



# Town of Hopkinton Planning Department

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## HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES JUNE 2, 2020

Members present: Chairman Daniel Rinden, Seth Greenblott, Jessica Scheinman, Jonathan Eck, and Alternate Andrew Locke. Staff present: Planning Director Karen Robertson.

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- I. **Call to Order.** Chairman Rinden called the meeting to order at 5:30 PM in the Hopkinton Town Hall.
  - 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:

- a. 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 # 1-646-558-8656 and meeting ID: 87165729397, or by clicking on the following website address: <https://us02web.zoom.us/j/87165729397> or by dialing the following phone # 1-646-558-8656 and using Meeting ID: 87165729397.
- b. 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.
- c. 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).
- d. 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.

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Subject to review and approval.

Please note that all votes that are taken during this meeting shall be done by Roll Call vote. Let's start the meeting by taking a Roll Call attendance. When each member states their presence, also please state whether there is anyone in the room with you during this meeting, which is required under the Right-to-Know law."

Roll Call: Seth Greenblott – present and alone, Jessica Scheinman – present and alone, Andy Locke – present and alone, Jonathan Eck – present and alone, and Dan Rinden – present and alone.

### III. Applications.

**#2020-06 Maureen Bland** Craig and Maureen Bland of 554 Camp Merrimack Road presented an application for a Variance to reconstruct a new residence at 548 Camp Merrimack Road, in the R-2 (Medium Residential) district, that is accessed via a private way. The property is located at 548 Camp Merrimack Road, shown on Tax Map 203 as Lot 6.1. The application was submitted in accordance with Zoning Ordinance 4.2 and 5.2.1.

Mr. and Mrs. Bland explained the poor condition of the residence at 548 Camp Merrimack Road, and their intentions to remove and reconstruct the structure using the same footprint.

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:** "The new home will be in substantially the same location on the lot. From the perspective of abutting properties, it will be a new structure of modern construction that will be setback to the submitted DES drawing, and access will be the same."
2. **Granting the Variance would not be contrary to the public interest because:** "There is currently an existing house on the property. The new structure will be in the same location meeting DES setback requirements attached to an approved septic."
3. **By granting the variance substantial justice would be done because:** "It will allow the owners to enjoy their lot while improving the nonconformity of the structure. The existing house is in very poor condition, and the new structure will be a substantial improvement."
4. **The spirit and intent of the Ordinance will not be broken by granting the Variance because:** "The new structure and septic will be compliant to the Town of Hopkinton and NHDES. The access to the lot will remain the same."
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 existing structure and lot are grandfathered. They have been accessed and used the same way for decades. The new house will be conforming with current Town setbacks. The access is through current property owner's property as it has been for decades."

**(ii) The proposed use is a reasonable one.** "The use will remain the same, but in compliance with State environmental rules and zoning. Access will remain the same as it has for decades. The new house will meet Town setbacks, and there will be a new septic design."

Ms. Scheinman inquired about access to the lots and whether the two lots owned by the Applicant were abutting. Mrs. Bland responded that the lots are located beside one another. Mr. Bland responded that access to the lots is through a right-of-way over the property of Camp Merrimac.

Chairman Rinden opened the meeting to public testimony with Mrs. Bland speaking in favor of the application as she owns the abutting property. With no other members of the public present, Chairman Rinden declared public testimony closed.

Mr. Rinden noted that when reviewing the plans showing the existing and proposed conditions of the site, it appears that the proposed deck will extend beyond the existing footprint of the house. Mr. and Mrs. Bland agreed to remove the deck from consideration.

Mr. and Mrs. Bland's engineer, Bill Evans, noted that the deck is statutorily allowed provided it does not exceed 12 feet. In response, Mr. Locke pointed out that while shoreland protection standards may allow the 12 feet, Hopkinton requires a Variance for encroachments in the setback area.

Mrs. Robertson inquired about the location of the proposed new residence as the Applicant has stated that the new structure will comply with current setbacks. The plans presented do not reflect the same. Mr. Locke agreed and inquired with the Applicant about the location of the proposed structure. Mrs. Bland noted that the lot is very small and that the existing footprint is the best location.

Mr. Locke referenced 5.2.1 of the Ordinance, which requires an owner that owns contiguous land to make adjustments to the nonconforming lot to bring it into conformance with present zoning. He questioned whether it would be possible to increase the size of the lot so that it conforms with zoning. In response, Mr. Bland did not believe so, explaining that there is a steep slope to the rear of the lot that will require

at least 500 yards of fill to relocate the structure further back from the river. Mr. Evans agreed, explaining that the side of the lot also has excessively steep slopes.

Mr. Evans believed that upgrading the structure would be permitted as it is a pre-existing nonconformity. Mrs. Robertson explained that when a nonconforming structure is removed, to reconstruct the structure, it must conform with current setback requirements.

Mr. Greenblott suggested that, at this time, there is not enough information available to make a decision. In response, Mr. Bland stated that replacing the structure will eliminate a safety hazard and increase property values; thereby, bringing in more tax dollars to the Town. Mr. Greenblott understood, explaining that the Board is not denying the request, but rather suggesting that more information is needed. Specifically, it would be helpful to have information showing whether it is possible to comply with the requirements of 4.2 and 5.2.1 of the Zoning Ordinance.

At this time, Mrs. Bland discussed the time constraints in beginning construction and the Board acting on the application. In particular, she noted that the septic permit would expire in August 2020.

Mr. Bland questioned the setbacks. In response, Chairman Rinden noted that the setbacks in the R-3 district are 60 feet from the front/rear property lines and 30 feet from the side property lines.

Mr. Locke explained that there is a process that the Board must go through, and one of the things that the Board must determine to grant a Variance is whether the current conditions impose unnecessary hardship. Mr. Bland responded that the unnecessary hardship is the fact that the existing structure is in disrepair.

Mr. Greenblott suggested that the Board continue the hearing and allow the Applicant to supplement the application with additional information. Mrs. Robertson recommended that the Board set a specific date for the hearing.

Mr. Evans reiterated the physical constraints to the property. In response, Chairman Rinden noted that it would be helpful if the Board received larger pictures, including pictures of the steep slopes. Additionally, it would be helpful if the existing and proposed setbacks were indicated, including road frontage and the acreage of the two (2) lots owned by the Applicant.

Mr. Locke noted that the provision of 4.2 and 5.2.1 of the Zoning Ordinance must be addressed. Mrs. Scheinman agreed, and noted that if the Applicant is unable to increase the acreage of the nonconforming lot, then explain why? Mr. Eck agreed, informing the Applicant that the Board understands what they are trying to accomplish; however, to grant a Variance, the Board needs to know what circumstances prevent them (the Applicant) from being able to comply with the provision of 4.2 and 5.2.1.

At the time, Mrs. Bland formally requested a continuance of her application for Variance.

Seth Greenblott, seconded by Jessica Scheinman, moved to CONTINUE the application as requested by the Applicant and to allow for supplementation of the information before the Board.

Mr. Bland and Mr. Evans suggested that they would have the supplemental information within a week, questioning the time frame in which the Board will be able to review the application further.

Following a brief discussion, Chairman Rinden suggested that the Board tentatively meet on Tuesday, June 16, at 5:30 PM. Board members agreed, with Mr. Greenblott withdrawing his original motion.

Seth Greenblott, seconded by Jonathan Eck, moved to CONTINUE the application and to allow the Applicant to submit supplemental information for the Board's review. The meeting will be continued to Tuesday, June 16, at 5:30 PM, pending confirmation of the Town's platform availability in compliance with the Governor's orders. Motion carried in the affirmative (Eck - yes, Scheinman - yes, Koontz - yes, Locke – yes, and Rinden - yes).

#### **IV. Approval of Meeting Minutes and Notices of Decision for March 3 and May 5, 2020.**

Seth Greenblott, seconded by Jessica Scheinman, moved to APPROVE the Minutes of March 3, 2020, as presented. Motion carried unanimously in the affirmative (Eck - yes, Scheinman - yes, Koontz - yes, Locke – yes, and Rinden - yes).

Andy Locke, seconded by Jessica Scheinman, moved to APPROVE the Minutes of May 5, 2020, as presented. With five members voting, three voted in favor (Scheinman - yes, Locke – yes, and Rinden - yes), and two voted in abstention (Eck and Greenblott).

Seth Greenblott, seconded by Andrew Locke, moved to APPROVE the Notice of Decision of March 3, 2020, as presented. Motion carried unanimously in the affirmative (Eck - yes, Scheinman - yes, Koontz - yes, Locke – yes, and Rinden - yes).

Jessica Scheinman, seconded by Andrew Locke, moved to APPROVE the Notice of Decision of May 5, 2020, as presented. With five members voting, three voted in favor (Scheinman - yes, Locke – yes, and Rinden - yes), and two voted in abstention (Eck and Greenblott).

#### **V. Adjournment.**

Andy Locke, seconded by Jonathan Eck, moved to ADJOURN the meeting at 6:21 PM. Motion carried unanimously in the affirmative (Eck - yes, Scheinman - yes, Koontz - yes, Locke – yes, and Rinden - yes). The next scheduled meeting of the Board is at 5:30 PM on Tuesday, July 7, 2020.

Karen Robertson  
Planning Director

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Subject to review and approval.

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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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