



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 November 10, 2011

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:34pm on Thursday, November 10, 2011, in the Community Development Meeting Room in the Town Hall basement. Chairman Seabury then requested Clerk Davis to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

Present: J. Bradford Seabury, Jim Pacocha, and Mike Pitre

Members

Absent: Normand Martin (Excused) and Donna Shuman (Absent)

Alternates

Present: William Abbott, Maryellen Davis, Gary Dearborn, and Kevin Houle

Alternates

Absent: Marilyn McGrath (Excused)

Staff

Present: William 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 sat Mr. Houle in place of Ms. Shuman, who was absent and sat Mr. Abbott in place of Mr. Martin, who was excused.

III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

1. **Case 176-049 (11/10/11, Deferred from 10/27/11): VSH Realty, Inc., 100 Crossing Blvd., Framingham, MA, request the following for property located at 189 Central Street, Hudson, NH. (Cumberland Farms):**
 - A. **A Variance to allow an electronic sign to be located within the required 200-foot setback to any residential dwellings. [Map 176, Lot 049, Zoned B, HZO Article XII, Section 334-64 C (6), Free-standing business and industrial signs.]**
 - B. **A Variance to allow the proposed electronic sign to have the text be 24 inches in height where a maximum of 10 inches in height is allowed. [Map 176, Lot 049, Zoned B, HZO Article XII, Section 334-64 C (3), Free-standing business and Industrial Signs.**

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

Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board.

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Mr. Oleksak replied that the case was before the Board for the same reason as notified above.

Chairman Seabury stated that the case was deferred from the last meeting (10/27/11) due to errors in the abutter notification.

Discussion with regard to (A) the request for a Variance

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

Ms. Carolyn Parker, Consultant, representing the applicant, addressed the Board, stating that the applicant was requesting a waiver for the Certified Plot Plan since only re-facing the existing pylon sign was being requested. She also said that a Site Plan from 1999 had been provided.

Ms. Parker stated that the proposed sign was not a LED sign 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 there is currently an existing internally illuminated price sign at the gas station. The existing 6' x 4' price sign, which protrudes from the side of the pylon structure, has a white background with 36' high prices and the whole sign is internally illuminated at night, except for the prices and "regular", therefore reducing the brightness of the sign. The new price sign will also be mounted within the structure of the sign, therefore, moving the sign 4 feet and 0 inches further from the residence across from the gas station at 190 Central Street. The sign would display static copy only.*
- 2. The proposed use will observe the spirit of the ordinance because the current use, a gas station and convenience store, is an allowed use in the Business Zoning District. We are proposing a "Scroller" style price sign, although this sign meets the letter of the definition of the electronic sign or message board, we do not feel it meets the intent of the bylaw which is to restrict bright lights/signs that constantly flash or change. The prices can be changed from within the building. The "Scroller" style sign is more of a mechanical sign than a typical electronic message reader board sign. The sign is strictly for the prices and will change once or twice daily; otherwise, it is a static sign with no movement.*

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3. *Substantial justice would be done to the property owner by granting the Variance because having the “Scroller” style sign would have minimal impact to the site and surrounding properties based on their size and intensity. The “Scroller” style sign will help improve both day and night visibility and will eliminate several safety concerns. “Scroller” style signs can be changed via hand-held remote control or via internet connection from the Corporate Office.*
4. *The proposed use will not diminish the values of surrounding properties because the existing pylon sign is already in existence and is currently internally illuminated. The proposed “Scroller” style sign does not increase the existing illumination level emitted by the pylon sign, it reduces it.*
5. *Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship** because it continues to permit a reasonable use. We only wish to reface an existing internally illuminated sign, reducing the brightness. The Pylon sign will remain in the exact location approximately 160’ (+/-) from the residential dwelling. The price sign being moved from the side of the sign column actually moves the illumination further from the house.*

Discussion with regard to (B) the request for a Variance

Ms. Carolyn Parker, representing the applicant, addressed the Board, and read aloud from the Application for a Variance summarized as follows:

