

From the desk of Dr. Bruce J. Trivellini, DDS

40 Juniper Ridge, Henniker, NH, 03242

November 15, 2016

As an abutter, I must say that the Town of Henniker has been unresponsive to my specific request for an opinion from the Board of Selectmen and or its counsel regarding the construction and use of the motocross track at 60 Juniper Ridge, Henniker NH.

I must say, neglecting to answer an abutter's or any property owner's specific questions does not put the board in a good light. It raises the question as to why you are refusing to answer a simple and direct question.

The land use issue before us is simple, can the owner of the property at 60 Juniper Ridge, Henniker, NH and/or The Town of Henniker prove the motocross track in question complies with Zoning Ordinance 133-3 Definition of accessory building or use and 133-22 Village Proper: use accessory to permitted use?

Pertinent facts: Henniker Zoning regulations definition of accessory building or use;

- 1.) Chapter 133-3 Accessory building or use: A building or use subordinate and customarily incidental to the main building or use on the same lot.
- 2.) Article V Chapter 133-22 Village defines permitted uses on subject property including the accessory uses to permitted use.
- 3.) New Hampshire's Supreme Court in Forster v. Henniker (Forster), as a matter of law, has affirmed our land use restrictions. Furthermore, it has definitively defined our accessory and customarily incidental land use restriction as follows:**

"Consistent with the common law, the Town's ordinance defines an accessory use as a "use subordinate and customarily incidental to the main . . . use on the same lot." The definition of accessory use in the ordinance involves several distinct elements. See Becker v. Town of Hampton Falls, 117 N.H. 437, 440 (1977) (discussing ordinance that defined accessory uses as those that are "customarily incidental and subordina[te]" (quotation omitted)). "[I]ncidental" and "subordinate" incorporate the requirement that the accessory use be minor in relation to the primary use and that it bear a reasonable relationship to that use. Id.; see Marchand v. Town of Hudson, 147 N.H. 380, 383 (2001). "[C]ustomarily" imposes an additional requirement that the accessory use "has commonly, habitually and by long practice been established as reasonably associated with the primary . . . use" in the local area. Becker, 117 N.H. at 441 (referring to "local custom"); see Town of Windham v. Alfond, 129 N.H. 24, 29 (1986). "While the strength or degree of the customary or habitual association does not lend itself to definition by formula, and while the combination need not occur in a majority of instances of the principal use, the uses must be associated with a frequency that is substantial enough to rise above rarity." Alfond, 129 N.H. at 29 (citation omitted)."

- 4.) The court also ruled in Forster the following:

“A landowner claiming the benefit of the accessory use doctrine bears the burden of proving that his use qualifies as an accessory use.” “Here, the petitioner failed to establish that his proposed uses have “commonly, habitually and by long practice been established as reasonably associated with the primary . . . use” in the local area. Becker, 117 N.H. at 441.”

Again, I must respectfully request a written opinion is the use of a motocross track at 60 Juniper Ridge a permitted accessory use to the primary use residential that is customarily associated with the property in the local area as defined by the Supreme Court in Forster and our Zoning Regulations?

A simple written explanation by the Board of Selectmen, which Mr. Osgood has firmly established that the board is the enforcing authority, or through your legal counsel is requested.

Do not send me a written opinion of the part time land consultant.

Thank you,

Dr. Bruce J. Trivellini