

**HUDSON ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
August 26, 2010**

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:00pm on Thursday, August 26, 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, Mike Pitre, Donna Shuman, and J. Bradford Seabury

Members

Absent: None (All present)

Alternates

Present: Kevin Houle

Alternates

Absent: Marilyn McGrath (Excused)

Staff

Present: Julie Kennedy, Administrative Aide, in place of William Oleksak

Liaison

Present: Ben Nadeau (Excused)

Recorder:

Trish Gedziun

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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.

III. APPROVAL OF MEETING MINUTES

Chairman Seabury announced that there was a quorum present which was sufficient to review the minutes from the June 24, 2010, and July 22, 2010, meetings.

The following edits were made to the minutes of the June 24, 2010, meeting:

1. Page 7, 2nd paragraph – the word “available” was added after the word “not” – Pitre

Mr. Martin made a motion to approve the minutes from the June 24, 2010, minutes as amended by the Board.

Mr. Pitre 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 June 24, 2010, meeting as amended by the Board.

The following edits were made to the minutes of the July 22, 2010, meeting:

1. Page 4, last paragraph – the “request for a Wetland Exception” was changed to the “request for a Special Exception” – Seabury

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2. Page 7, 7th paragraph – was changed to “Mr. Pacocha stated that a variance from the requirements of the Hudson Town Code #334-96.1 was required.” - Pacocha

Mr. Martin made a motion to approve the minutes from the July 22, 2010, minutes as amended by the Board.

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 July 22, 2010, meeting as amended by the Board.

IV. PUBLIC HEARINGS FOR SCHEDULED APPLICATIONS

1. **Chairman Seabury announced that the cases would be taken out of order.**
2. **Case 110-039 (8/26/10): Steven L. Chasse, 8 Christine Drive, Hudson, NH, requests an extension of an un-activated Variance previously granted by the Zoning Board of Adjustment on August 27, 2009, to allow expansion of an existing non-conforming (manufacturing) use. [Map 110, Lot 39, Zoned Business, HZO Article VII, Section 334-29, Expansion or enlargement of non-conforming uses.]**
3. **Case 110-037 & 038 (8/26/10): B&D Land Development, 70 Old Derry Road, Hudson, NH, requests an extension of an un-activated Variance previously granted by the Zoning Board of Adjustment on August 27, 2009, for Lot #38 to permit a proposed 12,000 square foot manufacturing/bulk storage building in the Business Zoning District. Manufacturing is not a permitted use in the Business Zoning District. Lot #37 will contain parking for the manufacturing/bulk storage use taking place on Lot #38. Property located at 10 & 14 Christine Drive. [Map 110, Lots 37 & 38, Zoned B, HZO Article V, Section 334-21, Table of Permitted Principal Uses.]**

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

Prior to discussing the case, Chairman Seabury stated that he wanted to address the issue concerning RSA #674.39.

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Mr. Martin commented that he felt the applicant had to obtain variances from the Zoning Board of Adjustment prior to appearing before the Planning Board

He also stated that he did not feel that RSA #674.39 applied to the Zoning Board of Adjustment because without a Variance, the applicant was not able to move the request forward to the Planning Board.

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

Mr. Patrick Colburn, from Keach-Nordstrom Associates, Inc., Bedford, NH, stated that the Zoning Board of Adjustment had initially approved the two variances in March of 2008. He further added that in June and September of 2008 both sub-division and site plan approval were obtained from the Planning Board. He also stated that extensions of the sub-division and site plan approval were granted by the Planning Board in July and August of 2009, respectively with the condition that the applicant appear back before the Zoning Board of Adjustment.

Mr. Colburn stated that the Zoning Board of Adjustment granted both of the Variances again in August of 2008 and that he was present to once again, request extensions for the Variances.

Mr. Pitre asked if the request was for a one-year extension. The applicant replied that it was a request for a one-year extension.

Chairman Seabury asked if there were any other members of the Board that shared Mr. Martin's view that the matter should be before the Planning Board and not the Zoning Board of Adjustment.

