



TOWN OF HUDSON

Zoning Board of Adjustment



J. Bradford Seabury, Chairman

Ben Nadeau, Selectmen Liaison

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HUDSON ZONING BOARD OF ADJUSTMENT MEETING MINUTES March 27, 2014

I. CALL TO ORDER

Acting Chairman Martin called this meeting of the Hudson Zoning Board of Adjustment to order at 7:30pm on Thursday, March 27, 2014, in the Paul Buxton Meeting Room in the Town Hall basement. Acting Chairman Martin then requested Clerk Dearborn to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

Present: Normand Martin and Donna Shuman

Members

Absent: J. Bradford Seabury, Jim Pacocha, and Mike Pitre (All Excused)

Alternates

Present: Maryellen Davis, Gary Dearborn, Marilyn McGrath, and Maurice Nolin

Alternates

Absent: Kevin Houle (Excused)

Staff

Present: William Oleksak, Zoning Administrator

Recorder: Trish Gedziun

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II. SEATING OF ALTERNATES AND ANNOUNCEMENTS

For the benefit of all attendees, Acting Chairman Martin 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. Acting Chairman Martin 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.

Acting Chairman Martin seated Ms. McGrath in place of Mr. Seabury, Ms. Davis in place of Mr. Pitre, and Mr. Nolin in place of Mr. Pacocha, who were all excused.

III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. **Case 131-030-000 (3/27/14): James & Sharon Gray, 6 Timothy Lane, Hudson, request a Home Occupation Special Exception for property located at 6 Timothy Lane to allow a Home Improvement Business to be conducted out of the existing dwelling. [Map 131/Lot 030, Zoned G; HZO Article VI, §334-24, Home Occupations.] Request denied at the 11/14/13 Zoning Board of Adjustment Meeting – (Request for Re-Hearing – Approved 01/23/14 meeting – To be heard on 3/27/14.**

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

Acting Chairman Martin asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak explained that the matter before the Board for the same reason as listed in the case description above.

Acting Chairman Martin 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 while the applicant operated a home occupation, all of the physical work of the business occurred at the customer's homes, not on the applicant's property. He said the only activity that occurred at 6 Timothy Lane was operating the business office. He said the property was a single-family dwelling with an enclosed carport. He said in the back of the building on the rear level was where the 16' x 20' typical home business office was located. He also said that James and Sharon Gray were the only two people who worked out of the office. Attorney Westgate stated that no third party employees worked out of the property at 6 Timothy Lane at all.

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Attorney Westgate stated that there were three business vehicles located on the property, a small dump truck which had been located off-site for a number of months, a pick-up truck, and a van. He said that these were the three vehicles that had the company's logos on them. He also said that the applicant had four personal vehicles – Mrs. Gray's sedan, a Ford Taurus that was owned and operated by her parents who also lived in house, a GMC pick-up truck which Mr. Gray used as his personal/business truck that it did have a small logo on it, and an old van that they were about to get rid of.

Attorney Westgate, referring to a plan he had passed out to the Board, stated that the plan showed #1 - Sharon Gray's vehicle, #2 - the pick-up truck that Jim Gray brought to the job sites and used as his personal vehicle, #3 was Mrs. Gray's parents car, #4 was the old van which was to be removed, #5 was the company van, and #6 was the company pick-up truck. He said that the applicant also had an excavator #7, and a car port #8, was located on the far rear side of the property. Attorney Westgate stated that the other business component were some ladders, #9, that were stored behind the house and a plow #10, which in the summer months was typically kept in the rear of the property. He said there were two vehicles that were business vehicles that were kept on-site, item #5 and item #6. The small dump truck that they owned which was a 3500 series truck was not presently kept on the property. As previously mentioned, five adults lived in the house, Jim and Sharon Gray; Sharon Gray's parents; and Jonathan Gray, who was Jim and Sharon's adult son. Attorney Westgate stated that Jonathan worked full-time for an electrical contractor outside of the Gray's home occupation but that he worked part-time for his father as well. He said that on a typical work day, Jonathan drove the business pick-up truck to his job with the electrical contractor and that he went to different job sites.

Attorney Westgate said that he was aware from the Board's previous discussions that there were some concerns about the comings and goings on the property and said he wanted to clarify that. Attorney Westgate said that Jonathan left for work at with the electrical contractor anytime between 5:00am – 6:30am, and Mrs. Gray also worked at the Lahey Clinic on Wednesday's, Thursday's, and Friday's and left about 5:30am. He said that Mr. Gray tended to leave the house for coffee about 5:30am prior to starting his workday.

Attorney Westgate said that Mr. Gray also owned a woodworking shop that he used for his personal use in the basement of the building. He said there was a mini excavator and a bob cat that were not used in connection with the business, that they were used for personal use or perhaps to help out friends from time to time. He also said that the bob cat was used to plow the applicant's own driveway and perhaps a few neighbors on occasion.

Attorney Westgate stated that customers were not received at the house on Timothy Lane. He said that the applicant would get inquiries by phone or by internet but that all work would be performed at the customer's property. He also stated that all building materials were to be delivered to the customer's homes.

