

**HUDSON ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
January 17, 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 17, 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, Board of Selectmen

Recorder: Trish Gedziun - Excused

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.

Mr. Pacocha and Mr. Pitre had not yet arrived at the meeting. For the purposes of reviewing the meeting minutes, Chairman Seabury sat Mr. Houle in place of Mr. Pacocha and sat Mr. Martin in place of Mr. Pitre.

III. APPROVAL OF MEETING MINUTES

The following edits were made to the minutes of the September 27, 2007, meeting.

1. Page 4 – 5th paragraph – the words “instruction onto” was changed to “intrusion into” – Davis
2. Page 5 – 3rd paragraph – “Acting Chairman Davis then sat Mr. Martin in her place” was changed to “Acting Chairman Davis then sat Mr. Martin in Mr. Seabury’s place” - Seabury
3. Page 6 – 1st paragraph – “Mr. Peter Radziewicz, 49 Burns Hills Road” was added as it was the first time his name was mentioned in the document. - Davis
4. Page 6 – 6th paragraph – “49 Burns Hill Road” was added after Ms. Joanne Radziewicz - Davis
5. Page 11 – 8th paragraph – the word “of” was added in the line “stating that, if one of the tenants moved out,” – Davis
6. Page 13 – Last paragraph - calling the meeting back to order at 9:25 p.m., “with Mr. Seabury remaining stepped down.” was added – Seabury

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7. Page 14 – Numbered list #1 – the word “not” was deleted from the line “the reasonable use of the property did allow for a horse to live on less than five acres of land” - Seabury
8. Page 15 – 4th paragraph – “or see any exceptional activity as a result of the horse being on the property” was added to the last line – Davis

Ms. Davis made a motion to accept the minutes of the September 27, 2007, 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.

The following edits were made to the minutes of the October 25, 2007, meeting.

1. Page 3 – Numbered item #6 – the word “no” was added to the line “there would be no separate utility service connection and meters would not exist” - Davis
2. Page 11 – Numbered item #5 – The sentence was change to “The damaged sidewalk would be repaired after the inspection by the Road Agent to determine the extent of the damage caused by PSNH employees or sub-contractors.” - Seabury

Mr. Martin made a motion to accept the minutes of the October 25, 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.

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

IV. PUBLIC HEARINGS FOR SCHEDULED APPLICATIONS

1. Case 102-7 (1/17/08): Vincent Braccio, 27 River Road, Hudson, NH, requests an Area Variance to allow construction of an attached garage within the front-yard setback, 50 feet required, 37 feet proposed for property located at 172 Old Derry Road, Hudson, NH. [Map 102, Lot 7, Zoned G-1, HZO Article VII, Section 334-27.1, Table of Dimensional Requirements.]

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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 applicant wanted to construct an addition to an existing non-conforming structure. Mr. Sullivan further explained that it was his determination that the proposed addition would increase the non-conformity of the structure in its entirety, which did not conform with the ordinance. Mr. Sullivan explained that he informed the applicant that he had the right to apply for an Area Variance, which would allow the proposed addition.

Ms. McGrath stated that the applicant was requesting to construct an addition on an existing non-conforming structure, but that the applicant had not mentioned how the existing non-conforming structure was going to be addressed.

Ms. McGrath further stated that the existing house was in the front-yard setback, and whether or not the Board approved the request for an Area Variance, the issue of the existing non-conformity still needed to be addressed.

Ms. McGrath commented that she would have thought that, when the applicant made the initial request for the proposed addition, Mr. Sullivan would have not only advised the applicant that an Area Variance was needed for the proposed addition, but an Equitable Waiver was needed to address the existing non-conforming structure as well.

Mr. Sullivan replied that the applicant was mistakenly not advised to request an Equitable Waiver to address the existing non-conforming structure.

Ms. McGrath stated that the two requests should have been bundled into one for the convenience of the applicant and the CDD staff. Ms. McGrath further stated that, if the applicant were to re-finance or sell his home, the non-conformity would have to be addressed before either of those transactions successfully occurs.