1. *Granting of the requested Variance will not be contrary to the public interest because there is currently an existing price sign with numbers that are 36’ in height. With the new “Scroller” style sign, we will be reducing that number to 24’, therefore making the numbers more in compliance with the zoning regulations.*
2. *The proposed use will observe the spirit of the ordinance because the current use, a gas station and convenience store, is an allowed use in the Business Zoning District.*
3. *Substantial justice would be done to the property owner by granting the Variance because the “Scroller” style sign would have minimal impact to the site and surrounding properties based on their size and intensity.*

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4. *The proposed use will not diminish the values of surrounding properties because the existing pylon sign is already in existence and is currently internally illuminated.*
5. *Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship** because it continues to permit a reasonable use. We only wish to reface an existing internally illuminated sign, reducing the brightness. The Pylon sign will remain in the exact location approximately 160' (+/-) from the residential dwelling. The price sign being moved from the side of the sign column actually moves the illumination further from the house.*

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

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

Chairman Seabury declared the matter before the Board.

Chairman Seabury asked how the sign would be illuminated. Ms. Parker replied that it would be internally illuminated with light bulbs.

Ms. Davis asked the applicant to confirm that the sign would not be an LED sign. Ms. Parker replied that it would not be an LED sign.

Motion with regard to (A) the request for a Variance

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 the applicant had successfully met all of the criteria for a Variance.

Mr. Pitre, speaking on his second, stated that he also felt the applicant had successfully met all of the criteria for Variance and there was no negative abutter testimony.

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VOTE: Chairman Seabury asked 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
Mr. Abbott	To approve
Mr. Houle	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.

Motion with regard to (B) the request for a Variance

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

Mr. Houle seconded the motion.

Mr. Pacocha, speaking on his motion, stated that he felt the applicant had successfully met all of the criteria for Variance.

Mr. Houle, speaking on his second, stated that he agreed with what Mr. Pacocha had said and felt that the overall reduction of illumination would not be contrary to the public interest.

VOTE: Chairman Seabury asked 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. Houle	To approve
Mr. Pitre	To deny
Mr. Abbott	To approve
Mr. Seabury	To deny

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

- 2. Case 217-005 (11/10/11): Alan and Theresa Boissonneault Living Trust, P.O. Box 2431, 1016 Yates Road, Oak Harbor, WA, requests the following for property located at 13 Mark Street, Hudson, NH.**

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- A. A Variance to allow access to the proposed lot without the proper frontage; 120 feet required, 50.49 feet proposed. [Map 217, Lot 005, Zoned R-2, HZO Article VII, Section 334-27, Table of Dimensional Requirements.]**

- B. A Wetland Special Exception to allow the proposed driveway to be located within the wetland buffer, 3,408 square feet to be impacted. [Map 217, Lot 005, Zoned R-2, HZO Article IX, Section 334-35, Uses within the Wetland Conservation District.]**

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 case was before the Board for the same reason as notified above.

Discussion with regard to (A) the request for a Variance

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

Attorney Andrew A. Prolman, from Prunier & Prolman, was present representing the applicant.

Chairman Seabury stated that he was concerned that an approval from the Board would mean that at least two lots would become landlocked. He further stated that he felt the Board should consult with the Town Attorney prior to hearing this case.

Mr. Pacocha made a motion to defer the case, date specific of January 26, 2012, to enable sufficient time for the Board to consult with the Town Attorney.

Mr. Pitre seconded the motion.

Mr. Pacocha, speaking on his motion, stated that he felt it was appropriate to consult with the Town Attorney prior to proceeding with the case.

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

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VOTE: Chairman Seabury asked Clerk Davis to poll the Board on the motion to approve the request to defer the case, date specific of January 26, 2012, and to record the members' votes, which were as follows:

Mr. Pacocha	To defer
Mr. Pitre	To defer
Mr. Abbott	To defer
Mr. Houle	To defer
Mr. Seabury	To defer

Chairman Seabury declared that, there having been five votes to defer the case, date specific of January 26, 2012, the motion had carried.

Discussion with regard to (B) the request for a Wetland Special Exception

Chairman Seabury asked Attorney Prolman if he would like to still present part B of the case – the request for a Wetland Special Exception. Attorney Prolman replied that he would like to proceed with the request.

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

Mr. Timothy Ferwerda, from Meridian Land Services, Inc., representing the applicant, addressed the Board, stating that the proposal was to construct a single-family residential dwelling on the lot.

Mr. Ferwerda read aloud from the Wetland Buffer Impact Report summarized as follows:

The wetlands were situated to the north and south of the proposed driveway such that the wetland buffer must be crossed by the driveway to access the buildable portion of the lot. The wetland to the south of the driveway was a small forested wetland that was isolated and not connected to any other wetland area. The wetland to the north of the property functioned “somewhat” for flood storage, groundwater recharge/discharge, and wildlife habitat as it functioned as a vernal pool.

The proposed driveway has been located as far south of the vernal pool wetland as reasonable to leave as large of a wetland buffer as possible. This allows any drainage from the driveway to be directed toward the forested wetland area to the south. Erosion control measures have been

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proposed during construction to prevent sediment from leaving the construction area and to protect the wetland areas.

The New Hampshire Natural Heritage Bureau was contacted for records of rare species and exemplary communities in the area of this parcel. The results are there are no records found for this area. A copy of the NH NHB review is on file. A review letter of this lot by Wetland Consulting Services, Robert Prokop, NH Wetland Scientist/Wildlife Biologist is also on file. (Recorder's Note: Back-up documentation as noted above is on file at the Community Development Department)

Mr. Ferwerda read aloud his answers to the requested Conditions for a Wetland Special Exception summarized as follows:

- A. The proposed driveway through the wetland buffer is essential to the use of the land outside of the Wetland Conservation District, namely, a single-family home.*
- B. There is no alternate access to this lot other than the proposed driveway.*
- C. Meridian Land Services, Inc., prepared the plan for this site. Erosion control measures have been proposed to protect the wetlands during construction. The site grading has been designed to minimize any impact to the wetland north of the site.*
- D. This application presents a single-family lot subdivided in 1970 (HCRD Plan No. 4599) The only allowed and intended use of the lot is for a single-family home, and the proposed driveway is not based primarily on economic conditions.*
- E. The proposed driveway has as little impact as possible on the Wetland Buffer (3,408 square feet). The proposed driveway keeps as much distance as possible from the vernal pool off our lot to the north. The proposed culvert allows for movement of water (if any) away from the vernal pool.*

Chairman Seabury read aloud a letter dated September 12, 2011, from the Conservation Commission summarized as follows:

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There was a motion to recommend a Wetland Special Exception with the following stipulations: (4-0-0)

1. *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 back to the Conservation Commission for further review.*
3. *The plan appears to provide the reasonable access to the buildable lot with significant but reasonable wetland buffer disturbance.*

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

Chairman Seabury declared the matter before the Board.

Ms. Davis commented that she felt the applicant had done what was possible to access the lot with the least amount of disturbance.

Mr. Pitre made a motion to approve the request for a Wetland Special Exception with the noted stipulations of the Conservation Commission and added the stipulation that the approval of the Wetland Special Exception shall be concurrent with the pending approval of the Variance.

Mr. Abbott seconded the motion.

Mr. Pitre, speaking on his motion, stated that he felt granting the request was reasonable, and there was a favorable recommendation from the Conservation Commission.

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

VOTE: Chairman Seabury asked 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:

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Mr. Pitre	To approve
Mr. Abbott	To approve
Mr. Pacocha	To approve
Mr. Houle	To approve
Mr. Seabury	To approve

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.

- 3. Case 148-065 (11/10/11): Ronald Savoie, 13 Wagner Way, Hudson, NH, requests an Accessory Living Unit to be located above the existing attached garage. [Map 148, Lot 065, Zoned R-1, HZO Article XIII A, Section 334-73.1, Accessory Living Units.]**

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 notified above.

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

Mr. Ronald Savoie, 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 a one-family dwelling. An ALU is not allowed in a two-family or multi-family dwellings, or any non-residential uses. An ALU is expressly prohibited in an Open Space Development. This site will conform to this requirement by: The main house is a one-family home with a 3-car garage attached and finished room above 2-car garage.*
- 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. This site will conform to this requirement by: The existing space is presently over attached 2-car garage. (see drawing)*
- 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*

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principal dwelling does not personally reside. This site will conform to this requirement by: Only family members (which would be “my in-laws”) will be allowed to live in it.

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. “This site will conform to this requirement by: The space being used is existing and we are just adding two dormers for windows above the garage door.” (see drawing)*
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 structure. This site will conform to this requirement by: The existing space has its own entrance from outside on the left side of house and its own entrance into the main house on the second floor. (see drawing)*
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. This site will conform to this requirement by: The space is existing and it will not have separate utilities.*
7. *Off-street parking shall be provided to serve the combined needs of the principal dwelling unit and an ALU. This site will conform to this requirement by: This site has 12+/- space off street parking.*
8. *The gross living area (GLA) of an ALU shall not be less than 350 square feet, and shall not exceed fifty percent of the principle 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 square feet in order to accommodate the creation of an ALU. This site will conform to this requirement by: This existing space is 557 square feet.*
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 alarms per Section R313.2.1 of the 2006 IRC Building Code. This site will conform to this requirement by: A licensed electrician will bring the fire alarms in the space to code.*

Mr. Savoie then read aloud the next four paragraphs indicating that he understood them.

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(Recorder’s Note: The applicant initialed the above noted paragraphs and documentation of that is on file with the Community Development Department.)

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 who would be living in the proposed ALU. Mr. Savoie replied that the intended residents of the proposed ALU would be his mother and father in-law.

Mr. Pitre asked if the closet was pre-existing. Mr. Savoie replied that it was.

Mr. Pitre asked if there would be a separate zone for heat in the proposed ALU. Mr. Savoie replied that there would not be a separate zone.

Mr. Pacocha made a motion to approve the request for an Accessory Living Unit with the stipulation that there would be no lock on the door accessing the hallway on the second floor - the common interior access between the main house and the ALU.

Mr. Pitre seconded the motion and added the stipulation that the applicant submit a letter of intended occupancy of the Accessory Living Unit prior to obtaining a building permit.

Mr. Pacocha indicated that he agreed with the added stipulation, making it a friendly amendment.

Mr. Pacocha, speaking on his motion, stated that he felt the applicant had satisfactorily addressed all of the criteria for an Accessory Living Unit. He also pointed out that this was one of the few Accessory Living Units over a garage that he liked.

Mr. Pitre, speaking on his motion, stated that he was in favor of the application because it had one continuous floor and it was in a space that already existed.

VOTE: Chairman Seabury asked Clerk Davis 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:

Mr. Pacocha	To approve
Mr. Pitre	To approve
Mr. Abbott	To approve

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Mr. Houle	To approve
Mr. Seabury	To approve

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

Chairman Seabury declared a break at 9:40pm, calling the meeting back to order at 9:50pm.

- 4. Case 173-019 (11/10/11): Richard Suter, III, 12 Campello Street, Hudson, NH, request an Appeal from an Administrative Decision issued by the Zoning Administrator dated September 29, 2011, which stated that a Variance is required for an Accessory Use of service and repair of vehicles in the Town Residence (TR) Zoning District. [Map 173, Lot 019, Zoned TR, HZO Article V, Section 334-22, Table of Permitted Accessory Uses.]**

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 (after having several conversations with the applicant) Mr. Suter had claimed he was performing car repairs (on his own vehicles only) in his garage. He further replied that there had been complaints from at least one neighbor and there was some question as to whether or not Mr. Suter was genuinely only working on his own vehicles.

Chairman Seabury read aloud a letter dated November 10, 2011, addressed to the Hudson Zoning Board of Adjustment, from Richard and Jacqueline Suter (the applicants), summarized as follows:

We authorize Attorney Andrew Prolman of Prunier and Prolman to speak on our behalf before the Hudson Zoning Board of Adjustment.

Chairman Seabury asked who was present who wished to speak in favor with regard to the Appeal of the Zoning Administrator's Determination.

Attorney Andrew A. Prolman, from Prunier & Prolman, was present representing the applicant. He said that the applicant was present to appeal the Zoning Administrator's Determination that the service and repair of motor vehicles was not an allowed accessory use.

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Attorney Prolman stated that the applicant had been working on a peaceful resolution to the situation since having received Mr. Oleksaks' letter dated September 29, 2011. He also said that, although the applicant had thought progress was being made, one set of neighbors continued to complain and that was why the appeal was before the Board.

Attorney Prolman stated that Mr. Suter was indeed doing service and repair on his own vehicles but that the definition listed in the Table of Permitted Accessory Uses did not match the activity happening on the property.

Attorney Prolman said that the applicant purchased the property in 1997 and, at the time, it came with a three-car garage. He also said that at the time, Mr. Suter was doing repairs to his cars as a home mechanic.

Attorney Prolman stated that in 2007, Mr. Suter replaced the third garage bay into a "barn" type garage which consisted of two floors.

Attorney Prolman said that from time to time, friends came by and their cars were worked on as well. He also said that the applicant was simply conducting a "hobby" and nothing more – adding that there was no business aspect to it.

Attorney Prolman stated that the Table of Accessory Uses allowed for garages, tool sheds, and parking areas in the TR District. He further stated that he felt Mr. Oleksak was in error when he labeled the applicants' use as miscellaneous service and repair, which was not an allowed use.

Attorney Prolman said that the applicant wanted to be respectful of his neighbors and would be willing to put in some type of sound insulation as a noise abatement measure.

Attorney Prolman stated that he had submitted a letter to the Board, dated October 1, 2010, in which eight or nine neighbors had indicated their support of Mr. Suter.

Chairman Seabury asked if there were anyone else present who wished to speak in favor with regard to the Appeal of the Zoning Administrator's Determination.

Ms. Meredith Rackliff, 10 Campbello Street, a direct abutter, addressed the Board (**in opposition of the applicant**) stating that she was disturbed by the excess noises coming from the Suters' property such as grinding, sanding, and air tools.

Ms. Rackliff stated that her house was 63 feet from the Suters' garage and her sons' bedroom window was closest to their garage.

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Ms. Rackliff said that Mr. Suter acknowledged that other people had also fixed their vehicles on his property.

Ms. Rackliff stated that the noise had subsided over the summer but had resumed again over Labor Day Weekend of 2011.

Ms. Rackliff also said that another concern was odor emissions and possible contaminants entering a nearby storm drain.

Ms. Rackliff stated that she felt “business” type services were being done, which was not allowed in the Residential Zone.

Chairman Seabury asked if there were anyone present who wished to speak in favor with regard to the Appeal of the Zoning Administrator’s Determination.

Ms. Jacqueline Suter, addressed the Board, stating that there were no contaminants being dumped in any drain and that vehicles were worked on typically until about 9:30 – 10:00pm.

Ms. Suter said that the one complaint regarding noise in which the police were called was addressed in a timely fashion. She also said that there were no tow trucks picking up and dropping vehicles off but that a friend who was a tow truck driver did stop by to say hello on occasion.

Ms. Suter stated that a restraining order had been taken out against a member of the Rackliff family. Chairman Seabury informed Ms. Suter that particular piece of information had no bearing on the matter before the Board.

Chairman Seabury asked if there were anyone else present who wished to speak in favor with regard to the Appeal of the Zoning Administrator’s Determination.

Mr. Michael Rampino, 41 Beachwood Road, Hudson, NH, addressed the Board, stating that he too was a “gearhead” and was there in favor of the appeal.

Mr. Mike Bear, 18 Baker Street, Hudson, NH, addressed the Board, stating that he was also a fellow hobbyist and was there in favor of the appeal.

Mr. Paul Tallo, Greenfield Drive, Hudson, NH, addressed the Board, stating that he was also there in support of the appeal as a fellow hobbyist.

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Mr. Bruce Bigelow, 10 Sheffield Street, Hudson, NH, addressed the Board, also stating that he was there in support of the appeal.

Mr. Craig Brown, Bedford, NH, addressed the Board, stating that he too was there in support of the applicants' appeal.

Chairman Seabury asked if there were anyone else present who wished to speak in favor with regard to the Appeal of the Zoning Administrator's Determination. No one else came forward at this time.

Chairman Seabury asked if there were anyone else present who wished to speak in opposition or neutrally with regard to the Appeal of the Zoning Administrator's Determination. No one else came forward at this time.

