

**HUDSON ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
September 27, 2012**

**I. CALL TO ORDER**

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:30pm on Thursday, September 27, 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, Mike Pitre, Donna Shuman, and J. Bradford Seabury

**Members**

**Absent:** Jim Pacocha (Excused)

**Alternates**

**Present:** Maryellen Davis, Gary Dearborn, and Maurice Nolin

**Alternates**

**Absent:** Kevin Houle (Excused) and Marilyn McGrath (Excused)

**Staff**

**Present:** Bill Oleksak, Zoning Administrator

**Recorder:** Trish Gedziun

**September 27, 2012**

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

Chairman Seabury also stated that Mr. Dearborn would be seated in place of Mr. Pacocha, who was excused.

Chairman Seabury stated that he had an issue with Case #123-001. He pointed out that Mr. Stevenson, who identified himself as the Project Manager, was the person who signed the application. Chairman Seabury asked if there were any members of the Board who felt that would be an issue – noting that the actual owner of the property had not signed the application, which was a requirement.

Chairman Seabury stated that the reason why the owner's signature was so important was to ensure that a renter of a property could not appear before the Board and present a case. He further stated that he did not think that applied in this case, so he was fine with the application as is.

Mr. Martin stated that he had no issue with it.

Chairman Seabury stated that there were no members of the Board who expressed any objections.

## **III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD**

1. **Case 204-040 (9/27/12): Scott Lambert, 10 Burns Hill Road, Hudson, NH, requests the following:**

**HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes**

**September 27, 2012**

- A. An Equitable Waiver to allow the existing dwelling to remain within the front-yard setbacks. [Map 204, Lot 040, Zoned R-2, HZO Article VIII, Section 334-28, Nonconforming Uses, Structures and Lots.]
  
- B. A Variance to allow the proposed 24’ x 38’ attached garage to be constructed within the front-yard setback, 26.4 feet proposed and construct a 8’ x 18’ farmer’s porch within the front-yard setback, 30.2 feet proposed, where a 50-foot front-yard setback is required for both. [Map 204, Lot 040, Zoned R-2, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]

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

Mr. Martin made a motion to defer the case, date specific, to the October 25, 2012, meeting, as the town had noticed the case incorrectly.

Chairman Seabury stated that the error was that the notice read as the property being located on Map 204, Lot 040 and the actual property was located on Map 204, Lot 020. Chairman Seabury also stated that the re-notification fee would be at the town’s expense and the case would be the first case heard at the next meeting on October 25, 2012. Mr. Martin agreed to make that part of his motion.

Ms. Shuman seconded the motion.

VOTE: Chairman Seabury asked Acting Clerk Davis to poll the Board on the motion to defer the request for an Equitable Waiver and a Variance, date specific, to the October 25, 2012, meeting, and to record the members’ votes, which were as follows:

Mr. Martin	To defer
Ms. Shuman	To defer
Mr. Dearborn	To defer
Mr. Pitre	To defer
Mr. Seabury	To defer

Chairman Seabury declared that, there having been five votes to defer the request for an Equitable Waiver and a Variance, date specific, to the October 25, 2012, meeting, the motion had carried.

Mr. Lambert stated that although he did get a letter from the town (which seemed to be in order), he had never received an agenda.

## HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

September 27, 2012

Chairman Seabury apologized to Mr. Lambert, stating that the Board had learned not to ignore such things as errors in notifications as they could become problematic in the future.

2. **Case 237-021 (9/27/12): Robert Lavoie, 42 Gowing Road, Hudson, NH, requests a Home Occupation Special Exception to allow an office for the business of RS Fireworks, LLC to be conducted out of the existing dwelling also so the property can be listed as a place of business. [Map 237, Lot 021, Zoned TR, HZO Article VI, Section 334-24, Home Occupations.]**

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 explained that Mr. Lavoie had approached the town and asked whether or not he could have his business in his home. He said he told Mr. Lavoie that he needed to request a Home Occupation Special Exception from the Zoning Board of Adjustment.

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

Mr. Robert Lavoie, the applicant, addressed the Board, stating that he owned a fireworks business and wanted to work out of his home office (which was his primary residence) to make sales calls from as well as have some equipment storage – he noted that actual fireworks would not be stored on the premises.

Mr. Lavoie stated that he did not entertain a retail crowd so he was not going to have a store front type of business. He further stated that fireworks were not transported in or out of the premises and there were no customers coming or going as he always went to their location.

Mr. Lavoie said that he did not feel he needed to rent a commercial space at this point as he could conduct most of the business from the home. He said that he owned a pick-up truck and a small box trailer, and that there were no big trucks or tractor-trailers.

Chairman Seabury asked if they were both unmarked. Mr. Lavoie replied that they were both unmarked.

Mr. Lavoie said that there was not a great deal of noise being made as they were just simply putting some “things” in the truck and that was infrequent. He further said that most people would not even know there was a business there. He said that nothing was

## **HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes**

**September 27, 2012**

manufactured on the premises and the small amount of deliveries arrived via UPS or U.S. Mail.

Mr. Lavoie stated that the equipment was stored in the large garage on the property. He said that there was no signage on the property and he had no intention of acquiring any.

Chairman Seabury said that he was a little confused that the applicant had said he had storage “elsewhere” but yet was putting “things” in his truck. He asked what was being put in the truck.

Mr. Lavoie replied that wooden racks that had to be brought to the job sites were being put in his truck.

Mr. Lavoie testified that the fireworks themselves were stored in a secure location 90 miles away from Hudson.

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. Charles Healy, an abutter from 4 Chiswick Road, addressed the Board, asking how long the Variance would last. Chairman Seabury replied that the applicant was asking for a Home Occupation Special Exception and not a Variance and that it would last forever.

Mr. Healy asked if the property was sold if it would be sold as a commercial property. Chairman Seabury replied that it would not be sold as a commercial property but that it could be sold to continue that use unless the Board put some type of restriction on it that would only apply to the current owner. Chairman Seabury further replied that it could not be used for other commercial uses. He said a special exception did not change the zoning of a property.

Mr. Healy asked what the criteria was for granting a Home Occupation Special Exception. Chairman Seabury replied that the normal procedure was for Mr. Oleksak, or a representative of the town, to take a look at the property after the permit was granted to make sure the applicant was doing what they were supposed to be doing. He also said that there was a provision, as part of the Board’s decision that the exception is only good if the applicant is doing what he said they would do.

## **HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes**

**September 27, 2012**

Chairman Seabury stated that the applicant had testified that he intended to use the exception for a home office, he would not be storing any fireworks, there would not be any customers, and he had indicated that no one would be able to tell the difference between a regular house and what he was doing.

Mr. Healy asked if the abutters had any recourse if there were activity going on that should not be. Chairman Seabury replied absolutely – there could be no violation of what the applicant had pledged he would do – otherwise, the Board would consider the exception null and void.

Mr. Jay McNay, an abutter from 6 Chiswick Road, addressed the Board, stating that he wanted to clarify that the applicant was offering a display service and fireworks were not stored on the property. Mr. Lavoie replied that the fireworks themselves would always be shipped to a secure location – not in Hudson. The only equipment stored on the premises was racks. He further replied that the fireworks were brought from that secure location to the actual display site.

Mr. McNay asked Mr. Lavoie if it was just strictly an office that he wanted to have in the home. Mr. Lavoie replied that was correct.

Mrs. Michel Phaneuf, a non-direct abutter from Chiswick Road, addressed the Board, stating that she felt the applicant's garage was very industrial looking in nature. She commented that it was her understanding that with a Home Occupation Special Exception, no other employees could work there unless they lived there. Chairman Seabury replied that was correct.

Mrs. Phaneuf suggested that Mr. Lavoie was inviting customers to his home as he included directions to his home on his web page. She also said that she saw the trucks in the driveway and did not feel it was in line with why they fought to get the neighborhood zoned residential.

Chairman Seabury asked how big the trucks were. Mrs. Phaneuf replied that she had no idea but she felt it was obvious that there was a business there and also that the business had been going on in there for a while.

Mr. Lavoie replied that he was the only employee that worked out of the property. Mr. Lavoie did agree that the steel garage was industrial looking in nature but said that it was put up with the appropriate permits.

## **HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes**

**September 27, 2012**

Chairman Seabury asked if there were anyone else 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 asked Mr. Lavoie if he had any additional testimony. Mr. Lavoie replied that he felt the abutters all had valid points. He said his web page had not been updated in some time, but that in his seven years of experience, he had not entertained any customers at this property. He said that the nature of this business required him to go to customers and the proposed display sites. Mr. Lavoie said that if the Board felt he should make any changes to the website, he would be happy to make the suggested changes.

