

ZONING BOARD OF REVIEW MEETING MINUTES – DECEMBER 15, 2022

State of Rhode Island

County of Washington

In Hopkinton on the fifteenth of December, 2022 A.D. the said meeting was called to order at 7:05 PM by Zoning Board of Review Chairman in the Town Hall Meeting Room with a moment of silent meditation and a salute to the Flag.

PRESENT: Johnathan Ure, Daniel Baruti, Joseph York, Ronnie Sposato, Chip Heil, Alternate Member Phil Scalise, and Solicitor Per Vaage of Gidley, Sarli, and Marusak LLP.

Zoning Board Clerk: Katrina Caputo

Building Official Anthony Santilli

Absent: Member Daniel Harrington

Sitting as the Board for Petition I: Ure, York, Sposato, Scalise & Heil

Petition I- Hearing

A Petition for a Special Use Permit to allow for the installation of ground mounted solar panels. Petition filed by Emiel Tetreault with mailing address of 152 Woodville Alton Rd, Hopkinton, RI 02833, for property located at 152 Woodville Alton Rd, Hopkinton, RI 02833, and identified as AP 9 Lot 16L, an RFR-80 Zone and filed in accordance with Sections 8C and 10 of Chapter 134 of the Zoning Ordinances of the Town of Hopkinton, as amended.

Filing fees paid and notice posted.

Discussion.

Decision.

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Chairman Ure explains that the applicant has requested a continuance to the January 19, 2022 meeting.

A MOTION WAS MADE BY MEMBER SCALISE AND SECONDED BY MEMBER YORK TO GRANT A CONTINUANCE. ALL WERE IN FAVOR.

SO MOVED

Sitting as the Board for Petition II: Ure, York, Scalise, Sposato, & Heil
Member Baruti recused himself from this application.

Petition II- Hearing

A Petition for a Special Use Permit and a Dimensional Variance to allow for a new construction of a single-family home. Petition filed by Robert Bruce and Wendy Bruce with mailing address of PO Box 536, Hope Valley, RI 02832, for property located at 3 Lakeside Drive Extension, Hopkinton, RI 02804, and identified as AP 27 Lot 111, an R-1 Zone and filed in accordance with Sections 8C and 10 of Chapter 134 of the Zoning Ordinances of the Town of Hopkinton, as amended.

Applicant or representative present.

Filing fees paid and notice posted.

Discussion.

Decision.

CHAIRMAN URE: Is the applicant or representative present?

MRS. BRUCE: Yes.

CHAIRMAN URE: Mrs. Bruce can you step up to the mic because we're at the show time here, we're going to have to ask you some questions and swear you in.

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CHAIRMAN URE: You're here because it looks like you want to build a new home on the lot. I know back in 2010 you and your husband were in; the house was damaged from the floods. We issued a Special Use permit. I actually have a decision that I read into the record that some of the Board members back then approved. Now it looks like we need more of a dimensional variance. It looks like you are looking for 1.7 feet. Are we looking at the front yard or the side? Katrina, do we have a big plan of that?

The Zoning Board Clerk hands out the site plans to the Board members.

CHAIRMAN URE: So, it's 10 foot from the front yard setback and 1.7 from the rear setback. So, my question, maybe for Council is back in 2010 we issued a Special Use Permit. Is it redundant to issue another Special Use Permit? We approved them, they were raising the house and they were going to rebuild on it?

SOLICITOR VAAGE: I would think so, a Special Use Permit runs with the land, it doesn't expire over time.

CHAIRMAN URE: Because back in 2010 the area of the lot was substandard, it's about nineteen thousand and change- about twenty thousand and in an R-1 they're looking at forty thousand. Back then we did issue a dimensional variance but they didn't need one from the lot lines at that time. So now we're just going to do the dimensional variance. So, my question looking at this is, Tony is here somewhere. What is considered the front yard of this line? It's a very weird lot. It's such an odd lot, it has two roads going through it, you have Lakeside, Lakeside Extension, and then you have water frontage on two sides.

MR. SANTILLI: Whatever the address is of the property, if it's Lakeside, that's the front.

CHAIRMAN URE: It's Lakeside Extension.

MR. SANTILLI: Then Lakeside Extension would be the front so it's an R-1. It has to be 25 front, 15 sides, and 30 rear.

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CHAIRMAN URE: So, Ronnie, looking at the big plan, which I don't have in front of me, my eyes cannot read this little print, where is Lakeside Drive on the frontage?

Discussion between the board and the solicitor in regards to the location and footage of the front, rear, and side setbacks on the site plan. They continue to discuss if Special Use Permits expire or not. Chairman Ure has the clerk cross out the section of the application where Mrs. Bruce wrote she needed rear setback relief and had the clerk write in side setback. Mrs. Bruce initialed the change.

CHAIRMAN URE: I wanted to clarify what was front and what was rear. I think the board and our Zoning Official, and council all agree as to what is front and what is back and side. So, on the dimensional side, the 10 foot that they're asking isn't necessarily, it's not needed because they own the lot across the street. It's a right of way that passes through their property, their frontage is well beyond what is required.

MEMBER SCALISE: I have a question on that, you know just because we had a lot problem just as an example across the street from me. So, there's a right of way, but you don't want to get yourself in a situation where they could sell that. Is that an available lot or is it stuck together? Your lot isn't separatable, it's one lot even though you have a right of way?

MRS. BRUCE: It's one lot and there's a right of way to one other house.

MEMBER SCALISE: Right, but you can't sell a chunk of the lot off is all I'm saying. You couldn't split your lot in any way? I'd be worried you'd create, because that happens every once in a while, where it's like well yeah, we don't need a variance because they own this and then suddenly, they don't own it.

MRS. BRUCE: Oh, no.

CHAIRMAN URE: The plat map is 111 is the whole entire- this is a very confusing one.

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MEMBER SPOSATO: The right away is not a road, so it doesn't impede their property.

CHAIRMAN URE: It's a usage, it's not but it doesn't divide property as far right.

MEMBER SPOSATO: Right. That's why they don't need anything on the front or the back.

Discussion between the Board.

MEMBER SCALISE: So bottom line though you don't need anything in the front because she owns all the way over here. You don't need anything in the back because you need 30 and there's already 31. The only tight spot is 14 feet to the sideline and you need 15.

MEMBER SPOSATO: Yeah 14.28. Is it .29? I can't see it right. So, it's 14.3, they're missing by inches.

MEMBER SCALISE: So, is this true, if the special exception that we did in 2010 stands, the zoning official can then waive the administrative amount. You can waive the six inches on the sideline.

SOLICITOR VAAGE: If it falls within the specific percentage varying that deviation. If it falls within the percentage than the maximum percentage modification amount the administrative officer can grant the modification. He has the authority to, whether or not he elects to is a different story.

MEMBER SPOSATO: How many percent can you do administratively?

MR. SANTILLI: We could have done that. We could have done that but that's not my worry. My worry is that the Special Use Permit was issued in 2010 and they did not act on it for years. So, it's my opinion they need to go back before the board and get another Special Use Permit.

MEMBER HEIL: I wasn't here so what specifically was that special variance for?

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CHAIRMAN URE: So again, back in 2010, they came in for a Special Use Permit and a dimensional variance. The dimensional variance was for the lot area. It's a substandard lot of record, it's half as small as a new lot would have to be. It's a grandfathered lot.

MEMBER HEIL: I guess my question is, have they actually not done anything?

CHAIRMAN URE: Not yet.

MEMBER HEIL: Okay, so nothing's been done since that last-

CHAIRMAN URE: The house that was on there is gone right, Mrs. Bruce?

MRS. BRUCE: It was not livable; it was being whatever that word is. We had to tear it down. So, we intended on building on a house but we actually bought the house next door to us because it allowed us to have my daughter.

MEMBER HEIL: That's all I was wondering was based on his quote -

SOLICITOR VAAGE: There's nothing in the zoning regs-

MEMBER HEIL: I was just wondering if they had done anything within, since that.

CHAIRMAN URE: Between the zoning official and us there's a little bit of a debate. I'm fine with moving forward, we've already granted the special use. It's not something we would ever deny, it's a residential home.

MEMBER HEIL: I don't know if this is possible, could we just approve like an extension of the original Special Use Permit?

CHAIRMAN URE: I don't believe we have to. I think the state law backs up the what the Solicitor says but I also don't disagree with what Tony said. And I think it's easy just to grant it because we're talking about it for an hour.

MEMBER SPOSATO: No but it matters next time around. Next time around we don't have to waste all the time.

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SOLICITOR VAAGE: If you guys want to belt and suspenders it, you may as well just grant the relief now.

MEMBER SPOSATO: We'll also set a precedent that we'll have to do it every time when it's not necessary.

MEMBER HEIL: I was wondering if we could just approve an extension of the original?

SOLICITOR VAAGE: Zoning board decisions aren't precedential.

MEMBER SPOSATO: Yeah, but we've got to be consistent.

CHAIRMAN URE: Chip's saying can we extend the previous Special Use Permit.

SOLICITOR VAAGE: You don't have to.

MEMBER SCALISE: You don't have to because it goes with the land. If that made everybody more comfortable, we could.

MEMBER SPOSATO: The Special Use Permit from 2010 is just saying that it was a substandard lot of record, that hasn't changed.

MEMBER HEIL: That's what I'm saying then, if Tony's got any real doubts, if it's simple for us to just extend the existing one, personally-

MR. SANTILLI: Speaking through the chair, I don't have any doubts as long as the Solicitor states that the Special Use Permit is legal from 10 years ago, I don't have a problem.

SOLICITOR VAAGE: I'm not making decisions for the Town, okay. I am advising the board that a Special Use Permit, by law, runs with the land unless there's a change in circumstances that requires an issuance of a new Special Use Permit. The construction of a single-family residence in an R-1 zone is, according to your ordinance, a permitted use. The lot, if it's vacant, in an R-1 zone may also be considered a buildable, a non-conforming buildable lot. So, with that information I think, you know, you certainly are legally able to grant whatever relief they're

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looking for but at the same time, I think with a Special Use Permit you can make the case that you don't need to. Because as a matter of law, it's already attached to the property.

A MOTION WAS MADE BY MEMBER SPOSATO AND SECONDED BY MEMBER YORK THAT THE SPECIAL USE PERMIT FROM 2010 STANDS. ALL IN FAVOR.

SO MOVED

CHAIRMAN URE: So, in that case why don't we ship it back to Tony because now he can do it if he so chooses. You have a problem with that?

MR SANTILLI: No.

CHAIRMAN URE: Okay, so we need to add a motion that we are going to remand it back for administrative.

SOLICITOR VAAGE: Yeah, you can do that, absolutely.

A MOTION WAS MADE BY MEMBER SPOSATO AND SECONDED BY MEMBER YORK TO REMAND THE DIMENSIONAL VARIANCE APPLICATION BACK TO THE BUILDING DEPARTMENT FOR ADMINISTRATIVE RELIEF. ALL IN FAVOR.

SO MOVED

SOLICITOR VAAGE: Did you want to take any testimonies? If anyone else out there wants to speak in favor or against?

CHAIRMAN URE: Absolutely. Does anyone in the audience want to step up? I know we asked you a lot of questions.

MRS BRUCE: I hope you get them all answered!

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CHAIRMAN URE: Maybe we can help clarify some of what we just discussed because I know it went around in a giant circle.

MS. LYNCH: So, my question is, being an abutting neighbor, at 5 Lakeside Dr Ext, the right of way ends my driveway. So, the right of way ends in my driveway, I'm on the peninsula. So, when you say, I'm just curious, if okay, the front is the right of way and their property across from the right of way, the back is the pond. The left, or if you're facing that way, the right side is 1 Lakeside Ext and then we'd be on the left.

CHAIRMAN URE: You're 112, right? You're on the end?

MS. LYNCH: I'm on the end, yes.

CHAIRMAN URE: She's at 112.

MS. LYNCH: Yes, so I'm just curious, so the 1.7 feet or so, which-

CHAIRMAN URE: To the pond.

MS. LYNCH: To the pond. Okay, so on the rear. Okay, got it.

MEMBER YORK: Where the property comes back around.

MS. LYNCH: Okay.

CHAIRMAN URE: Dimensionally it's such an odd area. It's not just their lot, all the lots. It's very weird because you've got water that comes this way, like you're surrounded by water and trees.

MS. LYNCH: Correct.

CHAIRMAN URE: Your frontage is different, that road, or that right of way ends directly into your property.

MS. LYNCH: Correct.

CHAIRMAN URE: It splits Mrs. Bruce's, right?

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MS. LYNCH: Theirs. Yes, right.

CHAIRMAN URE: But they also own the lot across the street so they're frontage from the setback from the house is all the way across.

MS. LYNCH: Okay, so, they don't, so right, so from the house to the water on the right of way side, okay so that all works. But then the right of way doesn't change at all?

CHAIRMAN URE: No, oh no.

MS. LYNCH: Okay.

CHAIRMAN URE: No, the right of way is the right of way, it's a deeded access to your property.

MEMBER SPOSATO: It should be in your deed.

MS. LYNCH: Right. Yeah, I'm sure it is.

CHAIRMAN URE: You have legal access to it. You don't necessarily, you don't own the land, you own the use.

MEMBER SPOSATO: If you want to just walk up for a second, this is your property line, I'm assuming that's your garage.

MS. LYNCH: No, that's their- oh, no I'm sorry- here.

MEMBER SPOSATO: That's your house.

MS. LYNCH: Yes, that's the garage.

MEMBER SPOSATO: See the only part is this 7 inches right there. So, all this that's really by your house, there's tons. So, you're good.

MS. LYNCH: Got it. Okay, great. Yeah, I wasn't sure, just listening to you guys talk.

MEMBER SPOSATO: Yeah, that's why I thought it would easier for you to see it.

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MS. LYNCH: Yes.

MEMBER SPOSATO: So, it's not even close and really all of your land. It's only this one little spot that's 7 inches and to me that's a question of where the water is.

MS. LYNCH: Right, right okay.

CHAIRMAN URE: So then, just to backtrack on where we went was the zoning official has the ability to make a 25% adjustment to setbacks and dimensional.

MEMBER SCALISE: So, he could make it smaller 25% or 15 feet if he wanted to. If everything else was okay. His appropriate concern was, gee did that special exception from 2010 stand all this time. Because in many other places it has an expiration date. And if it had an expiration date, it's void at that point and they would have to come back here for a new special exception. But Council has indicated that it has not gone bad, we re-voted just to make sure everybody's freshened up and comfortable and it still stands so they don't have to do anything special exception at that point.

CHAIRMAN URE: And as far as dimensionally, that's 7 inches. I'd be shocked if we didn't approve it.

MS. LYNCH: And that would be the same?

MEMBER SPOSATO: It would be the same for you as well because your boundaries would be the water. So, it'd be the same for you. All set? Any other questions? Anybody else?

CHAIRMAN URE: Okay, would anybody else like to speak? Any other questions?

MS. BOEGLYN: Yeah, my biggest question is, on the water side of the property, where does the setback or property line begin for the setback to begin? Because it's been back filled now with stone creating more area. Does it go from the high tide mark of the pond or is it going to go from the edge of these stones that were back filled in without a permit at first? But then DEM did permit it after it had all been done.

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MEMBER SPOSATO: Yeah, but that's not how a survey works. I don't care if it's 10 feet of riprap. The survey is derived from the deeds of all these lots.

MS. BOEGLYN: Okay, so the riprap doesn't matter?

MEMBER SPOSATO: The riprap doesn't matter.

MS. BOEGLYN: Other than it killed a lot of fish beds but that's okay.

MEMBER SPOSATO: That I couldn't tell you.

CHAIRMAN URE: That's a DEM concern.

MS. BOEGLYN: Oh, I know it's DEM, I know I'm dealing with them.

MEMBER SPOSATO: But when the surveyor comes out to do your property, he researches the deeds, your deeds, everybody's deeds.

MS. BOEGLYN: Yes, I understand. So, even though-

MEMBER SPOSATO: When they put the boundary in, that's from the deeds not from what's there or not.

MS. BOEGLYN: Okay, and-

MEMBER SPOSATO: And your property could actually go out into the water.

MS. BOEGLYN: And the other thing on the right of way, is he allowed to move it? He wants to change it.

SOLICITOR VAAGE: So, Zoning Board can't even touch easements.

MS. BOEGLYN: What's that?

SOLICITOR VAAGE: The Zoning Board cannot deal with easements.

CHAIRMAN URE: Yeah, that has nothing to do with us. That's civil. Anybody else?

MR. CHALIFOUX: My question is, there's no marker, I own Lot 110.

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CHAIRMAN URE: It's the one to the South.

MR. CHALIFOUX: When Dan surveyed the property, yeah here we are right here I think that's my house. There's no permanent marker here. This one has been established, and I would like Dan to come back and shoot this line because these numbers do not add up. There's no marker and I believe my property extends right out into the water. So, my only concern is, I would like to see that point put in.

MEMBER SPOSATO: Well, that there again, that wouldn't have anything to do with us. That would be up to you and- or you might even have to hire somebody to do that yourself. That's not the neighbor's responsibility.

MR. CHALIFOUX: Dan, yeah but that's his marker too.

MEMBER SPOSATO: Oh no, that's strictly between you guys.

CHAIRMAN URE: So, if you disagree with your neighbor's survey, you'd have to get another Surveyor to do a survey and then you both-

MR. CHALIFOUX: I don't disagree with it, there's just no marker put in. We believe it possibly could be in the tree and the tree grew over, we don't really have an issue with it. Because it does control the sideline, I'm not worried about 15-foot sidelines when you're talking about inches. I don't have any problem.

MEMBER SPOSATO: Actually, that sides more to you. And if it continues like you say, it's even more irrelevant as far as this application goes.

MR. CHALIFOUX: Yeah, I don't care that it doesn't.

CHAIRMAN URE: That's where they're asking for relief is where it gets even more away from it.

MEMBER SPOSATO: This is the only part that's close as far as 7 inches short.

MR. CHALIFOUX: The thing is, when you read the deeds, there was something there.

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CHAIRMAN URE: The problem you're going to have with deeds, if you go back far enough that's when Brushy Brook was there and the pond was never there.

MR. CHALIFOUX: Right, yup.

CHAIRMAN URE: So, you had a brook that was 10-foot wide and now turned into a mile long pond.

MEMBER SPOSATO: So, their property lines could be in the water.

CHAIRMAN URE: They are, but you can't own the water so they're all buried.

SOLICITOR VAAGE: We're getting a little off topic again.

CHAIRMAN URE: So, I understand what you're talking about but it doesn't, we can't force your neighbor to have the Surveyor come out and get another line. I'll put another point in, you don't get to spend any money for them. If you want to get somebody to put one in for you, and then-

MR. CHALIFOUX: Yeah, I don't think there really is any issue. I just thought that if he surveyed that, because they did put one in over here. There's no big discrepancy anywhere.

CHAIRMAN URE: Alright, that's fine. Would anybody else like to speak?

SOLICITOR VAAGE: I guess we want to redo that motion and close the public hearing and redo that motion.

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HEIL TO CLOSE THE PUBLIC HEARING. ALL IN FAVOR.

SO MOVED

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HEIL TO UPHOLD THE SPECIAL USE PERMIT ISSUED IN 2010. ALL IN FAVOR.

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SO MOVED

A MOTION WAS MADE BY MEMBER SPOSATO AND SECONDED BY MEMBER SCALISE TO REMAND THE DIMENSIONAL VARIANCE APPLICATION BACK TO THE BUILDING DEPARTMENT FOR ADMINISTRATIVE RELIEF. ALL IN FAVOR.

SO MOVED

Sitting as the Board for Petition III: Ure, York, Sposato, Baruti & Heil

Petition III – Determine completeness of application/consider waivers

A Petition for a Use Variance to allow for a kennel license at a residential property. Petition filed by Anthony and Sherrell Clemente with mailing address of 172 Lawton Foster Rd N, Hope Valley, RI 02832, for property located at 172 Lawton Foster Rd N, Hope Valley, RI 02832, and identified as AP 14 Lot 1, an RFR-80 Zone and filed in accordance with Section 9 of Chapter 134 of the Zoning Ordinances of Hopkinton, as amended.

Applicant or representative present.

Filing fees paid and notice posted.

Discussion.

Decision.

Chairman Ure explains that the applicants are here for a pre-app. He states that he has a couple of questions on the application. Chairman Ure explains to Mr. Santilli

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that he does not see a district use table for a kennel in the town's ordinance. Mr. Santilli states that if it's not in the ordinance, it is prohibited.

Chairman Ure states that the Board has never given a special use permit or a use variance for a prohibited use. He explains that the Town Council would have to do its own amendment to allow the use.

Mr. Santilli asks if it is showing that it is prohibited, are they losing all beneficial use of the property. Chairman Ure states that it is a residential property with a residential home on it so it would not lose all beneficial use. Mr. Santilli states that the applicants could go before the Board and give testimony or they could go before the Council and change the use tables.

The Board discusses whether the applicants should go before the Town Council and they discuss previous applications they have approved. They also discuss whether or not a kennel could fall under an agriculture use.

Chairman Ure asks the members of the Board how they would like to proceed. The Board decides they would like to go through the checklist with the applicants. The applicants are in agreeance that they would like the Board to go through the checklist. Chairman Ure states that he is not for or against a kennel but is concerned they are getting out of procedure since there is no district use table for a kennel. Member Sposato explains to the applicants that the Board doesn't know if the kennel could fall under some type of other farming ordinance. Mrs. Clemente explains that they need a license because they own Chihuahua dogs that they breed three to six litters a year. She explains that the dogs are inside their home. Member Baruti states that that is the state definition of a kennel, not Hopkinton's definition of a kennel.

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Chairman Ure states that if they get through the checklist, they can schedule a hearing date and the Board can get down into what the applicants are really doing and decide if they need to go before the Council or not.

CHECKLIST ITEM A: Three (3) copies of a site plan prepared by, and signed and stamped by, a professional engineer or professional land surveyor at a scale of no less than one (1) inch = forty (40) feet clearly showing:

- Name and address of property owner(s)
- Date, north arrow, graphic scale, lot dimensions and area
- Plat & lot, zoning district(s) and setbacks
- Existing and proposed structures, and their relationship & distances from lot boundary lines
- Existing and proposed parking areas and walkways – existing and proposed landscaping, as it relates to the request.
- Existing streets, 911 address, wells, septic system
- List of names and address of all property owners within 200 feet of subject property
- Best Management Practice work-plan where required
- Any peculiar site conditions or features

Member York states that the applicants have requested a waiver for Checklist Item A. Chairman Ure asks Mr. And Mrs. Clemente to withdraw the waiver on Checklist Item A since they provided copies of the site plan.

Member Baruti states that he does not believe the site plan is satisfactory because it doesn't show any outdoor operations pertaining to a kennel. Mrs. Clemente states

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that there is nothing outdoors and the dogs are within their home. Chairman Ure explains to the applicants that if they applying for a use variance and anything external changes, they need to see it on the site plan. The applicants state they have no outdoor structures and no plans to add any.

Solicitor Vaage states that a use variance runs with land. Chairman Ure explains to the applicants that if they approve this variance, although they have small dogs that they only keep indoors, the next property owner could have large dogs that are outside. He states that the board has to worry about thirty years down the road and not just right now. Solicitor Vaage states that there are a number of reasons why he is unsure if the Zoning Board has the authority to hear this application and more research needs to be done. He states that there is an ordinance where the Town Clerk can issue a license. Member Sposato explains to the applicants that since there is a town kennel ordinance, they should go see the Town Clerk and see if she can issue them a license. He continues to explain, if the Town Clerk can't issue a license, she will need to go through the Town Council's attorney and find out why that is.

Chairman Ure explains to the applicants that if the Town Clerk can issue them a kennel license under her authority, to reach out to Tony's office to withdraw their application. He explains to the applicants that they are deficient with their site map so if they need to come back, they need a new map. He continues to say, that the Board can go through the checklist so the applicants will know what they need to do in the event they do need to come back in front of the Zoning Board.

A MOTION WAS MADE BY MEMBER BARUTI AND SECONDED BY MEMBER HEIL THAT CHECKLIST ITEM A HAS NOT BEEN SATISFIED,

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THE APPLICANT NEEDS TO PROVIDE A NEW SITE MAP THAT MEETS THE REQUIREMENTS OF ITEM A.

Member York questions why the applicants need a new site map when there are no proposed structures or changes to the property. Member Sposato explains that this site map is outdated and the house could be in a different location than what the site plan shows. Member Baruti states that he wants a new map for a hearing to delve into the operations of the kennel and for the neighbors to know what actually will happen and be on notice.

ALL IN FAVOR.

SO MOVED

CHECKLIST ITEM B: Three copies of a separate map indicating all property owners within 200 feet of the subject property and/or all of those owners and entities which require notice under section 45-24-53 of the R.I.G.L., also depicting any zoning district boundary and uses of all neighboring properties.

A MOTION WAS MADE BY MEMBER BARUTI AND SECONDED BY MEMBER YORK THAT CHECKLIST ITEM B IS COMPLETE. ALL IN FAVOR.

SO MOVED

CHECKLIST ITEM C: A soil erosion and stormwater control plan with supporting calculations based on standards approved by the USDA Soil Conservations Service and in conformity with the R.I. Erosion and Sediment Control Handbook.

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Member York states that the applicants have requested a waiver for Checklist Item C.

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER SPOSATO TO GRANT THE WAIVER FOR CHECKLIST ITEM C. ALL IN FAVOR.

SO MOVED

CHECKLIST ITEM D: A letter from a biologist indicating that there are no freshwater wetlands on or in proximity to the site such that the application is regulated by the R.I. Freshwater Wetlands Act. In those instances where the application is regulated by the R.I. Freshwater Wetlands Act, a physical alteration permit issued by the R.I. Department of Environmental Management, and where applicable, the U.S. Army Corp of Engineers, shall be required.

Member Sposato suggests that the Board should wait for a new site map before approving this checklist item. He states that there are obviously Wetlands on the site. Member Sposato states that the Board should put this item on hold and can discuss it at the next meeting when they have a new site map.

A MOTION WAS MADE BY MEMBER HEIL AND SECONDED BY MEMBER YORK TO HOLD ITEM D UNTIL THE BOARD HAS THE NEW SITE MAP TO SATISFY ITEM A. ALL IN FAVOR.

SO MOVED

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CHECKLIST ITEM E: Location of existing septic system. Where construction requires approval by the R.I. DEM - Division of Land Resources for an ISDS (individual sewage disposal system) or change of use permit for the proposed activity, attach a copy to the application.

A MOTION WAS MADE BY MEMBER SPOSATO AND SECONDED BY MEMBER YORK TO WAIVE CHECKLIST ITEM E. MEMBERS URE, YORK, SPOSATO AND HEIL WERE IN FAVOR, MEMBER BARUTI OPPOSED.

MOTION PASSES

CHECKLIST ITEM F: Traffic Study addressing the potential impacts of the proposed activity.

Member York states that the applicants are requesting a waiver for this checklist item.

A MOTION WAS MADE BY MEMBER HEIL AND SECONDED BY MEMBER SPOSATO TO GRANT THE WAIVER REQUEST FOR CHECKLIST ITEM F.

Member Baruti states that he is in agreeance subject to the testimony at the hearing. He explains he wants to hear how much traffic the applicants anticipate.

ALL IN FAVOR.

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SO MOVED

CHECKLIST ITEM G: On a separate site plan, indicate existing and proposed topography at two (2) foot intervals.

A MOTION WAS MADE MEMBER HEIL AND SECONDED BY MEMBER SPOSATO TO HOLD ON ITEM G UNTIL THE BOARD HAS THE NEW SITE MAP TO SATISY ITEM A. ALL IN FAVOR.

SO MOVED

Member Sposato explains to the applicants that they are going to need topography on the new site map.

CHECKLIST ITEM H: Provide evidence that the proposed water supply has sufficient supply to support the proposed activity and is drinking water quality.

Member York states that the applicants have requested a waiver for Cheklist Item H.

A MOTION WAS MADE BY MEMBER SPOSATO AND SECONDED BY MEMBER YORK TO WAIVE CHECKLIST ITME H. ALL IN FAVOR.

SO MOVED

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Chairman Ure reviews the deficient checklist items with the applicants. Member York explains to the applicants that they should talk to the Town Clerk about getting a kennel license before they spend any money on a new site map.

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HEIL TO CONTINUE THIS APPLICATION TO THE JANUARY 19, 2023 MEETING. ALL IN FAVOR.

SO MOVED

Sitting as the Board for Petition IV: Ure, York, Sposato, Baruti & Heil

Petition IV- Determine completeness of application/consider waivers

A Petition for a Dimensional Variance for set-back relief of the locations of multiple sheds. Petition filed by Robin and Cynthia Dubay with mailing address of 12 Church St, Ashaway, RI 02804, for property located at 12 Church St, Ashaway, RI 02804, and identified as AP 24 Lot 124, an R-1 Zone and filed in accordance with Section 9 of Chapter 134 of the Zoning Ordinances of Hopkinton, as amended.

Applicant or representative present.

Filing fees paid and notice posted.

Discussion.

Decision.

Mr. Santilli states that Mr. Dubay has a legal pool company that he runs out of his property. He states that the Church next door filed a complaint regarding

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structures in Mr. Dubay's yard. Chairman Ure asks Mr. Santilli if the applicant is before the town with legal matters regarding the complaint. Mr. Santilli states that the applicant has storage containers and some sheds that are in an R-1 zoning district. Chairman Ure asks Mr. Santilli if this application would also need a Special Use Permit for the sheds. Mr. Santilli states the applicant needs a dimensional variance for the sheds. Chairman Ure asks Mr. Santilli for a special use would any of this be considered with the sheds an addition, enlargement, or expansion. Mr. Santilli states the sheds have been there for a long time. Chairman Ure asks Mr. Santilli if they pre-date zoning. Mr. Santilli states that he didn't think about that. Chairman Ure states that he would think the applicant would need a special use permit for the sheds. Member Baruti asks Mr. Santilli if he is under the impression that Mr. Dubay's use is permitted under a home based business. Mr. Santilli states that is permitted under the home occupation certificate. He explains that their main concern is the boxes that are within 15 feet of the Church property.

Member Baruti asks Mr. Santilli what the status of the violation is and if it is in the courts. Mr. Santilli states that Mr. Dubay can better answer these questions. He continues to explain that he thinks Mr. Dubay was in court with the Church. Mr. Santilli asks Solicitor Vaage if it's a permitted home occupation, would the boxes be an expansion of the non-conformity or would he need a special use. Solicitor Vaage asks if the use is non-conforming. Mr. Santilli states that it is not non-conforming because it meets the home occupation regulations. Solicitor Vaage states that if it's a permitted use, the non-conformance doesn't come into play at all. He states that he doesn't think he would need a special use.

Mr. Santilli states that he did send Mr. Dubay a summons but he told the judge the applicant is trying to comply with the town regulations. He continues to say the

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town has no pending litigation with Mr. Dubay at this point, he dismissed it pending the zoning actions.

Member Sposato asks if it's only one container within the 15 feet. Mr. Santilli states that he's not sure, he hasn't seen the site plan. The Board reviews the site plan with Mr. Santilli for the locations of the storage containers in relation to the setbacks and sidelines.

Chairman Ure states that the rear setback is the real issue. Member Heil states that the applicant is only asking for relief for shed number 4. Mr. Santilli states that the applicant has moved some of the sheds so they are in compliance. Chairman Ure states that shed number 2 is also in need of a dimensional variance since it is too close to the rear setback, it's on the application so the Board can't ignore it. Chairman Ure states that the Board is looking at storage sheds 2 and 4 for the dimensional variance since shed 3 has been removed.

CHECKLIST ITEM A: Three (3) copies of a site plan prepared by, and signed and stamped by, a professional engineer or professional land surveyor at a scale of no less than one (1) inch = forty (40) feet clearly showing:

- Name and address of property owner(s)
- Date, north arrow, graphic scale, lot dimensions and area
- Plat & lot, zoning district(s) and setbacks
- Existing and proposed structures, and their relationship & distances from lot boundary lines
- Existing and proposed parking areas and walkways – existing and proposed landscaping, as it relates to the request.
- Existing streets, 911 address, wells, septic system

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- List of names and address of all property owners within 200 feet of subject property
- Best Management Practice work-plan where required
- Any peculiar site conditions or features

Member Baruti asks if the site plan should be motified to reflect the current conditions. He explains that according to the current site map, it looks like there are five sheds that are out of compliance when it is only actually two. Chairman Ure explains that the applicant will have to go back to the Surveyor. He explains that if sheds number 2 and number 4 are the only ones that need relief, the site map needs to reflect that. He states that they are taking a time stamp of what is there when the Board approves it. Member Baruti asks Mr. Dubay if he thinks that is something that his Engineer would do. Mr. Dubay responds yes.

A MOTION WAS MADE BY MEMBER HEIL AND SECONDED BY MEMBER BARUTI THAT CHECKLIST ITEM A IS COMPLETE CONTINGENT UPON THE BOARD RECEIVING A NEW SITE MAP THAT SHOWS WHERE STRUCTURES ARE CURRENTLY LOCATED. ALL IN FAVOR.

SO MOVED

CHECKLIST ITEM B: Three copies of a separate map indicating all property owners within 200 feet of the subject property and/or all of those owners and entities which require notice under section 45-24-53 of the R.I.G.L., also depicting any zoning district boundary and uses of all neighboring properties.

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A MOTION WAS MADE BY MEMBER BARUTI AND SECONDED BY MEMBER YORK THAT CHECKLIST ITEM B IS COMPLETE. ALL IN FAVOR.

SO MOVED

CHECKLIST ITEM C: A letter from a biologist indicating that there are no freshwater wetlands on or in proximity to the site such that the application is regulated by the R.I. Freshwater Wetlands Act. In those instances where the application is regulated by the R.I. Freshwater Wetlands Act, a physical alteration permit issued by the R.I. Department of Environmental Management, and where applicable, the U.S. Army Corp of Engineers, shall be required.

Member Baruti states that the applicants requested a waiver for this checklist item.

A MOTION WAS MADE BY MEMBER BARUTI AND SECONDED BY MEMBER YORK TO GRANT A WAIVER FOR CHECKLIST ITEM C. ALL IN FAVOR.

SO MOVED

CHECKLIST ITEM D: Location of existing septic system. Where construction requires approval by the R.I. DEM - Division of Land Resources for an ISDS (individual sewage disposal system) or change of use permit for the proposed activity, attach a copy to the application..

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A MOTION WAS MADE BY MEMBER BARUTI AND SECONDED BY MEMBER YORK THAT CHECKLIST ITEM D HAS BEEN SATISFIED. ALL IN FAVOR.

SO MOVED

CHECKLIST ITEM E: On an existing site plan, indicate existing and proposed topography at two (2) foot intervals.

A MOTION WAS MADE BY MEMBER BARUTI AND SECONDED BY MEMBER HEIL THAT CHECKLIST ITEM E IS COMPLETE. ALL IN FAVOR.

SO MOVED

Chairman Ure explains to Mr. Dubay that the Board needs a new site plan that shows the current location of the all of the sheds. He states that his application will be continued to January 19, 2023 and can move into a hearing that night once the checklist is complete. Chairman Ure explains to Mr. Dubay that he needs to send out abutters notices at least two weeks before the next meeting and bring the green cards to the meeting.

A MOTION WAS MADE BY MEMBER BARUTI AND SECONDED BY MEMBER YORK TO CONTINUE THE APPLICATION TO THE JANUARY 19, 2023 MEETING. ALL IN FAVOR.

SO MOVED

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Member Baruti states that there is a notation on the November minutes that the applicants for Petitions 4 & 5 were present when they were not in attendance. He asks the Clerk to amend the November minutes.

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HEIL TO APPROVE THE MINUTES FROM THE NOVEMBER 17, 2022 MEETING AS CORRECTED. MEMBERS URE, YORK, HEIL, AND SPOSATO WERE IN FAVOR, MEMBER BARUTI ABSTAINED FROM THE VOTE.

MOTION PASSES

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HEIL TO ADJOURN THE MEETING AT 9:00 PM. ALL IN FAVOR.

SO MOVED

Respectfully Submitted,

Katrina Caputo

Zoning Board Clerk

Next scheduled Meeting: January 19, 2023