

**Hopkinton Planning Board**  
**Minutes**  
**May 8, 2007**

Chairman Bruce Ellsworth opened the Hopkinton Planning Board meeting of Tuesday, May 8, 2007, at 7:00 PM in the Hopkinton Town Hall. Members present: Michael Wilkey, Bethann McCarthy, Celeste Hemingson, Timothy Britain, Scott Flood, Alternates Edwin Taylor and Cettie Connolly.

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- I. **Public Hearing**, in accordance with RSA 676:4-a, to consider revocation of the subdivision approval of Francis Chase, dated March 21, 2006. Approval was to create six (6) single family residential lots to be accessed by a new roadway. Subdivision was to be located off Irish Hill Road in the R-4 (residential/agricultural) district. The subdivision plan had not been filed with the Merrimack County Registry of Deeds due to the fact that the Applicant had not provided the Town with the necessary surety for the construction of the proposed roadway. Therefore, active and substantial development had not occurred within twelve (12) months after the date of approval (NH RSA 674:39). Parent parcel shown on Hopkinton Tax Map 237 as Lot 36.

Mr. Chase addressed the Planning Board explaining that he had recently acquired financing for the subdivision. He presented a letter of commitment from a bank with respect to the financing. If an extension is granted, Mr. Chase would begin road construction immediately estimating that he would need four or so months to construct the road to base coat.

Mr. Britain suggested that at this point in time the Board may not have the ability to grant an extension. Mrs. Hemingson disagreed, suggesting that RSA 674:39 references the Board's authority to grant extensions. Mr. Britain believed that the Statute was referencing two (2) different time tables, the 12-months for active and substantial development and four (4) exemptions from zoning changes. He suggested that the extension referenced in the Statute was only in the case that the developer had completed active and substantial development within the 12-month period, then the Board could consider whether, at the four year time table, to grant an extension.

Mr. Flood believed that the extension could only be granted if Mr. Chase had requested the extension prior to the 12-month expiration. He suggested that the Board does not have the authority to grant an extension if the 12-month time table has passed which is the case for Mr. Chase's development.

Mr. Britain now believed that Mr. Chase would have to present a subdivision in accordance with the revised Conservation Subdivision Ordinance.

Mrs. Connolly recalled Mr. Chase previously presented plans of a conservation and conventional subdivision with the Planning Board agreeing that the conventional subdivision would be appropriate for the property. Mr. Britain responded by, again, explaining that the Statute does not allow for an extension to be granted after the 12-month time period has lapsed.

Motion was then made by Mr. Wilkey, seconded by Mrs. Connolly, to grant the Applicant an extension of six (6) months beginning May 8, 2007, with the understanding that the Applicant's obligation for the construction of the new roadway shall be completed within the six (6) month period. With seven members voting, two voted in favor (Bradstreet and Wilkey) and four voted in opposition (Britain, Hemingson, Flood, Taylor, and Ellsworth). Motion failed. It is understood that re-application to the Planning Board shall be in accordance with the Town's new Conservation Design Ordinance. Otherwise, the Applicant has the ability to request a waiver from compliance with the Conservation Design Ordinance as outlined in Section 8.5.3 of the Hopkinton Zoning Ordinance.

**II. Work Session** – Revisions to the Subdivision Regulations in an effort to update the procedure for submitting applications and plans.

Work Session rescheduled for Monday, May 21, 2007, at 7:00 PM in the Town Hall.

**III. Review of the Minutes and Notices of Decision of April 10, 2007.**

Motion made by Mrs. Connolly, seconded by Mr. Wilkey, to accept the Notice of Decision of April 10, 2007 as submitted. Motion carried unanimously.

Review of the Minutes of April 10, 2007 was deferred to the June 12, 2007 meeting.

**IV. Other business to legally come before the meeting.**

There was no other business to come before meeting.

**V. Conceptual Consultations.**

There were no conceptual consultations.

**VI. Applications/Public Hearing:**

#2007-3 Jack Porter—Jack Porter addressed the Board presented his application for Site Plan Review to convert the use of a detached building from an industrial (light assembly) use to a residential use. The property is owned by Louisa Porter, located at 881 Main Street in the VB-1 (village commercial) district, shown on Tax Map 101 as Lot 5. Mr. Porter explained how approximately four (4) years ago he had received permission to utilize the building for light assembly. At the time, he advised the Zoning Board of Adjustment and Planning Board of his future intentions of converting the building into a residential unit. The property is serviced by municipal water and sewer, and there is plenty of on-site parking.

Mr. Wilkey expressed concern with the close proximity of the parking spaces to the residential use. In response, Mr. Britain noted that the residential use had already been approved by the Zoning Board of Adjustment.

Mr. Britain then asked the number of parking spaces available. Mr. Porter responded by explaining that there are 27 on-site parking spaces that are utilized by his other

residential units and one business office unit. Based on the uses of the property a total of eighteen (18) parking spaces are required.

Mr. Flood noted his efforts in trying to find ways to expand the Town's tax base. He advised that he would have voted in opposition to Mr. Porter's application to the Zoning Board of Adjustment. In response, Chairman Ellsworth stated that Mr. Porter's property will remain in the commercial district and therefore could be converted, at any point in time, back to a commercial use.

Motion made by Mr. Wilkey, seconded by Mrs. Hemingson, to accept Application #2007-3 for consideration. Motion carried unanimously.

Mr. Taylor questioned whether the Zoning Board of Adjustment discussed the setbacks of the structure. Mr. Porter replied no, stating that he believed that the issue of setbacks was discussed at the time the use was converted to light assembly. He noted that the building setbacks are grandfathered as the structure has existed for a number of years. Mrs. McCarthy advised of the requirement of a greater setback for a commercial/industrial use versus a residential use.

Mr. Porter then briefly discussed the decrease in traffic anticipated as a result of the change of use. He noted that the previous use included fifteen (15) employees working at the property with FedEx and UPS coming to the property twice daily.

Lastly, Mr. Porter explained that he had reviewed his intentions with the Fire Inspector and has agreed to make modifications requested.

Motion made by Mr. Britain, seconded by Mrs. Hemingson, to approve Application #2007-3 subject to completion of requirements set forth in the Hopkinton Fire Department's letter, dated February 6, 2007. Motion carried unanimously (McCarthy, Wilkey, Hemingson, Ellsworth, Britain, Flood, and Bradstreet).

Selectmen's representative Scott Flood recused himself from reviewing the application of Split Tree Management Company, LLC as the principal owner of the company is Selectman Peter Russell.

#2007-4 Split Tree Management Co LLC—Peter Russell addressed the Board presenting his application for Site Plan Review to utilize property, including the existing and proposed structure, for closed storage of raw materials, finished goods or construction equipment, accessory outside storage, and repair garage. The property is located at 228 Bound Tree Road in the B-1 (commercial) district, shown on Tax Map 221 as Lot 72. Mr. and Mrs. Russell and their son, Joshua Russell, purchased the property in 2000. At the time, Joshua received permission to operate his landscaping business from the property, which is no longer in operation.

Mr. Russell informed the Board that he had recently received Zoning Board of Adjustment approval for the above-mentioned uses. At this point in time, he has a tenant that wishes to store his ten-wheeler and excavator at the property. The tenant, Mark Turner, lives across the street from Mr. Russell's property and currently stores his truck and excavator on his property.

Mr. Russell requested a waiver from paving the parking lot, noting that he intends to leave the drive crushed gravel.

Mr. Russell noted that as part of his permitting he plans to construct a 60' x 40' addition to the building that will include three separate bays that can be used for storage or the repairs of equipment.

Abutter Eugene Crews addressed the Board advising of his conversation that he had with Mr. Russell concerning the removal of trees that are on Mr. Russell's property, but provide a buffer from Mr. Crews' property to that of Interstate 89. Mr. Crews was satisfied with Mr. Russell's intentions for the property.

Mr. Russell readdressed the Board to explain that he has someone interested in renting space from him for their landscaping business, which may include outside storage of materials such as bark mulch and stone which is associated with the business. The smaller section, 20' x 26' that will attach the existing building with the new larger addition will be used by Mr. Russell for his own storage which will include his antique trucks.

Mrs. Hemingson questioned whether the repair garage would include retail repair or repairs of vehicles. Mr. Russell was unsure at this time stating that he was led to believe that if repairs were needed to any of the equipment at the property then he would need permission for the use. In particular, Mr. Russell advised that he had been approached by another person that is a field service technician repairing heavy equipment, such as caterpillar transmissions. Mr. Russell stated that the person had not signed a lease agreement so that he is unsure whether those types of repairs would be done at the property. The repair garage is not intended to be a place that the public could go and get their vehicles fixed.

Abutter Mark Turner addressed the Board explaining that he is the person interested in storage of the ten-wheel truck and excavator at Mr. Russell's property. In response to concerns about disposal of waste oils and other fluids used that may be used at the premises. Mr. Turner advised that he hires a fleet service company that comes to his property to change the oils and provide other services on his equipment. All waste oils and other fluids are collected and removed from the site by the fleet company.

Mr. Britain had no concerns with respect to Mr. Russell's intentions in operating the uses from the property; however, he expressed concern with subsequent owners that may not be as conscientious as Mr. Russell.

Motion made by Mr. Britain, seconded by Mr. Wilkey, to accept Application #2007-3 for consideration. Motion carried unanimously.

Byron Carr addressed the Board speaking in favor of Mr. Russell's request for waiver of paving the parking area. Mr. Carr believed with sandy soils that drainage would be better handled leaving the parking lot gravel.

Joanne McIntire addressed the Board expressed concern with the possible repair garage use of the property. While she agreed that Mr. Russell would be sure to operate the repair aspect of the business use as represented; she expressed concern with how future owners of the property may operate a repair business and how they would dispose of waste materials.

Abutter Jean Eaton addressed the Board explaining that she was in favor of Mr. Russell's request for landscaping and storage use of his property. She explained her experience with the previous owner of Mr. Russell's property and the particular problems with noise, outside storage, and aesthetics. She too expressed concern with how a future owner may operate the uses from the property.

Mr. Russell responded to the comments made by advising that the American Legion is across the street and down the road from his property and Mr. Turner's and Mr. Moran's residences are located across the street from his property. Mrs. Eaton's residence is approximately 400-feet up from the existing building and Mrs. McIntire's residence is more than 1000-feet away from the building. Mr. Russell believed that any traffic to and from his property would not pass by Mrs. Eaton's and Mrs. McIntire's residence as the traffic would come from the downtown area. Mr. Russell presented photographs of his property, including any existing buffer in front of his building, along Bound Tree Road. In an effort to increase the buffer from the residential uses, Mr. Russell proposes to remove the row of trees and construct a berm along the front of his property. He referred to the berm that had been constructed between his property and Mr. Bockius property as an example.

Mrs. Eaton readdressed the Board questioning whether Mr. Russell has any intentions of removing additional trees on his property, advising that the trees are a buffer from her property to Interstate 89. Mr. Russell stated that he could potentially add on to his building or construct additional buildings within 50-feet of Mr. Crews' property line.

Chairman Ellsworth asked Mr. Russell if he would retain a buffer along Bound Tree Road that is at least equal to what currently exists. Mr. Russell replied yes.

Mr. Britain stated that he had no concerns with the concept of the proposed uses; however, he believed that it is difficult for the Board to consider the site plan criteria when Mr. Russell is not sure of the specific use of the property. Additionally, he suggested that revisions should be made to the site plan indicating the location of proposed outside storage, including parking and travel lanes. In response, Mr. Russell stated that he currently has at least space available for twenty-four (24) parking spaces with a single gravel drive used for access.

Chairman Ellsworth inquired as to whether Mr. Russell would agree to come back before the Board should he decide to have any retail use of the property. Mr. Russell replied yes, reiterating the fact that in the B-1 district multiple, non-residential uses and structures are permitted on the property.

Marilyn Russell addressed the Board explaining how environmental conscious she and her family are with their property located off Maple Street. She reminded those

present that her family operates an organic blueberry business and would do anything that would be detrimental to their properties.

Mr. Crews suggested that there be a blending of the co-existence of the commercial and residential uses in the area. He again noted that he had spoken to Mr. Russell about his concerns and he felt comfortable with Mr. Russell's response.

Mrs. McIntire re-addressed the Board questioning the hours of operation for the different uses and the type of lighting of the property. In response, Mrs. Hemingson stated that at this time the Board is only aware of two (2) uses, the landscaping business, including storage, and the storage of heavy equipment. In response, Mr. Russell stated that there will be one outside light which already exists.

Mrs. McIntire then requested that the Board limit the amount of lighting allowed at the property. Again, Mr. Russell stated that he has no intentions of installing additional lighting, unless requested by the Planning Board.

Mrs. McCarthy questioned whether the existing light meets the requirements of the Lighting Ordinance. Mr. Russell explained the style of light. Following brief discussion there were no further questions from the Board with respect to lighting.

Chairman Ellsworth questioned whether the tenants would be restricted to hours of operation. In response, Mr. Russell stated that Mr. Turner will leave the property at 5:00 AM and return by approximately 8:00 PM.

Mrs. Eaton readdressed the Board requesting that the existing natural buffer along Bound Tree Road remain. Mr. Russell agreed.

Motion made by Mrs. Hemingson, seconded by Mrs. Bradstreet, to approve Application #2007-3 with the following conditions:

1. Landscaping equipment shall be stored inside the building.
2. Storage of landscaping materials may be outside; however, shall be located on the easterly side of the property, adjacent to I-89.
3. Excavation equipment shall be stored inside the building.
4. There shall be no new lighting of the facility unless reviewed by the Planning Board and all existing lighting shall be in conformance with the Town's Lighting Ordinance.
5. Traffic patterns shall be as described by the Applicant.
6. Applicant shall maintain the existing buffer until the Planning Board approves a plan for a buffer redesign.
7. Applicant is to provide the Planning Board with a final plan showing all parking associated with the proposed two (2) uses, including drive lanes and location of utilities serving the site.
8. Hours of operation shall be from 6:00 AM to 7:00 PM.

Motion then made by Mrs. Bradstreet to amend the original motion by expanding the hours of operation to 5:00 AM to 8:00 PM. Following discussion concerning the location of the property in a commercial district, Mrs. Bradstreet withdrew her

motion. Mr. Britain expressed concern with there being no limitation on hours of operation because of residential uses being located within the district.

Mrs. Hemingson asked Mr. Russell if he would be opposed to the Board approving the site plan as it relates to the uses that are known, landscaping business with outside storage and inside storage of construction equipment. Mr. Russell replied no.

Mr. Russell then asked whether the condition of inside storage of construction equipment would affect his tenants should he have his truck, trailer and equipment parked outside ready for leaving the site early the next day. Following brief discussion, the Board unanimously agreed that their definition of storage does not include equipment outside in preparation for travel.

Motion made by Mrs. Hemingson, seconded by Mrs. Bradstreet, to amend the original motion by omitting the limitation on the hours of operation. With seven members voting, six voted in favor (McCarthy, Wilkey, Taylor, Hemingson, Ellsworth, and Bradstreet) and one voted in opposition (Britain). Motion passed.

With seven members voting, all seven voted in favor of approving Application #2003-7 with the following conditions:

1. Landscaping equipment shall be stored inside the building.
2. Storage of landscaping materials may be outside; however, shall be located on the easterly side of the property, adjacent to I-89.
3. Excavation equipment shall be stored inside the building<sup>1</sup>.
4. There shall be no new lighting of the facility unless reviewed by the Planning Board and all existing lighting shall be in conformance with the Town's Lighting Ordinance.
5. Traffic patterns shall be as described by the Applicant.
6. Applicant shall maintain the existing buffer until the Planning Board approves a plan for a buffer redesign.
7. Applicant is to provide the Planning Board with a final plan showing all parking associated with the proposed two (2) uses, including drive lanes and location of utilities serving the site.

Motion carried unanimously (McCarthy, Wilkey, Taylor, Hemingson, Ellsworth, Bradstreet, and Britain).

Mr. Flood rejoined the Board for the remainder of the hearing.

#2007-5 Paul Mertz—Application for Site Plan Review to operate a plumbing business as a Home Business. The property is owned by Paul and Linda Mertz, located at 47 Hawthorne Hill Road in the R-4 (residential/agricultural) district, shown on Tax Map 251 as Lot 10.2.

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<sup>1</sup> Excavation equipment in preparation for leaving the site need not be stored inside the building.

Applicant waiting final review by the Zoning Board of Adjustment. Should the use be approved by the Zoning Board of Adjustment, the application for Site Plan Review will be reviewed at the Planning Board's June 12, 2007 hearing.

#2007-6 Ted Milbury—Mr. Milbury addressed the Board presenting his application for Site Plan Review to operate a retail business selling greenhouse plants and flowers. The property is located at 169 Burnham Intervale Road in the M-1 (industrial) district, shown on Tax Map 220 as Lot 4.

Mr. Milbury advised that the greenhouse will be purchased from the French family from Henniker. The 28' x 96' greenhouse is made of fabricate and is planned to be located adjacent to an existing garden on the property, approximately 100-feet from the residence.

Chairman Ellsworth asked Mr. Milbury if he had any intentions of erecting additional greenhouses. In response, Mr. Milbury stated that if his business is lucrative then he would install a second greenhouse, understanding that he would need to come back before the Planning Board.

Mr. Milbury reviewed his site plan with the Board explaining that there is approximately a 76-foot buffer between the proposed greenhouse and Burnham Intervale Road.

Mr. Wilkey asked whether there would be any composting or use of pesticides. Mr. Milbury replied no, explaining that he had checked with the NH Department of Environmental Services concerning the use of the greenhouse and was told that pesticides and certain fertilizers are prohibited within 25-feet of the reference line, which is the high water mark of the Contocook River. Mr. Milbury stated that he will use regular fertilizer for his garden.

The Board briefly discussed the parking requirements based on the proposed use with Mr. Milbury proposing seven (7) parking spaces. Mrs. Bradstreet reviewed the plan explaining that the width of the travel lane will need to be expanded by seven (7) feet in order to meet the parking requirement for a 22-foot wide travel land. Mr. Milbury agreed to make the necessary modifications to the parking.

Motion made by Mrs. Hemingson, seconded by Mr. Wilkey, to accept Application #2007-6 for consideration. Motion carried unanimously.

Abutter Byron Carr addressed the Board noting that there is a 50-foot setback requirement for principal structures from the river bank. He questioned whether phosphate fertilizers would be used, suggesting that when watering the plants the fertilizer could eventually runoff into the river. Mr. Carr suggested that Mr. Milbury locate the greenhouse closer to Burnham Intervale Road. In response, Mr. Milbury stated that he had chosen the location for the greenhouse due to the sun being located in the East. If a second greenhouse is constructed in the future it would be located parallel to the first greenhouse.

Following discussion, motion made by Mr. Wilkey, seconded by Mrs. Bradstreet, to approve Application #2007-6 with the stipulation that the Applicant complies with Best Management Practices and meets any requirements of the NH Department of Environmental Services. Motion carried unanimously (McCarthy, Wilkey, Hemingson, Ellsworth, Britain, Flood, and Bradstreet).

## **VI. Adjournment.**

There being no further business, Chairman Bruce Ellsworth declared the meeting adjourned at 9:50 PM. The next scheduled meeting of the Planning Board is Tuesday, June 12, 2007 at 7:00 PM in the Town Hall.

Karen L. Robertson  
Planning Director