

**Hopkinton Zoning Board of Adjustment**  
**Minutes**  
**May 10, 2007**

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment hearing of Thursday, May 10, 2007, at 7:00 PM in the Town Hall. Members present: Toni Gray, Charles Koontz, Carolyn Hackwell and John Boatwright.

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**I. Applications.**

TH07-2V-5-3 Robert & Linda Witham—Mr. Robert Witham of 8 Bluebird Lane addressed the Board to request a Variance to construct a detached garage with less than the rear setback requirement for the district. The property is located in the R-4 (residential/agricultural) district, shown on Tax Map 225 as Lot 87. The application was submitted in accordance with 4.3 and 4.4.1 of the Hopkinton Zoning Ordinance. This was a continuation of the May 1, 2007 hearing.

In reviewing the site plan it was noted that the property currently contains an existing 26' x 40' residence and a detached storage shed. The proposed garage will be 36' x 44' and approximately 27-feet in height. Due to the fact that the proposed garage will exceed 20-feet in height the setback requirements are the same for a principal structure in the R-4 district, 60-feet front and 30-feet from the side lot lines. Mr. Witham proposes to construct the garage 21-feet from the rear property line, abutting Robert and Edith Houston's property.

Mr. Witham's son, Shawn Witham, noted that he had spoken with Mr. Houston who has no objection to the proposal.

Mr. Witham reviewed the standards for Variance in accordance with Section 15.8.3 of the Hopkinton Zoning Ordinance.

1. The proposed use would not diminish surrounding property values because:

"A garage for use with an existing residence would not be contrary to the spirit of the neighborhood. The garage would increase the overall value of the property."

2. Granting the variance would not be contrary to the public interest because:

"Lots in this area were laid out before current setback requirements were established and much future use of this area would require values for any type of building."

3. By granting the variance substantial justice would be done because:

"By not granting the variance the lot would be unusable for any building usage and most lot sizes in this area prevent compliance with present setbacks."

4. The spirit and intent of the Ordinance will not be broken by granting the variance because:

"This subdivision is based on pre-zoning lot sizes and the overall area includes substandard lot sizes. Under current zoning setbacks should be waived by granting a variance as it will be necessary for many future uses in this area."

5. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship.

(a) An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.

"The lot size as laid out in this subdivided area prevents practical adherence to setback requirements."

(b) The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.

"The lot size as laid out in this subdivided area prevents practical adherence to setback requirements."

Shawn Witham re-addressed the Board explaining that the size of the garage is intended to accommodate 12-foot ceilings with attic storage above. At some point, he plans to install a vehicle lift. Mr. Witham noted that the garage is intended for personal use.

Mr. Koontz asked Mr. Witham whether he intends to restore and sell vehicles. Mr. Witham replied no.

Shawn Witham presented photographs of other large garages in the area, explaining that it is not unusual for large garages to be constructed in Little Tooky.

Mr. Boatwright asked whether the proposed garage would also be used for storage of personal vehicles. Shawn Witham replied yes, explaining that he currently works on his vehicles outside. Additionally, Mr. Witham stated that he would store his tractor, lawn mower and snow blower in the garage.

Mrs. Hackwell questioned whether there would be any electricity within the garage. Shawn Witham stated that at a later date electricity may be installed, depending upon whether money is available to cover the cost.

Chairman Krzyzaniak asked Mr. Witham to readdress item number five of the criteria for a Variance. Mr. Witham, again, noted that "the lot size as laid out in this area prevents practical adherence to the setback requirements. All of the lots are very small and pre-dated zoning."

Mr. Koontz inquired as to whether Mr. Witham believed that the configuration of the properties in the area create a unique setting. Mr. Witham replied yes.

Chairman Krzyzaniak expressed concern with the proposed height of the structure, suggesting that the Applicant is trying to justify the decreased rear setback based on the need for the proposed height of the garage. In response, Shawn Witham stated that the height as proposed is so that he would not have to come back before the Board at a later date should he need additional space.

Mr. Boatwright suggested that if the pitch of the roof were changed to 20-feet, which would allow a rear setback of 10-feet, then the walls of the garage would only be five-feet in height. He suggested that the roof would then be unsafe as it may not be able to accommodate the snow load. Mr. Boatwright then inquired as to who would be constructing the garage. In response, Shawn Witham noted that Lavallee Building Supply would be constructing the building.

Chairman Krzyzaniak believed that a building constructed using a truss roof system would allow limited storage. Shawn Witham agreed, stating that he will be able to use some of the space for storage. A portion of the garage will have a cathedral ceiling so to allow space for use of a vehicle lift.

There was no public testimony.

Following discussion, a motion was made by Mr. Koontz, seconded by Mr. Boatwright, to vote on Application TH07-2V-5-3 as presented. Motion carried unanimously. With five members voting, four voted in favor (Gray, Koontz, Hackwell, and Boatwright) and one voted in opposition (Krzyzaniak). The application was approved as presented. The Applicant adequately addressed the criteria to be granted a variance as set forth in paragraph 15.8.3 of the Zoning Ordinance. The majority of the Board believed that the construction of the garage is a reasonable use for the property. In considering the design of the garage, the majority of the Board believed that a reduction in the height and a change in the pitch of the roof would pose potential safety hazard when considering the impact of snow loads and the fact that the Applicant plans to install a vehicle lift. Note: It was represented by the Applicant that the proposed garage will not be used for commercial purposes.

TH06-2V-4-1 Stuart F. Nelson—Application for a Variance from Section 5.2.1 of the Hopkinton Zoning Ordinance requiring non-conforming lots to have 50-feet of road frontage was denied by the Zoning Board of Adjustment on April 4, 2006, and on September 5, 2006 (TH06-4V-8-2). The property is located off Clement Hill Road in the R-2 (medium density residential) district, shown on Tax Map 208 as Lot 14. A remand hearing was to be held for the sole purpose of reconsideration of the substantial justice criterion in accordance with the Superior Court's Order, dated March 15, 2007. This was to be a continuation of the May 1, 2007 hearing.

All abutters to the property were not notified of the hearing; therefore, the Zoning Board of Adjustment and Applicant agreed to reschedule the remand hearing for Tuesday, June 5, 2007, at 7:00 PM in the Town Hall.

TH07-4S-5-2 Paul Mertz—Applicant requested a Special Exception to operate a plumbing business as a Home Business. The property is owned by Paul and Linda Mertz, located at 47 Hawthorne Hill Road, shown on Tax Map 251 as Lot 10.2. The

application was submitted in accordance with Table of Uses 3.6.A.8 of the Hopkinton Zoning Ordinance. This was a continuation of the May 1, 2007 hearing.

Chairman Krzyzaniak recalled at the previous hearing the Board had begun deliberations on the application. The Board had also requested an opinion from Town Counsel as to whether a plumbing business should be considered a Home Business. Town Counsel's written response was as follows:

"Following up our conversation yesterday, I have had an opportunity to review Sections 2.1.H.1 and 2.1.H.2 of the Zoning Ordinance, and confirmed my initial reaction that such an operation is properly considered to be a home business.

Although the ordinance contemplates the business being 'conducted entirely within a dwelling,' any professional office or other typical home business would include leaving the premises to visit clients, attend business meetings, or other normal activities associated with the business. In my view, this is no different with respect to a plumber or builder that works primarily out of a motor vehicle, and conducts the 'office' work in the residence."

Chairman Krzyzaniak stated that the Zoning Board of Adjustment would continue deliberation and will not re-open public testimony.

Attorney Lick representing abutter, Tadd Renvyle, addressed the Board suggesting that he was asked at the previous hearing to supply the Board with a checklist of his client's concerns as it relates to the proposed business. The list is now available should the Board wish that he present it. Additionally, there was discussion with respect to property values. Mr. Renvyle's real estate agent is now available to support previous testimony that Mr. Mertz's business has affected Mr. Renvyle's property values.

Mr. Boatwright responded by indicating that he did request a checklist; however, at the time, Attorney Lick had noted that the information is summarized in his memorandum that he had presented to the Board. Mr. Boatwright noted that he had reviewed the memorandum that the issues are outlined; therefore, the checklist is now not necessary.

Mrs. Gray expressed an interest in hearing from Mr. Renvyle's realtor with respect to the operations of the business only and how it would affect property values. It was noted that other concerns with respect to items left in Mr. Mertz's yard or the condition of his residence is not a matter to be addressed by the Board. Mrs. Gray recalled from the previous hearing that Mr. Mertz also wanted an opportunity to provide rebuttal should the Board re-open testimony.

Chairman Krzyzaniak suggested that Mr. Mertz may request that the Board postpone the hearing so that he could have time to respond to any testimony presented this evening. Mrs. Hackwell believed that if new information is presented, Mr. Mertz should be required to respond at the hearing. Mr. Koontz concurred, noting that if testimony was presented with respect to property values at the original hearing, the Board would allow Mr. Mertz to respond at the hearing, rather than post-pone review

to give him additionally time to respond. Chairman Krzyzaniak concurred, requesting a vote of the Board as to whether public testimony should be re-opened.

Motion made by Mr. Koontz, seconded by Mrs. Hackwell, to not re-open public testimony. With five members voting, four voted in favor (Boatwright, Koontz, Hackwell, and Krzyzaniak) and one voted in opposition (Gray). Chairman Krzyzaniak stated that public testimony is closed.

At this point in time, the Board discussed the signage advertising Mr. Mertz's business. The Ordinance permits a sign not to exceed four square feet.

Mrs. Hackwell believed that if there were too many signs that it would change the character of the neighborhood.

The Board discussed signs on Mr. Mertz's trailer sponsoring his car racing and the sign on the side of the vehicle that Mrs. Mertz drives to and from work. Following discussion, the Board agreed that the four square feet referenced in the Zoning Ordinance was referring to a fixed sign. Chairman Krzyzaniak noted that Mr. Mertz had not requested a fixed sign at his property.

The Board then determined that the signage on the race car trailer and on the personal truck should not be included when calculating the maximum square feet of signs allowed. Mr. Boatwright used the example of someone operating their business in another Town that may drive their vehicle that has advertising on it to and from their residence in Hopkinton.

Chairman Krzyzaniak then asked Board members whether they believed the Applicant successfully addressed all criteria to be granted a Special Exception. In response, Mr. Koontz questioned whether the Board could limit the hours of operation. Chairman Krzyzaniak suggested that the nature of the business is 24-hours a day, seven days a week as Mr. Mertz is on call. Other members concurred.

Mrs. Gray expressed concern with item number three of the criteria that refers to the affects on property values; however, she believed that the Applicant addressed the eight remaining items.

Chairman Krzyzaniak reviewed the Zoning Ordinance, noting that the burden of proof is upon the Applicant. It is the Applicant's responsibility to prove that the operation of the home business will not affect values of surrounding properties.

In considering testimony from Mr. Mertz's abutter and Attorney Lick, Mr. Boatwright questioned whether the operation of the business has affected Mr. Renvyle's property value, or whether something else has affected the value of Mr. Renvyle's property. Mr. Boatwright noted that if Mr. Mertz were denied he would have an opportunity to request a rehearing at which time he should carefully address item number three of the Special Exception criteria. Mrs. Gray concurred, but noted that the information presented would have to be confined to the business and must include new information that was not available at the hearing.

Mr. Koontz suggested that item number three, seven and eight have not been adequately addressed by the Applicant.

Mrs. Hackwell stated that while the Applicant had addressed item three it was not adequately addressed. The response to the criteria appeared to be subjective after considering all of the information presented.

Motion made by Mrs. Gray, seconded by Mr. Koontz, to vote on Application TH07-4S-5-2 as presented. Motion carried unanimously. With five members voting, all five voted in opposition (Gray, Koontz, Hackwell, Boatwright, and Krzyzaniak). The application was denied. The Applicant did not adequately address the criteria to be granted a Special Exception set forth in paragraph 15.8.2 of the Zoning Ordinance. After hearing all of the information presented, the majority of the Board believed that the Applicant's response to Item #3<sup>1</sup> of the standards to be granted a Special Exception was subjective, noting that the burden is upon the Applicant to show that all conditions established for a Special Exception have been met.

## **II. Non-Public Session pursuant to NH RSA 91-A: 3, II (e).**

The Board of Adjustment did not enter into Non-Public Session.

## **III. Adjournment.**

Chairman Krzyzaniak declared the meeting adjourned at 8:45 PM. The next regular scheduled meeting of the Board is Tuesday, June 5, 2007, at 7:00 PM in the Town Hall.

Karen L. Robertson  
Planning/Zoning Director

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Pursuant to New Hampshire RSA 677:2, any party to the action or proceedings, or any person directly affected thereby, may apply for a rehearing. Application, in writing, must be submitted to the Zoning Board of Adjustment within thirty (30) calendar days beginning the date upon which the Board voted to approve or disapprove the application. Such a request must set forth the grounds on which it is claimed the decision is unlawful or unreasonable. The Board must decide to grant or deny the rehearing within thirty (30) days.

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<sup>1</sup> No detriment to property values in the vicinity or change in the essential characteristics of a residential neighborhood on account of the location or scale of the buildings and other structures, parking areas, access ways, odor(s), smoke, gas, dust, or other pollutants, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials.