

**HUDSON ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
March 25, 2010**

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:10pm on Thursday, March 25, 2010, in the Community Development Meeting Room in the Town Hall basement. Chairman Seabury then requested Clerk Houle to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

Present: Normand Martin, Jim Pacocha, Mike Pitre, J. Bradford Seabury, and Donna Shuman

Members

Absent: None (All present)

Alternates

Present: Kevin Houle

Alternates

Absent: Marilyn McGrath (Absent)

Staff

Present: William Oleksak, Building Inspector

Liaison

Present: Ben Nadeau (Excused)

Recorder:

Trish Gedziun

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II. SEATING OF ALTERNATES AND ANNOUNCEMENTS

For the benefit of all attendees, Chairman Seabury noted that copies of the agenda for the meeting, as well as an outline of the rules and regulations governing hearings before the Zoning Board of Adjustment, were available at the door of the meeting room. He noted the outline included the procedures that should be followed by anyone who wished to request a rehearing in the event the Board's final decision was not felt to be acceptable. Chairman Seabury pointed out that the Board allowed rehearings only if collectively 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 seated Mr. Houle in place of Mr. Pacocha for the purposes of reviewing the meeting minutes, as Mr. Pacocha had not yet arrived.

The following edits were made to the minutes from the December 10, 2009, minutes:

Chairman Seabury noted that Case 211 with respect to 49 Burns Hill Road, had been transcribed verbatim at the request of the Board and therefore, there were no edits made to that section of the minutes.

Excluding a few grammatical errors, the Board did not make any further edits to the minutes from the December 10, 2009, meeting.

Mr. Martin made a motion to approve the minutes from the December 10, 2009, minutes as amended by Board.

Ms. Shuman seconded the motion.

Chairman Seabury called for a verbal vote, and he then stated that all of the Board members were in favor of approving the minutes from the December 10, 2009, meeting as amended by the Board.

The following edits were made to the minutes from the January 28, 2010, minutes:

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1. Page 4 – 5th paragraph – “but then re-considered that decision feeling it should have been a request for a variance” was changed to “but then re-considered that decision feeling it should have been a request for a variance along with a Wetland Special Exception.” – Seabury
2. Page 4 – 5th paragraph – “He stated that the applicant was at this meeting to request the variance” was change to “He stated that the applicant was at this meeting to request the variance and to rehear the request for a Wetland Special Exception.” – Seabury
3. Page 18 – 8th paragraph – “Mr. Martin stated that the Board had approved both requests in April, 2008, and therefore, had expired.” Was changed to “Mr. Martin stated that the Board had approved both requests in April, 2008, and therefore the approvals had expired because no work had been done.” – Seabury
4. Page 27, last paragraph – “he then stated that all of the Board members” was changed to “he then stated that a majority of the Board members” – Seabury
5. Page 28, 3rd paragraph – “he then stated that all of the Board members” was changed to “he then stated that a majority of the Board members” – Seabury

Chairman Seabury stated that Mr. Martin would review the DVD for clarification with regard to a question on page 9 – 1st paragraph and a question on page 26 – last paragraph.

Chairman Seabury returned Mr. Houle to his seat as a non-voting alternate member of the Board, with Mr. Pacocha having arrived at 7:28pm.

IV. PUBLIC HEARINGS FOR SCHEDULED APPLICATIONS

1. **Case 173-056 (3/25/10): Geoffrey and Marilyn Freitas, 29 Webster Street, Hudson, NH, requests a Variance to allow parking of a vehicle in excess of 13,000 lbs. [Map 173, Lot 056, Zoned TR, HZO Article III, Section 334-15 (B) (2), Parking.]**

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

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Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak replied that the applicant was present for the reason stated in the posted notice, as recorded above.

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

Mr. Geoffrey Freitas, the applicant, addressed the Board, stating that he was self-employed and wished to park his truck, which was his only vehicle, in his driveway.

Mr. Freitas stated that he left the property very early in the morning and returned in the afternoon and his property was very well kept.

