

Hopkinton Zoning Board of Adjustment
Minutes
August 15, 2007

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment meeting of Wednesday, August 15, 2007, at 7:00 PM in the Town Hall. Members present: Toni Gray, Charles Koontz, Richard Hesse, John Boatwright and Harold Perkins.

The following members present to review the Motion for Rehearing: Toni Gray, Charles Koontz, Richard Hesse, John Boatwright and Janet Krzyzaniak.

The following members present to review the Applications: Toni Gray, Charles Koontz, Richard Hesse, John Boatwright and Harold Perkins.

I. Motion for Rehearing.

Richard Schoch asked to provide the Board with a letter addressing statements made in Stuart Nelson's Objection to the Motion. While Chairman Krzyzaniak received the letter, the letter remained face down on the table at all times with no copies provided to the members.

Motion for Rehearing submitted by Jayne and Richard Schoch and Jamie and Kathleen Schoch, dated July 3, 2007 and received on that same day. Motion for Rehearing pertains to the Zoning Board of Adjustment decision of June 5, 2007, in which the Board granted the application (TH06-2V-4-1) of Stuart F. Nelson for a Variance from Section 5.2.1 of the Hopkinton Zoning Ordinance requiring non-conforming lots to have 50-feet of road frontage. The property is located off of Clement Hill Road in the R-2 (medium density residential) district, shown on Tax Map 208 as Lot 14. No public testimony was accepted.

Mr. Hesse inquired as to limits of the Board's review, asking for clarification as to whether the review of the Motion for Rehearing was limited to the discussions at the Board's June 5, 2007 meeting involving the substantial justice criterion. Planning/Zoning Director Karen Robertson replied yes, explaining that based on her discussions with Town Counsel review is limited to the substantial justice criterion.

The Board then reviewed each section of the Motion for Rehearing with the Board agreeing that the first two sections consists of quotes from Court cases along with an outline of the review of the application to date.

The third section which refers to the Applicant's purchase of the property while knowing of the zoning restrictions was believed to be relevant. Mr. Hesse suggested that in reviewing an application the Zoning Board of Adjustment should be able to consider the equities, Applicant's knowledge at the time of purchase, while

considering the purpose of the Zoning Ordinance. It was believed that this is necessary in order for the Board to determine whether the Applicant had successfully addressed the substantial justice criterion. Mrs. Gray concurred, noting that at the time of review of the original application the majority of the Board had expressed concern with the fact that the Applicant was aware at the time of purchase of the zoning restrictions. In reviewing the substantial justice criterion, Mrs. Gray had not considered the matter as a result of statements made by the Superior Court.

Mr. Hesse noted that it is the Applicant's burden of proof to explain the substantial justice criterion – harm to the public versus benefit to the land owner. He still believed that the Applicant had not successfully addressed the issue.

Mr. Boatwright stated that he had carefully reviewed the Motion and did not see any reason to grant the rehearing. Mr. Koontz concurred.

Mr. Hesse then questioned the Board's past practices in reviewing Motions. In response, Chairman Krzyzaniak stated that when reviewing motions the Board has considered whether there is new information that was not available at the time of the original hearing or whether an error of law had been made. Mrs. Gray concurred, stating that the rehearing process is also intended to allow the Board to address errors that may have been made when reviewing the application.

With there being no further discussion, a motion was made by Mr. Boatwright, seconded by Mr. Hesse, to vote on the Motion for Rehearing. With five members voting, three voted in favor (Gray, Hesse and Krzyzaniak) and two voted in opposition (Koontz and Boatwright). Motion for Rehearing granted. The Board should be able to consider the Applicant's knowledge at the time of purchase while considering the purpose of the Zoning Ordinance. This is necessary in order to determine whether the Applicant successfully addresses the substantial justice criterion. Furthermore, the burden of proof to address the substantial justice criterion is the responsibility of the Applicant of which the majority of the Board believed had not been successfully addressed.

At the request of Stuart Nelson, the Board provided a copy of a letter that Mr. Schoch had provided the Board at the onset of the meeting. Due to the fact that the letter had arrived late, members did not read or consider the letter when reviewing the Motion for Rehearing.

II. Applications.

Chairman Krzyzaniak gave a brief outline of the Rules of Procedure that govern the meeting.

Chairman Krzyzaniak recused herself from reviewing the application as she lives in close proximity to one of the subject properties and because of the fact that the requests being made are for similar uses.

TH07-5S-8-1 Joseph R. Ouellette—Mr. Ouellette addressed the Board to request a Special Exception to use his property for residential/farming. Use to include the raising of poultry and the raising and boarding of horses. The property is located at

686 Clement Hill Road in the R-2 (medium density residential) district, shown on Tax Map 208 as Lot 106. The application was submitted in accordance with Table of Uses 3.6.D.2 of the Hopkinton Zoning Ordinance.

Mr. Ouellette's property is currently for sale. He noted that he is before the Board requesting the proposed use as he has had prospective buyers who were interested in farming, but were not interested in making application to the Board. The proposal includes eight horses, four owned by the property owner and four boarded and 25 chickens with no roosters.

Mr. Ouellette 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.

"The Hopkinton Zoning Ordinance, Section 3.6 (Table of Uses), allows for farming and raising of livestock by Special Exception in an R-2 district. Section 2.1.A.4 Agriculture, Farm, Farming, includes in item five the breeding, boarding and raising of equines."

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 properties due to fire, explosions or release of toxic materials because there will be no significant increase of combustible or toxic materials used or stored on the property."

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 would be no detriment to surrounding property values. Changes to the characteristics of the residential neighborhood will be unchanged due to the small scale of changes being made on the 13-acres."

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

"The property will remain a single-family residence. We propose to house up to eight horses in four shed barns (12' x 24' approx.). Four horses could be boarded. Thus, at the most there would be four additional cars per day at the property."

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

"The property will remain a single-family residence with its own drilled well, septic and leach field. There will be no excessive impact on the police, fire and school system. Additional buildings will be limited to four or five shed barns approximately 12' x 24' to house two horses each. Additionally, there may be a storage barn." Mr. Ouellette referred to photographs of the proposed barns.

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

"There will be no significant construction or changes to the property that will change the flow of storm water run-off on the property. Wetlands delineation has been completed on the property. The proposed Special Exception use will not impact the wetlands on the 13-acre parcel."

7. An appropriate location for the proposed use.

"The proposed location consists of 13-acres of land. This is more than enough land to house up to eight horses and chickens. Abutters and neighbors near by have had horses on their property and some still do."

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 health and safety of the surrounding residents will not be affected by the proposed use of keeping horses on the property. All areas on the property that house horses will be properly fenced to protect the animals and neighbors."

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

"I believe that the proposed Special Exception is consistent with the public's interest and the spirit of the Ordinance. The proposed Special Exception is for an allowable use in an R-2 district as outlined in Section 3.6 of the Hopkinton Zoning Ordinance. Section D, items one and two, address specifically that the use of the land can be used for Agriculture, Farm, and Farming and the raising of animals (equines and chickens) with a Special Exception."

Mr. Ouellette noted that there would be no riding lessons associated with the residential/farming operation.

Mr. Perkins questioned whether the proposal included a total of four or five barns, since there is conflicting information in the application. In response, Mr. Ouellette stated that there would be a total of five barns. Four shed barns for the horses and one barn for farming equipment.

Mr. Hesse noted that the plan presented did not indicate the location of any areas designated for paddocks. In response, Mr. Ouellette advised that he had purposely not included the fenced-in areas as he thought that the buyer of the property could designate those areas. However, he did not that one of the prospective buyers did agree to leave a buffer of vegetation between the neighboring properties and the fencing.

Mr. Hesse then inquired as to whether there would be plans to fence-in the wetland areas, so that they are not disturbed. Mr. Ouellette replied no, stating that a bridge or culvert would have to be installed in order to access the property on the other side of the wetlands. Mrs. Gray responded that a wetlands permit from the State would be required. Mr. Perkins concurred, noting that an alternative would be to erect the barns towards the front of the property, so to there would be no need to cross wetlands.

Mr. Perkins inquired as to why the proposal is for four barns to house eight horses. In response, Mr. Ouellette stated that based on the size of the shed barns he had estimated two horses to be housed in each barn.

Mrs. Gray questioned why there was an interest in having 25 chickens. In response, Mr. Ouellette stated that some of the prospective buyers were interested in having chickens.

Mrs. Gray then read a letter received from abutters Mike and Kate Trojano. Mr. and Mrs. Trojano were not opposed to a horse farm or to residential use of chickens; however, they did express concern with the smell, sounds and the affects of having a commercial chicken farm.

Byron Carr representing the Contoocook Riverway Association addressed the Board expressing concern with the potential affects of the run-off from the farm into the nearby brook, which ultimately drains into the Contoocook River. Mr. Carr suggested that the site plan, along with the owner's intentions for manure storage, should be reviewed by the Conservation Commission. In response, Mr. Ouellette believed that the person that purchases his property would be willing to abide by the requirements of the NH Department of Agriculture.

Mrs. Gray expressed concern with the storage and/or disposal of the manure, suggesting that it is really unknown as to how the buyer of the property will take care of the manure.

Public testimony was closed.

Mr. Hesse suggested that the Board has an opportunity to impose conditions involving fencing, number of horses, number of sheds/barns, review by Conservation Commission, and possibly Planning Board review. Mrs. Perkins concurred, but expressed concern with the Board taking action on an application without actually meeting with the person that will be operating the farm. Mrs. Gray agreed, suggesting that the Board could require that the buyer come before the Board to finalize the details of their proposal.

Mr. Koontz expressed concern with the lack of information as to how the manure will be handled for eight horses.

Motion made by Mr. Hesse, seconded by Mr. Boatwright, to vote on the application. Motion carried unanimously (Perkins, Koontz, Hesse, Boatwright and Gray).

Motion made by Mr. Hesse, seconded by Mr. Perkins, to impose the condition requiring a detailed plan be presented to the Planning Board for Site Plan Review approval before implementation of the residential/agricultural use. Motion carried unanimously (Perkins, Koontz, Hesse, Boatwright and Gray).

With five members voting, all five voted in favor of approving the application with the above condition. The above condition applies to the current and future owner of the property. The Board agreed that the Applicant had successfully addressed the criteria to be granted a Special Exception in accordance with Section 15.8.2 of the Zoning Ordinance.

TH07-6S-8-2 Shirley Sullivan, Agent—Mrs. Sullivan addressed the Board to request a Special Exception to use property for residential/farming. The property is owned by Cheryl Grego, located at 115 Spring Street in the R-1 (medium density residential) district, shown on Tax Map 221 as Lot 94. The application was submitted in accordance with Table of Uses 3.6.D.2 of the Hopkinton Zoning Ordinance.

Mrs. Sullivan is the real estate agent that currently has the property listed for sale. The owner of the property, Cheryl Grego, had been transferred to the Midwest and therefore could not be present at the meeting.

Mrs. Sullivan 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.

"The Town allows livestock, animals and poultry by Special Exception as per Table of Uses 3.6.D.2. This property has housed animals and horses in its accessory buildings for many years. No addition to any accessory structure is being requested."

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

"There are no public hazards. This is a residence with horse and farm improvements."

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.

"Nothing will change by granting this exception. The farm improvements already exist."

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

"This is a residence. There will be no increase in traffic at all."

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

"There would be no excessive demands on any services, as there are no changes being made."

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

"No changes will take place."

7. An appropriate location for the proposed use.

"The structures have been in existence for decades. The indoor round pen area structure was added three years ago and with an approved building 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.

"The area is developed now with the exception of a vacant lot to the east of the subject property."

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

"There have been animals (horses, etc.) on this street for many years. This use has co-existed with neighbors nicely."

Mrs. Sullivan stated that there will be no changes to the use of the buildings on the property. There is presently a five stall barn with two additional stalls that can only be access from the exterior of the building. While the barn contains spaces for seven horses, Mrs. Sullivan has never advertised the property for that many horses as the property only consists of 2-acres. The property also has an existing fenced-in riding arena and altra-dome. Ms. Grego had originally purchased the property as a horse farm and had made improvements costing approximately \$25,000. The prospective buyer of the property currently has three horses. Due to the size of the property and the close proximately of the neighbors, Mrs. Sullivan suggested that all manure be contained and picked-up from the property on a regular basis.

Mr. Hesse inquired as to whether the existing structures comply with the setback requirements. Mrs. Sullivan assumed that the structures were grandfathered, but noted that the house which was constructed in the 1800's is very close to the road.

Abutters Orville and Priscilla Edward of Kearsarge Avenue addressed the Board expressing concern with the conditions of the property over the past several years, noting that manure had been left in pile and had at one time been dumped into a nearby brook. Mrs. Edwards stated that there were times that they were unable to sit outside of their home as there were so many flies in the area. In response, Mrs.

Sullivan concurred with Mr. and Mrs. Edwards with regards to the condition of the property, advising that the manure should have been hauled away. The manure pile that presently exists on the property will be removed as a condition of the sale of the property.

Mr. and Mrs. Edwards questioned why they were not notified prior to the issuance of the permit for the dome, noting that the visual appearance of the dome is not pleasing. In response, Mrs. Gray informed Mr. and Mrs. Edwards that there is no requirement that abutters be notified when permits are issued for structures that comply with the setback requirements.

Abutter Byron Carr addressed the Board as the owner of the property across the street. Mr. Carr noted that he is not opposed to horses; however, he is concerned about the number of horses that may be on the 2-acre parcel. Again, he suggested that the Conservation Commission be consulted as to workable plan addressing run-off and protecting the wetlands.

Non-abutter Michael Ball of Kearsarge Avenue addressed the Board advising that over the years the manure has never been removed from the property. The smell and the flies have affected Mr. and Mrs. Edwards' ability to enjoy their property. He suggested that do to the fact that during the spring the brook floods the Grego property that it would be impossible to have five horses.

Public testimony was closed.

Mr. Boatwright believed that seven horses on the property would be too many. He suggested that there should be a cap on the number of horses allowed along with a condition of manure containment and disposal.

Motion made by Mr. Boatwright, seconded by Mr. Hesse, to approve the application with the following conditions:

- 1) No more than three horses at the property.
- 2) All manure shall be contained in a non-leaching container and removed from the property.
- 3) All manure that currently exists at the property shall be removed prior to horses being moved to the property.

Motion carried unanimously (Perkins, Koontz, Hesse, Boatwright and Gray). The Board agreed that the Applicant had successfully addressed the criteria to be granted a Special Exception in accordance with Section 15.8.2 of the Zoning Ordinance.

III. Other Business.

- **September 4, 2007 Agenda:** Mr. Hesse was asked if he could sit in place of Mrs. Hackwell for the September meeting. Agenda to include review of an application of the American Legion to extend their liquor privileged to outside of the building, and the Board clarifying its interpretation and understanding of the uses permitted at St. Methodios' property as a result of the Statement

of Uses provided to the Board on June 5, 2007. While Mr. Hesse is unable to attend the September meeting of the Board, he noted that it was clear to him that the uses allowed at St. Methodios' property are other religious OR non-profit groups OR groups associated with Metropolis of Boston. Mr. Hesse suggested that the language in the Statement of Use is very clear.

IV. Adjournment.

Motion made by Mr. Hesse, seconded by Mr. Koontz, to adjourn at 8:50 PM. Motion carried unanimously. The next regular scheduled meeting of the Board is Tuesday, September 4, 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.