

Hopkinton Zoning Board of Adjustment
Minutes
May 6, 2008

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment meeting of Tuesday, May 6, 2008, at 7:00 PM in the Town Hall. Members present: Harold Perkins, Toni Gray, John Boatwright, Daniel Rinden and David Brock. David Brock is an alternate that participated in the hearing process as a non-voting member.

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

I. Applications.

#ZO2008-04 Deep Woods Extreme Inc.: Roy Van Gemert, Jr., President of Deep Woods Extreme Inc., addressed the Board requesting a SPECIAL USE PERMIT for use of the Hopkinton Fair Grounds on July 20, 2008 for the purpose of holding the 7th Annual Four-Wheel Drive Rock Crawling Competition and Truck Show. The property is located at 329 Kearsarge Avenue in the Fair Overlay District, shown on Tax Map Lot: 222 as Lot 60. The application was submitted in accordance with Section 3.8 of the Hopkinton Zoning Ordinance.

Mr. Van Gemert provided Board members with a flyer detailing information about the proposed event. The event will begin at 9:00 AM, rain or shine, with gates opening at 8:30 AM. There will be a typical truck show with different categories so that people can display their vehicles. In addition to the truck show there will be a rock crawling competition where competitors will have to maneuver around a rock course. Portions of all proceeds benefit the Children's Hospital at Dartmouth Hitchcock and the Northeast Association of 4WD Clubs.

Mr. Van Gemert reviewed the standards 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 use is permitted per section 3.8 of the Hopkinton Zoning Ordinance."

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

"Our event is a motorized event so there is always a potential for fire. However, we operate a very controlled event and every year we have employed the Fire Department and an ambulance to be present. They can attest to the fact that we have been incident free and take all proper precautions."

- 3) No detriment to property values in the vicinity or change in the essential characteristics of the neighborhood on account of the location or scale of buildings and other structure, 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 is minimal noise associated with our event. We do strictly control the noise level and we do not permit the revving of motors or loud exhaust in excess of what is normally accepted. We understand and respect the local noise ordinances.”

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

“Due to the increase in attendance and construction on the fairground we did have an increase in traffic. Each year, we do our best to pull traffic in and off the street. We hope with the possible addition of a traffic cop and no construction of the fairgrounds we will not have traffic issues. This is a one day event from 9 AM to 4 PM on Sunday.”

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

“No excessive demand is anticipated. We have employed fire and ambulance personnel each year for the past two years. WE have been able to decrease the number of staff per the direction of the Fire Chief. In addition, each year the Police do a drive through at our event to insure control and we appreciate that. Again, we have never had any violations or incidents other than basic first aid, such as band-aid applications. We have never actually required the use of the fire or ambulance crew.”

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

“No, this is not applicable.”

- 7) An appropriate location for the proposed use.

“The location of the fairgrounds is a perfect fit for those attending our event and for the event itself, which has resulted in the annual success. The grand stands allow us to utilize a controlled area for safety of our participants.”

- 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 will be no affect on either the health or safety of residents.”

- 9) In the public interest and in the spirit of the Ordinance.

“The attendance of our show grows every year and people love it. We started the show to educate the public about the real and responsible use of 4WD motorized recreation. In addition, every year we make contributions to local charities from the surplus of our show. We always receive comments of how professional and fun the event is.”

Ryan Cross of Webster, NH, addressed the Board in favor of the event. Mr. Cross is the Secretary for Deep Woods Extreme, Inc.

Deb Curtis, President of the Hopkinton Fair Association, addressed the Board advising of the positive impact that the event has had on the fairgrounds. Ms. Curtis noted that the Fair Association is currently working with the Applicant as a possible participant in the Hopkinton Fair.

Public testimony was closed.

Motion made by Mr. Boatwright, seconded by Mr. Perkins, to vote on Application #ZO2008-04 as presented. Motion carried unanimously. With five members voting, all five voted in favor of the application (Gray, Perkins, Boatwright, Rinden and Krzyzaniak). The application was approved as the Applicant successfully addressed the requirements for a Special Exception in accordance with Section 15.8.2 of the Zoning Ordinance.

#ZO2008-05 Kurt Schuster: Request for a VARIANCE to construct a residence having less than the front and side yard setback for the R-4 (residential/agricultural) district. The property is located off White Tail Run, shown on Tax Map 212 as Lot 4.3. The application was submitted in accordance with Table of Dimensional Requirements 4.3 and Section 8.7.4 (a) of the Hopkinton Zoning Ordinance.

The area in which the Variance is requested is triangular in shape and lies outside of the front setback by 7-feet in width and 17-feet in length. The area in question is approximately 61 square feet. While Mr. Schuster had submitted his application requesting a Variance from the front and a side line setback, Mr. Schuster had since omitted from his design the third bay of the garage, so that it no longer impedes on the side line setback. Receipt of the revised site plan was entered into the record as part of the application.

Mr. Schuster reviewed a site plan of the property showing the proposed residence positioned as if the Variance were granted and a site plan showing the residence positioned in conformance with the setback requirements. He then advised that the Variance would prevent the need for an excessively steep driveway, creating a winter safety hazard, and would also prevent an excessive topography alteration in an attempt to build the residence.

Mr. Schuster 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 approval of this Variance would only help the value of the surrounding properties. If the home was positioned further toward the back of the lot, the neighboring homes' views would be impeded by looking directly at my home. The home would have that feeling of being in their back yards.

Also, the value of this home and property would be diminished if placed further back into the lot. The home would have an appearance of being down in a hole and placed in a location that does not capture the potential views, diminishing value."

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

"As seen from the road, or any location for that matter, the home would appear to be well within the setbacks and not in Variance. This is because 98 percent of the home

would be inside the setbacks and only a small portion would cross. This is due to an oddly shaped frontage setback. The setback determined from the hammerhead at the end of the road creates a small bite out of the corner of the buildable area. Again, the area infringing the setback would be triangular and would only cover about 61 square feet of this bite."

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

"This Variance would allow the ability to maintain a desired level of aesthetics for the subdivision and its owners, while granting an increased margin of safety to individuals utilizing the driveway to this lot. This would include fire response, ambulance and utility services."

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

"The spirit and intent of the Ordinance is to promote "health, safety, or general welfare of the community. This Variance will not congest any access, provide any less light or air to abutters, create any dangers, encroach any well or septic design, nor restrict the use of surrounding land. This Variance will allow for increased safety to occupiers of the home and neighboring homes by decreasing driveway pitch and aiding emergency response vehicles. As stated in the Board of Adjustment in New Hampshire – A Handbook for Local Officials, in regards to lot shapes and sizes:

Most zoning ordinances specify a minimum frontage for building lots to prevent overcrowding of the land. If a lot had ample width at the building line but narrowed to below minimum requirements where it fronted the public street, a variance might be considered without violating the spirit and intent of the ordinance, because to do so would not result in overcrowding. There are many other variations of lot shapes and sizes that might qualify for a variance; the principles remain the same. The courts have emphasized in numerous decisions that the characteristics of the particular parcel of land determine whether or not a hardship exists."

- 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.

"Again, to avoid a dangerously steep driveway for winter conditions and to prevent an excessive amount of fill to elevate the home, a Variance would be needed."

- (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.

"I am a disabled veteran and have designed a home to accommodate my five knee surgeries and future life with an arthritic knee. I was told that I could shrink the length of the home by placing the bedrooms up stairs. However, I was also told to

plan on not being able to effectively utilize stairs as I age, and since I plan to live in this home for a very long time, a ranch is my best option. I have altered my original plans twice, decreasing the size of the home and layout in order to get the home as close to the road as possible, yet I still am faced with a steep driveway, when abiding by all setbacks. By allowing this Variance, I can move the home forward about 30 feet and raise the elevation five feet. With much less fill necessary and 9 – 10 foundation walls, the home can be further raised about 2 – 4 feet, bringing the elevation from 503 feet to about 512 feet. This would decrease the driveway slope substantially – again, increasing safety while upholding our subdivision's appeal."

Mr. Schuster then reviewed photographs showing the property at various angles, including the downward slope of the property.

Chairman Krzyzaniak had viewed the property prior to the meeting and noticed the steep slope as compared to other properties which appeared level with the street.

Mr. Perkins inquired whether the Applicant planned to build on the property even if the Variance is denied. Mr. Schuster replied yes.

There was no one present wishing to provide public testimony.

Motion made by Mrs. Gray, seconded by Mr. Boatwright, to vote on Application #ZO2008-05 as presented, which is a request for a Variance from the front yard setback. Motion carried unanimously. With five members voting, all five voted in favor of the application (Gray, Perkins, Boatwright, Rinden and Krzyzaniak). The application was approved as the Applicant successfully addressed the requirements for an Area Variance in accordance with Section 15.8.3 of the Zoning Ordinance. Granting a Variance for an area of 7' x 17' (61 sq. ft.) was considered to be minor when considering the topography of the lot, design and layout of the proposed residence, and potential problems that may result from constructing a residence on a steep slope.

#ZO2008-06 Eric Sideleau and Cynthia Glass: Mr. Sideleau and Ms. Glass addressed the Board to request a SPECIAL EXCEPTION to operate a recreation establishment at property formerly used by Venture Golf, located at 205 Pine Street in the B-1 (commercial) and M-1 (industrial) districts, shown on Tax Map 221 as Lots 2 and 10. The application was submitted in accordance with Table of Uses 4.3.F.14 of the Hopkinton Zoning Ordinance.

Before hearing the Applicants' presentation, Chairman Krzyzaniak informed those present that the Board was in receipt of an email from Carol Frost, abutter to the property. Ms. Frost had requested that the Board post-pone the meeting due to the fact that she is out of the Country and is unable to attend. Ms. Frost also included in her email a number of questions that she has with respect to the operation of the proposed facility. Mr. Boatwright suggested that members of the Board question the Applicant in an effort to address her comments and concerns, rather than to post-pone the meeting.

Following brief discussion, a motion was made by Mr. Perkins, seconded by Mr. Rinden, to proceed in reviewing the application as publicly noticed. Motion carried unanimously agreed.

Ms. Glass began her presentation by explaining that she had grown up in Hopkinton and is excited to have an opportunity provide a recreation facility.

Ms. Glass reviewed the standards 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.

“A facility used for indoor and outdoor for profit recreation establishment as per section 3.6.F.14, page Z-19 of the Zoning Ordinance is permitted by Special Exception.”

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

“The proposed use is self-contained with no hazardous materials, only exercise equipment.”

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

“We are proposing a recreational center for adults and children. Adding a cosmetic lift with additional windows and enhancing the landscaping of the existing structure. The outside will be free of storage, such as golf carts and scraps as well as the smoke, gas and noise that went along with that type of business.”

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

“Use of the facility will be spread throughout the day. The number of employees working at one time will be around five or six. The members in the building at the same time will be around twenty-five to thirty. The building use capacity will be per code.”

Ms. Glass referred members to a tentative schedule of classes, along with a list of the hours of operation.

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

“The septic system will remain private. Water use is minimal. There will be reduced issues concerning fire hazard and waste as compared to the previous tenants. The facility will be a benefit to the schools as it will provide another space for activities.”

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

“There are proposed additional parking spaces in an existing area that was previously used for storage of golf carts. No additional paving is anticipated.”

- 7) An appropriate location for the proposed use.

“Walking side walks, mixed use neighborhood with rental units and commercial carpet business. The proposed use will be convenient for walkers from schools, village, library, senior center and Houston fields.”

- 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.

“Our plan is to improve the exterior of the building and property by adding windows and landscaping while providing a location that promotes health and fitness for the entire community.”

- 9) In the public interest and in the spirit of the Ordinance.

“This use is permitted by Special Exception. We will be providing a fitness center for the public, including use of a gymnasium. Our goal is to give the entire Town a recreation facility in the area with limited cosmetic changes to the facility.”

Currently, Ms. Glass teaches ten fitness classes a week at various locations in Town. Operating her own fitness facility will allow her provide additional classes for various age groups. The facility will also offer a full service gym with equipment similar to that used at Gold's Gym.

At this point, Ms. Glass provided the Board with a description of the business as outlined in her business plan. "Storms Fitness Center is a local business geared towards fitness fun for all age groups. There is a full fledged fitness gym. The gym is home to a total of 25 – 30 different variety style classes a week. Classes include beginner level to advanced training. They range from pilates, aerobics, step, yoga, core strength with balls, bands, and weights. We also offer spinning classes at multi levels. Our certified instructors are some of the best in the area, trained in CPR and have extensive knowledge of the fitness field. The facility has three fitness rooms filled with state of the art equipment from Cybex International. We offer a variety of cardio machines and a beautiful weight circuit as well as a large selection of free weights. The club also offers personal training to those who wish to take advantage of one-on-one training. There are a number of packages to choose from when picking out your personal training options.

Members have the use of the beautiful brand new showers and locker rooms. There is also a play room for the children who will need supervision while their parents are working out.

On the other side of the building there is a full size basketball court that will be used for multi purpose activities; this is available for rental use. The facility will be renting space for basketball practice as well as tournaments and game time. There will also be a variety of leagues established such as volleyball and basketball. We will be promoting these leagues to local businesses and different organizations to join and have healthy fun competition against each other. There is also an option to use this space as rental for birthday parties, batting practice, and roller skating or roller blade events. The seniors in the community will utilize this space for walking during the winter months, hot summer days, or just days with inclement weather. The surface is safe and clean for those concerned with outside paths and trails.

Ms. Glass then reviewed in detail Ms. Frost's comments and concerns:

- Do they own the property or just leasing it?

Applicant currently has a purchase and sale agreement contingent upon Town approval of the fitness center.

- What will the hours of operation be?

Hours of operation will be Monday – Thursday from 5:00 AM – 9:00 PM, Friday from 5:00 AM – 8:00 PM, Saturday from 8:00 AM – 6:00 PM and Sunday from 11:00 AM – 7:00 PM.

- Will it be open on weekends?

Facility will be open on weekends with Saturday hours from 8:00 AM – 6:00 PM and Sunday from 11:00 AM – 7:00 PM.

- What type of outdoor recreation will there be?

At this time, there are no plans to provide outdoor recreation activities. It was understood that any use other than the proposed indoor recreation activities would have to be reviewed by the appropriate Town board(s).

Mr. Brock asked the Applicant if she would be open to a condition with respect to outdoor activities. Ms. Glass replied yes.

- Will they be paving any of the land (concern about runoff into the brook and pond from vehicles)?

Applicant proposes to utilize the parking areas that were previously utilized by golf carts. There are no plans to pave the parking areas.

- Will additional lighting be installed, and if so, where?

Motion sensor lighting is proposed on the sides of the building.

- What will be the impact on the brook, pond and wildlife?

Ms. Glass did not believe that the proposal would have any impact on the brook, pond or wildlife. If anything, she believed that by cleaning up the exterior of the property it would have a positive impact on the neighborhood and environment.

- Will there be any change to the dam and/or the culvert under the old railroad bed?

Chairman Krzyzaniak noted that any changes to the dam or culvert would require approval by the Planning Board during the site plan review process. Ms. Glass noted that she has no changes proposed.

- What activities will be conducted on the property along the river?

Ms. Glass stated that, at this time, there are no activities anticipated along the river. Should any activities be proposed, she would apply to the necessary board for approval.

- Approximately how many people would be using the facility on a daily basis and what would be the age group?

Ms. Glass estimated that approximately 60 – 80 people would utilize the facility throughout the day with approximately 20 – 25 people at the facility at any given time. Ms. Glass then outlined her reasons for the hours of operation, noting that the early morning hours are for those people that would like to utilize the facility before work. The evening hours are for those that might work until 6:00 or 7:00 PM and would utilize the facility after work.

- Will there be batting cages and if so, where (concern about noise)?

Ms. Glass explained that at one point she had designed the interior of the facility with stationary batting cages; however, due to the expense they have opted to for a system in which batting cages will be lowered down from the ceiling in the multi-use area. When not in use, the batting cages would be lifted, so that the area could be utilized for another purpose, such as basketball. All batting cages will be located within the existing facility.

- Will the Boys and Girls Club be using the facility and if so, for what purpose?

The Boys and Girls Club will not be utilizing the facility.

- Will there be any additional fencing and if so, what type?

There is no additional fencing anticipated. All existing chain link fencing will remain.

- Will there be vehicle traffic to the land by the river (the old railroad bed is the only way to this parcel and it is not passable at this time due to culvert damage)?

Again, Ms. Glass stated that, at this time, there is no use proposed for the property along the river.

Chairman Krzyzaniak noted that the plan presented shows parking on that side of the building that abuts Ms. Frost's property. Mr. Sideleau stated that the parking area was previously utilized by golf carts and that their proposal is to continue use of that area for parking. There are no plans for paving. Chairman Krzyzaniak believed that any issue with respect to screening would be addressed by the Planning Board as part of the site plan review process.

Ms. Glass and Mr. Sideleau reviewed the site plan pointing out the anticipated flow of traffic with a second entrance proposed between the building and Ms. Frost's property. The main entrance to the property and building will remain in its current location, which is on that side of the building that abuts the Cressy property.

Mr. Brock inquired about the tanning and message room that is shown on the floor plan. In response, Ms. Glass stated that there will be one tanning bed and a licensed massage therapist. She considered the massages as massage therapy for those people that might have problem

areas. Utilizing the fitness center and having the massage therapy available will be an additional option to clients.

Chairman Krzyzaniak inquired about space dedicated as an office and meeting room. Ms. Glass stated that office is for herself and the meeting room is a place where staff can meet with clients to review different packages available to address their needs.

Jacqueline Stock of 136 Riverside Drive addressed the Board as an abutter and an owner of 129 and 153 Riverside Drive. Mrs. Stock was in favor of the proposal believing that the Town has a need for a fitness center. She does not anticipate an impact on traffic in the area. Furthermore, she noted that there is currently lighting on the building that is on all night. Motion lights would be an improvement.

Mrs. Stock expressed no concern with future outdoor activities that may take place on the property. In fact, she stated that the prior users of the property were not good stewards of the land. There were many batteries, broken golf carts, etc. that had been left on the property.

Byron Carr, member of the Contoocook River Advisory Committee, believed that the proposed use would be a much better use of the property when considering the natural resources of the area. He noted that there may be a need for a professional engineer to review the proposed lighting and potential noise, realizing that these issues are a matter for the Planning Board to address.

At this time, public testimony was closed.

Motion made by Mrs. Gay, seconded by Mr. Perkins, to vote on Application #ZO2008-00006 as presented with the following conditions:

- 1) There are to be no outdoor recreation activities on the property without approval of the Zoning Board of Adjustment, and
- 2) Use of the lease space, shown on the plan, must be approved by appropriate Town boards.

Motion to vote on the application with the above conditions carried in the affirmative. With five members voting, all five voted in favor (Gray, Koontz, Perkins, Boatwright and Krzyzaniak) of approving the application. The Applicant adequately addressed the criteria for a Special Exception set forth in paragraph 15.8.2 of the Hopkinton Zoning Ordinance.

II. Review of the Minutes and Notice of Decision of April 1, 2008.

Mrs. Gray, seconded by Mr. Perkins, moved to approve the April 1, 2008 Minutes and Notice of Decision as presented. Motion carried unanimously.

III. Adjournment.

Motion made by Mrs. Gray, seconded by Mr. Boatwright, to adjourn at 9:10 PM. Motion carried unanimously. The next scheduled meeting of the Board is Tuesday, June 3, 2008, 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.