Attorney Westgate stated that there was a fair amount of activity in the neighborhood the previous summer as the Grays were doing a home improvement job on a neighbor's house directly across the street. He said that because of the constraints of that property in terms of what could be stored there, there were materials stored

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at 6 Timothy Lane. He further stated that in terms of this Home Occupation Special Exception there would be no materials delivered or stored on the applicant's property whatsoever.

Attorney Westgate stated that the Gray's currently had one employee and that from time to time they may have two or three employees not including themselves and their son. He said that the employees did not do anything on the property and that they worked at the job sites only. He stated that on a typical work day Mr. Gray would drive either the business van or his pick-up truck to pick up the one or two employees, he would drive back to the house, and one of the two employees would drive another vehicle to the job site with Mr. Gray. He said that process was repeated at the end of the day. Attorney Westgate stated that in this manner the employees were not coming to the house and parking on the street or in the driveway of the applicant's home. He said there were no additional cars on the property as a result of the employees.

Attorney Westgate stated that the applicant would agree to a stipulation upon approval that there shall be no more than two business vehicles parked on the property at any given time.

Attorney Westgate then addressed the criteria for a Home Occupation Special Exception summarized as follows:

Attorney Westgate stated that the principal use of the property was that of a single family and that the home occupation took up a minority of the space in the house, about 300 SF. He also stated that the activity at the house pertaining to the home occupation, which was the home office, was only conducted by the residents of the home.

Attorney Westgate stated that the applicant did have one employee for hire at the present time but that there may be two or three in the future that don't reside at the house – he noted that they did not do the home occupation which occurred in the house. He said they worked at the job sites doing the physical labor.

Attorney Westgate stated that he contrasted this request with a home occupation where the product is actually produced in the home, sold from the home, and with people other than the residents doing so. He said that was not the case in this situation. He also said if you focused on what actually occurred at the home, it was clear that the applicant was not in violation of the criteria for a Home Occupation Special Exception.

Attorney Westgate stated that there would be no retail sales being done at the property, there was no signage, and there was no signage being proposed. He also stated that the exterior storage would be minimal but pointed out that external storage was not prohibited under the ordinance. He said there would be some ladders in the rear of the property. Attorney Westgate said that the applicant would plan to and would certainly understand a condition of approval to be that the applicant would install a 6-foot tall stockade fence which would provide screening. He said the proposed fence would go along a decent amount of the abutter's property (the Dabrowski's) past where the house was and to the beginning of their garage.

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Attorney Westgate stated that there would be no noise, vibrations, dust, smoke, electrical disturbances, odors, heat or glare produced as a result of the home occupation and the traffic generated by the home occupation activity would not be substantially greater in volume than would normally be expected in the neighborhood. He also said that there would be no vehicles carrying materials coming or going from the house. He said that the applicant had planned on constructing a garage at some point in the near future but he did not have a specific date.

Attorney Westgate stated that the applicants recognized that if the property were to ever sell, the Home Occupation Special Exception would expire and the Zoning Administrator had the authority to revoke the special exception if the conditions were not maintained.

Attorney Westgate stated that the property was located in the G2 Zoning District and there was a breadth of uses within that district including business and commercial uses.

Attorney Westgate stated that the applicant was proposing an approval with six conditions of approval in addition to the conditions that were implicit for a Home Occupation Special Exception.

1. The applicant would install a 6-foot stockade fence along a portion of the front of the property and near the westerly boundary line no later than June 30, 2014.
2. There shall be no more than two business vehicles (excluding personal vehicles) parked on the property.
3. No customers shall be received on the property nor should any building materials be delivered to the property.
4. No non-resident employee shall park at the property.
5. No non-resident employee shall process an exchange of vehicles before 7:00am.
6. No equipment shall be loaded onto the vehicles before 12:00 noon.

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

Mr. Richard Lavoie, 5 Timothy Lane, an abutter, addressed the Board, stating that he was in favor of the applicant's request for a Home Occupation Special Exception. He also said that he noted several area businesses were operating in violation of the ordinance. He said he was concerned that the Board would be setting a precedent if the applicant was singled out while others were "getting away with it."

Acting Chairman Martin asked if there were anyone present who wished to speak in opposition or neutrally with regard to the application.

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Attorney Andrew Prolman, from Prunier & Prolman, P.A., representing Walter and Claire Dabrowski, abutters of the applicant, addressed the Board, submitted a letter to the Board that he said he had just received, in opposition of the application, from Mr. Joseph Capozzo, 9 Timothy Lane.

Attorney Prolman also submitted pictures to the Board that the Dabrowski's had taken of the applicants property and noted that the pictures were taken after the last set of pictures were submitted the previous November. He said the pictures showed the effect that the applicant's home occupation had on the Dabrowski's home.

Ms. McGrath asked if the pictures were substantially different than that of those already submitted at the last meeting. Attorney Prolman replied that they were not all that different but more current. He also said that the previous set of pictures showed the materials that were delivered to the site but that they also accepted that there had not been deliveries like that since.

Attorney Prolman stated that the Dabrowski's did not have any objection to the business office which was being operated inside of the home. He said the issue was more that there was a contractor's yard located next to them.

Attorney Prolman stated that the definition of a Home Occupation Special Exception as defined in §334-6 was "the use is customarily carried out entirely in a dwelling or unit." Attorney Prolman further stated that was not the case in this situation. He said although there was an office located in the house, there were multiple trucks, storage of ladders, and storage of materials outside of the home. He said there were plows in the front yard and the back yard, a bobcat, a bucket, and shingles some of which were visible in the pictures he had distributed earlier.

Attorney Prolman said that one of the general criteria for a Special Exception §D-334.23 stated that "the proposed use was in character with the surrounding neighborhood." He said that although the property was located in the General Zoning District that the neighborhood was comprised of one acre residential lots on a cul-de-sac. He further said that the character of the neighborhood was not that of a typical general zone where there was a lot of mixed uses. He said this was basically a residential neighborhood.

Attorney Prolman, addressing the criteria for the home occupation itself, stated that under §24, the lead language talked about "providing a small in-home business." He said he would agree that there was a small business being run out of the home but because of the materials, and the trucks coming and going outside, it was not "in-home," it was not "in the residence." He continued by stating that "there shall be no employees for hire conducting the home occupation activities." Attorney Prolman stated that he appreciated that the applicant picked up his employees and either brought them back to the property or to the job site and he acknowledged that the employees were not doing any work in the home office. He also stated that there was presently one employee and when business picked up, there could potentially be more than one employee. He said that there were employees that came to the house to do what contracting companies do and that was

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loading and unloading trucks, picking up tools, buckets, and ladders. He said this work was done by more than just the Gray's. Attorney Prolman stated that it was clear that the business was not being operated entirely in the residence and that the pictures provided to the Board showed that. He said that the New Hampshire Supreme Court had put out a list of "typical home occupations" and that included things like tutoring and dressmaking, and that a general contracting yard in a fully residential setting was probably not considered to be a home occupation in the Town of Hudson. Attorney Prolman stated that there was exterior storage visible from the Dabrowski's property and while they appreciated the offer for a fence, they would still be able to see into the applicant's yard with a 6-foot fence, and that the fence would not block the noise. Attorney Prolman stated that contracting companies made noise, it was just the nature of the beast and that he did not feel it belonged in a residential neighborhood.

Attorney Prolman stated that some of the vehicles, which included trucks, were parked to the side of the driveway in the dirt. He said that one of the proposed conditions was that there would be no more than two business vehicles parked in the driveway at any one time. He pointed out that the ordinance restricted that number to one vehicle so that was already a problem.

Attorney Prolman said that he did not feel that anyone would want their property value impacted by this type of business and that the two uses, a one acre residential lot and a business, just did not mix.

Acting Chairman Martin then read aloud a letter which was not dated, from Mr. Joseph Capozzo, 9 Timothy Lane, stating opposition to the applicant's request. Mr. Capozzo stated that he felt the applicant should have explained the situation to his neighbor's prior to moving the business to his house and that allowing one exception may lead to many others. Mr. Capozzo also stated in his letter that he felt the value of all of the homes on Timothy Lane would depreciate and there would be excessive traffic.

Acting Chairman Martin asked if there were anyone else present who wished to speak in opposition or neutrally with regard to the application. With no one else coming forward, Acting Chairman Martin declared a second round of testimony.

Second Round of Testimony

Acting Chairman Martin asked if there were anyone present who wished to speak in favor with regard to the application for the second and last time.

Attorney Westgate addressed the Board, stating that the applicant was trying to present a protocol for moving forward on how this home occupation would work and fit within the regulation.

Attorney Westgate stated that while there was a lot of activity on the property the previous summer that was not what the applicant had planned on moving forward. He said what was being proposed was an operation whose core was the business office; that has two business vehicles located in the driveway, and has some

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exterior storage which would really just be the ladders. Attorney Westgate stated that there were a lot of vehicles on the property but that there were five adults living there. He said there were two business vehicles relating to the core of the business and that the ordinance did not limit the amount of personal vehicles an individual could have. He also said that the parking area at the house could certainly be paved and that the proposed fencing would provide a lot of screening of both the business and personal vehicles. Attorney Westgate said that some of the “stuff” shown in the pictures on the westerly side of the applicant’s property were materials that related to the applicants own home and not the business but that the applicant was willing to remove that “stuff.” He also said that the bob cat and excavator were not business vehicles but personal vehicles. He said that he felt the Board needed to separate the business components from the personal components. He said that while Timothy Lane was located in a residential neighborhood, it was located in the General Zoning District and there were substantial commercial operations located very close to it. He said he felt calling the Gray’s business a general contracting yard was a bit magnanimous and that the operations relating to this business occurred off-site. Attorney Westgate said that the only thing that occurred outside of the home office other than the vehicles being parked there and the getting in and out of those vehicles was the storage of some ladders. He said that the ordinance provided for outside storage as long as screening occurred. Attorney Westgate stated that the applicant recognized that the off-site employees should do nothing but come to the house, switch vehicles with Mr. Gray to drive a second vehicle to the job site and nothing else. Attorney Westgate stated that he interpreted the language in the ordinance regarding the number of business vehicles to be parked on the property to be different than that of Attorney Prolman. He said his interpretation was that two business vehicles were allowed. Attorney Westgate also said that the applicant was fully aware that Mr. Oleksak could void the Home Occupation Special Exception if the criteria were not adhered to.

