HOPKINTON ZONING BOARD OF ADJUSTMENT
MINUTES
OCTOBER 5, 2010

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment meeting of Tuesday, October 5, 2010, at 7:00 PM in the Town Hall. Members present: Dan Rinden, Toni Gray, Harold Perkins and Charles Koontz.

Note: The Zoning Board of Adjustment's Rules of Procedure was provided to the applicants, during the application process, and additional copies were available at the meeting for the general public.

I. Application(s).

ZBA#2010-12 Sandra Burney – Application for a Variance to permit a single-family residence to be constructed on a lot having frontage along a private right-of-way. The property is owned by the Estate of Genevieve (Jean) Jakubowski, located off Rolfe Pond Drive in the R-2 (medium density residential) district, shown on Tax Map 209 as Lot 27. A Variance was previously granted on December 2, 2008. The Applicant requests an extension of time period for the same. The application was submitted in accordance with paragraph 5.2.1 (c) and paragraph 15.12 of the Hopkinton Zoning Ordinance.

Mrs. Burney addressed the Board and read the following:

"When I was first before you in 2008, I was here on behalf of my mother, sister and brothers requesting a Variance to construct a single-family residence on my Mother's property located off Rolfe Pond Drive, which is a private right-of-way. Now, I am before you as the Executor of my mother's estate asking for an extension of the Variance that was granted in December 2008.

Originally, there were three individual lots that had been purchased by my parents in July 1963, November 1963 and in June 1965. The parcels were originally intended to be built upon by my parents and uncle and aunt. However, that never happened; instead, over the years we used the property during the summer weekends for picnics and tenting.

Prior to applying for the Variance we merged the three lots into one lot consisting of 225 feet of frontage and approximately 1.58 acres.

Section 5.2.1 of the Zoning Ordinance allows a non-conforming lot to be built upon, if, at the time of the enactment of the Ordinance the:

(a) Lot conformed to the then existing dimensional requirements (if any).

In this case, the lot(s) pre-dated the enactment of the 1988 Ordinance and the original Ordinance of 1964. The lots were part of an original 100 acres, more or less, sold to Harold Martin in 1950. Then, between 1950 and 1953 it appears that Mr. Martin had subdivided the property selling off individual lots.

(b) Owner(s) of the lot owned no additional contiguous land. Should the owner(s) own contiguous land, the land shall be annexed to the non-conforming lot to the extent necessary to bring it into conformance with the present zoning standards.

I would like to stress that we made a strong, goodwill effort to comply with the Ordinance by merging the lots before coming to the Board. The individual lots were larger than most lots along Rolfe Pond Drive and we had been told by a realtor that they would have been worth more separated.

While the parcel lacks the necessary acreage and frontage for compliance with the R-2 district, the lot is the second largest lot along Rolfe Pond Drive. The largest lot is a 57 acre parcel owned by Wayne and Sally Patenaude which has frontage along Pine Street and Rolfe Pond Drive.

(c) Lot has frontage of at least 50 feet.

While frontage needs to be along a "lawful public way" Rolfe Pond Drive is a private way. The frontage for the lot is 225 feet which is less than the requirement of 250 feet for the district; however, it does comply with the requirement of 50 feet for a non-conforming lot to be built upon."

At this time, the Board agreed that the revised Variance criteria are not relevant since the applicant is requesting an extension of time period from the Variance that had been previously issued.

While Mrs. Burney had supplied the Board with her explanation to the standards for a Variance that had been reviewed in 2008, the Board did not feel it was necessary for her to re-address the criteria.

Mrs. Burney noted that her family has been unsuccessful at selling the property and that it is their hopes that the property will sell within the two-year extension.

There was no one wishing to provide public testimony.

Motion made by Mr. Perkins, seconded by Mrs. Gray, to approve a two-year extension for the Variance. It is understood that the extension of time is to begin on December 2, 2010. With five members voting, all five voted in favor (Koontz, Gray, Perkins, Rinden and Krzyzaniak).

ZBA#2010-13 Santina M. LaCava – Application for a Special Exception to use the existing residence located at 951 Penacook Road as a Bed and Breakfast Home. The property is owned by Santina LaCava and Craig Bohanan and is located in the R-4 (residential/ agricultural) district, shown on Tax Map 242 as Lot 16. The application was submitted in accordance with Table of Uses 3.6.B.2 of the Hopkinton Zoning Ordinance.

Ms. LaCava addressed the Board advising that she and her husband have been unsuccessful at selling their home. They would like to now offer bed and breakfast service using three of the four bedrooms in their home.

Mrs. LaCava indicated that, "usage of the home is fully in keeping with every aspects of the environment and intentions of the Town. The Bohanan Farm Conservation Easement surrounds this property. Guests can be encouraged to enjoy nature, the rivers and so much that this part of New Hampshire has to offer. There will be no changes to the exterior of the building other than to maintain the gardens and to improve the parking, both of which I have done this summer. Even if I rented a room one or two nights a week, there would be no appreciable difference in traffic on Penacook Road."

At this point in time, Ms. LaCava 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.

   "Fewer than three units will be used for the bed and breakfast at lower than typical hotel rates. Style and presentation of the bed and breakfast will enhance the countryside aesthetics; simplicity and enjoyment of nature being the foremost offering."

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

   "This will be a non-smoking bed and breakfast with no additional use of woodstoves anticipated."

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.

   "There is essentially no change to existing property other than a new painting of the house and upgrade of the gardens and landscaping."

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

   "There will be no additional use or level of traffic for an occasional bed and breakfast guest over the current rights to have guests in my parking area. Presentation of the property will continue to be low impact."

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 use of municipal water or sewer waste disposal. We recycle our own waste at the transfer facility and compost near the gardens. We maintain our woodstoves, chimneys, oil furnace and smoke alarms/detectors."

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

"There is an existing drainage ditch in front of the house. The septic system is suited for four bedroom occupancy."

7. An appropriate location for the proposed use.

   "Our home is so well integrated into the surrounding Bohanan Farm property and conservancy that most people don't know we are a separate piece of property. Guests will have easy access to nature trails, skiing and all that Hopkinton offers."

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.

   "This bed and breakfast property will enhance and celebrate the conservancy and environmental interests of abutting property owners and the conservancy easement of farm property which invites public appreciation."

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

   "I have heard others say that Hopkinton needs a bed and breakfast. My friends and relatives who visit have said that we should open a bed and breakfast here."

Ms. LaCava referred the Board to photographs that had been submitted with the application that show the residence, along with the existing surroundings.

Mrs. Robertson noted that Ms. LaCava is scheduled to go before the Planning Board for Site Plan Review.

Mrs. Gray inquired as to whether licensing is necessary from the State. Ms. LaCava responded by saying that she is only aware that she is required to obtain a license to serve food.

There was no one wishing to provide public testimony.

Mrs. Gray, seconded by Mr. Perkins, moved approval of the application contingent upon all necessary State and local permits being received. With five members voting, all five voted in favor (Koontz, Gray, Perkins, Rinden and Krzyzaniak). Ms. LaCava successfully addressed the standards to be granted a Special Exception as set forth in Section XV of the Zoning Ordinance.

<u>ZBA#2010-14 Gary Rondeau</u> – Application for a Variance to expand an existing non-conforming garage by more than five (5%) percent and to further encroach upon a non-conforming setback. The property is located at 432 East Penacook Road and is located in the R-4 (residential/agricultural) district, shown on Tax Map 243 as Lot 25. The application was submitted in accordance with paragraph 5.1.2 of the Hopkinton Zoning Ordinance.

Mr. Rondeau addressed the Board explaining the existing garage was constructed in 1986 with a permit issued by the Town. The reason for the location of the proposed additions is

so that there is visibility from the house to the garage, noting that he has had two break-ins since constructing the garage.

The garage is used to store expensive vehicles that are part of a hobby. It is not used for commercial purposes as Mr. Rondeau stated that he operates a commercial business in Hooksett.

Mr. Rondeau reviewed a drawing of the property showing the garage and proposed additions. He noted that the garage is currently 44-feet from the front property line. The proposed additions will be no closer than 39-feet.

At this time, the Board discussed the increase in the non-conformity, noting that the Ordinance limits the size that a non-conforming structure could be increased to no more than five percent. The existing building is 1,020 square feet and the proposed additions will be 627 square feet which more than exceeds five percent.

There was no one wishing to provide public testimony.

Chairman Krzyzaniak inquired with the Board as to whether the Applicant adequately addressed the criteria to be granted a Variance. Mr. Perkins replied yes, stating that given the location of the existing garage the additional five feet will unlikely be noticeable or affect anyone surrounding the property. He then suggested that Mr. Rondeau had satisfied the revised criteria for a Variance.

Mr. Koontz believed that Mr. Rondeau's rationale for the need for sight line distance justifies the location of the proposed additions.

Mrs. Gray suggested that it is questionable as to whether Mr. Rondeau has satisfied the criteria; reminding members that not only will the garage be closer to the front property line it will exceed the maximum increase of square footage allowed.

Following brief discussion, motion was made by Mr. Rinden, seconded by Mr. Koontz, to approve the application as presented. With five members voting, all five voted in favor (Koontz, Gray, Perkins, Rinden and Krzyzaniak). Mr. Rondeau successfully addressed the standards to be granted a Variance as set forth in Section XV of the Zoning Ordinance.

ZBA#2010-15 Alan Davis (H.R. Clough, Inc.) – Application for a Special Exception to construct a detached 18' x 41' accessory storage building. The property is located at 76 Pine Street in the VB-1 (village commercial) district, shown on Tax Map 101 as Lot 30. The application was submitted in accordance with Table of Uses 3.6.H.6 of the Hopkinton Zoning Ordinance.

Mr. Davis addressed the Board stating that H.R. Clough currently operates a fuel, car wash and dog wash business from the property. The proposed storage building will be used for storage of items related to the business. The building will not be detrimental to property values as it will be painted the same color as other buildings on the property. There will be no creation of a traffic safety hazard as the building will be located in the rear of the property, adjacent to the present driveway, at present grade. There will be no change in municipal

services as the building will have no water, sewer, electricity or heat. The location is appropriate as the property is located in a commercial district. There will be no adverse affects on the health and safety of residents as the building will be used for storage necessary to the operation of the existing business.

There was no one wishing to provide public testimony.

Mr. Koontz inquired about the type of equipment that may be stored in the building. Mr. Davis stated that he intends to store lifts that are typically used on jobs that require moving of tanks. There will be no flammable material or equipment stored in the building.

Motion was made by Mr. Perkins, seconded by Mrs. Gray, to approve the application as presented. With five members voting, all five voted in favor (Koontz, Gray, Perkins, Rinden and Krzyzaniak). Mr. Davis successfully addressed the standards to be granted a Special Exception as set forth in Section XV of the Zoning Ordinance.

II. Minutes and Notice of Decision August 3, 2010.

Motion made by Mr. Koontz, seconded by Mrs. Gray, to accept the Minutes and Notice of Decision of August 3, 2010. Motion carried unanimously.

III. Adjournment.

With no other business, motion made by Mrs. Gray and seconded by Mr. Koontz to adjourn the meeting at 8:15 PM. Motion carried unanimously.

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 to the Zoning Board of Adjustment 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.