



# Town of Hopkinton

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## HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES DECEMBER 6, 2011

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment meeting of Tuesday, December 6, 2011, at 7:00 PM in the Hopkinton Town Hall. Members present: Toni Gray, Harold Perkins, Gregory McLeod and David Brock.

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*Note: The Zoning Board of Adjustment's Rules of Procedure was provided during the application process and additional copies were available at the meeting for the general public.*

### I. Application(s).

ZBA#2011-11 Mariana Thorne Special Exception to operate a hair salon as a home business at 1392 Maple Street in the R-3 district, shown on Tax Map 218 as Lot 8. The application was submitted in accordance with the provisions of Table of Uses 3.6.A.7 of the Hopkinton Zoning Ordinance.

Mrs. Thorne reviewed the criteria for a Special Exception as outlined in Section XV of the Zoning Ordinance.

1. Standards provided by this Ordinance for the particular use permitted by special exception.

"The use is permitted per Table of uses 3.6.A.7, Home Business."

2. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.

"There will be no hazardous materials used. I will be using shampoos, conditioners, colors and perms, hair sprays and gels."

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 pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials.

"There will be no changes to the exterior of the house other than a small sign. The business will be confined to the basement."

4. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.

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*Minutes are subject to review and approval.*

"I have plenty of parking. My driveway is over 200 feet off of the road. I don't anticipate having more than three cars at a time, including mine."

5. No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.

"We have a private well and septic. The site has been approved by the Fire Chief."

6. No significant increase of storm water runoff onto adjacent property or streets.

"There will be no exterior changes to the property, including the driveway."

7. An appropriate location for the proposed use.

"The salon in the basement will allow me to be home with my three children."

8. Not affect adversely 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.

"Everything will be confined to the basement. We have our own septic and private well."

9. In the public interest and in the spirit of the ordinance.

"This will allow the public to come and get their hair done in a family setting. It will also allow me to be home with my family."

Mrs. Thorne requested hours of operation from 8 AM – 7 PM, Mondays through Saturdays. She noted that while she does not anticipate being open for that length of time, she did not want to limit her ability to be open later.

Public testimony was opened.

Santina LaCava of East Penacook Road spoke in favor of the proposal.

Public testimony was closed.

***Motion made by Mr. Perkins, seconded by Mrs. Gray, to approve the application as presented. Motion carried unanimously (Gray, Perkins, McLeod, Brock and Krzyzaniak). The applicant successfully addressed the standards to be granted a Special Exception as set forth in subsection 15.8.2 of the Hopkinton Zoning Ordinance.***

ZBA#2011-12 Santina LaCava Special Exception to operate a bakery as a home business at 951 Penacook Road in the R-4 district, shown on Tax Map 242 as Lot 16. The application was submitted in accordance with the provisions of Table of Uses 3.6.A.7 of the Hopkinton Zoning Ordinance.

Ms. LaCava addressed the Board explaining her intentions to bake breads and cookies to sell at farmer's markets. She is in the process of obtaining a license from the State that will

allow her to also sell baked goods from her home. At her home, she hopes to sell breads, cut flowers, photography prints and cards.

Ms. LaCava reviewed a plan showing the layout of the portion of the residence that will be utilized by the bakery, noting that there is a sliding door that will be changed over to french doors where people will enter into a 4' x 10' area where the goods will be sold. She anticipates no changes to the property, noting that there is ample parking for four vehicles. Hours of operation will be limited to three half days. Ms. LaCava hopes that people visiting the conservancy on the Bohanan property will walk to her bakery to buy breads. She believes the home bakery is consistent with farm life.

Mrs. Robertson noted that previously the Board had approved Ms. LaCava for the operation of a Bed and Breakfast Home. Mrs. LaCava stated that during her approval process she found that the fire safety requirements were too cost prohibited so she decided not to open a Bed and Breakfast Home.

Ms. LaCava reviewed the criteria for a Special Exception as outlined in Section XV of the Zoning Ordinance.

1. Standards provided by this Ordinance for the particular use permitted by special exception.

“The use is permitted per Table of uses 3.6.A.7, Home Business.”

2. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.

“There will be no toxicity involved in the operation of the bakery. Adjacent properties will be unaffected by the business.”

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 pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials.

“The zone is residential and agricultural. A home bakery is consistent with farm life and business.”

4. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.

There will be limited open hours with most of the distribution occurring through farmer's markets, CSA and customers to whom I will deliver.”

5. No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.

“All of the services are private such as the well and septic system.”

6. No significant increase of storm water runoff onto adjacent property or streets.

"There will be no paving or change in the building foot print."

7. An appropriate location for the proposed use.

"The location is very appropriate as the home is surrounded by a working farm and conservation land where people come for recreation and will hopefully walk over to the bakery."

8. Not affect adversely 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.

"Hopefully, the baked goods will enhance the health and happiness of the neighborhood."

9. In the public interest and in the spirit of the ordinance.

"The public is increasingly interested in simplifying life and returning to values of healthy home and lifestyle. Eating local is supported by providing a local bakery, which will supply farmer's markets and CSA."

Ms. LaCava explained how the creation of her business will be done in two phases. The first phase involves State and local approval for a Homestead 1 license to make bread and other baked items using her existing kitchen. The second phase involves repurposing an 18' x 19' room adjacent to the kitchen which will become the baking and sales area. The bakery will be equipped with an electric convection oven that doesn't require a hood; a refrigerator; a large mixer; sink and butcher block table. Other than breads, Ms. LaCava anticipates baking and selling cookies, muffins and pies. Once phase two is completed, she will offer cut flowers as well as photography that will be done by local artists. An unlit hanging sign at the beginning of the driveway will be used to advertise the bakery name and what is the special baked good of the day.

There was no one present wishing to offer public testimony.

Mrs. Robertson noted that when assisting Ms. LaCava with her application they had discussed her selling associated goods, such as bowls and dry mixes. Ms. LaCava stated that she had changed her mind and is now only requesting permission to sell baked goods, local art and cut flowers. It was noted that Ms. LaCava could reapply to the Board should she wish to expand on the items that she wishes to sell.

Members of the Board suggested that Ms. LaCava request additional hours and days of operation so that she does not have to come back before the Board. Ms. LaCava agreed, suggesting that she be allowed to be open from 7 AM to 5 PM, seven days a week.

***Motion made by Mrs. Gray, seconded by Mr. Brock, to approve the application with the following conditions:***

- 1. Hours of operation limited to 7 AM to 5 PM, seven days a week.***
- 2. The sale of goods is limited to baked goods, cut flowers and local art.***

**3. Licensing from the State of NH is required.**

***Motion carried unanimously (Gray, Perkins, McLeod, Brock and Krzyzaniak). The applicant successfully addressed the standards to be granted a Special Exception as set forth in subsection 15.8.2 of the Hopkinton Zoning Ordinance.***

ZBA#2011-13 Lamarine Technical Land Services Tony Lamarine addressed the Board on behalf of Frederick and Rebecca Briccetti for a Variance to allow a decrease in the existing non-conforming front setback. The property is located at 259 Gage Hill Road in the R-3 district, shown on Tax Map 238 as Lot 3. The application was submitted in accordance with the provisions of subsection 5.2.2 of the Hopkinton Zoning Ordinance.

Mr. Lamarine advised of the Briccetti's plans to remodel their older home for both enhancement and functionality. The plan is to remove the existing garage, remodel a portion of the house and rebuild the garage. In planning for the remodel it was discovered that the front setback distance, established before zoning, is 49 feet. The proposed remodel includes a front porch which would reduce the setback to 44 feet. The Variance is requested to allow for a decrease of 5 feet in the front setback.

Mr. Lamarine reviewed the criteria for a Variance as outlined in Section XV of the Zoning Ordinance.

1. The proposed use would not diminish surrounding property values because:

"The proposed use will not diminish surrounding property values because of the refurbishing of the home. The proposed new façade at the front entrance will be striking while maintaining the classic charm of an older home. The aesthetic and monetary value will increase substantially and undoubtedly enhance the value of surrounding properties."

2. Granting the variance would not be contrary to the public interest because:

"Granting the Variance would not be contrary to the public interest because the remodeling will not include additional bedrooms. The amount of dwelling potential will remain exactly the same. Therefore, no increased burden on the water supply or sewage disposal system will result. Likewise, there will be no environmental or public health impacts. Moreover, the project will not increase additional pedestrian or vehicular traffic beyond the current potential and thus, no safety issues will be created. Nothing in the planning of this remodeling project will create new burdens to the police or fire departments. It is therefore safe to conclude that the Variance would not be contrary to the public interest."

3. By granting the variance substantial justice would be done because:

"By granting the Variance, substantial justice would be done because it's a win, win, win situation. The Briccetti family will enjoy the specifically planned amenities of the new portion of their home, including the front porch area, while the general public benefits from the enhanced aesthetic value and the surrounding properties gain in value by virtue of neighborhood improvement."

4. The spirit and intent of the Ordinance will not be broken by granting the variance because:

"The spirit and intent of the ordinance will not be broken by granting the Variance because no encroachment of any other setbacks will occur. The dwelling will continue to be used as a residence without major disruptions of the natural terrain, vegetation, watercourses or surface drainage. The property will continue to be a model for the Low Density Residential (R-3) zone with its planned expansive gardens and large 2.1 acre open lot. It will simply become more beautiful and functional."

5. Literal enforcement of the ordinance results in unnecessary hardship.

- (a) "The zoning restriction as applied to the applicant's property interferes with the applicant's reasonable use and enjoyment of the property considering the unique location of the dwelling in its environment. The Briccetti lot is oversized for the zone it is in. However, the dwelling is located too close to the front lot line by today's standard (49 ft. vs. 60 ft.). It should be noted that this structure has been in this exact location since the late 1700's, long before zoning was conceived. In recent years, the structure has been meticulously refurbished by the applicants in order to preserve its historical value while improving the functionality of such a landmark in the modern world. It would indeed be an unnecessary hardship to the Briccetti's, to history and to the town to disrupt the continued improvement/preservation of this old homestead."

- (i) "No fair and substantial relationship exists between the general public purposes of the ordinance provision (front line setback) and the specific application of that provision to the property. Obviously, front setback requirements are designed to create some distance between the travelled way and the structure. In this case, the setback from the road was fixed long before the advent of zoning, at a time when many, many homes were built very near the edge of the road. In fact, the majority of old homes in New England towns do not meet current front setback requirements. That is considered part of their charm by many people. In the Briccetti's immediate neighborhood, for example, three other older structures exemplify that condition, one at the corner of Dolly Road and Gage Hill Road (Tax Map 238 Lot 16), and one a bit further down Gage Hill Road (Tax Map 238 Lot 94.1). Of all of these lots, the Briccetti's have by far the greatest (perhaps double!) the front setback distance. The existing setback of 49 ft (including overhang) vs. the proposed setback to the new entrance of 44 ft constitutes a difference of only 5 ft. I would suggest to the Board that the general public will not be affected by this change and enforcing the front line setback requirement will not bring this property into current compliance. As mentioned, the Briccetti's proposal poses no environmental, safety or public health concerns. Consequently, there is no fair and logical reason to adhere to the front line setback distance in this case."

- (ii) "The proposed use is a reasonable one. The property was used as a residence for over 229 years and current zoning supports precisely how the Briccetti's have utilized the property. The R-3 zone was intended to provide for conservation of open space, some agricultural use and very low density development on individual lots that do not create disruptions to the natural

terrain, vegetation, watercourses or surface drainage and which would not customarily have precinct water or sewer systems. The Briccetti's have worked tirelessly to enhance their property with landscape gardens, vegetable gardens, natural woodland buffers, large open green areas, and preservation of original, natural terrain and surface drainage paths. The property in its current use could easily serve as the standard bearer for the R-3 and the proposed use is for even more of the same. To say the use is a reasonable use, is indeed an understatement!"

Mr. Brock inquired about the width of the road right-of-way. In response, Mr. Lamarine stated 49.6 feet. The paved road is 22 feet in width. There is an existing decorative stonewall in front of the Briccetti residence that is approximately 5 feet from the edge of the road.

In reviewing number five of the criteria, Mrs. Gray questioned what makes the Briccetti's situation so unique. In response, Mr. Lamarine stated that while the Briccettis are able to enjoy the use of their property they are not able to do what others have done that are similarly situated. That is constructing a front porch having less than the required front setback.

There was no one wishing to offer public testimony.

***Motion made by Mr. McLeod, seconded by Mr. Perkins, to approve the application as presented. Motion carried unanimously (Gray, Perkins, McLeod, Brock and Krzyzaniak). The applicant successfully addressed the standards to be granted a Variance as set forth in subsection 15.8.3 of the Hopkinton Zoning Ordinance. The Board concluded that there would be no adverse effects on abutting properties by allowing the Briccetti's to construct a front porch thereby reducing the front setback by 5 feet to 44 feet. In fact, the setback will be similar to that of other homes in the neighborhood.***

- II. Review of the Minutes and Notice of Decisions of June 7, July 6 and November 17, 2011.

***Mr. Perkins, seconded by Mrs. Gray, moved approval of the June 7, 2011 Minutes and Notice of Decision with a correction to the listing of members voting in favor of the application of Scott Westover. Note: Incorrectly listed Mr. Koontz, rather than Mr. McLeod. With five members voting, four voted in favor (Gray, Perkins, McLeod and Krzyzaniak) and one voted in abstention (Brock).***

***Mr. McLeod, seconded by Mrs. Gray, moved approval of the July 6, 2011 Minutes and Notice of Decision as submitted. With five members voting, three voted in favor (Gray, McLeod and Krzyzaniak) and two voted in abstention (Perkins and Brock).***

***Mrs. Gray, seconded by Mr. Brock, moved approval of the November 17, 2011 Minutes and Notice of Decision as submitted. With five members voting, three voted in favor (Gray, Brock and Krzyzaniak) and two voted in abstention (McLeod and Perkins).***

- III. Zoning Board of Adjustment's 2012 Schedule (dates/times).

***Mr. Perkins, seconded by Mrs. Gray, moved acceptance of the 2012 Zoning Board of Adjustment Schedule as presented. Motion carried unanimously.***

- IV. Adjournment.

***Mr. McLeod, seconded by Mrs. Gray, moved to adjourned at 8:25 PM. Motion carried unanimously.***

Karen L. Robertson  
Planning/Zoning Director

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Pursuant to New Hampshire RSA 677:2, any party to the action or proceedings, or any person directly affected thereby, may apply to the Zoning Board of Adjustment for a rehearing. Application, in writing, must be submitted to the Zoning Board of Adjustment within thirty (30) calendar days beginning the date upon which the Board voted to approve or disapprove the application. Such a request must set forth the grounds on which it is claimed the decision is unlawful or unreasonable. The Board must decide to grant or deny the rehearing within thirty (30) days.