

**HUDSON ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
September 9, 2010**

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:38pm on Thursday, September 09, 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

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

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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.

III. PUBLIC HEARINGS FOR SCHEDULED APPLICATIONS

1. **Case 190-187 (9/9/10), Deferred from (8/26/10): Manuel and Kathleen Souza, 28 Lowell Road, Hudson, NH, requests the following:**
 - a. **A Variance to allow reduction of the Fall Zone Limitation for the proposed free-standing cell tower for the property located at 28 Lowell Road, Hudson, NH, from a linear distance equivalent to the height of the tower to a proposed distance of 27 feet. [Map 190, Lot 187, Zoned B, HZO Article XVIII, Section 334-102 (A), Fall Zone Calculation.]**
 - b. **A Variance to allow the 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. Houle announced that he would step down from the case and he then moved to a seat in the audience section of the room.

Chairman Seabury stated that, as Mr. Houle had stepped down from the case, there were only four sitting Board members present. He further stated that the Board's By Laws indicated that applicants should be given a choice as to whether or not they wished the case to be heard with four sitting Board members, or to defer the case to the next available meeting, when presumably, there would be five sitting Board members. Attorney Steven E. Grill, the applicants' representative for Case 190-187, stated that he did wish to proceed with the Board hearing the case with four sitting members.

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Chairman Seabury announced that Mr. Martin would assume the role of Clerk for Case 190-187, as Mr. Houle had stepped down from the case.

Chairman Seabury announced that the Board would hear section (b) of the request first.

(b) Discussion for a Variance with regard to the proposed 120-foot monopole

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

Attorney Steven E. Grill, from Devine Millimet & Branch, Professional Association, 111 Amherst Street, Manchester, NH, representing the applicant, T-Mobile Northeast, LLC (“T-Mobile”) and on behalf of the owners, Manuel and Kathleen Souza, addressed the Board, stating that there was a need for more facilities with the overall increased usage as well as the increased services that each individual wireless device offered.

Attorney Grill also stated that the coverage had to be better because people were using wireless devices inside of their homes – which included basements and other harder to reach coverage areas.

Attorney Grill pointed out that the affidavit signed by Mr. Dinesh Dasani, Radio Frequency Engineer from T-Mobile, indicated that there was a gap in coverage in the vicinity between Lowell Road and Route 3A, particularly toward the east.

Attorney Grill stated that the applicant had looked into whether or not the proposed monopole could be lower in height but that the engineers concluded that it could not be.

Attorney Grill stated that he felt the applicant met the criteria for hardship in part because he did not feel that the proposed cell tower would not have a negative impact on the surrounding property values - especially those properties in the Business Zone. He also stated that he felt the proposed cell tower was very much in the public’s interest.

Attorney Grill stated that all of the alternate possible locations for the proposed cell tower would have equal zoning issues. Attorney Grill stated that the following locations were considered:

- Hudson Self Storage – 193 Central Street – The location was too close to an existing TMO on air site.

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- First Baptist Church – 236 Central Street – T-Mobile is on this flagpole so the candidate was ruled out.
- Kiwanis Hall – 14 Melendy Road – There was no landlord interest.
- Utility Pole – Melendy Road – Across from the skate park – The location was ruled out because of limited ground space and height.
- Hudson Memorial School – 1 Memorial Drive – There was limited ground space in the existing parking lot next to the ball field and getting closer to residential structures.
- Inside Track Cable Building – 6 Able Street – The building owner and attorney were working on a lease with TMO, however, for personal reasons, the owner was not interested.
- A-1 Self Storage – 7 Able Street – The site was ruled out because of limited ground space.
- Brook Plaza – 30 Lowell Road – During the site walk it was determined that the proposed tower could be located in the rear parking lot behind the plaza building on Lowell Road.

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

Chairman Seabury commented that he did not feel there was a hardship on the property and the property was already being used to its “max.”

Attorney Grill replied that the Federal Law imposed limits and one of those limits was that municipalities could not prohibit service. He also stated that he felt the applicant was limited as to where the proposed cell tower could be located.

Mr. Martin commented that it was confusing how some coverage could have been lost with the installation of the cell tower, as indicated on the coverage maps.

Mr. Shaw, Radio Frequency Engineer, from T-Mobile, stated that there was a mistake on the map provided to the Board and coverage was not expected to be lost.

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Mr. Martin asked if the coverage would be better if the cell tower were higher. Mr. Shaw replied that the higher the tower was, the more interference was likely to occur.

Chairman Seabury asked if there were anyone 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.

Chairman Seabury commented that he was bothered by the requirement that the proposed use would observe the spirit of the ordinance with the corollary that the proposed use did not conflict with the implicit or explicit purpose of the ordinance. He further commented that he felt the proposed cell tower clearly did conflict with the ordinance.

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

Mr. Seabury seconded the motion.

Mr. Pacocha, speaking on his motion, stated that he was not satisfied with the applicant's argument with regard to the hardship criteria and he did not feel it was in the spirit of the ordinance.

Mr. Seabury, speaking on his second, stated that he, too, was not satisfied with the applicant's argument with regard to the hardship criteria and he did not feel that it complied with the spirit of the ordinance.

Mr. Seabury further stated that he did not feel there was any actual evidence that the value of surrounding properties would be diminished with the construction of a cell tower but that he certainly would not want to purchase a house near one.

VOTE: Chairman Seabury asked Acting Clerk Martin 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. Pacocha	To deny
Mr. Seabury	To deny
Ms. Shuman	To deny
Mr. Martin	To deny

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

Chairman Seabury suggested that Attorney Grill request a withdrawal of Case 190-187, Section (a) without prejudice.

Attorney Grill submitted a hand-written request to withdraw Case 190-187, Section (a) of the request, without prejudice, as Section (b) was denied. He stated that the applicant would not have been able to build without the approval of both Variances.

Mr. Martin made a motion to withdraw Case 190-187, Section (a) without prejudice.

Ms. Shuman seconded the motion.

VOTE: Chairman Seabury asked Acting Clerk Martin to poll the Board on the motion to withdraw Case 190-187, Section (a) without prejudice, and to record the members' votes, which were as follows:

Mr. Martin	To allow the withdrawal without prejudice
Ms. Shuman	To allow the withdrawal without prejudice
Mr. Pacocha	To allow the withdrawal without prejudice
Mr. Seabury	To allow the withdrawal without prejudice

Chairman Seabury declared that the decision having been four votes to allow the withdrawal without prejudice, the motion had carried.

Chairman Seabury stated that Mr. Houle had returned to his role as a full voting member of the Board in place of Mr. Pitre, who was excused.

- 2. Case 177-012 (9/9/10), Deferred from (8/26/10): Joseph Brunelle, 55 Kimball Hill Road, Hudson, NH, requests a Variance to allow the existing shed to remain to the front of the main building. [Map 177, Lot 012, Zoned G, HZO Article VII, Section 334-27.1 (C), 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.

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Mr. Oleksak explained that it was noticed by the town that the shed was being built and the applicant had subsequently come into the Community Development Department to fill out an application for a Variance because of its location. Mr. Oleksak further explained that it was later found out by a land surveyor that the shed was not even located on the applicant's property, but on the abutter's property. Mr. Oleksak also stated that the applicant wished to keep the shed on the abutters' property.

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

Mr. Joseph Brunelle, the applicant, addressed the Board, stating that there was a mistake on the original plot plan and he initially thought the shed was located on his property.

Mr. Brunelle further stated that his neighbor had agreed to let him leave the shed where it was if the Board would allow it.

Chairman Seabury stated that the Board did not have the legal authority to allow the shed to be located on an abutter's property even if the abutter gave permission to do so.

Chairman Seabury posed the question "What if your neighbor sells his property and the new owner does not want your shed on his property?"

Mr. Brunelle stated that he was not able to place the shed in the back of the property because the purpose of the shed was to house a wheelchair and scooter for his disabled father.

Chairman Seabury stated that the Zoning Board of Adjustment was authorized to ignore the hardship criteria for cases regarding disabled residents. He further stated however, that the hardship criteria could only be ignored for as long as the disabled resident occupied the property.

Mr. Pacocha asked what size the shed was. Mr. Brunelle replied that the shed was 8' x 12'.

Chairman Seabury stated that the Board could authorize the applicant to place the shed in the front-yard portion of his own property in such a way that it did not interfere with access to the driveway and be at least 15 feet from the sideline. Chairman Seabury further stated that this authorization would be on a temporary basis only. (For as long as there was a person with a handicap on the property)

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Chairman Seabury noted that the Zoning Administrator had to approve the location of the shed if the applicant decided to move the shed onto his property.

Mr. Brunelle stated the following: “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.

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.

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.

Mr. Martin made a motion to approve the request for a Variance with the following stipulations:

- That the shed will be moved to an agreeable location between the applicant and Mr. Oleksak within the front-yard setback.
- That the shed will be removed once the hardship situation ceases to exist.

Mr. Pacocha seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt granting the Variance would be a reasonable use. Mr. Martin also stated that there was a hardship situation. (Reference RSA 674:33 V)

Mr. Pacocha, speaking on his second, stated that he was satisfied with the hardship requirement and he felt substantial justice would be done.

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

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

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

Chairman Seabury informed the applicant that he had up to sixty days to move the shed onto his property.

- 3. Case 193-037 (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 Occupations.]**

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 he had discovered that the applicant was operating a business out of her home. Mr. Oleksak stated that he contacted the applicant and informed her that she needed to obtain a Home Occupation Special Exception for the business to remain in her home.

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

Ms. Lauri Ripaldi, the applicant, addressed the Board, stating that the business was a floral preservation business. She further stated that the business was “pretty much” seasonal with the busiest time being from May through October.

Ms. Shuman asked if Lots 45, 46, and 47 were within 200 feet of the applicant’s property because they were not notified of the meeting and were not on the abutter’s list.

Mr. Oleksak replied that Lot 45 was 210 feet away from the applicant’s property but that Lots 46 and 47 were only 170 feet away from the applicant’s property.

Chairman Seabury made an administrative decision to defer the case, date specific, until the October 28, 2010, meeting because all of the abutter’s were not notified. He stated that the town would ensure that the owner(s) of Lots 46 and 47 were notified and that the notification fees would be paid for at the Town’s expense.

Ms. Ripaldi asked if she could have a sign on her property if her request were approved. Chairman Seabury replied that any sign(s) on her property had to be no larger than 3 square feet and at least 15 feet from the road.

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V. OTHER BUSINESS

Chairman Seabury stated that the Assessor's office had informed him that the property tax would have increased if T-Mobile's request to install a cell tower had been approved. He also commented that there were many variables in determining how much it would be increased by.

Chairman Seabury stated that he had contacted the Town Attorney with regard to the applicability of RSA 674:39. He further stated that the Town Attorney informed him that his advice was that the Board should follow the By Laws.

Chairman Seabury also stated that the Town Attorney also suggested that the Board not apply stipulations such as "there shall be no further extensions" in the future. He suggested that the Board should "never say never."

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 9:45pm.

Date: September 18, 2010

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun