

Hopkinton Zoning Board of Adjustment
Minutes
October 7, 2008

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment meeting of Tuesday, October 7, 2008, at 7:00 PM in the Town Hall. Members present: Toni Gray, Harold Perkins, John Boatwright, and Alternate Dan Rinden.

I. Application(s):

#ZO2008-10 Kurt D. & Sharon G. Schuster Request for Equitable Waiver due to the placement of a newly constructed residence within the front and rear setback. The property is located at 83 White Tail Run in the R-4 (residential/agricultural) district, shown on Tax Map 212 as Lot 4.3. The application was submitted in accordance with sections 4.3 and 15.8.4 of the Hopkinton Zoning Ordinance.

Mrs. Schuster addressed the Board advising that on August 26th she was notified that her home sat two-inches into the left side setback. At the time, the home was approximately ninety (90) percent complete. The original approved Variance of 61 square feet into the front 60-foot setback is now actually 79 square feet. This was discovered by Horizon Title's Surveyor, Colonial Surveyor Associates on July 15, 2008. As a result, the Schusters contacted their original surveyor, Belanger Surveyor, to confirm the findings of Colonial Surveyors. Mr. Belanger conducted a second survey on August 28th and confirmed the findings. Mrs. Schuster was unsure as to why she or her builders, Glover Construction, were not informed of the problem until August 26th.

Previously in June of 2008, the Schusters had hired Mr. Belanger to stake the layout of the home on the lot and discussed concerns of abiding by the approved Variance. During the initial ground breaking, the excavator of the site was also informed of the close proximity of the home to the setbacks and the need to adhere to the Variance granted. Mrs. Schuster stated that someone had failed to inform her and her husband of the inspection that had occurred on July 15th. Framing of the home began on July 27th, with funding for the project continuing until the matter was brought to their attention on August 26th.

Mrs. Schuster reviewed the standards for an Equitable Waiver in accordance with Section 15.8.4 of the Hopkinton Zoning Ordinance.

- (a) That the violation was unknown to the owner, owner's predecessors, owner's agent or representative, or municipal official, until after the structure in violation had been substantially completed, or until after a lot or other division of land in violation had been conveyed to a bona fide purchaser for value (i.e. an innocent purchaser who had no knowledge or reason to know of any problems and who, in good faith, paid full value);

"As stated previously, we were not informed of the foundation error until 42 days after the foundation inspection was completed and about 90% into framing completion. Additionally, we took what we assumed to be appropriate measures to prevent setback violations from occurring. I hired a surveyor to plot the layout of the home. We informed all appropriate parties involved of close proximity of the setbacks and original approved Variance to the front setback."

- (b) That the violation was caused by a good faith error in measurement or calculation by an owner or agent or an error in interpretation of the Ordinance or its applicability by a

municipal official in the process of issuing a permit, while that official was acting within the scope of his/her authority;

"We truly believed it was a good faith error because no party involved had anything to gain by pouring the foundation inches from its intended placement. We were completely surprised by the surveyor's findings, due to how cautious we had been. We would like to believe that all the rain we had received this summer had something to do with the land shift; however, we cannot be sure."

(c) That no public or private nuisance may be created by the violation;

"Our home front still sits 60 feet from the road. However, due to the hammer head at the end of the road that creates a bite out of the corner of the lot. The home violates the 60 foot setback from the hammer head."

(d) That there will be no diminution in the value of other property in the area;

"Since the foundation lies only inches into the side setback it does not create any visual or obvious obtrusion toward an abutting future home. The overage of square footage allowed from the original Variance still does not impede or visually hinder the abutting lot on its side, again due to the abnormal shape caused by the hammer head. We believe that without any obvious visual hindrance property values should be unaffected."

(e) That the violation will not interfere with or adversely impact any present or permissible future uses of any such property; and

"The current placement of the home does not visually appear to impact surrounding properties and will not hinder any utility easements. Furthermore, it will not restrict emergency response vehicles on this or abutting properties.

(f) That due to the degree of past construction or investment, the cost to correct the violation so far outweighs the public benefit to be gained that it would be inequitable to require the violation to be corrected.

"With the exceptions of trim throughout the home, completion of the half bath, and completion of the master bath, all funds for the home have been allocated to materials and labor. With an estimated budget for these remaining projects at \$15,000; and an estimated home mortgage at \$370,000, the home is 95.9 percent completed. After discussing the issue with our builder, it is estimated that an investment of \$100,000 would be needed to correct the setback issue, drastically altering the curb appeal of the home, and adding another three months of RV living."

There was brief discussion amongst the members and Applicant as to how the error in measurement might have occurred with members agreeing that while this is a serious offense it is believed to be at no fault of the owners.

Motion made by Mr. Boatwright, seconded by Mrs. Gray, to vote on the application as submitted. Motion carried unanimously. With five members voting, all five voted in favor of the application. The Applicant proved to the Board's satisfaction each and every element to be granted an Equitable Waiver in accordance with Section 15.8.4 of the Hopkinton Zoning Ordinance.

Reasons for approval as follows:

1. *The violation was unknown to the owners and municipal officials until after the structure had been substantially completed.* The owner was notified on August 26, 2008, that the home was two inches into the left side setback and that it was 79 ft² into the front setback, rather than 61 ft² as had previously been approved by variance. At this time, the home was 90% complete. The violation was originally discovered by Colonial Surveyor Associates on July 15, 2008. Following notification, the Owner had the original surveyor of the development, Belanger Surveying, confirm the findings. Belanger Surveying completed a second survey on August 28, 2008, confirming Colonial Surveyor Associates' findings.
2. *The violation was caused by a good faith error in measurement.* Prior to construction of the home the owner had a land surveyor mark in the field the layout of the home. This was due to the close proximity of the home to the setback lines and the fact that the Zoning Board of Adjustment had granted a variance of 61 ft² into the front setback. Following review of the application, including the Applicant's testimony, the Board concluded that it was unlikely that any of the parties involved had intentionally caused the violation.
3. *No public or private nuisance will be created by the violation.* The front setback violation is along that portion of the frontage that abuts the hammerhead. The abnormal front setback line is due the configuration of the hammerhead. While the violation is a serious matter, it is believed that visually no public or private nuisance will be created.
4. *There will be no diminution in the value of other property in the area.* The foundation lies two inches into the side setback. It is believed that the violation will not create any visual or obvious obstruction that will diminish values of other properties in the area. Furthermore, the square footage of the front setback variance that had previously been granted as compared to the actual location of the home does not appear to impede or visually affect properties in the area.
5. *The violation will not interfere with or adversely impact any present or permissible future uses of any such property.* The placement of the home does not appear to negatively impact surrounding properties or interfere with any reasonable use. Again, while the violation into the setbacks is a serious matter, it is believed that visually the violation would not be obvious to others in the area.
6. *Due to the degree of construction and investment it is believed that the cost to correct the violation would far outweigh the public benefit to be gained.* The owner represented that the home is more than ninety percent (90%) completed and that all remaining funds for the home have been allocated to material and labor. It is estimated that it would cost approximately \$100,000 to correct the violation.

Note: Granting of the Equitable Waiver shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the Hopkinton Zoning Ordinance.

#ZO2008-11 Mark & Eric Buckland Request for Special Exception to operate a home business selling firearms meeting all local, state and federal requirements. The property is located at 1182 Penacook Road in the R-4 (residential/agricultural) district, shown on Tax Map 243 as Lot 36. The application was submitted in accordance with Table of Uses 3.6.A.7 and 15.8.2 of the Hopkinton Zoning Ordinance.

Mr. Eric Buckland addressed the Board explaining that the nature of the business will be primarily the sale of firearms with no intentions on buying or selling ammunition. The hours of operation will be from 6 PM to 10 PM, Tuesday and Thursday evenings.

Mrs. Buckland reviewed the standards for Special Exception in accordance with Section 15.8.2 of the Hopkinton Zoning Ordinance.

- 1) Standards provided by this Ordinance for the particular use permitted by Special Exception.

“All standards provided by this Ordinance will be met and maintained by the issuance of this Special Exception for the establishment of this home business.”

- 2) No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.

“As there will be no danger of fire, explosion, or toxic material released in connection with the home business, there is no potential for public or adjacent property hazards.”

- 3) No detriment to property values in the vicinity or change in the essential characteristics of the neighborhood on account of the location or scale of buildings and other structure, parking areas, access ways, odor(s), smoke, gas, dust or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials.

“There will be no change to the existing structure for the establishment or operation of this business; therefore, there will be no detriment to property values or changes in the residential neighborhood characteristics.”

- 4) No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.

“The conduction of this home business will not require significantly increased amounts of foot or motor traffic to property or neighborhood vicinity. No traffic safety hazards or congestion will be created.”

- 5) No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.

“As there will be no increase demand for the consumption of property utilities (i.e., water, sewer, waste disposal), the business establishment will not require increased or excessive municipal services.”

- 6) No significant increase of storm water runoff onto adjacent property or streets.

“Due to the fact that there will be no change to the existing property structure with no additional structure being added to the property, storm water runoff will be in no way affected by this home business.”

- 7) An appropriate location for the proposed use.

“The property which will house this home business currently contains a finished basement with office space suitable for the conduction of the business. No interior or exterior changes are required.”

- 8) Not affect adversely the health and safety of the residents and others in the area and not be detrimental to the use or development of adjacent or neighboring properties.

“No adjacent property will be adversely affected by the granting of this Special Exception, nor will there arise any health and safety issues concerning the residents of the area as a result of the home business.”

- 9) In the public interest and in the spirit of the Ordinance.

“In the spirit of entrepreneurial enterprise and the pursuit of the American dream, my goal is to provide the general public a forum which allows the expression of citizens' rights under the Second Amendment in a professional and law-abiding manner.”

Mr. Buckland then advised of his meeting with Investigator Thierry Soucy of the Bureau of Alcohol, Tobacco and Firearms (ATF) in which he had given approval for the business pending appropriate town approvals. Mrs. Robertson confirmed the fact that Mr. Soucy is waiting for the Bucklands to receive all necessary local permits. She then noted that the Fire Inspector and Police Chief were aware of the proposal and had expressed no concerns. Mr. Eric Buckland concurred, then explaining the process by which he would need to notify the Hopkinton Police Department when he begins operation of the business. He further explained the process by which background checks will be done by either the Hopkinton Police Department or the ATF, dependent upon the type of firearm sold.

Mr. Perkins inquired as to any signage that will be placed on the property. In response, Mr. Buckland stated that there will be no signs advertising the business. The business will be advertised by way of word-of-mouth and eventually through a website that is to be established.

The business will be conducted in the finished basement of the home. All firearms will be stored in a locked safe and/or will have trigger locks as is required by law. Mr. Eric Buckland noted that he does not have the financial means to purchase a great amount of inventory. Most sales will involve a customer requesting a certain type of firearm and Mr. Buckland then ordering it through a vendor.

Mr. Mark Buckland noted that they are in the process of obtaining quotes for a safety alarm system for the home, pending Town approval of the business.

Chairman Krzyzaniak questioned what would happen to the records should Mr. Buckland decide to end his business. In response, Mr. Erick Buckland explained how his records will be stored electronically off-site. Should he decide to close his business all records need to be given to the ATF.

Motion made by Mr. Perkins, seconded by Mr. Rinden, to vote on the application as submitted. Motion carried unanimously (Gray, Perkins, Boatwright, Rinden and Krzyzaniak). With five members voting, all five voted in favor of the application. The Applicant adequately addressed all nine points to be granted a Special Exception in accordance with Section 15.8.2 of the Zoning Ordinance.

II. Review of the Minutes and Notice of Decision of August 5, 2008.

Motion made by Mrs. Gray, seconded by Mr. Boatwright, to accept the Minutes and Notice of Decision as corrected (omitted reference to Mrs. Gray as she was not present). Motion carried unanimously.

III. Other business to legally come before the meeting.

Between Meeting Communications Policy—As a follow-up to conversations with the Board's Counsel Attorney Bernie Waugh concerning the right-to-know-law and electronic communications, the Zoning Board of adjustment was in receipt of a draft Between Meeting Communications Policy provided by Attorney Waugh.

Following brief discussion concerning revisions to NH RSA 91-A, a motion was made by Mr. Perkins, seconded by Mrs. Gray, to adopt the Between Meeting Communications Policy as written. Motion carried unanimously.

Separate Legal Counsel from the Town's General Counsel—As a follow-up to the Board's July 15th meeting with Planning Board and Zoning Board of Adjustment counsel Attorney Bernie Waugh, Attorney Waugh provided an outline of his discussions with the Board.

Following discussion, the Board requested that Mrs. Robertson write to Attorney Waugh confirming the Board's request that all correspondence concerning planning and zoning matters, except the actual invoice, is to be sent to the Planning/Zoning Director. Furthermore, the Boards had asked that copies of correspondence should **not** be automatically sent to the Selectmen. The intent of the request is to ensure that the Boards maintain a degree of independence from the Board of Selectmen and Town Administrator as it relates to matters before the Planning Board and Board of Adjustment.

IV. Adjournment.

There being no further business to come before the meeting, Chairman Krzyzaniak declared the meeting adjourned at 8:45 PM. The next scheduled meeting of the Board is Wednesday, November 5, 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.