

**Hopkinton Zoning Board of Adjustment**  
**Minutes**  
**June 7, 2005**

Acting Chairman Toni Gray opened the Hopkinton Zoning Board of Adjustment public hearing of Tuesday, June 7, 2005, at 7:00 PM in the Town Hall. Members present: Charles Koontz, Carolyn Hackwell, Patricia Ayers, and William Horsfall.

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Mrs. Gray gave a brief outline of the Rules of Procedure that govern the hearing.

**I. Application.**

**TH05-2V-6-1 Andrew J. Gonzalez**—Mr. Gonzalez addressed the Board requesting a Variance to allow a non-resident owner to operate a home business on property owned by Lynch Realty Trust, located at 618 Park Avenue in the R-2 (medium density residential) district, shown on Tax Map 223 as Lot 22. The Application was submitted in accordance with Section 2.1.H.1 of the Hopkinton Zoning Ordinance. Mr. Gonzalez lives at the property that is currently owned by his father, Erik Gonzalez. Mr. Gonzalez and his partner now propose to change the status of his current computer business from a home occupation to a home business so that customers may come to home to pick-up and drop-off equipment. Mr. Gonzalez advised of his fathers vested interest in the business as he has financially assist in the operations of the business.

Mr. Gonzalez believed that there would be very little additional traffic as a result of customers being able to come to the property. He anticipated on average between three and five additional vehicles a day.

Mr. Gonzalez 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 owner’s son, Andrew Gonzalez, will make sure that the property and computer store will not lower the property values. This will be overseen by Andrew’s father, Erik Gonzalez, the owner of the property.”

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

“The small business is one of many on Park Avenue. Again, both Erik Gonzalez and Andrew Gonzalez have a vested interest in not lowering property values. Andrew will continue to treat the property with the same respect as that of the owner of the property. There will be no negative impact on the community.”

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

“Andrew will be able to operate a computer store, Guinard’s PC Consulting LLC, which has been in business for over ten years. We plan on making the business an asset to this community.”

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

“Both the owner and son have a vested interest in the business as well as the welfare of the community.”

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

- (a) The zoning restriction as applied to the applicant’s property interferes with the applicant’s reasonable use of the property, considering the unique setting of the property in its environment.

“Under this restriction, the owner would be unable to allow and oversee his son’s business.”

- (b) No fair and substantial relationship exists between the general purpose of the Zoning Ordinance and the specific restrictions on the property.

“Andrew will always treat and respect the property in the same manner as his father, Erik Gonzalez.”

- (c) The variance would not injure the public or private rights of others.

“There will be no evidence that the resident does not own the business. It will cause very little extra traffic as a good portion of the business also involves working at other sites. There will be no environmental hazards.”

Mr. Koontz questioned the location of the other businesses along Park Avenue that Mr. Gonzalez referenced when addressing the variance criteria. In response, other members of the Board advised of businesses such as the Cranberry Barn flower shop and Hallmark business. Mr. Gonzalez referenced Gamiles’ restaurant, which is located off Park Avenue in the Town of Warner.

Public Testimony was opened.

Mrs. Gray read a letter from abutters Robert and Barbara Smith as they were in favor of the Board granting the application.

Joe Persechino of Kearsarge Avenue addressed the Board in favor of the application, advising that Mr. Gonzalez currently services his business and that it is an asset to the community to have the computer business in Town.

In reviewing the application, Mrs. Hackwell believed that the requirement that resident owners of the property operate the business is intended to address third parties, rather than family members. Board members concurred.

Motion made by Mr. Koontz, seconded by Mrs. Hackwell, to vote on the application

as presented. Motion carried unanimously.

Motion made by Mr. Horsfall, seconded by Mrs. Ayers, to approve Application TH05-7S-6-2 as presented. Motion carried unanimously (Ayers, Horsfall, Gray, Hackwell, and Koontz). The Applicant adequately addressed the criteria to be granted a variance in accordance with paragraph 15.8.3 of the Zoning Ordinance. The Board agreed that the requirement in Section 2.1.H.1 that home business be operated by resident owners of property is intended to address third parties, rather than family members.

**TH05-7S-6-2 Andrew J. Gonzalez**—Andrew Gonzalez readdressed the Board to request a Special Exception to operate the home computer business on property owned by Lynch Realty Trust, located at 618 Park Avenue in the R-2 (medium density residential) district, shown on Tax Map 223 as Lot 22. The Application was submitted in accordance with Section 3.6.A.8 of the Hopkinton Zoning Ordinance.

Mr. Gonzalez 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.G.A.8 and paragraph 3.7.3 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.

"We do not use any explosive or otherwise toxic substances."

- 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 business will occupy an already built room in the garage. Parking will include three parking spaces. There will be no odors or other pollutants. We will not need any outdoor storage of equipment or materials."

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

"We currently leave the property several times a day to go to our customers. If we are granted a special exception it will enable us to have some of the customers come to us with very little new traffic created. It is estimated that on average there may be an additional three to five vehicles per day as a result of the business."

- 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 demand on any municipal service. We do take and recycle old computers and most components; however, we dispose of any parts we cannot use out of town typically once a year at a place such as Harding Metals in Northwood.”

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

“There will be no change.”

- 7) An appropriate location for the proposed use.

“This site is zoned for home businesses. Granting the Special Exception would allow us to provide a service to the public.”

- 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 home business 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. Other than a small sign, the neighborhood should not notice the home business.”

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

“The computer business is in the public interest as it would provide a service. It is in the spirit of the Ordinance as home businesses are permitted in the R-2 district.”

Mr. Horsfall inquired as to whether computer monitors would be stored at the property. In response, Mr. Gonzalez stated that functioning monitors would be at the property; while, non-functioning monitors would be disposed of at the Transfer Station.

Mrs. Hackwell asked about the number of deliveries that may occur on a daily basis. In response, Mr. Gonzalez explained that UPS delivers to the property daily. On occasion they may deliver twice in one day.

Mrs. Gray questioned the hours of operation for the computer business. In response, Mr. Gonzalez stated Monday through Friday from 9 AM to 5 PM and on Saturday from 8 AM to 1 PM. The business is operated by Mr. Gonzalez and his partner. Mr. Gonzalez stated that he had no employees.

There was no one wishing to provide public testimony.

Motion made by Mr. Koontz, seconded by Mrs. Hackwell, to vote on the application as presented. Motion carried unanimously.

Motion made by Mr. Koontz, seconded by Mrs. Ayers, approve Application TH05-7S-6-2 as presented. Motion carried unanimously (Ayers, Horsfall, Gray, Hackwell, and Koontz). The Applicant adequately addressed the criteria for a Special Exception set forth in paragraph 15.8.2 of the Zoning Ordinance.

**TH05-3V-6-3 A & P Investments, Inc.**—Attorney Richard Uchida addressed the Board on behalf of A & P Investments, Inc. requesting Variance to construct a sign identifying the name of a subdivision (Granite Valley) that will exceed four (4) square feet in area. The subdivision intersects Kearsarge Avenue in the R-4 (residential/agricultural) district, shown on Tax Map 223 as Lot 2. The Application was submitted in accordance with Section 7.3 of the Hopkinton Zoning Ordinance.

Attorney Uchida advised of the Planning Board's approval of two (2) subdivisions involving property owned by A & P Investments, Inc., located on across the street from one another off Kearsarge Avenue.

Attorney Uchida 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 use will be a very attractive sign displaying the name of the subdivision and setting the tone for the entrance to a quality development. Nothing suggests this sign would harm surrounding property values.”

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

“The public interest is in being able to see and read signs on the roadway, and thereby being able to locate a site or property. As the ordinance is currently drafted, and given the name of the subdivision, the sign will not be able to be clearly read unless motorists slow down to read it. This could create potential traffic problems, which is not in the public interest.”

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

“Substantial justice occurs when any benefit to the public outweighs any burden on private parties. The applicant is unaware of any burden or detriment to any party if the larger sign is permitted. On the other hand, the benefit to the applicant and to the public to be able to identify and distinguish the subdivisions is critically important.”

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

“The ordinance intends that there be signage which can be easily observed and read. The variance accomplishes this. Moreover, the use is within the area allowed for signs in other districts, non-residential in nature, and thus, is not out of character with standards in other parts of town.”

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 subdivision roads form a four way intersection with Kearsarge Avenue. It is important to be able to delineate one subdivision from another so motorists can make decisive turns. Four square feet is too small to see the wording, given the speeds along Kearsarge Avenue. In addition, these signs are not for residential homes, which should be smaller. They delineate and identify an overall community, and should be treated more akin to a commercial sign."

- (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.

"Other than abandoning the idea of a subdivision sign altogether, there is no other way to identify the name of the subdivision in a manner that is easily available. This is especially true given that the signs will need to set back out of the right-of-way and will be difficult to see. Thus, this represents a reasonably feasible alternative."

Mrs. Gray expressed concern with the overall size of the proposed sign, noting that while the graphic portion of the sign would consist of a 4-foot diameter circle the overall size of the sign would be approximately 4-feet by 6-feet. The Board discussed whether a sign exceeding the size limitation of the Ordinance is really necessary. In response, Attorney Uchida suggested that it would be difficult for people to see the entrance to the development without the larger sign. The size of the sign proposed would assist travelers along the street.

There was no one present wishing to provide public testimony.

Following brief discussion, Mrs. Gray, seconded by Mr. Horsfall, moved to deny Application TH05-3V-6-3 due to the fact that the Applicant did not satisfactory address the criteria to be granted a Variance outlined in Section 15.8.3 of the Zoning Ordinance. Motion carried unanimously. The Board unanimously agreed that the variance was not needed to enable the Applicant's proposed use of the property as the Applicant had recently been approved a residential subdivision of the property. Furthermore, it was noted that a street sign, similar to the street signs located at the end of most streets in Town, would be located at the end of the street advertising the roadway.

**TH05-4V-6-4 A & P Investments, Inc.**—Applicant requests Variance to construct a sign identifying the name of a subdivision (Hopkinton Woods) that will exceed four (4) square feet in area. The subdivision intersects 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 7.3 of the Hopkinton

Zoning Ordinance.

At this point in time, Attorney Uchida on behalf of A & P Investments, Inc. withdrew Application TH05-4V-6-4.

**II. Review of the Minutes and Notice of Decision of May 3, 2005.**

Review of the Minutes of May 3, 2005 was deferred to the July 5, 2005 meeting.

Motion made by Mr. Koontz, seconded by Mr. Horsfall, to accept the Notice of Decision of May 3, 2005 as written. Motion carried unanimously.

**III. Adjournment.**

Chairman Gray declared the meeting adjourned at 8:25 PM. The next scheduled meeting of the Board is Tuesday, July 5, 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.