



# TOWN OF HOPKINTON

OFFICE OF  
**BOARD OF APPEALS**

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TOWN HALL  
18 MAIN STREET – 3<sup>RD</sup> FLOOR  
HOPKINTON, MASSACHUSETTS 01748-3209

WAYNE R. DAVIES, Chairman  
ROBERT W. FOSTER, Vice Chairman  
THOMAS J. GARABEDIAN, Clerk

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January 25, 2005

## DECISION

**RE:** Petition for Variance and special permits filed by **Colella Family LLC** of 61 Main Street, Hopkinton, MA, 01748 regarding property at 61 Main Street (Assessors' Map U16, Block 250 Lot 0; Middlesex South District Registry of Deeds **Book 26967** at **Page 279**), Hopkinton, MA, 01748 (hereinafter the "Property").

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The Massachusetts Zoning Act having been duly complied with regarding notice, a Public Hearing was held on December 15, 2004 at 8:52 PM in the Hopkinton Town Hall.

### Requested Relief

The Applicant seeks relief to construct an expansion of the existing supermarket building at 61 Main Street, Hopkinton. The area of the existing building is 19,885 square feet; the proposed expansion is to 27,313 square feet, therefore the expansion would exceed the present area of the building by 38%. One corner of the existing building is 5.7 (five and seven-tenths) feet from the northerly property line of the Property. An extension of this wall of the building will be to a point 4.5 (four and five-tenths) feet from the property line.

Section 210-128 of the Hopkinton Zoning Code bars any reconstruction, extension or structural change and any alteration to a substantially greater extent, of a building or structure

except upon the grant of a Special Permit by the Board of Appeals. The applicant requests a Special Permit for relief under this Section

Section 210-128B of the Hopkinton Zoning Code allows the enlargement of an existing non-conforming building or structure to an extent not greater than 25% in area. The applicant requests a Variance for relief under this Section.

Section 210-119 of the Hopkinton Zoning Code allows that the required side yard and rear yard area may be varied in the case of an irregular, narrow or shallow lot, or a lot unusual in shape, upon the granting of a special permit by the Board of Appeals. The Applicant requests a Special Permit for relief under this Section.

Section 210-19D allows drive-through windows in a B District upon the granting of a Special Permit by the Board of Appeals. The applicant requests a Special Permit for relief under this Section.

### **Variance Review Standard**

Variances from the terms of an applicable zoning ordinance or by-law may be granted where literal enforcement would involve substantial hardship due to conditions unique to the particular parcel or structure. Variances are always in derogation of zoning and their procedures presuppose that a proposed use would be prohibited by zoning by-law.

As a matter of law, no person has a legal right to a variance and they are to be granted sparingly. If variances are granted with undue frequency or liberality, and without strict compliance with the prescribed statutory criteria, zoning regulations can become a matter of administration whim, and the intended uniformity may be destroyed. There is generally a distinction between “use” variances, which permit a use of land other than a use permitted by a by-law, and an “area” variance, which authorize deviations from restrictions dealing with such matters as setbacks, frontage, and lot size. Generally, a “use” variance is considered a more substantial departure from the goals of zoning than an “area” variance.

The test for a variance is not whether the requested relief is simply “desirable”, but whether it is justified, that is, whether there is evidence to show that the statutory prerequisites have been met. The prerequisites to the granting of a variance are conjunctive, not disjunctive; a failure to establish any one of them is fatal. However, even if the Board of Appeals finds that all the required conditions exist for the granting of a variance, as a matter of law the Board may exercise its discretion to refuse to issue the variance.

Variations from the term of the zoning by-law may be granted where owing to conditions (soil conditions, shape or topography) especially affecting such parcel or such building, but not generally the zoning district in which it is located, a literal enforcement of the provisions of the zoning by-law would involve substantial hardship, financial or otherwise, to the appellant, and where desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the by-law, but not otherwise. In granting such variations, the Board of Appeals may impose limitations, both of time and of use, and a continuation of the use permitted may be conditioned upon compliance with the regulations of the Board, if any, but may not be conditioned upon the continued ownership of the property to which the variance pertains.

In all matters on which it has jurisdiction to act, the Board of Appeals shall give due consideration to promoting the public health, safety, convenience and welfare, shall encourage the most appropriate use of land, and shall permit no building or use injurious, noxious, offensive, or detrimental to the neighborhood. To this end, it may prescribe appropriate conditions and safeguards in each case.

### **Special Permit Review Standard**

Special Permits, where granted, must be in harmony with the general purpose and intent of the zoning by-laws. Special Permits are granted for those specific uses which are deemed

necessary or desirable but which are not allowed as of right because of their potential for incompatibility with the characteristics of the zoning district. Special Permits are granted only after weighing the benefits and detriments of a proposal. No one possesses a “right” to a Special Permit and the Board may deny an application for such relief in its discretion. In all matters on which it has jurisdiction to act, the Board of Appeals shall give due consideration to promoting the public health, safety, convenience and welfare, shall encourage the most appropriate use of land, and shall permit no building or use injurious, noxious, offensive, or detrimental to the neighborhood. To this end, it may prescribe appropriate conditions and safeguards in each case.

### **Discussion**

The Applicant appeared at the public hearing and presented its proposal for expansion. The Applicant discussed key planned changes to the internal operation of the store and presented plans for the expansion to the rear (south side) of the building. With the improvements, the Applicant intends the current rear entrance (south side) to become the main entrance. The bank, which is currently located on the northeastern corner will be relocated to the southerly side of the building. The bank’s drive through window will be relocated to the south side of the building. There will also be a small “outside café” seating area for the enjoyment of customers. The Applicant owns a single family residence abutting the premises and intends to demolish said building for additional parking. The Applicant also intends to cooperate with the Town regarding improvements to the parking area and installation of new drainage systems. The proposed improvements are subject to site plan review by the Planning Board.

### **Decision**

Based on the application, presentation of the applicant, documents and evidence presented at the Public Hearing a Variance and Special Permits were granted as follows:

1. A variance was granted under Section 210-128C on a finding that the increase in non-conformity of the side set back by 1.2 (one and two-tenths) foot is de minimis, that the present configuration of the Property presents a hardship due to its shape and alignment, and that

a variance would not be detrimental to the public good and would not derogate from the intent of the Zoning By-laws.

On a motion to grant, the Variance was granted as aforesaid by the following vote:

Wayne R. Davies, Chairman	Yes
Robert W. Foster, Vice Chairman	Yes
Thomas J. Garabedian, Clerk	Yes
Ross D. Ginsberg	Yes
Patricia Rackauskis	No

The Petition for Variance is hereby **granted**.

2. A variance was granted under Section 210-128B to allow an increase in the area of the structure greater than 25% on a finding of hardship due to the shape and configuration of the Property, and that a variance would not be detrimental to the public good and would not derogate from the intent of the Zoning Code.

On a motion to grant, the Variance was granted as aforesaid by the following vote:

Wayne R. Davies, Chairman	Yes
Robert W. Foster, Vice Chairman	Yes
Thomas J. Garabedian, Clerk	Yes
Ross D. Ginsberg	Yes
Patricia Rackauskis	Yes

The Petition for Variance is hereby **granted**.

3. A special permit was granted under Section 210-119 to grant relief of 6 feet in side yard from the proposed addition of the warehouse to the northerly property line of the Property on a finding of an irregular, narrow or shallow lot and building configuration.

On a motion to grant, the Special permit was granted as aforesaid by the following vote:

Wayne R. Davies, Chairman	Yes
Robert W. Foster, Vice Chairman	Yes
Thomas J. Garabedian, Clerk	Yes
Ross D. Ginsberg	Yes
Patricia Rackauskis	Yes

The application for Special Permit is hereby **granted**.

4. A special permit was granted under Section 210-128 to allow a change in a non-conforming structure in accordance with the Plans attached hereto and incorporated herein by reference as “Exhibit A” on a finding that the proposed change is not substantially more detrimental to the neighborhood.

On a motion to grant, the Special permit was granted as aforesaid by the following vote:

Wayne R. Davies, Chairman	Yes
Robert W. Foster, Vice Chairman	Yes
Thomas J. Garabedian, Clerk	Yes
Ross D. Ginsberg	Yes
Patricia Rackauskis	Yes

The application for Special Permit is hereby **granted**.

5. A special permit was granted under Section 210-19D to allow a drive-through window for bank use only.

On a motion to grant, the Special permit was granted as aforesaid by the following vote:

Wayne R. Davies, Chairman	Yes
Robert W. Foster, Vice Chairman	Yes
Thomas J. Garabedian, Clerk	Yes
Ross D. Ginsberg	Yes
Patricia Rackauskis	Yes

The application for Special Permit is hereby **granted**.

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Thomas J. Garabedian, Clerk

**Any and all plans or specifications submitted to the Board of Appeals that detail construction or improvements to be undertaken or performed in conjunction with the relief granted hereunder, are hereby made express conditions of the issuance of this Decision and are incorporated herein by reference. Unless this Decision expressly provides otherwise, the rights and privileges granted under a Variance run with the land; and the rights and privileges granted under a Special Permit and Appeal are personal to the Applicant or Appellant and do not run with the land; except for a Special Permit issued pursuant to Zoning By-law 210-119 for relief from side and rear set back requirements, which shall run with the land.**

**No Variance or Special Permit, or any extension, modification, or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town clerk that twenty days have elapsed after the decision has been filed in the office of the town clerk and no appeal has been filed, shall be recorded at the Middlesex District Registry of Deeds in Cambridge, Massachusetts in accordance with MGL c. 40A s. 11. Appeal of this Decision, if any, shall be made pursuant to MGL c. 40A s. 17 and shall be filed within twenty (20) days after the date of filing of this Decision with the office of the Town Clerk.**