Mr. Freitas read aloud a portion of the Application for a Variance as summarized as follows:

- 1. Granting the variance will not be contrary to the public interest because there would be no diminution in the value and/or the condition of the subject property or the overall residential quality of the neighborhood. Not allowing the variance would require the applicant to secure an alternative parking location for the vehicle in question, incur significant costs to his detriment, and possibly result in his inability to earn an income.*
- 2. The proposed use will observe the spirit of the ordinance because it will not harm the public safety or welfare. No unregistered vehicles are present on the subject property, nor are there a large number of vehicles routinely parked on the subject property.*
- 3. Substantial justice would be done to the applicant by granting the variance because denying the request would result in the applicant incurring significant financial costs and a potential loss of income, and could result in the property falling into disrepair.*

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

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Mr. Larry Taylor, 27 Webster Street, an abutter, addressed the Board and stated that he and his wife were the only neighbors that could see the vehicle and they had absolutely no problem with it being parked in the driveway.

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

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

Chairman Seabury declared the matter before the Board.

Mr. Pacocha asked Mr. Oleksak what initiated the applicant's request for a variance. Mr. Oleksak replied that he had seen the vehicle parked in the applicant's driveway on a number of occasions.

Mr. Pitre stated that he believed the applicant's vehicle was a refrigeration vehicle and asked what type of business the applicant had conducted out of it. Mr. Freitas replied that he drove to Boston, MA every day and purchased wholesaled produce. He also replied that the gross weight of the vehicle was less than 33,000 pounds - which was a requirement for a CDL License.

Mr. Pitre asked the applicant what type of fuel the vehicle used. Mr. Freitas replied that the vehicle used diesel fuel.

Mr. Pitre commented that he felt the applicant's property was very well kept.

Mr. Martin commented that he had driven by the property and it appeared to be very well kept and that the applicant was not hurting anybody by asking for the variance and that he felt it was a good use.

Mr. Pacocha asked the applicant what time he left the house. Mr. Freitas replied that he left the house by 2:00am.

Mr. Pacocha asked the applicant if the vehicle were left idling during the winter months. Mr. Freitas replied that it was not.

Mr. Martin made a motion to approve the request for a Variance.

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Mr. Pitre seconded the motion.

Mr. Martin, speaking in his motion, stated that he felt the applicant had come in when asked; he had testified that it was a good use for him, the vehicle was clean and it did not look bad, and it would not be detrimental to the neighborhood or bring down any property values.

Mr. Pitre, speaking on his second, stated that he felt the applicant had not parked the truck in the driveway with any intended malice. He also stated that he felt a financial hardship would be caused by not granting the variance.

VOTE: Chairman Seabury asked Clerk Houle to poll the Board on the motion to approve the request for a Variance, and to record the members' votes, which were as follows:

Mr. Martin	To approve
Mr. Pitre	To approve
Mr. Pacocha	To approve
Ms. Shuman	To approve
Mr. Seabury	To deny

Chairman Seabury declared that the decision having been four votes to approve the request for a Variance and one vote to deny the request, the motion had carried.

- Case 216-001 and 002 (3/25/10): Merrimac Real Estate Inv., LLC., P.O. Box 4251, Cleveland, TN, requests a Variance to allow expansion of an existing nonconforming structure within the front-yard setback, 50 feet required, 45.02 feet proposed, for property located at 203 and 205 Lowell Road, Hudson, NH. [Map 216, Lot 001 and 002, Zoned Business, HZO Article VII, Section 334-27, Table of Dimensional Requirements and Article VIII, Section 334-31, Alteration and expansion of nonconforming structures.]**

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

Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak replied that the applicant was present for the reason stated in the posted notice, as recorded above.

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

Mr. Patrick Colburn, Civil Engineer, from Keach-Nordstrom Associates, Inc., representing the applicant, addressed the Board stating that the applicant had previously appeared before the Board on two separate occasions, to request a Wetland Special Exception and then for a Use Variance once the Board determined one was needed.

Mr. Colburn also stated that the applicant had subsequently received both the Wetland Special Exception and the Use Variance to allow for the construction of a building and parking spaces over an area that was presently delineated as jurisdictional wetlands.

Mr. Colburn stated that since the original approvals were granted, the applicant had reconsidered their needs and had slightly modified the proposed development to not only include the construction of a stand-alone assisted living facility, but also to include an expansion of the existing Fairview Nursing Home.

Mr. Colburn said that the existing building, which was non-conforming, had a through corridor which presently ended at emergency exit doors. Mr. Colburn further said that the applicant wished to hook the proposed expansion into the existing facility for circulation purposes.

Mr. Colburn stated that the Fairview Nursing Home's current proposed expansion plan included a 73-unit, three-story, stand-alone assisted living facility on Lot #1 as well as a 16,000 square foot building expansion to the existing facility which was currently located on Lot #2. Mr. Colburn further stated that the development plan did include merging the two pieces of property into one single lot. He noted that the existing facility accommodated 126 beds and the proposed expansion would add 31 beds to that number – totaling 157 beds.

Mr. Colburn stated that the proposed project would eliminate two existing curb cuts on Lowell Road which would be replaced by one centrally located curb cut as was seen on the proposed plan.

Mr. Colburn read aloud a portion of the Application for a Variance as summarized as follows:

- 1. Granting of the requested variance will not be Contrary to the Public Interest because the applicants are proposing to expand the existing*

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Fairview Nursing Home Facility. The requested variance would allow for the construction of a portion of the proposed building addition within the front-yard building setback along Lowell Road to accommodate a hallway connecting the easterly wing of the building addition to the existing facility. The condition provides necessary circulation through both the existing and the proposed facilities. The effect to the public interest by granting the requested variance is only positive. With an aging population that continues to grow in Hudson and in neighboring communities, the elderly care services of the type and quality afforded to the community by the Fairview Nursing Home in response to the demands of the public serves the public interest.

- 2. The proposed use will observe the spirit of the ordinance because it was a permitted use and the expansion would allow services to reach 31 additional patients and provide assisted living care for 73 more of Hudson's and the surround communities' elderly.*
- 3. Substantial justice would be done to the property owner by granting the variance because the subject properties are uniquely situated along an ever-growing right-of-way corridor. The applicant's are proposing reasonable expansion to an existing permitted use with the business zone. Opportunity lost by the applicant, should the Zoning Board of Adjustment decide not to grant the requested dimensional variance, far outweighs any gain that could possibly be realized by the public as a result of the same decision.*
- 4. The proposed use will not diminish the values of surrounding properties because the subject properties are situated along the Lowell Road corridor within the Business Zoning District. Due to the fact that the proposal is simply the reasonable expansion of an existing Hudson business, and that the proposed building addition and stand-alone facility will be built in a manner that is in keeping with the existing building and the uses surrounding it, it is very clear that the granting of the requested dimensional variance to allow the applicant's proposed building addition to meet their expansion goals by extending an existing hallway to connect the proposed addition will not affect surrounding property values.*
- 5. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship because the property lies adjacent to an*

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ever widening Lowell Road corridor. Over the years, several dictated property takings by the State of New Hampshire and the Town of Hudson for the widening of Lowell Road have further and further pushed the associated front-yard setback west onto the developable portions of Lots 1 and 2. For this reason, reasonable expansion of the existing facility now requires relief from the dimension requirements set forth in Section 334-27 of the Hudson Zoning Ordinance. The restriction applied to this particular property to maintain a 50-foot front-yard building setback, even if the setback grows with the widening of the Lowell Road right-of-way, is unfair and unreasonable.

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

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

Chairman Seabury declared the matter before the Board.

Mr. Pacocha made a motion to approve the request for a Variance.

Mr. Martin seconded the motion.

Mr. Pacocha, speaking on his motion, stated that he felt granting the variance would not be contrary to public interest, the site provided a service to the community, the proposed encroachment was minimal, it would not diminish the value of surrounding property values, and the fact that the state had taken a portion of the property had created a hardship.

Mr. Martin, speaking on his second, stated that he agreed with everything Mr. Pacocha had said and he felt that the applicant would not have had to make the request for variance in the first place had the state not taken away a portion of the property. Mr. Martin further stated that he felt granting the variance would provide the applicant with substantial justice.

VOTE: Chairman Seabury asked Clerk Houle to poll the Board on the motion to approve the request for a Variance, and to record the members' votes, which were as follows:

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Mr. Pacocha	To approve
Mr. Martin	To approve
Mr. Pitre	To approve
Ms. Shuman	To approve
Mr. Seabury	To approve

Chairman Seabury declared that the decision having been five votes to approve the request for a Variance, the motion had carried.

