

**HUDSON ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
July 24, 2008**

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:35pm on Thursday, July 24, 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: Normand Martin, Marilyn McGrath, and Donna Shuman

Alternates

Absent: Kevin Houle, Excused

Staff

Present: Sean Sullivan, Community Development Director

Liaison

Present: Roger Coutu, 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.

Mr. Coutu announced that Ms. Donna Shuman had filled one of the two vacant seats as a non-voting alternate member of the Board.

III. PUBLIC HEARINGS FOR SCHEDULED APPLICATION

1. **Case 150-14 (7/24/08, Deferred from 6/26/08): Sunset Rock, LLC, 1471 Methuen Street, Dracut, MA, requests a Wetland Special Exception to allow the contractor's existing gravel driveway, parking and outside storage area to remain within the wetland buffer for property located at 24 Barretts Hill Road, Hudson, NH. [Map 150, Lot 14, Zoned G-1, HZO Article IX, Section 334-33, Wetland Conservation District.]**

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

Ms. McGrath announced that she would step down from the case as she was a full voting member of the Planning Board and she would vote on the case if it came before that Board.

Mr. Pitre announced that he would also step down from the case because he had not attended the original meeting which was heard on June 26, 2008.

Chairman Seabury sat Mr. Martin in place of Mr. Pitre.

Chairman Seabury stated that although the Board had some significant reservations regarding the case, that after a site-walk was conducted on June 28, 2008, the Board felt

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much better regarding the situation. Chairman Seabury also stated that Attorney Prunier, legal representative of the applicant, and Mr. George Hall were also present.

Mr. Martin commented that he did not feel the five parking spots previously in question by some members of the Board posed any problem. Chairman Seabury commented that he agreed.

Ms. Davis stated that she felt the site-walk was very beneficial and she no longer had the previously stated concerns with the outside storage area or the parking spots because there was a sufficient distance and a man-made berm between the actual wetlands and the buffer to protect it. She further stated that the outside storage area was not used on a “day-to-day” basis thereby minimizing the intrusion in the buffer.

Ms. Davis made a motion to approve the request for a Wetland Special Exception with the stipulation that the existing outside storage, the parking spots, and the gravel driveway were to remain as is within the wetland buffer.

Mr. Pacocha seconded the motion.

Ms. Davis, speaking on her motion, stated that the Conservation Commission and the Planning Board had not provided a favorable recommendation but the site-walk had revealed that the actual wetlands would not be impacted and the buffer impact would be minimal and in her opinion, reasonable to the use of the land.

Mr. Pacocha, speaking on his motion, stated that he agreed with everything Ms. Davis had said.

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

Ms. Davis	To approve
Mr. Pacocha	To approve
Mr. McInerney	To approve
Mr. Martin	To approve
Mr. Seabury	To approve

Chairman Seabury reported that, there having been five votes to approve the request for a Wetland Special Exception, the motion had carried.

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Chairman Seabury returned Mr. Pitre to his seat as a full voting member of the Board and returned Mr. Martin to his seat as a non-voting alternate member of the Board.

- 2. Case 175-48 (7/24/08): John Lauziere, 5 Canna Path, Hudson, NH, requests an Area Variance to allow construction of a carport within the side, rear, and front-yard setbacks. The proposed carport would be set back 18.4 feet from Canna Path, where 30 feet is required. Additionally, the rear setback is proposed for zero feet where 15 feet is required. [Map 175, Lot 48, Zoned B, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**

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

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.

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

Mr. John Lauziere, the applicant, addressed the Board, stating that he had lived on the property for 24 years and in those years, he and his neighbor had always used each other's property to access their respective parking areas.

Mr. Lauziere then read aloud from his application for an Area Variance, as summarized as follows:

- 1. No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction(s) on the property because having a carport would not increase the size of the living space of the home.*
- 2. The variance would not injure the public or private rights of others because the carport would not obstruct anyone's view and it was where the occupants had parked their vehicles since they purchased the home in 1984.*
- 3. No diminution in the value of surrounding properties would occur because a covered area for cars to park would increase the value of all homes in*

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the neighborhood as it would increase the value of the homeowner's property.

4. *Granting the variance would do substantial justice because the carport would upgrade the home as did the new roof system for the next generation of homeowners.*

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.

Ms. McGrath asked what zone the property was located in and Mr. Martin replied that it was located in the Business Zone.

