



# Town of Hopkinton

## Planning Department

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### HOPKINTON ZONING BOARD OF ADJUSTMENT

#### MINUTES

JULY 12, 2023

The Hopkinton Zoning Board of Adjustment held a meeting on Wednesday, July 12, 2023, at 5:30 PM in the Hopkinton Town Hall, 330 Main Street, Hopkinton. Members present: Chair Daniel Rinden, Jessica Scheinman, Eric Buck, Andy Locke, and Kristen Cummings (via Zoom). Staff present: Planning Director Karen Robertson.

- I. Call to Order/Roll Call.** A motion was made by Jessica Scheinman, seconded by Erick Buck, to allow Kristen Cummings to join the meeting remotely. Motion carried in the affirmative.

Roll Call of members present: Scheinman, Buck, Locke, Cummings, and Rinden.

#### **II. Applications.**

**#2023-07 Thomas Morin** Special Exception to permit a residential driveway in the Wetland Conservation Overlay District. The property is owned by Thomas M. Morin Revocable Trust, located off Briar Hill Road, Tax Map 250, Lot 11, R-4 district, per Zoning Ordinance 12.7.2.

The Applicant postponed the review of the application to the next scheduled meeting.

**#2023-06 T. F. Bernier, Inc. – Timothy Bernier** Special Exception to permit a residential driveway in the Wetland Conservation Overlay District (WCOD). The property is owned by Brayshaw Asset Management, LLC, located off Briar Hill Road, Tax Map 240, Lot 51, R-4 district, per Zoning Ordinance 12.7.2.

Tim Bernier of T.F. Bernier, Inc. addressed the Board on behalf of his clients, Ben and Kim Brayshaw, who were also present. Mr. Bernier reviewed the plans showing the access road with portions outside and inside the Conservation District. The wood road has been in existence since at least 1927. The proposal is to impact a wetland at two locations. When considering the most suitable location for the wetland crossings, Mr. Bernier explained that several factors were considered, such as safety, environmental impact, the steep slopes, and the requirements outlined in the Driveway Regulations.

The Applicant's response to 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**

Approved: 09/02/2023.

**exception.** " The request is being made in accordance with 12.7.2(a) Special Exceptions: to allow an access way (to the upland building portion of Lot 51)."

- 2) **No hazard to the public or adjacent property on account of potential fire, explosion, or release of toxic materials.** "The proposed driveway will not produce or cause the release of any toxic materials and presents no risk of fire or explosion."
- 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 materials.** "The proposal is simply to construct a new driveway over the historically used access. The crossings of the WCOD will occur at the locations of the current crossings."
- 4) **No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.** "The driveway has safe sight distance in both directions. This is a single-family residential driveway. The construction in the WCOD will not result in any traffic congestion."
- 5) **No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.** "The driveway is on private property and will be maintained by the landowner. The driveway impacts to the WCOD will not result in any requirement for municipal services of any kind."
- 6) **No significant increase of stormwater runoff onto adjacent property or streets.** "The crossings will be made with properly engineered culverts, designed to pass stormwater at its naturally occurring rate and will not either increase or decrease runoff from the property."
- 7) **An appropriate location for the proposed use.** "The driveway is being constructed in the same location as the historical access to the property, in use for over 100 years, which limits impacts in the WCOD. The reconstruction of the driveway with properly engineered culverts and side slopes will provide a safe, stable, sustainable access. The driveway is designed to be consistent with state law and Best Management Practices."
- 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 crossing will have no effect on residents or others in the area. The new culverts will restore a proper hydrologic connection in the wetland."
- 9) **In the public interest and in the spirit of the Ordinance.** "The crossing provides safe and appropriate access to the upland, non-conservation areas of their property. The uses of the non-conservation area on the lot will be consistent with all state and local ordinances and/or regulations."

Ms. Scheinman confirmed that the wetland crossing is to access a future single-family residence. Mr. Bernier replied yes.

Mr. Buck inquired about the utilities to the future residence and whether they would be located under or above ground. In response, Mr. Bernier explained that the utilities would be above ground when passing over the wetlands and then change underground to the residence.

Board members and Mr. Bernier discussed the differences between the two wetland crossings, such as the fact that the existing wetland crossing is larger than the new crossing proposed. Also discussed was the fill, slope, and the design of a switchback in the lower crossing. Again, Mr. Bernier explained the various profiles he had developed for different locations for the driveway. Each time, impact on the wetland was necessary. Mr. Bernier believed the driveway design presented has the smallest impact on the wetlands.

When discussing the wetland application process for the NH Department of Environmental Services (NHDES), Mr. Bernier noted that it was recently brought to his attention that NH Fish and Game may require a 36" reinforced concrete pipe (RCP) at the upper crossing and two 18" RCPs at the lower crossing. However, Mr. Bernier noted that NHDES had not finalized their application review.

Chairman Rinden opened public testimony.

Bonnie Christie of 302 Smithfield Road and Katherine Mitchell of 1677 Bound Tree Road noted that they are members of the Conservation Commission but were not speaking on behalf of the Commission. As residents of Hopkinton, they hoped that the Applicant would amend the application by providing larger culverts that would better address the passage or connectivity of the wetlands for the wildlife in the area.

Ms. Christie noted that the property has one of the most diverse types of wildlife, including forested areas, plants, and five animals. The area is considered one of the most valuable areas in the region when looking at the NH Wildlife Action Plan. However, a significant portion of the property has been altered by heavy logging, which has caused fragmented rather than contiguous wetlands, making it more difficult for the animals living in the wetlands to migrate from one spot to another.

At this time, Ms. Christie and Ms. Mitchell asked that the Board deny the application, believing that the project would violate the spirit and intent of the Ordinance. In particular, Special Exception criteria one, two, six, seven, and eight. With what Ms. Christie believed to be small changes, she suggested that the owners can achieve their goal of building a residence on the property. However, larger culverts, such as box culverts or arched culverts, should be installed to restore the wetlands' connectivity.

Secondly, Ms. Christie expressed concerns about the owners having a paved driveway as asphalt pavement contains carcinogenic petroleum running into the wetlands. She recommended that the Board require the driveway to remain gravel if the application is

approved. If it is to be paved, there should be a mechanism to capture and divert the petroleum.

A final concern was the mapping of the wetlands. Ms. Christie noted that the Ordinance requires that all wetlands be shown. She asked that Mr. Bernier be required to map the remainder of the wetlands utilizing aerial and drone information, noting that the town relies on the information for its GIS maps.

Katherine Mitchell addressed the Board, echoing comments made by Ms. Christie. Ms. Mitchell noted that the Conservation Commission's recent Natural Resource Inventory shows that the area in question contains the highest-ranked habitat in the region.

In rebuttal, Mr. Bernier stated that he is familiar with New Hampshire's wildlife biology, wetlands, and surveying. The proposal is for a residential drive for a single-family residence, which is considered a "low" impact that the land can support. He believed the proposed culvert sizes were adequate for salamanders and turtles to cross through. Again, Mr. Bernier noted that the crossing is to access a single-family residence with an estimated number of ten vehicle trips per day.

Lastly, Mr. Bernier disagreed with Ms. Christie's statements concerning the effects of asphalt on wetlands, noting that many of New Hampshire's roads are paved.

Mr. Buck noted that according to Mr. Bernier, the NH Fish and Game's recommended change in culvert size was a preliminary review. The culvert recommendation may not be the only change during the final review.

Owner Ben Brayshaw addressed the Board, indicating that he is trying to access the home site with the least impact on the wetlands.

Chair Rinden read an email received from Hopkinton Conservation Commission (HCC) Chair James Newsom indicating that the Commission met with Tim Bernier regarding the proposed dredge and fill for two wetlands crossings. "Following the presentation and robust discussion, the HCC determined that there are no major concerns with the proposed project. However, the HCC requests that the wetlands on the entire property be mapped using the aerial interpretation method used for the current application."

There being no further public comment, Chair Rinden declared public testimony closed.

During deliberations, members of the Board discussed the criteria for a Special Exception outlined in Section XV of the Ordinance, with Chair Rinden noting that this is not the first time an applicant has requested permission to cross a wetland for access to a future single-family home. Mr. Locke agreed, recalling an application with many wetland crossings for drive access off Crowell Road.

The Board discussed the extent of the NHDES review and the public's concern with culvert sizing and the use of asphalt should the drive be paved. It was agreed that the NHDES and Conservation Commission would be more suitable to determine the appropriate sizes and types of culverts because they deal with wetlands more regularly

than the Zoning Board of Adjustment. Regarding concerns about the petroleum from asphalt, Board members recognized that it is an important discussion but part of a larger discussion that would be beyond the scope of the Board's authority.

Chair Rinden stated that the Zoning Board of Adjustment's review of the proposal is narrow as it only relates to the criteria to be granted a Special Exception. Board members concurred.

Ms. Scheinman restated that the review and recommendations of the NHDES and Conservation Commission are important since they are more familiar with wetlands. She then noted that the access is to a single-family residence rather than a subdivision development; therefore, if approved, it is understood that any change in the number of units would have to be reviewed and approved by the Board.

The Board unanimously agreed that access, if granted a Special Exception, would be to a single-family residence and a future accessory dwelling unit.

Andy Locke moved to **APPROVE** Application #2023-06 as presented with the following conditions:

- 1) Driveway access is only to a single-family residence and an accessory dwelling unit, and
- 2) Approval is subject to the approval of other regulatory authorities.

Eric Buck seconded the motion. The motion passed unanimously (Locke, Buck, Scheinman, Cummings, and Rinden). The Applicant successfully addressed all criteria to be granted a Special Exception as outlined in Section XV of the Zoning Ordinance.

The decision is based on the following findings:

- The use is specified as permitted by Special Exception in Section XII Wetlands Conservation District (Overlay) of the Hopkinton Zoning Ordinance.
- Based on representations and materials submitted by Applicant Tim Bernier, Licensed Land Surveyor, and Certified Wetlands Scientist, granting the Special Exception would not be contrary to the public interest and convenience or diminish the surrounding properties' values.
- The driveway is to access one residence and accessory dwelling unit; therefore, there will be no change in the essential characteristics of the residential neighborhood.
- Based on representations made by the Applicant, the locations of the wetlands crossings are appropriate when compared to other locations.
- The New Hampshire Department of Environmental Services Wetlands Bureau requires a Dredge and Fill Wetlands Permit.
- The Conservation Commission's request that wetlands on the remaining acreage be mapped using the "aerial interpretation method" was completed.
- Installing culverts to cross wetlands to access a single-family residence and accessory dwelling unit will not create a hazard to the public or adjacent property as the driveway will not produce toxic materials or present a risk of fire or explosion.

- The driveway access to a single-family residence and accessory dwelling unit will not create a traffic safety hazard or substantially increase traffic congestion.
- Impacting 5,905 square feet of wetlands on a 121-acre lot to access a single-family residence and accessory dwelling unit will not adversely affect the health and safety of residents or be detrimental to the use or development of adjacent or neighboring properties.
- It is anticipated that culvert installation will restore the wetland's hydrologic connection that was disturbed during timber cutting.

**#2023-08 Robert Saunders** Special Exception to permit a residential driveway and associated utilities in the Wetland Conservation Overlay District. The property is owned by Robert & Kimberly Saunders, located off Hopkinton Road, Tax Map 240, Lot 12.2, R3/R-4 district, per Zoning Ordinance 12.7.2.

The Applicant was absent; therefore, will need to reapply.

**I. Minutes and Notice of Decision of June 6, 2023.**

Eric Buck, seconded by Jessica Scheinman, moved to **APPROVE** the June 6, 2023, meeting Minutes. Motion carried in the affirmative (Locke, Buck, Scheinman, Cummings, and Rinden).

Eric Buck, seconded by Andy Locke, moved to **APPROVE** the June 6, 2023, Notice of Decision. Motion carried in the affirmative (Locke, Buck, Scheinman, Cummings, and Rinden).

**II. Adjournment.** Chair Rinden, seconded by Jessica Scheinman, moved to adjourn the meeting at 7:15 PM. Motion carried in the affirmative (Locke, Buck, Scheinman, Cummings, and Rinden).

Karen Robertson  
Planning Director

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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."