



# Town of Hopkinton Planning Department

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## HOPKINTON PLANNING BOARD MINUTES NOVEMBER 14, 2023

Members Present: Chair Michael Wilkey, Vice Chair James Fredyma, Jane Bradstreet, Clarke Kidder, Rich Steele, Robert Dapice, and Alternates Molly Hardenbergh and Samuel Durfee. Members absent: Ex-Officio Thomas Lipoma and Alternate Emily Bouchard. Staff Present: Planning Director Karen Robertson.

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- I. **Call to Order/Roll Call/Seating of Alternates.** Chair Wilkey called the meeting to order at 5:30 PM in the Hopkinton Town Hall, 330 Main Street, Hopkinton, NH, welcoming the newest member of the Planning Board, Samuel Durfee. With the introduction of Mr. Durfee and the Planning Board members, Chair Wilkey designated Alternate Molly Hardenbergh as a voting member and declared a quorum present.
- II. **5:30 PM - Zoning Amendments/Public Hearing.** Chair Wilkey opened the scheduled public hearing to receive input on proposed zoning amendments. This was the second of three public hearings. The final hearing will be held on Tuesday, December 12. A copy of the full text of the draft amendments, including supporting documents, is available in the Planning Office at Town Hall and on the Town website: <https://www.hopkinton-nh.gov/planningbuilding>.

Chair Wilkey noted that the Economic Development Committee has withdrawn their recommended zoning amendments. As a result, the public hearing is focused on amendments proposed by the Planning Board as follows:

- A. Amend Section II, the definition of "Lot Line, Front," clarifying the designation of a front lot line on a corner lot.

Mrs. Robertson explained that the last sentence in the definition of "Lot Line, Front," allowing owners to designate the front lot line when on a corner lot, would be omitted. The primary purpose of this amendment is to address a conflict in the Zoning Ordinance between the definition and the Setback Graphic. Additionally, Mrs. Robertson highlighted that the Setback Graphic would be replaced with a new illustration aimed at clarifying the distinction between front, side, and rear yard setbacks.

Members of the Planning Board recommended that the graphic be further refined to better convey the necessary information. Mrs. Robertson will work on the revisions and ensure that the updated map is ready for public notice before the final public hearing scheduled for December 12.

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*Subject to review and approval.*

- B. 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.

Mrs. Robertson provided an overview of the proposed amendment, emphasizing that it seeks to eliminate the requirement for owners of contiguous land to merge lots for a nonconforming lot to be built upon. The intended purpose of the amendment is to facilitate compliance with NH RSA 674:39-aa, specifically addressing the Restoration of Involuntarily Merged Lots.

- C. Amend Section XV, Zoning Board of Adjustment.

Mrs. Robertson addressed the proposed amendments to Section XV, Zoning Board of Adjustment, emphasizing that the changes are intended to align the section with the powers and duties granted to the Zoning Board of Adjustment as outlined in NH RSA 674:33.

- D. Amend Section XVII, Floodplain Development Ordinance.

Mrs. Robertson presented proposed amendments to Section XVII, Floodplain Development Ordinance. These changes are deemed necessary to ensure compliance with the requirements of the National Flood Insurance Program (NFIP). The amendments are being submitted based on the recommendation of the NH Office of Planning and Development.

The Planning Board acknowledged the importance of aligning Section XV with the statutory requirements and Section XVII with the requirements of the NFIP.

Members of the public were invited to share their thoughts and ask questions regarding the proposed amendments. With no public comments, Chair Wilkey declared the public hearing closed. The proposed amendments will proceed to the final public hearing to be held at 5:30 PM on Tuesday, December 12, 2023, at Town Hall. The decision to move the amendments forward to the voters will be made following the conclusion of the public hearing.

### **III. Applications/Public Hearings.**

Chair Wilkey opened the meeting by announcing that the Planning Board has consulted with the board's attorney regarding the board's ability to review agritourism activities. It was clarified that, based on the consultation, House Bill 252 allows the Planning Board to review noise related to agritourism.

Members engaged in a brief discussion to further understand the extent of the Planning Board's authority in reviewing noise associated with agritourism activities. Chair Wilkey provided a summary of changes according to House Bill 252. The summary was sourced from information provided by the New Hampshire Municipal Association and the New Hampshire Office of Planning and Development. The intention was to ensure a

clear understanding among board members regarding the implications and modifications brought about by House Bill 252.

Summary of changes as follows:

“HB 252 alters 31:39, I(n) to read as follows: (n) Regulating noise, except that no “quiet hours” ordinance or bylaw that attempts to regulate noise from activities related to farms, agriculture, and farming as defined in RSA 21:34-a shall be enforceable within a town. This exception shall not apply to agritourism as defined in RSA 21:34-a, II(b)(5). Existing RSA 674:32-c, II created a special process for land use boards to grant “waivers” of “noise” and other local regulations. RSA 674:32-c, II provided that if local regulations are “unreasonable in the context of an agricultural use or activity,” including by effectively prohibiting the use or activity, the board must grant the waiver unless it “would have a demonstrated adverse effect on public health or safety, or the value of adjacent property.” Now, no such waiver process is necessary for agricultural activity (except for agritourism). Of note RSA 674:44, II(n) still allows planning boards to adopt site plan review regulations which regulate noise including from farms, agriculture, and farming. This change goes into effect August 19, 2023.”

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

Site Plan Review to host live music as a part of the agritourism activities at Gould Hill Farm. *Note: On September 12, 2023, the Planning Board accepted the application for consideration, determined that the application is not a Development of Regional Impact, and continued the application to allow time to consult the board's attorney. The application was continued on October 17, 2023, at the Applicant's request.*

Owner Tim Bassett provided testimony, reiterating points shared at the September meeting. Mr. Bassett highlighted that he has been operating Gould Hill Farm for the past 15 years, emphasizing the growth of retail and the enhancement of the "customer experience," focusing on agritourism. Live music was introduced at the farm in 2010, and Mr. Bassett expressed its invaluable contribution to the overall customer experience. He detailed the positive impact of live music, noting that it has contributed to longer stays at the farm. While enjoying homemade cider, food, horse carriage rides, and sitting at picnic tables, customers have benefited from the addition of live music. This year will be the farm's third season hosting outdoor live music events. The live music is scheduled to begin Memorial Day weekend and will take place on Fridays and Saturdays between 4:00 PM and 7:00 PM, as well as on Sundays from 3:00 PM to 6:00 PM, weather permitting. Specific events at Gould Hill Farm, where live music is featured, include Maple Weekend, Blueberry Kickoff, and Peach Kickoff. These events are held on Saturdays and Sundays during daytime hours, from 1:00 PM to 4:00 PM. Live music will continue to take place indoors up to Christmas.

Chair Wilkey opened public testimony.

Leanne Vance, representing businesses in the downtown area, addressed the Planning Board. Ms. Vance expressed concerns regarding the potential music restriction at Gould

Hill Farm, emphasizing that such restrictions could have detrimental effects on local businesses. She explained that the music at the farm is a significant draw for visitors, and without it, there might be a decrease in the number of people going to Gould Hill Farm and other local businesses. Ms. Vance highlighted the mutual support between the farm and businesses in Contoocook Village, each directing customers to the other.

Arnold Coda of 400 Gould Hill Road addressed the Planning Board, expressing his concerns about the traffic caused by activities at Gould Hill Farm. He inquired about the possibility of discussing traffic-related issues. Chair Wilkey clarified that the board's authority is limited to live music. Mr. Coda expressed specific concerns about the duration and volume of live music, referring to the town's Noise Ordinance, which establishes limits for the decibels of noise that can be produced. He emphasized the impact of live music on the quality of life for residents in the vicinity of Gould Hill Farm.

David Lewine of 97 Robert Gould Road, a resident of Hopkinton for the past 12 years, also addressed the board. He voiced frustration with the farm's business model and specifically mentioned his concerns about outdoor music being played every Friday to Sunday. Lastly, Mr. Lewine noted the significance of respecting the existing Noise Ordinance, reminding the Planning Board that three components within the ordinance should be considered in evaluating the impact of live music activities.

Jeff Fitzgerald of 596 Gould Hill Road, the closest abutter, concurred with the concerns raised by Mr. Coda and Mr. Lewine regarding live music activities at Gould Hill Farm. Mr. Fitzgerald expressed a desire for the farm to succeed and noted that while there have been discussions with Mr. Bassett about the noise, a satisfactory solution has yet to be reached. He highlighted the persistence of noise issues even with triple-pane windows.

Larry Donahue of 558 Gould Hill Road read a letter expressing his support for the application of Gould Hill Farm. Mr. Donahue, a resident of Hopkinton for 27 years, recounted the history of the farm and the positive impact of the Bassett family's ownership. He noted that the noise produced from the farm is minimal compared to neighborhood noise and suggested that the farm, having been established some time ago, may be grandfathered.

Michelle Bickford of 495 Gould Hill Road supported Gould Hill Farm's application. Ms. Bickford expressed her positive views on the cultural and economic contributions of Gould Hill Farm to the community since the farm plays a crucial role in bringing in tourism and providing employment opportunities.

Ian Hart of 1264 Hatfield Road addressed the Planning Board in favor of Gould Hill Farm's application. Mr. Hart suggested that the farm is a "point of pride" in Hopkinton and expressed awareness of the challenges faced by farms today.

With no further public comments, Chair Wilkey declared the public hearing portion of the meeting closed.

Discussion ensued regarding the impact of indoor and outdoor music activities at Gould Hill Farm, with Ms. Bradstreet suggesting that indoor music might be less bothersome.

Ms. Bradstreet proposed repositioning where the musicians stand or finding a new location for the outdoor music to mitigate disturbances.

The board reviewed relevant sections of the Zoning Ordinance, focusing on Section 5.5 Noise Control, which allows the retention of an experienced acoustic engineer approved by the town before construction or continued operation of any facility that might reasonably be expected to produce objectionable noise.

Chair Wilkey responded to a comment during public testimony regarding the potential grandfathering of activities at Gould Hill Farm. He clarified that House Bill 252 provides no provisions for grandfathered activities.

Mr. Bassett readdressed the board, stating that he had repeatedly repositioned the musicians and still received complaints. He noted that the ambient noise level fluctuates between 55 and 70 decibels depending on weather conditions. Mr. Bassett advised that a new house is currently under construction between the farm and the Fitzgerald residence, potentially impacting how sound travels.

While board members deliberated on the issue, Ms. Bradstreet noted that the farm owners could hire a sound engineer to ensure compliance with the limit of 65 decibels. Mr. Dapice pointed out that despite being in a residential zoning district, farming is a recognized use in the NH Statutes. Mr. Kidder agreed, adding that the farm's location on a hill might make noise baffling insufficient to address neighbors' concerns.

Ms. Hardenbergh highlighted the historical significance of the farm and emphasized that resident surveys consistently express a desire to preserve Hopkinton's adaptive, active rural character. She pointed out that relying solely on the viability of the orchard might not be sufficient for the orchard's sustainability. The inability to sustain the farm could potentially lead to the development of the land.

Mr. Kidder agreed with Ms. Hardenbergh and pointed out that the legal obligation of the Planning Board is to approve applications that align with the requirements of the Zoning Ordinance. He emphasized that the Planning Board has the authority to mandate the involvement of an acoustic engineer to measure and, if needed, address the noise concerns associated with the application.

The board deliberated on the feasibility of requiring an acoustic study, with members reaching a consensus that such a requirement could be overly burdensome for the activities in question. Ms. Hardenbergh brought attention to section 5.5.4 of the Zoning Ordinance, which she stated does not adequately address inconsistencies in ambient noise.

She then referred back to the summary of changes pursuant to HB 252, pointing out language in RSA 674:32-c, II that allows land use boards to grant waivers for noise and other regulations, especially when local regulations are deemed "unreasonable in the context of an agricultural use or activity." The provision states that boards must grant the waiver unless it poses a demonstrated adverse effect on public health or safety or the value of adjacent property.

The board collectively agreed that the agritourism activity, specifically the music component, does not adversely impact public health or safety. Ms. Hardenbergh, drawing on her experience as a realtor, asserted that the presence of music would not diminish the value of adjacent property. On the contrary, she suggested that properties along Gould Hill Road, a desirable location for homes, consistently maintain their value.

Mr. Fredyma asked what would prevent the farm from having indoor music. Chair Wilkey responded that such activities would be permitted as long as the noise decibel levels remain within the limitations set by the Noise Ordinance. In other words, it would not be allowed if the indoor music exceeds the specified decibel limits.

**MOTION** James Fredyma, seconded by Jane Bradstreet, to approve the application of Gould Hill Farm to hold live music as part of agritourism activities. Motion carried in the affirmative (Fredyma, Bradstreet, Kidder, Steele, Dapice, Hardenbergh, and Wilkey).

The board's decision was based on the following findings:

- Summary of Changes pursuant to HB 252 highlighting a specific provision in RSA 674:32-c, II, which empowers land use boards to grant waivers for noise and other regulations, particularly in cases where local regulations are perceived as "unreasonable in the context of an agricultural use or activity."
- According to the provision of RSA 674:32-c, II boards are obligated to grant waivers for noise and other regulations unless there is a demonstrated adverse effect on public health, safety, or the value of adjacent property.
- Gould Hill Farm's agritourism activities, specifically the musical component, will not adversely impact public health or safety.
- Testimony from an experienced realtor supported that the musical component of the agritourism activities would not diminish the value of the adjacent property. On the contrary, it was suggested that properties along Gould Hill Road, a sought-after location for homes, consistently maintain their value.

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

**V. Approval of Meeting Minutes and Notice of Decision of October 17, 2023, and Work Session Minutes of October 24, 2023.**

**MOTION** Rich Steele, seconded by Clarke Kidder, to approve the October 17, 2023 Minutes. Motion carried in the affirmative (Fredyma, Bradstreet, Kidder, Steele, Dapice, Hardenbergh, and Wilkey).

**MOTION** James Fredyma, seconded by Rich Steele, to approve the October 17, 2023 Notice of Decision. Motion carried in the affirmative (Fredyma, Bradstreet, Kidder, Steele, Dapice, Hardenbergh, and Wilkey).

**MOTION** Rich Steele, seconded by Jane Bradstreet, to approve the October 24, 2023 Minutes. Motion carried in the affirmative (Fredyma, Bradstreet, Kidder, Steele, Dapice, Hardenbergh, and Wilkey).

**VI. Other business.**

- A. Housing Committee representative Rich Steele updated the Planning Board on the fact that public outreach sessions were held, highlighting the committee's intention to review the feedback received. The committee plans to discuss this feedback at their upcoming meeting. Additionally, Mr. Steele expressed his intent to provide a brief presentation to the Housing Committee at their December meeting. This presentation will cover various aspects, including projected population growth, existing construction activities, and potential strategies to align with Hopkinton's needs as outlined in the Master Plan. The same presentation will be provided to the Planning Board at the meeting on December 12, 2023.
- B. Chair Wilkey and Ms. Robertson briefly touched upon the budgeting of funds proposed in the Planning budget to facilitate a consultation to conduct an audit of the Zoning Ordinance. The primary objective of this audit is to assess how well the Zoning Ordinance aligns with the goals and objectives outlined in the Master Plan. If passed and funds are available, the proposed consultant will also be tasked with reviewing the Zoning Ordinance to ensure its compliance with New Hampshire laws and to identify any inconsistencies in formatting. This audit is a strategic step in ensuring that the Zoning Ordinance effectively supports and aligns with the broader planning objectives established in the Master Plan.
- C. The Planning Board acknowledged the passing of their long-time friend and chair, Bruce Ellsworth, who dedicated numerous years to the Planning Board and the town of Hopkinton, contributing both publicly and privately. Given his significant contributions, the board requested Ms. Robertson communicate their recommendation to the Select Board that Bruce be recognized in the upcoming Town Report as a tribute to his enduring commitment and service to the community.

**VII. Adjournment.**

**MOTION** James Fredyma, seconded by Jane Bradstreet, to adjourn the Planning Board meeting at 7:15 PM. Motion carried in the affirmative (Fredyma, Steele, Dapice, Bradstreet, Kidder, Hardenbergh, and Wilkey). The next regular meeting is at 5:30 PM on Tuesday, December 12, 2023.

Karen Robertson  
Planning Director