

**HUDSON ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
April 10, 2008**

I. CALL TO ORDER

Chairman J. Bradford Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:00pm on Thursday, April 10, 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

Alternates

Present: Normand Martin and Kevin Houle

Alternates

Absent: Marilyn McGrath (Excused)

Staff

Present: Sean Sullivan, Community Development Director

Liaison

Present: Roger Coutu, Member, Board of Selectmen

Recorder: Trish Gedziun

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

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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

For the purposes of reviewing the meeting minutes only, Chairman Seabury seated Mr. Houle in place of Mr. Pacocha, and seated Mr. Martin in place of Mr. McInerney who had not yet arrived at the meeting.

The following edits were made to the minutes from the January 24, 2008, meeting:

Page 3 – last paragraph - “as she was a full member of the Planning Board and would be voting on the matter when it came before that Board” was added – Seabury

Page 7 – 2nd paragraph - “nor did they have any identifying pointers or references” was added – Davis

Page 7 – 2nd paragraph – “and were taken before snowfall” was added – Seabury

Page 7 – 3rd paragraph – the word “okay” was changed to the word “allowable” – Davis

Page 13 – “Mr. Sullivan stated that Attorney LeFevre would be present at the February 14, 2008, meeting” was changed to “Mr. Sullivan stated that Attorney LeFevre would be present prior to the February 14, 2008, ZBA meeting, for a private attorney/client session to be held prior to the regular public session.” – Davis

Mr. Martin made a motion to approve the minutes from the January 24, 2008, meeting as amended by the Board.

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 approving the minutes from January 24, 2008, as amended.

The following edits were made to the minutes from the January 31, 2008, meeting:

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Page 7 – “Chairman Seabury asked if there were anyone else present who wished to speak in favor with regard to the application” was deleted – Seabury

Mr. Martin made a motion to approve the minutes from the January 31, 2008, meeting as amended by the Board.

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 approving the minutes from January 31, 2008, as amended.

The following edits were made to the minutes from the February 14, 2008, meeting:

Page 3, 6th paragraph – “Mr. Mithen stated that he had taken care of that problem by picking up any stock personally.” was changed to “Mr. Mithen stated that he had taken care of that problem by personally picking up any stock that was needed.”

Mr. Martin made a motion to approve the minutes from the February 14, 2008, meeting as amended by the Board.

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 approving the minutes from February 14, 2008, as amended.

The following edits were made to the minutes from the February 28, 2008, meeting:

Page 12 – Last paragraph – after the word Town – “without approval by the Planning Board” was added - Seabury

Mr. Martin made a motion to approve the minutes from the February 28, 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 of approving the minutes from February 28, 2008, as amended.

Chairman Seabury declared a break at 7:20pm calling the meeting back to order at 7:30pm.

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IV. PUBLIC HEARINGS FOR SCHEDULED APPLICATIONS

Mr. McInerney and Mr. Pacocha having arrived at the meeting, Chairman Seabury returned Mr. Houle and Mr. Martin to their seats as non-voting alternate members of the Board.

- 1. Case 221-8 (4/10/08, Deferred from 2/28/08): 1987 Nash-Tamposi Limited Partnership, 20 Trafalgar Square, Suite 602, Nashua, NH, requests an Appeal from an Administrative Decision issued by the Community Development Director dated December 3, 2007, which requires that both Site Plan Approval and a Conditional Use Permit be obtained from the Planning Board prior to installation of additional antennae at property located at 24 Flagstone Drive. [Map 221, Lot 8, Zoned Industrial, HZO Article XVIII, Sections 334-93, 334-95E, 334-96.1 & 2, Commercial Wireless Telecommunication, Radio Service and Receive and Receive-Only Facilities.]**

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

Chairman Seabury read aloud from a letter dated April 9, 2008, addressed to the Zoning Board of Adjustment as summarized below:

We respectfully request on behalf of our client, New Cingular Wireless PCS, LLC., through its' manager AT & T Mobility Corporation ("Cingular") that the Zoning Board of Adjustment allow Cingular to withdraw without prejudice its appeal from an Administrative Decision requiring both a Site Plan Approval and a Conditional Use Permit for the proposed co-location onto and next to the existing telecommunications tower located at 24 Flagstone Drive.

Ms. Davis stated that the applicant had been before the Board numerous times and asked Chairman Seabury if there were a limit on how many times an applicant could request a withdrawal without prejudice. Chairman Seabury replied that there was no limit.

Ms. Davis made a motion to allow the withdrawal without prejudice.

Mr. Pitre seconded the motion.

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

Ms. Davis	To allow the withdrawal without prejudice
Mr. Pitre	To allow the withdrawal without prejudice
Mr. McInerney	To allow the withdrawal without prejudice
Mr. Pacocha	To allow the withdrawal without prejudice
Mr. Seabury	To allow the withdrawal without prejudice

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

- 2. Case 192-17 (4/10/08): Empire Homes, Inc., 17 Elnathans Way, Hollis, NH, requests a Wetland Special Exception to allow three permanent wetland crossings to access the upland portion of Lot 17 and to bring the necessary utilities to the proposed units. Approximately 8,200 square feet total wetland impact and approximately 32,126 square feet total buffer impact. Also, two temporary crossings to bring water to the site. Approximately 595 square feet total wetland impact and approximately 3,981 square feet total buffer impact for property located at 68 Pelham Road, Hudson, NH. [Map 192, Lot 17, Zoned G, HZO Article IX, Section 334-33, Wetland Conservation District.]**

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

Chairman Seabury read aloud from a decision dated January 18, 2008, from the Conservation Commission as summarized below:

On January 18, 2008, the members of the Hudson Conservation Commission, heard case Map 192; Lot 17(Ridgewood Estates), concerning an application by Empire Homes, Inc., for a Wetland Special Exception for intrusion into the Wetland Conservation District to construct road and utilities access. The proposed temporary and permanent wetland impacts are as follows:

<i>Temporary Wetland Buffer Impact:</i>	<i>3,981 square feet</i>
<i>Temporary Wetland Impact:</i>	<i>595 square feet</i>
<i>Permanent Wetland Buffer Impact:</i>	<i>32,126 square feet</i>
<i>Permanent Wetland Impact:</i>	<i>8,200 square feet</i>

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Following the hearing of testimony by the applicant, the members of the Conservation Commission by a vote of 4-1 recommend to the Zoning Board of Adjustment that this Wetland Special Exception should be granted, with the following stipulations:

- 1. All conservation areas are to be marked with appropriate conservation signs at 100 feet intervals.*
- 2. The Town Engineer to provide careful oversight of all grading and blasting of ledge to prevent erosion effects on the wetlands.*
- 3. Use of construction equipment to be allowed in the Wetland Conservation District with subsequent restoration.*

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.

Chairman Seabury also read aloud a portion of a letter dated March 28, 2008, addressed to the Zoning Board of Adjustment, from John M. Cashell, Town Planner, as summarized below:

At its March 26, 2008, meeting, the Planning Board voted to send correspondence to the Zoning Board of Adjustment stating that the Planning Board had concerns relative to the requested Wetland Special Exception Permit Application by Ridgewood Estates.

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

Mr. Tony Basso of Keach-Nordstrom Associates, Inc., representing the applicant, addressed the Board, stating that the project known as Ridgewood Estates was a proposed 31unit single-family manufactured home park.

Mr. Basso further stated the applicant was proposing a single private road entering the site that would be approximately 2,500 feet long and would be serviced by municipal water and community septic systems. He also said that the roadway would be designed with a closed drainage system and storm water management areas.

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Mr. Basso stated that Lot 17, which was located in the General Zoning District, was approximately 40 acres in size, and was primarily a wooded lot with a rolling topography.

Mr. Basso then stated that approximately 35 acres of the developable portion of the lot was completely separated from the Pelham Road access by jurisdictional wetlands.

Mr. Basso stated that the applicant was proposing impacts to the wetlands on the way in which would allow access to the larger, developable portion of the property.

