

Hopkinton Zoning Board of Adjustment
Minutes
August 5, 2008

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment meeting of Tuesday, August 5, 2008, at 7:00 PM in the Town Hall. Members present: Toni Gray, Harold Perkins, John Boatwright, Charles Koontz, and Alternate Member David Brock.

Chairman Krzyzaniak gave a brief outline of the Rules of Procedure that will govern the hearing.

I. Application(s):

#ZO2008-09 JWF Real Estate & Development Corp. Attorney Maria Dolder of Hebert & Dolder addressed the Board requesting an AREA VARIANCE to permit a single family residence to be constructed on a lot containing 2.6 acres, where 2.75 acres are required. The property is currently owned by G. Nelson Degerberg Revocable Trust, located off Rollins Road in the R-4 (residential/agricultural) district, shown on Tax Map 250 as Lot 24. The application was submitted in accordance with Section 5.2.1 of the Hopkinton Zoning Ordinance.

Attorney Dolder 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:

"The impact of allowing this variance is no greater than other properties in the area. There are several other properties in the vicinity of this property that contains similar or less acreage that are preexisting lots. So, this would be out of the norm of what is already out there. We need to always remember that the use is allowed in the Ordinance. It is simply whether or not the acreage is sufficient to support the use. There is no evidence that any surrounding property values will be diminished."

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

"The use is allowed and is not contrary to the public interest. Constructing a single family residence is permitted in the R-4 district and that is what is intended. The property exceeds the amount of frontage that is required in order to be considered a building lot, while the difference between the acreage required under the Ordinance and that provided is minimal. Given this, it is not contrary to the public interest to allow the property to be utilized as intended – a single family residence."

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

"Zoning and Planning Boards guiding rule in evaluating substantial justice is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Under this standard, the applicant clearly satisfies this required. The use of the property for a single family residence is permitted by right in the R-4 district. The property exceeds the amount of frontage is required in order to be considered a building lot and will therefore provide for safe ingress and egress to the property. Although the property does not meet the acreage requirement under the Ordinance to be considered a building lot it does have sufficient frontage and setbacks, the discrepancy is in the amount is minimal – the property is 2.6 acres where 2.75 acres are required.

But for the fact that the adjoining property was purchased by the same owners, the property would be considered a grandfathered lot. In fact, the owner has continued to be taxed on the property by the Town of Hopkinton as a single family property. This is a minimum variance reasonably necessary to allow the applicant to utilize the property for a single family residence. Substantial justice is also achieved by granting variances which do not adversely impact on nearby property owners and which allow a property to be used productively. As stated, even with the requested relief, the differences between that required under the ordinance and that provided is minimal. Given that there is no evidence that the granting of this variance will injure the rights of others, but on the other hand, will greatly benefit the applicant, granting the variance would result in substantial justice."

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

"The use of the property for a single family residence is permitted by right in the R-4 district. The proposed use is consistent with the intent of the Ordinance. The property exceeds the amount of frontage that is required in order to be considered a buildable lot – once again being consistent with the intent of the Ordinance. Although the property does not meet the acreage requirement under the Ordinance to be considered a building lot, the discrepancy in the amount of is minimal – the property is 2.6 acres where 2.75 acres are required. The Ordinance intends to have sufficient property acreage available to provide for adequate placement of homes and sufficient spacing amongst abutting properties. Given the fact that the applicant can satisfy the required setbacks of the Ordinance, coupled with the fact that even with the requested relief, the differences between that required under the Ordinance and that provided is minimal, granting the Variance meets the spirit and intent of the Ordinance."

5. Special conditions exist such that the 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:

"Although the use of the property for a single family residence is permitted by right in the R-4 district, the applicant is not able to do so without the required variance. As previously stated, the property contains 2.6 acres where the Ordinance required 2.75 acres. But for the fact that the adjoining property was purchased by the same owners, the property would be considered a grandfathered building lot."

- 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 applicant is not able to purchase any additional property to increase the acreage. As a result, 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."

Mrs. Robertson noted that there is a residence that currently exists on the smaller lot owned by Mr. Degerberg.

Mr. Brock asked if there is law that suggests that when you have contiguous lots one being a non-conforming that they be merged. Attorney Dolder stated that in this case the merger requirement is referenced in the Zoning Ordinance. Courts have supported these types of requirements.

Mr. Brock questioned whether the lots are being taxed separately. Attorney Dolder responded by stating that the owner currently receives two separate tax bills with both lots being taxed as building lots.

Carl Goodman of 312 Briar Hill Road addressed the Board as an abutter who was neither in favor of opposed to the application. Mr. Goodman suggested that the owner could merge his two non-conforming lots in an effort to make the lots more conforming. In rebuttal, Attorney Dolder stated that it is the merger requirement that brings the Applicant before the Board requesting the Variance. The owner wishes to sell the lot in question as a separate building lot. Mr. Goodwin then questioned why the Town had not taken action to combine the parcels at the time of the change in the Zoning Ordinance. He suggested that in the future action should be taken to combine all non-conforming lots in accordance with the Zoning Ordinance.

Motion made by Mr. Boatwright, seconded by Mr. Perkins, to vote on the application as submitted.

Mr. Perkins believed the Applicant satisfied all requirements to be granted a variance. Mr. Brock concurred, stating that Mr. Goodman had made a good point in that perhaps there should be a review of the records concerning non-conforming lots that should be merged. While those present agreed, it was noted that such a review is not the jurisdiction of the Zoning Board of Adjustment.

Motion carried unanimously and the application was approved as submitted (Koontz, Boatwright, Perkins, Brock, and Krzyzaniak). The Applicant satisfied all requirements to be granted a Variance in accordance with Section 15.8.3 of the Zoning Ordinance.

II. Review of the Minutes and Notice of Decision of July 1, 2008.

Review of the Minutes and Notice of Decision of July 1, 2008, was deferred to the September 2, 2008 meeting.

III. Adjournment.

There being no further business to come before the meeting, Chairman Krzyzaniak declared the meeting adjourned at 7:35 PM. The next scheduled meeting of the Board is Tuesday, September 2, 2008, at 7:00 PM in the Town Hall.

Karen L. Robertson
Planning/Zoning Director

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.