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**TOWN OF HOPKINTON
PLANNING BOARD MEETING**

6
7:00 P.M.

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**Hopkinton Town Hall
One Town House Road
Hopkinton, Rhode Island 02833**

12
CALL TO ORDER

14 The March 7, 2012 meeting of the Hopkinton Planning Board was called to order at
7:02 P.M. by Acting Chairman, Howard Walker.

16
MEMBERS PRESENT

18 Present were: Howard Walker, Hazel Douthitt, Joseph Escher, Donald Simmons
and Carolyn Doyle.
Absent: Alfred DiOrio.

20 Also present were: James Lamphere, Town Planner; Scott Levesque, Town Solicitor;
22 Harvey Buford, Conservation Commission; and Barbara Capalbo, Town Council
Liaison.

24
APPROVAL OF MINUTES

26 MS. DOUTHITT MOVED TO ACCEPT THE MINUTES OF THE FEBRUARY 1, 2012 MEETING
AS WRITTEN.

28 MR. ESCHER SECONDED THE MOTION.

30 MR. SIMMONS, MR. ESCHER, MS. DOUTHITT AND MS. DOYLE APPROVE. MR. WALKER
ABSTAINS. MOTION PASSES.

32
**Development Plan Review – 247 Ashaway Road, (formerly Charlie’s Mobil), Plat 23,
Lot 4 – Hajvari, LLC, applicant.**

34 Attorney Vincent Naccarato represented the applicant for Development Plan
Review. The existing gas station at the intersection of Routes 216 and 91, formerly
36 known as Charlie’s Mobil, was purchased by the applicant two years ago. The
footprint of the existing building will remain the same. They will replace the three
38 (3) existing, 6,000 gallon, underground storage tanks. There will not be any car
repairs. They are proposing to have a small convenience store. Notice has been
40 given to all neighbors within two hundred (200) feet.

42 Kevin Morin, a Registered Professional Civil Engineer with DiPrete Engineering,
was questioned by Mr. Naccarato. The zoning is neighborhood business. DiPrete
44 Engineering was originally engaged to update the OWTS system for this site. They
submitted a plan to DEM last year that was approved for an IA advanced system, an
46 Advantex with a bottomless sand filter. Fill will be removed and replaced with
suitable material, with the bottomless sand filter installed near the surface. He
48 reviewed existing conditions with underground storage tanks to the east. There is a
wetland area with a fifty (50) foot wetland perimeter on the northern half of the
50 property. The existing original septic is within that fifty (50) foot perimeter
wetland. There are two existing curb cuts off Ashaway Road and one off Hindle

2 Drive. The original plans submitted in December, based on a prior Class II survey
by ARM Engineering, showed the existing well servicing the station, but was found
4 to be inaccurate. The well location was confirmed with the owner and was found to
have impact on the septic system that was approved. A new well has been drilled
6 behind the building. An abutting property well was brought to their attention by
the Town Building Official and RI DEM on Mr. Harrison's property. They reverified
8 that with field measurements and the plan now reflects the information which was
updated last week and resubmitted. The original septic was to the west of the
10 building and will be pumped out and abandoned. The old well will also be
abandoned.

12
14 Mr. Morin continued. The building will use the existing footprint but with
architectural changes to the facade and roofline. The gas pumps will be upgraded.
Two (2), 15,000 gallon, underground tanks will be in the same location, have been
16 approved by DEM, and they have received a copy of the permit. The existing tanks
will be removed. A dumpster enclosure is being added. They are removing, patching
18 and striping some of the existing pavement. A jurisdictional wetland in the rear has
been flagged. They will comply with all regulations with regard to Mr. Harrison's
20 well. There will be no additional pumps. The underground storage tank removal
and replacement is to be supervised and coordinated by DEM. They will update the
22 existing landscaping, including the dumpster enclosure, the bottom of the sand
filter, and the corner of Ashaway Road and Hindle Drive. The location of the
24 existing light poles will stay the same with updated posts and fixtures to comply
with the Town's Dark Sky Lighting Ordinance. Signage will be on the front façade
26 of the building. Mr. Morin presented the proposed new elevations for the building
and the proposed floor plan.

28
30 Mr. Naccarato presented a photo of the existing building as Applicant's Exhibit 1
and a photo of the existing pumps and canopy as Applicant's Exhibit 2.

32 Mr. Morin said there will be no food preparation or coffee on site, but they will sell
prepackaged food. They estimate water flow as about 160 gallons a day. Spillage is
34 regulated by DEM and is part of their review process.

36 Amer Javed, the applicant, said they are putting in the bigger tanks to prevent
accidents; most accidents happen during delivery. Trucks will come in with
38 deliveries once a week. Tanks will be triple walled with double walls of steel and a
wall of fiberglass. Each wall will have a sensor. The new tanks will have upgraded
40 fill covers to collect and minimize any spillage during delivery. The existing tanks
have ten years left. The pumps will have sensors. There will be no auto repair on
42 site. They will sell only packaged foods; nothing will be prepared on site. There will
be one employee at a time. It will be a self-service gas station. There will be the
44 same number of new pumps and they will use the same canopy, with a new, built in,
state of the art, fire extinguishing system, which will be checked by the State and
46 tested annually. The bathroom will not be public. The new, approved septic is a
denitrofication system. Mr. Javed explained how the sensors work. There is also an
48 emergency shut off system near the cash register. The hours of operation will be 6
a.m. to 10 p.m. They are not anticipating tractor trailers using the facility. Diesel
50 will be available for cars only.

2 Mr. Morin said they revised the plan and are now outside the required one hundred
4 (100) feet from the well for the septic system. The well will be private. There is
6 drainage that cuts through the site from the state highway for which the State is
8 trying to secure an easement from the owner. The grades on the site will not
10 change. They will remove some of the impervious pavement. There is nothing that
12 triggers the need for additional stormwater drainage design on the site. The OWTS
14 permit was approved last year. Mr. Morin has verified the location of the existing
16 and abutting wells. They are in the process of submitting a redesign for the OWTS
to DEM to clarify that they meet the one hundred (100) foot separation to the wells;
that is currently pending and being processed. The RIDOT requires a Physical
Alteration Permit; that application is pending and they have gotten comments back.
Ashaway Road is scheduled for improvements in the near future, including
resurfacing; the sidewalk along the front of the property may be removed which is a
DOT decision. The UST has approval from DEM. There are no wetland permits
pending.

18 Mr. Naccarato said the applicant has been served by the DOT to obtain a permanent
20 easement for the area where the drain that takes water from Route 216, through the
22 property and into a wetlands area, is. They are utilizing the condemnation
procedure to do that. That is drainage off of the road, not on site.

24 Mr. Morin said it is noted in their DEM application that there is no increase of
water flow to the right of way.

26 Mr. Naccarato asked if the State's easement would interfere with the location of the
28 septic system.

30 Mr. Morin said there are some setbacks from drainage that would affect it: twenty-
32 five (25) feet from any drainage if it was a solid pipe to fifty (50) feet if it is a
downgradient of the system. That creates issues with the existing septic system
location being inside the fifty (50) foot perimeter wetland.

34 Mr. Naccarato asked if the selection of the proposed site was something that was
36 discussed with DEM before locating the system.

38 Mr. Morin said the septic location was based on testing and constraints. He did not
40 have a meeting before filing the application with DEM directly. It was his office's
42 opinion as to the best location on site to locate the new system; there was less fill in
44 that location. It is considered a repair because there is an existing system, but was
actually submitted as an alteration. It they weren't doing anything to the building,
if it was to stay as a gas and service station, it would have been a repair. Because of
the convenience store, it is an alteration.

46 Mr. Lamphere questioned why the applicant opted for steel tanks as opposed to
fiberglass.

48 Mr. Javed said he chose steel because with his experience, the steel gets small holes
50 when it fails while the fiberglass cracks the tank. The double walled steel tanks
have a third wall that is fiberglass. He said it is too costly if a tank leaks so they
would rather use the best in the market. The fiberglass tanks are guaranteed for 10

2 years by the manufacturer; the steel for 30 years. If a steel tank should leak, they
4 take the tank out and replace it. Each tank has a sensor which alerts them to call
the company, have them test the tank, and if they find a leak, take it out. It is
6 usually not the tank that leaks but the lines inside the tank. Mr. Javed said the two
tanks cost \$35,000 each. Fiberglass tanks would be \$40,000 for the two tanks. The
contractor price is close to \$250,000 to replace those tanks.

8

Mr. Buford asked the proposed use numbers from the District Use Tables.

10

Mr. Naccarato said use number 541, a grocery store and deli, is a permitted use in a
12 neighborhood business zone. Use 631, car repairs, was not permitted in the zone,
was a nonconforming use, and will be eliminated. Use 554, gasoline service station,
14 is there by non-conforming use.

16

Mr. Walker asked, when you say that the nonconforming use of auto repair is not
going to be used, are you abandoning that?

18

Mr. Naccarato said they are abandoning that use. There are no dimensional issues
20 on the property. The only improvement they are making is the facade of the
building; the rest is in the ground. They are not increasing the footprint.

22

Mr. Buford asked if there is anything about the dimensional aspects of zoning that
24 would be nonconforming.

26

Mr. Naccarato responded, only that exists.

28

Mr. Buford said the forty (40) foot front setback applies to structures as well as the
30 building; there is the canopy over the pumps. He believes there is a 40,000 square
foot requirement for a neighborhood business property; the applicant has
approximately 30,000 square feet, therefore, also nonconforming in existing lot size.
32 He referred to the Zoning Ordinance Section 9, Nonconforming Development,
subsection b, use alteration, saying, "The use of a nonconforming development may
34 be altered by application to the Zoning Board of Review for a special use permit." He
believes that if you are adding a new use, you need to go before the Zoning Board for
36 a Special Use Permit.

38

Mr. Naccarato disagrees. They are eliminating a nonconforming use for a
conforming use; they are not intensifying the use at all.

40

Mr. Buford said they are making a use alteration because they are adding a new
42 district use table use. He believes it is a nonconforming development because it does
not meet the dimensional requirements.

44

Mr. Naccarato said here they are going from a nonconforming use to a conforming
46 use, and questioned, "Why would we need Zoning Board approval for a special use
permit for something that is permitted?"

48

Mr. Walker believes Mr. Buford's point is that while a convenience store may be a
50 permitted use in that zoning district, the lot lacks the required square footage for
that use. To that extent it raises an issue as to whether it would be conforming and

2 whether, by adding that use, you would actually be increasing the amount of
nonconformity on that site.

4

Mr. Levesque's concern is that while you may have the right to do a neighborhood
6 business like a convenience store in this location, you may need some relief from the
Zoning Board for the square footage of the lot for setbacks.

8

Mr. Naccarato said the lot is nonconforming as to its size.

10

Mr. Walker said you are not grandfathered in as a convenience store, only as a gas
12 station.

14

Mr. Naccarato agreed saying he is also grandfathered in as an automobile repair
shop. If he is giving up a nonconforming use, and because the lot size is smaller
16 than required by the ordinance, why would he need a special use permit?

18

Mr. Levesque said they need some relief because they don't have the right lot size or
the right setbacks; that is not relief the Planning Board can give. The Board can
20 give an advisory saying you need to go to the Zoning Board to get that relief.

22

Mr. Naccarato does not see the necessity for the relief. The pumps are a
grandfathered nonconforming use.

24

Mr. Levesque said the gas station is not the concern. The concern is the convenience
26 store, the nonconformance of the lot, and the setbacks related to that.

28

Mr. Morin said the building is setback 38 feet. There is also the canopy and the gas
island.

30

Mr. Buford said Section 9, subsection c, also states, "An addition, enlargement,
32 expansion, replacement or intensification of a nonconforming development shall be
allowed only by special use permit."

34

Mr. Naccarato said replacing underground tanks and keeping the building footprint
36 the same, do not require a Special Use Permit.

38

Mr. Levesque said he sees a problem as it relates to putting a permitted use on a
nonconforming lot. He is not focusing on any aspect of the gas station. The
40 nonconforming lot is a concern that should be addressed before the applicant returns
before this Board.

42

Mr. Walker said there is no issue about the gas station; you have an existing,
44 nonconforming use with no proposal to increase its intensity. You have another
existing nonconforming use that you are abandoning; auto repair. You are bringing
46 in a new conforming use, but on a nonconforming lot; a convenience store. He does
not know if they would require a special use permit but they could very likely
48 require a dimensional variance from the Zoning Board to permit that use on what is
a substandard lot. He is prepared to recommend to the Zoning Board that they
50 grant such relief, that the proposal, as it is proposed, is a good sound proposal that

2 is in the best interest of the Town, and that they should grant whatever zoning relief
is required to make it a legal project.

4 Mr. Naccarato said they will request a zoning certificate from the Zoning Official.

6 Mr. Walker said he would consider the following conditions be imposed by this
8 Board on any approvals that were granted to this application:

- 10 ■ That there would be no auto repairs on the premises and that the existing
nonconforming will be abandoned;
- 12 ■ The lighting will comply with the Town's Dark Sky Ordinance;
- 14 ■ That the hours of operation will be limited to 6 a.m. to 10 p.m.;
- 16 ■ There will be no food preparation on the premises;
- 18 ■ There is no public restroom;
- 20 ■ There will be a private well only, not a public well;
- 22 ■ There will be the required DEM approvals for the fuel tanks, for the
septic, including the setback from Mr. Harrison's well.

24 Mr. Walker asked if any of these conditions be a problem for the applicant.

26 Mr. Naccarato responded no.

28 Mr. Buford asked the status of the former violations for the underground storage
tanks that were imposed on Charlie's Mobil. He said that in 2010 there was a
30 consent agreement with the former owner. Since 2002 they have been in notice of
violations from DEM, signed a consent agreement, and made mandates that they
32 had to do certain things within sixty days. That was filed at the Town Hall in the
property records. Within those sixty days, or subsequent to that, were those items
34 taken care of? There has been concern by the Conservation Commission about that
property over the years, that it was potentially contaminating the ground water.
36 Has that consent agreement been complied with, has DEM signed off on that, and
has that been filed in Town Hall?

38 Mr. Javed said that when they bought the property, instead of doing the little fixes,
they planned on putting everything in new, which was approved by DEM, and
40 addressed all DEM's concerns. When they bought the property, Charlie paid DEM
for the violations in the past. At that point, they gave DEM their plans. When the
ground is opened up, all of the concerns will be right there. No leakage was ever
42 found.

44 Mr. Buford said Charlie's Mobil signed the consent agreement, paid the fine, and
never did any of the things that were to be done; that was in 2010.

46 Mr. Javed said he bought the property about that time. That finalized it with DEM.
48 Mr. Javed then filed for the new permits so they could find out what was going on
with the property.

Mr. Buford said that until they do their digging, we still don't know that something
isn't going to be found. He read the list that was required for Charlie's Mobil, items
A through J.

2 Mr. Javed responded, when they pull out the tank, DEM will be there. There is no
4 gas in the tanks now. DEM has approved their plan. They will be eliminating all
the issues.

6 Mr. Levesque said he believes Mr. Buford's concern is that there may have been an
8 ongoing problem for a number of years. If the UST's that are in the ground now are
discovered to have been leaking when DEM is on site doing their closure inspections,
what remediation will you be required to do?

10 Mr. Javed said they remove anything that is contaminated and haul it away,
12 following state guidelines.

14 Mr. Simmons would like to see a detailed lighting plan, including canopy lighting.
The applicant agreed.

16 Ken Panciera, 90 Panciera Lane, said his family owns property abutting this
18 property. He asked what class survey the plans are that we have been reviewing.

20 Mr. Morin said they submitted ARM's Class II boundary survey, as part of this
22 application. Their plan is taken from ARM's survey, so they did not classify it as a
Class II survey. The site plan they prepared is compiled from that to Class IV
standards.

24 Mr. Panciera said the well is in the fifty (50) foot perimeter wetlands as is the
26 culvert for the drain from the street.

28 Mr. Morin said drainage is part of the existing State highway drainage. The State is
30 requesting an easement from the property owner for the piping. A new well has
been drilled as an exempt activity from the DEM wetland regulations. It is an
32 existing property; there is an existing well. If it needs to be maintained in the
future, they would be allowed to do that.

34 Mr. Panciera asked if the new well has been tested.

36 Mr. Morin said he has not seen the results. There is usually a well completion
report that is done by the well driller and filed.

38 Mr. Panciera asked if the section in the back of the building could be considered part
40 of the existing structure; if it met code; if it had a building permit.

42 Mr. Morin said he is not aware of any issues or the history of how came to be. It is
existing; the assessor's office has the square footage of the building at about 1897
44 square feet. They are showing 1930 square feet.

46 Mr. Harrison said his well is near the boundary line. The new OWTS sticks out of
the ground about 3 feet. The existing well is shown on his diagram, near his well.
48 The reservoir in the existing well will be closer to their new sewerage system than to
his well. He wants a guarantee his well will never be contaminated and he doesn't
50 like the looks of the new OWTS.

2 Mr. Walker said we have no power to guarantee anything. The applicant would be
4 required, as a condition for any approvals, to get the required licenses and approvals
6 from DEM, including approval of the setback between their septic system and Mr.
8 Harrison's well. That is where his protection would come from.

10 Mr. Harrison said the original plans have to be revised which showed a plan with a
12 house that doesn't exist. They said there was already a well there when there
14 wasn't a well there.

16 Mr. Morin said the plan submitted last week was revised to show the actual location
18 of the historic well and the new well shown on the plan as well as Mr. Harrison's
20 well.

22 Mr. Javed doesn't like the septic system appearance either. He will landscape it and
24 will update the landscaping plan.

26 Ms. Capalbo said this property has been a twenty year dump and mess and is
28 pleased it will be improved. She would like landscaping to hide the ugly DEM thing.
30 She recommends a bicycle rack and believes it is a good improvement for the town.

32 Mr. Buford asked what the 100 year flood elevation is for that area.

34 Mr. Morin said the elevation was not shown on the FEMA maps. He does not
36 believe the flood zone comes into the higher area. Everything they are proposing is
38 outside the FEMA zone, as it is mapped.

40 Ms. Doyle said the DOT Physical Alteration Permit should be added to the list of
42 conditions for approval.

44 Mr. Lamphere said Mr. Louis Sawyer, a property owner diagonally across the way,
46 said in a letter that he is concerned with the removing of the gas tanks. Mr.
48 Lamphere said this issue has been addressed and resolved this evening.

50 Mr. Panciera asked how the existing building in the back would be acknowledged in
the rebuilding of the gas station.

Mr. Morin said whatever is required as part of the improvements within the
building, will meet all building codes.

Mr. Levesque said they are modifying the structure and will have to bring the
structure up to code, whatever the status is for the addition on the building.

Mr. Panciera asked if there was a procedure in zoning for a neighborhood business.

Mr. Walker said we have already determined the applicant will get a zoning
certificate from the Zoning Official or relief that may be needed for the variational
nonconformity of the premises for the legal use of the convenience store. They will
present a lighting plan that conforms to the Dark Sky Ordinance and landscaping
plan that will accommodate the legitimate interests of Mr. Harrison. We have

2 already listed some conditions that we would probably impose upon an approval, and
4 have been agreed to.

4 Mr. Naccarato said he would be ready for the April meeting and should have
6 something back from the Zoning Official by then. The applicant agreed to grant an
8 extension to the April meeting.

8 Mr. Walker said appears there is a consensus among the Board that once these
10 issues are taken care of, the Board would grant approval of this application subject
12 to the conditions listed. If, in the opinion of the Zoning Official, relief needs to be
14 obtained from the Zoning Board, the Planning Board would recommend that such
relief be granted and would issue an advisory recommending the granting of that
relief.

16 Mr. Lamphere said one more condition he might impose is that the applicant records
18 the entire approved site plan sheet in the office of the Town Clerk. He also said that
20 there is a five page plan set and two pages of landscape. The two landscape pages
should be renumbered as seven pages.

22 Mr. Escher said suggested they also add the water notation to the plan.

24 Mr. Lamphere suggests it be added to the plan and well as a well driller's report.

26 Ms. Doyle said to add the survey plan as part of the plan set for an 8 page total.

Comprehensive Plan – Zoning Consistency

28 Mr. Lamphere said the zoning needs to be consistent with the Town's
30 Comprehensive Plan. The latest version of the Future Land Use Map shows
changes made by the Board.

32 Discussion of the Future Land Use Map ensued with the Board members and the
34 public.

36 The final version, Version 4 of the Future Land Use Map, will be presented at the
38 April meeting. If the Board is satisfied with that iteration, we may ask the Council
for a workshop.

40 **PLANNER'S REPORT:** None

CORRESPONDENCE AND UPDATES

42 Mr. Lamphere received a letter from Chief Stanley regarding a leaking cistern in a
44 subdivision that came before the Planning Board. Capt. Bader requested a letter
46 from the Planning Board stating that this developer was in violation of our
subdivision approval. Mr. Lamphere said that his response was that when they
come for a building permit, say no. Mr. Levesque said Mr. Romano and Mr. Ward
are working on that currently.

48 Mr. Lamphere has received a letter from Mr. Henry Yeles saying he will do the turn
50 around on his road.

2 **PUBLIC COMMENT:** None

4 **DATE OF NEXT REGULAR MEETING:** April 4, 2012

6 **ADJOURNMENT**

MR. SIMMONS MOVED TO ADJOURN. MS. DOUTHITT SECONDED THE MOTION.

8 ALL APPROVE.

10 The meeting adjourned at 9:30 P.M.

12

14 Attest: _____
Lynda St. Amour, Planning Board Clerk

16

18 Approved: April 4, 2012