Mr. Basso stated that 8,200 square feet of permanent wetland impact, and approximately 32,126 square feet of buffer impact would be required to bring the necessary utilities to the proposed units and to provide access to the proposed leach fields.

Mr. Basso further stated that other temporary impacts were to access a water easement from the Hilindale subdivision to bring a water service to the proposed units – noting that 595 square feet of temporary wetland impact and 3,981 square feet of temporary buffer impact would be necessary.

Mr. Basso stated that the Conservation Commission voted to send a favorable recommendation to the Zoning Board of Adjustment for the approval of the requested Wetland Special Exception.

Mr. Basso also said that all of the spaces delineated on the property would not be on a wetland or a wetland buffer.

Mr. Basso stated that as a result of some of the discussions held with the Conservation Commission, the applicant had planned on setting aside 24.63 acres to be used as a conservation easement. He also said that out of those 24.63 acres, 19.75 acres would be upland and 4.88 acres would be wetland.

Mr. Basso stated that the New Hampshire Natural Heritage Inventory was contacted and had informed the applicant that no known records of threatened or endangered species within the project area existed.

Mr. Basso also stated that as part of the project approval process, a Standard Dredge and Fill Application would be submitted to the NH DES if the ZBA approved the request for the Wetland Special Exception.

Mr. Basso, addressing the concerns of the Planning Board, stated that he had met with that Board on numerous occasions, and although he had made significant changes to the

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plan in an effort to satisfy the Planning Board, that Board still had issues with the project itself.

Mr. Basso read aloud the criteria for granting a Wetland Special Exception as summarized below:

- 1. The proposed use and the temporary wetland crossings (for installation of a water line) are essential to the reasonable use of the main upland portion of Lot 17, which is outside of the Wetlands Conservation District. The main upland and developable portion of Lot 17 cannot be accessed from Pelham Road unless the project's road crosses the seasonal drainage way. The leach field areas are also separated from the proposed home sites by the wooded wetland.*
- 2. The applicant explored alternative designs for the project with the Planning Board. The proposed plan had the least amount of impacts to the wetlands and wetland buffers. Since the main portion of Lot 17 is developable, but separated from Pelham Road, there is no other reasonable alternative manner in which to access the acreage without crossing the wetlands.*
- 3. The design, construction methods, and maintenance methods for the project, including those involving the wetland and wetland buffer impacts, have been designed by the applicant's project engineers from Keach-Nordstrom Associates, Inc.*
- 4. The proposed impacts are primarily based on design criteria and not on economic considerations. The project design attempts to minimize wetland impacts, irrespective of road construction costs.*
- 5. The wetland crossings involve slopes and not retaining walls. The sloped areas can generally be traversed by wildlife. Culverts will accommodate smaller creatures who, along with larger creatures, may still traverse the slopes as noted above.*

Mr. Basso then read aloud from a portion of Article IX of the Hudson Zoning Ordinance, Section 334-33, as summarized below:

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The Hudson Wetland Conservation District was established to regulate the uses of the Town's natural resources in the interest of public health, safety, and general welfare.

The regulations under Section 334-33 are intended to achieve the following:

A. Prevent the contributions of pollution, degradation or impairment of surface water and groundwater resources.

The proposed residential development is designed with the least amount of wetland impact. Approximately 83% of the proposed impact is required simply to access the developable portion of the property. The remaining impact is required to provide maintenance access to the only suitable location for private septic systems.

B. Prevent the destruction or significant alteration of wetland areas.

The wetlands proposed to be impacted do not contribute to ground water recharge and flood mitigation due to their shape and location.

C. Prevent the unnecessary or excessive public expenditures for public services and utilities.

The only public utility proposed with the plan is the water service. The Planning Board was made clear during the Design Review Process that any water main extension proposed with the project would have to be privately maintained by the applicant or his assigns.

D. Preserve and enhance aesthetic values associated with Hudson's wetland areas.

The wetlands that would be impacted carry little aesthetic value.

E. Protect wildlife habitats, maintain ecological balance, and enhance ecological values.

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By providing large diameter culverts at each proposed crossing along with gently graded side slopes, we have created an easily traversed way through the proposed wetland area.

F. Protect rare and endangered species of flora and fauna.

The NH Natural Heritage Inventory was contacted they found no known records of rare or endangered species within the area.

G. Protect wetland areas from excessive sedimentation associated with construction.

An erosion and sedimentation control plan will be developed with the intent of limiting the potential for soil loss and associated receiving water quality degradation, both during and after the construction period.

H. Avoid the cost of constructing and maintaining massive containment and retaining devices at the public's expense.

The proposed project does not require the construction or maintenance of such containment or retaining devices at the public's expense.

I. Prevent damage to structures and abutting properties caused by inappropriate development in wetland areas.

The proposed design strives to appropriately develop the parcel outside of the on-site wetland areas and the associated buffer areas.

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.

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Ms. Davis asked what type of home would be constructed. Mr. Basso replied that they would be two bedroom single-family homes with a garage.

Mr. Pacocha asked if the proposed homes would be owned or rented. Mr. Basso replied that the applicant had not yet decided whether the property was going to be a condominium complex or a rental park.

Mr. Pitre asked how the wetland buffers would be marked. Mr. Basso replied that the buffers would be marked by signage on a stick in the ground every 100 feet.

Mr. Pitre commented that he felt that if the Board did allow the Wetland Special Exception, that a stipulation be imposed that would require the applicant to mark the wetland buffers every 50 feet rather than every 100 feet.

Chairman Seabury asked Mr. Basso to elaborate on how the proposal was not primarily based on economic considerations. Mr. Basso stated that the applicant had gone to great lengths and expense for proposal to affect the least amount of impact to the wetlands and the wetland buffers.

Ms. Davis made a motion to approve the Wetland Special Exception with the following three stipulations:

1. That the applicant conduct an independent engineering study of the current pumping station to determine its' issues and capabilities, that the developer pay for the study, the improvements, and/or the upgrades recommended as a result of that study.
2. That additional sheds or outbuildings would not be allowed within the 15 foot rear-yard setback and shall be no larger than 120 square feet in size. This stipulation was to be recorded in each of the property deeds.
3. The wetlands and the wetland buffers shall be clearly marked with the Conservation Commission decals at 50-foot intervals and, on spaces 19 and spaces 24 through 27, there shall be a post and rail fence installed with Conservation Commission decals on them.

Mr. Pacocha seconded the motion.

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Chairman Seabury asked Ms. Davis to clarify stipulation #2 as her original stipulation stated that no decks, sheds, or outbuildings would be allowed within the 15 foot rear-yard setback. Ms. Davis replied that she felt the property line was too close to the buffer and she felt such outbuildings would end up in the buffer at some point in the future. Ms. Davis also stated that she could clearly see numerous sheds and outbuildings in the backyards of the homes because the homes were most likely going to be on slabs and not have a basement for storage.

Chairman Seabury stated that he felt it was not reasonable to tell the residents of the proposed homes that they could not have a deck or shed.

Ms. Davis then changed stipulation #2 as follows:

2. Additional sheds or outbuildings would not be allowed within the 15 foot rear-yard setback and shall be no larger than 120 square feet in size; this stipulation was to be recorded in each of the property deeds.

Mr. Pacocha agreed to the change.

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

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

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

Chairman Seabury declared a break at 9:25pm calling the meeting back to order at 9:35pm.

3. **Case 222-16 (4/10/08): The Sign Center, 40 Orchard Street, Haverhill, MA, on behalf of Burger King Corporation of Miami, FL, requests a Use Variance to allow a second wall sign for property located at 219 Lowell Road, Hudson, NH.**

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[Map 222, Lot 16, Zoned Business, HZO Article XII, Section 334-63, Business and Industrial Building Signs.]

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

Chairman Seabury asked Mr. Sullivan to explain why the matter was before the Board. Mr. Sullivan explained that the Burger King located on Lowell Road in Hudson was being renovated and they had requested permission for an additional sign on the building. Mr. Sullivan stated that the ordinance only allowed for one sign and therefore, the applicant was present to request a Use Variance to allow for the second sign.