Mr. Lavoie stated that although he did have a truck and a trailer, he did not feel that the activity was any more than that of a landscaper – and that the activity was not even a weekly thing.

Chairman Seabury asked if there were any other function of the address listed on the website other than to let people know how to contact them. Mr. Lavoie replied it was mainly for towns to look them up and make a phone call.

Chairman Seabury asked if there were anyone else present who wished to comment.

Mr. Lavoie, Sr., addressed the Board, stating that he was the property owner and had the garage built years ago with the appropriate approvals. He said that the only reason this situation had come up was because a new ATF Investigator had contacted the town to verify that his son was able to use his residence for the business aspect of the company.

Mr. Lavoie (Jr.) stated that his father also owned a pick-up truck which had nothing to do with the business.

Chairman Seabury declared the matter before the Board.

Mr. Martin asked what would happen to the approval if the applicant decided to sell the property. Mr. Oleksak replied that if the applicant left it, he didn't have to re-apply but if there was a use change, it would have to be approved by the Board.

Ms. Davis added that, if the applicant sold the property and a new owner wished to keep a Home Occupation Special Exception on the property, the new owner would have to get approval from the Zoning Board.

## **HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes**

**September 27, 2012**

Mr. Martin asked what would happen in the event of the applicant's death. Chairman Seabury replied that it would be the same process as if the property was sold.

Mr. Dearborn asked the applicant to define what "equipment" would be stored on the property. Mr. Lavoie replied that the only equipment that would be stored on the property were wooden "racks" which had fiberglass motors in them. He also noted that tarps would also be stored on the property.

Mr. Dearborn asked if there would be anything stored on the outside of property. Mr. Lavoie replied there would not.

Mr. Dearborn asked if Mr. Lavoie planned on advertising on anything other than the internet. Mr. Lavoie replied he did not. Mr. Lavoie commented that a number of years ago, he had owned a store in another town and the need to get their name out there was larger at that point, but that it had since been sold. He said that his website did need to be updated to reflect that he no longer owned the store.

Mr. Dearborn asked Mr. Lavoie if he would be expanding to other types of equipment in the future. Mr. Lavoie replied that he would not. He said that, realistically, if the business got any bigger, he would have to move to an industrial park.

Ms. Shuman stated that Mr. Lavoie, Jr., was not the owner of the property and asked if the actual owner, Mr. Lavoie, Sr., should have signed the application. Mr. Oleksak stated that Mr. Lavoie, Sr., did sign the application.

Chairman Seabury asked Mr. Lavoie, Sr., who was present at the meeting, to write a note indicating that he gave Mr. Lavoie, Jr., permission to speak on his behalf. Mr. Lavoie, Sr., submitted the letter.

Mr. Pitre commented that most people that requested a Home Occupation Special Exception from the Board had already been operating a business out of their home.

Mr. Pitre wanted to clarify that there would never be any type of fireworks at any point in time on the property. Mr. Lavoie replied there would not be.

Mr. Lavoie commented that there were fireworks being set off all around his property as of late but he wanted to assure that the Board knew they were not coming from his property.



## **HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes**

**September 27, 2012**

Mr. Pitre asked Mr. Lavoie to clarify that he would not be putting any signage on the property. Mr. Lavoie replied that he would not.

Mr. Pitre asked Mr. Lavoie how active the business was. Mr. Lavoie replied that it was a year-round business but that it typically only happened on the weekends.

Mr. Pitre asked Mr. Lavoie how the ATF License worked. Mr. Lavoie replied that the ATF inspected the business every year but that the renewal was every three years.

Mr. Pitre asked how long Mr. Lavoie had owned the business. Mr. Lavoie replied that he had owned the business since 2004.

Ms. Davis asked Mr. Lavoie to expand on his explanation with regard to the UPS deliveries. Mr. Lavoie replied that the deliveries, which consisted mostly of office products, were very infrequent – maybe a couple of times a year. He said the UPS deliveries were typical of that which happened in the surrounding neighborhood.

Mr. Pitre asked how big Mr. Lavoie's truck was. Mr. Lavoie replied that it was a Ford pick-up truck and the trailer was like that of a landscaping trailer – 24 feet.

Ms. Davis commented that one of her biggest issues with Home Occupation Special Exceptions was the noise and disruption related to the business. Mr. Lavoie replied that he generally left his residence to go to a display site at approximately noon or early afternoon and although it would be late upon returning, there was no unloading or any activity at that point. He stated again, that the displays were typically held on weekends.

