



Town of Hopkinton

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HOPKINTON ZONING BOARD OF ADJUSTMENT

MINUTES

NOVEMBER 16, 2017

Notice is hereby given that the Hopkinton Zoning Board of Adjustment met on **Thursday, November 16, 2017, at 6:30 PM** in the Hopkinton Town Hall, 330 Main Street, Hopkinton, and made the following decision:

I. Motion for Reconsideration

Motion for Reconsideration of Rhapsody Farm, LLC concerning the Zoning Board of Adjustment's decision of October 3, 2017, in which the Board granted the Applicant's request for a Special Exception (#2017-03) to operate a commercial riding stable, but excluded horse shows. The property is owned by 1301 Bound Tree Road, LLC and is located on property at 1301 Bound Tree Road, Tax Map 204, Lot 002, R-3 District.

Chairman Rinden read an excerpt from the Zoning Board of Adjustment's Notice of Decision, dated October 3, 2017.

"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 was a continuation of the September 6, 2017 meeting.

Greg McLeod, seconded by Charles 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)."

Mr. Greenblott noted that while he had not been present at the previous meetings, he had reviewed the record. He then asked if there were other reasons, that were not reflected in the record, for the exclusion and/or reliance on the definitions for "horse shows". Chairman Rinden replied no, stating that the information is reflected in the record of the meetings.

In considering whether to grant the Motion for Reconsideration, the Board considered each point raised by the Applicant.

1. ***"The Board erred in defining the term 'commercial riding stable' as not including 'horse shows'."***

Chairman Rinden stated that while the Board may have referenced an incorrect classification, when reviewing the Standard Industrial Classification Manual (SICM), it is not necessarily grounds for a rehearing. Ms. Scheinman concurred, stating that

while there was reference made to the SICM, there were Board members that had referenced provisions of the Zoning Ordinance, without any reference to the SICM. These references included the lack of a definition in the Ordinance for a “Commercial Riding Stable” and the fact that there is a definition of “Entertainment”.

Chairman Rinden believed that reference to another classification in the SICM would not have changed the Board’s decision. Mr. Koontz concurred, stating that the information was available at the time of the hearing.

Mr. Greenblott suggested that if the Board had applied the incorrect definition, then there may be an argument that the Board made an error of law. In response, Mr. Koontz reiterated the fact that the Applicant and abutters had an opportunity at the hearing to present that information to the Board. Chairman Rinden concurred, noting that the Board did not consider one definition. In fact, the Board considered several definitions from several sources. The SICM was not a controlling factor when considering the use of the property. Again, whether the Board referenced an incorrect classification of the SICM would not have changed the Board’s decision as the Applicant had not satisfied all other criteria to be granted a Special Exception.

Mr. Koontz asked Planning Director Karen Robertson whether the Applicant has an opportunity to apply to the Select Board to operate the horse shows. Mrs. Robertson was unsure. She suggested that it is a legal question.

Ms. Scheinman stated that the Board had also considered and determined that the Applicant’s horse shows would not qualify as an accessory use based on the criteria in the Zoning Ordinance.

Mr. Koontz noted that in reading the Motion for Reconsideration, the Applicant had changed her request from 50 horse shows to 7-15 shows. Other Board members noticed the same.

Mr. Greenblott stated that if the Applicant can show good cause or that the decision was unlawful or unreasonable, then the Board can grant a rehearing. In response, Ms. Scheinman noted that the evidence that is being presented was available at the time of the original hearing; therefore, there is no ground for a rehearing. Mr. Greenblott agreed, stating that the Board is not obligated to grant a rehearing.

Ms. Scheinman suggested that point #1 is a question of law. She stated that she is comfortable with the Board’s initial decision. Mrs. Gray and other members of the Board concurred.

3. “Regarding the effect of the proposed project on property values and character, the Board overlooked specific language in the Applicant’s expert report regarding property values.”

Ms. Gray disagreed, stating that it appeared that Realtor Judy Hampe had not been at the property during a horse show. Chairman Rinden concurred, indicating that the realtor’s letter stated an opinion with little information to support it.

Ms. Scheinman noted that the realtor’s letter had referenced a sale that is common knowledge in Town. Letters submitted by abutters had referenced the same transaction. The transaction involved a party that had a personal connection to the abutting riding stable, which is not considered a typical sale.

Mr. Greenblott stated that the burden is on the Applicant to prove that there would be no diminution in property values. In receiving subjective opinions, the Board can consider whether the opinions are useful. Mr. Koontz agreed, stating that the property values in the neighborhood was not the only factor considered. The Board also considered the change that the use would have on the characteristics of the residential neighborhood. Ms. Scheinman concurred, stating that the Board not only considered the realtor's opinion, but also considered the testimony of the residents in the neighborhood.

4. *"The Board overlooked expert opinion about traffic safety in favor of anecdotal testimony from an affected abutter."*

Chairman Rinden recalled the presentation by the Applicant. He did not believe that the Applicant had given the impression that there would only be 6-8 trailers going in and out of the property as a result of the horse shows.

While the increased traffic may be during the times of the horse shows, Chairman Rinden suggested that consideration had to be given to overall impact that the traffic may have on the neighborhood, including when emergency vehicles are trying to get to the facility.

Mr. Koontz noted that while the Applicant had made efforts to direct people the shortest distance to the facility, to lessen the impact on the neighbors and on the road, that did not solve the concerns of traffic safety. He understood that there was an expert opinion; however, that does not take away from the observed opinions of the residents in the neighborhood.

Ms. Scheinman suggested that there was sufficient evidence to support the Board's initial conclusion concerning item #4 of the criteria for Special Exception. The Board concurred.

5. *"The Board overlooked objective expert evidence confirming that no excessive demand will be placed on town services and instead relied upon the anecdotal testimony of concerned abutters."*

Chairman Rinden wasn't sure why the use of port-a-potties was a matter raised in the Motion for Reconsideration. Mr. Koontz agreed, suggesting that at the hearing he had raised the matter, but that it wasn't a matter that he had considered when determining whether there would be an excessive demand on services.

Ms. Scheinman asked Mr. Koontz if, when raising the issue, he was considering traffic and the impact on the roads. Mr. Koontz did not recall details of the discussion.

Mr. Koontz then noted that the topic had to do with waste disposal as it had been an issue at other locations in Town. Mrs. Gray agreed, but suggested that the Applicant had satisfied the issue of waste disposal. The concern of excessive demand on municipal services was because of the impact that the traffic from the horse shows would have on the condition of the roads. Chairman Rinden concurred, noting that, at the hearing, the Public Works Director did not appear confident in endorsing the proposal. Ms. Scheinman agreed, stating that the Public Works Director had represented that the additional traffic would cause additional wear and tear and the need for additional sanding and grading of the roads. As a result, the Board had

concluded that the proposal would cause an excessive demand on municipal services.

7. ***“Because the Board erred in defining the Commercial riding stable horse shows as ‘entertainment’, its conclusion that the location was inappropriate for the use was error.”***

Ms. Scheinman stated that the location is inappropriate because of several factors, which included the location of the property along the road and the area of the neighborhood in which the shows were being operated. The location wasn't considered inappropriate because of the definition of a riding stable. Mrs. Gray concurred, noting that the riding stable was approved. The decision was that the location (property and neighborhood) was inappropriate for horse shows.

Mr. Greenblott stated that the issue raised by the Applicant is that horse shows are part of the operations of a commercial riding stable. Ms. Scheinman understood, stating that she had considered the location of the use on the property, the noise created and the impact of traffic.

8. ***“The Board erred by overlooking objective, expert testimony that the Applicant’s project would not affect the health and safety of residents in favor of subjective, anecdotal testimony.”***

Mrs. Gray disagreed with the Applicant's assumption that the Board had overlooked the testimony of the Fire Chief and Police Chief.

Mr. Koontz stated that while the Board had weighed all testimony, including that of the Fire Chief and Police Chief, the Applicant had weighed the testimony differently from that of the Board.

Mrs. Gray noted that that the application is straight-forward when only considering the Applicant's use of the property as a riding stable, without horse shows.

Ms. Scheinman stated that the Special Exception criteria also includes a provision that the use not be detrimental to the use and development of adjacent properties. As the record shows, the Board determined that the horse shows would be detrimental.

Chairman Rinden explained how he had no issues with what was represented as statements made by Chief Pecora and Chief Yale. However, there were other issues that had to be considered, such as the noise and traffic created from the horse shows. Mr. Koontz concurred, noting the crowded conditions and congestion on the road were important factors. Mr. Greenblott agreed, stating that this area of Town is one of the most rural areas.

9. ***“The Board’s determination that the proposed project was not within the spirit of the zoning ordinance was error because it was founded upon an incorrect definition of what activities are associated with a commercial riding stable.”***

Mrs. Gray did not agree with the Applicant's findings concerning the Board's reason for deciding that the Applicant did not satisfy item #9 of the criteria for Special Exception.

Mr. Greenblott suggested that if a commercial riding stable were to include horse

shows, it would not have changed the Board's decision as the Applicant did not satisfy all other criteria for Special Exception. Ms. Scheinman concurred, noting that if one were to assume that the definition included horse shows, the use would not qualify as an accessory use as it is not incidental and subordinate to the riding stable based on the portion of the property being utilized and the requirement in the Zoning Ordinance. Furthermore, when reviewing the factors and circumstances that were considered during the meetings, there is ample evidence on the record that the Applicant did not meet the burden of the spirit of the Zoning Ordinance.

Finally, Mr. Koontz stated that the Zoning Ordinance includes provisions for "Commercial Riding Stables and Riding Trails", but not "horse shows".

Toni Gray, seconded by Charles Koontz, moved to **DENY** the Motion for Reconsideration. Motion carried in the affirmative to deny the Applicant's Motion for Reconsideration (Gray, Koontz, Scheinman, Greenblott and Rinden).

Reason for Decision:

- *The Board unanimously agreed that Sector 71 of the Standard Industrial Classification Manual (SICM) was not a controlling factor in deciding whether the Applicant successfully addressed all criteria for a Special Exception. Various other sources were reviewed for definitions of "Commercial Riding Stable", "Entertainment", "Sporting Events" and "Use, Accessory". Other sources included the Zoning Ordinance and Webster's Unabridged Dictionary, Third Addition. Reference to another provision of the SICM would not have changed the outcome of the Board's decision, which was to grant the Special Exception to operate a commercial riding stable, except for horse shows.*
- *The Board unanimously agreed that the letter from the Realtor stated an opinion of property values based on the Realtor's experience in selling a property abutting a riding stable. It was unclear as to whether the realtor had visited the property in question during a horse show.*

In deciding whether the Applicant successfully addressed item three of the criteria for a Special Exception, the Board must also consider the effect that the use will have on the character of the neighborhood. Since the Applicant had been operating the riding stable and horse shows, prior to coming before the Board, residents in the neighborhood had experienced the operations. During public testimony, residents spoke of the negative impact that the shows had as it related to noise, traffic and the condition of the road.

- *The Board considered the testimony of the Director of Public Works, who had indicated that he was neither for nor against the proposal, but expressed concern with the number of vehicles associated with the horse shows and the impact that they would have on the condition of the road.*

While the Board recognized the Applicant's efforts to direct traffic the shortest distance to the site, the Board agreed that there was sufficient evidence in the record to support their conclusion that the Applicant did not satisfy the requirements of item four of the criteria for Special Exception.

- *The Board unanimously agreed that the use of the port-a-potties was not a factor in deciding whether the Applicant had satisfied the requirement of item five of the criteria for Special Exception.*

While the Board concluded that the traffic related to the commercial riding stable (September 6, 2017 meeting, Applicant estimated 10-15 horses usually at the property) would not create an excessive demand on municipal services, the Board concluded that the additional traffic from the operation of the horse shows would create an excessive demand. The Director of Public Works had provided testimony concerning the additional road maintenance that would be needed due to the additional vehicular traffic.

- The Board unanimously agreed that the definition of a “commercial riding stable” was not a controlling factor in deciding whether the location was appropriate to operate “horse shows”. Other factors considered included the noise, traffic, and location. Note: The Board had concluded that location is appropriate for a commercial riding stable.*
- The Board did not overlook the written testimony of the Police Chief or Fire Chief in determining whether a commercial riding stable would affect the health and safety of residents in the area. However, in deciding whether the Applicant successfully addressed item eight of the criteria for a Special Exception, the Board must also consider whether the request to operate horse shows would be detrimental to the use or development of adjacent or neighboring properties. Since the Applicant had been operating the riding stable and horse shows, prior to coming before the Board, residents in the neighborhood had experienced the operations. After reviewing the testimony from the Applicant and residents, the Board concluded that the use would be detrimental due to the amount of vehicular/trailer traffic and noise created by the horse shows.*
- The Board unanimously agreed that the determination as to whether the use (horse shows) was within the spirit of the Ordinance was not based solely on a definition.

Whether a commercial riding stable includes horse shows is irrelevant as the Applicant could not meet all other aspects of the criteria for a Special Exception. Furthermore, if one were to conclude that horse shows are a subordinate or incidental use of a riding stable, the record reflects that the use did not meet the Zoning Ordinance definition of an “accessory use”.

Mr. Koontz suggested that the Town consider whether horse shows should be allowed as it had been represented by the Applicant that many horse shows are taking place. In response, Mrs. Robertson noted that while other commercial riding stables and horse shows were referenced by the Applicant, it should not be assumed that these stables/horse shows have applied for or received permits to operate.

II. Adjournment.

Chairman Rinden declared the meeting adjourned at 7:12 PM. The next regular scheduled meeting of the Zoning Board of Adjustment is Tuesday, December 5, 2017, at 5:30 PM in the Town Hall.

Karen Robertson
Planning Director