



# Town of Hopkinton

---

330 Main Street • Hopkinton, New Hampshire 03229 • www.hopkinton-nh.gov

Tel: 603-746-3170

Fax: 603-746-3049

## HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES JANUARY 2, 2018

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

---

*Note: The Zoning Board of Adjustment's Rules of Procedure was available during the application process and additional copies were available at the meeting for the general public.*

- I. **Call to Order.** Chairman Rinden called the meeting to order at 5:30 PM in the Hopkinton Town Hall.
- II. **Application(s).**

**Rebecca Bernier (#2018-01)** Special Exception to utilize property for residential/farming. The property is located at 77 Spring Street, Tax Map 221, Lot 92.1, R-1 District. The application is submitted in accordance with Zoning Ordinance Table of Uses 3.6.D.2.

Ms. Bernier is requesting a Special Exception to have 6-chickens, 4-ducks and up to 2-horses at property that she rents from Alan Cote. Additionally, there will be a 12' x 24' run-in constructed attached to the existing barn. Ms. Bernier noted that the horses will not be at the property continuously; instead, they will also be housed at property in Weare. For health reasons, she finds it difficult to travel back and forth to Weare to care for the horses and believes that it would be easier for her if the horses were housed at her home for most of the time.

According to Ms. Bernier, all manure will be loaded into buckets and stored in a trailer that will be covered with a tarp. There are two off-site (out of town) places in which the manure can be disposed of.

The Applicant's written and spoken response to the criteria for a Special Exception as outlined in Section XV of the Zoning Ordinance was as follows:

- 1) **Standards provided by this Ordinance for the particular use permitted by Special Exception.** "My request is to have a maximum of 6-chickens, 4-ducks, and up to 2-horses in the R-1 district where Agriculture and Farming is a permitted use by Special Exception per Definition 2.1.A.4 and Table of Uses 3.6.D.2 of the Zoning Ordinance."
- 2) **No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.** "No. There are no hazardous materials used or potential fire or explosion in caring for the animals."

---

Adopted: 02/06/2018

**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.** “There will be no detriment to property values or change in the characteristics of the residential neighborhood. The Ordinance allows by Special Exception in the R-1 district Agriculture and Farming activities. The attached map shows a history of farm animals in the neighborhood with no known impact on property values or change in the essential characteristics of the neighborhood.

- 1978 an abutter, located across the street (Lot 134), received a permit to construct a pony barn;
- 1999, an abutter, located across the street (Lot 136), received a permit to construct a horse barn;
- 1978-1985, an abutter, located directly beside us (Lot 94), received a permit to operate a farm providing horse riding lessons and training.
- 2007, an abutter, located directly beside us (Lot 94), received permission to have a maximum of 3-horses with the condition that the manure be stored in non-leaching containers and removed from the property. If considered necessary, I would be willing to abide by the same condition.
- 11/2017, the Damours, who live in the neighborhood (Lot 118), received permission to have a maximum of 2-horses on 1.3 acres that fronts on Spring Street and Pinewood Drive. My property consists of 1.4 acres that fronts on Spring Street. Note: While an abutter uses a right-of-way across my property to access their residential property, the right-of-way will remain unchanged.

All animals will be confined to the property by fencing. The animals will be sheltered in a small run-in shed that will be attached to our existing 24' x 14' barn, like what the Damours have constructed. All waste will either be used as compost and/or disposed of off-site at either another farm or picked up by those interested in using it on their lawns or gardens.”

**4) No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.** “There will be no traffic safety hazard or substantial increase in traffic congestion due to the animals being at the property. The animals are our own personal animals that will be confined to a fenced in area and sheltered in a run-in shed that will be attached to our barn.”

**5) No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.** “There will be no demand on municipal services because of the animals. All waste will either be used as compost and/or disposed of off-site at either another farm or picked-up by those interested in using it on their lawns or gardens.”

**6) No significant increase of storm water runoff onto adjacent property or streets.** “I do not anticipate changes to runoff due to the animals being at the property. The property does not slope in the direction of the brook, so there should be no concerns with run-off. In addition, the animals will be separated from the brook by a fenced area and existing trees.”

- 7) An appropriate location for the proposed use.** “The location is appropriate because we have an existing 24’ x 14’ detached barn on 1.4 acres. Farm animals have been in the neighborhood for some time. The use is appropriate and consistent with other farming uses in the neighborhood. Refer to my answer to #3 for a history of farm animals in the neighborhood. Based on research done by the Town Offices, it appears that near my property there have been permits issued for horses, horse barns, lessons and training. The most recent permit was in November of this year to the Damours, located at 284 Spring Street, for a maximum of 2-horses on property that is a little smaller than ours.”
- 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.** “There will be no health or safety issues. The animals will be confined to a fenced area and when needed they will be sheltered in an existing barn/run-in, similar to what was approved and constructed by the Damours. All waste will either be used as compost and/or disposed of off-site at either another farm or picked up by those interested in using it on their lawns or gardens. Neighbors across the street have or had horses and other farm animals over the years with no known adverse or detrimental effects on the use of their adjacent or neighboring properties. The most recent permit was issued in November of this year to the Damours for up to 2-horses. The Damour’s property is 1.3 acres and our property is 1.4 acres.”
- 9) In the public interest and in the spirit of the ordinance.** “The use is in the spirit of the Ordinance as it allows for Residential Farming per Definition 2.1.A.4 and Table of Uses 3.6.D.2. The size of our property is similar to others that have received similar permits. Historically, the keeping and caring of farm animals has taken place next to our property and on other properties within the neighborhood. Granting this permit will allow us to care for our animals at our residence, rather than them having to stay elsewhere.”

Ms. Scheinman inquired about the storage of the manure in the trailer. In response, Ms. Bernier stated the trailer size is 5’ x 8’. She plans to store the manure in covered garbage pales and then store the pales in the trailer.

Chairman Rinden asked Ms. Bernier how often she expects that the manure will need to be removed from the property. Ms. Bernier responded weekly.

Ms. Scheinman questioned who would be removing the manure from the property. Ms. Bernier replied that she and Mr. Cote will be removing the manure.

Ms. Bernier then noted that she has owned one horse for approximately 20-years and the other for 15-years.

Chairman Rinden inquired about the frequency that the horses would be moved back and forth between Hopkinton and Weare. In response, Ms. Bernier noted that the horses would be in Weare for a couple of months.

Ms. Scheinman inquired about the type of screening between the adjacent properties. In response, Ms. Bernier noted the location of an existing tree line and brook. She also explained the possible location for a second paddock, if necessary.

**In response, to an inquiry made by an abutter to the Weare Police Department concerning Ms. Bernier's horses being in Weare, Ms. Bernier stated that she had trouble in the past when her father was sick, and she had lost her job. During that time, they (Weare) did come to the property and found that the horses were fine. Ms. Bernier is willing to provide the Board with references, if needed.**

Chairman Rinden opened public hearing portion of the meeting for public comment.

Abutter Ann Ball of 64 Spring Street expressed concern with the horses being located in a small area, noting that the owner will have to be diligent about the removal of the manure. Furthermore, Ms. Ball explained the proximity of the paddock areas to the Edward and Ellis homes. Due to the limited size of the area, Mrs. Ball stated that from her experience the horses will immediately remove all sod from the paddock areas, which will then leave a great deal of dust in the area. She then noted that Mr. and Mrs. Edwards have lived at their home for over 60-years and enjoy sitting outside. She suggested that the dust and flies in the area will affect the Edwards' ability to enjoy their property.

Mr. Koontz told Mrs. Ball that her knowledge about the care of horses may be a benefit to those in the neighborhood because if she notices that something is wrong, then she could report it to Animal Control. In response, Mrs. Ball stated that it is more difficult to gain control of a situation after the problem has arisen.

Mrs. Ball discussed her effort to ensure that the manure from her horse does not create a problem with flies. She explained how she and her husband constantly rotate the manure pile and mix alfalfa in with the manure. Once the manure is composted there is no issue with odor or flies.

Again, Mrs. Ball stated that the property is too small for horses and that the horses will be too close to the neighbors. She suggested that the paddock area or barn will be within 50 feet of one neighbor and 30 feet of another.

Abutter Orville Edwards of 79 Spring Street addressed the Board expressing concern with the proposal. Mr. Edward stated that he had an issue with a previous neighbor that had stored manure adjacent to Town property and within the brook. While the neighbor owned horses, he could not sit outside of his home because of the flies.

Lastly, Mr. Edwards disagreed with Ms. Bernier's description of the property, stating that the property slopes to the brook where he believed the run-off from the property will go.

Mrs. Ball readdressed the Board to speak about a request she had made to the Weare Animal Control concerning Ms. Bernier's horses in Weare. Mrs. Ball had heard from more than one person about the horses at the Weare property. She is awaiting the report from the Weare Police Department.

Abutter Mike Ball of 64 Spring Street addressed the Board to explain what it is like to be around flies that bite and how people are not able to sit outside.

In rebuttal, Ms. Bernier stated that she had owned horses for 40 years and is aware of how to take care of them. She discussed the use of fly predators and how they deter house flies.

Ms. Scheinman inquired about the use of fly predators. In response, Ms. Bernier stated that fly predators are little wasp that attack house flies. You have to order the wasps and put them in the ground. They eradicate house flies. They will not attack people

Ms. Scheinman inquired about a letter received from an abutter requesting that the Board continue the application. Continuing the application would allow the abutter time to receive information from the Weare Police Department concerning Ms. Bernier's care of horses in Weare. In response, Chairman Rinden questioned whether the information from the Weare Police Department would be pertinent to the application. Mr. Greenblott agreed, noting that the issue must be inherent or related to the property in question. He noted that someone's past error with animals in another location may not be relevant. Mr. Koontz agreed, noting that if the abutters find that the information is relevant, then they can request a rehearing within 30-days.

At this time, Board members reviewed the site plan of the property. While the property consists of 1.4 acres, Chairman Rinden stated that the fenced area appears to be a little more than one-third of the property. Due to the size, the paddock area could become dirt, very quickly. Ms. Scheinman agreed, noting that dust is a factor that the Board is to consider.

At this time, Board members reviewed Ms. Bernier's responses to the criteria for Special Exception to determine whether she had satisfied all requirements.

- 1) The use is allowed by Special Exception.
- 2) The manure could be considered toxic; however, the owner has agreed to remove it weekly. If, due to health reasons, the Applicant is unable to remove the manure there are services that then could be hired to take care of it.
- 3) There are other horses within the same neighborhood. A comparison was made between the proximity of the abutting residences to the Damour horses and the abutting residences to the Bernier horses was made. Members suggested that similar concerns would be true for item #7 of the criteria.
- 4) Any increase in traffic would be due to the horses and manure being moved from the property.
- 5) Chairman Rinden suggested that item #5 is not applicable.
- 6) Chairman Rinden discussed his visit to the site, noting that it appeared flat with a tree line and stream along the side of the property.
- 7) Mr. Greenblott was unsure if a residence being 100' or 30' from a horse paddock would make a difference when considering the impact of dust or flies.

Ms. Scheinman was not sure that animal control can address all issues that arise, such as dust. In response, Mr. Greenblott stated that the horses will not be at the property during the summer months; therefore, dust may not be an issue. Chairman Rinden

concurrred, noting that the Board could condition that the horses be removed from the property from June to end of August. Chuck agreed.

Ms. Scheinman also noted that the Board could impose a condition concerning the proper handling of the manure, such as storage and removal, as indicated by the Applicant. Mr. Greenblott concurred.

It was then noted that while the Applicant had represented that the manure may be removed from the site by individuals interested in using it on their gardens, the Applicant should not rely on this as a way to remove the manure from the property.

- 8) Chairman Rinden suggested that while the horses may be a nuisance, they are not a health or safety issue. Mr. Greenblott agreed, provided that the manure in the paddock is removed daily and all stored manure is removed from the property weekly.

Ms. Scheinman question whether approving the application would be detrimental to the use of abutting properties, or would the conditions discussed satisfy the criteria of item #8. In response, Mrs. Gray suggested that the conditions would address the requirements.

- 9) Chairman Rinden suggested that it would be difficult to argue that the proposal would not be in the public interest or spirit of the Ordinance when there are other horses in the neighborhood.

Ms. Scheinman expressed concern with the use of the wasps in combating the flies. While other members were not familiar with the use of wasps, they did not object.

Ms. Scheinman wanted to see the findings from the Weare Police Department concerning the Applicant's horses in Weare. She suggested that the information may be relevant to concerns that had been raised involving flies.

Chairman Rinden noted that the Board received a letter from abutter Janet Krzyzaniak. Mrs. Krzyzaniak had questions concerning the proposal, which Chairman Rinden believed the Board had addressed during the meeting.

Briefly, members discussed possible conditions that may be imposed should the application be approved.

Charles Koontz, seconded by Jessica Scheinman, motioned to **APPROVE** Application #2018-01 with the following conditions:

- 1) There shall be no horses at the property from June 1 – August 31;
- 2) All paddocks are to be cleaned (manure removed) daily, and
- 3) All manure is to be stored in covered containers in a trailer and removed from the property weekly.

Motion carried in the affirmative (Koontz, Gray, Scheinman, Greenblott, and Rinden). With the conditions imposed by the Board, all criteria to be granted a Special Exception as outlined in Section XV of the Zoning Ordinance were satisfied.

**John Herrick (#2018-02)** Tim Bernier of T.F. Bernier, Inc. and John Herrick, President of Excalibur Shelving Systems and Herrick Millwork, Inc., were present to request a Special Exception to excavate approximately 50,000 – 60,000 yards of gravel (sand) on properties owned by Herrick Millwork, Inc. and Excalibur Shelving Systems, Inc., located at 290 and 292 Burnham Intervale Road, Tax Map 220 Lots 23.1 and 23.2, M-1 District. The application was submitted in accordance with Zoning Ordinance Table of Uses 3.6.G.7 and Section XI.

Mr. Bernier explained that both lots are relatively flat; however, Lot 23.1 has an elevation difference of approximately 7-feet from that of Lot 23.2. The area of excavation will be approximately 3.9 acres. It is anticipated that between 50,000 – 60,000 yards of gravel (sand) will be removed from the site. The material will most likely be removed by trailer trucks with five truck loads a day anticipated.

The Applicant's response to the criteria for a Special Exception as outlined in Section XV of the Zoning Ordinance was as follows:

- 1) **Standards provided by this Ordinance for the particular use permitted by Special Exception.** "The proposed excavation will comply with all local regulatory requirements." Regulatory requirements include NH DES Alteration of Terrain Permit and Planning Board approval per RSA 155:E.
- 2) **No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.** "The removal of gravel (sand) will not create a risk of fire, explosion or release of toxic material."
- 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.** "None of the listed offenses will result from the proposed excavation." Mr. Herrick will utilize on-site loaders in removing the sand; therefore, no additional equipment is anticipated.  
  
The properties are in the industrial district and are surrounded by commercial building, and residential houses that are owned by Mr. Herrick.
- 4) **No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.** "The gravel (sand) will be removed in a maximum of ten truck trips per day (5 loads). Due to changes in the commercial industries on Burnham Intervale Road, the additional truck traffic will be less than historical volumes."
- 5) **No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.** "The proposed excavation will not create a demand on any municipal services."
- 6) **No significant increase of storm water runoff onto adjacent property or streets.** "The existing grade and drainage patterns will be maintained, and all runoff will be contained on site."

Mr. Bernier explained that the Alteration of Terrain rules concerning pre/post conditions.

- 7) **An appropriate location for the proposed use.** “The site is presently an industrial park and the proposed excavation is an industrial activity.”
- 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.** “The proposed excavation will have no detrimental effects on the abutting properties.” The site is currently used for lumber storage. The excavation will ultimately make the elevation of the lots, in the area in question, similar.
- 9) **In the public interest and in the spirit of the ordinance.** “The resulting excavation will improve the use of the property and is consistent with the spirit of the ordinance and public interest.” Mr. Herrick noted the difficulty in finding high quality sand, and the fact that the earth material will be used for construction projects.

There was brief discussion concerning the estimated time frame in the removal of the material, given that only five truck loads would be removed from the site per day (Monday – Saturday). It was calculated that the project would take approximately 5-years to be completed.

Mr. Herrick reviewed the history of the truck traffic related to his businesses, dating back to use of the old Excalibur and New Kearsarge buildings. Excalibur was moved from what is now Prototek to the former New Kearsarge facility. Mr. Herrick noted that over the years, as a result of change, the truck traffic has been reduced.

Mr. Bernier explained how the project could be finished within 2-months; however, they did not believe that it would be in the best interest of the neighborhood to have the number of trucks that would be needed to enter and exit the property during a short period of time.

Chairman Rinden opened the public hearing portion of the meeting.

Abutter Byron Carr of 191 Burnham Intervale Road questioned whether the matter of trucking would be further discussed by the Planning Board. Chairman Rinden replied yes.

Abutter Richard George of 97 Roby Road, Webster, had no objections to the proposal as currently presented.

Public testimony was closed.

Toni Gray, seconded by Charles Koontz, motion to **APPROVE** Application #2018-02 subject to the following conditions:

- 1) Planning Board approval, and
- 2) NH DES Alteration of Terrain permit.

Motion carried in the affirmative (Koontz, Gray, Scheinman, Greenblott, and Rinden). The Applicant successfully addressed all criteria to be granted a Special Exception as outlined in Section XV of the Zoning Ordinance.



**III. Review of Minutes and Notice of Decision of November 7 and 16, 2017.**

Toni Gray, seconded by Charles Koontz, motioned to **APPROVE** the Minutes and Notices of Decisions for the November 7 and 16, 2017 meetings. Motion carried in the affirmative (Koontz, Gray, Scheinman, Greenblott, and Rinden).

**IV. Other Business.**

Brief discussion ensued concerning the live streaming of the meeting and the fact that approved minutes of the meetings are the official record, rather than the video.

**V. Adjournment.**

Chairman Dan Rinden, seconded by Toni Gray, motioned to **ADJOURN** the meeting at 6:50 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, February 6, 2018, at the Hopkinton Town Hall.

Karen Robertson  
Planning Director