

Hopkinton Zoning Board of Adjustment
Minutes
May 1, 2007

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment hearing of Monday, May 1, 2007, 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. She then suggested that the Board set a specific time of 11:00 PM for adjourning the hearing, at which time, any remaining applications to be reviewed would be tabled to another hearing date that would be announced this evening. The Board unanimously agreed.

I. Applications.

TH07-1S-4-1 Jack Porter—Mr. Porter addressed the Board to request a Special Exception to convert the use of a detached building from an industrial (light assembly) use to a residential use. The property is owned by Louisa Porter, located at 881 Main Street in the VB-1 (village commercial) district, shown on Tax Map 101 as Lot 5. The application was submitted in accordance with Table of Uses 3.6.A.1 of the Hopkinton Zoning Ordinance.

Mr. Porter recalled four-years ago he had presented an application to the Board for use of the building by his former tenants. At the time, he had advised that at some point in the future he would most likely convert the use of the building into a single-family unit. The building (garage) is located in the rear of the property and presently contains a full bath. The proposal would include renovations to the building to install a kitchen. The building is currently connected to Town water and sewer. Mr. Porter anticipates less of impact on services, including traffic, with the use of the building for residential purposes, rather than commercial purposes. He noted that his previous tenants had between 12 and 15 employees. All parking presently exists with the change in use requiring two parking spaces in accordance with the Zoning Ordinance.

Mr. Porter 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.

"In the VB-1 zone, residential and commercial uses are permitted. The residential use is permitted in accordance with Table of Uses 3.6.A.1 of the Zoning Ordinance."

2. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.

"The proposed use as a single family residence with Town water and sewer will not create any hazard to the public."

3. No detriment to property values in the vicinity or change in the essential characteristics of a residential neighborhood on account of the location or scale of buildings and other structures, 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 building has been used for the past four years as assembly space. It is believed that it will be less of an impact to utilize the space as a single-family residence."

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

"Again, it is anticipated that the use of the building as a single-family residence will create less traffic, a maximum of two vehicles, than was created when utilizing the building for assembly purposes."

5. No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.

"The assembly business consisted of between 12 and 15 employees. The residential use is anticipated to use fewer services as there will be a maximum of two people living in the building."

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

"There will be no changes in the parking lot or building size as a result of the change in use."

7. An appropriate location for the proposed use.

"The proposed use fits within the mixed uses allowed within the district."

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 renovations to the building are believed to improve the appearance of the building. Again, the use is anticipated to create less of an impact in the area."

9. In the public interest and in the spirit of the ordinance.

"Again, improving the building for the purpose of converting the use to residential will improve the aesthetics of the area."

Mrs. Hackwell referred to a letter from the Deputy Fire Chief outlining applicable codes for the conversion of the building. Mr. Porter noted that he had met with Deputy Chief Pianka to review applicable codes and has agreed to address the requested changes to the building.

Chairman Krzyzaniak questioned whether a portion of the pavement in front of the building will be removed. In response, Mr. Porter noted that there will be no changes to the parking lot. However, there will be gutters installed on the front of the building to address water run-off.

There was no public testimony.

Mrs. Gray and Mrs. Boatwright believed that the Applicant had addressed the criteria to be granted a Special Exception.

Motion made by Mr. Boatwright, seconded by Mrs. Hackwell, to vote on Application TH07-1S-4-1 as presented. Motion carried unanimously. With five members voting, all five voted in favor (Boatwright, Koontz, Hackwell, Gray, and Krzyzaniak) of approving the application as presented. The Applicant adequately addressed the criteria to be granted a Special Exception set forth in paragraph 15.8.2 of the Zoning Ordinance.

TH07-3S-5-1 Split Tree Management Company LLC—Peter Russell, principal of Split Tree Management Company, addressed the Board to request a Special Exception to utilize his property, including the existing and proposed structure, located at 228 Bound Tree Road for closed storage of raw materials, finished goods or construction equipment, accessory outside storage, and repair garage. The application was submitted in accordance with Table of Uses 3.6.F.8 (repair garage), 3.6.G.12 (closed storage), 3.6.H.6 (accessory outside storage) of the Hopkinton Zoning Ordinance. The property is located in the B-1 (commercial) district, shown on Tax Map 221 as Lot 72.