Mr. Nolin stated that Attorney Westgate had said in his first round of testimony that the ladders would be loaded by the employees after 12:00 noon for the next business day but then in the second round of testimony he said that Mr. Gray would be the only one loading the ladders.

Attorney Westgate replied that it should be only Mr. Gray and his son and that if he said anything contrary to that, he had misspoken.

Acting Chairman Martin asked if there were anyone present who wished to speak in favor with regard to the application for the second and last time. No one else came forward.

Acting Chairman Martin asked if there were anyone present who wished to speak in opposition or neutrally for the second and last time.

Attorney Prolman addressed the Board, stating that he did not feel that Mr. Oleksak or his office needed any more protocols.

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Acting Chairman Martin asked if there were anyone present who wished to speak in opposition or neutrally for the second and last time. No one else came forward.

Acting Chairman Martin declared the matter before the Board.

Ms. McGrath asked what the name of the business was. Attorney Westgate replied that it was Gray's Contracting.

Ms. McGrath asked if the 16' x 20' office space was an addition that was built onto the home for the purpose of the business. Attorney Westgate replied that it was within the home but that it was part of a previous addition that was constructed prior to the applicant buying the house. She also asked if there was an ALU as part of the home and Attorney Westgate replied that there was not.

Ms. McGrath stated that Attorney Westgate had testified that there were three business vehicles, Mr. Gray's vehicle which had a sign entitled "Gray's Contracting" on it, a van identified as #5, and the pick-up truck, identified as #6, the son's vehicle, was also identified as a business vehicle. Attorney Westgate replied that Mr. Gray's GMC pick-up truck; although he used it for both personal and business use was not a business vehicle in the context of the home occupation regulation. He further stated that the vehicle that the home occupation owner used when used in combination of business and personal use was not one of the vehicles used in commerce in the context of the parking regulation. Mr. Gray said that the two business vehicles identified as #5 and #6 had the big business logos on them but Mr. Gray's pick-up truck had a small logo on it. He said the third vehicle he was talking about was a 3500 series dump truck that was not on-site, that it was parked off-site since the later part of the fall.

Ms. Davis asked if the old van, which was marked to be removed, was still on the property. Attorney Westgate stated that the very old van, identified as #4, was marked to be removed but that there was a newer one, identified as #5, that would remain.

Ms. McGrath asked when the "very old van," identified as #4, would be removed. Attorney Westgate replied that it would be removed promptly, within a month or two at most. He further said that the applicant would be willing to specify the date of removal of the van as one of the conditions of approval.

Ms. McGrath asked if the van was going to be replaced. Attorney Westgate replied that it would not be replaced.

Ms. Davis asked if vehicle identified as #10, (JBC Plow) was the bob cat he had referred to. Attorney Westgate replied that it was. Ms. Davis asked if there was a bob cat and an excavator parked on the property and how many snow plows were on the property. Attorney Westgate replied that there were four plow attachments on the property.

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Ms. McGrath asked why there were only two shown on the plan. Attorney Westgate replied that perhaps it was because only one or two plows were actually on the vehicles.

Ms. Davis asked if any of the snowplows were used in any part of the business. Attorney Westgate replied that the snow plows were for personal use only. Ms. Davis commented that since the plows were put on and off of the vehicles, she felt that would be considered equipment that was loaded and off-loaded and asked if that was a part of stipulation #6. Attorney Westgate replied that he did not consider that to be part of that stipulation because the snow plows were not part of the business operation.

Ms. McGrath stated that the applicant's son had a full-time job but also worked part-time for his father. She asked if he was considered the number one employee or was there an employee in addition to him. Ms. McGrath also stated that later on in Attorney Westgate's testimony he had mentioned that there were two or three employees. Attorney Westgate replied that the son was not the "one" employee that he was referencing, but employees who do not live at the house. He said there was currently one employee but that from time to time, for example, in the summer, there may be two or three off-site employees. Ms. McGrath asked what hours the part-time employee worked. Attorney Westgate replied the hours would be in the evening or on a Saturday.

Ms. McGrath asked how many days a week there was activity associated with the business at the residence. Attorney Westgate replied that the activity would occur Monday through Friday and on occasional Saturday's.

Ms. McGrath stated that the excavator, identified as vehicle #7, appeared to be in the setback and asked if it were always parked in that location. She also asked if the excavator were ever taken off-site for business use. Mr. Gray replied that he had taken the excavator off of the property twice the previous summer to help out a friend. He said he had purchased the excavator for a very cheap price when his addition was built. He also said he had taken out one snow plow during the winter and put it on his personal truck. Ms. McGrath asked how many snow plows the applicant had. Mr. Gray replied that he had four – noting that one went on his personal truck and one went on the bob cat which was also only for his own personal use. Ms. McGrath stated that the number of plows indicated on the plan did not match up with the applicant's testimony. Mr. Gray then replied that there were a total of five plows on the property.

Ms. McGrath stated that it had been mentioned that some of the employees used the side yard as a bathroom facility. She asked if the employees had to use the facilities if they could use the bathroom in the applicant's house. Mr. Gray replied that they could and added if he ever caught an employee doing that, they would be fired instantly.

Ms. Davis asked if the son, who worked at an electrical company, ever brought a company truck home. Attorney Westgate replied that he did not, that he typically drove Mr. Gray's business pick-up truck to his job.

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Ms. Davis clarified that the plows that were on the property were not used in conjunction with the business but were there because of the applicant's previous business as well as some personal use. She also clarified that the loading and unloading of the plows would not be a part of stipulation #6 because they were not used as part of the business use.

Acting Chairman Martin, referring to one of the pictures submitted to the Board, stated that the dump truck had yellow lights on it and that indicated to him that a plow would get attached to it. He said in the State of New Hampshire, a vehicle with yellow lights on it was not allowed without a permit. Mr. Gray replied that the vehicle in question was a dump truck which was not parked on-site. He said the vehicle did have strobe lights on it and they were there when he purchased it. He also said that the vehicle did plow but that it had not plowed this year.

Ms. Davis commented that one of her concerns with a Home Occupation Special Exception was the activity that occurred outside of the home, any noise that could be disruptive to the neighborhood. She further stated that she felt the loading and off-loading of the plows would make a lot of noise as well as the plowing itself. Attorney Westgate reiterated that snow plowing would not be part of the home occupation.

Ms. Davis commented on statements made by an abutter and pointed out that the fact that other people were not complying with the ordinance did not make it right for everyone not to comply. Attorney Westgate replied that he completely agreed.

Mr. Dearborn asked Attorney Westgate if he had observed the residence himself. Attorney Westgate replied that he had been there twice. Mr. Dearborn said that he had gone by the property and it reminded him of a New Hampshire Park & Ride with all the vehicles that were there. Mr. Dearborn also commented that in the sixty five years that he had worked none of his employers had ever come to his house to pick him up. He said the ordinance clearly stated that there shall be no employees for hire and also said that the parking was terrible, it was in the front yard and that was not allowed.

Attorney Westgate replied that Mr. Gray kept much of his tools and equipment in his vehicles and therefore, preferred for the vehicles to remain on his property to limit the chance of theft. He said that Mr. Gray would not have a comfortable level of security if the vehicles were parked at a third party location such as the employees' homes. Attorney Westgate said that his interpretation of the ordinance was that two business vehicles could be parked at the location of the Home Occupation Special Exception.

Mr. Dearborn said that he had observed the applicant's trucks on Greeley Street, Old Derry Road, and Highland Street and that there were more than one truck with a snow plow on it and they were plowing. Mr. Dearborn further stated that he felt snow plowing was indirectly a part of the business during the winter months. Attorney Westgate replied that Mr. Gray was not running a for hire snow plow operation. Mr. Dearborn also stated that he had observed that Mr. Gray was not the driver of the vehicles that had gone by his house on Highland Street.

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Ms. McGrath asked what the carport, identified as #8, was used for. Mr. Gray replied that his son's Ford Mustang was kept in the carport.

Ms. McGrath stated that when she looked up the applicant's web site on the internet, three different businesses came back from the search – Gray's Contracting, Gray's Roofing, and Jim Gray Contracting.

Ms. McGrath commented that she was having a hard time with the case because it seemed to her to be excessive and that it didn't meet all of the criteria and there was a lot of "stuff" crammed in on the small lot.

Acting Chairman Martin also said he was having a hard time with the case because he felt that a home occupation was designed to be discrete. He also said he was having a hard time agreeing that the employees were not doing any work on the site of the property.

Ms. Davis made a motion to deny the request for a Home Occupation Special Exception.

Ms. McGrath seconded the motion

Ms. Davis, speaking on her motion, stated that she did not feel it was within the character of the neighborhood, the business was not typical of a residential neighborhood, and there was testimony that there was excessive activity including noise and traffic coming in and out of the neighborhood. Ms. Davis also said that she felt it could have been deemed disruptive and she did not feel that it met the criteria of the ordinance. Ms. Davis further stated that there was excessive exterior storage and that it did not meet the criteria that there shall be no objectionable circumstances such as noise, vibration, dust and smoke – and also included light in the case where lights from vehicles may flash in and out of people's homes.

Ms. McGrath, speaking on her second, stated that she agreed with everything Ms. Davis had said and added that she felt the use was excessive for the lot and it clearly did not suit the neighborhood it was in. She also said that employees were being brought onto the property to exercise that business.

Mr. Nolin commented that he agreed with what Ms. McGrath had said and added that he felt an employee was an employee regardless of how they arrived at the property.

VOTE: Acting Chairman Martin asked Clerk Dearborn to poll the Board on the motion to deny the request for a Home Occupation Special Exception, and to record the members' votes, which were as follows:

Ms. Davis	To deny
Ms. McGrath	To deny
Mr. Nolin	To deny
Ms. Shuman	To deny
Mr. Martin	To deny

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Acting Chairman Martin declared that, there having been five votes to deny the request for a Home Occupation Special Exception, the motion had carried.

Acting Chairman Martin declared a break at 9:15pm, calling the meeting back to order at 9:20pm.

2. **Case 168-121-000 (03/27/14): H&B Berggren, LLC, 238 Central Street, Hudson, requests a Variance from the Hudson Zoning Ordinance, Article III of HTC § 334.16C.2.d in order to permit a conversion of the existing space to two apartments with more than 750 SF per apartment and the continued business use on the second floor. [Map 168, Lot 121, Zoned R2, HZO Article 334-16C.2.d Building Permits.]**

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

Acting Chairman Martin asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak explained that the matter was before the Board because the applicant had asked what was needed to convert the existing space into apartments because he had been unable to rent the existing space.

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

Mr. Stephen M. Trefethen, the applicant, addressed the Board, stating that he had been having a difficult time renting the space on the bottom floor despite a lot of advertising. He said the taxes had increased a fair amount over the past few years and he felt it would be easier to rent the space as apartments.

Mr. Trefethen 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 area has been residential.*
2. *The proposed use will observe the spirit of the ordinance because this property is on a Use Variance from a residential. Two residential units would conform to the use that was previously there and help rent the property to pay the bills.*
3. *Substantial justice would be done to the property owner by granting the Variance because the property is 60% empty and converting the bottom floor would help Steve & Laura pay their bills on this property.*
4. *The proposed use will not diminish the values of surrounding properties because the property has always enhanced the area and would remain in the same form.*

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- 5. Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship** because the owners have spent thousands of dollars on advertising to rent the property.*

The property is 60% vacant. The owners can no longer pay the taxes and other bills to remain on the property.

Ms. Davis asked if the proposed use was on the second floor. Mr. Trefethen replied that it was on the bottom of a split level – the basement.

Mr. Dearborn asked if there was a sprinkler system in the building. Mr. Trefethen replied there was not.

Mr. Dearborn asked Mr. Oleksak if a sprinkler system would have been required in the building. Mr. Oleksak replied that the Fire Department would have to review it.

Acting Chairman Martin asked if there were anyone present who wished to speak in favor, in opposition, or neutrally with regard to the application.

Mr. Norman Boyer, an abutter, addressed the Board, and asked Mr. Oleksak if the applicant would be subject to impact fees should the request be approved. Mr. Oleksak replied that information was determined on the planning side.

Mr. Boyer stated that the code called for an independent egress in every bedroom. Mr. Boyer also stated that he felt it was a very big building on a small lot.

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

Acting Chairman Martin declared the matter before the Board.

Mr. Oleksak stated that he was a bit confused as he did not consider the basement a first floor. He said a first floor would be on the ground level. He further stated the he had misunderstood what the applicant was asking and he thought the applicant was having a problem filling the first floor and that the second floor had tenants in it. He said if it were the basement, he did have concerns such as there being an independent egress from each bedroom that led directly to the outside by either a door or by a below grade window. He said that a basement was a basement by any definition in any code book.

Mr. Trefethen stated that there was one room on each end of the property that did have a fire escape. He said his idea was maybe if there weren't another one, there would be another set of doors going into the bedroom so the occupants would have a way in and a way out. He also said that the back of the property had some sort

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of drainage thing so the occupants could come out of the windows of the back units if you had to. Mr. Oleksak replied that there had to be a clear exit space from each bedroom. He also replied that an egress window had to provide 5.7 SF of clear space to get out and when you exited from a basement into a well there had to be 9 SF of landing. He said this was for two reasons, one to get a person out and one to get a fireman in.

Mr. Trefethen stated that at the end of the day a one-bedroom unit would still be better than office space. He said he just wanted to pay the bills; that the Town of Hudson wanted the tax money and he could not pay it, so if they had to be one-bedroom apartments, he would be okay with that.

Ms. Davis asked if this would have to go through the Planning Board. Acting Chairman Martin replied it would not but that the Fire Department would have to review the plans thoroughly.

Mr. Trefethen stated that if a sprinkler system had to be installed then he would not be able to do it because of financial reasons.

Mr. Oleksak asked where the closest fire hydrant was. Mr. Trefethen replied that he thought there was one across the street at the church.

Ms. Davis commented that she personally liked the idea of a mixed business/residential use. Ms. Davis further stated that she was not comfortable with it not going before the Planning Board because she felt there would be issues with the parking and it was a large building on a small lot. She said she would prefer to take a look at the building and would recommend a deferral to enable the Board to have a site walk of the inside and outside of the property.

Ms. McGrath stated that she would have to agree with the deferral for a site walk because the plans, as presented, were extremely unclear.

Ms. McGrath made a motion to defer the case to the May 22, 2014, meeting to allow the Board time to perform a site walk/visit on the property. Ms. McGrath also stated that members of the public were welcome to attend the site walk.

Mr. Trefethen stated that he would speak with Mr. Dube in the interim.

Ms. Davis seconded the motion.

VOTE: Acting Chairman Martin asked Clerk Dearborn to poll the Board on the motion to defer the case to the May 22, 2014, meeting and to record the members' votes, which were as follows:

Ms. McGrath	To defer
Ms. Davis	To defer

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Mr. Nolin	To defer
Ms. Shuman	To defer
Mr. Martin	To defer

Acting Chairman Martin declared that, there having been five votes to defer the case to the May 22, 2014, meeting, the motion had carried.

3. **Case 179-036-000 (3/27/14): Kerri & Matthew Simpson, 8 Kestral Lane, Hudson, request an Accessory Living Unit (ALU) to be built in an existing finished basement [Map 179, Lot 036, Zoned G1; HZO Article XIII A, §334-73.3, Accessory Living Units.]**

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

Acting Chairman Martin asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak explained that the matter was before the Board for the reason posted above.

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

Mr. Cary Riley, representing the applicant, addressed the Board, and read aloud from the Application for an Accessory Living Unit, summarized as follows:

1. *An ALU is allowed only in one-family dwellings. An ALU is not allowed in a two-family or multi-family dwelling, or any non-residential uses. An ALU is expressly prohibited in an Open Space Development. The in-law space is being built in an existing finished basement.*
2. *An ALU is not allowed as a free-standing, detached structure or as part of any structure which is detached from the principal dwelling. The ALU would conform to this.*
3. *An ALU is to be occupied only by immediate family members (by blood or marriage) of the owner of record of the principal dwelling. An ALU is not allowed in any principal dwelling in which the owner of record of the principal dwelling does not personally reside. The parents of Kerri Simpson, the owner of the property, will occupy the space. Karen and Gary Mooers.*
4. *The front face of the principal dwelling structure is to appear as a one-family dwelling after any alterations to the structure are made to accommodate an ALU. There will be no alterations to the existing exterior.*
5. *At least one common interior access between the principal dwelling unit and an ALU must exist. A second means of egress from an ALU must exist and be located at the side or rear of the*

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structure. There are two existing stairways to the basement, a 6.0' x 6.8' set of French doors leading to the backyard, and four windows.

- 6. Separate utility service connections and/or meters for the principal dwelling unit and an ALU shall not exist. (This does not preclude using a type of heating system for an ALU different from the type for the principal dwelling unit.) The ALU will be powered by an existing 200 amp service.*
- 7. Off-street parking shall be provided to serve the combined needs of the principal dwelling unit and an ALU. The existing driveway is "L" shaped and is approximately 20' x 75'. It "L's" toward the house and is 30' x 48'.*
- 8. The gross living area (GLA) of an ALU shall not be less than 350 SF, and shall not exceed fifty percent of the principal structure or 1,000 square feet, whichever is less. The above-grade GLA of the principal dwelling shall not be reduced to less than 850 SF in order to accommodate the creation of an ALU.*
- 9. A Building Permit for an ALU must be approved and issued prior to the construction of an ALU. The ALU shall have an interconnected smoke alarm per Section R313.2.1 of the 2009 IRC Building Code. We will be applying for an electrical permit to update the existing finished basement – wiring, smoke detectors, and carbon monoxide.*

Acting Chairman Martin asked the applicant to acknowledge that all of the items listed below the application were understood and initialed. Mr. Riley acknowledged the items as being understood and initialed.

Ms. Shuman stated that the owner of the property had not signed the application and the letter indicating who would occupy the ALU was written and signed by the intended occupants and not the owner of the property. Mr. Oleksak replied that the owner of the property, Ms. Kerri Simpson had giving written approval for Mr. Cary Riley to represent her.

Ms. McGrath stated that if the request were to be approved, the Board could apply a stipulation which stated that prior to occupancy the owner's had to provide signatures for both of the documents. Ms. Shuman stated that she agreed with that.

Mr. Dearborn asked Mr. Riley if he were going to be the contractor. Mr. Riley replied that he would be the contractor. Mr. Dearborn asked if Mr. Riley had provided the drawing. Mr. Riley replied that he did. Mr. Dearborn stated that the Board had had differences in the past regarding hand-drawn plans. Mr. Dearborn said there was a dimension of 25' x 43' which equated to 1,075 SF and the proposed ALU was only 800 SF. He said the drawing was very confusing to him. Mr. Riley replied that the other space was a mechanical room

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(where the boiler and oil tank were) and a storage space. Mr. Dearborn stated that there was a clear discrepancy in the square footage.

Acting Chairman Martin asked what the total square footage of the house was.

Ms. Davis asked if the existing spiral staircase led to the main living floor. Mr. Riley replied that it did.

Ms. Davis asked if the back door would be used as the main door for the ALU. Mr. Riley replied that was correct.

Ms. McGrath stated that the proposed ALU was 800 SF but that the dimensions that were shown on the plan were over 1,000 SF.

Ms. McGrath asked what the correct dimensions were for the living space. Mr. Riley replied that he had taken the full length of the foundation and did not cut out the actual living space. Mr. Riley was not able to answer the question definitively.

Acting Chairman Martin stated that the exact measurements of the ALU and the existing home would be needed.

Ms. Davis asked if there would be any building permits pulled. Mr. Oleksak replied that there would.

Mr. Nolin made a motion to approve the request for the Accessory Living Unit with the stipulation that it could not exceed 800 SF.

Ms. Davis said that typically her concern was someone turning an ALU into an illegal apartment but that she did not think that was likely in this situation in part due to the location of the neighborhood. Mr. Riley replied that owners' were aware of the fact that if they were to move, the ALU could not carry over without permission from the town.

Mr. Gary Mooers, the father of the owner and proposed occupant of the ALU, addressed the Board, stating that he intended on complying with all of the rules and regulations. He said when the house was purchased, the square footage was 3,700 SF not 5,200 SF. He said he did not realize basements counted towards the total square footage.

Mr. Oleksak said it did if the basement was finished.

Mr. Mooers said he would not be surprised if the proposed ALU turned out to be more than 800 SF and he said he would provide the Board with the exact dimensions.

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Ms. McGrath stated that she was a little concerned because the applicant's representative stated that the proposed ALU would be 800 SF and Mr. Mooers stated that he felt it would be larger than that. Ms. McGrath also stated that she felt the exact dimensions of the proposed ALU were needed prior to the Board making a decision. She said it was very important to have correct records.

Ms. McGrath asked if the Board would find it acceptable to approve the requested ALU with no more than 850 SF allowed, that the applicant had to provide a new plan showing the exact dimensions and be submitted to the building department prior to any building permits being issued. She further stated that she was hesitant to do that because the Board had not done it in the past. She said she felt it was just a mistake but she was concerned that the town might be liable in the end and having the accurate records as critical.

Acting Chairman Martin stated that he would have been more inclined to defer the case until the exact measurements could be submitted.

Mr. Mooers stated that he and his wife were presently sleeping on the floor of the dining room at his daughter's home and that he never expected there to be a problem with the approval.

Mr. Mooers asked if the Board would allow him the opportunity to go home and get the exact measurements. Acting Chairman Martin stated that the Board would allow the applicant the opportunity to go home and get the exact measurements of the proposed ALU.

Acting Chairman Martin declared a break at 10:45pm, declaring the meeting back to order at 11:10pm.

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

Mr. Riley addressed the Board, stating that the actual measurement to the existing stairway at the time was 38 feet. He also stated that the actual width of the existing room at the time was 24 feet as opposed to the 25 feet that was previously written. He said that the total square footage was 912 SF.

Ms. McGrath read her proposed stipulations as follows:

1. Prior to the issuance of a building permit and occupancy permit, a corrected ALU plan which showed the dimensions of the ALU – 38' x 24' equaling 912 SF shall be submitted.
2. The property owners are to submit an updated application which contains their initials next to those items on pages 8 and 9 of the Application for an Accessory Living Unit which signifies that they have read and understood the items of the terms and conditions of the ALU approval.

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3. The property owners are to submit a letter indicating the identity of the occupants of the ALU.

Ms. McGrath made a motion to approve the request for an Accessory Living Unit with the noted stipulations.

Ms. Davis seconded the motion.

Ms. McGrath, speaking on her motion, stated that she felt it met all of the criteria for an ALU and the noted stipulations will ensure that there is accurate information on file and that the property owners have read and understood all of the conditions of approval and will also know the identity of the occupants of the ALU.

Ms. Davis, speaking on her second, stated that she agreed with everything Ms. McGrath had said,

VOTE: Acting Chairman Martin asked Clerk Dearborn to poll the Board on the motion to approve the request for an Accessory Living Unit, with the noted stipulations, and to record the members’ votes, which were as follows:

Ms. McGrath	To approve
Ms. Davis	To approve
Ms. Shuman	To approve
Mr. Nolin	To approve
Mr. Martin	To approve

Acting Chairman Martin declared that, there having been five votes to approve the request for an Accessory Living Unit, with the noted stipulations, the motion had carried.

IV. OTHER BUSINESS

Acting Chairman Martin stated that a request for a rehearing had been received with regard to the property at 222 Central Street.

Acting Chairman Martin made a motion to defer that request to the next meeting because the Board had just received it.

Mr. Oleksak stated that the letter had been received on time.

Ms. Davis stated that there were a few members who were seated when the case was originally heard that were not present at this meeting so it was probably a good idea to defer it when those excused members would likely be present.

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V. ADJOURNMENT

All scheduled items having been processed, Ms. McGrath made a motion to adjourn the meeting.

Ms. Davis seconded the motion.

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

Acting Chairman Martin declared the meeting to be adjourned at 11:18 pm.

Date: April 8, 2014

Normand Martin, Acting Chairman

Recorder: Trish Gedziun