

**HUDSON ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
August 27, 2009**

**I. CALL TO ORDER**

Acting Chairman Davis called this meeting of the Hudson Zoning Board of Adjustment to order at 7:10pm on Thursday, August 27, 2009, in the Community Development Meeting Room in the Town Hall basement. Acting Chairman Davis 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, William McInerney, and Michael Pitre

**Members**

**Absent:** James Pacocha – Excused, and J. Bradford Seabury, 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

**Recorder:** Trish Gedziun

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## **II. SEATING OF ALTERNATES AND ANNOUNCEMENTS**

For the benefit of all attendees, Acting Chairman Davis 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. She 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. Acting Chairman Davis 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.

Acting Chairman Davis announced that she would be seated in place of Mr. Seabury, who was excused.

## **III. APPROVAL OF MEETING MINUTES**

Acting Chairman Davis announced that a quorum was present, which was sufficient to review the minutes from the June 25, 2009, and July 23, 2009, meetings. Those members currently present were Acting Chairman Davis and Mr. McInerney. Those alternate members present were Mr. Martin and Ms. Shuman who were respectively seated in place of Mr. Pacocha, who was excused, and Mr. Pitre, who had not yet arrived at the meeting.

The following edits were made to the minutes from the June 25, 2009, meeting:

1. Page 1 – “Maryellen Davis” was added to the members being present. – Davis
2. Page 7, 2<sup>nd</sup> paragraph – the word “a” was deleted. – Davis
3. Page 15, 7<sup>th</sup> paragraph – the word “actual” was changed to “actually”. - Davis

Mr. Martin made a motion to approve the minutes from the June 25, 2009, meeting.

Ms. Shuman seconded the motion.

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Acting Chairman Davis called for a verbal vote and she then stated that all of the Board members were in favor of approving the minutes from the June 25, 2009, meeting.

The following edits were made to the minutes from the July 23, 2009, meeting:

1. Page 5, 9<sup>th</sup> paragraph – the word “the” was added to the first sentence – in “the” front-yard setback. – Davis
2. Page 7, last paragraph – the word “deny” was added – one vote to “deny”.  
- Martin

Mr. Martin made a motion to approve the minutes from the July 23, 2009, meeting.

Ms. Shuman seconded the motion.

Acting Chairman Davis called for a verbal vote and she then stated that all of the Board members were in favor of approving the minutes from the July 23, 2009, meeting.

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

Acting Chairman Davis then declared a break at 7:16pm, calling the meeting back to order at 7:30pm, with Mr. Pitre and Ms. McGrath arriving in the interim.

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

Acting Chairman Davis stated that, she would step down from the first case and handed the gavel over to Mr. Pitre, who had arrived at the meeting and, was the next senior member of the Board present.

Acting Chairman Pitre noted that the regular sitting members of the Board for the first case were himself and Mr. McInerney. Acting Chairman Pitre then seated Mr. Martin in place of Mr. Pacocha, Ms. McGrath in place of Mr. Seabury, and Mr. Houle in place of Ms. Davis.

### **IV. PUBLIC HEARINGS FOR SCHEDULED APPLICATIONS**

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**NOTE: The minutes for the following case have been transcribed verbatim at the direction of the Zoning Board of Adjustment.**

1. **Case 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.]

Clerk Martin read aloud the posted notice, as recorded above.

Acting Chairman Pitre read aloud a letter addressed to the Zoning Board Members, dated August 27, 2009, from Megan Radziewicz, as follows:

*My name is Megan Radziewicz. I live at 49 Burns Hill Road in Hudson. I am 13 years old. I am very much in FAVOR of keeping our fence on our property just as it stands. For two and a half years I could hear and see things out of my bedroom window that no kid should have to hear or see. (Constant swearing, arguing, fighting, and much more – worst of all, my dad's life being threatened by the neighbor.) I moved out of my room for several months because I was afraid to be in there. With our fence, I no longer have to see that. I can sit at my desk with my curtain open for sunlight. We also could not feel safe being out in our back yard with neighbors not looking over at our yard and pool. We did not open our pool last year because of it. My father put the fence up to protect his family and his property and he did the right thing. It IS protecting us better. If it has to come down, I will be moving out of my room and into the living room again. The fence is there for our safety and so we can be in our yard again. Please do not make my dad remove it.*

Acting Chairman Pitre read aloud a letter addressed to the Zoning Board Members, dated August 27, 2009, from Peter Radziewicz, as follows:

*I am HIGHLY IN FAVOR of allowing the fence to stay at 49 Burns Hill Road. Not only is it there for our protection. It is there for the neighbor's protection as well.*

Acting Chairman Pitre asked who was present to speak in favor with regard to the application for an Area Variance.

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Mr. Pete Radziewicz, 49 Burns Hill Road, Hudson, NH, the applicant, addressed the Board, as follows:

**Mr. Radziewicz:** [Referring to a map] I am present to talk about the fence that we had installed. The fence was approximately 10 feet high. It goes from the front corner of our home – it's actually down to 6 feet and then goes up to 8 and then approximately 10 feet behind the front of the house to about half way at that angle to the back of the property.

I'm just wondering before we start if it would be beneficial for the Board members to defer to actually come to the property and see the fence in relation to the homes and landscape and to see first-hand the protection and privacy that it provides us from outside as well as inside of our home. So, I mean, I don't know if you want to consider that? But, I think if you just take into consideration that you hear 10 feet and it might be shocking but it is not very high when you come and look and you come and see the protection that it provides to my family.

Prior to installing the fence – this was not just citizens going out and just irregardless of the law or whatever and putting up a fence. We tried to obtain a permit. So, prior to installing it, on October 8<sup>th</sup>, my wife came to the town hall and filled out an application for a permit for a fence over 6 feet in height which is attached inside the pamphlet. I wasn't there, so I can't speak to exactly what was said but I can say that we subsequently followed up with multiple phone calls and visits to the town hall in order to find out where the letter of denial was that Mr. Oleksak stated was needed in order to go before the ZBA to get an appeals process going. So, we tried multiple times for approximately 6 weeks. You know, we needed a response as to what type of variance we needed to apply for. This information was not provided to us by Mr. Oleksak, no return calls, no info came in the mail. We still haven't received a denial for the permit as of today's date. We did receive a notice of violation but no denial for the permit.

When my wife went in – it was well aware that the matter was extremely urgent. I was trying to purchase a fence and we wanted to seek the ZBA's approval first – if needed. We called right up until the installation date, which was December 2<sup>nd</sup>. It was the last installation that the fence company could do in the middle of year, otherwise we would've had to wait until April to get the fence installed.

The previous fence was not – or fell down on September 8<sup>th</sup> so it was 2 ½ months that we had no fence there. So finally on December 4<sup>th</sup> the fence was installed. I had called the town hall and I actually spoke with Mr. Oleksak on the phone. I asked for a copy of the

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original permit application, if there was a denial so I could go in front of the ZBA, and the comment [from Mr. Oleksak] was “well, I’ll have to go and look for it.”

I told him the fence was just installed and I’d be needing to get a letter of denial to go before the ZBA. I still didn’t get one. It was not until there was an investigation on the abutting property that we ended up getting a violation shortly afterwards. That’s when we got our first notice of violation. We still haven’t gotten a denial for the permit.

As citizens of the town and taxpayers we don’t know what else we could have done to try to come before you before the fence was installed.

Now, I’ll go through a little bit more information. We ultimately used the violation letter in order to provide you with basically the denial in order to go in front of you for the ZBA meeting.

First, I’d to like begin – this application is stating that the fence was installed mostly because of --- I’ll save that, I apologize.

We looked into natural landscape, hedges and what not. If you look at the property, our home is about/exactly 15 feet off the property line. In order to plant trees that would grow, they would actually cause mold and mildew within the home. So, every landscaper told us that if you want them to grow 8, 10, 12, 15 feet high you’d have to plant them 8 – 10 feet inside your property line, which would be about 5 – 8 feet away from our home and they grow about 8 feet wide, so it would be right up against the home, so we really did not have a natural landscaping opportunity to put them on the side of our property. That wouldn’t work, not to mention that would have taken 4, 5, 6, 10 years to get to the proper height for the privacy and protection we feel we needed – and there’s no guarantee that those plants are going to survive.

1. The denial of the variance would result in an unnecessary hardship because:

- a. The zoning restriction of the ordinance interferes with the plaintiff’s reasonable use of the property because without the fence my family does not feel safe or comfortable using my backyard due to safety issues – due to comfort issues. At times, multiple families have been living in the abutting property. The abutting property’s grade – the grade – the elevation level from my property to the abutting property is anywhere from 4 feet to a 20 feet difference. If you go the bottom of my property and the top of the

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neighbor's property there is about a 20-foot elevation difference. A 6-foot fence is useless on that piece of property. It's 4 feet, it's just a huge grade issue difference so if you put a 6-foot fence up, I mean, you're basically staring over the top of the fence, it's like a knee fence. We feel we have the right not to be seen and threatened in our own backyard. The higher fence blocks the children's view of the driveway and yard abutting the property and they feel more comfortable using their bedrooms – more comfortable without witnessing any activities on the abutting property. The higher fence offers a buffer zone between the two homes really in the R-1 Zone but with very different uses. Those two homes are being used very differently – one's used as a single-family and one's not. The fence allows us to maintain our property value with the use of the abutting property - and it actually - with the use of the abutting property negatively impacting it.

- b. No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restrictions on the property. Because it is unfair to limit how someone feels that they need to protect their own property – in this case by restricting height of fences when their safety, comfort, and well-being, and the use of their property is being interfered upon.
  - c. The variance would not injure the public or private rights of others because there have been no complaints, that we know of filed by abutters in the 8 months the fence has been there. There have been no injuries. It actually protects our private rights as well as the abutters. The abutter had actually complained multiple times here at the ZBA meeting that we were actually spying on her and that actually prevents both from happening.
2. No diminution in the value of surrounding properties would occur. Because the abutter is free to use her property without any interference from us. The fence installer stated to us that we probably increased the value of both properties by twice the value of the fence installed. The fence is the highest quality and will not rot or deteriorate. We actually paid a lot of extra money to reinforce it with steel beams for safety and the added height.

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3. The proposed use would be compatible with the spirit of the ordinance. Because the fence installation was for safety and privacy which is the spirit of the ordinance. The ordinance for a fence is for privacy, it's a privacy fence and that's all we are trying – The height restriction, I think is an arbitrary number, I mean, why 6 feet? I don't think you can prove, you know, and to coin something that we've used in the past here, I'm not sure you can prove the intent of what the voters wanted when that ordinance was created. I mean was it just the standard fence that's 6 feet high. If you go to Home Depot or Lowe's, they have a standard fence that's 6 feet high. I think if they had 8 and 10-foot high fences, I think you'd probably see them popping up a lot more. It's not something that's been common. I believe its true intent was for the residents not to have a permit for a fence. That's what we believe the intent of the original ordinance was.
4. The proposed use will not be contrary to the public interest, because, again, not contrary, no complaints have been filed by any residents regarding this fence. Not sure what the abutter will or will not say today, but I don't believe there has been anything filed other than the violation from Mr. Oleksak.
5. Granting the variance would do substantial justice. Because we believe that granting this variance it will help correct possibly an injustice that was created when the abutting property was allowed to be used as a duplex or a multi-family home. We have already invested thousands of dollars and to reduce the height of the fence would be of a great financial difficulty for us, as well as it would not be effective in what it was originally installed for.

I mean if we sit here – I spent over \$12,000 to install a fence and it did not go to the end of the property which I wish it could have. We did not have the money to put it to the end of the property. I did not want to spend \$12,000 to put a fence in. It was a necessity that I had to do. Hopefully, the Board doesn't feel that I just put a 10-foot fence in to kind of stick it to you or anything, because that's not what we wanted to do – we wanted the right height. We originally went in to file for the permit and we thought we were going to do 12 to 15 feet and we put out some sticks with strings on it and we thought 12 feet might be a little bit high. There was really not much of a cost difference between 10 feet and 12 feet, it was maybe a \$1,000 difference so we actually went with the 10-foot fence just to try to maintain the appearance. Honestly, the fence looks great and the neighbor across the street has made great comments about it. If there are any issues, I hope that the Board would defer and come and see it, if there were a major issue, because it's not an obscenely large object although it is a few feet above the 6-foot arc.



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**Acting Chairman Pitre:** I know you answered the five criteria. I just have a couple of comments on what you had said. The first part of your question about the Board going to see your property – typically it was the usual procedure of the Board to inspect properties before meeting, so we know what it looks like. I'm sure we've all seen it, and if somebody hasn't they can let me know. I drive by it every day.

**Acting Chairman Pitre:** Do you have a copy of the application that you submitted for the permit?

**Mr. Radziewicz:** Yes.

**Acting Chairman Pitre:** Can you submit that?

**Mr. Radziewicz:** Yes. You don't have one there?

**Acting Chairman Pitre:** No, I don't have one. Can I keep this?

**Ms. McGrath:** [to Acting Chairman Pitre] Can you pass that around, please?

**Mr. Radziewicz:** I believe that was dated on October 8<sup>th</sup>.

**Acting Chairman Pitre:** Is there anyone else present who wishes to speak in favor with regard to the application. Seeing none.

**Acting Chairman Pitre:** Is there anyone present who wishes to speak in opposition or neutrally with regard to the application.

Ms. Bonnie Lavalley, 51 Burns Hill Road, Hudson, NH, an abutter, addressed the Board as follows:

**Ms. Lavalley:** I like the fence, I really do. The only thing I don't like is the rest of the fence. The building should have the 10-foot fence but the rest should come down to 6 or 8 feet, whatever they have, because I think if you allow them to continue with the fence, they're going to do 10 feet all the way around their property.

It does help Meagan with her place. I mean not looking out and seeing what goes on, which is not really bad, just young kids sitting out in the driveway. That I like to have, but on the stipulation that they set it back from the house on, because they should have 15

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feet from their house and I think they have over 20 feet. I believe the fence is on my property and they need to set it back at least 13 feet from their house.

I have blueprints on the property if you want to see it.

**Acting Chairman Pitre:** Yes, we'll see it.

**Ms. Lavallee:** [Referring to the blueprint] I believe their fence is on my property. The land was surveyed recently, but the measurements are off.

**Ms. McGrath:** Can I ask a question before she continues? What you just handed out, with the measurements from the addition to your home showing a 33-foot distance, where did this come from? I just wanted to confirm the measurements.

A further question about the plan the Board had just received. [as referred to as the blueprint by Ms. Lavallee] The dimensions that are shown on the plan – it appears that it is a copy of the original plan. Who prepared it?

**Ms. Lavallee:** I went to Maynard & Paquette to get the copy.

**Ms. McGrath:** Okay, but who added the dimensions onto this copy?

**Ms. Lavallee:** I went to Maynard & Paquette, so I'm not sure who added them. I think maybe it was Mr. Maynard, Sr.

**Ms. McGrath:** No, no, Mr. Maynard, Sr. has not been on this earth for a long time.

The original plan that you have [addressing Ms. Lavallee], that you recently picked up from Maynard & Paquette, only has your lot; that doesn't show any dwelling on it.

**Ms. Lavallee:** That's the abutter's lot, that's 49 Burns Hill Road.

**Ms. McGrath:** The plan that you picked up from Maynard & Paquette, are they the ones that added the dimensions shown?

**Ms. Lavallee:** I don't know who added them. My uncle is a builder and maybe he added them.

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**Ms. McGrath:** Well, no, because it's just a copy of the plan that someone has marked up.

So, what she is saying [Referring to Ms. Lavallee] is that the 15-foot dimension from the property line to the Radziewicz's home is correct, but the 33 feet from the property line to the edge of her home is not correct.

**Ms. Lavallee:** It could be the drawing itself, I'm not sure, but I got less footage. I got 27.8 footage from the garage.

**Ms. McGrath:** So, you measured?

**Ms. Lavallee:** I had it surveyed and I disagreed with Maynard & Paquette about it and he told me not to worry about. But, then we got this fence up and I have to worry about it, because I got a letter from the Radziewicz's saying that I'm going to be responsible for their fence if it's damaged, so I would like it set back.

**Acting Chairman Pitre:** Do you have a copy of that letter?

**Ms. Lavallee:** I don't have a copy.

**Acting Chairman Pitre:** Do you have any further testimony, Ms. Lavallee?

**Ms. Lavallee:** Just that I'd like it set back from their home maybe - I don't know how much footage.

**Ms. McGrath:** It would be 2 ½ or so.

**Ms. Lavallee:** Okay, so 2 ½ feet over.

**Acting Chairman Pitre:** But there is no setback on fences though.

**Ms. McGrath:** But what she is saying is that it encroaches onto her property line.

**Acting Chairman Pitre:** Well, we'll have to ask Bill if he has an opinion on that from when he did the inspection for the violation.

**Acting Chairman Pitre:** Is there anyone else present who wishes to speak in opposition or neutrally with regard to the application. Seeing none.

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**Acting Chairman Pitre:** [Introduced] Second round of testimony.

**Mr. Radziewicz:** We noticed that she did have her land surveyed by Maynard & Paquette. We also disputed – we thought we had more property – but before we installed the fence, which is attached, we had Jeffrey Land Survey do a property survey, and they were actually within about an inch of every one of Maynard & Paquette's – so you have two land surveys that were almost identical.

**Ms. McGrath:** I'm sorry, can you please repeat what you just said, the discrepancy?

**Mr. Radziewicz:** It was about 1 inch - within 1 inch of each other. He had spoken with my wife and it may have been 3 inches but actually it was 3 inches inside of Maynard & Paquette, closer to our property. We had him stake off every 10 feet on that side of the property. So I think they do normally do every 50 feet or something - he actually put stakes in the ground every 10 feet. Our fence is 1-foot to 18 inches inside that property line because they had to pour a concrete base. So, inside the base it's probably 6 inches inside that big concrete base that they poured. So, there should not be an issue with the property line at all. The fence is well within 1-foot of our property and there is no setback for a fence.

**Acting Chairman Pitre:** I do recall there being marks every 10 feet. I saw the little flags. So, right now, if you measured from your house to the fence, it's probably 13-½ feet or something like that.

**Mr. Radziewicz:** Yes. The issue with the damage to the fence was just the snow blower kept slamming – you know we had all that ice in the winter and the chunks of ice just kept hitting off the fence – luckily it's a plastic fence as opposed to a wood fence.

**Ms. McGrath:** [Addressing Ms. Lavallee] Can you provide the date of the survey you just had done? It was one year ago, September 8, 2008. Was that the date?

**Ms. Lavallee:** Yes, it was.

**Ms. McGrath:** This is showing from your existing residence, the back corner of your residence is showing 27.8 feet to the property line.

**Ms. Lavallee:** It's in question because when the lands were first sub-divided – it's not correct because, I don't know.

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**Ms. McGrath:** Because of that 33 feet that's hand-written onto the first plan.

**Ms. Lavallee:** Right, but I'd like to see proof of measurements from their home to the fence. If it's under 13 feet, then that's fine, but if it's not, then I ask if it can be set back.

**Acting Chairman Pitre:** That's a zoning determination.

**Mr. Radziewicz:** One thing I did ask the surveyor, just to clarify a little bit, they don't use home structures to measure the distance between, you know....they try to use natural boundaries such as existing rock walls from 200 hundred years ago.

**Mr. McInerney:** Mr. Chairman, I've noticed on the plan submitted by the applicant by Jeffrey Land Surveyors, Inc., there are no dimensions from the dwelling to the lot-line. According to our Notice to the Applicants, the plot plan shows all existing dwellings and structures. We do not have clarification and we now have a question of the potential of partial encroachment, and I think without a certified plan, we are blind. It would be unfair to either party to proceed until we have that.

**Acting Chairman Pitre:** Well, this is a copy of the certified plan, and I understand your concerns, because it's not mentioned in plan, but in the zoning district requirements it has the 30-foot front (15-side, 15-rear set) and if it didn't meet that criteria I don't think it would be stamped.

**Mr. McInerney:** Do we have a fence viewer in the town? The RSA calls for a fence viewer. They deal with encroachment issues. If we don't have one, then I think a detailed survey needs to be done.

**Mr. Pitre:** I've never heard of one.

**Mr. McInerney:** In Massachusetts they call them fence watchers. It is very archaic.

**Acting Chairman Pitre:** Before I close the questioning out, I'm going to read a letter submitted by Ms. Lavallee that was received from the applicant, dated January 23, 2009, as follows:

*In September, 2008, you ran a string with bright pink marker tape along the entire border between our two properties. Further, at that time, you posted several "No Trespassing" signs facing our home along the*

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*property line. The string and signs are still there. We are quite aware of where our property line is.*

*After threats from one of your tenants, in December, 2008, we had a fence installed between the two properties for reasons of safety and security. We own several inches behind the fence. Since the installation of the fence, we've had multiple snow and ice storms. We've noticed that a substantial amount of excess snow and ice from your driveway has subsequently been plowed and snow-blown onto our property and up against our fence. Photos have been taken. On two occasions within the past two and half weeks, we've witnessed you or your tenant's snow blower throwing large, heavy chunks of ice from your driveway into our fence. The fence will be inspected in the spring and you may be held responsible for any damages it may have sustained.*

*We ask that you remove the excess snow and ice from our property, advise whoever plows and/or snow-blows your driveway to please take notice of your own markers and "No Trespassing" signs, and that you plow your snow onto another area of your own property.*

**Acting Chairman Pitre:** The case is now before the Board. Does anyone have any questions?

**Acting Chairman Pitre:** Mr. Oleksak, upon inspection of the property, when you noticed the fence, did it look like fence was within the set-backs?

**Mr. Oleksak:** It's hard to say. I couldn't say one way or another.

**Ms. McGrath:** [addressing Mr. Oleksak] The applicant indicated in his testimony that either he or his wife called the town hall looking for information about the installation of fencing and height restrictions. Do you have a telephone log upstairs of calls that come in either to your office or to the desk concerning questions such as this?

**Mr. Oleksak:** Not every call is logged, but calls that have to be forwarded are replied to.

**Ms. McGrath:** So, we can check that log to see when the calls started concerning this process.

**Mr. Oleksak:** Yes

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**Ms. McGrath:** [addressing Mr. Oleksak] I know that at one time you needed building permits in order to install a fence. When did that discontinue and for what reason?

**Mr. Oleksak:** Good question. I think it was in the 90's. I would probably have to research that. I know when I first came here, you needed one. I might have to agree with Mr. Radziewicz that – people didn't know whether they needed a permit or not and they were putting them up. It seemed that we were just chasing our tails on a lot of that stuff in the beginning. Somehow it was put before the voters to get rid of it, or anything above 6 feet would have to be permitted.

**Ms. McGrath:** Not only would it be permitted but they needed to get a variance.

**Mr. Oleksak:** When Mr. Sullivan was in the process of departing, we were in a state of who's going to do what and we had no procedural method of...until Mr. Pearson came along.

**Ms. McGrath:** So in this case, a building permit would not be required if they were going to install a 6-foot fence. However, because they were going to exceed that height limitation, they would not only need a building permit but they would also need a variance in order to gain that building permit. Is that correct?

**Mr. Oleksak:** Correct.

**Ms. McGrath:** The other question I have for you is: have you received any complaints concerning the height of this fence?

**Mr. Oleksak:** Not one.

**Ms. McGrath:** [addressing Mr. Radziewicz] Can you go through for me, again, the process that you went through before you went and installed the fence – starting with dates.

**Mr. Radziewicz:** My wife would actually have intimate knowledge of this except that she has been under a lot of stress and strain. She was going to come tonight, and just before we left...

**Ms. McGrath:** And, she couldn't write it down for you?

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**Mr. Radzewicz:** I have some information. On October 8, 2008, my wife and my mother-in-law actually went into town hall, and they filled out an application for a permit for a fence, which I handed to Mr. Pitre earlier.

**Ms. McGrath:** Excuse me. I need to correct you. That wasn't an Application for a Permit, that it was a Request for a Zoning Determination.

**Mr. Radzewicz:** Well, that's what we were given at town hall when we told them we wanted to install a fence above 6 feet in height. That was the question that was brought to the town and this is what they gave us. If I got the wrong words, I apologize.

Again, I was not there, so I can't speak to what was exactly said, but we followed up with multiple phone calls and visits to town hall. I mean we are on a first name basis with Sue up there. We have been in there multiple times to find out if and when there was going to be a letter of denial.

**Acting Chairman Pitre:** [addressing Mr. Radzewicz] Just to clarify what she [referring to Ms. McGrath] said, there was no application for a permit, so there is no need for a denial, just a request for a variance and they wrote on there that you needed an Area Variance and a plot plan – the town wrote on there.

**Mr. Radzewicz:** That might have been...that's my wife's writing.

**Acting Chairman Pitre:** Okay, well it sounds like they requested that you do those things and it looks like you've come back for the Area Variance, but we still haven't seen any permit or request for a permit to build a fence that you keep saying has been denied.

**Ms. McGrath:** [addressing Mr. Oleksak] Bill, can we get a copy of what you have on file upstairs for that request so that we can determine whether it or not it was the town who wrote those notes or the Radzewiczes.

**Acting Chairman Pitre:** I don't see a permit that could be denied.

**Mr. Radzewicz:** We were told we didn't need a permit for a fence.

**Mr. Oleksak:** We couldn't recall anybody ever wanting a fence over 6 feet, so we put a phone call into Brad to see if he could remember what the process was.



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**Ms. McGrath:** [addressing Mr. Radziewicz] You indicated in your testimony that you consulted with a landscaping firm to look at putting up a natural buffer as opposed to a fence. Can you tell me what firm you consulted with?

**Mr. Radziewicz:** I do not know. My wife would know. I think she talked to several of them. I know one of them is in Bedford, NH, because it's the same company that installs my brother-in-law's – it was one of the ones.

**Ms. McGrath:** The notes written on the request were from the town. They were town notes.

**Ms. McGrath:** When was the fence installed again?

**Mr. Radziewicz:** December 2<sup>nd</sup> and 3<sup>rd</sup>.

**Acting Chairman Pitre:** Is there anyone else that has questions.

**Mr. McInerney:** I want to predicate my remarks by saying this is a Land-Use Board and that's all we do but you did mention an item several times of being threatened and that your family was frightened in their yard. Did you notify the police?

**Mr. Radziewicz:** Yes. We've been here since '06 and most of you guys know the situation that's been going on since '06, so I didn't feel the necessity to get into all the details. Right here I have the Town of Hudson Police Department Report and its dated July 22, 2008, but since then...I can have this updated as of tomorrow.

**Mr. McInerney:** No, only if it was pertaining to since the fence was erected. It's only for information and background because we have nothing to do with the police. If you don't have it, you don't have it.

**Mr. Radziewicz:** What's that? I have the information.

**Acting Chairman Pitre:** It's not applicable to this case.

**Mr. McInerney:** It's not applicable, it's too old.

**Acting Chairman Pitre:** [addressing Mr. Oleksak] So, as far as the files go upstairs, we have no real permit.

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**Mr. Oleksak:** We did inform him [referring to Mr. Radziewicz] that a variance had to be granted before a permit could be issued.

**Ms. Lavallee:** I'm talking about the police coming. I just want to say that there were never any arrests.

**Acting Chairman Pitre:** We disregarded the police topic. It's not relevant to this Board.

**Ms. McGrath:** [addressing Mr. Radziewicz] I would be more sympathetic with your request and your situation if you weren't so familiar with the proceedings of the Town of Hudson and in particular, the Zoning Board of Adjustment concerning variances and special requests. I find it disingenuous that you went ahead and installed the fence claiming that you didn't know the process. I find it really disingenuous.

I understand completely the contentiousness that has gone on between these two properties and I think it's a shame.

One other comment that Mr. Radziewicz had made concerning the fence was the cost of the fence and that if they had to reduce the size of the fence that it would be financially burdensome. The installation of that fence exceeded the height limitations, not by an insignificant amount, but by 4 feet. That was done in my opinion, at your own peril. You knew precisely what the restrictions were. You've got copies of the zoning ordinance, because you cite them readily, so, again, I would be more sympathetic to you if you had gone through the process. Now, that doesn't mean that I'm going to vote against the fence that you installed. I don't know that I'm going to vote for it either. I haven't made that decision yet. I just think that what you have done has damaged what you have tried to accomplish.

**Acting Chairman Pitre:** Are there any other questions? Seeing none, is anybody prepared to make a motion?

**Mr. McInerney:** I'll make a motion to deny the application based on the simple fact that it exceeds the height regulations. It would set an extremely bad and dangerous precedent for the entire community and it's not in the town's best interest. It doesn't follow the rules and regulations of the town. That's all.

**Ms. McGrath:** I'll second it for the purpose of discussion only. Again, I really don't know how to go about this, because I agree completely with Mr. McInerney. This fence

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flies in the face of the zoning ordinance and not in an insignificant manner. It also does set a precedent by allowing it.

However, on the flip side of that, given the rancor, I truly believe that if this situation is allowed to continue without some sort of a barrier between the two, that it could escalate to a point where lives could really be in danger. I truly believe that - Just based on what we've heard as Board members over the last two or three years. I don't know that I am comfortable having that on my conscience, if something escalated to that point where there was bodily harm done or worse still, that someone was killed over some ridiculous inability to get along. I really don't know how to vote.

**Mr. McInerney:** To be candid, to be honest, to be blunt, I am very uncomfortable with hearing this type of case. I believe that the members of the Board could be in jeopardy. I am very aware of it because of contempt or anger – what could occur – what has occurred throughout the country – in schools, in churches. It's a terrifying element to address.

We are not arbitrators, we are not police, we enforce land/use regulations – okay. That was the oath I took – provided by the State of New Hampshire and the Town of Hudson. We expect that every individual in the town will abide, whether or not there are contentious feelings, good feelings, or bad feelings. That is beyond our scope, and I concur with Ms. McGrath 1,000%. I don't think that's our function, and I think that once we cross that line we are abdicating our role as Land/Use Board. It is not up to us, it is beyond our power, okay. We can't babysit, we can't hold hands – I believe it is a highly explosive and dangerous situation that needs to be remedied, but not by this Board. That's how I'm voting.

**Acting Chairman Pitre:** Are there any other comments or questions?

**Mr. Martin:** I have a comment. I agree with both of you. [addressing Ms. McGrath and Mr. McInerney] I'm still on the fence which way I'm going to go. We are not the police and we should be going by how the zoning ordinance says and how the state laws say. However, Ms. McGrath said that if something bad happened she didn't want that on her conscience – well, neither do I. Considering we have a statement from the applicant's daughter, who is 13-years old, who feels that she is threatened by being in her bedroom. Well, yes, you can take her out of that room but what do you do with a 13-year old girl that doesn't have her own room for privacy? With that, I am leaning more towards – just for the safety fact – not that we should be looking at the safety fact – but, this could become very contentious between the two land owners.

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**Acting Chairman Pitre:** I also have a comment - building fences don't solve problems. We are a Land-Use Board and we have to decide on the land-use part of the case. There's a lot of people in town that have issues with their neighbors. It's a 10-foot fence today - it's a 12-foot fence tomorrow. The ordinance is there to allow fences for people to have some type of privacy or property separation, be that as it may, but fences don't solve problems. That's my only comment.

**Ms. McGrath:** I've been persuaded and I've been persuaded by Mr. McInerney's comments. You're absolutely right, I took an oath of office to uphold the rules and regulations and the laws of the Town of Hudson and the State of New Hampshire, and I'm going to do that. In this particular case, there were remedies available to the applicant prior to installing that fence – so thank you for reminding me.

**Acting Chairman Pitre:** Mr. McInerney, will you speak on your motion.

**Mr. McInerney:** I will do that but, I'm also going to make public that a member of this Board was threatened several months ago regarding this entire situation.

**Acting Chairman Pitre:** I don't think that's applicable.

**Mr. McInerney:** It's an element of fear, danger, and threatening that I am not comfortable with, and I wish none of it happened but it did. But, we are a Land/Use Board. We didn't create the by-laws - we didn't make the by-laws. There are many remedies that they could have done and they elected not to. In my education, in my experience in real estate, this type of structure is called a spite fence – it spites the neighborhood, the neighbor, the town officials, and the by-laws. It was unnecessary. I do not think the town can afford to allow a 10-foot fence, regardless of the situation. It just does not conform to the zoning – period.

**Acting Chairman Pitre:** Ms. McGrath, would you speak on your second.

**Ms. McGrath:** A 10-foot high fence does not conform to zoning. It doesn't even come close. As I stated earlier, it's excessive in its height, considering what the town voters put into effect in Section 334-12 - I don't believe the argument has been made that this use is not contrary to the public's interest – in fact, I think it is contrary to the public's interest. I don't believe that the literal enforcement of the zoning ordinance would result in the unnecessary hardship for this application. I don't believe that there are special conditions of this property other than the inability to get along between two neighbors. I think that the applicant could have achieved the same benefit by other means. The

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proposed use would not be compatible with the spirit of the ordinance – again, the excessiveness of the height of this fence flies in the face of a reasonable...as stated in Section 334-12, a reasonable appearance. Granting the variance would do substantial justice to the applicant – that argument may or may not be made, I’m not convinced that it does, and I do believe that there would be diminution in the value of the surrounding properties.

**Acting Chairman Pitre:** Is there any further discussion or comments from any other member of the Board?

**Mr. Houle:** I feel, as we are talking regarding the function of this Board, that this Board is here specifically to alleviate burdens to property owners also so we need to keep that in mind in terms of the height and position of the fence. Each case is taken individually upon its merits presented by the applicant, and I can’t assume what the applicant knows or doesn’t know or if they are working the system – that’s not what I look at. I look at the situation. I think the fence looks fine. It goes with the flow of the property in my opinion. That’s all I have to say at this point.

**Acting Chairman Pitre:** Is there anyone else who has comments? Seeing none, Mr. Martin, would you please poll the Board.

VOTE: Acting Chairman Pitre 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:

|               |            |
|---------------|------------|
| Mr. McInerney | To deny    |
| Ms. McGrath   | To deny    |
| Mr. Houle     | To approve |
| Mr. Martin    | To approve |
| Mr. Pitre     | To deny    |

Acting Chairman Pitre declared that, the decision having been three votes to deny and two votes to approve, the request for an Area Variance, the motion had carried.

Acting Chairman Davis returned to her seat as chair, Mr. Pitre returned to his seat as a regular member of the Board, and Mr. Houle returned to his seat as a non-voting alternate member of the Board.

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Clarification: The seating members for Case 131-005 (#2) were Acting Chairman Davis, Mr. Pitre, Mr. McInerney, Mr. Martin, and Ms. McGrath.

2. **Case 131-005 (8/27/09): William Smallwood, 20 Old Derry Road, Hudson, NH, requests a Home Occupation Special Exception<sup>1</sup> to allow a landscape business to be conducted out of the existing garage and a Use Variance<sup>2</sup> to allow the employment of non-resident employees. [Map 131, Lot 005, Zoned G, HZO Article VI, Section 334-24, Home Occupations.]**

Clerk Martin read aloud the posted notice, as recorded above.

Acting Chairman Davis asked Mr. Oleksak to explain why the matter was before the Board.

Mr. Oleksak stated that the issue was before the Board for the purposes of what was described in the published case.

Acting Chairman Davis stated that she did not feel a Home Occupation Special Exception was needed for this case because the property was located in the G-Zone (General Zone) and the type of business associated with the case, a landscaping business, was allowed in that zone. She further stated that she felt the applicant needed a Use Variance to allow for a mixed or dual use on the property.

Mr. Martin stated that he agreed with Ms. Davis.

Ms. McGrath stated that she felt the property needed both a Home Occupation Special Exception and a Use Variance.

After some discussion, the Board decided to hear the case as it was originally noticed – for both a Home Occupation Special Exception and a Use Variance.

### **Discussion with regard to the Home Occupation Special Exception<sup>1</sup>**

Acting Chairman Davis asked who was present to speak in favor with regard to the application for the Home Occupation Special Exception and Use Variance.

Mr. William Smallwood, 20 Old Derry Road, Hudson, NH, the applicant, addressed the Board and read aloud a portion of the application as summarized as follows:

1. *The zoning restriction of the cited ordinance interferes with the plaintiff's reasonable use of the property because the employees of my company*

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*would arrive, pick-up their equipment to be used for the day, and then return at the end of the day for equipment storage. The employees would not be causing any undue nuisances or distractions.*

- 2. No fair and substantial relationship exists between the general purposes of the Zoning Ordinance and the specific restrictions on the property because the property is located in the G-Zone. Under the Table of Permitted Uses, #30, garaging and parking of two or more light commercial vehicles is an approved use. My primary use will still be for residential use with the above as a secondary use.*
- 3. The variance would not injure the public or private rights of others because there would be minimal traffic and minimal on-site work at the proposed location. There will be no creation of unnecessary odors, dust, etc. There is also a dual use property across the street at 11 Old Derry Road having both residential and commercial use.*
- 4. No diminution in the value of surrounding properties would occur because there will be slight use of the property throughout the day. The heaviest use would be the parking of equipment overnight but would be isolated to an area to be buffered by evergreens.*
- 5. The proposed use would be compatible with the spirit of the ordinance because the employees would not be working on-site. The employees would arrive in the morning and leave their cars, they would utilize my trucks and equipment to accomplish day jobs and return in the evening to park equipment and leave in their cars. Therefore, any change in the use of land would be minimal.*
- 6. The proposed use will not be contrary to the public interest because we are looking to work with the town and our neighbors to maintain a residential “feel” to the property.*
- 7. Granting the variance would do substantial justice because it would allow a small business owner to remain visible in tough economic times.*

Mr. Smallwood stated that he had a total of five employees and he did not have any expectations of growing his business or hiring new employees for a number of years.

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Acting Chairman Davis asked if there were anyone else present to speak in favor with regard to the application. No one else came forward.

Acting Chairman Davis asked if there were anyone present who wished to speak in opposition or neutrally with regard to the application. No one came forward.

Acting Chairman Davis declared the matter before the Board.

Ms. McGrath asked what type of surface the parking area would consist of. Mr. Smallwood replied that it would have a permeable surface – such as gravel.

Ms. McGrath asked the applicant if any landscaping materials would be stored on the property. Mr. Smallwood replied that there would not be any landscaping materials stored on the site. He further replied that storage of any landscaping materials would be stored in a shed.

Ms. McGrath asked what plans the applicant had if he wanted to expand his business. Mr. Smallwood replied that he would be inclined into looking at purchasing a property off-site in the event his business grew.

Mr. McNerney asked if the applicant had looked into renting commercial or industrial space in Hudson. Mr. Smallwood replied that he had looked into renting space but decided not to due to financial reasons.

Mr. Pitre asked the applicant what the hours of operation would be. Mr. Smallwood replied that the hours of operation would be from Monday through Friday between 8:00am to anywhere between 4:00pm and 6:00pm. Mr. Smallwood also replied that the business was not typically open on Saturdays and Sundays – noting that the only thing that would preclude that would be if snowplowing was needed. He also noted that if the trucks had to be accessed late in the evening or early in the morning, the headlights would be screened from the neighbor's windows.

Mr. Pitre asked the applicant if he was proposing to put up any signs. Mr. Smallwood replied that he was not.

Ms. McGrath asked the applicant if he ran any part of the business out of his home. Mr. Smallwood replied that he ran his office from his Blackberry, lap top, and a portable printer all of which were with him 24 x 7. She further stated that she felt this case was a perfect example of what a Home Occupation Special Exception should be.



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Ms. Davis commented that she felt the applicant did not meet at least three of the criteria for a Home Occupation Special Exception.

Ms. McGrath made a motion to approve the request for the Home Occupation Special Exception with the following six stipulations:

1. No outside storage of landscaping materials such as mulch, loam, or planting material, etc. shall be allowed. Storage of the parking of vehicles, however are allowed.
2. The proposed parking area shall consist of only a permeable surface. Pavement is not permitted.
3. Evergreen Trees (not Pine Trees) to be planted on the westerly and southern borders of the parking area. Trees shall be 6 feet at planting and spaced in order to maximize screening.
4. The hours of operation shall be Monday through Friday from 8:00am – 6:30pm and Saturday from 8:00am – 5:00pm.
5. Any expansion of the use shall require an amendment of the Home Occupation Special Exception to be approved by the Zoning Board of Adjustment and a determination of the Zoning Board of Adjustment at that time relative to site plan approval shall be obtained.
6. Outside of the previous stated normal hours of operation of the business, snow plowing shall be allowed after hours of normal operation.

Mr. Pitre seconded the motion.

VOTE: Acting Chairman Davis asked the Clerk to poll the Board on the motion to approve the request for a Home Occupation Special Exception, with the noted stipulations, and to record the members' votes, which were as follows:

|               |            |
|---------------|------------|
| Ms. McGrath   | To approve |
| Mr. Pitre     | To approve |
| Mr. McInerney | To approve |
| Mr. Martin    | To abstain |

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Ms. Davis

To deny

Acting Chairman Davis declared that the decision having been three votes to approve, one vote to abstain, and one vote to deny the request for a Home Occupation Special Exception, the motion had carried.

Mr. Martin stated that he voted to abstain because he thought advice was needed from the Town's Attorney.

Ms. Davis stated that she denied the request because she did not feel the applicant met the criteria for a Home Occupation Special Exception.

Ms. McGrath stated that she felt it was important to note, for the record, that there was no negative abutter testimony.

### **Discussion with regard to the request for a Use Variance<sup>2</sup>**

Acting Chairman Davis asked if the applicant if he had any further testimony to add. Mr. Smallwood replied that he did not.

As a matter of form, Acting Chairman Davis asked if there were anyone else present who wished to speak in favor, neutrally, or in opposition with regard to the application. No one else came forward.

Acting Chairman Davis declared the matter before the Board.

Ms. McGrath made a motion to approve the request for a Use Variance with the stipulation that the applicant not hire any more than the five employees.

Ms. McGrath, speaking on her motion, stated that it was not contrary to the public's interest, there was no negative abutter testimony, it was in the spirit of the ordinance, granting the variance would do substantial justice to the applicant, and no diminution in the value of surrounding properties would occur if it were granted.

Mr. Pitre seconded the motion.

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

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

|               |            |
|---------------|------------|
| Ms. McGrath   | To approve |
| Mr. Pitre     | To approve |
| Mr. McInerney | To approve |
| Mr. Martin    | To approve |
| Ms. Davis     | To deny    |

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

Acting Chairman Davis stated that she voted to deny the request because she did not feel it met the conditions on the property and should have been noticed as a variance to permit dual use on the property.

Ms. McGrath stated that she would step down from the next two cases – Case 110-39 and Case 110-37 & 38 (#3 & #4) as she had been a sitting member of the Planning Board when the Zoning Board of Adjustment initially heard the cases.

Acting Chairman Davis seated Mr. Houle in place of Ms. McGrath (who was seated in place of Mr. Seabury) for the next two cases.

- Case 110-39 (8/27/09): Steven L. Chasse, 8 Christine Drive, Hudson, NH, requests an extension of an un-activated Use Variance previously granted by the Zoning Board of Adjustment on March 27, 2008, to allow expansion of an existing non-conforming (manufacturing) use. [Map 110, Lot 39, Zoned Business, HZO Article VII, Section 334-29, Expansion or enlargement of non-conforming uses.]**

Clerk Martin read aloud the posted notice, as recorded above.

Acting Clerk Davis asked who was present to speak in favor with regard to the application.

Mr. Patrick Colburn of Keach-Nordstrom, representing the applicant, addressed the Board, stating that he felt the Board should hear cases #3 and #4 simultaneously as they were virtually identical – noting that in March, 2008, Keach-Nordstrom was requested to

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obtain two Use Variances for the same project. He further stated that the five criteria for granting the variance were identical to one another.

The Board collectively decided to hear both cases simultaneously and Acting Chairman Davis asked Clerk Martin to read the fourth case into the record.

- 4. Case 110-37 & 38 (8/27/09): B&D Land Development, 70 Old Derry Road, Hudson, NH, requests an extension of an un-activated Use Variance previously granted by the Zoning Board of Adjustment on March 27, 2008, for Lot 38 to permit a proposed 12,000 square foot manufacturing/bulk storage building in the Business Zoning District. Manufacturing is not a permitted use in the Business Zoning District. Lot 37 will contain parking for the manufacturing/bulk storage use taking place on Lot 38. Property located at 10 & 14 Christine Drive. [Map 110, Lots 37 & 38, Zoned B, HZO Article V, Section 334-21, Table of Permitted Principal Uses.]**

Clerk Martin read aloud the posted notice, as recorded above.

Mr. Colburn stated that in March of 2008, Keach-Nordstrom appeared before the Zoning Board of Adjustment on behalf of both applicants, Steven L. Chasse and B&D Land Development for the very same reason Keach-Nordstrom was present at this meeting.

Mr. Colburn stated that, Mr. Chase who owned SL Chasse Welding & Fabricating currently located on Lot 39, known as 8 Christine Drive, wanted to expand the business.

Mr. Colburn explained that the first step of the expansion, which was a stipulation from the previous variances, was to consolidate Lots 37, 38, and 39 into one new Lot 39.

Mr. Colburn stated that the expansion included 13,800 square feet of building addition to the current SL Chasse Welding & Fabricating as well as a 12,800 square foot footprint building that would be a separate building. Mr. Colburn also stated that the plan included increased parking areas as well as a maneuvering area.

Mr. Colburn stated that although all three properties were located in the Business Zoning District, that the Table of Permitted Uses stated that a manufacturing use was not allowed in that zone.

Mr. Colburn noted that the Planning Board had approved the consolidation of all three lots on June 25, 2008, and the Planning Board had also granted site-plan approval for the expansion on September 24, 2008.

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Mr. Colburn also noted that the applicant received all applicable state permits including two septic approvals and an Alternation of Terrain Permit for the entire project from NH DES.

Mr. Colburn stated that, due to the poor economy, SL Chasse had not been able to purchase of lots 37 and 38 from B & D Land Development and consequently, had not been able to proceed with the expansion plans.

Mr. Colburn stated on July 24, 2009, the Planning Board granted extensions for both the subdivision approval for the consolidation, and the site plan approval with the stipulation that the Zoning Board of Adjustment re-grant the previously granted Use Variances.

Mr. Colburn then read aloud a portion of the application for a Use Variance as summarized as follows:

- 1. Denial of the variance would result in the unnecessary hardship for the plaintiff because the proposed reasonable use of the property (the site) is the reasonable expansion of a use that exists in this location today. The special conditions on the site include the current condition and appearance of Lots 37 and 38, along with the uses within the immediate proximity of the proposed use. Christine Drive is an industrial park.*
- 2. No fair and substantial relationship exists between the general purposes of the Zoning Ordinance and the specific restrictions on the property because the most appropriate use of the site is an industrial use given the surrounding land uses and the proximity to any high traffic flows.*
- 3. The variance would not injure the public or private rights of others because any private expectations, such as those of abutters, are not affected because the characteristics of the neighboring properties are industrial.*
- 4. No diminution in the value of surrounding properties would occur because the site is within an industrial park surrounded by other industrial uses similar in nature to the use proposed.*
- 5. The proposed use would be compatible with the spirit of the ordinance because the industrial park in which the existing SL Chasse operation is*

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*located was developed under the standards of the old Business Zone, where industrial uses were allowed. The subject property is located in a small piece of the Business Zone that is comprised of primarily industrial uses. It is not in the spirit of the ordinance to prevent an existing operation from reasonable growth.*

- 6. The proposed use will not be contrary to the public interest because allowing the existing SL Chasse Welding & Fabricating operation reasonable growth will create jobs for the area and additional tax base, which directly benefits the Town of Hudson.*

Acting Chairman Davis asked if there were anyone else present who wished to speak in favor with regard to the two applications. No one else came forward.

Acting Chairman Davis asked if there were anyone present who wished to speak in opposition or neutrally with regard to the two applications. No one came forward.

Acting Chairman Davis declared the matter before the Board.

Mr. Pitre asked the applicant what the proposed use for the additional building would be. Mr. Tony Basso of Keach-Nordstrom replied that it would be of an industrial/office use.

### **Motion on Case 110-39**

Mr. Martin made a motion to approve the request for the previously granted extension of an un-activated Use Variance.

Mr. Pitre seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt the applicant had met all of the criteria, there was no negative abutter testimony, and there were no changes to the site.

Mr. Pitre, speaking on his motion, stated that he agreed with everything Mr. Martin had said.

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

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|               |            |
|---------------|------------|
| Mr. Martin    | To approve |
| Mr. Pitre     | To approve |
| Mr. Houle     | To approve |
| Mr. McInerney | To approve |
| Ms. Davis     | To approve |

Acting Chairman Davis declared that the decision having been five votes to approve the previously granted extension of an un-activated Use Variance, the motion had carried.

## **Motion on Case 110-37 & 38**

Mr. Martin made a motion to approve the request for an extension of an un-activated Use Variance previously granted.

Mr. Pitre seconded the motion.

Mr. Martin, speaking on his second, stated that his comments would be identical to those he made under Motion 110-39.

Mr. Pitre, speaking on his second, stated that he felt that granting the variance would be an improvement.

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

|               |            |
|---------------|------------|
| Mr. Martin    | To approve |
| Mr. Pitre     | To approve |
| Mr. Houle     | To approve |
| Mr. McInerney | To approve |
| Ms. Davis     | To approve |

Acting Chairman Davis declared that the decision having been five votes to approve the previously granted extension of an un-activated Use Variance, the motion had carried.

- 5. Case 170-038 (8/27/09): SNF Construction, P.O. Box 63, Salem, NH, requests a Wetland Special Exception to allow construction of a parking lot within 2,390 square feet of the wetland buffer and construction of a parking lot detention pond within 18,665 square feet of the wetlands, for property located at 25**

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**Constitution Drive. [Map 170, Lot 038, Zoned I, HZO Article IX, Section 334-33, Wetland Conservation District.]**

Clerk Martin read aloud the posted notice, as recorded above.

Acting Chairman Davis stated that Ms. McGrath returned to her seat as a non-voting alternate member of the Board (as she was seated in place of Mr. Seabury) and Mr. Houle returned to his seat as a non-voting alternate member of the Board.

Acting Chairman Davis read aloud a letter dated August 27, 2009, addressed to the Zoning Board of Adjustment, from John Sokul of Hinckley, Allen & Snyder, LLP, Attorneys at Law, as summarized 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.*

Acting Chairman Davis asked who was present to speak in favor with regard to the request for the Wetland Special Exception.

Mr. Tony Basso of Keach-Nordstrom, representing the applicant, addressed the Board, stating that he had an un-appealed zoning determination stating exactly what was needed – a Wetlands Special Exception. He noted that the period of time in which to appeal that determination had expired.

Mr. Basso further stated that the purpose of the above letter was simply because one of the abutters did not want an industrial building next to his. He said that he did attempt to work with this abutter in good faith, but to no avail.



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Ms. McGrath commented that she felt it was important to note that there was no one in the audience other than Mr. Basso and Mr. Colburn. She further commented that neither Mr. Sokul nor the abutter he represented were present.

Ms. McGrath stated that she felt the case should be heard because the decision had not been appealed within the thirty day time period allowed.

Mr. Martin stated that he agreed with what Ms. McGrath had said.

Acting Chairman Davis pointed out to the Board that parking lots were not a permitted use by special exception.

Mr. Basso stated that the applicant, who owned a crane company, was proposing a 10,000 square foot industrial building with a single driveway accessing the site located on Wall Street to store cranes and rigging.

Mr. Basso stated that the abutter's drainage currently flowed onto the applicant's site and that the applicant had been kind enough to mitigate the drainage. He said the drainage was detained in an area creating a small wetland pocket that then flowed back onto the abutter's site. Mr. Basso stated that the applicant wanted to create a storm water management area to mitigate both the applicant's and the abutter's drainage.

Mr. Basso commented that it was not a highly functional wetland and there was no existence of wildlife on the wetland.

Mr. Basso stated that the Conservation Commission had given a favorable recommendation and the Planning Board had agreed with that recommendation.

Mr. Basso said that there would be a wetland impact of 2,390 square feet and another 18,000 square feet of impact to the buffer around that wetland. He also said that the nearby more valuable wetland would not be disturbed in any way.

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

- 1. The proposed use is essential to the reasonable use of land outside the Wetlands Conservation District because the proposal is essential to the use of the proposed facility to provide a parking area and navigation area for the purpose of servicing and storing construction equipment, for*

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*construction of a detention pond for storm water management, and for site access to Wall Street.*

- 2. There is no reasonable alternative to the proposed use that does not adversely affect the Wetland Conservation District because in terms of feasibility there are no other alternatives that would reduce or eliminate the need to impact the jurisdictional wetlands. The proposed building is pinned against the back building setback and the parking area is just large enough to meet the standards by the Hudson Town Code.*
- 3. The design, construction methods, and maintenance methods for the project, including those involving the wetland and wetland buffer impacts, have been designed by the 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 (NH DES): 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 and wetland buffer impact is based entirely on site feasibility.*
- 5. Provision is made for wildlife access corridors to promote the free migration of wildlife along the length of the Wetland Conservation District. Wildlife passage is unaffected by the proposed development.*

Acting Chairman Davis asked if there were anyone else present who wished to speak in favor with regard to the application. No one else came forward.

Acting Chairman Davis asked if there were anyone present who wished to speak in opposition or neutrally with regard to the application. No one came forward.

Acting Chairman Davis declared the matter before the Board.

Mr. Martin asked Mr. Basso about the Planning Board's concern regarding access to the site off of a classified street. Mr. Basso replied that the section in question was platted as a classified public road and the status of its acceptance was something he felt the

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Planning Board had to take up with the Developer. He also said there was sufficient legal frontage.

Ms. McGrath asked if the cranes and other equipment would always be kept in the proposed building. Mr. Basso replied that there may have been times that they were out of the building but the equipment would primarily be kept inside of the building.

Mr. McInerney made a motion to approve the request for a Wetland Special Exception.

Mr. Martin seconded the motion with the eight stipulations as outlined by the Conservation Commission on April 22, 2009. Mr. McInerney stated that he agreed with Mr. Martin's addition of the stipulations.

VOTE: Acting Chairman Davis asked the Clerk to poll the Board on the motion to approve the request for the Wetlands Special Exception, with the noted stipulations of the Conservation Commission, and to record the members' votes, which were as follows:

|               |            |
|---------------|------------|
| Mr. McInerney | To approve |
| Mr. Martin    | To approve |
| Mr. Pitre     | To approve |
| Ms. McGrath   | To approve |
| Ms. Davis     | To approve |

Acting Chairman Davis declared that the decision having been five votes to approve the request for the Wetlands Special Exception, with the noted stipulations of the Conservation Commission, the motion had carried.

## V. OTHER BUSINESS

Ms. McGrath asked Mr. Oleksak for clarification regarding two pieces of correspondence that were part of the Board's usual informational packets.

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**VI. ADJOURNMENT**

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

Mr. McInerney seconded the motion.

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

Acting Chairman Davis declared the meeting to be adjourned at 11:09pm.

Date: September 3, 2009

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Maryellen Davis, Acting Chairman

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Michael Pitre, Acting Chairman for Case #1

Recorder: Trish Gedziun