



# Town of Hopkinton

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330 Main Street • Hopkinton, New Hampshire 03229 • [www.hopkinton-nh.gov](http://www.hopkinton-nh.gov)

Tel: 603-746-3170

Fax: 603-746-3049

## HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES AUGUST 7, 2018

Members present: Chairman Daniel Rinden, Jessica Scheinman, Toni Gray, and Charles Koontz.  
Absent: Seth Greenblott. Staff present: Planning Director Karen Robertson.

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I. **Call to Order.** Chairman Rinden called the meeting to order at 5:45 PM in the Hopkinton Town Hall.

II. **Applications.**

**#2018-7 Elizabeth J. Nolin, Esq.** Attorney Paul Alfano of Alfano Law Office, Concord, New Hampshire, addressed the Board on behalf of Loren and Holly Clement for a Variance to permit the construction of an addition to the residence at 86 Maple Street, owned by Loren and Holly Clement, in the VR-1 district, Tax Map 102 Lot 42. The application was submitted in accordance with Zoning Ordinance Table 4.2 and Section 5.1.2 (a).

The site plans presented had shown the Clement property and the abutting property to the north and south. To increase the lot size a lot line adjustment with the property to the north had been completed. Mr. and Mrs. Clement are scheduled to go before the Planning Board to complete a similar lot line adjustment with the property to the south.

The existing 1,344 SF residence is non-conforming as it encroaches on the rear (Cedar Street) setback by five inches. In Comparing the Clement residence with other residences along the street, the setback of their residence is more conforming.

Mr. Clement explained his proposal to construct an addition of a first-floor mudroom/landing, a garage and living room, and second-floor bedrooms, full bath and a master bedroom.

Attorney Alfano noted that when considering the average size of the houses in the neighborhood, the changes proposed will bring the Clement house more in conformity. Additionally, many of the homes in the area have garages or barns, so the proposed garage will also be consistent with others in the neighborhood.

Attorney Alfano suggested that approval be contingent upon Planning Board approval of the lot line adjustment to the south, so to ensure that the side line setback is met.

Mr. Koontz questioned what would happen if the lot line adjustment is not approved by the Planning Board. Mr. Clement had no reason to believe that the Planning Board would not approve the adjustment. He explained that he was recently before the Board for a lot line adjustment on the other side of his property.

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*Subject to review and approval.*

Mrs. Robertson suggested reasons the Planning Board would not approve the lot line adjustment. For example, if the proposal created a violation of the Zoning Ordinance or increased an existing non-conformity.

Ms. Scheinman questioned the percentage of the property that would be covered by the residence after the addition is completed. In response, Mrs. Robertson reviewed the plan of the lot line adjustment which showed that the existing residence is currently using 20.2 percent of the lot. The residence after the addition will utilize 26.9 percent.

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:** "A Variance from Section 4.2 would not diminish surrounding property values. The existing square footage of the lot is 14,960 square feet, and the requirement under the table is 15,000 square feet. A residence already exists on the lot; and many lots in this area are non-conforming because of their age and less than the required dimensions. For this reason, the Variance to this section would not diminish surrounding property values.

A Variance from Section 5.1.2(a) for the proposed addition would not diminish property values because the use would remain residential, as required by the district; the property owner has hired experts and taken great measures to ensure that the addition will be in keeping with the aesthetic of the existing residence and the surrounding neighborhood, a task similarly undertaken when the applicant upgraded the existing residence; and the addition will bring the residence into closer conformity with surrounding properties in terms of square footage. Additionally, the proposed addition will increase the value and desirability of the subject property."

- 2) Granting the Variance would not be contrary to the public interest because:** "Granting a Variance from Section 4.2 would not be contrary to the public interest because it would be consistent with the essential character of the district (since the deficit is only 40 square feet and barely discernable from complying lots) and would in no way threaten the public health, safety, or welfare.

Granting a Variance from Section 5.1.2(a) for the proposed addition would not be contrary to the public interest because it would be consistent with the essential character of the district and would not in any way threaten the public health, safety, or welfare. The proposed use shall be entirely residential, and therefore will be in keeping with the residential nature of the district. Visually, the addition will be in keeping with the character of the district; the property owner has experience renovating the existing residence in keeping with the character and aesthetic of the district, and the same attention – as shown on the proposed plans – has and will be given to the addition to ensure consistency with the visual character of the district. Additionally, there is no risk that the proposed variance would have any risk to the public health, safety, and welfare as it shall be a residential addition with no increase in the number of residents, and minimal increase to public resources to accommodate the single bath in the addition. The fact that the proposed variance will not be contrary to the public interest is highlighted by the fact that both immediate abutters and many of the surrounding abutters are in favor of the application and have lent their support to the property owner in this application."

- 3) **By granting the Variance substantial justice would be done because:** “Granting a variance to Section 4.2 would serve substantial justice because the property owner would realize significant gain from being able to develop on the subject lot; the difference between the actual square footage and requisite square footage is only 40 square feet; and the general public would realize no appreciable gain from denying the variance as a structure is already on the lot and the deficiency in terms of square footage on the lot is barely discernable.

Substantial justice would be done by granting the Variance to Section 5.1.2 because the property owner would achieve tremendous gain by being able to expand his residence and thereby use and enjoy his property more fully, while the public would realize no loss. The proposed addition poses no threat or burden to the surrounding property or community, is appropriate for the area in terms of use, size, and appearance, and does not harm the abutters; therefore, the general public would realize no appreciable gain from denying the variance.”

- 4) **The spirit and intent of the Ordinance will not be broken by granting the Variance because:** “The spirit of the Ordinance is to, among other objectives, promote the health, safety, convenience, and general welfare of inhabitants.

The Variance request to Section 4.2 would not break the spirit and intent of the Ordinance because the deficiency of the subject lot is only 40 square feet, and there is already a residence on the subject lot.

The Variance request to Section 5.1.2 shall not be contrary to the spirit and intent of the Ordinance because the request does not threaten the health, safety, convenience, or general welfare of the inhabitants; nor does it propose an incompatible use on the subject location; nor does it threaten the values of surrounding properties. Because the proposal in no way is contrary to the public interest or proposes an inconsistent use for the district, the spirit and intent of the Ordinance will not be broken.”

- 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.** “With regards to the Variance from Section 4.2, no fair and substantial relationship exists between the general purposes of Section 4.2 and the specific application to the property. The public purpose of Section 4.2 is to regulate development and ensure that property is not overdeveloped and affecting abutting properties. In this case, the deficiency of the subject lot is 40 square feet; and a residence is already on the site. The proposed addition would be within the requisite building envelope, and therefore there is no risk of overdevelopment on the subject lot or interference with abutters by granting the Variance to Section 4.2.

We request a variance from Section 5.1.2, providing that non-conforming residences may be expanded by up to 50% in square footage from the square footage existing at the date of nonconformity provided the addition does not further encroach upon non-conforming setbacks.

The purpose of Section 5.1.2 is to prevent over-development on lots with non-conforming residences, to provide that building on such lots does not interfere with the aesthetic of the district, and to keep districts and neighborhoods substantially uniform.

In this case, no fair and substantial relationship exists between these general public purposes and the specific application to this property. The proposed expansion would be more than 50% of the square footage of the existing building but would be entirely within building envelopes and in conformity with setback requirements of VR-1 properties as articulated under Section 4.2. The applicant has hired professionals to design and plan the addition to ensure the addition would be consistent with the aesthetic of the existing property and surrounding properties in the district, particularly taking into account the historic element of the neighborhood. Additionally, the applicant's addition will be partly screened by surrounding vegetation, and immediate abutters have given their support to the project.

The proposed addition shall consist partly of additional living space and partly of a garage. The proposed addition is consistent with other properties in the neighborhood because most properties have an additional or supplemental building that is a garage or barn. In fact, the subject property as it currently exists is one of the only properties in the vicinity that does not have a garage or barn. The proposed addition is in keeping with the style and structures in the neighborhood. For these reasons, there is no fair and substantial relationship between the general public purposes of Section 5.1.2 and the specific application of that provision of this property.”

- (ii) The proposed use is a reasonable use.** “With regards to the Variance from Section 4.2, the proposed use of permitting the construction of an addition on a 14,960 square foot lot as opposed to 15,000 is reasonable because the deficiency is barely measurable and does not impact abutters with regards to overdevelopment of the lot or placement of a structure too close to lot lines.

With regards to the Variance from Section 5.1.2, the proposed use is a reasonable one because it seeks to expand a residence to reasonably accommodate the family that currently lives there and families who would look to purchase in the area. The existing structure is a non-conforming structure built in 1850, before there were zoning or planning ordinances in effect in Hopkinton. The existing residence consists of 1288 square feet. As shown on the preliminary plans, the proposed addition would seek to add extra living space, a garage, two bedrooms, and one full bath, all within the required building envelope for the VR-1 district. The addition would be entirely for residential use, in keeping with the district.

The applicant is married with four children, and understandably in need of additional space to raise his family. The existing residence is one of the smallest

residences in terms of square footage in the immediate vicinity, with surrounding properties ranging from about 1650 to 3000 square feet; therefore, the total square footage of the proposed and the existing residence would be within the range of other properties in the neighborhood. As Hopkinton is an extremely family-oriented community, the addition to the existing property would also likely be appealing to potential purchasers looking for a family home in the area. As the proposed addition would keep the existing residence and addition within the required building envelope while achieving these objectives, the proposed use is a reasonable use.

In addition to the above-described reasons as to why literal enforcement results in unnecessary hardship, an additional reason remains. The applicant would likely be able to demolish the existing residence and construct an entirely new residence within the building envelope that could result in a building larger than the existing residence and proposed addition. Literal enforcement of the Ordinance would result in unnecessary hardship on the applicant to level and erect a larger, new structure.”

Attorney Alfano was asked to further address the hardship element of the Variance criteria. In response, he stated that the Ordinance requires a minimum lot size of 15,000 square feet. The Clement lot consists of 14,960 square feet. There is a substantial hardship imposed when you balance the benefits with respect to the enlargement of the house because the house is so small. Attorney Alfano suggested that the maximum increase of fifty percent for additions to non-conforming residences is intended to address a possible lack of admiration in the area and not for the expansion of a small residence. Furthermore, the proposed addition is reasonable because it will make the house size more consistent with others in the neighborhood.

Ms. Scheinman asked Mr. Clement if he had considered designing the addition so that it would comply with the fifty percent requirement or were the plans developed before knowing about the maximum size allowed. Mr. Clement responded that he had the plans prepared with the understanding that he would need lot line adjustments. Later, he learned of the encroachment of the existing residence by five inches into the setback.

Ms. Scheinman asked Attorney Alfano to elaborate on the special conditions that distinguish the property from other properties in the area, such as no fair and substantial relationship exists and that the proposed use is reasonable. Attorney Alfano reiterated the size of the existing residence, noting that it is unusually small as compared to other homes in the neighborhood. He suggested that the purpose of the Ordinance is to create cohesiveness. Everything that the Applicant has done, such as the lot line adjustments and the design of the addition, is to make the home more consistent with the neighborhood. When the lot line adjustments are completed, the home will have the least non-conforming setback as compared to others within the neighborhood.

At this time, Chairman Rinden opened and closed the public hearing portion of the meeting as there were no members of audience, besides Mr. Clement and Attorney Alfano.

Ms. Gray believed that the Applicant had done everything possible to increase the size of his lot and to decrease the non-conformity of the setbacks of the home. She suggested that if the application were to be approved that it should be contingent upon Planning Board approval of the lot line adjustment. Members concurred.

Mr. Koontz noted that the Applicant could demolish the existing residence and construct a new three-story residence that would comply with the setbacks. While the new residence would comply, its size would not be consistent with the other homes in the neighborhood.

At this time, Board members reviewed the Applicant's response to the criteria for Variance to determine whether all were satisfied.

- 1) The proposal would increase surrounding property values.
- 2) Granting the Variance would not be contrary to the public's interest.
- 3) The public and private rights of others would not be adversely affected as the existing non-conforming lot size and setback is minimal, and the addition will make the residence consistent in size with other residences in the neighborhood.
- 4) The spirit and intent of the Ordinance would not be adversely affected because of the deficiency in the lot size and the setback. Furthermore, the proposal will not adversely affect the health, safety, convenience, or general welfare of the residents in the neighborhood.
- 5) The Applicant has made every effort to work with his neighbors in adjusting the lot lines so to reduce the non-conformity of the lot size and to provide adequate setback for the existing residence.

Ms. Scheinman noted that the Applicant was aware of the size of the property at the time of purchase. Chairman Rinden agreed and stated that if the Variance is not granted, the Applicant can tear down the existing residence and construct a new residence in conformity with the required setbacks. However, he suggested that removal and reconstruction would be costly.

Ms. Scheinman was not convinced that the Applicant had successfully addressed the "unnecessary hardship".

Mr. Koontz reiterated the fact that it would be costly to remove the existing residence and construct a new residence in compliance with the setback requirements.

Chairman Rinden stated that the residence is 150 years old and is non-conforming in setback by five inches.

Toni Gray, seconded by Charles Koontz, moved to **APPROVE** Application #2018-7 contingent upon Planning Board approval of the lot line adjustment (Lots 42 & 43). Motion carried in the affirmative (Gray, Scheinman, Koontz, and Rinden). The Applicant successfully addressed all criteria to be granted a Variance as outlined in Section XV of the Zoning Ordinance.<sup>i</sup>

Reasons for approval as follows:

- 1) Property Values:
  - There was no evidence that surrounding property values would diminish because of the existing non-conforming lot size (14,960 SF), existing non-conforming setback

(29'-7"), and size of the proposed addition (approx. 1,300 SF).

- The residence was constructed in 1850 before zoning in Hopkinton.
- The residences in the neighborhood are larger than the Applicant's residence and are more non-conforming in setback.

2) Public Interest:

- There was no evidence that the public's interest would be negatively affected because of the existing lot size being 40 SF less than required, the existing building setback being 5-inches less than required, and because of the proposed addition exceeding 50 percent of the size of the existing residence.
- Residences in the neighborhood are more non-conforming in setback and are larger in size than the Applicant's existing residence.
- Certified notice was provided to the abutters and public notice of the proceedings was published in the Concord Monitor. Subsequently, there was no member of the public present at the meeting.

3) Substantial Justice:

- The public would realize no appreciable gain from denial of the Variance.
- The Applicant's residence is very small and less non-conforming when compared to other residences in the neighborhood.
- The difference in actual square footage and required square footage of the lot is 40 square feet.
- The residence is already existing and the deficiency in lot size (40 SF) and setback (5") is unnoticeable.

4) Spirit and Intent:

- The spirit and intent of the Ordinance will not be broken by granting the Variance as the residence is existing, constructed in 1850, and 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 and the abutting property owners have agreed to the lot line adjustments.
- While the proposed addition exceeds fifty percent of the size of the existing residence, it will not further encroach upon the non-conforming setback.
- Requiring the Applicant to limit the size of the addition to no more than fifty percent of the existing residence 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 characteristics of other residences in the neighborhood.
- The proposed addition 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 would need to demolish and reconstruct the residence in order to construct the proposed addition.
- Given the age of the residence, the existing minimal deficiency in setback and lot size, as compared to others within the neighborhood, the proposed addition is reasonable.
- Once the addition is completed, the total size of the residence will be similar to other residences in the neighborhood.

**III. Any other business that may legally come before the Board.**

- The Minutes of the May 1, 2018 meeting were unanimously **APPROVE** as presented.
- The Notice of Decision of the May 1, 2018 meeting was unanimously **APPROVED** as presented.
- The Minutes of the May 10, 2018 meeting were unanimously **APPROVED** as presented.
- The Notice of Decision of the May 10, 2018 meeting was unanimously **APPROVED** as presented.

**IV. Adjournment.** Chairman Dan Rinden, seconded by Toni Gray, moved to **ADJOURN** the meeting at 6:23 PM. Motion carried in the affirmative. The next regular scheduled meeting of the Hopkinton Zoning Board of Adjustment is at 5:30 PM on Wednesday, September 5, 2018, at the Hopkinton Town Hall.

Karen Robertson  
Planning Director

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<sup>i</sup> 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."