



Town of Hopkinton

Planning Department

330 Main Street, Hopkinton NH 03229-2627 - (603) 746-8243 – planzone@hopkinton-nh.gov

HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES JULY 2, 2019

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

#2019-04 T.F. Bernier, Inc. Tim Bernier of T.F. Bernier, Inc. presented an application for a Variance to reconstruct a new residence in the R-2 (Medium Residential) district that is accessed via a private way. The property is owned by Robert H. and Maureen J. White, located at 44 Josylvia Way, shown on Tax Map 202 as Lot 17. The application was submitted in accordance with Zoning Ordinance 5.2.1.

A New Hampshire Shoreland Permit was issued by the New Hampshire Department of Environmental Services. Furthermore, as part of the project, a new State approved septic system was approved and will be installed.

The Applicant's 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:** "The new house will be in substantially the same location on the lot from the perspective of abutting properties. It will be new and modern construction, will be within the yard setbacks on the lot, and access will be the same."
- 2) **Granting the Variance would not be contrary to the public interest because:** "The house will be reconstructed in conformance with yard setbacks and the NHDES setback from Clement Pond. The new house will be connected to the new state approved septic system. The owners will still access the house from the same private way, as they have for many years, along with other homeowners on Josylvia Way."
- 3) **By granting the Variance substantial justice would be done because:** "It will allow the owners to enjoy their lot while improving the non-conformity of the structure. The existing house and septic are very old. The new house will be further from Clement Pond, which will be a substantial environmental improvement."
- 4) **The spirit and intent of the Ordinance will not be broken by granting the Variance because:** "The new structure and septic will be compliant with Town and NHDES

Adopted: October 1, 2019.

setbacks. The access from Camp Merrimac Road and Josylvia Way will remain the same as it has for decades.”

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 existing structure and lot are grandfathered. They have been accessed and used in the same way for decades. The new house will be conforming with current Town and State setbacks. The access via a private way is shared by several other houses and will remain the same.”

(ii) The proposed use is a reasonable use. “The use will remain the same, but in compliance with State environmental rules and zoning. Access will remain the same as it has for decades. The new house will meet Town and State setbacks. The new septic meets setbacks.”

Mr. Koontz inquired about the conditions, whether paved or gravel, of the road. Mr. Bernier explained how Josylvia Way is a small gravel road that is accessed by way of Camp Merrimac Road. In addition to Josylvia Way there are other private ways, such as Clough Lane, that are accessed from Camp Merrimac Road.

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

Abutter John Duston inquired about the septic system and common well. He explained that many years ago the Whites had inquired with his family about acquiring land for their septic system. He questioned whether there would be any liability issues because of the proximity of the shared well to the new septic system. In response, Mr. Bernier explained that the New Hampshire Department of Environmental Services requires a protective well radius to a septic system. The State approved the new septic system.

Ms. Scheinman asked if the proposed septic system is fully contained on the Applicant’s property. Mr. Bernier replied yes.

Mr. Koontz questioned whether the shared well is required to be licensed. Mr. Bernier stated that the well does not serve enough homes to require licensing.

Chairman Rinden declared the public hearing portion of the meeting closed; at which time, the Board began deliberations.

Mrs. Gray believed that the Applicant had satisfied all conditions to be granted a Variance. Chairman Rinden agreed, stating that the owner is making the situation better. Mr. Greenblott and Ms. Scheinman concurred.

Charles Koontz, seconded by Jessica Scheinman, moved to **APPROVE** Application #2019-04 as presented. Motion carried in the affirmative (Gray, Scheinman, Koontz, Greenblott

and Rinden). The Applicant successfully addressed all criteria to be granted a Variance as outlined in Section XV of the Zoning Ordinance.

Reasons for approval as follows:

1) Property Values:

- There was no evidence that surrounding property values would diminish if a new residence were constructed, and that access continue to be via the private way.
- The new location will be conforming with current setbacks.

2) Public Interest:

- There was no evidence that the public's interest would be negatively affected because of the new location and construction.
- The reconstruction of the residence will be in conformance with setbacks and the NHDES setback from the Clement Pond.
- The property will continue to be utilized in the same manner and accessed by way of the same private way.

3) Substantial Justice:

- The public would realize no appreciable gain from denial of the Variance.
- The reconstruction of the residence will be in conformance with setbacks and the NHDES setback from the Clement Pond.

4) Spirit and Intent:

- The spirit and intent of the Ordinance will not be broken by granting the Variance as the property will continue to be utilized in the same manner.
- The nature and character of the surrounding properties will not change as the abutting properties are used for residential purposes and accessed using a private way.
- Requiring the Applicant to reconstruct the residence in the same location is not necessary in order to give full effect to the purpose of the Zoning Ordinance as the residence will be constructed in a conforming location and in the same proximity of the current residence.
- The reconstruction of the residence will be in conformance with setbacks and the NHDES setback from the Clement Pond and therefore, will not adversely affect the health, safety, convenience, or general welfare of the residents in the neighborhood.

5) Unnecessary Hardship:

- Literal enforcement of the Ordinance will result in an unnecessary hardship as the Applicant's residence would remain in a non-conforming location.
- The access via a private way will remain the same as it has for decades.

#2019-05 T.F. Bernier, Inc. Tim Bernier of T.F. Bernier, Inc. presented an application for a Special Exception to allow a Repair Garage and Commercial Parking Lot in the M-1 (Industrial) district. The property is located at 290 Burnham Intervale Road, shown on Tax Map 220 as Lot 23.2.

Mr. Bernier explained that the request is for a Special Exception to utilize space in an existing building, which is now used as warehouse space, for the cleaning and routine maintenance of

a maximum of 23 school buses. In addition, the existing gravel yard space will be utilized for the parking of school buses, 23 passenger cars (bus drivers), and two spaces for one full-time employee and a visitor.

Mr. Bernier introduced Dave Fairweather of First Student Incorporated (school bus company) and John Herrick, owner of the property.

The facility has an existing approved septic system approved for 40 employees. The building is used primarily for warehouse storage but will have one employee associated with the leased space for the bus company.

Routine maintenance will include cleaning the interior of the buses, fixing seats and oil changes. Washing of the exterior of the buses will take place at H.R. Clough's car wash facility.

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 use shall meet all other requirements of the Ordinance." The repair garage and commercial parking lot is allowed by Special Exception in accordance with Zoning Ordinance 3.6.F.10 and 3.6.F.18.

Mr. Bernier noted that the proposal needs site plan approval by the Planning Board.

- 2. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.** "The facility meets all current building codes and all activities will comply with safe commercial practice and approved Best Management Practices (BMP's)."

All oil will be properly stored inside the building, including waste oils. Waste oil will be picked up by an environmental company, Clean Harbors, who will provide the waste disposal containers.

- 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 proposal utilizes a portion of the existing building and is shielded from other uses. The parking area designated for cars and buses is well buffered from all non-commercial uses."

The building complies with zoning setback requirements. All maintenance will occur within the building. The only modification to the building will be the installation of a garage door.

Adjacent uses, with the exception of residences owned by the Herrick family, are commercial/industrial uses. The adjacent closest residence is owned by John Herrick.

4. **No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.** “The use is being relocated from Maple Street and is replacing other uses which have in the past had similar traffic 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 use will add no new demand on any municipal services.”
6. **No significant increase of storm water runoff onto adjacent property or streets.** “The proposal is to utilize existing gravel parking and loading areas and will not result in any additional runoff.”
7. **An appropriate location for the proposed use.** “The location for the proposed use is in the middle of an existing industrial park surrounded by similar uses.”
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 proposal is to utilize existing facilities and will fit well with the warehousing use of the remaining building.”
9. **In the public interest and in the spirit of the ordinance.** “The use is required to provide the public with safe and reliable student transportation to and from school and is consistent with the spirit and intent of the ordinance.”

Ms. Scheinman questioned the times in which the school buses will exit and return to the facility. Mr. Fairweather indicated that the buses will leave between 6:00 – 6:30 AM and return between 8:00 – 9:00 AM. They will leave again around 1:30 PM to pick the children up from school.

Mr. Koontz asked if the previous business had toxic waste on-site. Mr. Herrick replied no.

Chairman Rinden questioned whether the buses were being maintained in Town. Mr. Fairweather replied no, stating that the buses were brought to Swanzey or Belmont for routine maintenance.

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

Abutter Byron Carr of 191 Burnham Intervale Road expressed concern with the potential for leaking oil. He stated that many years ago another bus company went through the same approval process, but ultimately had more buses on-site than approved that were found to be leaking oil. Mr. Carr asked if there were State regulations on waste oil and whether the State inspects the facility. Mr. Bernier responded that if there are more than 23 buses, they would need to come back before the Board. Furthermore, the bus company will need to follow Best Management Practices for the use.

Mr. Herrick noted that there will not be a fueling station.

Dave Fairweather of First Student, 51 Lowell Road, Salem, New Hampshire, discussed First Student's environmental program for the nine other facilities that they have throughout the State and their relationship with Strata Environmental, who helps manage the environmental

aspects of the business.

Ms. Scheinman asked if there have been environmental issues at the other nine facilities. Mr. Fairweather responded that in the two-years he has worked for the company there has not been any issues.

Mr. Greenblott asked if all the buses are local buses. Mr. Fairweather replied yes.

Mr. Greenblott asked how long it would take for the 23 buses to leave the site. In response, Mr. Fairfield explained that the departures will be between 6:00 – 6:30 AM. He suggested that if there is a problem with delays in local traffic, at the stop sign on the main road, then they could stagger times.

Chairman Rinden asked where the buses are refueled. Mr. Fairweather responded that the drivers have cards that are used at gas stations.

Ms. Scheinman inquired as to why the portion of the building, closest to the river, was chosen. In response, Mr. Herrick stated that the location will have the least affect on the other uses in the building.

Ms. Scheinman expressed concern with the 23 buses all arriving at the end of the Pine Street at the same time, and how any concerns that may arise would be addressed with the Town. Mr. Fairweather responded that any concerns would, first, be addressed with the School District. He noted that the bus company would do whatever would be required to address the issue.

Mrs. Robertson explained that the Town meets monthly with the School, so that if there were an issue it would most likely be discussed during that meeting.

Ms. Scheinman suggested including language requiring the bus company to be responsive to the Town should the issue of traffic congestion arise. Furthermore, add language that requires the use of outside services for the storage of waste and the use of proper protocols for compliance with environmental regulations. Mr. Greenblott concurred.

Following brief discussion, Board members agreed to condition compliance with State environmental regulations, cooperation for any traffic considerations raised by Town Officials, and the use of professional storage and disposal, off-site, for all hazardous waste.

Chairman Rinden declared the public hearing portion of the meeting closed; at which time, the Board began deliberations.

Seth Greenblott, seconded by Toni Gray, moved to **APPROVE** Application #2019-05 with the following conditions:

- 1) Compliance with all State environmental regulations;
- 2) Professional storage and disposal, off-site, of all hazardous waste;
- 3) Cooperation in addressing any traffic considerations raised by Town Officials.

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

Section XV of the Zoning Ordinance.

II. Approval of meeting Minutes and Notices of Decision for June 4, 2019.

Review of the Minutes and Notice of Decision was deferred to the August 6, 2019 meeting.

III. Adjournment.

Toni Gray, seconded by Jessica Scheinman, moved to **ADJOURN** the meeting at 6:25 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, August 6, 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."