

**HUDSON ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
November 19, 2009**

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:30pm on Thursday, November 19, 2009, in the Hudson Recreation Center located at 2 Oakwood Drive. Chairman Seabury then requested Clerk Martin to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

Present: Maryellen Davis, James Pacocha, Michael Pitre, and J. Bradford Seabury

Members

Absent: William McInerney (Excused)

Alternates

Present: Normand Martin and Donna Shuman

Alternates

Absent: Kevin Houle (Excused) and Marilyn McGrath (Excused)

Staff

Present: William Oleksak, Building Inspector (Excused)

Liaison

Present: Ben Nadeau, Selectmen's Liaison (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. (Brad - In this particular case, no variation of this was said, should I include it?) Chairman Seabury announced that Ms. Shuman would be seated in place of Mr. McInerney.

Chairman Seabury also announced that the Discussion of the Request for Reconsideration of the previously denied rehearing (Case 211-041: 49 Burns Hills Road) as well as the Request for Rehearing (Case 147-026: 8 Derry Lane) would be heard first.

III. DISCUSSION OF CORRESPONDENCE BEFORE THE BOARD

Discussion with regard to Case 211-041: 49 Burns Hill Road, Hudson, NH

Ms. Davis announced that she would step down from the case due to a conflict of interest.

Chairman Seabury stated that Mr. Martin would be seated in place of Ms. Davis, who had stepped down.

Chairman Seabury said that he had initially instructed the town's staff to deny this request stating that the Zoning Board of Adjustment did not "rehear" rehearings.

Chairman Seabury further said that one of the clerk's in the office took it upon themselves to contact Attorney LeFevre because there had been a concern with the instruction to deny the applicants' request.

Chairman Seabury stated that Attorney LeFevre had contacted him and said that he also had a concern with the denial of the request because of a precedent set in a previous case heard in Nashua, New Hampshire, in 2007, (74 Cox Street, LLC vs. The City of Nashua) where the Zoning Board of Adjustment reheard a case that was already denied. He said

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that because an abutter had complained, the case was heard by the Supreme Court and the Supreme Courts' decision was that the Zoning Board of Adjustment should take every opportunity it can to do what it can for the residents of the town.

Chairman Seabury stated that Attorney LeFevre suggested that the Board hear this case as a Request for the Re-Consideration of the Denial of the Rehearing Request and not a Request for Rehearing.

Chairman Seabury stated that the Board was in receipt of a letter dated November 1, 2009, addressed to the Zoning Board of Adjustment, from Miss Rebecca Radziewicz.

Mr. Martin made a motion to forego reading the letter from Miss Radziewicz into the record as the Board had ample time in which to review that letter.

Chairman Seabury called for a verbal vote, and he then stated that all of the sitting Board members were in favor of foregoing reading aloud the letter from Miss Radziewicz as the Board had ample time in which to review that letter.

Mr. Pitre stated that he had the following comments with regard to the letter from Miss Radziewicz:

- 1. The new information that was provided was with regard to a batting cage. He pointed out that the proposed batting cage was brought up after the fence was built – therefore it was not “new information” and not relevant.*
- 2. His interpretation of the RSA was with regard to the safety of residents and not the inability of two neighbors to get along.*
- 3. He said that other than an abundance of duplicate information, he did not see anything new in the request*

Chairman Seabury stated that Mr. Oleksak was not present at the meeting because when the meeting was originally scheduled, the only item on the agenda was the review of meeting minutes and the proposed changes to the by-laws.

Chairman Seabury also stated that the Board was in receipt of a letter, dated November 17, 2009, addressed to the Zoning Board of Adjustment, from Ms. Bonnie Lavallee. He further stated that he although he did read it into the record, he instructed the recorder not to include it in the typed version of the meeting minutes. He said that the letter was a

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matter of public record and if there were any members' of the public who wished to view a copy of that letter, one would be available to them at the Community Development Department. Chairman Seabury added that Ms. Lavalley's packet of information included police reports including who initiated those reports.

Mr. Martin stated that the applicant had still not received a Zoning Determination from Mr. Oleksak.

Mr. Martin commented that he felt the Board should rehear the applicant's Request for Re-Consideration.

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

No second being offered by the other members, Chairman Seabury relinquished the chairmanship, turning the gavel over to Mr. Pitre, and Mr. Seabury then seconded Mr. Martin's motion.

Mr. Martin, speaking on his motion, stated that he felt the Request for Rehearing should be approved to enable the Board to take a second look at the facts of the case and to ensure the Board did not miss anything.

Mr. Seabury, speaking on his second, stated that he was personally opposed to rehearing the Request for Reconsideration but that he was sensitive to Attorney LeFevre's concern.

Mr. Seabury also stated that although he felt the actual decision from the Zoning Determination was relevant in this particular case, that the fact was that a determination was not issued even though one was needed.

VOTE: Acting Chairman Pitre asked the Clerk to poll the Board on the motion to approve the Request for the Reconsideration for a Rehearing, and to record the members' votes, which were as follows:

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

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

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Acting Chairman Pitre stated that the reconsideration would be heard at the next scheduled meeting, December 10, 2009.

Mr. Pitre handed the gavel back over to Chairman Seabury.

Chairman Seabury returned Mr. Martin as a non-voting alternate member of the Board and Ms. Davis returned to the table as a full voting member of the Board.

Discussion with regard to Case 147-026: 8 Derry Lane, Hudson, NH

Mr. Pacocha stated that he would step down from the case as he was not present at the initial hearing.

Chairman Seabury seated Mr. Martin in place of Mr. Pacocha.

Chairman Seabury read aloud a letter dated November 6, 2009, addressed to the Hudson Zoning Board of Adjustment, from Mr. John V. O'Brien, summarized as follows:

The intent of this letter is to convey my Motion for Rehearing.

1. *The absence of a ZBA member who visited my property prior to the hearing on 10/08/09.*
2. *Adverse effects of the decision caused by points not fully considered during deliberation.*
 - a. *The container has been in its properly constructed placement for 28+ months without complaint.*
 - b. *Attempted relocation of container will seriously tear up the defined buffer area by necessary machinery.*
 - c. *After this buffer damage has been allowed, the placement of the container elsewhere on the property will have a direct adverse effect on a minimum of 4 abutters.*
 - d. *Current container placement is ideal to all concerned.*

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- e. The zoning restriction, as applied, does interfere with the reasonable use of my property.*
- f. The denial of the Use Variance was issued without careful consideration being given to the tremendous and unreasonable financial burden that was placed upon my already serious financial crisis that exists due to my now 16 months of unemployment.*
- g. Several key points that I presented either verbally or in supportive written material were misinterpreted by member during the deliberation phase of the meeting which could only have had a potentially negative impact on the final vote count.*

Ms. Davis stated that she felt there was no new testimony being presented. Ms. Davis also stated that she agreed that there would be a financial expense as well as a disturbance to the wetland to remove the container but noted that there was a financial expense as well as a disturbance to the wetland when the container was originally installed.

Ms. Davis said that the container was not a shed but a freight/cargo container that should be on ship and not in a backyard located in an R-2 neighborhood. She also said that she felt the original decision the Board made was a sound one and therefore, did not feel the request should be approved.

Mr. Pitre commented that he was glad that he attended the site walk because he felt viewing the plot plan alone would not have shown just how intrusive the container was to the wetlands. He also commented that he did not feel the applicant presented any new evidence to justify the Request for Rehearing.

Ms. Davis made a motion to deny the Request for a Rehearing.

Mr. Pitre seconded the motion.

Ms. Davis, speaking on her motion, stated that she felt there was no new evidence presented to warrant a rehearing and in her opinion, the Board did not make an error in judgment.

Mr. Pitre, speaking on his second, stated that he felt there was no new evidence to support a rehearing and he did not feel there was any hardship on the property.

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

Ms. Davis	To deny
Mr. Pitre	To deny
Ms. Shuman	To deny
Mr. Martin	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.

Chairman Seabury stated that Mr. Pacocha returned to his seat as a full voting member of the Board and seated Mr. Martin in place of Mr. Pitre, who had excused himself from the meeting.

IV. APPROVAL OF MEETING MINUTES

Ms. Davis announced that she would step down from voting with regard to the approval of the meeting minutes from the August 27, 2009, meeting as she was not present.

The following edits were made to the minutes of the August 27, 2009, meeting:

Mr. Martin made a motion to approve the minutes from the August 27, 2009, meeting as submitted because most of the text was transcribed verbatim.

Mr. Pacocha 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 August 27, 2009, meeting as submitted.

Ms. Davis returned to her seat as a full voting member of the Board.

The following edits were made to the minutes of the September 24, 2009, meeting:

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1. Page 2, 3rd paragraph from bottom – “what type of exception” was changed to “what type of relief” – Seabury
2. Page 4, 2nd paragraph – “4,200 square feet” was changed to “4,300 square feet” – Shuman
3. Page 7 - “to approve” in the vote was changed “to defer” - Davis
4. Page 11 – “Ms. Davis stated that the lots would be undesirable” was changed to “Ms. Davis stated that the lots being created were non-conforming and there could have been a better alternative.” - Davis
5. Page 17 – “huge” was changed to “expensive” – Davis

Mr. Martin made a motion to approve the minutes from the September 24, 2009, meeting as amended by the Board.

Ms. Davis 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 24, 2009, meeting as amended by the Board.

The following edits were made to the minutes of the October 8, 2009, meeting:

1. Page 8, 5th paragraph – “may have caused” was changed to “might cause” – Seabury
2. Page 14, 4th paragraph from the bottom – “request for rehearing” was changed to “request for deferral” – Seabury

Mr. Martin made a motion to approve the minutes from the October 8, 2009, meeting as amended by the Board.

Mr. Pacocha 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 October 8, 2009, meeting as amended by the Board.

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The following edits were made to the minutes of the October 29, 2009, meeting:

1. Page 8, 2nd paragraph from the bottom – “1,400 square feet” was changed to “1,400 square feet short of two fully conforming lots” – Seabury
2. Page 11 – “created two lots” was changed to “created a lot” – Davis

Mr. Martin made a motion to approve the minutes from the October 29, 2009, meeting 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 October 29, 2009, meeting as amended by the Board.

VI. ADJOURNMENT

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

Ms. Shuman seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 9:58 pm.

Date: November 26, 2009

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun