



# Town of Hopkinton

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## HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES November 7, 2012

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment meeting of Wednesday, November 7, 2012, at 6:30 PM in the Hopkinton Town Hall. Members present: Toni Gray, Charles Koontz, Harold Perkins and Daniel Rinden.

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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).

**#2012-5 Pollock Land Planning LLC** Variance to replace an existing 360 square foot (700 square feet, two-story) residential structure with a new 540 square foot (1100 square feet, three-story) residential structure. The property is an existing non-conforming lot of record, located at 444 North Shore Drive in the R-2 district, Tax Map 203, Lot 15. The application was submitted in accordance with Zoning Ordinance subsections 2.1.F.3, 2.1.S.9 and 5.2.1, and section IX.

Mr. Pollock presented site plans showing the existing conditions and proposed construction. The existing cottage consists of 360 square feet with a deck and existing parking and garage. The structure does not meet the current building and fire codes. Mr. and Mrs. Mitchell have a son that is paraplegic. Access to the structure is difficult without assistance due to its configuration. Therefore, the Mitchells propose to replace the cottage with a new structure that would accommodate the needs of their son. The interior of the house will have a lift to allow access from the upper level to the lower level of the house and will allow for exterior access to the water. The changes to the structure and property will not cause issues with erosion control as the site has been designed to retain as much vegetation as possible. Furthermore, reconstruction of the cottage is proposed six inches further back from the lake. The site will consist of a new retaining wall, plantings and gravel. In designing the site, the goal was to reduce, as much as possible, the amount of impervious surface. Drainage has been addressed as the sheet water will be captured in a bio-retention swale. Lastly, a new septic system has been designed that will be located further away from the lake.

Mr. Pollock 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 owner of the property is proposing to improve the property with a new structure that meets today's building and safety codes. They are proposing to upgrade the site with new landscaped spaces and improve the accessibility of the property. They are also, through best management practices, reducing the storm water flow into the pond. If anything, the owner will improve the values of the surrounding properties."

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*Minutes are subject to review and approval.*

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

"There is an existing residential structure on the site. The owner is not proposing to change the existing use of the site. The proposal is to improve the structure. Therefore, there will be no greater impact with traffic to and from this site other than what exists today. There will be no greater demand on public safety services other than that which exists today. Because of the improvements for handicapped accessibility, if there is an emergency there will be easier access to the site and better fire protection by constructing a building that will meet building and fire codes. There will be no increase on demand for police, plowing, road maintenance or other public services than that which exist today.

The proposed improvements will not create any hazards for the general public and will not threaten public health or create any safety issues that will affect the general public. If the Variance is granted, it will not alter the essential character of the neighborhood. The site is presently used as a residence and will continue to be used as a residence as are the abutting uses."

**3. By granting the variance substantial justice would be done because:** "The owner is making the improvements to the property to allow their paraplegic family member the ability to use the residence and the property in the same fashion an able bodied person would use the property. As the property currently exists there are impediments such as steps, narrow doorways and no direct access to the pond that make it difficult for the full use of the special needs of this particular member of the family."

**4. The spirit and intent of the Ordinance will not be broken by granting the variance because:** "The fundamental purpose of the Zoning Ordinance is to promote the health, safety and welfare of the community. This proposal will not cause traffic congestion on the existing streets; it will reduce the probability of fire by bringing the new structure up to code. The proposed use will not create a panic or other dangers to the public. If similar Variances were granted to other similar properties in the area it would likely reduce danger to the public by bringing similar structures in line with today's life safety codes."

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

**(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.** "The property is a non-conforming lot of record. When the structure is demolished a new structure cannot be built thus denying the owner reasonable use of the property. Unless North Shore Road is brought up to Town standards the lot cannot meet the frontage and street requirements of the Ordinance. The existing structure is presently located in the 'A' flood zone. The proposal is to move the building back from the water making the structure slightly less non-conforming."

**(ii) The proposed use is a reasonable one:**

a. "There are existing residential structures on the abutting properties. The owner proposes to replace the existing 360 square foot structure with a new 540

square foot structure to accommodate a handicapped lift to allow the disabled member of the family to access the pond.”

- b. “This is a non-conforming lot of record that has been used for years as a family camp. The camp was constructed before the establishment of this Ordinance. It never has had frontage on a public way and has never front on a public street. To have better reasonable use of the property, and to accommodate the needs of the handicapped member of the family, removal of the existing structure and constructing a new structure to building and fire codes is the most reasonable use of this property.”

**Item IX Variances and Appeals Floodplain Development (Section XVII Floodplain Development Ordinance):**

- a. **The Variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense.** “The new building will be set at the same elevation as the existing structure, 11-feet above the high water mark of the pond. The proposed structure is to be only 180 square feet greater than the existing structure, the equivalent of a space 10-feet wide and 80-feet long. This has a minimal effect on any flood holding capacity in this area. This should not create any additional threats to the public safety or cause any more extraordinary expense to the public than that of the existing structure on the site.”
- b. **If the requested Variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.** “This is a pond; therefore, there is no floodway and the new structure will not cause the increase of flood levels.”
- c. **The Variance requested is the minimum necessary, considering the flood hazard, to afford relief.** “Once again the building is being placed six inches further away from the pond and the area of the building is being increased by only 180 square feet. When considering the size of the pond and the fact that the building is being moved, all-be-it six inches, if there is an impact it is only measured in fractions of an inch. There are other factors that are greater than this proposal that are outside the project area that would have an impact on any raise in the flood elevation of the pond.”

There was no one present wishing to offer public testimony.

*Motion was made by Mr. Koontz, seconded by Mr. Perkins, to **approve** the application as presented. Motion carried unanimously (Gray, Koontz, Perkins, Rinden 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. By granting the Variance, it will allow continued use of the property in the same manner that it has been since before the establishment of zoning. The construction of the new structure will allow accommodations to be made for a handicapped member of the owner’s family. Furthermore, the new structure will be less non-conforming in setback as it will be constructed further away from the pond and will meet building and life safety codes; whereas, the existing structure does not.*

**#2012-6 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, Lot 16, was approved with

conditions on December 6, 2011. At this meeting, Ms. LaCava requested permission to expand hours of operation and the types of goods sold.

The Special Exception was originally approved with permission to sell bread, baked goods, local art, and cut flowers. The business has been successful with Ms. LaCava selling her goods wholesale, at farmers' markets and at her home. The hours originally approved for the home business were seven days a week from 7 AM to 5 PM; however, Ms. LaCava would like to change her business hours to 8 AM to 8 PM. In addition, she would like permission to sell spritzers, bottled water and other drinks. She noted that often people using the recreation area stop in and ask if she sells beverages.

Chairman Krzyzaniak requested that Ms. LaCava confer with the State concerning additional permits, if any, necessary for the sale of bottled beverages. Ms. LaCava agreed.

There was no one present wishing to offer public testimony.

*Motion was made by Mr. Perkins, seconded by Mr. Koontz, to approve the Applicant's request to expand hours of operation and the types of goods sold with the following conditions:*

1. *Hours of operation are not to exceed 8 AM – 8 PM, seven days a week,*
2. *Sale of goods to include bottled and canned beverages (see minutes of 12/6/2011 which includes baked goods, cut flowers and local art), and*
3. *Receipt of confirmation from Owner that the sale of beverages will not require approval from the State of NH.*

*Motion carried unanimously (Gray, Koontz, Perkins, Rinden and Krzyzaniak). The Applicant's use of the property (home business) continues to meet the standards of a Special Exception as reviewed and approved by the Board on December 6, 2011.*

**II. Review of the Minutes and Notice of Decision of June 5, 2012.** Review of the Minutes and Notice of Decision was deferred to the December 4, 2012 meeting.

**III. Procedural Change.** At this point forward, if there is no one speaking in opposition to an application, the applicants will not be required to read the questions or their responses for a Variance, Special Exception or Equitable Waiver. (Note: All questions and responses are provided in writing, in advance of the meeting, as part of the application process.)

**IV. Adjournment.** Motion made by Mrs. Gray, seconded by Mr. Rinden, to adjourn the meeting at 7:15 PM. Motion carried unanimously (Gray, Koontz, Perkins, Rinden and Krzyzaniak). The next regular scheduled meeting of the Board is Tuesday, December 4, 2012, at 6:30 PM in the Town Hall.

Karen L. Robertson  
Planning 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.