



# Town of Hopkinton

330 Main Street • Hopkinton, New Hampshire 03229 • [www.hopkinton-nh.gov](http://www.hopkinton-nh.gov)

Tel: 603 746-3170

Fax: 603 746-2952

## HOPKINTON ZONING BOARD OF ADJUSTMENT PLANNING BOARD MINUTES APRIL 14, 2014

Acting Planning Board Chairman Michael Wilkey opened the joint Hopkinton Zoning Board of Adjustment and Planning Board meeting of Monday, **April 14, 2014, at 5:30 PM in the Hopkinton Town Hall**. Members of the Zoning Board of Adjustment present: Chairman Janet Krzyzaniak, Toni Gray, Daniel Rinden Charles Koontz and Gregory McLeod. Members of the Planning Board present: Celeste Hemingson, Cettie Connolly, Jane Bradstreet and George Langwasser.

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The hearing began with the Zoning Board of Adjustment first hearing the Applicant's request for Variance.

### I. Application(s).

#2014-3 Larry Hilton/Darlene Isabelle **Variance** to manufacture precision CNC (computer numerical control) machined products at property owned by Eternal Solutions, LLC, located at 205 Pine Street in the B-1 district, shown on Tax Map 221 as Lot 10. The application was submitted in accordance with Zoning Ordinance Table of Uses 3.6.G.1. Note: April 1, 2014, Zoning Board of Adjustment granted a Special Exception to operate on that portion of the property (building area 56' x 24') that is located in the M-1 district. *Notice of the April 1, 2014 hearing did not include a request for a Variance for that portion of the property located in the B-1 district.*

Due to the fact that there were no members of the audience present, the Zoning Board of Adjustment waived the reading of the Applicant's written response to the criterion for a Variance. For the record, the written response for a Variance as outlined in Section XV of the Zoning Ordinance was as follows:

- 1. The proposed use would not diminish surrounding property values because:** "The proposed use will not diminish surrounding property values. There are no exterior changes proposed to the building. The existing chain link fence to the front of the property will be removed and a second drive/entrance will be constructed on the west side of the building to allow for delivery and pick-up of materials.

The proposal is to relocate the machine shop, including 14 employees, (4 of which are office personnel) to the facility at 205 Pine Street. Presently, there is more than adequate parking to accommodate the business. Other than the fact that a sign will be erected advertising the name of the business and parking of these employees vehicles will be present, the public will not be aware that the machine shop is operating from the facility.

The machine shop consists of manufacturing of precision aluminum, steel, stainless steel and plastic parts using CNC machinery. These machines are expensive and sophisticated as a computer and a program is used to cut various types of material based on a precise coordinate system. That portion of the building that will be designated for the CNC machines needs to be temperature regulated – insulated, heated and air conditioned. This will eliminate the possibility of exposing the machines to dust and humidity and at the same time prevent any possibility of noise carrying outside of the building. That portion of the building that will house the machines is setback at least 180 ft. from the side (west) property line; at least 160 ft. to side (east) property line; 175 ft. from the rear (south) property line. The most northerly section of the building, the wooden structure, will be used for secondary finishes only (cutting, vibrating, tumbling)."

**2. Granting the Variance would not be contrary to the public interest**

**because:** "The public interest will not be impacted as a result of the operation of the business. Again, Prototek currently operates this portion of our business at 244 Burnham Intervale Road. We operate in a residential and industrial neighborhood with little to no impact. Prototek has been operating since 2005 without complaints from neighbors. We have and continue to welcome the public to our facility to see what we do.

Again, other than the fact that a sign will be erected advertising the name of the business and parking of our employees vehicles will be present, the public will not be aware that the machine shop is operating from the facility.

It is our understanding that the property at 205 Pine Street has been vacant for many years. We believe that our utilizing the property will be in the public's interest as there will be less of a chance for vandalism to it and its surrounding neighbors and the property will be maintained on an on-going basis."

**3. By granting the Variance substantial justice would be done because:** "The substantial justice provided to Prototek should also be considered a potential gain to the general public. While manufacturing is permitted at the property, it is limited to a small portion of the building. Therefore, the use is consisted with the area's present uses (commercial/industrial/residential). Given the fact that the industrial district is located off Pine Street and the property has been used or approved for more intense uses. The use of the property for light manufacturing, rather than a gas station or automotive repair garage will be a gain to the public as there isn't potential for residents to be exposed to hazardous materials and increased traffic. Note: Relocating the machine shop to 205 Pine Street will neither increase nor decrease traffic in the area. Those same employees and delivery/pick-ups will move from Burnham Intervale to Pine Street. Since the project is appropriate for the area and does not harm its abutters, the general public will realize no appreciable gain from denying this variance."

**4. The spirit and intent of the Ordinance will not be broken by granting the Variance because:** "Manufacturing is permitted by Special Exception in that

portion of the facility that is located in the **M-1** (industrial) district. If it weren't for the fact that our building is transected by a zoning district boundary we would only need a Special Exception to operate the business. More intense uses than our business such as retail, convenience stores, filling and service stations, and repair garages and body shops are permitted by right or by Special Exception in that portion of the facility located in the **B-1** (commercial) district. The facility already exists with a wide range of uses having previously been approved or having operated from the facility. Such as: Astles Lumber Company, Steenbeke & Sons building supply store, Venture Golf storage, sales and service, Storm's Fitness, and a Childcare Center for 60 children. To allow Prototek to utilize the entire building, rather than a small portion, for light manufacturing use will be consistent with the spirit of the Ordinance as it will allow an existing business to continue to be viable in Hopkinton with no impact on the community, except increasing the town's economy."

**5. Literal enforcement of the Ordinance results in unnecessary hardship.**

- (a) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area.**
- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.** "The restriction on a portion of the property (building) is not necessary in order to give full effect to the purpose of the Ordinance (health, safety, convenience, general welfare, property values, promote efficiency and economy) especially given the fact that Prototek can already utilize a portion of our property for the proposed use, light manufacturing. To utilize the building for a use that would have less of an impact on the general public would more likely be consistent with the general purpose of the Ordinance. Other uses that are permitted in the B-1 district that could impact health, safety, property values include - Retail, convenience stores, filling and service stations, and repair garages and body shops."
- (ii) The proposed use is a reasonable one.** "The effect of the transection of the zoning boundary through the building is a restriction that precludes reasonable use of the property (building).

Again, manufacturing is a use permitted by Special Exception in that portion of the facility that is in the M-1 (industrial) district. In fact, provisions of the Ordinance allow the owner to designate up to 40 additional feet into the B-1 district for M-1 uses. The facility already exists with a wide range of uses having previously been approved or having operated from the facility therefore we believe that the use proposed is reasonable. Such as: Astles Lumber Company, Steenbeke & Sons building supply store, Venture Golf

storage, sales and service, Storm's Fitness, and a Childcare Center for 60 children."

- (b) **If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.** "The statute allows the granting of a variance only when "owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship." In this particular case, we believe the fact that a zoning district boundary transects the main building on the property is a "special condition" that results in an unnecessary hardship. From a practical perspective this special condition of the property makes it difficult or impossible for Prototek to operate our business."

Mr. Koontz asked the Applicant to verify that there will be no hazardous materials on the premises. In response, the Applicant confirmed that there will be no hazardous materials associated with the business. Furthermore, the Applicant advised that the CNC machines are self-enclosed.

Mr. McLeod inquired about the secondary equipment being located in the front portion of the building; while, the CNC machines will be located in the metal building in the M-1 district. The Applicant replied yes, indicating that the northerly section of the building will be used for secondary equipment such as cutting, vibrating and tumbling. The materials will be cut in the northerly section of the building and will be formed in the metal building and then perhaps returned to the northerly section to be finished.

There was no one in the audience to offer public testimony.

Mrs. Gray, seconded by Mr. Koontz, motion to **APPROVE** the Variance (#2014-3) as presented. With five members voting, all five voted in favor (Koontz, Gray, Rinden, McLeod and Krzyzaniak).

Reasons for approval as follows:

1. There was no evidence that any of the surrounding property values would diminish as a result of the operation of the Applicant's business. It was represented that there are no changes to the building proposed. Note: The machine shop is being relocated from 244 Burnham Intervale Road to 205 Pine Street.
2. There was no evidence that the public's interest will be impacted as a result of the operation of the business. The machine currently operates at 244 Burnham Intervale Road in a similar neighborhood setting with residential, commercial and industrial uses. Utilizing the property will be in the public's interest as there will

be less of a chance for vandalism and at the same time it is anticipated that the property will be maintained on an on-going basis.

3. The substantial justice provided to the Applicant is considered as a potential gain to the general public. Manufacturing is permitted by Special Exception in a portion of the building. The use is therefore consistent with the area's present uses (commercial/industrial/residential). The use of the property for Applicant's business, rather than for a gas station or automotive repair garage can be considered as a gain to the public as there is less potential for residents to be exposed to hazardous materials and increased traffic. Finally, the public would realize no appreciable gain from denying the Variance.
4. Manufacturing is permitted by Special Exception in a portion of the facility that is located in the M-1 (industrial) district. If it weren't for the fact that the building is transected by a zoning district boundary the Applicant would need only a Special Exception. More intense uses than the Applicant's business are permitted by right or by Special Exception in that portion of the facility located in the B-1 (commercial) district. The facility already exists with a wide range of uses having previously been approved or having operated from the facility. To allow the Applicant to utilize the entire building, rather than a small portion, is believed to be consistent with the spirit of the Ordinance.
5. The restriction on a portion of the property (building) is not necessary in order to give full effect to the purpose of the Zoning Ordinance (health, safety, convenience, general welfare, property values, promote efficiency and economy), especially given the fact that the Applicant's business can already utilize a portion of the property for the proposed use. Furthermore, to utilize the property for a use that would have less of an impact on the general public would more likely be consistent with the general purpose of the Ordinance. Note: Other uses that could impact health, safety, property values include – retail, convenience stores, filling and service stations, and repair garages and body shops.

The effect of the transection of the zoning boundary through the Applicant's property (building) is a restriction that the Zoning Board of Adjustment believed would preclude reasonable use of the property (building). Note: Provisions of the Ordinance allow the owner to designate up to 40 additional feet into the B-1 district for M-1 uses.

Additionally, the Board recognized the fact that the zoning district boundary which transects the main building on the property is a "special condition" that results in an unnecessary hardship. From a practical perspective, the Board agreed that this special condition would make it difficult for the Applicant to operate its business.

#2014-3 Larry Hilton/Darlene Isabelle **Special Exception** to manufacture precision CNC (computer numerical control) machined products at property (building area 56' x 40') owned by Eternal Solutions, LLC, located at 205 Pine Street in the B-1 district, shown on Tax Map 221 as Lot 10. The application was submitted in

accordance with Zoning Ordinance Table of Uses 3.6.G.1 and subsection 3.4.6. When a lot is transected by a zoning district boundary, the regulations applicable to the larger part (M-1) by area may, at the option of the owner, be deemed to govern the smaller part (B-1) only to an extent not more than forty (40) feet in depth beyond the district boundary. Note: April 1, 2014, Zoning Board of Adjustment granted a Special Exception to operate on that portion of the property (building area 56' x 24') that is located in the M-1 district. *Notice of the April 1, 2014 hearing did not include a request for a Special Exception in accordance with subsection 3.4.6 for that portion of the property located in the B-1 district.*

Mr. McLeod, seconded by Mr. Rinden, moved to **APPROVE** and waive any further discussion with respect to the application for Special Exception (#2013-3) as the use and criteria had already been presented at the April 1, 2014 hearing. With five members voting, all five voted in favor (Koontz, Gray, Rinden, McLeod and Krzyzaniak). The Applicant satisfied all requirements to be granted a Special Exception in accordance with Section 15.8.2 of the Zoning Ordinance.

#2014-3 Larry Hilton/Darlene Isabelle **Site Plan Review** to manufacture precision CNC (computer numerical control) machined products at property owned by Eternal Solutions, LLC, located at 205 Pine Street in the M-1/B-1 districts, shown on Tax Map 221 as Lot 10. Note: This is a continuation of the April 1, 2014 hearing.

The Applicant addressed the Planning Board providing a brief overview of discussions at the April 1, 2014 meeting, in which the Applicant explained that the proposal is to relocate Prototek's machine shop, including fourteen (14) employees, (four of which are office personnel) to the facility at 205 Pine Street. Presently, there is more than adequate parking to accommodate the business. The machine shop will consist of manufacturing of precision aluminum, steel, stainless steel and plastic parts using CNC machinery.

The Applicant then informed the Board of revisions to the site plan from that which was received by the Board at the previous hearing. In particular, the sign is proposed to be placed perpendicular to the road. Additionally, waivers are being requested from Section VI of the Parking Regulations:

1. 6.4.3 Surface: Use of crushed gravel in place of pavement. For aesthetics and drainage reasons the Applicant believed that paved parking is not necessary.
2. 6.1 Altering Parking Requirements in Section 6.3: Current maximum number of employees, all shifts combined will be fourteen (14). Based on the square footage of the facility forty-one (41) parking spaces are required. Instead of actually constructing the additional spaces, the Applicant requested that the Planning Board impose the same condition that was imposed on their facility at 244 Burnham Intervale Road – Applicant constructs five (5) additional parking spaces than that of the total largest number of employees working per shift.

Finally, the Applicant noted that an abutter is requesting a lot line adjustment in exchange for landscaping services for ten (10) years. In response, Mr. Wilkey advised that, at some point, an application and plans must be submitted for Planning Board review and approval.

There was no one in the audience to offer public testimony.

During deliberation, Mrs. Connolly noted that at the April 1<sup>st</sup> hearing, Mrs. Robertson advised that the required parking spaces are shown on the site plan. Mrs. Bradstreet then noted that all lighting for the night shift must be downward facing in compliance with the Town's Lighting Ordinance.

Mrs. Hemingson, seconded by Mrs. Bradstreet, moved to **ACCEPT** the application (#2014-3) as complete and for consideration. Motion carried unanimously.

Mrs. Bradstreet, seconded by Mrs. Hemingson, moved to **APPROVE** the Applicant's first request to waive the parking surface requirement – use of crushed gravel instead of pavement. Motion carried unanimously.

Mrs. Bradstreet, seconded by Mrs. Connolly, moved to **APPROVE** the Applicant's second request to waive the number of parking spaces to be constructed. Instead, require the Applicant to construct five (5) additional parking spaces than that of the total largest number of employees working per shift. Motion carried unanimously. Note: Based on the square footage of the facility forty-one (41) parking spaces are required. The site plan presented had shown the ability to have a total of forty-seven (47) spaces.

Mrs. Bradstreet, seconded by Mrs. Connolly, moved to **APPROVE** the Site Plan (#2014-3) as presented. Motion carried unanimously (Hemingson, Connolly, Bradstreet, Langwasser and Wilkey)

## **II. Review of the Minutes and Notice of Decision of the April 1, 2014 joint Planning Board and Zoning Board of Adjustment meeting.**

Mrs. Connolly, seconded by Mr. Rinden, moved to **APPROVE** the Minutes and Notice of Decision of April 1, 2014. Motion carried unanimously.

## **III. Adjournment.**

With no further business to come before the Boards, the meeting was **ADJOURNED** at 6:10 PM. The next scheduled meeting of the Zoning Board of Adjustment is Tuesday, May 6, 2014, at 5:30 PM in the Town Hall. The next scheduled meeting of the Planning Board is Tuesday, May 13, 2014, at 7:00 PM in the Town Hall.

Karen L. Robertson  
Planning Director

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Pursuant to New Hampshire RSA 677:2, any party to the action or proceedings, or any person directly affected thereby, may apply to the Zoning Board of Adjustment 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.