

Hopkinton Zoning Board of Adjustment
Minutes
November 5, 2008

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment meeting of Wednesday, November 5, 2008, at 7:00 PM in the Town Hall. Members present: Toni Gray, Harold Perkins, John Boatwright, Charles Koontz, and Alternate Member Daniel Rinden (non-voting).

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

I. Application(s):

#ZO2008-12 Concetta A. Connolly Trustee of the Concetta A. Connolly Trust 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 1.374 acres with 200 feet of frontage, whereas 2.75 acres with 300 feet of frontage is required. The property is located off Bassett Mill Road in the R-4 (residential/agricultural) district, shown on Tax Map 235 as Lot 27. The application was submitted in accordance with Section 5.2.1 of the Hopkinton Zoning Ordinance because the owner of the property also owns a contiguous lot.

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. In fact, there are several other properties in the vicinity of this property that contain similar or less acreage than what is being proposed by this variance. Given this, the use and the layout of the property will be compatible with surrounding uses, and are consistent with the character of the neighborhood. Given that the use itself is permitted by right and the variance relief requested is minimal, 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 of the property for a single family residence is permitted by right in the R-4 district. As a result, the proposed use is not adverse to the public interest. Similarly, the property exceeds the amount of frontage that is required under Section 5.2.1 of the Zoning Ordinance in order to be considered a non-conforming, building lot. The difference between the acreage required under the Ordinance and that provided is not contrary to the public interest since a single family residence can be placed on the property within the required setbacks of the Ordinance. 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:

"The instructional booklet prepared by the Office of State Planning for the Zoning and Planning Boards states that the 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 requirement. The use of the property for a single family residence is permitted by right in the R-4 district. Similarly, the property exceeds the amount of frontage that is required under Section 5.2.1 of the Zoning Ordinance in order to be considered a non-conforming, building lot and can clearly 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, but for the fact that the adjoining property was purchased by the same owners, the property would be considered a grandfathered lot. 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 above, even with the requested relief, the differences between that required under the Ordinance and that provided shall not create any adverse affect on the adjoining neighborhood, nor will it prevent the property from being utilized in compliance with the setback requirements of the Zoning Ordinance. 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. As a result, the proposed use is consistent with the intent of the Ordinance. Similarly, the property exceeds the amount of frontage that is required under Section 5.2.1 of the Zoning Ordinance in order to be considered a non-conforming, building 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 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 lot can be utilized in a safe and productive manner, granting of 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 1.374 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. Gray questioned whether the lots had been merged. Attorney Dolder replied no, indicating that the owner would rather merge the rear lot with their adjacent residential house lot, rather than merging the acreage to the lot in question.

Lenny Charron of 232 Bassett Mill Road addressed the Board advising that he was always led to believe that due to the size of the lots in the area that they could not be built upon. Mr. Charron had a similar situation in which he had owned two contiguous parcels which he ultimately merged. Mr. Charron

expressed concern with the condition of Bassett Mill Road and the additional impact that a new residence would have on the road which is a dead-end.

Lastly, Mr. Charron stated that he had believed that the Connolly's property had been merged prior to their purchasing the property.

In rebuttal, Attorney Dolder believed that there is a misconception in the way that the Ordinance reads. Some towns automatically merge non-conforming lots, while that is not the case in Hopkinton. The Ordinance in Hopkinton does not allow one to build on a non-conforming lot if a three part test is not met. She believed that if someone other than the Connollys had purchased the lot, the lot would be a grandfathered building lot complying with section 5.2.1 of the Ordinance.

Attorney Dolder then noted that there are other lots that are similarly situated along Bassett Mill Road. In particular, Lots 19, 20, 22 and 23.

Mr. Perkins questioned whether the Connollys have a legal right to use Drew Road as access to their rear lot. Mrs. Connolly replied no, advising that Drew Road ends just before her property.

Mr. Charron readdressed the Board expressing concern that the Board may set a precedent should they grant the approval. He suggested that increasing the acreage of the lot would at least provide sufficient acreage for the residence to be constructed further back from the road.

Mrs. Gray suggested that merging the rear lot to the lot in question would be appropriate. Mr. Boatwright disagreed, noting that merger should not be necessary unless by merging the lots it creates a lot that conforms to the acreage requirement for the district. Mr. Perkins concurred, stating that the lot will still remain non-conforming.

Following discussion, Mrs. Gray stated that the Applicant has successfully met the conditions necessary to be granted a Variance. Mr. Perkins agreed, stating that the Variance should be granted due to the unique circumstances of the property.

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

Reasons for approval as follows:

1. The proposed use would not diminish surrounding property values. *The impact of granting the Variance is no greater than other properties in the area. There are other properties in the vicinity that contain similar or less acreage that are pre-existing lots. There was no evidence that any of the surrounding property values would diminish.*
2. Granting the variance would not be contrary to the public interest. *The use is allowed and is not contrary to the public interest. The property exceeds the amount of frontage (50-feet) that is required to be built upon in accordance with Section 5.2.1.*
3. By granting the variance substantial justice would be done. *There was no evidence that the granting of the Variance would injure the rights of others. Granting of the Variance would allow the Applicant to use property that would be considered a grandfathered lot if it were not for the fact that the adjoining property was purchased by the same owner many years ago.*

4. The spirit and intent of the Ordinance will not be broken by granting the variance. *The use of the property for a single family residence is permitted in the R-4 district and is therefore consistent with the intent of the Ordinance. While the property does not meet the acreage requirement for the R-4 district to be considered a building lot, the property has sufficient acreage available to satisfy the required setbacks of the Ordinance.*
5. Special conditions exist such that the literal enforcement of the Ordinance results in an 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. *But for the fact that the adjoining property was purchased by the same owner, the property would be considered a grandfathered building lot. Again, the use of the property for a single family residence is a permitted use in the R-4 district.*
 - 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 additional property to increase the acreage. While the property to the north is contiguously owned by Mrs. Connolly it too has insufficient acreage and frontage and therefore cannot be reduced in size to accommodate the lot in question.*

II. Review of the Minutes and Notice of Decision of September 2, 2008.

Mrs. Gray, seconded by Mr. Boatwright, moved approval of the Minutes and Notice of Decision as amended (page six, paragraph three to be revised to clearly indicate that the letter to legal counsel from the Board of Adjustment was to be copied to the Board of Selectmen so that it was clear that request of counsel was being made by the Board of Adjustment and not of legal counsel). Motion carried unanimously.

III. Other business.

- *Method of Filing of Motions for Rehearing*—The Board agreed that all Motions for Rehearing must be filed by the close of business of the 30th day pursuant to NH Statute. Motions for Rehearing shall not be accepted by electronic filing.
- *New Right to Know Law*—Board members were in receipt of copies of the Land Use Legislation 2008 published by the New Hampshire Local Government Center. (Note: A Between Meeting Communications Policy was adopted by the Board of Adjustment on October 7, 2008).
- *Open Space Requirements in Conservation Easements*—The Board was in receipt of a newsletter published by DTC Lawyers referencing a scenario in which an applicant had proposed to include, for yield plan calculation purposes, a portion of land that had already been subject to a conservation easement. The applicant applied for a variance allowing use of the conservation easement in the yield plan. Ultimately, the NH Supreme Court addressed the issue "noting that the public interest and spirit and intent criteria were met by virtue of the fact that the ordinance requirement of 50% open space was still met because fifty of the seventy seven acres would remain undeveloped."
- *Contoocook Auto Clinic Remediation Project*—Chairman Krzyzaniak reported of a recent meeting

with representatives of NH DES and others concerning the noise associated with equipment used in the remediation of ground contamination. The meeting resulted in the contractor agreeing to erect a fence behind the equipment building, insulate the door of the equipment building, and install a large pipe on the exterior of the building in an attempt to reduce the noise associated with the remediation process. It was further noted, that representatives and residents were advised that Karen Robertson, Planning/Zoning Director, would be the point of contact should concerns or questions arise.

IV. Adjournment.

There being no further business to come before the meeting, Chairman Krzyzaniak declared the meeting adjourned at 8:15 PM. The next scheduled meeting of the Board is Tuesday, December 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.