

Hopkinton Zoning Board of Adjustment
Minutes
April 5, 2005

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment public hearing of Tuesday, April 5, 2005, at 7:00 PM in the Town Hall. Members present: Toni Gray, George Langwasser, and Charles Koontz.

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

I. Application.

TH05-2S-4-1 Provan & Lorber, Inc.—Theodore Kupper of Provan & Lorber, Inc. addressed the Board on behalf of A & P Investments requesting a Special Exception to construct a roadway and utilities in the Wetlands Conservation District. The property is located off Kearsarge Avenue in the R-4 (residential/agricultural) district, shown on Tax Map 223 as Lot 1. The application was submitted in accordance with Section 12.7.2 (a) of the Hopkinton Zoning Ordinance. Mr. Kupper informed the Zoning Board of Adjustment of the Planning Board's approval of two (2) subdivisions owned by A & P Investments to be located off Kearsarge Avenue. The subdivision known as Hopkinton Woods involves the construction of 2400 feet of roadway to service sixteen (16) residential lots. The construction of the roadway includes wetland impacts at two (2) locations. The Board reviewed two separate plans showing wetland crossings. Impact Area One had shown wetland impact of 2500 square feet. Impact Area Two had shown wetland impact of 2000 square feet. The extent of the impacts involves roadway and embankments. According to Mr. Kupper, the NH Wetland Bureau considers this type of wetland impact a Minimum Impact Permit.

Mr. Kupper 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.

“Town of Hopkinton Zoning ordinance, Section XII, Wetlands Conservation District (Overlay), Article 12.7.2 (a) 'Special Exceptions may be granted by the Board of Adjustment...for streets, roads and other access ways and utility right-of-way easements...”

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

“The construction of the roadway and utilities that require a wetland filling (dredge and fill permit) will not pose a hazard to the public or adjacent

property on account of potential fire, explosion or release of toxic materials."

- 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.

"Property values will not change by issuance of this special exception. The surrounding property is zoned residential and this project is also a residential project. The construction of roadway and homes for this project is in keeping with the values of the surrounding homes."

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

"A traffic study has been prepared and is enclosed for your review. The increase in traffic is considered within the normal range of this project and the increase will not exceed the capacity of Kearsarge Street."

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

"The project will not require municipal water or sewer and because of the limited nature of the project (16 homes) it is not anticipated to put undue demand on police and fire departments. The project is phased over four years as per the Town regulations, and as such will not put excessive demand on the school system."

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

"All runoff is contained on-site and released into historic drainage paths in a way that poses no damage downstream of the site."

- 7) An appropriate location for the proposed use.

"This site is zoned for residential use (R-4) and as such is an appropriate location for the proposed use. All of the 16 lots meet or exceed the minimum area for this zone."

- 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.

"This project will not harm the health and safety of anyone in the area and will not prevent the use or development of any adjacent or neighboring

properties."

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

"The project is a residential subdivision in a residential zone, where all lots meet or exceed the zoning requirements for this lot. This type of development is in the public interest and in the spirit of the Ordinance."

Mrs. Gray questioned whether the NH Wetlands Bureau had already approved the Dredge and Fill Permit. In response, Mr. Kupper explained that he had made application to the State and that the application is in the review stage. Mrs. Gray suggested that any approval by the Zoning Board of Adjustment be contingent upon approval by the NH Wetlands Bureau. All members concurred.

Mr. Kupper explained the process by which the contractor would redirect the flow of the wetlands to a culvert further down the proposed road. Again, Mr. Kupper explained the process by which a culvert would be placed in the location of Impact Area 2, so to allow the wetland crossing.

There was no one present wishing to provide public testimony.

Mr. Kupper advised of the Conservation Commission's walk of the property and review of the wetland delineations. The Commission had requested wetland buffers at certain wetland locations, along with markers providing an indication in the field of the buffer locations. The owners of the property had agreed to the Conservation Commission's request.

Mrs. Gray, seconded by Mr. Langwasser, moved to vote on Application #TH05-2S-4-1 contingent upon receipt of a copy of the NH Wetlands Bureau's Dredge and Fill Permit. Motion carried unanimously. With five members voting, all five (Gray, Langwasser, Koontz, Krzyzaniak, and Hackwell) voted in favor of approving the application with the condition. The Applicant adequately addressed the criteria for a Special Exception set forth in paragraph 15.8.2 of the Zoning Ordinance.

TH05-3S-4-2 Ronald B. Finlayson, Jr.—Applicant requests a Special Exception for accessory storage of construction and maintenance equipment as it relates to a permitted commercial use, landscape business. The property is presently owned by Kelly Dearborn-Luce, located at 220 Burnham Intervale Road 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.H.6 of the Hopkinton Zoning Ordinance.

Mr. Finlayson advised of his intentions to purchase the property and to continue the uses in the main building, including the storage and business use of the detached garage. However, he proposes to utilize a portion of the garage for storage and maintenance of equipment related to his landscaping

business. As part of the proposed landscaping business, Mr. Finlayson proposes to construct a second drive to be used to access the rear of the property. He intends to plant an evergreen buffer to separate the commercial and industrial use of the property.

Mr. Finlayson 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.

“Open and close storage of construction/maintenance equipment to include trucks, tractors, mowers, light equipment and tools. Open and closed storage of raw materials to include bark mulch, loam, compost, sand, salt, firewood, brush, etc. Table of Uses 3.6.G.11 and 3.6.G.12.”

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

“Fuel storage is only for my use and will be stored in a concrete well tile with a bottom or in a transfer tank on trucks. Salt will be properly stored on an asphalt pad and covered by a tarp building. All piles of materials will be well under 25 ft. high.”

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.

“No, industrial construction portion of the operation will be positioned toward the middle and back of the property, away from the road and residential neighbors (closer to industrial neighbors).”

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

“No, employees for the industrial portion of the operation will come to work and park their cars. Currently, the business employs approximately eight (8) people and anticipates no more than twenty (20) at some point in the future.”

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

“No, this is a small operation.”

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

streets.

“No, site is primarily coarse sand making for excellent drainage.”

7. An appropriate location for the proposed use.

“Yes, the proposed business is perfect for the M-1 district. The back garage is set-up for more industrial construction type use; however, the existing structure lends itself to mixed use because the front building is set-up for multiple commercial businesses. It would be appropriate to try and separate these uses by the construction of a separate driveway along with appropriate landscaping to create a visual barrier between each use.”

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.

“No, all changes in the plot plan involve dirt work along with the addition of small storage facilities that can be moved. This will not necessarily permanently commit the property to development in any one direction, but will leave the property in a flexible state so that it may be changed easily in accordance with future needs.”

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

“The plan is an excellent manipulation of property. It will give Winnepocket a base of operation closer to its customer base (80% Hopkinton) and better serve that base. It will provide good quality commercial business and industrial space for rent in a town that has limited amount of both. Take into account the vary needs of abutters and locating industrial use close to industrial and existing commercial business use close to residential abutters.”

The Board briefly discussed the fact that the property owner continues to violate the Zoning Ordinance by allowing the business to take place within the garage. It was noted that earlier this year the property owner, again, admitted to the violation and later advised that the tenants are no longer utilizing the building. Following brief discussion, the Board agreed to request that the Board of Selectmen immediately issue a cease and desist for the operation of the business. Mr. and Mrs. Finlayson indicated that they were recently aware that a permit had not been received for the business, explaining that they understand that if they were to purchase the property that a permit for any business within the garage would be necessary.

Chairman Krzyzaniak asked Mr. Finlayson to explain the operations of his business. In response, Mr. Finlayson stated that his employees arrive at approximately 6 AM and gather the equipment and materials necessary to take to the job sites and then return to the property at 5 PM unloading the

equipment and materials. Chairman Krzyzaniak expressed concern with dust that may be created at the property as a result of the traffic on the property. In response, Mr. Finlayson explained that a small amount of dust may be created because of the use of the gravel driveway, rather than as a result of the storage of the materials.

Mrs. Gray noted that the rear and side setback requirement is 40-feet in the M-1 district. Mr. Finlayson agreed to revise his site plan to reflect the necessary setback. He understood that the storage of materials and equipment must conform to the setback requirements for the district.

Mrs. Hackwell questioned whether there would be cutting of firewood at the property. Mr. Finlayson replied yes, explaining that during the winter months he usually cuts firewood; however, that is a small part of his operation.

Byron Carr, abutter to the property, addressed the Board questioning whether the property would need to be regraded to locate the piles of materials in the locations proposed, towards the rear of the property. Mr. Carr then questioned the size of the wood cones or wood piles. Lastly, Mr. Carr asked about the noise that may be created from the equipment and the method by which the salt would be stored. In response, Chairman Krzyzaniak recalled Mr. Finlayson explaining that the salt would be stored on pavement or cement to prevent leaching and would be covered. The wood cones and piles would be as a result of splitting firewood and would not exceed the height limitation in the Zoning Ordinance. With regards to the regrading of the property, Mr. Finlayson explained that there will be a small cut and grade change to smooth out the property. He will leave some natural growth along the property line to avoid possible erosion.

Mr. Langwasser, seconded by Mrs. Hackwell, moved to vote on the application as presented subject to the following:

- 1) Applicant to provide a revised plan with corrections to the setbacks.
- 2) Hours of operation are limited to 6 AM to 6 PM with the understanding that on occasion the hours may be later, depending upon the winter season. During the summer months the hours of operation may include weekends, but at a much lower level.
- 3) Fuel shall be stored in a concrete well tile with a bottom or in a transfer tank on trucks.

Motion carried unanimously. With five members voting, all five (Gray, Langwasser, Koontz, Krzyzaniak, and Hackwell) voted in favor of approving the application with the condition. The Applicant adequately addressed the criteria for a Special Exception set forth in paragraph 15.8.2 of the Zoning Ordinance.

TH05-4S-4-3 Stuart & Peggy Lyman—Applicant requests a Special Exception to convert a single-family residence into a two-family dwelling. The property is

located at 818 East Penacook Road in the R-4 (residential/agricultural) district, shown on Tax Map 245 as Lot 2. The Application was submitted in accordance with Table of Uses 3.6.A.2 of the Hopkinton Zoning Ordinance.

Mr. Lyman addressed the Board explaining their intent of their request to convert their home so that they may be able to rent out a two bedroom apartment while they live in the other portion of the home. The house is situated on approximately seven (7) acres and is secluded from the neighbors. The conversion will consist of placing a non-load bearing wall and door, changing an existing utility room into a kitchen. The conversion will also consist of placing an exterior door and stairway so that the apartment will have its own access. The exterior entrance will be in the back of the house and is not visible from the road.

Mrs. Lyman 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.

“Standards provided by this Ordinance for the particular use permitted by Special Exception can be found in Table of Uses 3.6.A.2 of the Ordinance.”

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

“There will be no hazard to the public or adjacent properties because there will be no change from the residential use.”

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 will be no detriment to property values in the vicinity as there are already multi-family homes in the area. Our house cannot be seen from the street and there is adequate parking including a garage. There will be no change in access way, odor, smoke, gas, etc.”

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 or safety hazard because there will be no difference from current use.”

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 increase in the number of bedrooms in this house. The house presently has four bedrooms and will remain at four bedrooms. There will be no increase in services. It will remain as residential use.”

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

“There will be no change in storm water runoff. There will be no changes to the driveway and no new construction.”

7. An appropriate location for the proposed use.

“Location is appropriate for the proposed use, it is a secluded home on seven (7) plus acres and is located in a residential zoning district which allows two family dwellings.”

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 adverse effect on adjacent properties because it is in a residential area and cannot be seen by neighbors.”

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

“It is in the public interest because it will allow for a rental unit and is in the spirit of the Ordinance because it is allowed by Special Exception in the R-4 district.”

Mr. Lyman noted that since filing the application his builder has recommended changes to the entrance of the apartment in order to avoid runoff. The Board reviewed the recommended changes.

Chairman Krzyzaniak questioned whether the apartment would be on the first or second floor of the home. In response, Mr. Lyman explained that it would be on the second floor with a small portion being located in the home and the main portion being located over the garage.

It was noted that as part of the building permit process the Fire Department would need to inspect the premises. Mr. and Mrs. Lyman concurred.

There was no one present wishing to provide public testimony.

Mr. Koontz, seconded by Mrs. Hackwell, moved to vote on the application as presented. Motion carried unanimously. With five members voting, all five (Krzyzaniak, Gray, Langwasser, Hackwell, and Koontz) voted in favor of approving the application. The Applicant adequately addressed the criteria for

a Special Exception set forth in paragraph 15.8.2 of the Zoning Ordinance.

II. Review of the Minutes and Notice of Decision of April 5, 2005.

Mrs. Gray, seconded by Mr. Langwasser, moved approval of the Minutes and Notice of Decision as presented. Motion carried unanimously.

III. Adjournment.

Chairman Krzyzaniak declared the meeting adjourned at 8:35 PM. The next scheduled meeting of the Board is Tuesday, May 3, 2005, at 7:00 PM in the Town Hall.

Karen L. Robertson
Planning Director

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.