

ZONING BOARD OF ADJUSTMENT	MARCH 22, 2018 – 7:00 p.m.
TOWN OF HAMPTON FALLS	TOWN HALL

DRAFT

- 1. CALL TO ORDER:** The meeting was called to order by John DeLeire, Chairman.
- 2. ROLL CALL:** John DeLeire, Chair, Frank Perry, Vice Chair, Larry Job, Mark Call, Members; Scott Almeda, Alternate, Patti Young, Alternate (voting member), Alex Dittami, (arrived at 7:05 p.m.) Alternate. Absent: Steve Bryant.

The meeting was called to order at 7:00 p.m.

Chairman John DeLeire opened the first hearing.

- 3. Case # 18-04.** Application from Heronfield Academy, requests a modification of the Variance granted in 2006 to permit the construction of a building solely for use as a School gymnasium and other School purposes. Property located at 356 Exeter Road, Map 6, Lot 22.

Attorney Sharon Somers discussed her preliminary work with Mark Sikorski, Building Inspector, when lot coverage was discussed. M. Sikorski had additional questions, and an Administrative Decision was issued on January 6, 2018. Ms. Somers introduced the following people to present:
Eric Weinrieb- Altus Engineering
Robert G. Martel, Bernard Martel Architecture, Inc.
Peter Engerhoffer, Board of Trustees, Heronfield Academy

Attorney Somers listed the goal of each of the 4 matters on tonight’s agenda. The matter was continued in November, 2017, and questions arose about the case.

Chairman John DeLeire confirmed receipt of four letters of support, Sharon stated that she did not wish to read them into the record, but requested that they be added into each case of the four case records of the evening.

Mr. Weinrieb presented a drawing of 2016 information regarding the site, of the conditions existing at that time.

A second drawing shows all structures are in Hampton Falls except a shed in Exeter, including a power easement, wetlands, and the proposed building. There are no flood zones, no increase in faculty, staff, parking demands on the site. The septic system is designed for 100 students with capacity to accommodate more. Another septic system is planned. The riding stable is planned to remain. Two small buildings are to be removed. Attorney Somers stated that there are no other buildings planned, “not at this time.” Septic is included in lot coverage, as confirmed by Mark Sikorski, Building Inspector.

Chairman DeLeire asked for clarification, the leach field is included in lot coverage. As reported by M. Sikorski. Because it is below grade, it is acceptable. J. DeLeire expressed concern about lot coverage.

E. Weinrieb described the birds eye view of the buildings. One building has offices and classes, the 2-story building provides instruction in math, science, art, 1st floor has a multipurpose room for physical education, drama. The multi-purpose room is currently not large enough for the students using it. The proposed building includes a gym area, separate multipurpose room, storage, physical education classes. The gym is middle School regulation size. It is intended for use for drama, concerts, plays, weekly chapel and School meetings. M. Sikorski asked about a viewing area at events, and stage. Martha Shepardson-Killam Head of School, confirmed that a stage would be brought in if needed, and then removed. Attorney Somers confirmed that Heronfield's middle School games are 5 on 5 in the late afternoon.

L. Job reported that fundraising literature states a seating capacity of 450. A. Dittami (in a non-voting capacity) concurred, further describing fundraising literature. Attorney Somers stated that the project is intended for smaller groups.

Martha Shepardson-Killam, confirmed that currently Heronfield's events are held at Christ Church in Exeter, attract 200 participants, twice a year.

F. Perry asked if the riding arena is part of the School? Attorney Somers reports that the arena is vacant. Robert Martel reviewed the arena: the steel structure is 17-19 feet high. A height of 24 feet is required for a middle school gym. When asked where the 24" height requirement came from, M. Shepardson-Killam reported that the basketball coach provided the guidance. F. Perry wondered why the building remains. Attorney Somers states that it needs to remain on the land due to the lender's requirements. The appraisal of the property was important to the total value of the loan. A. Dittami stated that he thought it implied that there was a future plan for the School. L. Job confirmed when loan comes down and appraisal goes up they could consider taking the arena down. The arena is not currently used.

E. Weinrieb states that they want to maintain a farm-like atmosphere. He reports that the proposed building is smaller in length than the existing buildings. He reported that the close knit feel of the campus makes placement of the gym closer to the other buildings desirable.

A. Dittami sought information about the size of the 2 buildings to be removed.

F. Perry stated that the proposed facility could hold functions accommodating 400 people. In 2006, there was a concern about traffic. E. Weinrieb stated that there is no plan to increase parking. An abundance of gravel surface can be used for parking. More parking becomes available when the faculty go home. Games are currently played at The Rim, Hampton.

M. Shepardson-Killam confirmed four games per year, and if there were 35 spectators, it would be considered a large crowd.

M. Call asked about the number of parking spaces now- 26. Because of the site, E. Weinrieb stated that there will always be enough parking due to the impervious surface for overflow parking.

Attorney Somers stated that the level of activity was reduced in 2006 due to the auctioneer and horse activity.

F. Perry asked whether there would be additional traffic. Attorney Somers stated that it would be for School use only.

P. Young said that Phillips Exeter allows the town to use their facilities. She doesn't want to shut out the Town. Attorney Somers clarified her position that it is a difficult choice.

M. Shepardson-Killam clarified that there will be multiple games, back to back. The Academy has never had an issue with parking. M. Call asked what the normal School hours are. 7:40 a.m. to 3:10 p. m. Theatrical plays are normally held on Thursday nights, game nights, no activity on weekends.

L. Job asked M. Sikorski if Heronfield Academy goes to the Planning Board, they may question the availability of parking. Attorney Somers states their plans will be scrutinized by the Planning Board.

A. Dittami stated that the parking requirements are established, based on the building, number of employees and attendance. M. Sikorski confirmed. A. Dittami wanted to know whether there were certain standards - Do you know what the traffic studies show? Attorney Somers stated that it is usually addressed by the Planning Board. ITE of Engineers traffic is based on the student population. A. Dittami also stated that traffic studies are based on capacity. F. Perry reminded the group that it is traffic in a residential area. A. Dittami stated that a variance should be hard to get.

P. Young reported that she has never been to a School that has had adequate parking. She recommended that the issue of parking be left to the Planning Board.

Attorney Somers reported that the Zoning Board of Adjustment granted approval for a 100 student School in 2007, with caveats such as special events, and winter snow.

Attorney Somers reported that the modification of the 2006 variance was a vested variance for 100 students. There were no expressed limitations, but the minutes have an implied limitation. There are two Supreme Court Cases to reference- *Bartlett v. Manchester*, contained in every variance application is the threshold question - whether an unnecessary hardship exists. The second matter is *1808 Corp v. Town of New Ipswich*, intended to use 3,800 square feet, that went back to court for an additional 1,500 square feet. The gymnasium is an accessory use to the operation of the School.

Chairman DeLeire asked if the case law was based on the circumstances of Heronfield, and Attorney Somers replied "No."

Attorney Somers stated that the request is not contrary to public interest- same number of students, essential character of the School is unchanged. She explained that the students need more room. The new building is set back from the road, should not impact the abutters. The value of properties already account for the value, and the School has been in existence for 10 years.

J. DeLeire wanted no diminution of value as a result of the gym. Attorney Somers states that architectural style is the same. She does not think there will be any change in value. Peter Angerhofer, Chair of Board, reported that the appraisal is more valuable with the arena than without. F. Perry confirmed. A. Dittami requested the valuation information as part of the process.

Attorney Somers was then given the floor- NH law Harborside Case deems attorney evidence as credible. Surrounding properties have already been appraised in relation to the presence of the School.

The Hardship requirement- the statute was changed in 2010. The Zoning Ordinance governs the number of students, not the activities at the School. The right to 100 students is vested. Since 2006, the activities have been reduced because some activities no longer occur. There is no fair and substantial relationship between 10 and 100 students.

J. DeLeire reiterated from 2006 minutes that there would not be a gym. He reflected on whether the decision would have been different if a gym was considered.

Attorney Somers stated that there would be damage to the School and would cause a lot of harm if the variance is not granted.

F. Perry discussed the difference in needs of the students 12 years ago and that they may be different today. If the needs can't be met, isn't it an option to reduce the size of the student body?

M. Shepardson-Killam states that the School is a wonderful place that has the right balance of students interacting with everyone else. F. Perry reminded the applicants that it is a residential lot. Attorney Somers stated that she appreciated Mr. Perry's comments.

David Killam- shared that in 2006 there was a horse business. F. Perry stated that a permit was required.

P. Young passed on making comments.

A. Dittami asked if there is there a certification body? The State of NH and two additional highly respected organizations with excellent ratings report that the failure to have a "new" gymnasium did not have an adverse impact on their certifications or ratings. What happens if you don't get the additional footage? M. Shepardson-Killam said she will cross that bridge if they ever get to it. A. Dittami confirmed that the School will go on if the variance is not granted.

M. Sikorski highlighted that the 2006 minutes stated the variance was granted as long as “we do not have a gymnasium.” M. Sikorski stated that this is a significant change. Attorney Somers raised whether there would have been any change if the gym was part of the ask. She asked whether a variance would have been granted in 2006 if the gym was part of the request?

A. Dittami stated that the 2006 minutes indicated “And no buildings will be removed.” No gymnasium.

Attorney Somers stated that the minutes from 2006 shape the discussion. She wondered whether the Board has the authority. J. DeLeire confirmed that there is no confusion, that the ZBA has the authority to amend the variance. The question is whether Heronfield Academy has enough to meet the criteria.

P. Young reported that no abutter has said the value of their property has been diminished. Is there going to be a stage? It will be rented. Wanted to confirm reason it would not be available to the Town- Attorney Somers states that it would undercut their argument. In 2006, P. Young stated that there were large horse shows twice a year. Lot coverage reflects the elimination of 2 buildings.

M. Shepardson-Killam stated that the Founding Head of School was able to rent the property. He was honest and made a tiny middle School. She wanted to be sure she could have an open house on a Saturday. Dave Birdsall wanted to create a gym. He is now deceased. We are good honest people.

M. Sikorski reported that in 2015- 12 acres were purchased. He asked about a parcel designated for parking as shown on one of the drawings, that is not owned by the School. Parking was for activities at the arena.

P. Young reflected that she attends many events for her grandchildren at their School, there is never enough parking.

A. Dittami, reading from Peter Robart’s comments from November 6, 2006- recited statements made at the Zoning Board of Adjustment Meeting. At that time, they wanted to preserve the rural nature of the area. Things have not changed. P. Young stated that things have changed a lot.

J. DeLeire opened the discussion to the public.

John Livermore, Exeter, Abutter- described the auction use, 1st horse show Silver Oaks, and a vehicle was parked on his property, uninvited. He has a basketball hoop. He placed his house on the market 2010, two potential buyers were not interested in the property because of the School. Drivers dropping off students are harried and not paying attention to others driving by. He wondered what is ahead in 5-10 years. It is a case of creep. He wondered what the pitch of the roof would be- 3-12? He states that he has seen a decrease in property values. He thinks there will be more development in the future.

A. Dittami discussed the pages from website show 5,000 representations to 10,200 square feet now. He could not obtain the master plan, and additional renditions about the size of the building.

M. Call reminded the group that it is the public's time to speak.

Richard Grulick, 15 Exeter Falls Drive, Abutter- asked about the fire code capacity of the building. A. Dittami discussed how that number is reached. What is the plan for lighting? E. Weinrieb stated that the question is typically a Planning Board issue. Is there plans to further develop Karen Birdsall's neighboring land. M. Shepardson-Killam said she had no idea.

P. Young stated that Mrs. Birdsall did not want further development.

Attorney Somers invited E. Weinrieb to speak to the leach field. The existing leach field is adequate for the new building. A secondary leach field puts less pressure on the system. We did not include secondary septic as impervious.

M. Sikorski said he follows the guide 7.1.1. Definition Lists the septic system as a structure.

E. Weinrieb said that students will be playing basketball in the gym, rather than on an abutter's property.

Regarding the website, Attorney Somers reported that she was not involved in the development of the website. Peter Angerhofer, Chair of the Board, spoke to the development of the site. Buy the property, improve the structure. M. Shepardson-Killam stated that her constituents are aware of the application's form. Attorney Somers views the structure as an accessory use.

F. Perry confirmed that the variance stays with the land. He hears the concerns about traffic, flood lighting, diminution of value as a specific example.

Attorney Somers- 2nd abutter had questions. Diminution of value, Mrs. Oberhaus spoke with M. Shepardson-Killam and she reportedly did not have any concerns. The Applicant's four letters of support were not abutters.

P. Young- Did Mr. Livermore's middle School have a gym- "No."

J. DeLeire closed the public hearing.

Further discussion of the Board:

F. Perry wanted to confirm an adjustment to the prior **Case #06-08**, subject to conditions of approval. The prior case did not allow a gymnasium. Request to grant expressed permission to allow a gym. There is a recognition of an implied condition that a gym could not be built.

J. DeLeire stated he wanted to vote on **18-04** today.

Attorney Somers recommended the Board go back in time to 2006 to approve a variance to grow the School from 10 students to 100 students and include the gym.

MOTION: To deny **Case #18-04**, Application from Heronfield Academy, requests a modification of the Variance granted in 2006 to permit the construction of a building solely for use as a School gymnasium and other School purposes. Property located at 356 Exeter Road, Map 6, Lot 22.

MOTION: F. PERRY
SECONDED: M. CALL

DISCUSSION:

F. Perry discussed his rationale-

- 1) It would change the essential character of the locality, in conflict with the Zoning Ordinance.
- 2) The spirit of the ordinance is not observed.
- 3) There is some detriment to the public at large. There are alternative approaches to dealing with the overcrowding at the School. We are not prepared to deal with the increased traffic.
- 4) No evidence that property values would not be diminished.
- 5) Unnecessary hardship- no characteristic of the property per se that creates an unnecessary hardship to the owners.

M. Call agrees with Frank's analysis. No injustice. Property values will be negatively affected. M. Call's opinion is that the Variance would not have been granted in 2006.

L. Job agrees with the Motion. He gives a lot of weight to the original variance. He is concerned about traffic, mix of speed limit.

P. Young stated that most of her points were made earlier. She disagrees with the Motion. She does not understand how the gym would change the public interest. Spirit of the ordinance- Heronfield Academy could have built the gym in 2006. She does not believe values have dropped compared to surrounding properties.

J. DeLeire stated that the design is appealing, minutes and knowledge of the project, lots of unknowns, it is contrary to public interest because we know that there is at least one abutter that is unhappy. We are not impeding the continuation of the School. There is a hardship issue- to know that property values would suffer with increased activity. Agree to deny.

VOTE:
FOUR IN FAVOR, 1 OPPOSED, DOES NOT PASS

J. DeLeire then closed the matter.

M. Call departed the meeting, S. Almeda, Alternate, become a voting member.

J. DeLeire opened the next public hearing.

4. **Case #17-06** Application of Heronfield Academy for a variance to the terms of Article III, Section 7.7.1.1 and asks that said terms be waived to permit lot coverage of more than the allowed 15% in Zone A located on 356 Exeter Road, Tax Map 6 Lot 22. Continued from December 21, 2017.

Attorney Somers requested that all previous evidence presented this evening be brought forward. There is a request for a minor increase in lot coverage. Lot coverage prevents overcrowding. It will not alter the essential character of the School. Substantial justice- allows construction of gym and multi-purpose room, which is an accessory use. The Planning Board process to have a variance of 1.8% lot coverage will be scrutinized. Special circumstances- operate with up to 100 students by adding music, drama, indoor space needed for a gymnasium. No fair and substantial relationship of 1.8% over 15%, it is a fair and substantial purpose, and a reasonable use. It is customary for a middle School to have a gymnasium and multipurpose room. We have met all criteria.

F. Perry questioned whether the requests are linked? Build a gym and lot coverage. Attorney Somers stated that lot coverage is a threshold issue. She requested that the Board rule on whether each of the criteria have been made. If they removed the arena, they would not have a lot coverage issue. But, it must remain as is a condition of financing.

F. Perry said the case was dead on arrival because of the previous determination under **Case #18-04**.

L. Job stated that he doesn't know how to disprove what has been proven.

P. Young said that it was more than a 10,000 square foot gym, it is a multipurpose room. She prefers calling the project a gymnasium/ multipurpose building.

Attorney Somers discussed the application process since October, 2017.

J. DeLeire opened the discussion to the public.

Mr. Livermore- Abutter- wondered what the hardship is if the variance was not granted.

F. Perry declared that it is a bigger issue than 1.8%.

At this time J. DeLeire closed public comment.

MOTION: To deny **Case #17-06** Application from Heronfield Academy for a variance to the terms of Article III, Section 7.7.1.1 and asks that said terms be waived to permit lot coverage of more than 15% in Zone A located at 356 Exeter Road, Map 6 Lot 22. Continued from December 21, 2017.

Motion to deny the request on the basis that the 10,000 square foot multipurpose facility, which was addressed on 18-04, based on the criteria stated in that case.

MOTION: F. PERRY
SECOND: L. JOB

DISCUSSION:

L. Job stated that a Variance is not contrary to the public interest- already denied
Spirit is denied
Justice- because the School can continue
Diminution of Properties- not changed
Literal enforcement- impact to the community at large

S. Almeda stated that he agreed with L. Job.

P. Young- passed on commenting.

J. DeLeire- evidence suggests that the building is not allowed on the property and is contrary to public interest.

VOTE:

4 IN FAVOR, 1 ABSTAINED, PASSES

J. DeLeire closed the matter.

Attorney Somers thanked the Board.

J. DeLeire then opened the next matter.

5. Case # 18-01. Administrative Appeal by Heronfield Academy of the Building Inspector's decision regarding the construction of an Indoor Recreational Facility or Gymnasium dated January 16, 2018 for property located at 356 Exeter Road, Map 6, Lot 22.

Attorney Somers requested that evidence previously submitted this meeting be incorporated. An accessory use is needed for the primary use. The School is augmented by other educational activities. Many private Schools have facilities for additional activities. The building could not be considered an indoor recreational facility. She reviewed the Planning Board minutes of 2017 and there was no evidence as to what they contemplated. Attorney Somers provided examples of indoor tennis and indoor pool table businesses that constitute an indoor recreational facility. The application violates due process. She confirmed that the project is not an indoor recreational facility.

F. Perry wanted to research the definition of Indoor Recreational Facility, including payment.

P. Young can't find a reason to uphold M. Sikorski's letter.

S. Almeda stated that he thinks the gym is an accessory use.

A. Dittami referred to Zoning Ordinance, page 76, Section 1, Requirements of Ordinance- the highest most restrictive standard must be applied, also Article 1, page 1 for accessory use. page

19 described as a gym an incidental use or a primary use. Table of Uses, Section 4- private Schools page 14, are permitted in AG/RES district are limited to 10 students. An Indoor Recreational Facility is not permitted. A. Dittami thinks a variance could be granted.

L. Job stated that it is a difficult issue. Attorney Somers clarified that their entire application process has referenced gymnasium/ multipurpose room. A. Dittami proposed a limited use building, and believes Sikorski is right.

P. Young stated that there is an indoor facility on the property now. She is frustrated that the Town doesn't think more about the kids' needs.

F. Perry reminded the group that a variance was granted before, but he doesn't want to overturn M. Sikorski's decision.

M. Sikorski stated that an indoor recreational facility is nonprivate, fees for use because it is a facility to play an organized sport. Basketball is played in a gymnasium. He views them as one in the same, indoor recreational facility and gymnasium. This often prompts a change in zoning.

Attorney Somers asked if it would also apply to someone who wants an indoor swimming pool?

A. Dittami states he agrees with M. Sikorski.

L. Job stated that if a School asked for a variance, it would be fine. The problem is that it had previously been denied.

M. Shepardson-Killam stated that people have been speaking about a gym in a shed, is that why it is not going forward?

A. Dittami asked if the School can make a gym within the arena? M. Sikorski can't comment on that application.

M. Sikorski stated that he applied the definition. He felt it was the right decision based on how the zoning was written.

M. Shepardson-Killam stated that it is a multipurpose room- "Why can't we just call it what it is." M. Sikorski stated that the Applicant could not change the name of the project.

J. DeLeire recommends continuing the matter so that the Board could speak with Counsel about the matter.

Attorney Somers requested a Continuance of **Case #18-01**.

MOTION: To keep the public hearing open on **Case #18-01** open to have an opportunity to discuss with Counsel. The matter will be continued to April 26, 2018.

MOTION: J. DELEIRE

SECOND: F. PERRY
UNANIMOUS

MOTION: To continue **Case # 18-02** to April 26, 2018.

MOTION: J. DELEIRE
SECOND: F. PERRY
FOUR IN FAVOR ONE OPPOSED PASSES

6. REVIEW AND APPROVAL OF PREVIOUS MEETING MINUTES

MOTION: To approve the meeting minutes of February 22, 2018 as written.

MOTION: M. CALL
SECOND: L. JOB
UNANIMOUS

7. OTHER BUSINESS
No other business was addressed.

8. COMMUNICATIONS TO BOARD MEMBERS
No other communications were shared with the Board.

9. MOTION: To Adjourn the meeting at 11:45 P.M.

MOTION: J. DELEIRE
SECOND: F. PERRY
UNANIMOUS

The next meeting of the Zoning Board of Adjustment will be Thursday, April 26, 2018.