

**HUDSON ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
March 27, 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, March 27, 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: Mike Pitre (Excused)

Alternates

Present: Kevin Houle and Normand Martin

Alternates

Absent: Marilyn McGrath (Excused)

Staff

Present: Sean Sullivan, Community Development Director

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 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.

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Chairman Seabury pointed out that the Board allowed rehearings only if collectively convinced by a written request that the Board might have made an illogical or illegal decision or if there were positive indications of new evidence that for some reason, was not available at the hearing.

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

III. APPROVAL OF MEETING MINUTES

The following edits were made to the minutes from the January 17, 2008, meeting:

1. Page 5 – The first sentence was re-worded as follows: “Ms. Davis commented that she was concerned with the fact that the case was advertised as a proposed attached garage and the plan clearly showed not only a proposed garage, but also an addition to the existing house over proposed garage.” – Davis
2. Page 5 – Verbiage in the last line was added as follows: “and that, because of that, it was important to re-notice the case properly and get better plans of the proposed new addition.” – Davis
3. Page 7, 4th paragraph – Vice Chairman Davis then seated Mr. Houle in place of herself was changed to “Vice Chairman Davis then seated Mr. Houle in place of Mr. Seabury.” – Seabury
4. Page 8 – The first sentence was re-worded as follows: “Ms. McGrath stated that, although not currently seated, she should have stepped down at the beginning of the case as it was going to be heard by the Planning Board in the future.” – Davis
5. Page 9, 6th paragraph – All of the above is conditional upon the Hudson Zoning Board of Adjustment’s approval “of an Area Variance.” – was added – Seabury
6. Page 10, 2nd paragraph, 2nd line – the words “made a motion” was deleted. – Seabury
7. Page 14, 4th paragraph from the bottom – Mr. Pitre withdrew his motion was changed to “Mr. Pitre withdrew his second” – Seabury

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8. Page 14, 6th paragraph – Mr. McInerney was looking for information regarding the “Assessor’s Field Cards and if the Assessor’s Office were applying taxes on signs.” – McInerney
9. Page 15, 3rd paragraph from the bottom – Chairman Seabury stated that the motion had failed due to the lack of a second was changed to “No second being offered, Chairman Seabury stated that the motion had failed due to the lack of a second.” – Seabury

Ms. Davis made a motion to accept the minutes from the January 17, 2008, meeting as amended by the Board.

Mr. McInerney seconded the motion.

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

IV. PUBLIC HEARINGS FOR SCHEDULED APPLICATIONS

1. **Case 110-39 (3/27/08): Steven L. Chasse, 8 Christine Drive, Hudson, NH, requests a Use Variance to allow expansion of an existing non-conforming (manufacturing) use. [Map 110, Lot 39, Zoned Business, HZO Article VII, Sections 334-29, Expansion or enlargement of non-conforming uses.]**
2. **Case 110-37 & 38 (3/27/08): B&D Land Development, 70 Old Derry Road, Hudson, NH, requests a Use Variance for Lot 38 to permit a proposed 12,000 square foot manufacturing/bulk storage building in the Business Zoning District. Manufacturing is not a permitted use in the Business Zoning District. Lot 37 will contain parking for the manufacturing/bulk storage use taking place on Lot 38. Property located at 10 & 14 Christine Drive. [Map 110, Lots 37 & 38, Zoned B, HZO Article V, Section 334-21, Table of Permitted Principal Uses.]**

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

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

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Mr. Tony Basso of Keach-Nordstrom Associates, Inc., representing the applicant, addressed the Board, stating that the applicant's current manufacturing and office facilities were located on Robinson Road.

Mr. Basso discussed the details of the plan, referring to a copy of the plan affixed to the meeting room wall.

Mr. Basso stated that the applicant was acquiring Lot 38 and the majority of Lot 37. Mr. Basso further stated that the applicants' intention was to move the manufacturing and office facilities from Lot 39 to Lots 37 and 38 and that the site would be a little over 6 acres when it was complete.

Mr. Basso stated that an industrial use was an allowed use in the past but that the use was eliminated approximately one year ago. Mr. Basso also stated that many of the surrounding properties were of an industrial use.

Mr. Basso stated that the applicant had a significant growth in his business – noting that the number of employees had increased from 50 to 75 and that was the reason for the expansion.

Mr. Basso stated that the applicant would ensure that the lots would be kept much cleaner than they were presently kept, and he said he felt that an industrial use was in character with much of the neighborhood, and any houses that may have been occupied were not owner occupied.

Mr. Basso read aloud a portion of his request for a Use Variance as summarized below:

1. Denial of the variance would result in unnecessary hardship for the plaintiff because the proposed reasonable use of the property is the reasonable expansion of a use that exists in this location today. Special conditions of the property include the current condition and appearance of Lots 37 and 38, along with the uses within the immediate proximity of the proposed use.

2. No fair and substantial relationship exists between the general purposes of the Zoning Ordinance and the specific restrictions on the property because the most appropriate use of the site is an industrial use, given the surrounding land uses and the proximity to any high traffic flows. Failure to grant the requested variance would contradict the general purpose of the ordinance, to encourage the most appropriate use of the land given the general character of Christine Drive.

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3. The variance would not injure the public or private rights of others because there are no public or private rights in question with respect to this application. Any private expectations, such as those of abutters, are not effected because the characteristics of the neighboring properties are industrial.

4. No diminution in the value of the surrounding properties would occur because the site is located away from any heavily traveled corridors and is within an industrial park surrounded by other industrial uses similar in nature to the proposed use. Additionally, the site is located away from any residential zones or uses.

5. The proposed use would be compatible with the spirit of the ordinance because the industrial park was developed under the standards of the old Business Zone when industrial uses were allowed.

6. The proposed use will not be contrary to the public interest because allowing the business reasonable growth will create jobs for the area, and create an additional tax base which directly benefits the Town of Hudson.

7. Granting the variance would do substantial justice because permitting this manufacturing business to expand in the existing Christine Drive Industrial Park, along side like industrial uses, does substantial justice.

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

Mr. William Tate, 271 Nashua Road, Londonderry, NH, addressed the Board, stating that he and his brother were co-owners of the property as well as co-owners of B&D Land Development Incorporated.

Mr. Tate stated that he and his brother purchased the property in 1977 and at that time, the property was zoned general which meant any use was allowable.

Mr. Tate stated that the zoning was changed to a commercial use sometime in the 1980's. Mr. Tate further stated that the commercial use was eliminated in 2006.

Mr. Tate stated the Mr. Chasse started his business as a one man operation in a barn and he presently had 50 employees and wanted to hire an additional 25.

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Mr. Tate stated that he felt Mr. Chasse had done a remarkable job with his business and had tremendous respect for him.

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. McInerney asked Mr. Sullivan if the site had any past zoning or code violations on it. Mr. Sullivan replied that it had not.

Mr. McInerney stated that the applicant was expanding employment from 50 to 75 and said he felt that the Board should definitely approve the variance.

Ms. Davis asked how long the existing business had been there. Mr. Basso replied that although he could not be sure, that he did know it was there significantly longer than eight years.

Ms. Davis asked the applicant to clarify that the same type of manufacturing, which was fabricating steel, would occur in the new properties as the existing property. Mr. Basso replied that it would remain the same.

Ms. Davis asked Mr. Basso to explain what the crane would be used for. Mr. Basso explained that it was not a typical crane with a high boom that lifts things, but an arch (or a Gantry Crane) that ran along a track which would enable it to carry steel off a truck and move it. Mr. Basso further explained that there would be one crane located inside the building and one on the outside – noting that the Gantry Crane would not be as tall as the building and therefore, would not be visible from Robinson Road.

Ms. Davis asked Mr. Basso what type of noise the crane made. Mr. Basso replied that it was relatively quiet and was run by an electric motor.

Chairman Seabury asked Mr. Basso how the applicant intended on cleaning up the properties as their existing state was deplorable. Mr. Basso replied that other businesses' cars would not be allowed to park on the property, that all debris would

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be removed, and the applicant would adhere to the landscaping standards that the Town had imposed. Mr. Basso stated that the applicant had intended on planting 122 shrubs and 19 trees.

Mr. Houle commented that he felt the property looked deplorable as well.

Chairman Seabury asked if there were any other member of the Board that had questions or comments. There were none.

Mr. McInerney made a motion to approve Case 110-39.

Mr. Pacocha seconded the motion.

Mr. McInerney, speaking on his motion, stated that he felt the expansion of the applicant's business, the proposed landscaping, and the increased employment opportunities conformed with the zoning purposes as well as being a benefit to the entire community.

Mr. Pacocha, speaking on his second, stated that he agreed with what Mr. McInerney had stated.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to approve the Use Variance 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 motion had carried.

Mr. McInerney made a motion to approve Case 110-37 & 110-38 with the stipulations that the cars and debris be adequately and promptly removed from the premises, that the landscaping should, minimally, meet the standards of the Town, and that all three lots identified at Lots 37, 38, & 39 would be consolidated to become one lot.

Mr. Pacocha seconded the motion.

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Mr. McInerney, speaking on his motion, stated that the property would produce additional taxes for the Town as well as additional job opportunities. Mr. McInerney also stated that the removal of the existing debris and the addition of the proposed landscaping would be a benefit to the community.

Mr. Pacocha, speaking on his second, stated that his comments were the same as his comments in the first case - 110-39.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to approve the Use 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 motion had carried.

Chairman Seabury declared a break at 8:33pm calling the meeting back to order at 8:44pm.

- 3. Case 105-5, 105-6, & 105-7 (3/27/08): Robert Demers, c/o GNM Corporation, 172 Kinsley Street, Nashua, NH, requests a Wetland Special Exception to allow installation of a water main within the 50-foot wetland buffer for property located at 315, 317, & 321 Derry Road, Hudson. [Map 105, Lots 5, 6, & 7, Zoned Business, HZO Article IX, Section 334-33, Wetland Conservation District]**

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.

Mr. Tony Basso of Keach-Nordstrom Associates, Inc., representing the applicant, discussed details of the plan, referring to a copy of the plan affixed to the meeting room wall.

Mr. Basso stated that the applicant wanted to install a water main on Derry Road to service the new St. Joseph's Family Medical Center on Robinson Road.

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Mr. Basso stated that a portion of the wetland buffer on Derry Road would have to be disturbed in the process of installing the water main.

Mr. Basso stated that both the Conservation Commission and the Planning Board did not have any issues with the temporary disturbance.

Mr. Basso also stated that he had been in contact with the New Hampshire Heritage Inventory Bureau and they informed him that no endangered species were found.

Mr. Basso further stated that the wetlands were mapped along the route to ensure that it was the only impact. He also noted that the disturbance would be in the shoulder of the road and not on the pavement as it was a state highway.

Mr. Basso stated that the water main would service the new 30,000 square foot medical office building and that the applicant would be going before the Planning Board on April 9, 2008.

Mr. Basso stated that it would be a temporary impact –noting that after the water main was placed, the area would be loamed and seeded to allow the grass to grow back.

Mr. Basso also stated that it would be a municipal water main which would be of a benefit to other areas of the Town and fire hydrants would also be installed.

Chairman Seabury stated that the Conservation Commission had recommended that the Zoning Board of Adjustment vote in favor the request with the following stipulation:

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.

Chairman Seabury read aloud a letter dated March 13, 2008, addressed to the Zoning Board of Adjustment from John M. Cashell, Town Planner, as summarized below:

Subject: St. Joseph's Medical Center – ZI#02-08

Purpose of plan: To depict wetland buffer impact associated with a waterline extension along NH Route 102 for use on Map 105, Lot 12, Planning Board

Input to the ZBA

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Dear Zoning Board of Adjustment:

At its March 12, 2008, meeting the Planning Board voted to forward correspondence to the Zoning Board of Adjustment, stating that the Planning Board has no planning concerns relative to the requested Wetland Special Exception by St. Joseph's Medical Center.

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.

Ms. Davis asked if pumping stations would be required. Mr. Basso replied that Pennichuck Water had informed him that although they would not require a pumping station, they would require a metering pick.

Mr. Leo Bernard, Chairman of the Water Utility Committee, stated that although there would be a meter installed, it would not be located anywhere near the wetland or the wetland buffer.

Chairman Seabury asked if there were any other members of the Board who had questions or comments. There were none.

Ms. Davis made a motion to approve with the stipulation noted by the Conservation Commission.

Mr. Houle seconded the motion.

Ms. Davis, speaking on her motion, stated that she felt the application met all of the requirements of the ordinance, that it was a minimal temporary intrusion to the buffer, and approvals were made by the Conservation Commission, the Planning Board, and the State of New Hampshire.

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

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

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

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

V. REQUEST FOR REHEARING

- 1. Aranisian Oil Company, Inc., c/o Robert Welts, Esq., PO Box 507, Nashua, NH, requests a rehearing of a Zoning Board of Adjustment decision, dated January 17, 2008, which denied a request for an Appeal from an Administrative Decision.**

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 Attorney Welts had advised him that he was going to file a request for a rehearing of the ZBA decision which denied his request from an Appeal of an Administration Decision on January 17, 2008. Mr. Sullivan further explained that he received the request for a rehearing on February 19, 2008, and that he had subsequently had a conversation with the Town Attorney.

Mr. Sullivan stated that the Town Attorney's recommendation was that the Board should table the request until the next meeting, April 10, 2008, because at that time, the issue would likely be moot as he was unaware of anyone filing an appeal of the decision rendered by the Board.

Mr. Martin stated that he felt the Board should not consider the Request for Rehearing because the request was filed on February 19, 2008, which was the 33rd day after the deadline of their appeal – noting that the applicant's 30th day would have been on February 16, 2008. Mr. Martin stated that the RSA 677.2:2 states that an applicant has 30 calendar days in which to file a Request for Rehearing.

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Ms. Davis asked if anyone had contacted Attorney Welts to find out if he wished to withdraw the request. Mr. Sullivan replied that Attorney Welts advised him that he did not wish to withdraw the request.

Ms. Davis made a motion not to accept the application for a rehearing on the grounds that it was filed too late.

Mr. Pacocha seconded the motion.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion not to accept the Request for Rehearing on the grounds that it was filed too late, and to record the members' votes, which were as follows:

Ms. Davis	Not to accept
Mr. Pacocha	Not to accept
Mr. McInerney	Not to accept
Mr. Houle	Not to accept
Mr. Seabury	Not to accept

Chairman Seabury reported that, there having been five votes not to accept, the motion had carried.

VI. OTHER BUSINESS

Chairman Seabury read aloud a letter which he received that was unsigned and had no return address as summarized as follows:

Here is a list of in-home child care providers that have broken their zoning permits by taking too many children other than what their zoning permits specifies they can have.

Chairman Seabury indicated that the author of the letter listed seven such providers but declined to read those names into the record.

Some of these providers have been found multiple times taking too many kids or infants.

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You have the right to pull zoning permits, instead of punishing every new person who wants to become a provider.

Chairman Seabury pointed out that it was not true that the ZBA can pull zoning permits.

Use these people as an example. If one doesn't follow the rules of their zoning permit then it will get pulled. You will be weeding out a lot of the bad providers and setting precedence for quality child care. Look these violations up on the NH DCCL website and then click on child care search and then click on Hudson.

Why is the ordinance enforcer not on top of this and doing his job?

Chairman Seabury stated that, although unsigned letters received by the Community Development Department were usually thrown out, he had done a little research and discovered that all seven providers on the list had been, at one time or another, cited by the State of New Hampshire.

Chairman Seabury stated that it appeared that at least one provider may have still be in violation and asked Mr. Sullivan to follow-up.

After a lengthy discussion with regard to the Board requiring Certified Plot Plans for specific requests, the Board initially decided as stated below.

Certified Plot Plans are not required for the following: (To-scale drawings however, are required)

- A. Temporary structures like above the ground pools, decks, and sheds.
- B. Home Occupation Special Exceptions that will not have additional accessory structures built or structural changes to an existing home.

After additional discussion, Mr. McInerney stated that he felt the Board needed to put more thought into the wording of the requirements for Certified Plot Plans vs. to-scale drawings, and discuss it further at the next meeting.

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VII. ADJOURNMENT

All scheduled items having been processed, Ms. Davis 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 10:03 p.m.

Date: April 8, 2008

Maryellen Davis, Acting Chairman

Recorder: Trish Gedziun