Ms. McGrath pointed out that 50 feet of frontage was required in the Business Zone and not the previously noticed 30 feet.

Mr. Coutu asked if the applicant could have placed the proposed carport in another location which met the requirements. Mr. Lauziere replied that there was not.

Chairman Seabury declared the matter before the Board.

Ms. Davis commented that she did not understand what the hardship was on the property.

Mr. Pitre asked how long the existing shed had been on the property, and the applicant replied that it had been there for 14 years.

Ms. Davis made a motion to deny the request for an Area Variance.

Mr. Pitre seconded the motion.

Ms. Davis, speaking on her motion, stated that it was a small lot, and she said felt it was being used as it was designed, and she did not see any hardship or special conditions on the property.

Mr. Pitre, speaking on his second, stated that he felt the applicant had not met the requirements and the build-out of the lot was at its maximum.

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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:

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

Chairman Seabury reported that, there having been four votes to deny and one vote to approve the request for an Area Variance, the motion had carried.

Chairman Seabury commented that he voted in the affirmative because he felt the hardship on the property was the zoning ordinance itself.

- 3. Case 174-222 (7/24/08): Rachel Colburn, 56 School Street, Hudson, NH, requests an Area Variance to allow a 15 foot above-the-ground swimming pool to be placed within the side-yard setback. 15 feet required, 5 feet proposed. [Map 174, Lot 222, Zoned TR, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**

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

Chairman Seabury noted for the record that the applicant, Rachel Colburn, was requesting the proposed pool to provide a means of exercise for her daughter Phyllis Colburn, who had been diagnosed with Congenital Arthrogyrosis Multiplex.

Chairman Seabury again 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.

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

Ms. Phyllis Colburn, representing the applicant, addressed the Board, and read aloud from the application for an Area Variance as summarized as follows:

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1. *No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restrictions(s) on the property because the owner of Lot 221-000, Mrs. Shirley Clemons, had already given her verbal approval for the project.*

(Note: There was also a letter in the Board's packet dated June 23, 2008, addressed to the Zoning Board of Adjustment, from Shirley Clemons stating that she was in favor of the proposed pool. This letter was not read into the record.)

2. *The variance would not injure the public or private rights of others because the swimming pool would be located in the backyard which was enclosed with a chain link fence. The fence would have proper locks prohibiting public use.*
3. *The proposed use would be compatible with the spirit of the ordinance because the pool would be located as far from Lot 221-000 as the space constraints would allow. The original plan put the proposed pool 5 feet from Lot 221-000 and the revised plan put the proposed pool closer to the applicant's home within the 15 foot property line.*
4. *Granting the variance would do substantial justice because it would allow my daughter to exercise on a daily basis during the summer. She would not be required to use public pools in Nashua or a pool at a health club.*

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 an Area Variance.

Mr. Pitre seconded the motion.

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Mr. Pacocha, speaking on his motion, stated that he felt there was a hardship on the property, it was a very small lot, the proposed pool was of a minimal size, and it was practical.

Mr. Pitre, speaking on his second, stated that he felt the applicant had shown good faith in attempting to meet the requirements and he felt approving the request was warranted in the case.

Ms. Davis commented that she would vote against the motion with regard to the case because she felt the case was much like the previous request for a carport, which had been denied. She further commented that the activity that accompanied a pool was much more intrusive than that of a carport. Ms. Davis also commented that she felt the ordinance was in place to prevent the overcrowding of small lots and approving the request went against the spirit of the ordinance.

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

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

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

Chairman Seabury asked the Board if Case #5 should be the next case heard (out of order) as Case #4 would likely take a much longer time. Chairman Seabury also noted that the applicants that were present for Case #4 were amenable to that.

Mr. Pitre made a motion to hear Case #5 next.

Ms. Davis seconded the motion.

Chairman Seabury called for a verbal vote, and he then stated that all of the Board members were in favor of hearing Case #5 prior to hearing Case #4.

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5. **Case 165-17 (7/24/08): Robin Nazarian, 4 Gambia Street, Hudson, NH, requests an Area Variance to allow a 24 foot above-the-ground swimming pool to be placed within the side and rear-yard setbacks. 15 foot side and rear-yard setbacks required, 7 foot and 9 foot side and rear-yard setbacks proposed. [Map 165, Lot 17, Zoned TR, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**

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.

Ms. Robin Nazarian, the applicant, addressed the Board, stating that she had submitted a letter to the Board from the neighbor who was most affected by the proposed swimming pool which indicated support of her application.

