

Hopkinton Zoning Board of Adjustment
Minutes
September 5, 2006

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment meeting of Tuesday, September 5, 2006, at 7:00 PM in the Town Hall. Members present: Charles Koontz, Toni Gray, John Boatwright, and William Horsfall.

Chairman Krzyzaniak gave a brief outline of the Rules of Procedure that govern the hearing; explaining that during review of the Motions for Rehearing the public will not have an opportunity to provide testimony. Review of the Motions for Rehearing will be based on the written request.

I. Applications.

TH06-4V-8-2 Stuart F. Nelson—Applicant requests a Variance from Section 5.2.1 of the Hopkinton Zoning Ordinance which requires non-conforming lots to have 50-feet of frontage, whereas Mr. Nelson's lot has only 30-feet of frontage. The property is located off Clement Hill Road in the R-2 (medium density residential) district, shown on Tax Map 208 as Lot 14.

Before asking Mr. Nelson or Attorney Puffer representing Mr. Nelson to present the application, Chairman Krzyzaniak stated for the record that she had received a letter dated August 18, 2006 from Attorney Puffer on behalf of Mr. Nelson (see attached copy). The purpose of the letter was to inform Chairman Krzyzaniak that at the September 5, 2006 hearing, Mr. Nelson would object to her sitting as a member of the ZBA in reviewing his application. The reason given was an indication that she is friends with Richard Schoch, an abutter of the Nelson property, who had previously appeared before the Board objecting to Mr. Nelson's proposal. In response, Chairman Krzyzaniak had read a written response to the request for recusal, "I have been requested by Counsel for Stuart Nelson to recuse myself from sitting on Application TH06-4V-8-2 because of a friendship with the Schoch family. My decision on the application coming before the Zoning Board of Adjustment is based on the Zoning Ordinance of the Town. I take into consideration the rules, the arguments for a variance or special exception or any other information pertaining to each application. My decision is based on the merits of each case and not friendship or other cases or applications. If friendship was a reason to recuse myself or any member of this Board, one or members would have to recuse themselves on three quarters of the applications coming before this Board. I personally have lived in this Town since I was six years old, so I know a lot of people and I would hope that the majority of people that I know in this Town I can call friends. I can't call the newcomers in the Town friends because some of them I do not know. I would hope that other people that I know in this Town such as Dick Drescher and the Dufaults I can consider them a friend (Note: Mr. Drescher and Mr. and Mrs. Dufault were in the audience). We are not socially friends but I hope that I can call them my friends.

Members of the Board are appointed because of expertise, impartiality, honesty and so forth. I personally take offense to having my integrity questioned. I have been on this

Zoning Board of Adjustment for twenty-five (25) plus years. I served a one (1) term Selectman position prior to sitting on this Zoning Board of Adjustment and I have been the Chairman of this Board for over twenty (20) years. So, I do take offense to this request. I have never considered friendship as a reason to approve or deny any application or applicant and never will. I, therefore, refuse to step down from this Board for the application of Stuart Nelson."

Chairman Krzyzaniak also noted that should she have agreed to recuse herself that there would not be a five (5) member Board available as was requested by Mr. Nelson. The two (2) other alternates had previous engagements.

Before beginning review of Mr. Nelson's application, Chairman Krzyzaniak asked the Board whether they should proceed in hearing the application or whether the application submitted is similar to the Mr. Nelson's application that was denied by the Board on April 4, 2006. In response, Attorney Puffer indicated that this application is materially different. The difference is the circumstances. He advised that the prevailing law is that of Fisher v. Dover where the Supreme Court in the Fisher case has agreed that there must be one of two criteria present. Either a material change in circumstances affecting the merits of the application or the application has to be for a use that materially differs in nature and degree from the first application. In Mr. Nelson's application he is requesting the same use for the same property. However, Attorney Puffer believed that there has been a material change in circumstances affecting the merits of the application. The first application that was before the Board involved the property in question which is approximately an eight (8) acre parcel with no frontage as defined by the Zoning Ordinance. Since that time Mr. Nelson acquired a fee simple title for the thirty (30) foot strip of land, so he now has thirty (30) feet of frontage along Clement Hill Road.

Mrs. Gray questioned the lot number or ownership of the parcel in which the thirty (30) feet of land is attached to. In response, Attorney Puffer stated that the frontage is now attached to the Nelson eight (8) acre parcel; however, it has not been formally merged. Mrs. Gray stated that even now the thirty (30) feet of frontage is actually a separate lot, questioning whether Mr. Nelson's application is timely. Attorney Puffer believed that the application is timely, stating that Mr. Nelson owns the eight (8) acre parcel that is contiguous with the thirty (30) foot strip of frontage. Attorney Puffer advised that Mr. Nelson is prepared to merge the lots and that any rights granted would be contingent upon such merger.

Chairman Krzyzaniak asked the actual dimensions of the thirty (30) foot strip of land. In response, Mr. Nelson estimated 30-feet in width and 1000-feet in length. Attorney Puffer believed that section from Clement Hill Road to the beginning of Mr. Nelson's property is approximately 400-feet in length. Mr. Boatwright noted that he had calculated the length at 391-feet to the Nelson lot.

Attorney Puffer stated that the standard is whether a reasonable Zoning Board of Adjustment member could vote differently in deciding whether the application is substantially similar to the previous application.

The application that was previously denied has been appealed and is now pending in Merrimack County Superior Court. Attorney Puffer believed that the primary reason for denial of the previous application was that the Board found that the granting of the Variance would not affect substantial justice because the Applicant knew that the property lacked the required frontage at the time he had purchased the property. Attorney Puffer explained that at the time the Applicant purchased the property he believed that he owned the 30-feet of frontage as it is shown on the tax records. During title work it was determined that he didn't own the frontage and that someone that no longer owns land in the area actually owned the property.

Mrs. Gray questioned the actual size of the area that Mr. Nelson recently purchased. Mr. Nelson stated that he has not had the property surveyed so that he not clear as to the actual amount of property that he owns; however, he believes that he also purchased property that extends towards the existing camp ground.

Attorney Puffer indicated that if Mr. Nelson were to try to obtain 50-feet of frontage it would require a subdivision that would probably not be approved as a practical matter. He believed that a reasonable Zoning Board of Adjustment member could determine that a Variance from thirty to fifty feet is appropriate. In response, Mrs. Gray stated that all members of the Board are reasonable.

Mr. Boatwright questioned whether the property was acquired from one of the present abutters. Attorney Puffer replied no, stating that the property was purchased from someone who had formerly developed the property in the area, but mistakenly did not include the 30-feet in any of the transfers.

Mr. Koontz questioned why Mr. Nelson had not merged the two (2) parcels. Attorney Puffer responded that it had not been completed, but that Mr. Nelson is now presenting the properties as one (1) parcel.

Mr. Boatwright stated that he would not interpret the properties as being merged until such time as they have been formerly merged. Mrs. Gray concurred, stating that is why she had questioned whether Mr. Nelson's application is a timely application. Mr. Horsfall noted that the deed reflects that Mr. Nelson had purchased the 30-foot parcel in April. Mrs. Gray agreed, stating that Mr. Nelson has had plenty of time to merge the two (2) parcels.

Chairman Krzyzaniak inquired whether Mr. Nelson is scheduled to go before the next Planning Board for the merger. Attorney Puffer replied no.

Again, Chairman Krzyzaniak asked the Board to decide whether the circumstances in this particular application are different from the application denied on April 4, 2006. In response, Mrs. Gray stated that while the circumstances may be different, the application is not timely due to the fact that the two (2) lots have not been merged. Mr. Koontz concurred, suggesting that it would be well advised for Mr. Nelson to have the 30-foot strip of land surveyed so that he knows what he actually owns. Mr. Boatwright concurred, stating that the merger and survey are necessary.

Chairman Krzyzaniak then questioned whether Mr. Nelson would have to present a new application before the Board of Selectmen since their application reflects the two (2) lots as being merged. Following brief discussion, the Board agreed that the matter is something for the Board of Selectmen to decide.

Motion made by Toni Gray, seconded by William Horsfall, to deny Application TH06-4V-8-2 due to the fact that there was no material change of circumstances from the application that was reviewed and denied by the Zoning Board of Adjustment on April 4, 2006. With five members voting, all five voted in favor of the motion (Gray, Horsfall, Koontz, Boatwright, and Krzyzaniak). The denial was based on the fact that the dimensions of the lot and the use proposed remains the same as was presented to the Board on April 4, 2006, Application TH06-2V-4-1.

II. Other Business to legally come before the meeting.

- Motion for Rehearing submitted by Richard and Judith Houston, dated August 19, 2006 and received on August 21, 2006. See attached copy. Motion for Rehearing pertained to the Zoning Board of Adjustment decision of August 1, 2006, in which the Board granted the application (TH06-4S-8-1) of Moser Engineering for a Special Exception to construct a retreat house for lodging and meetings at property owned by Saint Methodios Faith and Heritage Center, LLC, located at 329 Camp Merrimac Road in the R-2 (medium density residential) district, shown on Tax Map 202 as Lot 8. The application was submitted in accordance with Table of Uses 3.6.B.1 of the Hopkinton Zoning Ordinance. There was no public testimony accepted.

In reviewing Mr. and Mrs. Houston's Motion for Rehearing it appears that they believe that they are abutters and should have been notified of the August 1, 2006 hearing. In response, Mrs. Gray understood that the location of the Houston property does not meet the legal definition as an abutter as they are across the lake.

With regards to Mr. and Mrs. Houston's comment that the current camp is only used for youth camp, Mrs. Gray disagreed, indicating that facility has been used by other organizations in the past. She recalled being told by the Director of the property that the facility had been used by other organizations and residents. In particular, a resident of Ridge Lane utilized the facility for a wedding anniversary. Chairman Krzyzaniak concurred, noting that Mr. and Mrs. Houston use the word, "rented" when expressing concern that the facility will be used by outside organizations. Chairman Krzyzaniak stated that in reviewing the application she did not recall that the facility would be "rented", but rather that the owners of the facility would allow outside groups to use the property and that they would accept donations for use of the facility. Mrs. Gray recalled the Director of the facility explaining the proposed use and presenting photographs of the property. Mr. Boatwright concurred, stating that it was very clear as to the proposed use of the facility.

Paragraph five of the Motion for Rehearing references Chairman Krzyzaniak commenting that if the application were approved she would hope that the

church would develop an agreement as to the uses that would be allowed. In response, Chairman Krzyzaniak agreed with the statement; however, did not believe that the lack of including her comments as a condition of approval would rise to a level of granting a Motion for Rehearing. She further noted that if she really believed that the allowable uses were an issue that she would have included the matter as a condition of approval. Mr. Koontz concurred; noting that on occasions in reviewing applications the Board discusses placing conditions on applications, but in the end decides not to do so. He agreed that the lack of inclusion of the uses as a condition of approval is not a reason to grant a Motion for Rehearing.

Following brief discussion, the Board agreed that the issues raised in the Motion for Rehearing do not warrant a rehearing of the application. With five members voting, all five members voted in favor of denying the Motion for Rehearing as submitted.

- Motion for Rehearing submitted by Louis and Sandra Josephson, dated August 21, 2006 and received on August 22, 2006. See attached copy. Motion for Rehearing pertained to the Zoning Board of Adjustment decision of August 1, 2006, in which the Board granted the application (TH06-4S-8-1) of Moser Engineering for a Special Exception to construct a retreat house for lodging and meetings at property owned by Saint Methodios Faith and Heritage Center, LLC, located at 329 Camp Merrimac Road in the R-2 (medium density residential) district, shown on Tax Map 202 as Lot 8. The application was submitted in accordance with Table of Uses 3.6.B.1 of the Hopkinton Zoning Ordinance. There was no public testimony accepted.

In reviewing the Motion for Rehearing, Board members believed that Mr. and Mrs. Josephson raise the same issues as the Board discussed in reviewing the Houston Motion for Rehearing.

Mrs. Gray noted that the Director of the facility had disclosed the proposed uses of the facility in detail at the August 1, 2006 hearing. She believed that there had been a misunderstanding as to the version of the information that was provided at the hearing. Again, Mrs. Gray believed that the Board had received a detailed accounting as to use of the proposed facility.

In reviewing the second paragraph of the Motion, Mr. and Mrs. Josephson express their concerns with traffic, safety and noise. In response, Mrs. Gray noted that those issues were discussed at the hearing. Furthermore, the issues are also now being reviewed by the Planning Board.

Following brief discussion, the Board agreed that the issues raised in the Motion for Rehearing do not warrant a rehearing of the application. With five members voting, all five members voted in favor of denying the Motion for Rehearing as submitted.

III. Other Business.

- The Zoning Board of Adjustment scheduled review of three (3) additional Motions for Rehearing pertaining to the Board's decision of August 1, 2006, in which the Board granted the application (TH06-4S-8-1) of Moser Engineering for a Special Exception to construct a retreat house for lodging and meetings at property owned by Saint Methodios Faith and Heritage Center, LLC, located at 329 Camp Merrimac Road in the R-2 (medium density residential) district, shown on Tax Map 202 as Lot 8. Motions for Rehearing submitted by A. David and Karen Dufault, Charles and Sheri Myers and Karen Harman, and Robert DeFusco Et Al will be reviewed on Thursday, September 21, 2006, at 6:30 PM in the Town Hall. There will be no public testimony received.

IV. Review of the Minutes and Notice of Decision of August 1, 2006.

Motion made by Mrs. Gray, seconded by Mr. Koontz, to approve the Minutes and Notices of Decision of August 1, 2006. Motion carried unanimously.

V. Adjournment.

Chairman Krzyzaniak declared the meeting adjourned at 8:27 PM. The next regular scheduled meeting of the Board is Tuesday, October 3, 2006, at 7:00 PM in the Town Hall.

Karen L. Robertson
Planning/Zoning Director

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.