

**HUDSON ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
September 11, 2008**

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:32pm on Thursday, September 11, 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: William McInerney, Michael Pitre, and J. Bradford Seabury

Members

Absent: Maryellen Davis and James Pacocha, Excused

Alternates

Present: Kevin Houle, Normand Martin, and
Donna Shuman

Alternates

Absent: Marilyn McGrath, Absent

Staff

Present: William Oleksak, Building Inspector

Liaison

Present: Roger Coutu, Selectmen's Liaison

Recorder: Trish Gedziun

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes September 11, 2008

II. SEATING OF ALTERNATES AND ANNOUNCEMENTS

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

Chairman Seabury announced that Mr. Houle would be seated in place of Mr. Pacocha and Ms. Shuman would be seated in place of Ms. Davis.

III. PUBLIC HEARINGS FOR SCHEDULED APPLICATION

- 1. Case 165-151 (9/11/08): 90 Derry Street, LLC, 520 Providence Highway, Suite 9, Norwood, MA., requests an Area and Use Variances to allow the installation and use of two additional building signs, specifically, the "Walgreens" script sign on the south side of the building (approximately 75 square feet in size) and the "Pharmacy" word sign on the east side of the building (approximately 12 square feet in size), two directional signs (specifically, directional signs attached to the building adjacent to the drive thru pharmacy area reading "Drive Thru Pharmacy" and "Exit" on the opposite sides) where each directional sign is larger than 3 square feet (being approximately 6 square feet each) and a free-standing sign, where the closest edge of the sign is set back approximately 21 feet from Derry Road (and approximately 23 feet from the edge of the pavement of a common private driveway), where a 25 foot setback is required for property located at 90 Derry Road, Hudson, NH. [Map 165, Lot 151, Zoned B, HZO Article XII, Sections 334-60(C), 334-60(E), 334-63 & 334-68, Signs.]**

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

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

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes September 11, 2008

Attorney J. Bradford Westgate, from Winer & Bennett, LLP, Nashua, NH, representing the applicant, addressed the Board, stating that Mr. Doug Benoit, P.E., and Mr. Todd Davini of Moeser & Associates were also present in support of the application.

Attorney Westgate stated that the applicant had originally requested a total of six signs, as each individual word required its own sign. He continued by stating that the applicant had reduced the request from six signs to a total of only four signs.

Attorney Westgate said that the applicant, in tradition with other typical Walgreens sites, was requesting to have a sign with the word “Walgreens” in script on one sign, and the word “Pharmacy” on a separate sign on both the east and south sides of the building.

Attorney Westgate, referring to an 8 ½ x 11 handout which had been previously distributed to the Board, summarized the applicant’s requests as follows:

- a) A Use Variance which would allow the two additional wall signs on the building – the word “Walgreens” on the south side and the word “Pharmacy” on the street side.
- b) A Use Variance which would allow for the word “Walgreens” in script on the south side of the building to be the same size as the word “Walgreens” in script on the east side of the building. Attorney Westgate noted that the ordinance only allowed for a secondary sign to be 50% of the size of the primary sign.
- c) An Area Variance which would allow for two (directional) “Drive Thru Pharmacy” signs six square feet in size as opposed to the three square feet that the ordinance allowed.
- d) An Area Variance which would allow for a free-standing sign with the word “Walgreens” on the top and a manual reader board on the bottom. Attorney Westgate pointed out that the ordinance did allow for the free-standing sign, but that the applicant wanted to place the free-standing sign 21 feet from the Derry Road right-of-way line rather than the 25 feet that the ordinance required. He also noted that the proposed free-standing sign would be located in the same location as the previous free-standing sign used for the Days Inn.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes September 11, 2008

Attorney Westgate stated that the property was located directly across the street from the Hudson Mall and the new Walgreens Pharmacy was in the process of being constructed on the old site of the Days Inn.

Attorney Westgate commented that the main access onto the site was a common driveway that serviced Walgreens Pharmacy, Dunkin Donuts, and the entrance to the Abbott Farms Condominiums.

Attorney Westgate stated that the site was approximately 1.19 acres in size. He also stated that an important aspect of the site was to notice where the edge of the pavement on Derry Road was in relation to the building, the parking area, and the proposed location of the free-standing sign --- noting that the Derry Road right-of-way was approximately 23 feet from the edge of pavement.

Attorney Westgate then read aloud from the application for a variance as summarized below:

- 1. The zoning restriction interferes with the plaintiff's reasonable use of the property because it would unnecessarily prevent reasonable, unobtrusive and consistent corporate signage for a redeveloped and improved site in an aesthetically pleasing manner, in a developed commercial area.*
- 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 pharmacy was a permitted use and had already obtained site plan approval.*
- 3. The variance would not injure the public or private rights of others because there were no public rights in question with respect to the variance request.*
- 4. No diminution in the value of surrounding properties would occur because the property is located in a longstanding, developed, commercial area on a busy arterial road.*
- 5. The proposed use would be compatible with the spirit of the ordinance because it would encourage the most appropriate use of the land.*

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes September 11, 2008

6. *The proposed use would not be contrary to the public interest because it would facilitate the public's use of the pharmacy by unobtrusive means.*
7. *Granting the variance would do substantial justice because permitting the building signs would help facilitate the rehabilitation of an under utilized commercial site, in a developed commercial zone.*

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 then declared the matter before the Board.

