

TOWN OF HUNTINGTON

APPLICATION TO ZONING BOARD OF ADJUSTMENT

Map # 05-055-000 Appeal # 2011-02-CU Date 3/15/11

Landowner ANDY + ONNIE PALMER (TRUSTEES) Phone # 508-645-3630

Mailing Address P.O. BOX 37 MENEMSHA, MA. 02532

Appellant (if different) ARNOLD BLAIR Phone # 439-2129

Mailing Address 1395 HINESBURY HOLLOW, HUNTINGTON

Location of Property 3840 MAIN ROAD District RES-AGR

Type of Application:  Conditional Use Permit  Variance

Proposed Project REPAIR SERVICE HOME OCCUPATION - MECHANIC, AUTOBODY

Appeal of Action by Zoning Administrator

Reason for Appeal \_\_\_\_\_

The owner or applicant should submit with the application: plans, maps, elevations, landscaping diagrams, traffic circulation diagrams, names/addresses of abutting property owners (including across waterways and roads), and any other relevant information and data required to advise the Board fully with reference to the application or appeal.

Signature of Applicant(s) [Signature] Date 3/15/11

[Signature] Date 3/15/11

FOR USE BY ZONING BOARD OF ADJUSTMENT

Appeal # 2011-02-CU Zoning Permit # \_\_\_\_\_

\$175 Fee Paid Check #1611 Date 3-22-2011 Rec'd by LUR

Notice of Hearing Posted  Warned  Date of Hearing April 12, 2011 Notices mailed to: Maurer, Spence, Hodge, Homans, Reynolds

Approved  Denied \_\_\_\_\_ on the basis of the following determination or conditions:

See: Findings of Fact and Conclusion of Law  
dated June 24, 2011

Date of Decision 5-24-2011

**HUNTINGTON ZONING BOARD OF ADJUSTMENT**

**IN Re Conditional Use Permit Application of Arnold Blair,  
Appeal No. 2011-02-CU (Map # 05-055.000)**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Huntington Town Clerk's Office  
Received for Record

June 27 A.D. 2011  
at noon o'clock minutes - M.  
Recorded in Book 102 Page 309-31

Attest:  Town Clerk

**I. INTRODUCTION**

These findings concern a request for a conditional use permit for a home occupation for a vehicle repair service for the property located at 3840 Main Road, which is currently owned by Andy and Onnie Palmer. Blair is a potential purchaser of the property and requests the Board to determine whether such a permit is feasible before he purchases the property.<sup>1</sup> The motor vehicle repair shop would be located in the existing shop building as delineated in the attached map. See Exhibit A.

This is a difficult issue for the ZBA in light of the restrictions placed on home occupations by the Huntington Ordinance. Accordingly, the ZBA has held four different meetings on this application. These meeting were conducted on: (1) April 12, 2011; (2) April 26, 2011; (3) May 3, 2011; and (4) May 24, 2011. Most of these meetings were attended by the adjacent landowners Robert Hodge and Ethan Maurer. The May 3, 2011 meeting included a site visit to the property and a demonstration by Arnold Blair of the noise impacts of some of his machinery and comparing noise level impacts on adjacent properties with the shop doors open versus shut. This meeting was attended by both Hodge and Maurer as well. On May 2, 2011, Robert Hodge submitted a written objection to the conditional use application.

In short, the ZBA concludes that with the imposition of numerous mitigating conditions, the application can meet the conditional use criteria for a motor vehicle repair service home occupation.

**II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**A. Vehicle Repair Services Home Occupation Requirements**

The property at issue is located in the Rural Residential District which allows Vehicle Repair Services as a conditional use. See Ordinance Art. 3.2(c)(15). As a conditional use, the proposed use must meet the conditional use criteria of Article 4.2.2, the Site Plan Review Standards of Article 4.3.3; and the additional Vehicle Repair Services conditional use criteria of Article 5.3.

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<sup>1</sup> Under Article 5.1.4 of the Huntington Ordinance conditional use approval expires upon transfer of ownership. However, if there were a change in ownership of this property to Blair, and absent the presentment of new material facts, the ZBA foresees reaching the same decision as that contained herein.

An issue arose at the hearings whether the ZBA was required to make a finding that the proposed use also had to also meet the Performance Standards of Article 5.1.3. These Performance Standards appear exceedingly difficult to meet because they prohibit the home occupation from, among other things, causing “disturbance to any of the surrounding properties or their occupants.”<sup>2</sup> Article 5.1.3(1).

The ZBA concludes that while the operation of all home occupations must satisfy these standards or face the potential imposition of civil penalties, *see* Article 6.4, the Ordinance does not require (or at least is not clear on this point) that the ZBA make specific findings that the performance standards will be prospectively met before issuing a permit. Indeed, it would be somewhat speculative for the ZBA to presume how a home occupation is actually operated and whether such operation would, in fact, meet these performance standards. The best evidence of whether a home occupation can meet these standards is its actual operation. Accordingly, regardless of whether a home occupation is issued a permit by the ZBA, the home occupation permittee must vigilantly comply with the performance standards or risk being subject to penalties.

### **B. Application Findings.**

The existing garage/shop building where the vehicle repair service is proposed lays 130 feet from the center line of Main Road. This building is 329 feet from the Ethan Maurer residence, which is to the north on Main Road, and 184 feet to the Robert Hodge residence which is to the south on Main Road. Accordingly, this vehicle repair home occupation meets the enhanced setback requirements delineated in Article 5.2.11.

The ZBA also finds that the building was originally built in 1972. It has been used as a commercial wood shop (with the attendant noise impacts) since that time, with the exception of the past five years, when it has been used only sporadically. Nonetheless, given that the property in question has a long home occupation history, a new motor vehicle repair shop, subject to the below conditions, would not adversely affect the essential character of the neighborhood.

The Huntington Ordinance, *see* Article 4.2.4, authorizes the ZBA to impose any “additional conditions necessary to protect the best interests of the surrounding property, the neighborhood, or the town as a whole.” The ZBA finds that in order to “protect the interests” of the adjacent landowners it is appropriate to impose the following conditions on the granting of this conditional use permit:

- (1) air tools, and other equipment/machinery that emit a similar level of noise, must be used indoors with the doors and windows of the shop closed;
- (2) air compressor must be operated inside a structure, with windows and doors closed;

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<sup>2</sup> It is the ZBA’s understanding that the Planning Commission is in the process of reviewing the wording of these performance standards to attempt to strike the proper balance between allowing reasonable home occupations with insignificant impacts on adjacent landowners with the interest of protecting adjacent landowners from home occupations that significantly impact the peace and tranquility of their homes and adversely impact their property values.

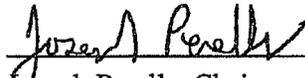
- (3) hours of operation are restricted to 7:30 A.M. – to 5:30 P.M. on weekdays and 9:00 A.M. to 3 P.M. on Saturdays;
- (4) no more than ten customer cars are allowed on the lot at any one time except during tire changing season in the autumn and spring when up to 15 customer cars are allowed;
- (5) all painting of vehicles must be done in an enclosed area and all exhaust from such operations will be filtered to reduce fumes and odor to satisfy the performance standards;
- (6) erosion preventive measures must be maintained on dirt driveways;
- (7) customer parking shall be primarily concentrated in the gravel parking area directly adjacent to the shop, which is naturally screened by vegetation and land. *See Exhibit A.* Any overflow parking will be done in other areas that are screened from view from adjoining properties and the road while satisfying setback requirements;
- (8) existing vegetative and land screening will be maintained to ensure visual and sound protection for adjoining landowners and the roadway;
- (9) all exhaust fans in the building must have filters to reduce dust and fumes;
- (10) any junk parts that come off cars such as brake parts, exhaust systems, tires, etc., must be stored behind a privacy fence;
- (11) the operation of the repair service must meet the Performance Standards delineated in Article 5.1.3;
- (12) any outdoor lighting must minimize off-site glare and be in accordance with the Outdoor Lighting standards delineated in Article 5.11;
- (13) the vehicle repair service shall be kept in “neat order and good conditions at all times” in accordance with Article 5.3.9.
- (14) the disposal of any waste must be in accordance with state regulations; and,
- (15) septic system must be maintained in accordance with state requirements

The ZBA thus concludes that a home occupation at this site can meet the conditional use criteria, the site plan review standards, and the home occupation vehicle repair service standards, so long as a number of mitigating conditions are implemented.

### III. CONCLUSION

With the implementation of the above described conditions, the ZBA finds that the conditional use criteria in Article 4.2.2 are met because: (1) the proposed use does not adversely affect the capacity of existing or planned community facilities; (2) the proposed use does not adversely affect the essential character of the neighborhood; (3) the proposed use does not adversely affect the traffic on the roads and highways; (4) the proposed use does not adversely affect the Town Plan and regulations in effect; (5) the proposed use does not adversely affect the utilization of renewable energy resources; (6) the proposed use does not adversely affect the appropriate use or development of adjacent property; and, (7) the proposed use does not adversely affect the public welfare in any other manner. With the implementation of these conditions, the ZBA also finds that the proposed use satisfies the site plan review standards in Article 4.3.3 and the home occupation vehicle repair service criteria delineated in Article 5.3. Accordingly, the ZBA grants a conditional use permit subject to the terms delineated in this decision.

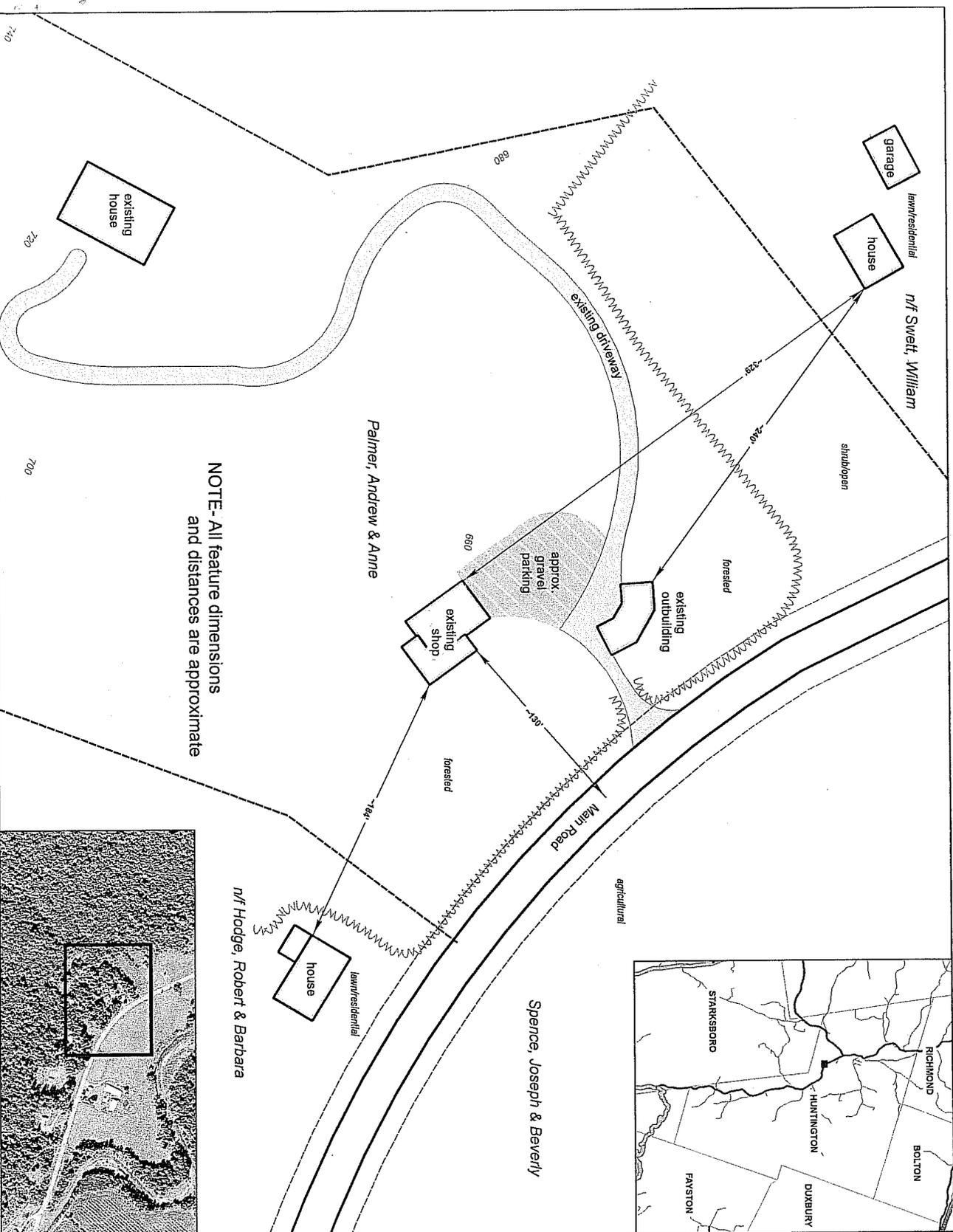
Dated at Huntington, Vermont this 24<sup>th</sup> day of June, 2011.

  
\_\_\_\_\_  
Joseph Perella, Chair  
John Altermatt  
Mark Smith  
Zoning Board of Adjustment<sup>3</sup>  
Huntington, Vermont

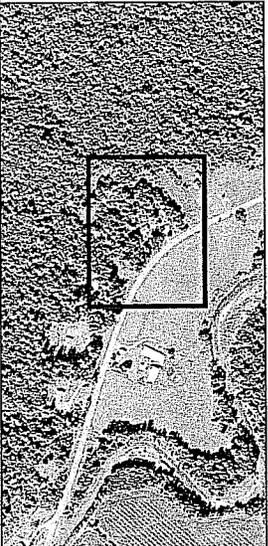
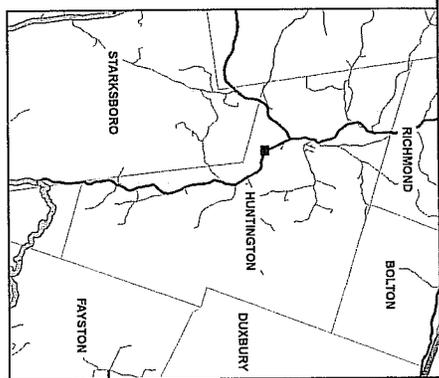
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<sup>3</sup> ZBA member Joseph Spence has recused himself from voting on this application due to the fact that his residence and property is adjacent to the parcel of the proposed use.

Exhibit A



NOTE - All feature dimensions and distances are approximate



Palmer Property  
Huntington, Vt  
**SITE PLAN**

- Approximate Property Line
- - - Town Right-of-Way
- ~~~~~ Tree Line
- 20' Contours
- Building
- Road
- Driveway
- Parking



Source notes and disclaimers:  
Data sources: Site features derived from orthophoto interpretation by Arrowwood Environmental, no site visit was conducted or actual site measurements recorded. Parcel boundaries based loosely upon Town of Huntington original parcel data (tax maps); however errors were evident and "best guess" approximations were made. Other data from VDOT.

No on-site investigations for regulatory natural resources have been conducted.  
Plan review & approval: This plan provided to Amold Blair for discussion and presentation to the Huntington Zoning Board of Adjustment.  
All data displayed here is APPROXIMATE and provided for discussion and informational purposes only. No "best guess" measurements were collected. This is NOT a survey.

Arrowwood Environmental is not responsible for and shall NOT be held liable for site discrepancies, construction errors, misinterpretations or any interpretations arising from data utilized in this map that not specifically authorized by Arrowwood Environmental. Map user is responsible for understanding data sources and actual site conditions, displayed herein or not, including property lines, natural resource boundaries and other site features.

Thursday, May 13, 2010  
File: C:\GIS\Projects\Palmer\Site1.mxd  
Prepared By: Aaron Washley, Arrowwood Environmental  
Coordinate System  
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