Mr. Sullivan also stated that he had investigated the site at Mr. McInerney's request and advised the management that the additional signs in the windows on the property had to be removed.

Chairman Seabury noted that a picture with a full description of the proposed sign was absent from the application.

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

Mr. Jason Kahn of the Sign Center, representative of the applicant, addressed the Board, stating that the proposed sign was a channel LED sign with a logo sitting in front of it which was 30 inches tall with 24 inch LED letters. Mr. Kahn further stated that the LED portion of the sign was a total of 50 square feet of the sign.

Mr. Kahn stated that the applicant felt that the logo portion of the sign was extremely important and that brand images provided company recognition.

Mr. Kahn stated that the request for the sign was to support the brand and the overall architecture of the Burger King restaurants. Mr. Kahn also stated that the typical Burger King Restaurant branding utilized all four elevations for signage and that the present request was to add only one additional sign.

Mr. Kahn stated that the surrounding properties would not experience a diminution of value due to the sign because it was in keeping with the buildings architecture and existing brand, and the property was located in a commercial zone.

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Mr. Kahn stated that the proposed use would not be contrary to the public interest because the sign would have helped mark the location in a high traffic area.

Mr. Kahn stated that the request would do substantial justice because it would come as close to representing the property owner's brand standard while being respectful to its neighbors, and the Town of Hudson's Zoning Ordinance.

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.

Ms. Davis asked what type of illumination the proposed sign would have. Mr. Kahn replied that the sign would be an LED sign, but that it would not be a message center.

Mr. McInerney stated that he was concerned with the fact that the Burger King Corporation had not adhered with the by-laws of the Town in the past. Mr. Sullivan stated that he had contacted the Burger King Corporation at the corporate level and he was assured that the management at the local level would have a clear understanding of what signage was and was not allowed.

Ms. Davis asked if the red band on the top of the building was illuminated. Mr. Kahn replied that he was not familiar with the architecture of the building and was not sure.

Mr. Sullivan replied that he was sure there had not been a sign permit issued for that, but that he was not sure either, and he would find out and follow-up.

Ms. Davis commented that she wanted to be assured that the band was not illuminated as the Board had recognized that once a sign was illuminated, it became part of the branding signage.

Mr. McInerney stated that the sign did not produce any taxable revenue and he said he felt that signs in general were self serving for the corporation and not serving the Town.

Mr. McInerney stated that he felt the property had enough signs on it and he said he was not in favor of the application.

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Ms. Davis stated that one of the criteria for a Use Variance was that there needed to be a special condition on the property and asked the applicant to explain what the special condition was on the property. Ms. Davis also stated that she felt Burger King had the luxury of a very large lot and had very good exposure. Mr. Kahn replied that the special condition on the property was that the applicant had the option of placing a larger, less visually attractive, permanent sign on one side of the building, but they chose a smaller sign in an effort to stay in keeping with what the Town of Hudson allowed.

Ms. Davis made a motion to deny.

Mr. McInerney seconded the motion.

Ms. Davis, speaking on her motion, stated that the Town ordinances superseded any type of corporate recognition and the reason the Town imposed the one sign per building rule was to control visual blight. Ms. Davis also stated that the property already had perfect exposure and she said she did not feel the applicant met the criteria because it was not in the best interest of the public, and it did not have special conditions on the property that warranted a Use Variance.

Mr. McInerney, speaking on his second, stated that the corporation had already been in violation of the ordinance, that it did not meet the criteria, and that the property already had too many signs on it.

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

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

Chairman Seabury reported that, there having been five votes to deny the Use Variance, the motion had carried.

4. **Case 200-40 (4/10/08): Denise True, 81 Bush Hill Road, Hudson, NH, requests the following:**

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A. An Area Variance to allow the subdivision of one lot into two lots. One lot would be conforming, comprising of 1.2 acres and containing 150 feet of frontage. The other lot would be non-conforming, comprising of 4.5 acres and containing 36 feet of frontage, where 150 feet of frontage is required. [Map 200, Lot 40, Zoned General, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]

B. A Wetland Special Exception to fill approximately 690 square feet of wetlands and approximately 3,250 square feet of wetland buffer to allow the driveway for the proposed 4.5 acre lot. [Map 200, Lot 40, Zoned General, HZO Article IX, Section 334-33, Wetland Conservation District.]

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

Mr. Pitre announced that he would step down from the case as he had voted in favor of the request in past, and since that vote he had become friendly with the applicant and did not feel it was appropriate to stay seated.

Chairman Seabury seated Mr. Houle in place of Mr. Pitre, who was excused from the case.

Chairman Seabury asked Mr. Sullivan to explain why the matter was before the Board. Mr. Sullivan replied that the Board had approved the Area Variance in June 2006, and that the approval had expired in June 2007.

Mr. Sullivan further stated that he had informed the applicant that a Wetland Special Exception had to be obtained in addition to the Area Variance and the applicant was present to discuss both of the requests.

Mr. Brad Westgate from Weiner and Bennett, LLC, legal representative of the applicant, addressed the Board, stating that the applicant wished to subdivide the lot which would allow for a single-family home to be constructed on a 4.5 acre, and that lot would only have 36 feet of frontage.

Attorney Westgate stated that the applicant was requesting the Wetland Special Exception because the access driveway for the property crossed over a small wetland area.

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Attorney Westgate also stated that the primary abutting properties were residential and the largest abutting property was the circumferential highway.

Attorney Westgate stated that the total available amount of frontage on the property “that counted” was 186 feet.

Attorney Westgate stated that the proposed lot would be designed to accommodate one single-family dwelling and would be significantly set back from Bush Hill Road. He also noted that it would accommodate its own septic system and well.

Attorney Westgate stated that the applicant had gone before the Conservation Commission and had received a favorable recommendation for the Wetland Special Exception.

Attorney Westgate 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 a 4.5 acre lot for a single-family dwelling was a reasonable use when considering the property's unique setting. The property's frontage along land owned by the State of New Hampshire does not count as “frontage” under the present definition of frontage in the Hudson Zoning Ordinance. At the time the property was created by the subdivision plan, frontage along the State of New Hampshire land would still count as “frontage” under the Hudson Zoning Ordinance.*
- 2. The general purposes of the ordinance include conserving property values, avoiding undue concentration of population, both of which are frustrated by the frontage requirement in this circumstance, when the 4.5 acre lot will function in the same fashion it would as if it had full frontage.*
- 3. There are no public rights on this property, nor are there any private rights to be injured.*
- 4. The benefit sought cannot be achieved by any other method reasonably feasible because the Community Development Director made an administrative decision confirming that the parent tract may not be subdivided without the granting of the variance.*

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5. *Granting the variance would do substantial justice because a single-family dwelling on an oversized lot, which lot is larger than most lots in its immediate area, and which use is similar to and compatible with the neighboring single-family uses, and where the lot frontage will function as adequate given the nature of the adjacent state-owned land.*

Attorney Westgate stated that the ZBA had granted the variance to allow for the creation of the 4.5 acre parcel with 36 feet of frontage on November 18, 2004, and on June 15, 2006.

Attorney Westgate then distributed copies of letters to the Board from Keller-Williams Realty that stated it was their opinion that the approval of the variance would not adversely affect the property values of surrounding properties. Attorney Westgate also distributed copies of two letters from abutters who resided on Bush Hill Road which stated they were in favor of the applicant.

Chairman Seabury read aloud from a Decision to Recommend a Wetlands Special Exception from Timothy Quinn, Chairman of the Hudson Conservation Commission as summarized below:

On December 10, 2007, the members of the Hudson Conservation Commission heard Case 200-40, concerning an application by M.J. Grainger Engineering, Inc., and Denise True (owner) for a Wetlands Special Exception for intrusion into the Wetland Conservation District to construct a retaining wall, a 25 foot culvert piping to allow drainage, and a driveway for a single-family home on a 4.5 acre lot. Following the hearing of testimony by the applicant, the members of the Commission by a vote of 5-0-1 recommend to the Zoning Board of Adjustment that this Wetlands Special Exception should be granted, with the following stipulations:

1. *Use of construction equipment will be allowed to be used in the wetland buffer with subsequent restoration. All restoration of the area disturbed shall comply with the latest edition of the following NH Best Practices as applicable: Best Management Practices to Control Non-Point Source Pollution: A Guide for Citizens and Town Officials (NH Department of Environmental Services, 1994).*

2. *The Town Engineer to inspect all restoration work.*

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3. *The wetland buffers are to be marked at 100-foot intervals and approved by the Town Engineer.*
4. *Provide for a 10-foot easement on each side of the driveway for construction disturbance. The construction engineer shall mark the area and the Town Engineer shall validate the dimensions.*

Chairman Seabury asked if there were anyone else present who wished to speak in favor with regard to the application.

Mr. Michael Grainger, of MJ Grainger Engineering, LLC, addressed the Board, stating that the impact to the wetland was temporary for the purpose of construction and the New Hampshire Natural Heritage Inventory had been contacted and they found no endangered species or wildlife within the area.

Mr. Grainger read aloud from the Criteria for Granting a Wetlands Special Exception as summarized below:

1. *The proposed use is a driveway to service a single-family home to be constructed on the proposed 4.5 acre lot. The use is essential to service the lot and make use of the 1.75 acres of useable upland property.*
2. *There is no reasonable alternative to the proposed use that does not affect the Wetland Conservation District since the Town's regulations require that an individual residential lot be serviced by its own driveway. Given the location of the drainage ditch and the proposed lot's frontage available for the driveway, this is the only feasible location.*
3. *The design, construction, and maintenance methods were prepared by a professional engineer and include restoration requirements.*
4. *The proposed use is not based primarily on economic conditions, but it is fundamental to allow for the individual driveway to service the proposed single-family dwelling.*
5. *Given the minimal nature of the wetland impact and its location adjacent to Bush Hill Road, there is no interference with the free flow of wildlife along the wetland crossings or impact area.*

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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.

Mr. Eric Crivac, 159 Wasson Road, an abutter, addressed the Board, stating that his home was surrounded by many wetlands and the Community Development Department had informed him that a variance would have to be obtained before anyone could construct anything.

Mr. Crivac stated that the proposed house would basically be in his backyard. Mr. Crivac also stated that he had three wells on his property searching for water to supply his home and he was concerned that the new construction would negatively influence his water source.

Mr. Crivac was also concerned with the amount of frontage on the proposed lot – noting that 36 feet was a huge difference from the 150 feet which was allowed.

Mr. Rich Stratton, 161 Wasson Road, an abutter, addressed the Board, stating that he had lived in his home for ten years and he bought the home with the understanding that the surrounding property would remain as it was. Mr. Stratton stated that one of the reasons he bought his property was because he wanted to live in the woods and he did not want another house to be visible from his property.

Mr. Stratton stated that he felt the proposed construction would create a public nuisance, it was not within the public's best interest, and it went against the ordinance.

Mr. Ray Shuman, 71 Bush Hill Road, an abutter, addressed the Board, stating that he was concerned with the disturbance to the wetlands and was also concerned with the proposed property taking water from his well.

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

Chairman Seabury asked if there were any members of the Board who had questions or comments.

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Ms. Davis asked Mr. Grainger to go over the 9 foot retaining walls and explain where it would be placed.

Mr. Grainger explained that the 9 foot retaining wall would be located at the beginning of the road and it would be 9 feet high for approximately 55 feet and then gradually get smaller.

Mr. Grainger stated that there was a significant distance between the proposed house and septic system and the wetlands and buffer.

Mr. Grainger stated that the proposed leach field was more than the state mandate of 75 feet from a wetland and it would not affect surrounding wetlands.

Mr. Grainger stated that the addition of one more well on the 4.5 acre lot would not have any impact on any downstream lots.

Attorney Westgate noted that the three opposing abutters were not direct abutters, but abutters that lived within 200 feet of the applicant. Attorney Westgate also stated that the proposed house would be further away from the three abutters than the existing home was.

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

Chairman Seabury asked if there were anyone else present who wished to speak for the second and final time in opposition or neutrally with regard to the application.

Mr. Stratton addressed the Board and stated that he did not agree that 36 feet of frontage should be allowed when the Town required 150 feet of frontage.

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

Chairman Seabury declared the matter before the Board.

Mr. Houle asked what the outbuilding on the property was. Mr. Grainger replied that it was the applicant's 8 x 8 shed used for storage. Mr. Grainger further replied that the shed

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was not located on the applicant's property, but that it would be moved to a location that was on her property.

Ms. Davis commented that the applicant had every right to construct the proposed single-family home as it was a reasonable use of the land. Ms. Davis also stated that the hardship on the land was the fact that the circumferential highway took a portion of the applicant's frontage.

Ms. Davis stated that the applicant's proposal was the least impact of all possible situations.

Mr. McInerney stated that it was his opinion that if the Board denied the application, Attorney Westgate would likely have taken the matter to court and that Attorney Westgate would probably win.

Case 200-40 (4/10/08) – Request for an Area Variance

Mr. McInerney made a motion to approve the Area Variance with the following stipulations:

1. That no further development was allowed on the newly created larger lot.
2. That only one single-family home is constructed on the newly created larger lot.
3. That there shall be no shared or common driveway.
4. That the existing shed that was on someone else's property had to be moved and made compliant with the Town's regulations with respect to setbacks.

Mr. Pacocha seconded the motion.

Mr. McInerney, speaking on his motion, stated that the proposed use would not be contrary to the public interest, that denying the variance would result in unnecessary hardship on the property, that the proposed use would be comparable with the spirit of the ordinance, that granting the variance would do substantial justice to the applicant, and there would be no diminution of the property values of surrounding properties.

Mr. Pacocha, speaking on his second, stated that he felt there was a hardship on the property due to the frontage that was taken by the circumferential highway and it met the criteria required by Boccia.

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

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

Chairman Seabury reported that, there having been five votes to approve the Area Variance with the noted stipulations, the motion had carried.

Case 200-40 (4/10/08) – Request for a Wetland Special Exception

Mr. Pacocha made a motion to approve the Wetland Special Exception subject to the stipulations made by the Conservation Commission.

Ms. Davis seconded the motion.

Mr. Pacocha, speaking on his motion, stated that he felt the proposed impact was essential to the reasonable use of the land, there was no other reasonable alternative, and the Conservation Commission had provided a favorable recommendation.

Ms. Davis, speaking on her second, stated that she felt the Wetland Special Exception was necessary for the reasonable use of the land, that the applicant had worked with the Conservation Commission to minimize the impact to the wetlands, and it was the least intrusive solution.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to approve the Wetland Special Exception with the noted stipulations of the Conservation Commission, 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

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Chairman Seabury reported that, there having been five votes to approve the Wetland Special Exception with the noted stipulations of the Conservation Committee, the motion had carried.

V. OTHER BUSINESS

Mr. Sullivan stated that the individual who had sent an anonymous letter to Chairman Seabury with regard to the child daycare licensing issue had since sent another signed letter to the Community Development Department, and the matter was in the process of being investigated.

Mr. Sullivan stated that the next scheduled meeting would be held on Thursday, May 8, 2008, as two of the Board members would not be available to attend the meeting on Thursday, April 24, 2008.

Mr. Coutu, liaison from the Board of Selectmen, stated that the BOS wished to meet with each Board and each committee in the Town in order to ascertain what the BOS could do to make their respective jobs easier for them.

Ms. Davis stated that she had some documents for the Board to review prior to the joint meeting with the Planning Board and asked the members to please provide their input to her via e-mail prior to that joint meeting.

The Board collectively decided that Mr. Coutu, the liaison from the Board of Selectmen would be welcome to ask questions and make comments on cases only up and until Chairman Seabury declared the matter before the Board.

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VI. ADJOURNMENT

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

Mr. Pitre seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 12:10am.

Date: April 8, 2008

Maryellen Davis, Acting Chairman

Recorder: Trish Gedziun