Mr. Dearborn asked Mr. Lavoie if there would be any type of explosives or fireworks on display at the home for potential customers to look at. Mr. Lavoie replied that it was actually a felony to bring something of that nature into a residence. He further replied that if he were to show any piece to a customer it would have to be inert – noting that he did not have anything of that sort presently on his property.

Chairman Seabury asked if there were any other members of the Board who had questions or comments. There were none.

Mr. Pitre made a motion to approve the request for a Home Occupation Special Exception for a conditional-use to allow an office for the business of RS Fireworks, LLC 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:

**HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes**  
**September 27, 2012**

1. There shall be NO fireworks stored on the property at ANY TIME.
2. 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.)
3. 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.
4. 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.
5. The hours of business, as specified by the applicant, shall be as the applicant testified to.

Mr. Dearborn seconded the motion.

**HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes**

**September 27, 2012**

VOTE: 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. Pitre	To approve
Mr. Dearborn	To approve
Ms. Shuman	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 Home Occupation Special Exception, with the noted stipulations, the motion had carried.

- Case 123-001 (9/27/12): Brox Industries, Inc., 1471 Methuen Street, Dracut, MA, requests a Wetland Special Exception for property located at 39 Old Derry Road, to allow a 7,780 square foot encroachment into the wetland buffer for construction of a haul road. [Map 123, Lot 001, Zoned G-1, HZO Article IX, Section 334-33, Wetland Conservation District.]**

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 matter was before the Board for the same reason explained in the notification above.

Mr. Martin commented that this request was for construction that had already been completed and the applicant was present for an exception after the fact.

Chairman Seabury read aloud from the Motion Sheet for a Wetland Special Exception from the Conservation Commission, dated August 13, 2012, summarized as follows:

**Description of Proposed Project:** *Shoulder and slope encroachments of constructed haul road into 50-foot buffer of two separate, pocketed wetlands. The total buffer impact 7,780 square feet.*

**Motion:** *To recommend the plan as presented, with stipulations:*

- All work shall be in compliance with Best Management Practices to Control Non-Point Source Pollution: A Guide for Citizens and Town Officials. (NH Department of Environmental Services – latest issue.)  
The motion passed favorably 4 – 0 with one abstention.*

## HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

September 27, 2012

Chairman Seabury read aloud a letter from The State of New Hampshire Department of Environmental Services, dated July 24, 2006, as summarized below:

*Based upon plans and application approved on July 24, 2006, we are hereby issuing RSA 485-A:17 Site Specific Permit WPS-7562. The permit is subject to the following conditions:*

- 1. Water quality degradation shall not occur as a result of the project.*
- 2. Revised plans shall be submitted for permit amendment prior to any changes in construction details or sequences. The Department must be notified in writing within ten days of a change in ownership.*
- 3. The Department shall be notified in writing of the status of the project every two years and furnished with an updated plan of the project every six years from the issuance of this permit.*
- 4. The approved plans and supporting documentation in the permit file are a part of this approval.*
- 5. No work shall occur within 50' of a wetland area unless a wetlands permit is obtained from the NHDES Wetlands Bureau. Issuance of this permit does not obligate the Department to approve a wetlands permit for this project.*
- 6. Other permits may be required for this project. (See letter in office file for full description)*

Chairman Seabury read aloud a portion of a letter from the Planning Board, addressed to the Zoning Board of Adjustment, dated September 18, 2012, summarized as follows:

*At its September 12, 2012, meeting, the Planning Board voted to forward correspondence to the Zoning Board of Adjustment, citing that the Planning Board concurs with the Conservation Commission's attached recommendation, with its stipulations, relative to the Wetland Special Exception Permit application, calling for two 50-foot wetland buffer impacts associated with the already constructed haul road, as shown on the plan entitled: Greeley Street and Barretts Hills Road, Special Exception Plan (Lot 1, Map 123) Hudson, NH, prepared by*

## **HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes**

**September 27, 2012**

*Hayner/Swanson, Inc., dated June 27, 2012 (no revision date), consisting of Sheets 1 & 2 and Notes 1 – 6.*

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

Mr. Earle D. Blatchford, Sr. Project Manager, Hayner/Swanson, Inc., representing the applicant, addressed the Board, stating that the parcel was approximately 100 acres in size and was currently permitted by the town and the state as an excavation operation.

Mr. Blatchford stated that the haul road had been constructed a short time ago and there were two buffer areas that were inadvertently disturbed during the construction. He said that, when the disturbance became apparent, the applicant had done the necessary field work to document it and, after meeting with Mr. Oleksak, it was decided to appear before the Zoning Board to rectify the situation.

Mr. Blatchford said that one area had a disturbance of 4,600 square feet and the other disturbance was 3,180 square feet – a total disturbance of 7,780 square feet.

Mr. Blatchford said that there were photos of the haul road and the wetland impacts included in the Boards package. He also said there was a Wetlands Report that was prepared by Schauer Environmental Consulting.

Mr. Blatchford stated that the disturbed areas had been stabilized and re-vegetated on the sloped area. He further stated that the road and shoulder areas were constructed out of re-claimed asphalt pavement.

Mr. Blatchford said that the haul road was a necessary part of the operation and that the road and slope construction in the wetland buffer were allowed by the town under a special exception. He further said that the disturbance within the wetland buffer was done inadvertently and they were at this meeting in an attempt to make it right.

Mr. Blatchford stated that both the Conservation Commission and the Planning Board had given the Zoning Board favorable recommendations to grant a Wetland Special Exception.

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.

## **HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes**

**September 27, 2012**

Mr. Martin asked when the disturbance was discovered. Mr. Blatchford replied that the disturbance was discovered after the construction of the haul road had been completed. He said that it was inadvertent and, as it was explained to him, it was a loss of some control as far as layout during the construction.

Mr. Martin asked if there was any site work prep or land surveying done prior to starting construction of the haul road. Mr. Blatchford replied that his firm was not involved in that, so he was not able to answer that question.

Mr. George Hall, Manager of Real Estate for Brox Industries, addressed the Board, stating that the road itself was outside of the buffer. He further stated that it was a year after the initial construction of the road that cleanup was done and the layout had been lost. He further stated that the encroachments were relatively minor but in grading the slopes of the road, people got a little carried away when trying to make the slopes look appropriate. He said that the slopes should not have been graded to the extent that they were but the encroachments occurred after the construction of the road.

Mr. Hall stated that the applicant acknowledged the fact that it should have been done differently and, additionally, that the applicant was sorry for the mistake.

Mr. Dearborn stated that the applicant's plan indicated Greeley Street and Barretts Hill Road and asked how 39 Old Derry Road entered into the picture. Mr. Blatchford replied that it was his understanding that was the address that the Assessor's office had associated with the parcel. Mr. Dearborn asked if the newer haul road would come out onto Old Derry Road. Mr. Blatchford replied that it would not come out onto Old Derry Road and that it would dead end on the property.

Mr. Martin commented that he took it to heart when people violated the wetlands ordinances – such as PSNH had in the past. He further commented that the road was built, but an ordinance had still been violated and he felt he would approve the request but with a stipulation. He said he would elaborate further on that stipulation when the Board was ready to hear his motion.

Chairman Seabury asked if there were any other members of the Board who had questions or comments. There were none.

Mr. Martin made a motion to approve the request for a Wetland Special Exception with the stipulation that prior to the issuance of a building permit, Brox Industries shall pay \$5,000.00 to the Conservation Fund for violating the wetlands ordinance.

## HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

September 27, 2012

No second being brought forward, Chairman Seabury declared that the motion had failed due to lack of a second. He asked if there were anyone else who wished to make a motion of a different nature.

Mr. Pitre made a motion to approve the request for a Wetland Special Exception with all of the stipulations of the Conservation Commission and the New Hampshire Department of Environmental Services.

Mr. Dearborn seconded the motion.

Mr. Pitre, speaking on his motion, stated that he felt the intrusion onto the wetland buffer was minimal and it was done without malice. He stated that the Conservation Commission had given a favorable recommendation the New Hampshire Department of Environmental Services had given a favorable recommendation and Mr. Hall, who was an upstanding citizen of the town, had also spoken in favor with regard to the application. Mr. Pitre also stated that he felt the repair to the property and the re-vegetation was done within the guidelines of Best Practices.

Mr. Dearborn, speaking on his motion, stated that he agreed with Mr. Pitre as well as somewhat with what Mr. Martin had said, as he said he felt someone should have been made to be responsible somewhere along the line.

Chairman Seabury commented that while he concurred with Mr. Martin and Mr. Dearborn's comments, he felt the intrusion was slight, was probably done by a sub-contractor and done after the road had been built. Chairman Seabury also commented that he felt Mr. Martin's provision was a bit excessive for this particular case.

Mr. Martin commented that although he was in favor of the road being built, he would vote to deny the request as he felt approving it meant that the Board was allowing "big business" to dictate what "we" do. He said the law had been violated, even if it was after the fact, and he did not want a precedent to be set.

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

Mr. Pitre	To approve
Mr. Dearborn	To approve
Ms. Shuman	To approve
Mr. Martin	To deny

**HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes**

**September 27, 2012**

Mr. Seabury

To approve

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

4. **Case 251-010 (9/27/12): 75 River Road Realty Trust, Donald Nicolls, Trustee, 10 North Road, Chelmsford, MA, requests a Wetland Special Exception for property located at 75 River Road, to allow a 6,534 square foot encroachment into the wetland buffer for the installation of a drainage system. [Map 251, Lot 010, Zoned G-1, HZO Article IX, Section 334-33, Wetland Special Exception.]**

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 proposed development of the site had a 6,500 square foot encroachment into the wetland buffer for the installation of the drainage system.

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

Mr. Patrick Colburn from Keach-Nordstrom Associates, Inc., representing the applicant, addressed the Board, stating that the property was located on the west side of River Road. He said the property was 1.91 acres in area and was located entirely in the G-1 Zoning District. He further said that the westerly property boundary was adjacent to Limit Brook which flowed south by the site toward the Merrimack River.

Mr. Colburn stated that the applicant wished to remove the existing dilapidated building and replace it with four new buildings totaling 18,750 square feet. He further stated that the applicant wished to remove the two existing driveways along River Road and replace them with one full access driveway.

Mr. Colburn stated that the four new proposed buildings would be for leasable commercial, light industrial with each building providing designated parking spaces. He also said that the sidewalk would be flush with the building slabs for easy access.

Mr. Colburn stated that in order to construct the appropriate storm-water management accommodation to handle the increased impervious surface, work needed to be done inside of the wetland buffer. He further stated that the applicant wanted to pick up the storm water on the property, treat it, and mitigate the increase in an above ground



## **HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes**

**September 27, 2012**

infiltration pond and outlet the pond in the same place as the NH DOT outlets their storm water.

Mr. Colburn stated that on August 13, 2012, the Conservation Commission gave the project a favorable recommendation.

Mr. Colburn said that he had presented the same plan to the Planning Board (for ZBA input) on September 12, 2012, and that was when some confusion arose regarding the plans presented to the Conservation Commission vs. the plan being advanced to the Planning Board.

Mr. Colburn explained that there was an existing conservation easement across the back westerly property line. He further explained that the language that perfected that easement was somewhat tricky in that the initial piece of the language stated that storm water improvements could be constructed within the easement and then in a later section, it stated that no dredging of any materials within that area was allowed – meaning re-grading of any sort. He said that as they approached the final design, to “err” on the side of caution, they decided to completely remove the storm water improvements from the area encumbered by that conservation easement. He said that the revised plan had been submitted to the Planning Board for site plan review. [Plan Title: Grading and Drainage Plan, 75 River Road, Map 251, Lot 10, Hudson, NH – August 15, 2012, Sheet 5 of 15]

Mr. Colburn said that the applicant had reorganized the location and shape of the storm water improvement, noting it still did the same thing. He said that all of the areas on-site were picked up in closed drainage and piped to this location and treatment occurred primarily through deep sumps in the catch basins and through the sandy sub-soils in the separation to seasonal ground water. He further said that the only overflow during large storm events happened through an identical outlet control structure from the previous layout directly into the channel utilized by the Department of Transportation. He said that in addition to pulling out of the Conservation Easement, it reduced the wetland buffer impact by approximately 25% and the request for a Wetland Special Exception was down to 4,781 square feet of encroachment.

Mr. Colburn stated that both the Conservation Commission and the Planning Board’s one stipulation was that there shall be no work done in the easement area.

Mr. Colburn read aloud a portion of the Application for a Wetland Exception summarized as follows:

## HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

September 27, 2012

1. *The proposed use is essential to the reasonable use of land outside the Wetlands Conservation District because the existing lot of record is 1.9 acres in total area, with nearly 25% of the property located within the wetland buffer. Due to the reduction of available space on the site it was necessary to impact the buffer. The proposal has been designed to keep areas of normal activity outside of the buffer and wetland impacts have been prevented altogether. Lastly, the majority of the wetland buffer impact is due to the grass covered fill slopes around the exterior of the infiltration basin. This area will not be an area of normal use; therefore the runoff will remain clean.*
2. *There is no reasonable alternative to the proposed use that does not adversely affect the Wetland Conservation District because according to the Hudson Zoning Ordinance, 32 parking spaces with a 24-foot wide access isle are required the proposed buildings, which are of modest size. In order to provide adequate space for the buildings, associated parking, and other required site improvements, the wetland buffer area must be impacted.*
3. *Design, construction and maintenance methods shall be prepared by a Professional Engineer (PE) and shall include restoration of the site, as nearly as possible, to its original grade and condition. The design, construction methods, and maintenance methods for the project, including those involving the wetland buffer impacts, have been designed by the applicant's project engineers, Keach-Nordstrom Associates, Inc. He noted that Best Management Practices were followed.*
4. *The proposed use within the Wetland Conservation District is not based primarily on economic considerations because the proposed wetland buffer impact is based entirely on project feasibility.*
5. *Provision is made for wildlife access corridors to promote the free migration of wildlife along the length of the Wetland Conservation District. Wildlife access should not be impacted by the proposed development. There is an existing natural corridor along the rear of the property to provide for the free migration of wildlife. The New Hampshire Natural Heritage Bureau was notified of the proposed development and asked to check their records for threatened or endangered species in and adjacent to the subject site. There are no known records.*

## HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

September 27, 2012

Chairman Seabury stated that the Conservation Commission had made a recommendation to approve the request for a Wetland Special Exception with the following stipulation:

*That all work shall be in compliance with Best Management Practices to Control non-point Source Pollution: A Guide for Citizens and Town Officials. (NH Department of Environmental Services – latest issue.)*

Chairman Seabury also stated that Mr. John Cashell had sent correspondence to the Zoning Board of Adjustment stating that the Planning Board had no concerns with the proposed plan as long as no disturbance occurred in the existing conservation easement.

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. Doris Ducharme, an abutter, 76 River Road, addressed the Board, stating that she was opposed to the application because it would allow them to build more buildings on that property and she was concerned how it would affect River Road.

Ms. Ducharme said that when the state and the town updated that road she was told by the engineer that it would not impact her property. She further stated that rain and snow very negatively affected her property and she was the only person there to deal with the snow removal.

Ms. Ducharme commented that she did speak to the state about her situation and “they did not know how bad it was.” She said “she was not going to have that River Road widened any further.”

Ms. Ducharme asked the Board to please not allow the application to go through to the Planning Board and if they did allow it, to please include a stipulation that would require the applicant to prove that it would not negatively impact River Road.

Chairman Seabury clarified with Ms. Ducharme that what was being discussed at this meeting was a Wetland Special Exception and had nothing to do with the buildings – noting that it would be up to the Planning Board to decide how many buildings would be allowed. Ms. Ducharme replied that she felt it was obvious that “you people” plan on letting “these people” do whatever they want. “They have the bucks and everything so

## **HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes**

**September 27, 2012**

they can do whatever they want.” Chairman Seabury stated that he did not think Ms. Ducharme could conclude that and said that he took offense to her saying it.

Chairman Seabury asked Ms. Ducharme if she had anything else to add. Ms. Ducharme replied that she was done making her comments.

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 asked Mr. Colburn if he would like to address any of the issues that Ms. Ducharme had raised.

Mr. Colburn stated that the applicant did not expect or want any improvements off-site of River Road. He further stated that the applicant was taking two paved driveways and creating one new one, in effect, reducing the impervious surface area in the 50-foot front-yard setback. Under our proposal, we are doing nothing but landscaping and planting within that 50-foot front-yard setback, therefore, the impacts along River Road were null.

Chairman Seabury asked Mr. Colburn if there were any way he could make sure that the reduction from two driveways to one would not add flow across River Road. Mr. Colburn replied that had to be done as a matter of practice to get approval from the Planning Board.

Chairman Seabury asked Mr. Colburn to explain what the applicant’s plan was to prevent run-off from going across River Road. Mr. Colburn replied the plan showed a proposed high spot at the edge of the pavement at River Road with grade falling into the site only from the proposed driveway. He said the storm water from the proposed driveway flowed into the site, into the proposed closed drainage improvements, to the back of the site – during small events going into the ground completely and during larger storm events, overflow going into Limit Brook. He further said that the slope of the driveway was 3% for the first twenty feet and then tapering into 6% into the site, and then flattening out again as you go through the parking lot.

Chairman Seabury asked if that was all going down into the property. Mr. Colburn replied that was correct.

Chairman Seabury asked Ms. Ducharme if she had any additional comments.

Ms. Ducharme asked how many rooms each of the four new buildings would have. Chairman Seabury replied that he did not know because the request for the four buildings was not before the Board.

## **HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes**

**September 27, 2012**

Chairman Seabury declared the matter before the Board.

Mr. Martin asked if there was anyone presently living on the property. Mr. Colburn replied there was not.

Mr. Pitre asked if the applicant was using town water. Mr. Colburn replied that the applicant was using town water.

Mr. Pitre asked where the two septic systems were located. Mr. Oleksak replied that they were located under the parking lot.

Chairman Seabury asked how the leach fields would be maintained. Mr. Colburn replied that they would not be maintained and the septic tanks would be maintained via sewer manholes.

Mr. Pitre asked if the applicant planned on maintaining the current sign ordinance. Mr. Colburn replied that he was sure the applicant would maintain the current sign ordinance but there was a proposed sign on the site plan.

Ms. Shuman stated the deed indicated that there was a conservation easement and a drainage easement. She further stated that there was also an easement for pedestrian traffic and asked where that was located. Mr. Colburn replied that he felt the pedestrian easement referred to a separate lot but he would verify that.

Chairman Seabury asked if there were any other questions or comments from members of the Board.

Mr. Dearborn made a motion to approve the request for a Wetland Special Exception, for 4,781 square feet of disturbance to the wetland buffer, with the stipulations imposed by the Conservation Commission as well as the Planning Board.

Mr. Martin seconded the motion.

Mr. Dearborn, speaking on his motion, stated that he felt granting the Wetland Special Exception was a reasonable use for the land, he felt there would be significant improvements, and Mr. Colburn had testified that the neighbors would not be adversely affected.

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

## HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

September 27, 2012

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

Mr. Dearborn	To approve
Mr. Martin	To approve
Ms. Shuman	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 Wetland Special Exception, with the noted stipulations, the motion had carried.

### IV. APPROVAL OF MEETING MINUTES

The following changes were made to the minutes of the July 26, 2012, meeting:

Page 6 – “To deny the Request for a Rehearing” was changed to “To deny the request for a Variance” - Martin

Page 7 – “Vice Chairman Pitre” was changed to “Acting Chairman Pitre” – throughout the document – Seabury

Ms. Shuman made a motion for Case 182-125 to be transcribed verbatim.

*Case 182-125, Rehearing: Hudson Library Street Associates, LLC. 253 Main Street, Nashua, NH, requests a Variance to allow the change of use from multi-tenant commercial to multi-family residence for property located at 39 Library Street, Hudson, NH. [Map 182, Lot 125, Zoned TR, HXO Article VIII, Section 334-28, Nonconforming Uses, Structures, and Lots.]*

Mr. Pitre 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 having Case 182-125 transcribed verbatim.

Mr. Martin made a motion to approve the minutes from the July 26, 2012, meeting, including the verbatim portion, as amended by the Board.

**HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes**  
**September 27, 2012**

Mr. Pitre 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 July 26, 2012, meeting, including the verbatim portion, as amended by the Board.

**V. DISCUSSION OF TOWN INTEREST TO THE BOARD**

The Board discussed a complaint that was received via certified mail from Ms. Laurie Blanchette, Controller, from Reeds Ferry Sheds in which she indicated that there was a pick-up truck, with magnetic signs on its sides, that was parked daily at the intersection of Route 102 and Tracy Lane that was in violation of the Zoning Ordinance.

Mr. Martin made a motion to meet with the Town Attorney prior to hearing the case.

Ms. Shuman seconded the motion.

Chairman Seabury called for a verbal vote, and he then stated that four of the sitting members of the Board were in favor of meeting with the Town Attorney prior to hearing the case. Chairman Seabury abstained from the vote.

**VI. 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 9:54pm.

Date: October 11, 2012

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J. Bradford Seabury, Chairman

Recorder: Trish Gedziun