

Hopkinton Zoning Board of Adjustment
Minutes
May 16, 2006

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment meeting of May 16, 2006, at 7:00 PM in the Town Hall. Members present: Toni Gray, Charles Koontz and John Boatwright.

Chairman Krzyzaniak began by explaining that it is customary for the Zoning Board of Adjustment to have the same members review motions for rehearing as were present during the original hearing. Presently, there are only four members available as one member, Carolyn Hackwell, was not available due to medical reasons. With only four members present there is a possibility that there may be a tie vote at which time the motions for rehearing would automatically be denied. Chairman Krzyzaniak gave the petitioners a choice of having four members review their motions or to waive the 30-day time limit in which the Board has to act on the motions and to have the motions reviewed at a later date.

Chairman Krzyzaniak then offered to review the motions out of order allowing Stuart Nelson an opportunity to wait for his attorney to arrive. Mr. Nelson concurred.

Marc Jalbert (Amsden Et Al motion) asked to discuss the options outside of the meeting. Chairman Krzyzaniak concurred.

Stephen Amsden questioned whether the two members that had originally voted in favor of the appeal were present this evening. Chairman Krzyzaniak responded that all members are present with the exception of Carolyn Hackwell.

Chairman Krzyzaniak stated that both parties as it relates to the Amsden application (motion), this includes the petitioner and the property owner, must also decide whether or not to move forward this evening. The reason for the both parties is due to the fact that the motion is for a rehearing as it relates to an application that was granted to the property owner.

Mr. Nelson inquired as to whether Mrs. Hackwell would definitely be available next month. In response, Chairman Krzyzaniak stated that she was unsure. Mr. Nelson then inquired as to the possibility of having an alternate member participate in reviewing the motion. Chairman Krzyzaniak explained how the Board tries to have the same members that heard the original appeals sit when reviewing motions for rehearing. Mr. Nelson noted that there may be a possibility that Mrs. Hackwell will not be available for a rehearing should the motion be approved. Chairman Krzyzaniak agreed, stating that if a rehearing is granted the Board will the application review process over; at which time, an alternate member could be present if regular members were unavailable. Mr. Nelson inquired whether he would have another opportunity to appeal if his motion for rehearing is denied this evening. In response, Chairman Krzyzaniak stated that if the motion for rehearing is denied Mr. Nelson's only recourse would be to appeal to court.

Mr. Nelson inquired as to the time frame for rescheduling review of the motion should he agree to post-pone review. Chairman Krzyzaniak responded by saying that the Board would try to schedule the meeting as soon as possible. Again, Mr. Nelson inquired as to the Board's ability to

have an alternate participate in reviewing his motion. In response, Chairman Krzyzaniak suggested that the Board would consult with Town Counsel. Additionally, Chairman Krzyzaniak would inquire with Carolyn Hackwell as to whether she would be available within the next couple of weeks.

Mr. Amsden advised of his group's interest in post-poning review of the motion. Chairman Krzyzaniak asked if that included waiving the 30-day time period in which the Board has to act on the motion. Mr. Amsden replied yes, asking if the meeting would be scheduled within the 30-days. In response, Chairman Krzyzaniak stated that the Board hopes to be able to schedule the meeting within the 30-days; however, the Board is unable to commit to that time frame. She then explained the Board's intentions to make every effort to hold the meeting as soon as possible. Chairman Krzyzaniak reiterated that she would follow-up with Carolyn Hackwell as to whether she will be available.

Mrs. Amsden questioned how they would be affected should Carolyn not be available. Chairman Krzyzaniak was unsure, but stated that she would consult with Town Counsel as to how to proceed.

Chairman Krzyzaniak then asked Attorney Gould whether he would prefer to post-pone review or move forward. In response, Attorney Gould stated that they (the property owners) are not prepared to waive the 30-days and would like to conclude this process as soon as possible. In response, Chairman Krzyzaniak stated that the Board has a 30-day time period in which the ZBA must act on the motion for rehearing. Both parties (Amsden and Ehlinger/Levesque) must agree; otherwise, the Board members will move forward and review the motion with four members present. Since Attorney Gould has not agreed to waive the 30-day time period, the Board will review the Motion for Rehearing submitted by Stephen Amsden Et Al.

Chairman Krzyzaniak explained that the Board will not hear the merits of the case, but rather decide this evening whether or not to grant the motion for rehearing. The opportunity was given to the petitioners, as well as the property owners, to post-pone the meeting. With a four member Board a motion is always made in the affirmative and therefore if there is a tie vote the application (motion) is automatically denied. Mr. Jalbert questioned the statutory provision that indicates that a tie vote would be a loss. Chairman Krzyzaniak was unsure, noting that she has been a member of the Board for a number of years and that this process has always been the advice of Town Counsel. Again, Mr. Jalbert questioned the statutory provision. Chairman Krzyzaniak inquired with Mrs. Robertson. In response, Mrs. Robertson was not aware of the provision, but reiterated the fact that if a motion is made in the positive and it is a tie vote then the motion fails.

