



Town of Hopkinton Planning Department

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HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES JUNE 1, 2021

Members: Chairman Daniel Rinden, Jessica Scheinman, Andrew Locke, and Eric Buck.
Staff present: Planning Director Karen Robertson.

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- I. **Call to Order.** Chairman Rinden called the meeting to order at 5:30 PM. Due to the COVID-19/Coronavirus crisis and per Governor Sununu's Emergency Order #12, under Executive Order 2020-04, the Zoning Board of Adjustment was authorized to meet electronically.

Roll Call: Jessica Scheinman – present and alone, Andrew Locke – present and alone, Eric Buck – present and alone, and Dan Rinden – present and alone.

With only four members present, the Applicants were given an opportunity to table review of their applications. All agreed to have their applications heard this evening.

II. Applications.

#2021-4 Pauline Meridien Special Exception to permit outdoor wilderness activities at 334 College Hill Road, Tax Map 212, Lot 2, R-4 district, per Zoning Ordinance Table of Uses 3.6.H.12.

The proposal is to use a forested, 7-acre area on the property for no more than twenty campers. Representatives of Thrive New Hampshire supervise the campers. The wilderness activities include tenting, campfires, non-motorized water activities, fishing, hiking, etc. While the wilderness activities have taken place during the summer months, they may include winter activities in the future.

It was noted that the front area of the property is utilized by Back N' the Saddle, an Equine Therapy Center, and Cowboy camps.

Ms. Meridien reviewed the criteria for a Special Exception as outlined in Section XV of the Zoning Ordinance was as follows:

- 1) **Standards provided by this Ordinance for the particular use permitted by Special Exception.** "The request is permitted by Special Exception per Section III, Table of Uses 3.6.H.12."
- 2) **No hazard to the public or adjacent property on account of potential fire, explosion, or release of toxic materials.** "Non-motorized water activities, low impact camping (tents) and supervised use of the grounds at all times preclude

Subject to review and approval.

hazards to the public as far as fire, explosion or toxic materials. The campfire area has the approval of the Hopkinton Fire Department (2021 inspection)."

- 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 pollutants, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other material.** "The camping area is situated one-quarter mile in and completely out of sight of the main road (College Hill Road) and can be viewed only indirectly from the rear of the property of one of the nine abutters to the property."
- 4) **No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.** "Campers arrive by van, or individually, and are dropped off. Parking for staff, etc., is adjacent to the camping area, out of sight of the main road."
- 5) **No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.** "There are no demands on municipal services at this time. Porta-Potty use and/or organic composting of human waste maintains a clean environment. Campfires will be regulated according to fire warnings/hazards as posted by the State of NH, and all needed burning permits will be maintained with the Town."
- 6) **No significant increase of stormwater runoff onto adjacent property or streets.** "No changes will be made in the grade or materials in the forest that might conceivably impact adjacent property."
- 7) **An appropriate location for the proposed use.** "Teaching survival in the woods requires woods."
- 8) **Not adversely affect the health and safety of the residents and others in the area and not be detrimental to the use or development of adjacent or neighboring properties.** "The property encompasses 23-acres, mostly wooded. Camping by supervised groups should in no way affect the development of adjacent properties."
- 9) **In the public interest and the spirit of the Ordinance.** "Opening the use of the forest to young people without experience of nature in this manner is meant to foster a love of the gift that is our earth. Sharing it can only bring better understanding and appreciation of the wild, and hopefully an understanding of what it takes to safeguard it for future generations."

Jake King, the owner of Thrive New Hampshire, located at 552 South Main Street, Manchester, explained how he had provided wilderness survival camps for teens for years. The overnight camp usually takes place once every other week during July and some of August. Some of the teens who attend have never camped before. Typically they do not exceed 12 campers, including three staff members. As part of the camp's

operation, battery-operated equipment, a staffed 12 or 15 passenger vehicle, and a generator are available; however, they try to keep the area dark to help foster knowledge of the land. Campers arrive on a Thursday or Friday for half the day, set up, and do activities. They spend the night with quiet hours begin at 7 PM. The next morning, they have breakfast, pack up and leave.

There was a brief discussion about the availability of access to the area by emergency vehicles, including water supply if needed, with Ms. Meridien explaining that the Fire/Rescue Department has completed "what if scenarios" at her therapy facility taking into consideration all contingencies. They are familiar with the property.

Ms. Scheinman asked about lighting availability during an emergency. Mr. King said that they have high-powered spotlights that can light up the access road, saying that lighting should not be an issue during an emergency.

Chairman Rinden questioned whether alcohol is allowed. Mr. King replied no, noting that the campers are youth age.

Members of the Board inquired about the siting of the camp area, questioning whether it could be moved so that it is not visible. Mr. King replied yes, saying that the campsite could be moved.

Chairman Rinden asked about access to drinking water. Mr. King noted that canisters are filled at the barn.

Chairman Rinden opened public testimony with abutter Craig Billingham of 468 College Hill Road, speaking in opposition to the proposal. Mr. Billingham questioned whether Ms. Meridien had legal access to the pond because she had sold three acres of the property where the access drive exists. In response, Ms. Meridien noted that she has the right of way over the property specifically to access the pond.

Mr. Billingham explained how he could hear the campers during the summer, and at certain locations on his property, he can see the campers. He expressed opposition to "seeing and hearing kids run around all day."

Abutter Mark Fenske of 212 College Hill Road explained how his property is approximately 200 feet above the forested area. He expressed concern with light pollution and asked if the Board were to approve the request that the decision includes indemnification for him should the campers "forage" onto his property for firewood.

Resident Erin Tullar of 860 Sugar Hill Road expressed her appreciation for what Ms. Meridien and Mr. King proposed, noting that more people need to understand and respect the earth.

In rebuttal, Ms. Meridien said that she uses a right-of-way to access the pond; therefore, there is no reason why the existing pond road, formerly a logging road, cannot be used. Ms. Meridien suggested that moving the campsites would ensure that they would not be visible from the Billingham property.

Lastly, Ms. Meridien noted that the camp had been taking place at the property and that she was not aware that she needed permits until the Town had notified her.

In rebuttal, Mr. King said that the campers do not "forage" as there is no need to do so. He noted that the overnight camp is for those campers that have never camped. It is a precursor to spending time in "real wilderness" such as the Catskill or White Mountains. Mr. King then noted his training as a former army ranger and police officer, explaining that they have a standard protocol for respecting the property and running the camp.

In rebuttal, Mr. Fenske, again, requested indemnification should a camper go onto his property. Mr. King concurred, saying that he would include Mr. Fenske's and Mr. Billingham's property as part of his insurance policy.

In rebuttal, Mr. Billingham said, "I do not want to listen to kids."

With no further testimony, Chairman Rinden declared testimony closed, and the Board began its deliberations.

Ms. Scheinman wondered if moving the camping area would appease the abutter. In response, Mr. Billingham agreed that he would not have a problem if the camping area were moved.

Ms. Meridien noted that moving the campsites to the other side of her property would be insufficient because the camp is focused on using the pond. Furthermore, its location near the pond includes access to the site by emergency vehicles.

Mr. Locke noted that Mr. Billingham's concern with noise is reasonable, suggesting that the Applicant should move the more intense activities at the camp to the other side of the pond. More ancillary activities should be located towards Bits.

Chairman Rinden suggested that if the application were to be approved, it could be on a one-year trial period that includes the moving of the campsite. If the campsite is visible from the abutting property, it might be necessary to plant forested trees.

At this time, the Board discussed each standard for a Special Exception to determine whether the Applicant had adequately addressed the criteria, with Ms. Scheinman stating that the noise will be detrimental to the abutter's quiet enjoyment of his property. Mr. Buck suggested that relocating the campsites should address concerns of visibility of the tents. Furthermore, he believed that the quiet hours for the camp are more than what most residential offer. Mr. Locke agreed that the campsites would be barely noticeable based on testimony but suggested that hearing the campers would be detrimental to abutting properties.

At 6:45 PM, Mr. Buck was scheduled to leave the meeting. With only three members present to act on the application, Andy Locke, seconded by Eric Buck, moved to **CONTINUE** review of Application #2021-4 to Tuesday, June 8, 2021, at 5:00 PM via

Zoom. Motion passed in the affirmative (Locke – in favor, Scheinman – in favor, Buck – in favor, and Rinden – in favor).

#2021-5 Pauline Meridien Special Exception to permit a seasonal farm stand selling goods primarily raised at 334 College Hill Road, Tax Map 212, Lot 2, R-4 district, per Zoning Ordinance Table of Uses 3.6.H.20.

At the Applicant's request, Application #2021-5 will be reviewed on Tuesday, June 8, 2021, at 5:00 PM via Zoom.

#2021-6 Erin Tullar Special Exception to permit a seasonal farm stand selling goods primarily raised at 860 Sugar Hill Road, Tax Map 232, Lot 11, R-4 district, per Zoning Ordinance Table of Uses 3.6.H.20.

Ms. Tullar reviewed the criteria for a Special Exception as outlined in Section XV of the Zoning Ordinance was as follows:

- 1) **Standards provided by this Ordinance for the particular use permitted by Special Exception.** "A seasonal farmstand selling goods primarily raised on the premises is permitted as an accessory use by Special Exception per Zoning Ordinance Table of Uses 3.6.H.10."
- 2) **No hazard to the public or adjacent property on account of potential fire, explosion, or release of toxic materials.** "There will be no hazardous chemicals or materials used. Goods sold will be primarily grown on the premises, such as vegetables, fruits, Christmas trees, etc."
- 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 pollutants, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other material.** "There will be no odor or runoff to cause detriment to adjacent properties. Again, the proposal is to operate a farmstand selling primarily products grown on the premises. It is anticipated that at times the farmstand will be self-serve (honor system)."
- 4) **No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.** "There should be no substantial increase in the level of traffic. There is more than sufficient parking available with adequate room to turn around."
- 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 increase in demand for municipal services. The property has private water, sewer, and waste disposal."

- 6) **No significant increase of stormwater runoff onto adjacent property or streets.** "There will be no change in stormwater runoff as there are no anticipated changes to the property."
- 7) **An appropriate location for the proposed use.** "The location, on 20-acres in the agricultural district, is appropriate. The driveway is at least 480' long, known as the former Sugar Hill Road, so there is ample parking and space to turn around."
- 8) **Not adversely affect the health and safety of the residents and others in the area and not be detrimental to the use or development of adjacent or neighboring properties.** "The farmstand will not adversely affect the health and safety of residents in the area. If anything, it will allow neighbors to purchase locally grown produce."
- 9) **In the public interest and the spirit of the Ordinance.** "The proposal is in the spirit of the Ordinance as farmstands are recognized as a permitted activity in the definition of 'Agriculture, Farm, Farming.'"

Ms. Tullar reiterated that she owns 20-acres with already established gardens that will be used for the farmstand.

Chairman Rinden opened and closed the public hearing portion of the meeting as no one wished to give public testimony.

Given the nature of the property, and the Applicant's intentions to sell produce primarily from the property on a self-service basis, the Board agreed that the Applicant addressed the criteria to be granted a Special Exception.

Jessica Scheinman, seconded by Andy Locke, moved to **APPROVE** Application #2021-6 as presented. Motion passed in the affirmative (Locke – in favor, Scheinman – in favor, and Rinden – in favor).

#2021-7 Marissa A. Schuetz, Esq. Variance to permit an addition to the residence at 86 Maple Street, owned by Loren and Holly Clement, Tax Map 102, Lot 42, VR-1 district, per Zoning Ordinance Table 4.2 and Section 5.1.2 (a).

Attorney Schuetz reviewed the criteria for a Variance as outlined in Section XV of the Zoning Ordinance was as follows:

- 1) **The proposed use would not diminish surrounding property values because:** "A Variance from Section 4.2 would not diminish surrounding property values. The existing square footage of the lot is 14,960 square feet, and the requirement under the Table is 15,000 square feet. A residence already exists on the lot, and many lots in this area are nonconforming because of their age and less than the required dimensions. For this reason, the Variance to this section would not diminish surrounding property values."

A Variance from Section 5.1.2(a) for the proposed addition would not diminish property values because the use would remain residential, as required by the district. The property owner has hired experts and taken great measures to ensure that the addition will be in keeping with the aesthetic of the existing residence and the surrounding neighborhood, a task similarly undertaken when the Applicant upgraded the existing residence; and the addition will bring the residence into closer conformity with surrounding properties in terms of square footage. Additionally, the proposed addition will increase the value and desirability of the subject property."

2) **Granting the Variance would not be contrary to the public interest because:**

"Granting a Variance from Section 4.2 would not be contrary to the public interest because it would be consistent with the essential character of the district (since the deficit is only 40 square feet and barely discernable from complying lots) and would in no way threaten the public health, safety, or welfare.

Granting a Variance from Section 5.1.2(a) for the proposed addition would not be contrary to the public interest because it would be consistent with the essential character of the district and would not in any way threaten the public health, safety, or welfare. The proposed use shall be entirely residential, and therefore will be in keeping with the residential nature of the district. Visually, the addition will be in keeping with the character of the district; the property owner has experience renovating the existing residence in keeping with the character and aesthetic of the district, and the same attention – as shown on the proposed plans – has and will be given to the addition to ensure consistency with the visual character of the district. Additionally, there is no risk that the proposed Variance would have any risk to the public health, safety, and welfare as it shall be a residential addition with no increase in the number of residents and minimal increase to public resources to accommodate the single bath in the addition. The fact that the proposed Variance will not be contrary to the public interest is highlighted by the fact that both immediate abutters and many of the surrounding abutters are in favor of the application and have lent their support to the property owner in this application."

3) **By granting the Variance, substantial justice would be done because:** "Granting a Variance to section 4.2 would serve substantial justice because the property owner would realize significant gain from being able to develop on the subject lot; the difference between the actual square footage and requisite footage is only 40 square feet; and the general public would realize no appreciable gain from denying the Variance as a structure is already on the lot, and the deficiency in terms of square footage on the lot is barely discernable.

Substantial justice would be done by granting the Variance to Section 5.1.2 because the property owner would achieve tremendous gain by being able to expand his residence and thereby use and enjoy his property more fully, while the public would realize no loss. The proposed addition poses no threat or burden to the surrounding property or community, is appropriate for the area in terms of use, size, and appearance, and does not harm the abutters; therefore, the general public would realize no appreciable gain from denying the Variance."

- 4) **The spirit and intent of the Ordinance will not be broken by granting the Variance because:** "The spirit of the Ordinance is to, among other objectives, promote the health, safety, convenience, and general welfare of inhabitants.

The Variance request to Section 4.2 would not break the spirit and intent of the Ordinance because the deficiency of the subject lot is only 40 square feet, and there is already a residence on the subject lot.

The Variance request to Section 5.1.2 shall not be contrary to the spirit and intent of the Ordinance because the request does not threaten the health, safety, convenience, or general welfare of the inhabitants; nor does it propose an incompatible use on the subject location; nor does it threaten the values of surrounding properties. Because the proposal in no way is contrary to the public interest or proposes an inconsistent use for the district, the spirit and intent of the Ordinance will not be broken."

- 5) **Literal enforcement of the Ordinance results in unnecessary hardship.**

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. "With regards to the Variance from Section 4.2, no fair and substantial relationship exists between the general purposes of Section 4.2 and the specific application to the property. The public purpose of Section 4.2 is to regulate development and ensure that property is not overdeveloped and affected abutting properties. In this case, the deficiency of the subject lot is 40 square feet; and a residence is already on the site. The proposed addition would be within the requisite building envelope, and therefore there is no risk of overdevelopment on the subject lot or interference with abutters by granting the Variance to Section 4.2.

We request a Variance from Section 5.1.2, providing that nonconforming residences may be expanded by up to 50% in square feet from the square footage existing at the date of nonconformity provided the addition does not further encroach upon nonconforming setbacks.

The purpose of Section 5.1.2 is to prevent over-development on lots with nonconforming residences, provide that buildings on such lots do not interfere with the aesthetic of the district, and to keep districts and neighborhoods substantially uniform.

In this case, no fair and substantial relationship exists between these general public purposes and the specific application to this property. The proposed expansion would be more than 50% of the square footage of the existing building but would be entirely within building envelopes and in conformity with setback requirements of VR-1 properties as articulated under Section 4.2. The Applicant has hired professionals to design and plan the addition to ensure the addition would be consistent with the aesthetic of the existing property and surrounding properties in the district, particularly taking into account the historic element of the neighborhood.

Additionally, the Applicant's addition will be partly screened by surrounding vegetation, and immediate abutters have given their support to the project.

The proposed addition shall consist partly of additional living space and partly of a garage. The proposed addition is consistent with other properties in the neighborhood because most properties have an additional or supplemental building that is a garage or barn. In fact, the subject property as it currently exists is one of the only properties in the vicinity that does not have a garage or barn. The proposed addition is in keeping with the style and structures in the neighborhood. For these reasons, there is no fair and substantial relationship between the general public purposes of Section 5.1.2 and the specific application of that provision to this property."

ii) The proposed use is a reasonable one. "With regards to the Variance from Section 4.2, the proposed use of permitting the construction of an addition on a 14,960 square foot lot as opposed to 15,000 is reasonable because the deficiency is barely measurable and does not impact abutters with regards to overdevelopment of the lot or placement of a structure too close to lot lines.

With regards to the Variance from Section 5.1.2, the proposed use is a reasonable one because it seeks to expand a residence to reasonably accommodate the family that currently lives there and families who would look to purchase in the area. The existing structure is a nonconforming structure built in 1850, before there were zoning and planning ordinances in effect in Hopkinton. The existing residence consists of 1,288 square feet. As shown on the preliminary plans, the proposed addition would seek to add extra living space, a garage, two bedrooms, and one full bath, all within the required building envelope for a VR-1 district. The addition would be entirely for residential use, in keeping with the district.

The Applicant is married with four children, and understandably in need of additional space to raise his family. The existing residence is one of the smallest residences in terms of square footage in the immediate vicinity, with surrounding properties ranging from about 1,650 to 3,000 square feet; therefore, the total square footage of the proposed and the existing residence would be within the range of other properties in the neighborhood. As Hopkinton is an extremely family-oriented community, the addition to the existing property would also likely be appealing to potential purchasers looking for a family home in the area. As the proposed addition would keep the existing residence and addition within the required building envelope while achieving these objectives, the proposed use is a reasonable one.

A similar Variance was previously granted by this Board in 2018. All factors remain the same in this current application, though now both proposed lot line adjustments have been finalized. A lot line adjustment with on the abutter required lengthy court action and then was further delayed by COVID related mortgage processing difficulty, which led to the expiration of the 2018 Variance prior to the commencement of building the approved addition.

In addition to the above-described reasons as to why literal enforcement results in unnecessary hardship, an additional reason remains. The Applicant would likely be able to demolish the existing residence and construct an entirely new residence within the building envelope that could result in a building larger than the existing residence and proposed addition. Literal enforcement of the Ordinance would result in unnecessary hardship on the Applicant to level and erect a larger, new structure."

Chairman Rinden opened and closed the public hearing portion of the meeting as no one wished to give public testimony.

Board members agreed that the request is the same as was approved in 2018, except for the lot size, which was adjusted as a condition of the original approval.

Ms. Scheinman confirmed with the property owner that there are no substantial changes to the addition from what was approved in 2018.

Andy Locke, seconded by Jessica Scheinman, moved to **APPROVE** Application #2021-7 as presented. Motion passed in the affirmative (Locke – in favor, Scheinman – in favor, and Rinden – in favor). The Applicant successfully addressed all criteria to be granted a Variance as outlined in Section XV of the Zoning Ordinance.

Reasons for approval:

- 1) Property Values:
 - There was no evidence that surrounding property values would diminish because of the existing nonconforming lot size, existing nonconforming setback.
 - The residence was constructed before zoning in Hopkinton.
- 2) Public Interest:
 - There was no evidence that the public's interest would be negatively affected.
 - Residences in the neighborhood appear more nonconforming in setback and are larger in size than the Applicants.
- 3) Substantial Justice:
 - The public would realize no appreciable gain from denial of the Variance.
 - The Applicant's residence is very small and less nonconforming when compared to other residences in the neighborhood.
- 4) Spirit and Intent:
 - The residence will continue to be utilized in the same manner.
 - The nature and character of the surrounding properties will not change as the abutting properties are used for residential purposes.
 - Requiring the Applicant to limit the size of the addition to not more than fifty percent of the existing residence is not necessary in order to give full effect to the purpose of the Zoning Ordinance as the residence will be of a similar size and characteristics of other residences in the neighborhood.
- 5) Unnecessary Hardship:

- Literal enforcement of the Ordinance will result in an unnecessary hardship as the Applicant would need to demolish and reconstruct the residence in order to construct the proposed addition.

III. Approval of Meeting Minutes and Notice of Decision for April 6, 2021.

Andy Locke, seconded by Jessica Scheinman, moved to **APPROVE** the Minutes of April 6, 2021, as written. Motion in the affirmative (Locke – in favor, Scheinman – in favor, and Rinden – in favor).

Andrew Locke, seconded by Jessica Scheinman, moved to **APPROVE** the Notice of Decision of April 6, 2021, as written. Motion in the affirmative (Locke – in favor, Scheinman – in favor, and Rinden – in favor).

IV. Adjournment. Andy Locke, seconded by Jessica Scheinman, moved to **ADJOURN** the meeting. Motion in the affirmative (Locke – in favor, Scheinman – in favor, and Rinden – in favor). The meeting adjourned at 7:42 PM. The next scheduled meeting of the Board is at 5:30 PM on Tuesday, June 8, 2021.

Karen Robertson
Planning Director

Ordinance §15.10: "Representations made at the public hearing or material submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking, or uses which are subject to regulations pursuant to subsection 15.8.2 or 15.8.3 shall be deemed conditions upon such special exception or variance."

Note: Due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Ordinance #12, pursuant to Executive Order 2020-04, the Board was authorized to meet electronically. There was no physical location to observe and listen contemporaneously to the meeting, which was authorized pursuant to the Governor's Emergency Order. In accordance with the Emergency Order, public access to the meeting by video and telephone was provided. All members of the Board had the ability to communicate contemporaneously during this meeting through the Zoom platform, and the public had access to listen contemporaneously and, if interested, participate in the meeting through the website: <https://zoom.us/j/95385796402> or by dialing the following phone #: 1-929-205-6099 and using Meeting ID: 953 8579 6402. A mechanism for the public to alert the Board during the meeting if there were problems with access was provided.