

**HUDSON ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
February 28, 2008**

I. CALL TO ORDER

Chairman J. Bradford Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:30pm on Thursday, February 28, 2008, in the Community Development Meeting Room in the Town Hall basement. Chairman Seabury then requested Clerk Martin to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

Present: William McInerney, James Pacocha,
Michael Pitre, and J. Bradford Seabury

Members

Absent: Maryellen Davis (Excused)

Alternates

Present: Normand Martin and Marilyn McGrath

Alternates

Absent: Kevin Houle (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. Chairman Seabury pointed out that the Board allowed rehearings only if collectively

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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. Martin in place of Ms. Davis, who was excused.

III. PUBLIC HEARINGS FOR SCHEDULED APPLICATIONS

1. **Case 221-8 (2/28/08, Deferred from 1/24/08): 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 the installation of additional antennae at property located at 24 Flagstone Drive, Hudson, NH. [Map 221, Lots 8, Zoned Industrial, HZO Article XVIII, Sections 334-93, 334-95 E, 334-96.1 & 2, Commercial Wireless Telecommunication, Radio Service and Receive-Only Facilities.**

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

Ms. McGrath stepped down from the case as she was a full voting member of the Planning Board.

Chairman Seabury read aloud a portion of a letter dated February 20, 2008, addressed to himself, from Scott Lacy of Anderson & Kreiger, LLP. as follows:

We respectfully request on behalf of our client, Cingular Wireless PCS, LLC. through its' manager AT & T Mobility Corporation, Cingular, that the Appeal from an Administrative Decision requiring both Site Plan Approval and a Conditional Use Permit for the proposed location onto and next to the existing telecommunications tower located at 24 Flagstone Drive pending before the Zoning Board of Adjustment and scheduled for the February 28, 2008, meeting be deferred for at least a month.

On February 13, 2008, the Planning Board granted Cingular's application for a Conditional Use Permit and Site Plan Approval, which was submitted all rights reserved. We have been informed that the notice of that decision was sent out today, and that the Planning Board would be signing the written decision at its next meeting. To allow for the filing of

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the decision and expiration of the appeal period, we request that the pending matter before the ZBA be deferred for at least a month.

At that time, we would evaluate whether to proceed with the pending application or seek to withdraw it.

Mr. Martin made a motion to defer the case, date specific, to April 10, 2008.

Mr. Pitre seconded the motion.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to defer the case, date specific, to April 10, 2008, and to record the members' votes, which were as follows:

Mr. Martin	To defer
Mr. Pitre	To defer
Mr. McInerney	To defer
Mr. Pacocha	To defer
Mr. Seabury	To defer

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

- 4. Case 222-16 (2/28/08): Richard Cook, P.O. Box 1073, Lebanon, NH, on behalf of the 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. [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.

Ms. McGrath remained stepped down from this case, as she was a full voting member of the Planning Board.

Chairman Seabury read aloud a portion of a letter dated February 27, 2008, addressed to himself, from Bowditch and Dewey as follows:

This office has been retained to represent the Burger King Corporation. We respectfully withdraw the above mentioned application for a variance, which is scheduled to go before the Board tomorrow, February 28, 2008.

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Mr. Martin made a motion to accept the request for withdrawal without prejudice.

Mr. Pitre seconded the motion.

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

Mr. Martin	To accept the withdrawal
Mr. Pitre	To accept the withdrawal
Mr. McInerney	To accept the withdrawal
Mr. Pacocha	To accept the withdrawal
Mr. Seabury	To accept the withdrawal

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

Chairman Seabury asked Mr. Sullivan to inspect the property located at 219 Lowell Road and count the number of existing signs. Chairman Seabury further stated that he felt there were signs on the property that were not in compliance with the Hudson Zoning Ordinance.

- 2. Case 198-25 (2/28/08, Deferred from 2/14/08): Aranosian Oil Company, Inc., c/o Robert Welts, Esq., PO Box 507, Nashua, NH, requests an Appeal from an Administrative Decision issued by the Community Development Director dated August 21, 2007, which states that the electronically-changing, freestanding sign located at 72 Lowell Road is in violation of the Hudson Zoning Ordinance. [Map 198, Lot 25, Zoned B, HZO Article XII, Section 334-60 H, Electronic-Changing signs.]**

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

Ms. McGrath returned to her seat as a non-voting alternate member of the Board for the remainder of the meeting.

Chairman Seabury asked Mr. Sullivan to explain why the matter was before the Board.

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Mr. Sullivan replied that a permit for a freestanding sign was applied for on April 18, 2007, for property located at 72 Lowell Road. Mr. Sullivan further stated that the completed sign application had no indication of the applicant's intention to erect a freestanding sign or, that any component of that sign would change electronically.

Mr. Sullivan then stated that supplemental information was supplied to the Community Development Department on April 18, 2007, along with the sign application, but that he did not see that information prior to the issuance of the freestanding sign permit.

Mr. Sullivan also stated that, in April of 2007, Mr. William Oleksak, the Building Inspector, was out of work for a period of time and he had assumed the sole responsibility of issuing building permits in addition to his existing duties as the Community Development Director.

Mr. Sullivan stated that he had endorsed the permit on behalf of the Building Inspector as well as himself on April 27, 2007, and that subsequently, on April 30, 2007, a sign permit was issued to the applicant.

Mr. Sullivan stated that, when the applicant began conducting business on or about August 16, 2007, it was apparent that the freestanding sign was equipped with an electronically-changing component. Mr. Sullivan further stated that, on August 21, 2007, he had sent a letter to Aranco Oil Co., Inc., which stated that electronically-changing signs were not a permitted use in any zoning district and that the 4-inch street identification numbers were not obvious on the sign. Mr. Sullivan also stated that the letter directed Aranco Oil to bring the sign into compliance within thirty days.

Mr. Sullivan stated that he inspected the property in September of 2007, and that Attorney Welts and Mr. Paul Kenney from Aranco Oil were both present. Mr. Sullivan noted that the 4-inch street identification numbers had been installed, as had an on/off switch that was located on the sign pole.

Mr. Sullivan stated that Aranco Oil had advised him that the sign would be shut off during the time that the price of gas was changed and then turned back on. Mr. Sullivan further stated that he felt Aranco Oil had made a sincere attempt to abate the existing zoning violations, but that on October 26, 2007, he had sent Attorney Welts a letter in which he advised him that an existing zoning violation remained at 72 Lowell Road because the electronically-changing sign remained on the property.

Mr. Sullivan stated that the applicant had subsequently turned off the electronically-changing sign, pending the outcome of the ZBA enforcement action.

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Mr. Sullivan stated that, on both September 19, 2007, and November 20, 2007, applications for Administrative Appeals were filed with the Community Development Department and that the applicant was present tonight to discuss them.

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

Attorney Robert Welts, legal representative for the applicant, addressed the Board, stating that Mr. Floyd Hayes, Vice President of Aranco Oil was also present.

Attorney Welts then distributed information to members of the Board, consisting of a revised affidavit from Mr. Hayes, and a signed copy of his argument.

Attorney Welts stated that the applicant was at the meeting to appeal Mr. Sullivan's zoning determination of August 21, 2007.

Attorney Welts then read aloud a portion of his argument, as summarized below:

On April 18, 2007, Mr. Hayes filed a sign application for the freestanding sign which is the subject matter of this appeal.

The sign application that Mr. Hayes submitted consisted of the following:

- 1. A two page Sign Application Form*
- 2. A sheet entitled "Goalpost Installation Diagram"*
- 3. A sheet which contained a diagram showing the dimensions of the sign*
- 4. A sheet entitled "Proposed Freestanding Sign"*
- 5. A copy of the site plan*

The sheet with the heading Proposed Freestanding Sign stated "This 88.8 square foot freestanding sign is comprised of the following": "Fuel Price sign" will be a LED illuminated price sign with a remote price changer to change the numeric digital fuel prices. All fuel prices are changed electronically from within the store."

On April 27, 2007, Mr. Sullivan signed the approval section of the sign application in two places, first as the Building Inspection for William Oleksak, who was on medical leave, and second as the Community Development Director.

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Mr. Hayes was notified on April 30, 2007, that the sign application was approved. The sign permit was dated April 30, 2007, and had a stamped signature of William A. Oleksak, Code Official.

In July, 2007 Aranco Oil had the sign installed at a cost of \$7,631.00. After receiving a Certificate of Occupancy, the station opened on August 16, 2007.

On August 21, 2007, Mr. Sullivan sent a letter to Aranco Oil which stated that the freestanding electronically-changing sign recently activated at 72 Lowell Road was in violation of the Hudson Zoning Ordinance because electronically-changing signs are not permitted in any district.

From the time Aranco Oil turned on the sign on August 16, 2007, to the date of Mr. Sullivan's letter dated August 21, 2007, the two illuminated fuel prices on the sign (retail and diesel) remained constant and there were no changes to the illuminated price sign during that time except that the sign was turned off each night at approximately 10:30pm, and turned on again at 5:30am when the station re-opened for the day.

For a period of seven weeks after August 21, 2007, Aranco Oil changed the two illuminated price signs on an average of once a week by sending a designated employee to the station. The employee would change the prices by inputting the new price into a radio frequency controller which was located in a locked box inside of the station. The change occurred while the sign was not illuminated and the change in the illumination of the sign was for approximately 2 seconds per week.

Aranco Oil modified its procedure by adding a switch on the sign which allowed for the designated Aranco Oil employee to turn off the sign before changing the illuminated prices. After the price was changed, the employee would turn the illuminated sign on again, reflecting the new price.

The modification had been in place since October 9, 2007, and at no time had the illuminated price sign ever changed while the sign was illuminated.

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It is Aranco Oil's position that Mr. Sullivan's determination in his letter dated August 21, 2007, was incorrect and should not be upheld for two reasons:

- 1. Mr. Sullivan did issue a permit for the sign which the applicant relied upon and that Mr. Sullivan and the Town of Hudson should be stopped from withdrawing or revoking the applicant's permit.*
- 2. Aranco Oil's sign does not fall within the definition of Electronic Changing Signs as set forth in Section 334-59 of the Hudson Zoning Ordinance.*

It is Aranco Oil's position that its price sign is not an Electronic Changing Sign as the meaning is defined in Section 334-59 and that, if the town wishes to clarify the ambiguous language in said section, it can do so by adding "Price Signs" to the list of signs that the town does not allow.

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 stated that he had visited the site and noticed what he described as an attractive nuisance should a child stumble across the property and that there was also a pole with a wire hanging from it in the rear of the property.

Mr. McInerney also noted that there were signs located at the adjoining Dunkin Donut's that were not approved by the town.

Mr. Martin commented that it was his opinion that the sign in question was not an electronically-changing sign, adding that he did not feel it was out of character for the neighborhood.

Mr. Pitre made a motion to overturn the Zoning Administrator's decision with the comment that the Hudson Zoning Ordinance should include Price Signs to the list of signs that the town did not allow. Mr. Pitre also made the stipulation that the sign

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modifications remained the same - that the sign was to be changed once a week, and it was to be turned off every night.

Mr. Martin seconded the motion.

Mr. Pitre, speaking on his motion, stated that he felt the case was unique and that it should not set a precedent for other sign requests.

Mr. Martin, speaking on his second, stated that he agreed with what Mr. Pitre had said.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to overturn the Zoning Administrator's Decision with the two noted stipulations, and to record the members' votes, which were as follows:

Mr. Pitre	To overturn
Mr. Martin	To overturn
Mr. McInerney	Not to overturn
Mr. Pacocha	To overturn
Mr. Seabury	To overturn

Chairman Seabury reported that there having been four votes to overturn and one vote not to overturn, the motion had carried.

Chairman Seabury then declared a break at 8:38pm, calling the meeting back to order at 8:44pm.

3. **Case 175-36 (2/28/08, Case A deferred from 1/24/08): Janice A. Kinville, 134 Ferry Street, Hudson, NH, requests the following:**
 - A. **(Deferred from 1/24/08): An Area Variance to allow construction of a detached garage within the side-yard setback. 15 feet required, 10 feet proposed. [Map 175, Lot 36, Zoned Business, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**
 - B. **An Area Variance to allow construction of a detached garage within the front-yard setback. 30 feet required, 15 feet proposed. [Map 175, Lot 36, Zoned Business, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**

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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.

Attorney Brad Westgate of Weiner and Bennett, legal representative for the applicants, addressed the Board stating that Mr. & Mrs. Kinville, the applicants, and Tony Basso and Patrick Colburn of Keach-Nordstrom Associates were also present.

Attorney Westgate stated that the property had frontage on two sides, both on Ferry Street and on Magnolia Path, that the lot was just over 11,000 square feet in size, it was built in 1920, and it was a two story dwelling.

Attorney Westgate stated that, because of the zoning requirements, the effective building envelope for the lot was very small and as a result of that, any attempt to modernize or make improvements would require relief from the zoning ordinance.

Attorney Westgate noted that the property, as well as others located on Ferry Street, were built prior to the town's adoption of the zoning ordinances in 1942.

Attorney Westgate stated that Magnolia Path was not paved and it served as an access for five properties.

Attorney Westgate stated that the applicant wished to build a 24' x 24' detached garage in the same area where the existing shed was, adding that the existing shed would be removed. Attorney Westgate further stated that the proposed garage would be located 20 feet from the travel portion of Magnolia Path, 15 feet from the right of way area of Magnolia Path, and 10 feet from the side line of the neighboring property located at 132 Ferry Street.

Attorney Westgate stated that the position of the leach field and septic system made it difficult to place the proposed garage in the direction further towards the house.

Attorney Westgate read aloud a portion of his Application for an Area Variance as summarized below:

- 1. The zoning restriction of the ordinance interferes with the applicant's reasonable use of the property because there were special conditions on*

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the property which included its location in a long-standing, established neighborhood, the house was constructed prior to the adoption of zoning in Hudson, and the property had the burden of having frontage on two roads. The proposed variances would create a portion of the property to be functional and serviced from Magnolia Path.

- 2. No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restrictions on the property because specific restrictions did not allow for the modernization of a modest sized residential property. The inability to modernize discourages an appropriate use of land and holds back the value of the property.*
- 3. The variance would not injure the public or private rights of others because there were no public or private rights in question with respect to the variance application.*
- 4. An Area Variance was necessary to allow for a portion of the front-yard setback area to be used for the detached garage. The detached garage (a portion of which would be within 15 feet of the front-yard setback) was a reasonable use of the property given the special conditions of the property.*
- 5. The benefit sought by the applicant could not be achieved by another method reasonably feasible for the applicant to pursue, other than an Area Variance, because in this case, the Community Development Director had made an administrative decision to the effect that a variance was necessary if a portion of the detached garage was to be constructed within the 30 foot front-yard setback. Consequently, no administrative route remains open.*

Attorney Westgate also read aloud a portion of a letter dated January 28, 2008, addressed to the Zoning Board of Adjustment from Randy Trumel, of Keller Williams Realty, as summarized below:

After review of the applicant's proposed use and the analyses of the immediate property owners in the neighborhood, it is my opinion that the construction of a new detached garage on the property known as 134 Ferry Street, Hudson, NH would be in character and an asset to the neighborhood.

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In addition, it is my opinion that the garage would not have an adverse effect on the surrounding neighborhood property values.

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

Mr. Chad Wiley, an abutter, 132 Ferry Street, addressed the Board, stating that the applicant had a very nice looking lot and he did not feel that the construction of a garage would be an eyesore and he did not have any problems with it.

Mr. Daniel Muser, an abutter, 136 Ferry Street, addressed the Board, stating that he felt the garage would be a beautiful addition to the neighborhood and he was in support of the applicant.

Mr. John Settle, an abutter, 9 Iris Path, addressed the Board, stating that he had no problems with the construction of the detached garage and he felt it would be a nice addition to the neighborhood.

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

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

Chairman Seabury then declared the matter before the Board.

Mr. Pitre asked if the garage were going to be a standard two-car garage, and the applicant replied that it would be a standard garage.

Ms. McGrath asked if there were any access to Ferry Street, and Mr. Basso replied that there was not.

Ms. McGrath asked if Magnolia Path were a town accepted street, and Mr. Basso replied that he felt that it was.

Chairman Seabury asked why there would be two driveways as he had assumed that the existing driveway would be turned into a grassed area adding, that a second driveway was not permitted by the town without approval by the Planning Board.

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Attorney Westgate stated the town’s Engineering Department had already approved the second driveway.

Mr. McInerney stated that, as the plan stood, there would be less green area and more asphalt or gravel.

Mr. Martin stated that he was concerned with the second driveway, and he asked to see the actual permit and Attorney Westgate provided a copy of it to the Board.

Mr. Pitre made a motion to approve the Area Variance for Case 3-A (the side-yard setback)

Mr. Pacocha seconded the motion.

Mr. Pitre, speaking on his motion, stated that the majority of the neighborhood was built prior to zoning, and there were many zoning violations and because of that, many of the neighbors had been in support of the applicant, there were special conditions on the property, and he felt it was in keeping with the spirit of the ordinance.

Mr. Pitre also attached a stipulation that a letter should be sent to the town’s Engineering Department and the Board of Selectmen indicating a general concern with the issuance of a permit for a second driveway for property located at 134 Ferry Street.

Mr. Pacocha, speaking on his second, stated that the proposed use was not contrary to the public interest, a hardship would be created by not approving the variance, and that he felt it was in keeping with the spirit of the ordinance.

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

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

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

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Mr. Pacocha made a motion to approve the Area Variance for Case 3-B (the front-yard setback) with the same stipulation that had been made in Case 3-A.

Mr. Pitre seconded the motion.

Mr. Pacocha, speaking on his motion, stated that he felt it was in the public's best interest, that granting the variance would do substantial justice, and that it was compatible with the spirit of the ordinance.

Mr. Pitre, speaking on his second, stated that it was not contrary to public interest and the property met the criteria for hardship.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to approve the Area Variance with the noted stipulation, the same as in Case 3-A, and to record the members' votes, which were as follows:

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

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

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IV. ADJOURNMENT

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

Mr. Pacocha seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 10:00pm.

Date: February 3, 2008

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun