



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 October 25, 2012

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:35pm on Thursday, October 25 2012, in the Paul Buxton Meeting Room in the Town Hall basement. Chairman Seabury then requested Acting Clerk Davis 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, Donna Shuman, and J. Bradford Seabury

Members

Absent: None (All present)

Alternates

Present: Maryellen Davis, Gary Dearborn, and Maurice Nolin

Alternates

Absent: Mr. Houle and Ms. McGrath (Both Excused)

Staff

Present: Bill Oleksak, Zoning Administrator

Recorder: Trish Gedziun

II. SEATING OF ALTERNATES AND ANNOUNCEMENTS

For the benefit of all attendees, Chairman Seabury noted that copies of the agenda for the meeting, as well as an outline of the rules and regulations governing hearings before the 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.

Chairman Seabury stated that Ms. Davis would assume the role of Clerk in place of Mr. Houle, who was excused.

III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. **Case 204-020 (10/25/12, Deferred from 9/27/12): Scott Lambert, 10 Burns Hill Road, Hudson, NH, requests the following:**
 - A. An Equitable Waiver to allow the existing dwelling to remain within the front-yard setbacks. [Map 204, Lot 040, Zoned R-2, HZO Article VIII, Section 334-28, Nonconforming Uses, Structures, and Lots.]
 - B. A Variance to allow the proposed 24' x 38' attached garage to be constructed within the front-yard setback, 26.4 feet proposed, and construct a 8' x 18' farmer's porch within the front-yard setback, 30.2 feet proposed, where a 50-foot front-yard setback is required for both. [Map 204, Lot 040, Zoned R-2, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]

Acting Clerk Davis 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 matter was before the Board for the same reason as noticed above.

Discussion regarding the Request for an Equitable Waiver

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

Chairman Seabury asked Mr. Oleksak if there had been any complaints with regard to the location of the house. Mr. Oleksak replied that there had not been any complaints.

Mr. Scott Lambert, the applicant, addressed the Board, stating that the house had been in existence since the late 1960's and he did not even know that he needed an Equitable Waiver until recently when he had requested a permit for the proposed garage.

Chairman Seabury stated that the house had been in existence for over ten years without complaint and had not caused any distress in the neighborhood – which was the basic requirement for granting an Equitable Waiver.

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

Chairman Seabury declared the matter before the Board.

Mr. Martin made a motion to approve the request for an Equitable Waiver.

Ms. Shuman seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt there were no violations on the property, it had been in existence for well over ten years, and there would be a high correction cost on the behalf of the applicant if it were to be rectified.

Ms. Shuman, speaking on her second, stated that she concurred with everything Mr. Martin had said.

VOTE: Chairman Seabury asked Acting Clerk Davis to poll the Board on the motion to approve the request for an Equitable Waiver, and to record the members' votes, which were as follows:

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

Chairman Seabury declared that, there having been five votes to approve the request for an Equitable Waiver, the motion had carried.

Discussion regarding the Request for a Variance

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

Mr. Scott Lambert, the applicant, addressed the Board, stating that the proposed farmer's porch encroached approximately 32 feet into the setback.

Mr. Lambert stated that he wanted to construct a farmer's porch for aesthetics purposes as well as the fact that it would increase the value of the home. He said that although the proposed porch would be located in the setback, it would be "far enough away" from the street and it would be in the same location in which he presently entered the home.

Chairman Seabury asked Mr. Lambert to address the requirements in the Application for a Variance.

Mr. Lambert replied he did not see why there would be an issue granting the Variance because there was no impact on traffic, there would be no safety issues, and it would increase the value of the house.

Mr. Dearborn asked if Mr. Lambert was asking for a Variance for a farmer's porch, a garage, and a family room. Mr. Lambert replied that the proposed family room would be in the back of the garage – noting that the family room portion of the garage would not encroach into the setback.

Chairman Seabury asked Mr. Lambert to read aloud from the Application for a Variance. Mr. Lambert did so summarized as follows:

- 1. Granting of the requested Variance will not be contrary to the public interest because his intention was to improve his property and not contrary to the public interest.*

Mr. Lambert said that the proposed two-car garage would be located where he presently parked his cars. He said there would still be adequate parking for four cars in the driveway.

- 2. The proposed use will observe the spirit of the ordinance because the proposed improvements will not conflict with the surrounding homes.*

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3. *Substantial justice would be done to the property owner by granting the Variance because it would allow me to complete the improvements with the least costly building options.*
4. *The proposed use will not diminish the values of surrounding properties because the construction would accent and improve my property as well as the surrounding properties.*
5. *Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship** because many conditions and special limitations existed with the homes location on the property including the setback requirements. The home was built prior to the 50-foot setback requirement.*

Mr. Lambert stated that the proposal was to put the garage where the cars were presently parked and the addition of the family room would make the existing home more functional.

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

Chairman Seabury declared the matter before the Board.

Mr. Pacocha asked how deep the main portion of the garage would be. Mr. Lambert replied that he believed it was either 22 or 24 feet.

Mr. Pacocha asked how far the front of the house was from the right-of-way. Mr. Lambert replied that it was 38 feet.

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

Mr. Pitre seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt the applicant had demonstrated that there was no other feasible place on his property in which to construct the garage without substantial cost, granting the Variance would not be contrary to the public interest, it would observe the spirit of the ordinance, substantial justice would be done to the property owner, the proposal would not diminish values of the surrounding property

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values, special conditions existed on the property, and he said he felt it would enhance the property.

Mr. Pitre, speaking on his second, stated that he agreed with what Mr. Martin had said and added that the special condition that existed on this property existed on many other surrounding properties.

VOTE: Chairman Seabury asked Acting Clerk Davis 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. Shuman	To approve
Mr. Pacocha	To approve
Mr. Seabury	To approve

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

- 2. Case 192-017 – (10/25/12): Empire Homes, Inc., 17 Elnathans Way, Hollis, NH, requests an extension of an un-activated Wetland Special Exception previously granted by the Zoning Board of Adjustment on April 28, 2011, to allow permanent impact of 7,910 square feet of the wetlands and 32,360 square feet of the wetland buffer for access to the upland portion of Lot 17, together with temporary crossings for water utility lines involving 423 square feet of wetlands and 898 square feet of wetland buffer for property located at 68 Pelham Road, Hudson, NH. [Map 192, Lot 017, Zoned G, HZO Article IX, Section 334-33, Wetland Conservation District.]**

Acting Clerk Davis read aloud the posted notice, as recorded above.

Mr. Martin commented that this Variance had expired six months prior, on April 28, 2012, and felt the applicant "should go back through the process."

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

Mr. Tony Basso, from Keach-Nordstrom Associates, representing the applicant, addressed the Board, stating that the Variance had not expired because the time clock followed the Planning Board's approval, which the applicant had recently received an extension to, and not the Zoning Board of Adjustment's time clock.

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Chairman Seabury stated that one of the stipulations the Planning Board had applied to granting the extension was that the applicant also requested an extension from the Zoning Board of Adjustment.

Mr. Basso stated that the construction had been delayed due to the current economic conditions. He further stated that nothing had changed on the property and that the plan was the same plan as originally presented.

Chairman Seabury asked Mr. Oleksak if there had been any changes in the ordinance that would affect the request. Mr. Oleksak replied that there had not been any changes.

Mr. Martin commented that the applicant requested the extension from the Planning Board on September 26, 2012, and that the original approval from the Planning Board was granted on September 14, 2011. Mr. Basso replied that although the actual approval was granted on September 14, 2011, that the paperwork was filed well before that.

Mr. Pitre asked if all of the stipulations from the Conservation Commission would still apply. Mr. Basso replied that those stipulations would still apply.

Mr. Basso stated that he would like to make sure that the entire record from the initial meeting would be part of the official record. Chairman Seabury replied that it would.

Chairman Seabury asked if there were any other members of the Board who had questions or comments. There were none.

Mr. Pitre made a motion to approve the request for an extension of the un-activated Wetland Special Exception subject to the same stipulations originally applied by the Conservation Commission and the Planning Board.

Mr. Pacocha seconded the motion.

Mr. Pitre, speaking on his motion, stated that he felt the case had been thoroughly reviewed and felt the request should be approved.

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

VOTE: Chairman Seabury asked Acting Clerk Davis to poll the Board on the motion to approve the request for an extension of the un-activated Wetland Special Exception, with

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the noted stipulations originally applied by the Conservation Commission and the Planning Board, and to record the members' votes, which were as follows:

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

Chairman Seabury declared that, there having been five votes to approve the request for an extension of the un-activated Wetland Special Exception, with the noted stipulations originally applied by the Conservation Commission and the Planning Board, the motion had carried.

3. **Case 177-006 (10/25/12): Dan and Denise Freeman, 44 Kimball Hill Road, Hudson, NH, requests the following:**

- A. An Equitable Waiver to allow the existing dwelling to remain within the front-yard setbacks; 50 feet required, 23.7 feet exists. [Map 177, Lot 006, Zoned G, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]
- B. A Variance to allow the proposed attached garage to be constructed within the front and side-yard setbacks; 50-foot front-yard setback required, 22.7-foot front-yard setback proposed and 15-foot side-yard setback required, 7.3-foot side-yard setback proposed. [Map 177, Lot 006, Zoned G, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]
- C. A Wetland Special Exception to allow the proposed attached garage to be constructed within the 50-foot wetland buffer. [Map 177, Lot 006, Zoned G, HZO Article IX, Section 334-33, Wetland Conservation District.]

Acting Clerk Davis 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 matter was before the Board for the same reason as noticed above.

Discussion regarding the Request for the Equitable Waiver

Chairman Seabury stated that the home had been built prior to when the ordinance was created, by at least a decade, and there had been no complaints on the property.

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

Mr. Thomas Bloch, from Morgan Exteriors, representing the applicant, addressed the Board, stating that the home was built in the 1930's and it met all of the requirements for an Equitable Waiver.

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

Chairman Seabury declared the matter before the Board.

Mr. Martin made a motion to approve the request for an Equitable Waiver.

Mr. Pacocha seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt the applicant had demonstrated that the home had been there for over ten years, there was no nuisance, and there would be a high correction cost on behalf of the applicant if the Equitable Waiver were not approved.

Mr. Pacocha, speaking on his second, stated that he felt the applicant had met all of the conditions for an Equitable Waiver.

VOTE: Chairman Seabury asked Acting Clerk Davis to poll the Board on the motion to approve the request for an Equitable Waiver and to record the members' votes, which were as follows:

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

Chairman Seabury declared that, there having been five votes to approve the request for an Equitable Waiver, the motion had carried.

Discussion regarding the Request for a Variance

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

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1. *Granting of the requested Variance will not be contrary to the public interest because the proposed garage will be attached to the existing home and look like most homes with an attached garage. It will not harm the public interest.*
2. *The proposed use will observe the spirit of the ordinance because this house was built in the 1930's and does not conform to the existing zoning ordinances. Building the garage in the proposed location will not alter the character of the locality in any way.*
3. *Substantial justice would be done to the property owner by granting the Variance because due to the lay of the land and the unique dwelling location, granting of the Variance would permit the property owner reasonable use of their land/home.*
4. *The proposed use will not diminish the values of surrounding properties because the new garage will enhance property values in the area as well as improving the current look dramatically.*
5. *Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship** because based on location of the house, driveway and where the house was built, this expansion is reasonable. Mr. Freeman has been diagnosed with Parkinson's Disease and access directly from the house to his vehicle in the garage will become very important in the future.*

Mr. Bloch stated that the initial proposal was for a 24' x 30' garage. He further stated that at this point in time, he wished to change the request to a 26' x 30' garage. He said the reason for this was it would enable the applicant to install a door which led to the house.

Mr. Oleksak stated that he did not have an issue with that.

Mr. Pitre stated that he felt the case was notified as a request for a 24' x 30' garage and not a 26' x 30' garage.

Chairman Seabury commented that as he recalled, the Town Attorney had once mentioned that as long as the public and abutters were notified that something was going

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to happen on the property, that they had an opportunity to address any concerns at the advertised meeting.

Mr. Martin commented that he agreed with Chairman Seabury’s comments.

Mr. Bloch stated that the total side-yard setback would be 5.3 feet.

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

Chairman Seabury declared the matter before the Board.

Mr. Pacocha made a motion to approve the request for a Variance subject to the changes in the dimensions made at the meeting, and the removal of the canvas shelters and sheds to be relocated easterly from the house and further from the edge of the wetlands.

Mr. Pitre seconded the motion.

Mr. Pacocha, speaking on his motion, stated that he felt the house was built prior to the zoning ordinance being in effect, the proposed addition was parallel to the front of the existing house, it would not be in conflict with the general public, it would not adversely affect surrounding properties, the improvements to the house would result in the increased value of the property, and there was a hardship on the property.

Mr. Pitre, speaking on his second, stated that he felt it was appropriate to grant the Variance with the 5.3’ side-yard setback as opposed to the 7.3’ side-yard setback because there were special conditions on the property.

VOTE: Chairman Seabury asked Acting Clerk Davis to poll the Board on the motion to approve the request for a Variance, with the noted stipulations, and to record the members’ votes, which were as follows:

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

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

Discussion regarding the Request for a Wetland Special Exception

Chairman Seabury read aloud a portion of the Motion Sheet from the Conservation Commission dated July 9, 2012, summarized as follows:

Motion to recommend a Wetlands Special Exception with the following stipulations:

- 1. All work shall be done in compliance with: Best Management Practices to Control non-point Source Pollution: A Guide for Citizens and Town Officials (NH Department of Environmental Services – Latest Issue)*
- 2. This motion is based on the wetlands plan submitted by the applicant. Additional impacts that may be the result of impervious surfaces have not been addressed. It is recommended that if these conditions occur, the plan be sent to the Conservation for further review.*
- 3. The limit of any construction is to be to the top of the slope which abuts the proposed garage location.*
- 4. No modification of existing conditions is allowed during the construction.*
- 5. Erosion control devices will be placed at the top of the bank during the construction. The two-tent type structures will be removed and the existing shed shall be relocated so that it is outside of the conservation buffer area.*
- 6. A plan is to be generated to show all of the prior stipulations for presentation to the Zoning Board of Adjustment.*

Mr. Pacocha asked if the applicant had planned on removing the sheds entirely out of the wetland or just further away from the wetland. Mr. Bloch replied that the applicant was happy to do whatever the Board's recommendation was.

Mr. Oleksak pointed out that if the shed were moved completely out of the buffer, it would be located in the front yard due to the fact that the lot was so non-conforming.

Chairman Seabury noted the Conservation Commission had included the verbiage "that the existing shed shall be relocated so that it is outside of the conservation buffer area" as part of stipulation #5 and he was not sure if the Zoning Board could change that verbiage.

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Mr. Martin replied that the Conservation Commission had made a “recommendation” to the Zoning Board, and therefore, he felt the Zoning Board could change that “recommendation.”

Mr. Pacocha asked if there had been any changes to the wetland area.

Ms. Denise Freeman, the applicant, addressed the Board, stating that she had lived on the property for thirty years and the only change with respect to water run-off on her property was when the condo complex located on Shepherd’s Hill was constructed years ago.

Ms. Freeman commented that she felt the swimming pool located at the condo complex caused a lot of noise and nuisance for her and the construction of the proposed garage would actually act as a buffer.

Mr. Bloch read aloud from the Application for a Wetland Special Exception summarized as follows:

Please describe the proposed use, indicating the impact to the wetland and its buffer.

We propose to build a 24’ x 30’ attached garage, a 4-foot frost and concrete pad. During the construction we will use silk screening, bales of hay or use any recommendations of the committee. The finished product will have a beneficial effect on the wetlands. Currently, vehicles are parked in the driveway where the proposed garage will go. These vehicles can leak oil, radiator fluid and transmission fluid onto the driveway and into the wetlands. With the construction of the garage, they would leak onto the concrete pad and be contained within the garage.

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

Chairman Seabury declared the matter before the Board.

Mr. Pitre asked what the applicant was planning on putting on the top level of the garage. Mr. Bloch replied that the proposed garage would be one level and the windows would be full light and there were no plans for storage at this point in time.

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Mr. Pitre clarified that there were actually two sheds on the property - not one - as indicated in the Conservation Commissions’ stipulation #5. He asked if the applicant would be relocating both sheds. Mr. Bloch replied that both sheds would be relocated.

Ms. Davis asked if the applicant “worked” on cars on the property. Mr. Bloch replied that Mr. Freeman worked on a 54’ Chevy that he owned personally. (i.e. – changing the oil and flushing the radiator.)

Mr. Martin wanted to confirm that the Planning Board did not get consulted with regard to single-family homes. Chairman Seabury replied that they did not and commented that the Department of Environmental Services had not been consulted with either.

Mr. Pacocha made a motion to approve the request for a Wetland Special Exception subject to the stipulations of the Conservation Commission with the exception of #5, which was modified to reflect relocating two sheds instead of one and the location of the sheds shall be at the discretion of the Zoning Administrator.

Mr. Pitre seconded the motion.

Mr. Pacocha, speaking on his motion, stated that he felt the garage would be an improvement, the relocation of the sheds and tent-type structures would also be an improvement, there was no other reasonable alternative because of the way the house was positioned on the property, the applicant had testified that they would abide by the Conservation Commissions’ recommendations, and the provision of wild-life was not applicable in this case.

Mr. Pitre, speaking on his second, stated that he agreed with everything Mr. Pacocha had said.

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

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

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

Chairman Seabury declared a break at 9:14pm, calling the meeting back to order at 9:24pm.

4. **Case 101-017 (10/25/12):** SMT Tracy Lane Holdings, LLC, 3 Tracy Lane, Hudson, NH, requests an Appeal from an Administrative Decision issued by the Zoning Administrator dated August 22, 2012, which stated that the pick-up truck parked on Tracy Lane near the intersection of Route 102, with a magnetic sign on its sides, advertising “guns” is not in violation of the Hudson Zoning Ordinance. [Map 101, Lot 017, Zoned B, HZO Article XII, Section 334-58B (13), Signs, Permit required; exemptions.]

Acting Clerk Davis read aloud the posted notice, as recorded above.

Mr. Seabury stated that he would step down from the case as the Zoning Administrator had accused him of “interfering with the process” and Vice Chairman Pitre would be seated in his place. Mr. Seabury took a seat in the audience section of the room.

Acting Chairman Pitre seated Mr. Nolin in place of Mr. Seabury, who had stepped down from the case.

Acting Chairman Pitre asked who was present who wished to speak in favor with regard to the Zoning Administrators Decision.

Mr. Tony Basso, from Keach-Nordstrom Associates, representing the applicant, addressed the Board, and read aloud a letter from Reeds Ferry Sheds, addressed to the Zoning Board of Adjustment, dated September 17, 2012, as summarized below:

On August 22, 2012, Mr. William Oleksak, Zoning Administrator, made a Zoning Determination on our complaint dated July 27, 2012, concerning a violation of HZO, Chapter 334, Article XII. The determination was that there was no violation of the Zoning Ordinance and it indicated that we could appeal the decision to the ZBA within 30 days. Please accept this letter, and related documentation, as our appeal of this decision.

The Zoning Determination indicates that the pick-up truck, with magnetic signs on its sides, that is parked daily at the intersection of Route 102 and Tracy Lane is not in violation of the ordinance because Article XII, Section 334-58 B (13) states that “Lettering, logos or graphics identifying

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vehicles or equipment or their manufacturers, vendors or distributors, which are permanently affixed to the exterior of the vehicles or equipment” do not require a permit. It is our view that the parked truck (1) does not comply with this ordinance, and (2) does not comply with other, more directly relevant Zoning Ordinances.

First, you should be aware that the signs on the sides of the truck are magnetic and therefore, are not “permanently affixed” to the exterior of the vehicle. Therefore, this type of signage is not permitted.

Second, according to Chapter 334, Article XII, Section 334-58 B, signs “must comply with all other requirements of this chapter,” and the parked truck does not meet these requirements. As stated in my letter of dated July 27, 2012:

Section 334-59 defines a portable sign as, “A sign that is movable, typically set up on a daily basis....” This vehicle, with sign, is moved on a daily basis, based upon the business hours, to the corner of Route 102 and Tracy Lane. The business this vehicle relates to is located at 11 Tracy Lane.

Section 334-60 indicates that:

“No off-premises advertising signs are permitted in any district.” Since this sign is located at the edge of our property, and the business this vehicle relates to is located at 11 Tracy Lane, this is clearly an off-premises advertising sign.

“No portable signs are allowed in any district.” As noted above, since the truck is clearly being used as a portable sign, it is in violation of the Zoning Ordinance.

Although we agree that lettering logos permanently affixed to vehicles and used in the traditional fashion do not violate the sign ordinance - that is not how the sign in question is used. The sign in question is parked in the same location, off-site, every day with the sole purpose of directing customers to the retail establishment advertised on the sign. The truck is not that of a contractor or vendor, who may be parked from time to time in public ways in the execution of their daily business. This is a vehicle, parked at a specific location for the sole purpose of advertising the

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location of a business. The business in question is located not on a busy street suitable for retail, but on a cul-de-sac with minimal public exposure. The sign on the truck is a specific remedy for the lack of traffic exposure. It is placed daily near the higher volume road, Route 102, for maximum exposure, in front of and on land owned by SMT Tracy Lane Holdings, LLC, which is leased by Reeds Ferry Small Buildings, Inc. Because of how the sign/truck is used, we feel it is both an Off-Premises Sign and a Portable Sign and should be viewed by the Zoning Board as such.

Finally, Article XII, Section 334-57 indicates that “the purpose of this article is to encourage the effective use of signage...while protecting public safety, preserving neighborhood character, aesthetics and minimizing visual clutter.” This vehicle being parked on the corner of Route 102 and Tracy Lane violates this purpose for many reasons, including:

- 1. As previously stated, the vehicle is a hazard for traffic entering and exiting Tracy Lane and therefore, is an issue for public safety.*
- 2. Relating to “preserving neighborhood character and aesthetics”, Reeds Ferry has invested a large amount of money to maintain a very high quality property for the benefit of our customers. The area in which the vehicle is parked is one that is maintained by us and as a result our landscapers can no longer maintain it. In addition, any vehicles parked there for purposes of advertising their business do not preserve the character or aesthetics of the neighborhood, but rather destroy it. We do not park our vehicles there, as we believe that any vehicle parked there would bring down the aesthetic appeal and the character of the neighborhood. Also, a vehicle parked at the edge of our property, advertising for any other business but ours, devalues our property and business.*
- 3. Relating to “minimizing visual clutter”, if this vehicle is allowed to park on the corner of Route 102 and Tracy Lane, what is to stop any of the other businesses on Tracy Lane from parking there as well? Bobcat, Fred Fuller, NEGTC, Wayne’s Tattoo World, AJ’s Sports Bar and Mailhot Industries; if the*

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gun shop is allowed to park there to advertise their business, then we could potentially have six other vehicles, at least, parking there as well. If the determination stands that this parked truck does not violate the Zoning Ordinances, then a precedent is being set in the town that businesses may advertise wherever, whenever they want, without a permit, on or off their property, as long as the sign is somehow affixed to their vehicle. Continued enforcement of the Zoning Opinion in question would allow the parking of vehicles with signs affixed around town with the sole purpose of advertising. As a resident business in town, we do not feel this would be in the best interest of the town long-term and request that town officials consider the long-term effects of this opinion.

You should also note that when Reeds Ferry moved to its current location, we were not allowed to erect a permanent, professional sign that would allow multiple businesses to display their business names. If that is not permitted under the Zoning Ordinance, how can a truck parked alongside the road with a magnetic sign be in compliance?

As a business, we have been careful to comply with the Zoning Ordinances and understand their importance to maintain a viable, appealing business district that is beneficial to all businesses there. We are trying to do the right thing and follow the proper channels to ensure that the Zoning Ordinances are being properly applied.

For all of these reasons, it is clear that the parked truck violates the Hudson Zoning Ordinance, and we hereby request that the determination that the truck complies with the Zoning Ordinances be overturned and that the Board take prompt action to enforce the applicable Zoning Ordinances.

