



Town of Hopkinton

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HOPKINTON PLANNING BOARD MINUTES NOVEMBER 18, 2014

Vice Chairman Timothy Britain opened the Hopkinton Planning Board meeting of Tuesday, November 18, 2014, beginning at 7:00 PM in the Hopkinton Town Hall. Members present: Celeste Hemingson, Cettie Connolly, Jane Bradstreet, Michael Wilkey and Alternates Clarke Kidder and James Fredyma. Members absent: Chairman Bruce Ellsworth, Ex-Officio George Langwasser and Alternate Richard Steele. Staff present: Planning Director Karen Robertson.

Due to the absence of regular members, Mr. Fredyma and Mr. Kidder were designated as voting members.

- I. **Applications.** *Upon finding that an application meets the submission requirements, the Planning Board will vote to accept the application as complete and a public hearing on the merits of the proposal may immediately follow.*

#2014-7 FirstLight Fiber Site Plan Review to erect an unoccupied public utility structure to accommodate the extension of fiber optic cable in the area of land owned by Wayne and Sally Patenaude Family Trust, 87 Garrison Lane, Tax Map 251, Lot 50, R-4 district. The request is associated with Zoning Ordinance section 3.7.8 Unoccupied Utility Structure.

Glenn Mills representing FirstLight Fiber addressed the Planning Board explaining the proposal to install a 56 in. wide, 47 in. deep and 77 in. tall cabinet on a 8' x 8'-6" concrete pad. The cabinet will be installed in an easement area at 87 Garrison Lane, which is the very end of the road, on property owned by Wayne and Sally Patenaude.

The cabinet is necessary as SegTel, Inc. d/b/a FirstLight Fiber, which is a registered New Hampshire public utility, has an existing "long-haul" fiber route connecting northern NH to southern NH. According to Mr. Mills, the "re-generation" cabinet is necessary in order to booster fiber optics signals. The equipment is necessary in order for FirstLight to provide power to its commercial customers. The equipment will be installed adjacent to an existing utility coordinator which includes FirstLight's fiber cable route. The existing utility pole will be used to provide underground power and fiber cable to the proposed cabinet.

At this time, Board members reviewed the site plan and Zoning Ordinance provisions 2.1.E.1 Essential Services and 3.7.8 Unoccupied Utility Structures to determine whether the application complies with applicable provisions.

Vice Chairman Britain inquired as to whether the cabinet exceeds the allowed two hundred (200) square feet. Mr. Mills replied no, advising that the cabinet will be approximately eighteen (18) square feet and the concrete pad will be sixty-four (64) square feet. In reviewing Zoning Ordinance 2.1.S.10 Structure, Vice Chairman Britain stated that the cabinet is not considered a structure. Mr. Mills concurred, noting that typically towns consider the cabinet as equipment and the concrete pad as a structure.

Motion made by Mrs. Hemingson, seconded by Mr. Wilkey, to ACCEPT application #2014-7 of FirstLight Fiber as complete and for consideration. Motion carried unanimously (7-0).

Vice Chairman Britain asked if members of the public had any comments or questions.

Mike and Mary Ann Byrne of 1428 Hopkinton Road addressed the Planning Board questioning whether the easement and installation of the cabinet will change the zoning of the Patenaude property. Vice Chairman Britain replied no, explaining that “unoccupied utility structures” are permitted in all districts; the utility easement or installation of equipment does change the underlying intent of the district which is residential.

Mr. Byrne asked Mr. Mills to explain who will ultimately utilize the fiber optics. Mr. Mills responded by explaining that FiberLight will own the equipment; however, its customers will utilize the services using fiber optics.

Mrs. Byrne inquired about the frequency of visits to the site in order to maintain the equipment. In response, Mr. Mills estimated two or less visits per month, depending upon service activity and whether maintenance is necessary.

There being no further comment from members of the public, Vice Chairman Britain closed the public hearing.

Motion made by Mrs. Hemingson, seconded by Mr. Wilkey, to APPROVE application #2014-7 of FirstLight Fiber as presented. Motion carried unanimously (7-0).

#2014-8 Jessica Dunlap Site Plan Review to change use of property located at 2 Maple Street from two residential units to one residential unit and one commercial unit offering spa type services. The property is owned by Robert and Jessica Dunlap and is shown on Tax Map 101 as Lot 10, VB-1 district. The request is associated with Zoning Ordinance Section VI Parking Requirements.

Mrs. Dunlap addressed the Planning Board presenting interior and exterior photographs of the building. She then explained that the property had been used as a two-family for many years, until the property was purchased and renovated. Currently, there is an apartment on the second floor with the first floor being open space. Mrs. Robertson noted that at one time previous owners had planned to renovate the property and utilize the first floor as an art studio. However, that never happened and the owners subsequently sold the property. Following the sale, the owner had utilized the apartment on the second floor leaving the first floor, again, as vacant open space.

Mrs. Dunlap noted her intentions to rent out the second floor apartment and to contract or hire an individual to operate a business on the first floor providing spa services, such as manicures, pedicures, formal hairstyling and other “polished” services. It is anticipated that the business will operate weekdays from 8 AM to 7 PM, by appointment only. As there is currently no on-site parking, Mrs. Dunlap requested that Planning Board alter the specification of Zoning Ordinance Section VI Parking Specifications and instead allow customers to utilize municipal parking. The size of the property and structure has always precluded the use of on-site parking. In fact, tenants have always utilized municipal parking.

Discussion ensued concerning Zoning Ordinance 6.1 Off-Street Parking and 6.2 Location of Parking Spaces, which allows the Planning Board to alter the parking specifications or when “practical differences” as determined by the Planning Board prevent their establishment upon

the same lot, the Planning Board can allow the establishment of the spaces no further than 500 feet from the premises. Mrs. Robertson noted that the two (2) municipal parking lots are within 500 feet of the premises; however, it is understood that there is no dedicated parking spaces.

Mrs. Connelly inquired about on-street parking during the winter storms. In response, Mrs. Dunlap noted that customers or tenants cannot park on-street during storms; however, there are four (4) overnight parking spaces in the municipal parking lot, which are again not dedicated to any particular tenant or business.

Motion made by Mr. Wilkey, seconded by Mrs. Hemingson, to **ACCEPT** application #2014-8 of Jessica Dunlap as complete and for consideration. Motion carried unanimously (7-0).

Vice Chairman Britain asked if members of the public had any comments or questions on the application.

Mark Winzler representative of the Contoocook Riverway Association addressed the Board in favor of another business in the downtown.

Richard Simms of Maple Street expressed concern with the Planning Board allowing use of the municipal parking lot. He questioned whether there is adequate parking available in the downtown given the fact that the Everyday Café's customers "illegally" park alongside Maple Street. In response, Mrs. Dunlap noted that currently most businesses in the downtown have some type of on-site parking with three (3) businesses that do not have the ability to have on-site parking. It was suggested that the municipal parking lots are very seldom to capacity as most customers and tenants tend to park in on-street parking. Use of all on-street parking can give the appearance that there is insufficient parking available in the downtown.

There being no further comment from members of the public, Vice Chairman Britain closed the public hearing.

Mr. Kidder believed that the lack of knowledge and convenience are reasons why the municipal parking lots are underutilized. The Board agreed.

Vice Chairman Britain inquired as to the size of the space on the first floor that will be utilized. Mrs. Dunlap estimated 325 square feet. Vice Chairman Britain noted that the parking requirements for the business and residence combined will be less than the requirements for two (2) residential units. One (1) parking space required for every 400 SF of gross floor space and two (2) parking spaces required for each residential unit. In this case, Mrs. Dunlap will need a total of three (3) parking spaces.

Motion made by Mr. Wilkey, seconded by Mrs. Connolly, to **APPROVE** application #2014-8 of Jessica Dunlap as presented with the use of public parking. Motion carried unanimously (7-0).

At this time, Mrs. Dunlap inquired about approval of the sign for the business. Following brief discussion, Vice Chairman Britain noted that the Architectural Design Review for signage was not public noticed and therefore Mrs. Dunlap will have to come back before the Board at a later date. Mrs. Dunlap agreed, inquiring as to whether, in the meantime, she could erect a temporary sign. Mrs. Robertson believed that a request for temporary signage would need to be brought before the Select Board for review.

II. Review and adopt the Minutes of October 14, 2014.

Review of the Minutes was deferred to the December 9, 2014 meeting.

III. **Conceptual Consultations.** There were no conceptual consultations.

IV. **Public Hearing – Zoning Amendments for 2015 Annual Town Meeting.** Pursuant to NH RSA 675:3, Vice Chairman Britain opened the public hearing on proposed amendments to the Hopkinton Zoning Ordinance. A full-text of proposed amendments was available at Town Hall, Town Clerk's Office and Town's website.

Vice Chairman Britain noted that the Board was in receipt of a memo from Mrs. Robertson concerning further amendments. He suggested that when reviewing the individual amendments that the Board also consider additional changes reflected in Mrs. Robertson's memo to the Board.

Amendments proposed as follows: *(Proposed language publicly noticed shown in red, deleted text shown with ~~strikethrough~~ and further revisions, offered by Mrs. Robertson, shown in blue.)*

a) Amend definition 2.1.A.4 Agriculture, Agritourism, Farm, Farmers' Market, Farming inserting language that recognizes the fact that working farms may on occasion host, non-commercial, recreational activities and events, such as weddings, retreats, and reunions.

(VI) The term “**agritourism**” means attracting visitors to a working farm for the purpose of eating a meal, making overnight stays, enjoyment of the farm environment, education on the farm operations, or active involvement in the activity of the farm which is ancillary to the farm operations. **For the purposes of this Ordinance, agritourism may include occasional, non-commercial, recreational activities and events, such as weddings, retreats, and reunions.**

(IV) The term “**agritourism**” means attracting visitors to a working farm for the purpose of eating a meal, making overnight stays, enjoyment of the farm environment, education on the farm operations or active involvement of activity of the farm which is ancillary to the farm operations. **In order to support a variety of agritourism uses that encourage economic sustainability while still respecting and promoting the agricultural use of the farm, “agritourism” may include [daytime] recreational activities such as walking, kayaking, sledding and snowshoeing or the like that take place at the farm. Agritourism may also include [private] special events such as weddings, retreats, and reunions or the like that take place in agricultural areas at the farm. For private special events, the following conditions shall be adhered to:**

- a) **No private special event shall be permitted at an agricultural farm that is less than _____ acres in size, so to insure there is adequate buffer from residential properties.**
- b) **Adequate agricultural land area must be available to accommodate on-site services, e.g., parking and number of attendees.**
- c) **The number of private special events held in a given year shall not exceed _____;**
- d) **There shall be adequate on-site parking for all attendee's vehicles as on-street parking shall be prohibited.**

- e) **Limitation on the number of attendees shall be based on availability of off-street parking or shall not exceed _____, whichever is less.**
- f) **The events shall not generate more than _____ vehicle trips; otherwise, Site Plan Review shall be required by the Planning Board.**
- g) **Where access to the agricultural farm is off of a private or class VI road, access shall be subject to review and approval of the Planning Board.**
- h) **Amplification of outdoor music is prohibited during the event.**
- i) **The events shall take place no earlier than 8:00 AM or later than 8:00 PM.**
- j) **The owner of the agricultural farm shall be responsible in notifying and providing the Fire/Police/Emergency Medical Services (EMS) with any information deemed reasonably necessary to determine if additional municipal services will be required. Should additional services, as a result of the event, be required the Town shall have the right to recover from the owner of the agricultural farm and/or operator of the event all additional expenses incurred by the Town.**

Vice Chairman Britain asked if members of the public had any comments or questions.

Arnold Coda of Gould Hill Road addressed the Board to speak in opposition to the amendment. Mr. Coda is aware that weddings have been taking place at Gould Hill Orchard. He had spoken with Town Administrator Neal Cass questioning whether the Zoning Ordinance allows weddings and other events to take place at the Orchard. At the time, Mr. Cass had given the impression that the events are not permitted in the Ordinance. The reason for the question is because of concerns with respect to the increased traffic on Gould Hill Road. In July/August, Mr. Coda had a conversation with the Police Chief concerning the increased traffic and the “uncontrolled” parking of vehicles along Gould Hill Road. Chief Pecora had discussed the issue with the Orchard owner, Tim Bassett. Mr. Bassett had agreed to increase on-site parking, have employees direct traffic during the Orchard’s busy times, and install signage to address parking alongside Gould Hill Road. Mr. Coda explained that while there has been small signs placed alongside the road it has not helped the situation.

Mr. Coda questioned who initiated the proposed amendment, whether it was the Town or owners of farms. Mrs. Robertson responded that she had initiated the matter by providing the Planning Board with suggested language in light of the fact that many farms are offering to host weddings and other events. In response, Mr. Coda did not believe that allowing such events would benefit the Town in anyway. He noted that many farms are not situated where they have sufficient parking to facilitate events. He suggested that prior to any changes in the Ordinance that the Planning Board should initiate a traffic study for Gould Hill Road to determine the impact on the neighborhood and the road.

Mrs. Hemingson asked whether since the Orchard was purchased by Mr. Bassett there has been a noticeable increase in traffic along Gould Hill Road. Mr. Coda replied yes, but was unsure as to reason for the increase.

Richard Simms of Maple Street addressed the Board explaining that when he had tried to stop at the Orchard there was no parking available. At the time, vehicles and tour buses were parked alongside Gould Hill Road.

Vice Chairman Britain suggested that the Planning Board thoroughly review the proposal prior to further amendments being recommended. Mrs. Bradstreet concurred, indicating that while it is understandable that more and more farms are offering to host events in order to financially support the farm the last thing the Board wants is to support an amendment that later has “unintended consequences”.

Mrs. Hemingson questioned what would happen to the farms that currently host these events should the Planning Board not recommend the proposed amendment. Vice Chairman Britain responded that the farms will continue to be able to operate as an agricultural use. Mrs. Hemingson expressed concern as to whether the farms would be able to continue to host events, such as weddings. Vice Chairman Britain believed that it would depend upon how the Select Board interprets the language in the existing Ordinance.

Mrs. Connolly recommended that the Board not wait a year to recommend changes to the Ordinance as this may have a negative impact on farms should they no longer receive income from hosting events at the farm.

Mr. Wilkey noted that it is not the Planning Board’s role to interpret the language of the Ordinance, but rather it is up to the Select Board to make that determination for uses.

Discussion briefly ensued concerning the fact that Dimond Hill Farm hosts events with the Board noting that there is no comparison to that of Gould Hill Road as they are two separate venues. One farm is on a State road and the other on a Town road.

Vice Chairman Britain asked if members of the Board were interested in moving forward in amending the definition of “Agritourism” to include other events.

Motion made by Mrs. Hemingson, seconded by Mrs. Connolly, to further consider amending the definition of “Agritourism” for the 2015 Annual Town Meeting.

Mrs. Bradstreet spoke to the motion, suggesting that the original proposed amendment was “very simple”. However, if the Board is considering expanding on the amendment then the Planning Board does not have enough time, prior to the deadline for submittal of amendments, to thoroughly review the language. She recommended that the language not be amended.

Mrs. Hemingson noted that with no amendments, the current definition of “Agritourism” allows the Town based on complaints received to prohibit activities such as weddings, picnics and retreats from taking place at farms. She believed that the current definition of “Agritourism” is too restrictive, suggesting that the Board recommend language that will get the farms through the next year, until such time as the Planning Board has had an opportunity to review “Agritourism” in its entirety.

Vice Chairman Britain suggested that if the Planning Board is to thoroughly review the various types of “Agritourism” that the Board should ask the farms to participate in discussions. Other members concurred.

With seven members voting, one (Connolly) voted in favor and six (Hemingson, Bradstreet, Wilkey, Kidder, Fredyma and Britain) in opposition to the motion to further consider amending the definition of “Agritourism” for the 2015 Annual Town Meeting. Motion FAILED (Vote 1-6).

- b) Amend definition 2.1.M.1 Manufactured Housing, so that the language is consistent with NH RSA 674:31. Full-text as follows:

2.1.M.1 Manufactured Housing: Any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling unit with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. **Manufactured housing as defined in this section shall not include pre-site built housing as defined in RSA 674:31-a.** (RSA 674:31)

Mr. Kidder explained the basic differences in “Manufactured Housing” and “Pre-site Built Housing”.

There were no comments or questions from the public.

Motion made by Mr. Kidder, seconded by Mrs. Connolly, to recommend the amendment as written for the 2015 Annual Town Meeting. Motion PASSED (Vote 7-0).

- c) Amend Section II Definitions deleting definition 2.1.T.2 Travel Trailer and inserting new definition 2.1.R.2 Residential Tenting/Recreational Camping Vehicles. Amendment will require changing the numerical sequence of remaining definitions. Intent and purpose of amendment is to change the definition so that it coincides with provisions of Section 10.4 Residential Tenting/Recreational Camping Vehicles, and clarifies the various types of vehicles used for recreational camping, travel or seasonal use. Full-text as follows:

~~2.1.T.2 Travel Trailer: A mobile home designed to be used for temporary occupancy for travel, recreational or vacation use; with the manufacturer’s permanent identification “Travel Trailer” thereon; and when factory equipped for the road, being of any length provided its gross weight does not exceed forty-five hundred (4,500) pounds, or being of any weight provided its overall length does not exceed twenty-eight (28) feet.~~

2.1.R.2 Recreational Camping Vehicles (also Travel Trailers): A mobile home designed to be used for temporary occupancy for travel, recreational or vacation use; with the manufacturer’s permanent identification “Travel Trailer” thereon; and when factory equipped for the road, being of any length provided its gross weight does not exceed forty-five hundred (4,500) pounds, or being of any weight provided its overall length does not exceed twenty-eight (28) feet. **Means any of the following vehicles:**

- (a) Motor home or van, which is a portable, temporary dwelling to be used for travel, recreation and vacation, constructed as an integral part of a self-propelled vehicle.
- (b) Pickup camper, which is a structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation, and vacation.
- (c) Recreational trailer, which is a vehicular, portable structure built on a single chassis, 400 square feet or less when measured at the largest exterior horizontal projections, calculated by taking the measurements of the exterior of the recreational trailer including all siding, corner trim, molding, storage space and area enclosed by windows

but not the roof overhang. It shall be designed primarily not for use as a permanent dwelling but as a temporary dwelling for recreational, camping, travel or seasonal use.

- (d) Tent trailer, which is a canvas or synthetic fiber folding structure, mounted on wheels and designed for travel, recreation, and vacation purposes.

3.6 TABLE OF USES		R-4	R-3	R-2	R-1	B-1	M-1	VR-1	VB-1	VM-1	W-1
H. Accessory Uses											
4.	Travel trailer Residential Tenting and Recreational Camping Vehicles of a visitor in accordance with Section X, provided that the trailer is located to comply with setbacks of the district and provided no travel trailers residential tenting and recreational camping vehicles are located on the property for greater than 60 days per year.	P	P	P	P	P	S	P	P	S	Section XII Wetlands Conservation District (Overlay)

10.4 RESIDENTIAL TENTING/RECREATIONAL CAMPING VEHICLES: Residential tenting and recreational vehicles will be allowed provided that the following requirements are met.

10.4.1 Limitations: Such occupancy of either tents or recreational vehicles at any residence shall not exceed a total of ~~four weeks~~ **sixty (60) days** per year. No more than one such unit may be occupied in connection with any residence.

10.4.2 Location: Any tent or recreational vehicle temporarily placed upon a lot in conjunction with a residence shall be located as inconspicuously as possible so as to minimize to the greatest degree possible the unit’s visibility from public roads or neighboring lands. Children’s tents, used by the minor children of the occupants of the residence, are exempt from this paragraph.

There were no comments or questions from the public.

Planning Board briefly discussed the discrepancy in the number of days per year that a tent or camping vehicle may be occupied in connection with any residence. It was agreed to **RE-POST** the proposed amendment to allow for no more than sixty (60) days per year.

- d) Amend Section II Definitions inserting new definitions 2.1.R.4 Restaurant, 2.1.R.5 Retail Establishment, and 2.1.S.3 Self-Service Storage Facility. Amendment will require changing the numerical sequence of remaining definitions. Intent and purpose of amendment is to provide definitions for already established uses and a proposed new use in Table of Uses 3.6. Full-text as follows:

2.1.R.4 Restaurant: An eating establishment, with or without entertainment, which is primarily designed for its patrons to eat at tables, booths or a counter or receive take-out that is incidental to the main purpose of the establishment. Includes diners, cafes, and cafeterias and does not include drive-in restaurants.

2.1.R.5 Retail Establishment: A place of business, including a discount and limited price variety store, selling convenience goods and general merchandise, including but not limited to foods, pharmaceutical drugs, proprietary goods, dry goods, apparel and

accessories, furniture and home furnishings, home equipment, small wares and hardware.

2.1.S.3 Self-Service Storage Facility: A building or group of buildings that contains varying sizes of individual, compartmentalized, and controlled access stalls or lockers for the storage of customer's goods or wares.

Refer to item j. for Planning Board's review of definition 2.1.R.4 Restaurant and item i. for Board's review of definition 2.1.R.5 Retail Establishment.

There were no comments or questions from the public concerning proposed definition 2.1.S.3 Self-Service Storage Facility.

Mrs. Connolly, seconded by Mrs. Hemingson, moved to recommend the ADOPTION of proposed definition 2.1.S.3 Self-Service Storage Facility for the 2015 Annual Town Meeting. Motion PASSED (Vote 7-0).

- e) Amend definition 2.1.S.7 Special Exception inserting cross-reference to Section XV Board of Adjustment. Intent and purpose of amendment is to assist readers in locating the specific provisions for Special Exception.

2.1.S.78 Special Exception: A use allowed by the Zoning Ordinance but under pre-determined conditions and after a public hearing before the Board of Adjustment to determine if the conditions **as outlined in Section XV** have been met.

There were no comments or questions from the public.

Mrs. Hemingson, seconded by Mrs. Connolly, moved to recommend the ADOPTION of the amendment as written for the 2015 Annual Town Meeting. Motion PASSED (Vote 7-0).

- f) Amend 3.6.1 inserting clarifying language to assist readers in understanding that Table of Uses 3.6 is divided into two parts, one for principal uses and the other for accessory uses. Provide further explanation as to the letters "P", "S", "X" or for uses not specified in the Ordinance. Lastly, clarify the fact that all uses are subject to the provisions of Section XII Wetlands Conservation District. This amendment will not affect the intent or meaning of uses; nor will it change the districts in which uses are currently permitted, permitted by special exception or not permitted. Full-text as follows:

3.6.1 The Table of Uses, Section 3.6, **is divided into two parts, one for principal uses, and the other for accessory uses, specifying** specifies the uses that are permitted by right, are permitted by special exception, or are **not permitted** prohibited.

(a) Uses Permitted by Right Uses denoted by the letter "P" in the Table of Uses are permitted by right in the Districts so indicated, subject to all other applicable sections of this Ordinance and other local, state and federal laws, rules and regulations. uses are designated in the Table with a P

(b) Uses Permitted by Special Exception Uses which require the granting of a Special Exception by the Zoning Board of Adjustment are designated with an denoted by the letter "S" in the Table of Uses in the District so indicated. The Zoning Board of Adjustment may grant Special Exceptions in accordance with the procedures and conditions as specified in Section XV, Board of Adjustment, of this

Ordinance, subject to all other applicable sections of this Ordinance and other local, state and federal laws, rules and regulations.

- (c) **Uses Not Permitted and Uses Not Specified** ~~Prohibited Uses denoted by the letter “X” in the Table of Uses are not permitted in the District so indicated. designated with an X.~~

Any use not specifically listed **in the Table of Uses** as a permitted use shall not be allowed unless the Board of Adjustment determines it is substantially similar to a use listed as a permitted use in the applicable zone by virtue of an Administrative Appeal to the Board. A use shall not be deemed substantially similar to a permitted use unless it is substantially similar in all aspects to a permitted use; otherwise the use shall be deemed to be **not permitted** ~~a prohibited use.~~ **For purposes of this section, a substantially similar shall include a use by reason of its normal operation, would not cause observable difference in patronage, service, sight, noise, traffic, employment or similar characteristics, including its impacts to abutting properties.** Any use deemed by the Board to be a prohibited use, and any use explicitly prohibited by this Ordinance, shall only be allowed in the event that the Board of Adjustment grants a variance allowing the use.

- (d) **All Uses Subject to Wetlands Conservation District** ~~All uses are subject to the provisions of Section XII, Wetlands Conservation District (Overlay). is an overlay district and information is in Section XII.~~

There were no comments or questions from the public.

Mrs. Hemingson, seconded by Mrs. Bradstreet, moved to recommend the ADOPTION of the amendment as written for the 2015 Annual Town Meeting. Motion PASSED (Vote 7-0).

- g) Amend Table of Uses 3.6 relocating 3.6.A.7 Home Business, 3.6.A.10 Home Occupation, and 3.6.A.11 Telecommuting to Table of Uses 3.6.H, so that the uses are designated as accessory uses, rather than principal uses. This amendment will not affect the intent or meaning of the uses; nor will it change the districts in which the uses are currently permitted or permitted by special exception. Full-text as follows:

3.6 TABLE OF USES	R-4	R-3	R-2	R-1	B-1	M-1	VR-1	VB-1	VM-1	W-1
H. Accessory Uses										
16. Home Business in accordance with Section III, 3.7.3, except for the VB-1 and VM-1 districts. Site Plan Review required in <u>all</u> districts.	S	S	S	S	S	S	S	P	P	Section XII Wetlands Conservation District (Overlay)
17. Home Occupation in accordance with Section III, 3.7.5.	P	P	P	P	P	P	P	P	P	
18. Telecommuting in accordance with Section III, 3.7.5.	P	P	P	P	P	P	P	P	P	

There were no comments or questions from the public.

Mrs. Hemingson, seconded by Mr. Kidder, moved to recommend the ADOPTION of the amendment as written for the 2015 Annual Town Meeting. Motion PASSED (Vote 7-0).

- h) Amend Table of Uses 3.6 inserting cross-references for uses in which there are other relevant provisions of the Ordinance. Cross-reference Section IX Manufactured Housing with 3.6.A.6 Manufactured Housing Subdivision, Section XVI Affording Housing Innovative Land Use Control with 3.6.A.9 Affordable Housing Option, Section X Recreational Camping Parks/Residential Tenting and Recreational Camping Vehicles with 3.6.H.4 Residential Tenting and Recreational Camping Vehicles of a Visitor, and Section XII Wetlands Conservation District (Overlay) with 3.6.H.9 Filling of Water or Wet Area. This amendment will not affect the intent or meaning of the uses; nor will it change the districts in which the uses are currently permitted, permitted by special exception or not permitted.

Planning Board agreed to **RE-POST** the proposed amendment as additional revisions are being proposed to Section X Recreational Camping Parks/Residential Tenting and Recreational Camping Vehicles with 3.6.H.4 Residential Tenting and Recreational Camping Vehicles of a Visitor. Refer to item c. for further information.

- i) Amend Table of Uses 3.6 deleting the explanation in 3.6.F.1 Retail Establishment and instead, insert the explanation as new definition 2.1.R.5 Retail Establishment. This amendment will not affect the intent or meaning of the use; nor will it change the districts in which the use is currently permitted, permitted by special exception or not permitted. Full-text as follows:

3.6 TABLE OF USES	R-4	R-3	R-2	R-1	B-1	M-1	VR-1	VB-1	VM-1	W-1
F. Commercial Uses										
1. Retail E stablishment selling convenience goods (including but not limited to foods, drugs and proprietary goods) and general merchandise (including but not limited to dry goods, apparel and accessories, furniture and home furnishings, home equipment, small wares and hardware) including discount and limited price variety store.	X	X	X	X	P	S	X	P	S	Section XII Wetlands Conservation District (Overlay)

2.1.R.5 Retail Establishment: A place of business, including a discount and limited price variety store, selling convenience goods and general merchandise, including but not limited to foods, pharmaceutical drugs, proprietary goods, dry goods, apparel and accessories, furniture and home furnishings, home equipment, small wares and hardware.

There were no comments or questions from the public.

Mrs. Hemingson, seconded by Mrs. Bradstreet, moved to recommend the ADOPTION of the amendment as written for the 2015 Annual Town Meeting. Motion PASSED (7-0)

- j) Amend Table of Uses 3.6 inserting the words “without entertainment” in 3.6.F.5 Restaurant, and insert new use 3.6.F.6 Restaurants with Entertainment with the new use being permitted by Special Exception in the commercial and industrial districts and prohibited in

all residential districts. Intent and purpose of amendments are to divide “restaurant” into two categories with no change to the use or districts in which “Restaurant without Entertainment” is permitted, permitted by special exception or not permitted. Permitting by special exception “Restaurants with Entertainment” will require abutting property owners to be legally notified so that they may participate in discussions concerning any such proposal. Full-text posted as follows:

2.1.R.4 Restaurant: An eating establishment, with or without entertainment, which is primarily designed for its patrons to eat at tables, booths or a counter or receive take-out that is incidental to the main purpose of the establishment. Includes diners, cafes, and cafeterias and does not include drive-in restaurants.

3.6 TABLE OF USES	R-4	R-3	R-2	R-1	B-1	M-1	VR-1	VB-1	VM-1	W-1
F. Commercial Uses										
5. Restaurants without entertainment.	X	X	X	X	P	S	X	P	S	
6. Restaurants with entertainment.	X	X	X	X	S	S	X	S	S	

Revised amendment and full-text as further recommended by Mrs. Robertson as follows:

Amend Section II Definitions inserting new definitions 2.1.E.1 Entertainment, 2.1.R.4 Restaurant and 2.1.R.5 Restaurant with Entertainment. Amendment will require changing the numerical sequence of already proposed and existing definitions. Intent and purpose of amendment is to provide definitions for existing and proposed uses listed in Table of Uses 3.6.

2.1.E.1 Entertainment. Any single event, a series of events, or an ongoing activity or business, occurring alone or as part of another business, to which the public is invited or allowed to watch, listen, or participate or that is conducted for the purpose of holding the attention of, gaining the attention of or diverting or amusing guests or patrons, regardless of whether a charge or fee is levied, including but not limited to: Instrumental music, individual singer, singing group or band, dance, comedy, theatrical, readings, talk or speech, performance art, hypnotists, mimes, sporting events, exhibitions, carnival, rodeo or circus acts, talent shows, and reviews. Nothing in this definition shall be construed to include exposure of specific anatomical areas or the conduct of adult entertainment of any kind as referenced in Section 3.9 of this Ordinance.

2.1.R.4 Restaurant. An eating establishment, ~~with or~~ without entertainment, which is primarily designed for its patrons to eat at tables, booths or a counter or receive take-out that is incidental to the main purpose of the establishment. Includes diners, cafes, and cafeterias and does not include drive-in restaurants.

2.1.R.5 Restaurant with Entertainment. An eating establishment, with entertainment, which is primarily designed for its patrons to eat at tables, booths or a counter or receive take-out that is incidental to the main purpose of the establishment. Entertainment, as defined in Section II, 2.1.E.1 of this Ordinance, shall be provided concurrently with or upon completion of the serving of restaurant meals to the restaurant’s customers, as opposed to entertainment being provided to an audience that is generally separated and distinct from customers who consume a meal. A restaurant with Entertainment shall be subject to the provisions of Section III, 3.7.9. of the Ordinance.

3.7.9. Restaurant with Entertainment. In addition to meeting the requirements of Section XV, 15.8.2 of this Ordinance, the applicant must agree to and demonstrate compliance with the following conditions to the Zoning Board of Adjustment, as applicable, in order to operate a Restaurant with Entertainment.

- a) The eating establishment shall be primarily designed for its patrons to eat at tables, booths or a counter or to receive take-out that is incidental to the main purpose of the establishment, which is to serve food.
- b) The type of entertainment shall comply with Section II, 2.1.E.1 of this Ordinance.
- c) The applicant shall provide evidence that there is adequate sound insulation so to insure that all sounds emanating from or related to the entertainment shall be limited to and contained within the interior of the restaurant building.
- d) Sound from the entertainment shall not be transmitted to any outdoor areas, nor allowed to be discernable from the boundaries of the parcel on which the restaurant is located, whether intentional or unintentional.
- e) All windows and doors shall remain closed at all times during the entertainment, and during preparation before and after, to minimize the incidental transmission of sound.
- f) There shall be no vehicles parked in landscaped areas, in circulation aisles, fire lanes, on the street or on adjoining properties for which no formal arrangements exist with the owners thereof to allow such parking.
- g) Entertainment shall take place no earlier than _____ AM or later than _____ PM.
- h) Site Plan Review shall by the Planning Board shall be required.

At this time, Planning Board member James Fredyma recused himself from review of the proposed amendment.

Mrs. Robertson addressed the Board explaining that she has suggested the amendment in an effort to address the fact that more and more restaurants tend to provide some type of entertainment. Currently, the Zoning Ordinance does not address entertainment and therefore the use is not permitted. Mrs. Robertson updated the Board on an application the Zoning Board of Adjustment had reviewed concerning the same being proposed by The Everyday Café. At the time, members of the Zoning Board of Adjustment had suggested that offering some type of entertainment is common; however, they noted that the use is not specifically listed in the Ordinance and is therefore not permitted. In an effort to preserve the Applicant's right to come back before the Board of Adjustment for the same use, the Board had recommended that the Applicant withdrawn their application. They had also recommended that the Applicant further discuss the provisions of the Ordinance with the Select Board to determine whether there is alternative provision of the Ordinance that would require a Special Exception, rather than a Variance.

Mr. Kidder noted that the Covered Bridge Restaurant provides entertainment. Mrs. Robertson agreed, indicating that it is not permitted.

Mrs. Bradstreet expressed concern with the proposed definition of “Entertainment” suggesting that it may be too restrictive. Mr. Wilkey concurred, questioning whether having a radio or television on would be considered entertainment.

Mrs. Robertson noted that the condition requiring a Special Exception in order to entertainment is so that abutters will be made aware of the proposal and have an opportunity to provide input. When reviewing the application of The Everyday Café abutters that own residential apartment buildings or mixed residential/commercial property spoke expressed concern with the potential impact, if any, to their residential tenants.

The Planning Board briefly discussed the potential permitting process and rights of abutters in an effort to come up with a compromise. In particular, discussed ensued concerning whether noise would be limited to the interior of the building only and whether there should be a specific decibel or restriction imposed for noise. Following discussion, the Planning Board agreed to **POST-PONE** any action on the amendment and instead create a subcommittee made up of Mr. Britain, Mrs. Bradstreet and Mr. Wilkey in an effort to develop new language addressing the issue of entertainment. It is anticipated that the recommended language of the subcommittee will be provided in time for posting the proposed amendment for the Board’s December 9, 2014 public hearing.

- k) Amend Table of Uses 3.6 deleting the location and time limitation provided in 3.6.H.4 Residential Tenting and Recreational Camping Vehicles of a Visitor. Location and time limitations already established in 10.4 Residential Tenting/Recreational Camping Vehicles require occupancy of either tents or recreational vehicles on a lot in conjunction with a residence not exceed a total of four weeks per year and to be located as inconspicuously as possible. This amendment will not affect the intent or meaning of the use; nor will it change the districts in which the use is currently permitted or permitted by special exception.

Refer to item c. where it was agreed to **RE-POST** the proposed amendment to allow for no more than sixty (60) days per year.

- l) Amend 3.9 Use, Adult inserting other uses and locations in which an adult use shall be a minimum of 1,000 feet from property lines. Furthermore, inserting language prohibiting adult uses within 500 feet of a residential zoning district. Amended sentence as follows: “No adult use shall be located within 1,000 feet of the property line of **a place of religious worship, church, cemetery, school, day care center, youth center, public park, public sports or recreation field or similar publicly-owned facility**, or within 500 feet of a property line of any residence ~~or residential zoning district boundary~~.” This amendment will revise conditions by which applicants must demonstrate compliance.

Mrs. Robertson suggested omitting proposed words, “...or residential zoning district boundary” as it appears that there are no properties in the VB-1 district that an adult use would be permitted and only one (1) property in the B-1 district, off Bound Tree Road, in which the use may be permitted. Requiring a distance from a residential zoning district boundary would prohibit an adult use from being operated in Hopkinton.

Vice Chairman Britain concurred, and briefly discussed the fact these uses are protected under the 1st Amendment (U.S. Constitution). The language in the current Ordinance with the addition of the words shown in red provides an opportunity for these uses with conditions.

There were no comments or questions from the public.

Planning Board agreed to **RE-POST** the proposed amendment with the addition of the words shown above in red and omitting the words in blue.

- m) Amend 4.3 Principal Structure inserting reference to the Village Commercial (VB-1) and Village Industrial (VM-1) districts in the second sentence and at the same time delete a sentence having similar wording. Amended sentence as follows: “In the **VB-1**, B-1, **VM-1** and M-1 zones, there may be multiple principal nonresidential structures and uses within structures so long as each use is listed as a permitted (P) use or use permitted by special exception (S) in 3.6 Table of Uses.” In the B-1 and M-1 zones, the maximum gross floor area of commercial retail stores and restaurants shall not exceed 40,000 square feet. In the VB-1 and VM-1 zones, the maximum gross floor area of commercial retail stores and restaurants shall not exceed 20,000 square feet. ~~In the VB-1 and VM-1 zones, there may be multiple principle structures and uses within structures so long as each use is listed as a permitted (P) use or use permitted by special exception (S) in 3.6 TABLE OF USES.~~ Nothing herein shall be construed to preclude compliance with the requirements set forth in Article 15.8.2 of this Ordinance. This amendment will not change the districts in which uses are currently permitted, permitted by special exception or not permitted.

Vice Chairman Britain asked if members of the public had any comments or questions.

Martin Marklin questioned whether a two-family or multi-family residence would be permitted in the VM-1 district. Vice Chairman Britain responded by explaining that the amendment as proposed will not change those uses that are currently permitted, permitted by Special Exception or prohibited in the district. Mrs. Robertson concurred, noting that the intent of the amendment is to prohibit multiple principal (residential) structures on a lot. She believed the amendment to be a clarification or correction as at the time the language was originally developed it was never the intentions of the Planning Board to allow more than one residential structure on a lot.

There were no further comments or questions.

Mr. Wilkey, seconded by Mrs. Connelly, moved to recommend the ADOPTION of the amendment as written for the 2015 Annual Town Meeting. Motion PASSED (7-0)

- n) Amend Section VI Parking Requirements deleting 6.4.6 Special Exception which requires a special exception for use of public parking facilities to supplement or reduce the required minimum parking standards. Intent and purpose of this amendment is to streamline the permitting process as similar authority has already been given to the Planning Board in 6.1 Off-Street Parking and 6.2 Location of Parking Spaces.

~~**6.4.6 Special Exception:** Public parking facilities can be used to supplement or reduce the required minimum parking standards by special exception of the Zoning Board of Adjustment.~~

There were no comments or questions from the public.

Mrs. Connolly, seconded by Mr. Britain, moved to recommend the ADOPTION of the amendments as written for the 2015 Annual Town Meeting. Motion PASSED (7-0).

Following review of the proposed amendments, Mr. Wilkey, seconded by Mrs. Connelly, moved to CONTINUE the PUBLIC HEARING to December 9, 2014 at 7:00 PM in the Town Hall.

V. Adjournment.

Vice Chairman Britain declared the meeting **ADJOURNED** at 10:00 PM. The next regular scheduled meeting of the Hopkinton Planning Board is at 7:00 PM on Tuesday, December 9, 2014, at the Hopkinton Town Hall.

Karen L. Robertson
Planning Director