

Hopkinton Planning Board
Minutes
July 11, 2006

Chairman Bruce Ellsworth opened the Hopkinton Planning Board public hearing of Tuesday, July 11, 2006, at 7:00 PM in the Town Hall. Members present: Bethann McCarthy, Celeste Hemingson, Clarke Kidder, and Cettie Connolly. Members absent: Vice Chairman Timothy Britain, Michael Wilkey, Jane Bradstreet, and Edwin Taylor.

I. Conceptual Consultations – There was no conceptual plans presented.

II. Applications –

#2006-8 McLane Northeast, Inc. – John Scott of Rist-Frost-Shumway presented modifications to the Site Plan previously approved by the Planning Board for the construction of an addition on the northeast corner of the McLane facility for the purpose of expanding their freezer facility. Modifications to include the fire lane, finish grade, dock area, paved path, and shape and location of the detention ponds. The property is located at 932 Maple Street in the M-1 (industrial) district, shown on Tax Map 228 as Lot 34. The application was previously approved on May 9, 2006.

The Planning Board reviewed the specific changes which included extending the fire lane so that it is continuous and ties into the existing fire lane. The reason for the extension is due to McLane requiring access to the northwest side of the plant to park trailers not in use. Due to the turning requirements of tractor trailers, the parking area cannot be accessed from the west side of the plant. As a result of the extension of the fire lane the detention ponds had to be relocated further away from the building. Mr. Scott stated that the ponds will function as designed and represented to the Board on May 9, 2006. Additional changes include the finish grade around the freezer being raised two feet to help in insulating the freezer. The trailer dolly pads for the dock area of the main building have been enlarged as the existing pads are too close to the building. The pads were constructed of pavement; however, the new pads will be constructed of concrete to better support the trailers. Lastly, a six foot wide paved path has been added to the west end of the freezer addition for movement of hand carts.

Mrs. Robertson noted that the Fire Inspector had reviewed and approved the modifications as presented.

Mrs. McCarthy questioned the setback of the freezer addition to the shoreland. In response, Mr. Scott stated that the setback well exceeds 250 feet.

Mrs. McCarthy then inquired as to the acreage of the open space on the lot following the addition and site modifications. Mrs. Robertson stated that the property consists of approximately 58 acres. In response, Mr. Scott recalled during a previous review of the

long range plan for the property, included the freezer addition, the open space would exceed that which is required in the Ordinance. It was noted that the Ordinance requires a minimum of 30 percent of open space (undisturbed area) on the lot. Mr. Scott agreed to confirm the calculation of open space and provide the information to the Board.

There was no one present wishing to provide public testimony.

Motion made by Mr. Kidder, seconded by Mrs. Hemingson and amended by Mrs. McCarthy, to approve the site modifications of Application #2006-8 as presented provided that the Applicant provides the Board with confirmation of compliance with the Open Space requirement for the M-1 district, shown in Table 4.3 of the Zoning Ordinance. Motion carried unanimously (Kidder, Hemingson, McCarthy, and Ellsworth).

#2006-10 David & Esther Price – David Price addressed the Planning Board presenting plans of an annexation/lot line adjustment involving properties located at 114 and 136 Flintlock Road, located in the R-3 (low density residential) district. The properties are owned by David F. Jr. and Stacey Price and David and Esther Price. Mr. Price explained the intent of the annexation/lot line adjustment involving 2,150 square feet of property is to provide him with additional land so that he may construct a two-car garage meeting the sideline setback requirement.

Mrs. McCarthy expressed concern that the application was not signed by the other property owner, David F. Price, Jr. In response, David Price, Jr. addressed the Board speaking in favor of the annexation/lot line adjustment.

Motion made by Mr. Kidder, seconded by Mrs. Hemingson, to accept Application #2006-10 as presented. Motion carried unanimously.

There was no one present wishing to provide public testimony.

Mrs. Hemingson questioned the distance of the existing shed from the proposed side lot line. Mr. Price responded that the shed will be 15-feet from the new lot line. The Zoning Ordinance requires a minimum of 10-feet.

Mr. Kidder noted that Mr. Price had received a Shoreland Waiver for the construction of his proposed garage. Waiver was attached to the application submitted to the Board.

Motion made by Mr. Kidder, seconded by Mrs. Hemingson and amended by Mrs. McCarthy, to approve Application #2006-10 as presented with the following conditions:

- 1) That the Applicant submit a copy of the deed transferring the .05 acres from David Price, Jr. to David Price, and
- 2) That the owner, David Price, Jr., sign the Planning Board application.

Motion carried unanimously (Kidder, Hemingson, McCarthy, and Ellsworth).

#2006-11/12 River Grant Condominium Unit Owner Association – Timothy Bernier of T. F. Bernier Incorporated addressed the Planning Board presenting plans of an annexation/lot line adjustment and modifications to the site plan involving properties shown on Tax Map 225 as Lots 12 and 13, located off Park Avenue in the R-2 (medium density residential) district. The site plan (#369) was originally approved on August 14, 1986 with modifications approved on April 9, 1987. Modifications will include reconfiguration and relocation of two "carriage sheds" not yet constructed, the establishment of a postal area, refuse container area, handicapped parking spaces and expansion of on-site parking.

Mr. Bernier presented the 1987 approved subdivision/site plan advising that two (2) buildings consisting of a total of sixteen (16) units were completed. Presently, the remaining two (2) buildings are under construction. In locating the carriage sheds it was determined that the location of one of the sheds would make it difficult for vehicles to maneuver due to the turning radius. The location of the second carriage shed was such that the window of one of the end units of the condominiums would look out onto the shed. Therefore, the proposal is to relocate the two (2) carriage sheds. In one case, the proposal is to move the carriage shed away from the building and to construct an additional bay that will house the postal area. Mr. Bernier advised that the interior lot line adjustments will allow the relocation of the proposed carriage shed in compliance with the Town's setback requirements. In addition to the relocation of the sheds and the new postal area, the Association proposes to relocate and enclose the refuse container, reconfigure walkways for better snow removal and construct additional parking spaces, including handicapped spaces.

Mr. Bernier requested waivers from requiring a landscape plan and from having to locate all buildings within 200 feet of the site. The Association has contracted the services of a landscaper that will landscape the new units with the same landscaping of the existing units.

Motion made by Mrs. Hemingson, seconded by Mr. Kidder, to accept Application #2006-11 for consideration. Motion carried unanimously.

There was no present wishing to give public testimony.

Mr. Kidder questioned whether the Planning Board in 1987 treated the development as one or four separate lots. Mr. Bernier responded that the Town approved the development as separate lots for zoning purposes.

The Board briefly discussed the number of parking spaces to determine whether sufficient parking is provided. Mr. Bernier advised that there will be 52 parking spaces available. Each unit will have one outside parking space and one space in the garage.

Motion made by Mrs. Hemingson, seconded by Mr. Kidder, to approve Application #2006-11/12 as presented, including the Applicant's request for waivers. Motion carried unanimously (Kidder, Hemingson, McCarthy, and Ellsworth).

Mr. Kidder questioned whether he should be recused from reviewing Mr. Nelson's request as he is in his position as Selectman he will be participating in deciding whether to issue Mr. Nelson's building permit. At this point in time there were only four members of the Planning Board present which is necessary for a quorum of the Board. Chairman Ellsworth inquired with Attorney Puffer if his client wished for Mr. Kidder to recuse himself which would also mean that review and comment concerning Mr. Nelson's building permit request would be deferred to a later meeting. Following consultation with Mr. Nelson, Attorney Puffer advised that his client had no objection with Mr. Kidder reviewing the request; therefore, there was no need for him to recuse himself. Chairman Ellsworth concurred.

#2006-13 Stuart F. Nelson – Pursuant to RSA 674:41, I (d), the Board of Selectmen referred to the Planning Board for review and comment a request for a Building Permit submitted by Stuart F. Nelson to construct a residence with a studio apartment on property located off a private road, known as Bass Lane. The property consists of eight (8) acres, located in the R-2 (medium density residential) district, shown on Tax Map 208 as Lot 14.

Attorney Mark Puffer of Preti Flaherty Beliveau & Pachios addressed the Board representing Mr. Nelson in a request pursuant to RSA 674:41, I (d) for the issuance of a building permit for construction of a residence with access via a private way. The Planning Board reviewed a map submitted by Attorney Puffer indicating the location of Mr. Nelson's property, the private way, and other properties which utilize the same access road known as Bass Lane. The private way is accessed from Clement Hill Road which is a Class V road. Attorney Puffer went on to explain how Bass Lane is already utilized by eight (8) other parcels that are beyond the Nelson lot.

Chairman Ellsworth inquired as to the ownership of Bass Lane. In response, Mr. Nelson stated that he owned 30-feet of frontage along Clement Hill Road where Bass Lane meets Clement Hill Road. Mr. Nelson stated that he recently obtained a deed for that portion of the property and was not sure whether Bass Lane is solely located on his property or portions of others.

Attorney Puffer explained that Mr. Nelson's lot existed approximately 50 years before zoning was adopted in Hopkinton. A 1956 plan created a number of the lots around Rolfe Pond with some of the lots to the west utilizing access from another private way off Pine Street.

Attorney Puffer then referenced a 2002 request that the Planning Board had reviewed for a building permit on a Class VI road. The building permit was referred from the Board of Selectmen to the Planning Board for review and comment, similar to the Nelson request, in accordance with RSA 674:41. Attorney Puffer explained the differences in the two

requests, noting that Mr. Nelson is requesting permission to build off of a private way while Mr. McAllister was proposing to build off of the Class VI portion of Barton's Corner Road. Mr. Nelson's drive is estimated at approximately 400 feet from Pine Street which is a Class V road. Mr. McAllister was proposing a driveway that would have been approximately 1400 feet from the Class V portion of Barton's Corner Road. In 2002, the Planning Board believed that the issuance of the building permit to Mr. McAllister would create scattered and premature development. Attorney Puffer believed that in Mr. Nelson's case, the Board could not use the same argument as there are currently eight (8) other properties beyond Mr. Nelsons with three (3) properties being utilized year-round. No matter the outcome of Mr. Nelson's request the eight (8) other property owners will continue to have access to their property utilizing the private way (Bass Lane) as they have a deeded right-of-way. With regards to the Board's concern in 2002 that issuance of the permit would set a precedent, Attorney Puffer stated that in Mr. Nelson's case there are no other properties between his and Clement Hill Road; while in Mr. McAllister's case the last residence on the Class V road was 1400 feet before his property.

Chairman Ellsworth questioned what would prevent Mr. Nelson from further subdividing his property once receiving the building permit. In response, Attorney Puffer informed the Board that Mr. Nelson has no intentions of subdividing his property. Additionally, he will agree to sign a release to the Town with regards to maintenance and liability in accordance with RSA 674:41.

Mr. Kidder questioned the applicability of Section 5.2.1 of the Zoning Ordinance which references standards for use of a non-conforming lot. Mrs. Hemingson noted that the letter from Richard and Jayne Schoch, abutters to the Nelson property, indicates that Mr. Nelson fails to comply with Section 5.2.1 (b) which requires that the owner own no contiguous land.

Motion made by Mrs. Hemingson, seconded by Mrs. McCarthy, to accept the application for consideration. Motion carried unanimously.

At this point, Cettie Connolly joined the Board.

Chairman Ellsworth inquired as to when Mr. Nelson had purchased the property. In response, Mr. Nelson estimated within the last six to eight months he purchased the property from Roger French.

Chairman Ellsworth then inquired as to whether Mr. Nelson owns other properties along Rolfe Pond or properties that are contiguous. Mr. Nelson replied no, explaining that his wife owns the neighboring property and at no point in time did he own the property at the same time as he had purchased the French property. Mr. Nelson indicated on the map the location of his wife's property, along with other properties further around the pond that he either currently or previously owned.

With respect to the applicability of Section 5.2.1 of the Zoning Ordinance, Attorney Puffer explained that Mr. Nelson's lot does not have the 50-feet of frontage in accordance with Section 5.2.1. Mr. Nelson presented a building permit application to the Board of Selectmen under RSA 674:41 because of the fact that he does not meet the requirements of Section 5.2.1. The Planning Board is being requested to review and comment based planning issues.

Chairman Ellsworth stated that it is difficult to say Mr. Nelson cannot use his property while others further down the private road have homes. However, the dilemma for the Board is Section 5.2.1 of the Zoning Ordinance requiring 50-feet of frontage. Mrs. Robertson noted the definition of frontage, frontage being defined as a distance along a street and street being defined as a public way. In response, Attorney Puffer believed that one could argue that Bass Lane is a public way as it could be utilized by the public. Mrs. Connolly concurred, stating that she believed that it would be difficult to prevent the public from using the road. Mrs. Robertson disagreed, stating that Mr. Nelson or others own the underlying fee of the road. She questioned what would prevent the residents along the road and Mr. Nelson from placing a gate across the road preventing public access.

Attorney Puffer reiterated the fact that RSA 674:41 authorizes the Selectmen to issue a permit even though the lot does not have frontage on a Class V road. Again, review and comment is required by the Planning Board to determine whether the proposal is consistent with the Master Plan, whether there are safety issues, or any other planning issues.

Mr. Kidder expressed concern with not knowing whether the property can actually support a building. He noted that topographic and wetland information should have been provided. Attorney Puffer again reiterated that the Planning Board should not be concerned with whether the lot could be built upon, noting that issue would be addressed at the time of issuance of the building permit.

Mrs. McCarthy believed that the Board has no authority to grant the permit as it would conflict with the Town Ordinance. RSA 674:41-III indicates that the Statute supersedes any less stringent local ordinance. She believed that Section 5.2.1 of the Zoning Ordinance requiring 50-feet of frontage is a more stringent requirement than RSA 674:41. Mrs. Connolly disagreed with Mrs. McCarthy's interpretation, stating that the circumstances surrounding Mr. Nelson's property should warrant the issuance of the permit.

Again, Attorney Puffer asked that the Board provide general review and comment concerning the issuance of the permit to build on the private way.

Mrs. McCarthy restated her opinion that RSA 674:41 is not intended to supersede more stringent local ordinance. Mrs. McCarthy then questioned the intent of RSA 674:41-II. In

response, Attorney Puffer noted that should the Selectmen not issue the building permit Mr. Nelson could then apply to the ZBA in accordance with RSA 674:41-II.

At this point, Chairman Ellsworth suggested that the Board provide the Selectmen with pros and cons as to the issuance of the building permit. He began by stating that he did not believe that the issuance of the permit would impact the neighborhood, increase traffic, impact the school system, or increase the risk of fire protection.

Mrs. Hemingson stated that Hopkinton has had a long standing policy concerning building residences on other than Class V roads. She explained how the Transportation Chapter of the Town's Master Plan addresses the importance of preserving the rural character of Hopkinton's roads. Additionally, at numerous Town Meetings there have been concerns expressed by residents about services being provided on private roads. There has been a reluctance to increase the use of the roads or zones for purposes for which they are not intended. Chairman Ellsworth believed that the concerns of the residents were related to the issue of sprawl.

Mrs. Hemingson believed that at Town Meetings the residents appear to be resentful of people that are requesting maintenance of private roads. The Town is reluctant to have additional private roads. The issuance of permits on private roads may mean that the property owners will eventually request that the Town maintain the road. Mrs. Connolly noted that in some cases there are residents that live on private roads that maintain the roads themselves, rather than seeking assistance from the Town. Again, Chairman Ellsworth disagreed with Mrs. Hemingson's interpretation with respect to the reaction of the residents at Town Meeting.

Mr. Kidder questioned whether a permit would be required to winterize camps along private roads. Mrs. Robertson replied yes.

Mrs. Hemingson stated that it is conceivable that people further down the road (Bass Lane) could come in at a later date and request a residential permit should the permit be issued to Mr. Nelson.

Chairman Ellsworth stated that there should be limitations imposed on Mr. Nelson should the Board of Selectmen decide to issue the permit. He suggested that there should be some assurance that the residence be strictly a single family residence with a studio apartment for Mr. Nelson's mother. He further suggested that Mr. Nelson provide the Town with a liability and maintenance waiver as it relates to Bass Lane.

Again, Mrs. McCarthy believed that the Town's Ordinance is more stringent therefore requiring a Variance in order to build on the private road. At this point, she suggested that it may be appropriate for the Planning Board to vote as to whether to recommend the issuance of the permit. Chairman Ellsworth then asked for a raise of hands of members in favor and in opposition. Mr. Kidder recused himself. With four members voting, two

voted in favor (Connolly and Ellsworth) and two voted in opposition (McCarthy and Hemingson).

III. Review of the Minutes and Notice of Decision of May 9 and June 13, 2006.

Motion made by Mrs. Hemingson, seconded by Mr. Kidder, to approve the Minutes of May 9, 2006 as amended (page two, paragraph one, "...installation of residential sprinklers may be a requirement *on all lots within the subdivision.*" Motion carried unanimously.

Motion made by Mr. Kidder, seconded by Mrs. McCarthy, to approve the Notice of Decision of May 9, 2006 as submitted. Motion carried unanimously.

Motion made by Mrs. McCarthy, seconded by Mrs. Hemingson, to approve the Minutes of June 13, 2006 as submitted. Motion carried unanimously.

Motion made by Mrs. Hemingson, seconded by Mrs. McCarthy, to approve the Notice of Decision of June 13, 2006 as submitted. Motion carried unanimously.

IV. Any other business to legally come before the meeting.

#2006-8 McLane Northeast, Inc. – Request that the Planning Board's decision of May 9, 2006, granting conditional approval that the color of the siding of the new freezer addition that is directed towards the Contoocook River be camouflaged or less visible than the color of the main building be rescinded. John Scott representing McLane advised that the metal panel manufacturers have warned that any color other than white will place stress on the panels; therefore, increasing the possibility of breaking the vapor seal(s). The Planning Board viewed photographs that were taken from the Contoocook River directed towards the rear of the building in order to see the possible visual affects, if any. Following brief discussion, Mrs. Hemingson, seconded by Mrs. McCarthy, moved to revisit the issue and accept the color of white for the exterior of the facility. Motion carried unanimously (Kidder, Hemingson, McCarthy, and Ellsworth).

V. Adjournment

There being no further business, Chairman Ellsworth declared the meeting adjourned at 10:00 PM. The next scheduled meeting of the Planning Board is Tuesday, August 8, 2006 at 7:00 PM in the Town Hall.

Karen L. Robertson
Planning Director

In accordance with RSA 677:15, any person(s) aggrieved by any decision of the Board concerning the application(s) may present to the Superior Court a petition, duly verified, setting forth that such a decision is

illegal or unreasonable in whole or part and specifying the grounds upon which the same is claimed to be illegal or unreasonable. Such petition shall be presented to the court within thirty (30) days after the Board's final decision regarding the application in question has been filed and becomes available for public inspection in the Planning Office.