

**HUDSON ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
October 23, 2008**

**I. CALL TO ORDER**

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:10pm on Thursday, October 23, 2008, in the Community Development Meeting Room in the Town Hall basement. Chairman Seabury then requested Clerk Martin to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

**Members**

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

**Members**

**Absent:** None (All present)

**Alternates**

**Present:** Kevin Houle, Normand Martin, and Donna Shuman

**Alternates**

**Absent:** Marilyn McGrath, Excused

**Staff**

**Present:** William Oleksak, Building Inspector

**Liaison**

**Present:** Roger Coutu, Selectmen's Liaison, Excused

**Recorder:** Trish Gedziun

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

For the benefit of all attendees, Chairman Seabury noted that copies of the agenda for the meeting as well as an outline of the rules and regulations governing hearings before the Zoning Board of Adjustment were available at the door of the meeting room. He noted the outline included the procedures that should be followed by anyone who wished to request a rehearing in the event the Board's final decision was not felt to be acceptable. Chairman Seabury pointed out that the Board allowed rehearings only if collectively convinced by a written request that the Board might have made an illogical or illegal decision or if there were positive indications of new evidence that for some reason, was not available at the hearing.

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

Chairman Seabury noted that Mr. Pacocha and Mr. Pitre had not yet arrived at the meeting. He stated that for the purposes of reviewing the meeting minutes only, he seated Mr. Martin in place of Mr. Pacocha, and Mr. Houle in place of Mr. Pitre.

The following edits were made to the minutes of the June 26, 2008, meeting:

1. Page 1 – Mr. Coutu's name should be listed as "Selectmen's Liaison" rather than "Member, Board of Selectmen" - Seabury
2. Page 4, 1<sup>st</sup> paragraph – "Chairman Seabury stated that he advised Mr. Sullivan to advise the applicant to withdraw the request for a Use Variance and to request a Wetland Special Exception" was put in place of the original verbiage. – Seabury

Ms. Davis made a motion to accept the minutes of the June 26, 2008, meeting as amended by the Board.

Mr. Martin seconded the motion.

Chairman Seabury called for a verbal vote and he then stated that all of the Board members were in favor.

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The following edits were made to the minutes of the July 24, 2008, meeting:

1. Page 6, 3<sup>rd</sup> paragraph – “Chairman Seabury commented that the Zoning Board of Adjustment was a land/use Board and while the Board empathized with anyone with a medical or physical condition, the Board could not take ones medical or physical condition into consideration when making decisions on cases.” – This paragraph was added to the beginning of Case #174-222 (Rachel Colburn). - Davis

Mr. Martin made a motion to accept the minutes of the July 24, 2008, meeting as amended by the Board.

Mr. Houle seconded the motion.

Chairman Seabury called for a verbal vote and he then stated that all of the Board members were in favor.

As Ms. Davis did not attend the September 11, 2008, meeting, Ms. Shuman was seated in her place for the purposes of reviewing the meeting minutes.

The following edits were made to the minutes of the September 11, 2008, meeting:

1. Page 5, 7<sup>th</sup> paragraph – “manually changeable” was added before the words “reader board” – Davis
2. Case #165-151 – A brief description of what each variance request was for was added to each section of the four requests respectively.
3. Ms. Davis commented that she felt it was very important to note that the citizens of Hudson were concerned with signage that was esthetically pleasing.

Mr. Martin made a motion to accept the minutes of the September 11, 2008, meeting as amended by the Board.

Ms. Shuman seconded the motion.

Chairman Seabury called for a verbal vote and he then stated that all of the Board members were in favor.

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Chairman Seabury declared a break at 7:26pm calling the meeting back to order at 7:30pm.

Mr. Pacocha and Mr. Pitre having arrived at the meeting, Chairman Seabury returned Mr. Houle and Mr. Martin to their seats as non-voting alternate members of the Board. Ms. Shuman also returned to her seat as a non-voting alternate member of the Board with Ms. Davis returning to her seat as a full voting member.

### IV. PUBLIC HEARINGS FOR SCHEDULED APPLICATIONS

1. **Case 234-48 (10/23/08): Lori McGibbon, 7 Stuart Street, Hudson, NH, requests a Use Variance to allow the property to be used as a dual use of a dog training facility and kennel/residential . [Map 234, Lot 48, Zoned G-1, HZO Article III, Sections 334-10, mixed or dual use on a lot.]**

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

Ms. Davis asked Chairman Seabury if the applicant should have also requested a Home Occupation Special Exception because the use was going to be a dual use and the property did not have the proper area or frontage.

Chairman Seabury replied that it was his opinion that a Home Occupation Special Exception was something that was granted by the ZBA and because it was of a lesser zoning significance than a Use Variance, it was covered by the notice and the Board should hear the case.

Ms. Davis commented that she was not sure if the second request should have been for a Home Occupation Special Exception or for an Area Variance. She continued to say that she did not feel the public was noticed correctly because of the possibility that the property did not have the proper lot size or frontage.

Chairman Seabury replied that he felt it was all covered under the request for a Use Variance.

Chairman Seabury announced that he had erroneously informed the Board that this case was with regard to the applicant's wish to build a fence that was higher than what was allowed. He said that due to his statement, some of the member's of the Board had gone to the property to inspect the fence and questioned whether or not the height of the fence met the town's requirements. Chairman Seabury stated that he had confused this case

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with another case and this applicant's request had nothing to do with a fence, however he did ask Mr. Oleksak to verify that the fence was in compliance with the ordinance.

Proceeding with the case at hand, Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak explained that the property received a Use Variance on May 28, 1992, which allowed for the dual use of a residence and coffee shop. He also explained that it was noted on the site plan that it was the only use allowed and the Board would have to approve any changes to that use.

Chairman Seabury stated that the original request for the Use Variance was granted on May 28, 1992, and one of the stipulations stated that "the variance is specific to the applicant's request to sell coffee and is not to allow further or other commercial uses in its place." Chairman Seabury stated that the Board voted four votes to approve and one vote to deny. He further stated that he was the individual who voted to deny the request.

Chairman Seabury then stated that because he was the only sitting member that had heard the case in 1992 (which he had denied) he felt it was appropriate to step down from the case and he turned the gavel over to Vice-Chairman Davis.

Vice-Chairman Davis seated Mr. Houle in Mr. Seabury's place as a full voting member of the Board.

Vice-Chairman Davis asked who was present to speak in favor with regard to the application.

Mr. Tony Basso, from Keach-Nordstrom, representing the applicant, addressed the Board, stating that the former owner of the property was granted a Use Variance in May of 1992, which allowed for the dual use of a residence and a coffee shop -- The Daily Grind.

Mr. Basso further stated that, if the dual use were to ever change, the Zoning Board of Adjustment had to approve the change.

Mr. Basso stated that the property was located in the G-1 Zone, both uses were individually allowed, the lot was a pre-existing, non-conforming lot, and the dual use had already been approved with the stipulation that, if the use were to change, the Zoning Board of Adjustment would have to approve it.

Mr. Basso pointed out that the applicant's intent was to provide dog training and possibly some grooming, but was not requesting to "kennel" or "board" any dogs overnight.

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Mr. Basso stated that the applicant's intent was to train one to four dogs at any given time.

Mr. Basso also stated that the proposed use was of a "lighter use" in nature than the previous coffee shop, which created more traffic than the training/grooming facility would create. Mr. Basso further stated that the applicant may have up to four customers on any given day, while the previous coffee shop had many more customers.

Mr. Basso said that one of the criteria which would allow the dual use would be if the property had twice the area and twice the frontage. Mr. Basso then said that the applicant did not have the required area or frontage, explaining that was why the applicant had requested the variance.

Mr. Basso commented that the "doggie" training/grooming facility would be located in the same building as the coffee shop had previously been located in.

Mr. Basso further commented that there was an existing 6-foot high stockade fence which the applicant replaced with a 6-foot high stockade fence that was exactly the same in height and location, due to deterioration.

Mr. Basso then read aloud from the application for a Use Variance as summarized as follows:

- 1. Denial of the variance would result in unnecessary hardship for the plaintiff because the subject parcel is located in the G-1 Zone which restricts dual uses to lots having frontage and area for both principal uses. The parcel does not have frontage or area as the parcel pre-dates zoning. The site was granted a variance to allow a dual use of a residence and coffee shop. The approval restricted the site from any other use. The site was set up to accommodate the dual use and not allowing the use would prevent the applicant from using a portion of the site, as it was specifically set up for the dual use. The site could still be used as a coffee shop and the applicant's proposed business would be far less intense in nature than the approved use.*
- 2. No fair and substantial relationship exists between the general purposes of the Zoning Ordinance and the specific restriction(s) on the property because the property is set up to have the dual use. The residence is separated from the structure to be used for the dog training facility, each*

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*having separate entrances and parking. The applicant only requests a change to the restriction of having the coffee shop changed to the dog facility.*

- 3. The variance would not injure the public or private rights of others because the change of use would have less impact on the public than the existing coffee shop. There are no public or private rights that exist on the site.*
- 4. No diminution in the value of surrounding properties would occur because the subject property was located in the G-1 Zone. The proposed use was allowed in the zone. The dog training facility would have no overnight boarding of pets, will have far less traffic than that of the coffee shop, and therefore causing no diminution of property values.*
- 5. The proposed use would not be contrary to the public interest because the dual use currently existed and the use would be less intense and scattered throughout the day.*
- 6. Granting the variance would do substantial justice because the property was set up and utilized for dual use. The owner purchased the property with that in mind. The owner's use is a less intense use, creates less traffic, and would allow the applicant to have her business at home.*

Vice-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.

Vice-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.

Vice-Chairman Davis then declared the matter before the Board.

Mr. Pacocha asked Mr. Basso if there would be a fenced in area where the training of the dogs would take place. Mr. Basso replied that the intended training would take place inside of the building.

Mr. Pitre asked Mr. Basso if the property would change in any way esthetically. Mr. Basso replied that the new fence simply replaced the old fence (exactly) and there would be no change to the appearance of the property.

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Mr. McInerney asked if both existing buildings were within the front-yard setback. Mr. Basso replied that they were both pre-existing, non-conforming structures, which dated back quite a number of years.

Vice-Chairman Davis asked Mr. Basso if the residence would be owner-occupied. Mr. Basso replied that it would be owner-occupied.

Vice-Chairman Davis asked Mr. Basso if there would be any doggie daycare facilities on the site. Mr. Basso replied that there would not be any doggie daycare facilities on the property.

Vice-Chairman Davis asked Mr. Basso how many dogs would be trained at the same time. Mr. Basso replied that there would be anywhere from one to four dogs being trained at the same time.

Vice-Chairman Davis asked Mr. Basso what the hours of operation would be. Mr. Basso replied that the hours of operation would be approximately 10:00am – 8:00pm.

Vice-Chairman Davis asked Mr. Basso how many employees the applicant would have. Mr. Basso replied that it would be the applicant, Ms. McGibbon, as the dog trainer, and there could possibly be an employee hired as a groomer.

Mr. Pacocha asked if the applicant would accept a stipulation which stated that there would be no more than one owner and one employee working at the facility at any given time. Mr. Basso replied that the use was allowed in the G-1 zone and he did not feel the Board should put a stipulation of that type as part of the decision.

Vice-Chairman Davis asked where the waste water produced by the grooming would go and where the dog waste would go. Mr. Basso replied that the septic system was set up with a grease trap, dual septic tanks, and a pumping chamber for the coffee shop. He also replied the previous coffee shop would have had a lot more of “nasty” waste water than that of grooming dogs. Mr. Basso also replied that the applicant’s intention was to hire a company to collect the waste from the property.

Mr. Pitre asked if there were a designated area where the dogs could go to the bathroom. The applicant replied that if the dogs had to go to the bathroom in the 45-minute time allotted for training, that there was a designated area in the parking lot for the waste.

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



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Mr. Pitre seconded the motion.

Mr. Pacocha, speaking on his motion, stated that the property had been granted a variance which allowed for a dual use and he stated that he felt the applicant’s request for a dog training/grooming facility was for a less intrusive use. Mr. Pacocha also stated that he agreed with all of the arguments that Mr. Basso had presented and it would provide the applicant with due justice.

Mr. Pitre, speaking on his motion, stated that there were pre-existing, non-conforming issues on the property, that the spirit of the neighborhood had multiple dual-use properties, there would be less traffic than the previously operated coffee shop, and there was no negative abutter testimony.

VOTE: Vice-Chairman Davis asked the Clerk to poll the Board on the motion to approve the request for a Use Variance, and to record the members’ votes, which were as follows:

Mr. Pacocha	To approve
Mr. Pitre	To approve
Mr. McInerney	To approve
Mr. Houle	To approve
Ms. Davis	To approve

Vice-Chairman Davis reported that, there having been five votes to approve the request for a Use Variance, the motion had carried.

Mr. Seabury returned to the table and resumed his position as Chairman with Mr. Houle returning to his position as a non-voting alternate member.

**V. OTHER BUSINESS**

Proposed revisions to the Zoning Board of Adjustment By-laws

The Board had discussion with regard to the following items:

1. To continue to allow an alternate member of the Board to hold the position of Clerk.
2. The Board’s ability to impose time limits for applicant/abutter testimony.

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**VI. ADJOURNMENT**

All scheduled items having been processed, Mr. Pacocha 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 9:54pm.

Date: November 3, 2008

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J. Bradford Seabury, Chairman

Recorder: Trish Gedziun