Acting Chairman Pitre asked if there were anyone else present who wished to speak in favor, in opposition, or neutrally with regard to the Zoning Administrator's Decision. No one else came forward.

Acting Chairman Pitre declared the matter before the Board.

Mr. Nolin asked if it would be an issue if any other vehicle were to park in that location other than a "signed vehicle." Mr. Basso replied that although it was not a great place to

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park, it was not – not allowed. He said that the important thing to note in this case was that the public right-of-way was actually almost on the edge of the pavement so that the vehicle, to not be on the applicants' property, would have to be almost completely on the pavement. He further said that he did not feel it was appropriate for a vehicle to be parked on the pavement in that location.

Mr. Pacocha asked if the truck in question was actually parking on the applicants' property. Mr. Basso replied that "the truck had parked on the applicants' property." He also said that the applicants had agreed to go through the "zoning process" before they started "chasing them off of the property."

Mr. Pacocha commented that he felt the applicant was trying to selectively enforce something that was discriminatory – pointing out that there were not any town approved "no parking signs" on the property. Mr. Basso replied that he did not feel the applicant was trying to be selectively discriminatory. He further said that the sign was directional in nature - which consisted of a sign and an arrow and therefore should not be allowed.

Ms. Davis commented that HZO §334-58 (A) stated that a placed freestanding sign on any premise, public or private roadway, or rights of way, did require a permit. She further commented that a directional sign that was less than 3 square feet did not require a permit.

Mr. Basso replied that he felt the sign "structure" (which was the truck itself) should be taken into consideration while determining the actual size of the sign.

Ms. Davis commented that she did not feel the sign met the requirements of the ordinance because the truck itself acted as a "pole" in which to hold the sign.

Mr. Basso also pointed out that the sign was an off-premise sign as it was located either on the applicants' property or on the towns' right-of-way.

Mr. Martin commented that HZO §334-60 (E) stated that all signs shall be set back a distance of not less than 25 feet from the point of intersections' right-of-way. He further commented that he felt it was closer than 25 feet and therefore, it was a safety hazard.

Mr. Pitre replied that the police had visited the site where the vehicle was parked and it was not felt that it was against the law or a safety issue.

Mr. Dearborn stated that he noticed some stakes on the property and asked what they were there for. Mr. Basso replied that they were there to mark the property line.

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Mr. Dearborn stated that HZO §334-60 (K) stated that no inflatable balloon or portable signs were allowed in any district. Mr. Basso replied that he would have absolutely considered it a portable sign.

Mr. Tim Malley, 4 St. Johns Street, Hudson, NH, and owner of T.J. Malley Electric also in Hudson, addressed the Board, and asked if a vehicle sign was considered a portable sign if the vehicle parked in front of a business all day long. Mr. Basso replied “no, I don’t, I want to consider a vehicle sign a portable sign or an off premise sign if its’ done in this manner – where it is advertising, it is off premise, it’s pointing, it’s not advertising a specific business.”

Mr. Pitre asked Mr. Basso if he felt the arrow portion of the sign was larger than 3 square feet. Mr. Basso replied that the arrow portion of the sign was probably less than 3 square feet. Mr. Pitre commented that he felt the directional portion of sign was the arrow only.

Ms. Davis commented that she felt it came down to what a persons’ definition of a sign was. Mr. Pitre said that he felt it was just the arrow and Ms. Davis said that she felt it was the entire sign.

Mr. Pacocha stated that he felt it was a matter of selective enforcement.

Mr. Martin stated that he felt the sign could be considered off premise advertising and felt it needed a permit.

Mr. Martin made a motion to overturn the Zoning Administrator’s Determination.

Acting Chairman Pitre stated that the motion had failed due to the lack of a second.

Mr. Pacocha made a motion to uphold the Zoning Administrator’s Determination.

Ms. Shuman seconded the motion.

Mr. Pacocha, speaking on his motion, stated that he felt the case was bordering on selective enforcement and felt that if the decision was overturned, then all vehicles with business names or logos would have to fall under the same category. He also stated that he felt if the applicant felt the situation caused a nuisance then they had recourse – trespassing.

Ms. Shuman, speaking on her second, stated that she agreed with Mr. Pacocha.

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Mr. Martin stated that he would vote to overturn the Zoning Administrators Determination because he felt this sign was showing people where a business was located. He also said that the location of the truck and sign were in a right-of-way and he said he felt that was a safety issue for the motoring public.

Mr. Pitre, replying to Mr. Martin’s comments, stated that he too felt it was a safety issue but that matter was not before the Board. He said that the matter before the Board was what was on the sign.

VOTE: Acting Chairman Pitre asked Acting Clerk Davis to poll the Board on the motion to uphold the Zoning Administrators Determination, and to record the members’ votes, which were as follows:

Mr. Pacocha	To uphold the Zoning Administrator’s Determination
Ms. Shuman	To uphold the Zoning Administrator’s Determination
Mr. Martin	Not to uphold the Zoning Administrator’s Determination
Mr. Nolin	To uphold the Zoning Administrator’s Determination
Mr. Pitre	To uphold the Zoning Administrator’s Determination

Acting Chairman Pitre declared that, there having been four votes to uphold the Zoning Administrator’s Determination, and one vote not to uphold the Zoning Administrator’s Determination, the motion had carried.

Mr. Seabury returned to his seat as Chairman, with Mr. Pitre returning to his seat as a full voting member of the Board, and Mr. Nolin returned to his seat as a non-voting alternate member of the Board.

- Case 204-064 (10/25/12): James Porter, Sr., 15 Burns Hills Road, Hudson, NH, requests a Variance to allow the proposed farmer’s porch to be constructed within the front-yard setback; 50 feet required, 46 feet proposed. [Map 204, Lot 064, Zoned R-2, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**

Acting Clerk Davis read aloud the posted notice, as recorded above.

Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak explained that the matter was before the Board for the same reason as notified above.

Chairman Seabury reminded the members of the Board that when an applicant was before the Board for something that had already been done, that the Board needed to look at it as something that had yet to be done.

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

Mr. James Porter, Sr., the applicant, addressed the Board, and read aloud a portion of the Application for a Variance summarized as follows:

- 1. Granting of the requested Variance will not be contrary to the public interest because the farmer's porch increases curb appeal and property value to all homes in the neighborhood.*
- 2. The proposed use will observe the spirit of the ordinance because it maintains neighborhood appearance standards.*
- 3. Substantial justice would be done to the property owner by granting the Variance because increasing his property value and appearance benefits all property owners in Hudson.*
- 4. The proposed use will not diminish the values of surrounding properties because prior to building the farmer's porch, there was two, less than appealing, cement slab steps for the front entries.*
- 5. Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship** it would result in the diminishment of the property's potential value. Both aesthetically and economically.*

An existing and seriously wet basement condition will be resolved with the 8' extension made possible by the construction of the proposed farmer's porch. This is a more cost effective solution to this existing water problem over other remedies.

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

Chairman Seabury declared the matter before the Board.

Mr. Pitre asked Mr. Porter how the addition of the farmer's porch remedied the water problem in the basement. Mr. Porter replied that the water problem was resolved by removing the water shed area from the roof by 8 feet.

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Mr. Pitre asked if the decks on either side of the property met the setbacks. Mr. Oleksak replied that the decks did meet the setback requirements.

Mr. Pitre asked if the shed located on the property line had been removed. Mr. Porter replied that the shed had been removed.

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

Mr. Pacocha, speaking on his motion, stated that he felt granting the Variance was not contrary to the public interest, it observed the spirit of the ordinance, and it increased the value of the property.

Mr. Pitre, speaking on his second, stated that he felt the intrusion into the setback was minimal, the applicant had done due process, and there were special conditions that existed on the property.

VOTE: Chairman Seabury asked Acting Clerk Davis 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. Pacocha	To approve
Mr. Pitre	To approve
Ms. Shuman	To approve
Mr. Martin	To approve
Mr. Seabury	To approve

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

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V. ADJOURNMENT

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

Ms. Shuman seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 10:30pm.

Date: November 5, 2012

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun