



# Town of Hopkinton Planning Department

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## HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES DECEMBER 1, 2020

Members present: Chairman Daniel Rinden, Seth Greenblott, Jessica Scheinman, Andrew Locke, and Alternate Dulcie Madden Lipoma.

- I. **Call to Order.** Chairman Rinden called the meeting to order at 5:30 PM. He explained that due to the COVID-19/Coronavirus crisis and per Governor Sununu's Emergency Order #12, under Executive Order 2020-04, the Zoning Board of Adjustment is authorized to meet electronically.
- II. **Declaration of Chair.** "As Chair of the Hopkinton Zoning Board of Adjustment, due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, this Board is authorized to meet electronically.

Please note that there is no physical location to observe and listen contemporaneously to the meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, this is to confirm that we are:

We are providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means. We are utilizing the Zoom platform for this electronic meeting. All members of the Board have the ability to communicate contemporaneously during this meeting through the Zoom platform, and the public has access to listen contemporaneously and, if necessary, participate in this meeting through dialing the following phone # 1-929-205-6099 and meeting ID: 94597010138, or by clicking on the following website address: <https://zoom.us/j/92370407190> and using Meeting ID: 923 7040 7190.

- a. Providing public notice of the necessary information for accessing the meeting. We previously gave notice to the public of how to access the meeting using Zoom, and instructions are provided on the Town of Hopkinton's website at [www.hopkinton-nh.gov](http://www.hopkinton-nh.gov) and on the Town Hopkinton's Facebook page.
- b. Providing a mechanism for the public to alert the public body during the meeting if there are problems with access. If anybody has a problem, please call (603) 746-8243 or email at: [planzone@hopkinton-nh.gov](mailto:planzone@hopkinton-nh.gov).
- c. Adjourning the meeting if the public is unable to access the meeting. In the event the public is unable to access the meeting, we will adjourn the meeting and have it rescheduled.

Please note that all votes that are taken during this meeting shall be done by Roll Call vote."

### III. Applications.

**#2020-12 T.F. Bernier, Inc.** Timothy Bernier of T.F. Bernier, Inc., representing the Estate of Richard B. and Susan M. Drescher, presented a request for a Variance from Zoning Ordinance 4.2, to allow a lot to be created with less than the required frontage for the R-1 district. The property is located at 199 Maple Street, Tax Map 102, Lot 90.

The property consists of approximately 14.88 acres with 292.89 feet of road frontage. The proposal is to sell the Drescher family home on 1.38 acres with 160 feet of road frontage and retain the remaining 13.5 acres with 132.89 feet of frontage. While Peter Drescher noted that the family has no intentions, at this time, to construct a residence, the property would be available should his sister's children wish to at some point in the future.

Mr. Bernier and Mr. Drescher were clear that rumors circulating that the purpose of the subdivision is for development and that a road is to be constructed are not true. They both stated that speculations about the use for the property are not relevant when acting on the Variance as any request for subdivision or construction of a road would require Planning Board approval and not approval of the Zoning Board of Adjustment.

The Applicant's response to the criteria 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:** While the new lot will have 27 feet less frontage than required, it will have more frontage than most of the abutting lots along Maple Street.

Granting the Variance will allow the lot to be used in the same manner as the other neighborhood lots. The proposed lot is large, 13.5 acres, and will have more frontage, 132.89 feet, than other lots in the neighborhood. There will be no more diminishment in value than other lots in the area with less frontage.

Lastly, Mr. Bernier noted that the zoning requirement of 160 feet of frontage in the R-1 district made at least 80 percent of the neighborhood's lots non-conforming.

- 2. Granting the Variance would not be contrary to the public interest because:** The existing lot is one of the largest privately-owned lots in the neighborhood. The new lot will continue to be one of the largest lots and will continue to have more frontage than most other lots.
- 3. By granting the Variance, substantial justice would be done because:** The existing lot has just over 292 feet of frontage, which is the largest amount of frontage for a lot in the neighborhood. Based on the remaining lot's configuration and size,

there will not be a need to build near property lines unless decided to convert the existing barn into a residence.

4. **The spirit and intent of the Ordinance will not be broken by granting the Variance.** The lot with the existing house will meet all zoning requirements. The remaining lot will have nearly ten times the required lot area and 83 percent of the needed frontage, with ample buildable land. The R-1 dimensional and density requirements caused many lots within the neighborhood to be non-conforming. In contrast, the remaining lot has more frontage than many of the lots.
5. **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 purposes of the Ordinance provision and the specific application of that provision to the property.** The remaining lot will have 83 percent of the required frontage and meet all other zoning requirements. The front portion of the lot is flat with ample buildable area. The abutting lots and the lots across Maple Street have frontages of between 95 and 128 feet.
    - (ii) **(a) The proposed use is a reasonable one.** The request is reasonable as the property consists of about 14 acres. Again, the proposed new lot will be larger than many lots in the area and will be in keeping with the neighborhood's existing development and density.

Mr. Bernier stated that it is unreasonable to require a road to be constructed to subdivide the property. He suggested that if the Variance is not granted and the property is sold, the new owner may decide to develop the property similar to Orchard Way.

Chairman Rinden opened public testimony.

Abutter Doug Maynard expressed concern with the impact of potential development on the neighborhood, suggesting that a new road constructed across from Maple Street School will cause traffic and other safety issues.

Abutter Margaret Astles stated that approving the Variance will prepare the lot for a road and cluster development. Also, she disagreed with Mr. Bernier's comment that the new lot will not compromise the neighborhood's density, suggesting that the Variance could be a "smokescreen" for development. Mrs. Astles agreed with Mr. Maynard that a driveway or roadway across from the school is a safety concern.

Abutters David and Susan Hagner addressed the Board with Mr. Hagner, noting that they own a non-conforming lot. Mr. Hagner commented on the proximity of the homes

within the neighborhood and to the Village, indicating that the combination of old and new homes and big and small is the neighborhood's character. Mr. Hagner asked that the Variance be denied. If approved, he asks that the Board stipulate that a road cannot be constructed across from the school.

Abutter Thomas Hardenbergh noted that he had been told that the Drescher property could not be developed. He suggested that most of the acreage remain with the existing house rather than the new lot, stating that the proposed larger lot's development will alter the neighborhood's properties' character and value. Lastly, he suggested that there will be no loss to the Drescher family if the Board were to deny the Variance as the Drescher's had created the lot's present configuration.

Non-abutter and member of the Conservation Commission Bob Lapree of 25 Highland Avenue, commented that granting the Variance will allow the use of the lot to be decided by whoever owns it. Mr. Lapree recommended that the Board not grant the Variance until the current or future owners present a complete plan of their proposal.

Abutter and member of the Conservation Commission Bonnie Christie of 302 Smithfield Road, stated that the application before the Board is not for development, but rather for a Variance. The Variance is not necessary to develop the property. Denial of the Variance will only prevent the property from being developed as two lots.

Ms. Christie appreciated the traffic concerns and suggested that those concerns be raised with the NH Department of Transportation rather than the Zoning Board of Adjustment as Maple Street is a State road. Ms. Christie then noted that Smithfield is about the same acreage as the Drescher property, suggesting that an owner could decide to develop the property similarly to Smithfield.

Lastly, Ms. Christie commented that the ravine near the Drescher property, a major contributor to the Contoocook River, would need to be protected if there were development.

At this point, Mr. Maynard readdressed the Board to question how it would be possible to develop the land if the Variance were denied. Chairman Rinden asked Mr. Bernier to respond during rebuttal testimony.

In rebuttal, Mr. Bernier agreed with Ms. Christie's comments that the Board's action will not change the property's development potential. Mr. Bernier said that the property is developable according to the zoning rules, requiring an application to the Planning Board. The Variance request for the frontage does not change the developability of the lot. The intent of the two lot subdivision is so that the Drescher children can retain a presence in Town.

In response to comments concerning traffic, Mr. Bernier stated that a new residence would not create a lot of traffic, explaining the location of an existing driveway that presently provides access to the barn. The same driveway would likely be used to access a new residence.

In response to Mr. Lapree's comments, Mr. Bernier stated that there are many other lots along Maple Street with 100 feet of frontage that could be further developed.

Lastly, Mr. Bernier said that requiring a lot to have more frontage than any other lot within the neighborhood creates an unreasonable hardship.

In rebuttal, Mr. Drescher responded that if the Variance is not granted, they will sell the entire parcel. He then concurred with comments concerning existing traffic but noted that Maple Street is a main road between the Village and interstate. The main house is located across from the school property, and the driveway to the barn is located across from a residence.

In rebuttal, Margaret Astles questioned whether she would be permitted to develop her property. Mr. Rinden replied yes, stating that if she could put forth an application that meets the Ordinance requirements.

Mrs. Astles reiterated her concerns with traffic and that the proposal is not within the spirit of the Ordinance. Lastly, she noted that the proposed driveway is located directly across from the school's property.

In rebuttal, Mr. Maynard thought that the purpose of the Variance was to obtain enough frontage for a road. Again, he questioned why the Dreschers would need a Variance if there is already an existing driveway.

In rebuttal, Mr. Hardenberg suggested the Town needs more commercial rather than residential development, which costs the Town money.

Lastly, in rebuttal, Mr. Bernier responded to Mr. Maynard's comments reiterating that the Dreschers are not proposing a road. The Variance allows a lot to be created with 132.89 feet of frontage, rather than 160 feet. Mr. Bernier stated that the proposal meets the Ordinance's spirit and intent as the frontage is consistent with the neighborhood. Lastly, he noted that the existing house's driveway is across from the SAU office, formerly used as a residence. The current driveway for access to the barn is across Lot 2, a home owned by an individual.

Chairman Rinden declared public testimony closed, at which time the Board began its deliberations.

Chairman Rinden explained that any potential development would need to be presented to the Planning Board.

Ms. Scheinman inquired about the use under consideration when reviewing the hardship criteria. In response, Mr. Bernier stated that the use is their ability to sell the lots separately.

Mr. Locke did not see a compelling reason to grant the Variance as allowing the subdivision to be created with less than the required frontage enables the property owner to earn more revenue. While he understood that the owners could construct a housing development, he noted that it is their right today, without a Variance.

Chairman Rinden suggested that granting the Variance would help the owners keep the family's property, suggesting that the new lot would be much larger than any of the lots surrounding the property. He did not believe that it would do justice to anyone by not granting the Variance.

Mrs. Lipoma commented that the development of the lot and its impact on the neighborhood is unknown as it may occur at some point in the future. She did not believe that there is a hardship, noting that revenue does not qualify as a hardship.

Mr. Greenblott agreed that there is an economic cost associated with building a road, which is a hardship. However, as long as there is a relationship between the zoning's general-purpose, which ensures that the lots have a certain road frontage, there is no undue hardship. Mr. Bernier disagreed, stating that the intent of the statute is to require a comparison to others when determining an unnecessary hardship. There is an unnecessary hardship as the lot must have more frontage than other lots within the same district.

Lastly, Mr. Bernier stated that Variances had been granted along Maple Street with far more density exceptions than proposed for the Drescher property. He suggested that limiting the owner's ability to develop the property only by constructing a road is unfair.

Chairman Rinden stated that by not granting the Variance, the Dreschers would have to sell all the property as one lot. Mr. Bernier agreed, at which point the property could be subdivided by constructing a road, as could the Astles' property with only 100 feet of frontage and 3.9 acres.

Ms. Scheinman inquired with Mr. Bernier as to the different applications that have been granted Variances for frontage. Mr. Bernier responded that the Variances were not for frontage but rather for additional residential units.

Mr. Greenblott noted that it is not the Board's responsibility to consider whether an error had been made when the Ordinance was adopted, limiting the neighborhood's density. Rather, it is the responsibility of the Board to apply the Ordinance as currently written. In response, Mr. Bernier stated that he has served as a Planning Board member in another community and is familiar with zoning laws and rules. When the provisions of an ordinance are adopted, he has heard drafters indicate that the Variance process is for those lots that differ when comparing a zoning change.

Ms. Scheinman asked Chairman Rinden if he was aware of any Variances for frontage being approved. Chairman Rinden was unsure.

Mrs. Lipoma noted that there are other large lots within one-half mile of the Drescher property. Those lots are similarly situated and are within the R-1 district. She suggested that if there are other lots equally situated, then the property in question would not be unique. In response, Mr. Bernier indicated that the parcels may be publicly owned and lead outside of the neighborhood.

At this time, the Board reviewed each of the criteria for a Variance:

1. There was no evidence that allowing a lot with less than the required frontage would negatively impact property values.
2. There was no evidence that the public's interest would be impacted due to granting the Variance. The proposed new lot will have 132.89 feet of frontage, more frontage than many lots in the neighborhood.

In terms of density, Ms. Scheinman noted that the proposed lot meets the width requirements for constructing a single-family residence. Mr. Greenblott concurred, stating that creating a non-conforming lot will not negatively impact the public interest.

3. Substantial Justice: Ms. Scheinman stated that the loss to the individual is not outweighed by a gain to the public. Mr. Locke concurred, suggesting that there will be no loss to the owners since they can continue to use the property for permitted uses.

At this time, Mr. Drescher reiterated their intentions to retain the lot for his sister's children, should they decide someday to build on it. If they are not allowed to subdivide the property, their options will be limited.

4. Mr. Rinden stated that the Ordinance's spirit and intent would not be broken by granting the Variance as there are other lots within the neighborhood with less than the required frontage.
5. Literal enforcement of the Ordinance will result in unnecessary hardship: While Chairman Rinden believed that the alternative to granting the subdivision, which is potential development, is a factor to be considered, other Board members disagreed.

Mr. Greenblott commented that the property is unique if the Board considers a narrow view of the neighborhood. Otherwise, if the Board includes properties along the same street within the same zoning district, the Drescher property is not unique. Furthermore, if the Board does not grant the Variance, the Ordinance does not otherwise restrict the use of the property as it can continue to be used in compliance with the Ordinance. Mr. Locke and Mrs. Lipoma concurred with Mrs. Lipoma stating that the 17 percent deficit in the frontage is significant.

Ms. Scheinman then noted that the matter of "unique" is "owing to special conditions of the property." Mrs. Lipoma concurred and commented that the issue is whether

the property is unilaterally unique or are other properties similarly situated. In this case, the are other properties equally situated.

Dan Rinden, seconded by Seth Greenblott, moved to **APPROVE** Application #2020-12, as presented. Motion failed by a vote of 1-4 (Scheinman - no, Locke - no, Lipoma – no, Greenblott – no, and Rinden – yes ). The Applicant was not successful in addressing all criteria for a Variance, as outlined in Section XV of the Zoning Ordinance.

### **III. Approval of Meeting Minutes and Notices of Decision for August 4, October 6, October 13, and November 18, 2020.**

Review of the meeting Minutes and Notices of Decision was deferred to the January 5, 2021 meeting.

### **IV. Adjournment.**

The adjourned at 7:41 PM. The next scheduled meeting of the Board will be held via Zoom at 5:30 PM on Tuesday, January 5, 2021.

Karen Robertson  
Planning Director

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Ordinance §15.10. "Representations made at the public hearing or material submitted to the Board by an applicant for a special exception or Variance concerning features of proposed buildings, structures, parking, or uses which are subject to regulations pursuant to subsection 15.8.2 or 15.8.3 shall be deemed conditions upon such special exception or Variance."

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