

Hopkinton Zoning Board of Adjustment
Minutes
June 1, 2010

Acting Chairman Toni Gray opened the Hopkinton Zoning Board of Adjustment meeting of Tuesday, June 1, 2010, at 7:00 PM in the Town Hall. Members present: Dan Rinden, David Brock and Greg McLeod. Note: Janet Krzyzaniak joined the Board at a later time.

Mrs. Gray began the meeting advising that applicants had received copies of the Board's Rules of Procedure. Additional copies were available at the meeting for abutters and the general public.

With there being only four (4) members of the Board present to review the application of Matt Traffie/Arlen Company, LLC, Mrs. Gray provided Mr. Traffie with an opportunity to post-pone review of his application until such time as a five (5) member board is available. She then noted that with only four members present a tie vote would mean that the application fails. In response, Mr. Traffie agreed to move forward with only four members present.

I. Applications.

Case #2010-07 Matt Traffie/Arlen Company LLC Matt Traffie addressed the Board for an Administrative Appeal of the Code Enforcement Officer's decision regarding the administration and enforcement of the NH State Building Code, more specifically the International Residential Building Code (2006), section R311.5.2. The Administrative Appeal involves property owned by Robert and Eleanor Parker, located at 544 North Shore Drive in the R-2 district, Tax Map 202, Lot 29.

Mr. Traffie presented a plan showing the elevation view of the residence and a copy of section R104.10 of the International Residential Code (IRC), which allows building officials to grant modifications.

Mr. Traffie then explained the reason for constructing a stairway, rather than a pull-down or ladder, to access the Parker's attic which was to provide for a more accessible access for Mr. Parker who has a fused ankle that limits his mobility. He then noted that the Code that addresses an unoccupied space requires 30-inches of headroom. While Mr. Traffie indicated that the Code Enforcement Officer's concerns are legitimate he believed that the stairway as constructed is the safest alternative. Section R104.10 of the IRC allows the Code Enforcement Officer to grant modifications to Code which Mr. Traffie which would then make the attic access compliant. Again, with the owner's handicap, he believed that the stairway is the safest access. Mr. Traffie went on to state that the attic space is unoccupied space. If it were occupied space the IRC would require 7-feet of headroom, noting that the Parker residence currently has 6-feet of headroom. Furthermore, if the space were occupied, at any point in the future, the space would not meet the intent of the Code.

Mr. Brock inquired about the height of the headroom available as it relates to the stairway. In response, Mr. Traffie noted that the headroom is 4-feet, 7-inches at the top of the stairway.

In considering whether the attic space could be occupied, Mr. Brock questioned whether the window in the attic was necessary. Mr. Traffie stated that it was requested by the home owner

for light and ventilation. He did not believe the Parkers would object to removing the window; however, the Parkers have represented that the space would only be utilized for storage.

Mr. Brock believed the issue is the Building Inspector's interpretation of the Code assuming that the space will be habitable. Mr. Traffie again noted that based on the headroom available the space could never be habitable. The only way that it could be occupied would be for a dormer to be constructed. He noted that if the Building Inspector grants any modifications to the Code then documentation must be noted and recorded, which would make people aware that space was to only be used for storage.

Mr. McLeod questioned whether it is structurally possible to redesign the stairs so that they are straight. Mr. Traffie replied yes, but stated that the residence is small and that straightening the stairs would infringe on living space.

Mrs. Gray stated that the Applicant was informed in December 2009 by the Building Inspector that the stairway did not include the required headroom. At that time, the stairway could have been redesigned. She asked why changes were not made immediately following notification. In response, Mr. Traffie recalled the Parkers requesting access to unoccupied space. He said that the Parkers were happy with the stairway as constructed. There was never an issue until the Parkers were notified directly by the Building Inspector. In reviewing the Code, Mr. Traffie did not see where the Code disallowed the stairway as designed for access to unoccupied space.

Mr. Rinden questioned whether the alternative is use of pull-down stairs for access. Mr. Traffie believed that the Parkers would not be happy with pull-down stairs because they would be steep and difficult for Mr. Parker to use.

Building Inspector/Code Enforcement Officer John Pianka addressed the Board stating that he regrets that the Parkers are in the middle of the disagreement. Mr. Pianka believed that the builder misinterpreted the Code which addresses access to attic space, noting that the particular section of the Code does not address stairways. Instead, stairways are addressed in R311.5.2 which does not differentiate between stairs used to access bedrooms or any other space within a residence. The attic space in question has a window, electricity, and will have heat and be insulated. There is a great opportunity for the space to be used as living space.

Mr. Rinden asked if the concern is that the stairway does not have adequate headroom for safety purposes. Mr. Pianka replied yes, stating that he brought the issue to the attention of the builder at the time of framing at which time a decision could have been made to redesign the stairway or to construct a dormer.

Mr. Brock asked Mr. Pianka if he believed that the stairway provides safer access than using a ladder. Mr. Pianka stated that he had contacted a number of code enforcement officials, including the International Code Council (ICC) and they all have agreed with his interpretation.

Mr. McLeod noted that there are two (2) issues that are being discussed; however, they are separate from one another. First, the issue involving non-compliance of the stairway due to insufficient headroom and the second issue is the functionality of the space or room to which the stairway leads to. Based on Mr. McLeod's experience as a realtor he suggested that at some point in time the attic space will be occupied based on its design. However, whether or

not it is occupied the stairway leading to the space does not comply with the IRC. Mr. Pianka concurred, noting that the section of the Code that addresses stairways does not differentiate between habitable and non-habitable spaces.

Mr. Brock noted that the alternative access would be to use a straight, steep ladder, which could be safety issue especially when trying to carry items up and down the ladder. Mr. Pianka believed that the alternative could include spiral stairs or a dormer.

Fire Chief Rick Schaefer addressed the Board stating that the stairs as designed are not correct. At the time of framing the builder was given two (2) options to correct the situation, redesign the stairs or construct a dormer. He believed that the stairs as designed were never on the plans presented when the building permit was approved. Again, Mr. Schaefer stated that the issue is the stairs, noting that the Code does not require different standards depending upon where the stairs lead to.

There were no abutters wishing to provide public testimony.

Mrs. Gray asked Mr. Pianka if the plans had ever shown the stairway as designed. Mr. Pianka replied no, stating that it is not unusual to not receive detailed plans prior to construction. Mr. Traffie disagreed, noting that the stairway design was shown on the original drawing and had shown the required headroom; however, during construction the headroom was reduced because of the installation of an extra step in the stairs. Mr. Traffie stated that he had also discussed the matter of headroom with other inspectors who questioned whether the stairs were to an attic and if so, believed that the Code was never intended to require adequate access to attic space. Mr. Traffie again referenced the modification section of the code, stating that the Building Inspector, if he believes that the stairway Code is relevant, can grant a modification provided that it is recorded. In response, Mr. Pianka agreed that the IRC allows him to grant modifications as long as those modifications meet the intent and purpose of the Code. Mr. Pianka stated that the stairway headroom is a hazard and should be corrected.

Mr. Brock stated that it is important that the Board doesn't deviate from its standard of review which is whether the decision manifests justice or is contrary to the purpose of the Building Code.

Chief Schaefer briefly readdressed the Board to explain that walking down the stairs is difficult because at the lowest point the headroom is only 4-feet, 7-inches. He again stated that the headroom is a safety issue.

Mr. Brock asked Chief Schaefer whether in his opinion a ladder or the stairway as designed is the safest option. In response, Chief Schaefer stated that it is not unusual for homes to have pull-down stairs and in fact the Fire Department has carried fire hoses up and down pull-down stairs.

Public testimony was closed.

Mr. Brock believed that there wouldn't be as much of a concern if the attic space did not have heat, electricity or a window in it, so that there is a possibility that the space could be occupied. He stated that he is inclined to vote against the appeal.

Mr. McLeod stated that while the Board cannot predict the use of the attic space there is a section of the IRC that addresses the headroom required for stairways, which has not been satisfied. Furthermore, when reading section R104.10 concerning Modifications, the code starts out by indicating that, "Whenever there are practical difficulties involved in carrying out the provisions of this code..." He believed that the stairway could have been or could be reconfigured or a dormer could be constructed.

Motion made by Mr. Brock, seconded by Mr. McLeod, to uphold the decision of the Building Inspector, which would deny the Administrative Appeal. With four members voting, all four (Rinden, Brock, McLeod and Gray) voted in favor of the motion. The Administrative Appeal was denied.

Janet Krzyzaniak joined the Board as the chairperson for the remainder of the meeting.

Prior to Fire Chief Schaefer leaving the meeting, Chief Schaefer advised the Board of his review of the Jones' property at 48 Pine Street, noting that there were a couple of minor changes needed to the residence. For example, smoke detectors are needed and a keyless knob is required for the bathroom door. Chief Schaefer will re-inspect the residence (day care) before issuance of the Certificate of Occupancy.

Case # 2010-08 Sheri Jones Sheri and Rick Jones addressed the Board to request a Special Exception to provide home based child care (child care, family group home) for a maximum of twelve preschool children plus five children enrolled in a full day school program. The property is owned by Sheri and Rick Jones, located at 48 Pine Street in the VB-1 district, Tax Map 101, Lot 33. The application was submitted in accordance with Table of Uses 3.6.H.14 of the Hopkinton Zoning Ordinance.

Mrs. Jones explained how she had been caring for children at various times of the day within her home. Because it was not on a regular she assumed that she did not need a permit or license. However, recently she was notified by the State that a permit from the Town and license from the State is required. While the State has not prevented Mrs. Jones from continuing to care for children they have requested that she go through the necessary permitting and licensing process, which is the reason for the application before the Board.

Mr. Jones reviewed a site plan of the property including a first floor plan showing the various rooms that are to be utilized by the day care. The Town and State require a minimum of 35 square feet of area per child, excluding hallways, baths, etc. The plan presented showed areas of the home that are 10' x 18', 17' x 13' and 8' x 16' that will be designated for the day care. The children will use the first floor bath which is located toward the front of the home, off the kitchen.

Mrs. Jones 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.

"A childcare family group home is permitted by special exception per Table of Uses 3.6.H.14 of the Zoning Ordinance."

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

"We see no hazard to the public because it is a daycare and we won't deal with any hazardous materials whatsoever."

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.

"We see no detriment to property values because the building and parking area is not changing. We produce no smoke, gas or dust. The only change to the exterior is a fence in our backyard. We are located in the VB-1 (commercial) zone."

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

"We do not believe there would be a significant increase in traffic because we are not dealing with that many kids and parents because they are coming at different times throughout the day and we are within a business district."

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

"The only increase in services would be children using the bathroom throughout the day. I can't think of any other services that would be affected."

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

"We are not changing anything on the exterior of the property and several years ago we added a man-hole for drainage and we have no affect on adjacent properties or streets."

7. An appropriate location for the proposed use.

"I believe it is an appropriate location because we are in a VB-1 district surrounded by businesses such as the telephone company, bank, fire department, Schoch's Auto Body and Dockham Trucking."

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.

"I don't believe it will affect the health and safety of residents because we are not changing anything on the exterior, but a fence in the backyard. I have been watching children in my home for sometime and seem to have no affect on adjacent properties."

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

"I believe by providing childcare it is a valuable service to the parents in Town and provides a safe and fun place for children to play."

Mrs. Jones advised that while she is requesting approval as a childcare, family group home, she is only anticipating caring for between five to seven children at various times throughout the day and when necessary will have her daughters assist her in caring for the children. The hours of operation will be Monday through Friday from 8 AM to 5:30 PM.

Mrs. Robertson provided the Board with a brief explanation as to the various types of home day care categories listed in the Zoning Ordinance, which is based on the number of children to be cared for. For example: Family Home Child Care is for a maximum of six preschool, plus three children enrolled in full day school and for Family Group Home Child Care a maximum of twelve preschool, plus five children enrolled in a full day school program is permitted. Mrs. Robertson explained that the categories provided in the Ordinance were intended to coincide with the State's licenses. In another words, if someone wished to care for three preschool children and one child after school, they would apply under the category of Family Home Child Care even though that category allowed more children than anticipated.

Mrs. Krzyzaniak questioned the space currently utilized as outdoor play area. She noted that currently the children are playing in the open area along side the home. Mrs. Jones agreed, explaining that the area is unfenced and owned by the telephone company. However, she plans to fence in a play area in the back of the property as shown on the plan presented. She noted that she was not aware if the children had to remain in the fenced area at all times and that she would have to speak with the State as to the rules. Mrs. Jones did state that she is permitted to walk the children to the park and to the library, so she would assume that they would not have to be in a fenced area if they were supervised.

There were no abutters wishing to offer testimony; therefore, public testimony was closed.

The Board believed that the Applicant satisfied all nine points to be granted a Special Exception per Section XV of the Zoning Ordinance.

Mr. Rinden, seconded by Mrs. Gray, moved in favor of approving the application as presented. Motion carried unanimously (Brock, Rinden, McLeod, Gray and Krzyzaniak).

Case #2010-09 Steven and Laura Flynn Steven Flynn and his father Robert Flynn addressed the Board to request a Special Exception to convert the single family dwelling located at 166 Pleasant Pond Road into a two-family dwelling. The second living unit is proposed above a proposed attached garage. The property is located in the R-3 district shown on Tax Map 206, Lot 7. The application was submitted in accordance with Table of Uses 3.6.A.2 of the Hopkinton Zoning Ordinance.

Mr. Robert Flynn provided the Board with a brief history of his family's move to Hopkinton and changes in their personal lives that have made the family feel that they need to be living together.

Mr. Robert Flynn 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.

“The use is permitted by Special Exception per Table of Uses 3.6.A.2 of the Zoning Ordinance.”

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

“There will be no potential fire hazard due to the distances from the properties and there will not be any toxic materials associated with the residence.”

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.

“The proposed use would not diminish the surrounding property values because I have 5.3 acres of land. As a result the Special Exception will have no impact on neighboring property. The exception will allow me to increase my property value thereby increasing the value around me.”

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

“This exception is only meant to be living quarters for family and not a business that would create additional traffic congestion in the vicinity.”

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

“There will be no demand on municipal services as the property has its own water and septic. The living quarters are meant for parents who do not have young children using the school system. This addition will be built to accommodate all codes in regards to fire, etc.”

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

“This addition will not create any water runoff onto adjacent properties or streets. The existing building does not create this problem and the proposed structure will be build in a way that would accommodate these issues if need be. The property does not have any hills and is flat so that it would not be an issue.”

7. An appropriate location for the proposed use.

“This addition would be an attached garage which would have living space above to house my parents. I have 5.3 acres of land so it would have no adverse affect on any neighbors.”

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 proposed use would not be adverse to the health and safety of residents and others in the area. The exception would actually allow me to increase the value of my property, thereby increasing the values of the properties around me.”

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

"This addition would not be contrary to the public interest because it would not affect the public negatively. I seek this exception so that I may build a place for my parents to reside. My parents have suffered economic hardship recently. As a result the granting of this exception would be beneficial to public interest."

Originally, Steven Flynn had submitted an application that had requested permission for the construction of a detached garage with living quarters above for his parents Robert and Linda Flynn; however, after speaking with Mrs. Robertson, Mr. Flynn submitted a revised application requesting to construct an attached garage with living space above. Requesting living space in the detached garage would mean a second detached living unit on the property which is not permitted. Since filing the revised application Mrs. Robertson had notified the Flynns of covenants and restrictions that had been placed on the property by the original developer. The covenants specifically restrict use of the property to a single-family residence. Following notification by Mrs. Robertson, Robert Flynn had contacted Tod Whipper, former developer, owner of United Construction for permission to have living space above the garage. At this time, Mr. Robert Flynn presented a letter to the Board from Mr. Whipple, noting that he has no objections to the proposal. Furthermore, Mr. Flynn advised that his wife, Linda, had informally discussed the matter with attorneys at a law firm that she works at and they believe that the covenants should not pose a concern to the Board as they are an agreement between the former developer and Steven and Laura Flynn.

At this time, Mrs. Robertson advised that the drawing presented was inadvertently submitted by Mr. and Mrs. Flynn, noting that it is of their former proposal to construct a detached garage. Mr. Steven Flynn concurred, advising that he would submit a corrected drawing. He also stated that he will be having the same engineer work on the plans for the proposed garage as did the design for his home.

Mr. McLeod referred to the Planning Board approved subdivision plan which notes that the use of the lots as single-family residential. In addition to the note concerning the use of the lots there is also reference to the covenants and restrictions. Mrs. Robertson advised that the notes were placed on the plan by the developer, not specifically at the request of the Planning Board. However, due to the note on the plan any change from a single family to a two family would require further review by the Planning Board.

Following reading of the covenants and restrictions, Mr. McLeod said that it appears that the declarant is Hardy Spring (United Construction) and that they have previously amended the covenants concerning the use of Lot 3. Mrs. Robertson noted that Lot 3 has an existing commercial gravel pit that needs to be reclaimed prior to construction of a residence.

Mr. Brock stated that in order to amend or deviate from the covenants and restrictions the owners having interest in all of the lots that are bound by the covenants and restrictions must agree to any such change. Mr. McLeod concurred.

Mrs. Krzyzaniak questioned how someone could make changes to covenants once they have been signed. In response, Mr. Brock stated that amendments or changes can easily be made provided that all parties agree. Mrs. Robertson concurred, noting of other developments in

Town that have covenants could be amended by the residents of the development or members of the association should one exist, unless there is a clause prohibiting amendments.

Mr. Brock suggested that the easiest way to deal with the application before the Board is if the Applicants request permission for an in-law apartment. He believed that the in-law apartment would not change the designation of the residence as a single-family. Mrs. Robertson noted that the Applicants are requesting an in-law apartment; however, Hopkinton's Zoning Ordinance does not address in-law apartments. The closest use would be that of a two-family dwelling, which is why the request is listed as such.

Abutter David Smith of 173 Pleasant Pond Road addressed the Board in favor of the proposal. Mr. McLeod asked whether Mr. Smith's property is bound by the covenants. Mr. Smith wasn't sure, stating that his property is located across the street from the Flynn's residence.

Linda Flynn, mother of Steven Flynn, addressed the Board requesting clarification. Mrs. Flynn questioned why the Board believed the covenants were an issue even though they are an agreement between the developer and Steven Flynn. In response, Mr. Brock stated Steven Flynn's lot was part of a subdivision which included covenants that now mutually benefit other property owners. He again stated that the in-law apartment approach to the application may be easier for both the Board and Applicant. He suggested that the Board consider approving the application with a condition designating the apartment as an in-law apartment, so that the residence remains as a single-family.

Mrs. Gray and Mrs. Krzyzaniak suggested that it would be better if the Applicant withdrew his application and asked United Construction to amend the covenants.

While Mr. Brock believed that amending the covenants was a possibility he believed that it would be easier for the Applicant to request a letter from United Construction (Hardy Springs) allowing the in-law apartment and recognizing the fact that the residence would remain as a single-family. He also noted that similar letters would be necessary from the other property owners that purchased lots within the development.

Mr. Brock, seconded by Mr. McLeod, moved approval of the application with the condition that the Board receives a letter from United Construction (Hardy Springs) indicating that they understand the Flynn's proposal, which is to construct an attached addition to their single family residence for use as an in-law apartment. Furthermore, United Construction (Hardy Springs) agrees that the proposed addition and use as an in-law apartment will not change the status as a single-family residence. In addition to the letter from United Construction (Hardy Springs), the Board shall receive signed statements from all other property owners within the subdivision indicating that they, too, have no objections to the proposed attached addition for the purpose of an in-law apartment and that it is their understanding that the addition and use as in-law apartment will not change the status as a single-family residence. With five members voting, four (Brock, McLeod, Rinden and Gray) voted in favor and one (Krzyzaniak) vote in abstention.

II. Review of the Minutes and Decision of May 4, 2010 hearing.

Motion made by Mrs. Gray, seconded by Mr. Rinden, to approve the Minutes and Decision of May 4, 2010 as submitted. Motion carried unanimously.

III. Adjournment.

With no other business to come before the meeting, motion was made by Mrs. Gray, seconded by Mr. McLeod, to adjourn at 9:15 PM. Motion carried unanimously. The next scheduled meeting of the Board is Tuesday, July 6, 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.