



Town of Hopkinton Planning Department

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HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES MAY 3, 2022

The Hopkinton Zoning Board of Adjustment held a meeting on Tuesday, May 3, 2022, at 5:30 PM in the Hopkinton Town Hall, 330 Main Street, Hopkinton. Members present: Chairman Daniel Rinden, Andrew Locke, Jessica Scheinman, Jonathan Cohen, and Kristen Cummings. Staff present: Planning Director Karen Robertson.

I. Roll Call. Cummings, Cohen, Scheinman, Locke, and Chair Rinden.

II. Applications.

#2022-03 Deborah Follansbee Special Exception from Zoning Ordinance 3.6.H.10 to operate a nature-based preschool program at property owned by Patricia and Joab Owen (Owen Farm), 580 Brockway Road, Tax Map 266, Lot 26.1, R-4 district.

Mrs. Follansbee of District 5 Road, Concord, has a degree in early childhood education and has operated her own children's learning center for up to 30 children in Concord. She would now like to offer a nature-based preschool program at the Owen Farm. The program would be nature-related, from reading materials, group discussions, and learning through play. The program would operate three days a week and anticipates on Tuesdays, Wednesdays, and Thursdays between 8:00 AM – 12:30 PM for children ages 3 – 6 who are not in a full-day school program. The estimated group size is 10 – 15 children. During inclement weather, they will use the existing yurt. There would be no changes to the property.

The Applicant's response to the criteria for a Special Exception as outlined in Section XV of the Zoning Ordinance:

- 1) Standards provided by this Ordinance for the particular use permitted by Special Exception.** "A home-based child daycare (preschool program) is permitted by Special Exception per Table of Uses 3.6.H.10 and is defined under Section II of the Zoning Ordinance."
- 2) No hazard to the public or adjacent property on account of potential fire, explosion, or release of toxic materials.** "There will be no hazards or potential for fire, explosion, or release of toxic materials. The proposal is to provide a nature-based preschool program where the children learn from reading, group discussion, and play involving nature. The preschool program will be licensed by the State of NH. In addition, the Health Officer and Fire Chief are required to inspect and approve before issuance of a license."

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- 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 would be no detriment to property values or change in the characteristics of the neighborhood. The Owen farm is an ideal location as the children will be surrounded by acres of fields and woods. The existing structure (yurt) will be utilized primarily as a shelter from inclement weather. There is sufficient parking and an area for drop-off and pick-up. Anything brought into the fields/woods will be brought out at the end of the day."
- 4) **No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.** "There would not be a substantial increase in traffic congestion. While it is anticipated that there would be an increase in traffic, possibly 10-vehicles, it should not create congestion in the area. On Tuesday, Wednesday, and Thursdays, during the 8:00 AM drop off and at 12:30 PM for pick-up."
- 5) **No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.** "There would be no demand on municipal services. There is a composting toilet for our use (sewer), and the children will be bringing their own water bottles each day. Again, anything brought into the fields/woods will be brought out at the end of the day."
- 6) **No significant increase of stormwater runoff onto adjacent property or streets.** "There are no changes to the property being proposed; therefore, there would be no increase in stormwater runoff."
- 7) **An appropriate location for the proposed use.** "The Owen farm property is an ideal location for a preschool nature program. The children would be surrounded by acres of fields and wooded areas, all of the natural world."
- 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.** "Again, the Owen farm is an ideal location with many areas for the children to explore. The proposed preschool program would not be visible or heard from neighboring properties."
- 9) **In the public interest and the spirit of the Ordinance.** "The Town of Hopkinton does not have another nature preschool of this type. I feel there would be a public interest. The use is permitted by Special Exception."

Mrs. Follansbee reiterated the need for a license from the State of New Hampshire that will include inspections from the Fire Chief and Health Officer. As part of their safety measures, she is considering using walkie-talkies. Additionally, at the request of the Fire Chief, when not at the yurt, a sign will be posted giving them notice as to where

they are on the property. Furthermore, the yurt will have smoke and carbon monoxide detectors, a fire extinguisher, and an exit sign.

Mrs. Scheinman noted that the Zoning Ordinance restricts the number of children to between 10 - 12 preschool age and five school-age children. Mrs. Follansbee agreed to the limitation. When asked about the program's seasons, she said the Summer and maybe Fall.

Mr. Cohen inquired about whether there is a need for the Applicant to reside at the property. A brief discussion ensued, with the Board unanimously agreeing that the Applicant does not need to live at the property. If residing at the property was a factor, there would be language in the Ordinance indicating so, similar to a Home Business.

The Board considered whether the use category, home childcare, was the appropriate use listed in the Zoning Ordinance or whether the use should be considered recreational. Following discussions, the Board unanimously agreed that home childcare is the correct category in the Table of Uses.

Andrew Locke moved to **APPROVE** Application #2022-03 as presented (maximum of 12 preschool children plus five (5) children enrolled in a full-day school program) subject to all local, state, and federal licensing requirements. Jessica Scheinman seconded the motion. The motion passed unanimously. Roll Call vote: Locke – in favor, Cummings – in favor, Cohen – in favor, Scheinman – in favor, and Rinden – in favor. The Applicant successfully addressed all criteria to be granted a Special Exception as outlined in Section XV of the Zoning Ordinance. All members agreed that the use is appropriate for the location, and the proposal addresses the Town's spirit and intent, which is to encourage the enjoyment of nature.

#2022-05 Matthew & Pimsiree Bryant Variance from Zoning Ordinance 3.12.4 (e) to permit the total area of an Accessory Dwelling Unit (ADU) to exceed 1,400 square feet, 737 Putney Hill Road, Tax Map 238, Lot 94.1, 94.2, R-2 district.

A brief discussion ensued concerning the fact that a two-family dwelling is permitted without a Special Exception. The differences between an Accessory Dwelling Unit and a two-family dwelling were discussed. As a result, the Applicant withdrew the application without prejudice.

At this time, Chairman Rinden recused himself from the Board. Mr. Locke became the Acting Chair of the meeting.

#2022-06 Daniel Rinden Variance from Zoning Ordinance 4.2 to construct an attached porch with less than the required sideline setback, 755 Rollins Road, Tax Map 260, Lot 7, R-4 district.

Mr. Rinden explained that Gideon Gould built his house between 1763 – 1765. Mr. Rinden's family is the seventh generation to own the home in the past 250 years.

The Board reviewed photographs of the home, a site plan showing the location of an existing entryway outside the kitchen, and a plan of the Kimball property that is land only, which is on the same side of the property as the proposed porch. The abutting Kimball property consists of high tension powerlines and a conservation easement. As a result, the property cannot be built on or subdivided.

Mr. Rinden's property consists of 5.04 acres. Thirty-nine square feet of the proposed 189 square foot porch will encroach into the sideline setback.

Mr. Rinden's written response to 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:**
"Farmer's porches are in keeping with the character of the other homes on Rollins Road. Only the outer 2'8" would be visible from the road due to the bump out of the house and the lilac hedge on the other side of the driveway. Only one corner of the porch will be in the setback totaling 39.6 square feet or 21 percent of the total porch area. The addition of the porch would increase the value of the house and, in turn, the other houses in the neighborhood."
- 2) Granting the Variance would not be contrary to the public interest because:**
"The purpose of this question is to promote the 'health, safety, or general welfare of the community' by enacting an ordinance which would protect adjoining properties from building too close to the lot line. In this situation, the adjoining lot is a hayfield with a conservation easement and powerlines. Approving this Variance will not limit anyone's light and air by the structure being proposed and is not contrary to the public interest."
- 3) By granting the Variance, substantial justice would be done because:** "It would allow us to more thoroughly enjoy our home and the surrounding countryside while having no impact on neighbors."
- 4) The spirit and intent of the Ordinance will not be broken by granting the Variance because:** "The spirit and intent of the Ordinance is to control the crowding of building too close to neighbors. Due to the small encroachment of the side setback and the fact that the adjoining parcel is a field with a conservation easement and powerlines, the spirit and intent of the Ordinance will not be broken."
- 5) Literal enforcement of the Ordinance results in unnecessary hardship.**
 - a) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:**
 - i) No fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property.** "The strict enforcement of the Ordinance will benefit no one and will deny me the full enjoyment of my home. Narrowing the porch is

not an option due to the depth of the bulkhead, and reducing the length of the porch would make the porch too short to use. There is currently a porch on the other side of the house. Constructing the porch on the driveway side will make the house more symmetrical. Due to the surrounding vegetation and the bump out of the house, the porch will be mostly concealed."

ii) The proposed use is a reasonable one. "Farmer's porches are common on residential structures in the neighborhood and are in keeping with the character of the house."

b) If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is, therefore, necessary to enable a reasonable use of it. "The house is unique in that it was built by Mr. Gideon Gould circa 1765. The house was built in the southeast corner of a 50-acre lot to maximize the available farmland and because the spot was at the top of the hill. Unfortunately, the building was not built parallel to the side lot line, a stonewall running North and South. Due to the wording of the conservation easement on the abutting parcel, a lot line adjustment is not possible."

Acting Chair Locke opened public testimony and read an email, dated May 3, 2022, from abutters Elmar and Suzanne Woetzel in support of granting Mr. Rinden a Variance.

There being no further comments, Acting Chair Locke closed public testimony.

Ms. Scheinman believed that the Applicant met all criteria to be granted a Variance. She noted that the driveway would separate the porch from the side property line, and the powerlines and conservation easement on the abutting property preclude development on the property. Acting Chair Locke and Mr. Cohen concurred.

Jessica Scheinman moved to **APPROVE** Application #2022-06 as presented. Kristen Cummings seconded the motion. The motion passed unanimously. Roll Call vote: Locke – in favor, Cummings – in favor, Cohen – in favor, and Scheinman – in favor. The Applicant successfully addressed all criteria to be granted a Variance as outlined in Section XV of the Zoning Ordinance. Overview of reasons for approval:

1) Property Values:

- No evidence surrounding property values would diminish because of the porch's 39.6 square feet or 21% encroachment into the setback.
- The existing driveway is closer to the side property line.
- The adjacent lot is a hayfield with a conservation easement and powerlines, preventing future residential development.

2) Public Interest:

- No evidence that the public's interest would be negatively affected.
- The non-conforming portion of the porch, 39.6 square feet, will be separated from the side lot line by way of the existing driveway.

- 3) Substantial Justice:
 - The public would realize no appreciable gain from denial of the Variance.
 - A large portion of the porch will meet the setback requirements.
- 4) Spirit and Intent:
 - The residence will continue to be utilized for residential purposes.
 - The nature and character of the surrounding properties will not change as the property in question will continue to be used for residential purposes, the same as abutting properties.
 - The conservation easement on the adjacent lot prevents future residential development; therefore, that property's nature and characteristics will not change.
 - Limiting the size of the porch to only that part that conforms to the setback is unreasonable given the location of the existing bulkhead and side entrance to the residence. It is not necessary to give full effect to the purpose of the Zoning Ordinance, as there will be no impact on neighboring properties.
- 5) Unnecessary Hardship:
 - Literal enforcement of the Ordinance will result in unnecessary hardship since the Applicant would only be permitted to construct a portion of the porch with no direct access from the residence.
 - The residence is unique in that Mr. Gideon Gould built it circa 1765. The residence was not built parallel to the side lot line.
 - The conservation easement on the abutting parcel prohibits the possibility of a lot line adjustment.

Mr. Rinden rejoined the Board as Chair.

III. Minutes and Notice of Decision of April 5, 2022. Review deferred to the June 7, 2022 meeting.

IV. Other Business.

- (a) Revised Rules of Procedure (Draft) – Review deferred to the June 7, 2022 meeting.
- (b) Cedar Street Holdings, LLC – Mrs. Robertson presented two site plans of the proposed deck at 16 Cedar Street. The first plan showed the proposed deck approved by the Board in January. The second, a revised plan to be presented to the Planning Board on May 10, showed a revised deck configuration.

Due to the differences in the deck configuration, setbacks, and river reference line, the Board agreed that the Applicant would have to reapply for a Variance. It was noted that representations made and materials submitted to the Board by an applicant are conditions of approval, noted in section 15.10 of the Zoning Ordinance.

V. Adjournment. Andrew Locke moved to adjourn the meeting at 7:05 PM. Jessica Scheinman seconded the motion. Motion passed unanimously. The Board's next scheduled meeting is Tuesday, June 7, 2022.

Karen Robertson
Planning Director

Subject to review and approval.

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."

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