



# Town of Hopkinton Planning Department

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## HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES JUNE 4, 2019

Members present: Chairman Daniel Rinden, Toni Gray, Charles Koontz and Seth Greenblott.

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

II. **Applications.**

**#2019-03 T.F. Bernier, Inc.** Tim Bernier of T.F. Bernier, Inc. presented an application for a Variance to reconstruct an existing non-conforming residence and garage having less than the required setbacks for the R-4 district. The property is owned by Edward J. III and Kerry C. Donnelly, located at 5 Eagle Lane, shown on Tax Map 225 as Lot 113. The application was submitted in accordance with Zoning Ordinance 4.1 and 4.2.

Mr. Bernier reviewed the plans showing the location of the existing and proposed residence and garage, reference line of the shoreland protection buffer, and floodplain hazard boundary.

The proximity of the new structures to the Contoocook River will be more conforming. The existing residence is 17.7 feet from the river. The proposed new residence will be 21.9 feet from the river. The elevation of the current house is under the 100-year floodplain. The first floor of the new residence will be elevated so that it is above the floodplain. The deck is currently 7.9 feet from the river. The new deck will be 9.8 feet from the river. Finally, the garage is currently 7.2 feet from the side lot line. The new garage will be 9.8 feet from the lot line. The relocation of the garage was limited due to the fact that a specific area had to remain for the Natural Woodland Buffer, which is required as part of the approved Shoreland Impact Permit.

In addition, the existing septic system is only 60 feet from river. A new State approved septic system will be installed further back from the river.

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 house and garage are in substantially the same location from the perspective of abutting properties and will be new and modern construction meeting building and fire codes. There will be very little impact to the vegetated buffer."

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Subject to review and approval.

- 2) **Granting the Variance would not be contrary to the public interest because:** “Both structures will be reconstructed to be more nearly conforming with yard setbacks. Both of the structures will also be constructed above the 100-year flood elevation.”
- 3) **By granting the Variance substantial justice would be done because:** “It will allow the owners to enjoy their lot while improving the non-conformities of the structures. The new septic system will be an environmental improvement, being compliant with current NHDES rules. The structures will be removed from the 100-year flood zone.”
- 4) **The spirit and intent of the Ordinance will not be broken by granting the Variance because:** “The structures will become more nearly conforming with yard setbacks and will be removed from the 100-year flood zone.”
- 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.** “The structures are pre-existing non-conforming on a small lot created in 1945 and are generally in the same location. The new locations of the structures will be more nearly conforming with current setbacks. The lot age and size is typical with surrounding lots.”
    - (ii) **The proposed use is a reasonable use.** “The use will remain the same, residential. Many properties and structures in the area face the same setback and flood zone issues.”

Mr. Koontz noted that the proposal improves the non-conformity, the structures still remain substantially non-conforming. Mr. Bernier agreed, explaining their options to rebuild in the same location or to rebuild in a more conforming location while still being in close proximity of the river. Mr. Koontz suggested that the proposal is not only less non-conforming, but that the proposal is a better solution than rebuilding in the same location.

Mr. Bernier explained that the first floor of the residence will be 2-feet higher in elevation in order to be outside of the 100-year floodplain.

Chairman Rinden opened the public hearing portion of the meeting for public comment.

Abutter Deborah Nicholson of 377 Little Tooky Road suggested that the proposal is the best possible solution given the size of the lots and the locations of the residences in the area. She did not believe that there is a conforming lot in Little Tooky.

Edward Donnelly addressed the Board explaining that the purpose of the improvements is so that the home can be lived in full-time.

Mr. Koontz inquired about the frequency of flooding. Mr. Donnelly recalled about 12-15

years ago water had flooded a portion of the crawl space/basement of the home. It receded the next day.

Chairman Rinden inquired about the approval of the septic system. Mr. Bernier explained that the NHDES had recently approved the septic system and Shoreland permit.

Chairman Rinden declared the public hearing portion of the meeting closed; at which time, the Board began deliberations.

Board members agreed that reconstructing the residence so that it is more conforming and outside of the 100-year floodplain is a reasonable request.

Seth Greenblott, seconded by Toni Gray, moved to **APPROVE** Application #2019-03 as submitted. Motion carried in the affirmative (Gray, Koontz, Greenblott and Rinden). 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) Property Values:

- There was no evidence that surrounding property values would diminish if a new residence were constructed.
- The structures will be reconstructed to be more conforming with yard setbacks and will be above the 100-year flood elevation.

2) Public Interest:

- There was no evidence that the public's interest would be negatively affected because of the new location and construction.
- The new septic system will be an environmental improvement, being compliant with NHDES rules.
- The reconstructed structures will be removed from the 100-year flood zone.

3) Substantial Justice:

- The public would realize no appreciable gain from denial of the Variance.
- The Applicant's existing residence and garage is located within the 100-year zone.
- The reconstructed structures will be removed from the 100-year flood zone.

4) Spirit and Intent:

- The spirit and intent of the Ordinance will not be broken by granting the Variance as the property will continue to be utilized in the same manner.
- The nature and character of the surrounding properties will not change as the abutting properties are used for residential purposes.
- Requiring the Applicant to reconstruct the residence in the same location is not necessary in order to give full effect to the purpose of the Zoning Ordinance as the residence will be of a similar size and in the same proximity of the current residence.
- The reconstruction of the residence in a more conforming location, outside of the 100-year floodplain, will not adversely affect the health, safety, convenience, or general welfare of the residents in the neighborhood.

5) Unnecessary Hardship:

- Literal enforcement of the Ordinance will result in an unnecessary hardship as the Applicant's residence would remain in a more non-conforming location that is below the 100-year floodplain with the continued risk of flooding.

**II. Approval of meeting Minutes and Notices of Decision for May 7, 2019.**

Since Ms. Scheinman was not present, the Board deferred review of the Minutes and Decision to the June 4, 2019 meeting.

**III. Adjournment.**

Chairman Rinden **ADJOURNED** the meeting at 5:57 PM. The next regular scheduled meeting of the Hopkinton Zoning Board of Adjustment is at 5:30 PM on Tuesday, July 2, 2019, at the Hopkinton Town Hall.

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."