



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 13, 2012

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:30pm on Thursday, December 13, 2012, in the Paul Buxton Meeting Room in the Town Hall basement. Chairman Seabury then requested Acting 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, Mike Pitre, and J. Bradford Seabury

Members

Absent: Donna Shuman (Excused)

Alternates

Present: Maryellen Davis and Gary Dearborn

Alternates

Absent: Kevin Houle, Marilyn McGrath, and Maurice Nolin (All excused)

Staff

Present: Bill 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 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 Ms. Shuman, who was excused.

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

III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. **Case 145-015 (12/13/12): Pocomo Development, LLC, P.O. Box 642, Windham, NH, requests the following for property located at 3 Sullivan Road, Hudson, NH:**
 - A. A Variance to allow residential use within the Industrial Zoning District. [Map 145, Lot 015, Zoned Industrial, HZO Article V, Section 334-21, Table of Permitted Principal Uses.]
 - B. A Variance to allow the frontage of the proposed lot to have 50.04 feet, where 150 feet is required. [Map 145, Lot 015, Zoned Industrial, HXO Article VII, Section 334-27, Table of Dimensional Requirements.]

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

The Board collectively decided to hear both requests, A and B, at the same time but with the provision that the vote would be discussed and voted on separately.

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Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak replied that the matter was before the Board for the same reason as posted in the notice above.

Chairman Seabury asked who was present who wished to speak in favor with regard to the application. Attorney Brad Westgate, from Winer & Bennett LLP, representing the applicant, addressed the Board, stating that Mr. Richard Tate, one of the Principals of Pocomo Development, LLC, was also in attendance.

Attorney Westgate stated that the testimony was basically the same for both Variance requests.

Attorney Westgate stated that the property (Lot 15) had two very distinct portions – the larger portion with frontage on Central Street and Sullivan Road containing approximately 30.605 acres, and the smaller portion with 50.04 feet of frontage on Cheney Drive.

Attorney Westgate said that the applicant wanted to subdivide Lot 15 into the two portions, as mentioned above and construct and use a residential structure (a duplex or single-family detached dwelling) on the smaller portion which contained approximately 3.933 acres. He also said that the only access was from Cheney Drive, which was in a residential subdivision and the smaller portion abutted a residentially zoned property to the east, south and west and the former Boston & Maine Railroad line to the north.

Attorney Westgate stated that the triangular portion and the main portion of the lot were located in the Industrial Zoning District, the homes on Cheney Drive were located in the R-1 Zoning District, and the homes that were located on Lund Drive were located in the R-2 Zoning District. He said that most of these homes were either single-family in nature with a mix of some duplexes on Lund Drive.

Attorney Westgate noted for the record that quite a few abutter notifications were sent out regarding the application because of the size of the overall lot – but that the focus was on the triangular portion of the lot, not the larger portion.

Attorney Westgate said that the minimum lot size in the Industrial District was 43,560 square feet with a minimum frontage requirement of 150 feet. He also said that there was more than ample room for a stand-alone buildable lot as there was approximately 3.4 acres of contiguous dry land.

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Attorney Westgate stated that he felt the key point of this property was the unique and isolated nature of the triangular portion of the lot.

Attorney Westgate read aloud a portion of the Application for a Variance summarized as follows:

- 1. It is not contrary to the public interest to permit reduced frontage for an isolated piece of land to enable it to be put to a residential use, when such isolated piece of land is located in and accessed through a residential neighborhood, with its only frontage being at the end of an existing residential, public street. It is in the public interest to allow the most productive and appropriate use of land. Consequently, granting the frontage Variance would not be contrary to the public interest.*
- 2. The proposed use will observe the spirit of the ordinance because the spirit of the ordinance is, in part, derived from the purposes of the ordinance. In this case, granting the Variance for a reduced frontage would not be contrary to the spirit of the ordinance since the Variance would enable the 3.933 acre portion of Lot 15 to be up to a productive use, in particular for residential purposes, on a lot sufficient in size to accommodate a residential use, where the lot is adjacent to existing residential uses.*
- 3. Substantial justice would be done to the property owner by granting the Variance because it facilitates an appropriate use of this portion of industrial land which is surrounded by residential uses in a non-industrial manner.*
- 4. The proposed use will not diminish the values of surrounding properties because the surrounding properties, especially those accessed through Cheney Drive, are residential in nature. Granting the frontage Variance would facilitate a residential use in a residential neighborhood which would not diminish surrounding property values.*
- 5. Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship** because the smaller portion of the lot is isolated from the larger portion to the extent that it cannot be developed in a harmonious manner with the larger portion. There is literally less than a two-foot wide small strip of land connecting the two portions which constitute Lot 15. It can only be accessed through Cheney Drive.*

