

**HUDSON ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
October 28, 2010**

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:00pm on Thursday, October 28, 2010, in the Community Development Meeting Room in the Town Hall basement. Chairman Seabury then requested Clerk Houle to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

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

Members

Absent: Mike Pitre (Excused)

Alternates

Present: Kevin Houle

Alternates

Absent: Marilyn McGrath (Excused)

Staff

Present: William Oleksak, Zoning Administrator

Liaison

Present: Ben Nadeau (Excused)

Recorder:

Trish Gedziun (Excused)

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes October 28, 2010

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 announced that Mr. Houle would be seated in place of Mr. Pitre, who was excused.

Chairman Seabury stated that seated Board members for this meeting would be Mr. Houle, Mr. Martin, Mr. Pacocha, Ms. Shuman, and himself. He asked if there were anyone present who had any objections with the seated members. There was no one present who expressed objection.

III. APPROVAL OF MEETING MINUTES

A. The following edits were made to the minutes of the August 26, 2010, meeting:

1. Page 5, 3rd paragraph – the paragraph was left as it was originally typed. – Seabury
2. Page 9, 2nd paragraph – “Mr. Hoomis” was changed to “Mr. Coumis” – Martin
3. Page 12, 1st paragraph – The sentence “Chairman Seabury noted that this language was taken directly from LGC analysis of the new legislation.” was added to the paragraph - Seabury

Mr. Martin made a motion to approve the minutes from the August 26, 2010, minutes as amended by the Board.

Ms. Shuman seconded the motion.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes October 28, 2010

Chairman Seabury called for a verbal vote and he then stated that all of the Board members were in favor of approving the minutes from the August 26, 2010, meeting as amended by the Board.

B. The following edits were made to the minutes of the September 9, 2010, meeting:

1. Page 5, 2nd paragraph – “as indicated on the coverage map” was added. – Seabury
2. Page 6, 9th paragraph – “Clerk Houle” was changed to “Acting Clerk Martin” – Martin
3. Page 8 – The following testimony made by Mr. Joseph Brunelle was added. Well, it’s not going to be a permanent thing, eventually I want to do a two-car garage on the side of the house with an in-law above for my parents. Then I’ll have the garage for storage after that and I won’t need it [the shed] for storage anymore. Hopefully within in two years, I’ll be able to do that.
4. Page 8 – The following statement made by Mr. Oleksak was added. Mr. Oleksak stated that the applicant would have to come back before the Board to request permission for an ALU plus a setback on the structure he was going to put on the side of the house.
5. Page 10, 1st paragraph – “Ms. Rinaldi” was changed to “Ms. Ripaldi” - Martin

Mr. Martin made a motion to approve the minutes from the September 9, 2010, minutes as amended by the Board subject to Chairman Seabury’s changes.

Ms. Shuman seconded the motion.

Chairman Seabury called for a verbal vote and he then stated that all of the Board members were in favor of approving the minutes from the September 9, 2010, meeting as amended by the Board subject to Chairman Seabury’s changes.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes October 28, 2010

Chairman Seabury then declared a break at 7:24pm, calling the meeting back to order at 7:35pm.

IV. PUBLIC HEARINGS FOR SCHEDULED APPLICATIONS

- 1. Case 193-037 (10/28/10, deferred from 9/9/10): Lauri Ripaldi, 46 Bush Hill Road, Hudson, NH, requests a Home Occupation Special Exception to allow a floral business to be located within the existing dwelling. [Map 193, Lot 037, Zoned G, HZO Article VI, Section 334-24, Home Occupation]**

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

Chairman Seabury announced that the Community Development Department was now utilizing the GIS Mapping System to ensure that all of the necessary abutters were properly notified of hearings.

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

Ms. Lauri Ripaldi, the applicant, addressed the Board, stating that she wished to continue operating the already existing floral restoration business out of her home.

Chairman Seabury stated that Ms. Ripaldi had read her answers into the record with regard to the application for a Home Occupation Special Exception on September 9, 2010.

Ms. Ripaldi stated that the two abutters who had not been notified at the last meeting (September 9, 2010) had since been notified.

Ms. Ripaldi stated that she wanted to have a sign on her property advertising her business. Chairman Seabury replied that a sign of no more than three square feet in size and positioned at least fifteen feet from the road was permitted if a Home Occupation Special Exception were granted.

Chairman Seabury asked if there were any members of the Board who had questions or comments.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes October 28, 2010

Mr. Martin asked what the intended hours of operation would be. Ms. Ripaldi replied that the hours of operation would be strictly scheduled by appointment only.

Chairman Seabury commented that he had a slight concern with customers finding and entering the property.

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

Chairman Seabury declared the matter before the Board.

Mr. Martin made a motion to approve the request for a Home Occupation Special Exception for a Conditional-Use floral preservation 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:

- a. 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.)
- b. 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.
- c. 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

**HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes
October 28, 2010**

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.

- d. The hours of business, as specified by the applicant, shall be by appointment only.

In addition, the applicant expressed understanding that the sign permitted for this business would be no greater than three square feet, located at least 15 feet behind the front lot-line, with only the basic information and the street address. (no additional banner work)

Mr. Pacocha seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt the Home Occupation Special Exception was a non-invasive use, the applicant had successfully met all of the criteria, and it would not produce additional traffic. He further stated that he felt it was “an out-of-sight/out-of-mind business.”

Mr. Pacocha, speaking on his second, stated that he felt the business would have a minimal impact on the neighborhood, and the applicant had successfully met all of the criteria.

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

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

Chairman Seabury declared that the decision having been five votes to approve the request for a Home Occupation Special Exception, with the noted stipulations, the motion had carried.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes October 28, 2010

2. **Case 222-005 (10/28/10): Rick Wheeler and Brian Wheeler, DBA Hudson Cycle, P.O. Box 196, 71 Bridge Street, Pelham, NH, requests the following:**
 - a. **An Appeal from an Administrative Decision issued by the Zoning Administrator dated August 2, 2010, which stated that a Variance is required for an off-premises sign for property located at 225 Lowell Road, Hudson, NH. [Map 222, Lot 005, Zoned B, HZO Article XII, Section 334-60 (B), General Requirements.]**
 - b. **A Variance to allow 2 Flagstone Drive, Hudson, NH off-premises advertisement on the sign located at 225 Lowell Road, Hudson, NH. [Map 222, Lot 005, Zoned B, HZO Article XII, Section 334-60 (B), General Requirements.]**

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

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

Mr. Oleksak explained that the applicant had requested to put a new reader board sign on the property. He further stated that he decided to deny the requested sign because the proposed sign was not located at the same address as the applicant, and therefore deemed it as an off-premise sign and had to be approved by the Zoning Board of Adjustment.

Chairman Seabury pointed out that the decision of the Zoning Board of Adjustment with regard to this case was to determine if the members believed they would have made the same decision and/or interpretation based on the evidence presented.

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

Mr. Rick Hammar, from Hammar & Sons Sign Company, representing the applicant, stated that he was present to request an Appeal from an Administrative Decision as well as a Variance in the event that the decision was not overturned.

Chairman Seabury indicated that he was eager to hear the testimony with regard to why Mr. Hammar felt that the sign which was **not** located on the applicant's property was **not** considered an "off-site" sign.

Mr. Hammar replied that he felt that Mr. Oleksak's interpretation of the code "certainly sounded correct."

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes October 28, 2010

Mr. Hammar stated that he initially thought the sign may have been “grandfathered” as the applicant had been advertising their name on the sign for approximately four years and had never been cited for having an off-premise sign.

Mr. Hammar stated that the state of New Hampshire had widened Lowell Road in 1998 which removed the entrance to 225 Lowell Road and closed and removed the Mobile Station on the corner of Flagstone and Lowell Roads.

