



Town of Hopkinton

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HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES FEBRUARY 5, 2019

Members present: Chairman Daniel Rinden, Toni Gray, Jessica Scheinman, and Alternate Jonathan Eck. 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. Applications.

#2019-01 Charles & Joyce Rose Administrative Appeal of the Select Board's decision to deny a Building/Use Application, per Zoning Ordinance Section 1.2, to construct a residence on property for which the access road, Thain Road, is subject to a flowage easement by the Army Corps of Engineers. The property is in the R-4 district, shown on Tax Map 216 as Lot 24.

Note: While the Applicants and no members of the public were present, the Board was in receipt of a letter from the Applicant's attorney, requesting a continuance to the April 2019 meeting, so that the Applicant can provide to the Select Board an engineered plan of an emergency right-of-way. As an alternative to granting a continuance, the Applicant's attorney asked that the Board allow his client to file a second appeal, should one be needed, that would be based on "different factual circumstances".

Mrs. Gray believed that the Board should finalize the matter as the appeal process has been going on for too long. She suggested that the Applicant's 2015 appeal, that is now before the Board, is for the same request as a 1994 appeal for which the Board had denied. Chairman Rinden agreed.

At this point, Mrs. Scheinman questioned whether the Board had agreed to discuss the substance of the 2015 appeal, or whether members wished to stay the appeal for a specified period.

Chairman Rinden suggested another alternative would be to deny, without prejudice, the appeal, and to allow the Applicant to come back before the Board with another appeal, if needed.

Mr. Eck did not believe that there would be any harm in continuing the application for an additional two (2) months. Hopefully, by then, there is an agreement concerning the right-of-way, so that there is no need for the Applicant to move forward with the appeal.

Subject to review and approval.

Ms. Gray asked if the applicant is scheduled to meet with the Select Board. Mrs. Robertson replied no.

Ms. Scheinman responded that if there are material changes or new facts, such as an easement or a different access, the Applicant would not be precluded from coming before the Board. Mr. Eck agreed, but suggested that it would be easier if the Board granted the continuance.

During discussions, Ms. Scheinman stated that she did not appreciate the threat of litigation that was noted in the filings.

Ms. Scheinman stated that the appeal is based on what was before the Select Board in 2015, when they had made their decision. Mrs. Robertson agreed, suggesting that what has occurred, after the filing of the 2015 appeal, would come under the Applicant's second building application that is now before the Select Board.

Chairman Rinden then suggested that it may be clearer if the Board denied the 2015 appeal and let the Select Board evaluate the new application.

Mrs. Robertson's understanding is that the Select Board had not acted on the second building application, at the Applicant's request, so to give the Applicant time to seek a right-of-way from an abutter.

Mr. Eck questioned the downside of granting the continuance. In response, Ms. Scheinman stated that it has been 3.5 years since the Applicant's filing of the application, and a previous appeal was denied in 1994. At some point, there needs to be finality for the abutters and the people living in the area. If a continuance is to be granted, Ms. Scheinman asked that a specific date be given as to when the matter is to be decided. Members agreed.

Mr. Eck agreed that this would be the last continuance, absent some exceptional circumstance affecting the Board and not the Applicant. It was then suggested that the appeal may be moot as the matter may get resolved, or when the appeal is to be reviewed, members may decide that the appeal is improper as there is no substantial change in circumstances from the 1994 appeal.

Jonathan Eck, seconded by Jessica Scheinman, moved to **RESCHEDULE** review of the appeal for the April 2, 2019 meeting, and that no further continuances will be granted, absent unforeseen circumstances affecting availability of the Board. Motion carried unanimously in the affirmative (Eck, Gray, Scheinman, and Rinden).

II. Review of Minutes and Notices of Decisions.

Jessica Scheinman, seconded by Jonathan Eck, moved to **APPROVE** the Minutes of January 3, 2019, with the following amendments:

- Page 8, paragraph 9, adding the word "only", so that the sentence reads: "Ms. Scheinman asked if the only reason for tabling the application is to gather more information concerning the number of units."
- Page 9, paragraph 8, adding the words "before buying his lot". The sentence reads:

“The concerns of the abutters, including the one abutter that had reviewed the Ordinance before buying his lot and had expectations as to the zoning for the area, is a consideration.”

Motion carried unanimously in the affirmative (Eck, Gray, Scheinman, and Rinden).

Toni Gray, seconded by Jessica Scheinman, moved to **APPROVE** the Notice of Decision of January 3, 2019, as presented. Motion carried unanimously in the affirmative (Eck, Gray, Scheinman, and Rinden).

III. Adjournment.

Chairman Rinden, seconded by Toni Gray, moved to **ADJOURN** the meeting at 5:55 PM. Motion carried unanimously in the affirmative. The next regular scheduled meeting of the Hopkinton Zoning Board of Adjustment is at 5:30 PM on Tuesday, March 5, 2019, at the Hopkinton Town Hall.

Karen Robertson
Planning Director

Ordinance §15.10. “Representations made at the public hearing or material submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking, or uses which are subject to regulations pursuant to subsection 15.8.2 or 15.8.3 shall be deemed conditions upon such special exception or variance.”