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The smaller portion of Lot 15 primarily abuts existing residences, rather than industrial properties. Yet, it is zoned industrial. Its zoning is incompatible with the neighboring properties to the east, south and west and thus is not zoned with an appropriate recognition of its location and neighborhood.

Lastly, it is oddly shaped, with a triangular upper half, with wetlands running generally in that upper half, further limiting any connectivity between it and the industrially zoned property.

Chairman Seabury read aloud a portion of a letter from Mr. Randy Turmel, from Keller Williams Realty, summarized as follows:

I have thoroughly reviewed the application (and all supporting documentation) for the Variances. Additionally, I also visited the site and adjacent properties.

It is my opinion that granting both Variances will not diminish the surrounding property values, and in fact, the construction of a single-family or two-family home will only enhance the neighborhood values. The property is unique in many ways and clearly lends itself to a residential use. It is naturally bound by the existing stone walls and the former railroad line which appears to be treed and overgrown.

A residential structure will maintain the residential character of Cheney Drive and keep the neighborhood in harmony. Any other use such as an industrial application would be very detrimental to the neighborhood and would diminish the values of their properties.

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.

Ms. Susan Mount, an abutter, 13 Cheney Drive, addressed the Board, stating that while she was not necessarily opposed to the application, her only comment was that Cheney Drive consisted of single-family homes and hoped the zoning would remain consistent with that.

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Mr. David Anderson, 22 Cheney Drive, an abutter, addressed the Board, stating that he was not opposed to a residential use, but expressed that he strongly felt it should remain residential in nature.

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.

Chairman Seabury declared a second round of testimony and added his concern that the applicant or a successor might wish to construct something other than a single-family home on the property.

Attorney Westgate, addressing the concerns, stated that the applicant was aware of the fact that the homes on Cheney Drive were all residential in nature. He further commented that he was confident that the Board would make an informed and thoughtful decision.

Chairman Seabury asked if there was 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.

Chairman Seabury declared the matter before the Board.

Ms. Davis asked if the proposed home would have an address of Cheney Drive. Attorney Westgate replied that it would. She said she felt that the proposed home should follow suit with the other homes on the street. Attorney Westgate replied that the applicant understood that.

Mr. Pitre asked what the size of the proposed structure was. Attorney Westgate replied that the size of the proposed structure had not yet been determined.

Mr. Martin commented that 6 Cheney Drive had an Accessory Living Unit and 8 Cheney Drive was of a residential/commercial use. Mr. Oleksak replied that 8 Cheney Drive had been disbanded – it was a daycare that was no longer there.

Vote on (A) The Request for a Variance to allow Residential Use

Mr. Pacocha made a motion to approve the request for a Variance with the stipulation that only a single-family home shall be built on the property.

Mr. Martin seconded the motion.

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Mr. Pacocha, speaking on his motion, stated that he felt that the public interest would be served because the location of the property was of a residential use, the majority of the property was abutting residential uses, and the only access would be through a residential neighborhood. He also said that he felt substantial justice would be done to the applicant as well as the residents of Cheney Drive because it would prevent an industrial traffic flow from going through a residential neighborhood. He said he did not feel that there would be a diminution of surrounding property values and that the applicant had met all of the criteria for hardship.

Mr. Martin, speaking on his second, stated that he felt it was a good use and that he agreed with everything Mr. Pacocha had said.

Chairman Seabury asked Acting Clerk Davis to poll the Board on the motion to approve the request for a Variance, with the noted stipulation, and to record the members' votes, which were as follows:

Mr. Pacocha	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 a Variance, with the noted stipulation, the motion had carried.

Vote on (B) The Request for a Variance to allow the Frontage

Mr. Martin commented that a very small portion of the frontage was located in the wetland setback and asked how it could be protected from any possible construction.

Chairman Seabury asked how far away the edge of the wetland was with respect to the 50-foot access. Attorney Westgate replied that he believed the wetlands were already flagged but that he would ensure that the wetlands would be flagged and remain flagged during the driveway installation.

Chairman Seabury asked why the applicant had not gone before the Conservation Commission. Attorney Westgate replied that the 50-foot access was not in the wetland buffer.

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Mr. Pacocha made a motion to approve the request for a Variance with the stipulation that the driveway entrance to the property shall be located on the most southern portion of the side of the cul-de-sac - as designated on Sheet 3 of the Plan submitted to the Board. Mr. Pitre seconded the motion and added the stipulation that all wetland buffers shall be marked at 50-foot intervals.

Mr. Pacocha stated that he agreed with the added stipulation.

Mr. Pacocha, speaking on his motion, stated that he felt all of the criteria for the Variance had been met.

Mr. Pitre, speaking on his second, stated that he approved the request and agreed with the stipulation that the driveway be placed to the most southerly section of the property as delineated on the Plan, Sheet 3, as submitted to the Zoning Board of Adjustment and that all wetland buffers be marked at 50-foot intervals with Conservation Commission approved markings. He also said that he felt the property would be served with due justice by keeping the area residential in nature.

Chairman Seabury asked Acting Clerk Davis to poll the Board on the motion to approve the request for a Variance, with the noted stipulations, and to record the members' votes, which were as follows:

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

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

- 2. Case 258-011 (12/13/12): Joseph Dolan, 26 Schaeffer Circle, Hudson, NH, requests a Home Occupation Special Exception to allow an automobile transport business to be conducted out of the dwelling. [Map 258, Lot 011, Zoned R-1, HZO Article VI, Section 334-24, Home Occupation.**

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

Mr. Martin commented that the property was not owner occupied. He said that Mr. Joseph Dolan, the property owner, had provided written permission for Ms. Virginia McLeod, the applicant, to represent him and request a Home Occupation Special Exception.

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Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak replied that the matter was before the Board for the same reason as notified above.

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

Mr. Joseph Dolan, property owner, addressed the Board, stating that he was present on behalf of Ms. Ginger McLeod. He further stated that Ms. McLeod owned a worldwide automobile transport business. He said that Ms. McLeod was actually looking for a Transport Plate to further her business and make it more lucrative.

Chairman Seabury asked Mr. Dolan to clarify what a Transport Plate was. Mr. Dolan replied that The State of New Hampshire issued Transport Plates and that would enable Ms. McLeod to drive cars from state to state.

Ms. McLeod said that a Transport Plate would enable her to drive many different types of vehicles (i.e. larger vehicles such as an ambulance or fire truck) from point A to point B.

Ms. Davis asked if the applicant had to register the property as a business site in order to obtain the Transport Plate. Mr. Dolan replied that was correct.

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

Ms. Virginia McLeod, the applicant, addressed the Board, stating that she owned a transportation company and that she was a broker. She said that she was hired by people to have their vehicles picked up and delivered from point A to point B nationwide.

Ms. McLeod stated that 99.9% of the time she did not meet her customers or see the vehicles. She said she was licensed and bonded with the Federal Motor Carriers Safety Administration. She further said that she arranged for the pick-up and delivery of the cars via the internet or telephone.

Ms. McLeod read aloud from the application for a Home Occupation Special Exception summarized as follows:

Please explain, in detail, the nature of your business. I am a Freight Broker – licensed and bonded with the Federal Motor Carriers Safety Administration. I mostly specialize in moving automobiles nationwide and

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overseas. I require very little space to work. I run my business with a telephone and a computer.

Is the Home Occupation secondary to the principal use of the home as the business owners' residence? Yes

Will the Home Occupation business be carried on within the residence and/or within a structure accessory to the residence? Yes, only as an office.

Other than the sign(s) permitted under Article XII, will there be an 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? I was not planning on using any signs unless otherwise granted permission and then I would consider.

Will there be exterior storage and will it be screened from neighboring views? No

Will there be noise, vibrations, dust, smoke, electrical disturbances, odors, heat or glare produced? No

Will the traffic generated by the Home Occupation activity be substantially greater in volume than would normally be expected in the neighborhood? No

Where will customer/client parking for the Home Occupation be located? Due to scheduling conflicts with the customer and the carrier, the customer may need to drop a vehicle here for me to arrange a time with the carrier. It would be parked in front of the garage.

Who will be conducting the Home Occupation? Virginia McLeod (Ms. McLeod noted that she would be the only employee)

Will there be a vehicle(s) for the Home Occupation? No

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.

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

Mr. David Peaslee, an abutter, 27 Schaeffer Circle, addressed the Board, stating that he felt it was important to note that he had never met the applicant or the owner of the property.

Mr. Peaslee presented the Board with a petition signed by 26 residents of Schaeffer Circle. Chairman Seabury read aloud from the petition summarized as follows:

We, the following property owners of Schaeffer Circle, are in opposition to the automobile transport business request from Mr. Joseph Dolan.

Mr. Peaslee stated that Schaeffer Circle was comprised of mostly owner-occupied residential homes with many children under the age of 16. He said he felt approving the request would change the nature of the street by causing an unnecessary risk, causing unnecessary noise with the addition of large, commercial trucks (18-wheeler type), which had already been seen on Schaeffer Circle on a number of occasions.

Mr. Peaslee said that he was not opposed to anyone trying to build a business behind a desk and a computer but that he felt any business in a residential neighborhood which could pose a potential danger to the residents (particularly the children) was not a good idea. He also said that he had consulted a real estate professional who strongly felt that allowing a commercial use in a residential neighborhood would decrease the surrounding property values.

Mr. Peaslee asked the Board what course of action was available to the residents should they keep seeing the commercial trucks in the neighborhood.

Mr. Peaslee said that he felt the applicant had contradicted herself by saying in one instance that the business would be operated only out of a home office and then in another instance, by saying that on occasion, customers may have to drop off their vehicles due to scheduling conflicts.

Mr. Ken Verge, an abutter, 28 Schaeffer Circle, addressed the Board, stating that he was not in favor of having transport trucks in the neighborhood but it was his impression that the applicant was asking for a Transport Plate.

Mr. Verge said that he had seen commercial trucks at the property and at times, they idled for two hours at a time and he was not in favor of that.

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Chairman Seabury said that the State of New Hampshire issued the Transport Plate not the Zoning Board of Adjustment. Mr. Oleksak said that the state would contact him to ensure that the applicant was in compliance with the zoning prior to the issuance of the plate.

Mr. Phillip Nichols, an abutter, 23 Schaeffer Circle, addressed the Board, stating that he was not in favor of a commercial use on Schaeffer Circle and had safety concerns for the neighborhood children in addition to other safety concerns.

Mr. Brian Dowling, an abutter, 30 Schaeffer Circle, addressed the Board, stating that he wanted to reinforce some of the concerns from previous speakers. He said that he felt Schaeffer Circle was not conducive to tractor trailers. He also said that he was concerned for the safety of the neighborhood children.

Mr. Dowling said that, while he was not opposed to Home Occupation Special Exceptions in general, he was specifically not in favor of this type of business.

Ms. Kerrie Peaslee, an abutter, 27 Schaeffer Circle, addressed the Board, stating that she too had many safety concerns with the proposed type of business. She said she was concerned with traffic safety, noise pollution, and the potential negative effect on the value of surrounding properties.

Mr. Tom Polak, an abutter, 25 Schaeffer Circle, addressed the Board, stating that he also had safety concerns, such as air quality and also felt that the surrounding property values would be diminished.

Chairman Seabury asked the applicant to address the abutters' concerns.

Mr. Dolan addressed the Board, stating that the business was not operated out of the secondary unit (the garage) but from the basement of the home. He also said that not everything was based out of New Hampshire.

Ms. McLoud addressed the Board, stating that she had not met many of her neighbors because she had been somewhat housebound due to multiple foot surgeries. She also said that when she first moved into the property she did have a couple of trucks coming to her house – however, she assured the Board and neighbors that would no longer occur. She said that she was interested in going through the appropriate channels and was concerned with the happiness of her neighbors.

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Chairman Seabury asked what would happen if a customer had a time conflict and said a vehicle had to be dropped off at a particular time. Ms. McLeod replied that she would be willing to rent a storage yard if need be, to avoid cars being dropped off at her home.

Chairman Seabury asked Ms. McCloud if she could ensure that there would be no truck activity (or cars parked in her driveway) between now and the issuance of the Transport Plate. Ms. McCloud testified that there would be no trucks dropping off or picking up vehicles. She said she “guaranteed it.”

Chairman Seabury asked Ms. McCloud if she had anything to add. Ms. McCloud replied that she did not.

Chairman Seabury asked for the second and final time if there were anyone present who wished to speak in favor, in opposition, or neutrally with regard to the application.

Mr. Phillip Nichols, an abutter, 23 Schaeffer Circle, addressed the Board, again stating that he was not in favor of the application. He said that he felt once the Transport Plate was issued, there would be nothing to stop the applicant from having trucks picking up and dropping off vehicles on the property.

Chairman Seabury replied that everything that had been said at the meeting was recorded and a typed summary of what was said at the meeting would also be available. He said that the applicant had “guaranteed” that there would be no trucks on the property and if there were, she would be in violation and subject to a fine of \$275.00 per day and the Home Occupation Special Exception could be revoked.

Chairman Seabury asked Ms. McCloud to explain in detail what she meant by wanting to expand her business. She replied that the Transport Plate would allow her to transport vehicles to other states instead of hiring someone else to do it.

Chairman Seabury declared the matter before the Board.

Mr. Pitre asked if there would ever be additional vehicles coming to the property. Ms. McCloud replied there would not.

Mr. Pitre asked if there were anyone living in the upper level of the garage. Ms. McCloud replied there was not.

Mr. Dearborn commented that he could not imagine a large transport vehicle pulling out onto Dracut Road – he said he felt it would be very dangerous.

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Mr. Martin asked if the ALU on the property was active. Mr. Oleksak replied that he did not know anything about it.

Ms. Davis commented that the Board had heard testimony that there was a business being operated from the property and that she felt there was no guarantee that the activity would not continue with the expansion of the business.

Mr. Pitre asked Mr. Oleksak to review what the code enforcement process was. Mr. Oleksak replied that the first step would be to send a notice of violation to the homeowner as well as to the Department of Safety. Mr. Oleksak further replied that he would contact the Town Attorney in an attempt to expedite the process. He also said that he would include the verbiage of all stipulations so that the Department of Safety could easily reference the information.

Mr. Pitre commented that if the abutters saw a violation on the property, it might be helpful to have photos of the violation.

Mr. Dearborn made a motion to approve the request for a Home Occupation Special Exception for a conditional-use automobile transport 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. There shall be no signage on the outside of the property.
2. There shall be no vehicles stored on the property other than the owners'/applicants' personal vehicles.
3. There shall be absolutely no vehicle transport carriers allowed on Schaeffer Circle pertaining to this business.
4. 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

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produced or was producing damage or potential damage to the environment or to the property values of the surrounding neighborhood.)

5. 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.

6. 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.

Mr. Pitre seconded the motion.

Mr. Dearborn, speaking on his motion, stated that he felt it was right to approve the request and that the added stipulations would ensure conformity with the zoning ordinance.

Mr. Pitre, speaking on his second, stated that he hoped the concerns of the abutters’ were adequately addressed and again, said that there shall be no additional vehicles parked on the property other than the owners/applicants. He also said that he felt all of the criteria for a Home Occupation Special Exception had been met.

Chairman Seabury asked Acting Clerk Davis 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. Dearborn	To approve
Mr. Pitre	To approve
Mr. Pacocha	To approve
Mr. Martin	To deny
Mr. Seabury	To approve

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

Chairman Seabury declared a break at 10:07pm, calling the meeting back to order at 10:15pm.

- 3. Case 216-002 (12/13/12): Fairview Nursing Home, 10605 Boca Pointe Drive, Orlando, FL, requests a Variance for property located at 203 Lowell Road, Hudson, NH, to allow a proposed expansion of the existing Nursing Home to be constructed within the front-yard setback, 41.47 feet proposed, 50 feet required. [Map 216, Lot 002, Zoned Business, HZO Article VII, Section 334-27, Table of Dimensional Requirements and Article VIII, Section 334-31, Alteration and expansion of nonconforming structures.]**

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

Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak replied that the application was before the Board for the same reason as notified above.

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

Mr. Tony Basso, L.L.S., from Keach-Nordstrom Associates, Inc., representing the applicant, addressed the Board, and asked the Board if he should read his Application for a Variance into the record or if the Board just wanted to go ahead and ask him questions.

Chairman Seabury replied that the Board had the application in their possession for over a week and did not feel Mr. Basso had to read the entire document into the record.

Application for a Variance (Summarized)

1. Granting of the requested Variance will not be contrary to the public interest because the applicants are proposing to expand the existing Fairview Nursing Home facility. The proposed expansion will accommodate 58 new patient beds. The requested Variance would allow for the construction of a portion of the proposed building addition within the front-yard building setback along Lowell Road.

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Since the construction of the existing nursing home facility, multiple property takings by the State of New Hampshire and the Town of Hudson have occurred for the widening of Lowell Road. Each time a taking occurred, the associated 50-foot front-yard setback has extended further and further west across the existing properties, making the existing nursing home facility less and less conforming with the zoning requirements. If not but for the property takings ordered by the State of New Hampshire and the Town of Hudson, the proposed building expansion would be allowed without a Variance, as the addition would not be located within the front-yard setback.

The effect to the public interest by granting the requested Variance is only positive. With an aging population that continues to grow in Hudson and in neighboring communities, the elderly care services of the type and quality afforded to the community by the Fairview Nursing Home in response to the demands of the public serves the public interest.

2. The proposed use will observe the Spirit of the Ordinance because, due to previous widenings of Lowell Road, it is unlikely further widenings in this immediate area will occur, but if they did, a major change in the existing structure would be required so granting the Variance will not be contrary to the intent of the ordinance to allow widening without impact on structures. Denying the applicants the right to reasonable expansion of the existing nursing home facility is contrary to the spirit of the ordinance, which, is to promote the separation between neighboring buildings and adjacent roadway corridors.
3. Substantial justice would be done to the property owner by granting the Variance because substantial justice is achieved through granting the requested Variance in that such approval would afford the Fairview Nursing Home the opportunity to provide expanded services to local and neighboring residents in a location and within a facility that is best suited to meet their needs.
4. The proposed use will not diminish the values of surrounding properties because due to the fact that the proposal is simply a reasonable expansion of an existing Hudson business, and the proposed building addition will be built in a manner that is in keeping with the existing building and the uses surrounding it, it is very clear that the granting of the requested

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dimensional Variance, to allow the applicant’s proposed building addition to meet their expansion goals, will not affect surrounding property values.

5. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship because special conditions on the subject property did exist. The property lies adjacent to the Lowell Road corridor. Over the years, several property takings by the State of New Hampshire and Town of Hudson for widening of Lowell Road have further and further pushed the associated front-yard setback west onto the developable portions of Lot #2 and also moved the right-of-way of Lowell Road closer to the existing structure.

Chairman Seabury commented that the proposed addition was going to be further back from the road than the existing home. He further said that the Board had allowed setback violations for homes in the past for exactly that reason.

Mr. Pacocha asked if this request was further back from the right-of-way than the last request. Mr. Basso replied that he did not want to guarantee that, but that it appeared to be almost identical.

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

Mr. Pacocha seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt this particular project would enhance the property, it would provide substantial justice to the property owner as well as the Town of Hudson, and it was a good continued use for the property.

Mr. Pacocha, speaking on his second, stated that he felt the expansion was a good service to the public, it was within the spirit of the ordinance, substantial justice would be done to the applicant, it would not decrease the surrounding property values, and he also felt that the applicant had successfully met the criteria for hardship.

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

Mr. Martin	To approve
Mr. Pacocha	To approve
Mr. Dearborn	To approve
Mr. Pitre	To approve

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Mr. Seabury To approve

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

IV. APPROVAL OF MEETING MINUTES

The following changes were made to the minutes of the October 25, 2012, meeting:

Page 7, 1st paragraph – the word “granting” was added - Seabury

Page 15 – “Tracey Lane” was changed to “Tracy Lane” - Dearborn

Mr. Martin made a motion to approve the minutes from the October 25, 2012, meeting, as amended by the Board.

Mr. Dearborn 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 approving the minutes from the October 25, 2012, meeting as amended by the Board.

The following changes were made to the minutes of the November 8, 2012, meeting:

Page 4, Stipulation #1 – was changed to “One-year extension through November 30, 2013.” – Seabury

Mr. Martin made a motion to approve the minutes from the November 8, 2012, meeting, as amended by the Board.

Mr. Dearborn 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 approving the minutes from the November 8, 2012, meeting as amended by the Board.

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VI. ADJOURNMENT

All scheduled items having been processed, Mr. Pitre 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 26, 2012

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun