

**Hopkinton Zoning Board of Adjustment**  
**Minutes**  
**December 4, 2007**

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment meeting of Tuesday, December 4, 2007, at 7:00 PM in the Town Hall. Members present: Toni Gray, Charles Koontz, John Boatwright and Harold Perkins.

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

**I. Public Hearing/Applications.**

TH07-4V-12-1 Cyn Environmental Services—Elizabeth Strachan representing Cyn Environmental addressed the Board to request a Variance to erect a shed with less than the side and rear setbacks required for the VB-1 (village commercial) district. The property is owned by Raymond Mock, located at 861 Main Street, shown on Tax Map 101 as Lot 3. The application was submitted in accordance with Section 4.1 of the Hopkinton Zoning Ordinance.

While Cyn Environmental was hired by Ray Mock to install a soil vapor extraction system, which includes the construction of the shed to house the blower and equipment, the system and its installation is being paid for by the State of New Hampshire. The intent of the soil vapor extraction system is to reduce ground contamination.

Ms. Strachan advised of the limited size of the property in question and their efforts to place the shed at other locations on the property, including within the existing auto repair garage. Other locations were not possible due to the small size of the property and the fact that the existing repair garage has doors on two sides of the building. It was determined that it would be best not to located the shed within the garage due to the fact that welding takes place within the building which would pose a hazard if combined with flammable vapors.

Ms. Strachan reviewed the standards for Variance in accordance with Section 15.8.3 of the Hopkinton Zoning Ordinance.

1. The proposed use would not diminish surrounding property values because:

"The shed is an integral part of a groundwater treatment system installed on the property and will increase the property value by decreasing the groundwater contamination beneath the subject property as well as surrounding properties. Additionally, the shed is temporary in nature and will be removed from the site within two or three years."

2. Granting the variance would not be contrary to the public interest because:

"The purpose of the shed is to reduce the groundwater contamination, which would be beneficial to the public interest."

3. By granting the variance substantial justice would be done because:

"The circumstance of the groundwater contamination beneath the site creates a unique situation and in order to remedy that situation the shed is required on the site. Since the reduction of the groundwater contamination would be in the best interest of the general public, it is Cyn's opinion that substantial justice would be done."

4. The spirit and intent of the Ordinance will not be broken by granting the variance because:

"The chosen location of the shed is the location which will have the least impact to abutters and the general public."

5. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship.

- (a) An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.

"The contamination located beneath the property is a special condition that is being addressed by the placement of the shed. Additionally, the limited area present on the property creates a secondary special condition that requires locating the shed in such a way that does not impact the general public or the business operations conducted on the site."

- (b) The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.

"The shed cannot be placed elsewhere on the property without blocking access to the existing business on the subject property. Additionally, the proposed location of the shed is situated in an area to minimize the impact to abutters and the general public."

Gary Lynn of NH Department of Environmental Services addressed the Board agreeing with the representation that the sound produced by the blower will be approximately 80 decibels without any sound proofing of the shed. However, the proposal is to insulate the shed and floor in an effort to reduce vibration. Additionally, it is believed that the existing stockade fence will help reduce noise. During the summer months the system could be placed on a timer so that the blower isn't continuously operating. Mr. Lynn noted that similar sound proofing measures were in place for a system in Northwood, which reduced the noise level of the blower to a level of street noise.

Chairman Krzyzaniak questioned the level of the noise approximately 30-feet away from the shed. In response, Ms. Tamis was unsure, stating that if at any point in time there are concerns with the level of noise, the State is very flexible at addressing concerns. For example, the system might not operate during the evening hours.

Mr. Perkins questioned whether the vapor extraction system could be shut-off at times when the garage is not open for business. Mr. Lynn replied yes, but would prefer to run the system around the clock in an effort to obtain as much of the vapors as quickly as possible.

Mr. Boatwright inquired as to the actual design of the blower to determine what parts of the system will actually be moving, causing a potential for increased noise. Ms. Tamis discussed the actual mechanisms involved; noting that the blower designed for this facility is the smallest blower that possibly could be designed.

Members questioned whether there are other systems in New Hampshire that could be viewed. In response, Mr. Lynn stated that the system in Northwood was very similar; however, the shed as since been removed from the site.

Mr. Lynn explained how the State has a limited amount of money available to clean-up sites. If the Variance is not granted, the State will cancel remediation of this particular site because it is a low priority. In the meantime, the State will continue to monitor the site as it has been doing for years.

Mrs. Gray questioned who had contaminated the property and the fact that they are not responsible for clean-up. Mr. Lynn was unsure who had owned the property at the time of contamination. He then explained the history of the State legislation that had provided money for clean-ups for contaminated sites in New Hampshire. Mr. Lynn believed that the contamination occurred at some point when the old gas tanks were in the ground; therefore, it would have been sometime prior to 1996.

Mr. Perkins suggested that Mr. Lynn speak with an acoustical engineer from the NH Department of Transportation that might assist in calculating the actual decibels of the blower. Mr. Lynn was not confident that a final determination of the decibels could be determined without the actual system operating.

At this point in time, Chairman Krzyzaniak read a letter received from the Board of Selectmen expressing concern with the potential noise problem. See attached copy.

Ms. Tamis again stated that the hours of the operation of the system could be controlled to address noise concerns. Additionally, the Town of Hopkinton has a Noise Ordinance that must be adhered to.

Mr. Lynn readdressed the Board reviewing the measures that the State is willing to put in place to minimize the potential of noise; however, at this time, the State is not willing to pay for an acoustical study. He then noted that there are systems in West Lebanon, West Ossipee and Windham; however, those systems are larger than the one proposed at the Contoocook Auto Clinic.

Abutter Gretchen Jacques of 14 Highland Avenue expressed concern with the potential of fire, explosion and air contamination. Mrs. Jacques discussed the fact that several months ago Mr. Mock had approached her requesting permission to build on her property the shed for what she was led to believe was for a compressor. Mrs. Jacques noted that she has severe asthma and at times needs to use oxygen. She estimated the proposed shed to be approximately 20 feet from her residence. In response to Mrs. Jacques' concerns, Ms. Tamis advised that the shed is fire and explosion proof. The shed will need to be inspected by the Town's Fire Inspector prior to operation of the system. She then noted that all vapors that are extracted are treated through a carbon filter so that volatiles do not leak into the air.

Representatives referred to the NH Department of Environmental Services website that provides information concerning contaminated sites with the State of New Hampshire. It was noted that the contamination of Mr. Mock's property and the proposed method of clean-up is not unusual.

Ms. Tamis suggested that a fence or vegetated screening could be installed along Mrs. Jacques property line in an effort to reduce noise associated with the system.

Chairman Krzyzaniak was not prepared, at this time, to vote on the application, suggesting that concerns with the potential noise and the concerns of the neighbor need to be addressed.

Following discussion, a motion was made by Mrs. Gray, seconded by Mr. Koontz, to continue the application to January 2, 2008, so to allow the Applicant an opportunity to provide additional information with respect to the level of noise, including the hours of operation. In the meantime, the Board will ask the Fire Inspector to meet with Mrs. Jacques in an effort to address her concerns with the potential of fire. Motion carried unanimously (Krzyzaniak, Gray, Koontz, Perkins and Boatwright).

## **II. Review of the Minutes and Notices of Decision for October 2, 2007.**

Page 3 of the Minutes in correctly references Mr. Perkins as Richard Perkins, rather than Harold Perkins. Minutes are to be corrected and reviewed at the January 2, 2008 meeting.

## **III. Adjournment.**

Chairman Krzyzaniak declared the meeting adjourned at 9:10 PM. The next scheduled meeting is Wednesday, January 2, 2008, at 7:00 PM, Town Hall.

Karen L. Robertson  
Planning/Zoning Director

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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.