Chairman Seabury asked the applicant if the sign in question was actually located on the property that it was advertising on.

Mr. Hammar replied that he did not disagree with Mr. Oleksak’s decision but he was unsure as to whether or not a type of “land-lock” technicality applied to this situation.

Mr. Hammar commented that the applicant agreed that most towns did have a code which stated that off-premise signs were not allowed for a variety of reasons including advertising for properties that were one or two miles down the road. Mr. Hammar further commented that the applicant did not feel it was the same situation as the business advertised was located directly next to the sign.

Chairman Seabury suggested that he felt the Board should proceed to section (b), the Variance request since that applicant was not disagreeing with Mr. Oleksak’s initial decision.

Mr. Martin asked if the sign, which was permitted on January 28, 2000, was the same sign in question. Mr. Oleksak replied that the sign was originally approved because after the gas station and entrance were removed, the owner of the property had come in to plead his case for a sign. Mr. Oleksak further stated that he was not sure if the lot in question would ever be usable due to the contamination problem that existed.

Mr. Martin commented that he had an issue with telling the applicant that the sign identifying the location of the business had to be removed since the state of New Hampshire had closed off the driveway and the access became off of Flagstone Drive. He also stated that he did not feel the sign would hurt anything.

Mr. Hammar stated that the applicant was simply present to request the name of “Hudson Cycle” to be added to the sign that had been in existence for four years.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes October 28, 2010

Chairman Seabury stated that he did not feel that it was “ok” to add the name of the company simply because the sign had been there for four years. He further stated that it did not make it “ok” just because the town had not previously noticed it.

Chairman Seabury suggested that combining the two lots could have been a simpler solution. Mr. Hammar replied that the applicant had looked into combining the two lots, but that it would risk bringing the property values down because of the contamination on one of the lots.

Mr. Martin stated that he would vote to uphold the Zoning Administrator’s Decision because he felt it was the right decision.

Ms. Shuman asked Mr. Oleksak what the property was zoned as. Mr. Oleksak replied that the property that had the existing sign on it was located in the Business Zoning District. However, he also replied that Hudson Cycle was located in the Industrial Zoning District.

Ms. Shuman stated that the tax card indicated that the property in question was located in the Industrial Zoning District and the off-site sign would be an allowed use in that zone.

Mr. Martin read aloud a portion of the following citation:

334-60 (B) except as noted in 334-65 (B) no off-premises advertising signs are permitted in any district.

334-65 (B) an Industrial Park sign will be permitted along a public right-of-way in addition to other signage for the purpose of project identification at the entrances to the large scale developments. The Industrial Park sign is permitted in addition to other signage.

Mr. Oleksak stated that what Mr. Martin cited was not with regard to an off-premise sign. Mr. Oleksak further stated that all of the buildings “down there” had a sign on the building and a sign close to the road - to the right-of-way. There were no marquee type signs advertising the companies in any Industrial Park in Hudson.

Mr. Oleksak stated that his interpretation of the ordinance was that it did not allow for signs which were located “off-premise.”

**HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes
October 28, 2010**

Mr. Martin made a motion to defer the case in order to obtain the Town Attorney’s interpretation of the ordinance.

Ms. Shuman seconded the motion.

Mr. Martin, speaking on his motion, stated that he respectfully disagreed with the Zoning Administrator’s Decision and felt it was important to get the Town Attorney’s opinion.

Ms. Shuman, speaking on her second, stated that she felt there was a grey area with this situation, she questioned the tax cards, and agreed with what Mr. Martin had said.

Mr. Hammar stated that he would like to withdraw his request for an Appeal from an Administrative Decision and continue on with the request for a Variance because time was of the essence.

Chairman Seabury asked Mr. Hammar to explain why time was of the essence. Mr. Hammar replied that the applicant was trying to run a business and they did not have a sign.

Chairman Seabury stated that the Board’s interpretation of the ordinance had extraordinarily significant implications for the Town of Hudson. Chairman Seabury further stated that he was not inclined to pursue the case any further without legal review.

Mr. Martin agreed that the absence of a sign could have been hurting the applicants business and therefore, did not see why the Board could not allow the use of the sign until a final decision was made. Ms. Shuman stated that she agreed with Mr. Martin.

VOTE: Chairman Seabury asked Clerk Houle to poll the Board on the motion to defer the case pending an opinion from the Town’s Attorney, allowing the applicant to use the sign until a final decision was made, and to record the members’ votes, which were as follows:

Mr. Martin	To defer
Ms. Shuman	To defer
Mr. Pacocha	To defer
Mr. Houle	To defer
Mr. Seabury	Not to defer

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes October 28, 2010

Chairman Seabury declared that the decision having been four votes to approve the motion to defer the case pending a decision from the Town's Attorney, and one vote not to defer, the motion had carried.

3. **Case 198-126 (10/28/10): Daniel Bonhomme, Jr., 8 Charbonneau Street, Hudson, NH, requests an Accessory Living Unit within the existing addition, to be occupied by a family member. [Map 198, Lot 126, Zoned TR, HZO Article XIII A, Section 334-73.3, Accessory Living Units.]**

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

Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak replied that Mr. Bonhomme wished to convert an addition, which was constructed several years, into an Accessory Living Unit. He further stated that the applicant still had to install a stove in the kitchen area.

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

Mr. Daniel Bonhomme and Ms. Tina Bonhomme, the applicant's, addressed the Board, and (Ms. Bonhomme) read aloud a portion from the Application for an Accessory Living Unit as summarized as follows:

- *An ALU is allowed only in one-family dwellings. An ALU is expressly prohibited in an Open Space Development. This site will conform to this requirement by: This is a one-family home. The addition was done on a previous permit. Permit #2003-519. We only wish to add a stove making the addition an ALU.*
- *An ALU is not allowed as a free-standing, detached structure or as part of any structure which is detached from the principal dwelling. This site will conform to this requirement by: There will not be any free-standing detached structures. We are only adding a stove inside the addition making it an ALU.*
- *An ALU is to be occupied only by immediate family members (by blood or marriage) of the owner of record of the principal dwelling. An ALU is not*

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes October 28, 2010

- *allowed in any principal dwelling in which the owner of record of the principal dwelling does not personally reside. This site will conform to this requirement by: The addition was built for Daniel Bonhomme, Jr. to care for his aging parents. Daniel Bonhomme, Sr. is living with us. Daniel Bonhomme, R. has since married his wife and two children also reside in the home.*
- *The front face of the principal dwelling structure is to appear as a one-family dwelling after any alterations to the structure are made to accommodate an ALU. This site will conform to this requirement by: The addition already exists therefore no alterations will be made to the outside of the structure.*
- *At least one common interior access between the principal dwelling unit and an ALU must exist. A second means of egress from an ALU must exist and be located at the side or rear of the structure. This site will conform to this requirement by: There is already a common interior access between the principal dwelling unit and the existing addition from permit #2003-519. Ms. Bonhomme also stated that she had pictures of the existing common access and distributed them to the Board.*
- *Separate utility service connections and/or meters for the principal dwelling unit and an ALU shall not exist. (This does not preclude using a type of heating system for an ALU different from the type for the principal dwelling unit.) This site will conform to this requirement by: There is only one service connection for the entire home including the addition already built per #2003-519.*
- *Off-street parking shall be provided to serve the combined needs of the principal dwelling unit and an ALU. This site will conform to this requirement by: There is plenty of off-street parking for the dwelling unit and the ALU.*
- *The gross living area (GLA) of an ALU shall not be less than 350 square feet, and shall not exceed fifty percent of the principal structure or 1,000 square feet, whichever is less. The above-grade GLA of the principal dwelling shall not be reduced to less than 850 square feet in order to accommodate the creation of an ALU. This site will conform to this*

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes October 28, 2010

- *requirement by: The addition exists already and was approved by the town's Building Inspector.*
- *A Building Permit for an ALU must be approved and issued prior to the construction of an ALU. The ALU shall have interconnected smoke alarms per Section R313.2.1 of the 2006 IRC Building Code. This site will conform to this request by: The addition already exists and was built on Permit #2003-519.*
 - *Interconnected smoke alarms exist. We are only adding an electric stove to the existing addition.*

Ms. Bonhomme then read aloud from the list of Procedural Requirements (Pages 8-9 of the Application for an Accessory Living Unit) that were initialed as verification that the applicant understood all of them.

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. No one came forward.

Chairman Seabury declared the matter before the Board.

Ms. Shuman asked if the ALU had a second egress. Ms. Bonhomme replied that the ALU had three egresses.

Mr. Martin stated that the Hudson Fire Department no longer determined house numbers of Accessory Living Units.

Mr. Martin made a motion to approve the request for an Accessory Living Unit.

Mr. Pacocha seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt that it was a great case for an ALU. He stated that the addition had been built prior to the request for the ALU and the use would serve the applicant well.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes October 28, 2010

Mr. Pacocha, speaking on his second, stated that the applicant had successfully addressed the requirements for an ALU and he said he felt the Board should approve the request.

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

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

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

- 4. Case 241-061 (10/28/10): Heather Bucknam, 40 Dracut Road, Hudson, NH, requests a Variance to allow a proposed garage to be constructed within the front-yard setback. 50 feet required, 35.6 feet proposed. [Map 241, Lot 061, Zoned R-2, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**

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

Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak replied that the applicant wished to construct a garage within the front-yard setback. He further replied that the ordinance did not allow for that and the applicant was before the Board to request a Variance.

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

Ms. Heather Bucknam, the applicant, addressed the Board, and read aloud a portion of the Application for a Variance as summarized as follows:

- *Granting of the requested Variance will not be contrary to the public interest because the site of the garage will still be set back 35 feet which does not place it close enough to the road to hinder any traffic or emergency vehicles.*

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes October 28, 2010

- *The proposed use will observe the spirit of the ordinance because the garage will sit within the boundary lines with enough set back to the neighbors.*
- *Substantial justice would be done to the property owner by granting the Variance because by allowing the garage to be built on the existing driveway, it will shorten the amount of driveway needed and reduce the amount of snowplowing. There is a large tree towards the side of the property that might sustain damage if the garage were moved farther back.*
- *The proposed use will not diminish the values of surrounding properties because many of the homes in the surrounding area on Dracut Road seem to be less than 50 feet from the road as well. The proposed garage would be nearly in line with our immediate neighbors' home.*
- *Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship because one of my big concerns is the effect of building a garage on top of the large 22-year old Maple Tree that shades the east side of the house. This tree provides a great deal of natural cooling in the summer. Also, shortening the length of the driveway will make it considerably cheaper to replace next year. It will also allow for less shoveling/snow blowing this winter. I have planted a garden to encourage the wild life of this area to find good homes.*

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. No one came forward.

Chairman Seabury declared the matter before the Board.

Mr. Martin made a motion to approve the request for a Variance stating that he felt there was no negative abutter testimony, the applicant was covered under the side-yard setback, the proposed garage would not sit entirely in front of the house, he did not feel that it would de-value any of the surrounding property values, and it would be a good use.

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

**HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes
October 28, 2010**

Mr. Houle asked how many cars the applicant intended on parking in the proposed two-stall garage and if there was room for a turn-a-round because Dracut Road was a very heavily traveled road. Ms. Bucknam replied that she had become very adept at backing into her driveway. She also stated that if she had to, she could turn her vehicle around in her yard.

Mr. Pacocha stated that he did not feel the hardship criteria had adequately been addressed.