Chairman Seabury read aloud a letter dated July 23, 2008, from Andrew Cirrone, 6 Gambia Street, as summarized as follows:

To whom it may concern,

My property abuts that of Robin Nazarian who is applying for a variance for an above-the-ground pool. I understand her application will be reviewed on July 24, 2008. I am unable to attend the meeting but this letter is to confirm that I have no objections to Robin installing a pool 9 feet from my property line as proposed in her application.

Ms. Nazarian then read aloud from the application for an Area Variance, as summarized as follows:

1. *The zoning restriction of the cited ordinance interferes with the plaintiff's reasonable use of the property because I have limited space to put a pool on my property because the property is only 1/4 of an acre in size and the only side-yard that has space gets flooded in the spring. This flooding could damage or destroy a pool.*
2. *No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restrictions on the property because the proposed setback is outside of any distance that*

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would cause damage to the abutting neighbors should the pool break or leak, and if is fenced in on the abutting neighbor's side.

- 3. The variance would not injure the public or private rights of others because the proposed position of the pool is still an estimated 25 feet from any structure of the side neighbor and at least 50 feet from any structure of the neighbor located behind my property.*
- 4. No diminution in the value of surrounding properties would occur because pools do not decrease property values. I also plan to add landscaping and bushes on the side fence area to make the view more pleasant.*
- 5. The proposed use would be compatible with the spirit of the ordinance because the pool would be used for private recreation only.*
- 6. The proposed use would not be contrary to the public interest because the two abutting properties and my own are separated by fences therefore, safety issues of neighbors would not be an issue.*
- 7. Granting the variance would do substantial justice because I cannot position a pool on the left side-yard which is the only other space I have so granting the variance would enable me to have a swimming pool for my own use.*

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.

Mr. Coutu asked Ms. Nazarian if she had considered filling the low lying area and then placing the pool in that location which would have met the requirements.

Ms. McGrath stated that one can not fill wetlands.

Mr. Pitre asked the applicant how many times her property had flooded, and the applicant replied that it had flooded three times since 2001.

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Chairman Seabury suggested that the existing shed that was already too close to the back property line should be moved if the variance were granted.

Mr. Pitre made a motion to approve the request for an Area Variance with the stipulation that the shed had to conform with the side and rear-setbacks.

Mr. McInerney seconded the motion.

Mr. Pitre, speaking on his motion, stated that he felt above-the-ground pools were not very intrusive as eventually they would go away by either falling down or being taken down, the property was located on a dead end street so there would be no impact to the surrounding properties, and he said he felt it met the requirements.

Mr. McInerney, speaking on his second, stated that he felt it was a good use due to the topographical problems and the flooding on the lot.

Chairman Seabury stated that he was concerned with a pool being next to the wetlands, because, there was a danger of the wetlands being contaminated if the pool broke or was drained.

Ms. Davis commented that she did not feel there were special conditions on the property just because it was a small lot and it was wet.

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

Mr. Pitre	To approve
Mr. McInerney	To approve
Mr. Pacocha	To deny
Ms. Davis	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, the motion had carried.

Ms. McGrath also expressed concern of the wetlands being contaminated when the pool was drained, and she suggested that the applicant take great care not to contaminate the wetlands when it came time to drain the pool in the future.

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Chairman Seabury declared a break at 9:05pm calling the meeting back to order at 9:17pm.

- 4. Case 217-33 & 37 (7/24/08): Todd and Allyson Graham, 67 Burns Hill Road, Hudson, NH, request a Wetland Special Exception to allow a temporary wetland buffer impact of 887 square feet, a permanent wetland buffer impact of 12,928 square feet, and a permanent wetland impact of 2,442 square feet for a proposed 11-lot subdivision located at 7 Mark Street and 67 Burns Hill Road. [Map 217, Lots 33 & 37, Zoned R-2, HZO Article IX, Section 334-33, Wetland Conservation District.]**

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

Ms. McGrath announced that she would step down from the case, as she was a full voting member of the Planning Board and would be voting on the case in the event the case went before that Board in the future.

Ms. Davis also announced that she would step down from the case, as she was a personal acquaintance of the applicant.

Chairman Seabury seated Mr. Martin in place of Ms. Davis.

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

Mr. Tony Basso of Keach-Nordstrom, representing the applicant, addressed the Board, stating that the intent of the project was to subdivide the subject parcels into an eleven-lot, open-spaced residential subdivision with one remainder single-family residential lot (Lot 37).

Mr. Basso stated that there was initially 2,442 square feet of wetland impact in order to construct the road across a small wet area of the property.

Mr. Basso then stated that the impacts to the wetland buffers were the area associated with punching the road through, the buffer impact area for the discharge of the storm water management area – noting that he wanted to get the discharge down to the flatter grade. He said that the total permanent impact to the wetland buffer would be 1,196 square feet.

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Mr. Basso said that the temporary impact to the wetland buffer would be located in two areas.

Mr. Basso noted that the applicant was proposing 12.79 acres of upland conservation and 4.2 acres of wetland conservation as part of the open space of the development. He also noted the total size of the property was 29 acres and he said he felt a large portion of acreage would be preserved.

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 the land because there was no other reasonable alternative in which to reach the property without impacting the wetland and wetland buffer.*
- 2. The design was done by Keach-Nordstrom, P.E., would be constructed by a reputable contractor, and would be built in accordance with the plans using Best Management Practices.*
- 3. The proposed use is not primarily for economic consideration because it was necessary to cross the wetland and wetland buffers to access the property.*
- 4. Wildlife corridors would be provided around the perimeter of the property and there were no known threatened or endangered species as documented by the Natural Heritage Inventory. (NHB)*
- 5. The Planning Board and the Conservation Commission had provided favorable recommendations with stipulations.*

Clerk Martin read aloud a letter from the Conservation Commission as summarized as follows:

On May 12, 2008, the members of the Hudson Conservation Commission heard case #217, Lots 37 & 33, 67 Burns Hill Road, concerning an application by Todd M., and Allyson G. Graham for a Wetland Special Exception in accordance with the Graham Subdivision.

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Following the hearing of testimony by the applicant, the members of the Board by a vote of five in favor and two opposed recommend to the Zoning Board of Adjustment that this Wetland Special Exception should be granted, with the following stipulations:

- 1. All restoration of the area disturbed will comply with the latest edition of the following NH Best Practices as applicable: Best Management Practices to Control Nonpoint Source Pollution: A Guide for citizens and Town Officials, NH Department of Environmental Services 1994.*
- 2. The house foundations for house lots six, seven, and eight be located as far away from wetland buffer as practical, and provide no less than twenty-five feet distance from the foundation to the buffer.*
- 3. The culvert on Mark Street is cleared.*
- 4. The wetland buffer is marked by approved Conservation Commission signs at intervals no greater than fifty feet.*
- 5. The Conservation Easement for the forestry to be approved by the Conservation Commission.*

Clerk Martin read aloud a letter dated June 30, 2008, addressed to the Zoning Board of Adjustment from the Planning Board as summarized as follows:

At its June 25, 2008, meeting the Planning Board voted to forward the following correspondence citing the Planning Board has no objection to the wetland crossing as proposed in accordance with the following stipulation:

- 1. The developer is required to implement the stipulations of approval provided by the Conservation Commission in their recommendation to the Zoning Board of Adjustment.*

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.

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Mr. Martin asked if the existing pool on Lot #11 would remain and Mr. Basso replied that it would be taken down.

Mr. Martin made a motion to approve the request for a Wetland Special Exception with the noted stipulations of the Conservation Commission and added the stipulation that, when the property was developed, there shall be no further subdivision.

Mr. Pitre seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt the plan (known as Allyson’s Landing, Map 217; Lots 37 and 33, Sheets 1-4) was well configured, there was no negative abutter testimony, and he felt it would be a very nice subdivision.

Mr. Pitre, speaking on his second, stated that he felt it was a good use of a large lot, there was no negative abutter testimony, 16 acres of the lot would be conservation, and it would provide due justice to the property owner.

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

Mr. Martin	To approve
Mr. Pitre	To approve
Mr. McInerney	To approve
Mr. Pacocha	To deny
Mr. Seabury	To approve

Chairman Seabury reported that, there having been four votes to approve and one vote to deny the request for a Wetland Special Exception, the motion had carried.

IV. OTHER BUSINESS

- Mr. Sullivan stated that the next meeting would be held on August 14, 2008.

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- Ms. Davis asked if the town had hired a Town Engineer and Mr. Sullivan replied that the town had not. Mr. Sullivan also stated that the position of Code Enforcement Officer would soon be vacated.

VI. 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 10:10pm.

Date: August 8, 2008

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun