



Town of Hopkinton

Planning Department

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HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES SEPTEMBER 5, 2023

The Hopkinton Zoning Board of Adjustment held a meeting on Tuesday, September 5, 2023, at 5:30 PM in the Hopkinton Town Hall, 330 Main Street, Hopkinton. Members present: Chair Daniel Rinden, Jessica Scheinman, Eric Buck, Andy Locke, and Kristen Cummings. Staff present: Planning Director Karen Robertson.

I. Call to Order/Roll Call.

II. Applications.

#2023-10 Neil & Melinda Flanagan Variance to replace a detached accessory structure having less than the required setbacks, per Zoning Ordinance 4.4.1. The property is at 23 Maple Street, Tax Map 102, Lot 47, VR-1 District.

Mr. Flanagan spoke before the Board, detailing that the current Home Depot shed is in disrepair. The plan is to substitute the existing 10' x 10' storage shed with a new Reed's Ferry 8' x 12' shed.

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 surrounding properties are rental and retail commercial. The outbuilding will add value to the home, which increases market value within the area. The fence provides a suitable and secure boundary."
- 2) Granting the Variance would not be contrary to the public interest because:** "The small building is replacing one that has stood for 20 years without incident or complaint. The footage is the same as the previous."
- 3) By granting the Variance, substantial justice would be done because:** "The historical build of our home and land plot (.09 acres) allows little storage space to safely store lawn/garden/tools away from our home, and it reflects living in town that allows families to use their property."
- 4) The spirit and intent of the Ordinance will not be broken by granting the Variance because:** "There was no issue within the last 20 years our Home Depot shed existed."

Subject to review and approval.

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 public purposes of the Ordinance provision and the specific application of that provision to the property. "It's a fancy shed – that's it, providing safe storage of tools, gas, etc. It will add to the property value and be fully fenced, without affecting the neighbors."

ii) The proposed use is a reasonable one. "We are surrounded by rentals, a commercial retail store (Mr. Mike's), dumpsters, a restaurant, and a church. We are the only single-family home on this section of Maple Street."

b) If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist, if and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the Ordinance, a variance is therefore necessary to enable reasonable use of it:
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Mr. Buck inquired about the location of the proposed shed in relation to the property lines. In response, Mr. Flanagan affirmed that, currently, the shed is positioned four feet away from the property line at its closest point and the new shed will be no closer.

Ms. Cummings inquired about the height of the shed being proposed, questioning if it would match the height of the existing shed. Mr. Flanagan indicated that he expects the height to either remain the same or vary by no more than six inches.

Chair Rinden opened and closed public testimony as there was no one present wishing to speak.

In the course of deliberation, Chair Rinden noted that the existing shed is two decades old. The owner intends to substitute it with a new shed of the same square footage. The Applicant's residence is the sole single-family dwelling, encompassed by a mix of retail businesses, a restaurant, a multi-family structure, and a church. Additionally, the lot size is small, measuring only 0.09 acres.

MOTION made by Eric Buck, seconded by Kristen Cummings, to approve Application #2023-10, allowing the replacement of a detached accessory structure (shed) having less than the required setbacks. The motion passed unanimously (Locke, Buck, Scheinman, Cummings, and Rinden).

The Applicant successfully addressed all criteria to be granted a Variance as outlined in Section XV of the Zoning Ordinance. The decision is based on the following findings:

- The existing shed has been in its current location for two decades without any reported issues.
- The new shed, with a similar square footage, is planned to occupy the same location.
- Given the limited size of the lot (0.09 acres), relocating the shed is challenging.
- The home is the sole residential property, surrounded by commercial retail space, a restaurant, multi-family dwellings, and a church.

#2023-11 Granite Roots Construction LLC Variances to establish two principal uses (commercial and residential) in separate structures and two principal residential structures where multiple nonresidential uses/structures or one multi-family residential structure is permitted, per Zoning Ordinance 4.4.3. The property is off Bound Tree Road, Tax Map 221, Lot 75.1, B-1 District.

Attorney Maria Dolder from Hebert and Dolder, representing the Applicant, advised that the B1 zoning district allows limited commercial and residential activities by right. The objective of the B1 district is to accommodate limited commercial, institutional, professional, and personal service uses in addition to residential uses. While the Zoning Ordinance allows for several primary nonresidential structures and uses as a right, it lacks provisions permitting a blend of commercial and residential uses on the same lot.

The Applicant intends to establish a single business office on the property, dedicated to their business activities, along with two residential structures. The property's placement within the B1 district is notable due to its unique characteristics—it adjoins a commercial use on one side and an approved residential use on the other, with the rear abutting I-89. The Applicant has designed the project to align with both neighboring uses. Specifically, the commercial building will be adjacent to the commercial use, while the residential buildings will be next to the residential use. Despite the property's 3.3-acre size, the property features two substantial wetlands, one of which divides the lot. These wetland areas not only act as a natural buffer separating the residential and commercial uses but also result in clearly defined and separate buildable areas on the property. The Applicant will comply with all setback requirements within the B1 district, and the property will be equipped with municipal water and private septic systems, ensuring that it does not unreasonably burden town services.

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:** "Both of the uses being proposed are permitted by right within the B1 Zoning District and they are the type of uses which are expressly anticipated within the District. In fact, the stated purpose of the B1 district is to provide limited commercial, institutional, professional and personal service uses along with residential uses. With that said, although the Zoning Ordinance permits multiple principal nonresidential structures and uses by right in the B1 Zoning District, the Zoning Ordinance doesn't have any provision to allow a mix of commercial and residential uses on the same lot, nor does it permit multiple principal residential structures to be established on the same lot. The location of the property within the B1 Zoning district is unique in that it has a commercial use on one side of it and a residential use on the other side. The Applicant has made a concerted effort to design this property to be consistent with both of those uses. Specifically, the commercial building will be constructed on the portion of the property abutting the commercial use and the residential buildings will be constructed on the portion of the property abutting the residential use. Although the property is 3.3 acres in size, it has two substantial wetlands located on the property, one of which bisects the lot. The wetland areas not only serve as a natural buffer, but also creates a situation where the buildable areas on the lot are quite distinct and separate. It is also important to note that the Applicant would be permitted by right to establish multiple commercial buildings on this property in the same manner and density as is being requested herein. There is no evidence to suggest that allowing the multiple buildings to consist of commercial and residential uses will in any way diminish the value of surrounding property values."
- 2) **Granting the Variance would not be contrary to the public interest because:** "To be contrary to the public interest, the Variance must unduly, and in a marked degree conflict with the Ordinance such that it violates the Ordinance's basic zoning objectives. To ascertain whether granting the Variance would violate basic zoning objectives, you must examine whether it would alter the essential characteristics of the neighborhood or would threaten the public health, safety or welfare of the public. The Applicant's requested variances do neither. As stated above, the underlying uses are both permitted by right in the Zoning District and are consistent with the uses that are established not only within the neighborhood, but on the abutting lots. The neighborhood itself is characterized by a mix of commercial and residential uses. There are several properties that have multiple commercial buildings located on them and one of the abutting properties has been approved to house two residential buildings on it. There is also one commercial building which has a residential unit on the second floor. Accordingly, the granting of the relief requested herein shall have no impact on public safety, health or general welfare of the public and will not be contrary to public interest. Instead, granting the Variance will allow the property to be utilized in a reasonable manner, consistent with the intent of the Zoning Ordinance."

In terms of the proposed residential structures, requiring the Applicant to construct one large residential building is not in the public interest nor does it provide any public benefit. Not only will it detract from the design of the property and the aesthetic appearance of the neighborhood, but it appears that in reviewing the abutter's proposal for a similar use, the Fire Chief indicated that it would be preferable to have the residential units split into separate buildings for emergency access and in order to minimize any possibility of loss or displacement from a fire event. Similarly, having two residential buildings instead of one large building promotes low-impact development by keeping the runoff from concentrating in one location and promoting multiple smaller treatment practices."

- 3) By granting the Variance, substantial justice would be done because:** "One of the guiding rules in evaluating substantial justice is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Under this standard, the Applicant clearly satisfies this requirement. As stated above, the uses being proposed are permitted by right in the Zoning Ordinance and will not have any adverse impact on the neighborhood. Since the Applicant has designed the lot so that the residential use would be located near the approved residential development and the commercial building will be located near the commercial use, there is no justified gain to the public by limiting the use of this particular property. Similarly, the unique physical aspects of this particular lot create a natural separation between the two principal uses being proposed. It is also important to point out that the Applicant would be permitted to establish the same proposed multiple buildings on this lot by right if they were all commercial in nature. Accordingly, there is no justified gain to the public in restricting the residential use to one building when the lot next door has been approved for two residential buildings and from restricting a mix of uses when there is one commercial structure in this area that already has a commercial use with a residential use on the second floor.

Instead, the Applicant has made a concerted effort to develop this lot to be consistent with the abutting properties and the uses that are established or have been approved. By granting the Variance, substantial justice will be done since a denial would be a tremendous loss to the Applicant without any justified gain to the public.

Substantial justice is also achieved by granting variances which do not adversely impact on nearby property owners and which allow a property to be used reasonably. As stated above, even with the requested relief, the difference between that required under the Zoning Ordinance and that being proposed is so minimal that it shall not create any adverse affect on the adjoining neighborhood."

- 4) The spirit and intent of the Ordinance will not be broken by granting the Variance because:** "Once again, the proposed uses are permitted by right

under the Zoning Ordinance. The stated purpose of the B1 district is to provide limited commercial, institutional, professional and personal services along with residential uses. Accordingly, the Zoning Ordinance anticipated that certain commercial uses, such as the one being proposed by the Ordinance anticipated that certain commercial uses, such as the one being proposed by the Applicant, could co-exist with residential uses. The unique natural characteristics of this property create a circumstance where the lot is in essence bisected into two buildable areas where it can be developed for multiple purposes without creating any conflict. Similarly, one of the general purposes of the Zoning Ordinance is to encourage the most appropriate use of land throughout the Town. In this particular case, granting the variances would be consistent with such a purpose in that it would allow the property to be used in a similar manner as its two close"t abutters and consistently with the neighborhood and Zoning District.

In terms of the two residential structures being proposed, they are similar in nature to the structures that have been permitted on the abutting lot and will not have any adverse impact on the neighborhood. There ultimately is no measurable difference to having multiple commercial buildings on this lot, which would be permitted under the Zoning Ordinance, versus multiple residential buildings. It is also important to note that under the Zoning Ordinance, a principal residential structure is permitted to have a detached ADU. Although this is not the circumstance anticipated here, it is simple evidence that the Zoning Ordinance does anticipate having two residential structures on one lot."

5) Literal enforcement of the Ordinance results in unnecessary hardship.

I. 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. "This property, as well as this area of Town, are certainly unique in several ways. First of all, the property is located within a small B1 District consisting of seven properties varying in their use and development. The area itself is made up of a mix of residential and commercial uses, with several properties having or having been approved to have multiple buildings located on a single lot. Most significantly, the abutting lot to this property was approved to have two residential structures located on the same lot. There is also one property that has a commercial building with a residential unit on the second floor. The lot itself is 3.30 acres in size, which is significantly larger than the .344 acres required in the Zoning Ordinance, but it is unique in its physical attributes. Specifically, the lot has two wetlands on it, one of which basically bisects the lot into two different buildable areas, which also serves as a natural buffer. As a result of the unique physical makeup of the property, the lot is similar to that of two different properties. In

this case, the Applicant is proposing to utilize the property as such, while being able to maintain and preserve its natural characteristics. In designing the layout of the property, the Applicant has taken into account not only its unique physical attributes but also its location in a unique setting. As a result, the Applicant is proposing a commercial building on the portion of the lot next to a commercial use and a residential use next to the approved residential use on the other abutting lot. It is also important to once again note that even with the proposal, the proposed use will not alter the essential characteristics of the neighborhood or the property. In fact, with the requested relief, the Applicant is able to create a property that will be consistent with both the neighborhood and, more specifically, its closest developed or approved abutters. Similarly, having two residential buildings instead of one large building promotes low-impact development by keeping the runoff from concentrating in one location and promoting multiple smaller treatment practices. Accordingly, there is no fair and substantial relationship between the general purposes of the Zoning Ordinance and the specific restrictions on the property."

ii) The proposed use is a reasonable one. "As already stated herein, the proposed uses of the Property are permitted by right under the Zoning Ordinance and the relief requested will allow it to be utilized consistently with the abutting properties."

II. If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist, if and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the Ordinance, a variance is therefore necessary to enable reasonable use of it:

"The property, as well as this area of Town, are certainly unique in several ways. First of all, the property is located within a small B! District consisting of seven properties varying in their use and development. The area itself is made up of a mix of residential and commercial uses, with several properties having or having been approved to have multiple buildings located on a single lot. Most significantly, the abutting lot to this property was approved to have two residential structures located on the same lot. There is also one property that has a commercial building with a residential unit on the second floor. The lot itself is 3.30 acres in size, which is significantly larger than the .344 acres required in the Zoning Ordinance, but it is unique in its physical attributes. Specifically, the lot has two wetlands on it, one of which basically bisects the lot into two different buildable areas, while also serving as a natural buffer. As a result of the unique makeup of the property, the lot is similar to that of two different properties. In this case, the Applicant is proposing to utilize the property as such, while being able to maintain and preserve its natural characteristics. In designing the layout of the property, the Applicant has taken into account not only its unique physical attributes but also its location in a unique setting. As a result, the Applicant is proposing a commercial building on the portion of the lot next to a commercial

use and a residential use next to the approved residential use on the other abutting lot. It is also important to once again note that even with the proposal, the proposed use will not alter the essential characteristics of the neighborhood or the property. In fact, with the requested relief, the Applicant is able to create a property that will be consistent with both the neighborhood, but more specifically, its closest developed or approved abutters. Similarly, having two residential buildings instead of one large building promotes low-impact development by keeping the runoff from concentrating in one location and promoting multiple smaller treatment practices. Accordingly, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it."

The Board received a letter from the Fire Chief referring to a similar endorsement he had previously submitted for Mike Martin under comparable circumstances. Chief Yale expressed support for the proposal of two separate buildings, each with four units, as opposed to a single building with eight residential units. He emphasized that the separate structures would facilitate better access to the outer perimeter in various emergency scenarios, preventing potential delays. Additionally, having two buildings reduces the likelihood of a fire or fumes in one unit affecting the others. Chief Yale noted that he had consulted with Peter Swislosky of Granite Roots Construction and reviewed the site plan. He stated that Mr. Swislowky is aware of the fire prevention requirements. Chief Yale emphasized that elevation plans per NFPA 1, 101, 13, and 72 will be necessary and expected from Mr. Swislosky's office as part of the permitting process.

Chair Rinden asked about the intended use of the commercial building, and owner Peter Swislosky provided clarification. Mr. Swislosky, who resides in Webster and currently operates his office in New London, outlined the proposal to build a 28' x 40' barn. The purpose of this structure is to serve as storage for construction materials and equipment. Mr. Swislosky specified that his company specializes in construction management.

Based on the site plan, Attorney Dolder anticipated that the residential units would likely be two-story structures with two or three bedrooms each. In response, Mr. Buck raised a concern about whether the lot load calculations for the septic systems would adequately support the proposed uses. Owner Mr. Swislowsky assured that the lot load calculation is sufficient, supporting a total of 26 bedrooms.

Ms. Cummings inquired about the daily staffing levels for the commercial business. Mr. Swislosky responded, indicating that there would typically be one to two employees per day for the commercial business.

Ms. Scheinman asked about the use of the property across the street on Bound Tree Road. Attorney Dolder clarified that it is currently a vacant wooded lot. Following up, Ms. Scheinman inquired about the curb cuts for the driveway, to which Mr. Swislosky affirmed that there is more than ample sight distance in both directions.

Chair Rinden opened public testimony.

Scott Clay from 1677 Bound Tree Road expressed concerns. Mr. Clay suggested that upon reviewing the property, the wetlands overlay, and contour maps, there might not be enough high ground. He questioned the practicality of the proposed construction of both residential structures, indicating that the owner may be overly ambitious with the proposal. In response, Mr. Swislosky explained that the previous property owner had removed a significant amount of fill, which now needs to be restored to the property. He highlighted the collaboration between wetland scientist Aaron Wechsler and engineer Anthony Costello, both of whom possess extensive experience. They have assessed the site and concluded that it can support the proposed uses without adversely impacting the wetlands.

Chair Rinden asked about the distance between the wetland and the residential buildings. Mr. Swislosky estimated 75 to 100 feet. Additionally, Mr. Swislosky mentioned that Mr. Costello would prepare the required plans for the Planning Board and the required filing for an Alteration of Terrain (AoT) permit from the State.

With no additional public testimony, Chair Rinden concluded the public hearing portion of the meeting.

Ms. Cummings highlighted that while the Applicant could subdivide the property, having two residential buildings on the same parcel would necessitate a variance, emphasizing the Fire Chief's endorsement of separate buildings.

While Mr. Locke considered the public benefit of the proposed property use, emphasizing the positive impact on the community is the additional housing that should have no adverse effects on neighboring properties. The Board collectively acknowledged the unique feature of the property—the stream/wetland that bisects the lot, creating the illusion of two lots.

Ms. Cummings stated that the proposed separate buildings align with what was previously approved on the adjacent property owned by Mr. Martin. Ms. Scheinman concurred, noting that the proposal mirrors the approved structures on the neighboring lot and is consistent with the neighborhood uses, highlighting the existence of a commercial use with a residential apartment on the second floor.

MOTION made by Kristen Cummings, seconded by Eric Buck, to approve Application #2023-11, allowing the establishment of two principal uses in separate structures. The motion passed unanimously (Locke, Buck, Scheinman, Cummings, and Rinden).

MOTION made by Andy Locke, seconded by Eric Buck, to approve Application #2023-11, allowing the establishment of two residential structures on a single lot.

The motion passed unanimously (Locke, Buck, Scheinman, Cummings, and Rinden).

The Applicant successfully addressed all criteria to be granted a Variance as outlined in Section XV of the Zoning Ordinance. The decision is based on the following findings:

- The commercial building will be situated adjacent to a commercial use, while the residential buildings will be positioned adjacent to residential uses.
- The wetland areas on the lot not only serve as a natural buffer but also create a unique characteristic where the buildable areas on the lot are distinct and separate.
- The unique natural characteristics of this property create a circumstance where the lot is essentially bisected into two buildable areas for multiple purposes without conflict.
- The underlying uses are permitted by right and are consistent with the uses established within the neighborhood and on the adjoining lots. The neighborhood features a mix of commercial and residential uses, including properties with commercial buildings, an abutting property approved for two residential buildings, and one commercial building with a residential unit on the second floor.
- Granting the Variance will have no impact on public safety, health, or the general welfare of the public and will not be contrary to public interest.
- Requiring the Applicant to construct one large residential building would not benefit the public. The Fire Chief, when reviewing a similar use proposed by an abutter (two multi-family residential buildings), preferred separate buildings for emergency access and to minimize potential loss or displacement from a fire event.
- There is no justified gain to the public by limiting the use of this particular property.
- There is no measurable difference between having multiple commercial buildings, permitted under the Zoning Ordinance, and multiple residential buildings on this lot.

III. Minutes and Notice of Decision of July 12 and July 26, 2023.

All board members unanimously approved the Minutes and Notice of Decision of the July 12, 2023 meeting (Locke, Buck, Scheinman, Cummings, and Rinden).

The Minutes and Notice of Decision of the July 26, 2023 meeting were approved by a majority of the board members (Locke, Scheinman, Cummings, and Rinden, with Buck voting in abstention) with the following corrections:

- On page 4, in the second paragraph, correct the spelling of Mrs. Cummings's name.

- Page 4, sixth paragraph, and page 5, first paragraph, acknowledge the Applicant's statement concerning his awareness of the impact of selling the adjacent lot on his ability to access the building area on the lot under consideration.

IV. Adjournment. Chair Rinden, seconded by Jessica Scheinman, moved to adjourn the meeting at 7:15 PM. Motion carried in the affirmative (Locke, Buck, Scheinman, Cummings, and Rinden).

Karen Robertson
Planning Director

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."