

ZONING BOARD OF REVIEW MEETING MINUTES – June 24, 2021

State of Rhode Island

County of Washington

In Hopkinton on the twenty-fourth day of June, 2021 A.D. the said meeting was called to order by Zoning Board of Review Chairman Jonathan Ure at 7:06 P.M. in the Town Hall Meeting Room with a moment of silent meditation and a salute to the Flag.

PRESENT: Jonathan Ure, Joe York, Dan Harrington, Daniel Baruti

Alternate Zoning Board Clerk: Elizabeth Monty, Solicitor Per Vaage

PRESENT VIA ZOOM: Member Chip Heil, Zoning Official Sherri Desjardins

Absent: Member Ronnie Sposato, Alternate Member Phil Scalise; Town Council

Liaison Michael Geary, Building Official Anthony Santilli

Sitting as Board for Petition I: Ure, York, Baruti, Harrington, Heil

Petition I – Determine completeness of application/consider waivers.

Special Use Permit filed by Bruce Bryant, with mailing address of 93 Arcadia Rd, Hope Valley, RI 02832, for property owned by Bruce Bryant located at 1127 Main Street, Hope Valley, RI 02832 identified as AP 28, Lot 142 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.

Applicant is present.

Filing fees paid and notice posted.

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Mr. Ure explained the format of the meeting to the Applicant. The Board moved on to the checklist.

Member York read through the check list.

CHECKLIST ITEM A:

Three copies of a site prepared by, and signed and stamped by, a professional engineer or professional land surveyor at a scale of no less than one inch = forty feet clearly showing:

- Name & 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 and 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 addresses of all property owners within 200 feet of subject property
- Any peculiar site conditions or features

The Board noted that all items were present.

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HARRINGTON TO DEEM CHECKLIST ITEM A COMPLETE. THERE WAS NO DISCUSSION. ALL WERE 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 those property owners and entities which require notice under Section 45-24-53 R.I.G.L., also depicting any zoning district boundary and uses of all neighboring properties.

There was no map in the packet, only a list. Member Baruti noted that Terry Rhodes should have the map, since he had done the work for the Applicant. To aid in timing, the Board asked Clerk Monty for an Assessor's Map, which was produced.

Clerk Monty assisted by printing an abutters radius map to coordinate with the list of abutters. The Board went through the list in order to match the list of abutters to the map.

Chairman Ure stated that the applicant must also include in notification the Town of Richmond and three other abutters on the Richmond side as well as his Hopkinton neighbors.

The Board confirmed in discussion with Mr. Bryant further notification directions as to the mailing of certified letters.

Checklist Item B is not complete at this point. Applicant needs to amend the abutters list per Member Baruti.

A MOTION WAS MADE BY MEMBER HARRINGTON AND SECONDED BY MEMBER YORK TO DEEM CHECKLIST ITEM B NEEDS TO BE AMENDED PRIOR TO THE PUBLIC HEARING; WITH THE UPDATED ABUTTERS LIST INCLUDING THE RICHMOND PROPERTIES, TOWN OF RICHMOND AND TWO OR THREE OTHER RICHMOND PROPERTIES. NO DISCUSSION. ALL WERE 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 Conservation Services and in conformity with the R.I. Erosion and Sediment Control Handbook.

Member York noted that there was a waiver request for Checklist Item C.

A MOTION WAS MADE BY MEMBER HARRINGTON TO GRANT THE WAIVER REQUEST FOR CHECKLIST ITEM C AND SECONDED BY MEMBER YORK.

Discussion followed as to whether this item could be waived since structures had been added to the parcel, although they were added a long time ago and did not disturb the ground:

Chairman Ure was concerned about the site being surrounded by wetlands being nearby. Member Harrington discussed the fact that the structures were physically present and no disturbance to the ground would presently be happening. The ground disturbance would have already happened. Mr. Harrington mentioned that if Mr. Ure wanted to see a drainage report, that would be different.

Member Baruti stated that they are making a distinction between erosion control measures versus runoff. Member Harrington and Chairman Ure agreed.

Member Heil spoke stating that any soil change would have happened already, but he just wanted to make sure that the structures that are already there are not inside of wetland buffers and all are outside the wetland setback. Mr. Ure stated they do not know based on this map.

Member Harrington said he doesn't seem to have a 50-foot setback for that forested wetland; Applicant does not seem to have that on his plan. (to Chip)

Member Heil stated that as a Town we should be concerned with that, but if they are within a 50-foot wetland, they could be opening themselves up to DEM violations.

Chairman Ure: He asked Member Harrington to interpret the site plan, since he understands these better than any of them. He continued: On that site plan there is a building set back perimeter. What is that for?

Member Harrington stated the setbacks are only those for the Town not wetlands and reiterated what those setbacks are.

Member Ure stated that he may have been merging this item and the next item together (C+D).

The Board decided C + D are separate items.

No more discussion.

ALL WERE IN FAVOR. MOTION PASSES.

SO MOVED.

CHECKLIST ITEM D: A letter from a biologist indicating that there are no fresh-water 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 the Environmental Management, and where applicable, the U.S. Army Corp of Engineers, shall be required.

Member Harrington stated that he has asked for a waiver on the checklist item.

Chairman Ure stated that the problem with this is that they don't even know where the wetlands buffers are.

Mr. Bryant stated that the entire area is in a flood zone – all the houses too.

Member Heil stated that in this circumstance this would be different than flood. He continued to state that this is dicey now since those structures have already been there. From the Town, if they're within 50 feet of a wetlands, that is, as far as I know from what he knows of the Wetlands regulations, that could open them up to DEM penalties, and as a Town, He doesn't the Board can knowingly waive this. The best thing is for the Applicant to have that boundary determined and then, I would assume that they would have to ask DEM for a waiver, themselves. It's not our story to waive that. The Board agreed.

Mr. Heil continued to say – DEM may say – yes you are within that buffer, but they may say because it's existing or minimal or negligible impact – it could be no big deal. So I don't want to scare the Applicant away by going this route, but I think it's the appropriate so that the Town and the Applicant are protected from violating this regulation.

Member Baruti spoke – I don't think we have any responsibility of condoning the DEM Reg.'s. That's not for us to determine, #1, #2 we have no power to enforce.

That's between the applicant and DEM. I agree with Chip to the extent that we would be hard pressed to support a waiver without some evidence to support that we can get through this, but not because we are an extension of DEM.

Mr. Heil clarified that he was not suggesting that this was the Board's role. He is just not sure that when the Board knows that a rule exists, he is not sure that it's good practice – Not good practice for the Town to approve something that may or may not be in violation.

Chairman Ure asked “Why is that checklist item in there?”

Solicitor Vaage stated that if you don't comply with the State reg's (and the applicant is supposed to) no matter what the Town says, the Town's grant of the Special Use permit might be voided. He went into detail providing an example.

Member Harrington stated that at minimum what he would need is to have the wetlands delineated and a letter from a Biologist, if that wetland is less than an acre in size and not contiguous with the river, there could be no setback, but we don't know that.

Member Baruti stated that it was pretty obvious he will need an insignificant alteration permit from the RI DEM.

Chairman Ure stated an example of the Board's historical requests regarding situations like this – specifically on Wincheck Pond, where a letter from a biologist was requested. This is normal. He agrees with Chip.

Member Harrington asked the Applicant if he followed the discussion. He continued to give direction that the Applicant should follow up with Terry Rhodes and he would need to get a letter from a Biologist. They would have to flag it and go out and locate it. Then you may also need a letter of non-jurisdiction from DEM, etc. as well with a preliminary determination. Based on the contours, this was disturbed 150 years ago. Unfortunately, you will have to cross that hurdle.

Member Baruti brought up the location of the trailers and Member Ure stated this would be good question for Sherri of Zoning.

Member Baruti states that this is up to the Applicant to bring forth evidence to support an argument that suggests he might be entitled to a different set of parameters or consideration.

Mr. Ure asked Ms. Desjardins how the town views these structures. He inquired if they are temporary structures, just structures, how do we look at them?

Ms. Desjardins stated that as of right now the Town is viewing them as structures, similar to a shed. The storage units are popping up all over town, but because of the commercial look of them, going forward with Zoning rewrite – we are proposing that these not be allowed in any front yards; should be in backyards or screened properly or sided to look more residential in nature. I understand that this use with Bruce is not a residential use. So we would leave that at the discretion of the Board. Having no specific wording to answer the question - So they are a structure similar to a shed. They are placed on top of the ground. There is no disturbance to the ground when you place these units, but we are looking to regulate these from a Town perspective going forward.

Chairman Ure asked that if someone were to put a shed on their property would they fall under the same wetlands and building set-backs?

Ms. Desjardins stated Absolutely/Yes – unless it was smaller than 8 X 8 (64 sq. ft.) and that doesn't require a building permit.

Mr. Ure inquired that this wouldn't matter if it had a foundation, if it was on blocks or on the ground?

That comes down to State building code "Anything over 199 sq. ft. requires a foundation. You can go up to 199 sq. ft. on blocks, but you're still required to add ground anchors at opposing corners to prevent overturn in a wind storm. Those units being made of the material that they are made of I don't foresee anything happening with those as far as wind issues, but we're still looking at them as structures. .

Mr. Ure stated that a structure can be a shed, above ground pool, these boxes. A structure is a multitude of things. Mr. Ure stated that the Solicitor inquired as to how DEM defines these items.

Mr. Heil stated that as far as DEM it's not about putting a structure in the wetland, it's about any potential alteration to the wetlands. Ms. Desjardins agreed.

Mr. Vaage stated that this is his point as to something not acceptable to the wetlands or its barrier.

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Mr. Ure reads from the Zoning Regulations book – “Structure is a combination of materials to form a construction for use, occupancy or ornamentation whether installed on, above or below the surface of land and water.” That’s a lot of things. We ran into that a few years ago – I don’t know if it was a shed or a pool. They tried to say it wasn’t a structure. A structure is pretty much anything you can put on land. Mr. Ure concluded with “I think we need the Biologist letter on this one. “

MEMBER HARRINGTON MADE A MOTION THAT THE APPLICANT PROVIDE NOT ONLY A BIOLOGIST LETTER BUT THE DEM PERMIT AS WELL. THERE WAS NO SECOND. (MOTION WAS RESUBMITTED POST DISCUSSION.)

Discussion:

Mr. Heil stated looking at the checklist, that there be no freshwater wetland disturbance. He inquired - If the applicant can’t get a Biologist letter stating this, what’s the next step?

Member Baruti stated that it is DEM permission. The letter from a Biologist saves him that step. It determines that the area he is contemplating is outside the wetland – he is good.

Chairman Ure called attention to the fact that this question is answered in the second half of this checklist item. Above is the alternative direction given.

Member Baruti asked Mr. Bryant if he understood what the Board is saying? What the Solicitor is saying is that if we are to proceed without this benefit, then your Special Use permit would be called into question. So, instead of you going through this entire process and thinking you get a positive resolution for an outcome to your request, they’re simply saying that that checklist item has to be satisfied.

Mr. Bryant noted that Terry Rhodes may already have the information in his files as to where the wetlands are.

Mr. Baruti stated that if he does – then great! You’re a step closer to it. Essentially the Biologist has to tell us that you are operating outside of that setback, as required by DEM.

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Member Harrington noted that the Biologist would look at the plan and state whether it meets the requirement or it does not meet the requirement.

The Board and Mr. Bryant discussed the challenges of his lot.

Mr. Baruti stated that nothing that Mr. Bryant is doing today could be done today without some significant relief.

Mr. Baruti clarified that the Board did not want to put Mr. Bryant into a situation where his Special Use permit would be called into question.

The Board deliberated whether to stop at this point or continue.

Mr. Ure stated that it was best to go on because he has more checklist waiver requests and he would rather give him a full quiver as to whether he needs more information, and he can bring all that, rather than stopping and having him return again to be postponed. Regarding the checklist items he recapped that the Board did not get past checklist item D, Checklist item E will not pass, but is an easy hurdle. C is waived. We have G + H to go through. Let's move beyond...

Harrington – Excuse me one second, (to Mr. Baruti) What was your reason for possibly withdrawing?

Mr., Baruti: To give him a chance to regroup, get back with his engineer and take a better look at this checklist.

Member Harrington: It seems to me if this is the biggest hurdle, if we just cover the last 3 items, we can just ask for a continuance.

Mr. Ure stated that if they are going to get through the waivers, he'd rather go through the other items so they don't send the Applicant out short.

Members Harrington, York and Heil agreed.

MEMBER HARRINGTON MADE A MOTION THAT WAS SECONDED BY MEMBER YORK THAT CHECKLIST ITEM D IS INCOMPLETE. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR.  
SO MOVED

(At this time Applicant joined the Board at the front of the room.)

CHECKLIST ITEM E: Location of existing septic system. Where construction requires approval by R.I.D.E.M. – 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.

The Board looked at the map for location of the septic. Mr. Ure inquired to Mr. Bryant: You have a septic. Do you have bathrooms?

Mr. Bryant responded that he had a septic, but no bathrooms.

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HARRINGTON THAT CHECKLIST ITEM E IS COMPLETE.

Discussion followed regarding the history of the septic/bathroom situation:

Mr. Bryant stated that he has a toilet but no bathrooms. All had to be torn out when the great flood occurred.

Mr. Ure recommended that since he has a business, Mr. Bryant should have a bathroom, even if just for the employees.

Mr. Bryant stated that he was going to revamp the whole building, but it's too difficult, and he doesn't plan on being in this location much longer.

Chairman Ure asked Ms. Desjardins what the Town thinks regarding a business with a septic and no bathroom. Ms. Desjardins offered to do research in the State building code and get back to the Board.

Mr. Harrington read the checklist and inquired, "Does this structure require a septic design?"

Ms. Desjardins: In this instance, it's a little foggy. There was no construction. Just placement of pre-existing structures. It's a grey area.

Mr. Ure noted in showing existing locations, The Board has that.

Mr. Heil noted, per checklist "If the applicant has provided the location of the existing septic, I am ok with that. If we look at this item, they provided that item.

OK. We may run into issues in other places, but this item was provided."

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Chairman Ure: “If we look at the structures, they aren’t really retail units. It’s just employees going in it as storage. It’s not really an issue of septic as far as those containers. I don’t know the answer. As Sherri said it’s a gray area.

As far as we can see it’s there.

Mr. Baruti: “I agree with Chip. From my perspective, you hit the nail on the head.”

ALL WERE IN FAVOR.

SO MOVED

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

Discussion:

Chairman Ure noted that there was enough driveway at the site.

Member Heil stated that these containers aren’t necessarily intended to allow more customers. Just storage?

Mr. Ure: Storage for retail – hay and grain.

Mr. Heil: They’ve been there already? Any current complaints about traffic.

Mr. Ure: Not with traffic.

Mr. Heil: Fine with me.

Mr. Baruti: If there is any further expansion to his operation it would require a traffic study.

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HEIL TO GRANT THE WAIVER OF THE TRAFFIC STUDY FOR CHECKLIST ITEM F. THE BOARD NOTES THAT IN THE CASE OF ANY FURTHER EXPANSION IN OPERATION, A TRAFFIC STUDY WOULD THEN BE REQUIRED. NO DISCUSSION. ALL WERE IN FAVOR.

SO MOVED

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

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HARRINGTON THAT THE REQUIREMENTS FOR CHECKLIST ITEM G HAVE BEEN MET. NO DISCUSSION. ALL WERE IN FAVOR. SO MOVED

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

Discussion:

Member Harrington stated that they were on town water. He asked Mr. Bryant directly – Are you on Town Water?

Mr. Bryant stated that he is not hooked up to it; he has a well.

Mr. Ure asked – so the activity with the storage boxes – does it expand your usage?

Mr. Bryant said No.

A MOTION WAS MADE BY MEMBER HARRINGTON AND SECONDED BY MEMBER YORK TO ACCEPT THE WAIVER REQUEST FOR CHECKLIST ITEM H. ALL WERE IN FAVOR. SO MOVED

Chairman Ure stated that the Board cannot deem the application complete. The Applicant needs to:

1. Checklist Item B: Amend the Abutters Map, List, and notifications to include those abutters in Richmond, including the Town of Richmond and those neighboring properties. Mr. Baruti asked that the Applicant come back to another meeting to deem everything complete. This may take a couple of months. As soon as you have everything, notify

Sherry or Tony and we will schedule the meeting to deem the application complete so that we can further schedule a hearing.

2. Mr. Baruti asked that regarding the trailer – if it's use is continuing, it MUST be on the map, wherever you want to put it. We will need to consider it because the Applicant will need some relief for the set-backs.
3. Checklist Item D: A letter from a Biologist is required or an appropriate permit from DEM.

Next time we meet - after everything is deemed complete, we will send you out to send certified letters at that time, and the hearing will be scheduled for the following month and advertised accordingly.

Mr. Ure went through the process to go forward.

The Board further discussed whether the Applicant was under an NOV (Notice of Violation). Mr. Ure stated that the Applicant is following up with Tony and Sherry because the use of the structures is not in compliance with Town Zoning, and he has to apply for a Special Use Permit.

Ms. Desjardins stated that he had received a Notice of Violation in November 2020, and it was followed by a Court Summons recently. In which he went before the Judge and he was asked to remove the storage containers or to apply for a Special Use Permit for an expansion of non-conforming. So this is where he is at.

Mr. Baruti asked if he was in conformance with the Court, to the best of your knowledge?"

Ms. Desjardin stated this was correct.

Mr. Baruti thanked Ms. Desjardins.

Mr. URE requested that the Board kick this to August 19<sup>th</sup>, 2021

A MOTION WAS MADE BY MEMBER HARRINGTON AND SECONDED BY MEMBER YORK TO DEEM THAT THIS APPLICATION IS INCOMPLETE. WE WILL CONTINUE THIS PRE-APP MEETING TO THE AUGUST 19<sup>th</sup> MEETING, 2 MONTHS AWAY, AT WHICH POINT IF THE APPLICANT IS READY, WE WILL MOVE FORWARD WITH THE PRE-APP MEETING, IF NOT WE WILL CONTINUE AND TAKE IT AS SUCH.

ALL WERE IN FAVOR.

SO MOVED

Mr. Ure noted that he would ratify the Hope Valley Grange decision from the March 18, 2021 Zoning Board of Review meeting relative to AP 28 Lot 145.

Mr. Ure noted that he would ratify the Edward Sherman decision from the April 22, 2021 Zoning Board of Review meeting relative to AP 23 Lot 4.

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HARRINGTON TO ACCEPT THE MINUTES FROM THE ZONING BOARD OF REVIEW MEETING ON APRIL 22, 2021. ALL WERE IN FAVOR.

SO MOVED

Member Harrington noted that he spoke to Joe Capalbo, neighbor of the new dog kennel and he said it was a nice operation. They are good neighbors.

Mr. Ure asked if there was anyone in the audience that needed to say anything?

Ms. Desjardins stated that she was still there, and wished all a good night.

Joe Moreau stated that sometimes people take for granted what these Boards and Commissions are really like and what people do when they volunteer their time; It's easy to sit back and criticize when you don't understand; time away from their family and all the pre-work for the meeting. He wanted to acknowledge that. He was

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concerned about delays with this Frontier project, and he had some comments about that project, but doesn't know that it is appropriate to talk about it with their attorney not being present. He noted that there will be a new work schedule Monday through Friday 8:00 – 5:00 with no weekend work at all. I was at Maxson Hill on a weekday at 6.

Mr. Ure stated that now is not the time to discuss Revity. It would be heard at a later date.

Mr. Ure and the Board appreciated these comments. We are appointed; we are not elected and we don't get paid. He acknowledged that Dan and he have been there for a while and they have had some doozies. Joe and Dan have seen a few, but we have had some whoppers over the years.

Mr. Moreau: Keep up the great work. Thanks.

A MOTION WAS MADE BY MEMBER HARRINGTON AND SECONDED BY MEMBER YORK TO ADJOURN THE MEETING AT 8:20 P.M. ALL WERE IN FAVOR.

SO MOVED

Respectfully Submitted,  
Elizabeth Monty  
Alternate Zoning Board Clerk

Next Scheduled Meeting: July 15, 2021