Mr. Russell began by explaining some of the history of the property, noting that he and his wife, Marilyn, and son, Joshua, had purchased the property in 2000 from William Gerrard. Prior to the purchase, Mr. Gerrard had operated a sandblasting business from the property. After purchasing, Joshua had operated a landscaping and stone work business from the business.

Mr. Russell recently had been before the Planning Board for a conceptual consultation, discussing his proposal to construct additions to his building for the purpose of continuing use of the building by a landscaping business, storage of excavation equipment inside and repair garage for Caterpillar transmissions. At the time, the Board had suggested that Mr. Russell apply to the Zoning Board of Adjustment for uses which require a Special Exception and then apply to the Planning Board for Site Plan Review.

Mr. Russell reviewed the criteria for a 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.

"The request for a Special Exception is for the following uses: In accordance with Section 3.6.F.8, 3.6.G.12, and 3.6.H.6 of the Hopkinton Zoning Ordinance. The property is located in the B-1 zone which provides for multiple uses."

2. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.

"The use applied for will in no way produce potential fire, explosion or release of toxic materials. All uses will be passive uses in the B-1 zone."

3. No detriment to property values in the vicinity or change in the essential characteristics of a residential neighborhood on account of the location or scale of buildings and other structures, 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.

"All uses will enhance the property. Buffers are in place. Building is in place. This will only increase values of the neighborhood and add commercial value to the tax base."

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

"There will be no substantial increase in traffic."

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 demands on the municipal infrastructure."

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

"There will be no increase in water runoff. Soils in the area are sandy."

7. An appropriate location for the proposed use.

"This is a B-1 (commercial) zone. WE propose to have multiple uses as applied for."

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.

"This will in no way adversely affect the health and safety of the residents."

9. In the public interest and in the spirit of the ordinance.

"This is creating multiple uses as the zone indicates. It will also diversify the tax base. Certainly it is in the spirit of the Ordinance."

Chairman Krzyzaniak asked whether it is anticipated that traffic will be entering and leaving the property at all times. Mr. Russell responded no, explaining how most of the anticipated uses would take place off-site. For example, while the landscaper would have storage of equipment and materials at the property, the actual landscaping work would take place at other properties. Additionally, the storage and repairs may take place on and off site. Repairs and storage of the excavation equipment or caterpillar transmissions may take place inside the building; however, the equipment will be used off-site. Mr. Russell noted that he had been approached by an individual that repairs caterpillar equipment about using space within his building; however, there has been no formal agreement.

Mr. Koontz inquired as to whether there would be any toxic materials associated with the equipment stored and repaired at the property. He also questioned how the oils and fluids will be disposed. In response, Mr. Russell recalled his son changing oils and making repairs to his equipment at the property. He anticipates that his tenants would dispose of oils and other fluids or materials in a proper manner such as recycling oil. Mr. Russell explained how his son had a method by which he recycled water used when cutting granite. Chairman Krzyzaniak questioned whether there would be a formal rental agreement that would address disposal of materials. Mr. Russell didn't think that it would be necessary, stating that he does not want any storage of waste oil or other waste materials at his property. Chairman Krzyzaniak agreed that it would not be something that Mr. Russell would allow, but wanted to be sure that tenants understood that it would not be permitted.

Chairman Krzyzaniak asked Mr. Russell whether he planned to construct mini-storage units at the property. Mr. Russell replied no; however, in order to have storage of a dump truck, excavator, or landscaping materials, he needs to apply for permission to have storage of raw materials and finished goods as listed in the Table of Uses in the Zoning Ordinance.

Chairman Krzyzaniak inquired whether Mr. Russell would be going before the Planning Board for Site Plan Review. Mr. Russell replied yes, and stated that he currently has a natural buffer at the front of his property and a man-made berm separating his property from that of Greg Bockius.

Public testimony was opened.

Jean Eaton of Bound Tree Road addressed the Board expressing concern with not knowing the specifics of the business that will be using the property. She questioned the types of repairs and outside storage that is intended to take place. In response, Mr. Russell stated that when he had conversations with the Planning Board, they had suggested that he apply for the different uses that may take place at the property. So, Mr. Russell believed that he had done so when applying to the Board. Mr. Russell, again, stated that he has no formal agreement with someone to repair Caterpillar equipment at the property; however, he was approached by a person who does that type of business. He noted that he has no intentions of moving Milton-Cat to his property on Bound Tree Road.

