Town of Hopkinton

330 Main Street • Hopkinton, New Hampshire 03229 • www.hopkinton-nh.gov

Tel: 603 746-3170 *Fax*: 603 746-2952

HOPKINTON ZONING BOARD OF ADJUSTMENT
MINUTES
June 7, 2011

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment meeting of Tuesday, June 7, 2011, at 7:00 PM in the Hopkinton Town Hall. Members present: Toni Gray, Gregory McLeod, Harry Perkins and Daniel Rinden.

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

I. Application(s).

ZBA#2011-7 Scott Westover Variance and Special Exception to permit a second detached residential unit on property located at 310 Stumpfield Road in the R-4 (residential/agricultural) district, shown on Tax Map 230 as Lot 8. The application was submitted in accordance with Table of Uses 3.6.A.2 and subsection 4.4.3 of the Hopkinton Zoning Ordinance.

The Variance and Special Exception would allow Mr. and Mrs. Westover to create a family/friends living space in a detached barn that with the clear understanding it will never be used as an income property. Mr. Westover's parents will move to New Hampshire as they are at a point in their life in which they require assistance from family. He compared his proposal to that which was approved for the Chapin property years ago.

Mr. Westover considered alternatives to the Variance, such as expanding the house or connecting the barn to the house. Both alternatives were not feasible. The expansion of the house would impact setbacks, interfere with the in-ground swimming pool or require partial demolition of the house because of the existing floor plan configuration. The connection of the barn to the house would block a tractor path leading to a field used for manure management. In addition, the connection would complicate the roof line due to the scale of the barn compared to the house. The barn is a three story structure and the house is single story.

The Fire Chief and Code Enforcement Officer have reviewed the building and requested improvements so that the unit will comply with all life safety and building codes. In addition, the residential unit in the barn will accommodate a lift in the event the stairs become a challenge to Mr. Westover's parents.

Mr. Westover 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.

   "Table of uses 3.6.A.2 (two family use) R-4 (residential/agricultural)."

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

   "There is no hazard to the public or adjacent property related to potential fire, explosion or release of toxic materials."

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 no detriment to property values or change in the essential characteristics of a residential neighborhood. There is no change to the current exterior of the property; all buildings will continue to appear just as they are and as they have been for more than 150 years.

   There are no issues of concern related to parking areas, access ways, odors, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or outdoor storage of equipment, vehicles or other materials."

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

   "There is no change to traffic safety or traffic levels related to this request."

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

   "The property has a private well and septic so there is no impact to water or sewer. In addition, there will be no impact on schools. The demand for waste disposal, police and fire protection would be no more than any other home."

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

   "There would be no increased storm water runoff onto adjacent property or street. There is no change in the amount of impervious surface or increases/changes to roofs."

7. An appropriate location for the proposed use.

   "This is an appropriate location for the use and permitted by R-4 zoning as residential and agricultural."

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 request does not impact the health and safety of the residents and others in the area; it would not be detrimental to the use or development of adjacent or neighboring properties."

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

   "This request is in the public interest because it allows a family to stay together without disturbing the look and feel of an agricultural community and is in the spirit of the ordinance because residential uses are allowed."

Mr. Westover 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 proposed use would not diminish surrounding property values because there will be no change to the exterior of any structure on the property. In addition it will avoid an awkward connection of the barn to the farmhouse that would disturb the traditional look of the large detached New England barn. This variance is to allow occupancy in detached residential units; attaching the units would require mating a traditional three story New England barn with a single story farmhouse."

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

   "Granting this variance would not be contrary to the public interest because it would allow an extended family to live together and assist aging parents by maximizing existing structures with no visible changes to the community. This solution preserves the look and feel of an agricultural community and honors the tradition of multigenerational living.

   To learn more about the alternatives that was considered before requesting a variance please see the response to question four. These alternatives were rejected because they either do not meet the public interest as directly as this variance request or they disrupt the current agricultural use of the property."

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

   "Substantial justice would be done by granting this variance because it is consistent with the spirit of the ordinance. Residential use is allowed; this Variance seeks to allow the use to occur in detached structures. This request, made with the clear understanding that this living space is restricted to family/friends and will never be an income property, preserves the defining characteristics of the community. The reason for including family as well as friends is the need for caregivers to stay with Dean and Patricia in the event Scott and Lindsay are away."

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

   "This particular use, which is residential, is consistent with the spirit and intent of this Ordinance so long as the Variance, which is to create a detached residential unit, is granted with the clear understanding that this living space will be for the sole use of family and friends and never become an income property.

Prior to this request the possibility of expanding the core farmhouse was considered. Expansion to the east will not satisfy setback requirements, and expansion to the west is prohibited by the in-ground pool space. Expansion to the north and south would require partial demolition of the original structures dating to approximately 1800. Since purchasing the property in 2005, our family has been dedicated to preserving this property and restoring it is much as possible.

The other possibility considered prior to request this Variance was the connection of the barn (proposed site of the family living space) with the farmhouse. This possibility interferes directly with the agricultural use of the property because it blocks a tractor path leading to the far south field that is used for manure management (spreading). In addition, the connection would need to tie from the barn to the porch which would complicate the roof line and completely disturb the traditional aesthetic of a farm property. This problem is made worse due to the scale of the barn compared to house. The barn is a three story structure and the house is a traditional single story farm house."

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

   (a) For purposes of this subparagraph, "unnecessary hardship" means that, owning to 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.

      "It is my understanding that the general public purpose of the ordinance is to thoughtfully insure the use of the property is compliant with Town planning principles and zoning rules. The spirit of this Variance request honors that public purpose because the use is residential and allowed, and connecting the two units into a single family unit would require joining a single story farmhouse with a three story barn. The resulting structure would spoil the character of this property and harm the aesthetic value of the greater community."

      (ii) The proposed use is a reasonable one.

      "The proposed use is reasonable as the request is limited to family and friends and will never be an income property. It is more reasonable than disturbing the feel and function of the property by connecting the buildings or expanding the original house. With the emphasis on preserving New Hampshire's barns, this request is an excellent use of the building that preserves the exterior look and the interior post and beam structure. It is an opportunity to repurpose the use and preserve a piece of New Hampshire at the same time."

Mr. Westover advised of the Fire Chief's preference that the barn and house not be connected as he had concerns that the connection would create a fire corridor.

There was no one present wishing to offer public testimony.

Mr. McLeod questioned the adequacy of the septic system to accommodate the second residential unit. In response, Mrs. Robertson noted that the issue will need to be addressed by Mr. Westover, prior to the Board of Selectmen issuing a building/use permit.

Mr. McLeod reiterated concerns that he had expressed in the past when reviewing similar requests for in-law apartments. The use requested, in-law apartment, does not technically qualify as a two-family dwelling as it will not be income property. Other members concurred, suggesting that the matter would need to be addressed as a zoning amendment.

Motion made by Mr. Perkins, seconded by Mr. McLeod, to approve the application with the condition that the proposed residential unit be utilized only by family/friends with the clear understanding that it shall never be utilized as rental/income property. With five members voting, all five voted in favor (Gray, McLeod, Perkins, Rinden and Krzyzaniak). The Applicant adequately addressed all criteria to be granted a Special Exception and Variance. In approving the application, the Zoning Board of Adjustment considered the feasibility of connecting the three story barn to a single story farmhouse, and the possibility of expanding the farmhouse to accommodate the residential unit. The Board unanimously agreed that both options were not feasible, due to the scale of the buildings, floor plan of the farmhouse and the location of existing accessory structures.

ZBA#2011-8 Daniel Kilrain and Abigail Dixon Special Exception to operate a farm-stand selling produce and flowers grown at their farm located off Beech Hill Road in the R-4 (residential/agricultural) district. The property is owned by Brian and Susan Kilrain, shown on Tax Map 259 as Lot 23.2. The application was submitted in accordance with Table of Uses 3.6.D.3 of the Hopkinton Zoning Ordinance.

Ms. Dixon presented an email from Tracey Boisvert of the NH Conservation Land Stewardship Program indicating that the proposal is incompliance with the conservation easement. If requested, Ms. Dixon is willing to obtain a formal letter from Ms. Boisvert indicating the same.

Mr. Kilrain and Ms. Dixon are currently farming approximately four (4) acres of land using organic practices under the name Work Song Farm.

Mr. Kilrain stated, “Our farm stand will be located in an existing barn on the property. We are interested in keeping part of the barn for storage supplies and the other portion for retail stand. The barn is sectioned off with a half wall to designate the two areas. The stand will consist of tables/benches to place baskets of fresh produce and buckets for cut flower bouquets.” The stand will be open during daylight hours only from May – November, weather permitting.

In addition to the farm stand, Mr. Kilrain and Ms. Dixon will offer a CSA (community support agriculture) program that will allow individuals to purchase a share of the produce upfront. Individuals of the CSA program will pick up their produce one day a week, generally from 3 PM to 7 PM. The existing driveways have been reviewed by the Public Works Director with no concerns with sight distances, slope or access.

Mr. Kilrain 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.

   “Under the zoning Table of Uses 3.6.D.1, agriculture is permitted in zone R-4 except a greenhouse or a stand for retail sales. Table of Uses 3.6.D.3 permits year-round greenhouses or farm stands by Special Exception. We are applying for a Special Exception to set up a retail farm stand, which will not operate year-round, in conjunction with our produce farm. Farm stand products will primarily (90-95%) consist of crops we have grown on site (mixed vegetables, herbs and flowers). “

Mr. Kilrain noted that, at this time, the farm stand consists of 100% of their own crops; however, in the future they may want to include other locally made products, such as honey and soaps.

"Relevant zoning definitions are: 2.1.A.4 Agriculture, Farm, Farming, paragraph II (b) Any practice on the farm incident to, or in conjunction with such farming operations, including, but not necessarily restricted to the marketing or selling at wholesale or retail, onsite and offsite, where permitted by local regulations, any products from the farm.

2.1.A.4 Agriculture, Farm, Farming, paragraph III, a farm roadside stand shall remain an agricultural operation and not be considered commercial, provided that at least 35 percent of the product sales in dollar volume is attributable to products produced on the farm or farms of the stand owner."

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

   "We will not have any hazardous, explosive, toxic materials at our farm stand, just fresh, healthy vegetables, herbs and flowers."

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 are not adding any additional buildings, just a gravel driveway. We are using existing entrances from the road. We have already spoken to Harold Blanchette from Public Works. He does not see any problems with the proposed driveway site.

   We feel the farm stand is a good fit for the neighborhood with Beech Hill Farm and Ice Cream barn located across the street. Except for the Kimball family, who own Beech Hill Farm, the nearest residence, is hundreds of yards away from the farm stand location."

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

   "We intentionally placed our driveway across the street from Beech Hill Farm to keep the cars entering and exiting the roads in that vicinity (cars are already slowing down at this location). We designed our driveway with separate entrance and exit points to allow for greatest sight distances along the road."

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

   "We do not anticipate any additional demand on municipal services. There are no utilities on the property."

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

"We do not anticipate any additional increase of storm water runoff. In speaking with Mr. Blanchette, he did not foresee any problems due to our property naturally sloping away from the road."

7. An appropriate location for the proposed use.

   "We feel the given location is appropriate for the neighborhood, with both Beech Hill Farm and the former Hopkinton Independent School being next door."

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.

   "We do not foresee any problems."

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

   "We believe it is in the public interest to maintain open space and local agriculture. It appears that the Zoning Board agrees through its allowance and definition of agriculture. In order to maintain the vitality of farms, farmers must have an outlet to see their goods."

Mrs. Gray questioned the hours of operation. Following brief discussion, Mr. Kilrain noted that the farm stand will be self-serve and therefore the hours may be from 9 AM to 9 PM.

Public testimony was opened.

Cindy Salsbury of 363 Patch Road addressed the Board as a non-abutter opposed to the application. Mrs. Salsbury discussed the traffic in the area and the impact that it has had on Patch Road. She believed that the proposal violates the conservation easement as it will be a retail business.

Lynn Fenollosa of 265 Patch Road addressed the Board as a non-abutter opposed to the application. Mrs. Fenollosa discussed the additional traffic that will be created by the farm stand. Mrs. Fenollosa suggested that the Applicants will need to have water and restroom facilities available for employees or those utilizing the farm stand.

Public testimony was closed.

Mrs. Gray believed that the Applicant successfully addressed the criteria for a Special Exception and noted that the conservation easement allows the operation of a farm stand.

Motion made by Mrs. Gray, seconded by Mr. Riden, to approve the application as presented. Motion carried unanimously (Gray, McLeod, Perkins, Rinden and Krzyzaniak). The applicant successfully addressed the standards to be granted a Special Exception as set forth in subsection 15.8.2 of the Hopkinton Zoning Ordinance.

II. Review of the Minutes and Notice of Decision of May 3, 2011 hearing.

Motion made by Mrs. Gray, seconded by Mr. Rinden, to accept the Minutes and Notice of Decision of May 3, 2011 as presented. With five members voting, four voted in favor (Gray, Perkins, Rinden and Krzyzaniak) and one voted in abstention (McLeod) as he was not present at the May meeting.

III. Adjournment.

Mrs. Gray, seconded by Mr. Perkins, moved to adjourned at 7:55 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.