



# Town of Hopkinton Planning Department

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## HOPKINTON PLANNING BOARD MINUTES SEPTEMBER 12, 2023

Members present: Chair Michael Wilkey, Vice Chair James Fredyma, Jane Bradstreet, Clarke Kidder, Rich Steele, and Rob Dapice (arrived late). Alternates Molly Hardenbergh and Emily Bouchard. Members absent: Ex-Officio Thomas Lipoma. Staff present: Planning Director Karen Robertson.

- I. **Call to Order/Roll Call.** Chair Wilkey called the meeting to order at 5:30 PM in the Hopkinton Town Hall, 330 Main Street, Hopkinton, NH. With the Roll Call of the Planning Board, Chair Wilkey designated Alternates Emily Bouchard and Molly Hardenbergh as voting members and declared a quorum present.

Chair Wilkey welcomed Molly Hardenbergh, an alternate who will be sitting as a representative of the Conservation Commission.

- II. **Review of Minutes and Notice of Decision.**

**MOTION** Jane Bradstreet, seconded by Clarke Kidder, to approve the August 8, 2023 Minutes. Motion carried in the affirmative (Fredyma, Bradstreet, Kidder, Steele, Hardenbergh, Bouchard, and Wilkey).

**MOTION** Jane Bradstreet, seconded by Rich Steele, to approve the August 8, 2023 Notice of Decision. Motion carried in the affirmative (Fredyma, Bradstreet, Kidder, Steele, Hardenbergh, Bouchard, and Wilkey).

- III. **Conceptuals.** There were none.

- IV. **Applications/Public Hearings.**

Rob Dapice joined the Board.

Mrs. Bradstreet recused herself from reviewing the application of Robert and Kimberly Saunders since she is an abutter.

**ROBERT & KIMBERLY SAUNDERS, 2370 Hopkinton Road (Tax Map 240, Lots 12.1 & 12.2), R2/R3 District** Conservation Subdivision involving the resubdivision of lots to create one new residential lot. A review of the application is a Continuation of the August 8, 2023 meeting.

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*Subject to review and approval.*

As a result of the August 8, 2023 meeting, Mr. Saunders presented revised plans, noting that most of the items previously requested, except for the legal documents, have been completed. Documentation of control of the open space, declaration of covenants, and the homeowner association is in the process of being finalized by Attorney Maria Dolder.

Mr. Saunders noted that he has requested that the NH Department of Transportation (NHDOT) reconsider his request for a driveway permit for Lot 12.3 as new information has been submitted showing that his property was, at one time, on two separate deeds and, therefore, should qualify for an additional curb cut.

Mr. Saunders discussed the interest of an abutter in the field on Lot 12.3. The neighbor would like to swap a parcel he owns abutting Mr. Saunders's residence. As a result, Mr. Saunders and the Planning Board discussed the various options in processing his application, such as moving forward with the proposal reviewed on August 8 and later coming back with a request for a lot line adjustment or revising the current plan to include the lot line adjustment. While the field on Lot 12.3 would be shown on the plans, the area would not be considered a part of the Conservation Subdivision. Following discussion, it was understood that the sequence of subdivision and lot line adjustment is Mr. Saunders's choice.

Mr. Saunder then asked for clarification on two items noted in Mrs. Robertson's "Summary Review" submitted at the August 8 meeting. In particular, the 100-foot vegetated buffer between new structures and existing public roads and the 25-foot buffer around wetlands. While Mr. Saunders's proposal meets the buffer requirements, he questioned whether it would be necessary to note the buffers on the plan since conservation easements will protect the frontage and all areas surrounding the wetlands. Following discussion, the Board agreed that, in this particular case, the buffers are not necessary.

Mr. Dapice inquired about public access to the open space. In response, Mr. Saunders noted that public access would not be restricted if public trail connectivity eventually becomes available on abutting properties. The language will be part of the homeowners' declaration.

At this time, Mr. Saunders formally requested a continuation of the application, waiving the 65-day statutory time and agreeing to give the Planning Board an extension to include the October 17, 2023 Planning Board meeting.

**MOTION** Clarke Kidder, seconded by Rich Steele, to table the application of Robert and Kimberly Saunders to the Tuesday, October 17, 2023, Planning Board meeting so that the Applicant can follow up with NHDOT on the issuance of a driveway permit and have time to provide the necessary legal documents to be reviewed by the Board's attorney. Motion carried in the affirmative (Fredyma, Kidder, Steele, Dapice, Hardenbergh, Bouchard, and Wilkey).

At this time, Jane Bradstreet re-joined the Board for the remainder of the meeting.

**GOULD HILL FARM, 656 Gould Hill Road (Tax Map 241, Lot 30), R2/R3 District:**

Tim Bassett addressed the Board for Site Plan Review to host live music as a part of the agritourism activities at the Farm. The Bassett family has been operating Gould Hill Farm since 2009. Since then, they have increased their retail and “customer experience,” focusing on agritourism. As a result, live music at the Farm was introduced in 2010. According to Mr. Bassett, the music has been invaluable as it has kept customers at the Farm longer while enjoying homemade cider, food, horse carriage rides, and sitting at the picnic tables.

A brief discussion ensued concerning the definition of agritourism and whether the Planning Board has the authority to review agritourism activities. The discussion included the perimeters of agritourism activities versus the actual use.

Mr. Dapice disclosed that his daughter, on a very part-time basis, works at the Farm. He stated that he could make an unbiased decision concerning the application. Board members agreed that Mr. Dapice would not have to recuse himself.

Mr. Bassett provided more information concerning the music, explaining that, except for the last three years, live music has been held every weekend from Fall to almost Thanksgiving. The hours were expanded three years ago to Friday, Saturday, and Sunday from Memorial Day to Labor Day. Summer hours are from 4:00 or 4:30 PM to 7:30 PM, and Fall hours are from 1:00 to 4:00 PM. Typically, all performers are scheduled through Brad Myrick, which usually involves one person performing.

**MOTION** James Fredyma, seconded by Clarke Kidder, to accept the application for consideration and as complete. Motion carried in the affirmative (Fredyma, Bradstreet, Kidder, Steele, Dapice, Hardenbergh, and Wilkey).

**MOTION** James Fredyma, seconded by Rich Steele, to determine that the application is not a Development of Regional Impact. Motion carried in the affirmative (Fredyma, Bradstreet, Kidder, Steele, Dapice, Hardenbergh, and Wilkey).

Chair Wilkey opened public testimony.

Abutters Daniel and Geoff Fitzgerald of 596 Gould Hill Road explained how they believe the music most affects them. Mrs. Fitzgerald noted that the music took place indoors for the longest time. She believed that this Spring, something changed as the music seemed much louder. She can now hear the music in her kitchen, bedroom, and while on her deck. Mrs. Fitzgerald offered to play a recording of the music heard from her deck. She has asked Mr. Bassett to mitigate the music so that it is not so imposing on her home. However, nothing has changed. She recommended that the performers not use amplifiers when performing outdoors. Mr. Fitzgerald agreed, explaining that he sometimes needs to sleep in another room of the house because of the level of music.

In rebuttal, Mr. Bassett explained that the Fitzgerald residence is more than 300 feet from the location of the music. He has adjusted the sound, moved the speakers, and still receives calls from Mrs. Fitzgerald concerning the noise. Mr. Bassett suggested that the

sound travels on the hill, with the wind and sound bouncing off the metal buildings. He found that when measuring the sound at the property line, it was less than 65 decibels.

Abutter David Lewine of 97 Robert Gould Road moved to his home 13 years ago. Mr. Lewine supports the Farm but noted that the activities have increased with live music, pony rides, more fruit trees, and spraying of the trees late at night. He noted that the music can be heard every weekend and, after a while, is wearing. Mr. Lewine noted that while the Ordinance limits the sound to no more than 65 dB measured at the property line, it also notes that the sound cannot exceed ten decibels of the residual ambient sound that exists without the noise source, which he estimated to be much less than 65 dB.

Lastly, Mr. Lewine stated that the Farm appears to be changing to something that doesn't integrate farm activities, such as live music, serving appetizers and pizza, and alcohol. He questioned whether the Farm was changing into a pub where people could eat and drink, noting that the restaurant's business name is registered under a different name from Gould Hill Orchard.

Chair Wilkey inquired about the restaurant's operations as a separate business from the Farm. In response, Mr. Bassett explained that a license from the State was required to make hard cider. However, the State would not allow them to only apply as a beverage manufacturer; instead, they had to apply for a restaurant license. The license was issued in 2013.

Mr. Lewine readdressed the Board, expressing concern with the impact that the expansion of activities at the Farm will have on his property values.

Mrs. Hardenbergh questioned whether the music was amplified. Mr. Bassett responded that the performers bring their equipment, which includes speakers. He has turned down and sometimes repositioned the speakers; however, customers sitting on the patio said they could not hear the music. Finally, Mr. Bassett suggested that the new residence to be constructed between the main Farm building and the Fitzgeralds will help reduce the noise travel.

Mrs. Hardenbergh questioned whether the cider business comes under the definition of agriculture. Mrs. Robertson explained that the cider is made using the apples grown at the Farm.

Chair Wilkey read letters and emails from residents Michelle and Brian Bickford, John Greene, Julie and Brian Williams, Kevin Flynn and Rebecca Lavoie, Lawrence and Shannon Donahue, and Michael, Sarah, and Paxton Parker in support of live music events held at Gould Hill Farm.

Abutter Mary Leadbeater of 33 High Pond Road, who owns property off Robert Gould Road, spoke about her experience working on the Farm when her family owned the property. She believed the Farm was quieter than it used to be, explaining that the orchard was much larger, with semi-trailers picking up apples twice daily. The apple industry has changed, with farms having to resort to more and more agritourism to

survive. Ms. Leadbeater stated that Applecrest Farm in Hampton Falls is large and now operates a restaurant and store and holds festivals with live music.

Lastly, Ms. Leadbeater noted that when her family operated the Farm, they sprayed the trees in the middle of the night because there was little wind during that time.

Mrs. Bradstreet suggested that music for events like Maple Weekend, from Memorial Day to Labor Day, isn't unreasonable for agritourism.

Mr. Lewine readdressed the Board, indicating that for noise to be 65 dB at the Farm's property line, the music at the source must be much louder.

Chair Wilkey declared public testimony closed.

Mr. Steele referenced Section 5.5.4 of the Zoning Ordinance, which allows hiring an acoustical engineer. The Ordinance indicates that "prior to construction or continued operation of a building or facility within Hopkinton that might reasonably be expected to produce objectionable noise, the developer or owner shall retain the services of an experienced acoustical engineer approved by the Town."

The Board discussed the Select Board having the enforcement authority should a remedy be necessary. Furthermore, whether "agritourism," as defined in Section II of the Zoning Ordinance and RSA 21:34-a, is a use that the Planning Board can review as the Board is not certain that the Applicant had to apply for Site Plan Review.

Chair Wilkey asked for a consensus on consulting with the Planning Board's attorney. Roll Call: Fredyma- yes, Bradstreet-no, Kidder-yes, Bouchard-yes, Steele-yes, Dapice-yes, Hardenbergh-yes, and Wilkey-yes.

**MOTION** Rich Steele, seconded by Rob Dapice, to continue the application of Gould Hill Farm to the Tuesday, October 17, 2023 meeting in order to consult with the Board's attorney concerning the Planning Board's ability to review agritourism activities. Motion carried in the affirmative (Fredyma, Kidder, Steele, Bradstreet, Dapice, Hardenbergh, and Wilkey).

## V. Other Business.

- a) Zoning Amendments: The Planning Board received copies of recommended amendments proposed by Economic Committee Director Anna Wells on behalf of the Economic Development Committee (EDC) and recommended amendments by Planning Director Karen Robertson.

Ms. Wells's recommendations are as follows:

- 1) Permit single-family dwellings in the Commerce and Community Overlay District (CCOD);
- 2) Expand the existing CCOD at what is known as Hart's Corner;
- 3) Overlay the CCOD on properties in the Exit 6 area and
- 4) Overlay the CCOD on properties in the Burnham Intervale area.

Mrs. Hardenbergh, on behalf of the Conservation Commission (ConCom), shared the Commission's comments concerning the Economic Development Committee's recommended proposed amendments. Comments are as follows:

- 1) Lot 46, shown on Tax Map 228, be excluded from the CCOD (ConCom unanimously in favor);
- 2) The CCOD not be applied to the M-1 zoned areas (ConCom 3-4 vote failed);
- 3) Lots 8 and 9, shown on Tax Map 220, on Burnham Intervale Road, be excluded from the CCOD (ConCom unanimously in favor);
- 4) Exclusion of lots impacted by flowage easements and flood zones from the CCOD (ConCom unanimously in favor);
- 5) Exclusion of the Burnham Intervale M-1 district from the CCOD (ConCom unanimously in favor) and
- 6) Requested the recommendations be presented, in total, to the Economic Development Committee and Planning Board.

Mrs. Hardenbergh and the Planning Board briefly discussed concerns raised by Commission members about how the change in the Burnham Intervale area may increase traffic traveling through downtown. In addition, discussed was Hopkinton's Natural Resource Inventory (draft), which shows land in the Burnham Intervale area as some of the highest-ranked habitats in New Hampshire. Following discussion, members of the Planning Board suggested that it would be helpful to residents, when considering proposed zoning amendments, to easily be able to access the Natural Resource Inventory (NRI) and associated maps, especially the Wildlife Action Plan Ranked Tiers with Conservation Land (Map #9, February 2023). Mrs. Hardenbergh and Katherine Mitchell, also a Conservation Commission member, will follow up with the Commission. If agreeable, the NRI will be posted to the Town's website.

Lastly, in reviewing the Commission's comments, it was noted that the Economic Development Committee had excluded Lot 46 on Tax Map 228 and Lot 8 and 9, shown on Tax Map 220, from their list of recommended amendments. However, the CCOD remains to be proposed on properties impacted by flowage easements, flood zones, and the Burnham Intervale M-1 district.

Mrs. Robertson's recommendations are as follows:

- 1) Amend Section II, the definition of "Lot Line, Front," clarifying the designation of a front lot line on a corner lot.
- 2) Amend Section V, 5.2.1, Use of a Nonconforming Lot, eliminating the requirement that an owner owning contiguous land must merge lots for a nonconforming lot to be built upon.
- 3) Amend Section XV, Zoning Board of Adjustment, to be consistent with the powers and duties specifically granted to the Board under RSA 674:33.
- 4) Amend Section XVII, Floodplain Development Ordinance, as necessary to comply with the National Flood Insurance Program requirements.

The Planning Board then briefly discussed the purposes of Mrs. Robertson's recommended amendments, suggesting that the "Setback Graphic" be revised to reflect better the front, rear, and side setback areas. Also noted were RSA 674:39-aa, Restoration of Involuntarily Merged Lots, and the effort to further comply by revising Section V, 5.2.1.

The first public hearing on recommended proposed amendments to the Zoning Ordinance will be held on Tuesday, October 17, 2023, at Town Hall.

b) Housing Committee Update: There was no new information reported.

## **VI. Adjournment.**

Chair Wilkey declared the meeting adjourned at 8:18 PM. The next scheduled meeting is at 5:30 PM on Tuesday, October 17, 2023.

Karen Robertson  
Planning Director

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