Joannie McIntire of Bound Tree Road addressed the Board also expressing concern with the potential uses of the property. She questioned whether the next owner of

the property could operate a repair garage as a result of a permit issued to Mr. Russell. At this point in time, the Board reviewed the uses allowed in the B-1 district, noting that a repair garage without gas pumps is a permitted use. Chairman Krzyzaniak responded to Mrs. McIntire's concern by explaining that Special Exceptions and Variances go with the property; however, if there are changes from what was approved and represented to the Board, then the property owner would have to come back before the Board for a new or amended permit.

Chairman Krzyzaniak asked about the proposed outside storage. Again, Mr. Russell stated that in order to allow for the landscaper to store bark mulch, stone, granite, or other materials at the property, he would need a Special Exception to allow accessory outside storage.

Mrs. Gray questioned whether each of the proposed uses might have outside storage. Mr. Russell stated that he hadn't thought of that possibility.

Mrs. Eaton suggested that there be conditions imposed as to the location of the outside storage.

Mrs. Gray then questioned whether it would be possible to have the outside storage located in the rear of the property, behind the building. Mr. Russell replied yes, stating that it would limit the space available for storage. He recalled that Mr. Gerrard had received a Variance from the Zoning Board of Adjustment for outside storage with no limitation as to the location. He further noted as a comparison that the Zoning Ordinance allows him to construct a building within 50-feet of a residential use. In response, Mrs. Gray did not believe the Board should limit the location of outside storage which would then render most of the lot unusable.

Joe Eaton of Bound Tree Road believed that storage of mulch piles and other natural materials would be less visible as compared to storage of equipment.

In reviewing the criteria for a Special Exception, Mr. Koontz questioned whether there would be any unsightly outside storage. Mr. Russell replied no.

Mrs. Eaton then asked whether the buffers would remain and whether Mr. Russell intends to remove additional trees on his property. Chairman Krzyzaniak and Mrs. Gray suggested that discussion concerning buffers and tree removal be discussed with the Planning Board during review of the site plan.

Mark Turner of Bound Tree Road addressed the Board explaining that he owns property across the street from Mr. Russell's property. Mr. Turner advised that the previous owner of his property, Nic Hasey, used the garage on the property for storage of his landscaping equipment. Mr. Turner operates a small excavation business and currently stores his heavy equipment at his property. However, Mr. Russell has offered space available in his building for storage which is preferable since the equipment would be stored inside. Mr. Turner explained how he leaves from his property early in the morning with his equipment and returns in the evening. Occasionally, there may be a load of crushed stone stored at the property on a temporary basis. Lastly, Mr. Turner informed the Board that he does not typically do his own repairs to his equipment. Instead, he hires a fleet service that

comes to the property to change the oil and other fluids. The fleet service removes all waste when leaving the property. Any extensive repairs that may be required are usually done at the site of the equipment dealer.

Public testimony was closed.

Mr. Boatwright believed that the Applicant had addressed the criteria to be granted a Special Exception. Mr. Koontz concurred, noting that Mr. Russell satisfied the requirements of items two and three of the criteria.

Mrs. Hackwell noted that the B-1 district is a commercial district that allows multiple uses. Mrs. Gray agreed, stating that she believed that Mr. Russell will be sensitive to the concerns of the neighbors.

Motion was then made by Mrs. Hackwell, seconded by Mr. Boatwright, to vote on Application TH07-3S-5-1 as presented. Motion carried unanimously. With five members voting, all five voted in favor (Boatwright, Koontz, Hackwell, Gray, and Krzyzaniak) of approving the application as presented. The Applicant adequately addressed the criteria to be granted a Special Exception set forth in paragraph 15.8.2 of the Zoning Ordinance.

TH07-4S-5-2 Paul Mertz—Mr. Mertz addressed the Board requesting a Special Exception to continue the operation of his plumbing business as a Home Business. The property is owned by Paul and Linda Mertz, located at 47 Hawthorne Hill Road, shown on Tax Map 251 as Lot 10.2. The application was submitted in accordance with Table of Uses 3.6.A.8 of the Hopkinton Zoning Ordinance.

Mr. Mertz reviewed the criteria for a 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.

"The Home Business is allowed per Table of Uses 3.6.A.8 by Special Exception."

2. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.

"There will be no hazard to the public or adjacent property as we do not store hazardous materials or have them on site. There will be no potential fire, explosion or toxic release due to the business operation."

3. No detriment to property values in the vicinity or change in the essential characteristics of a residential neighborhood on account of the location or scale of buildings and other structures, 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.

"There will be no detriment to property values due to the operation of the business. It will still be a residential neighborhood of two houses and the scale of

my house will not change. All materials for the business will be stored indoors and we have no unsightly vehicles or other materials."

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

"We will have the same level of traffic as we have had for the last 15 years, my wife leaves in the AM for work, I leave in the AM (9:00 AM) for service calls, my son arrives in his car at 8:30 AM and leaves at 5:00 PM. My wife and I and other children arrive later with some variation as to timing."

5. No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.

"We do not have any demand on water, sewer, and waste disposal as we have a well and septic on-site existing. The police and fire are not affected by my son answering the phone as we have for the last 15 years. We will not have any more children and they are all through school as of this year."

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

"There will be no change in the water runoff as no changes are being made."

7. An appropriate location for the proposed use.

"We are zoned R-4 which is appropriate for the use that we have been using for the last 14 years and wish to get approved for now that we are aware of the permit."

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.

"We will not adversely affect the health and safety of residents (only two houses on dead-end street) and are not detrimental to the use or development of adjacent or neighboring properties."

9. In the public interest and in the spirit of the ordinance.

"I am a self-employed plumber who does work in Town. This is a benefit to the Town as there are too few plumbers. This is in the spirit of the Ordinance as I only have one employee and that is my son who answers the phone at my house."

Mr. Mertz reviewed the criteria for a Home Business in accordance with Section 2.1.H.1 of the Hopkinton Zoning Ordinance.

- (a) Entails contact with the general public at the premises.

"We do not have contact with the general public at my house. My business is a service business, with services being performed at the client's home. We bring our own tools and supplies, which are mostly stored in my truck, to the client's house after they have called on the phone to schedule an appointment."

- (b) Is capable of being unobtrusively pursued.

"My business is unobtrusively pursued. The normal procedure for any given day is as follows:

My son drives into the driveway at approximately 8:30 AM, parks his car and walks into the house. We confer as to what service calls I will be performing that day. My first appointment is usually set for 9:00 AM, and I drive out of my driveway between 8:45 AM and 9:00 AM and am gone for the remainder of the day. On occasion I may return for lunch, or my son may leave for lunch or other off-site activities such as going to the bank or Post Office. At approximately 5:00 PM, my son leaves the premises to return to his home, and I return to my house for the evening.

On a rare occasion I will have to leave for an after-hours emergency call, but that is not common place. After-hours calls are any call scheduled after 5:00 PM. So far this year (as of May 1, 2007), I have performed four (4) after-hours calls and seven (7) weekend calls. Last year (2006), I had nine (9) after-hours calls and eleven (11) weekend calls.

I do not regularly receive deliveries of materials at our house. Generally, I either pick up supplies directly from the vendor, or have them delivered to the particular job site that I will be working at."

- (c) Creates no nuisance nor any environmental, health or safety concerns.

"We do not create a nuisance or environmental, health or safety concerns for our neighborhood.

My business operations consist of my son coming to our house five (5) times a week and myself going to work five (5) days a week, as most of us do in our pursuit of earning a living. The traffic that we generate does not create any safety hazards different than that which any normal household would incur. If I were to have a babysitter come to my house and watch my children, we would have the same amount of traffic that we have now.

I do not store any hazardous materials as relates to my business. The items that I store are mostly in my truck, and are inert, such as faucets, toilets, water heaters, etc."

- (d) Is clearly incidental and subordinate to the dwelling use.

"I have an office in my house where my son answers the phone and uses a computer to perform general clerical duties. I have a few shelves in the barn with repair parts on them. We have four (4) people residing at the residence

who either work or go to school. According to our tax card, we have 6,312 square feet of living space.

The business is clearly incidental and subordinate to the dwelling use."

- (e) Does not change either the character of the dwelling as a residence or the character of the neighborhood in which the Home Business is established.

"We have not changed the exterior of our house in any way in order to have a home business.

If the business were closed tomorrow, the only difference in our neighborhood or residence would be that my son would probably visit less frequently if he worked for someone else. I would still drive away each morning and return at night. I would still have to leave some evenings and weekends. My wife would still leave each morning to go to work, and return home at night. My daughters would still go to school and return after classes. I would still have a plumbing truck (although it would have someone else's name on it) parked in the driveway as the zoning ordinances allow. Nothing about the house or neighborhood would change whether I have a home business or I work for someone else."

- (f) Is conducted by the resident owner(s) of the dwelling.

"I am a resident owner of my house and I am who conducts the business."

- (g) Employs not more than one person outside the family (as defined in Section II, paragraph 2.1.F.1).

"I do not at present employ anyone outside of my family. My son answers the phone at my house."

- (h) Utilizes an area (either in the dwelling or in an accessory building) of not more than twenty-five percent (25%) of the total floor area of the dwelling (including any functional basement) or five hundred (500) square feet, whichever is less.

"We utilize an area under 500 square feet and that is well under twenty-five percent of our floor area. I have one box truck that I bring home at night and park at 47 Hawthorne Hill Road. It is screened by other vehicles, and a forty-five (45) foot line, five (5) foot high solid wood fence that runs parallel to my common boundary with my neighbor."

Mr. Mertz reviewed the criteria for a Home Business in accordance with Section 3.7.3 of the Hopkinton Zoning Ordinance.

- (a) The use shall be carried out entirely within the dwelling or an accessory building located on the same premises as the dwelling, such to the area limitations set forth in Section II, paragraph 2.1.H.1.

"We carry out the business inside the house by answering the phones and performing general clerical duties. We do not have customers come to the house, and we do not carry out the business on the exterior property of the residence. We are in compliance with the office area as answered in previous statements."

- (b) There shall be no display of goods or wares visible from the street.

"We do not display goods or wares at all. I have my repair parts inside my truck, which I take to the customer's home."

- (c) The dwelling or accessory building in which the Home Business is conducted shall not be rendered objectionable to the neighborhood because of exterior appearance, emission of odors, gas, smoke, dust, noise, electrical disturbance, hours of operation or in any other way.

"The dwelling is not rendered objectionable because of exterior appearances as there have been no modifications to the exterior of my house. We do not emit odors, gas, smoke, dust, noise, or electrical disturbances, as the business operation merely consists of my son sitting inside the house answering the phone and working on the computer.

As stated previously, the hours of operation are normal business hours with no additional activity beyond what a normal family with teenage children would incur."

- (d) In a multi-family dwelling, the Home Business use shall in no way become objectionable or detrimental to any residential use within the multi-family dwelling. It shall include no features of design not customary in buildings for residential use.

"We do not have a multi-family dwelling, so this is not applicable."

- (e) The use shall not create a traffic safety hazard, nor shall it result in a substantial increase in the level of traffic congestion in the vicinity of the dwelling.

"The business does not create a traffic safety hazard or result in a substantial increase in the level of traffic congestion in the vicinity of the dwelling, due to the fact that we do not have the public coming to the office. The only increased traffic is that my son drives into our driveway at approximately 8:30 AM and leaves at approximately 5:00 PM, Monday through Friday.

We very seldom get deliveries to the house, as we normally pick-up our parts at the local supply house, or have them delivered to the jobsite."

- (f) No outside storage of equipment will be allowed in connection with the Home Business.

"We do not store equipment outside in conjunction with the business. It is either stored inside my service truck, or inside the barn on the shelves. If left outside to the elements, my repair parts would get ruined."

- (g) Any special exception for a Home Business (i) shall be nontransferable, (ii) shall be issued to the individual applicant(s) only, and (iii) shall automatically expire when such applicant(s) is no longer the resident owner(s) of the dwelling.

"Not applicable."

- (h) Not more than one commercial vehicle in connection with the Home Business shall be stored on the premises. Parking areas associated with or needed for the Home Business, if any, shall be effectively screened from abutting and facing residential properties by appropriate fencing, four (4) feet in height, or by an evergreen planting at least three (3) feet in height, at the time of planting.

"I have one plumbing truck that I bring home at night and park at 47 Hawthorne Hill Road. It is screened by other vehicles and a 45 foot long, five foot high solid wood fence that runs parallel to my common boundary with my neighbor."

- (i) Site plan review by the Planning Board shall be required.

"I have the proper paperwork submitted and will have the site plan reviewed on the eighth of this month."

Mr. Koontz questioned whether when describing Mr. Mertz's business it would be considered as being conducted entirely within the dwelling. Mrs. Robertson recalled other home businesses, such as a doctor, lawyer, and computer consultant that has clients come to the home, but also operates their business outside of the home at a hospital, court, or client's home or place of business.

Chairman Krzyzaniak questioned whether Mr. Mertz's son lives in the home. Mr. Mertz replied no, advising that his son lives in Concord; however, he comes to the home daily.

Public testimony was opened.

Attorney Derek Lick representing Tad Renvyle, neighbor of Mr. Mertz's property, addressed the Board explaining that the issue of the home business was brought to the Selectmen's attention as a result of a dispute between Mr. Renvyle and Mr. Mertz concerning the condition of Mr. Mertz's property.

Chairman Krzyzaniak noted that she had visited Mr. Mertz's property and had noticed a pick-up truck having Mr. Mertz's business advertised on it. Mr. Mertz concurred, noting that his wife drives a three-quarter ton pick-up truck that has his company logo on the side of the truck for advertising purposes. The truck is not registered as a commercial vehicle.

Mr. Renvyle of 53 Hawthorne Hill Road addressed the Board objecting to the application. Mr. Renvyle believed that the Applicant's business does not meet the requirements set forth in the Ordinance for a home business or a special exception. Mr. Renvyle stated that Mr. Mertz had once informed him that the Mertz property in Epsom would be used for the home business, not the property in Hopkinton. Mr. Renvyle then reviewed specific criteria for a Special Exception in which he believed Mr. Mertz had failed to adequately address. In particular, he stated that Mr. Mertz has had on occasion metals and other material outside on his property that may or may not be associated with the business. Additionally, until recently, Mr. Mertz had a second commercial plumbing vehicle parked at the property; however, it has now been moved to his property in Epsom. Mr. Renvyle asked the Board to consider whether proposal meets the spirit of the Ordinance as there have been trucks coming and going from the property in order to make deliveries of supplies. Lastly, Mr. Renvyle expressed concern with the building in which Mr. Mertz stores his business materials meets fire safety codes, and whether the type of drainage from Mr. Mertz's property and whether it contains any hazardous materials.

Mr. Renvyle then expressed his objection to the appearance of Mr. Mertz's property, noting that the house has no siding in places with insulation being visible in some locations.

Chairman Krzyzaniak inquired as to the timing for the installation of the fence on Mr. Mertz's property. In response, Mr. Mertz stated that he had installed the fence today in an effort to comply with the requirements of the Ordinance.

Mr. Koontz asked Mr. Mertz whether the logo on the car trailer was intended to advertise his business. Mr. Mertz replied yes, stating that he races cars as a hobby and that the logo on the trailer includes other business logos that sponsor his race team.

Attorney Derek Lick on behalf of Mr. Renvyle addressed the Board referring to a letter he had prepared outlining in detail objections to Mr. Mertz' home business. He noted that the business is operated 24-hours a day with delivery trucks coming and going from the property. Attorney Lick advised that should Mr. Mertz fail to address one of the criteria required for a Special Exception, then the Board has to deny the request.

Lastly, Attorney Lick mentioned Mr. Renvyle's inability to sell his property due to the condition of Mr. Mertz's property and the operation of his business. Attorney Lick suggested that Mr. Mertz relocate his business to his property in Epsom.

In rebuttal, Mr. Mertz stated that he has no hazardous materials on his property, nor does he work with hazardous materials. He then stated that the operation of the home business does not increase the potential for fire hazard, noting that his son comes and goes from the property on a daily basis. Mr. Mertz responded to comments made by Mr. Renvyle with respect to run-off, advising that the wash-out of his property was due to rain and flooding and was unrelated to the operation of the home business. However, he noted that his drainage pipe for his perimeter drainage runs into the existing catch basin at the street. Mr. Renvyle's sump pump drain also runs into the same catch basin.

Linda Mertz addressed the Board explaining how they were unaware that a permit was needed to operate a home business; however, now they are before the Board in an effort to be compliant with the Town's Ordinance. She objected to statements made by Mr. Renvyle with respect to them being dishonest. Mrs. Mertz then addressed comments with respect to an increase in traffic flow, noting that her children coming to and from the home affects the traffic flow in the area.

Lastly, Attorney Lick readdressed the Board questioning whether the home business could be unobtrusively pursued as it has changed to the character of the neighborhood with the nuisance of deliveries being unloaded and loaded in close proximity to Mr. Renvyle's residence. Furthermore, he suggested that the home business is not carried out entirely within the home as required in Section 3.7.3 (a) of the Ordinance. Attorney Lick then relayed testimony from Mr. Renvyle's real estate agent advising that the condition of the Mertz property and the operation of the business have affected the value of the Renvyle property.

Chairman Krzyzaniak inquired as to whether all storage of business supplies is stored within the barn. Mr. Mertz replied yes, stating that the supplies include mostly plastic fittings that are stored on shelves in the barn. Boilers and other large supplies are usually delivered directly to the customers homes. He noted that in the past he had deliveries left at the end of his driveway; however, he no longer deals with that particular supplier.

Chairman Krzyzaniak suggested that the Board could not guarantee compliance with the Ordinance. However, if there is a problem with the operations of the business then the matter would have to be addressed directly to the Board of Selectmen as they are the enforcers of the Zoning Ordinance.

Mr. Renvyle believed that the Mr. Mertz's past with respect to the operations of the business is pertinent to the legitimacy of his application. He noted that the Town had worked with Mr. Mertz for months in an effort to try to get him to clean up debris that he had left in Hawthorne Forest.

Public testimony was closed.

In discussing the merits of the application, Mr. Boatwright stated that he would be unable to vote on the application at this time. He expressed concern with his ability to balance the testimony by the Applicant and Abutter. Chairman Krzyzaniak and Mrs. Gray concurred.

Mr. Koontz stated that the history involving the property should not be relevant; however, he expressed concern with the requirements of the Ordinance that the use be conducted entirely within the dwelling, suggesting that Mr. Mertz's business is conducted primarily from his vehicle. Mrs. Hackwell concurred, suggesting that the Board consult with Town Counsel concerning the matter.

A motion by Mrs. Hackwell, seconded by Mr. Koontz, to continue review of the Application to the May 10, 2007 hearing, so to allow the Board an opportunity to

consult with Town Counsel as to whether a plumbing business could be classified in the Zoning Ordinance as a Home Business. Motion carried unanimously.

Mr. Boatwright suggested that Attorney Lick provide the Board with a detail outline of their objection to the application. Attorney Lick concurred, noting that the memorandum provided to the Board should address Mr. Boatwright's request. Mr. Renvyle then inquired as to his ability to provide additional information at the May 10th meeting with respect to property values. Mr. Koontz noted that while public testimony is closed, the Board may decide to re-open testimony to receive additional information. Mr. Mertz responded that he would like the same opportunity to provide rebuttal with respect to property values should the Board decide to re-open public testimony.

At this point in time, due to the late hour, the Board then tabled review of the application of Stuart Nelson and Robert Witham to a hearing scheduled for Thursday, May 10, 2007, 7:00 PM in the Town Hall.

TH06-2V-4-1 Stuart F. Nelson—Application for a Variance from Section 5.2.1 of the Hopkinton Zoning Ordinance requiring non-conforming lots to have 50-feet of road frontage was denied by the Zoning Board of Adjustment on April 4, 2006, and on September 5, 2006 (TH06-4V-8-2). The property is located off Clement Hill Road in the R-2 (medium density residential) district, shown on Tax Map 208 as Lot 14. A remand hearing was to be held for the sole purpose of reconsideration of the substantial justice criterion in accordance with the Superior Court's Order, dated March 15, 2007.

TH07-2V-5-3 Robert & Linda Witham—Applicant was to request a Variance to construct a detached garage with less than the rear setback requirement for the district. The property is located at 8 Bluebird Lane in the R-4 (residential/agricultural) district, shown on Tax Map 225 as Lot 87. The application was submitted in accordance with 4.3 and 4.4.1 of the Hopkinton Zoning Ordinance.

II. Review of the Minutes and Notice of Decision of the April 3, 2007 meeting.

Motion made by Mrs. Hackwell, seconded by Mr. Boatwright, to accept the Minutes and Notice of Decision as presented. Motion carried unanimously.

III. Adjournment.

Chairman Janet Krzyzaniak declared the meeting adjourned at 11:05 PM. The next regular scheduled hearing of the Board is Thursday, May 10, 2007, 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.