

**HUDSON ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
October 8, 2009**

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:10pm on Thursday, October 8, 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, Michael Pitre, and J. Bradford Seabury

Members

Absent: William McInerney (Excused) and James Pacocha (Excused)

Alternates

Present: Kevin Houle, Normand Martin, Marilyn McGrath,
and Donna Shuman

Alternates

Absent: None (All present)

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, Ms. McGrath, and Ms. Shuman would be seated in place of Ms. Davis, Mr. McInerney, and Mr. Pacocha respectively, for the purpose of reviewing the meeting minutes from the August 27, 2009, meeting as those regular members had either not yet arrived or were excused, except for Ms. Davis, who stepped down from the review of the August 27, 2009, minutes.

III. APPROVAL OF MEETING MINUTES

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

Page 2, 5th line – “he noted” was changed to “she noted” – Seabury

Page 3, 11th paragraph – “whose seat was left open when he replaced Ms. Davis in her role as Acting Chairman” was deleted. - Seabury

Page 3, 9th paragraph – “non-alternate” member was changed to “non-voting alternate” member - Shuman

Ms. McGrath commented that she felt Case #211-041 should be transcribed verbatim and not as originally transcribed, which was merely a summarization. The case was noticed as follows:

#211-041 (8/27/09): Pete Radziewicz, 49 Burns Hill Road, Hudson, NH, requests an Area Variance to allow a fence greater than 6 feet in height to remain on the property. [Map 211, Lot 041, Zoned R-1, HZO Article III, Section 334-12, (C), Fences, and similar enclosures.]

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Ms. McGrath made a motion that the minutes from Case 211-041, beginning on page 3 and ending on page eleven, of the originally submitted minutes, be transcribed verbatim, given the contentiousness of the case as well as what she said she believed to be an ensuing court case.

Mr. Martin seconded the motion.

Chairman Seabury called for a verbal vote, and he then stated that all of the sitting Board members were in favor of having the minutes from Case 211-041 be transcribed verbatim.

Page 21, 6th paragraph – “as a regular sitting Board member” was changed to “as a non-voting alternate member of the Board” - Shuman

Page 22, 8th paragraph – “by special exception” was added to the end of the sentence. – Martin

Page 25, 1st paragraph – “Mr. Houle” was changed to “Ms. McGrath” - Shuman

Note: There was no motion to approve or deny the minutes from the August 27, 2009, meeting pending the submission of the verbatim minutes from Case 211-041.

Chairman Seabury then declared a break at 7:25pm, calling the meeting back to order at 7:34pm.

Chairman Seabury returned Ms. Davis to her seat as a voting member and returned Mr. Martin and Ms. Shuman to their respective seats as non-voting alternate members of the Board. Chairman Seabury then seated Ms. McGrath in place of Mr. McInerney, and Mr. Houle in place of Mr. Pacocha.

IV. PUBLIC HEARINGS FOR SCHEDULED HEARINGS

1. **Case 190-030 (10/8/09):** Raymond A. Ricard, 22 Riverside Avenue, Hudson, NH, requests an Area Variance to allow expansion of an existing non-conforming structure, by permitting the construction of a farmer’s porch within the front and side-yard setbacks. 30-foot front-yard setback required, 16.8 feet proposed; 15-foot side-yard

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setback required, 4 feet proposed. [Map 190, Lot 030, Zoned TR, HZO Article VIII, Section 334-29, Extension or enlargement of non-conforming uses.]

Clerk Martin read aloud the posted notice as above.

Chairman Seabury stated that the Board had just realized that the case was advertised incorrectly. He further stated that the case number was #190-033 and not #190-030 as advertised in the newspaper, and as noticed to the abutters.

Chairman Seabury stated that not all of the abutters within 200 feet of the property were noticed with regard to the case because of the error, stating that the abutters located on Lots 140 and 148 had not been informed.

Chairman Seabury asked if the Board felt the case should be deferred in order to re-advertise the case correctly.

Ms. McGrath stated that she felt the Board should defer the case and re-advertise it correctly in order to be fair to everyone concerned.

Ms. McGrath made a motion to defer the case to the next meeting, date specific, of October 22, 2009.

Mr. Pitre seconded the motion.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to defer the case to the October 22, 2009, meeting, and to record the members' votes, which were as follows:

Ms. McGrath	To defer
Mr. Pitre	To defer
Ms. Davis	To defer
Mr. Houle	To defer
Mr. Seabury	To defer

Chairman Seabury declared that the decision having been five votes to defer the case to the October 22, 2009, meeting, the motion had carried.

Ms. McGrath pointed out that the applicant would not incur any additional re-notification fees because the mistake was on the part of the town.

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2. **Case 147-026 (10/8/09):** John O'Brien, 8 Derry Lane, Hudson, NH, requests the following:
- A. A Wetland Special Exception to allow grading in the 50-foot wetland buffer as permanent encroachment into the buffer. [Map 147, Lots 026, Zoned R-1, HZO Article IX, Section 334-33, Wetland Conservation District.
 - B. A Use Variance to allow a steel shipping container to remain within the 50-foot wetland buffer. [Map 147, Lots 026, Zoned R-1, HZO Article IX, Section 334-35, Uses within the Wetland Conservation District.]

Clerk Martin read aloud the posted notice as above.

Discussion regarding request (B) - Request for a Use Variance

Chairman Seabury read aloud a portion of a motion sheet dated September 14, 2009, from the Hudson Conservation Commission, as summarized as follows:

Case: Map, 147, Lot 026, 8 Derry Lane

Applicant: John Vincent O'Brien

Motion: To recommend a Wetland Special Exception for grading in the buffer with stipulations as follows:

1. *The grading plan to be approved by the Town Engineer.*
2. *Standard Best Management Practices are to be followed.*
3. *Construction equipment will not be allowed in the brook.*

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

Mr. John O'Brien, the applicant, addressed the Board, stating that when he had purchased the property in July, 2006, he discovered that when the lot was sub-divided in 1955, there was no delineation of a ditch. Mr. O'Brien further stated that Mr. Michael J. Grainger, PE, had informed him that the ditch was man-made.

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Mr. O'Brien stated that he had gone to the Hillsborough County Registry of Deeds in Nashua, NH, to confirm that there were no wetlands on the property and he had found no evidence that there were.

Mr. O'Brien stated that the town used sand in the winter for snow/ice conditions and in the spring, Mr. O'Brien asked the town if he could use the leftover sand that the town would otherwise have to find a place to dispose of.

Mr. O'Brien further stated that it was not until he started to spread the sand with a bobcat that he received notification from the town that he had been encroaching onto the wetland buffer.

Mr. O'Brien stated that the town had informed him that 58% of his property was considered to be in the wetland or wetland buffer. He said that this percentage had "just stunned him" as he had no control or say as to what happened to this percentage of land.

Mr. O'Brien stated that in June of 2007, he had placed a Corten Steel Shipping Container (weighing 3 tons) in a location that he felt would not bother his neighbors – having no idea that the wetland buffer existed.

Mr. O'Brien noted that he had been un-employed for the past 15 months.

Mr. O'Brien stated that the container stored such items as a snow-blower, a ride-on lawn mower, and various non-toxic, non-hazardous items – pointing out that there were no chemicals stored in the container whatsoever.

Mr. O'Brien stated that he was informed by the town in June, 2009, that the container was in the Wetland Conservation District. He further stated that there were no tags or markers posted to indicate that there were wetlands on the property.

Mr. O'Brien stated that the floor of the container consisted of 1-½ inches of marine grade plywood, treated with an internationally accepted material called magnium. He further stated that the magnium material made the container impervious to rot and wood-boring insects.

Mr. O'Brien said that the shipping container was made of 100% Corten Steel, was water tight, and was weather proofed.

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Mr. O'Brien stated that he chose to place gravel as the base for the container – noting that gravel was an excellent filtering medium, but that there was nothing to filter from the container except for things such as rainwater run-off from a shed or snow/ice melt.

Mr. O'Brien stated that the container was of high quality and he had no problems with it since it was purchased.

Mr. O'Brien stated that there was no other location to put the container, it would be of a great financial hardship to move the container, and the removal of the container had the potential of doing substantial damage to the wetlands.

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

Mr. William Barnes, 7 Derry Lane, Hudson, NH, an abutter, addressed the Board, stating that he was stunned by the fact that his abutter was not being allowed to use his property as he saw fit. He further stated that he had no problem with the container.

Mr. Barnes also said that he felt the Town of Hudson should take great care in taking people's property, as well as dictating what should and should not be done with the property.

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.

Mr. O'Brien stated that one of his frustrations was that he was paying 100% of the property tax on wetland located on his property that he was told he could not use.

Chairman Seabury commented that some of the members of the Board had performed a site walk on the property. He further commented that, Mr. Pacocha did attend the site walk, and although he was not present at the meeting, he had indicated that he would have probably voted in favor with regard to the application on the grounds that it was a water safe container, it was tucked away on the property, and did not interfere with the abutters.

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Ms. McGrath asked Mr. O'Brien if he had a photograph of the existing container. Mr. O'Brien replied that he did, and he provided the Board with a photograph of the container.

Ms. McGrath asked Mr. O'Brien when he had received the citation letter from Mr. Oleksak. Mr. O'Brien replied that he received the citation letter on April 10, 2009.

Ms. McGrath asked Mr. O'Brien to explain how he had obtained the sand from the Town of Hudson and if the Board of Selectmen were aware of it. Mr. O'Brien replied that in the winter of 2008, he asked the Town's Road Agent, Mr. Burns, if there were any leftover/or used sand available.

Ms. McGrath stated that she was concerned that the sand that was originally spread on the town's roads contained gasoline, salt, and likely other containments that were placed into the wetland.

Chairman Seabury noted that the sand was spread on the outside edge of the buffer and not in the actual wetland. Ms. McGrath stated that, based on the coloring of the map before her, she disagreed with him.

Ms. McGrath stated that she felt that the New Hampshire Department of Environmental Services should be consulted with regard to the practice of re-using sand.

Ms. McGrath commented that the removal of the container might cause more damage to the environment than if it was just left alone.

Ms. McGrath also commented that the applicant would not have seen any wetland markers on the property at the time of purchase because (unless the property had been subdivided by the Planning Board) it was the responsibility of the property owner to install some sort of fencing or markers to illustrate that there were wetlands. Ms. McGrath also commented that the property was subdivided in 1954, and that certainly predated the requirement (for placing wetlands markers) of the Planning Board.

Mr. Pitre asked if the applicant had received a certified plot plan when he purchased the property. Mr. O'Brien replied that he had not.

Mr. Pitre asked what the bags on the property were used for. Mr. O'Brien replied that the bags served as a retaining wall so that the stone did not shift and they contained gravel.

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Mr. Pitre asked what Mr. O'Brien initially thought the drainage ditch was. Mr. O'Brien replied that he felt it was seasonal run-off.

Ms. Davis commented that the applicant was not asking for a shed to remain on the property but a commercial ocean freight container in a residential neighborhood. She further commented that, although the container was located in the wetland buffer, it was precariously close to the actual wetland.

Chairman Seabury commented that the container was very highly constructed and that he, too, shared the concern that the removal of the container might cause more damage to the environment.

Ms. Davis asked what the circumstances were surrounding the purchase of the storage container and who was going to inspect it – noting that this type of container was typically inspected every two years by a qualified inspector.

Ms. McGrath stated that she suspected that, if the NH Department of Environmental Services were consulted, they would say that removing the container would cause more damage than allowing it to stay put.

Ms. McGrath asked Mr. O'Brien if the container was purchased new or used. Mr. O'Brien replied that the container was 9 months old when he purchased it and he further replied that he did not know what was stored in the container prior to his purchase of it.

Mr. Pitre commented that he did not think it would be more damaging to the environment to move the shed than allowing it to remain where it was and he was concerned that the container was too close to the wetland. He further commented that he felt there were other areas in which to place the container that were not so close to the wetland.

Ms. Davis made a motion to deny the request for a Use Variance.

Mr. Pitre seconded the motion.

Ms. Davis, speaking on her motion, stated that she felt the container was a commercial shipping container which was located in an R-1 neighborhood, the container sat directly on top of the wetland, she did not feel it was an appropriate use, it was not in the spirit of the ordinance, and she felt the applicant could move the container away from the wetland and the wetland buffer.

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Mr. Pitre, speaking on his second, stated that he did not feel it was in the spirit of the ordinance, he felt that the applicant knew he was placing the container in an area of concern, and he did not feel that it would cause any unfair or substantial justice to the applicant.

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

Ms. Davis	To deny
Mr. Pitre	To deny
Ms. McGrath	To deny
Mr. Houle	To approve
Mr. Seabury	To approve

Chairman Seabury declared that the decision having been three votes to deny the request for a Use Variance, and two votes to approve, the motion had carried.

Discussion regarding request (A) - Request for a Wetland Special Exception

Mr. O'Brien, addressed the Board, stating that, his property value had been affected by the poor economy and he said that he might have to sell his house under adverse conditions.

Mr. O'Brien stated that he wanted to increase the value of his property by grading a portion of the property that would make it look more pleasing to the eye.

Mr. O'Brien stated that he wished to raise the elevation (from 3.5 feet - slowly decreasing it to 0) of the buffer with sand as the house frequently had water in the basement.

Mr. O'Brien further stated that, if the Board had approved the request, he had intended to put loam on the top and then grass seed over the 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.

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Mr. Pitre asked Mr. O'Brien if he felt he presently had enough sand to accomplish his goal. Mr. O'Brien replied that he did have enough sand to accomplish his goal.

Ms. McGrath asked Mr. O'Brien to clarify that he presently had enough sand on his property to accomplish his goal. Mr. O'Brien replied again, that he did have enough sand to accomplish his goal.

Ms. Davis made a motion to approve the request for the Wetland Special Exception with the noted stipulations of the Conservation Commission, to allow the grading in the 8,000 square foot buffer only, and no additional sand shall be used or dumped on the property.

Mr. Pitre seconded the motion.

Ms. Davis, speaking on her motion, stated that she felt it was in the spirit of the ordinance, it was a reasonable use of the land, it was a wet parcel of land that continued to sink. Ms. Davis also stated that she felt the applicant was trying to mitigate the situation because of the water, there was a favorable recommendation from the Conservation Commission and there was no negative abutter testimony.

Mr. Pitre, speaking on his second, stated that the proposed use was essential to the reasonable use of the land outside of the Wetland Conservation District.

VOTE: Chairman Seabury asked the Clerk 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:

Ms. Davis	To approve
Mr. Pitre	To approve
Ms. McGrath	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 a Wetland Special Exception with the noted stipulations, the motion had carried.

- Case 157-035 (10/8/09): John Plichta, 9 Wagner Way, Hudson, NH, requests an Accessory Living Unit to remain within the existing dwelling; previously granted on September 25, 1997. [Map 157, Lot 035, Zoned R-1, HZO Article XIII A, Section 334-73.1, Accessory Living Units.]**

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Clerk Martin read aloud the posted notice as above.

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

Mr. John Plichta, the applicant, addressed the Board, stating that when he purchased the house, he had done so with the understanding that the ALU was a legal “in-law” apartment.

Mr. Plichta then read aloud a portion of the Application for an Accessory Living Unit as summarized as follows:

1. *An ALU is allowed only in one-family dwellings. An ALU is not allowed in a two-family or multi-family dwellings. This site will conform to this requirement by: The existing ALU is a one-family dwelling.*
2. *An ALU is not allowed as a free-standing, detached structure or as part of any structure which is detached from the principal dwelling. This site will conform to this requirement by: The existing ALU is not free-standing.*
3. *An ALU is to be occupied only by immediate family members (by blood or marriage) of the owner of record. This site will conform to this requirement by: The existing ALU is occupied by immediate family members.*
4. *The front face of the principle dwelling structure is to appear as a one-family dwelling after any alterations to the structure are made to the ALU. This site will conform to this requirement by: The existing ALU does appear as a one-family dwelling.*
5. *At least one common interior access between the principal dwelling unit and an ALU must exist. A second means of egress from an ALU must exist and be located at the side or rear of the structure. This site will conform to this requirement by: The existing ALU has a common interior access and a second egress on the side.*
6. *Separate utility service connections and/or meters for the principal dwelling unit and the ALU shall not exist. This site will conform to*

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this requirement by: The existing ALU does not have separate utility service.

7. *Off-street parking shall be provided to serve the combined needs of the principal dwelling unit and the ALU. This site will conform to this requirement by: The existing does have off-street parking.*
8. *The gross living area (GLA) of an ALU shall not be less than 350 square feet, and shall not exceed fifty percent of the principle structure or 1,000 square feet, whichever is less. This site will conform to this requirement by: The existing ALU does not exceed 1,000 square feet.*
9. *A building permit for an ALU must be approved and issued prior to the construction of an ALU. The ALU shall have an interconnected smoke alarms per Section R313.2.1 of the 2006 IRC Building Code. This site will conform to this request by: The existing ALU had a building permit issued in 1997.*

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 if Mr. Plichta would be willing to sign a document stating that he, his wife, his daughter, and his son-in-law owned the principal dwelling and ALU. Mr. Plichta replied that he would be happy to do so.

Ms. Davis made a motion to approve the request for an Accessory Living Unit to remain within the existing dwelling; previously granted on September 25, 1997.

Mr. Pitre seconded the motion.

Ms. Davis, speaking on her motion, thanked the applicant for appearing before the Board, and stated that she felt it was in the spirit of the ordinance, and the applicant had maintained the ALU in the same format as when it was originally granted.

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Mr. Pitre, speaking on his second, stated that he felt the ALU was very nicely done and had the appearance of a single-family home.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to approve the request for an Accessory Living Unit to remain within the existing dwelling as previously granted on September 25, 1997, and to record the members' votes, which were as follows:

Ms. Davis	To approve
Mr. Pitre	To approve
Ms. McGrath	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 Accessory Living Unit to remain within the existing dwelling, previously granted on September 25, 1997, the motion had carried.

V. DISCUSSION OF CORRESPONDENCE BEFORE THE BOARD (REQUEST FOR REHEARINGS)

1. Case 211-041: 49 Burns Hill Road, Hudson, NH: Re – Meeting on August 27, 2009, meeting:

Prior to stepping down from the case, Chairman Seabury noted that although there were numerous referrals to “attachments” in the original “Request for Rehearing” dated September 24, 2009, that said attachments had arrived at the town hall on the morning of October 7, 2009, and only one copy of the attachments were provided.

Chairman Seabury further noted that both he and the applicant had decided that a request for deferral would be appropriate, to ensure that all of the Board member’s had the sufficient time to review the attachments.

Chairman Seabury and Ms. Davis stepped down from the case, as they had not been present at the August 27, 2009, meeting.

The gavel was then handed over to Acting Chairman Pitre.

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Acting Chairman Pitre seated Mr. Martin in place of Mr. Seabury and Ms. Shuman in place of Ms. Davis.

Acting Chairman Pitre stated for the record that the members seated for the purposes of this discussion were himself, Ms. McGrath, Mr. Houle, Mr. Martin, and Ms. Shuman.

Acting Chairman Pitre read aloud a letter dated October 7, 2009, addressed to the Hudson Zoning Board of Adjustment, from Mr. Pete Radziewicz, summarized as follows:

Please defer “Request for Rehearing” to the next available meeting 10/22/09.

This is so appropriate copies can be made available and the Board has sufficient time to review. All information was received on 10/7/09. Copies will not be available until 10/8/09 – 10/9/09.

Ms. McGrath asked Mr. Oleksak how many copies of the Request for Rehearing the applicant was obliged to provide the Board. Mr. Oleksak replied that the applicant was obliged to provide the Board with twelve copies of the Request for Rehearing in time for the copies to be mailed to the members of the Board prior to the meeting. Mr. Oleksak further stated that the applications(s) would not be accepted if the appropriate amount of copies were not received.

Ms. McGrath commented that this particular applicant had not provided the town with the appropriate amount of copies and she said she felt that the Board would be showing this particular applicant preferential treatment if the request were granted.

Mr. Martin stated that the meeting minutes had to be available within 144 hours of the Board’s final vote. Mr. Martin further stated that the minutes from the August 27, 2009, meeting, were not available within the period. He said that the Radziewiczs’ did not receive a copy of the meeting minutes until September 8, 2009.

Ms. McGrath commented that she felt the meeting minutes were a transcript and not a verbatim account of the meeting. She further commented that the formal record of the meeting was available on the DVD.

Mr. Pitre commented that the only thing usually captured verbatim in the minutes were the actual decisions. He also commented that the fact that the Board had voted to

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transcribe the portion of the meeting pertaining to this applicant was relevant to the discussion.

Mr. Martin read from RSA 677:2, Motion for Rehearing of the Board of Adjustment/Board of Appeals in Local Legislation Body, stating that an applicant had 30 days after any decision of the Zoning Board of Adjustment in which to appeal. This 30-day time period shall be counted in calendar days beginning with the date following the date upon which the Board voted to approve or disapprove in accordance to RSA 21:35 provided however, if the moving party show that the minutes of the meeting at which such vote was taken, including the written decision, were not on file within 144 hours of the vote pursuant to RSA 676:3 II.

Acting Chairman Pitre stated that the minutes from the August 27, 2009, meeting were still not officially declared – that having been said, he said he felt the applicant’s request was an honest and legitimate one.

Mr. Martin made a motion to defer the request to the next available meeting, date specific, to October 22, 2009.

Mr. Houle seconded the motion.

VOTE: Acting Chairman Pitre asked the Clerk to poll the Board on the motion to defer the request for a rehearing, date specific, to the October 22, 2009, meeting, and to record the members’ votes, which were as follows:

Mr. Martin	To defer
Mr. Houle	To defer
Ms. McGrath	Not to defer
Ms. Shuman	To defer
Mr. Pitre	To defer

Acting Chairman Pitre declared that, the decision having been four votes to defer the request for a rehearing, date specific, to the October 22, 2009, meeting, and one vote not to defer, the motion had carried.

Mr. Seabury returned to his seat as Chairman and Ms. Davis and Mr. Pitre returned to their respective seats as regular voting members of the Board.

Chairman Seabury returned Mr. Martin and Ms. Shuman to their respective seats as non-voting alternate members of the Board.

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3. Case 183-012: 5 Noel Street, Hudson, NH (Request for an Expedited Hearing)

Note: Chairman Seabury heard this case out of order because he said he felt it would be the shorter of the remaining two requests.

Chairman Seabury read aloud a letter dated September 29, 2009, addressed to Mr. J. Bradford Seabury, from Mr. Matthew E. Trudel as summarized as follows:

On the 17th of September, 2009, I submitted an application to the Zoning Board of Adjustment requesting a hearing for the property located at 5 Noel Street. I was just informed that I will not be heard until November 12, 2009, which is outside of the 30-day requirement based on the RSA. I would request that my hearing be moved to the meeting in October as I have based crucial business decisions on being heard within the specified time period. In addition, the property is currently an estate sale with out-of-town trustees.

Chairman Seabury stated that he agreed that the applicant should have been heard at this night's meeting due to "crucial business decisions."

Mr. Oleksak explained that the request was with regard to taking one lot and subdividing it into two lots in the TR Zone. He further explained that one of the proposed lots was 10,000 square feet in size and the other one was "just under" 10,000 square feet, therefore an Area Variance was needed.

Mr. Matthew Trudel, 216 Central Street, Hudson, NH, addressed the Board, stating that he was the Option Holder and not the applicant.

Mr. Trudel stated that he was not going to submit anything to the Planning Board until he knew whether or not an Area Variance would be granted.

Ms. McGrath suggested that the Board add a meeting on Thursday, October 29, 2009, for the purpose of hearing this case. Chairman Seabury stated that he agreed with that suggestion and the Board collectively agreed to the addition of a meeting on Thursday, October 29, 2009.

2. Case 170-038: 25 Constitution Drive (Request for Rehearing)

Chairman Seabury read aloud a letter dated September 24, 2009, addressed to the Zoning Board of Adjustment, from John H. Sokul, Jr. as summarized as follows:

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Please find for submission to the Zoning Board of Adjustment a Motion for Rehearing with respect to the above referenced project. We are filing this motion on behalf of our client, Century Park, LLC, a direct abutter to 25 Constitution Drive. We believe that a variance, not a special exception, is required for the proposed project.

Ms. McGrath made a motion to dispense with the reading of the letter of request into the record.

Mr. Houle seconded the motion.

Chairman Seabury called for a verbal vote and he then stated that all of the sitting Board members were in favor of dispensing with the reading of the letter of request into the record.

Chairman Seabury turned the gavel over to Ms. Davis, as he had not been present at the original meeting with regard to the case.

Acting Chairman Davis seated Ms. Shuman in place of Mr. McInerney, and Mr. Martin in place of Mr. Seabury.

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

Keach-Nordstrom Associates, Inc. represents Mr. John Jarmer, the owner of the property at 25 Constitution Drive and SNF Construction, the Applicant for the referenced project. On August 27, 2009, a Wetland Special Exception was granted by the Zoning Board of Adjustment. This letter is in response to the Motion for Rehearing filed by Century Park, LLC, on September 24, 2009.

Century Park, LLC, maintains that a variance for the parking lot aspect of project must be obtained rather than a Wetland Special Exception. The Zoning Determination made by Mr. William B. Oleksak on July 23, 2009, went un-appealed. 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 Pursuant to RSA 676:5, I, Appeals of Administrative Decisions are to be taken up in a reasonable time-frame. The Town of Hudson has established thirty days as that time-frame.

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The Zoning Board of Adjustment acted lawfully and reasonably in granting the Wetland Special Exception.

Ms. McGrath made a motion to deny the request for a re-hearing.

Ms. McGrath, speaking on her motion, stated that she did not feel the applicant had presented any new evidence and she said she did not feel that the Board made an error in judgment when the case was originally voted on.

Mr. Seabury stated that he would join the discussion as he had not stepped down from the case due to any bias but simply because he was not present at the meeting.

Mr. Seabury strongly advised that the Board seek legal counsel regarding the case prior to making a motion.

Ms. McGrath withdrew her motion to deny.

Acting Chairman Davis stated that she agreed with Mr. Seabury's advice.

Ms. McGrath then made a motion to defer the request for rehearing, pending legal advice from the Town's Attorney, date specific, to the October 29, 2009, meeting.

Mr. Pitre seconded the motion.

VOTE: Acting Chairman Davis asked the Clerk to poll the Board on the motion to defer the request for a rehearing, pending legal advice from the Town's Attorney, date specific, to the October 22, 2009, meeting, and to record the members' votes, which were as follows:

Ms. McGrath	To defer
Mr. Pitre	To defer
Mr. Martin	To defer
Ms. Shuman	To defer
Ms. Davis	To defer

Acting Chairman Pitre declared that the decision having been five votes to defer the request for a rehearing, pending legal advice from the Town's Attorney, date specific, to the October 22, 2009, meeting, the motion had carried.

Mr. Seabury returned to his seat as Chairman as Ms. Davis returned to her seat as a regular voting member of the Board. Chairman Seabury returned Mr. Martin and Ms. Shuman to their respective seats as non-voting alternate members of the Board.

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VI. ADJOURNMENT

All scheduled items having been processed, Ms. Davis 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 11:01pm.

Date: October 12, 2009

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun