. He added that the applicant had assured the Board that the situation would be rectified if not totally eliminated.

Chairman Seabury replied that the applicant was not going to rectify it or eliminate it but that they would not be adding to it.

Chairman Seabury stated that he had some difficulty with the case based on his own knowledge of the area and the Conservation Commission’s response that it was not a valuable wetland. He said he voted to deny the request for a Variance because the applicant was proposing to construct a building in the setback and he could not accept that.

Ms. Davis stated that she did not sit on the case but the question before the Board was whether or not the members would have made the same decision with respect to the request for a Variance.

Mr. Martin made a motion not to rehear the case.

Mr. Dearborn seconded the motion.

Mr. Martin, speaking on his motion, stated that he did not feel there was any new evidence presented that would have led him to rehear the case nor did he feel the Board made an unlawful or unreasonable decision.

Mr. Dearborn, speaking on his second, stated that he agreed with what Mr. Martin said and added that if the applicant had a problem with the size of the building, they should have gone before the Planning Board and contested it – noting that was not for the Zoning Board of Adjustment to decide.

VOTE: Chairman Seabury asked Acting Clerk Houle to poll the Board on the motion to deny the Request for a Rehearing, and to record the members’ votes, which were as follows:

Mr. Martin	To deny the Request for a Rehearing
Mr. Dearborn	To deny the Request for a Rehearing
Mr. Nolin	To deny the Request for a Rehearing
Mr. Houle	To deny the Request for a Rehearing
Mr. Seabury	To deny the Request for a Rehearing

Chairman Seabury declared that, there having been five votes to accept to deny the Request for a Rehearing, the motion had carried.

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V. DISCUSSION OF ANY TOWN/STATE ACTIVITY OF INTEREST TO THE BOARD

Chairman Seabury stated that he felt the Decision Sheets took an inordinately long time to fill out and that most of the members of the Board were not actually writing anything on them, but just circling the yes's and no's.

Ms. Davis asked if the Decision Sheets were helpful if they went to court. Chairman Seabury replied they were not. He also said that the information should be in the motions and why the members made those motions.

Mr. Dearborn asked whether or not it would be a good idea to get the town counsel's opinion. He further said that he, personally, liked the Decision Sheets.

Ms. Davis stated that she was under the impression that the Board was supposed to write on the back of the Decision Sheets substantiating their decision.

Mr. Dearborn stated that he felt there should be a comment section added to the Decision Sheets.

Mr. Pacocha stated that he tried to address every criterion on the Decision Sheet so that the courts would not send it back due to a lack of information.

Ms. Shuman asked if the courts saw copies of the DVD. Chairman Seabury replied that they only got a hard copy of the minutes.

Mr. Martin suggested that the Board have the two scheduled meetings per month and hear the case at the first meeting and make the decisions at the second meeting.

Chairman Seabury stated that he would write a letter to Attorney Buckley and request his advice with regard to the Decision Sheets.

Chairman Seabury stated that he returned Mr. Pacocha and Ms. Shuman to their respective seats as full voting members of the Board returned Mr. Houle and Mr. Nolin to their seats as non-voting alternate members.

Ms. Davis stated for the record, that at this point, the sitting Board members were Ms. Shuman, Mr. Martin, Mr. Pacocha, Ms. Davis, and Chairman Seabury.

VI. RE-ORGANIZATION OF THE BOARD

Ms. Davis made a motion to nominate J. Bradford Seabury as Chairman of the Board.

Mr. Dearborn made a motion to close the nomination. Ms. Davis seconded the motion.

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Mr. Dearborn, as an alternate, was not supposed to make a motion but nobody went back to rectify it.

Chairman Seabury called for a verbal vote and he then stated that four of the sitting Board members were in favor of electing J. Bradford Seabury to the role of Chairman of the Board - 4-0-1 (Chairman Seabury abstained from the vote.)

Ms. Shuman made a motion to nominate Normand Martin as Vice Chairman of the Board.

Ms. Davis made a motion to nominate Michael Pitre as Vice Chairman of the Board.

Chairman Seabury called for a show of hands vote and declared that Mr. Martin was duly elected to the role of the Vice Chairman of the Board.

Ms. Davis made a motion to nominate Mr. Dearborn as Clerk of the Board.

Mr. Martin made a motion to nominate Mr. Nolin as Clerk of the Board.

Mr. Pacocha stated that he would abstain from the vote. Chairman Seabury stated that because Mr. Pacocha had abstained from the vote he seated Mr. Houle in place of Mr. Pacocha.

Chairman Seabury called for a show of hands vote and declared that Mr. Dearborn was duly elected to the role of the Clerk of the Board. 3-2

VII. APPROVAL OF MEETING MINUTES

The following changes/edits were made to the meeting minutes of the October 24, 2013, meeting minutes:

1. Page 2 – “and he turned the gavel over to Vice Chairman Pitre” - was added - Martin
2. Page 3 – “and Mr. Dearborn returned to his seat as a non-voting alternate” – was added – Dearborn
3. Page 4 – 5th paragraph – “Acting Chairman Pitre” was changed to “Chairman Seabury” – Martin
4. Page 4 – Vote – “Mr. Dearborn” was changed to “Mr. Pitre” – Martin
5. Page 4 – Adjournment – “Mr. Dearborn” was changed to “Mr. Pitre” - Martin

Mr. Martin made a motion to approve the minutes from the October 24, 2013, meeting, as amended by the Board.

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Ms. Davis seconded the motion.

Chairman Seabury called for a verbal vote, and he then declared that all of the voting Board members were in favor of approving the minutes from the October 24, 2013, meeting, as amended by the Board.

Mr. Martin made a motion to defer reviewing the meeting minutes from the December 12, 2013, meeting due to the late hour, until the next scheduled meeting.

Ms. Shuman seconded the motion.

Chairman Seabury called for a verbal vote and he then stated that all of the sitting Board members were in favor of deferring reviewing the meeting minutes from the December 12, 2013, meeting until the next scheduled meeting.

Chairman Seabury appointed Ms. Davis to chair a committee for the purposes of reviewing the ordinances as it pertained to zoning. He said that he and Ms. Shuman would also sit on that committee.

VIII. ADJOURNMENT

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

Ms. Shuman seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 11:26pm.

Date: January 28, 2014

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun