

Town of Hopedale
Decision of the Hopedale Zoning Board of Appeals
August 17, 2022

Case: 7-2022

Applicant(s):	Christopher Jones and Shinae Kim
Property Owner:	Christopher Jones and Shinae Kim
Property:	18 Westcott Road, Hopedale, MA 01747
Application Filed:	June 22, 2022
Hearing Dates:	August 17, 2022

Relief Sought: Applicants are seeking a special permit for construction of an accessory apartment in a single-family residence.

Decision: Following the closing of the public hearing on August 17, 2022, the Zoning Board of Appeals voted unanimously to issue a special permit for the construction of an accessory apartment in a single-family residence with the following conditions:

1. The special permit is limited to the current owners (Christopher Jones and Shinae Kim).
2. The special permit is limited to an accessory apartment occupied solely by Richard and Ann Jones (parents and in-laws of the current owners).
3. The special permit shall terminate upon the sale or transfer of the property.
4. To accommodate Americans with Disabilities Act requirements, the accessory apartment shall not exceed 667 square feet.
5. The special permit is limited to 1 bedroom in the accessory apartment.
6. The subject property must comply with all Hopedale Zoning By-Laws.

Certification

This is to certify that the above action was taken in compliance with the statutory requirements as set forth in Chapter 40A of General Laws, and that copies of this decision and plans referred to in this decision, if any, were filed with the Town Clerk on _____, 2022.

Special Permit or Variance is not in effect until the decision is recorded with the Worcester County Registry of Deeds and the building permit will not be issued until proof of recording is presented.

APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PERSUANT TO GENERAL LAWS, CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING THIS DECISION IN THE OFFICE OF THE TOWN CLERK.



Christopher P. Hodgins, Chairman

**Record of Proceedings and Summary of Findings and Decision
Hopedale Zoning Board of Appeals**

Case: 7-2022

Applicant(s): Christopher Jones and Shinae Kim
Property Owner: Christopher Jones and Shinae Kim

Property: 18 Westcott Road
Hopedale, MA 01747

Hearing Proceedings

On June 22, 2022, Christopher Jones and Shinae Kim filed an application for a special permit seeking construction of an accessory apartment in a single-family residence. The Zoning Board of Appeals (ZBA) scheduled a public hearing for August 17, 2022, notified the Town Clerk, abutters and other interested parties, and requested publication of the notice in the Milford Daily News.

The Town Clerk posted the hearing notice on July 19, 2022. The Milford Daily News published the first notice on August 3, 2022, and published the second notice on August 10, 2022.

Public Hearing August 17, 2022

On August 17, 2022, the ZBA opened a public hearing on the application. All members of the ZBA were present (Scott Savage present remotely). Chairman Christopher Hodgens opened the public hearing, explained the process, and outlined the procedural posture of the application. Mr. Hodgens invited the applicants to make a presentation.

Architect and builder Sean Barrett of Verdigris Design Studio, Inc., spoke on behalf of the applicants. He said the purpose of the addition is to provide living space for Richard and Ann Jones, the parents/in-laws of the applicants. The addition will be at the ground level to avoid constructing a lengthy wheelchair ramp. The project is a little larger than the 600 square foot limit because room must be created to accommodate the turning radius of a wheelchair within the residence. The project will also include an addition to the main residence that is unrelated to the accessory apartment. Mr. Barrett distributed photographs and satellite photos of the property. He said that the accessory apartment will be added to the rear of the property and will not be visible from the street view.

Mr. Hodgens referenced the 13 pages of plans submitted by the applicants. The plans show various profiles of the addition as well as a detailed floor plan. The plan is date stamped June 22, 2022, and has the seal of Sean Barrett, a registered architect in the Commonwealth of Massachusetts. Mr. Hodgens opened up the discussion to members of the ZBA.

Ms. Biagetti asked about the plan reference to a second story on the existing garage. Mr. Barrett indicated that addition is part of the existing residence. Mr. Hodgens clarified that the materials submitted indicate an addition of an accessory apartment as well as an addition to the living space of the single-family residence. Mr. Hodgens then read

through the list of limitations on accessory apartments as set forth in the Hopedale Zoning By-Laws (a copy of the limitations is available on the ZBA website).

Nick Alexander asked about the square footage of the accessory apartment. Mr. Barrett indicated that the proposal exceeds the 600 square foot maximum under the by-laws in order to accommodate ADA guidelines.

Mr. Savage asked about the washer/dryer and mudroom. Mr. Barrett indicated that the washer and dryer will be in a mudroom that will be shared by occupants of the main residence and the accessory apartment. Mr. Hodgins noted that the plan calls for a significant increase in the floor space of the structure. The current floor space of 3,750 square feet will increase to 6,815 square feet (numbers include basement area). Mr. Barrett confirmed the increase in total floor space and indicated that the basement area beneath the proposed accessory apartment will be storage area for the main residence.

Mr. Hodgins asked if anyone else wished to be heard. Board of Health Chairman Walter Swift was present and noted an issue that has arisen. He said that the town has recently adopted a new program for uniform trash receptacles. During the distribution of those receptacles, town officials noticed many single-family residences in town with accessory apartments that have been converted into rental properties. Lou Costanza said that if this permit is approved, there will be express limitations on the property including a limit to the current owners. Sandra Biagetti clarified that the limitation will be expressed in the special permit rather than the deed to the property.

Mr. Hodgins added that accessory apartments have a number of limitations as expressed in the Hopedale Zoning By-Laws. The problem is that in years past, the ZBA has been very trusting of residents. That trust has not worked well because some residents have taken liberties with the special permit and have treated it as an opportunity to create rental properties. That is not permitted under the zoning by-laws. It is also not fair to others similarly situated in the neighborhood to see a property converted to multi-family use. Now, the ZBA specially informs all applicants of the limitations of accessory apartments and adds the limitations as conditions to the special permit. In other words, the applicants cannot sell the property as a two-family or in-law apartment. The permit will terminate with a change in ownership or a change in the occupancy of the accessory apartment. Mr. Hodgins outlined the factors that must be considered when issuing a special permit. After no one had any additional comments, and no one raised any objections, the public hearing closed.

Mr. Hodgins said that all factors appear to be satisfied and asked if any members disagreed. No one expressed any disagreement. Mr. Hodgins then said that it appeared members were inclined to issue the special permit with conditions. Mr. Hodgins outlined the conditions that would address the matters discussed:

1. The special permit is limited to the current owners (Christopher Jones and Shinae Kim).
2. The special permit is limited to an accessory apartment occupied solely by Richard and Ann Jones (parents and in-laws of the current owners).
3. The special permit shall terminate upon the sale or transfer of the property.
4. To accommodate Americans with Disabilities Act requirements, the accessory apartment shall not exceed 667 square feet.
5. The special permit is limited to 1 bedroom in the accessory apartment.
6. The subject property must comply with all Hopedale Zoning By-Laws.

Mr. Costanza moved to approve the application with the conditions as outlined by Mr. Hodgens. Mr. Alexander seconded the motion.

A roll call vote followed on the motion:

Scott Savage	yes
Nicholas Alexander	yes
Sandra Biagetti	yes
Louis Costanza	yes
Christopher Hodgens	yes

Mr. Hodgens declared the motion had passed unanimously, and a special permit would issue with the conditions noted.

Summary of Findings and Decision

The subject property at 18 Westcott Road consists of approximately .873 acres with a single-family, colonial-style residence built in 1986. The assessor's records indicate a current living space of 3,064 square feet (less than the amount indicated by the architect). The property is in a RA-1 zoning district (Residential A-1) under the Hopedale Zoning By-Laws. Accessory apartments are allowed in residential districts only by a special permit of the ZBA. Hopedale Zoning By-Laws § 6.3

An applicant does not have “an absolute right to a special permit.” MacGibbon v. Board of Appeals of Duxbury, 356 Mass. 635, 638, 639 (1970). The decision to grant or deny “special permits is within the discretion of the board.” ACW Realty Management, Inc. v. Planning Board of Westfield, 40 Mass. App. Ct. 242, 246 (1996). “Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law, and shall be subject to general or specific provisions set forth therein; and such permits may also impose conditions, safeguards and limitations on time or use.” G.L. c. 40A, § 9. Conditions may consider “protection of the neighborhood, the Town, and the natural environment” and may include limitations and restrictions designed to address specific features of the proposed use. Hopedale Zoning By-Laws § 10.6(e). Based upon the governing standard, the Hopedale Zoning By-Laws, and the facts presented at the hearing in the instant case, the ZBA exercises its discretion in favor of issuing a special permit with conditions.

A special permit may not issue unless the ZBA finds that “all of the requirements” of the Hopedale Zoning special permit criteria under Hopedale Zoning By-Laws §§ 10.6(d)(1)-(8) are satisfied. Based upon the information available at the public hearing, the ZBA concludes that if the applicants abide by the Hopedale Zoning By-Laws as amplified by the special permit conditions outlined by the ZBA, the special permit criteria will be satisfied. The accessory apartment will not have “detrimental effects which outweigh its benefits to the neighborhood, Town or zoning district in which it is located.” By-Laws § 10.6(1). The accessory apartment will not have a detrimental effect on the neighborhood. The neighborhood is part of a large housing development of similar homes and lots. The apartment will be unobtrusively incorporated into the existing residence in a wing off the back of the house. Detailed architectural plans show a seamless addition that will not be noticed by a person standing in front of the house along the road. The owners have ample land to accommodate the addition. There is an existing driveway that will be expanded to accommodate the accessory apartment. The neighborhood has well-

designed and maintained roadways with unobstructed views for the safe passage of vehicles and pedestrians. Given the minimal exterior changes to the structure, the minimal changes to the surrounding land, and the presence of only two occupants in the accessory apartment, the ZBA concludes that the accessory apartment will be unobtrusive and virtually unnoticed to an observer. The unobtrusive nature of the accessory apartment and limited use by two occupants will not “materially endanger or be hazardous to the public health and safety” By-Laws § 10.6(3), has sufficient off-street parking, By-Laws § 10.6(4), is adequately served by municipal water and sewer, By-Laws § 10.6(5), will have no impact on surface water runoff, By-Laws § 10.6(6), will not contaminate ground water, wells, streams, ponds, watercourses, or wetlands, By-Laws § 10.6(7), and will not “create undue traffic congestion or impair pedestrian safety.” By-Laws § 10.6(8). The Master Plan is being developed and is not a factor that militates against a special permit. By-Laws § 10.6(2).

The ZBA notes that the entire project will substantially increase the floor space of the residence (current floor space of 3,750 square feet will increase to 6,815 square feet). The vast majority of this increase is related to the main residence and is tangential to the instant application. The special permit addresses only the accessory apartment.

Also, brief mention must be made about the 600 square foot limit on accessory apartments. The Hopedale Zoning By-Laws expressly limit accessory apartments to a maximum of 600 square feet. By-Laws § 6.3(d). The special permit here is allowing the applicants to exceed that limit. The reason for doing so is that the by-laws give the ZBA discretion to “allow deviation” from this limit “where necessary to install features that facilitate use by disabled persons.” By-Laws § 6.3(d). The ZBA specifically finds that deviation from the strict application of the 600-foot limit is necessary to accommodate the turning radius of a wheelchair. The relief granted herein is entirely consistent with the evident and laudable purpose of the Hopedale Zoning By-Laws at issue – to enable relatives to live in close proximity as family circumstances may dictate.

Based upon the foregoing, the ZBA hereby allows the application for a special permit with the following conditions noted:

1. The special permit is limited to the current owners (Christopher Jones and Shinae Kim).
2. The special permit is limited to an accessory apartment occupied solely by Richard and Ann Jones (parents and in-laws of the current owners).
3. The special permit shall terminate upon the sale or transfer of the property.
4. To accommodate Americans with Disabilities Act requirements, the accessory apartment shall not exceed 667 square feet.
5. The special permit is limited to 1 bedroom in the accessory apartment.
6. The subject property must comply with all Hopedale Zoning By-Laws.

Copies of this decision will be filed with the Town Clerk and sent to the applicant, Building Commissioner, and Tax Assessor.