

Hopkinton Zoning Board of Adjustment
Minutes
June 5, 2007

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment hearing of Tuesday, June 5, 2007, at 7:00 PM in the Town Hall. Members present: Toni Gray, Charles Koontz, Richard Hesse, and John Boatwright.

I. Applications.

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.

The purpose of the remand hearing is for reconsideration of the substantial justice criterion in accordance with the Superior Court's Order, dated March 15, 2007.

Attorney Mark Puffer addressed the Board on behalf of Mr. Nelson presenting the following exhibits:

- Superior Court's Decision of 3/16/07
- 1992 Subdivision Plan
- Merger Documents
- Loughlin, Land Use, Planning and Zoning, § 24.11
- Average Size of Other Lots Using the 30-Foot R-O-W
- Jamie and Kathleen Schoch's House
- Chester Rod and Gun Club, Inc. v. Town of Chester, 152 N.H. 577 (2005)
- Malachy Glen Associates, Inc. v. Town of Chichester (decided March 20, 2007)
- ZBA Minutes of June 4, 1996 (Spilewski), t 6, 1996 (Roberts), October 7, 1997 (Kirsch) and May 2, 2006 (Doherty)
- Variances to Section 5.2.1

In reviewing the above, Attorney Puffer referred to a 1992 Subdivision Plan showing Mr. Nelson's property that included the 30-feet of frontage along Clement Hill Road. The Subdivision Plan was presented only for the purpose of showing the location of the property. The 1992 Subdivision Plan did not create Mr. Nelson's lot. The lot was created by deed in 1956, prior to Hopkinton adopting zoning in 1964 and prior to the 50-foot frontage requirement.

Again, Attorney Puffer referred to the Subdivision Plan advising that there are eight other lots across from the Nelson right-of-way with three of the lots being used year-round.

At the time Mr. Nelson was before the Zoning Board of Adjustment in 2006, he believed that he had owned the 30-foot strip of frontage as part of his eight acre parcel; however, it was brought to his attention by Mr. Nelson's attorney, at that time, that he did not own the frontage, but rather the original developer still retained ownership. Immediately following, Mr. Nelson had obtained a confirmatory deed for the property. Since obtaining ownership of the 30-feet of frontage lot, Mr. Nelson has merged the two parcels.

Attorney Puffer then referred to Peter Loughlin's Treatise that quotes the Office of State Planning Handbook in an attempt to define substantial justice.

In reviewing the substantial justice criterion the Board balanced the harm to the Applicant if the Variance were not granted to the harm to the general public should the Variance be granted.

Attorney Puffer believed that there would be very little, if any, harm to the general public by granting the Variance. There are eight other residential units that have a right-of-way to cross over Mr. Nelson's property to access their property. One additional residence with a much shorter access drive would not cause harm to the general public. Attorney Puffer noted that it would be odd if the eight other owners could utilize Mr. Nelson's right-of-way to access their property, but that Mr. Nelson could not do the same.

Exhibit (F) was of a photograph taken from the proposed house site looking in the direction of the closest property owned by Jamie and Kathleen Schoch. Attorney Puffer informed the Board that the distance from the Schoch residence to the Nelson's house site is approximately 339-feet.

Mr. Boatwright recalled that at the time Mr. Nelson first applied to the Board that his proposed home site had no frontage on a Town road, but that later Mr. Nelson had acquired ownership of the abutting parcel which has the 30-feet of frontage. Attorney Puffer concurred, noting that the two parcels have since been merged. He then represented that Mr. Nelson has no intentions of subdividing his property and is agreeable to a condition limiting further subdivision. Furthermore, Mr. Nelson agreed to provide a disclaimer advising that the Town will not be liable for maintenance or any use of the road (right-of-way).

Attorney Puffer stated that when any Variance is granted one could argue that there is minor harm to the general public as the granting of any Variance is a deviation from that which is required in the Town Zoning Ordinance. However, the question is whether substantial justice would be done in granting the Variance. Whether the harm to the public out ways the harm that would be imposed on the Applicant requesting the Variance from the Ordinance.

Exhibit (G) was a 2005 Supreme Court case of Chester Rod and Gun Club, Inc. v. Town of Chester, 152 N.H. 577. Attorney Puffer reviewed specific points of the Court's decision with respect to substantial justice.

In Mr. Nelson's case, Attorney Puffer believed the harm to be the fact that Mr. Nelson owns a piece of property that was created prior to zoning. If he were unable to utilize his property for residential purposes, then the only remaining possible use would be as a woodlot.

Mr. Hesse asked Attorney Puffer's opinion as to the 50-foot frontage requirement. Attorney Puffer believed the requirement was primarily for safety reasons.

Mr. Koontz suggested that if Mr. Nelson's lot had no road frontage that alone would be a reason for denial of the Variance. In response, Attorney Puffer stated that having no frontage is a different case and whether it would be a reason for denial would depend upon the circumstances. Attorney Puffer noted that Variances have been granted by the Zoning Board of Adjustment for lots having no frontage on a Town road. Mr. Hesse questioned whether the other cases involved access ways of less than 50-feet. Attorney Puffer responded that the lots had no road frontage; however, he was unsure of the

exact width of the right-of-way used to access the lots. In response, Mr. Hesse stated that if it is believed that the frontage requirement is do to public safety, then the width of the access way to the lots is relevant.

Attorney Puffer advised that the Superior Court had reviewed the original Minutes and Motion for Rehearing. He believed the reason for the remand is due to the fact that the Court was unsure whether the Board had known that Mr. Nelson had acquired the adjacent parcel having road frontage.

Exhibit (H) was of a March 2007 Supreme Court decision in which the Court had quoted Peter Laughlin's Treatise in determining substantial justice. The Court indicated that, "'Perhaps the only guiding rule [on this fact] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.'" Again, Attorney Puffer stated that the harm to Mr. Nelson, should the Variance be denied, outweighs the harm to the public in granting the Variance.

Attorney Puffer then referred back to the Superior Court's decision remanding the Nelson matter back to the Zoning Board of Adjustment. He noted that Mr. Nelson believed at the time of purchase that he would be able to use his property. The fact that Mr. Nelson purchased the property with the knowledge of the zoning restriction is not relevant. Attorney Puffer referred the Board to the Hill v. Town of Chester case, 146 N.H. 291, 293 (2001), in which the Supreme Court determined that the purchase with knowledge is not a factor in considering whether the hardship test had been met. Again, in the Nelson case there are three homes that have been converted to year-round use (Martin, Schoch, and Dockham), noting that no one has applied for year-round use or been denied a request for the same.

Exhibit (I) includes copies of minutes of Zoning Board of Adjustment meetings in which others (Spilewski, Kirsch, and Roberts) have applied for and received Variances to construct residences on lots having no road frontage.

Mr. Boatwright questioned whether Mr. Nelson has agreed to maintain the 30-foot access way. Attorney Puffer responded by advising that Mr. Nelson agrees that the Town of Hopkinton has no responsibility to maintain the right-of-way; however, whether he maintains the right-of-way is a matter that would involve Mr. Nelson and the other residents that have legal access using the right-of-way.

Lastly, Attorney Puffer presented a copy of an approved septic design for the property which shows the location of the proposed home on the property.

Mr. Hesse questioned whether Attorney Puffer believed that there would be no harm to the public, whatsoever, in granting the Variance. Attorney Puffer replied that there is generally harm when any Variance is granted. Mr. Hesse then asked Attorney Puffer whether he believed that other than "generalized harm" there would no harm to the public. Attorney Puffer agreed.

Mr. Boatwright recalled previously reviewing Mr. Nelson's request and at the time, suggesting that the Board would need proof of ownership of the parcel involving the 30-foot access way. He stated that if he had proof presented to him, he would have voted in favor of Mr. Nelson's application. He suggested that proof has since been received by the Board.

Abutter Jayne Schoch of 1309 Pine Street addressed the Zoning Board of Adjustment advising of the 43 years that she and her family have lived at her property and the difficult times that her family has experienced in the past year involving three (3) different zoning issues that have been requested in her neighborhood.

Mrs. Schoch provided the Board with a letter, dated June 4, 2007, addressing the substantial justice criterion. Copy of letter attached. The letter submitted was on behalf of the following: Paul and Charlotte Sankey, Al and Kim LaGuardia, Jayne and Dick Schoch, and Jamie and Kathleen Schoch.

Mrs. Schoch stated that the zoning protection (50-foot frontage requirement, section 5.2.1(c)) is intended to, "preserve the rural character of the town and reflect the position of its residents, as reflected in their votes at Town Meeting..." Mrs. Schoch then advised of the fact that a portion of Mr. Nelson's parcel is within the jurisdiction of the Shoreland Protection Act. She further advised of Mr. Nelson's violation of the Act in which he is now required to transplant trees in the spring over a portion of the property.

The Nelson property has provided the residents in the neighborhood with protection from noise heard from Sandy Beach Campground and a buffer from abutting properties. Mrs. Schoch stated that, "The gain to the general public to protect against noise pollution, devaluation of their property and to protect their legal rights to the long-term privacy they've been afforded by this parcel (Nelson parcel) outweighs the loss suffered by the applicant."

Abutter Dave Herrick addressed the Board stating that he has known Mr. Nelson for a number of years and is in favor of his request to build a residence. Chairman Krzyzaniak reiterated the fact that the Board is only reviewing the substantial justice criterion. In response, Mr. Herrick stated that Mr. Nelson's proposal would not be detrimental to the neighborhood.

Abutter Jamie Schoch of 1297 Pine Street addressed the Board explaining that he had constructed his residence in a location that would not be visible to others, nor would he be able to see neighboring residences. Mr. Schoch explained that he had come home one day to ribbons around trees adjacent to his home. He questioned what Mr. Nelson was really proposing as it appears to be more than just constructing a single-family residence. Mr. Schoch reviewed with the Board the photograph presented as Exhibit (F). He explained that the picture actually shows the roof line of his home. He questioned that visual affect when all of the leaves are gone from the trees. Mr. Schoch believed that looking at the property is not substantial justice.

Attorney Mark Puffer readdressed the Board to rebut the testimony of the abutters. Attorney Puffer clarified Mr. Nelson's intention for the property, advising that Mr. Nelson proposes to construct a dwelling with an in-law apartment. Of the eight properties that currently have structures on them, seven are in favor of Mr. Nelson's proposal. The only party opposed is the Schochs, so they were not approached in signing the letter in favor of the proposal. Copy of letter attached.

Mr. Hesse asked Attorney Puffer to respond to comments made with respect to violation of the Shoreland Protection Act. Attorney Puffer believed the matter to be irrelevant to the issue of substantial justice. He noted that if there were a violation that Mr. Nelson will remedy the matter.

Mr. Hesse then asked for an explanation as to comments raised by Mrs. Schoch with respect to the property being used as a wildlife corridor. In response, Attorney Puffer stated that there are most likely a number of eight acre parcels zoned residential that are currently being used by wildlife.

Jayne Schoch readdressed the Board stating that the issue of substantial justice is not limited to the 30-feet of frontage. She believed that more harm will be done by the Applicant should the Board grant the Variance.

Public testimony was closed.

Motion made by Mr. Boatwright, seconded by Mr. Koontz, to vote on Application TH06-2V-4-1 as presented. Mr. Hesse and Mrs. Gray suggested that that Board should further discuss the application. Following brief discussion, Mr. Boatwright and Mr. Koontz withdrew their motion.

Mrs. Gray suggested that the following conditions be imposed should the Board decide to grant the Variance.

1. That there be no further subdivision of the property;
2. That the Applicant enters into an agreement indemnifying the Town from claims concerning liability (right-of-way).

The Board unanimously agreed to the above conditions should there be a motion to approve the application.

Mr. Hesse believes there is evidence that there is harm that would not just be related to the 30-foot right-of-way. The issue of harm would include the actual development of the lot. Mr. Boatwright concurred, noting that he believed there to be a balance between the harm of the public and that to the Applicant.

Mr. Hesse indicated that he was not persuaded that the Applicant had adequately addressed the standard for substantial justice. He believed that there had been a lot of generalized discussion.

It was Mr. Koontz's position that after listening to the testimony of all parties that the Applicant would be the one most harmed. Substantial Justice would be done by allowing the Applicant to use his property. Mr. Boatwright concurred.

Mr. Koontz then suggested that the access way (right-of-way) be maintained by the Applicant. Mr. Hesse stated that the issue of maintenance of a private right-of-way is a contractual matter between the owner of the property and those people that have use of the right-of-way.

Following discussion, a motion was made by Mr. Boatwright, seconded by Mr. Koontz, to vote on Application TH06-2V-4-1 with the following conditions:

1. That there be no further subdivision of the property;
2. That the Applicant enters into an agreement indemnifying the Town from claims concerning liability (right-of-way).

All in favor of voting. With five members voting, three voted in favor (Koontz, Gray, and Boatwright) and two voted in opposition (Hesse and Krzyzaniak). The application was approved with conditions.

In evaluating the substantial justice criterion, the majority of the Board agreed that the harm to the Applicant in denying the use of his property would outweigh any harm to the public. Furthermore, not allowing the Applicant to construct a residence on his property utilizing the same access way (right-of-way) that is currently being used by other year-round homes may be considered an injustice to the Applicant. The conditions imposed are intended to indemnify the Town from any exposure of liability in the use of the access way (right-of-way). Finally, the majority of the Zoning Board of Adjustment agreed that substantial justice would be done by granting the Variance.

In evaluating the criterion for substantial justice, those voting in opposition believed that the burden of proof was the responsibility of the Applicant, which was not adequately addressed. Furthermore, the members believed that the harm to the public outweighs any harm to the Applicant.

TH06-4S-8-1 Moser Engineering—Application for a Special Exception to construct a retreat house for lodging and meetings, in accordance with Table of Uses 3.6.B.1 of the Zoning Ordinance, was approved by the Zoning Board of Adjustment on August 1, 2006. The property is located at 329 Camp Merrimac Road in the R-2 (medium density residential) district, shown on Tax Map 202 as Lot 8. This is a remand hearing in accordance with the Superior Court's Order, dated May 15, 2007.

