

**HUDSON ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
June 24, 2010**

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:00pm on Thursday, June 24, 2010, in the Community Development Meeting Room in the Town Hall basement. Chairman Seabury then requested Acting Clerk Martin to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

Present: Normand Martin, Mike Pitre, Donna Shuman, and
J. Bradford Seabury

Members

Absent: Jim Pacocha (Excused)

Alternates

Present: Marilyn McGrath (7:10pm arrival)

Alternates

Absent: Kevin Houle (Excused)

Staff

Present: William Oleksak, Zoning Administrator

Liaison

Present: Ben Nadeau (Excused)

Recorder: Trish Gedziun

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

June 24, 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 Ms. McGrath would be seated in place of Mr. Pacocha, who was excused.

Chairman Seabury also announced that Mr. Martin would assume the role of Clerk in place of Mr. Houle, who was also excused.

III. APPROVAL OF MEETING MINUTES

Chairman Seabury announced that there was a quorum present which was sufficient to review the minutes from the May 27, 2010, meeting.

The following edits were made to the minutes of the May 27, 2010, meeting:

1. Page 3, #3 – the word “altercation” was changed to “alteration” – Shuman
2. Page 4, 5th paragraph – “had already had” was changed to “already had” - Martin
3. Page 6 – “to approve” was changed to “not to deny” as part of the vote - Seabury
4. Page 10, 1st paragraph – the words “if requested” was added to the first sentence as indicated. – Seabury

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes June 24, 2010

5. Page 11, 8th paragraph – the word “Occupation” was added to the first sentence. – Shuman

Mr. Martin made a motion to approve the minutes from the May 27, 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 May 27, 2010, meeting as amended by the Board.

Chairman Seabury then declared a break at 7:25pm, calling the meeting back to order at 7:31pm.

IV. PUBLIC HEARINGS FOR SCHEDULED APPLICATIONS

1. **Case 105-017 (6/24/10): Noury Investment, LLC, 17 Elnathans Way, Hollis, NH, requests a Wetland Special Exception to allow installation of a drainage pipe within the wetland buffer and wetlands. 260 square feet of temporary wetland impact and 2, 350 square feet of temporary wetland buffer impact, for property located at 203 Robinson Road, Hudson, NH. [Map 105, Lot 017, Zoned G-1, HZO Article IX, Section 334-33, Wetland Conservation District.]**

Acting Clerk Martin 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 site plan which was prepared for the property indicated that there was a drainage pipe that encroached into the wetlands. Mr. Oleksak further replied that the applicant was informed that a Wetland Special Exception was needed as a result of that encroachment.

Chairman Seabury stated that there was a Motion to Recommend a Wetlands Special Exception from the Conservation Commission included in the applicant’s packet of information dated April 12, 2010.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes June 24, 2010

Chairman Seabury also stated that the motion to approve the recommendation was made by Ms. Michelle Champion and seconded by Ms. Linda Kipnes, with three stipulations. The final vote was 6-0-0 (six members were in favor, zero members were not in favor, and zero members abstained)

Chairman Seabury read aloud the three stipulations as 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. *Work to be performed during the dry season. (July – September)*
3. *Restoration of the disturbed area to be accomplished and approved by the Town Engineer.*

Chairman Seabury read aloud a portion of the Notice from the Planning Board, dated May 14, 2010, addressed to the Zoning Board of Adjustment, as summarized as follows:

At its May 12, 2010, meeting, the Planning Board voted to forward correspondence to the Zoning Board of Adjustment, citing that the Planning Board does not have concerns regarding the proposed temporary wetland and wetland buffer impacts associated with the development of the Robinson Road Self Storage facility, located on the parcel shown on Map 105/Lot 17. However, the Planning Board does have planning concerns regarding this development (i.e. the access driveway onto Derry Road) which will be considered by this Board upon submission of the Site Plan application for this development.

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

Mr. Tony Basso, from Keach-Nordstrom Associates, Inc., representing the applicant, stated that the general application was for a self-storage facility and that the wetland had to be crossed in order to do the storm-water management. Mr. Basso further stated that the applicant was proposing to place a single culvert pipe, which would carry storm-water from the development parcel to a storm-water management treatment area which complied with the latest NH DOT/DES Alteration and Terrain requirements for storm-water before it discharged.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes June 24, 2010

Mr. Basso stated that the applicant was proposing a temporary impact to the wetland which would be fully restored. He also stated that the entire proposed storage facility was located outside of the wetland and wetland buffer.

Ms. McGrath asked where the proposed driveway accessing the site would be, and Mr. Basso replied that the driveway would be located off of Robinson Road.

Mr. Basso read aloud from the Application for a Wetland Special Exception summarized as follows:

- 1. The proposed use is essential to the reasonable use of the viable upland portion of Lot 17, which is outside of the Wetlands Conservation District. The main upland and developable portion of Lot 17 is bisected by a jurisdictional wetland. The proposed storm-water management area occupies a tremendous amount of upland area, not viable on the northern side of the bisecting wetland do to its size and separation from the estimated seasonal high water table.*
- 2. There is no reasonable alternative because a substantial portion of Lot 17 is separated from the access drive and self-storage units due to a jurisdictional wetland thread. There is no reasonable alternative manner in which to access this substantial acreage for storm-water management without crossing the wetland.*
- 3. The design, construction methods and maintenance methods for the project, including those involving the temporary wetland and temporary wetland buffer impacts have been designed by the applicant's project engineers, Keach-Nordstrom Associates, Inc. The wetland will be restored to pre-construction conditions and grades once the drainage pipe has been installed.*
- 4. The proposed impacts (the temporary impacts for drain line installation) are based primarily on design criteria, not economic consideration. The project design attempts to minimize wetland impacts, irrespective of construction costs.*
- 5. The wetland impact is temporary and will be re-stabilized to pre-construction conditions, thus restoring the current wildlife access corridors that exist on-site today. The New Hampshire Natural Heritage*

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes June 24, 2010

Inventory advises that there are no known records of threatened or endangered species in the project area.

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. McGrath asked what the proposed use for the balance of the property was. Mr. Basso replied that the Developer had not provided him with any proposed uses with respect to the balance of the property.

Ms. McGrath stated that the applicant was proposing 2,400 square feet of office space in addition to the storage facility. Mr. Basso replied that the additional space was for the management of the storage facility and was not located in a separate building.

Ms. McGrath asked Mr. Basso if the additional space was just for the storage units and not anything else. Mr. Basso said that he did not have an answer to that question.

Ms. McGrath stated that she felt the proposed additional two-story; 2,400 square foot addition was quite large to be used as office space for the storage facility alone.

Ms. McGrath asked where the entrance would be and where the parking would be located. Mr. Basso replied that there were two ways in which to enter the facility; a driveway off of Robinson Road and another entrance near the curb cut from Route 102.

Ms. McGrath asked how the wetlands would be further impacted if the Planning Board did not approve the plan with the driveway access that was presently being proposed. Mr. Basso replied that the wetlands would not be further impacted regardless of the Planning Board's decision.

Chairman Seabury asked if there were anyone else who had questions or comments.

Mr. Paul A. Tornstrom, 10 Twin Meadow Drive, Hudson, NH, an abutter, addressed the Board, and asked how the evening lighting of the proposed facility would affect the surrounding properties. Mr. Basso replied that the applicant would have to present a

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes

June 24, 2010

lighting plan with photo metrics to show what would happen with light as well as with the spillover from light. He further replied that the applicant would also have to present a schedule of when the lights would be on and how long they would be on for. Mr. Basso said it was a certainly a matter that the applicant would take up with the Planning Board

Mr. Basso stated that a final design which would include a lighting plan was presently not available and that the question pertaining to lighting was a Planning Board issue.

Mr. Tornstrom commented that the area the applicant wished to develop was never “dry” and also commented that he was concerned how the development would affect the pair of breeding red-tailed hawks and turkey vultures that inhabited the property. Mr. Basso replied that there would be no permanent disturbance to the wetland or the wetland buffer - it was a temporary wetland impact and the area would be fully restored.

Chairman Seabury asked Mr. Tornstrom if he had any further questions at the time. Mr. Tornstrom replied that he did not.

Ms. McGrath commented that Mr. Tornstrom should address the intended hours of operation, the schedule of the lighting, and the trash pick-up schedule with the Planning Board.

Chairman Seabury asked if there were anyone else who had questions or comments. No one else came forward with questions or comments.

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

Mr. Pitre seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt that the applicant was proposing a temporary wetland impact to install a drain pipe, which would be buried underground, and the area would be restored to its natural state.

Mr. Pitre, speaking on his second, stated that he felt the applicant was proposing a small temporary intrusion to the wetland buffer, which would actually improve that portion of the property.

Ms. McGrath commented that she would support the motion because she said she felt it was a small intrusion into the wetland for a use that was not substantial or a nuisance.

**HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes
June 24, 2010**

Ms. McGrath also commented that she did have concerns with the balance of the property.

VOTE: Chairman Seabury asked Acting Clerk Martin 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. Martin	To approve
Mr. Pitre	To approve
Ms. Shuman	To approve
Ms. McGrath	To approve
Mr. Seabury	To approve

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

- 2. Case 183-055 (6/24/10): Kevin and Kimberly Bastek, 7 Burton Street, Hudson, NH, request a Variance to allow the installation of an above-ground pool within the side and rear setbacks; 15-foot side and rear setback required, 9-foot side and rear setback proposed. [Map 183, Lot 055, Zoned TR, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**

Acting Clerk Martin 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 applicants wished to install an above-ground pool and because the proposed pool would sit within the allowed setbacks, a Variance would be required.

Ms. Shuman commented that she was concerned that there were abutters who were not notified by Certified Mail.

Chairman Seabury replied that the abutter list was provided to the town by the applicant and he felt certain that any abutters that were not notified by Certified Mail would have been notified via First-class U.S. Mail.

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

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes June 24, 2010

Mr. Kevin Bastek, the applicant, addressed the Board, and read aloud a portion of the Application for a Variance as summarized as follows:

- 1. Granting the variance will not be contrary to the public interest because the direct abutters are separated by our fence, therefore, safety and privacy would not be an issue.*
- 2. The proposed use will observe the spirit of the ordinance because the pool would be for private recreation only. This will not alter the character of the neighborhood because there are currently five pools in the surrounding area.*
- 3. Substantial justice would be done to the property-owner by granting the variance because the property is small and the 15-foot setbacks would place a minimum sized pool up against the house. We cannot use the side of the property because it slopes and there is a buried natural gas line.*
- 4. The proposed use will not diminish the values of surrounding properties because swimming pools generally do not decrease property values. We will also be landscaping our property.*
- 5. Special conditions exist such that literal enforcement of the ordinance would result in unnecessary hardship because if the 15-foot setbacks are enforced, it limits our options. This is a small property and the side of the property is not an option.*

Chairman Seabury noted that there was no one else present to speak in favor or opposition with regard to the application, and he asked the members of the Board if there were any questions or comments.

Ms. McGrath asked the applicant how high the fence on the property was. Mr. Bastek replied that the fence was 6 feet high.

Ms. McGrath made a motion to approve the request for a Variance.

Mr. Pitre seconded the motion.

Ms. McGrath, speaking on her motion, stated that she felt the application conformed with the surrounding area so that substantial justice would be done, there was a hardship on

**HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes
June 24, 2010**

the property, it was a small lot with very little usable space, and approving the Variance would allow the applicant to have reasonable use of the property. Ms. McGrath also stated that she did not feel granting the Variance would diminish the value of surrounding property values because many of them were the same size with similar uses.

Mr. Pitre, speaking on his second, stated that he felt the proposed use was within the spirit of the ordinance, it would not diminish the value of surrounding property values, and there was a hardship on the property.

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

Ms. McGrath	To approve
Mr. Pitre	To approve
Ms. Shuman	To approve
Mr. Martin	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.

V. OTHER BUSINESS

- 1. Case 204-011 (6/24/10), 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; 43,500 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.]**

Chairman Seabury declared that Case 204-011 would be deferred to the next available meeting as Ms. McGrath wished to step down from hearing the case because she was not present at the initial hearing, leaving only four voting Board members. Chairman Seabury also stated that neither the applicant nor her representative was present at the meeting and the applicant had the right for a full Board to hear the request.

**HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes
June 24, 2010**

VI. ADJOURNMENT

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

Ms. McGrath seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 8:29pm.

Date: July 19, 2010

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun