

**Hopkinton Zoning Board of Adjustment**  
**Minutes**  
**May 2, 2006**

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment public hearing of Tuesday, May 2, 2006, at 7:00 PM in the Town Hall. Members present: Toni Gray, Charles Koontz, John Boatwright and Richard Hesse.

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Chairman Krzyzaniak began the hearing suggesting that the Board consider reviewing the applications out of order as the application of Drew Drummond will not require a full presentation.

Motion made by Mrs. Gray, seconded by Mr. Boatwright, to review the applications out of sequence from that which was posted for the hearing. Motion carried unanimously (Gray, Koontz, Boatwright, Hesse, and Krzyzaniak).

**I. Application.**

**TH06-3SP-3-5 Drew Drummond, NH Lodging & Restaurant Association** – Drew Drummond of the NH Lodging and Restaurant Association addressed the Board requesting that they amend their March 7, 2006 approval of his application to hold an event celebrating the NH Hospitality Industry. The event was to be held on July 29, 2006, and has since been post-poned. Mr. Drummond is now requesting permission to hold the same event on July 28, 2007, explaining that due to time constraints the Association believed it would be in their best interest to post-poned the event to next year. The event will take place on property owned by the Hopkinton State Fair Association, Inc., shown on Tax Map 222 as Lots 57.2, 59, 60, 61 and 79.

Mr. Drummond had informed the Police Chief and Fire Chief of the change in the date of the event and will continue to work with the departments in organizing the event.

Following brief discussion, motion was made by Mr. Hesse, second by Mrs. Gray, to approve application TH06-3SP-3-5 as amended (change in date of event). Motion carried unanimously (Gray, Koontz, Boatwright, Hesse, and Krzyzaniak). The application was approved. At the hearing of March 7, 2006, the Applicant adequately addressed the standards set forth in paragraph 3.8.6, which included addressing the criteria for a Special Exception set forth in paragraph 15.8.2 of the Zoning Ordinance.

**TH06-1V-3-1 Constance M. Doherty** – Attorney Patrick McNicholas addressed the Board on behalf of Constance Doherty who is requesting 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. This was a continuation of the April 4, 2006 hearing.

Attorney McNicholas addressed the Board explaining that Mrs. Doherty's property had been taxed as a building lot up until 2002 when the change occurred as a result of Mrs. Doherty approaching the Town. Mrs. Doherty would now like her property approved as a building lot, so to allow a modest single-family residence of approximately 16' x 26' to be built. Attorney McNicholas advised that Mrs. Doherty's lot comparable in size to other lots along one side of Robin Lane. Attorney McNicholas provided the Board with a sketch map of the property, indicating the location of abutting residences, vacant lots, the potential location of a new residence, setbacks, driveway, and septic and well.

Attorney McNicholas explained that he had visited abutting properties in determining the location of existing wells and septic systems. In one case, he was not successful at locating the septic system.

Attorney McNicholas re-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 predated zoning. The lot, if approved, would be put to a productive use consistent with the other five residential uses in the area."

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

"By granting the variance, the property owner would have use of a prior non-conforming lot that has otherwise been rendered useless by the zoning requirements."

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 five (5) other houses on the private right of way."

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.

"The setback restriction interferes with any reasonable use of the property. The lot was created in the early 1960's and is consistent size with others in the area."

(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 only way the property owner can avoid the private road issue is to change the status of the road; however, that would not be feasible. The Applicant would be happy to sign a private road waiver agreement that is an requirement under the State Statutes for building on private roads. The Statute allows construction along private roads to be approved by the Board of Selectmen after comment by the Planning Board; however, the Hopkinton Zoning Ordinance requires 50-feet of frontage and that is why the Applicant is before the Board, rather than the Board of Selectmen.”

Mrs. Gray questioned whether Mrs. Doherty proposes to live at the property. Attorney McNicholas was unsure, but assumed that she would sell the property.

Mr. Hesse questioned the zoning requirements in affect at the time of purchase of the property. Attorney McNicholas stated that the 1981 zoning requirements were in affect.

Chairman Krzyzaniak expressed concern with Mrs. Doherty not owning frontage along a Town road when the Zoning Ordinance requires a minimum of 50-feet of town road frontage.

Mr. Hesse believed the purpose of a variance is to allow deviations from the Ordinance, questioning whether the 50-foot requirement is more rigid.

Mrs. Gray suggested that the 50-foot requirement may have been for safety reasons, so that in the case of emergency there would be access to the property.

Attorney McNicholas estimated a roadway width of approximately 10-feet. Mr. Hesse estimated approximately 290-feet from Little Tooky Road to the property in question. Given the neighborhood, Mr. Hesse stated that he was inclined to grant the Variance. Mr. Boatwright concurred, stating that the Applicant had met the request of the Board in providing the map.

Motion made by Mr. Koontz, seconded by Mr. Hesse, to vote on Application TH06-1V-3-1 as presented. All were in favor of voting. With five members voting, four voted in favor (Gray, Koontz, Boatwright, and Hesse) and one voted in opposition (Krzyzaniak). The application was approved. The Applicant adequately addressed the standards set forth in paragraph 15.8.3 of the Zoning Ordinance. The majority of the Board agreed that Mrs. Doherty originally believed that the lot was a building lot, and that she had paid taxes as a building lot.

## **II. Other Business.**

- Motion for Rehearing submitted by Simon C. Leeming, Esquire on behalf of Stuart F. Nelson, dated and received on May 1, 2006. Motion for Rehearing pertains to the Zoning Board of Adjustment’s decision of April 4, 2006, in which the Board denied the Applicant’s application (TH06-2V-4-1) for a Variance to construct a residential dwelling as permitted in the R-2 district on a non-conforming lot with less than the required frontage on a public

road. The property is located off Clement Hill Road, shown on Tax Map 208 as Lot 14. The application was submitted in accordance with paragraph 5.2.1 of the Hopkinton Zoning Ordinance. There will be no public testimony accepted. ***Board scheduled review for Tuesday, May 16, 2006, at 7 PM, Town Hall.***

- **Motion for Rehearing** submitted by Stephen Amsden Et Al, received on April 28, 2006. Motion for Rehearing pertains to the Zoning Board of Adjustment's decision of April 4, 2006, in which the Board denied the Applicant's application (TH06-1A-4-3) for Administrative Appeal of the Hopkinton Planning Board's decision (#2005-30) of January 26, 2006. The Planning Board had 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. There will be no public testimony accepted. ***Board scheduled review for Tuesday, May 16, 2006, at 7 PM, Town Hall.***

### **III. Review of the Minutes and Notice of Decision of November 1, 2005 and March 7, 2006.**

Review of the Minutes and Notices of Decision were deferred to the May 16, 2006 meeting.

### **III. Adjournment.**

Chairman Krzyzaniak declared the meeting adjourned at 7:40 PM. The next scheduled meeting of the Board is Tuesday, May 16, 2006, at 7:00 PM in the Town Hall.

Karen L. Robertson  
Planning Director

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Pursuant to New Hampshire RSA 677:2, 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.