3. **Case 179-010 (3/25/10): Daniel and Christine Greenwood, 124 Kimball Hill Road, Hudson, NH, requests a Home Occupation Special Exception to allow a vehicle service and repair business to be conducted out of the existing detached garage. [Map 179, Lot 010, Zoned G-1, HZO Article VI, Section 334-24, Home occupations.]**

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

Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak replied that the applicant was present for the reason stated in the posted notice, as recorded above.

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

Attorney J. Bradford Westgate, from Winer and Bennett, LLP, representing the applicant, addressed the Board, stating that Mr. Mike Grainger, Civil Engineering from M. J. Grainger Engineering, Inc., was also present at the meeting on behalf of the applicant.

Attorney Westgate read aloud from the Application for a Home Occupation Special Exception as summarized as follows:

- 1. Please explain, in detail, the nature of your home business. The home business is in the nature of motor vehicle service and repairs, and occasional trailer and small engine repair. Services include general mechanical repairs and servicing, including engine repairs, power train and transmission repairs, oil changes, alignments, tire rotations, and related repairs and mechanical work. The business includes inspections and diagnostics. The business does not include auto body painting, body work, or auto dealing.*

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2. *Is the home occupation secondary to the principal use of the home as the business owners' residence? Yes. The applicants (property owners) reside at the residence which is the primary structure on the property. The motor vehicle repair business functions from a detached garage. Office work for the business is conducted in the second floor of the garage.*
3. *Will the home occupation business be carried on within the residence and/or within a structure accessory to the residence? The home occupation business will be conducted in the detached garage, a structure accessory to the residence.*
4. *Other than the sign(s) permitted under Article XII, will there be an exterior display or other exterior indications of the home occupation? Will there be any variation from the primarily residential character of the principal or accessory building? No signs, other than those permitted under Article XII, are proposed. The current nature and character of the residence and detached garage will not change. The exterior of the detached garage is residential nature.*
5. *Will there be exterior storage and will it be screened from neighboring views by a solid fence or by evergreens of adequate height and bulk at the time of planting to effectively screen the area? There will be no exterior storage in connection with the business. All parts and materials will be stored in the detached garage. With respect to customer vehicles, please see the third to last paragraph below.*
6. *Will there be noise, vibrations, dust, smoke, electrical disturbances, odors, heat or glare produced? Please explain, and if there will be electrical disturbances, describe the frequency. All repair operations will be conducted inside the garage; consequently, only relatively modest noise from the operations will emanate from the detached garage. No dust, smoke, electrical disturbances, odors, heat or glare will be produced from the garage which would travel outdoors.*
7. *Will the traffic generated by the home occupation activity be substantially greater in volume that would normally be expected in the neighborhood? Please explain the expected traffic to your business. The traffic generated by the home occupation activity will not be substantially greater in volume*

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than would normally be expected in the neighborhood. The number of customer vehicles serviced on any business day varies, but rarely exceeds six in any one business day. From time to time, parts and supply deliveries are made by local auto suppliers or delivery services. Such deliveries typically do not total more than two in a day. The total traffic volume is nominal in comparison with existing, regular traffic volume in the neighborhood.

8. *Where will customer/client parking for the home occupation be located? Customer parking will occur adjacent to the existing gravel driveway leading to the garage. One or two customer vehicles may be situated to the rear of the garage. On a typical day, customers will either drop off their vehicles for the day for servicing, or for a minor job, customers may stay on-site while the vehicle is serviced. On some other occasions, customer vehicles may be dropped off at the end of the day or early evening for servicing the next day. Since the garage contains two bays, it is anticipated that those bays will be the primary locations for vehicle storage overnight.*
9. *Who will be conducting the home occupation? The home occupation will be conducted by the applicant, Mr. Daniel Greenwood. Mr. Greenwood personally undertakes the vehicle repairs. He and Mrs. Christine Greenwood perform the related office work.*
10. *Will there be a vehicle(s) for the home occupation. The only vehicles used in the home occupation are the Greenwoods' regular vehicles. From time to time, Mr. Greenwood will use his truck to pick up parts and supplies.*

Chairman Seabury read aloud a letter addressed to the Zoning Board of Adjustment, dated March 7, 2010, from Mark and Sheryl Connors, 123 Kimball Hill Road, Hudson, NH, as summarized as follows:

It is our understanding that Daniel and Christine Greenwood, our neighbors across the street at 124 Kimball Hill Road, have applied for a Home Occupation Special Exception in order to run their motor vehicle repair business out of their detached garage.

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Mr. Greenwood has discussed the proposal for the home occupation with us. We are aware of the current operations and fully support the Greenwoods' application for the special exception.

Chairman Seabury read aloud a letter addressed to the Zoning Board of Adjustment, dated March 7, 2010, from Paul and Joyce Goodale, 122 Kimball Hill Road, Hudson, NH, as summarized as follows:

We understand that Daniel and Christine Greenwood, our neighbors at 124 Kimball Hill Road, have applied for a Home Occupation Special Exception to run their motor vehicle service and repair business. Mr. Greenwood has discussed the proposal with us.

We are familiar with the Greenwoods' current operations at the property and fully support their application for a Home Occupation Special Exception.

Chairman Seabury read aloud a letter addressed to the Zoning Board of Adjustment, dated March 16, 2010, from Robert P. Laroche, 114 Kimball Hill Road, Hudson, NH, as summarized as follows:

It is my understanding that Daniel and Christine Greenwood, have applied for a Home Occupation Special Exception in order to run a motor vehicle repair business out of their garage.

Mr. Greenwood has discussed the proposal for the home occupation with me and I support their application.

Chairman Seabury read aloud a letter addressed to the Zoning Board of Adjustment, dated March 7, 2010, from Louis & Cynthia Lonardo and Dante & Trish Lonardo, 128 Kimball Hill Road, Hudson, NH, as summarized as follows:

I have had the pleasure of being a neighbor to Daniel and Christine Greenwood for the past eight years.

In getting to know the Greenwoods, they are polite and respectable people and are always considerate of others.

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Mr. Greenwood has always respected me and my family with regard to his garage which is located on the border of my property. I have never once heard loud noises or been disturbed by the operations going on while Mr. Greenwood has been working in his garage. Mr. Greenwood is a true asset to this community.

The Greenwood's have demonstrated a positive attitude toward people and have always been helpful to neighbors in their time of need. We could not ask for better neighbors and I say this with true sincerity and caring.

Chairman Seabury read aloud a letter addressed to the Zoning Board of Adjustment, dated March 16, 2010, from Jeffrey Parent and Blair Lambert, 120 Kimball Hill Road, Hudson, NH, as summarized as follows:

It is our understanding that Daniel and Christine Greenwood have applied for a Home Occupation Special Exception in order to run a motor vehicle repair business out of their garage.

Mr. Greenwood has discussed the proposal for the home occupation with us and we support their application.

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

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

Chairman Seabury declared the matter before the Board.

Mr. Houle asked how used batteries and other types of shop debris were disposed of and if there was a dumpster on-site. Mr. Greenwood replied that used batteries were returned to the appropriate vendor and did not remain on the premises.

Mr. Martin asked the applicant how auto related fluids, such as brake fluid would be disposed of. Mr. Greenwood replied that all waste fluids were placed in a drum, pumped out, and then recycled.

Mr. Martin also asked the applicant how tires would be stored and disposed of. Mr. Greenwood replied that he did not deal with tires at all.

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Mr. Pacocha asked the applicant if there would be any exterior storage. Attorney Westgate replied that parts would not be stored on the property.

Mr. Pitre asked how long the applicant's business had been in operation. Attorney Westgate replied that the business had been in operation for approximately three years.

Mr. Greenwood further replied that, when the oil was removed from the premises, a tracking number was issued. He explained that if there were an accidental oil spill the applicant would be responsible for the portion of oil that was removed from his property.

Ms. Shuman asked how many vehicles would be parked on the property. Attorney Westgate replied that the applicant could potentially service up to six vehicles per day but that did not mean that all six vehicles would be parked on the property at the same time. Attorney Westgate further replied that the applicant was aware that vehicles were not permitted to be parked in the setbacks.

Attorney Westgate stated that the applicant was well aware that the proposed Home Occupation Special Exception was personal to him and not a transferable right to any potential new buyer.

Mr. Pacocha commented that presently there were no signs on the property and asked if the applicant had planned on installing any. Attorney Westgate replied that if the Home Occupation Special Exception was granted, the applicant did wish to install a sign but that the sign permit process would be adequately followed.

Mr. Martin made a motion to approve the request for a Home Occupation Special Exception with the following six stipulations:

I move to approve the request for a Home Occupation Special Exception for a conditional-use auto repair business within the existing dwelling or secondary building in accordance with the plan shown to and described to the Board by the applicant at this meeting, subject to the following stipulations:

1. That a non-intrusive inspection shall be performed by the Zoning Administrator or the Zoning Administrator's delegate approximately six months following the posting of the decision, with the Zoning Administrator to provide a report back to this Board with respect to any findings, that this initial and any future subsequent examinations shall be performed by the Town at its convenience on or after the dates specified, with no impact on the applicant's continuation of business, until such time

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as this Board receives and responds to any reports (with the understanding that this Board may withdraw this Home Occupation Special Exception or terminate it at that time in the event that any inspection shows a lack of compliance and/or suggests that the operation of this business had produced or was producing damage or potential damage to the environment or to the property values of the surrounding neighborhood.)

2. That a similar inspection shall be performed six months later (i.e., one year following granting of this approval) by the Zoning Administrator or the Zoning Administrator's delegate, and then annually thereafter, until such time as some future Zoning Board of Adjustment declares that these inspections are no longer necessary for this site.
3. That this Conditional-Use Special Exception shall terminate upon sale of the premises to any other party, or in the event that the current applicant becomes a resident of any other dwelling, in or out of Hudson, or following a period of twelve months of non-operation of this business, with the business not to be continued by any other person except by the granting of a new Conditional-Use Special Exception by the Hudson Zoning Board of Adjustment specifically to that person following processing of a new application submitted by that person, including the weighing of the balance of all factors made known to the Board during the hearing(s) pertaining to that process.
4. The hours of business, as specified by the applicant, shall be from 8:00am to 6:00pm, Monday through Friday and 8:00am to 1:00pm on Saturday. There are no Sunday's are allowed.
5. The applicant expressed understanding that the sign permitted for this business would be no greater than 3 square feet and be located at least 15 feet behind the front lot-line with only the basic information and the street address shown.
6. There will be no additional banner work.

Mr. Pitre seconded the motion.

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Mr. Martin, speaking on his motion, stated that he felt all of the questions were adequately addressed by the applicant and the property was very well-kept. Mr. Martin further stated that he felt it was a good use.

Mr. Pitre, speaking on his second, stated that he felt it was a very reasonable request and all of the criteria had been adequately addressed by the applicant. Mr. Pitre also stated that the applicant had been successfully conducting business from that location for three years without incident.

VOTE: Chairman Seabury asked Clerk Houle to poll the Board on the motion to approve the request for a Home Occupation Special Exception, with the noted stipulations, and to record the members' votes, which were as follows:

Mr. Martin	To approve
Mr. Pitre	To approve
Mr. Pacocha	To approve
Ms. Shuman	To approve
Mr. Seabury	To approve

Chairman Seabury declared that the decision having been five votes to approve the request for a Home Occupation Special Exception, with the noted stipulations, the motion had carried.

- Case 222-039 (3/25/10): Wendy Willard, 3 Colson Road, Hudson, NH, requests a Home Occupation Special Exception to allow a childcare for a maximum of 12 children within the existing dwelling. [Map 222, Lot 039, Zoned R-2, HZO Article VI, Section 334-24, Home occupations.]**

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

Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak replied that the applicant was present for the reason stated in the posted notice, as recorded above.

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

Ms. Wendy Willard, the applicant, addressed the Board, and read aloud a portion from the Application for a Home Occupation Special Exception as summarized as follows:

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1. *A home occupation is a sales or service operation for goods produced or services provided on-site and are permitted only as a special exception upon approval by the Zoning Board of Adjustment. In granting such an exception, the Board must find the home occupation to be in full compliance with the requirements. Explain the nature of your home business. To provide a licensed in-home family-run child care facility in my house with a maximum of twelve children.*
2. *The home occupation is secondary to the principle use of the home as the business owners' residence.*
3. *Will the home occupation business be carried on within the residence and/or within a structure accessory to the residence? The proposed child care facility will be an in-home based childcare provided mostly in our finished basement.*
4. *Other than the sign(s) permitted under Article XII, will there be exterior display or other exterior indications of the home occupation? Will there be any variation from the primarily residential character of the principal or accessory building? There will be no signs or changes to the character of the house.*
5. *Will there be exterior storage and will it be screened from neighboring views by a solid fence or by evergreens of adequate height and bulk at the time of planting to effectively screen the area? There will be no exterior storage.*
6. *There will be no noise, vibrations, dust, smoke, electrical disturbances, odors, heat or glare produced.*
7. *Will the traffic generated by the home occupation activity be substantially greater in volume that would normally be expected in the neighborhood? There will be vehicles dropping off in the morning and picking up in the afternoon. This will be Monday through Friday – closing at 5:30pm.*
8. *The customer/client parking for the home occupation will be located in the (applicant's) driveway.*

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9. *Who will be conducting the home occupation? Wendy Willard, the applicant and Alana Bagley, the applicant's mother.*

10. *Will there be a vehicle(s) for the home occupation? There will only be personal vehicles.*

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

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

Chairman Seabury declared the matter before the Board.

Chairman Seabury asked the applicant what type of fence would be used to enclose the backyard. Ms. Willard replied that the fence intended would be a black chain-link fence that would stand 4 feet in height.

Mr. Martin asked the applicant if her mother lived in the same home. Ms. Willard replied that her mother did live in the same house.

Mr. Pitre asked what the hours of operation would be. Ms. Willard replied the hours of operation would be 7:00am – 5:30pm.

Mr. Martin asked the applicant if both the dirt and paved driveways would be remaining on the property. Ms. Willard replied that they were both permitted and would be remaining on the property.

Mr. Martin commented that a lot of red flags were raised in his opinion when he had driven by the property but that the applicant had adequately addressed those concerns in her testimony.

Mr. Martin made a motion to approve the request for a Home Occupation Special Exception with the following stipulations:

I move to approve the request for a Home Occupation Special Exception for a conditional-use child care business within the existing dwelling or secondary building in accordance with the plan shown to and described to the Board by the applicant at this meeting, subject to the following stipulations:

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1. That a non-intrusive inspection shall be performed by the Zoning Administrator or the Zoning Administrator's delegate approximately six months following the posting of the decision, with the Zoning Administrator to provide a report back to this Board with respect to any findings, that this initial and any future subsequent examinations shall be performed by the Town at its convenience on or after the dates specified, with no impact on the applicant's continuation of business, until such time as this Board receives and responds to any reports (with the understanding that this Board may withdraw this Home Occupation Special Exception or terminate it at that time in the event that any inspection shows a lack of compliance and/or suggests that the operation of this business had produced or was producing damage or potential damage to the environment or to the property values of the surrounding neighborhood.)
2. That a similar inspection shall be performed six months later (i.e., one year following granting of this approval) by the Zoning Administrator or the Zoning Administrator's delegate, and then annually thereafter, until such time as some future Zoning Board of Adjustment declares that these inspections are no longer necessary for this site.
3. That this Conditional-Use Special Exception shall terminate upon sale of the premises to any other party, or in the event that the current applicant becomes a resident of any other dwelling, in or out of Hudson, or following a period of twelve months of non-operation of this business, with the business not to be continued by any other person except by the granting of a new Conditional-Use Special Exception by the Hudson Zoning Board of Adjustment specifically to that person following processing of a new application submitted by that person, including the weighing of the balance of all factors made known to the Board during the hearing(s) pertaining to that process.
4. The hours of business, as specified by the applicant, shall be from 7:00am to 5:30pm, Monday through Friday. There will be no weekend days allowed.

In addition, the applicant expressed understanding that the sign permitted for this business would be no greater than three square feet, located at least 15 feet behind the front lot-line, with only the basic information and the street address (no additional banner work).

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Mr. Pacocha seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt the applicant had successfully met all of the requirements, the applicant had to go through the state’s approval processes, it was a good use that would provide the applicant with substantial justice, and the applicant had adequately responded to the Board’s concerns.

Mr. Pacocha, speaking on his second, stated that he felt the applicant had successfully addressed all of the requirements and the business would be a service to the community.

Chairman Seabury commented that he agreed with both Mr. Martin and Mr. Pacocha’s remarks.

VOTE: Chairman Seabury asked Clerk Houle to poll the Board on the motion to approve the request for a Home Occupation Special Exception, with the noted stipulations, and to record the members’ votes, which were as follows:

Mr. Martin	To approve
Mr. Pacocha	To approve
Mr. Pitre	To approve
Ms. Shuman	To approve
Mr. Seabury	To approve

Chairman Seabury declared that the decision having been five votes to approve the request for a Home Occupation Special Exception, with the noted stipulations, the motion had carried.

V. OTHER BUSINESS

- 1. Case 170-038: 25 Constitution Drive; request a rehearing of a Use Variance and a Wetland Special Exception granted on January 28, 2010 (requested by Hinckley Allen Snyder, LLP, an abutter)**

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

Mr. Martin made a motion to forego reading the Motion for Rehearing into the record as the members of the Board had had adequate time in which to review the document.

Mr. Pacocha seconded the motion.

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Chairman Seabury called for a verbal vote, and he then stated that all of the Board members were in favor of foregoing reading the Motion for Rehearing into the record.

Mr. Martin commented that he felt there was not any new testimony presented to the Board which would have warranted a rehearing and he did not feel that the Board had made an illegal or illogical decision.

Mr. Martin also commented that he did not agree with Attorney Sokuls’ opinion on the site line or devalued view the proposed building would cause and that the addition of the proposed building would be an upgrade to the area.

Chairman Seabury commented that he disagreed with the statement which read “Finally, even if the wetland in this case could be considered a “special condition” and even if the Applicant’s wetland were created by run-off from adjacent properties, the fact remains that because wetlands exist on surrounding properties, the granting of a variance was unlawful or unreasonable.”

Mr. Martin made a motion not to rehear.

Mr. Pacocha seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt the Board did not make an illegal or illogical decision and no new testimony was presented to warrant the Board rehearing the case.

Mr. Pacocha, speaking on his second, stated that he did not feel the Board made an error in law and the abutter did not present persuasive evidence to warrant a rehearing. Mr. Pacocha also stated that he did not agree with the Appraisal Consulting Report prepared by CB Richard Ellis. (CBRE)

VOTE: Chairman Seabury asked Clerk Houle to poll the Board on the motion Not to Rehear and to record the members’ votes, which were as follows:

Mr. Martin	Not to rehear
Mr. Pacocha	Not to rehear
Mr. Pitre	Not to rehear
Ms. Shuman	Not to rehear
Mr. Seabury	Not to rehear

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Chairman Seabury declared that the decision having been five votes not to rehear, the motion had carried.

Chairman Seabury noted that Attorney LeFevre had sent a letter, dated March 10, 2010, reminding the Zoning Board of Adjustment that the Board of Selectmen had established a policy in the past few years that unless there was a particular reason for it, the town would ask not be involved in the potential litigation following the Board's decision regarding Requests for Rehearings. The Board collectively agreed that this would be agreeable.

VI. DISCUSSION OF CORRESPONDENCE BEFORE THE BOARD

Mr. Martin, referred to a letter from Attorney LeFevre, addressed to both the Board of Selectmen and the Zoning Board of Adjustment, dated March 10, 2010, with regard to the passage of Article 6. (Town of Hudson v. Peter Radziewicz and Joanne Radziewicz)

Mr. Martin commented that he disagreed with Attorney LeFevre's recommendation to dismiss the ZBA appeal on the basis that the issue was moot. Mr. Martin further commented that the fence in question was installed prior to the passage of Article 6 therefore he felt the case was still valid.

Chairman Seabury replied that he would convey those comments to Attorney LeFevre.

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VII. ADJOURNMENT

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

Mr. Pacocha seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 10:23pm.

Date: March 15, 2010

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun