



# Town of Hopkinton

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## HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES JULY 7, 2015

Members present: Charles Koontz, Toni Gray, Gregory McLeod, Daniel Rinden and Jessica Scheinman. Staff present: Planning Director Karen Robertson.

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

- I. **Call to Order.** Acting Chairman Greg McLeod called the meeting to order at 5:30 PM in the Hopkinton Town Hall.
- II. **Application(s).**

**#2015-5 Mark Winzeler Variances** to operate a retail store selling antiques, furniture and art, and to have more than one principal use (retail/residential) on property located at 53 Maple Street in the VR-1 district. The property is currently owned by Leona Lorber Trust, shown on Tax Map 102 as Lot 50. The application was submitted in accordance with Zoning Ordinance Table of Uses 3.6.F.1 and Section 4.4.3.

Mr. Winzeler addressed the Board advising of his proposal to utilize the second floor of the building for his own personal residence and the first floor for a retail shop selling antiques, furniture and art. He suggested that the building is ideal for a commercial use as it had been "grandfathered" for various uses in the past, including an antique shop, Post Office, American Legion, funeral home, and a church. In considering other uses for the property, such as converting the building into four (4) apartments; Mr. Winzeler found that zoning prohibits more than two (2) apartments in the district. Therefore, he believed that residing at the property while operating a retail shop is the most appropriate use for the property given the size and style of the building.

Mr. Winzeler discussed his plans in preserving architectural characteristics of the building. He mentioned his role as a charter member of the Contoocook Riverway Association and their efforts in improving the "attractiveness" of the downtown by restoring the Depot as well as being instrumental in the repurposing of land behind the Depot for use as a Town park. He suggested that establishment of the retail shop will be "good for downtown merchants by pulling in local shopping dollars as well as tourist."

Mr. Winzeler's written response for a Variance as outlined in Section XV of the Zoning Ordinance was as follows:

1. **The proposed use would not diminish surrounding property values because:**  
"This property has been a commercial use for decades and this new use would be just an extension of that."

2. **Granting the Variance would not be contrary to the public interest because:** “No changes to exterior, traffic patterns or congestion.”
  3. **By granting the Variance substantial justice would be done because:** “This unique building could continue to be a viable part of downtown Contoocook’s commercial center.”
  4. **The spirit and intent of the Ordinance will not be broken by granting the Variance because:** “This property has been a business of varying types for years; grandfathered in years ago.”
4. **Literal enforcement of the Ordinance results in unnecessary hardship.**
- (a) **For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area.**
    - (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 building was built and used as a public meeting place, church, etc., not as residential. An antique, furniture, art store would continue that use as a place for the public.”
    - (ii) **The proposed use is a reasonable one.** It will not change the fabric of the neighborhood because it has always been one of several commercial uses.”

In response to Mrs. Gray inquiry as to the current use of the space on the second floor of the building, Mr. Winzeler indicated that the space is now loft space, but was previously used by Provan & Lorber.

Mrs. Scheinman questioned whether there are other properties in the district that are being used for dual purposes. Mr. Winzeler was not aware of any. Mrs. Robertson recalled a private school/daycare was being operated at a residence off Cedar Street.

Acting Chairman McLeod opened public testimony.

Leona Lorber, owner of the property in question, stated that this will be an “easy transition” from a civil engineering firm to the residential/retail use. Mrs. Lorber further noted that at the height of the business there were fifteen (15) to twenty (20) employees working at the building.

Mrs. Lorber listed uses that had at one time taken place at the property: Church, American Legion, funeral parlor, Post Office, business offices, book business, flea market, antique, arts & crafts Shop, and residence.

Finally, Mrs. Lorber questioned what would happen should the Methodist Church vacate their building; suggesting that they too would have a difficult time converting their building to a commercial use as the property is located in a residential district. In response, Mr. McLeod noted that any change in use of the Methodist Church building would have to be

reviewed by the appropriate officials so to determine whether the use is something permitted in the Ordinance.

Richard Simms, abutter at 43 Maple Street, addressed the Board indicating that he was not able to hear what was said by Mrs. Lorber. Acting Chairman McLeod advised that Mrs. Lorber spoke in favor of the proposal. She discussed several different uses that had historically been at the property and noted that the Methodist Church is also in the same predicament as their property is located in a residential district.

Mr. Simms spoke in favor of the proposal; suggesting that what is being proposed by Mr. Winzeler is most desirable as compared to other uses that could possibly take place at the property.

James O'Brien, abutter at 17 Prospect Street, addressed the Board advising that the Provan & Lorber business has been a "good neighbor". While he is not opposed to Mr. Winzeler's application, he has concerns. In particular, concerns are with the exterior changes to the building, hours of operation, and vehicular traffic traveling along Prospect Street which is a quiet residential neighborhood. In response, Mr. Winzeler noted that the plan he had presented showing changes to the building façade is not actually how the building will look. He noted that he had to present something as part of his application and that he had quickly prepared the plan. In fact, he intends to leave the entrance door in the same place and enlarge the window closest to the door. All work will be in keeping with the character of the building.

Mrs. Robertson noted that Mr. Winzeler is scheduled to appear before the Planning Board for Site Plan and Architectural Design Review. The Planning Board will review the architectural design of the building, including lighting and parking, to insure that the proposed use meets the requirements of the Ordinance and Regulations.

Mrs. Gray questioned the hours of operation for the business. After brief discussion, Mr. Winzeler stated, Mondays – Thursdays from 10 AM – 5 PM, Fridays 10 AM to 7 PM, Saturdays 10 AM – 5 PM and Sundays 12 Noon – 5 PM.

Mrs. Scheinman inquired as to whether the Board would want to impose a restriction limiting business traffic to Maple Street in an attempt to address Mr. O'Brien's concern with the potential for additional traffic on Prospect Street. Acting Chairman McLeod suggested that the matter should be a decision of the Planning Board as part of Site Plan Review. Mrs. Robertson agreed to bring the matter to the Planning Board's attention; however, she suggested that the Planning Board may determine that it would be difficult to prohibit Mr. Winzeler's customers from driving Prospect Street. Furthermore, she believed it would be difficult for the Town to enforce the condition as Prospect Street is currently open to through traffic.

Mrs. Lorber readdressed the Board noting that prior to the renovations to the building there was a second entrance to the building off of Prospect Street.

With no further testimony, Acting Chairman McLeod declared public testimony closed.

Mrs. Gray believed that all concerns were addressed by the Applicant, and that the Applicant satisfied all criteria to be granted a Variance. Mrs. Robertson reiterated the fact

that she will bring to the Planning Board's attention the matter of traffic exiting the property onto Prospect Street.

Mrs. Gray, seconded by Mr. Koontz, moved to **APPROVE** the application for Variance (#2015-5) as presented with the following condition: Mondays – Thursdays and Saturdays 10 AM – 5 PM, Fridays 10 AM – 7 PM, and Sundays 12 Noon – 5 PM. Motion passed unanimously (Koontz, Gray, Rinden, Scheinman and McLeod). The Applicant successfully addressed all criteria to be granted a Variance as outlined in Section XV of the Zoning Ordinance.

Reasons for approval as follows:

1. There was no evidence that surrounding property values would diminish as a result of the retail shop or allowing two principal uses within the building. In fact, the residential unit will be owner-occupied.
2. There was no evidence that the public's interest would be impacted as a result of the commercial (retail) use or allowing two (2) principal uses (residential/retail) within the building. For more than thirty-years (30) the building had been used for various commercial uses as the property was located in the commercial district. In fact, at one point, the property was used as a retail establishment selling antiques, arts and crafts. There was no evidence that the previous or proposed commercial use would negatively impact the public's interest. The proposed residential unit is a permitted use in the district and therefore, will be consistent with other residential uses in the neighborhood.
3. Substantial Justice: The residential unit and retail shop is anticipated to have little to no impact on the public when comparing the proposal to the number of employees (15-20) that once worked at the civil engineering firm that operates from the property.

The uses (retail/residential) of the property will not be substantially different by reason of normal operation, readily observable difference in patronage, sight, noise or similar characteristics from the existing permitted business office or other residential homes in the district. In other words, the public would realize no appreciable gain from denial of the Variance.

4. The spirit and intent of the Ordinance will not be broken by granting the Variance as the retail/residential uses on the property will not change the character of the surrounding area or the architectural design of the building.
5. Requiring the Applicant to utilize the property for one principal use is not necessary in order to give full effect to the purpose of the Zoning Ordinance. The property will be used for residential and commercial purposes which are uses that are consistent with the uses in the area.

### III. Review/Approval of Minutes.

Mrs. Gray, seconded by Mr. Koontz, moved to **APPROVE** the Minutes and Notice of Decision of June 2, 2015 as corrected. Motion passed unanimously (Gray, Koontz, McLeod, Rinden and Scheinman). Motions to approve the Minutes and Notice of Decision were corrected to reflect that Jessica Scheinman abstained from voting and that Janet Krzyzaniak was not present.

**IV. Other Business.**

- a) Annual appointment of Chairperson. Mrs. Robertson reported that Mr. Koontz has indicated that he will not be able to fulfill the role as the official Chairman of the Board.

Following brief discussion, members unanimously agreed to appoint Dan Rinden as Chairman of the Zoning Board of Adjustment.

- b) Rotating Schedule Chairing Meetings. Mr. Rinden is scheduled to oversee the August 4, 2015 meeting of the Board.

**V. Adjournment.**

Mrs. Gray, seconded by Mr. Koontz, moved to **ADJOURN** the meeting at 6:45 PM. Motion passed unanimously. The next regular scheduled meeting of the Hopkinton Zoning Board of Adjustment is at 5:30 PM on Tuesday, August 4, 2015, at the Hopkinton Town Hall.

Karen Robertson  
Planning Director