

**HUDSON ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
May 28, 2009**

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:32pm on Thursday, May 28, 2009, in the Community Development Meeting Room in the Town Hall basement. Chairman Seabury then requested Acting Clerk Shuman to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

Present: William McInerney, James Pacocha, Michael Pitre, and J. Bradford Seabury

Members

Absent: Maryellen Davis, Excused

Alternates

Present: Donna Shuman

Alternates

Absent: Kevin Houle – Excused, Normand Martin – Excused, and Marilyn McGrath - Excused

Staff

Present: William Oleksak, Building Inspector

Liaison

Present: Ben Nadeau, Selectmen’s Liaison

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 Ms. Davis, who was excused. Chairman Seabury also stated that Ms. Shuman would assume the role of Clerk as Mr. Martin was excused.

III. PUBLIC HEARINGS FOR SCHEDULED APPLICATIONS

1. **Case 223-039 (5/28/09): John and Kathleen Greenleaf, 14 Tanglewood Way, Merrimack, NH, requests an extension of an Area Variance previously granted by the Zoning Board of Adjustment on May 22, 2008, to allow construction of a single-family dwelling on property located at 5 Gregory Street, Hudson, NH, without the required amount of frontage. 150 feet of frontage required, 25.7 feet of frontage proposed. [Map 223, Lot 39, Zoned R-2, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**

Acting Clerk Shuman read aloud the posted notice, as recorded above.

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

Attorney Daniel Muller, from Cronin & Bisson, P.C., representing the applicant, stated that the Zoning Board of Adjustment had previously granted a frontage variance to allow construction on the lot. Attorney Muller further stated that the applicant was requesting an extension of the approval due to the poor housing market and the economy.

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Attorney Muller stated that the applicant had made many attempts to sell the property but it had been extremely difficult to find any interest. He said that there had been some interest in the property in the spring of 2008 but it was not successful.

Attorney Muller stated that the applicant had continued to market the property but there had been no interest.

Attorney Muller commented that the applicant was not a developer and was of modest means.

Attorney Muller stated that there had not been “much” of a change on the property but that what he would note was that the assessment on the property had increased significantly from \$19,500 to \$131,000 – pointing out that the loss of the variance would have a direct impact on the price.

Chairman Seabury commented that although Attorney Muller had stated that there was not “much” of a change on the property, that there were in fact, seven trailers, a pile of pallets, and a boat that may or not have been serviceable. Chairman Seabury commented that it was his opinion that the property looked like a “junkyard” and he said he was not at all surprised that that it had not sold.

Chairman Seabury asked Mr. Oleksak to visit the property and determine whether or not it fit the definition of a junkyard. Mr. Oleksak agreed to visit the property.

Attorney Muller stated that he was not aware of the condition of the property and would certainly notify the applicants of Chairman Seabury’s commentary.

Chairman Seabury pointed out that the applicant was requesting an extension that had already been extended once.

Mr. Pacocha stated that he did not feel anything had changed on the property with regard to zoning and he felt the Board should approve the extension with the same stipulations as previously applied.

Mr. Pitre commented that he did not feel the criteria had changed for an Area Variance.

Attorney Muller stated that the variance was originally granted in 2007, an extension was granted in 2008, and the applicant was presently requesting an additional extension (2009).

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Chairman Seabury informed Attorney Muller that there were wetlands on the property and that the wetland buffer requirement may increase over the next year or two, and he felt the applicant should be aware of that.

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

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

Chairman Seabury declared the matter before the Board.

Mr. Pacocha made a motion to approve the request for the extension of an Area Variance with the following three stipulations:

1. Only a single-family dwelling is permitted, in keeping with the spirit of the neighborhood.
2. No further subdivision is to take place on the lot nor shall the lot be used for access to surrounding lots.
3. Initial construction and any future expansion of that construction shall be outside the wetland buffer.

Mr. Pitre seconded the motion.

Mr. Pacocha, speaking on his motion, stated that there had been no significant changes to the property that would require a review of the application.

Mr. Pitre, speaking on his second, stated that he felt it met all of the Boccia Requirements for an Area Variance as was previously granted and there had been no significant changes to the property.

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

Mr. Pacocha	To approve
Mr. Pitre	To approve

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Mr. McInerney	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 the extension of the Area Variance with the noted stipulations, the motion had carried.

- 2. Case 156-025 (5/28/09): Town of Hudson, 12 School Street, Hudson, NH, requests a Wetland Special Exception to allow the construction of a 5-foot sidewalk and drainage swale within the 50-foot wetland buffer along the property located at 127 Derry Road, Hudson, NH. [Map 156, Lot 025, Zoned R-1, HZO Article IX, Section 334-33, Wetland Conservation District.]**

Acting Clerk Shuman read aloud the posted notice, as recorded above.

Chairman Seabury read aloud from the Decision to Recommend a Wetlands Special Exception Permit from the Conservation Commission, dated April 22, 2009, as summarized as follows:

On April 13, 2009, the members of the Hudson Conservation Commission, as part of its regular public meeting for that date, heard Case Route 102 Sidewalk Project #13894 concerning an application by CLD Consulting Engineers for a Wetlands Special Exception for intrusion into the Wetland Conservation District for a temporary buffer impact of 4,412 square feet and permanent buffer impact of 9,885 square feet to construct a sidewalk on the existing roadway, Route 102 from Megan Drive to Evergreen Drive as shown on CLD Plan 05-0119, Wetlands Impact Plan, Drawings W-1, W-2, & W-3, dated September 13, 2008.

Following the hearing of testimony by the applicant, the members of the Commission by a vote of 7-0 recommends to the Zoning Board of Adjustment that this Wetlands Special Exception should be granted with the following stipulations:

- A. All restoration of the area disturbed will comply with the latest edition of Best Management Practices to Control Nonpoint Source*

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Pollution: A Guide for citizens and town officials, NH Department of Environmental Services 1994, with updates.

B. Best Management Practices for Urban Storm Water Run-Off, NH Department of Environmental Services, 1996, with updates.

C. Storm Water Management/Erosion and Sedimentation Control Handbook for Urban and Developing Areas in New Hampshire, NH Department of Environmental Services, 1992, with updates.

Chairman Seabury noted that the applicant was the Planning Board of the Town of Hudson, NH and that Board had been trying to gain approval of the plan for many years.

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

Mr. Gary Webster, Acting Town Engineer, for the Town of Hudson, addressed the Board, stating that the project, which was initiated by the Planning Board, had started in 1998.

Mr. Webster stated that, due to the fact that the entire project could have been lost, he had requested the DOT to provide funding for the completion of only half of the project.

Mr. Webster stated that the proposed sidewalk would be located in the wetland buffer. He also stated that the applicant was in the process of obtaining a wetland permit from the state.

Mr. Webster stated that the drainage swales had to be a minimum of 100 feet for treatment and the reason for the swales was that granite curbing was being used.

Chairman Seabury asked Mr. Webster if he knew if the sidewalk would ever be completed – which would continue up to Hannaford's Supermarket. Mr. Webster replied that there were other monies available from impact fees and he would focus on the second portion of the project as soon as the first portion was underway.

Mr. Webster also stated that an additional goal was to repair the light at the corner of Elm Street and Route 102.

Mr. Webster noted that there would be a 5-foot sidewalk and a 7-foot bike path – he also noted that a painted bike path would be located on the west side of Route 102.

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

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

Chairman Seabury declared the matter before the Board.

Mr. Pitre asked Mr. Webster if he had any renderings of the proposed project.

Mr. Webster provided the Board with renderings and pictures of the proposed project.

Mr. Pitre made a motion to approve the request for a Wetland Special Exception with the noted stipulations from the Conservation Commission.

Mr. Pacocha seconded the motion.

Mr. Pitre, speaking on his motion, stated that he felt it was definitely a “betterment” and in the best interest for the Town of Hudson. He also stated that the Conservation Commission and the Planning Board were in favor of the project.

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

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

Mr. Pitre	To approve
Mr. Pacocha	To approve
Mr. McInerney	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 the Wetland Special Exception with the noted stipulations, the motion had carried.

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- 3. Case 157-033 (5/28/09): Town of Hudson, 12 School Street, Hudson, NH, requests a Wetland Special Exception to allow the construction of a 5-foot sidewalk and drainage swale within the 50-foot wetland buffer along the property located at 147 Derry Road, Hudson, NH. [Map 157, Lot 033, Zoned R-1, HZO Article IX, Section 334-33, Wetland Conservation District.]**

Acting Clerk Shuman read aloud the posted notice, as recorded above.

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

Mr. Gary Webster, Acting Town Engineer, for the Town of Hudson, addressed the Board, stating that this request was very much the same as the previous request – noting that the only difference was that this request had a lesser impact than the previous request, because there was only one treatment swale.

Chairman Seabury asked if there were any way to make the swales look more attractive. Mr. Webster replied that the swales would be mowed and maintained. He also said that the swales would look more appealing by planting wild flowers that would grow back every spring.

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

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

Chairman Seabury declared the matter before the Board.

Mr. Pacocha made a motion to approve the request for a Wetland Special Exception with the noted stipulations from the Conservation Commission.

Mr. Pitre seconded the motion.

Mr. Pacocha, speaking on his motion, stated that all of his comments were identical to those made regarding the last case also stating that he felt it would be beneficial to the town.

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Mr. Pitre, speaking on his second, stated that he felt the treatment swales and curbstones would be better for the environment and it would also be a benefit to the Town of Hudson.

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

Mr. Pacocha	To approve
Mr. Pitre	To approve
Mr. McInerney	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 the Wetland Special Exception had carried.

- 4. Case 198-158, 159, 176 & 177 (5/28/09): Town of Hudson, 12 School Street, Hudson, NH, requests a Wetland Special Exception to allow the rehabilitation of the existing dam within the wetlands along the properties of 38, 42, 37 & 35 Pelham Road, Hudson, NH. [Map 198, Lots 158, 159, 176 & 177, Zoned R-2, HZO Article IX, Section 334-33, Wetland Conservation District.]**

Acting Clerk Shuman read aloud the posted notice, as recorded above.

Chairman Seabury read aloud from the Decision to Recommend a Wetlands Special Exception Permit from the Conservation Commission, dated April 22, 2009, as summarized as follows:

On April 13, 2009, the members of the Hudson Conservation Commission, as part of its regular public meeting for that date, heard Case Pelham Road Retaining Wall – State Wetlands Permit Application concerning an application by CLD Consulting Engineers for a Wetlands Special Exception for intrusion into the Wetland Conservation District for a temporary impact of 2,009 square feet, and a permanent impact of 1,157 square feet to construct a flood control retaining wall, replacing the current deteriorated wall as shown on CLD Plan: Pelham Road Over Second Brook, Hudson, NH, 03051, dated 3/09 Drg 1.(06-229)

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Following the hearing of testimony by the applicant, the members of the Commission by a vote of 7-0 recommends to the Zoning Board of Adjustment that this Wetlands Special Exception should be granted with the following stipulations:

- A. All restoration of the area disturbed will comply with the latest edition of Best Management Practices to Control Nonpoint Source Pollution: A Guide for citizens and town officials, NH Department of Environmental Services 1994, with updates.*
- B. Best Management Practices for Urban Storm Water Run-Off, NH Department of Environmental Services, 1996, with updates.*
- C. Storm Water Management/Erosion and Sedimentation Control Handbook for Urban and Developing Areas in New Hampshire, NH Department of Environmental Services, 1992, with updates.*

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

Mr. Gary Webster, Acting Town Engineer, for the Town of Hudson, addressed the Board, stating that the town had a choice of either repairing the existing dam or replacing it with a bridge. He further stated that it was decided to replace the dam, in part due to the high cost of constructing a bridge.

Mr. Webster also stated that a bridge would ultimately have to be constructed in the future.

Mr. Webster stated that the plan was to shut down Pelham Road during the day once school was out for the summer in order to start the work. He also noted that temporary traffic would be allowed during the evening hours and the work had to be completed prior to school re-opening in the fall of 2009.

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

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

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Chairman Seabury declared the matter before the Board.

Mr. Pacocha made a motion to approve the request for the Wetland Special Exception, with the noted stipulations from the Conservation Commission.

Mr. Pitre seconded the motion.

Mr. Pacocha, speaking on his motion, stated that he felt the existing dam was in total disrepair and something had to be done soon, it would be beneficial to the community. He also stated that there was a favorable recommendation from the Conservation Commission.

Mr. Pitre, speaking on his second, stated that he felt it would be beneficial to the community and there was no negative abutter testimony.

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

Mr. Pacocha	To approve
Mr. Pitre	To approve
Mr. McInerney	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 the Wetland Special Exception had carried.

IV. OTHER BUSINESS

Chairman Seabury noted that the handouts in the packet for this meeting included a large number of memos pertaining to signs being pulled from around the town by Mr. Oleksak. Mr. Oleksak explained that while a business was doing actual work at a property, he allowed the (advertisement) signs to remain in place. He further stated that as soon as the actual work was completed, the signs had to be removed.

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V. ADJOURNMENT

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

Mr. McInerney seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 8:42 pm.

Date: June 12, 2009

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun