

Hopkinton Zoning Board of Adjustment
Minutes
April 4, 2006

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment public hearing of Tuesday, April 4, 2006, at 7:00 PM in the Town Hall. Members present: Toni Gray, Charles Koontz, Carolyn Hackwell and John Boatwright.

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

I. Application.

TH06-1V-3-1 Constance M. Doherty – Attorney Patrick McNicholas of the McNicholas Law Offices, 91 North State Street, Concord, addressed the Zoning Board of Adjustment as a continuation of the March 7, 2006 hearing. Attorney McNicholas on behalf of Constance Doherty requested a Variance to construct a single family home on a non-conforming lot with reduced setbacks and no frontage on a public road. The property is located off Robin Lane in the R-4 (residential/agricultural) district, shown on Tax Map 225 as Lot 80. The application was submitted in accordance with paragraphs 4.3 and 5.2.1 of the Hopkinton Zoning Ordinance.

At the March 7, 2006, public hearing the Zoning Board of Adjustment continued the application so to allow Attorney McNicholas an opportunity to present a revised site plan showing the location of the proposed residence, setbacks, well, septic system, and location of abutting residences and wells. In reviewing the revised site plan, Mrs. Gray expressed disappointment that the information she had requested was not shown. She had requested that the location of the abutting residences be shown so that the Board could determine the impact, if any, on the neighbors. Attorney McNicholas apologized for the misunderstanding, stating that the lot on one side of the Doherty property is vacant. He then gave a brief description as to the location and type of residence located on the other side of the Doherty property. He further explained that he was unsuccessful at locating the well on the Doherty property; while, Mrs. Doherty has informed him that a spring fed well does exist. The proposal is to construct a modest 16' x 32' single family residence; however, in order to construct a residence of this width the Board is being asked to grant Variance allowing reduced side line setbacks of approximately 22-feet. The proposed leach field is to be located in the rear of the property.

Chairman Krzyzaniak asked for clarification as to the two (2) different types of Variances being requested. In response, Attorney McNicholas explained that the Applicant is requesting a Variance to construct a residence with less than the required 50-feet of frontage on a public road in order to be classified as a non-conforming building lot. Additionally, they are requesting a Variance to construct a residence with less than the required side line setbacks for the R-4 district. Again, it was estimated that the side line setback proposed would be no less than 22-feet; while the R-4 district requires a minimum of 30-feet.

Chairman Krzyzaniak expressed concern with the limited space available should the owner decide to construct a garage. Mrs. Gray concurred, questioning whether the owner would use the variance for the construction of the residence with less the required side line setback as a hardship in requesting a garage.

Chairman Krzyzaniak then questioned the location of the parking area for the property. In response, Attorney McNicholas suggested that it would be to the right of the home, away from the well.

Mr. Boatwright inquired as to whether the existing well would be used or whether there would be a new well to serve the home. Attorney McNicholas responded that they propose to utilize the existing well.

Mrs. Gray questioned what would happen if the owner could not obtain approval from the State for the septic system. Attorney McNicholas indicated that without the approval the owner could not build the residence.

Chairman Krzyzaniak expressed concern with the vagueness of the information provided, suggesting that she would like additional information. In response, Attorney McNicholas stated that he had taken a low key approach in preparation of the site plan so to avoid the expense of hiring an architect.

Mrs. Gray asked Mrs. Robertson whether the Selectmen would issue a building permit without an approved septic system. Mrs. Robertson replied no.

Following brief discussion, Attorney McNicholas asked that Mrs. Doherty's application be tabled for one month so to allow him to come back with a more detail site plan. Mrs. Hackwell suggested that the revised site plan contain exact measurements. Mr. Boatwright concurred. At this point, the Zoning Board of Adjustment unanimously agreed to table Application TH06-1V-3-1 to the May 2, 2006 hearing, so to allow the Applicant an opportunity to provide additional information. The Board unanimously agreed.

TH06-2V-4-1 Stuart F. Nelson – Attorney Patrick McNicholas then addressed the Board representing Stuart Nelson to request a Variance to construct a single family home on a non-conforming lot with less than the required frontage on a public road. The property is located off Clement Hill Road in the R-2 district, shown on Tax Map 208 as Lot 14. The application was submitted in accordance with paragraph 5.2.1 of the Hopkinton Zoning Ordinance.

Attorney McNicholas noted for the record that the public notice incorrectly referenced the construction of a single-family home when the application presented never referenced "single family home". Instead, the application referred to the construction of "a residential dwelling as permitted in the R-2 district..."

The property consists of approximately 8-acres located on the east side of Rolfe Pond and served by a right-of-way off Clement Hill Road. The right-of-way in question presently serves nine (9) other residences that are located on non-conforming lots.

Attorney McNicholas stated that there are many residences along Rolfe Pond that are on non-conforming lots that were created in the 1950's and are served by a right-of-way. The Zoning Board of Adjustment has granted similar Variance to others in the area. Attorney McNicholas referenced the lot being compliance with the requirements of NH RSA 674:41 and that the owner is willing to sign a private road maintenance agreement.

Attorney McNicholas 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 proposed residential use is allowed in the zone and is consistent with other residences in the district.”

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

“The previously existing non-conforming lot created in the 1950's is larger than other lots in the area along rights-of-ways. The lot would be put to a productive use consistent with others in the area.”

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

“The owner would have the productive use of a prior existing non-conforming lot rendered useless by the fifty (50) foot public road requirement.”

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

“The proposed use is consistent with residential uses in the area and there are already numerous other houses on the private right of way that serves the subject lot.”

5. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship.

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

“This pre-existing non-conforming lot was created in the fifties, but is substantially larger than other lots served by private rights of way in the area, many of which have residences on them.”

- (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.

“The Applicant’s lot, along with eight (8) other prior non-conforming lots, have access to Clement Hill Road via a private right of way approximately 30-feet in width. The lot meets the requirements of RSA 674:41 and the owner will sign a private road maintenance agreement.”

Chairman Krzyzaniak questioned whether Mr. Nelson purchased the property in year 2005. Attorney McNicholas stated that was correct.

Chairman Krzyzaniak then questioned whether the previous owner had every applied for a permit to build a residence on the property. Attorney McNicholas was unsure.

Chairman Krzyzaniak asked Mrs. Robertson if she was aware of any new construction along the private way. Mrs. Robertson replied no, indicating that she was not aware of any new construction since she has been with the Town.

Mrs. Hackwell asked Attorney McNicholas to explain which lots shown on the map provided have homes constructed on them. In response, Attorney McNicholas stated that Tax Lots 9, 10, 11 and 15, which are abutting lots, have residences. There are additional lots just south of Lot 4.

Public testimony was opened.

Richard Schoch of 1309 Pine Street addressed the Board as an abutter speaking in opposition. Mr. Schoch explained that he has lived at his property for approximately forty years. He had hoped the Board would not approve the application because when he had proposed to subdivide his property to create a building lot for his son he had to create a conforming lot having sufficient acreage and frontage along a public road. Mr. Schoch reiterated the fact that Mr. Nelson had purchased the lot in question knowing that it was non-conforming. Again, Mr. Schoch stated that he was required to follow the zoning rules in order to subdivide his property. Chairman Krzyzaniak questioned who had told him that he must create a conforming lot. In response, Mr. Schoch stated that he was not advised by anyone, but instead read the zoning requirements and complied with them.

Jayne Schoch of 1309 Pine Street addressed the Board as an abutting in opposition to the proposal. Mrs. Schoch questioned whether there was ever a permit applied for by the previous owner to construct a residence, noting that the previous owner of the property was present at the hearing. Mrs. Schoch explained that the previous owner had an opportunity to sell the lot to her and her husband. They would have left the lot in its natural state. Instead, the lot was sold to Mr. Nelson who has extensively timbered the property.

Charlotte Sankey of 819 Clement Hill Road addressed the Board as an abutter opposed to the application. Mrs. Sankey was under the impression that the lot was not a building lot. She believed that Mr. Nelson knew at the time he purchased the property that it was non-compliance with zoning rules.

Roger French of Clement Hill Road and previous owner of the property stated he purchased the property in the 1950’s with his parents. Over the years he and his

parents had discussed constructing a residence on the property, but had never done so.

Chairman Krzyzaniak asked Mr. French whether Mr. Nelson was aware that the lot was non-conforming at the time he purchased the property. Mr. French replied yes, stating that there is sufficient land to build a residence and that there are other residences along the private road. Chairman Krzyzaniak noted that the other residences have existed for a number of years.

Mrs. Gray questioned why Mr. Nelson would purchase the property knowing that it was non-buildable. In response, Mr. Nelson stated that the Zoning Board of Adjustment had granted other Variances to owners of property along private roads, so he did not believe that he would have difficulty in receiving a Variance. Mr. Nelson stated that his lot is more conforming in acreage in comparison to the other properties in which Variances were granted. Mrs. Gray responded that there is no new construction of residences on this private road.

At this point in time, Attorney McNicholas reviewed with the Board three (3) Variances that had previously been issued for what he believed to be similar situations. The Variances were issued to the following: Roberts property off South Shore Drive in 1996, Spilewski property off South Shore Drive in 1996 and the Kirsch property off Rolfe Pond Drive in 1997.

Chairman Krzyzaniak stated that each application is reviewed based on its own merits; therefore, the fact that the Board had previously granted approvals to others in Town does not mean that the Board would grant the same Variance to everyone. Chairman Krzyzaniak suggested that many factors have to be taken into consideration when reviewing an application, such as whether the zoning was different years ago.

Chairman Krzyzaniak then noted for the record that she had received a Variance twenty-seven (27) years ago to construct her residence off of a private road. However, she believed that at the time the zoning requirements were different than today's standards.

Mr. Schoch readdressed the Board explaining that the properties off South Shore Drive and Rolfe Pond Drive have existed since approximately 1965. Mr. Schoch noted that in the past the Town had graded South Shore Drive and Rolfe Pond Drive. Now, the Town only provides winter plowing along the roads, which is not done on the private road that Mr. Nelson would use to access his property.

Mrs. Gray asked Mr. Nelson if he had purchased the Kirsch property after the Zoning Board of Adjustment granted the Variance. Mr. Nelson replied yes.

Mr. Nelson advised that he currently lives off Rolfe Pond Drive and has no room for expansion of his home. He purchased the eight (8) acres to build a house for him and his mother. Chairman Krzyzaniak questioned whether the lot has frontage along the water. Mr. Nelson replied no.

Mrs. Schoch readdressed the Board stating that while the eight (8) acre lot may not have frontage, Mr. Nelson owns a cottage and his residence that front along the pond. Mrs. Schoch stated that she was first told that Mr. Nelson had purchased the Kirsch lot to build a home for his mother; instead, Mr. Nelson sold the home. Then, she was told that Mr. Nelson had purchased the cottage for his mother. In response, Mr. Nelson stated that his mother cannot live alone. The cottage (camp) is owned by Mrs. Nelson and will be sold for financial reasons. He further stated that if he is not allowed to construct the home that he will most likely sell his home along Rolfe Pond Drive and move elsewhere. He would prefer to live near the pond as he grew up in the area, but needs space for his family and his mother.

Chairman Krzyzaniak asked Attorney McNicholas to again address the Variance criteria, which Attorney McNicholas did.

Mrs. Gray believed that the Applicant was not successful at addressing the question concerning substantial justice being granted. Mrs. Gray stated that Mr. Nelson purchased the lot knowing that it was non-buildable and therefore, there is no substantial justice to be granted. The Zoning Ordinance requires a minimum of 50-feet of road frontage for a non-conforming lot to be built upon. Additionally, there are no new residences along the private way. Mrs. Hackwell concurred.

Mr. Boatwright believed that the application as presented stands on its own and complies with the requirements to be granted a Variance.

Motion made by Mrs. Gray, seconded by Mrs. Hackwell, to approve Application TH06-2V-4-1 as submitted. With five members voting, two voted in favor (Koontz and Boatwright) and three voted in opposition (Gray, Hackwell and Krzyzaniak). The majority of the Board believed that the Applicant was unsuccessful at proving the requirement of substantial justice; again, noting that the Applicant purchased the property knowing that it was a non-conforming lot with less than the required 50-feet of frontage on a public road (Class V). Furthermore, since the adoption of the Zoning Ordinance there have no new homes constructed utilizing the private way.

TH06-3V-4-2 Greg and Alison Paglia – Greg and Alison Paglia addressed the Board to request a Variance to construct an addition to their residence which is currently non-conforming in setbacks. The property is located at 216 Briar Hill Road in the R-4 district, shown on Tax Map 250 as Lot 20. The application was submitted in accordance with Section 5.1.2 (a) and Table 4.3 of the Hopkinton Zoning Ordinance.

Mr. Paglia explained the proposal to construct an addition that will consist of living space, a garage and a deck. The house is located on a pie shaped lot at the intersection of Briar Hill Road and Rollins Road. The proposal involves the removal of the existing one car detached garage that is currently non-compliance with setbacks and to construct a new attached garage with living space (master suite) above. While the size of the addition will exceed fifty (50) percent of the total square footage of the existing residence, the addition will be less non-conforming in setbacks than what presently exists.

Mr. Paglia 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 property is located at 216 Briar Hill Road on a corner lot approximately ¼ mile from Hopkinton Village and is the 1st home in the R-4 zoning after Hopkinton Village. We are seeking to build an addition in order to improve our current small home built in the early 1950’s. The proposed project would not decrease the surrounding property values as the addition will enhance the appearance of the existing structure. The size and appearance of the proposed project is in keeping with the other houses on the road and in the area, especially given our closeness to Hopkinton village and the proximity of the homes on our section of Briar Hill Road.

The proposed project includes taking down a one car detached garage and adding a two car attached garage. The new garage will have a larger Briar Hill setback than the current garage and house. The current size of the home is 1040 square feet. The footprint for the proposed project is 1136 square feet of which 59% (672 square feet) is a two car attached garage. Additionally, the proposed project will include a 240 square foot platform deck and 680 square feet of living space above the attached garage. The garage and deck comprise 44% (912 square feet) of the proposed addition.”

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

“There is no adverse effect of the proposed project on the public interest. As stated previously, our home is located close to Hopkinton Village on the 1st ¼ mile of Briar Hill. Our home with the addition is comparable in size and positioning on the lot to the other homes in the area; although, the addition will not be visible from another residence. The addition will be to the south and west of our home and the abutting residences are on the eastern side of our home. The proposed construction will be further from an abutting residence than the distance of the existing structure to a residence.

Rollins Road is on the south and western side of the property. The land (Lot 66) that is across Rolling Road behind our lot and extends to Briar Hill Road is approximately 55 acres and therefore if a structure was placed on the land there would be ample possibilities for positioning of that structure. The land (Lot 2) across from our lot on Briar Hill is 2.8 acres and has recently been cleared. Given the lot configuration, it is unlikely that our home would be visible from a future residence on this land.”

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

“The lot is an awkward corner, pie shaped .79 acre lot with the existing structure positioned in the far north east corner of the lot, leaving the only feasible location for the addition to be to the west and south of the current home. Given the pie shaped nature of the lot to the south and west, we are faced with the challenge of two front setbacks (Briar Hill and Rollins Road) and no side setback. The proposed addition would be further back from the Briar Hill setback than our current non-compliant home and current detached

garage, i.e. the addition will encroach less on the Briar Hill setback than the current structure. The Briar Hill setback of the current home is 40-feet and the current garage is 35-feet. The proposed addition would include the removal of the current garage and the Briar Hill setback of the proposed addition would be 43-feet. The new garage structure would be attached to a new 16' x 20' room at the rear of the current home, placing the proposed garage as far back as feasible and farther back than the existing home and garage. Due to the unique shaped lot and the steep drop off in the rear of the lot the addition is close to and/or in violation of the Rollins Road setback, specifically the south west corner of the deck and the south west corner of the garage."

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

"If the Variance is granted, the resulting addition would not lead to overcrowding of the current lot or the abutting land/residences. Given that the lot is a corner lot, the position of the current structure, the location of the abutting residences, and the size of the abutting lots; the proposed addition will not result in overcrowding. Since our home is the 1st home on Briar Hill that is outside of Hopkinton Village and begins the R-4 zoning on Briar Hill, the positioning of our home and proposed addition would be similar to that of the surrounding homes. The proposed addition will not place the residence any closer to an existing structure and the proposed structure will encroach less on the Briar Hill setback than our current home. The proposed project will not be visible from either of the residences directly connected to our lot. The proposed project will not crowd the additional abutters if a residence is built in the future, as there is considerable distance between the proposed addition and those properties.

The current size of the home is 1040 square feet. The footprint for the proposed project is 1136 square feet of which 59% (672 square feet) is a two car attached garage. Additionally, the proposed project will include a 240 square foot platform deck and 680 square feet of living space above the garage. The proposed addition allows for attaching a garage to a 16' x 20' room that will be attached to the rear of the home, and the front setbacks will be further back than the existing structure. The size and location of the proposed addition is in keeping with other homes in the area."

5. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship.

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

"Given that the lot is a corner lot, the position of the current structure, the location of the abutting residences, and the size of the abutting lots; an area variance would allow reasonable use of our property without being contrary to public interest. The existing house is positioned near the road on the far eastern side of an awkward pie shaped lot. Given our proximity to our abutters and Briar Hill the only feasible location for the addition is the western and rear portions of the property, presenting the challenge of two front setbacks and no side setback. This configuration limits the options for expansion and compliance with the Ordinance, would deny us

reasonable use of the property and create unnecessary and unreasonable economic hardship.”

- (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.

“The proposed addition is a way to improve our current small home by adding a two car attached garage and increased living space while not substantially increasing the footprint and having less encroachment on the Briar Hill setback than our current non-compliant home. As proposed the two car garage will be attached to a new addition room at the rear west corner of the current home, placing the garage as far back from the current structure as feasible. Due to the pie shaped lot a small portion of the addition may be non-compliant with the Rollins Road setback which is the rear south west corner of the deck and rear south west corner of the garage. Other possible configurations that include an attached garage would require increasing and considerably repositioning the addition, removing the existing driveway, and creating a new driveway, thereby increasing the cost of the construction project beyond our means. Any attempt to reconfigure the addition to be further from the Briar Hill setback would not be economically feasible and would still be in violation of the Briar Hill setback and would further encroach on the Rollins Road setback.”

There was no one present wishing to provide public testimony.

The Board reviewed photographs of Mr. and Mrs. Paglia’s property and complimented Mr. and Mrs. Paglia on their completeness of their application.

Based on the configuration of the property, the Board members agreed that the Applicants had done their best in configuring the addition on the lot.

Motion made by Mr. Boatwright, seconded by Mr. Koontz, to vote on the application for consideration. All in favor of voting. With five members voting, all five voted in favor (Gray, Koontz, Hackwell, Boatwright and Krzyzaniak) of approving the application.

TH06-1A-4-3 Stephen E. Amsden Et Al – Administrative Appeal of the Hopkinton Planning Board’s decision (#2005-30) of January 26, 2006, in which the Planning Board granted Site Plan Review approval to Larry Ehlinger for the purpose of operating an agricultural use boarding, breeding and training equines. The property is owned by Larry Ehlinger and Susan Levesque, located at 100 Chase Farm Road in the R-4 (residential/agricultural) district, shown on Tax Map 243 as Lot 20.

Chairman Krzyzaniak began by explaining that the Zoning Board of Adjustment is hearing an appeal of a decision of the Planning Board. The question before the Board is whether the use is an agricultural use boarding, breeding and training equines which is a permitted use or whether it is a commercial business that would require a Special Exception. Chairman Krzyzaniak requested that the use classification be the only issue to be discussed. The Board will not hear information

with regards to drainage, location of the barn or any other information that does not pertain to the use classification. Chairman Krzyzaniak noted that every member of the Board had received copies of the minutes of the Planning Board hearings.

Stephen Amsden of 211 and 213 East Penacook Road addressed the Board referencing to the Planning Board's approval of the Ehrlinger Site Plan on January 26, using the agricultural farm land use classification which is a piece of land on which crops or animals are raised. Mr. Amsden stated that no crops were proposed to be grown, sold or harvested as one of the uses of the land; no animals were proposed to be bred, milked, raised, slaughtered or sold as a primary source of business. He believed that there was a conflict in the Planning Board's decision to grant site plan approval based on the classification of farm, agricultural. Mr. Amsden stated that the proposed operation is clearly not a farm usage of the land. He believed that classification of agricultural farm was inadvertently and erroneously used in the Ehrlinger application and approval. The correct classification is an outdoor/recreational use found in 3.6 Table of Uses as a commercial riding stable/trail shown as requiring a special exception. Mr. Amsden reviewed items two through nine of the criteria for a special exception (see attached copy). He said that the purpose of the appeal is to require compliance with the Town's established rules and regulations as they apply to the Ehrlinger's site. Mr. Amsden asked that the Zoning Board of Adjustment rescind the January 26 decision of the Planning Board based on the incorrect land use classification of agricultural farm. He said that resubmission of the Ehrlinger application would fall under the reclassification of an outdoor/recreational use according to the Zoning Ordinance Table of Uses. In doing so, by special exception, the reclassification as a condition of approval should include an accurate and thorough site plan. He said that they are looking for a reasonable, common sense, well thought out approach toward accommodating the new owners proposed operation without causing an undesirable change in the character of the neighborhood. He then questioned whether the Planning Board approval was based on expediency while inadvertently overlooking the fact that there is a conflict with the land usage. Lastly, Mr. Amsden reviewed paragraph 3.6 which indicates that in the case of conflict the more restrictive interpretation shall apply.

Mrs. Gray asked Mr. Amsden if he had considered that a commercial riding stables and riding trails is a principal use, rather than the accessory use. In other words if there was a commercial riding stable a residence would not be allowed on the lot. If the Ehrlinger's use was classified as a commercial riding stable it would require a Variance. Mr. Amsden said he had not taken that into consideration.

Donna Beth Jalbert of Chase Farm Road questioned how many of the members had seen the complete document for Administrative Appeal. Chairman Krzyzaniak referred to the document received by all members of the Board. Mrs. Jalbert then read to the Board the following: "We, Marc B. Jalbert and Donna B. Jalbert, respectfully come before the Hopkinton Zoning Board of Adjustment to request a reconsideration and reversal of the Planning Board's decision to allow the construction and operation of a commercial riding stable in our residential neighborhood. There are five facts that we present this evening and we are petitioning this Board to rule in agreement with the following statement: 1) The Ehrlinger's purchased a single-family home in a residential subdivision. The Planning Board approved subdivision plans that Marc and I had done on two separate

occasions to create a three lot residential subdivision in that area. The Ehlingers didn't purchase a farm at the subject property. When we had it in '86 we took down the decrepit barn that was there and there hasn't been live stock or crops since John Rowell stopped keeping the...heifers up in the pasture when my kids were quit small. The owners own and operate a recreational commercial riding stable and their Dunn Bradstreet paperwork which is available on the internet...mentions that they are a recreational riding facility...The Jalbert family is entitled to equal protection of their property rights in accordance with the Hopkinton Zoning Ordinance. We, therefore, ask the Zoning Board of Adjustment to require that the Applicant, Larry Ehlinger, resubmit an application for a special exception or a variance as may be required to operate a recreation commercial riding stable in a residential neighborhood in accordance with the zoning laws of the Town of Hopkinton, New Hampshire. We thank the Board for their consideration in this matter."

Mr. Koontz recalled reading material that suggested that there was mowing taking place at the property. In response, Mrs. Jalbert referred to a meadow that she and her husband had placed in conservation easement along the Blackwater River. She believed that cutting the grass, mowing the hay and keeping the pasture open does not rise to the level of agriculture according to the definition from the U.S. Department of Agriculture. Mr. Koontz questioned whether the property had been mowed recently. In response, Mrs. Jalbert stated that she believed that the meadow along the Blackwater River had been mowed.

Marc Jalbert of Chase Farm Road stated that the Ehlinger's application was based on the definition of Agriculture found on page two of the Zoning Ordinance. The definition was amended at Town Meeting on March 15, 2001. Mr. Jalbert reviewed what was read at the meeting. "Are you in favor of the adoption of amendment number two as proposed by the Planning Board for the Town of Hopkinton Zoning Ordinance as follows: To amend Section 2.1.A.4 definition of Agriculture to make it consistent with New Hampshire RSA 21:34. The following sentence remains from the current definition to be incorporated at the end of the definition included in RSA 21:34. For the purposes of this Ordinance, slaughter houses, rendering plants, or tanneries are not considered as falling within the definition." Mr. Jalbert stated that the vote was taken and it had passed. There were no explanation and no discussion as what the actual changes to the Ordinance meant. In response, Mrs. Gray stated that it is her understanding that there is always an informational hearing held concerning amendments. The zoning amendments are not voted on at Town Meeting which takes place at the School. The amendments are voted on as a ballot item in the Town Hall, so that there is no room for discussion. Mr. Jalbert questioned whether anyone would believe that the intent of the zoning amendment was to allow by right the introduction of large scale commercial activities in residential neighborhoods. He questioned whether the voters would have passed the amendment if they would have understood the impact of the amendment. Mr. Jalbert then noted that there was no appeal by the voters to change the requirement of a special exception for commercial riding stables.

Mr. Jalbert then questioned the compelling reason to have the Ehlinger's business classified as agricultural use. He believes there is "a loop hole" in the Ordinance that is not intended. Mr. Jalbert stated that this is the first time that this section of the Ordinance is being used. The Town is being exposed to an unlimited development

potential on the property. He did not believe that is right because it does not protect the abutters and does not protect the Town. The Town would be exposed to growing business where an unlimited number of people living on the site to support the business. He believed that the property cannot support that type of growth and that the Ehlingers should be able to do business in Town utilizing the proper category of the Ordinance.

Chairman Krzyzaniak confirmed that Mr. Jalbert was referring to the definition of Agriculture, Farm and Farming shown on page two of the Zoning Ordinance. Chairman Krzyzaniak then referred to the definition indicating that it includes “the breeding, boarding, raising, training, riding instruction, and selling of equines”. Mrs. Jalbert stated that the Ehlinger’s property is not a farm. If they were classified as a farm they could have horses. She believed that Erick Leadbeater and Glenn Bohanan could have horses at their farm. She believed that just because one has horses they are not classified as a farm. Within the Town’s definition of a farm there is a subcategory allowing horses; however, you must first have the farm. The Ehlingers purchased a single-family home with no barn on the property. They live in a three-lot residential subdivision in which their lot consists of 56-acres. When the house was last purchased the lot size consisted of ten-acres and the Jalbert’s property contained the 56-acres. The Jalbert’s then sold some of their land to the former owner. The house has not always been on a large lot.

Nancy Amsden of 211 East Penacook Road asked for clarification concerning Mrs. Gray’s comments about the primary use of the property. Mrs. Amsden explained her understanding of the business. In response, Mrs. Gray clarified that she was not saying that the principal use of the property is the single family residence because she was not sure how the Board will feel about the definition of the property as a farm. If the Board determines that the land is a farm then the house will part of the principal use of a farm.

Bobbie Murphy of 295 East Penacook Road explained the location of her property directly down hill from the Ehlinger property. Ms. Murphy stated that there was other property in Town that would have been more suitable for the Ehlingers; however, they decided to purchase property located at the top of a hill. She stated that whatever use occurs at the Ehlinger property will have a direct reflection on her property. Chairman Krzyzaniak reiterated the Zoning Board of Adjustment’s limited review of the appeal in that the Board is deciding whether the use of the Ehlinger’s property is an agricultural or commercial establishment. Ms. Murphy then advised that the Bohanan and Sandbank farms do not have ten parking spaces. Chairman Krzyzaniak noted that those farms are old and have been in existence. In response to Ms. Murphy’s comments concerning parking, Mrs. Gray referenced Gould Hill farm and Mrs. Robertson suggested that the Bohanan farm has large milk trucks that go to the property.

Bruce Lyon of 295 East Penacook Road addressed the Board indicating that there have been mistakes by the Zoning Board over the years. He referenced Pheniox Stable and previous and what he believed to be a continued problem with Pheniox Stables. Again, he suggested that the Zoning Board of Adjustment has made mistakes in the past and because of that the Board should take this issue under serious consideration. Mrs. Robertson advised that the Zoning Ordinance was

adopted in 1988; while the Pheniox Stable matter occurred in 1978. Again, Mr. Lyons suggested that the Board could learn from the Pheniox Stable matter.

Henry Amsden owner of property off East Penacook Road addressed Board stating that if it doesn't make a difference as to the number of horses at the property then the Town has a problem.

Mr. Jalbert stated that Pheniox Stable was involved in a dispute after the adoption of the 1988 Ordinance. He referred to a letter in 1991 concerning the classification of Pheniox Stable as a commercial riding stable. Mrs. Robertson inquired as to whether there is a residence on the same property. Mr. Jalbert responded that there are houses next door and across the street.

Planning Board Representative Ed Taylor of 76 Maple Street addressed the Board explaining that there were three Planning Board public hearings with discussions and a determination that the application qualified under the terminology for Agricultural. It was stated by the Applicant the use of breeding, boarding, raising, training, and riding instruction of equines. They facility the Ehlinger's propose is a larger structure having 24-stalls with a large riding arena for training of the horses. Considerations that the Planning Board had in terms of planning and layout and discussion of abutters were that the proposed site plan needed additional work. Mr. Taylor stated that from the Planning Board's point of view the site plan met the criteria for the agricultural use. In looking up information on the web about Pheniox Stables they appear to be an outdoor commercial venture. They do have horse shows of which they advertise. Mr. Taylor stated that the Board agreed that it was an agricultural use which was then challenged by the abutters at which time the Board took a second vote on the issue and again determined that the proposal is an agricultural use.

Attorney Bryan Gould of Brown, Olson and Gould addressed the Board representing the Ehlingers. Attorney Gould stated that the real issue before the Board is whether the use is an agricultural use or a commercial riding stable. He understood the Planning Board to conclude that a commercial riding stable was in the nature of a business that rents horses out for riders to come and trail ride. It has been stated that the Ehlingers will have trail riding; Attorney Gould explained that it is not true. The Ehlingers did request access to surrounding land to ride the horses and was denied permission, so there will be no trail riding associated with the use. The Ehlingers own nine (9) Arabian horses, so nine of the potential twenty-four that will be boarded at the facility will be owned by the Ehlingers. They also board other people's horses training them for horse shows that take place off premises. The training takes place indoors within the arena. Attorney Gould referred to the Town's definition of Agriculture, Farm, Farming which states, "The words 'agriculture' and 'farming' mean all operations of a farm, including: The breeding, boarding, raising, training, riding instruction, and selling of equines". He then stated that with respect to breeding that could be done for profit. Boarding, training, riding instruction could be done for profit. There are others uses referred to in the definition of Agriculture that also involve commercial activity, such as the commercial raising, harvesting and sale of fresh water fish or other aquaculture products.

Attorney Gould then recalled Mr. Jalbert making reference to the definition of Agriculture, which includes all operations of a farm. Attorney Gould then stated that a farm means a place where agriculture takes place. He believed that agriculture and farming are synonymous terms under the Town's Ordinance. Lastly, Attorney Gould stated that the definition in the Ordinance came from State Statutes. Any zoning amendment is put before a public hearing at which questions may be asked.

Jim Mason, a contractor/builder, who works for the Ehlingers addressed the Board explaining that he has been involved with the Farm Bureau and local/state regulation and policy setting. Mr. Mason passed out information from the NH Land Use Regulations, section 672:1. He reviewed the significant contributions of agriculture to New Hampshire and the fact that it municipalities shall not unreasonably limit the use by imposing planning and zoning ordinances and regulations.

Marc Jalbert readdressed the Board asking Mrs. Robertson what the definition of Commercial Riding Stable is in the Town's Zoning Ordinance. Mrs. Robertson responded that there is no specific definition in the Ordinance. Mr. Jalbert then questioned how the Board can define a Commercial Riding Stable when it is not defined. He believed that it critical in order for the Board to make a decision concerning the matter. Mr. Jalbert believed that the Ehlingers will not be operating an agricultural operation, but rather a recreational business. Again, he questioned the compelling reason for the Ehlingers proposal to be classified as an agricultural use.

At this point, Mr. Amsden, Ms. Murphy and Mrs. Jalbert spoke again concerning the Ehlingers' proposal and the classification of the use as agricultural versus a recreational use as a commercial riding stable.

Public testimony was closed.

Motion made by Mr. Koontz, seconded by Mrs. Hackwell, to vote on the Administrative Appeal as submitted. All in favor of voting. With five members voting, two voted in favor (Boatwright and Hackwell) and three voted in opposition (Gray, Koontz and Krzyzaniak). The majority of the Board agreed that the proposed use of the property at 100 Chase Farm Road is classified as an agricultural farm use in accordance with section 2.1.A.4 of the Town's Zoning Ordinance.

II. Review of the Minutes and Notice of Decision of November 1, 2005 and March 7, 2006.

Review of the minutes were deferred to the May 2, 2006 meeting.

III. Adjournment.

Chairman Krzyzaniak declared the meeting adjourned at 10:40 PM. The next scheduled meeting of the Board is Tuesday, May 2, 2006, 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.