Chairman Seabury stated that he agreed with Mr. Pacocha and also felt that there was not a hardship on the property but on how the applicant wanted to use it.

Chairman Seabury made a motion to deny the request for a Variance based largely on the grounds that the unnecessary hardship was not demonstrated and putting a two-story garage significantly ahead of the front line of the building was clearly contrary to the implicit purpose of the ordinance as stated.

Mr. Pacocha seconded the motion.

Chairman Seabury, speaking on his motion, stated that he had nothing further to add to his commentary.

Mr. Pacocha, speaking on his second, stated that he agreed with everything Chairman Seabury had said. He also stated that the Board had denied a similar request in the past.

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

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

Chairman Seabury declared that the decision having been four votes to deny the request for Variance, and one vote to approve the request for a Variance, the motion had carried.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes October 28, 2010

V. OTHER BUSINESS

1. **Case 190-187 (10/28/10, Request for Rehearing):** Manuel and Kathleen Sousa, 18 Overlook Circle, Hudson, NH, requests a Variance to allow a proposed 120-foot tall monopole in the Business Zone, within 600 feet of a corridor and within 600 feet of residential uses, where only 100 feet is an allowed use. [Map 190, Lot 187, Zoned B, HZO Article XVIII, Section 334-96.1, Districts where conditionally permitted.]

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

Mr. Martin made a motion to forego reading the Request for a Rehearing into the record as the Board had ample time in which to review the document. (Note: The letter was however, a matter of public record and available for review at the Community Development Office)

Ms. Shuman seconded the motion.

Chairman Seabury called for a verbal vote and he then stated that all of the Board members were in favor of not reading the Request for a Rehearing into the record as the Board had ample time in which to review the document.

Mr. Houle stated that he would step down from hearing the Request for a Rehearing as he had stepped down when the Board originally heard the case.

Chairman Seabury pointed out that only four sitting Board members would remain after Mr. Houle stepped down but that the case would still be heard.

Mr. Martin commented that the application which was presented to the Board listed Manuel and Kathleen Souza as the applicants and not Team Mobile Northeast.

Mr. Martin asked if the FCC covered Manuel and Kathleen Souza. Chairman Seabury replied that it was almost always either the carrier or the tower constructor who made the presentation but that the Zoning Board of Adjustment insisted that the property owner sign the application.

Chairman Seabury noted that Manuel and Kathleen Souza had given written authorization for Attorney Grill to speak on their behalf.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes October 28, 2010

Mr. Martin commented that Manuel and Kathleen Souza had nothing to do with Team Mobile but were simply the property owners of 28 Lowell Road who wanted to have the monopole on their property. Mr. Martin asked again if the FCC covered the application.

Mr. Martin stated that Attorney Grill was really representing Team Mobile and not Manuel and Kathleen Souza - despite the fact that they had given Attorney Grill written permission to represent them.

Ms. Shuman commented that the authorization read that “the land owner authorized Team Mobile Northeast by and through its’ attorney to apply for any Variance, etc., that they required.” Ms. Shuman further commented that she felt it was “ok”, but that if Mr. Martin wanted a ruling she was “ok” with that as well.

Mr. Martin commented that he was unaware of the FCC prior to the recent Law Lecture Series in which he had attended.

Chairman Seabury stated that he was going to follow-up with Mr. Oleksak on possible changes to the ordinance as well as following up on suggestions made by the Town Attorney.

Chairman Seabury also stated that it was unclear if the town had been notified of the recent changes in the law and, if so, who made the notification.

Chairman Seabury stated that one of the issues that Attorney Grill raised was that the written decision dated September 16, 2010, did not comply with the requirements of the FCC. Chairman Seabury agreed that it did not comply because the Board had made the same kind of decision made for all of its cases – that a few days after the meeting a sheet was produced within a few days for the sake of the record which indicated whether the Board approved/denied or deferred/withdrew. Chairman Seabury commented that the Board had not been writing the decisions in a detailed or explicit way.

Chairman Seabury stated that Attorney Grill indicated that he had reviewed the minutes and he said he did not feel that the minutes explained why the Board made the decision it made.

Chairman Seabury stated that Attorney Grill had made a point about the tower being a tenth of a mile away from residences. Chairman Seabury further stated that this distance was not accurate as the Board had demonstrated – pointing out that the proposed tower

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes October 28, 2010

would be 324 feet from Lowell Road and there were three residences within 600 feet from the proposed tower.

Chairman Seabury stated that Attorney Grill had made several statements which they could now claim went undisputed because nobody else was here and the Board did not dispute them. Chairman Seabury further stated that since the Board had since been informed that in the future, a procedure should be put in place in which an outside person would be hired to review the case and then answers the questions and see whether or not they should be refuted.

Mr. Pacocha commented that he would be inclined to make a motion to rehear based on the fact that new information was discovered at the Law Lecture Series. He also commented that he felt that an independent expert should be hired to provide an opinion if the Board did decide to rehear the case.

Mr. Pacocha stated that one of the reasons he had voted to deny the applicant's original request was because he felt there could have been a more appropriate and less intrusive place in which to locate the tower but that he did not have any grounds to back it up.

Chairman Seabury stated that he was going to contact the National Regional Planning Commission for suggestions with regard to hiring independent experts.

Mr. Pacocha made a motion to approve the Request for a Rehearing, date specific, to be heard at the December 9, 2010, meeting.

Ms. Shuman seconded the motion.

Mr. Pacocha, speaking on his motion, stated that attending the Law Lecture Series prompted him to re-think his original decision and that the question of hardship should have been on the Telecommunications Act and not the land.

Ms. Shuman, speaking on her second, stated that she felt there was new evidence available (obtained from the Law Lecture Series) which warranted a rehearing.

Mr. Martin stated that he did not feel there was any new evidence presented by the applicant, but new evidence by the Board attending the Law Lecture Series.

Chairman Seabury stated that he would vote against the motion because despite of the information learned at the Law Lecture Series, he said he felt there needed to be more

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes October 28, 2010

control at the local level. He further stated that the town had set up and developed a telecommunications ordinance which addressed the questions and established a variety of places in which towers could be placed. He said that the ordinance was just fine ten or fifteen years ago but that the procedures had since been changed.

Chairman Seabury stated that he felt the property was being used to the maximum but that the applicant could have convinced him otherwise if it was proved that there really was no other reasonable location for the proposed tower.

VOTE: Chairman Seabury asked Clerk Houle to poll the Board on the motion to approve the Request for a Rehearing, date specific, to be heard at the December 9, 2010, meeting and to record the members' votes, which were as follows:

Mr. Pacocha	To approve the request to rehear
Ms. Shuman	To approve the request to rehear
Mr. Martin	To approve the request to rehear
Mr. Seabury	To deny the request to rehear

Chairman Seabury declared that the decision having been three votes to approve the Request for a Rehearing, date specific, to be heard at the December 9, 2010, meeting, and one vote not to approve, the motion had carried.

Chairman Seabury asked Mr. Oleksak if there was anything else he wished to bring up before the Board.

Mr. Oleksak stated that he would like the Board to pay particular attention to the section of the ordinance which pertained to Business and Industrial Building Signs - Section 334-63 and not Section 334-65 - which referred to parks.

Chairman Seabury stated that it should be brought to the Planning Board's attention.

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

Ms. Shuman made a motion that would require all applicants to provide a copy of their deed when filing an application.

Mr. Martin seconded the motion.

**HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes
October 28, 2010**

Chairman Seabury called for a verbal vote and he then stated that all of the Board members were in favor of approving the motion which would require all applicants to provide a copy of the deed when filing an application.

VI. ADJOURNMENT

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

Mr. Pacocha seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 10:08pm.

Date: November 9, 2010

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun