

Hopkinton Zoning Board of Adjustment
Minutes
April 6, 2010

Acting Chairman Harold Perkins opened the Hopkinton Zoning Board of Adjustment meeting of Tuesday, April 6, 2010, at 7:00 PM in the Town Hall. Members present: Toni Gray, Charles Koontz, Dan Rinden and David Brock.

It was noted that in advance of the meeting, the applicants were provided copies of the Board's Rules of Procedure; therefore, Mr. Perkins did not read the Rules into the record. However, he did provide the public an opportunity to ask procedural questions of which there were none.

I. Applications.

Case #: ZO2010-03 Dudley Millikin Attorney Erick Newman of the Concord law firm of Gallagher, Callahan & Gartrell addressed the Board on behalf of Mr. Millikin to request a Variance for an existing shed located within the rear and side setbacks and having less than the required setback between structures. The property is located at 2 Maple Street in the VB-1 district, Tax Map 101, Lot 10. The application was submitted in accordance with Section 4.3 and 4.4.1(a) of the Hopkinton Zoning Ordinance.

Attorney Newman provided a brief overview as to why the application before the Board had been submitted "after the fact" or after construction of the shed had been completed. He explained how, what he believed to have been, a misunderstanding by the contractor as to the requirements for a permit for the construction of the 3' x 5' storage shed. The shed in its present location does not comply with the 10-foot setback between structures, nor does it comply with the rear and side line setback which is also a requirement of 10-feet.

Mr. Milliken was notified by the Town of a need for a building permit for the shed. He had submitted the necessary application which was denied due to insufficient setbacks, requiring a Variance. Given the design of the shed the doors currently swing out over property of the abutter Lynda Kimball. While Mr. Milliken and Ms. Kimball have discussed the need for access over Ms. Kimball's property based on the current design, there isn't currently an agreement in place. Attorney Newman stated that Mr. Milliken proposes to redesign the shed by reducing the size by one foot. He further proposes to change out the doors from swinging to bi-folding, so to avoid encroachment onto Ms. Kimball's property. Both Attorney Newman and Mr. Milliken stated that by redesigning the size of the storage shed there should be sufficient room to access the shed from Mr. Milliken's property.

Attorney Newman reviewed the criteria for a Variance as outlined in Section XV of the Zoning Ordinance.

1. The proposed use would not diminish surrounding property values because:

"The structure is minimal in size for its intended use for firewood and trash storage, being only 2' deep, 5'-4" tall at its highest point, 11'-4" wide and was professionally constructed and seamlessly integrated to match the historic quality of the existing residence."

2. Granting the variance would not be contrary to the public interest because:

"The structure promotes the public interest as a preferred alternative to the unenclosed storage of firewood and household waste. In fact, the structure was built in response to a neighbor's request to screen trash barrels from view."

3. By granting the variance substantial justice would be done because:

"Lot 10 presently has no garage or outbuildings and could not accommodate their conforming construction owing to minimal clearance from side and rear property lines on this pre-existing non-conforming lot. These unique characteristics of the property make the rear of the lot the most suitable location taking into consideration the interests of abutters and the general public. Granting the variance would therefore do substantial justice by providing relief from the constraints of the lot while serving the applicant's and the general public's interest in screening and securing the storage of household waste and firewood."

4. The spirit and intent of the Ordinance will not be broken by granting the variance because:

"The structure respects the Ordinance's purpose in promoting health, safety, convenience and public welfare by screening and securing the storage of household waste and firewood. Also, the structure was designed to compliment the historic nature of the property."

5. Literal enforcement of the ordinance results in unnecessary hardship.

- (a) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area.

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.

"Lot 10 cannot support conforming construction of an enclosure for the storage of household waste and firewood given the special conditions imposed by the minimal clearances from side and rear property lines on this pre-existing non-conforming lot. Construction on the rear of the house is the most reasonable location for the structure giving consideration to the interests of neighbors, the public and the purpose of the ordinance."

- (ii) The proposed use is a reasonable one.

"The structure affords a reasonable and preferable alternative to the open storage of firewood and trash barrels, which would otherwise be on view to neighbors, the public and could potentially be interested with by dogs and wild animals."

Mr. Brock asked whether the abutter's concern regarding maintenance and the need to access to shed by way of their property had been sufficiently addressed. In response, Attorney Newman stated that by cutting back the size of the shed there should be sufficient room to provide maintenance and to access the shed from Mr. Millikin's property.

While reviewing the site plan, Mr. Brock questioned whether the shed could be moved towards the right side (direction when looking at the shed from the rear of the property) where it appears there would be additional room to access the shed. Attorney Newman responded that the shed currently

sits on a concrete slab. Mr. Millikin believed that relocating the shed would interfere with snow storage.

Mr. Perkins inquired about the distance available from the rear property line to the shed if the shed were reduced in size as has been proposed. Attorney New Neman estimated that there would be approximately two and one-half feet on one side of the shed which he believed would be sufficient room for access.

Mr. Perkins questioned whether the abutter had been consulted concerning the proposal to reduce the size of the shed. Mr. Milliken stated that he had discussed the location of the shed with the abutter; however, he has not had an opportunity to discuss his plans to reduce the size of the shed.

Mr. Brock questioned whether it would be possible to access the shed from the end, rather from the rear. In response, Mr. Millikin stated that he would have to raise the roof of the shed so that he could access the rear of the shed and in raising the roof he would cover a portion of the existing windows on the residence. Currently, the shed roof is constructed below the windows.

Mrs. Gray asked Mr. Millikin if he had considered utilizing a sliding door, so to avoid any encroachment onto neighboring property. Mr. Millikin replied no, but indicated that he would look into it.

At this time, public testimony was closed.

Mr. Brock asked members if there was a possibility of delaying further review of the application so that the Applicant could further discuss his proposal with abutter Linda Kimball. Mrs. Gray agreed with Mr. Perkins stating that his concern is that the Applicant hasn't reviewed his newest proposal with Ms. Kimball. Mr. Brock concurred.

Attorney Newman suggested that the Board consider granting conditional approval subject to evidence being submitted showing that Ms. Kimball is in agreement with the proposal. Board members did not agree with Attorney Newman's suggestion.

Motion made by Mrs. Gray, seconded by Mr. Rinden, to continue application #ZO2010-03 to the May 4, 2010 meeting, so to allow the Applicant an opportunity to discuss his proposal with the abutter. Motion carried unanimously (Brock, Gray, Koontz, Rinden and Perkins).

Case #: ZO2010-04 Paul & Heidi Martin Requests a Special Exception to operate a year-round barn shop (farm stand) selling goods and services derived from the property. The property is currently owned by Donald and Mildred Rice, located at 1392 Maple Street in the R-3 district, Tax Map 218, Lot 8 and 219, Lot 3. The application was submitted in accordance with Table of Uses 3.6.D.3 of the Hopkinton Zoning Ordinance.

Mr. and Mrs. Martin reviewed their proposal to operate an alpaca farm which would include a year-round barn shop selling goods and services derived from the property. Their goal is to promote, preserve and protect alpaca husbandry in New Hampshire. Their immediate plans are to have two alpaca with a long-term goal to grow up to fifteen in the next five years. While raising the alpaca, they will sell the fiber, yarn, patterns and associated handmade items from the barn shop. Additionally, Mr. and Mrs. Martin will open their farm up to local community groups to teach children alpaca husbandry. This will include teaching at the farm and at school or civic functions.

Mr. Martin reviewed the criteria for a Special Exception as outlined in Section XV of the Zoning Ordinance.

1. Standards provided by this Ordinance for the particular use permitted by special exception.

“Section 3.6 Table of Uses, Agriculture allows a year-round farm stand by special exception. The proposal is to operate an alpaca farm with a barn shop selling goods and services derived from the property.”

2. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.

“No toxic materials or explosives will be kept on the property with the exception of gas and oil for a lawn mower. Petroleum products will not be stored in the barn.”

3. No detriment to property values in the vicinity or change in the essential characteristics of a residential neighborhood on account of the location or scale of buildings and other structures, parking areas, access ways, odor(s), smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials.

“Our goal is to operate our farm and to promote, preserve and protect alpaca husbandry in New Hampshire while preserving the natural landscape of the region. See business plan for manure composting details.”

4. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.

“The barn store will not operate regular hours year-round. Our business won’t add a substantial increase in traffic. Traffic will increase on weekends from September through November with our participation in the New England Alpaca Association’s farm and agritourism promotion open houses. See business plan.”

5. No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.

“We will use the well on our property to water the livestock.”

6. No significant increase of storm water runoff onto adjacent property or streets.

“The property will not be altered to increase water runoff. Crushed stone will be added to the driveway and parking areas to increase space. See photographs.”

7. An appropriate location for the proposed use.

“The barn shop will be located within the family residence compound and abutting parking and turn-around area will be on a level surface. See photographs.”

8. Not affect adversely the health and safety of the residents and others in the area and not be detrimental to the use or development of adjacent or neighboring properties.

"The sale of alpaca products will be within the confines of the 20' x 24' barn and will not pose a health or safety risk. The barn will be restored to accommodate the shop. Restoration will increase the visual value to the property."

9. In the public interest and in the spirit of the ordinance.

"The farm will promote positive animal husbandry practices in accordance to the UNH Cooperative Extension, Merrimack County Office protocols. The farm will promote agritourism and advertise our State through New Hampshire made products."

Mr. Brock inquired about the process by which Mr. and Mrs. Martin propose to recycle the manure. In response, Mrs. Martin explained their intentions for manure storage according to Best Management Practices. Manure will be composted, used on the farm and sold. The manure pellets will be vacuumed and then composted as described by the UNH Cooperative Extension and the Northeast Recycling Council for small and hobby farms. The main compost pile will be situated away from abutting property lines and the road; however, it will be accessible to removal services. Mrs. Martin stated that alpaca manure is a highly sought after source of organic nitrogens and the odor is less offensive than other livestock due to alpaca digestion system.

Brief discussion ensued concerning Mr. and Mrs. Martin's proposed hours of operation with Mrs. Martin advising of her intentions to have open houses from September to November, weekdays from 10 AM to 2 PM and weekends from 10 AM to 4 PM. She then discussed the late summer months when the alpaca are at "full fleece".

Mr. Koontz inquired about the potential maximum number of days and hours of operation for the barn shop, informing Mrs. Martin that she should provide the maximum time so that she will not have to come back before the Board in the future to expand her hours. In response, Mrs. Martin asked that the Board approve the barn shop to be open year-round, Monday through Sunday from 10 AM to 4 PM.

Public testimony was closed.

Mrs. Gray stated that the Applicant addressed all points required to be granted a Special Exception. Mr. Koontz concurred, but asked that the Martins continue to be aware of any potential impact that the manure storage may have on neighbors. Mr. and Mrs. Martin agreed.

Mrs. Robertson noted for the record that the Applicants have filed their application to the Planning Board for Site Plan Review.

Motion made by Mrs. Gray, seconded by Mr. Koontz, to approve the application #ZO2010-04 as presented. Motion carried unanimously (Brock, Gray, Koontz, Rinden and Perkins).

II. Review of the Minutes and Decision of February 2, 2010 hearing.

Motion made by Mrs. Gray, seconded by Mr. Koontz, to approve the Minutes and Decision of February 2, 2010 as submitted. Motion carried unanimously.

III. Public Hearing - Mr. Perkins called the Zoning Board of Adjustment's public hearing to order for the purpose of reviewing proposed amendments to the Board's Rules of Procedure. It should be noted that there was no public present.

- Notice of Decisions The amendment would change the date in which written decisions will be made available for public inspection, so as to coincide with the new statutory requirement of five (5) business days after the decision is made. RSA 676:3.

Following brief discussion, the Board unanimously agreed to adopt the amendment as presented.

- Minutes The amendment would change the date in which the Minutes of the meetings will be made available for public inspection so as to coincide with the new statutory requirement of five (5) business days after the public meeting.

The Board unanimously agreed to adopt the amendment as presented.

- Motion for Rehearing The amendment would require that all Motions for Rehearing be filed by the close of business of the 30th day following the Board's original decision and will not allow Motions for Rehearing to be accepted by electronic filing.

Mr. Brock suggested that the language include reference to NH RSA 21:35. Following brief discussion, the Board unanimously agreed to adopt the amendment as written with the addition of reference to NH RSA 21:35.

IV. Other Business.

The Board briefly discussed the fact that for years, at the start of each meeting, the Rules of Procedure are read aloud. Members suggested that there is no need to read the Rules aloud if each applicant is provided a copy in advance of the meeting. It was also suggested that copies be available at the meeting so that members of the public will have an opportunity to view them, should they wish to do so. Furthermore, at the start of each meeting, the Chairperson may inquire as to whether anyone present has procedural questions.

V. Adjournment.

With no other business to come before the meeting, motion was made by Mrs. Gray, seconded by Mr. Koontz, to adjourn at 7:50 PM. Motion carried unanimously. The next scheduled meeting of the Board is Tuesday, May 4, 2010, at 7:00 PM in the Town Hall.

Karen L. Robertson
Planning/Zoning Director

Pursuant to New Hampshire RSA 677:2, any party to the action or proceedings, or any person directly affected thereby, may apply for a rehearing. Application, in writing, must be submitted to the Zoning Board of Adjustment within thirty (30) calendar days beginning the date upon which the Board voted to approve or disapprove the application. Such a request must set forth the grounds on which it is claimed the decision is unlawful or unreasonable. The Board must decide to grant or deny the rehearing within thirty (30) days.