Chairman Krzyzaniak advised those present that the original certified record will be included as part of the official record for this hearing; therefore, the Board would only hear new information that was not presented at the original August 1, 2006 hearing.

It was her understanding that there were individuals that had presented to the Court new information that had not been seen by the Zoning Board of Adjustment. At the request of Town Counsel the matter is now remanded back to the Board so that the Board will now have an opportunity to review the new information. Chairman Krzyzaniak made it clear that at this point in time the Board is not aware of any documents involving new information.

Attorney Simon Leeming on behalf of Camp Methodios and Attorney Scott Hogan on behalf of abutters and neighbors addressed the Board explaining that all three parties had agreed to enter into a stipulation in sending the case back to the Board.

Chairman Krzyzaniak stated that she had been advised that the Board should only hear new information. She again noted that the original record of August 1, 2006 is part of tonight's record.

Attorney Leeming began by introducing the Arch Bishop of the Greek Orthodox of Boston, St. Methodios, explaining that he was prepared to speak to the Board, however, at this point in time they have decided to forgo his speaking. Attorney Leeming went on to presented letters from abutters and others that support the proposal, highlighting the efforts that Camp Methodios has taken to improve the property since the time of purchase.

Attorney Leeming submitted the following for the Board's review:

- Map of Cloughville, 1806-1919
- Camp Merrimac History
- St. Methodios Faith & Heritage Center Site Map
- Camp Merrimac Septic Tanks & Fields (Prior to Purchase)
- St. Methodios Faith & Heritage Center: Architectural Rendering
- Proposed Retreat House Plans
- Planning Board Materials; Site Plan Review
- Miscellaneous State Filings, Permits
- Variety of Camps (mainly religious), with Lodge Buildings

One issue raised in Court involves Cloughville. The map presented shows Cloughville which is now Camp Methodios. Cloughville was once a thriving village that was sold to a group that operated a Jewish Boys' Camp. Since then the concentration of buildings has remained mainly unchanged.

Mr. Hesse questioned the relevance of Cloughville. Attorney Leeming stated that there has been reference to the Court that Camp Methodios is interfering with the pristine nature of Lake Josylvia. He believed that the map showed that the property had been used as a camp all along.

Attorney Leeming noted that the recent site plan is included within the packet of materials provided.

Attorney Leeming then referred the Board to all of the materials that were submitted and reviewed by the Planning Board, including the minutes of the Planning Board meeting. Included in the materials were various letters from the Fire Chief, Police Chief, Director of Public Works and a report from Vollmer Associates as to the condition of Camp Merrimac Road. He noted that all recommendations from Vollmer Associates were accepted by the Applicant. Additionally, presented to the Board was a copy of the Site Specific Approval, Dredge and Fill Application and Approval for Construction of the septic system.

At the Superior Court issues were raised about the proposed retreat house and that it was really a hotel rather than a camp building. In response, Attorney Leeming had provided the Board with information he obtained on-line showing that there are a range of camps throughout the Country that are comparable to the proposed retreat house.

Attorney Leeming also noted that the Architect is present and was to speak about the roof line and other architectural features of the building. He then referred to a conceptual photograph that was prepared by the architect that is of a photograph of the property with the building superimposed on it. The purpose of the photograph is to show how the building would look with minimal impact to the neighborhood.

Mrs. Gray questioned the number of trees in the photograph that are evergreens. In response, Engineer Mark Moser stated that he would confirm the number and get back to the Board. Mrs. Robertson recalled that a map of the trees was presented to the Planning Board. Mr. Moser stated that the map had shown the number of trees above and below the roof line that were deciduous and conifer.

Attorney Leeming stated that there was opposition with respect to value and impact on the neighborhood. Attorney Leeming introduced Mark Correnti, a licensed New Hampshire appraiser. Mr. Correnti had reviewed the certified record from the first hearing; some of the pleadings presented to the Court and had completed a site visit of

the property and proposed building site. Mr. Correnti presented photographs from Camp Methodios' property, explaining where he was standing at the time the photographs were taken. One of the photographs included a balloon test that was done to show the visual location of the building from the opposite side of the lake (2,600-feet in distance).

Mr. Correnti stated that value remains a derivative of an economic principal. It is what a buyer would pay for a property. He compared Lake Josylvia with Canobie Lake and Camp Methodios with Canobie Lake Park. He had compared values, including that of Arlington Lake, Cabotts Pond and Big Lake and found no depreciation in value. He believed that the obscured view of the building would not change the essential characteristics of the area.

Mr. Hesse questioned the affects if the leaves had fallen from the trees. Mr. Correnti deferred the question to the Applicant.

Mrs. Gray questioned whether the use of the building would affect the values of the surrounding properties. Mr. Leeming stated that the use of the building will have minimal impact. The building will be used primarily for the parents of the children that utilize the Camp. During the summer months the use of the facility will be essentially for priests, the Arch Bishop and parents who want to come and visit their children while at camp. Off season would be limited to more adults, rather than children. The season runs from May to Labor Day or beyond.

Engineer Mark Moser addressed the Board stating that in front of the building there will be 104 trees that are four inches and greater and there will be 82 trees that are six inches and greater. Mr. Moser reviewed a schematic of the site indicating the distribution of the conifers and deciduous trees.

Attorney Leeming stated that one of the issues raised to the Court was whether or not the elements for the Special Exception had properly been addressed. Mr. Hesse questioned whether it would be necessary for Attorney Leeming to review the elements since the application was original approved and the information is part of the original record. Attorney Leeming requested an opportunity at a later time to review the elements of the Special Exception.

Mrs. Gray asked for a list of the new information presented by Attorney Leeming which is as follows:

- Letters
- Planning Board Materials; Site Plan Review (incl. letters from various Town Departments)
- Applications to the State of New Hampshire for septic, Dredge and Fill and Site Specific.
- Information re: Consistency of the Retreat House with other camps.
- Information re: Cloughville and the continuation of the camp.
- Appraiser's testimony.
- Arch Bishop and Architect (Architect's rendering) would have testified.

Scott Hogan then re-addressed the Board explaining his involvement in the matter began after the Board had made its original decision. He filed the appeal of the Board's approval to Superior Court. The position was that the application did not meet the definition of a non-profit overnight day camp and that it didn't meet the nine points for a

Special Exception. In the meantime, the "new" information became available and was subsequently filed with the Court.

In response to Attorney Hogan's motion to the Court, the Town and Attorney for the Applicant had indicated that the facility would be used by non-profit organizations and children using the camp. Attorney Hogan stated in his motion to the Court he had quoted the minutes of the Board's meeting with respect to the use of the facility by the community, non-profit groups, high school and Town Departments. The Director of the Camp had also stated that the facility had been used by the Snowmobile Club, Bishop Brady, Fire Department and a resident off Ridge Lane that had a 50th Wedding Anniversary. Following the Applicant's representations to the Board, the Board had determined that the use of the retreat house was more of a residential use versus a commercial use. Attorney Hogan noted that the category for the use was listed in a temporary residential category of the Ordinance. He argued to the Court that a three story building with 44 double bedrooms and a conference center does not meet the Town's definition for a non-profit temporary overnight camp, but rather should be classified as a hotel.

Attorney Hogan then presented to the Board a copy of the first group of exhibits that had been presented to the Court. The exhibits include a program at the facility of a process to rent the facility. The second is a list of activities that could take place. The remainder of the materials include maps for potential users, a visitor registration and agreement and information packet. He believed that it is a sophisticated program where people are getting information in advance telling them when they need to pay, including the security deposit, etc. Also, included was information with respect to emergency services and water front rules that warn people about ice during the winter months.

Mr. Hesse asked to draw the connection from the charging of a fee and the issue of not for profit. Attorney Hogan stated that the relevance is that there appears to be a program to rent the facility to private commercial enterprises. The specific definition in the Zoning Ordinance with respect to the matter is Table of Uses 3.6.B.1. Attorney Hogan stated that initially it is required to be a non-profit overnight camp, day camp, or colony. In response, Mr. Hesse stated that he is involved in a number of nonprofits which charge fees and allows uses other than their primary use. He is unaware that by doing so it changes its status from non-profit. Attorney Hogan stated that in the first instance the Board should have heard the information and have determined whether the Applicant meets the definition of non-profit. The facility appears to be used for uses other than the uses represented to the Board. They appear to be commercial uses, i.e., the groups that use the facility appears to be for profit businesses.

Chairman Krzyzaniak questioned how the information presented by Attorney Hogan was obtained. In response, Attorney Hogan advised the information was from web sites.

Attorney Hogan then presented a second group of exhibits that had been presented to the Court. The appearance was that the Applicant came to the Board and made a very limited presentation and received approval. When the new information was brought up, after the fact, the Applicant's response was to file a motion to exclude it without any explanation. Other events at the property include, the Highland Game, NH Highlands, Retreat Weekends for Women and an International Knife Fighting Training Camp. Included were directions to the facility and email information from those who had attended the knife fighting at the camp. The relevance is also whether they are a day camp, overnight camp or cottage colonially. Attorney Hogan stated that in speaking with

his clients they have expressed concern about the increase in traffic. He referred to a ground breaking that had 1,500 people in attendance.

Attorney Hogan explained how he had presented Planning Board documents the Court in which there was a letter from the Fire Department noting that the road is one lane and that it floods. He also noted that review of the building for fire safety was based on the code requirements for a hotel.

Attorney Hogan stated that the Intervener's memorandum to the Court referred to the fact that during most of the summer the property is used as a camp and the proposed building will only be used by persons associated with the camp. They then indicate that during the off-season the premises will not be idle. They then reiterated the representations made to the Board about the organizations that would use the facility and indicate that the off-season use should not change its non-profit status.

With regards to the issue of non-profit and for profit, Attorney Hogan presented a recent NH Supreme Court case in which the Court held that charitable tax exempt status contemplates occupancy; therefore, if the building were to be rented it would be taxable.

Attorney Hogan believed that following the Board's review of the new information it will be clear that the facility is not a non-profit overnight camp or colony. He then noted that the issue of traffic must also be considered in deciding whether to grant a Special Exception.

Attorney Hogan stated that his clients have told him that there has been a dramatic increase in the use of the facility. They believe that the use of the facility is more significant than what was represented to the Board.

In summary, Attorney Hogan believed that the new information addresses the issue of not for profit and the use of an overnight day camp or colony. The question is how much the project will diminish the value of the adjacent property and how much will it affect the daily use and enjoyment of the property. The Applicant had an opportunity at the original hearing to present appraisal information and they did not do so; therefore, he believed that the Appraiser's representations should not be considered as new information.

Attorney Leeming readdressed the Board advising that most of the information presented to the Board by Attorney Hogan was obtained from websites. The only information received directly from the camp is the letter from Linda Ramsey in response to a request by someone interested in using the camp. Included as part of Ms. Ramsey's letter was information with respect to donations being requested in the amount of between \$20 and \$35 per person per night. The money is used by the camp to cover the cost associated with keeping the camp open for the event. Last year Camp Methodios became a member of the American Camping Association which requires the materials outlining the Camp's fees and rules. He noted that if the retreat house were to be considered a hotel, the people attending the retreat house would not be required to wash out their own sink or do many of the other things that are outlined in the packet of materials.

With respect to comments raised about the number of people attending the camp, Attorney Leeming advised that September 15 is the time of the Holly Cross and every year parishioners meet at the Camp. On September 15, 2006, there were approximately 1,500 people at the facility.

Mr. Hesse inquired as to the number of times the Highland Games has used the facility. In response, Attorney Leeming stated that the Camp supports culture and that the Highland Games and Fiddlers have used the facility in the past. Additionally, the Knife Fighting Camp has been at the facility for a number of years. That particular camp is operated by a parishioner that runs a martial arts school in Rhode Island.

Attorney Leeming addressed comments with regards to the architectural rendition that was included as part of the official record to the Court. The architectural rendition is a conceptual that was used as a brochure in an effort to raise funds for the retreat house.

With respect to use of the island, Attorney Leeming advised that the Camp had received permission for use of the island by the camp counselors. However, at this point in time they will no longer use the island.

Lastly, Attorney Leeming stated that the use of the camp on occasion by for profit groups does not disqualify the non-profit status of the property. He then compared the retreat house to that of a dormitory at Saint Paul's School.

Mr. Hesse agreed with Attorney Leeming's characterization that on occasion non-profit facilities are used by for profit groups. The question is what percent of the operation is devoted to what is represented in the materials provided about other uses for the facility and how much of the facility is used by the Camp. Attorney Leeming was unsure, but suggested that the use by for profit groups is very limited. Attorney Leeming then presented the Applicant's Statement of Use which refers to the retreat house and camp facilities as being primarily used for the children of members of the Greek Orthodox Metropolis of Boston's churches in New England. The Statement of Use is to be effective immediately with the exception to those events that have already booked use of the facility up to October 1, 2007.

Mr. Boatwright questioned the mechanism that the Camp would use for oversight of the uses. In response, Attorney Leeming suggested that the Camp would put into place some type of mechanism for oversight to insure that the use complies with the Applicant's Statement of Use.

At this point in time, Attorney Leeming briefly reviewed the nine points for a Special Exception with Chairman Krzyzaniak noting that the points had been addressed by the Applicant as part of the original certified record.

Mr. Hesse reviewed the definition of a "Hotel" as referenced in the Zoning Ordinance. He noted that there is no language in the definition that requires that a hotel make money. Attorney Leeming reiterated the fact that the retreat house is to be part of the Camp and that it would be similar to a dormitory at a school. He further noted that hotels do not offer a camp style of life, but do provide a place for transient or semi-transient occupancy.

Attorney Hogan referenced a memorandum from the Hopkinton Fire Department classifying the proposed facility as a hotel in determining the applicable NFPA Codes based on occupancy.

In reviewing the nine points for a Special Exception, Attorney Hogan believed that based on the new information there are detrimental affects to the enjoyment of the property values in the area.

John Dustin of 712 Main Street addressed the Board as the owner of the island at Josylvia. Many years ago when the ownership of the camp had changed, Mr. Dustin had discussed with the Director, Michael Sintros, that his family owned the island and that they had installed no trespassing signs. At the time, Mr. Sintros had admitted that the island had been used by prayer groups. Mr. Dustin had then agreed to the minimal use, but discouraged use of the island without permission. Mr. Dustin advised the Board that reference in the materials submitted as to the use of the island was not as a result of permission by his family.

Richard McIntire, owner of property along Lake Josylvia, addressed the Board stating that the lake consists of approximately 100 acres. Mr. McIntire recalled Mr. Sintros meeting with the association of the lake to inform them that the retreat house would be used by family, children and non-profit groups. In light of the new information presented this evening, Mr. McIntire believed that the use of the camp had been misrepresented to the association.

Richard Schoch of 1309 Pine Street recalled the camp having been a seasonal facility as he was the one that opened and closed the camp.

Justice Spaulding addressed the Board explaining that he and his parents live across the Lake. He expressed concern with the affects that water draw may have on the area homes.

Maureen White, owner of a camp on Lake Josylvia, addressed the Board to explain that during the winter months, when leaves have fallen from the trees, she can see the camp buildings. She expressed concern with among many things the visual affects that the proposed building will have on the enjoyment of her property. Mrs. White's beach is 1,100 feet from the beach of the Camp. Lastly, Mrs. White questioned who would be responsible for policing the Applicant's Statement of Uses, suggesting that someone will need to be sure that the Applicant complies.

Justice Spaulding stated that there are loon and blue hearings in the area. Both birds are endangered species.

Ruth White, a descendent of the Clough family, offered to speak with Mr. Leeming about the history of her family.

Mark Reil, owner of a cottage on the Lake, addressed the Board to explain that on the weekends traffic is congested along Camp Merrimac Road.

Richard Vitagliano of 348 North Shore Drive expressed concern with the families of the children coming to Lake Josylvia. He suggested that there is now a potential for jet skis and more boats added to the Lake.

Jenny Mason of 148 South Shore Drive believed that jet skis were not allowed on the lake. Mrs. Mason stated that while she lives further away from the Camp she has had no problems with the noise. She commended the Camp owners for improving their property.

Glen Mason of 148 South Shore Drive suggested that the Board look into what activities actually take place at the lake.

Attorney Leeming readdressed the Board stating that anyone would be allowed to stay at a hotel. At Camp Methodios only those people associated with the Camp are allowed to utilize the facility.

Public testimony was closed.

Mrs. Gray referred to paragraph three of the Applicant's Statement of Use which states that, "When a camp is not in session, St. Methodios will allow its facilities, including the retreat house, to be used by other religious or non-profit organizations, or by individuals or groups associated with the Metropolis of Boston..." Mrs. Gray believed that the language would include such uses as knife fighting. She expressed concern with that type of activity taking place at the Camp and the fact that the activity would be associated with a religious group. In response, Mr. Boatwright noted that the information presented with respect to the knife fighting was obtained from a website. He assumed that the information on the website was not developed by the Church. Mrs. Gray understood, stating that her opinion with respect to the knife fighting is her own personal opinion. She was concerned with the appearance that the Church allows anyone to utilize the facility without any oversight of the actual type of use.

Mr. Hesse then asked Mrs. Gray if she had concerns with public safety as a result of the knife fighting. Mrs. Gray replied no, again stating that it was her personal opinion that the knife fighting activity may not be appropriate. Mr. Hesse stated that the Board could impose a condition by inserting additional language with respect to the uses allowed at the facility.

Mr. Boatwright was pleased about the Applicant's Statement of Use. Chairman Krzyzaniak concurred, but expressed disappointment with the fact that the Applicant had an opportunity in the past to provide the statement in an effort to address the concerns of the Board and residents. Mr. Koontz noted that at the original hearing there were many issues that were not brought to the Board's attention.

Mr. Hesse suggested that the Board consider issues involving noise, traffic, or a threat to public safety. Chairman Krzyzaniak concurred, noting that at the time she had originally reviewed the application she was not aware of the issues raised this evening.

The Board then discussed whether the proposed retreat building should be considered a hotel. Following discussion and based on the Board's interpretation of the definition of a "hotel" as defined in Section 2.1.H.4 of the Hopkinton Zoning Ordinance, the Board unanimously agreed that the proposed retreat house would not be considered under the definition of a hotel. The activities as described by the Applicant are not conducted in hotels.

The second issue discussed by the Board was the issue of profit versus non-profit. Following discussion, the Board unanimously agreed that the Church as the owner of the property is a non-profit organization. The cost of use of the facility is to cover the operation and maintenance of the Camp. Additionally, the Board believed that the Applicant meets the legal standards for non-profit as the Town and owner of the Camp have entered into an agreement with respect to taxes paid by the owner.

As the Zoning Board of Adjustment had agreed that the Applicant's proposed retreat building is not a "hotel" and that the Applicant qualifies as a non-profit organization, the Board then unanimously agreed that the use and proposed retreat structure is a

temporary residential use as a non-profit overnight and day camp in accordance with Table of Uses 3.6.B.1 of the Ordinance.

At this point in time, the Board re-reviewed the criterion for a Special Exception in accordance with Section 15.8.2 of the Hopkinton Zoning Ordinance. Additionally, the Board reviewed the minutes of the August 1, 2006 hearing and new information presented in an effort to make a determination as to whether the Applicant had met the requirements to be granted a Special Exception.

1. Standards provided by this Ordinance for the particular use permitted by special exception.

The Board agreed that the Applicant successfully addressed the criteria at the August 1, 2006 hearing.

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

The Board agreed that there was no new information presented. The Applicant successfully addressed the criteria at the August 1, 2006 hearing.

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.

Mr. Hesse believed that there were general statements and conclusions represented to the Board with respect property values. There was no actual information provided that would confirm detriment to property values.

The Board agreed that the burden of proof was addressed by the Applicant by way of the Appraiser's testimony comparing use of the retreat house to other properties throughout the State and the affect that those uses have on residential properties in their vicinity.

It was also agreed that the issue with respect to traffic and lighting was addressed by the Planning Board as represented by the new information presented to the Board. All lighting is to conform to the Town's Lighting Ordinance which requires lighting to be directed downward.

Mr. Hesse suggested that the Board may decide to impose a condition to address concerns with noise. A time restriction of 9:00 PM to 9:00 AM for all days of the week was discussed. The actual limitation to the type of noise whether amplified or of children playing was discussed with the Board agreeing that the noise type and whether offensive should be a determination by the Police Department on a case by case basis.

Following review of the minutes of August 1, 2006, and the new information provided to the Board it was agreed that the Applicant successfully addressed Item three of the criteria for a Special Exception.

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

The Board discussed whether the retreat house would pose a traffic safety hazard or affect the ability of the residents in the area to access their property. While it was agreed that the use of the retreat house may increase the level of traffic congestion, the Board unanimously agreed that increase would not be substantial. Furthermore, improvements to the road as represented in the report to the Planning Board by Vollmer Associates will be made by the Applicant.

Applicant successfully addressed the criteria.

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

Applicant successfully addressed the criteria at the August 1, 2006 hearing. Letters from the Fire Department, Police Department and Public Works Department requesting improvements to the road, changes to the power lines, and additional street signage along Camp Merrimac Road and at the intersection of Pine Street and Clement Hill Road are to be addressed by the Applicant according to representations made at the Planning Board hearing. Property will be serviced by its own water and sewer systems.

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

Following review of the minutes of August 1, 2006, it was agreed that the Applicant successfully addressed Item six of the criteria for a Special Exception. There was no new information presented.

7. An appropriate location for the proposed use.

The Board reiterated the fact that the proposed use is permitted by Special Exception in the R-2 district. Furthermore, the Board considered the proposed location which includes the distance from the lake and determined the Applicant successfully addressed Item seven of the criteria. The information provided with respect to the Planning Board's application and review of the location was considered in determining that the criteria had been met.

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.

There was nothing new presented as compared to that presented and represented to the Board at the August 1, 2006 hearing. The Board agreed that the Applicant successfully addressed Item eight of the criteria.

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

The potential increase in the Town's tax base and the fact that the Applicant will be offering a service to their parishioners was determined to be in the public interest and spirit of the Ordinance.

Chairman Krzyzaniak again expressed concern with the fact that the Applicant wasn't as forthcoming during the Board's review of the application on August 1, 2006. Mr. Hesse

suggested that Chairman Krzyzaniak consider whether receiving the information now or at the August 1, 2006 hearing would have changed her position with respect to the application.

Mrs. Gray believed that the Applicant should make every effort to insure that the use of the facility is in compliance with the Applicant's Statement of Use. Mr. Hesse agreed, stating that after October 1, all bookings for use of the property should be consistent with the policy.

Chairman Krzyzaniak read for the record letters the Board received from Alan Bloomquist and David and Karen Dufault. Both parties were in opposition to the application. In considering the letters, the Board agreed that there was no new information provided that had not already been discussed or represented to the Board at the August 1, 2006 hearing.

A motion was then made by Mrs. Gray, seconded by Mr. Boatwright, to vote on Application TH06-4S-8-1 with the following conditions:

1. That the Applicant implements their Statement of Use as represented to the Board, and
2. That a noise time restriction be imposed from 9:00 PM to 9:00 AM each day.

All in favor of voting. With five members voting, four voted in favor (Boatwright, Hesse, Koontz and Gray) and one voted in opposition (Krzyzaniak). The application was approved with the above conditions.

III. Adjournment.

Chairman Krzyzaniak declared the meeting adjourned at approximately 1:15 PM. The next regular scheduled meeting of the Board is Tuesday, July 3, 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.