



# Town of Hopkinton

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## HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES MARCH 6, 2018

Members present: Chairman Daniel Rinden, Jonathan Eck, Toni Gray, Charles Koontz and Seth Greenblott. 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. **Application(s).**

**John Wuellenweber (#2018-04)** Special Exception and Variance for multi-family dwelling units; Special Exceptions for business and professional offices, and Variance for more than one principal use on a lot. The property is owned by Citizens Bank NA, located at 56 Maple Street, Tax Map 102, Lot 44, VR-1 District. The application was submitted in accordance with Zoning Ordinance Table of Uses 3.6.A.3, 3.6.F.2, 3.6.F.3 and subsections 4.3(i) and 4.4.3.

Mr. Wuellenweber addressed the Board explaining that he has been a resident for many years and is a member of various committees, including the Budget Committee. Mr. Wuellenweber's profession is a general contractor. He has worked on various projects throughout the Town, such as new residences, renovations and commercial buildings.

Mr. Wuellenweber reviewed photographs of the property at 56 Maple Street, noting that the property has been vacant for some time. He is purchasing the property for use as a multi-family residence and offices. He intends to move his own business office to the property. In addition to his office, he hopes that complimentary offices, such as a surveyor or realtor, move to the property. Mr. Wuellenweber did not expect a lot of traffic because of the offices and suggested that there would be little visual impact as the property will continue to have trees and landscaping.

The residential structure has doors on various sides of the building that will be used for access to the proposed 6-8 residential apartments. Furthermore, there will be a new parking area (18 spaces) constructed adjacent to the accessways. While there will be a 4-foot grade difference between the parking lot and the building, the area will be sloped. Additionally, the parking area will be sloped so that all drainage will flow into the existing catch basin that is at the street.

Mr. Wuellenweber believed that the property location is ideal for one or two-bedroom apartments. The property is within walking distance to Town center with the Café and Mr. Mike's located down the street. He further suggested that the apartment will be a place for residents that wish to sell their homes and downsize to a place that requires no maintenance.

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*Subject to review and approval.*

Mr. Wuellenweber reviewed photographs of properties in the vicinity that have rental units and retail space. Lastly, he presented a photograph of his existing business sign and estimated the size to be about 15 square feet. The same sign will be used to advertise the business/professional offices.

In reviewing the proposed layout of the apartments and business/professional office space, Mr. Wuellenweber noted that the first floor of the barn will be offices; while, the second floor space will contain two apartments. The building will be renovated to include new windows, wiring, plumbing, and paint.

The Applicant's written 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 building owner plans to improve and remodel the home to attract people looking to rent a 1-2 bedroom high-end apartment and business/professional office space."
- 2) **Granting the Variance would not be contrary to the public interest because:** "A multi-use development of the property would be consistent with the current neighborhood as there are residences, multi-family units, and commercial mixed with residential directly abutting the property in question. The proposed residential units and business and/or professional offices are permitted uses in the district."
- 3) **By granting the Variance substantial justice would be done because:** "The current home disrepair is impacting the value of surrounding homes and businesses. The owner plans to improve and remodel the home attracting renters to what will be high-end apartments and business/professional office space. The proposed uses (residential and business/professional offices) of the property will not be substantially different by reason of normal operation, patrons, sight, noise or other characteristics from the existing multi-family apartment buildings or mixed retail/residential building."
- 4) **The spirit and intent of the Ordinance will not be broken by granting the Variance because:** "The building is abutting multi-family apartment buildings and is across the street from a mixed commercial/residential property. The adjacent 4-unit apartment building and mixed commercial (retail) and residential property that is across the street are on smaller lots than the property in question. The proposed mixed commercial/residential use will not change the character of the surrounding area, or the spirit and intent of the Ordinance as both uses are permitted within the district."
- 5) **Literal enforcement of the Ordinance results in unnecessary hardship.**
  - (a) **For purposes of this subparagraph, "unnecessary hardship" means that, owning 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.** "Requiring the owner to utilize the property for a maximum of three residential units and one principal use is not necessary in

order to give full effect to the purpose of the Zoning Ordinance. The district allows multi-family as well as commercial uses. In fact the property abuts a 4-unit and 5-unit multi-family apartment building and is located across the street from a mixed use commercial retail and residential building. The 4-unit building and mixed-use building are located on lots having less acreage than the lot in question.”

- (ii) **The proposed use is a reasonable use.** “There are several homes in the area that were once single-family homes that have been converted to multi-family homes and commercial enterprises. The proposed uses (multi-family, commercial and mixed) are consistent with other uses in the neighborhood.”

Mr. Eck asked the Applicant to elaborate on the requirement that there be an unnecessary hardship. In response, Mr. Wuellenweber suggested that an individual would not invest their money to repair a building that is approximately 6,000 SF for use as a single-family residence. Note: Estimated 6,000 SF is the combination of residence and barn.

In reviewing the Applicant’s response to item 3 of the criteria, Chairman Rinden questioned what would qualify as a high-end apartment. In response, Mr. Wuellenweber explained that it is the quality of work, such as new windows, tiled floors, tiled backsplashes, and tiled bathrooms.

Again, Mr. Eck asked Mr. Wuellenweber to further address item 5 of the criteria that requires an unnecessary hardship. In particular, he asked how an unnecessary hardship is having no more than 3-units. Mr. Wuellenweber responded that if there were only 3-units then they would have to be sizeable units, which would attract tenants with children. He suggested that the School District doesn’t need more children. Furthermore, he indicated that, financially, having only 3-units would not be feasible.

Mr. Eck then asked Mr. Wuellenweber to further address the issue of unnecessary hardship as it would relate to his request for more than one principal use. Mr. Wuellenweber stated that if the property were to remain as a single-family home then he would lose money if he should try to resell it, after the renovations. The property is along a noisy street with commercial traffic.

Mr. Koontz questioned whether the residence is the largest house in the neighborhood. Mr. Wuellenweber replied no, suggesting that there is a larger residence that is further up Maple Street.

Chairman Rinden asked Mr. Wuellenweber how he intends to prevent tenants with children from renting the units. In response, Mr. Wuellenweber stated that he is the property owner; therefore, he could decide who is eligible to rent the units. He further stated that the units will be designed for the individual that wishes to downsize, rather than for families.

Chairman Rinden inquired about the approximate size of each residential unit. In response, Mr. Wuellenweber estimated 500 to 600 square feet.

Mr. Koontz inquired about the least number of residential units that would financially make sense. Mr. Wuellenweber suggested that 6-units would be practical; however, he would like the option of using the office space for residential units should it be difficult to rent out the

office space.

Mr. Koontz asked if there were other properties similarly situated as it relates to the property being unoccupied for several years. Mr. Wuellenweber was unsure.

Chairman Rinden questioned whether there is a landscaping plan for the property. Mr. Wuellenweber said no, not at this time. He then explained the various trees and other vegetation that will remain and be removed, so that the building is visible.

Mrs. Gray asked if the Fire Department had reviewed the plans. Mr. Wuellenweber replied no, explaining that he would have the plans reviewed.

Chairman Rinden opened public testimony.

Mark Winzler of 53 Maple Street addressed the Board expressing concern with the number of proposed apartments and their parking needs. He suggested that four apartments and two offices would be appropriate.

Harold Ekstrom of 73 Maple Street expressed concerned with the number of apartments and the size of the parking area being proposed. He suggested that changes in the use of the building extends the commercial zoning further up Maple Street. He then noted that the property abuts residential uses and one mixed residential/commercial use.

Lastly, Mr. Ekstrom stated that the change from one residential unit to 6-8 units and three offices will require additional usage of the Town's water and sewer system.

In rebuttal, Mr. Wuellenweber explained his history of participation in the community and that he cares about the Town and the neighbors. He stated that the reduction in the number of residential units does not necessarily mean there will be less people living at the property. He suggested that if the number of residential units is reduced then the unit sizes will increase with more bedrooms being available for families with children. This in turn would mean that there would be more usage of the Town's water and sewer systems.

In rebuttal, Mr. Winzler reiterated his concern with the number of units being proposed on the property. Mr. Ekstrom concurred, noting that having that number of rental units and parking will affect, one way or another, property values in the neighborhood.

Chairman Rinden declared public testimony closed.

Mr. Eck spoke positively about Mr. Wuellenweber's quality of work that he has done in Town. While Mr. Eck is aware of the Town's revenue problem, he reminded the Board that they must work within the confines of the Zoning Ordinance, as it is written. If there is a need for amendments to the Ordinance, then future amendments should be considered.

Mr. Eck could not support either request for Variance as the Applicant had not met the criteria for unnecessary hardship. Furthermore, he did not believe that the requirement that the "spirit and intent" of the Ordinance not be broken had been adequately addressed. To a greater degree, Mr. Eck believed that the criteria had not been addressed concerning the Variance involving the land area.

Mrs. Gray concurred with Mr. Eck, suggesting that the Applicant only offered a financial hardship, which does not qualify as an unnecessary hardship.

Mr. Greenblott noted that the Town is in need of affordable housing and more commercial office space; however, he was unable to find that the Applicant had adequately addressed the requirement for an unnecessary hardship.

Mr. Koontz suggested that the building is in poor condition and that by approving the Variances the aesthetics of the building will be improved. In response, other members suggested that aesthetics is not a reason to grant a Variance.

Mr. Wuellenweber believed that the Zoning Board of Adjustment has the authority to amend the Zoning Ordinance by granting a Variance. Many members responded, no. Mr. Greenblott then explained how a Variance can only be granted if the Applicant satisfies all five requirements for Variance.

Again, Board members reiterated their support for Mr. Wuellenweber and for what he is trying to accomplish; however, most of the Board agreed that he did not satisfy all requirements to be granted the Variances.

Mr. Wuellenweber asked for an example of an “unnecessary hardship”. In response, Mr. Greenblott gave a scenario where the property owner could not construct a driveway in a location that is conforming, due to fact that there is a cliff in that location. Due to the special condition of the property, the Board could grant a Variance.

Based on the opinions of a majority of the Board that the Applicant had not satisfied the requirements to be granted the Variances, Mrs. Robertson questioned which use the Applicant would prefer, residential or business/professional offices. Members agreed, suggesting that the Applicant should be given time to make the decision.

Brief discussion ensued concerning whether the Board should re-open public testimony to give the Applicant an opportunity to withdraw the application for Variances and Special Exceptions. In response, the majority of the Board agreed that resubmittal of the request for Variances would not change their opinion, which is that there is no special condition of the property that would satisfy the requirement for an unnecessary hardship.

Seth Greenblott, seconded by Jonathan Eck, moved to **DENY** the application for Variances and to permit the Applicant to withdraw the request for Special Exceptions. With five members voting, four voted in favor (Eck, Gray, Greenblott and Rinden) and one voted in opposition (Koontz). The motion passed. The Applicant then withdrew the application for Special Exceptions.

The Applicant did not successfully address all criteria to be granted a Variance as outlined in Section XV of the Hopkinton Zoning Ordinance. Reasons for denial:

a) Spirit and Intent:

- The Applicant failed to prove that the proposed intensity of development (6-8 residential units and 3 business/professional offices) is consistent with the spirit and intent of the Ordinance and the Maple Street VR-1 district.

## b) Unnecessary Hardship:

- Literal enforcement of the Ordinance does not result in an unnecessary hardship. The lot conforms to the dimensional requirements for the district and is currently being used for a permitted use (single-family) that is consistent with other uses in the Maple Street VR-1 district.
- A Variance is not necessary to give full effect to the purpose of the Ordinance or to support a reasonable use. The property can be used, by right or by Special Exception, for single-family, multi-family (3-units), business offices or professional offices.
- Rehabilitating and converting the residence into a multi-family (6-8 units) does not result in a special condition of the property.
- The proposed intensity of development (6-8 residential units and 3 business/professional offices) is not consistent with existing uses in the Maple Street VR-1 district.

**II. Review of Minutes and Notice of Decision of February 6, 2018.**

Toni Gray, seconded by Seth Greenblott, moved to **APPROVE** the Minutes of February 6, 2018 as presented. With five members voting, four voted in favor (Gray, Koontz, Greenblott and Rinden) and one voted in abstention (Eck). Vote: 4-0-1

Toni Gray, seconded by Charles Koontz, moved to **APPROVE** the Notice of Decision of February 6, 2018 as presented. With five members voting, four voted in favor (Gray, Koontz, Greenblott and Rinden) and one voted in abstention (Eck). Vote: 4-0-1

**III. Adjournment.**

Toni Gray, seconded by Charles Koontz, moved to **ADJOURN** the meeting at 7:55 PM. Motion carried in the affirmative. The next regular scheduled meeting of the Hopkinton Zoning Board of Adjustment is at 5:30 PM on Tuesday, April 3, 2018, at the Hopkinton Town Hall.

Karen Robertson  
Planning Director