

**HUDSON ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
June 26, 2008**

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:10pm on Thursday, June 26, 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, and J. Bradford Seabury

Members

Absent: Michael Pitre, Excused

Alternates

Present: Kevin Houle, Normand Martin, and Marilyn McGrath

Alternates

Absent: None

Staff

Present: Sean Sullivan, Community Development Director

Liaison

Present: Roger Coutu, Selectmen's Liaison

Recorder: Trish Gedziun

II. SEATING OF ALTERNATES AND ANNOUNCEMENTS

Chairman Seabury stated that Mr. Houle would be seated in place of Mr. Pitre, who was excused. Chairman Seabury then seated Mr. Martin in place of Mr. McInerney who had not yet arrived at the meeting.

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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

The following edits were made to the minutes from the May 22, 2008, meeting:

Page 5 – 3rd paragraph – “the applicants’ garage and the abutters’ garages” was changed to “the applicants’ garage and the abutters’ property” - Houle

Page 5 – 6th paragraph – “he would not” was changed to “he might not” – Davis

Page 5 – 7th paragraph – “he not feel” was changed to “he did not feel” – Martin

Page 6 – 6th paragraph – “Mr. Houle returned to his seat as a full voting member” was changed to “Mr. Houle returned to his seat as an alternate member” – Houle

Page 7 – 2nd paragraph - was re-worded as follows: “Acting Chairman Davis stated for the record that, since nothing had changed regarding this case since the Board's prior decision at the original hearing, Attorney Cronin would not present testimony for this hearing to extend that decision.” - Davis

Page 7 – 7th paragraph – “the Decision” was changed to “the previous Decision” – Davis

Page 8 – 4th paragraph - “the motion had carried” was added to the end of the sentence – Davis

Page 9 – 7th paragraph – “travel time restraints” was changed to “travel time constraints” – Davis

Page 12 – 1st paragraph – “of the power easement” was changed to “of the power company easement” – Davis

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Mr. Martin made a motion to approve the minutes from the May 22, 2008, meeting.

Ms. Davis seconded the motion.

Chairman Seabury called for a verbal vote, and he then stated that three of the four seated Board members were in favor of approving the minutes from the May 22, 2008, meeting as amended. Note: Mr. Seabury abstained from this vote as he did not attend the meeting on May 22, 2008.

Chairman Seabury declared a break at 7:25pm calling the meeting back to order at 7:30pm.

IV. PUBLIC HEARINGS FOR SCHEDULED APPLICATIONS

Mr. McInerney having arrived at the meeting, Chairman Seabury returned Mr. Martin to his seat as a non-voting alternate member of the Board.

- 3. Case 106-22 (6/26/08): Michelle & Stephen Burke, 9 Jessica Lane, Hudson, NH, request a Use Variance to allow a 24-foot above-the-ground swimming pool to be placed within the 50-foot wetland buffer. 50-foot buffer required, 15-foot buffer proposed. [Map 106, Lot 22, Zoned G-1, HZO Article IX, Section 334-35, Wetland Conservation District.**

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

Chairman Seabury read aloud a letter dated June 26, 2008, from Michelle and Stephen Burke as follows:

We are currently scheduled on the agenda for the June 26, 2008, meeting of the Zoning Board of Adjustment. At this time, we would like to request a withdrawal without prejudice of our application for a Use Variance to allow a 24-foot above-the-ground swimming pool to be placed within the 50-foot wetland buffer.

We will move forward with this request at a later time.

Chairman Seabury stated that he felt the applicant's request should have been for a Wetland Special Exception instead of a Use Variance, since the proposed pool encroached onto the Wetland Conservation District.

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Chairman Seabury stated that he had advised Mr. Sullivan to advise the applicant to withdraw the request for a Use Variance and to request a Wetland Special Exception.

Chairman Seabury pointed out that because the error was on the side of the town, he recommended that the Board allow the withdrawal without prejudice and return any fees paid to the town for the application.

Mr. Sullivan stated that the applicant intended on seeking input from the Conservation Commission and subsequently request a Wetland Special Exception from the Zoning Board of Adjustment. Mr. Sullivan further stated that he would not return any fees paid to the applicant but would certainly not charge the applicant additional fees for the Wetland Special Exception application.

Mr. Pacocha made a motion to approve the withdrawal of the application without prejudice.

Ms. Davis seconded the motion with the understanding that if the applicant did not re-submit any requests, that the fees would be repaid.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to approve the withdrawal of the application without prejudice, and to record the members' votes, which were as follows:

Mr. Pacocha	To approve the withdrawal
Ms. Davis	To approve the withdrawal
Mr. McInerney	To approve the withdrawal
Mr. Houle	To approve the withdrawal
Mr. Seabury	To approve the withdrawal

Chairman Seabury reported that, there having been five votes to approve the withdrawal without prejudice, the motion had carried.

- 1. Case 150-14 (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, Sections 334-33, Wetland Conservation District.]**

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

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Ms. McGrath announced that she would step down from the case as she was a full voting member of the Planning Board and expected the case to be heard by that Board.

Chairman Seabury read aloud from an Interoffice Memorandum dated January 17, 2008, addressed to Sandra Rumbaugh, former Chairman of the Conservation Commission, from the former Town Engineer, Tom Sommers, as follows:

My comments are as follows:

- 1. The site was being used within the buffer in 1997 and before as shown by the aerial photo attached.*
- 2. Site usage appears to have increased from 1997 to 2004 as shown by the second aerial photo. There appears to be a second building in one of the buffers.*
- 3. I am not sure (if the Commission decides to recommend a special exception) where they want to put the line. I don't think vehicles should be parked in the buffer.*
- 4. Wherever any line is delineated, I think it should have a continuous demarcation of fieldstone not less than one cubic foot in size.*

Chairman Seabury read aloud from copies of the Decisions signed by the former Chairman of the Conservation Commission, Sandra Rumbaugh, and dated January 25, 2008, as summarized below:

*On January 18, 2008, the members of the Hudson Conservation Commission heard Case Tax Map 150, Lot 14, concerning an application by Bedford Design Consultants for a Wetland Special Exception for intrusion into the Wetland Conservation District for parking and the site of a dumpster on the southeast edge of the property. The proposed permanent wetland impacts are 10,958 square feet. Following the hearing of testimony by the applicant, the members of the Commission by a vote of 4-0 recommend to the Zoning Board of Adjustment that this Wetlands Special Exception **should not be granted.***

On January 18, 2008, in addition the members of the Hudson Conservation Commission heard Case Tax Map 150, Lot 154, concerning an application

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*by Bedford Design Consultants for a Wetland Special Exception for intrusion into the Wetland Conservation District to access the building and parking on the existing roadway, located at 24 Barretts Hill Road. Following the hearing of testimony by the applicant, the members of the Commission by a vote of 4-0 recommend to the Zoning Board of Adjustment that this Wetland Special Exception **should be granted.***

Chairman Seabury then read aloud a letter dated March 17, 2008, addressed to J. Bradford Seabury, Chairman of the Zoning Board of Adjustment from John Cashell, Town Planner, as summarized as follows:

At its March 12, 2008, meeting the Planning Board voted to forward the following correspondence to the Zoning Board of Adjustment regarding the Sunset Rock, LLC. Wetland Special Exception application:

The Planning Board concurs with the Conservation Commission's recommendations, that is:

- 1. The existing wetland intrusion located within the borders of the existing driveway should be allowed to continue. This is taking into consideration that the driveway's existing route creates the least amount of wetland impact, leading to the buildable area of the lot.*
- 2. The parking spaces located south of the building shall be removed, which will take the parking out of the wetlands.*

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

Attorney Gerald Prunier, legal representative of the applicant, addressed the Board, stating that the piece of property had existed for at least 30 years and since that period of time, there had been a lot of work done on the property and, as a result of that work, some wetlands had been created.

Attorney Prunier stated that the applicant was not proposing to work within the actual wetlands, but that the work would be in the wetland buffer. He also noted that there would be two areas that would actually be affected.

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Attorney Prunier indicated that the Board had copies of a Wetland Impact and Functions and Values Assessment prepared by Schauer Environmental Consultants, LLC. Attorney Prunier then read aloud from page 4 of the report as follows:

The presence of the driveway and parking lot in the buffer of these wetlands would not be expected to influence or limit the ability of the wetlands to provide groundwater discharge/recharge.

Chairman Seabury asked Attorney Prunier if the applicant was still asking for the five parking spaces that the Conservation Commission already did not think should have been allowed. Attorney Prunier replied that the applicant was still asking for those same five parking spaces.

Ms. Davis asked if it was the same plan that had previously been before the Board, which requested that the lot be sub-divided and a single-family home be built on the smaller lot.

Attorney Prunier stated that the applicant knew that a Wetland Special Exception had to be granted by the ZBA for the parking area and the outside storage to remain where they were prior to going before the Planning Board.

Mr. Martin asked Mr. Sullivan if there were a business being operated on the property and if there were not, why there was a need for so many parking spaces. Mr. Sullivan replied that there would be a business on the property at some point in the future and that it was an allowed use.

Ms. Davis asked Attorney Prunier if the applicant had any future proposed use for the larger lot, as one of the stipulations from the decision in 2007 was that no changes could occur on that lot. Attorney Prunier replied that the use would not be any different than what was presently there.

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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Ms. Davis asked Attorney Prunier what the nature of the outdoor storage was.

Attorney Prunier replied that there was currently a roofing business being operated on the property and materials such as shingles were stored “in the area” prior to going on-site for a job.

Ms. Davis suggested that she felt the roofing business could have been storing the new shingles prior to using them for a job and then taking the old shingles and throwing them in the on-site dumpster.

Ms. Davis said that she felt it was necessary for the Board to conduct a site walk on the property to attain a clearer view of the nature of the property, in particular the location of the dumpster and storage area.

Chairman Seabury commented that it was his understanding that there were vehicles parked on the access road. Attorney Prunier replied that although some of the vehicles had been removed, the road was still being used.

Ms. Davis made a motion for the Board to conduct a site walk on June 28, 2008, at 9:00am, and to continue hearing the case at the July 24, 2008, meeting.

Mr. Pacocha seconded the motion.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion for the Board to conduct a site walk on June 28, 2008, at 9:00am, and to continue hearing the case at the July 24, 2008, meeting, and to record the members’ votes, which were as follows:

Ms. Davis	To conduct a site walk
Mr. Pacocha	To conduct a site walk
Mr. McInerney	To conduct a site walk
Mr. Houle	To conduct a site walk
Mr. Seabury	To conduct a site walk

Chairman Seabury reported that, there having been five votes for the Board to conduct a site walk, the motion had carried.

2. Case 175-84 (6/26/08): Nicholas P. Dionne, 8 State Street, Hudson, NH, requests the following:

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- A. An Equitable Waiver to allow the existing garage to remain within the side-yard setback. 15 feet required, 14.4 feet and 14.2 feet exist. [Map 175, Lot 84, Zoned B, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**
- B. An Area Variance to allow construction of a Farmer’s Porch within the front-yard setback. 30 feet required, 24.4 feet proposed. [Map 175, Lot 84, Zoned B, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**

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

Discussion on “A” – Request for an Equitable Waiver

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

Mr. Nicholas Dionne, the applicant, addressed the Board, and read aloud from the application for an Equitable Waiver as summarized as follows:

1. *Innocent Mistake: It was an innocent mistake because the structure existed prior to the sale of the home to me and my wife.*
2. *Discovered too Late: The violation was discovered when the Certified Plot Plan was done for the building permit for an addition. The land was surveyed on May 15, 2008.*
3. *No Nuisance: The structure runs along the back yard of the property and also along the back and side yard setbacks of the abutting property. The structure surpasses the 15-foot setback by 10 inches.*
4. *High Correction Cost: The cost to move the structure back by 10 inches would be almost as much as the cost of rebuilding it. No public benefit would come from this costly re-construction.*

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.

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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. Pacocha asked the applicant when the garage was built. Mr. Dionne replied that it was built in 1991 and that the existing house was built in 1935.

Chairman Seabury asked Mr. Sullivan if there had been any complaints reported on the property. Mr. Sullivan replied that there had been no complaints received.

Ms. Davis asked Mr. Sullivan if there were a building permit on file for the garage. Mr. Sullivan replied that he would check into it.

Mr. Pacocha made a motion to approve the request for an Equitable Waiver.

Ms. Davis seconded the motion.

Mr. Pacocha, speaking on his motion, stated that he felt the applicant had satisfactorily addressed the criteria, there had been no complaints on the property in over 10 years, and there was a very high correction cost for a very minimal difference.

Ms. Davis, speaking on her second, stated that she felt the applicant met all of the criteria for an Equitable Waiver and the garage had been there for over 10 years without any complaints.

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

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

Chairman Seabury reported that, there having been five votes to approve the request for an Equitable Waiver, the motion had carried.

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Discussion on “B” – Request for an Area Variance

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

Mr. Nicholas Dionne, the applicant, addressed the Board, and read aloud from the application for an Area Variance as summarized as follows:

- 1. The zoning restriction interferes with the plaintiff's reasonable use of the property because: The existing dwelling (#8 State Street) was constructed in 1935, prior to the town's adoption of the Zoning Ordinances in 1942. The dwelling exists 19 feet from Cliff Avenue and 26 feet from State Street.*
- 2. No fair and substantial relationship exists between the general purpose of the Zoning Ordinance and the specific restrictions on the property because: The property already encroaches onto the setbacks. The inability to modernize discourages any appropriate use of the land and holds back the value of the property.*
- 3. The variance would not injure the public or private rights of others because: The proposed Farmer's Porch will be built per applicable building codes. There are no public or private rights in question.*
- 4. No diminution in the value of surrounding properties would occur because: The proposed Farmer's Porch will add value to the surrounding properties.*
- 5. Granting the variance would do substantial justice because: The proposed improvement would bring added value to the property as well as supply the needed room for an expanding family.*

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. Pacocha asked if there would be steps on the Farmer’s Porch that would further encroach onto the setback. Mr. Dionne replied that he thought there would be approximately two steps that would encroach onto the setback.

Ms. Davis made a motion to approve the Area Variance.

Mr. Pacocha seconded the motion.

Ms. Davis, speaking on her motion, stated that the encroachment was minimal, that it would be an improvement to the neighborhood, there was no negative abutter testimony, and the property had special conditions on it which presented restrictions.

Mr. Pacocha, speaking on his second, stated that the home was built prior to the adoption of the Zoning Ordinance, there was no negative abutter testimony, and he felt it met the requirements.

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:

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

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

V. OTHER BUSINESS

- Chairman Seabury advised Mr. Sullivan that in the event that Michelle and Stephen Burke, 9 Jessica Lane, had planned on returning with the request for a Wetland Special Exception, that he would not be inclined to accept a marked up plan from 1997 prepared by Mike Grainger that did not include sufficient information.

Mr. Sullivan stated that the cost of having an above-the-ground pool installed would be approximately \$3,000 - \$4,000 and the cost to have a Certified Plot Plan

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prepared with the wetlands delineated would cost approximately \$1,000 - \$2,000 and he felt that was a lot of money for any applicant to spend.

Ms. McGrath stated that the plan was stamped by Mr. Sprague and Mr. Grainger, both engineers, and she further questioned the validity of the plan.

Mr. Sullivan stated that he would inform the applicant that a clearer plan had to be presented.

Chairman Seabury asked Mr. Sullivan if there were any update on why the home on Jessica Lane was allowed to be built in the Wetland Conservation District in the first place.

Mr. Sullivan replied that he did not have an update but would follow-up.

- Chairman Seabury announced that Attorney LeFevre had confirmed that the Aranasian Oil Company, Inc., v. the Town of Hudson case had been dismissed by the Superior Court on grounds of mootness.

- Chairman Seabury stated that there was a joint workshop scheduled between the Zoning Board of Adjustment and the Board of Selectmen scheduled for July 1, 2008.

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VI. ADJOURNMENT

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

Ms. Davis 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: July 6, 2008

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun