



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 NOVEMBER 7, 2017

Members present: Chairman Daniel Rinden, Toni Gray, Charles Koontz and Jessica Scheinman. 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.

While the applicants were given an opportunity to post-pone review of their applications to the December meeting when five (5) members of the Board would be present, there was no one that wished to do so.

II. Application(s).

William Turner (#2017-04) William Turner addressed Board requesting a Variance to construct a single-family residence in B-1 district. The property is located on Bound Tree Road, Tax Map 221, Lot 071. The application was submitted in accordance with Zoning Ordinance Table of uses 3.6.A.1. A Variance was granted on May 1, 2012, but had since expired.

The Applicant's written response to the criteria 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:** "My proposal to construct a single-family residence is consistent with the use of my abutters' properties and the neighborhood; therefore, there should be no adverse effects on surrounding property values."
- 2) Granting the Variance would not be contrary to the public interest because:** "Granting of the Variance will allow me to utilize my property in the same manner as my abutters have been able to do with their properties. Allowing a single-family residential use of the property would not be contrary to the public interest. Whereas, requiring the property to be utilized for a two-family or for commercial uses, such as a small retail business, restaurant, gas station, or autobody shop, would be contrary to my abutters' interest in their properties and the neighborhood."
- 3) By granting the Variance substantial justice would be done because:** "By granting the Variance substantial justice would be done as it would allow me to utilize my property in the same manner as my abutters have been able to use their properties."

Adopted: 01/02/2018

While my property is zoned B-1 (commercial), the property is surrounded by single-family residences and vacant residential zoned property.”

4) The spirit and intent of the Ordinance will not be broken by granting the Variance because: “The Bound Tree Road B-1 zone encompasses six (6) lots with one (1) lot partially zoned B-1 and R-2. The spirit and intent of the Ordinance will not be broken as the B-1 district allows for residential uses (two-family and multi-family up to 8-units). The Bound Tree Road B-1 zone consists of a total of six (6) lots that abut the R-3, R-2 and R-1 districts. In fact, to get to the Bound Tree Road B-1 zone you have to drive past the residences in the R-1, R-2 and R-3 districts. The pictures show the uses of the six (6) lots in the B-1 district which includes the Bourchard’s single-family residence, which is my direct abutter, a landscape/storage building, a welding business with a residential unit on the second floor and two lots that remain land only.”

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 purpose of the Zoning Ordinance is to ‘protect and conserve the value of property, to encourage the most appropriate use of land...by promoting good civic design and arrangements’. The purpose of the Commercial (B-1) district is ‘to provide limited commercial, institutional, professional and personal uses along with residential uses. The fact that you have to drive past residences that are located in the R-1, R-2 and R-3 districts to get to my property and the fact that my property abuts a residence that is in the B-1 district and residences across the street in the R-3 district are obvious reasons as to why the most appropriate use of the property is for a single-family residence. While the B-1 district allows for two-family and multi-family dwellings there are none in the B-1 zone and in the abutting R-3 zone.”

(ii) The proposed use is a reasonable use. “As I have stated above, in order to get to my property you need to drive past what is predominantly single-family residences in the neighborhoods. The property is surrounded by the R-1, R-2, R-3 districts and is abutted by a residence that is located in the B-1 district. Again, there are six (6) lots in the B-1 district. One lot has a residence on it, another lot has a residential/commercial use, one lot is being utilized by a landscaping/storage use and there are two lots that are land only.

While the B-1 (commercial) district allows for commercial uses, including a retail establishment, restaurant, gas station and autobody shop, these uses would be contrary to the interest of those that own the residences that abut my property. The fact that one would have to drive through residential neighborhoods to get to a small retail business, restaurant, gas station or autobody shop is not realistic as it is unlikely that patrons would go out of their way to get to these businesses. The appropriate location for commercial uses is in the downtown, not in a residential neighborhood.”

- (b) If the criteria in subparagraph (a) is 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 lot is triangular shaped as a result of the highway being constructed and the construction of Bound Tree Road in order to access those lots on this side of the highway on what was formerly Spring Street. The shape of the lot hinders my ability to use the property for commercial purposes, without obtaining a Variance. The Ordinance requires a commercial use abutting a residential use (Bourchard’s residence) or residential district (R-3) to have a minimum front and rear setback of 100 feet and side setback of 50 feet from the property line abutting the residential use or district. Whereas, a residential use requires setbacks of 30 feet front, 15 feet side and 40 feet rear.

While the lot is triangular shaped, it more than meets the minimum acreage and frontage requirements for the B-1 district. The lot contains .43 acres with 300+ feet of frontage along Bound Tree Road and 237.72 feet along Spring Street. If, due to the lots configuration, it cannot support a permitted commercial use then the only reasonable use is for a single-family residence which is consistent with the other uses in the neighborhood.”

Mrs. Gray noted that she had voted in favor of the application when it was before the Board in 2012.

Chairman Rinden opened the public hearing portion of the meeting by requesting comments from abutters and non-abutters that were in favor or in opposition to the proposal.

Abutters Emily Bouchard and Joseph Bouchard of 314 Bound Tree Road inquired about the location of the proposed residence in relation to the shared property line. In response, Chairman Rinden reviewed the site plan explaining that the residence is shown to be setback 30-feet from Bound Tree Road and from Spring Street. While there was no distance shown from the Bouchard property line, the Applicant estimated the distance to be at least 30-feet.

Ms. Bouchard inquired about the height of the proposed residence, due to its proximity to her residence, and the street that the driveway would access. In response, the Applicant provided the Bouchard’s with elevation drawings of the proposed residence and advised that the driveway would access Spring Street.

Ms. Bouchard questioned whether the property was adequately sized for a well and septic system. The Applicant replied yes, noting that the residence would be connected to municipal water and an on-site septic system.

Brief discussion ensued with the Applicant informing Mr. Bouchard that he does not plan to live at the residence. As a result, Mr. Bouchard expressed concern with the possibility that the residence would be rented or leased to others.

With there being no further comments from the public, Chairman Rinden closed the public hearing portion of the meeting.

Ms. Scheinman commented that the proposed use is not contrary to the public interest based on the information provided by the Applicant concerning the other residential uses in the district. Chairman Rinden concurred, stating that that proposal would not have a negative impact on property values as it is made up of mostly residences.

Ms. Gray stated that given the unusual shape of the lot it would be appropriate for the Board to grant the Variance. Chairman Rinden concurred, noting that if the Applicant were to construct a commercial structure there would be greater setback requirements, than if a residential structure is constructed.

Ms. Scheinman suggested that it would be advantageous to those in the residential neighborhood if the Variance were granted. She further noted that the proposed use is consistent with the spirit of the Ordinance for all the reasons mentioned in the Applicant's presentation.

Chairman Rinden suggested that not granting the Variance would create an unnecessary hardship because the Applicant would most likely have to come before the Board for a Variance if he were to construct a commercial structure that requires a greater setback. Mr. Koontz concurred, noting that for a commercial use to abut a residential use or district a greater setback is needed.

Ms. Scheinman did not believe that the surrounding property values would decrease given the nature of the neighborhood and the information provided by the Applicant.

Jessica Scheinman, seconded by Toni Gray, moved to **APPROVE** Application #2017-04 as presented. Motion carried in the affirmative (Koontz, Gray, Scheinman, and Rinden). The Applicant successfully addressed all criteria to be granted a Variance as outlined in Section XV of the Hopkinton Zoning Ordinance.

Reasons for approval as follows:

- 1) There was no evidence that surrounding property values would diminish as a result of the property being used for a residential, rather than commercial use. The proposed residence would be located in a neighborhood with many other residences, including an abutting residence that is located in the commercial district. Furthermore, the Applicant represented that construction of the single-family residence would be in compliance with the setback requirements for the district.
- 2) There was no evidence that the public's interest would be negatively affected as a result of a residence, rather than a commercial structure being constructed in the commercial district. If anything, the use of the property for residential, rather than commercial, purposes is believed to be in the public's interest. In fact, the property abuts a residence that is in the same commercial district.

Certified notice was provided to the abutters and public notice of the proceedings was published in the Concord Monitor. Abutters were present, but did not express concern with the proposed residential use.

- 3) Substantial Justice: The Bound Tree Road commercial district includes six (6) lots with one (1) lot partially zoned commercial and residential. Considering the characteristics of the neighborhood, which is mostly residential, and the fact that one side of the street is zoned residential and the other side commercial, substantial justice would be done by allowing the property owner to utilize his property in the same manner as his abutters. It is anticipated that the residential use would have no impact on the abutters or general public. In other words, the public would realize no appreciable gain from denial of the Variance.
- 4) The spirit and intent of the Ordinance would not be broken by granting the Variance as the residential use would be consistent with other uses within the neighborhood. Requiring the Applicant to utilize his property for commercial purposes is not necessary in order to give full effect to the purpose of the Zoning Ordinance. Again, utilizing the property for residential purposes is consistent with the uses in the area. Furthermore, based on the information presented, the residential structure would be architecturally similar with the residences in the neighborhood.
- 5) Literal enforcement of the Ordinance would result in an unnecessary hardship. The setback requirements for a commercial use abutting a residence or a residential district is greater than if a residential use were to be constructed. The property is surrounded by residential uses and a residential district which would require a greater setback to construct a commercial structure. Based on the shape and size of the lot, and the close proximity of the residential uses and district, it is assumed that the property owner would need a Variance in order to utilize his property for commercial purposes. While the commercial district allows retail, restaurants, gas stations and autobody shops, it is believed that these uses would be contrary to the interest of the residential owners in the neighborhood.

Denise Damour (#2017-05) Denise Damour addressed the Board requesting Special Exception to utilize her property for residential/farming. Specifically, Mrs. Damour is requesting permission to have two (2) horses at her property. The property located at 284 Spring Street, Tax Map 221, Lot 118, R-1 District. The application was submitted in accordance with Zoning Ordinance Table of uses 3.6.D.2.

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.** "Farming (horses) is permitted by Special Exception in the R-1 district per Zoning Ordinance Table of Uses 3.6.D.2 and Definition 2.1.A.4."
- 2) **No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.** "No, the horses are not treated or maintained with any toxic or flammable materials."
- 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. “The horses will be confined to our property with electric fencing and will be sheltered in a pole barn attached to the garage. All waste will be composted and/or moved to Lewis Farm.”

- 4) **No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.** “No, the horses will be confined to the barn and fenced in area.”
- 5) **No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.** “No, waste will be composted and used to fertilize the lawn. The current horse is geriatric and produces less waste than a typical horse due to his age and nutrition.”
- 6) **No significant increase of storm water runoff onto adjacent property or streets.** “No, our property is on an old riverbed with excellent drainage. There is no expected water run-off.”
- 7) **An appropriate location for the proposed use.** “Yes, according to UNH Cooperative Extension, we have the appropriate amount of area for maintaining a rotating pasture.”
- 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.** “Electric fencing will be closely maintained and well defined. Three (3) sides of our property is lined with evergreen trees.”

Mrs. Damour’s daughter, Amanda Damour, reviewed a map with Ms. Scheinman, and pointed out the location of the evergreens that screen the property.

- 9) **In the public interest and in the spirit of the ordinance.** “The ordinance allows for this use. Our property is large and ideal for this use. Historically, this property was once maintained as a farm. Water supplied to the horses will come from buckets and carried from our home.”

Amanda Damour explained how she had adopted the horse in 2013 as a result of poor living conditions. The horse is 31 years old and doesn’t have the usual amount of waste as he cannot eat the standard foods. While the horse is currently being boarded elsewhere, Amanda believed that the horse would be better suited living with her.

When asked about her knowledge of horses, Amanda Damour explained how she had worked at a local horse farm for a number of years.

Mrs. Damour noted that she has received a permit to construct an addition to her garage that would be used for the horses. Mr. Koontz inquired as to whether the stalls would be open or enclosed. Mrs. Damour explained how the addition would be considered a run-in in which the horses could go in or out at any time. She noted that while the wind does not blow in the direction of the open run-in shed, during the winter months they plan to enclose the area with a tarp.

Mr. Koontz confirmed the three (3) available methods of disposal of horse manure – spread over the yard, compost or Lewis Farm.

Ms. Scheinman questioned where the manure would be stored. In response, Mrs. Damour had reviewed the map presented, explaining that the manure would be stored on the east side of the property where she now stores her leaves and branches.

Chairman Rinden opened the public hearing portion of the meeting by requesting comments from abutters and non-abutters that were in favor or in opposition to the proposal.

Abutter David Jones of 291 Spring Street addressed the Board in favor of Mrs. Damour's application. Mr. Jones lives directly across the street and is believed to be the closest abutter. He explained how immaculate the Damours keep their property. He then noted that Mrs. Damour was brought up in a farming family and is very familiar with the workings of a farm.

Mr. Jones stated that he had not heard of anyone in the neighborhood being opposed to the application. He noted that there are now several horses in the neighborhood. Lastly, he explained that in constructing his residence he found that the property is very sandy; therefore, he did not believe there would be any issues with water run-off.

With there being no further comments, Chairman Rinden closed the public hearing portion of the meeting so that the Board could begin deliberations.

Chairman Rinden believed that the Applicant is well prepared for the caring of horses. Mrs. Gray concurred, stating that the Applicant had addressed all criteria to be granted a Special Exception.

Chairman Rinden reiterated what had been said by the Applicant, which was that there would be no hazardous materials, impact on traffic safety or excessive demand on municipal services as it relates to the caring of the horses. Ms. Scheinman concurred, stating that there would be no impact on property values in the vicinity as there are other horses in the area. Ms. Scheinman questioned how the Board felt about limiting the Applicant to no more than two (2) horses. Mrs. Robertson reminded members that there is language in the Ordinance indicating that any representations made to the Zoning Board of Adjustment are considered conditions of approval. Ms. Scheinman and other members were satisfied.

Based on the representation and application presented, Ms. Scheinman suggested that the Applicant had satisfied all conditions for a Special Exception.

Charles Koontz, seconded by Jessica Scheinman, motioned to **APPROVE** Application #2017-05 as presented. Motion carried in the affirmative (Koontz, Gray, Scheinman, and Rinden).

III. Review of the Zoning Board of Adjustment Minutes and Notice of Decision of October 3, 2017.

In reviewing the minutes Ms. Scheinman recommended that in the future a water mark be placed across each page so that the reader is clearly aware that the minutes are a draft or subject to review. Members of the Board concurred.

Chairman Rinden noted that the minutes received by the Board had recommended changes made by Ms. Scheinman. He questioned whether members had additional changes. Mrs. Robertson noted that Ms. Scheinman had brought to her attention an additional change that would indicate that Ms. Scheinman had reviewed the dictionary and found the definition of the word, “stable” to be a traditional definition that did not mention horse shows. Furthermore, Ms. Scheinman had requested a formatting change that would require an indent of a paragraph to be removed.

Charles Koontz, seconded by Toni Gray, moved to **APPROVE** the Minutes as amended. Motion carried in the affirmative. Note: Amendments were as follows:

- Page 2, 10th paragraph – Add the following sentence: She looked in the dictionary and found the definition of the word “stable” to be a traditional definition that did not mention horse shows.
- Page 2, 10th paragraph – Replace “only allowed” with “specifically mentioned”. Sentence to read: She noted that horse shows are specifically mentioned in the Fair Overlay District.
- Page 2, 10th paragraph – After the word “events” add “and exhibitions”. Sentence to read: Ms. Scheinman further stated that the Zoning Ordinance defines, “Entertainment” to include sporting events and exhibitions, which she believed to include horse shows.
- Page 2, 10th paragraph – Omit the word, “clearly”. Sentence to read: In the R-3 district, the Ordinance prohibits a “Place of Entertainment”.
- Page 3, 5rd paragraph – After the word “dust” add the words “from the horse shows. Without the horse shows, the riding stable did meet the criteria”. Sentence to read: 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.
- Page 3, 5rd paragraph – Replace the word “referenced” with the words “did reference”. Sentence to read: The realtor’s letter, submitted by the Applicant, did reference boarding horses and riding lessons.
- Page 4, 8th paragraph – Replace the word, “Application” with the word, “Applicant”. Replace the word, “addressed” with the words, “met with respect to the horse show component”. Sentence to read: 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.
- Page 4 – Before the last paragraph add new paragraph, “Mrs. Scheinman stated that the Applicant failed to show that horse shows are customarily or habitually associated with stables in our region.”
- Page 4, 12th paragraph – Add the word, “also” before the word, “stated”. Add the word, “the” before the word, “horse”. Sentence to read: 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.

- Page 5, 1st paragraph – Add new sentence, “She concluded the horse shows are not an accessory use.”

Chairman Dan Rinden, seconded by Charles Koontz, moved to **APPROVE** the Notice of Decision of October 3, 2017 as presented. Motion carried in the affirmative.

IV. Other Business.

- a) **Motion for Reconsideration** – Chairman Rinden announced receipt of a Motion for Reconsideration for 1301 Bound Tree Road, LLC and Rhapsody Farm, LLC concerning the Board’s decision of October 3, 2017. The Motion is dated November 2, 2017, and was received on that same day.

Chairman Rinden asked members to review their calendars to determine when they would be available for a public meeting. Following review, Chairman Rinden announced that those present are possibly availability on Tuesday, November 14th at 5:00 PM and on Thursday, November 16th at 6:30 PM. Ms. Robertson is to confer with member Greg McLeod concerning his availability. Once determined, Mrs. Robertson inform members of the Board and representatives for the Applicant (Kennedy) and Abutter (Aubry).

- b) **Alternate Vacancy** – Chairman Rinden asked Board members if there are residents that they would like to recommend to the Select Board for consideration in filling the alternate vacancy. There were no names offered.

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, December 5, 2017, at the Hopkinton Town Hall.

Karen Robertson
Planning Director