

**Hopkinton Zoning Board of Adjustment**  
**Minutes**  
**January 4, 2005**

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment public hearing of Tuesday, January 4, 2005, at 7:00 PM in the Town Hall. Members present: Toni Gray, George Langwasser, Charles Koontz, and Carolyn Hackwell.

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Chairman Krzyzaniak gave a brief outline of the Rules of Procedure that govern the hearing.

**I. Application.**

**TH04-6V-11-1 Dan Luce**—Mr. Luce addressed the Board to request a Variance to convert property located at 220 Burnham Intervale Road from multiple commercial uses to a multi-family residential use having a total of three residential units. The property is located in the M-1 (industrial) district, shown on Tax Map 220 as Lot 25. The application was submitted in accordance with Table of Uses 3.6.A.3 of the Hopkinton Zoning Ordinance.

Mr. Luce began by explaining that approximately two months ago he was before the Zoning Board of Adjustment requesting the same. At the time, the Board requested additional information with regards to the septic system, and the property setbacks. Mr. Luce presented information from Mark Moser and the New Hampshire Department of Environmental Services with regards to the size of the existing septic system and the size of the system that is necessary to accommodate three apartments. The existing septic tank is a 1000 gallon capacity. In order to convert to three apartments the tank size required is 1200 gallons. Mrs. Gray recalled Mr. Luce's comments at the previous meeting in which he indicated that a 1012 gallon tank was necessary for three apartments.

Mr. Luce then presented a site plan of the property that he had marked-up showing the distances from the side property line to the existing building. Mr. Luce recalled from the previous meeting the Board requesting that he meet with his abutter Byron Carr to confirm the location of the side lot line and the distance from that line to the building. Mr. Luce then advised that he and Mr. Carr had located the side lot line and measured the setbacks. The plan reflected Mr. Carr's initials as confirmation of his measurements.

Mrs. Gray expressed concern with the lack of an official map by a licensed surveyor who would have measured the setbacks, rather than the setbacks being measured by Mr. Luce and Mr. Carr who are not licensed land surveyors. In response, Mr. Luce believed that he had done what he was asked to do in meeting with Mr. Carr and providing the side line setbacks. Mrs. Gray reviewed the minutes of the Board's November meeting and agreed

that Mr. Luce did what he was requested; however, she believed that the Board, at the time, should have requested an official map.

Mr. Luce further explained the intent of the application is to be able to convert the space within the building into two (2) additional apartments. There is currently an apartment that was previously approved by the Board. Mr. Koontz recalled the previous approval of the apartment was based on the fact that the person operating the bakery within the building would also reside in the apartment. Mr. Luce disagreed and believed that the apartment and bakery were two separate issues. The apartment was intended to be for rental purposes. Chairman Krzyzaniak reviewed the minutes of the Board's October 2002 meeting in which Mrs. Dearborn-Luce had presented her applications for multi-use of the building, which included the apartment. Following review, Chairman Krzyzaniak stated that the minutes reflect that the apartment was independent of the bakery; therefore, it could be used for rental purposes.

Chairman Krzyzaniak questioned whether the intent of the application that is presently before the Board is to convert the use of the entire property from commercial to residential. Mr. Luce responded yes, stating that the garage is now being used to store his personal belonging. Chairman Krzyzaniak recalled at the November meeting, Mr. Luce stating that someone was paying rent to utilize the building or the equipment in the building. Mr. Luce concurred, but stated that the person is no longer using the building or equipment and that he will utilize the building for storage of his personal belongings as he is in the process of selling his residence. In response, Mrs. Gray advised Mr. Luce that if the application is approved for residential use and at any point in the future he wishes to utilize the property for commercial purposes, including rental for commercial purposes, he would need to re-apply to the Zoning Board of Adjustment. Mr. Luce responded that he understood.

Mrs. Gray questioned why Mr. Luce is applying for a Variance to have three-apartments with the understanding that the third apartment would be utilized at some point in the future when the septic system is improved. Mrs. Gray noted that Mr. Luce could have applied for a Special Exception to have a two-family dwelling, the existing apartment and one new apartment, and apply for the third apartment as a Variance at a point when the septic system has been improved. In response, Mr. Luce explained that he would not want to expend the money to improve the septic system not knowing whether the Board would grant the Variance for the third apartment.

Mr. Langwasser reviewed the minutes of October 2002 in which he had expressed concern with the creation of residential units within the industrial district because of the complaints that may arise from those that occupy the units concerning the industrial uses. Mr. Langwasser then review the minutes of the Board's November 2004 meeting in which Mr. Luce addressed the criteria for a Variance and then reviewed Mr. Luce's revised response to the criteria, specifically number five (see attached copies). Mr. Langwasser believed that the Applicant continues to not meet the requirements of number 5(a) of

the Variance criteria. He went on to explain the reason for his opinion is based on the fact that the Zoning Board of Adjustment had previously granted the Applicant a Variance to have multiple uses within the structure, including a residential unit; therefore, the Applicant has not been prohibited from reasonable use of his property. Again, Mr. Langwasser stated that the provisions of the Zoning Ordinance do not interfere with the reasonable use of the property considering its setting, which is in the industrial (M-1) district.

Carolyn Hackwell questioned whether there was a letter from the Fire Department approving the structure for multi-residential units. In response, Mr. Luce explained that the Fire Department had reviewed the facility and provided a letter outlining issues that would need to be addressed during construction of the units.

There was no one present wishing to provide public testimony.

Motion made by Mrs. Gray, seconded by Mr. Koontz, to approve Application TH04-6V-11-1 contingent upon the following:

- 1) Septic System approval from the NHDES in order to establish the third apartment. Confirmation shall be provided to the Town prior to construction/occupancy of the third apartment.
- 2) Occupancy of the proposed two (2) apartments cannot occur until such time as the concerns/comments of the Fire Department have been addressed. Confirmation shall be provided to the Town prior to occupancy of the proposed two (2) apartments.

With five members voting, two voted in favor (Hackwell and Koontz) and three voted in opposition (Gray, Langwasser, and Krzyzaniak). The application as presented was denied. The majority of the Board concurred that the Applicant did not adequately address the requirements to be granted a Use Variance; specifically, the Board agreed that Applicant could not prove that the Zoning Ordinance as applied to the property interfered with his reasonable use of the property, considering the property setting in an industrial (M-1) district. It was reiterated that by way of a previous Variance granted to the Applicant, the Applicant is currently able to utilize the building for mixed use – One (1) residential unit and commercial uses, provided Applicant receives necessary permits for each specific commercial use.

**TH05-1S-1-1 Larry Hilton, Prototek Sheetmetal Fabrication, Inc.**—Larry Hilton of Prototek Sheetmetal Fabrication, Inc. addressed the Board to request a Special Exception to operate a manufacturing, assembly, and fabricating business at property owned by Excalibur Shelving Systems, Inc., located at 244 Burnham Intervale Road in the M-1 (industrial) district, shown on Tax Map 220 as Lot 24. The application was submitted in accordance with Table of Uses 3.6.G.1 of the Hopkinton Zoning Ordinance. Mr. Hilton advised that Prototek is currently operating at 104 High Street in Boscawen in a building that is approximately 15,000 square feet in size. The purpose of the move to

Hopkinton is to find enough space to allow the business to grow. Prototek manufactures and assembles small parts made from sheet metal. The business currently has two (2) tractor trailer deliveries a week of sheet metal and anticipates at some point in the future of having as many as one (1) tractor trailer load delivered daily. Prototek currently operates a light van and pick-up truck for their daily deliveries to customers and vendors and receives daily deliveries and pick-ups from UPS. Presently, the company employs 25 people and anticipates this number to increase to as many as 70 people as they expand. The hours of operation are 7 AM to 4 PM, five days per week. Occasionally, there is a need to operate on Saturdays from 7:30 AM to 12 Noon. They anticipate, at some point in the future, operating 24-hours a day when they are at peak capacity with multiple shifts.

Mr. Hilton reviewed the requirements for Special Exception in accordance with Section 15.8.2 of the Hopkinton Zoning Ordinance.

- 1) Standards provided by this Ordinance for the particular use permitted by Special Exception.

“Manufacturing, fabricating and assembly operations are permitted by Special Exception per Table of Uses 3.6.G.1 of the Hopkinton Zoning Ordinance.”

- 2) No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.

“There are no hazards associated with the business. Sheet metal operations use standard 30-weight oil when needed for machines. Additionally, there are no toxic materials associated with the business.”

- 3) No detriment to property values in the vicinity or change in the essential characteristics of the neighborhood on account of the location or scale of buildings and other structure, parking areas, access ways, odor(s), smoke, gas, dust or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials.

“There are no changes to the interior or exterior of the building. Operation of the business is at a 75 decibel noise level. Again, there will be no changes to the building exterior, lighting, access and egress.”

- 4) No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.

“There will be no traffic increase due to the operation of the business. In fact, traffic will decrease from that which was created by the current tenants of the building.”

- 5) No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.

“There will be no additional demand on services as a result of the business as there will be no changes to the building or property. The Fire Department was consulted and had expressed no concerns.”

- 6) No significant increase of storm water runoff onto adjacent property or streets.

“There will be no changes in the storm water runoff as there are no plans for changes to the building or property.”

- 7) An appropriate location for the proposed use.

“The property is located in an industrial district. The business proposed is very similar to the operation of the Excalibur business that formerly utilized the property.”

- 8) Not affect adversely the health and safety of the residents and others in the area and not be detrimental to the use or development of adjacent or neighboring properties.

“There will be no affects adversely on residents or others. Again, the use of the existing building will be similar to the operations of the Excalibur business.”

- 9) In the public interest and in the spirit of the Ordinance.

“Table of Uses 3.6.G.1 lists manufacturing, assembly and fabricating operations as an industrial use permitted by Special Exception in the M-1 district.”

Mrs. Hackwell questioned the process by which waste sheet metal is disposed. In response, Mr. Hilton stated that some of the waste metal is placed in a dumpster and what is considered valuable metal waste is placed on a trailer that is picked up once a month.

Mrs. Hackwell then questioned whether there is sufficient parking for 25 and as much as 70 employees. In response, Mrs. Robertson explained that sometime in 1999 the Planning Board approved a site plan for an expansion to what was the Excalibur building. The site plan had not only shown the building expansion, but also the additional parking spaces as required by the Ordinance. Mrs. Robertson recalled parking for 70 plus employees, but that the Planning Board agreed that Excalibur would only have to construct the parking spaces as needed. This was to avoid more parking than was actually necessary to the operation of the business. Mrs. Robertson noted that the Applicant will need to receive Site Plan Review approval by the Planning Board.

Bill Donoghue representing Excalibur Shelving Systems, Inc. stated that there is more than sufficient room for additional parking.

Chairman Krzyzaniak asked Mr. Donoghue the time frame for which Excalibur moved from the building to the adjacent facility. In response, Mr. Donoghue estimated that the final move took place in February 2004.

Mr. Langwasser then questioned whether there will be a need for outside storage associated with the business. Mr. Hilton responded no, indicating that there is waste sheet metal stored in a dumpster and a box trailer for pick-up by a vendor. The Board then briefly discussed whether temporary storage of waste sheet metal is considered outside storage as it relates to Table of Uses 3.6.H.6 of the Zoning Ordinance. Following discussion, the Board believed that waste storage would not be considered outside storage. Table of Uses 3.6.H.6 involves storage of materials or products necessary for the manufacturing process.

Byron Carr of Burnham Intervale Road addressed the Board with questions as to whether the 75 decibels were determined from the outside of the building or within the building, whether there would be evening tractor trailer truck deliveries to the facility, and to whom he would speak with should there ever be a problem with the operations of the business. In response to Mr. Carr's questions, Mr. Hilton stated that the noise level was measured from inside the building. There will be no tractor trailer deliveries during the evening hours. Deliveries will be between 7 AM and 4 PM with trucks being unloaded as late as 6 PM. Again, Mr. Hilton stated that there will be no hazardous materials associated with the business. Additionally, the business will not be painting any of their products at the facility. Currently, the finished product is sent out to a vendor to be painted and then returned to Prototek.

Mr. Carr questioned whether Prototek plans to hire additional employees based on the additional space that they will utilize. In response, Mr. Hilton stated that they anticipate that the business will grow and that they will hire additional employees. Moving into the Excalibur building will allow the business that is very limited in space to spread out.

In response to Mr. Carr's question as to whom he would contact should he have problems or concerns about the operations of the business, Chairman Krzyzaniak advised that the Selectmen are the enforcement officials and therefore would be the appropriate people to contact.

With there being no further public comment, Chairman Krzyzaniak declared public testimony as being closed.

Motion was then made by Mrs. Hackwell, seconded by Mr. Langwasser, to vote on the application as presented. Motion carried in the affirmative. With five members voting, all five voted in favor of approving the application as

presented. The Applicant adequately addressed the criteria to be granted a Special Exception as set forth in paragraph 15.8.2 of the Zoning Ordinance.

**TH05-1V-1-2 Robert Wardell**—Attorney David Hilts addressed the Board on behalf of Mr. Wardell to request a Variance to create a lot with less than the required frontage and lot area for the R-4 (residential/agricultural) district, shown on Tax Map 254 as Lot 23. The application was submitted in accordance with Section IV, paragraphs 4.1 and 4.2 of the Hopkinton Zoning Ordinance.

Attorney Hilts explained that Mr. Wardell's property currently consists of a total of 4.29 acres and 439 feet of frontage, which includes 3.05 acres and 296 feet of frontage contiguously located in the Town of Weare. In subdividing the property along the Town boundary line, the Hopkinton lot would have an area of 1.24 acres and frontage of 143 feet. As a result of the subdivision the Hopkinton lot would not have the required lot width of 85 percent of the required 300 feet of frontage at the front yard setback as required by paragraph 4.3(g) of the Zoning Ordinance. Chairman Krzyzaniak noted that there are three issues that require a Variance that relate to the dimensional requirements of the Zoning Ordinance. Attorney Hilts concurred, stating that Mr. Wardell is not able to pursue a subdivision of his property unless he receives approval from the Towns of Hopkinton and Weare. Weare currently has a dimensional requirement of 10 acres for a residential lot. Attorney Hilts has had conceptual discussions with the Weare and Hopkinton Planning Board, reiterating that on the Hopkinton side there are no proposed changes. Mr. Wardell will still have 1.24 acres with a house in Hopkinton that will continue to be taxed in that manner. The Variance will allow that portion of the properties within Hopkinton and Weare to be treated separately as they are currently being treated for other reasons.

Attorney Hilts reviewed with the Board RSA 674:53 which address properties that straddle municipal boundaries. In this particular case, the Hopkinton portion of the property depends on the area and frontage within the Town of Weare for compliance with the Hopkinton Zoning Ordinance. In the case of the Town of Weare, the Town depends on the Hopkinton portion in area even though it does not provide enough area for compliance with the Weare Zoning Ordinance.

Attorney Hilts reviewed the requirements for Variance in accordance with Section 15.8.3 of the Hopkinton Zoning Ordinance.

1. The proposed use would not diminish surrounding property values because:

“The Applicant does not propose in this application to alter the Hopkinton lot or the improvements on it in any way, other than to subdivide the premise along the municipal boundary. As such, nothing will change within the Town of Hopkinton that could diminish surrounding property values in the Town. Furthermore, the Applicant has contacted all of his abutters, with the exception of Ms. Allan who was no available at the time.”

Attorney Hilts then advised of the presence of Mr. and Mrs. Burack, who are abutters to the property that have concerns that they will discuss this evening.

Mr. Wardell was no successful in his attempt to acquire additional property from his abutter in order to conform to the dimensional requirements.

2. Granting the variance would not be contrary to the public interest because:

“As neither the Hopkinton lot proper nor its improvements will be altered by the requested variances, there will be no direct impact to Town services or resources by the resulting subdivision and addition of a single family home on the Weare lot. The amount of additional traffic to South Road accompanying the addition of one single family home to the neighborhood would not be significant as the subdivision would be along the current Town boundary, no diminution to the current tax base will occur.”

3. By granting the variance substantial justice would be done because:

“Tax Map 254 Lot 23, which is already being treated as a separate lot for taxation purposes, would be treated as a separate lot in all other respects, enabling the reasonable use of the Weare lot as a separate residential lot. In granting the requested variances, the only practical effect will be to disallow the Applicant from counting his 3.05 acres of land and 296 feet of frontage in Weare toward his Hopkinton area and frontage requirements. The granting of the variance will also enable a two lot subdivision which would add one single-family home to the neighborhood. Such treatment does substantial justice in that it would allow the full utilization of a lot that straddles a municipal boundary, which is not a common occurrence. The requested variances will only fully and completely separate two portions of the premises which are now already being treated as different lots by the Towns of Hopkinton and Weare.”

4. The spirit and intent of the Ordinance will not be broken by granting the Variance because:

“The intent of the R-4 district is to provide for open space conservation, agricultural use, and predominantly very low density residential development which can be accommodated on the land without major disruptions of the natural terrain, vegetation, watercourses or surface drainage. The intent of the frontage and lot area requirements are to prevent overcrowding and to better maintain the aesthetic and monetary value of property within the Town of Hopkinton. In this case, granting a variance to enable the subdivision of the premises does not obstruct any of the purposes for which the R-4 exists. Furthermore, even though the intended new single-family home would be build outside of the Town, in Weare, the characteristics of the Weare lot would be in keeping with the majority of the nearby surrounding properties in Weare. As such, the monetary and aesthetic value of the Hopkinton lot would not be significantly affected, if at all.”

5. The denial of the Variance would result in an unnecessary hardship to the owner seeking it because:

- (a) An area variance is needed to enable the Applicant's proposed use of the property given the special conditions of the property.

"The Weare/Hopkinton municipal boundary already divides the premises into Hopkinton lot 254//23, 1.24 acres and Weare lot 403/128, 3.05 acres. However, RSA 674:53, I provides that a municipal boundary can be treated as a n existing boundary between lots, unless the proposed use of the land of one of the municipalities is dependent upon land located in the other municipality with respect to matters such as lot size. In this case, the Hopkinton lot depends upon the Weare lot to meet the lot area and frontage requirements for the Town of Hopkinton. Without counting the Weare lot, the Hopkinton lot would have 1.24 acres where 2.75 acres is required, and 143 feet of frontage where 300 feet is required. The Applicant is currently proposing to create a separate lot for the purpose of building a single-family home is Weare by proposing a division along the Town line. A variance from the applicable provisions of the ordinance will enable the Applicant's reasonable proposed use of the premises by allowing a separate lot to be created for a single-family home."

- (b) The benefit sought by the Applicant cannot be achieved by some other method reasonably feasible for the Applicant to pursue, other than an area variance.

"Mr. Wardell had approached his neighbors about acquiring additional property, but was unsuccessful. The additional property would have made the proposed Hopkinton lot conforming after subdivision. There is no other reasonably feasible way the applicant can pursue a subdivision of the premises while still keeping the Hopkinton lot conforming, other than by the requested variances."

Mr. Koontz questioned the number of lots within Hopkinton with similar acreage to that portion of the portion of Mr. Wardell's property that would remain in Hopkinton. In response, Attorney Hilts stated that there are not many lots in Hopkinton with similar acreage. Most of the lots are of larger acreage; however, there are not many lots in which there would a Town bound proposed as the dividing line of a subdivision.

Attorney Gray asked Attorney Hilts if he would agree that Mr. Wardell is making reasonable use of his property. Attorney Hilts replied yes, referencing the most recent NH Supreme Court case that modified the variance criteria and what he believes now allows a financial hardship to be considered by municipalities. In this particular case, Mr. Wardell is proposing to subdivide his property in order to relieve a financial hardship. Again, Attorney Hilts mentioned the task of obtaining a Variance from the Town of Weare to create a lot that is 3-acres when in fact their Ordinance requires 10-acres.

Tom Burack of 526 South Road addressed the Board to express concerns with regards to the impact of the subdivision on his property values. Mr. Burack's

property is located in a residential/agricultural district which he believes is based on open space and not the construction of additional homes and driveways in the area. Mr. Burack then presented a map of the area showing the locations of his drive and the Town turn-around. He believed that if Mr. Wardell were to be allowed to construct a residence that it would further encumber his (Mr. Burack's) lot by way of the town turn-around having to be moved or widened further onto his property. Mr. Burack then discussed the safety aspect of constructing a driveway along a steep point of the property with concerns of sight distance as a result of the existing steep portion of South Road in that area.

Mr. Burack believed that the proposed subdivision would be contrary to the public interest in that the addition of a residence would cause additional vehicles to travel South Road which may affect the safety of the people that walk the road. Mr. Burack noted that he had spoken with Mr. and Mrs. Holmes who had sold the lot in which Mr. Wardell's residence is located on. Mr. Burack stated that the Holmes believed that they were selling sufficient land for one single-family residence.

With regards to the spirit of the Ordinance, Mr. Burack believed that it would not be appropriate for the Board to only consider the impacts of Hopkinton, but rather the Board should consider the overall impacts to wildlife habitat, open space, etc.

Lastly, Mr. Burack questioned whether the fact that the property straddles the Town boundary is a special condition that warrants the granting of a variance. He noted that if the property were only located in Hopkinton, Mr. Wardell would still need the Variance for subdivision in that the property consists of insufficient acreage and frontage.

Mr. Langwasser respectfully disagreed with Mr. Burack's comments with regards to affects on property values, noting that if there were a subdivision of one of the large parcels in the area that it may not necessarily affect property values, depending on the design of the subdivision.

Mr. Langwasser stated that Hopkinton has an obligation to enforce the Hopkinton Zoning Ordinance; what happens in the Town of Weare is Weare's responsibility.

Attorney Hilts rebutted Mr. Burack's comments by stating that a subdivision of five or six lots would retain its development value in that each lot would be sold at a value that would not be depreciated. Attorney Hilts then reminded the Board that if Hopkinton and Weare were to grant variances, Mr. Wardell would still need subdivision approval from the Planning Boards at which time the issues of sight distance, snow removal and traffic would be reviewed.

Lastly, Attorney Hilts responded to Mr. Burack's comment concerning Mr. and Mrs. Holmes belief that they sold sufficient land for a single-family residence. Attorney Hilts noted that there is no deed restriction or plan restriction indicating that the lot is not to be further subdivided or that it is solely for a single-family residence.

Public testimony was closed.

Mrs. Gray stated that if Mr. Wardell's lot was entirely within the Town of Hopkinton that there would be no doubt that she would vote to deny the application as it would be setting a precedent for others. She believed that Mr. Wardell is making reasonable use of his property by having a single family residence on the lot. She then noted that the lot proposed in Hopkinton is less than 50 percent of the minimum lot size required for the district.

Mrs. Hackwell stated that she did not believe that Mr. Wardell's situation was uncommon in that there are other properties that straddle a town boundary.

Motion made by Mrs. Gray, seconded by Mr. Koontz, to approve Application TH05-1V-1-2 as presented. With five members voting, one voted in favor (Langwsser) and four voted in opposition (Krzyzaniak, Koontz, Gray and Hackwell). The application was denied due to the fact that the Applicant did not adequately address the standards to be granted an Area Variance. Furthermore, the Board believed that there were no special conditions that prevent the Applicant from continuing to reasonably use his property, noting that there are other properties similarly situated and that in this particular case the property is currently being used for a single-family residence.

## **II. Adjournment.**

Chairman Krzyzaniak declared the meeting adjourned at 9:55 PM. The next scheduled meeting of the Board is Wednesday, February 2, 2005, at 7:00 PM in the Town Hall.

Karen L. Robertson  
Planning Director

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Pursuant to New Hampshire RSA 674:2, any party to the action or proceedings, or any person directly affected thereby, may apply for a rehearing. Application, in writing, must be submitted to the Zoning Board of Adjustment within thirty (30) calendar days beginning the date upon which the Board voted to approve or disapprove the application. Such a request must set forth the grounds on which it is claimed the decision is unlawful or unreasonable. The Board must decide to grant or deny the rehearing within thirty (30) days.