

Hopkinton Zoning Board of Adjustment
Minutes
May 5, 2005

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

Mr. Langwasser gave the applicants an opportunity to post-pone review of their applications as there were only four members present and the possibility of a tie vote in which case the applications would fail. Following brief discussion both applicants wished to have their applications reviewing this evening. Mr. Langwasser then gave a brief outline of the Rules of Procedure that govern the hearing.

I. Application.

TH05-5S-5-1 David & Marlo Herrick—Tim Bernier of T.F. Bernier Inc. addressed the Board requesting a Special Exception to construct roadways and access ways in the Wetlands Conservation District. The property is owned by David and Marlo Herrick, located off Clement Hill Road and Pine Street in the R-2 (medium density residential) district, shown on Tax Map 208 as Lot 99. The Application was submitted in accordance with Section 12.7.2 of the Hopkinton Zoning Ordinance.

Mr. Bernier presented construction plans showing details of the four areas in which the proposed roadway will affect wetlands, along with two driveway crossings. The parcel in question consists of approximately 75-acres that will have a roadway connecting Pine Street to Clement Hill Road. The crossings involved an intermittent stream, two forested wetlands, and utilization of an existing crossing. Mr. Bernier reviewed the reasons for the wetland crossing whether it is to avoid a steep slope or replacement of an culvert in an existing crossing.

Mr. Bernier 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.

“The ordinance allows for ‘roads and other access ways’ in the Wetland Conservation District (W-1) if those ways are essential to the productive use of land outside the W-1 zone and if constructed as to minimize the detrimental impact to the zone. The impacts are essential to provide adequate access as required by Hopkinton’s subdivision and zoning ordinance for the remainder of the property not in the W-1 zone. The configuration of the access ways has been designed to provide safe and

appropriate access while minimizing impacts to the wetlands and environment.”

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

“None of the hazards listed will result from the construction of roads and access ways in the W-1 zone.”

- 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.

“The construction of ways in the W-1 zone will have no effect on property values in the area. The resulting subdivision will most likely have a positive effect on property values in the area. The proposed access ways are an essential characteristic of a residential neighborhood and will not result in any of the items listed.”

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

“The construction of roads and access ways in the W-1 zone does not generate traffic by itself. The resulting subdivision and subsequent residential construction will not create a traffic safety hazard or create congestion (See Traffic Impact Assessment prepared by Stephen G. Pernaw & Company).”

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

“The construction of roads and access ways in the W-1 zone will not create any demand on municipal services.”

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

“No significant storm water runoff will result from the proposed construction (see Site Specific Permit and Drainage Report prepared by Northeast Engineering, PLLC).”

- 7) An appropriate location for the proposed use.

“The road and access way locations were chosen to provide a safe travel way while minimizing the impacts to all wetlands on the site.”

- 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 negative health or safety concerns will arise from the construction of these roads and ways in the W-1 zone. The proposal will not affect the development potential or use of abutting properties.”

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

“The proposal will ultimately provide safe and alternative access to many existing and future residents. The proposal will not affect the public health safety or welfare and will not damage groundwater supplies as specified as the purpose of the zone.”

Mr. Bernier reviewed the driveway crossings with the Board, explaining that the wetlands in question are classified as forested wetlands. The locations selected along the wetland are believed to be at the narrowest point.

Mrs. Gray questioned whether the Conservation Commission had an opportunity to review the proposed crossings. In response, Mr. Bernier explained that the property was walked by the Conservation Commission; however, Mr. Herrick and the Commission have not had an opportunity to complete their discussion. Conservation Commission member Ronald Klemarczyk addressed the Board explaining how the Commission is in the process of negotiating with Mr. Herrick the purchase of easements in certain areas along the property. Mr. Klemarczyk did not advise of any objections to the proposal.

Abutter Bruce Gamsby addressed the Board expressing concern with the subdivision. Mr. Gamsby stated what he believed to be the negative affects on the quality of life in the area as a result of the subdivision and wetland crossings.

Mr. Klemarczyk readdressed the Board advising of the fact that last year the Herricks had proposed a cluster subdivision that would have protected approximately 57-acres of open space land. The subdivision was withdrawn as a result of the numerous objections by the abutters. The conventional subdivision that is now proposed is believed to be as a result of the objections of the cluster development by the abutters.

Mr. Klemarczyk then discussed the fact that there are extensive wetlands on the property; however, the Commission has been working with the Herricks to protect the wetlands. In fact, there is a proposal for buffers and easement area to tie into the Brookwood development open space. Furthermore, the Commission is working on acquiring a parcel that is near what is believed to be the most important wetland.

Byron Carr, representative of the Contoocook River Advisory Committee, addressed the Board to provide additional information concerning the Herrick property. Mr. Carr believed this to be the last change for the Town to protect an existing wildlife corridor along the Herrick property. Mr. Carr further discussed the affects of the subdivision and wetlands to that of the Contoocook River which is considered part of the City of Concord's water supply. Lastly, Mr. Carr suggested that the proposed roadway could be relocated to lessen the impact to the wetlands; however, relocating the roadway would reduce the number of lots.

Mr. Bernier responded to comments explaining that there are a multitude of different types of wetlands and wetland systems. The subdivision proposed is designed to protect standing water wetlands. Mr. Bernier believed that wetland impacts have not affect on wildlife corridors, noting that the Herricks are continuously working with the Conservation Commission and as a result have agreed to protect the largest wetland on the property. It was noted that the proposed subdivision would require review by the New Hampshire Wetland's Board to see if it meets their criteria.

The Board discussed their task at hand which is to review the wetland crossings for the roadway and driveways. While the Board understood the concerns of those present, the Board agreed that the better place to voice those concerns would be with the Planning Board.

Following discussion, Mrs. Gray, seconded by Mr. Koontz, moved to approve Application #TH05-5S-5-1 contingent upon Planning Board approval of the subdivision and receipt of a copy of the NH Wetlands Bureau's Dredge and Fill Permit. With four members voting, all four (Gray, Langwasser, Koontz, and Horsfall) voted in favor of approving the application with the above conditions. The Applicant adequately addressed the criteria for a Special Exception set forth in paragraph 15.8.2 of the Zoning Ordinance.

TH05-6S-5-2 Ronald B. Finlayson, Jr.—Mr. Finlayson addressed the Board requesting a Special Exception to operate a commercial business involving assembly and storage of arts and crafts. The property is 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.G.1 of the Hopkinton Zoning Ordinance.

The purpose of the application is to bring into conformance the operation of a small arts and crafts business that has been operating from one bay of the detached garage. The space is leased to two partners that operate the business making stain glass, crafts, and wood cabinets. There are no customers coming to 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.

“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.

“No, the business is a small operation with one to two people working in the garage.”

- 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, all equipment and materials are stored with the garage. There are no customers coming to the property. The noise as a result of the business is self-contained within the building.”

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

“No, the products tend to be special made and are therefore delivered to customers.”

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

“No, there will be no changes to the property as a result of the business.”

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

“Yes, a portion of the property is already approved for an industrial type use (landscaping, storage of materials and equipment). The building in which this operation will take place is pre-existing and lends itself well to this type of use.”

- 7) An appropriate location for the proposed use.

“No, the space is simply being rented to the business. All assembly will take place inside and will not alter the existing 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.

“The property is located within the industrial district. The property has been approved for multiple uses.”

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

“The proposed use is in the public interest as it is good use of pre-existing space in an M-1 zone.”

Mr. Langwasser asked Mr. Finlayson to explain in detail the type of crafts and products being made at the property. In response, Mr. Finlayson stated that the two partners operate the business making chandeliers, cabinets, signs, and other wood and glass crafts.

Mr. Koontz questioned the hours of operation. In response, Mr. Finlayson was unaware of any set hours of operation, but assumed that the business operated during normal working hours.

Mrs. Gray advised that if the business is approved it should be understood that the Board is not approving any retail activity. Mr. Finlayson agreed.

Following discussion, Mr. Koontz, seconded by Mr. Horsfall, moved to approve Application #TH05-6S-5-2 with the following conditions:

1. There shall be no more than four (4) employees, including business partners.
2. The business shall be wholesale with no retail at the premises, and
3. The hours of operation shall be from 8 AM to 6 PM, Monday through Sunday.

With four members voting, all four (Gray, Langwasser, Koontz, and Horsfall) voted in favor of approving the application with the above conditions. 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.

Charles Koontz, seconded by William Horsfall, moved approval of the Minutes and Notice of Decision as presented. Motion carried unanimously.

III. Other Business.

- ❖ Administrative process of holding joint meetings with the Planning Board.
- ❖ Request of Zoning Board of Adjustment to the Board of Selectmen re: Zoning Board of Adjustment retaining its own legal counsel similar to that of Planning Board.

IV. Adjournment.

Acting Chairman George Langwasser declared the meeting adjourned at 9:30 PM. The next scheduled meeting of the Board is Tuesday, June 7, 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.