



TOWN OF HUDSON

Zoning Board of Adjustment



J. Bradford Seabury, Chairman

Ben Nadeau, Selectmen Liaison

12 School Street • Hudson, New Hampshire 03051 • Tel: 603-886-6000 • Fax: 603-594-1142

HUDSON ZONING BOARD OF ADJUSTMENT MEETING MINUTES April 28, 2011

I. CALL TO ORDER

Acting Chairman Pitre called this meeting of the Hudson Zoning Board of Adjustment to order at 7:10pm on Thursday, April 28, 2011, in the Community Development Meeting Room in the Town Hall basement. Acting Chairman Pitre then requested Clerk Davis to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

Present: Normand Martin, Mike Pitre, Donna Shuman, and Jim Pacocha (Arrived at 7:30pm)

Members

Absent: J. Bradford Seabury (Excused)

Alternates

Present: Bill Abbott, Gary Dearborn, Maryellen Davis, and Kevin Houle

Alternates

Absent: Marilyn McGrath (Excused)

Staff

Present: William Oleksak, Zoning Administrator

Recorder: Trish Gedziun

April 28, 2011

II. SEATING OF ALTERNATES AND ANNOUNCEMENTS

For the benefit of all attendees, Acting Chairman Pitre 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. Acting Chairman Pitre 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.

III. APPROVAL OF MEETING MINUTES

Acting Chairman Pitre commented that Ms. Davis would be seated in place of Mr. Seabury, who was excused, and Mr. Dearborn would be seated in place of Mr. Pacocha, who had not yet arrived at the meeting.

The following edits were made to the minutes of the March 24, 2011, meeting:

1. Page 5, 3rd paragraph – the word “apartment” was changed to “bedroom” – Davis
2. Page 5, 10th paragraph – the words “other” and “what” were added as follows: “...he felt there was not much more that could be done with the property “other” than “what” the applicant was asking for.” – Abbott
3. Page 8 – Verbiage with regard to density and hardship should be added to the minutes. - Shuman

Mr. Martin made a motion to postpone approving the minutes from the March 24, 2011, meeting (verbiage on page 8 regarding density and hardship to be added) until the May 26, 2011, meeting.

Ms. Shuman seconded the motion.

Acting Chairman Pitre called for a verbal vote, and he then stated that all of the sitting Board members were in favor of postponing the approval of the minutes from the March 24, 2011,

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 28, 2011

meeting (verbiage on page 8 regarding density and hardship to be added) until the May 26, 2011, meeting.

Acting Chairman Pitre declared a break at 7:25pm, calling the meeting back to order at 7:30pm.

Acting Chairman Pitre stated that, with Mr. Pacocha having arrived, Mr. Dearborn would return to his seat as a non-voting alternate member of the Board.

Acting Chairman Pitre then stated that Mr. Houle would be seated in place of Mr. Seabury, who was excused, with Ms. Davis resuming her role as a non-voting alternate member of the Board.

IV. PUBLIC HEARING FOR PROPOSED AMENDMENT OF ZBA BYLAWS (HTC §143)

1. For the past two years, the members of the Zoning Board of Adjustment have been discussing proposed revisions of the Board's bylaws, mostly involving the re-arrangement of the existing regulations for clarity, together with some updating in response to changes of the applicable New Hampshire Statutes by the State Legislature since the last revision of the bylaws. This will be the first of two public hearings for the purpose of ratifying the proposed amendments. A copy of the proposed version of the bylaws is available for inspection at the Community Development Department at the Town Hall.

Acting Chairman Pitre opened the hearing for public discussion and asked if there were anyone present who wished to make comments.

Acting Chairman Pitre stated that the Board would have a discussion regarding the bylaws at the end of this meeting.

Mr. Martin commented that, although he did have some changes, he did not feel the Board should make any final decisions until a revised copy (which included the most recent changes) of the bylaws was provided by Mr. Seabury.

Acting Chairman Pitre closed the hearing for public discussion, noting that the Board would discuss the bylaws at the end of the meeting but would not, however, make any final decisions until the next scheduled meeting in May.

April 28, 2011

V. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. **Case 185-007 (4/28/2011):** Brian Lachance, 6 Flying Rock Road, Hudson, NH, requests a Wetland Special Exception to fill in 5 square feet of the wetland buffer. [Map 185, Lot 007, Zoned G, HZO Article IX, Section 334-33, Wetland Conservation District.]

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

Recorder's Note: On March 14, 2011, The Hudson Conservation Commission made a Motion to Recommend a Wetlands Special Exception as summarized as follows:

The Conservation Commission voted to recommend a Wetland Special Exception with the following two stipulations:

1. Restorations will comply with: BEST MANAGEMENT PRACTICES TO CONTROL NON-POINT SOURCE POLLUTION: A Guide for Citizens and Town Officials (NH Department of Environmental Services – Latest Issue.)
2. This motion is based on the wetlands plan submitted by the applicant. Additional impacts that may be the result of impervious surfaces or relocation of structures have not been addressed. It is recommended that, if these conditions occur, the plan should be sent to the Conservation Commission for further review.

The vote was 7-0-0.

Acting Chairman Pitre asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak replied that the actual amount of square feet to be filled was 5,000 (with 710 cubic yards of material) square feet and not 5 square feet as advertised.

Ms. Davis asked if the case needed to be re-advertised because of the error. Mr. Oleksak replied that he did not feel the case needed to be re-advertised and the correct amount of square footage of 5,000 feet had been presented to the Conservation Commission.

Acting Chairman Pitre asked if there were any members of the Board who had concerns with the error in the advertisement.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 28, 2011

Mr. Martin stated that he was concerned that the case had not gone before the Planning Board - for ZBA input only. Mr. Oleksak replied that it would only go before the Planning Board if it was for a site plan – not a Wetland Special Exception, and the property was located in the Residential Zoning District.

Acting Chairman Pitre stated that the consensus of the sitting Board members was to continue with hearing the case.

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

Mr. Brian Lachance, the applicant, addressed the Board, stating that 90% of his backyard was located in the wetland buffer zone and he wanted to level off the grade into the buffer zone. He further stated that the water run-off would be diverted through drainage pipes and that an Earth Wall with 5” erosion control stone slope would be used to control and prevent run-off in addition to top soil and grass.

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

- 1. Property contains wetlands shared by neighbor on Lot 8/Map 185. City sewer and drain easement runs adjacent to the wetlands. Wetland is described as a swamp filled in spring with water and dry throughout the remaining year. Habitat contains mostly natural habitat shrubs and trees. Wetland overflows into adjacent larger wetland area shared by Lots 8 & 9/Map 185. Property has a certified foundation plan with details of property wetland and buffer zone.*
- 2. Project will consist of backfilling using fill dirt within the buffer zone to achieve an even slope in addition to gravel for draining. An Earth Wall with 5” erosion control stone slope will be used to control and prevent run-off in addition to top soil and grass. The project will consist of one phase and is estimated to take 3-4 weeks to complete. Land use purpose will be backyard use and entertainment.*
- 3. No impact to the wetland area, however buffer zone will be altered by additional fill dirt covering approximately 5,000 SF. Total fill required to level the area will be approximately 710 cubic yards. No changes in characteristics are anticipated for run-off. Water run-off from house will be*

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 28, 2011

diverted through drainage pipes. Top soil, grass and shrubs will be used to prevent erosion.

- 4. Local habitat shrubs and plants would be planted at the top and base of the slope that would include Rhododendrons, Mtn. Laurel, Hydrangea Annabell, Ivory Halo Redtwig Dogwood, Blue Prince & Princess Holly, and Doublefile Viburnum.*

Mr. Abbott asked what the approximate dimensions were of the area to be filled. Mr. Lachance replied that it was approximately 40 feet deep and 80 feet long and it extended beyond the house by 15 feet on either side.

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

Mr. Jim Moynahan, 35 Bush Hill Road, Hudson, NH, an abutter, addressed the Board, stating that he was in favor of the application.

Acting Chairman Pitre 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.

Acting Chairman Pitre declared the matter before the Board and asked if there were any members who had questions or comments.

Acting Chairman Pitre asked if the run-off would be from a gutter system. Mr. Lachance replied that the run-off would be from a gutter system – pointing out that it was not yet installed.

Acting Chairman Pitre asked if the deck was there when the applicant purchased the house. Mr. Lachance replied that the deck was there when the house was purchased and that the previous owner (the builder) had received an “exception” to build it.

Mr. Martin made a motion to approve the request for a Wetland Special Exception with the noted stipulations of the Conservation Commission.

Mr. Houle seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt the applicant was doing what was right, the Conservation Commission had provided a favorable recommendation, the applicant would follow Best Management Practices for restoration, and all of the criteria were met.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 28, 2011

Mr. Houle, speaking on his second, stated that he concurred with everything Mr. Martin had said and he felt that the wetlands were resilient, and the disturbed area would have an easy time growing back.

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

Mr. Martin	To approve
Mr. Houle	To approve
Ms. Shuman	To approve
Mr. Pacocha	To approve
Mr. Pitre	To approve

Acting Chairman Pitre declared that, there having been five votes to approve the request for a Wetland Special Exception, with the noted stipulations of the Conservation Commission as previously cited, the motion had carried.

- 2. Case 192-017 (4/28/11): Empire Homes, Inc., 17 Elnathans Way, Hollis, NH, requests a Wetland Special Exception to allow permanent impact of 7,910 square feet of the wetlands and 32,360 square feet of the wetland buffer for access to the upland portion of Lot 17, together with temporary crossings for water utility lines involving 423 square feet of wetlands and 898 square feet of wetland buffer for property located at 68 Pelham Road, Hudson, NH. [Map 192, Lot 017, Zoned G, HZO Article IX, Section 334-33, Wetland Conservation District.]**

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

Acting Chairman Pitre asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak replied that any development that would encroach onto the wetlands and/or the wetland buffer had to first appear before the Zoning Board of Adjustment to request a Wetland Special Exception.

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

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 28, 2011

Mr. Patrick Colburn, Civil Engineer from Keach-Nordstrom Associates, Inc., representing the applicant, addressed the Board, stating that he was joined by Attorney Brad Westgate from Weiner & Bennett, LLP.

Mr. Colburn said that the ZBA had already issued a Wetland Special Exception for the project in April, 2008.

Mr. Colburn stated that the proposed project entailed the construction of a 31-unit single-family manufactured home park along with the associated private cul-de-sac road. He further stated that the 33 units would be serviced by municipal water and community septic systems and the roadway would be equipped with a closed drainage network that would discharge to one of three proposed stormwater management areas.

Mr. Colburn said that Lot 17, as it existed, was a 40-acre lot located in the General Zoning District and had been selectively cleared over the years. He said that the site was encumbered by several threads of jurisdictional wetlands, as well as a pond.

Mr. Colburn stated that two wetland crossings would be required in order to provide access to the substantial developable portions of the lot. He further stated that a third wetland crossing was needed to access the proposed leach fields.

Mr. Colburn said that the temporary impacts would be for access to the existing utility easement.

Mr. Colburn stated that the proposed permanent wetland impact for this component of the project was 7,910 SF, together with 32,360 SF of permanent wetland buffer impact.

Mr. Colburn reiterated that the project had received a Wetland Special Exception from the ZBA on April 10, 2009, but that approval had become null and void, requiring the applicant to obtain a new one.

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

- 1. The proposed use is essential to the reasonable use of the land because the proposed use (3 permanent wetland crossings, 2 of which pertain to the main access road and 1 of which allows access to leach fields) and the temporary wetlands crossings are essential (for installation of the water line) are essential to the reasonable use of the main upland portion of Lot 17, which is outside of the Wetlands Conservation District. The main upland and developable portion of Lot 17 cannot be accessed from Pelham Road unless the project's road crosses the seasonal drainage way. The leach field areas*

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 28, 2011

are also separated from the proposed house sites by the wooded wetland. The proposed leach field areas contain the best soil conditions on site for leach field installation.

- 2. The applicant explored alternate designs with the Planning Board and the Conservation Commission. The proposed site had the least impact on the wetland and wetland buffers.*
- 3. The design, construction methods, and maintenance methods for the proposed project, including those involving the wetland and wetland buffer impacts, have been designed by the applicant's engineers, Keach-Nordstrom Associates, Inc.*
- 4. The proposed impacts are based primarily on design criteria, not economic considerations. The project design attempts to minimize wetland impacts, irrespective of road construction costs.*
- 5. The wetland crossings involve slopes, not retaining walls. The sloped areas can be traversed by wildlife generally. Culverts will accommodate smaller creatures who, along with larger creatures, may still traverse the slopes. The project proposes to install open bottom box culverts with a 4' x 2' opening to promote wildlife migration.*

Mr. Colburn stated that both the Conservation Commission and the Planning Board had given the proposed project favorable recommendations. He further stated that the only revisions to the plan since the initial approval was a slight reduction in the total wetland impact, and the project plans were revised to replace the three wetland crossings, previously proposed with 24" cross culverts, with open-bottom box culverts.

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

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

Acting Chairman Pitre declared the matter before the Board and asked if there were any comments or questions.

Ms. Davis commented that, as she recalled, one of the biggest issues with the application in 2008 was with the water situation. She further stated that the town had to install a pumping station on

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 28, 2011

the opposite side of the proposed project. Ms. Davis asked what the plans with regard to water were and if there were any guarantees that there would not be any problems with the other development.

Mr. Colburn replied that an adjacent property, now owned by K&M Developers, had recently gone before the Zoning Board of Adjustment regarding construction of a 55+-year old community. He further replied that the alternative water rights the applicant was seeking were from the Oak Ridge Condominium Development vs. from the Hilindale Development. He said that there were concerns with the water system on Hilindale, which is why the Hilindale easement rights had to be reserved and the temporary impacts associated with getting water there. He stated that one project could not be “held hostage” by the other project.

Mr. Colburn stated that, if all went as planned, Empire Homes would seek water rights from K&M Developers – pointing out that while those agreements were under way, K&M Developers had not yet finalized the water system design with the Town of Hudson. He further stated that, at least for now, he wanted to keep the temporary impact available as an option in case the water system with the town did not work out.

Ms. Davis asked what would happen if the water rights from Hilindale had to be used. Mr. Colburn replied that there were a couple of areas where water could come from – he said there would need to be some system in place but that he was not sure which type of system. He said these options had not been thought about in-depth because the project had been tabled in 2008 due to the poor economy.

Ms. Davis asked how long the cul-de-sac was. Mr. Colburn replied that it was approximately 2,700 feet long.

Mr. Martin asked how long the Department of Environmental Services permit lasted. Mr. Colburn replied that a standard wetland permit was good for a period of five years and that the applicant’s permit was valid until 2013. (The exact date in 2013 was uncertain)

Mr. Martin asked if the state had to be notified that the proposed project was going to have a lesser impact on the wetlands. Mr. Colburn replied that he would need to notify the state with an amended permit application that reflected the replacement of two closed culverts with two open bottom boxes.

Mr. Martin asked if the Board would receive a copy of the paperwork that reflected the lesser impact of 7,910. Mr. Colburn replied that he was almost certain that information was automatically forwarded to the Conservation Commission.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 28, 2011

Acting Chairman Pitre asked how high the proposed culverts would be. Mr. Colburn replied that the culverts, by design, were 4' wide x 3' high concrete boxes, but pointed out that they were recessed sub-surface by 1 foot.

Recorder's Note: On February 14, 2011, the Conservation Commission made a unanimous Motion to Recommend a Wetlands Special Exception with the following stipulations summarized as follows:

1. Restorations will comply with: BEST MANAGEMENT PRACTICES TO CONTROL NON-POINT SOURCE POLLUTION: A Guide for Citizens and Town Officials (NH DEPT. OF ENVIRONMENTAL SERVICES – Latest Issue.)
2. This motion is based on the wetlands plan submitted by the applicant. Additional impacts that may be the result of impervious surfaces or relocation of structures have not been addressed. It is recommended that if these conditions occur, the plan be sent to the Conservation Commission for further review.
3. Reference Plan WETLAND/WETLAND BUFFER IMPACT OVER PLAN, VISTA RIDGE ESTATES, Map 192, Lot 105, 68 Pelham Road, Hudson, NH, Hillsborough Country. Also COMMON OPEN SPACE/CONSERVATION LAND PLAN, VISTA RIDGE ESTATES.
4. Recommend Motion from January 8, 2008. Temporary Wetland Buffer Impact 898 SF, Temporary Wetland Impact 423 SF, Permanent Wetland Buffer Impact 7,910 SF, and Permanent Wetland Impact 32,360 SF.
 - a. All conservation areas are to be marked with appropriate conservation signs at 100 ft. intervals.
 - b. The Town Engineer to provide careful oversight of all grading and blasting of ledge to prevent erosion effects on the wetlands.
 - c. Use of construction equipment to be allowed in the Wetland Conservation District with subsequent restoration.

All restoration of the area disturbed shall comply with the latest edition of the following NH Best Practices as applicable (see stipulation 1.) The Town Engineer to inspect all restoration work.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 28, 2011

- d. Open Box Culvert at the southern most crossing and northern most crossing to septic fields.

Recorder's Note: On April 10, 2008, the Zoning Board of Adjustment made a decision to grant a Wetlands Special Exception with the following stipulations summarized as follows:

1. All restoration of the area disturbed shall comply with the latest edition of the following NH Best Practices as applicable:

BEST MANAGEMENT PRACTICES TO CONTROL NON-POINT SOURCE POLLUTION: A Guide for Citizens and Town Officials, NH Department of Environmental Services, 1994.

2. An independent engineering study of the current pumping station shall be conducted to determine issues and capability; developers shall pay for the study all improvements and/or upgrades recommended as a result of the study.
3. Wetlands and wetland buffers shall be clearly marked with the Conservation Commission decals at **50-foot intervals** and Lot 19 and Lots 24 through 27 shall have a post and rail fence installed at the space line to further delineate the wetland buffer. Said fence shall contain additional Conservation Commission decals as well. (**Note: The decals would be placed at 50-foot intervals and not 100-foot intervals.**)
4. Additional sheds and/or outbuildings shall not be allowed in the 15-foot rear setback, and shall be no larger than 120 square feet. This stipulation shall be recorded in the property deed.

Attorney Brad Westgate, from Weiner and Bennett, representing the applicant, stated that it was his understanding that the conservation open space land was to be used by the neighborhood and that it was not for the use of the general public.

Mr. Pacocha made a motion to grant the request for a Wetland Special Exception, with the noted stipulations of the Conservation Commission (2/14/11) and the ZBA (4/10/08).

Mr. Martin seconded the motion.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 28, 2011

Mr. Pacocha, speaking on his motion, stated that he felt the applicant satisfactorily addressed all of the criteria, the impact was minimized, and it was necessary for the development of the property.

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

VOTE: Acting Chairman Pitre asked Clerk Davis to poll the Board on the motion to approve the request for a Wetland Special Exception, with the noted stipulations of the Conservation Commission and the previous approval by the Zoning Board of Adjustment as previously cited, and to record the members' votes, which were as follows:

Mr. Pacocha	To approve
Mr. Martin	To approve
Ms. Shuman	To approve
Mr. Houle	To approve
Mr. Pitre	To approve

Acting Chairman Pitre declared that, there having been five votes to approve the request for a Wetland Special Exception, with the noted stipulations of the Conservation Commission and the Zoning Board of Adjustment's previous approval, the motion had carried.

3. **Case 160-105 (4/28/11): William Tate, 72 Old Derry Road, Hudson, NH, requests the following for property located at 297 Central Street:**
 - a. **A Variance to allow construction of five parking spaces, a loading space, dumpster pad and a shallow retaining wall within the Wetland Conservation District. [Map 160, Lot 105, Zoned I, HZO Article IX, Section 334-35, Uses within the Wetland Conservation District.]**
 - b. **A Wetland Special Exception to allow the impact of 10,300 square feet of the Wetland Buffer for construction of a storm water infiltration basin, tree box filter, five parking spaces, and a retaining wall. [Map 160, Lot 105, Zoned I, HZO Article IX, Section 334-33, Wetland Conservation District.]**

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

Acting Chairman Pitre asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak replied that the case was originally before the Board in 2009, the Board voted on the case, and that vote had been challenged. He further replied that the applicant had subsequently changed the proposed plan, but the new proposed plan was still located in the wetland setbacks.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 28, 2011

Mr. Martin asked if it was still in litigation. Attorney Westgate replied that the prior case was still pending at the Superior Court level but that a settlement understanding had been reached in principle – noting that the understanding had not been finalized.

Mr. Martin stated that he was concerned about the Board making a decision with regard to the case prior to a decision made by the Superior Court.

Attorney Westgate explained that the abutter, Century Park, LLC, appealed the approval of the Variance and Wetland Special Exception granted by the Board in 2009. He further stated that the applicant had subsequently revised the original plan as a result of discussions with Century Park, LLC, and all parties were aware of the hearing at this meeting. He said that “technically” this was a new case.

Ms. Shuman asked if the negotiations would be affected if a decision was rendered at this meeting. Attorney Westgate replied that negotiations would not be affected.

Mr. Dearborn asked when a decision was expected from the Superior Court. Attorney Westgate replied that he would be hopeful that the paperwork would be complete sometime prior to June.

Mr. Houle commented that the abutter, Century Park, LLC, was not present and he would suggest that the Board hear the case.

Ms. Davis commented that she felt that the applicant had the right to submit a brand new application. Acting Chairman Pitre stated that he agreed with Ms. Davis’ comment.

Attorney Westgate pointed out that legal counsel for Century Park LLC “did not know until today that the applicant was appearing before the Board.”

Mr. Houle asked what the town’s position was on the lawsuit. Attorney Westgate replied that the town was a party to the case “almost” in name only.

Mr. Martin reiterated that he did not feel the Board should hear the case, adding that he would step down if it was heard.

Mr. Martin stepped down from hearing the case.

Acting Chairman Pitre seated Ms. Davis in place of Mr. Martin, who had stepped down.

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

April 28, 2011

Discussion with regard to the Variance

Mr. Patrick Colburn, Civil Engineer from Keach-Nordstrom, LLC, representing the applicant, addressed the Board, stating that the original plan proposed that the building be located on the northeast corner of the property with access from the southwest corner. He further stated that the current plan proposed that the building be located on the southwest corner of the property with access from the southeast corner. He said that the building size, number of seats, and number of parking spaces had not changed.

Mr. Colburn stated that both the Conservation Commission (2/14/11) and the Planning Board (3/30/11) had respectively sent favorable recommendations to the Zoning Board of Adjustment.

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

1. *The Variance will not be contrary to the public interest because a restaurant on Central Street will provide a benefit to the public. Currently the site is undeveloped and overgrown with scrub brush. Keach-Nordstrom Associates, Inc. will design the construction methods and maintenance methods for the project, including those involving the wetland buffer impacts.*
2. *The spirit of the ordinance is observed because the regulations are intended to prevent the development of structures and certain land uses that could contribute to the pollution or impairment of the surface water and ground water resources. The proposed project incorporates development strategies that maintain the functions and values of the on-site wetland, which currently serves as a conveyance channel for both on-site and off-site stormwater run-off.*
3. *Substantial justice is done by allowing the reasonable use of the applicant's property. The nature of the affected wetland is a stormwater conveyance channel formed during the construction of Central Street (NH Route 111.) The stormwater treatment and mitigation measures proposed as part of the project will maintain the function and value of the on-site wetland.*
4. *The values of surrounding properties are not diminished because, in our opinion, no diminution of property values of the parcels surrounding the area would occur.*

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 28, 2011

- 5. No fair and substantial relationship exists between the general public purposes of the ordinance and the specific application because in this specific application, the subject project does not discount the health, safety, and general welfare of the inhabitants resulting from the construction of five parking spaces, a loading space, dumpster pad and retaining wall, which are required as part of the site development, within the Wetland Conservation District.*

The proposed site design incorporates modern strategies for the development of this industrially zoned parcel.

The layout of the proposed parking area was designed to accommodate Hudson EMS. Additionally, a new hydrant would be installed between the proposed building entrance and the adjacent parking lot.

- 6. The proposed use is a reasonable one because the proposed Central Street Restaurant and the associated parking area constitute reasonable use of the property. Special conditions of the site include the stormwater conveyance channel that runs adjacent to the property's northerly boundary line along Route 111 (Central Street), affectively cutting the subject site off from access via Central Street. The property is located within the Industrial Zoning District.*

The applicant has determined that reducing the size of the project to accommodate development outside the Wetland Conservation District makes the project unfeasible. Therefore, we have reduced impacts to the extent practicable.

Mr. Colburn read aloud a portion of the criteria for granting a Wetland Special Exception, summarized as follows:

- 1. The proposal is essential to the reasonable use of the land outside the Wetlands Conservation District. The existing lot of record is 1.4 acres in total area, with nearly one quarter of the property located within the wetland buffer for the Central Street drainage ditch. Wetland impacts are eliminated altogether by proposing a retaining wall and utilizing an easement for access to the site, rather than constructing a new driveway crossing on the wetland.*

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 28, 2011

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, 63 parking spaces are required for the proposed restaurant, which is modest in size with only 100 seats. In order to provide adequate space, parking, and other improvements, the wetland buffer area must be impacted. There is no reasonable alternative to the proposed use that does not adversely affect the Wetland Conservation District on this property.*
3. *Design, construction, and maintenance methods for the project, including those involving the wetland buffer impacts, have been designed by the applicant's project engineers, Keach-Nordstorm Associates, Inc.*
4. *The proposed use within the Wetland Conservation District is not based primarily on economic considerations but 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 will not be impacted by the proposed development. The New Hampshire Natural Heritage Bureau was notified of the proposed development and was asked to check their records for threatened or endangered species on and adjacent to the subject site.*

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

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

Acting Chairman Pitre declared the matter before the Board and asked if there were any members who had questions or comments.

Acting Chairman Pitre asked what type of dumpster was being proposed – noting that the dumpster would be located in the buffer zone. Mr. Colburn replied that a Planning Board member had suggested that a curb be left on the concrete pad to prevent any spill over from the dumpster.

Acting Chairman Pitre asked Mr. Colburn to explain how the “newer technology” basins worked. Mr. Colburn gave a brief description.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 28, 2011

Mr. Dearborn asked if there were an easement for the private drive accessing the property. Mr. Colburn replied there was an easement.

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

Vote with regard to the Variance

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

Ms. Davis seconded the motion.

Mr. Pacocha, speaking on his motion, stated that he felt the new plan was less of an impact and met all of the criteria for a Variance were met.

Ms. Davis, speaking on her second, stated that she felt all of the requirements were met.

VOTE: Acting Chairman Pitre asked 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. Pacocha	To approve
Ms. Davis	To approve
Ms. Shuman	To approve
Mr. Houle	To approve
Mr. Pitre	To approve

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

Vote with regard to the Wetland Special Exception

Mr. Pacocha made a motion to approve the request for a Wetland Special Exception, with the noted stipulations of the Conservation Commission (February 14, 2011), and the previous approval by the Zoning Board of Adjustment. (12/10/09)

Mr. Pitre added a stipulation that there should be some type of curbing retention around the concrete dumpster pad to prevent any leakage into the wetland buffer. Mr. Pacocha stated that he agreed with that stipulation.

Mr. Houle seconded the motion.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

April 28, 2011

Mr. Pacocha, speaking on his motion, stated that he felt all of the criteria were met by the applicant, and that there were favorable recommendations from the Conservation Commission and the Planning Board.

Mr. Houle, speaking on his second, stated that he agreed with what Mr. Pacocha had said, and that he was happy that the plan came back to the Board with a lesser impact to the wetland buffer.

VOTE: Acting Chairman Pitre asked 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. Pacocha	To approve
Mr. Houle	To approve
Ms. Shuman	To approve
Ms. Davis	To approve
Mr. Pitre	To approve

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

Acting Chairman Pitre noted that Ms. Davis returned to her seat as a non-voting alternate member of the Board with Mr. Martin returning to his seat as a full voting member of the Board.

VI. PUBLIC HEARING FOR PROPOSED AMENDMENT OF ZBA BYLAWS (HTC §143) - DISCUSSION

Mr. Martin made a motion to defer the discussion until the next scheduled meeting of May 26, 2011 - Prior revisions to be available.

Acting Chairman Pitre called for a verbal vote and he then stated that all of the sitting Board members were in favor of deferring the discussion until the next scheduled meeting of May 26, 2011.

VII. ADJOURNMENT

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

**HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes
April 28, 2011**

Ms. Shuman seconded the motion.

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

Acting Chairman Pitre declared the meeting to be adjourned at 10:00pm.

Date: May 11, 2011

Michael Pitre, Acting Chairman

Recorder: Trish Gedziun