



TOWN OF HOPEDALE
ZONING BOARD OF APPEALS
TOWN HALL
78 HOPEDALE STREET
HOPEDALE, MA 01747

Christopher P. Hodgens, Chairman
Nicholas A. Alexander, Member
Sandra E. Biagetti, Member
Louis J. Costanza, Member
Scott M. Savage, Member

**Hopedale Zoning Board of Appeals
Meeting Minutes
August 17, 2022**

Chairman Christopher P. Hodgens called the Zoning Board of Appeals (ZBA) public meeting and public hearing to order on August 17, 2022, at 7:00 pm. Meeting was held in the Town Hall Draper Room, streamed live via Zoom and on Hopedale Cable Access. Participation was made available through the following Zoom link:

Join Zoom Meeting

<https://us02web.zoom.us/j/89428044314?pwd=SUFVVmo3V2UydVRoN014a3cyT2tHZz09>

Meeting ID: 894 2804 4314

Passcode: 439560

Recorded meeting can be found on the Town of Hopedale website under meeting videos.

Members that were present:

Christopher P. Hodgens, Chairman
Nicholas A. Alexander
Sandra E. Biagetti
Scott M. Savage
Louis J. Costanza

Mr. Hodgens said there are a couple of public hearings. He cautioned everyone that the meeting is broadcast by zoom and is being recorded. He asked people to speak one at a time so that people can follow what is being said. Mr. Hodgens said that all members of the ZBA were present (Scott Savage present remotely). He then introduced all members of the ZBA.

Edward, Olimpia, and Michael McGrath (Case # 8-2022)

Mr. Hodgens called the matter of Edward, Olimpia, and Michael McGrath. He said that he received a message that the McGraths contacted the Town Clerk's Office today and said they would not be able to make it to the hearing due to illness. Mr. Hodgens said that he would open the hearing tonight because the ZBA is required by law to do so, but he will entertain a motion to continue the hearing so that the applicants can be present at the next hearing date. Mr. Hodgens then provided procedural history of the application. Mr. Hodgens said that he would follow up with the McGraths and send them a form agreeing to the continuance to September 21.

Lou Costanza moved to continue the hearing to September 21, and Nicholas Alexander seconded the motion. Following a voice vote, Mr. Hodgens declared the motion passed unanimously. Mr. Hodgens announced that the hearing would be continued to September 21, at 7 p.m., in the Town Hall. The public hearing remains open.

Mr. Hodgens called the matter of Christopher Jones and Shinae Kim. He 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. Hodgens 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. Hodgens 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. Hodgens 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. Hodgins. 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 Hodgins	yes

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

At the conclusion of the meeting, Board of Health (BOH) Chairman Walter Swift addressed the ZBA about the proposed project on Plain Street. Mr. Swift informed the ZBA of Planning Board action earlier in the month. Mr. Swift said that the Planning Board approved a new plan for the property that would be completed in two phases and would supposedly no longer require ZBA approval. Mr. Swift said that the BOH had intended to review the original site plan with the applicant, but he wondered whether that review is now needed.

ZBA member Scott Savage said that he watched a recording of the same Planning Board meeting. He said that he believed the Planning Board approved the new plan based on the representation of the applicant that ZBA approval was no longer required and construction of a smaller 400,000 square foot building could begin. Mr. Alexander said that he heard the same assertions at the Planning Board meeting.

Mr. Alexander asked about a change in use. Mr. Hodgens said that any change in use in the Ground Water Protection District requires a special permit. Mr. Hodgens described the process of adopting the Ground Water Protection District. He said that uses at the time of the adoption of the overlay district were allowed to continue. Once that use changed, however, a special permit would be required from the ZBA. Mr. Hodgens said that the district has grown over the years, and perhaps residents are not aware of the vast amounts of property involved. The heart of Hopedale is now included in the district and follows along the Mill River. The district includes the former Draper property.

Mr. Hodgens said that he has been making a point for a long time. Hopedale has very good, very vigorous zoning by-laws. A lot of the issues over the years has come from a lack of enforcement of the by-laws. The by-laws don't have to be "updated" as some say, the by-laws have to be "enforced." That is the issue. Mr. Alexander said that he agrees. Mr. Alexander asked how we get the message to GFI about the need for a special permit. Mr. Hodgens said that he supposes something should be said so that GFI is not misled into believing that construction can go forward. Money may be needlessly spent based upon a misunderstanding. Mr. Hodgens suggested talking to the Building Commissioner.

Mr. Costanza said that it is his understanding the smaller scale of the project means that construction can begin without any further approvals. Mr. Alexander and Ms. Biagetti said that the smaller project is still a change in use that requires a special permit.

Mr. Hodgens said that he would like to speak in general terms, without specific reference to any property, because everyone should have a chance to be heard. He said the point is that the ZBA is not "interpreting" anything. Mr. Hodgens said that he is reading what the by-laws say. He said that we can't have individual boards saying that is not what the by-laws say. The by-laws say what they say. Others may ignore the by-laws if they want to, but Mr. Hodgens said he is not going to ignore the by-laws, and he is sensing from the discussion that other members of the ZBA are not going to ignore the by-laws.

Mr. Savage said the Planning Board did not actually say a special permit was not required. He said that the applicant presented the issue to the Planning Board in that manner. Mr. Savage said that he "got the impression" that the Planning Board and Building Commissioner accepted the applicant's proposition that the first phase of the project could proceed without ZBA approval.

Mr. Alexander said that one of the Planning Board members raised the issue of sidestepping the ZBA. Other Planning Board members did not share that concern. Mr. Savage said that the applicant asserted shrinking the project below the 15% impervious requirement would allow the project to proceed because the 15% was the "trigger" for ZBA review. Mr. Savage said that he did not believe the applicant considered the change of use was also a trigger for ZBA review. Mr. Alexander agreed that is how it appeared at the Planning Board meeting. Mr. Savage said that he did not believe the Planning Board was intended to find a way around the ZBA. Mr. Alexander said that one Planning Board member did raise the issue about sidestepping the ZBA. Mr. Savage said that the change from the original plan to the two-phase plan was not a substantial change. Mr. Savage said that he believes the ZBA needs to consider speaking on these issues.

Mr. Alexander said that he does not think the ZBA should remain idle and let this play out. Ms. Biagetti agreed. There are interests involved here that may result in substantial money being spent based upon a misunderstanding of what is required. She said that the ZBA should not sit

silent. Mr. Savage said that there is a risk of litigation. Mr. Alexander said that someone at the Planning Board meeting asked what if the ZBA does not approve the second phase of the project, and someone said that there will just be a 400,000 square foot building there. Mr. Savage said that the applicant believes it can build the first phase by right. Mr. Alexander agreed that is how the matter was presented to the Planning Board. Mr. Savage said that he is concerned that the Building Commissioner may issue the building permit based upon the applicant's representations. Ms. Biagetti said that the ZBA has a responsibility to say something. Mr. Hodgins said it seems that substantial rights of the town and the applicant are involved here. Mr. Hodgins said that he will reiterate that allowed uses without approval of the ZBA are limited under 17.6(a). He invited anyone viewing this meeting now or in the future to review the by-laws. He then read the permitted uses within a Ground Water Protection District. Eight uses are listed. They are very benign uses. The proposed project does not fall into any of those categories. Whoever is floating out the idea that the project can go forward without ZBA approval is mistaken. Mr. Hodgins said any misunderstanding can be cleared up by simply referring to the by-laws. Mr. Hodgins said the other fact to keep in mind is which board is designated as the special permit granting authority. The by-laws designate the ZBA. The Building Commissioner does not issue a special permit. The Planning Board does not issue a special permit. Only the ZBA, on a 4 of 5 person vote issues a special permit. Mr. Hodgins said that is not him saying that. It is the residents of Hopedale who voted to pass the zoning by-laws. Mr. Hodgins said a special permit is needed for any alteration of use in a Ground Water Protection District. He said that only the ZBA may issue that special permit. Mr. Hodgins said these conclusions are not his "opinion" or his "judgment." These conclusions are expressly stated in the zoning by-laws.

Mr. Hodgins said that the best remedy at this point, like the temporary sign issue, is to reach out to the Building Commissioner and ask if he wants to come in and speak about this. Ms. Biagetti agreed. Mr. Alexander asked Mr. Swift if he had the answer to his question. Mr. Swift said that he just wants some direction so that the BOH can take the action it needs to take. Mr. Hodgins said that the ZBA agreed last month that it was very much interested in hearing from the ZBA even if other boards are not interested. Mr. Hodgins emphasized that the special permit application is pending and will remain pending until the ZBA acts on the application. Even if the applicant wants to withdraw the petition, the ZBA still must vote on whether to allow the withdrawal. Mr. Hodgins said that he wants to hear from the ZBA.

A resident, Rick Lima, attending the ZBA meeting remotely, reported that the Planning Board approved the new plan after the applicant indicated that ZBA approval would no longer be required. Mr. Lima added that town counsel was also present at the meeting remotely and "opined" that the applicant no longer needs a special permit.

Based upon the information presented, Mr. Hodgins said that if these discussions were taking place with town counsel, it would have been nice if someone notified the ZBA. Ms. Biagetti agreed. Mr. Hodgins said that he would be happy to reach out to town counsel to get an understanding of any opinion provided. Mr. Costanza said that he wanted to make a motion to contact town counsel to inquire about any legal opinion. Mr. Hodgins said that he did not believe a formal motion and vote would be necessary. He said that would could simply call town counsel. Ms. Biagetti agreed with Mr. Costanza.

Ms. Biagetti seconded the motion to check with town counsel. Mr. Alexander agreed. Mr. Costanza said that the vote covers everyone. Following a voice vote, Mr. Hodgins declared that the motion passed unanimously.

Tim Watson, joining by zoom, asked if the ZBA has issued any special permits in a Ground Water Protection District in the past. He asked if the two marijuana grow facilities on Condon Way are within the Ground Water Protection District. Mr. Hodgins said that he does not believe the properties are in the district. Mr. Watson said, "I can assure you that they are." Mr. Hodgins viewed the zoning map on the ZBA website and said that the map indicates the properties referenced by Mr. Watson are not within the Ground Water Protection District. Condon Way is not within the Ground Water Protection District. Mr. Hodgins said the map is available to the public.

Ms. Biagetti made a motion to adjourn, and Mr. Costanza seconded the motion. Following a voice vote, Mr. Hodgins said the motion passed.

Meeting adjourned at 8:14 p.m.