Mr. Pitre commented that Massachusetts had just passed a new "Hardship Law" which granted builders an additional two years for completing sub-divisions.

Mr. Martin commented that although he was prepared to approve the applicant's request for an extension because of hard economic times, he felt that the Town Attorney should be contacted to ascertain whether or not RSA #674.39 applied to the Zoning Board of Adjustment.

Chairman Seabury commented that he agreed with what Mr. Martin had said.

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

Mr. Patrick Colburn, representing the applicant, SLC Development and B&D Land Development, addressed the Board, stating that the case involved the expansion of the applicant's existing S. L. Chasse Welding and Fabricating operation located on Lot #39 at 8 Christine Drive.

Mr. Colburn stated that the applicant was requesting a total of two Variances at this meeting because there was no provision for extensions of previously granted Variances.

Mr. Colburn stated that the applicant wished to purchase the adjacent lots (Lots #37 & #38) from B&D Land Development and upon that purchase would consolidate Lots #37, #38, & #39 into one lot – a new Lot #39.

Mr. Colburn further stated that the applicant wished not to only expand the existing building but also to construct a new building on the same parcel, which would house a light industrial as well as office space.

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. Pacocha asked what activity was happening on Lots #37 & #38.

Mr. Colburn replied that Lots #37 & #38 were vacant and served as storage for miscellaneous construction materials.

Mr. Colburn also replied that the lots on the opposite side of Christine Drive were of a mixed Industrial Use.

Mr. Pitre asked if there had been any changes to the property since the Board's original approval of the Variances.

Mr. Colburn replied that he was not aware of any changes to the property.

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

Mr. Martin made a motion to approve the request for a one-year extension for both Variances. – (Case 110-039 & Case 110-037 & 038)

Mr. Pacocha seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt the applicant had done due diligence to keep the Variances in place so that the project could continue to be available for completion. Mr. Martin also stated that nothing had changed on the property and the Planning Board had already approved the extension which pertained to that Board.

Mr. Pacocha, speaking on his second, stated that the applicant had satisfactorily addressed all of the criteria for a Variance at the original hearing and there were no changes to the property.

Chairman Seabury pointed out that any stipulations which were applied to the original Variance approvals would be applied to the approval of the extensions.

VOTE: Chairman Seabury asked Clerk Houle to poll the Board on the motion to approve the request for a one-year extension for both Variances with regard to Case 110-039 & Case 110-037 & 038, including any applicable stipulations, and to record the members' votes, which were as follows:

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

Chairman Seabury declared that the decision having been five votes to approve the request to approve the request for a one-year extension for both Variances with regard to Case 110-039 & Case 110-037 & 038, including any applicable stipulations, the motion had carried.

- 4. Case 183-116 (8/26/10): Glenn and Charlene Forward, 4 Short Street, Hudson, NH, requests a Variance to allow the extension of the existing non-conforming structure by aligning the proposed addition within the existing front-yard setback. [Map 183,**

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Lot 116, Zoned R-2, HZO Article VIII, Section 334-29, Extension or enlargement of non-conforming uses.]

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

Chairman Seabury commented that the case before the Board concerned an applicant who wished to enlarge a very small house by adding a living room and a bathroom.

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

Ms. Charlene Forward, 4 Short Street, Hudson, NH, the applicant, addressed the Board, and stated that a Variance was being requested which would allow the proposed addition to align with the front of the house keeping the appearance of that of a single structure and not a structure with “an addition.”

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. Pitre asked if there were any renderings of what the proposed addition would look like. Ms. Forward provided the Board with a pencil rendering of the proposed addition.

Mr. Martin asked what the proposed addition would consist of. Ms. Forward replied that the proposed addition would consist of a living room and a bathroom.

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

Mr. Pacocha seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt the applicant had met all of the criteria for a Variance and was trying to keep the house esthetically pleasing by aligning the addition with the original structure.

Mr. Pacocha, speaking on his second, stated that it observed the spirit and intent of the ordinance, and granting the variance was not contrary to the public interest, and it would provide the applicant with substantial justice.

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

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

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

5. Case 190-187 (8/26/10), Deferred from (7/22/10): Manuel and Kathleen Sousa, 28 Lowell Road, Hudson, NH, requests the following:

- a. A Special Exception to allow the increase of the height for the proposed cell tower (80 feet allowed, 120 feet proposed) for the property located at 28 Lowell Road, Hudson, NH. [Map 190, Lot 187, Zoned B, HZO Article XVIII, Section 334-101 (C), Antenna and mast height.]
- b. 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.]

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

Chairman Seabury read aloud a letter (sent via fax) dated August 20, 2010, from Attorney Steven E. Grill from Devine Millimet, addressed to Mr. William Oleksak, as summarized as follows:

*RE: Application of T-Mobile Northeast, LLC.
28 Lowell Road, Hudson, NH (Map 190/Lot 187)*

This will confirm our telephone conversation of August 19, 2010, in which we discussed that the above applicant will be submitting an application for an additional variance from the provisions of Section 334.96.1 of the

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Hudson Zoning Ordinance, in that the proposed 120-foot monopole is not at least 600 feet from all residential uses; in fact, within 600 feet there appear to be three residential uses (on the corner of Lowell Road and Riverside Drive.) Accordingly, we hereby request a deferral of the pending application from the public hearing scheduled for August 26, 2010, until the next regularly scheduled meeting of the Zoning Board of Adjustment, which we understand will be held on September 9, 2010. We further understand that in order to have the additional application for a variance heard at the September 9, 2010, meeting the application must be submitted no later than September 2, 2010.

Mr. Martin commented that he had received an e-mail from a resident, Mr. Mike Coumis, and asked the following questions on his behalf:

- *Will the tower require red lights at 120 feet? Chairman Seabury replied that there would not be red lights required at 120 feet.*
- *Can they add more antennae in the future or will they limit three antennae if this is approved? Chairman Seabury replied that the ordinance strongly recommended co-sponsorship of towers so if they could sell more space, they likely would.*
- *What tax revenue would the town receive from this? Chairman Seabury replied that he did not know the answer to that question but that he would find out definitively from Mr. Jim Michaud, Tax Assessor for the Town of Hudson.*
- *Will the town send a letter to the owner of the parcel behind Brook Plaza notifying them of a Variance request as the property is in the Fall Zone? Chairman Seabury replied that the town would have already sent that letter at this point.*

Mr. Martin made a motion to defer the case, date specific, to the September 9, 2010, meeting.

Ms. Shuman seconded the motion.

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VOTE: Chairman Seabury asked Clerk Houle to poll the Board on the motion to defer the case, date specific, to the September 9, 2010, meeting, and to record the members' votes, which were as follows:

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

Chairman Seabury declared that the decision having been five votes to approve the request for a deferral, date specific, to the September 9, 2010, meeting, the motion had carried.

V. OTHER BUSINESS

1. **Case 177-012 (8/26/10), deferred from (4/22/10), Request for Deferral: 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 read aloud a letter dated August 16, 2010, from Mr. Joseph M. Brunelle, addressed to the Zoning Board of Adjustment, summarized as follows:

I, Joseph M. Brunelle, located at 55 Kimball Hill Road, is requesting to be moved from the August 26, 2010, meeting to the September meeting due to being out of town that week.

Chairman Seabury commented that there had been a question as to whether or not a portion of Mr. Brunelle's shed was located on his neighbor's property.

Chairman Seabury further commented that it had since been determined that Mr. Brunelle's shed was, in fact, entirely located on his neighbor's property.

Mr. Martin made a motion to defer the case, date specific, to the September 9, 2010, meeting.

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Ms. Shuman seconded the motion.

VOTE: Chairman Seabury asked Clerk Houle to poll the Board on the motion to defer the case, date specific, to the September 9, 2010, meeting, and to record the members' votes, which were as follows:

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

Chairman Seabury declared that the decision having been five votes to approve the request for a deferral, date specific, to the September 9, 2010, meeting, the motion had carried.

- 2. Case 204-011 (8/26/10), deferred from (7/22/10), Request for a Rehearing: Tammy Williamson, 14 Pelham Road, Hudson, NH, requests a Variance to allow the existing dwelling to become a two-family dwelling without the proper amount of acreage; 43,560 square feet required, 9,748.9 square feet exists. [Map 204, Lot 011, Zoned R-2, HZO Article VII, Section 334-27, Table of Minimum Dimensional Requirements.]**

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

Chairman Seabury stated that he had a letter dated June 9, 2010, written by Mr. Richard Maynard, P.E., from Maynard & Paquette Engineering Associates, LLC, and signed by Ms. Tammy Williamson, the applicant.

Mr. Martin made a motion to dispense reading the letter into the record as the Board had had the letter in its possession since June 9, 2010.

Mr. Pitre 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 letter from Maynard & Paquette Engineering Associates, LLC, into the record. (Note: The letter was however, a matter of public record and available for review at the Community Development Office)

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Chairman Seabury stated that one of his concerns with regard to the letter was that Mr. Maynard had stated that one of the reasons he felt that the Board had denied the applicant's request was "possible harmful impact to the neighborhood residents outweighed the value of any benefits to the property owner." The letter also read "this analysis or comparison is unclear and imprecise and has no particular basis in law with regard to Variances." Chairman Seabury noted that this language was taken directly from LGC analysis of the new legislation.

Mr. Martin commented that he had concerns with 4(a), 4(b), and 4(c), regarding "character of the neighborhood." Mr. Martin stated that he did not feel that the character of the neighborhood had any bearing on whether or not the Board granted permission for a duplex to be allowed. Chairman Seabury responded that he did not agree with that assessment, and Mr. Pitre commented that the Board had taken the character of neighborhoods into consideration in the past when approving/denying cases.

Mr. Martin stated that he did not feel there was any new evidence presented within the letter and he did not feel the Board had made an illegal or illogical decision.

Mr. Martin made a motion to deny the Request for a Rehearing.

Mr. Pacocha seconded the motion, agreeing that he felt there was no new evidence presented, and he stated that did not feel the Board had made an error in judgment.

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

Mr. Martin	To deny
Mr. Pacocha	To deny
Ms. Shuman	To deny
Mr. Pitre	To deny
Mr. Seabury	To deny

Chairman Seabury declared that the decision having been five votes to deny the Request for a Rehearing, the motion had carried.

Lindquist, Susanne – 44 Webster Street, Hudson, NH (Map 173, Lots 7 & 8)

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Chairman Seabury commented that the Board was in receipt of a letter requesting whether or not extensions were need for the applicant's two requests for a Variance.

Chairman Seabury stated that he needed to consult with the Town Attorney prior to answering the question.

Laine, Louis - 65 Pelham Road, Hudson, NH (Map 199, Lot 026)

The following letter, signed by Mr. Louis Laine and Ms. Lois Laine, dated July 30, 2010, was received in the Community Development Department on August 4, 2010.

I am responding to a letter I received about an Attached Living Unit.

In 1997, my in-laws, Robert and Pauline Martin had the house built at 65 Pelham Road with an Attached Living Unit. THE ALU was for them to live in while we (my wife and 3 kids) lived in the main part of the house. In 2004, I purchased the house from them. It is still the same people living in the main part of the house, and the same people living in the ALU side of the house. I understand that this ALU must be used for a blood relative.

I would like to get permission to transfer the ALU permit to my wife and I (Louis and Lori Laine), as there really was no change of occupants and would appreciate your guidance in resolving this issue.

Chairman Seabury stated that the Board had collectively decided that, since the Assessor's Card proved that Mr. Louis Laine was in fact the owner of the property, that the letter he had provided notifying the town of the situation was sufficient.

Discussion with Regard to Chickens being Permitted in Town

Chairman Seabury stated that the Town of Hudson would allow residents to have chickens on a property that is less than 5 acres as long as it is as secondary and not a primary use. Chairman Seabury also stated that roosters would not be allowed because they could become a nuisance.

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VI. ADJOURNMENT

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

Mr. Pitre seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 9:02pm.

Date: September 13, 2010

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun