

**HUDSON ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
October 29, 2009**

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:43pm on Thursday, October 29, 2009, in the Community Development Meeting Room in the Town Hall basement. 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, Jim Pacocha, and J. Bradford Seabury

Members

Absent: William McInerney (Excused) and Michael Pitre (Excused)

Alternates

Present: Kevin Houle, Normand Martin, and Donna Shuman

Alternates

Absent: Marilyn McGrath (Excused)

Staff

Present: William Oleksak, Building Inspector

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.

Chairman Seabury announced that Mr. Martin would be seated in place of Mr. Pitre, who was excused, and Mr. Houle would be seated in place of Mr. McInerney, who was also excused.

III. PUBLIC HEARINGS FOR SCHEDULED APPLICATIONS

1. **Case 109-003 (10/29/09): Edward Pepin, 3 Page Road, Hudson, NH, requests an Equitable Waiver to allow the existing dwelling to remain within the front-yard setback; 30 feet required, 23 feet exists. [Map 109, Lot 003, Zoned G-1, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**

Clerk Martin read aloud the posted notice as above.

Ms. Shuman announced that she would step down from the case, citing a conflict of interest.

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

Attorney John Griffin, of Griffin & Owen P.C., representing the applicant, addressed the Board, stating that the Equitable Waiver was being requested because in preparing the lot-line relocation plan Mr. Michael Grainger, P.E. from MJ Grainger Engineering, Inc., discovered that the applicant's home violated the 30-foot front-yard setback requirement off of Page Road.

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Attorney Griffin pointed out that the violation was located in the front-yard setback even though the encroachment of the setback was located in the rear of the property simply because of the orientation of the house.

Attorney Griffin stated that the distance between the Page Road right-of-way and the improved portion of the property was approximately 23 feet.

Attorney Griffin stated that the applicant thought the house was built sometime in the 1940s but that the town's Tax Assessment Card indicated that it was built in the 1950's. He further stated that the applicant was not sure if the setback had been grandfathered or if an Equitable Waiver was required.

Attorney Griffin addressed the criteria for an Equitable Waiver as summarized as follows:

- 1. There was no question that the encroachment had existed for more than ten years.*
- 2. The applicant discovered the encroachment after he had closed on the property and after Mr. Grainger was commissioned to create the lot-line relocation plan – August, 2009.*
- 3. The encroachment did not adversely impact the other properties in the immediate neighborhood.*
- 4. The cost involved to correct the encroachment would far exceed any possible benefit to be derived by the town, the abutter, or the applicant.*

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. Davis asked Mr. Oleksak if there had been any complaints or code enforcements with regard to the property. Mr. Oleksak replied that there were none.

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Mr. Pacocha made a motion to approve the request for an Equitable Waiver.

Mr. Martin seconded the motion.

Mr. Pacocha, speaking on his motion, stated that he felt the applicant met all of the criteria for an Equitable Waiver.

Mr. Martin, speaking on his second, stated that he agreed with what Mr. Pacocha had said.

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

Mr. Pacocha	To approve
Mr. Martin	To approve
Ms. Davis	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 Equitable Waiver, the motion had carried.

- 2. Case 109-002 and 109-003 (10/29/09): Winnie Shepherd, 5 Page Road, Hudson, NH, and Edward Pepin, 3 Page Road, Hudson, NH, requests an Area Variance to allow a lot-line relocation without the proper lot size. Both properties are located within the G-1 Zoning District, which requires 87,120 square feet per lot; Lot 002 will consist of 76,373 square feet, and Lot 003 will consist of 48,350 square feet. [Map 109, Lots 002, and 003, Zoned G-1, HZO Article VII, Section 334-27, Table of Dimensional Requirements.**

Clerk Martin read aloud the posted notice as above.

Ms. Shuman announced that she would step down from this case also, citing a conflict of interest.

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

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Attorney John Griffin, from Griffin & Owen P.C., representing the applicant, addressed the Board, stating that the two properties had been in Ms. Shepherd's family for quite some time. He further stated that when Ms. Shepherds' mother had passed away earlier in the year, she decided to sell the property located at 3 Page Road – noting that Mr. Pepin eventually purchased the property.

Attorney Griffin commented that Ms. Shepherd was under the impression that the lot-line ran perpendicular from Page Road in the same manner that was being proposed. He also commented that coincidentally, the town's Tax Map also showed that the lot-line ran perpendicular from Page Road bisecting the two properties. Chairman Seabury commented that the fact the town had the same information made it particularly confusing.

Attorney Griffin stated that the proposed lot-line relocation was always what Ms. Shepherd thought she had and Mr. Pepin agreed to consent to the lot-line relocation as part of the Purchase & Sales Agreement.

Attorney Griffin stated that there were two non-conforming lots and creating the lot-line relocation would result in two different non-conforming lots – both for area purposes.

Attorney Griffin noted that the Town's Counsel had advised the applicant to request an Area Variance from the Zoning Board of Adjustment prior to the Planning Board making a decision with regard to the lot-line relocation.

Attorney Griffin read aloud from the Application for An Area Variance, summarized as follows:

- 1. The zoning restriction of the cited ordinance interferes with the plaintiff's reasonable use of the property because the use is not changing – only the lot-line and the lots are currently nonconforming. We are not creating more nonconforming uses – only the lot-line relocation.*
- 2. No fair and substantial relationship exists between the general purposes of the Zoning Ordinance and the specific restriction(s) on the property because no change in use is being proposed and the nonconformity already exists.*
- 3. The variance would not injure the public or private rights of others because both applicants desire the change.*

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4. *No diminution in the value of surrounding properties would occur because there is no change in use.*
5. *The proposed use would be compatible with the spirit of the ordinance because there is no change in use.*
6. *The proposed use will not be contrary to the public interest because there is no change in use.*
7. *Granting the variance would do substantial justice because it would allow the proposed lot-line relocation without interfering with anyone else's property rights.*

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. Davis asked Mr. Grainger why the applicant thought the lot-line was in the same place that the tax map indicated it was.

Mr. Grainger replied that he discovered that the tax map was wrong when he did the survey.

Mr. Pacocha made a motion to approve the request for an Area Variance.

Ms. Davis seconded the motion.

Mr. Pacocha, speaking on his motion, stated that the lot-line relocation would make the two nonconforming lots a little bit less nonconforming, the lots were in existence and nonconforming before the ordinance changed, the relocation helped clarify the lot-lines, and it was compatible with the spirit of ordinance. He also stated that there would be no diminution in the value of surrounding property values, it was not contrary to the public's interest, and it would provide substantial justice to the applicant.

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Ms. Davis, speaking on her second, stated that it was within the spirit of the ordinance, and the applicant was not increasing the size of the nonconformance of the two lots combined, leaving the net result with the same amount of conformance. She further stated that the applicant was not asking to change anything on the lots.

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

Mr. Pacocha	To approve
Ms. Davis	To approve
Mr. Houle	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 an Area Variance, the motion had carried.

Chairman Seabury noted that Ms. Shuman had returned to her seat as a voting alternate member of the Board in place of Mr. Pitre, who was excused. Chairman Seabury returned Mr. Martin to his seat as Clerk as well as a non-voting alternate member of the Board.

- 3. Case 183-012 (10/29/09): Wendy D. Goddard and Betty L. Noel, 67 Scobie Pond Road, Derry, NH, requests an Area Variance to allow the proposed sub-division of one lot into two lots. One lot would be conforming to the 10,000 square feet; the second lot would be nonconforming consisting of 8,595 square feet, where 10,000 square feet is required for property located at 5 Noel Street, Hudson, NH. [Map 183, Lot 012, Zoned TR, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**

Clerk Martin read aloud the posted notice as above.

Prior to hearing the case, Chairman Seabury asked Mr. Maynard if he had signed his name on the Application for an Area Variance. Mr. Maynard replied that he did sign the application as an authorized representative of the applicant.

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Chairman Seabury pointed out that although there was a signed letter of authorization from the applicant, Ms. Wendy Goddard, that the Zoning Board of Adjustment required the actual applicant to sign the applications and not their respective representatives.

Ms. Davis stated that she felt Mr. Maynard should be put on notice that if such a form was signed by himself rather than the applicant in the future, the case would not be heard at that meeting.

Chairman Seabury read aloud a letter dated September 14, 2009, from Ms. Wendy Goddard as summarized as follows:

To whom it may concern:

I give my permission for Maynard and Paquette to speak with the town and go through the Zoning Board and Planning Board processes. This is for the property located at 5 Noel Street, Hudson, NH, 03051.

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

Mr. Richard Maynard, P.E., from Maynard & Paquette, Nashua, NH, representing the applicants, addressed the Board, stating that the Town of Hudson was the only town that he worked with that required the actual applicant to sign the application, and he asked if the town's staff would please let him know if and when he erroneously signed an application.

Mr. Maynard stated that the house and garage described as a "bungalow" on the Assessor's Record would be raised – noting that the proposal would result in a new moderately priced home properly built to today's building and energy codes, and the two proposed lots would be serviced by town water and sewer.

Mr. Maynard stated that the property was relatively unique in that it was located next to a cemetery, saying that many people might shy away from living in a house that was adjacent to a cemetery.

Mr. Maynard said that the lot was very large for the TR Zone and was 1,400 square feet short of two conforming lots. He also said the lots exceeded the required frontage of 90 feet – noting that one lot would have 100 feet of frontage and the slightly undersized lot would have 108 feet of frontage.

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Mr. Maynard commented there were similar lots in the neighborhood as to what was being proposed – noting that there were also approximately ten lots that were actually smaller than the proposed lot.

Mr. Maynard read aloud from the application for an Area Variance as summarized as follows:

- 1. The zoning restriction of the cited ordinance interferes with the plaintiff's reasonable use of the property because the parcel is substantially oversized for the TR Zone and the lots created would be in character with the immediate neighborhood. There are ten existing lots similar or smaller in size than the proposed 8,595 square foot lot.*
- 2. No fair and substantial relationship exists between the general purposes of the Zoning Ordinance and the specific restriction(s) on the property because the purpose of the Zoning Ordinance is to maintain or create neighborhoods of similar character. This proposal meets that intent.*
- 3. The variance would not injure the public or private rights of others because the lots created by this subdivision would be consistent with the size of the existing residential properties in the neighborhood.*
- 4. No diminution in the value of surrounding properties would occur because the created residential lots would be consistent in size and character with the surrounding properties. The new homes would enhance neighborhood property values.*
- 5. The proposed use would be compatible with the spirit of the ordinance because it would allow the creation of two residential lots that would be consistent in size and use with the surrounding residential properties.*
- 6. The proposed use will not be contrary to the public interest because the proposed use is residential, consistent with the other uses in the neighborhood. Said use is not in opposition to the public interest. Affordable, middle income single-family housing is needed.*
- 7. Granting the variance would do substantial justice because it would allow the reasonable use of a substantially oversized parcel in conformity and in character with the surrounding neighborhood.*

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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.

Ms. Joyce Cloutier, 6 Clifton Street, Hudson, NH, an abutter, addressed the Board, stating that she could not imagine two houses of any size on the lot. She further stated that the lot was a “very different type of lot” and she said she wanted to know what size the proposed homes would be.

Ms. Cloutier further stated that she had lived there for over forty three years and she was not prepared to say “yes” or “no” to the proposal.

Chairman Seabury asked if there were anyone else present who wished to speak in opposition or neutrally with regard to the application.

Ms. Susan Hart, 1 Blackstone Street, Hudson, NH, addressed the Board, stating that she felt it was a major impact to the neighborhood and wanted further information.

Second Round of Testimony

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

Ms. Davis asked Mr. Maynard to explain what he felt the special conditions were on the property.

Mr. Maynard replied that the lot was substantially larger than most in the neighborhood, the proposed undersized lot would be similar in size to many of the lots in the neighborhood and larger than ten existing lots in the neighborhood. He also replied that he felt living next to a cemetery was a hardship.

Ms. Cloutier asked what size the proposed houses would be. Mr. Maynard replied that the proposed houses would be 24 x 34 – noting that it would be a smaller sized house similar to a Cape with Dormers. (a maximum of 1-½ stories)

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Ms. Cloutier asked how much open space would be left after the proposed construction. Chairman Seabury replied that there had to be 30 feet of separation between the buildings under the Zoning Ordinance.

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

Chairman Seabury declared the matter before the Board.

Ms. Davis, referring to the submittal of the lots, stated that Mr. Maynard had very judiciously highlighted the smaller lots in the area of the site in black magic marker, but she noted that there were seven other lots in that same area, some even closer, that were of equal or greater in acreage. She also stated that although Mr. Maynard stated that the proposed two lots were in keeping with the neighborhood, there were other lots in the immediate neighborhood that were of equal size or larger than the existing site.

Mr. Maynard replied that it was a neighborhood of mixed lot sizes and he said he felt the proposal fit into the mixed lot sizes of the neighborhood.

Chairman Seabury commented that he felt the nature of the neighborhood lots was predominantly larger than what was being proposed.

Chairman Seabury stated that there was currently an oversized lot that was in compliance and the applicant was asking to create a lot that was not in compliance, and he had a problem with that.

Ms. Davis stated that she agreed with Chairman Seabury's comments.

Mr. Houle stated that he felt it was not uncharacteristic of the specific neighborhood and it would be of a reasonable use. He further stated that he felt it was the Board's job to grant alleviation to lots if possible and allow people to be able to make a livelihood out of it if they chose to.

Ms. Davis made a motion to deny.

Mr. Pacocha seconded the motion.

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Ms. Davis, speaking on her motion, stated that she did feel the request was in the spirit of the ordinance and the lot had continuous reasonable use for the past forty years. She further stated that she did not feel there were any special conditions on the lot, and that the lot, as is, fits with the character of the neighborhood. Further, she said, she felt creating a lot that was nonconforming was not in the spirit of the ordinance.

Mr. Pacocha, speaking on his second, stated that he agreed with everything Ms. Davis had said.

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

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

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

Chairman Seabury then declared a break at 8:30pm, calling the meeting back to order at 8:35pm.

IV. REQUEST FOR REHEARING

1. Case 170-038: 25 Constitution Drive

Chairman Seabury announced that Mr. Pacocha would step down from the case as he had not been present at the initial hearing.

Chairman Seabury stated that he would remain seated to maintain a Board of five voting members despite the fact that he had not been present at the initial hearing.

Chairman Seabury announced that Mr. Martin would be seated in place of Mr. Pacocha, who had stepped down for the case.

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Chairman Seabury read aloud from the Motion for Rehearing, delivered by John H. Sokul, Jr., on September 24, 2009, as summarized as follows:

NOW COMES Century Park, LLC, the owner of tax map 170, lot 39, and requests a rehearing before the Town of Hudson Zoning Board of Adjustment as to its unlawful or unreasonable decision to grant a Wetlands Special Exception Permit with respect to proposed wetland

impacts on property owned by SNF Construction at 25 Constitution Drive, Hudson, NH.

Introduction and Factual Background

- 1. At its meeting on August 27, 2009, the ZBA granted SNF Construction its Application for a Wetlands Special Exception Permit dated July 28, 2009, to allow construction of a parking lot within 2,390 square feet of wetland buffer and construction of a parking lot detention pond with 18,655 square feet of the wetlands, for property located at 25 Constitution Drive.*
- 2. Century Park had notified the ZBA that it believed a variance, not a special exception, was require for the proposed project. During the August 27, 2009, meeting, Acting Chairman Davis read aloud a letter dated August 27, 2009, from the undersigned counsel, which the ZBA summarized in its meeting minutes as follows:*

This firm represents Century Park, LLC; the owner of tax map 170, lot 39, a direct abutter to the above-captioned project. The abutter has several concerns with respect to the project; most of which pertain to design and layout issues more appropriately addressed during site plan review.

However, with respect to wetlands impacts, we believe that under Article IX of the Hudson Zoning Ordinance, the proposed project requires a variance (not a special exception) for the construction of the parking lot within the Wetlands Conservation District. Parking lots are neither allowed uses under Section 335-35.A nor uses allowed by special exception under Section 334-35.B.2 of the Zoning Ordinance and, therefore, a variance is requested.

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3. *Acting Chairman Davis agreed, in part, stating the “parking lots were not a permitted use.” Nevertheless, the ZBA granted the Special Exception, subject to six conditions.*

Argument

4. *Century Park requests a rehearing because its decision to grant the Special Exception was unlawful or unreasonable.*
5. *Century Park has standing to move the ZBA for a rehearing because as an abutting property owner, Century Park will be directly affected by the proposed project.*
6. *Specifically, the ZBA’s decision was unlawful or unreasonable because the proposed parking lots are neither a permitted use in the Town’s Wetland Conservation District, nor a use permitted by special exception. As such, SNF Construction must obtain a variance from the ZBA, not a special exception.*
7. *Section 334-35(A) defines permitted uses to include only (1) forestry and tree farming; (2) agriculture, including grazing, cultivation, and harvesting of crops; (3) water supply well; and (4) conservation areas and nature trails.*
8. *Section 334-35(B)(2) defines uses permitted by special exception to include only:*
 - a. *Drainageways, swales, culvert and other devices designed to control the volume and timing of stormwater run-off.*
 - b. *Stormwater detention basins, settling basins and other methods of improving the quality of stormwater run-off.*
 - c. *Public utilities, including, but not limited to, electric transmission lines, telephone lines, cable television lines and pipelines.*
 - d. *Regarding the ground surface within a buffer zone of the Wetland Conservation District but not inside the wetland boundaries.*

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- e. Roads designed and built in such a fashion as to minimize the impacts on the Wetland Conservation District where wetlands, very poorly drained soils or open water must be crossed.*
- 9. The ZBA's decision was unlawful or unreasonable because parking lots are not contained in the complete and exclusive list of uses permitted by special exception. Accordingly, since the proposed use is neither allowed by right nor by special exception, a variance is required. Unless a particular use for which an application is submitted as stated in the ordinance as being explicitly allowed by special exception, the Board of Adjustment is powerless to grant a special exception for that use.*
- 10. Moreover, the ZBA is without authority and jurisdiction to create new categories of uses permitted by special exception.*

Accordingly, the ZBA should grant a rehearing because it exceeded its authority and jurisdiction by effectively creating a new use category permitted by special exception for parking lots in the Wetland Conservation District.

WHEREFORE, Century Park, LLC, respectfully requests the ZBA to:

Schedule a rehearing of the ZBA's decision to grant SNF Construction's Application for a Wetlands Special Exception Permit; and

Deny the Application for a Wetlands Special Exception Permit because SNF Construction must obtain a variance to construct the proposed parking lot within the Wetland Conservation District; and

Grant such other relief as the ZBA deems necessary or appropriate.

Chairman Seabury read aloud a letter addressed to the Zoning Board of Adjustment, dated October 8, 2009, from Mr. Anthony Basso, Keach-Nordstrom Associates, Inc., summarized as follows:

As you are aware, Keach-Nordstrom Associates, Inc. represents John Jamer, the owner of the property at 25 Constitution Drive and SNF Construction, the Applicant for the referenced project. On behalf of the

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Applicant, we filed an application for a Wetland Special Exception for this project, which was granted by the Zoning Board of Adjustment on August 27, 2009. This letter is in response to the Motion for Rehearing filed by Century Park, LLC on September 24, 2009.

On August 27, 2009, the ZBA granted the Special Exception. On September 24, 2009, a direct property abutter, Century Park, LLC filed a Motion for Rehearing pursuant to RSA 677:2 on the basis that the ZBA's decision to grant the Special Exception was unlawful or unreasonable because the proposed parking lots are neither a permitted use in the Town's Wetlands Conservation District, nor a use permitted by Special Exception in the Town's Wetlands Conservation District. As such,

Century Park, LLC maintains that a variance, presumably to the parking lot aspect, must be obtained rather than a Wetland Special Exception.

Pursuant to Town protocol, on July 23, 2009, William B. Oleksak, Zoning Administrator, issued a Zoning Determination for the subject project. The determination concluded that "A Wetland Special Exception is required in order to construct an industrial building, parking lot and detention pond within the wetlands, in accordance with Article IX, Section 334-33 of the Hudson Zoning Ordinance." This determination was not appealed and the appeal period has expired. Accordingly, this office proceeded to file an application and supporting material for a Wetland Special Exception Permit.

The Motion for Rehearing is both untimely and off point. First, an un-appealed administrative decision was issued establishing that a Wetland Special Exception was the appropriate approval for not only the parking lot, but the related improvements. Pursuant to RSA 676:5, I, appeals of administrative decisions are to be taken in a reasonable time. In the Town of Hudson, thirty (30) days is the established time frame. To permit a rehearing renders useless the finality of the administrative decision and permits a second bite at the apple, after the Applicant, having relied on the decision, has expended significant time and effort to process the Wetland Special Exception.

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The ZBA acted lawfully and reasonably in granting the Wetland Special Exception. The ZBA formed the basis for granting the Wetland Special Exception on testimony supplied by the applicant that sufficiently demonstrated the criteria listed in Section 334-35 (B)(1) of the Hudson Zoning Ordinance.

Chairman Seabury stated that the Zoning Board of Adjustment had consulted with the Town's Attorney with respect to some of the issues surrounding the request.

Chairman Seabury further stated that the Board had made a determination that the procedure to be followed for such cases would be that the applicant would have to request both a variance (either for the use or the acreage) and a special exception which would allow work to be done in the wetland or the wetland buffer. He also said that the Board would need input from the Conservation Commission with regard to the Wetland Special Exception before making a final and informed decision.

Ms. Davis commented that she felt the Board had acted in good conscience and made a reasonable decision given the information that was available to them at the time.

Ms. Davis stated that she had served as Acting Chairman for the case, and in hind sight she felt she should have deferred the case to seek advice from the Town's Attorney.

Ms. Davis stated that she felt the Board should rehear the case since the Board had received input from the Town's Attorney.

Chairman Seabury commented that a variance had to be granted in order to grant a special exception. He further commented that he felt the Board had made an illegal decision since the Board had approved the request for a special exception without first granting a variance.

Chairman Seabury stated that he felt the Board should in fact, rehear the case and, in addition, the applicant should request a variance as well as a special exception.

Mr. Martin made a motion to rehear the case and to notify the applicant that a Use Variance had to be requested in addition to the Wetland Special Exception. Mr. Martin also indicated that, as part of the motion, the town would incur any and all re-notification fees.

Mr. Houle seconded the motion.

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Mr. Martin, speaking on his motion, stated that given the opinion of the Town’s Attorney and the discussion the Board had, he felt an error was made and the case should be re-heard, date specific on December 10, 2009

Mr. Houle, speaking on his second, stated that he agreed with everything Mr. Martin had said.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to rehear the case, date specific on December 10, 2009, and the town is to pay any and all re-notification fees, and to record the members’ votes, which were as follows:

Mr. Martin	To rehear
Mr. Houle	To rehear
Ms. Davis	To rehear
Ms. Shuman	To rehear
Mr. Seabury	To rehear

Chairman Seabury declared that the decision having been five votes to rehear the case, the motion had carried.

V. OTHER BUSINESS

The Board collectively decided to move the previously scheduled Zoning Board of Adjustment meeting from Thursday, November 12, 2009, to Thursday, November 19, 2009.

VI. ADJOURNMENT

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

Ms. Davis seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 9:38pm.

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Date: November 9, 2009

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun