



Town of Hopkinton

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HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES OCTOBER 3, 2017

Members present: Chairman Daniel Rinden, Toni Gray, Charles Koontz, Gregory McLeod and Jessica Scheinman. Staff present: Planning Director Karen Robertson.

I. **Call to Order.** Chairman Rinden called the meeting to order at 5:30 PM in the Hopkinton Town Hall.

II. **Application(s).**

Special Exception (#2017-03) Rhapsody Farm, LLC on behalf of 1301 Bound Tree Road, LLC on property located at 1301 Bound Tree Road, Tax Map 204, Lot 002, R-3 District. Commercial riding stable/equestrian facility in accordance with Zoning Ordinance Table of Uses 3.6.C.3. Review of the application is a continuation of the September 6, 2017 meeting.

The September 6, 2017, motion to continue the application was as follows:

*“Toni Gray, seconded by Greg McLeod, motioned to **CONTINUE** the application for Special Exception (#2017-03) to the next regular scheduled meeting (October 3, 2017, 5:30 PM, Hopkinton Town Hall), so that the Board will have an opportunity to review the information submitted by the public and to seek an opinion from counsel concerning “horse shows”. Motion carried in the affirmative (Gray, Koontz, McLeod, Scheinman and Rinden).”*

At that same meeting, Chairman Rinden closed the public hearing portion of the meeting. Additionally, the Chairman informed those present that the Board would not reopen public testimony at their October 3, 2017 meeting; nor would the Board receive additional information, prior to or during the October meeting, except for the legal opinion from its counsel.

Chairman Rinden, seconded by Mr. Koontz, motioned to enter **NONPUBLIC SESSION** for consideration of legal advice provided by the Board’s legal counsel, under the provisions of RSA 91-A: 3 II (L). Motion carried in the affirmative with a roll call vote: Koontz (yes), Gray (yes), Scheinman (yes), McLeod (yes), and Rinden (yes).

At 6:00 PM, Chairman Rinden announced the return to public session.

Adopted: 11/07/2017

Chairman Rinden, seconded by Mr. Koontz, motioned to **SEAL THE MINUTES** of the nonpublic session. Motion carried in the affirmative with a roll call vote: Koontz (yes), Gray (yes), Scheinman (yes), McLeod (yes), and Rinden (yes).

In considering whether the Applicant successfully addressed all criteria to be granted a Special Exception, the Board reviewed each criterion.

1) Standards provided by this Ordinance for the particular use permitted by Special Exception.

Mr. McLeod read into the record his findings in researching the use, “horse shows”.

“Section III, Table of Uses, C. 3. allows, but does not define, ‘Commercial riding stables and riding trails’. The Ordinance directs that definitions not specifically found defer to Webster's Unabridged Dictionary, Third Edition or to the standard Industrial Classifications Manual. Webster's is silent, but the following is found in SICM:

Sector 71 Arts, Entertainment, and Recreation, 7113 Promoters of Performing Arts, Sports, and Similar Events. This industry group comprises establishments primarily engaged in organizing, promoting, and/or managing live performing arts productions, sports events, and similar events, held in facilities that they manage and operate or in facilities that are managed and operated by others. Horse Shows are referenced in the 2107 NAICS under 711190.

The Ordinance provides a definition under SECTION II, 2.1.A.4 Agriculture (etc.), (II) (5) as ‘The breeding, boarding, raising, training, riding instruction, and selling of equines.’ The definition does not include horseshows. The Ordinance does provide a definition of ‘Entertainment’ under SECTION II, 2.1.E.1 that I believe applies, that being ‘sporting event’, a use prohibited under SECTION III, F.8.”

As a result of his findings, Mr. McLeod believed that the Applicant had failed to demonstrate that the intended use is within the allowable parameters of a Special Exception.

Chairman Rinden noted that the Zoning Ordinance permits by Special Exception “commercial riding stables and trails”. He concurred with Mr. McLeod that horse shows are not a use listed in the Ordinance and therefore, are not permitted.

Ms. Scheinman stated that she, too, agreed with Mr. McLeod. She looked in the dictionary and found the definition of the word “stable” to be a traditional definition that did not mention horse shows. She noted that horse shows are specifically mentioned in the Fair Overlay District. Ms. Scheinman further stated that the Zoning Ordinance defines, “Entertainment” to include sporting events and exhibitions, which she believed to include horse shows. In the R-3 district, the Ordinance prohibits a “Place of Entertainment”. Therefore, horse shows are not permitted.

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

Chairman Rinden suggested that the manure might be the only toxic material. However, the Applicant had testified that she had made arrangements for storage and removal. Mrs. Gray concurred, stating that the Applicant has successfully addressed item 2, for the operation of a riding stable.

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

In response to item 3, Chairman Rinden stated that there are many farms, including farming equipment, in Hopkinton. Mrs. Gray agreed, suggesting that the Applicant had satisfied item 3, provided that the use excludes horse shows. Chairman Rinden concurred, stating that the Board had received testimony that the horse shows had changed the character of the neighborhood – noise, dust and traffic.

Ms. Scheinman believed that the Applicant had not sufficiently proven that there is no detriment to property values because the noise, traffic and dust from the horse shows. Without the horse shows, the riding stable did meet the criteria. The realtor's letter, submitted by the Applicant, did reference boarding horses and riding lessons.

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

Mr. Koontz suggested that the Applicant's description on the number of vehicles and trailers and how vehicular and trailer traffic is handled does not satisfy the criteria in item 4. Chairman Rinden concurred, stating that the Board had received testimony concerning the increase in the number of vehicles/trailers that travel to the horse shows. Without the horse show component, the members believed that there would be no creation of a traffic safety hazard or substantial increase in traffic.

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

Chairman Rinden stated that water, sewer and waste disposal will not require the use of municipal services. Furthermore, a subdivision is not being proposed; therefore, there would be no impact on schools.

Mr. McLeod suggested that the riding stable would have no excessive demand on municipal services based on the written testimony of the Fire Chief and Police Chief. Ms. Scheinman agreed, provided that the horse shows are not a factor being considered. Otherwise, Ms. Scheinman suggested that the vehicular traffic from the horse shows would create an excessive demand on roads.

Mr. Koontz expressed concern with the use of port-a-potties as represented by the Applicant. Mr. Koontz wanted to be sure that they are in place temporarily. Mrs. Gray responded that the port-a-potties were represented to be associated with the horse shows, not the riding stable.

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

Members agreed that the Applicant successfully addressed item 6.

7) *An appropriate location for the proposed use.*

Chairman Rinden believed that the property is appropriate for a riding stable, but that the location is not appropriate for horse shows. Mr. McLeod concurred, noting that entertainment venues are not allowed in the district (R-3). Ms. Scheinman concurred.

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.*

Chairman Rinden suggested that a commercial riding stable would have no adverse effect; however, he believed that horse shows with the associated vehicles/trailers would adversely affect the safety of others along the road.

Ms. Scheinman stated that without the horse shows, the Applicant had satisfied item 8. However, based on the information presented by the Applicant concerning the operation of horse shows, she agreed that item 8 had not been adequately met with respect to the horse show component. Mr. McLeod concurred.

9) *In the public interest and in the spirit of the ordinance.*

Mr. McLeod indicated that the riding stable, which includes lessons, breeding, boarding and riding trails, is within the spirit of the ordinance. He reiterated that for the reasons previously stated horse shows are not permitted and therefore, the use is not in the spirit of the Ordinance. The property is in a low-density district. During testimony, reference had been made about the “business”. The business aspect of a riding stable is limited. Furthermore, the horse show component does not meet the definition of a home occupation or a home business.

Mrs. Scheinman stated that the Applicant failed to show that horse shows are customarily and habitually associated with stables in our region.

Ms. Scheinman also stated that the horse shows are not subordinate or incidental to the riding stable, due to the size of the property that is being utilized for the horse shows, number of attendees and traffic. She suggested that based on the information presented that the space utilized for the horse shows exceeds the percent referenced

in the definition of “accessory use”. She concluded the horse shows are not an accessory use.

Chairman Rinden then suggested that a motion be made with conditions. Mr. Koontz concurred, indicating that the motion may be to approve the application, except for horse shows.

Chairman Rinden assumed that if the horse shows were not taking place, then the loud speakers would not be used. Mrs. Gray concurred, assuming that there would be no loud speakers or a substantial increase in traffic.

Mr. McLeod recommended that the Board not include language in the motion concerning the use of loud speakers as many people have speakers outside their home, such as on their decks.

Mr. McLeod, seconded by Mr. Koontz, motioned to accept and **APPROVE** Application #2017-03, with the condition that “horse shows” be excluded from the approval. Motion carried in the affirmative (Koontz, Gray, Scheinman, McLeod, and Rinden).

Summary: The Applicant successfully addressed all criteria to be granted a Special Exception, as outlined in Section XV of the Zoning Ordinance, for the operation of a commercial riding stable, excluding horse shows. The Applicant did not successfully address items 1, 3-5, and 7-9 of the criteria for a Special Exception to operate horse shows. Horse shows are not defined in the Zoning and are only referenced in the Fair Overlay District. Consideration was given to Webster’s Unabridged Dictionary, Third Addition, the Standard Industrial Classification Manual, published by the U.S. Bureau of Census, and including but not limited to the Zoning Ordinance definition of “Entertainment”, which includes “sporting events”, and the definition of “Use, Accessory”. In the R-3 district, entertainment venues are not permitted. Upon further review of the Zoning Ordinance and based on testimony of the Applicant, it was also determined that horse shows would not be incidental, subordinate or accessory to the Applicant’s commercial riding stable, due to the area of property utilized by the horse shows, number of attendees and amount of associated vehicular traffic. Additionally, it was determined that the use would not qualify as a home business or home occupation in accordance with the provisions in the Ordinance. Zoning Ordinance provisions considered in reviewing the application: 2.1, 2.1.A.4 (II) (5), 2.1.E.1, 2.1.H.1, 2.1.H.2, 2.1.U.2, 3.5.2, 3.6.C.3, 3.6.F.8, and 3.8. Standard Industrial Classification Manual provisions considered in reviewing the application: Sector 71, 7113 and in the 2017 version 711190.

III. Review of the Zoning Board of Adjustment Minutes and Notice of Decision of September 6, 2017.

Chairman Rinden, seconded by Mr. McLeod, moved to **APPROVE** the Minutes with grammatical corrections. Motion carried in the affirmative.

Mrs. Gray, seconded by Mr. Koontz, moved to **APPROVE** the Notice of Decision of September 6, 2017 as presented. Motion carried in the affirmative.

IV. Adjournment.

Toni Gray, seconded by Charles Koontz, motioned to **ADJOURN** the meeting at 6:43 PM. Motion carried in the affirmative. The next regular scheduled meeting of the Hopkinton Zoning Board of Adjustment is at 5:30 PM on Tuesday, November 7, 2017, at the Hopkinton Town Hall.

Karen Robertson
Planning Director