Chairman Krzyzaniak introduced members of the Board, and explained the process by which the Board would review point by point each motion.

- I. 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.

Mrs. Gray began by explaining that the reason for granting a rehearing is usually when a technical error has occurred or new evidence is presented that was not available at the time of the first hearing.

Section one of the motion, "Zoning Board did not rule on the validity of Hopkinton Zoning Ordinance section 3.6.2." Mrs. Gray believed that the Zoning Board of Adjustment is not required to rule on the validity of the Ordinance. The conflict clause is to address conflicts within ordinances and not when a Planning Board member disagrees with another Board member. Mrs. Gray provided an example of what she believed would be considered a conflict. For example, a residence requires a 40-foot front yard setback and a day care requires a 60-foot front yard setback for safety reasons. Mrs. Gray believed that a day care that is within a residence would require a 60-foot front yard setback. Under this scenario there is a conflict within the ordinance and not between two Planning Board members that disagree as to what section of the ordinance applies.

Again, Mrs. Gray reiterated that the Board is not required to rule on the validity. Chairman Krzyzaniak agreed, suggesting that the validity issue would have to be determined by the courts.

With regards to the statement that, "There is evidence in the January 10, 2006 Planning Board hearing minutes that the use classification of the Applicants' business was in dispute among Planning Board members, creating a conflict in the interpretation of the Applicants' use of the subject property." In response, Mrs. Gray stated that she had already stated her opinion on the conflict issue. Mrs. Robertson asked for clarification if the members believed that the entire first section related to the question of validity. Chairman Krzyzaniak replied yes, indicating that the bottoms of page one, entire page two and top part of page three relates to section one.

Section two of the motion, "The Planning Boards' representation to the Zoning Board on April 4, 2006, is not accurate." Mrs. Gray stated that the Planning Board's presentation did not sway her one way or another. In fact, she believed that their presentation to the Zoning Board of Adjustment was accurate. There were no other comments from other members. Chairman Krzyzaniak believed that there was nothing new in section two to justify a rehearing.

Section three of the motion, "Planning Board approved riding trails, Applicants deny use of riding trails, Applicants have riding trails." Mr. Koontz stated that he had put very little weight on the issue of riding trails. Mrs. Gray agreed, stating that the riding trails were a non-issue. There were no other comments from other members. Chairman Krzyzaniak inquired as to whether there is new evidence in section three that would warrant a rehearing. Members responded no. Mr. Koontz believed that the Applicants (property owners) could have riding trails on their property, and that the issue related more to riding trails outside of the property.

Section four of the motion, “Recent Superior Court decision supports Appellants’ assertion that the Planning Boards; deferral of its authority to the Applicants is illegal.” Mrs. Gray did not believe that the court decision related to the Zoning Board of Adjustment, noting that the Board of Adjustment cannot rule on the procedures of the Planning Board. Chairman Krzyzaniak agreed, stating that the Zoning Board of Adjustment is not over the Planning Board. Other Board members concurred.

Mrs. Gray noted that the Petitioners also asked the Board to request a definitive decision as to the legal operation of Section 3.6.2 of the Ordinance. Chairman Krzyzaniak noted that the original appeal is a separate document from the motion for rehearing. Mrs. Gray agreed, stating that the request for a definitive decision was part of the Petitioners original appeal of the Planning Board’s decision, noting that the Board is not in the business of providing legal decisions (advice).

Motion then made by Mrs. Gray, seconded by Mr. Koontz, to approve the application (motion for rehearing) as submitted. All in favor of voting. With four members voting, all four voted in opposition. The motion for rehearing was denied.

- II. 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.

Mr. Nelson addressed the Board agreeing to a waiver of the 30-day time period, so to allow his Motion for Rehearing to be reviewed at a later date when five members of the Board are present. Chairman Krzyzaniak informed Mr. Nelson that he would be notified as soon as possible of the new meeting date.

- III. Review of the Minutes and Notices of Decision of November 1, 2005 and March 7, 2006.

Review of the Minutes and Notice of Decision was deferred to the June 6, 2006 meeting.

III. Adjournment.

Chairman Krzyzaniak declared the meeting adjourned at 8:00 PM. The next regular scheduled meeting of the Board is Tuesday, June 6, 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.