Mr. Sullivan stated that, in some cases, non-conforming structures conformed at the time they were built and, therefore, were legal.

Ms. McGrath stated that she felt when applications were submitted to the Community Development Department, and it was clear that there was a non-conformity on the lot, that it was the Community Development Director's responsibility to advise the applicant how to address the non-conformity.

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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.

Ms. Davis further commented that the proposed addition would consist of additional living space, and it was not clear what the intent of that living space was.

Chairman Seabury asked the applicant, Mr. Vincent Braccio, what the addition would consist of. Mr. Braccio replied that it was an extension of both the existing living room and a bedroom.

Mr. Vincent Braccio, owner and applicant, addressed the Board and read aloud a portion of his application for an Area Variance as summarized below:

- 1. The existing home is less than 50 feet from the front lot line and the proposed addition is to be attached to the existing home. The septic tank is directly behind the home which prevents the proposed addition to be moved back any further.*
- 2. There was no change to the use of the land and all other setbacks were within the zoning ordinance requirements.*
- 3. The addition would be an extension of the existing home and would provide additional living space to an already residential use.*
- 4. The property is zoned residential and the addition would extend the current home at the same distance from the existing road.*
- 5. The variance would do substantial justice because the applicant and his family would be able to enjoy the extended living space.*

Chairman Seabury asked if the Board felt that the case should continue to be heard based on several of the aforementioned concerns.

Ms. Davis stated that she felt the case was improperly noticed. Ms. Davis further stated that it was possible that the addition could easily turn the house into a two-family home, and that, because of that, it was important to re-notice the case properly and get better plans of the proposed new addition.

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Ms. McGrath commented that she felt the case should be deferred because it was improperly noticed, that the majority of the Board wanted to see a building plan for the proposed addition, and an Equitable Waiver needed to be granted.

Chairman Seabury then declared the matter before the Board.

Ms. Davis made a motion to defer the case to the next available meeting. Mr. McInerney seconded the motion.

Ms. Davis, speaking on her motion, stated that, because the case was improperly noticed, she felt the case should be deferred as a means of protecting the applicant, the abutters, and the town.

Mr. McInerney, speaking on his motion, stated that he concurred with what Ms. Davis had stated.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to defer the case to a special meeting, date specific of January 31, 2008, as the agenda for the January 24, 2008, was filled, and to record the members' votes, which were as follows:

Ms. Davis	To defer
Mr. McInerney	To defer
Mr. Pitre	To defer
Mr. Pacocha	Not to defer
Mr. Seabury	To defer

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

2. Case 165-29 (1/17/08): Rebecca Davani, 20 Campbello Street, Hudson, NH, requests the following:

A. An Equitable Waiver to allow the existing dwelling to remain within the side-yard setback. (15 feet required; dwelling encroaches 2.5 feet onto the abutting property.) [Map 165, Lot 29, Zoned TR, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]

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B. An Area Variance to allow the existing dwelling to remain within the side-yard setback. (15 feet required; dwelling encroaches 2.5 feet onto the abutting property.) [Map 165, Lot 29, Zoned TR, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]

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

Chairman Seabury stated that he would step down from the case and said the gavel would be turned over to Vice Chairman Davis. Mr. Seabury took a seat in the audience section.

Vice Chairman Davis then sat Mr. Houle in place of Mr. Seabury as a full voting member of the Board.

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

Ms. Rebecca Davani, owner and applicant, addressed the Board, stating that she had been trying to put an addition on her house for over two years.

Ms. Davani stated that she knew when she purchased the home that a portion of it encroached onto an abutter's property by 2.5 feet.

The applicant and the abutter had agreed to a lot-line relocation and would be going before the Hudson Planning Board if the Hudson ZBA approved the application for the Equitable Waiver and Area Variance.

Acting Chairman Davis clarified that the applicant was asking for an Equitable Waiver to allow the house to remain non-conforming and then to request an Area Variance to construct an addition. Acting Chairman Davis also clarified that the applicant was at the meeting to obtain an Equitable Waiver and was not there to address the proposed addition.

Ms. McGrath commented that the plan that was provided to the Board did not have the setback lines on it.

Vice Chairman Davis stated that she agreed that the property needed an Equitable Waiver. Vice Chairman Davis further stated that she did not feel the Board should vote on an Area Variance, because she felt the property needed a Use Variance, as there was a house on two separate lots of record.

Mr. Pitre replied that, there would not be a house on two separate lots of record, because the applicant was going to appear before the Planning Board to request a lot-line relocation.

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Recorders note: Ms. McGrath, although not currently seated, stated that 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. Ms. McGrath then stepped down and took a seat in the audience section.

Ms. Davani stated that she felt she had done everything the Town had asked her to do and yet, two years had passed, and the situation was still not resolved.

Ms. Davani then read aloud a portion of her application for an Area Variance to allow an existing addition to remain in the side-yard setback; 15' feet required, 2.5' proposed, as summarized below:

- 1. The main reason for the variance was for the dimensional requirements to meet what the town required.*
- 2. The intent of the setback requirements were to provide for adequate light and air, as well as to prevent the overcrowding of land. The existing dwelling is located within the 15 foot setback and therefore, any alteration to the existing dwelling would be prohibited because of non-compliance with the current zoning requirements.*
- 3. The proposed addition would not create any further impact to the setback in question. The plaintiff was not suggesting anything that would affect the health safety or general welfare of the public or natural resources.*
- 4. As shown on the attached plan, the proposed addition would appear as part of the existing single-family dwelling and not change the character, quality, or aesthetics of the neighborhood.*
- 5. Granting the variance would allow the owner of the property with a pre-existing condition, which was no fault of their own, to be able to use their property in a reasonable manner.*
- 6. The applicant would be severely prejudiced if she were unable to obtain this variance, and the loss to the applicant was in no way outweighed by a gain to the public.*

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

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Mr. Douglas Verbeck, the abutting neighbor, addressed the Board, stating that, “for once, the Board was hearing two neighbors who actually agreed with each other.” Mr. Verbeck further stated that he felt it was a “win-win” situation for everyone.

Recorders note: Mr. Douglas Verbeck acknowledged his agreement to the lot line relocation and would go before the Planning Board as well, as referenced in his letter addressed to the applicant, dated August 12, 2007, entered as an exhibit and summarized below:

As we discussed recently, I am writing to you to confirm our agreement on our mutual Lot Line Adjustment.

As the attached survey indicates, our lot line would be adjusted to give you two feet of our property off your house and your rear boundary would be adjusted to give me an equal amount of land.

When the Deed is adjusted accordingly, the present easement that provides for your house to be partly on our property would be eliminated.

All of the above is conditional upon the Hudson Zoning Board of Adjustment’s approval of an Area Variance.

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

Acting Chairman Davis asked if there were anyone present who wished to speak in opposition or neutrally with regard to the application. There were none.

Acting Chairman Davis declared the matter before the Board.

Mr. Pacocha made a motion to approve the Area Variance (first, before addressing the Equitable Waiver) with the stipulation that the approval was pending the approval of a lot line relocation to be determined by the Planning Board.

Acting Chairman Davis stated that Mr. Pacocha’s motion had failed due to lack of a second.

Acting Chairman Davis stated that, it was her opinion that the Equitable Waiver should be granted first, allowing the house to remain as it was.

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Mr. Sullivan stated that the Town Attorney had recommended that the applicant apply for both an Equitable Waiver and an Area Variance.

Mr. Pacocha made a motion to approve the Equitable Waiver to allow the existing house to remain as it was and to approve an Area Variance to allow a portion of the property to remain in the side-yard setback pending a lot line re-location to be determined by the Planning Board.

Mr. Pitre seconded the motion.

Mr. Pacocha, speaking on his motion, stated that, the home had been there for more than ten years, and there had been no code enforcement issues on the property during that time.

Mr. Pitre, speaking on his second, stated that he concurred with what Mr. Pacocha had said.

Mr. J. Bradford Seabury, 4 Meadow Drive, Hudson, NH, speaking from the floor, from his stepped down position, prior to returning to his place at the table, commented that, both the applicant and abutter had mentioned that they had docks on the river and that those docks (and any others for that matter – referring to the viewing public) needed to be in compliance with not only the HZO, but the DES as well.

VOTE: Vice Chairman Davis asked the Clerk to poll the Board on the motion to approve the Equitable Waiver and the Area Variance, and to record the members' votes, which were as follows:

Mr. Pacocha	To approve both
Mr. Pitre	To approve both
Mr. McInerney	To approve both
Mr. Houle	To approve both
Ms. Davis	To approve both

Vice Chairman Davis reported that the vote having been unanimous, the motion had carried.

Chairman Seabury returned to his seat as chairman, with Ms. Davis returning to her position as a full voting member of the Board, and Mr. Houle and Ms. McGrath resumed to their roles as a non-voting alternate members of the Board.

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Chairman Seabury then declared a break at 9:34p.m., calling the meeting back to order at 9:44p.m.

3. Case 198-25 (1/17/08): Aranosian Oil Company, Inc., c/o Robert Welts, Esq., P.O. Box 507, Nashua, NH, requests the following:

A. 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.]

B. An Appeal from an Administrative Decision issued by the Community Development Director dated October 26, 2007, to Robert B. Welts, Esq., which states that the electronically-changing, freestanding sign located at 72 Lowell Road remains in violation. [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 stepped down from the case noting that she was a full voting member of the Planning Board, which had already dealt with the property.

Discussion with regard to the Appeal of an Administrative Decision - B

Attorney Robert Welts, legal representative for the applicant, read aloud from his Statement of Facts, as summarized as follows:

On April 18, 2007, Floyd Hayes, VP of Aranosian Oil Company, Inc., d/b/a Aranco Oil Company submitted a sign application for a freestanding sign to be located at Aranco's service station, 72 Lowell Road, Hudson, NH.

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

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The sign permit for the sign is dated April 30, 2007, and contains the stamped signature of William A. Oleksak.

In July 2007, the applicant had the sign installed at a cost of \$6,881.00, and tested the sign for several days in July and early August.

On August 21, 2007, Sean Sullivan sent a letter to Aranco stating, “This notice is being sent to advise you that the freestanding electronically changing sign recently activated at 72 Lowell Road is in violation of the HZO, Article XII, Section 334-60 H.

After multiple conversations between the applicant and Mr. Sullivan, the applicant agreed to modify the sign in an attempt to bring into compliance with Mr. Sullivan’s interpretation of the ordinance.

The applicant modified the sign to include an “on/off” switch. The sign is turned off every night at about 10:00p.m. when the station closes and is turned on again at approximately 5:30a.m. the next morning when the station opens.

On October 9, 2007, Attorney Welts and Paul Kenney from Aranco, invited Mr. Sullivan to the station and demonstrated to him how the sign had been modified so that prices were only changed on the sign when the sign was off.

On October 26, 2007, Mr. Sullivan sent a Zoning Determination letter to Attorney Welts in which he states that although the modification of the sign was a good faith effort attempt to bring the sign into conformance, his Zoning Determination is that the sign remains in violation.

Attorney Welts stated that, even if the Board found against the applicant, the town was prohibited under the doctrine of estoppel ordering the applicant to cease and desist.

Attorney Welts mentioned that Mr. Hayes and Mr. Kenny, the applicants, were present, and submitted signed affidavits, on their behalf, which stated that they were both in favor of the application.

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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. No one came forward.

Chairman Seabury then declared the matter before the Board.

Chairman Seabury mentioned that Attorney Welts had repeatedly referred to Section 334-59, but that he never mentioned what the definition was.

Attorney Welts stated that, he felt the sign did not satisfy the definition of 334-59 because he felt the word “illustrate” meant that the sign was changing, and it was his contention that, the sign did not “illustrate different copy changes on the same sign, because there were absolutely no changes of copy while the sign was illuminated.”

Chairman Seabury commented that, it was his opinion that, the sign did satisfy the definition in the ordinance.

Mr. McInerney commented that the sign was excluded from the Assessor’s Field Card and therefore, it was not taxed and did not produce any revenue for the town.

Mr. McInerney also commented that the sign which the applicant applied for was not the same as the existing sign.

Ms. Davis requested that the Administrative Decision be signed and dated by Mr. Sullivan and entered into the record.

Mr. Sullivan commented that freestanding signs were allowed up to 100 square feet and the applicant’s sign was a little bit under 100 square feet. Mr. Sullivan further commented that it was his interpretation that the 100 square foot maximum was the area which existed between the poles.

Ms. Davis commented that, it was her opinion that, the signage should be measured by the outside boundaries, which was part of the ordinance, and the square footage inside those boundaries needed to coincide with what was allowed based on the size of the lot.

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Mr. Sullivan replied that the ordinance needed to be “tweaked” to make the allowable square footage more explicit.

Ms. Davis stated that she felt the addition of the Dunkin Donuts was a safety concern because the location was opposite of the traffic flow.

Ms. Davis stated that she recalled when the applicant had originally applied for the variance, it was stated that the sign was not going to be illuminated and would not be a LED type of sign. Ms. Davis further stated that it was supposed to be an internally lit sign.

Mr. Pitre commented that he was surprised that the minutes from the original meeting were not available for the Board to review, as he, too, recalled the statements made with regard to the type of illumination of the sign.

Mr. Pitre further commented that he felt the Board should review the minutes from the original meeting prior to continuing hearing the case.

Mr. McInerney made a motion to defer the case until the Board had the opportunity to review the minutes of the original meeting, and if the Assessor’s Office were taxing on the sign.”

Mr. Pitre seconded the motion.

Mr. Sullivan commented that, although he did receive the entire application, he had inadvertently missed a portion of the information included in the application.

Mr. Pitre withdrew his second. As no other member of the Board seconded the motion, Chairman Seabury stated that the motion had failed due to the lack of a second.

Ms. Davis made a motion to uphold the Administrative Decision.

Mr. McInerney seconded the motion.

Ms. Davis, speaking on her motion, stated that she felt the intent of the ordinance was to control and prohibit electronically changing signs, and the sign in question was electronically changeable and it was an LED type of sign. Ms. Davis further stated that, when Mr. Sullivan realized he had inadvertently missed a portion of the information on the application, he immediately notified the applicant of the reversal of his approval of the permit.

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

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to uphold the Administrative Decision and to record the members' votes, which were as follows:

Ms. Davis	To uphold
Mr. McInerney	To uphold
Mr. Pitre	To uphold
Mr. Pacocha	Not to uphold
Mr. Seabury	To uphold

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

Discussion with regard to the Appeal of an Administrative Decision – A

Chairman Seabury commented that he felt that, if the Board did not accept the changed version (the less intrusive version) of the sign (part B), he was not inclined to think that the Board would accept the unchanged version (the more intrusive version) of the sign (part A).

Mr. McInerney made a motion to declare the appeal of part A, to be unacceptable.

No second being offered, Chairman Seabury stated that the motion had failed due to the lack of a second.

Attorney Welts stated that he wanted the opportunity to appeal both parts A and B. Chairman Seabury commented that Mr. Sullivan would leave the meeting at 11:00p.m., as instructed by the Board of Selectmen, and he felt, if the case was heard by the Board, Mr. Sullivan should have been present.

Mr. McInerney made a motion to defer the case and requested additional information regarding the doctrine of estoppel.

Mr. Pitre seconded the motion.

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Mr. McInerney, speaking on his motion, stated that the applicant’s legal representative had brought up the “estoppel” concept many times, and he felt the Board had the right to consult with town counsel.

Mr. Pitre, speaking on his second, stated that he felt consulting with town counsel would help the Board to make an informed decision.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to defer the case, date specific of February 14, 2008, and to record the members’ votes, which were as follows:

Mr. McInerney	To defer
Mr. Pitre	To defer
Mr. Pacocha	To defer
Ms. Davis	Not to defer
Mr. Seabury	To defer

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

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V. 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 11:28 p.m.

Date: February 3, 2008

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun