



Town of Hopkinton

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HOPKINTON PLANNING BOARD MINUTES MAY 9, 2017

Members present: Chairman Bruce Ellsworth, Vice Chairman Michael Wilkey, Jane Bradstreet, Celeste Hemingson, and Alternates Clarke Kidder and Jim Fredyma. Absent: Ex-Officio Jim O'Brien, Rich Steele, Cettie Connolly and Alternate Timothy Britain.

I. Call to Order. Chairman Ellsworth called the meeting to order at 6:30 PM in the Hopkinton Town Hall. Due to the absence of regular members, Mr. Fredyma and Mr. Kidder were designated as voting members.

II. Review of the Minutes and Notice of Decision of April 11, 2017.

Mrs. Hemingson, seconded by Mr. Wilkey, moved to **APPROVE** the Minutes of April 11, 2017, as presented. Motion carried unanimously (Bradstreet, Hemingson, Wilkey, Fredyma, Kidder and Ellsworth). Vote: 6-0-0

When asked to review the Notice of Decision of April 11, 2017, Mrs. Hemingson and Mrs. Bradstreet suggested that the Planning Board revisit their action in approving the revised site plan for the proposed veterinary clinic at 1325 Hopkinton Road; given the fact that there may be nonconforming provisions of the Zoning Ordinance that need to be satisfied. In response, Chairman Ellsworth informed members that the issue before the Board is the accuracy of the Planning Board's Notice of Decision of April 11, 2017. Whether the Planning Board wants to revisit their decision concerning a particular application is a separate matter.

Mr. Kidder, seconded by Mr. Wilkey, moved to **APPROVE** the Notice of Decision of April 11, 2017, as presented. With six members voting, four voted in favor (Wilkey, Fredyma, Kidder and Ellsworth) and two voted in opposition (Bradstreet and Hemingson). Vote: 4-2-0

III. Conceptual Consultations.

There were no conceptual consultations.

IV. Applications

There were no applications to be presented.

V. Other Business.

- a) Notice of Voluntary Merger (NH RSA 674:39-a), Jennifer Balkus to voluntarily merge two (2) pre-existing lots, known as Lots 15 and 16, shown on Tax Map 251, located off Hopkins Green Road, R-4 district.

Mrs. Hemingson, seconded by Mrs. Bradstreet, moved to **APPROVE** the merger as submitted. Motion carried unanimously (Bradstreet, Hemingson, Wilkey, Fredyma, Kidder and Ellsworth). Vote: 6-0-0

- b) Site Plan Review #2017-03, Request for legal opinion concerning applicable provisions of Zoning Ordinance involving previously approved application of Michael Dutton for veterinary clinic and two-residential apartments, 1325 Hopkinton Road, Tax Map 258 Lot 73. Zoning Board of Adjustment approved change of mixed uses (Montessori School to Veterinary Clinic and Business/Professional Offices to Two-Residential Apartments) on November 2, 2016. Planning Board approved Site Plan/Architectural Design Review for same with original approval on November 15, 2016, and revisions approved on April 11, 2017.

In providing a brief explanation as to why the Site Plan Review application for the veterinary clinic was included on the Board's agenda, and why a request for a legal opinion was made to the Board's Attorney, Chairman Ellsworth advised that a member of the Board had contacted him expressing concern with the Planning Board's decision of April 11th. As a result, he requested a legal opinion from the Board's Attorney in an effort to determine whether the Board had erred when reviewing the application on April 11th. Furthermore, a second member of the Board had contacted him requesting that the matter be included on the agenda.

Recently, Chairman Ellsworth learned that there had been a misunderstanding of the review being requested. Instead of reviewing the actions of the Planning Board, the Attorney was reviewing the Zoning Board of Adjustment's actions of November 2, 2016. Once realized, the Board's Attorney was immediately informed that the legal opinion was no longer necessary. Chairman Ellsworth informed the Board members that it was never his intention to request an opinion of the actions of the Zoning Board of Adjustment, since the Planning Board has no authority or role in reviewing Zoning Board of Adjustment decisions. Again, it was his intentions to have the Attorney review the process by which the Planning Board approved the application.

Mrs. Bradstreet then noted that, following the April 11, 2017 meeting, she had contacted Chairman Ellsworth because it had been brought to her attention that the use and structure on the property were not in compliance with Section 5.3.7 of the Zoning Ordinance. Mrs. Bradstreet then read Section 5.3.7, which states as follows:

“5.3.7 Unsafe Structures: Any non-conforming structure determined to be unsafe may be restored to a safe condition. Such work on any non-conforming structure shall not place it in greater non-conformity. If the cost to restore any structure shall exceed 50 percent of its physical replacement value, it shall be reconstructed only as a conforming structure and used only for a conforming use.”

While Mrs. Bradstreet had reviewed the definitions of a Nonconforming Structure (2.1.S.12) and Nonconforming Use (2.1.U.4), she suggested that the definitions were unclear.

“2.1.S.12 Structure, Nonconforming: A structure lawfully existing at the effective date of this Ordinance or any subsequent amendments thereto, which does not conform to one or more provisions of this Ordinance.”

“2.1.U.4 Use, Nonconforming: Nonconforming means use of land, building or premise which is not a use permitted by the provisions of this Ordinance for the district in which such land, building or premise is situated.”

Following review of the nonconforming provisions of the Ordinance, Mrs. Bradstreet believed that the Zoning Board of Adjustment needed to further review the request for the proposed veterinary clinic. She suggested that because the structure will be razed and reconstructed, it will exceed the 50 percent factor that is referenced in Section 5.3.7; therefore, the structure must be constructed as a conforming structure and use, which Mrs. Bradstreet suggested would be a residence. In response, Mrs. Robertson explained the process by which matters are referred to the Zoning Board of Adjustment. She also noted that decisions made by the Zoning Board of Adjustment can only be revisited by way of the granting of a Motion for Rehearing or by decision of Superior Court. Since the rehearing and appeals period, following the Zoning Board of Adjustment’s decision of November 2, 2016, had passed with no filings by the abutters or non-abutter concerning the matter, the decision of the Zoning Board of Adjustment is final.

Mrs. Robertson noted that she was unclear as to what was being considered nonconforming, since the uses proposed and approved by the Zoning Board of Adjustment (veterinary clinic and residential apartments) are permitted uses. Furthermore, the location of the existing structure and the proposed new structure are conforming in setbacks as represented on the survey and site plan of the property. She suggested that the nonconforming provisions of the Zoning Ordinance are not applicable.

Mrs. Hemingson questioned whether Mrs. Robertson was indicating that the veterinary clinic, listed in the Table of Uses as requiring a Special Exception, is a permitted use. Mrs. Robertson replied yes, noting that in New Hampshire, a Special Exception is considered a permitted use, provided the Applicant satisfies the Special Exception criteria with the Zoning Board of Adjustment.^{(1), (2)}

Mr. Fredyma did not recall the Applicant, during the April 11th meeting, indicating that the razing and reconstruction of the structure was due to it being unsafe. In fact, he believed that the razing of the structure was a decision based on practicality, rather than safety. Mr. Kidder concurred.

Brief discussion ensued with Chairman Ellsworth asking members if they were satisfied with the explanation provided by Mrs. Robertson. All members present indicated, yes.

VI. Adjournment.

Chairman Bruce Ellsworth declared the meeting **ADJOURNED** at 7:35 PM. The next regular scheduled meeting of the Hopkinton Planning Board is at 6:55 PM on Tuesday, June 6, 2017, at the Hopkinton Town Hall.

Karen Robertson
Planning Director

In accordance with RSA 677:15, any person(s) aggrieved by any decision of the Planning Board concerning application(s) may present to the Superior Court a petition, duly verified, setting forth that such a decision is illegal or unreasonable in whole or part and specifying the grounds upon which the same is claimed to be illegal or unreasonable. Such petition shall be presented to the court within thirty (30) days after the Board's final decision regarding the application in question has been filed and becomes available for public inspection in the Planning Office.

¹ § 3.6 Use Regulations (excerpt from Hopkinton Zoning Ordinance, as amended through March 18, 2017), (b) Uses Permitted by Special Exception: Uses which require the granting of a special exception by the Zoning Board of Adjustment are denoted by the letter "S" in the Table of Uses in the District so indicated. The Zoning Board of Adjustment may grant special exceptions in accordance with the procedures and conditions as specified in Section XV, Board of Adjustment, of this Ordinance, subject to all other applicable sections of this Ordinance and other local, state and federal laws, rules and regulations.

² § 23.05 Status of Special Exception (excerpt from New Hampshire Practice, Vol. 15, Land Use Planning and Zoning, Third Edition, Atty. Peter J. Loughlin), There is little difference between the legal status of a permit obtained directly from a municipal building official because a particular use is permitted as a matter of right, and a permit obtained from a municipal building official after the Board of Adjustment has found that the use complies with the conditions for a special exception. In other words, a special exception provided for by ordinance is a permitted use when approved.