Chairman Seabury asked Mr. Oleksak to explain his interpretation of the ordinance as it applied to this case. Mr. Oleksak replied that Mr. Suter had assured him that he was not working on any vehicles for payment. He further replied that the activity in Mr. Suters' garage had become a Noise Ordinance issue – pointing out that the Hudson Police Department were the caretakers of the Noise Ordinance. He said that when the police were called to the residence, it was not for the noise of the activity in the garage but neighbors verbally arguing.

First Round of Rebuttal

Ms. Rackliff addressed the Board, again stating that she was opposed to the activity in Mr. Suters' garage.

Attorney Prolman addressed the Board, again stating that the applicant would like to Appeal the Zoning Administrators' Determination and use his garage as intended.

Chairman Seabury commented that he did not feel that the Noise Ordinance was going to help a great deal in this case.

Mr. Jean Pelletier, 28 Campbello Street, Hudson, NH, asked if there was a law which dictated what times of day a reasonable amount of noise could be made. Mr. Pelletier stated that he did not feel that vehicles should be worked on until 9:00 or 10:00pm.

Chairman Seabury declared the matter before the Board.

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Mr. Pitre asked what the relationship was between the applicant and the website www.certifiablejeep.com. Mr. Suter replied that it was a public forum and not his personal website.

Mr. Pitre commented that he felt it was more like a “group” of people going to Mr. Suters’ property and not just the occasional “friend.”

Mr. Dearborn asked Mr. Suter what percentage of work he felt was done on his own vehicles versus that of work done on friends vehicles. Mr. Suter replied that approximately 80% of the work done was on his own vehicles.

Mr. Dearborn asked Mr. Suter what time of night he stopped working on vehicles. Mr. Suter replied that he usually stopped working on vehicles around 10:00pm – noting that it was possible to be working longer on occasion.

Mr. Pitre asked how many jeeps Mr. Suter owned. Mr. Suter replied that he owned three jeeps.

Ms. Davis asked what time Mr. Suter started working on his vehicles. Mr. Suter replied that it would generally be after 7:30am.

Ms. Davis asked if Mr. Suter allowed his friends to work on their vehicles while he was not home. Mr. Suter replied that although he had allowed that in the past, he had come to an understanding with Mr. Oleksak that he would no longer allow that.

Ms. Davis asked if the activity that happened at night was solely within the garage or outside of the garage. Mr. Suter replied that he could not think of an instance when activity occurred outside of the garage.

Ms. Davis asked if the garage door was left open during the summer months. Mr. Suter replied that it was generally kept closed.

Chairman Seabury questioned whether the applicant should request a Home Occupation Special Exception but then commented that (among other requirements) the applicant was not charging for any services and one of the requirements of such an exception would be that work ceased significantly earlier than 10:00pm.

Chairman Seabury said that he felt the real issue in this case was that one if not two neighbors were complaining about the noise coming from Mr. Suters' garage.

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Chairman Seabury also said that he felt this case was more about a conflict of personalities rather than that of an occupation.

Ms. Davis commented that she felt it was not only the noise level but there was also a lot of activity for a neighborhood setting.

Mr. Pitre commented that he agreed with what Ms. Davis had said.

Mr. Suter commented that he was not insensitive to the noise issue and was open to solutions.

Mr. Pacocha commented that he felt the issue was a Noise Ordinance issue and the Zoning Board of Adjustment did not handle those issues.

Chairman Seabury commented that he did not feel the case was a matter of Land/Use control but more of a police matter.

Mr. Abbott commented that he felt it was not a matter of the particular activity but the degree of activity.

Chairman Seabury made a motion not to hear the case because it was improperly before the Board.

Mr. Pacocha seconded the motion.

VOTE: Chairman Seabury asked Clerk Davis to poll the Board on the motion to approve the request not to hear the case because it was improperly before the Board, and to record the members' votes, which were as follows:

Mr. Seabury	Not to hear
Mr. Pacocha	Not to hear
Mr. Pitre	Not to hear
Mr. Abbott	Not to hear
Mr. Houle	Not to hear

Chairman Seabury declared that, there having been five votes not to hear the case because it was improperly before the Board, the motion had carried.

VI. ADJOURNMENT

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

Mr. Abbott seconded the motion.

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

Chairman Seabury declared the meeting to be adjourned at 11:22pm.

Date: December 6, 2011

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun