

**HUDSON ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
September 24, 2009**

**I. CALL TO ORDER**

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 8:05pm on Thursday, September 24, 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, Michael Pitre, and J. Bradford Seabury

**Members**

**Absent:** William McInerney (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 (Absent)

**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 Ms. Shuman would be seated in place of Mr. McInerney, who was excused.

## III. PUBLIC HEARINGS FOR SCHEDULED HEARINGS

Chairman Seabury stated that the Board would hear Case #2 (216-001 & 002) first.

- 2. Case 216-001 and 002 (9/24/09): Merrimac Real Estate Investors, P.O. Box 4251, Cleveland, OH, requests a Wetland Special Exception to allow construction of a building and parking lot within 763 square feet of the wetland and 20,979 square feet of the wetland buffer for property located at 203 and 205 Lowell Road, Hudson, NH. [Map 216, Lots 001 and 002, Zoned B, HZO Article IX, Section 334-33, Wetland Conservation District.]**

Clerk Martin read aloud the posted notice as above.

Chairman Seabury stated that both the Zoning Administrator as well as himself had made a mistake regarding what type of relief was needed for the case.

Mr. Tony Basso from Keach-Nordstrom Associates, representing the applicant, addressed the Board, stating that a zoning determination for a Wetland Special Exception had already been made. He also noted that the determination had not been appealed.

Chairman Seabury replied that the problem still remained that constructing a building in the wetlands was simply not allowed.

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Chairman Seabury stated that a variance was needed and he suggested that the applicant request a deferral for the Wetland Special Exception and re-appear before the Board with an application for a variance.

Mr. Basso, on behalf of the applicant, requested a deferral to the next available meeting on October 22, 2009, for the Wetland Special Exception. Mr. Basso also submitted the request in writing.

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

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

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

- Case 160-105 (9/24/09): William Tate, 72 Old Derry Road, Hudson, NH, requests a Wetland Special Exception to allow construction of a parking lot and drainage structures within 10,635 square feet of the wetland buffer for property located at 297 Central Street, Hudson, NH. [Map 160, Lot 105, Zoned 1, HZO Article IX, Section 334-33, Wetland Conservation District.]**

Clerk Martin read aloud the posted notice as above.

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

Mr. Patrick Colburn of Keach-Nordstrom Associates, representing the applicant, addressed the Board, stating that the completely undeveloped parcel of land was

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approximately 1.4 acres in size and was located entirely within the Industrial Zoning District.

Mr. Colburn stated that the proposed project was for a 4,300 square foot, 100-seat restaurant with a parking lot which would consist of 59 parking spaces.

Mr. Colburn stated that the parcel had wetlands and associated buffer areas along the northern property line. He further stated that the proposed encroachment to the wetland buffer would be approximately 10,635 square feet.

Mr. Colburn noted that Gove Environmental Services had classified the wetland as an intermittent stream that flowed from east to west. He further noted that the stream served as a conveyance channel for storm water run-off from a large water shed.

Mr. Colburn said that in an effort to keep out of the wetlands, the applicant was proposing to construct an 80-foot long shallow retaining wall.

Mr. Colburn pointed out that on May 11, 2009, the Conservation Commission had voted to send a favorable recommendation to the Zoning Board of Adjustment. He also pointed out that the Planning Board voted to concur with the favorable recommendation of the Conservation Commission at its July 8, 2009, meeting.

Mr. Colburn then read aloud a portion of the application for a Wetlands Special Exception as summarized as follows:

- 1. The proposed use is essential to the reasonable use of the land outside the Wetlands Conservation District because the subject property would not be feasible without impacting the wetland buffer due to space constraints and the required number of parking spaces for a 100-seat restaurant.*
- 2. There is no reasonable alternative to the proposed use that does not adversely affect the Wetland Conservation District because due to the size constraints on the property, wetland buffer impacts are essential in order to accommodate the development.*
- 3. Design, construction and maintenance methods shall be prepared by a Professional Engineer (PE) and shall include restoration of the site, as nearly as possible, to its original grade and condition. The design, construction methods, and maintenance methods for the project, including those involving the wetland buffer impacts, have been designed by the*

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*applicant's project engineers, Keach-Nordstrom Associates, Inc. General construction sequencing and erosion control practices have been implemented according to the State of New Hampshire, Department of Environmental Services (NHDES) Best Management Practices as described in the manual for: Storm water Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire.*

4. *The proposed use within the Wetland Conservation District is not based primarily on economic considerations because the proposed wetland buffer impact is based entirely on project feasibility.*
5. *Provision is made for wildlife access corridors to promote the free migration of wildlife along the length of the Wetland Conservation District. As defined in a memo from The New Hampshire Natural Heritage Bureau, dated January 29, 2009, wildlife access will not be impacted by the proposed development.*

Chairman Seabury asked Mr. Colburn if either the proposed restaurant or parking lot would be in the actual wetland. Mr. Colburn replied that the impact was to the wetland buffer only.

Chairman Seabury read aloud a letter dated May 11, 2009, from the Hudson Conservation Commission as summarized as follows:

*To write a letter to the ZBA for a favorable recommendation for the plan Wetland Buffer Impact, Central Street Restaurant, Map 160, Lot 105, 297 Central Street. Keach-Nordstrom Number 08-0123-02, Dated April 13, 2009, No Revisions; with the following stipulations:*

1. *Best Management Practices to Control Non-point Source Pollution: A Guide for Citizens and Town Officials (NH Department of Environmental Services – 1994)*
2. *Make an effort to preserve the trees along the front of the lot, private driveway to the extent practicable.*

Chairman Seabury read aloud a letter dated June 15, 2009, from the Planning Board, addressed to the Zoning Board of Adjustment as summarized as follows:

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*At its July 8, 2009, meeting, the Planning Board voted to forward correspondence to the Zoning Board of Adjustment, citing that the Planning Board concurs with the favorable recommendation of the Conservation Commission, re: proposed 10,635 square feet wetland buffer impact cited on the Wetland Buffer Impact Plan for the proposed Central Street Restaurant, Map 160/Lot 105. Note: said plan is entitled: Wetland Buffer Impact Plan Central Street Restaurant, Map 160/Lot 105, 297 Central Street, Hudson, New Hampshire, prepared by Keach-Nordstrom Associates, Inc., dated: April 3, 2009, with no revision date(s), consisting of Sheet 1 of 1 and Notes 1-8.*

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” or “otherwise” who wished to speak in opposition or neutrally with regard to the application.

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

*This firm represents Century Park, LLC, the owner of Tax Map 170/Lot 40, 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. With that stated, we write to raise a concern regarding the above request for a Wetland Special Exception Permit.*

*Regarding wetlands impacts, we believe that Article IX of the Hudson Zoning Ordinance requires the proposed project to obtain a variance, not a special exception, for the construction of the parking lot within the Wetland Conservation District. Parking lots are not contained in the complete and exclusive list of either an “allowed use” under Section 334-35(A), or a “use permitted by special exception” under Section 334-35(B) (2). Therefore, a variance is required.*

Chairman Seabury asked if there were anyone “present” 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 commented that one of the standard stipulations of the Conservation Commission which stated that the wetlands should be delineated with markers posted at 50-foot intervals was missing from the previous letter read into the record.

Ms. Davis stated that she felt the applicant needed to request a Use Variance and not a Wetland Special Exception. She noted that parking lots were not an allowed use under Section 334-35(A) of the Hudson Zoning Ordinance. Chairman Seabury stated that he agreed with Ms. Davis. Mr. Pitre and Ms. Shuman also stated that they agreed with Ms. Davis.

Mr. Colburn stated that the letter from Hinckley Allen Synder, LLP represented an angry abutter who was trying to delay the applicant's project. He also noted that this was not the first time the abutter's representative had attempted to delay the project.

Ms. Davis stated that she felt the case should be deferred to the October 22, 2009, meeting.

Mr. Colburn requested a deferral, date specific, to the October 22, 2009, meeting. Mr. Colburn also submitted the request in writing.

Mr. Pacocha made a motion to defer the case, date specific, to the October 22, 2009, meeting.

Ms. Davis seconded the motion.

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

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

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

**3. Case 173-007 & 008 (9/24/09): Susanne Lindquist, Trustee, 44 Webster Street, Hudson, NH, requests the following:**

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- A. An extension of an un-activated Use Variance to allow residential uses of four proposed building lots within the Business Zoning District for property located at 50 & 58 Webster Street, Hudson, NH. [Map 173, Lots 007 & 008, Zoned Business and Town Residence, HZO Article V, Section 334-21, Table of Permitted Principal Uses.]
  
- B. An extension of an un-activated Area Variance for the proposed creation of four residential building lots within the Business Zoning District to have dimensional deficiencies of less than 150 feet of frontage for proposed lots 1, 2, & 4 and less than 30,000 square feet of buildable area within proposed lots 1, 2, & 4 for property located at 50 & 58 Webster Street, Hudson, NH. Proposed buildable area of Lot 1 is 15,924 square feet with 90 feet of frontage, Lot 2 is 25,157 square feet with 120.58 feet of frontage, and Lot 4 is 19,052 square feet with 95.04 feet of frontage. [Map 173, Lots 007 & 008, Zoned Business and Town Residence, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]

Clerk Martin read aloud the posted notice as above.

### **A. Discussion with regard to the Use Variance**

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

Ms. Susanne Lindquist, the applicant, addressed the Board, stating that she was asking for an extension for the Area and Use Variances in the hope that in a year or two, the economy would be better, which would allow them to either sell the lots or build on them.

Chairman Seabury asked the applicant if anything on the property had changed with regard to the ordinance. The applicant testified that nothing had changed.

The applicant stated that she did have both the Area and Use Applications for Appeal but noted that they were virtually the same as her initial requests from the previous year. Chairman Seabury stated that because the information had already been read into the record, the applicant did not have to re-read her statements aloud.

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.



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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 commented that she remembered the case quite well and while she had agreed that it was appropriate to grant a Use Variance, she had felt the case did not meet the requirements for an Area Variance. She further commented that she still felt the same way.

Mr. Pitre stated that he agreed with Ms. Davis and wanted to take another look at the maps.

Ms. Davis made a motion to approve the request for a one-year extension of an un-activated Use Variance previously approved on May 22, 2008.

Mr. Pacocha seconded the motion.

Ms. Davis, speaking on her motion, stated that she felt it was an appropriate use and similar to the other properties in the area.

Mr. Pacocha, speaking on his second, stated that he felt it met all of the requirements for a Use Variance.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to approve the request for a one-year extension of an un-activated Use Variance, and to record the members' votes, which were as follows:

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

Chairman Seabury declared that the decision having been five votes to approve the request for a one-year extension of an un-activated Use Variance, the motion had carried.

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**B. Discussion with regard to the Area Variance**

Mr. Pitre made a motion to approve the request for a one-year extension of an un-activated Area Variance with the five stipulations previously applied (as indicated below) when the case was originally heard on May 22, 2008.

1. Wetland markers shall be placed at every lot line and across the wetland buffer at “**50-foot intervals.**” Mr. Pitre added the amount of footage.
2. The existing shed on proposed Lot 3 shall be relocated inside the building envelope.
3. The existing shed on proposed Lot 4 shall be relocated outside of the 50-foot wetland buffer.
4. No additional structures are to be built within the side or rear setbacks.
5. No further sub-division of newly created Lot 3 shall be allowed.

Mr. Pacocha seconded the motion.

Mr. Pitre, speaking on his motion, stated that he felt it met all of the requirements for an Area Variance, there were no changes on the property, the applicant could not achieve the same benefit by seeking alternate means, and granting the variance would do substantial justice for the applicant.

Mr. Pacocha, speaking on his second, stated that in addition to Mr. Pitre’s comments he had voted to approve the request because, although some of the lots had less than the required frontage, that overall, the piece of property had the required frontage.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to approve the request for a one-year extension of an un-activated Area Variance with the noted stipulations, and to record the members’ votes, which were as follows:

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

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Chairman Seabury declared that the decision having been four votes to approve the request for a one-year extension of an un-activated Area Variance, and one vote to deny the request, the motion had carried.

Ms. Davis stated for the record that she had voted to deny the request because she did not feel that the applicant met the criteria for an Area Variance, there were no special conditions on the property, the lots were very small, and she felt the lots being created were non-conforming and there could have been a better alternative. (Ms. Davis noted that this was the same way she had voted one year prior.)

4. **Case 134-025 (9/24/09): Eric Van Singel, Indymac Mortgage Services, One West Bank, 2900 Esperanza Crossing, Third Floor, Austin, TX, requests the following:**

- A. An Equitable Waiver to allow the existing 2,766 square-foot dwelling to remain for property located at 35 Hazelwood Road, Hudson, NH. A variance granted in 1994 stipulated that the house shall be limited to two bedrooms and a maximum of 1,000 square feet of living space excluding garage and porches; this request asks that the excessive as-built size be allowed with a provision that occupancy shall be limited to a maximum of four residents. [Map 134, Lot 025, Zoned R-1, HZO Article VII, Section 334-29, Extension or enlargement of non-conforming uses.]
- B. A Use Variance to change the previously granted variance, which had a stipulation that the house on property located at 35 Hazelwood Road, Hudson, NH, shall be limited to two bedrooms and a maximum of 1,000 square feet of living space excluding garage and porches, to allow the existing 2,766 square-foot dwelling with a provision that occupancy shall be limited to a maximum of four residents. [Map 134, Lots 025, Zoned R-1, HZO Article VII, Section 334-29, Extension or enlargement of non-conforming uses.]

Clerk Martin read aloud the posted notice as above.

Prior to hearing the case, Chairman Seabury declared Part A of the case, the request for an Equitable Waiver, to be moot. He explained that he had suggested that an Equitable Waiver also be requested when the request for a Use Variance was received, but that it had since been suggested that an Equitable Waiver would not be appropriate in this case because the Board was not authorized to change its own stipulations by that method.

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

### **B. Discussion with regard to the Use Variance**

Attorney John J. Ratigan, representing the applicants, addressed the Board, stating that his clients, Ms. Margery Harris and Mr. Bruce Atwood were present at the meeting.

Attorney Ratigan stated that a Wetland Special Exception was originally granted for the property located at 35 Hazelwood Road on March 10, 1994.

Attorney Ratigan also stated that, at the time, the Conservation Commission suggested a stipulation that there should be no more than two bedrooms and which limited the square footage to a maximum of 1,000 square feet of living space, excluding the garage and porches.

Attorney Ratigan commented that a succession of owners, over a period of the last 10 years, received permits to build substantially more than 1,000 square feet. He also commented that the septic system on the property was only suitable to accommodate a two-bedroom dwelling.

Attorney Ratigan stated that upon doing research into the title, his clients had come across the old Wetland Special Exception. He further stated that they were concerned that there might be difficulties with the re-sale of the property because of the stipulation that limited the square footage to a maximum of 1,000 square feet.

Attorney Ratigan stated that the applicants would be happy to accept a stipulation stating that no more than four occupants would live in the home.

Chairman Seabury read aloud a letter dated September 14, 2009, addressed to the Zoning Board of Adjustment, from Mr. Janos Kovacs, Real Estate Advisor, summarized as follows:

*I have been asked to draw upon my experience as a real estate broker to offer an opinion about whether the value of properties surrounding the 35 Hazelwood Drive, Hudson, NH, property will be diminished if a variance is granted without the existing square foot structure limitation that burdens the property, or if that condition is otherwise released, or released and a condition is substituted in its place that limits the number of occupants to the existing septic capacity.*

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*I have been in the real estate brokerage profession for over fifteen years, and I have a very good understanding of the circumstances and conditions that can influence property values. One of the biggest depressing effects on residential property values can come from a home that stands unoccupied for a considerable period of time and that is not maintained to the standards that one would expect of an occupied home.*

*It is my understanding that the 35 Hazelwood Road property has been unoccupied for years, even though it is in a lovely neighborhood. If the Board grants the requested relief of lifting the square footage limitation that presently exists on the property, it is my opinion that this relief will not have the effect of diminishing the value of surrounding properties. In fact, if this relief allows the property to be transferred out of the bank's ownership to new owners, such as Mr. Atwood and Ms. Harris, their occupancy and maintenance of the home will enhance the values of surrounding properties.*

Chairman Seabury also read aloud a letter dated September 19, 2009, addressed to the Zoning Board of Adjustment, from Mr. Edward Duffett, an abutter, as summarized as follows:

*I met the folks who are trying to buy the property.*

*They seemed like nice folks and that they wanted to do the right thing with the land. They were concerned about the overall environment.*

*I have mixed feelings as I do not want to see an empty house sitting there, but at the same time, the house sits in a very critical area as it relates to the pond. There is drainage right in front of the property and there is a stream that leads into the pond on the other side of the fire lane. This spot will be critical during our monthly water sampling if it is approved.*

*I am unable to attend your meeting on September 24, 2009, but I have the following concerns.*

*What is the mechanism that will be used to ensure that no more the four people live in the house? Who will monitor that not more than four people live in the house? What will happen if more than four people are found to be living in the house? Is there a fine? Is the house condemned? What could be done?*

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*If it is approved, add something that says that the septic tank is pumped “X” times a year and the leach field is checked every “X” years and identify who will be responsible for ensuring that this is done.*

*If the leach field fails, who will be responsible for the resultant damages? Will the town be responsible for the resultant damages if the home owners are unable to take care of the damages?*

*The big questions is how did this happen? And, who was asleep at the wheel when this house was being built? How do we prevent this from happening in the future?*

Attorney Ratigan noted that he had distributed a two-page document to the Board signed by Mr. Mitchell Albanese and Ms. Mary Joyce, abutters, expressing favorable recommendations.

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

Ms. Margery Harris, the applicant, addressed the Board, stating that the problems with the property went back at least 20 years.

Ms. Harris stated that the original owner, Gerard Bergeron, was granted a Wetland Special Exception from the Zoning Board of Adjustment on March 10, 1994. She further stated that one of the stipulations limited the total number of bedrooms not to exceed two and limited the maximum living area to 1,000 square feet.

Ms. Harris said that the previous owner had obtained the necessary permits to effectively increase the size of his house by finishing off a spacious attic, as well as an enclosed porch, resulting in a house whose tax assessment card now indicates 2,766 square feet of finished living space. The house is therefore in violation of the 1,000 square foot restriction of the original approval, presenting a legal dilemma to any future owner of this home.

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.

Mr. Alfred Langguth, 31 Hazelwood Drive, an abutter, addressed the Board, stating that he was there to speak neutrally with regard to the application. He said that he had attended

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many ZBA meetings over the years regarding the property and he was concerned that the septic system from the oversized home might overflow into Robinson Pond.

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

Ms. Davis asked Mr. Oleksak if he knew what building activity had been happening on the property in 2005. Mr. Oleksak replied that the previous owner, Mr. Gerald Bizzarro, had finished the kitchen and the bathroom, and had installed a heating system. Mr. Oleksak further replied that he informed Mr. Bizzarro that the room above the garage, the loft above the garage, as well as the porch (which were not included in the allowable living space) could not be finished. He said that at the time of inspection for a Certificate of Occupancy, he walked through the home and the door to the garage was closed and it appeared that only 1,100 square feet was finished at the time. Mr. Oleksak commented that any work done after May of 2006, was done without the town's knowledge.

Ms. Davis commented that the town had no control over people doing "work" inside their own home. She further commented that the town could not go into a private citizen's home and police it. Ms. Davis also noted that a person could have one big party on a weekend that could max out a septic system.

Attorney Ratigan read aloud a portion of the Application for a Use Variance as summarized as follows:

- 1. The zoning restriction of the cited ordinance(s) interferes with the plaintiff's reasonable use of the property because the house as built has almost 2,800 square feet of living space. Removal of the extra area would be expensive and wasteful.*
- 2. No fair and substantial relationship exists between the general purposes of the Zoning Ordinance and the specific restriction(s) on the property because a living area restriction only indirectly protects the two bedroom septic system. Our proposed occupancy limit directly protects the septic system, reflecting the original intent of the ZBA.*
- 3. The variance would not injure the public or private rights of others because it affects only the interior of the dwelling, not the footprint which is already in compliance with the Zoning Ordinance.*

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4. *No diminution in the value of surrounding properties would occur because a larger and more useful house is more valuable, which increases the value of surrounding properties.*
5. *The proposed use would be compatible with the spirit of the ordinance because it directly protects the septic system.*
6. *The proposed use will not be contrary to the public interest because a protected septic system is less likely to leak into Robinson Pond.*
7. *Granting the variance would do substantial justice because the present owner obtained the house through foreclosure and was not responsible for the enlarged living area.*

Chairman Seabury noted that he was concerned that the town would not be able to enforce the residential restriction.

Attorney Ratigan suggested that the applicant put up a bond. He further stated that, if the applicant did not follow the town's instructions, then money could be taken from that bond.

Mr. Pacocha asked if the bond would be part of the package if the property were to sell. Attorney Ratigan replied that it could be part of the title, which would notify any future potential owners of the bond.

Ms. Davis commented that there were other lots in the neighborhood that had comparable sized lots with three and four bedrooms.

Attorney Ratigan mentioned that those lots may have larger septic systems.

Ms. Davis asked Mr. Oleksak if there was any way to put a reminder in the system to ensure that the septic system was pumped every year or two and that the applicant would be required to provide proof of that.

Mr. Pitre commented that he felt there was no way to keep track of the activity inside the home.

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



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

Chairman Seabury declared the matter before the Board.

Mr. Oleksak suggested that the applicant have a new septic system designed under current standards and keep it on file.

Ms. Davis made a motion to approve the request for a Use Variance with the following stipulations:

1. The property owner will have the septic system pumped every odd year with the receipt filed in the property folder in the Town Hall.
2. If the septic system fails, it shall be replaced with a system that is appropriate to a house having four bedrooms or to the maximum load of the land – whichever is lower.
3. The property owner will post a bond with the Town of Hudson for 10 years in the amount of \$2,500.00 to cover any expenses incurred as a result of failure to comply with these stipulations.
4. The property owner will have the septic system inspected/tested by a third party designer witnessed by the town health officer every 3 years to ensure proper function.
5. Any violation of these stipulations will result in the revocation of the Certificate of Occupancy.
6. That the house is to remain as a two-bedroom single-family residence.

Mr. Pacocha seconded the motion.

Ms. Davis, speaking on her motion, stated that she felt the case was one of the hardest cases she had ever heard, because it had both pros and cons and it was tough to protect the abutters as well as the applicant. Ms. Davis also said she felt that the decision along with the noted stipulations would protect the ZBA's original intent, it was in the spirit of the ordinance, it would be an expensive burden to retrofit the dwelling, and granting the request would do substantial justice to the applicant.

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Mr. Pacocha, speaking on his motion, stated that he agreed with Ms. Davis' commentary and the proposed use would not be contrary to the public's interest.

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

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

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

## **IV. OTHER BUSINESS**

Chairman Seabury stated that there was an upcoming case scheduled to be heard on October 7, 2009, regarding 8 Derry Lane, Hudson, NH. He further stated that the property owner had requested that the Board perform a site-walk prior to the meeting.

Mr. Oleksak stated that he agreed with the property owner's request.

The Board collectively decided to perform the site-walk on Monday, September 28, 2009, at 6:00pm.

Chairman Seabury stated that the request for a re-hearing regarding 49 Burns Hill Road would be discussed at the October 8, 2009, meeting, due to the fact that this meeting had already gone past the curfew.

**HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes  
September 24, 2009**

**V. ADJOURNMENT**

All scheduled items having been processed, Mr. Pitre 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 11:41pm.

Date: October 7, 2009

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J. Bradford Seabury, Chairman

Recorder: Trish Gedziun