Mr. McInerney asked if the signs were neon or flashing. Mr. Davini replied that the signs were LED signs which were internally illuminated.

Mr. McInerney asked what time the signs would be turned off and Mr. Davini replied that the signs would be turned off when the store closed at midnight.

Chairman Seabury commented that he did not feel the town of Hudson should deem it acceptable to have a certain type of signage simply because it was a national image. He also said that he did not feel the site needed as many signs as the applicant was requesting.

Mr. Pitre commented that as long as the free-standing sign met the size criteria, the manually-changeable reader board could not be eliminated or in any way limited in what advertising was on it.

Request A - Use Variance – A Use Variance which would allow the two additional wall signs on the building – the word “Walgreens” on the south side and the word “Pharmacy” on the street side.

Mr. Pitre made a motion to deny request (A), for a Use Variance.

Mr. McInerney seconded the motion.

**HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes
September 11, 2008**

Mr. Pitre, speaking on his motion, stated that he did not feel the Boccia requirements for hardship were met.

Mr. McInerney, speaking on his second, stated that he concurred with everything Mr. Pitre had said.

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

Mr. Pitre	To deny
Mr. McInerney	To deny
Mr. Houle	To approve
Ms. Shuman	To deny
Mr. Seabury	To deny

Chairman Seabury reported that, there having been four votes to deny and one vote to approve the request for a Use Variance (A), the motion had carried.

Request B - Use Variance – A Use Variance which would allow for the word “Walgreens” in script on the south side of the building to be the same size as the word “Walgreens” in script on the east side of the building. Attorney Westgate noted that the ordinance only allowed for a secondary sign to be 50% of the size of the primary sign.

Mr. Pitre made a motion to deny request (B), for a Use Variance, arguing that because request (A) was denied, request (B) became null and void.

Mr. McInerney seconded the motion.

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

Mr. Pitre	To deny
Mr. McInerney	To deny
Mr. Houle	To approve
Ms. Shuman	To deny
Mr. Seabury	To deny

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes September 11, 2008

Chairman Seabury reported that, there having been four votes to deny and one vote to approve the request for a Use Variance (B), the motion had carried.

Request C - Area Variance - An Area Variance which would allow for two (directional) “Drive Thru Pharmacy” signs six square feet in size as opposed to the three square feet that the ordinance allowed.

Mr. Pitre made a motion to deny the request (C) for an Area Variance.

Mr. McInerney seconded the motion.

Mr. Pitre, speaking on his motion, stated that while he understood that the company needed signage, he did not feel the signs needed to be as large as the applicant had requested.

Mr. McInerney, speaking on his second, stated that he concurred with everything Mr. Pitre had said.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to deny the request for an Area Variance (C), and to record the members’ votes, which were as follows:

Mr. Pitre	To deny
Mr. McInerney	To deny
Mr. Houle	To deny
Ms. Shuman	To deny
Mr. Seabury	To deny

Chairman Seabury reported that, there having been five votes to deny the request for an Area Variance (C), the motion had carried.

Request D - Area Variance – An Area Variance which would allow for a free-standing sign with the word “Walgreens” on the top and a manual reader board on the bottom. Attorney Westgate pointed out that the ordinance did allow for the free-standing sign, but that the applicant wanted to place the free-standing sign 21 feet from the Derry Road right-of-way line rather than the 25 feet that the ordinance required. He also noted that the proposed free-standing sign would be located in the same location as the previous free-standing sign used for the Days Inn.

**HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes
September 11, 2008**

Mr. Pitre made a motion to approve request (D) for an Area Variance with the stipulation that if future road expansion were to occur, that the setbacks would remain as granted.

Mr. McInerney seconded the motion.

Mr. Pitre, speaking on his motion, stated that he did not feel the free-standing sign would be intrusive and it would provide due justice to the applicant.

Mr. McInerney, speaking on his second, stated that he concurred with everything Mr. Pitre had said.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to approve the request for an Area Variance (D), with the noted stipulation, and to record the members' votes, which were as follows:

Mr. Pitre	To approve
Mr. McInerney	To approve
Mr. Houle	To deny
Ms. Shuman	To deny
Mr. Seabury	To approve

Chairman Seabury reported that, there having been three votes to approve and two votes to deny the request for an Area Variance (D), with the noted stipulation, the motion had carried.

- Case 174-82 (9/11/08): FRKRAR, LLC, 15 Derry Road, Hudson, NH, requests an Area Variance to allow the placement of a free-standing sign within the 25 foot front-yard setback. A 25 foot front-yard setback is required, 15.3 feet of front-yard setback is proposed for property located at 15 Derry Road, Hudson, NH. [Map 174, Lot 82, Zoned TR, HZO Article XII, Section 334-60 (C) & (E), Signs.]**

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

Chairman Seabury stated that the case had been previously heard by the Board on October 14, 2004, and that the Board had denied the applicant's original request for a variance.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes September 11, 2008

Chairman Seabury asked if the Board felt there was a significant difference from the original request for a variance.

Mr. Martin commented that the original request included encroachment into the front and side-yard setbacks, and he said he felt the case before the Board was significantly different because the present request affected only the front-yard setback.

Chairman Seabury announced that the Board would hear the case as there were no concerns expressed.

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

Ms. Marsha Ives, from Signature Signs, Inc., representing the applicant, addressed the Board and read aloud a portion of the Application for a Variance as summarized below:

- 1. The zoning restriction of the cited ordinance(s) interferes with the plaintiff's reasonable use of the property because the frontage of the building is too close to the road. The 25 foot setback would not work on this property.*
- 2. No fair and substantial relationship exists between the general purposes of the Zoning Ordinance and the specific restriction(s) on the property because there are other signs in the area that are closer than the 25 foot setback requirement.*
- 3. The variance would not injure the public or private rights of others because the sign would be located 15.3 feet away from the sidewalk and would in no way interfere with the public foot traffic.*
- 4. No diminution in the value of surrounding properties would occur because the business already existed and adding the sign would help with less traffic turning around in driveways.*
- 5. The proposed use would be compatible with the spirit of the ordinance because the sign would meet all size and height requirements to support the ordinance.*
- 6. The proposed use would not be contrary to the public interest because the request had no impact on anyone's rights.*

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes September 11, 2008

- 7. Granting the variance would do substantial justice, because meeting the existing requirements of the ordinance would place the sign in the middle of the building which can not be done. The proposed location is the best working option for a neat and clean appearance.*

Ms. Ives also stated that the proposed internally illuminated sign would be on a timer and would be turned off when the store closed at 9:00pm.

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 then asked Clerk Martin to read aloud the following letter addressed to the Zoning Board of Adjustment, dated September 9, 2008, from Mrs. George Briand, 21 Derry Road, Hudson, NH, as follows:

I received your notice regarding the above hearing. As I cannot attend, I would like to add my own comments. Nothing was mentioned concerning the size or height of the proposed sign should the variance be approved. I certainly do not see a need for a free-standing sign as the business at this location juncture is highly visible and well advertised to include a box truck on the property.

However, after saying that, I do not object to a sign if it is in taste with the surrounding neighborhood and not so large in size or height that it becomes distasteful to the surrounding area.

Chairman Seabury further asked that Clerk Martin read aloud an additional letter addressed to the Zoning Board of Adjustment, dated September 10, 2008, from Ann Brooke-Smith, Trustee of the Leonard A. Smith Trust, 3 Leslie Street, Hudson, NH, as follows:

I respectfully request that the application for a variance regarding the proposed sign at 15 Derry Road be denied. The proposed sign is extremely large and too close to the road creating both a visual disturbance to traffic at an already hazardous intersection, as well as a visual blight to a mostly residential neighborhood.

HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes September 11, 2008

In addition, aesthetic standards that were stringently applied to other properties due to their proximity to the Town Common must be equally applied as Showtime Computers abuts not only the Common, but also the Millworker's Row Houses from the late 1800's.

Chairman Seabury declared the matter before the Board.

Mr. Houle asked if the picture of the proposed sign the Board received was an accurate reflection of what the actual sign would be. Ms. Ives replied that although it was not to scale, it was “fairly” accurate and that the actual sign would not exceed the height of the building “by that much”.

Mr. Houle commented that he did not feel the sign would be visible from all angles despite its large size, and also that he had concerns.

Ms. Ives replied that if the variance for the pylon was approved, the applicant would take down the façade.

Mr. McInerney asked if the sign was reader board in nature, and Chairman Seabury replied that it was a sign that included reader board functions.

Mr. McInerney asked if the sign posed a safety hazard. Chairman Seabury replied that both the Fire and Police Departments were part of the review process and, if there were any concerns, both departments had an opportunity to voice them.

Mr. Pitre made a motion to deny.

Mr. McInerney seconded the motion.

Mr. Pitre, speaking on his motion, stated that the area was highly traveled and was located in a great location and already had very good visibility. Mr. Pitre also stated that he did not feel that the Boccia requirements for hardship were met.

Mr. McInerney, speaking on his second, stated that he felt the lot had ample room and adequate visibility. Mr. McInerney further stated that he felt the sign could pose a traffic problem and cause visual clutter.

**HUDSON ZONING BOARD OF ADJUSTMENT – Meeting Minutes
September 11, 2008**

VOTE: Chairman Seabury 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. Pitre	To deny
Mr. McInerney	To deny
Mr. Houle	To deny
Ms. Shuman	To deny
Mr. Seabury	To deny

Chairman Seabury reported that, there having been five votes to deny the request for an Area Variance, the motion had carried.

IV. OTHER BUSINESS

- Mr. Oleksak informed the Board that there were new laws in affect with regard to wood burning furnaces which were separate from the structures they heated. He stated that there were setbacks and requirements which had to conform to CDC and EPA recommendations and he would distribute that information to the Board.

V. ADJOURNMENT

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

Mr. Houle seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 9:45pm.

Date: September 20, 2008

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun