



TOWN OF HUDSON

Zoning Board of Adjustment

J. Bradford Seabury, Chairman

Ben Nadeau, Selectmen Liaison

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HUDSON ZONING BOARD OF ADJUSTMENT

MEETING MINUTES

December 12, 2013

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:30pm on Thursday, December 12, 2013, in the Paul Buxton Meeting Room in the Town Hall basement. Chairman Seabury then requested Acting Clerk Houle to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

Present: Normand Martin, Mike Pitre, and J. Bradford Seabury

Members

Absent: Jim Pacocha, and Donna Shuman (both Excused)

Alternates

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

Alternates

Absent: Maryellen Davis (Excused)

Staff

Present: William Oleksak, Zoning Administrator

Recorder: Trish Gedziun

II. SEATING OF ALTERNATES AND ANNOUNCEMENTS

For the benefit of all attendees, Chairman Seabury noted that copies of the agenda for the meeting, as well as an outline of the rules and regulations governing hearings before the Zoning Board of Adjustment, were available at the door of the meeting room. He noted the outline included the

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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.

Chairman Seabury seated Mr. Dearborn in place of Mr. Pacocha and Mr. Nolin in place of Ms. Shuman, who were both excused.

Chairman Seabury stated the Mr. Houle would assume the role as Clerk as Ms. Davis was excused.

III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

2. **Case 170-038-000 (12/12/13), Deferred from 10-24-13: Century Park, LLC, appealing party. This is an appeal pursuant to RSA 676:5, III of so much of the September 11, 2013, decision of the Town of Hudson Planning Board that had determined that the applicant, John W. Jamer/Unicorn Industrial Park (the "Applicant"), could construct a building within 50 feet of Hudson Park Drive, contrary to Section 334-27.2 of the Hudson Zoning Ordinance.**

Chairman Seabury stated that the Board had received an unsigned e-mail from Attorney Brad Westgate, from Winer and Bennett, LLP, which read "As council for Mr. John Jamer, he was confirming that the matter had been settled and tonight's hearing was not necessary."

Chairman Seabury informed Mr. Anthony Basso, who was seated in the audience, that he was not satisfied with an unsigned e-mail.

Mr. Martin pointed out that although an e-mail was received from Attorney Westgate, that what the Board should have received was a Request for a Withdrawal from Century Park, LLC.

Ms. McGrath stated that she would step down from hearing or voting on this case as she was a member of the Planning Board and had previously heard the case.

Mr. Martin made a motion to defer the case until the next available meeting, in which time the Board would receive a Request for a Withdrawal from the applicant, Century Park, LLC, or the case would be denied.

Mr. Pitre seconded the motion.

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Chairman Seabury called for a verbal vote, and he then declared that all of the voting Board members were in favor of deferring the case until the next available meeting, in which time the Board would receive a Request for a Withdrawal from the applicant, Century Park, LLC, or the case would be denied.

1. **Case 222-029-000 (12/12/13), Deferred from 10-24-13: Maiko Veilleux, 23 Wason Road, Hudson, requests an Accessory Living Unit (ALU) for an existing living unit in the basement that was established prior to the purchase of the house. They were unaware that it was illegal and now want to rectify that issue. [Map 222, Lot 029, Zoned G, HZO Article XIII A Section 334-73.8 Existing legal nonconforming and illegal Accessory Living Units.]**

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

Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board.

Mr. Oleksak explained that it had been discovered that there was an illegal Accessory Living Unit in the home. He further stated that the owner was notified and was presently before the Board to rectify the situation.

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

Mr. Maiko Veilleux, the applicant, addressed the Board, and read aloud from the Application for an Accessory Living Unit summarized as follows:

1. *An ALU is allowed only in one-family dwellings. An ALU is not allowed in a two-family or multi-family dwellings, or any non-residential uses. An ALU is expressly prohibited in an Open Space Development. This site will conform to this requirement by:*

The property is not in an open-space development. The property is a one-family dwelling and is used for residential purposes.

2. *An ALU is not allowed as a free-standing, detached structure or as part of any structure which is detached from the principal dwelling. This site will conform to this requirement by:*

The property is not free-standing or a detached structure. The ALU exists in the basement of the residence.

3. *An ALU is to be occupied only by immediate family members (by blood or marriage) of the owner of record of the principal dwelling. An ALU is not allowed in any principal dwelling in which the owner of record of the principal dwelling does not personally reside. This site will conform to this requirement by:*

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The ALU is occupied by Carl Veilleux, the owner's brother. The owner resides on the property.

- 4. The front face of the principal dwelling structure is to appear as a one-family dwelling after any alterations to the structure are made to accommodate an ALU. This site will conform to this requirement by:*

This property complies with these requirements. Picture enclosed.

- 5. At least one common interior access between the principal dwelling unit and an ALU must exist. A second means of egress from an ALU must exist and be located at the side or rear of the structure. This site will conform to this requirement by:*

A door which meets the fire department qualifications complies with this requirement. The door is located in the basement in between the unit right by the front door.

- 6. Separate utility service connections and/or meters for the principal dwelling unit and an ALU shall not exist. (This does not preclude using a type of heating system for an ALU different from the type for the principal dwelling unit. This site will conform to this requirement by:*

It is all the same utilities and septic.

- 7. Off-street parking shall be provided to serve the combined needs of the principal dwelling unit and an ALU. This site will conform to this requirement by:*

A parking space is provided for the ALU.

- 8. The gross living area (GLA) of an ALU shall not be less than 350 square feet, and shall not exceed 50% of the principle structure or 1,000 square feet, whichever is less. The above-grade GLA of the principal dwelling shall not be reduced to less than 850 square feet in order to accommodate the creation of an ALU. This site will conform to this requirement by:*

There is 400 square feet for the ALU and over 2,200 square feet for the main residence. Pictures are included.

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9. *A Building Permit for an ALU must be approved and issued prior to the construction of an ALU. The ALU shall have an interconnected smoke alarms per Section R313.2.1 of the 2006 IRC Building Code. This site will conform to this requirement by:*

The Hudson Fire Department inspected and approved the ALU on July 26, 2013.

Chairman Seabury stated that the applicant had also initialed the remaining five requirements indicating that he understood them.

Mr. Veilleux submitted a letter to the Board which indicated that his brother was the occupant of the ALU.

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. Pitre asked when the applicant had purchased the property. Mr. Veilleux replied that he had purchased it in 2005.

Mr. Pitre asked the applicant when the work had been done. Mr. Veilleux replied the he had the addition done – adding that he had a building permit for it. He further replied that the kitchen and bathroom were already in existence when he bought the property.

Mr. Nolin asked if the backdoor entrance was behind the building to the side of the garage. Mr. Veilleux replied that it was in the back, opposite of the garage and went directly into the ALU.

Mr. Nolin asked where the egress to the main house was. Mr. Veilleux replied the egress was in the back of the house by the bedroom and led out to the front door.

Chairman Seabury asked if there was a back door to the main part of the house. Mr. Veilleux replied that there was a back door.

Ms. McGrath commented that the applicant needed to testify that if the property were sold, that this ALU would not carry forward to the new owner. She also stated that she felt many residents were selling their property without notifying the new owners that an existing ALU may be illegal.

Mr. Veilleux testified that he understood if the property were sold, the ALU would not carry forward to the new owner.

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Mr. Oleksak stated that the Assessor’s Office had been very active in this area and notified him of any known ALU’s. He further stated that he then would send a letter to the new property owner inquiring if they were or were not planning on using the ALU. He said that realtors had come into the office asking if a particular ALU was legal or not.

Mr. Nolin made a motion to approve the request for the continued use of a previously illegal Accessory Living Unit.

Mr. Martin seconded the motion.

Mr. Nolin, speaking on his motion, stated that he felt that based on the applicant’s testimony, he had met all of the requirements for an ALU. He further stated that the applicant had submitted a letter with the name of the person occupying the ALU.

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

VOTE: Chairman Seabury asked Acting Clerk Houle to poll the Board on the motion to approve the request for the continued use of a previously illegal Accessory Living Unit, and to record the members’ votes, which were as follows:

Mr. Nolin	To approve
Mr. Martin	To approve
Mr. Dearborn	To approve
Mr. Pitre	To approve
Mr. Seabury	To approve

Chairman Seabury declared that, there having been five votes to approve the request for the continued use of a previously illegal Accessory Living Unit, the motion had carried.

- 3. **Case174-136-000 (12/12/13): Steven A. Forkey, 18 Gloria Avenue, Hudson, requests an Accessory Living Unit (ALU) to be located within a proposed addition. [Map 174, Lot 136, Zoned TR, HZO Article XIII A, Section 334-73.3, Accessory Living Units.] Approximately 600 square feet of the addition is for the ALU.**

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

Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board.

Mr. Oleksak explained that the applicant had come into the Town Hall requesting an addition. The addition was for an Accessory Living Unit and therefore, we informed the applicant that he had to appear before the Zoning Board of Adjustment for permission.

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

Mr. Steven Forkey, the applicant, addressed the Board, and read aloud from the Application for an Accessory Living Unit, summarized as follows:

1. *An ALU is allowed only in one-family dwellings. An ALU is not allowed in a two-family or multi-family dwellings, or any non-residential uses. An ALU is expressly prohibited in an Open Space Development. This site will conform to this requirement by:*

It is remaining a one-family dwelling with an attached ALU.

2. *An ALU is not allowed as a free-standing, detached structure or as part of any structure which is detached from the principal dwelling. This site will conform to this requirement by:*

It is remaining attached.

3. *An ALU is to be occupied only by immediate family members (by blood or marriage) of the owner of record of the principal dwelling. An ALU is not allowed in any principal dwelling in which the owner of record of the principal dwelling does not personally reside. This site will conform to this requirement by:*

The ALU will be housing a family member, my mother.

4. *The front face of the principal dwelling structure is to appear as a one-family dwelling after any alterations to the structure are made to accommodate an ALU. This site will conform to this requirement by:*

The ALU will be located behind the garage.

5. *At least one common interior access between the principal dwelling unit and an ALU must exist. A second means of egress from an ALU must exist and be located at the side or rear of the structure. This site will conform to this requirement by:*

There is a common room in between the dwellings. See Drawing.

6. *Separate utility service connections and/or meters for the principal dwelling unit and an ALU shall not exist. This does not preclude using a type of heating system for an ALU different from the type for the principal dwelling unit. This site will conform to this requirement by:*

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We are keeping the existing utility services as a single dwelling.

7. *Off-street parking shall be provided to serve the combined needs of the principal dwelling unit and an ALU. This site will conform to this requirement by:*

See plans for proposed garage.

8. *The gross living area (GLA) of an ALU shall not be less than 350 square feet, and shall not exceed fifty percent of the principle structure or 1,000 square feet, whichever is less. The above-grade GLA of the principal dwelling shall not be reduced to less than 850 square feet in order to accommodate the creation of an ALU. This site will conform to this requirement by:*

We are adding 670 square feet for the proposed ALU with 946 square feet existing addition with 624 square foot garage.

9. *A Building Permit for an ALU must be approved and issued prior to the construction of an ALU. The ALU shall have an interconnected smoke alarms per Section R313.2.1 of the 2006 IRC Building Code. This site will conform to this requirement by:*

We plan on following the rules and plan on upgrading the existing alarms as well.

TERM OF SPECIAL EXCEPTION APPROVAL: Any Special Exception granted to permit the creation of an ALU in accordance with Provisions 1 through 9 listed on the previous pages of this application, is to benefit the original applicant for same exclusively. The approval by Special Exception granted shall expire when the owner of record of the principal dwelling conveys the property by sale or ceases to personally occupy either the principal dwelling unit or the ALU. In the event the Special Exception approval expires, one of the following provisions must be met:

- a. *The original applicant shall notify the Zoning Administrator of such occupancy termination.*
- b. *If a new owner of record of the principal dwelling desire to maintain the existence of the previously approved ALU, an application must be submitted to the ZBA prior to conveyance of the subject property.*

Chairman Seabury stated that the applicant had read, understood, and initialed the following seven paragraphs on the application.

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Chairman Seabury asked what was going to be on the second floor. Mr. Forkey replied that he had not yet decided.

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. Pitre asked if there were a setback issue in front of the house. He said the existing structure was too close to the road.

Chairman Seabury stated there was a setback issue and that the applicant should also request an Equitable Waiver.

Mr. Forkey submitted a written request to the Board for an Equitable Waiver for the front and side setbacks.

Ms. McGrath asked if the proposed plan was to have two driveways. Mr. Forkey replied that was correct.

Chairman Seabury stated that would be an issue as two driveways were not allowed in the town of Hudson except by permission by the Planning Board.

Mr. Dearborn asked what would happen to the existing small stone retaining wall. Mr. Forkey replied that the entire length of that wall would come out with the construction of the addition.

Ms. McGrath stated that there was also a shed located in the setback. Mr. Forkey replied that the shed would be moved out of the setback once the proposed addition had been completed.

Mr. Dearborn made a motion to approve the request for an Accessory Living Unit with the following three stipulations:

1. The Equitable Waiver be approved for the front and side setbacks.
2. The existing driveway is to be eliminated prior to the issuance of the Certificate of Occupancy for the ALU.
3. The existing shed is to be moved out of the setback no closer than 15 feet from the property line.

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Mr. Pitre seconded the motion.

Mr. Dearborn, speaking on his motion, stated that he felt the owner had agreed to the stipulations and had met all of the criteria for an Accessory Living Unit.

Mr. Pitre, speaking on his second, stated that felt the design was very good, it conformed with the town’s ordinances, and the setback issues were also being addressed.

VOTE: Chairman Seabury asked Acting Clerk Houle to poll the Board on the motion to approve the request for an Accessory Living Unit, with the noted stipulations, and to record the members’ votes, which were as follows:

Mr. Dearborn	To approve
Mr. Pitre	To approve
Mr. Martin	To approve
Mr. Nolin	To approve
Mr. Seabury	To approve

Chairman Seabury declared that, there having been five votes to approve the request for an Accessory Living Unit, with the noted stipulations, the motion had carried.

Chairman Seabury stated that Ms. McGrath was excused from the meeting at 8:27pm.

Chairman Seabury declared a break at 8:27pm, calling the meeting back to order at 8:33pm.

- 4. **Case 165-145 & 146 (12-12-13): Elcan and Associates, Inc., 3601 Spring Hill Business Park, Suite 201, Mobile, AL, 36608, requests the following:**
 - A. **Wetland Special Exception to encroach into the wetland buffer for 20,670 sq. ft. and a permanent wetland impact of 2,636 sq. ft. for the proposed access, drainage, swales, slope grading, and other devices to control the volume and timing of storm water run-off within the Wetland Conservation District, located at 66 & 68 Derry Street, Hudson. [Map 165, Lots 145 & 146, Zoned B, HZO Article IX, Section 334-35 B (2). Uses within Wetland Conservation District.]**
 - B. **A Variance to permit construction, loading and parking within the wetland buffer within the Wetland Conservation District. [Map 165, Lots 145 & 146, Zoned B, HZO Article IX, Section 334-35C].**

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

Mr. Pitre made a motion to hear the case as one presentation but to vote on the requests separately.

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Mr. Martin 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 hearing the case as one presentation, but to vote on the requests separately.

Discussion with regard to the request for a Wetland Special Exception

Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board.

Mr. Oleksak explained that any time there was an encroachment into the wetland buffer it had to be addressed by the Zoning Board of Adjustment for approval.

Chairman Seabury read aloud a letter dated September 9, 2013, from the Conservation Commission, summarized as follows:

Motion to Recommend:

With Stipulations:

1. *Construction and restoration shall comply with: BEST MANAGEMENT PRACTICES TO CONTROL NON-POINT SOURCE POLLUTION: A GUIDE FOR CITIZENS AND TOWN OFFICIALS. (NH Department of Environmental Sciences – Current Issue.*
2. *During construction and restoration erosion control barriers shall be installed and maintained to the satisfaction of the Town Engineer.*
3. *An oil trap shall be installed in the existing catch basin at the northwest edge of the carwash parking lot, on the applicant's property, and improvements shall be made to the existing curbing in this area to prevent storm water overtopping of the curbing and directly entering the wetland.*
4. *During clearing for construction in the buffer area proper methods for the clearing and disposal of invasive species (Knotweed) shall be used to the satisfaction of the Town Engineer.*

It is understood that the proposed site plan will also require a Use Variance to permit the construction of the parking areas and structures in the Wetland Conservation District.

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Chairman Seabury read aloud a letter dated September 30, 2013, from the Planning Board, summarized as follows:

At its September 25, 2013, meeting, the Planning Board voted to forward favorable correspondence to the Zoning Board of Adjustment, citing that the Planning Board has no concerns relative to the Wetland Special Exception Permit Application, calling for a proposed permanent wetland impact of 2,636 square feet, and the permanent buffer impact is 20,670 square feet.

Chairman Seabury stated that he had been contacted by the Chairman of the Conservation Commission, Mr. Jim Battis, who had said that he had some concern that the Conservation Commission was now being asked to provide input with respect to a Variance. He further stated that Mr. Battis asked if the Zoning Board of Adjustment wanted to meet with the Conservation Commission to discuss it.

Chairman Seabury stated that he did not think that was necessary.

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

Mr. Tony Basso, LLS, Keach-Nordstrom Associates, Inc., representing the applicant, addressed the Board, stating that over many years they just used to do a Special Exception for any kind of use within the wetland or wetland buffer. He said that after many years of doing it that way, it was decided that Variances were needed instead. He said that because he felt the Conversation Commission did not understand the difference between a Special Exception and a Variance, he had asked them for a comment one way or another.

Chairman Seabury stated that the ordinance required the Conservation Commission to provide input with regard to Wetland Special Exceptions but it did not say anything about providing input for Variances.

Mr. Basso stated that the property was across from Ledge Road with the front being on Rte. 102 and sloped down about 29 feet to the back. He said that the wetland buffer had been previously disturbed.

Mr. Basso stated that the run-off from the nearby car wash parking lot (partially located on the applicant's property) drained through a catch basin which flowed through an outlet into the wetland and then conveyed into an inlet which took the drainage away.

Mr. Basso stated that Gove Environmental Services, Inc. had done the wetland mapping and they found that the wetland was a low value wetland that provided some storm water retention from the storm water coming from the car wash. He said that it basically provided some level of treatment which was evident by the big sand plume that was there. He also said that it was a disconnected wetland and that the buffer

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was full of Japanese Knotweed and some other invasive species that needed to be dealt with. Mr. Basso said that there was not a lot of habitat located there.

Mr. Basso stated that the applicant was proposing to impact only the finger of the wetland that was located on their property as well as the wetland buffer located along that finger. He said that the wetland and wetland buffer had to be impacted in order to provide a reasonable use of the development of the property.

Mr. Basso stated that the buffer would become a slope and all of the invasive species would be removed and the trash would be cleaned up. He also said that the development was being proposed as retail.

Mr. Basso said that the storm water could be treated, retained, and detained completely mechanically on-site. He also said the curbing by the catch basin would also be fixed and a gas/oil separator would be installed.

Mr. Basso read aloud from the Application for a Wetland Special Exception summarized as follows:

1. *The proposed use is essential to the reasonable use of land outside the Wetland Conservation District:*

The proposed commercial retail use is commensurate with surrounding similar land uses and is located on Route 102, a prime retail business corridor and without the isolated on-site wetland, the proposed would likely move forward within usual and customary regulatory compliance.

2. *There is no reasonable alternative to the proposed use that does not adversely affect the Wetland Conservation District.*

The proposed commercial retail use is germane to the surround business community. It is highly likely and nearly inevitable some form of retail development would occur on the subject parcel within the foreseeable future. In order to competitively develop this parcel, the building size or sizes must be large enough to house a viable tenant. A smaller development requiring less lot coverage is not practical, given the site's urban setting.

There are likely no reasonable alternatives to develop this site without impacting the existing environmental areas, due to their location, elevation difference, relatively low functional assessment and regulatory need to provide safe and adequate parking, access and drainage.

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3. *Design, construction and maintenance methods shall be prepared by a Profession Engineer (PE) and shall include restoration of the site, as nearly as possible, to its original grade and condition.*

The project's design, permitting, construction and maintenance methods will be designed by Keach-Nordstrom Associates, Inc. - Professional Engineers.

Unfortunately, in this site specific application, maintaining original grade is not practical or feasible, hence the need for a Wetland Special Exception. However, the original site grades will be maintained wherever feasible and sensible.

For example, all site re-grading will occur within the property boundary without requiring the need for specialized construction practices, such as retaining walls. For this reason, the proposed design will maintain and restore the original grade within the property limits with one exception.

The proposed project will seek to proactively cooperate with the adjacent land owner to the north to improve the existing unmaintained and overgrown “abandoned lane.” Improving this area through minor re-grading and re-vegetation will vastly enhance the aesthetic appearance of both properties.

As an integral part of this project, general construction sequencing and erosion control practices have been implemented according to the State of New Hampshire, Department of Environmental Services Best Management Practices as described in the manual for Storm water Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire.

4. *The proposed use within the Wetland Conservation District is not based primarily on economic considerations.*

While the proposed retail use is based on various economic considerations, there are also many other site feasibility factors as well. Similar business uses want to be near their primary competitors. The location of the site provides the required infrastructure most commonly sought after. Also, the traffic counts are favorable along this major arterial roadway.

5. *Provision is made for wildlife access corridors to promote the free migration of wildlife along the length of the Wetland Conservation District.*

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The proposed use is located within a largely developed corridor, having insignificant wildlife habitat, according to the report prepared by Gove Environmental Services, Inc. (Note: Complete report is available as part of the full public record located at the Community Development Department)

Chairman Seabury asked if there were anyone else present who wished to speak in favor with regard to the request for a Wetland Special Exception. 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 request for a Wetland Special Exception.

Attorney Jim Kerouac, Wadleigh, Starr, and Peters, representing Hudson Vicary, LLC, addressed the Board, stating that his client owned the Hudson Mall located at 77 Derry Road. He said there were some concerns with regard to both applications.

Attorney Kerouac stated that it was suggested repeatedly in the application that it was necessary to have particular size buildings to house viable tenants. He said there was no place in the application that the particular tenants or the particular nature of the retail tenants were identified. He further said that he felt there were different impacts that could have resulted from the particular retail uses that could have been put there. He said he felt it was important to have that information for a full and fair evaluation of the project under the applicable criteria for both the Variance and the Special Exception.

Attorney Kerouac stated that the general purpose of the wetland buffer was to protect the existing wetland resources. He further stated that in this case, the site was very challenged with a steep slope and that the applicant was going to be creating a steeper slope in the buffer area. Attorney Kerouac said that he wanted to have his client's engineer take a look at the reports and calculations that were prepared by Keach-Nordstrom and Gove Environmental Services so that he could submit additional comments based on a peer review. He said he felt that the case should be deferred until that time.

Attorney Kerouac stated that he did not feel the applicant had provided sufficient evidence to prove that all of the necessary criteria had been met. He said that with respect to the first criteria, the applicant suggested that the impact to the buffer was essential to the reasonable use of the property but he felt that it was essential to the maximum use of the property to generate the highest possible economic value – which violated one of the criteria for a Special Exception.

Attorney Kerouac said that additionally, he had not heard about alternatives that would reduce the square footage of the proposed buildings. He said he was just told that they need to do it that way or they would not have tenants. He said that he felt there were alternative designs that could have been used.

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Ms. Diane Cannava, 36 Willow Creek Drive, addressed the Board, stating that she lived west of Derry Street, directly behind the proposed development. Historically, the abutting wetland naturally overflowed and saturated the landscaped area of Willow Creek. She said her major concern was that granting a Wetland Special Exception to encroach into the wetland buffer would affect the existing water table that historically leveled it, and that the residents of Willow Creek would be impacted by flooding of a common area and the basements of the two back buildings. She further said that the water saturation turned into a sheet of ice in the winter.

Ms. Cannava also stated that there were concerns with where vehicles would be entering and exiting from the proposed property.

Chairman Seabury commented that the ordinance dictated that when and if the proposed project were completed, there could not be any additional water flowing onto surrounding properties.

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

Mr. Basso, addressing the opposing testimony, stated that he was not allowed to increase storm water at the property lines per the regulations and would be happy to prove that as part of the Planning Board application. He said that he agreed that there was quite a bit of storm water which came from the site and would be happy to meet with the condominium Board and share the information. Mr. Basso stated that his hope would be to actually decrease the volume as well as the peak rate.

Mr. Basso stated that he felt the opposing owner of the Hudson Mall simply wanted to make sure the new development would not be taking a tenant. He said he wanted to maximize the development and that between the property and the site it was worth approximately \$8.5 million. He further said that was tax revenue with very little impact to the services of the town.

Mr. Basso said he was not in favor of giving a copy of the plan to Attorney Kerouac for a peer review. He said the project had no impact whatsoever on the Hudson Mall. He also said that he did state why the location of the site was necessary – it was the slope of the land. Mr. Basso stated that any traffic concerns would be addressed with the Planning Board.

Mr. Basso stated that since Attorney Kerouac had just showed up and produced a document, without any prior notice, he felt his client may need legal representation.

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Mr. Martin asked Mr. Basso if the piece of wetland could be considered a seasonal swale. Mr. Basso replied that it was not a perennial stream but that it flowed when there was storm water and that the parking lot provided a substantial amount of the run-off. He said it was really storm water related.

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 last time.

Mr. Dan Elcan, the applicant, addressed the Board, stating that he did want to address the concerns of the residents from the Willow Creek Condominiums. He said he did appreciate their concern and said that not only would he not speed up the flow of water but he planned on decreasing it.

Ms. Cannava expressed her appreciation.

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

Chairman Seabury declared the matter before the Board.

Mr. Dearborn asked how many parking spaces were being proposed. Mr. Basso replied there were 129 parking spaces being proposed and most were located in the front of the property but some were on the side.

Mr. Dearborn asked if there would be a septic system near the wetlands. Mr. Basso replied there would not be – noting that the final plan for sewer removal had not yet been decided.

Mr. Pitre commented that he felt the Willow Creek Condominiums were actually located in the wetland buffer. Mr. Basso replied that he agreed with that, but also stated that he was convinced that there were no wetlands located there when the condos were built in 1985.

Mr. Pitre asked how the number of parking spaces was figured out. Mr. Basso replied that the rule was one space per every 200 square feet for general retail.

Mr. Martin made a motion to approve the request for a Wetland Special Exception with the four stipulations provided by the Conservation Commission.

Mr. Dearborn seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt the applicant had successfully met all of the criteria for a Wetland Special Exception. He also stated that he felt the development would not have a

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negative effect on surrounding properties, it was in the spirit of the ordinance, and it was a good use of the property.

Mr. Dearborn, speaking on his second, stated that he agreed with everything Mr. Martin had said.

Chairman Seabury asked what rights this motion was affording the applicant.

Mr. Martin replied that he felt every property owner had the right to use their property as reasonable. He further said that he did not think it was unreasonable to have two buildings on one parcel of land.

Mr. Dearborn replied that part of the reason he seconded the motion was due to the testimony of the applicant that improvements would be made on the property.

Mr. Pitre commented that the Conservation Commission had given the application a favorable recommendation and that the Board usually followed that recommendation, but not always.

Chairman Seabury commented that he would vote in favor of the request as he did not feel the piece of land in question was much of a wetland. He said he felt the situation came about as a result of man-made error.

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

Mr. Martin	To approve
Mr. Dearborn	To approve
Mr. Nolin	To approve
Mr. Pitre	To approve
Mr. Seabury	To approve

Chairman Seabury declared that, there having been five votes to approve the request for the Wetland Special Exception, with the noted stipulations, the motion had carried.

Discussion with regard to the request for a Variance

Mr. Basso 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 because:*

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The proposed site re-development project involves both wetland and wetland buffer impacts associated with the construction and permanent use of site access, loading, parking, drainage, and slope grading improvements. While some of the existing wetland and buffer areas are impacted through the proposed site re-development, the main functionality remains intact and is improved upon with the latest storm water technologies – i.e. permeable pavers, groundwater infiltration through bio-retention and vegetated swales.

2. *The proposed use will observe the spirit of the ordinance because:*
 - a. *The proposed project will be designed, permitted, and constructed with strict adherence of applicable state and local storm water regulations.*
 - b. *The existing disconnected wetland area is not considered to be of high value and functions nor does the impacted area provide significant wildlife habitat.*
 - c. *The proposed project will utilize existing available public utilities.*
 - d. *The proposed development is well out of sight of the public eye.*
 - e. *The wetland area does not provide significant wildlife habitat according to a study prepared by Gove Environmental Services, Inc.*
 - f. *The wetland area does not contain any endangered species according to the NHB Report.*
 - g. *The wetland area is not considered to be of high value and functions.*
 - h. *The proposed site will not require any specialty containment or retaining devices.*
3. *Substantial justice would be done to the property owner by granting the Variance because:*

The proposed site is a permitted use within a vibrant business community situated amongst similar businesses.

4. *The proposed use will not diminish the values of surrounding properties because:*

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The proposed site is new construction and will likely add both aesthetic and real estate value to the surrounding commercial community.

5. *Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship because:*

The unique and special condition common to the proposed site is that it's the last of its kind.

It is a reasonable use because of its location, proposed use and preservation of local environmental functionality.

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.

Attorney Jim Kerouac, Wadleigh, Starr, and Peters, representing Hudson Vicary, LLC, addressed the Board, stating that he did not feel the applicant had met the criteria for a Variance.

Attorney Kerouac stated that he felt a smaller project, which would avoid the wetlands impacts, would be in the public's interest more so than the one that was on the table. He also noted that he felt the intensity of the project would impact the traffic but agreed that was a matter for the Planning Board.

Attorney Kerouac commented that he questioned whether or not the proposed size of the development met the requirements to prevent the overcrowding of land and to lessen the congestion on the streets.

Attorney Kerouac stated that he did not feel the applicant met the burden for substantial justice, he did not feel the applicant satisfied the hardship test, and he did not feel this particular use was reasonable due to the magnitude of it. He also said he felt that the Willow Creek Condominium's property value would be diminished if the development were built.

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

Ms. Diane Cannava stated that she did not feel her property value would be diminished by the proposed project.

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.

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Chairman Seabury declared the matter before the Board.

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

Mr. Dearborn seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt the applicant had met all of the criteria for a Variance and he felt it was a great use that would only improve and clean-up the site. He also stated that he did not feel it would diminish any property values, and it would provide the applicant with substantial justice.

Mr. Dearborn, speaking on his motion, stated that he 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 the Variance, and to record the members' votes, which were as follows:

Mr. Martin	To approve
Mr. Dearborn	To approve
Mr. Nolin	To approve
Mr. Pitre	To deny
Mr. Seabury	To deny

Chairman Seabury declared that, there having been three votes to approve the request for the Variance, and two votes to deny the Variance, the motion had carried.

IV. APPROVAL OF MEETING MINUTES

The following changes/edits were made to the meeting minutes of the November 14, 2013, meeting minutes:

1. Page 5 – the word “site” was changed to the word “sight” – Dearborn
2. Page 5 – 2nd to last paragraph – “but that the job...” was changed to “but that particular job...” – Seabury
3. Page 8 – 3rd from last paragraph – “No second being brought forward” was added to the beginning of the sentence – Seabury

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4. Page 9 – 2nd paragraph – “No second being brought forward” was added to the beginning of the sentence – Seabury

5. Page 11 – 2nd to last paragraph – “Chairman Seabury concurred.” was added to the end of the sentence - Seabury

Mr. Martin made a motion to approve the minutes from the November 14, 2013, meeting, as amended by the Board.

Mr. Dearborn seconded the motion.

Chairman Seabury called for a verbal vote, and he then declared that all of the voting Board members were in favor of approving the minutes from the November 14, 2013, meeting, as amended by the Board.

V. OTHER BUSINESS

Chairman Seabury asked if the Board felt the Conservation Commission should provide input with regard to Variances.

Mr. Martin commented that he felt it was in the Conservation Commission’s purview to provide input with regard to Wetland Special Exceptions but not with regard to Variances.

Chairman Seabury commented that he did not want any buildings in the Wetland Conservation District but that perhaps some parking might be acceptable, especially within the first 25 feet. Mr. Pitre concurred.

VI. ADJOURNMENT

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

Mr. Dearborn seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 10:55pm.

Date: December 30, 2013

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J. Bradford Seabury, Chairman

Recorder: Trish Gedziun