

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

I. CALL TO ORDER

Chairman J. Bradford Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:00 p.m. on Thursday, January 24, 2008, in the Community Development Meeting Room in the Town Hall basement. Chairman Seabury then requested Clerk Martin to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

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

Members

Absent: None (All present)

Alternates

Present: Normand Martin, Marilyn McGrath, and Kevin Houle

Alternates

Absent: None (All present)

Staff

Present: Sean Sullivan, Community Development Director

Liaison

Present: Doug Robinson, Member of the 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

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Zoning Board of Adjustment were available at the door of the meeting room. He noted the outline included the procedures that should be followed by anyone who wished to request a rehearing in the event the Board's final decision was not felt to be acceptable. Chairman Seabury pointed out that the Board allowed rehearings only if collectively convinced by a written request that the Board might have made an illogical or illegal decision or if there were positive indications of new evidence that for some reason, was not available at the hearing.

III. APPROVAL OF MEETING MINUTES

Chairman Seabury noted that Mr. Pacocha had not yet arrived at the meeting. For the purposes of reviewing the meeting minutes only, he seated Mr. Martin in place of Mr. Pacocha.

The following edits were made to the minutes of the November 8, 2007, meeting.

1. Page 2 – 2nd paragraph under case #1 – “if this request were approved” was added to the last line.
2. Page 9 – the word “applicant’s” was changed to “applicants” in the 2nd, 3rd, and 8th paragraphs.
3. Page 10 – 6th paragraph – last line – “the same” was added to “prior to the wetland buffer being treated “the same” as other state wetlands.
4. Page 13 – 1st paragraph – 3rd line – the sentence was changed to “but it had been advertised as a rehearing request, because the Superior Court heard appeals of the Boards decisions, not the ZBA”.
5. Page 13 - 7th paragraph – the words “as follows” were deleted.

Mr. Martin made a motion to accept the minutes of the November 8, 2007, 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.

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Chairman Seabury then declared a break at 7:15p.m., calling the meeting back to order at 7:30p.m.

Mr. Pacocha having arrived, Chairman Seabury seated Mr. Pacocha, with Mr. Martin returning to his seat as a non-voting alternate member of the Board.

IV. PUBLIC HEARINGS FOR SCHEDULED APPLICATIONS

1. Case 221-8 (1/24/08): 1987 Nash-Tamposi Limited Partnership, 20 Trafalgar Square, Suite 602, Nashua, NH, requests the 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, 334-95 E, 334-96. 1 & 2, Commercial Wireless Telecommunication, Radio Service and Receive-Only Facilities.]

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

Chairman Seabury read aloud a portion of a letter, dated Wednesday, January 23, 2008, from Anderson & Kreiger, LLP, which stated that the applicant had not yet been able to be heard by the Planning Board due to severe weather conditions. The letter further stated that, due to the fact that the pre-requisite was to be heard by the Planning Board prior to going before the Zoning Board of Adjustment, the point was moot.

Chairman Seabury stated that the applicant had requested that the case be heard by the Zoning Board of Adjustment on February 14, 2008, but that the agenda for that date was previously filled. Chairman Seabury noted that the case would be heard on February 28, 2008.

Ms. Davis made a motion to defer with a date specific of February 28, 2008. Mr. Pitre seconded the motion.

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

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Recorders Note: Ms. McGrath, at her request, did not participate in the Board's discussion or the Board's vote with regard to Case 221-8, as she was a full voting member of the Planning Board and would be voting on the matter when it came before that Board.

4. Case 175-36 (1/24/08): Janice A. Kinville, 134 Kerry Street, Hudson, NH, requests 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.]

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

Chairman Seabury read aloud a letter, addressed to Sean Sullivan, from Anthony Basso of Keach Nordstrom, dated Wednesday, January 23, 2008, as summarized below:

Please ask the Zoning Board to table our application for the variance on Thursday, January 24, 2008, per our telephone discussion. We will amend our application to include a front-yard setback variance. Please place the application on the next available agenda.

Mr. McInerney made a motion to approve. 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.

2. Case 198-134 (1/24/08): Brian Hanlon, 6 ½ Belknap Terrace, Hudson, NH, requests the following:

A. An Appeal from an Administrative Decision issued by the Community Development Director dated November 2, 2007, which advises that pre-fabricated sheds are not a permitted accessory use. [Map 198, Lot 134, Zoned TR, HZO Article V, Section 334-22, Table of Permitted Accessory Uses.]

B. A Use Variance to allow two pre-fabricated sheds to be placed on the property located at 6 ½ Belknap Terrace. [Map 198, Lot 134, Zoned TR, HZO Article V, Section 334-22, Table of Permitted Accessory Uses.]

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

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Chairman Seabury asked Mr. Sullivan to explain why the matter was before the Board. Mr. Sullivan replied that the case was first brought to his attention when the Community Development Department received a complaint from an abutter.

Mr. Sullivan further explained that the applicant had subsequently applied for a building permit to allow the pre-fabricated storage containers, (which housed antique cars), to remain on the property. Mr. Sullivan said he had informed the applicant at the time that the storage containers were not an allowed use in the TR zone.

Mr. Sullivan stated that the applicant was at the meeting to appeal the Administrative Decision and to request a Use Variance to allow the storage containers to remain on the property.

A. Discussion for the Appeal of an Administrative Decision

Chairman Seabury asked who was present to speak in favor with regard to the application for the Appeal of an Administrative Decision.

Mr. Brian Hanlon, the applicant, addressed the Board, stating that he was renting a condex at 6 ½ Belknap Terrace and, as a renter, he was not allowed to build a permanent garage.

Mr. Hanlon stated that he owned antique vehicles and related tools and he wished to protect his investments by placing them in the storage containers.

Mr. Hanlon stated that the Table of Permitted Accessory Uses allowed for tool sheds and garages, and he said he felt that the storage containers were similar to those structures.

Chairman Seabury asked if there were anyone else present who wished to speak in favor with regard to the application for the Appeal of an Administrative Decision. 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 for the Appeal of an Administrative Decision.

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Mr. Richard Dube, 7 Belknap Terrace, addressed the Board, stating that he would like to see the Board uphold the Administrative Decision.

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

Chairman Seabury then declared the matter before the Board.

Ms. Davis made a motion to uphold the Zoning Administrator’s Decision. Mr. Pacocha seconded the motion.

Ms. Davis, speaking on her motion, stated that, based on the Zoning Ordinance, structures like the atypical storage containers in this case were not a permitted use in the TR Zone.

Mr. Pacocha, speaking on his second, stated that, based on the photos, he considered the units to be commercial storage containers with 3rd party advertisements on them and not a pre-fabricated shed. Mr. Pacocha also stated that he did not feel commercial structures belonged in a residential neighborhood.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to uphold the Zoning Administrator’s Decision and to record the members’ votes, which were as follows:

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

Chairman Seabury reported that, the decision having been unanimous, the motion had carried.

B. Discussion for the Application for a Use Variance

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Note: The Board collectively agreed to accept the applicant's hand drawn plot plan instead of a Certified Plot Plan.

Chairman Seabury asked who was present to speak in favor with regard to the application for a Use Variance.

Mr. Brian Hanlon, the applicant, distributed pictures that he claimed to show the general characteristic of the neighborhood, which included sheds, (allegedly) unregistered vehicles, motor homes, and trailers. (Note: The pictures Mr. Hanlon distributed were not current pictures, but were taken before snowfall.)

Ms. Davis stated that, because there may have been other properties in the neighborhood that had code enforcement issues, it did not make it allowable for the applicant to be in violation as well.

Mr. Hanlon then distributed pictures of the opposing abutter's property, (Mr. Dube's property), which showed an (allegedly) unregistered travel trailer, a pre-fabricated metal shed, and a wooden shed.

Mr. Brian Hanlon, the applicant, read aloud from his application for a Use Variance as summarized below:

The variance would not injure the public or private rights of others because sheds are on private property and any private expectations (such as those of abutters) are not affected because of the overriding and defining characteristics of the abutting properties.

The structures were compatible with the character of the surrounding properties, and the structures were temporary.

The proposed use would be compatible with the spirit of the ordinance because the proposed sheds would be an appropriate use for storing antique vehicles.

The proposed use would not be contrary to the public interest because the use would be compatible with the surrounding properties.

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

Ms. Amy Pratt, 5 Belknap Terrace, addressed the Board, stating that she lived directly across the street from the applicant and she had no problem with the storage containers.

Mr. Jason Hamblett, 6 Belknap Terrace, addressed the Board stating that he lived next door to the applicant and he had no problem with the storage containers. Mr. Hamblett also stated that the storage containers were neatly placed on the property.

Mr. Thomas LeBlanc, 3 Belknap Terrace, addressed the Board, stating that the neighborhood was a blue collar working neighborhood, and the storage containers did not look out of place.

Mr. David Foley, owner of 6 ½ Belknap Terrace, addressed the Board, stating that he had no problem with the applicant using the storage containers to house antique cars and related tools.

Mr. Ron DiNitto, 5 Charbonneau Street, addressed the Board, stating that he also had no problem with the storage containers.

Ms. Jeanne Johnson, 3 Belknap Terrace, addressed the Board, stating that she was there in support of the applicant and she had no problem with the storage containers, as they matched the house and were set back on the property.

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

Chairman Seabury then asked if there were anyone present who wished to speak in opposition or neutrally with regard to the application for the Use Variance.

Mr. Richard Dube, 7 Belknap Terrace, addressed the Board, stating that he owned four properties directly across the street from the applicant.

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Mr. Dube distributed pictures to the Board that he said consisted of views from the living rooms of each of the properties that he owned and stated that the storage containers were not concealed or set back on the property, and they were unsightly.

Mr. Dube stated that the containers had caused a financial hardship for him as he had attempted to sell one of his properties, but that, when the potential buyers saw the containers they backed out of the deal.

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

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

Mr. McInerney asked what the dimensions of the storage containers were and what the dimensions of the applicant's condex was. Mr. Hanlon replied the size of the dimensions of the storage containers were 8' x 40' and they were 8 feet in height. Mr. Hanlon also replied that the dimensions of the condex were 26' x 52'.

Mr. McInerney asked if the containers were owned or leased, and Mr. Hanlon replied that they were leased.

Mr. McInerney also asked what the difference in cost was for the current lease vs. the cost of leasing a secured and properly zoned facility. Mr. Hanlon replied that he had checked into leasing a secured facility but the cost was too high.

Ms. Davis stated that the applicant had not provided the Board with any special conditions on the property that would have allowed the Use Variance.

Mr. Houle asked if the storage containers were climate controlled and Mr. Hanlon replied that they were not.

Mr. Houle asked if Mr. Foley, the owner of 6 ½ Belknap Terrace, lived in the neighborhood, and Mr. Foley replied that he lived in Pelham, NH.

Mr. Pitre asked how long the storage containers had been there, and Mr. Hanlon replied that the containers had been in place for over two years.

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

Chairman Seabury then declared the matter before the Board.

Ms. Davis made a motion to deny the Use Variance, with a stipulation that the storage containers and the vehicles had to be removed by June 1, 2008. Mr. McInerney seconded the motion.

Ms. Davis, speaking on her motion, stated that it did not meet the criteria for a Use Variance, there were no special conditions on the land that limited the reasonable use of the property, the structures were very atypical, commercial looking (with advertisements on them) and she did not feel it was within the spirit of the ordinance.

Mr. McInerney, speaking on his motion, stated that he felt the storage units were commercial/industrial looking in nature, and they posed a public safety hazard.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to deny the Use Variance, with the noted stipulation, 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, the decision having been unanimous, the motion had carried.

Chairman Seabury declared a break at 9:00p.m., calling the meeting back in order at 9:07p.m.

- Case 246-72 (1/24/08): Michael and Diane O'Bryant, 5 1/2 Philbrick Street, Hudson, NH, request an Accessory Living Unit to be constructed within the proposed 28' x 26' addition. [Map 246, Lot 72, Zoned TR, HZO Article XIII A, Section 334-73.3, Accessory Living Units.]**

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

Ms. McGrath pointed out that both the house and the shed intruded into the side-yard setback. Ms. McGrath stated that an Equitable Waiver should be obtained, minimally, to avoid problems if the applicants ever wanted to re-finance or sell their home, as it could become an issue with the lender.

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

Mr. Michael O’Bryant, owner and applicant, addressed the Board and read aloud from his application for an Accessory Living Unit as summarized below:

The proposed ALU will be constructed in an existing single-family dwelling.

The proposed ALU will be directly attached to the principle dwelling and the applicant’s mother-in-law, Jolie Nolan, would be the occupant of the ALU.

The proposed ALU will be a two-story structural addition maintaining the existing architectural design.

The proposed ALU and the principle dwelling will share a common entryway. The proposed ALU will have a sliding door on the rear wall to serve as an egress.

The proposed ALU will maintain existing service connections and meters.

The proposed ALU will have a GLA of 704 square feet. The principle dwelling has a total GLA of 2,030 square feet.

An interconnected fire alarm system will be installed.

Mr. O’Bryant stated that his mother-in-law had emphysema and that was the main reason why he wanted to construct the ALU.

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Mr. O’Bryant also stated that he wished to build a 12’ x 16’ addition which would serve as a TV room, but that he did not need to appear before the ZBA for that addition.

Mr. Pacocha advised the applicant that there could be no lock put on the common doorway between the principle dwelling and the ALU.

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

Mr. David Seale, 3 Ash Street, an abutter, addressed the Board, stating that Mr. O’Bryant was a good neighbor and that he was looking forward to him improving his property.

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 stated that she was concerned that the common doorway could easily be sealed off, turning the ALU into a rental apartment in the future. Chairman Seabury replied that could be true of any ALU.

Mr. Pacocha made a motion to approve with the stipulation that neither the entryway door nor the interior doors shall have locks on them.

Mr. Pitre seconded the motion.

Mr. Pacocha, speaking on his motion, stated that he felt the applicant had satisfactorily addressed the requirements for an ALU.

Mr. Pitre, speaking on his second, stated that he felt the applicant met the criteria for an ALU, it met the GLA, and the applicant was requesting it for his ailing mother-in-law, which was exactly what an ALU was for.

Ms. Davis said that she would vote in the negative because the property sat on a very small, secluded lot, and she felt that approving the ALU would be setting it up to be a future rental apartment.

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

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

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

V. OTHER BUSINESS

Mr. Sullivan stated that Attorney LeFevre would be present prior to the February 14, 2008, ZBA meeting, for a private client-attorney session to be held prior to the regular public session.

Re-Organization of the Zoning Board of Adjustment

The following positions were voted on at the January 24, 2008, ZBA Meeting:

Chairman of the Board:	J. Bradford Seabury – Unanimously voted
Vice Chairman of the Board:	Maryellen Davis – Unanimously voted
Clerk:	Normand Martin - Unanimously voted

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VI. ADJOURNMENT

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

Mr. McInerney seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 10:36 p.m.

Date: January 27, 2008

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun