

Hopkinton Planning Board
Minutes
October 13, 2009

Chairman Bruce Ellsworth opened the Hopkinton Planning Board meeting of Tuesday, October 13, 2009, beginning at 7:00 PM in Hopkinton Town Hall. Members present: Michael Wilkey, Bethann McCarthy, Edwin Taylor and Cettie Connolly. Members absent: Timothy Britain, Celeste Hemingson, Jane Bradstreet, James O'Brien and Clarke Kidder.

I. Minutes and Notice of Decision of September 8, 2009.

Mrs. Connolly, seconded by Mr. Wilkey, moved to approve the Minutes of September 8, 2009 as presented. Motion carried unanimously.

Mr. Wilkey, seconded by Mrs. McCarthy, moved to approve the Notice of Decision of September 8, 2009 as presented. Motion carried unanimously.

II. Application(s).

#2008-13B Francis Chase – In accordance with RSA 676:4-a the Hopkinton Planning Board held a Public Hearing on Tuesday, October 13, 2009, at 7:00 PM in the Hopkinton Town Hall for the purpose of hearing all interested parties and to take testimony concerning the issue of whether the subdivision approval granted to Francis Chase on August 14, 2007 and filed with the Merrimack County Registry of Deeds on January 16, 2008, plan 18773 should or should not be revoked for the following reasons: Failure to comply with a condition of approval within the time(s) specified by the Board under RSA 676:4-a, I(c) and failure to provide for continuation of adequate security under RSA 676:4-a, I(e).

The subdivision was approved on August 14, 2007 with the condition that the house on Lot 7 be removed within one year from the date of subdivision approval. A one-year extension, from the date of the original condition, was granted on November 13, 2008. A 30-day extension from August 11, 2009 was then granted with the condition that at the Board's September 8, 2009 meeting, the Applicant was to present a plan and timetable for any improvements deemed necessary by the Public Works Director in an effort to stabilize the new roadway as well as the adjacent property. In addition to the plan and timetable, the applicant was to present a renewed Letter of Credit to cover all costs associated with the construction of the new roadway. On September 8, 2009, the Applicant did not present the above information. As a result, the Planning Board denied the Applicant's request for an extension of time to remove the home on Lot 7. The property is owned by Francis and Ellen Chase, located off Irish Hill Road in the R-4 district, shown on Tax Map 237 as Lot 36.

Mrs. Robertson announced that the Board of Selectmen, at their meeting of Monday, October 12, 2009, agreed to call on the letter of credit which is scheduled to expire on Saturday, October 17, 2009. The decision with respect to the letter of credit is a financial matter under the jurisdiction of the Board of Selectmen, rather than the Planning Board.

Chairman Ellsworth noted that the Board was in receipt of a letter from abutters, Douglas and Karen Kimball, who have expressed concerns with the condition of the property.

Attorney Jim Shannan representing David Sands, President of Builders & Homeowners Mortgage Corporation, addressed the Board advising that Mr. Sand's company is a mortgage holder for the property. There are three mortgages currently being held on the property and Builders & Homeowners Mortgage holds two of the mortgages; therefore, they have an interest in the project.

Attorney Shannan reviewed the statutory process, referring to an Amherst case in which the courts noted that a revocation should be "the last resort to enforce..." Attorney Shannan discussed the harm that any revocation would have on an applicant, noting that Mr. Sands is willing to extend the bond if there is a commitment by the Planning Board to eliminate the requirement for the removal of the home.

With respect to the condition of the roadway, Attorney Shannan explained that a meeting had taken place at the site with Mr. Sands, who is the mortgage holder, Mr. Shannan, who is a construction contractor (Attorney Shannan's brother), and two representatives of the Town (Public Works Director Harold Blanchette and Road Committee Chairman Mark Bates). During the meeting the Public Works Director had indicated what needed to be done; for example, erosion control measures and cleaning the edge of roadway, which Attorney Shannan believed could easily be completed within one-day or so. So, he was not sure of what concerns the Board has with respect to the stability of the roadway if the Public Works Director had not expressed concerns during the site visit.

Attorney Shannan noted that should the Town call on the letter of credit that the subdivision road would need to be completed. Attorney Shannan advised his client had not received any notification as to the Selectmen's intentions with respect to the letter of credit. Mrs. Robertson responded that she was only recently made aware of the Selectmen's decision.

Chairman Ellsworth responded to Attorney Shannan's comments by explaining that the purpose of tonight's meeting is not to reconsider the Board's action of September 8, 2009, but rather to properly confirm the action that had been taken. He agreed that revocation of a subdivision should only be the last resort; however, in this particular case Mr. Chase was granted approval of his subdivision with the condition that the existing home, located within the buffer zone, be removed within one year from the date of subdivision approval. After the one-year time period Mr. Chase came before the Planning Board requesting a one-year extension. In considering whether or not to grant the extension the Board took into consideration the economic climate. The extension was subsequently granted. Following that one-year time period, Mr. Chase came back before the Board requesting an additional one-year extension. When asked by the Board of his plans for completing the project Mr. Chase provided no guidance or answers; instead, he had indicated that it was dependent upon when the economy improves. Again, taking the economic conditions into consideration, the fact that the cost for the removal of the home would take away from money that Mr. Chase could otherwise use to stabilize or complete the roadway, the Board granted Mr. Chase a 30-day extension, during which time he could have removed the home. In granting the extension the Board had also required Mr. Chase to come back before the Board that following month to present a plan and timetable for any improvements deemed necessary by the Public Works Director in an effort to stabilize the new roadway as well as any adjacent property. Mr. Chase was to also present a renewed Letter of Credit to cover all costs associated with the construction of the new roadway. On September 8, 2009, Mr. Chase met with the Planning Board and when asked about a time line he was unable or unwilling to provide a time line. Matter of fact, Mr. Chase appeared to not be interested in completion of the project. He provided no sense of where he was going in terms of construction time line. The Board provided him with ample opportunity to address their concerns and even considered the

financial nature of having the funds to complete the roadway, instead of immediately removing the home. Chairman Ellsworth indicated that the Board had lost confidence in whether Mr. Chase was able or willing to complete the project, since he was non-responsive to any of the Board's concerns or requests.

As for the extension of the letter of credit, Mr. Chase had provided a letter from Mr. Sands indicating that the letter of credit would only be extended should the Board rescind its condition requiring the removal of the home.

Mr. Taylor concurred with Chairman Ellsworth, noting that when Mr. Chase asked for the one-year extension that was putting the Town at risk as the letter of credit would soon expire. The Board provided Mr. Chase with the 30-day extension so that he would have time to address the Board's concerns and he did not do so. The Board made every effort to work with Mr. Chase.

Mr. Wilkey also concurred with Chairman Ellsworth, stating Mr. Chase was asked to come in with a plan that would outline a time table for which he would stabilize and then complete the project. The Board was providing Mr. Chase with an opportunity to utilize his limited resources for the completion of the development. Ultimately, Mr. Chase was non-responsive to the Board's request.

Abutter Doris Filson expressed concern with the lack of detail of the Board's minutes of the previous meetings concerning Mr. Chase's application. Ms. Filson recalled the Board being made aware of concerns with respect to the lack of water available to service the proposed new homes, which was not reflected in any of the Board's previous meeting minutes. She suggested that the Board meetings be tape recorded and transcribed.

Attorney Shannan reiterated the fact that the bond company would be willing to keep the bond in place if the Board were to rescind the condition or grant an extension. Again, Chairman Ellsworth noted that the purpose of tonight's meeting is not to re-address the Board's decision of September 8, 2009, noting that Mr. Chase had been given prior extensions and an opportunity to address concerns raised by the Board, which he failed to do.

Cettie Connolly, seconded by Edwin Taylor, moved to revoke the subdivision approval granted to Francis Chase on August 14, 2008, and filed with the Merrimack County Registry of Deeds on January 16, 2008, plan #18773, based on the following reasons: Failure to comply with a condition of approval within the time(s) specified by the Board under NH RSA 676:4-a, I(c) and failure to provide for continuation of adequate security under NH RSA 676:4-a, I(e). Furthermore, the Board is to advise the Board of Selectmen to take whatever action is necessary to reconvey, to the former owners, the open space which was conveyed to the Town by deed recorded at Book 3043, Pages 0701-0707 in the Merrimack County Registry of Deeds. Motion carried unanimously (Connolly, McCarthy, Taylor, Wilkey and Ellsworth).

#2009-9 Ed Bender, Sundance Solar - Request for Site Plan Review to operate a business known as Sundance Solar at property formerly utilized by Lett Manufacturing. The property is owned by William F. Lett Trust and is located in the R-4 district, Tax Map 258, Lot 18.

Mr. Bender, President of Sundance Solar, addressed the Board explaining how he had started the business in the early 1990's from his home, which he eventually moved to the former Cricenti building in Warner. The business involves the sales of small solar products and light assembly.

The products are shipped around the world with most of his business being done utilizing the internet.

Mrs. Robertson advised of the Zoning Board of Adjustment's approval of a Special Exception to operate the business at the former Lett Manufacturing facility off Currier Road.

Chairman Ellsworth inquired as to whether there were changes proposed to the exterior of the building or property. Mr. Bender responded by advising that his only plans were to clean-up the property.

Michael Wilkey, seconded by Cettie Connolly, moved to accept as complete and for consideration Application #2009-9. Motion carried unanimously (Connolly, McCarthy, Taylor, Wilkey and Ellsworth).

There was no one present wishing to provide public comment.

Mr. Wilkey questioned the types of deliver trucks that may come to the property. In response, Mr. Bender advised that he typically has daily UPS and FEDEX deliveries.

Chairman Ellsworth noted that Hopkinton has lighting and signage constraints that must be adhered to. Mr. Bender agreed, noting that there is existing safety lighting at the back doors and that he anticipates a need for a small sign at the front of the property.

It was also noted that the Fire Chief had reviewed the property and expressed no concerns. There will be no hazardous materials in connection with the business.

Mrs. McCarthy inquired as to the type of light assembly that would take place at the property. Mr. Bender stated that they assemble small solar units, such as solar cell phone chargers.

Michael Wilkey, seconded by Bethann McCarthy, moved to approve Application #2009-9 as presented. Motion carried unanimously (Connolly, McCarthy, Taylor, Wilkey and Ellsworth).

#2009-10 Brenda & Alain Breault - Request for Site Plan Review to provide family group home child care at property located at 69 Snowshoe Trail in the R-1 district, Tax Map 222, Lot 22.7.

Mr. and Mrs. Breault addressed the Board advising that they are currently providing licensed family child care that allows them to care for nine (9) children between the ages of six (6) weeks and twelve (12) years. The proposal is to expand the child care so to allow a total of seventeen (17) children with twelve (12) being between six (6) weeks and five (5) years old and five (5) children of first grade level and after school age group. Mrs. Breault currently has a waiting list of parents that need child care.

Chairman Ellsworth noted that NH RSA 170-E indicates the various age groups being twelve (12) and five (5), however, the application submitted requests age groups of twelve (12) and seven (7). Mrs. Breault noted that her application should be revised to reflect the same numbers of NH RSA 170-E, which is twelve (12) and five (5). She then stated that the ratio of children to care giver is one for every five (5) children, depending upon the ages of the children.

In reviewing the site plan, Mr. Breault advised that the parking area consists of five (5) parking spaces. Furthermore, photographs were submitted showing the existing fenced-in outside play area. The State requirement is that there be fifty (50) square feet per child.

In order to accommodate the additional children, Mr. Breault plans to convert one-bay of the garage into space that can be utilized by the day care. The proposal has been reviewed by both the Fire Chief and Code Enforcement Officer and both had no concerns.

Mrs. Breault stated that by changing to family group home child care, allowing the additional children, she will be required to have one (1) full-time employee. Additionally, she will have a high school student work during the afternoons. Hours of child care will be from 6:30 AM to 5:30 PM, Monday through Friday.

There was brief discussion concerning the process by which the State issues licenses to day care with Mrs. Breault providing an overview of the various types of inspections necessary by Town and State officials.

Chairman Ellsworth noted that there is a potential for twelve (12) vehicles at the property at any given time. Mr. Breault agreed, noting that not all children arrive at the same time and that some of the children come for half of the day and others only come for afterschool care. Mrs. Breault stated that they have never had a problem with traffic congestion. The drop offs and pick ups tend to be staggered.

In reviewing the site plan, the Board discussed the various outdoor lighting that exists at the property to ensure that there is sufficient lighting.

Bethann McCarthy, seconded by Michael Wilkey, moved to accept as complete and for consideration Application #2009-10. Motion carried unanimously (Connolly, McCarthy, Taylor, Wilkey and Ellsworth).

There was no one present wishing to provide public testimony.

Mrs. McCarthy inquired about the adequacy of water and sewer for child care operation. In response, Mr. Breault stated that he had spoken with the State concerning the system and was advised that he should apply for a larger system in the case that the current system fails.

Cettie Connolly, seconded by Michael Wilkey, moved to approve Application #2009-10 as presented.

Mrs. McCarthy wanted the Applicant to provide information with respect to what the State will require for a septic system. Mr. Wilkey and Mrs. Connolly disagreed, both stating that they believed the matter to be outside the Board's jurisdiction.

Mr. Breault advised that the State requires one (1) bathroom for every twenty (20) children and for every ten (10) children under a certain age. They currently have one (1) full bath, but have plans to construct a second bath at some point in the future. He noted that the State's suggestion with respect to his septic system was just a recommendation and not a requirement.

Motion carried unanimously (Connolly, McCarthy, Taylor, Wilkey and Ellsworth).

#2009-11 Martin G. Marklin - Mr. Marklin of 112 Riverside Drive addressed the Board, along with his facilities manager, to present a request for Site Plan Review to operate a retail business/coffee bar at property owned by AUS, LLC. The property is located at 28 Riverside Drive in the VB-1/VM-1 districts, Tax Map 101, Lost 23, 24 & 25.

Mr. Markin's business involves making candles and furniture for churches. He noted that for some time he has had some degree of retail business at the facility; however, it wasn't until October of this year that he decided to expand the retail aspect of the business to include a distinctive and locally made gift and food items. At the time, he was unaware that Site Plan Review was a requirement even though the property is located in a commercial district. The proposal includes approximately 80 square feet of area that will be considered a coffee bar selling coffee and prepackaged biscotti, etc. The small patio area for two (2) to three (3) tables will be space that customers could sit to enjoy their coffee as part of their shopping experience.

In reviewing the site plan, Mr. Marklin advised that there is sufficient parking for eighty-eight (88) vehicles. All aspects of the business consist of a total of twenty (20) to twenty-five (25) employees. A breakdown of the number of parking spaces required based on the space utilized is as follows: Warehousing – 26 spaces, manufacturing – 37 spaces, retail – 5 spaces.

The patio will be landscaped with flagstone with no changes proposed to the exterior of the building with the exception of landscaping and the erection of a pergola over the entrance where there was once an awning. The existing sign will be lit with shielded lighting and the area around the sign will be landscaped so that the light fixture will not be visible.

Michael Wilkey, seconded by Bethann McCarthy, moved to accept as complete and for consideration Application #2009-11. Motion carried unanimously (Connolly, McCarthy, Taylor, Wilkey and Ellsworth).

Don Houston addressed the Board advising that the lighting of the sign will be similar to the lighting of the sign advertising the housing development behind the Post Office. The lighting will be totally shielded and will be directed only at the sign. Chairman Ellsworth noted that the Town's Lighting Ordinance is intended to minimize the lights into the sky.

Discussion ensued concerning the method of lighting of the sign with Mr. Marklin agreeing that he would be responsive to complaints or concerns should at any point it be determined that the lighting needed to be adjusted.

Bethann McCarthy, seconded by Michael Wilkey, moved to approve Application #2009-11 subject to further consideration should at any point in time the Planning Board determines that the Applicant is not complying with the intent of Hopkinton's Lighting Ordinance. Motion carried unanimously (Connolly, McCarthy, Taylor, Wilkey and Ellsworth).

III. Adjournment.

With no other business to come before the Board, Chairman Ellsworth declared the meeting adjourned at 9:45 PM. The next regular scheduled meeting of the Planning Board is Tuesday, November 10, 2009, 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 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.

