



# Town of Hopkinton

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## HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES MAY 21, 2013

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment meeting of Tuesday, May 21, 2013, at 6:30 PM in the Hopkinton Town Hall. Members present: Toni Gray, Charles Koontz, Jessica Scheinman and Gregory McLeod.

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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).

**#2013-4 Kathryn A. Millis** Attorney Adam Costa of Blatman, Bobrowski & Mead addressed the Board representing Ms. Millis in her application for Variance to construct a 12' x 20' addition to a single-family residence located at 124 Perch Lane in the R-2 district, Tax Map 208, Lot 21. The application was submitted in accordance with Zoning Ordinance Table of Dimensional Requirements 4.2 and Expansion of a Non-Conforming Residence 5.1.2(a).

Attorney Costa began by explaining that like many other homes in the neighborhood, Ms. Millis' home is nonconforming and therefore subject to the "50% rule" as referenced in section 5.1.2 of the Zoning Ordinance. Nonconforming residences may be expanded "by up to fifty percent (50%) in square footage from the square footage existing at the date of nonconformity..." However, any expansion must satisfy all other applicable sections of the Ordinance, including the dimensional and density requirements of section IV. Ms. Millis' home was originally constructed with only 904 square feet of gross floor area; therefore, fifty percent (50%) of the size would allow for an expansion of 452 square feet. In considering the 452 square feet, Ms. Millis' has constructed additions consisting of 224 square feet of kitchen and 95 square feet of mudroom space for a total of 319 square feet, leaving 133 square feet available for expansion of the living area of her home. However, given the fact that Ms. Millis now proposes a 12' x 20' (240 SF) addition it will exceed the fifty percent (50%) by 107 square feet.

Also, depending upon how you view the front lot line, the proposed addition will encroach within the minimum front setback. In the R-2 district, a front setback of forty (40) feet is required. Ms. Millis' home is approximately 41 feet, at its closest point; the addition will bring it within 35 feet of the property line. At this time, Attorney Costa directed the Board's attention to the definition of "lot line, front" as referenced in section 2.1.L.8 of the Zoning Ordinance. The front lot line is defined as "...property line dividing a lot from a street (right-of-way)." In reviewing the site plan presented, Attorney Costa noted that the front lot line as added to the plan by Mrs. Robertson is not what divides the lot line from the street.

Listed below is Attorney Costa's response to the criteria for a Variance as written and presented.

1. **The proposed use would not diminish surrounding property values.** “The residence situated on the locus is of modest size, both generally and as compared with other homes in the neighborhood. Just as other single-family residences in the area have been expanded in years past with no apparent negative effect on the value of the surrounding homes. It is not anticipated that a 12' x 20' addition will cause a diminution in property values...”
2. **Granting the variance is not contrary to the public interest.** “The issuance of a variance for the addition is consistent with the purposes of the Ordinance ‘to protect and conserve the value of property’ and ‘to encourage the most appropriate use of land throughout the town.’ Constructing an addition five feet closer to the property line at a dead-end street isn’t inconsistent with the Ordinance.

At this time, the Board reviewed photographs of other homes along the street showing what appeared to be homes that are closer to the right-of-way than that of Ms. Millis’ home.

3. **By granting the variance substantial justice would be done.** “Requiring a reduction in the size and dimension(s) of the proposed addition is of no advantage to the public, given the property’s area, its distance from neighboring homes and the scope of the proposal.”

Attorney Costa referenced a statement in the Office of Energy and Planning Handbook concerning inability to foresee any harm to the general public. Attorney Costa went on to explain why the addition could not be constructed elsewhere. To the south is the pond and construction closer to the pond is not permitted. To the east is a retaining wall that is required to remain, along with any vegetation in its unaltered state, according to NH DES. To the west is the septic system.

4. **The spirit and intent of the Ordinance will not be broken by granting the variance.** “No effect will be had on the public health, safety or general welfare as protected by the Ordinance. The proposal is in keeping with the character of the neighborhood, both in the square footage of the home and its location on the property.”
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 purposes served by the adoption of the 50% rule and the Ordinance’s front-yard setback requirement are not fairly and substantially advanced when applied to the property.”
  - (ii) **The proposed use is a reasonable one.** “Because both the nonconformities of the home and development constraints prevent the construction of an addition elsewhere on the property, the proposal being made to the Board is reasonable.”

Ms. Scheinman inquired further concerning reference Attorney Costa had made to the requirements of NH DES. In response, Attorney Costa noted that in complying with the Alteration Permit issued by NH DES for the installation of the septic system there were conditions imposed. Ms. Sheinman suggested that other homeowners along the pond are restricted according to the NH Shoreland Regulations and therefore, those restrictions may not be considered special conditions only inherent in Ms. Millis’ property.

Mr. McLeod questioned whether the width of the right-of-way is defined by meets and bounds. In response, Attorney Costa stated that while there is reference to the right-of-way in the Millis deed there are no plans or actual measurements given. In fact, in most places it is referenced as “woods road”.

Mr. Koontz questioned whether the abutters were notified of the hearing. Ms. Robertson replied yes.

Mrs. Gray believed that the Applicant had met the criteria to be granted a Variance. Mr. McLeod concurred, noting that the Applicant had satisfied the criteria to be granted a Variance for the setback and to exceed the 50% rule.

Motion made by Mr. McLeod, seconded by Mrs. Gray, to approve Application #2013-4 as presented. With five members voting, three voted in favor (Gray, McLeod and Krzyzaniak) and two voted in opposition (Koontz and Scheinman).

Ms. Schienman noted that she voted in opposition as she did not believe that the Applicant had successfully addressed provision five of the criteria to be granted a Variance.

## **II. Review of the Minutes and Notice of Decision of January 2 and April 2, 2013.**

Motion made by Mrs. Gray, seconded by Ms. Scheinman, to approve the Minutes of April 2, 2013 as presented. Motion carried unanimously.

Motion made by Mrs. Gray, seconded by Mr. McLeod, to approve the Notice of Decision of April 2, 2013 as presented. Motion carried unanimously.

As the members present were not the same as those that attended the January meeting, review of the Minutes and Notice of Decision of January 2, 2013 were deferred to the June meeting.

## **III. Adjournment.**

With no further business to come before the meeting, motion was made by Mrs. Gray, seconded by Mr. McLeod, to adjourn the meeting at 7:00 PM. The next regular scheduled meeting of the Board is Tuesday, June 4, 2013.

Karen L. Robertson  
Planning Director

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.