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**HUDSON PLANNING BOARD
MEETING MINUTES
January 9, 2008**

I. CALL TO ORDER

Chairman Barnes called this Planning Board meeting to order at 7:02 p.m. on Wednesday, January 9, 2008, in the Community Development meeting room in the Hudson Town Hall basement.

II. PLEDGE OF ALLEGIANCE

Chairman Barnes asked Ms. Chadwick, the newly appointed alternate, to lead the assembly in pledging allegiance to the Flag of the United States of America.

III. ROLL CALL

Chairman Barnes asked Ms. McGrath to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

Present: James Barnes, George Hall, Vincent Russo, Terry Stewart, Marilyn McGrath, Suellen Quinlan, and Richard Maddox (Selectmen's Representative).

Members

Absent: None.

Alternates

Present: Tierney Chadwick and Ken Massey (Selectmen's Representative Alternate).

Alternates

Absent: Brion Carroll (excused).

Staff

Present: Town Planner John Cashell.

Recorder: J. Bradford Seabury.

IV. SEATING OF ALTERNATES AND ANNOUNCEMENTS

Chairman Barnes noted all regular members of the Board were present at tonight's meeting and there was no need to seat any alternates.

V. MINUTES OF PREVIOUS MEETING(S)

Chairman Barnes noted the minutes for the November 14, 2007 Planning Board meeting would be reviewed at another time.

Chairman Barnes stated that, without objection, he was going to take **New Business**, Item D, out of order. Hearing no objection, Chairman Barnes proceeded to that item.

XII. NEW BUSINESS

**D. Tolles Riverside LLR
SB# 06-07**

**Map 173/Lots 12, 14, 15
19 Second Street**

Purpose of Plan: To adjust lot lines of Lots 12, 14 & 15 as shown on the plan (no new lots created). Application Acceptance & Hearing.

Chairman Barnes stated that the Board had received a request in writing from the applicant asking that this application be withdrawn.

Selectman Maddox moved to allow the applicant to withdraw without prejudice the Tolles Street (Map 173/Lots 12, 14 and 15) lot-line relocation application. Ms. Quinlan seconded the motion.

VOTE: Chairman Barnes called for a verbal vote on the motion. All members voted in favor and Chairman Barnes declared the motion to have carried (7 -0).

Chairman Barnes stated that, without objection, he was going to take **Old Business**, Item C out of order. Hearing no objection, Chairman Barnes proceeded to that item.

X. OLD BUSINESS

**C. Mammoth Green Estates (aka Nadeau Farm Qroe SB)
SB# 04-06**

**Map 115/Lot 3
Old Derry Road**

Purpose of Plan: To review status of this approved 30-lot Mammoth Green Estates OSD Subdivision Plan and establish a surety. Deferred Date Specific from the September 26, 2007, Planning Board Meeting of this approved 30-lot Mammoth Green Estates OSD Subdivision Plan and establish a surety. Deferred Date Specific from the September 26, 2007, Planning Board Meeting.

Mr. Hall stepped down to avoid a possible perception of conflict of interest. Chairman Hall appointed Ms. Chadwick to sit in Mr. Hall's place.

Mr. Cashell noted that the plan the Board was dealing with at tonight's meeting was the November 9, 2007, revision —adding that it was correctly referenced on Page 2 of the Staff Report.

Atty. Buckley noted that he had read the declaration and bylaws, which now mandated a centralized farm management system, and he was satisfied that the documents addressed the principal concerns of the Board. He said the declaration now stated there could be no change to a building envelope location or dimension without the approval of the Planning Board. He concluded by saying he had tried to address Mr. Carroll's concerns, as provided by an E-mail.

Selectman Maddox said he would like to see the final document reviewed by the Town Attorney. Atty. Buckley said he felt that the Development Agreement was in final form and ready for Planning Board approval. Mr. Cashell said that document was upstairs in the office. Selectman Maddox said he just wanted the Town Attorney to have a last look at the document.

Ms. Stewart referenced Atty. Buckley's letter to the Board, dated January 2, 2008, noting that she could not find where the documents stated the Town could enforce the conditions set forth in the documents. Atty. Buckley stated that he interpreted the documents as imposing those conditions, adding that there was no specific verbiage to that effect.

Ms. Quinlan expressed a preference to having a specific statement. Ms. Stewart referenced Paragraph 3.13, noting the paragraph did not state who would be responsible for enforcing the conditions set forth in that paragraph. Atty. Buckley said he read the agreement as saying the obligations of the developer would become the obligations of the association. Selectman Maddox said he also would like it to be locked in. Atty. Buckley referenced paragraph 3.12, saying "perpetuity" implied the obligation to maintain the farm system. He then suggested possibly adding a sentence to further define the obligation.

Selectman Maddox moved to add a sentence to Paragraph 3.12. Ms. Stewart seconded the motion. Ms. Quinlan said she was satisfied with Atty. Buckley's explanation. Selectman Maddox retracted his motion.

Atty. Buckley suggested that another section be added to the Declaration of Easements that would clarify that the declaration would be enforceable by the Town, with this addition to be designated as Section 8.5.

Ms. Stewart moved that Section 8.5 be added to the Declaration of Easements Covenants and Restrictions to reinforce that the declaration was enforceable by the Town of Hudson. Ms. Quinlan seconded the motion.

VOTE: Chairman Barnes called for a verbal vote on the motion. All members voted in favor and Chairman Barnes declared the motion to have carried (7 -0).

Ms. Stewart referenced Section 6.1, asking if the developer could amend the document. Atty. Buckley said his opinion was that the developer could not amend

without the Board's approval. He suggested adding "subject to Section 6.2, 6.3 , and 6.4" in front of Section 6.1.

Selectman Massey referenced Section 3.12, saying he had always understood that the farming would not necessarily be the same in all belts. He asked if "uniform" meant the same. Atty. Buckley said he felt that the Board was concerned about a patchwork of farming taking place in the farm belts. He suggested expanding the paragraph to specify what type of farming should take place in each farm belt. Selectman Massey said that was not what he was talking about. Atty. Buckley said the intent was to manage each belt with a certain degree of uniformity. He suggested that "uniform" might need to be clarified. Ms. Quinlan said her vision was that the farm belts would be worked and managed by the association. Selectman Maddox said it said "farm belt." Chairman Barnes said the Planning Board was getting into issues that should be handled by Town Counsel. Atty. Buckley said a compromise might be to say that "the agricultural activity to be conducted thereon shall be of uniform or cohesive nature throughout each contiguous farm belt area." Chairman Barnes asked if there were any objections. No objections were forthcoming.

Atty. Griffin, legal council for Mr. Tsu, the applicant, said he had no problem with the proposed changes.

Selectman Maddox referenced the requirement for signage that would say that the Town was not responsible for maintaining the roads and driveways within the development. Atty. Buckley suggested adding a paragraph to the Development Agreement to cover that. Atty. Griffin suggested having one sign at the main access to the subdivision. Selectman Maddox said he would be willing to compromise, and he then suggested that there be a sign at every driveway during construction but one at the main entrance after construction had been completed. Atty. Buckley said the signs should only be placed at the beginning of each shared driveway. Atty. Griffin said that would be specified in the Public Offering Statement, adding that he did not have any objections to the signs at the beginning of each shared driveway and one at the entrance to the development. Ms. Stewart said the most effective way to do it would be to put it in promotional materials and in the deed. Mr. Russo expressed agreement with Selectman Maddox's suggestion about the signs.

Selectman Maddox moved to add a paragraph to the Development Agreement that stated that signs were to be installed at all common driveways, stating that these were private driveways and were not maintained by the Town of Hudson. Ms. Chadwick seconded the motion.

VOTE: Chairman Barnes called for a verbal vote on the motion. All members voted in favor and Chairman Barnes declared the motion to have carried (7 -0).

Selectman Maddox moved to establish a surety for the **Nadeau Farm Preservation – A Qroe Farm Project** in the amount of \$237,052.00, as recommended by Town Engineer Tom Sommers (see Mr. Sommers' memo in file, dated October 23, 2007, which includes a copy of the Road Guarantee Estimate Form for this development). Ms. Quinlan seconded the motion.

VOTE: Chairman Barnes called for a verbal vote on the motion. All members voted in favor and Chairman Barnes declared the motion to have carried (7 –0).

Ms. Quinlan moved to require the owner/developer of the **Mammoth Green Estates Open Space Development (OSD) Subdivision** (aka Nadeau Qroe Farm OSD Subdivision), Taideh Hsu, of 131 Route 101A Suite 204, Amherst, NH to complete said development in accordance with the Subdivision Plan-of-Record entitled: **Nadeau Farm Preservation, A Qroe Farm Project, Old Derry Road, Hudson, NH**, prepared by Bedford Design Consultants, 177 East Industrial Park Drive, Manchester, NH, dated November 11, 2005, and revised through November 9, 2007, consisting of Sheets 1, OV1, PH1, S1 through S10, T1 through T10, P1 through P3, DV1 through DV3, CS1 through CS8, SD1, DD1 through DD3, EC1 and D1 through D3, and Notes 1 through 20 on Sheet OV1. Selectman Maddox seconded the motion.

VOTE: Chairman Barnes called for a verbal vote on the motion. All members voted in favor, and Chairman Barnes declared the motion to have carried (7 –0).

Mr. Russo moved to amend Section 3.12 of the Declaration by changing the second full sentence, after the first and only comma, to read: "The agricultural activities to be conducted thereon shall be of uniform or cohesive nature throughout each contiguous farm belt area." Ms. Stewart seconded the motion.

VOTE: Chairman Barnes called for a verbal vote on the motion. All members voted in favor and Chairman Barnes declared the motion to have carried (7 –0).

Ms. Quinlan moved to approve the following declarations, by-laws, and development agreement, and for the same to be incorporated and become a part of, in perpetuity, the Planning Board's Decision of Approval for the **Mammoth Green OSD Subdivision**, having an address of Old Derry Road – Map 115/Lot 3:

1. By-Laws for Mammoth Green Estates Homeowners Association (aka Nadeau Qroe Farm OSD), dated: January 9, 2008, as revised by the Planning Board at the meeting of that date.
2. Declaration of Easements, Covenants and Restrictions, dated January 9, 2008, as revised by the Planning Board at the meeting of that date.
3. Declaration of Driveway and Common Driveway Easements and Restrictions, dated September 26, 2007.
4. The Development Agreement dated January 9, 2008, as revised by the Planning Board at the meeting of that date.

Selectman Maddox seconded the motion.

VOTE: Chairman Barnes called for a verbal vote on the motion. All members voted in favor and Chairman Barnes declared the motion to have carried (7 -0).

Mr. Hall resumed his position as a regular member of the Planning Board. Ms. Chadwick returned to her non-voting alternate position.

VI. CORRESPONDENCE

Chairman Barnes noted that items of correspondence received in tonight's packet would be taken up in conjunction with the associated cases, with any remaining items being taken up under **Other Business** at the end of the meeting.

VII. PERFORMANCE SURETIES

Chairman Barnes noted that there were no **Performance Sureties** items to discuss at tonight's meeting.

VIII. DESIGN REVIEW PHASE

Chairman Barnes noted that there were no **Design Review Phase** items to discuss at tonight's meeting.

IX. CONCEPTUAL REVIEW ONLY

Chairman Barnes noted that there were no **Conceptual Review Only** items to discuss at tonight's meeting.

X. OLD BUSINESS (Continued)

A. Specialty Kitchens (Amended) SP# 11-07

Map 169/Lot 020
Hudson Park Drive

Purpose of Plan: To amend the existing site plan to show an accessory use. The hockey skate sharpening business is general retail sales (service, wholesale and some cash and carry) and is an allowed use in an industrial zone. Deferred Date Specific from the October 10, 2007, Planning Board meeting.

Mr. Cashell said CLD had verified Mr. Maynard's lot size calculations.

Mr. Richard Maynard, Professional Engineer, of Maynard & Paquette, Engineering Associates, LLC, appearing before the Board as the engineering representative of the

applicant, said the lot size calculations had been done by three different firms, adding that Director Sullivan had stated in a letter that the proposed use was an "allowed use."

Mr. Russo asked if it would be possible to add spaces and still satisfy the green space requirements. Mr. Maynard answered in the affirmative but suggested the spaces were not needed for the site. Mr. Russo said he wanted to see the spaces on the site plan. Mr. Maynard suggested that a note be added to the plan stating that the parking configuration would have to be reviewed by the Planning Board if the use changed. Mr. Russo said that would get confusing. Mr. Maynard said he could add a dashed line showing future parking spaces.

Ms. McGrath asked if the business were just for skate sharpening. Mr. Maynard said it would be for skate sharpening and sales of hockey equipment. He said it was a hockey pro shop. Ms. McGrath said the use was not clear, and she suggested that Mr. Maynard change the note on the plan so that the use was made clear. Mr. Maynard said he could amplify it.

Chairman Barnes said the staff report was taking a different direction —i.e., determining if a full site plan application would be required for this plan. Mr. Maynard said a site plan had been submitted and accepted at the last meeting. Mr. Cashell said the change of use had not been submitted to the Planning Board.

Mr. Maynard said Director Sullivan had made the determination that the use would be allowed. He said a full site plan application had been submitted and accepted by the Board, adding that the Board had expressed a couple of concerns.

Ms. McGrath referenced Director Sullivan's letter of January 19, 2007, saying she did not think she had seen it before she got the packet. If that were the case, she said, the appeal period would have already expired. Mr. J. Bradford Seabury, a member of the Zoning Board of Adjustment, said HTC 143 stated that the 30-day appeal period did not begin until the members of the Planning Board had received notification.

Selectman Maddox said the issue was that the existing site plan stated that there would not be any retail sales. Mr. Maynard said that was why an amended plan had been submitted. Ms. McGrath said the site plan had been amended after the fact, adding that she was not certain she agreed with Director Sullivan's zoning determination. Ms. Quinlan expressed agreement with Ms. McGrath. Mr. Cashell said it was a permitted use in an Industrial zoning district. He said staff had been dealing with a zoning violation at this site for several years and that it had not been until recently that the applicant had decided to try to make things right. Ms. McGrath said she was not certain she agreed that this was an accessory use.

Mr. Maynard said his client had come to Town Hall and had been told that everything was fine. He said a Certificate of Occupancy, dated September 14, 2006, had been issued and that it was not until several months later that the applicant was told the site was in violation. He said his client had not tried to avoid the issues, noting that his client had communicated with the Town on several occasions. Ms. McGrath said the Certificate of Occupancy did not say anything about a hockey pro shop.

Mr. Hall asked if Mr. Maynard were saying that the unit was not a cash-and-carry business with no retail sales. Mr. Maynard said it was and that was why an amended

plan had been submitted. Mr. Hall asked if Mr. Maynard had advised his client to go ahead and submit an application for a building permit for the cash -and-carry/retail sales business, even though a note to that effect was not on the plan. Mr. Maynard said he resented that, saying that he had not had any contact with his client until the question of the zoning violation had come up. Mr. Maynard said his client had gone to the Town and was told the cash -and-carry business was okay. Mr. Hall said Mr. Maynard was talking in circles.

Mr. Hall moved to deny the waiver of HTC 275-8B (26) for ten additional parking spaces. Ms. Quinlan seconded the motion.

Mr. Hall noted that there was no request for that waiver.

Ms. Quinlan said she remembered a discussion in which Specialty Kitchens had said there would not be any retail sales on the site. She said any oral discussions the applicant had with staff regarding retail sales did not mean anything to the Planning Board. She then asked how the Board wanted to proceed with this matter.

Ms. Stewart asked if the hockey shop had received a permit from the Town. Ms. Quinlan and Mr. Maynard said it was unspecified. Ms. Stewart said she thought the Board should work with Specialty Kitchens to make the plan work, noting the Board's reputation for making things difficult for businesses. Mr. Hall said he did not think the Board made things difficult for businesses, noting that the Board had a specific ordinance that prohibited retail sales on this site, and adding that a waiver had been granted for 19 parking spaces for that reason. He said the applicant should come back to the Board with a full site plan.

Ms. McGrath concurred with Mr. Hall, saying the Board was upholding a binding agreement between the Board and Specialty Kitchens. She said Specialty Kitchens should live up to the same standards that all the other businesses in Hudson lived up to.

Selectman Maddox said the Board did not want retail sales in an industrial zone, noting increased traffic on Hudson Park Drive.

Ms. Stewart expressed agreement that Specialty Kitchens should live up to its agreement with the Planning Board. She then asked if the Board expected Specialty Kitchens to close up shop tomorrow and to come back with a new site plan. Ms. Quinlan said Specialty Kitchens was asking the Board to approve the plan as amended, adding that Mr. Hall and others wanted the applicant to come back with a new site plan.

Mr. Cashell said, as he recalled, it was to be an online hockey business, noting that there had been a grand opening.

Mr. Russo said he was confused about the parking space situation. Mr. Maynard said the original waiver was for 19 parking spaces, adding this waiver was for 7 spaces for a total of 26 parking spaces. Mr. Hall demurred, saying the request was to add three parking spaces to 25 spaces for a total of 28 parking spaces; he then noted that 54 parking spaces were needed for all the uses. He said the intent of his motion was to lead to a discussion of what the Planning Board wanted the applicant to amend and what the Board wanted to see changed. He said he was trying to move forward.

VOTE: Chairman Barnes called for a hand vote on the motion. All members voted in opposition except for Mr. Hall and Ms. McGrath, who both voted in favor, and Chairman Barnes and Selectman Maddox, who both abstained. Chairman Barnes declared the motion to have failed (2-3-2).

Ms. Quinlan moved to require the applicant for the Specialty Kitchens Plan project to submit a new Site Plan application, relative to the proposed amendments to the previously approved plan, and for said application to include: a revised Site Plan, showing the retail Hockey Shop use, the respective square footage for each use within the building, and parking requirements, together with a new CAP fee and any other conditions that may arise from this review (i.e. —exaction contribution toward a new traffic signal at the intersection of Hudson Park Drive and Route 111). Ms. Stewart seconded the motion.

Mr. Maynard questioned how the plan did not meet every word except for the CAP fee, asking where the plan was deficient. Mr. Hall expressed agreement with Mr. Maynard, saying the plan met all requirements.

Selectman Maddox said the plan did not meet what the Planning Board wanted ; he then referred to the last agreement , in which no retail sales had been specified. He questioned what would happen when the hockey pro shop went away, adding that Mr. Maynard had previously said that “retail sales is retail sales.” He said he felt that something had to be put in the plan that would stop retail encroachment.

Mr. Cashell suggested that the best course of action would be to have the applicant come back with a new site plan, noting the safety issue with Route 111 if retail sales were allowed on the site.

Mr. Maynard said 27 required parking spaces for that use was ludicrous. He said he doubted if there were ever more than two cars on the site at any given time.

Selectman Maddox said that, if the Board approved retail sales for Specialty Kitchens and in the future another business moved into the site, the entire 12,000 ft² could end up being retail sales.

Mr. Russo asked whether the applicant would have to come back for the site plan or remove the skate shop if this motion were approved . Mr. Cashell said that could be done if the applicant wanted to become compliant, but the applicant would have to come back to the Board with a new site plan if the applicant wanted to keep the skate shop. Mr. Russo said he was concerned about possible litigation.

Ms. McGrath said if the courts found in the Town's favor, the court would be asked to reimburse the Town for its attorney fees and any other incidental costs, noting that this had happened in the past. Mr. Russo said he understood that, but that the applicant was trying to cut things short so this could be ended, Once money was expended , it was expended , he said, and he questioned who would bare that expense.

VOTE: Chairman Barnes called for a verbal vote on the motion. All members voted in favor except for Chairman Barnes, who

abstained. Chairman Barnes then declared the motion to have carried (6-0-1).

Mr. Maynard stated for the record that the court case had been filed after the site plan had been submitted. Ms. Quinlan said this was all part of negotiations.

Chairman Barnes declared a break at 9:06 p.m., calling the meeting back to order at 9:23 p.m.

Chairman Barnes stated that there were three more items left on tonight's agenda, noting that one of them was a Public Hearing, which had to be held, so the Board would address as the next item.

Chairman Barnes opened the Public Hearing at 9:25 p.m.

XIV. PUBLIC HEARING

A. Petition to Rezone property at 51 Burns Hill Road, Map 211/Lot 40, from R-1 to R-2.

Purpose of Public Hearing: To consider Citizen Petition to Rezone property at 51 Burns Hill Road, Map 211/Lot 40, From R-1 to R-2.

Ms. McGrath stepped down to avoid a possible perception of conflict of interest, as she had sat on a ZBA hearing pertaining to this property. Chairman Hall appointed Ms. Chadwick to sit in Ms. McGrath's place.

Ms. Bonnie LaVallee, 51 Burns Hill Road, said she was at tonight's meeting asking that the lot be rezoned. She said she was on the west side of Burns Hill Road, not the east side specified in the warrant article, saying that she felt her property had been looped into Glen Drive zoning, and adding that she felt her property should be zoned R-2.

Chairman Barnes opened the meeting for public input and comment, in favor or opposition.

Mr. Joanne Radziewicz, 43 Burns Hill Road, an abutter to 51 Burns Hill Road, said Ms. LaVallee wanted a two-family home, adding that Ms. LaVallee had gotten that approval from the Zoning Board of Adjustment so the point was moot unless Ms. LaVallee wanted to do something else with the property. She said to rezone Ms. LaVallee's property as R-2 in the midst of an R-1 zone would be spot zoning.

Chairman Barnes asked a second time for public input and comment, in favor or opposition. No one else coming forward to provide input, Chairman Barnes closed the Public Hearing at 9:29 p.m., asking the members of the Board for comment or questions.

Mr. Hall asked if Ms. LaVallee had a copy of the tax map. Ms. LaVallee looked through the documentation she had brought with her, not finding a copy of the tax map.

Mr. Russo asked to see where the existing R-2 in that area was. Mr. Cashell explained the zoning in that area, showing a copy of the zoning map on the display screen; he noted that three adjoining properties on the west side of Burns Hill Road were designated as R-1, with the property to the rear being designated R-2. Mr. Russo expressed a belief that rezoning this lot would not be spot zoning, as there was abutting R-2 property behind the lot. Mr. Cashell concurred. Ms. Radziewicz expressed disagreement. Mr. Cashell described the zoning again. Ms. Radziewicz said that was incorrect, referencing the warrant article from 1986. Ms. LaVallee expressed disagreement with Ms. Radziewicz. Ms. Radziewicz said she believed the Muller property to the side and rear to be R-1. Ms. LaVallee declared that it was R-2.

Chairman Barnes asked if the zoning information were in the tax map. Mr. Cashell displayed the parcel map on the screen. Mr. Hall asked where Ms. Radziewicz lived, and she identified her home as 49 Burns Hill Road, the adjoining lot. Mr. Hall asked Ms. Radziewicz if she were objecting to the rezoning. Ms. Radziewicz answered in the affirmative, saying there had been some dispute as to whether the homes in question were ever rezoned from A-2 to R-1, adding that the zoning of specific-numbered lots had been changed in 1986 to protect single-family homes in the area. She said 51 Burns Hill Road had been listed as a single-family home, noting additional kitchens had been added to the home. She said Ms. LaVallee had purchased the home as a two-family home plus, adding that she felt at times there had been more than two families living in the home. She said this had been an ongoing process for the past year and a half, noting that the ZBA had upheld the decision that this property was zoned R-1. She concluded by saying she did not see any necessity for the property to be rezoned, adding she did not need an R-2 home between two R-1 homes. She then protested that the ZBA had simply ignored the ordinance requirements and given Ms. LaVallee a variance to be R-2, even though she did not meet the requirements for either R-1 or R-2. She then reiterated that she did not need an R-2 home located between two R-1 homes, saying the homes were basically on top of each other, and Ms. LaVallee had already been granted what she wanted, so it was kind of a mute point at this point. She expressed doubt that Ms. LaVallee had explained the matter well to the people who signed it, saying it had been a very difficult situation for a year and a half.

Mr. Hall said the zoning map did not show Ms. LaVallee's home between two R-1 homes. Ms. Radziewicz said the map did not show it but she felt the lot on the other side had also been rezoned in 1986, referencing the 1986 warrant article and the petition warrant article. Mr. Hall said the official zoning map showed the homes on each of two sides of Ms. LaVallee's property to be R-2. Ms. Radziewicz said there had been some debate about that. Mr. Hall said he had to go by the official tax map.

Mr. Russo asked Ms. Radziewicz if she believed R-2 zoning of Ms. LaVallee's home would have a negative impact on her property. Ms. Radziewicz said the way Ms. LaVallee was using her home already had a negative impact on her home. She said the Zoning Board of Adjustment had called the matter a civil issue, adding that there had been rental issues and many police visits to the property on many occasions. She said Ms. LaVallee's home did not meet the ZBA requirements (60,000 ft² lot and Town water

and sewer) for a house to be a two family home . She said it needed a special exception when it was built, saying that within seven or eight years, an addition with two bedrooms, a bath, and a kitchen had been put on, and adding that with the adaptable kitchen in the lower level up to three families could live in the home. Ms. Radziewicz said those things were questioned but that an answer was never given. She said the ZBA had completely ignored the Town ordinance.

Mr. Russo asked about the home at 43 Burns Hill Road. Ms. Radziewicz said it was a duplex before the rezoning in 1986. Ms. Radziewicz commented that there was a lot of activity that went on at Ms. LaVallee's property that Ms. LaVallee was probably unaware of. She said the ZBA had overlooked the ordinance. Mr. Russo stated that by granting Ms. LaVallee the rezoning request , since she already had a variance for a duplex home , it would have no further effect on Ms. Radziewicz. Mr. Radziewicz expressed agreement. Mr. Russo asked if going from R -1 to R-2 would have a negative impact on Ms. Radziewicz's property. Ms. Radziewicz said she and her husband felt there would be a negative impact , based on what was going on in that home . She questioned why change things at all , since Ms. LaVallee already had what she wanted .

Mr. Russo said it seemed to him that spot zoning had been done years ago and this might be a way to start correcting it. He then said Ms. LaVallee felt she had the right to request the zoning change. He said he did not see an issue with Ms. LaVallee going to an R -2, because that was what she was adjacent to . Ms. Radziewicz said the 1986 change had come before the Planning Board and not one member of the Planning Board of that time had said it was spot zoning. Mr. Russo said he did not see any problem as long as the change did not create a negative impact to Ms. Radziewicz. Ms. Radziewicz said she believed Ms. LaVallee intended to have more than one renter , as she needed to have income in order to retain the home . Mr. Russo said that a three-family would not be allowed. Ms. Radziewicz expressed agreement.

Ms. Stewart asked when the home had gone from a single-family home to a multi-family home. Ms. Radziewicz said she had not seen anything before 2005 , when she and her husband went through the property with an intent to purchase the home, but had not done so because the multiuse was not allowed in an R -1 zone. She said it became a two-family home when Ms. LaVallee purchased the property with the intent to use it as a two-family, in April 2005 . She said that Ms. LaVallee had kept it as a single-family in the tax office for a full year, even though up to three families were living there, in three separate family units.

Chairman Barnes asked what the Board wanted to do.

Ms. Chadwick moved to recommend for the 2008 Town Warrant the following rezoning amendment to the Official Zoning Map of the Town of Hudson , by re-zoning from Residential -One (R-1) to Residential -Two (R-2), 51 Burns Hill Road, Map 211/Lot 40. Note: Said parcel abuts an R -2 zoning district, and is generally located across the street and to the immediate south of the Glen Drive and Burns Hill Road intersection. Mr. Russo seconded the motion.

VOTE: Chairman Barnes called for a hand vote on the motion. All members voted in favor except for Ms. Quinlan and Ms.

fence had been moved to prevent cut-through traffic, and adding that all the shrubbery would be on the pharmacy side of the fence. Ms. Brewster said the entrance had been offset by approximately 50 feet, dramatically skewing the approach in, and the width had been reduced from 18 feet to 16 feet to deter left-turn movement from Derry Street.

Ms. Brewster said a sidewalk had been added along the corridor. She noted that one more parking space had been added, saying the parking would be parallel to the building. She said the applicant was no longer asking for a loading waiver, noting that more pavement had been added in the back. Selectman Maddox noted that the applicant had not asked for a waiver for the reduction in parking space width.

Ms. Brewster said the building could be reduced in width by two feet if that were required to satisfy other concerns, adding that the waiver for internal green space was no longer needed.

Ms. Brewster said the applicant had done a coordination study between the two signals in the area. She said the results of the study indicated that the traffic flow would be improved by about 20 percent if the signals were coordinated. She said the applicant had agreed to contribute \$50,000 to the corridor fund above and beyond the CAP fee.

Ms. Brewster showed pictures of the landscaping proposal and pictures of the proposed pharmacy. She expressed a belief that the proposed building and landscaping, as well as other improvements, would be a good fit for the area, noting other allowed uses that would not fit as well in the area.

Atty. Westgate referenced the November 14, 2007, Planning Board meeting, saying the Board had accepted the plan as complete. On December 31, 2007, he said, he had submitted a letter supplementing the waiver requests. He said the waivers were of two categories: waivers for particular studies, and waivers for particular design parameters. He said the three study waivers were HISS Mapping, Noise Study, and Fiscal and Environmental Study, noting that those studies were not necessary and adding that those studies would result in a hardship from increased costs and increased time to process this application. He said the two prime design parameter waivers were the Front Pavement Setback waiver and the Impervious Surface Lot Coverage waiver. He said the issue was whether the Planning Board would allow parking in the front and on the north side of the building. If that were to be allowed, he said, it would effectively allow the redevelopment of the site. He said no other use would provide the benefits that this use would provide.

Atty. Westgate addressed the hardship and spirit of intent to justify the waivers, saying the area had been developed 30 years ago, which pointed to the notion of hardship. He said a comparison of this property with other properties in the area showed the property was in a sea of pavement, arguing that imposing the regulations to make this property very different from the surrounding properties would impose a hardship. He said the spirit of intent was realized in this type of development.

Atty. Westgate addressed the other waiver requests—i.e., side and rear setback and 100-foot setback—saying they were of less significance. He said there already was some encroachment into the pavement. He said the 100-foot buffer affected some of

the residential properties to the north, adding that the closest Abbott Farms building was more than 100 feet from the building footprint. He reiterated his statements regarding spirit of intent and hardship, saying the trade-off was the waivers versus the benefits.

Atty. Westgate addressed the two-driveway issue, saying he had tried to figure out the Board's stance on two driveways over the years. He said the Board did not require a driveway permits for commercial site plan approvals, so why would one need a waiver for something that was not required to begin with? He said he had prepared a letter if the Board required that waiver request.

Atty. Westgate said he could not find any waiver request for parking space size. He said the regulation was not iron-clad, noting that site plan regulation HTC §275-8D(28) stated that "parking space dimensions shall be 10 by 20 feet, except that the Planning Board may vote to allow dimensions of 9 by 18 feet." He said that language was different from a waiver, adding that he looked at that as saying the Board had the flexibility to dimension the spaces by vote.

Chairman Barnes opened the meeting for public input and comment, in favor or opposition.

Mr. Roland Cloutier, 225 Abbott Farms, said the purpose of the drive-through lane was stated to be for medicine/prescriptions only, saying he did not think that would last too long. He said there was only one way for the cars in that lane to come out. He said he had asked where employee parking would be and was told that the employees would park in the rear. He said he did not see any parking there. Ms. Brewster said there were 46 parking spaces, which would be plenty for employees and customers. Mr. Cloutier said he questioned Ms. Brewster's statement. Chairman Barnes said there was some confusion about Mr. Cloutier concern, stating that the applicant was not requesting a waiver for parking sizes.

Mr. Cloutier asked about the median. Ms. Brewster said the change to the median was done as the result of a request that it be shortened at the last meeting. Mr. Cloutier asked if the island had been extended out toward Derry Road. Mr. Brewster said it had been lengthened in an effort to accommodate more queuing.

Mr. Cloutier referenced the traffic light at Abbott Farms driveway, noting the traffic study, and he asked where the other driveway would go. Chairman Barnes described the driveways. Mr. Cloutier said the second driveway was on Abbott Farms property. Mr. Cloutier then asked what the volume would be. Mr. Duval said the driveway volume would be about 500 cars per day. Mr. Cloutier said that would be a problem, noting that Dunkin Donut had 800 cars per day and this proposal would add an additional 500 cars.

Mr. Cloutier questioned how the applicant would meet the green space requirement. Chairman Barnes said he thought the applicant would be doing some landscaping on Abbott Farms property.

Selectman Maddox said the copies of the traffic study that the Board member had received were unreadable. He referenced slide number 8, noting the thing that was missing was all the cars. He said he could not vote for the proposal because of the

entrance on Derry Road , adding that 35 percent green space was a realistic number for the town.

Ms. Stewart asked if the applicant had met with the Abbott Farms condominium association. Atty. Westgate said he had not but that Mr. Scott Weymouth, Arista Development, had said the meetings went back two years, noting that many changes had been made as the result of requests from the residents of Abbott Farms . Ms. Stewart said she wanted to see some documentation that said the residents ' concerns had been addressed.

Ms. Stewart questioned the delivery truck size. Mr. Weymouth said Walgreens could dictate what kind of trucks would make the deliveries and when the deliveries would be made , adding that the Board could decide what kind of trucks would make the deliveries and when those deliveries would be made.

Atty. Westgate said Abbott Farms had to give an easement for Arista to install the landscaping on Abbott Farms property.

Ms. Quinlan said she was in favor, saying the applicant had listened to the Board's concerns and had come back with a better plan. She said she did not think stand -alone drug stores were huge traffic generators , saying this use was the best that could be hoped for. She said she wanted the building to shrink a couple of feet in width if that were a viable option.

Ms. Chadwick asked if there were enough room for a person sitting in the drive - through and a person coming in the drive to get through. The applicant's team said there was enough room.

Ms. Chadwick asked if anything could be done to prevent cars from cutting through the back of Walgreen's parking lot to get to Dunkin Donut. Ms. Brewster said that should not be a problem because of the way the traffic flow was designed.

Mr. Russo said he did not see a waiver request for the size of the loading area. Atty. Westgate said there was no need for that waiver because of the pavement width for loading and the drive isle was widened. Mr. Russo said the applicant still needed to request the waiver.

Mr. Russo said he was not a proponent of smaller parking spaces. He suggested that the smaller parking spaces be in an area where there was a lot of maneuverability. Atty. Westgate said all factors should be analyzed to come up with the best result.

Selectman Maddox noted that it was after 11 p.m. , the cutoff deadline.

Mr. Russo asked if speed bumps would be an option in the back driveway. Mr. Duval said that was a possible option.

Mr. Russo asked about the lighting study. Ms. Brewster described the lighting plan. Mr. Russo said he was interested in the lighting study. Ms. Brewster said that had been submitted.

Mr. Russo expressed agreement with reducing the width of the building.

Mr. Russo asked about the dimensions of the WD-40 delivery truck, as mentioned by the applicant. A member of the team said the vehicle was 40 feet from axle to axle.

Mr. Hall asked about the crosswalk, asking if the signal system were capable of handling walk cycles. An unidentified person answered in the affirmative.

Mr. Hall asked about the form of communication between the driver and the store at the drive-through window. An unidentified member of the applicant's team said there was a speaker/microphone setup through the window. Mr. Hall said that could be an annoyance late at night for the abutting residents. He said he wanted to hear more about how that would work.

Mr. Hall asked how the plantings would be maintained. Atty. Westgate said that would be done through a permanent easement. Mr. Hall said he would be concerned about the plantings if the road were widened.

Mr. Hall asked about the entrance to Abbott Farms. Atty. Westgate said there were existing permanent easements that benefited the Days Inn site.

Mr. Hall said the applicant was asking to put a lot of stuff on a small site. He said he was not sure he could vote to approve all the waivers.

Chairman Barnes noted that there was not a request for a waiver for HTC §275-8 B 31(a). He said he was having a hard time finding 10 percent of the interior of the parking lot set aside for landscaping. Atty. Westgate said it was his understanding that the current design did not require that waiver, because the 10 percent had been met.

Selectman Massey asked if the coordinated signaling system between the Dunkin Donut and the Elm Avenue signals were needed. Atty. Westgate said traffic flow would improve around the site if those signal lights were coordinated.

Selectman Massey asked about the minimum number of traffic that would be required for Walgreens to be profitable. Mr. Weymouth said he had not heard that question before, adding that Walgreens used demographic information to determine where to build stores. Selectman Massey asked how the 500-vehicle figure was determined. Mr. Duval said that number was based on ITE pharmacy drive-through classification averages.

Selectman Maddox moved to defer further review of the 90 Derry Street (Pharmacy) Site Plan application, date specific to the February 13, 2008, Meeting. Ms. Stewart seconded the motion.

VOTE: Chairman Barnes called for a verbal vote on the motion. All members voted in favor and Chairman Barnes declared the motion to have carried (7 -0).

XI. ZBA INPUT ONLY

Chairman Barnes noted that there were no **ZBA Input Only** items to discuss at tonight's meeting.

XIII. OTHER BUSINESS

Chairman Barnes noted that there were no **Other Business** items to discuss at tonight's meeting.

XV. ADJOURNMENT

All scheduled items having been addressed, Ms. Stewart made a motion to adjourn. Selectman Maddox seconded the motion.

VOTE: Chairman Barnes called for a verbal vote on the motion. All members voted in favor.

Chairman Barnes then declared the meeting to be adjourned at 11:37 p.m.

Date: February 5, 2008

James Barnes, Chairman

J. Bradford Seabury, Recorder

Marilyn McGrath, Secretary

Transcribed by:
Joseph F. Hemingway and J. Bradford Seabury

These minutes were accepted as amended following review at the 03-05-08 Planning Board meeting.

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**HUDSON PLANNING BOARD Meeting Minutes
January 9, 2008**

Page 20

The following changes were made to the draft copy in accordance with review comments at the Planning Board meeting of 03-05-08:

Page 9, VOTE paragraph at top of page — the numerical tally of the vote had been incorrectly given as 3 –2–2 when, as noted in the accompanying text, the actual vote was 2-3-2; the tally count was corrected.

Page 10, VOTE paragraph concluding at top of page — the numerical tally of the vote had been incorrectly given as 6–1 when, as noted in the accompanying text, the actual vote was 6-0-1; the tally count was corrected.