

Hopkinton Zoning Board of Adjustment
Minutes
December 2, 2008

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment meeting of Tuesday, December 2, 2008, at 7:00 PM in the Town Hall. Members present: Toni Gray, Harold Perkins, John Boatwright, and Daniel Rinden.

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

A vote of three members is necessary to decide in favor of an application; however, only four members were present. Chairman Krzyzaniak gave the Applicant the option of postponing review until all five members were present. In response, the Applicant agreed to move forward in having her application reviewed by a four member Board.

I. Application(s):

#ZO2008-13 Sandra Burney Mrs. Sandra Burney of 213 Salsbury Road, Franklin, New Hampshire, addressed the Board on behalf of her mother, sister and brother requesting an AREA VARIANCE to permit a single family residence to be constructed on a lot (three lots combined) containing 1.58 acres with 225 feet of frontage, whereas 1.84 acres with 250 feet of frontage is required. The property is owned by Genevieve (Jean) Jakubowski, located off Rolfe Pond Drive (private right-of-way) in the R-2 (medium density residential) district, shown on Tax Map 209 as Lots 26, 27 and 28. The application was submitted in accordance with Section 5.2.1(c) of the Hopkinton Zoning Ordinance.

The individual lots were purchased separately by Mrs. Burney's parents in July 1963, November 1963 and in June 1965. In reviewing the history of the property, Mrs. Burney believed that the property was purchased in 1950 by Harold Martin and between 1950 and 1953 Mr. Martin had subdivided the property selling individual lots. While the property currently consists of three separate lots of record, the Applicant is proposing to merge the parcels so that the total acreage will be 1.58 acres.

Mrs. Burney stated, "Section 5.2.1 of the Zoning Ordinance allows a non-conforming lot to be built upon, if, at the time of the enactment of the Ordinance the:

- (a) Lot conformed to the then existing dimensional requirements (if any).

In this case, the lot(s) pre-dated the enactment of the 1988 Ordinance and the original Ordinance of 1964. The lots were part of an original 100 acre more or less sold to Harold Martin in 1950.

- (b) Owner(s) of the lot owned no additional contiguous land. Should the owner(s) own contiguous land, that land shall be annexed to the non-conforming lot to the extent necessary to bring it into conformance with the present zoning standards.

In this case, we own three separate parcels that are intended to be merged into one parcel consisting of 1.58 acres. While the parcel, once combined, will lack the necessary acreage and frontage for compliance with the R-2 district, the lot will be the second largest lot along Rolfe Pond Drive, the largest lot being a 57 acre parcel owned by Wayne and Sally Patenaude which has frontage along Pine Street and Rolfe Pond Drive.

- (c) Lot has frontage of at least 50 feet.

It is our understanding that frontage needs to be along a lawful public way and that Rolfe Pond Drive is a private way. Again, once the lots are combined the lot will have 225 feet of frontage; whereas, 50 feet are required for a non-conforming building lot."

Mrs. Burney went on to review the standards for an Area 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 proposed residential use will be consistent with the use of surrounding properties. The lot, once combined, will be one of the largest lots fronting along Rolfe Pond Drive. The impact to Rolfe Pond Drive will be no greater than other residential uses in the area."

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

"The existing non-conforming lot will be put to a productive use which consistent with the neighborhood. All other residential structures in the neighborhood are on lots that are less than one acre. The use of the property for residential purposes, consistent with the neighborhood, would not be adverse to the public interest. Two properties down from ours is a new residence in which the prior owners received a Variance to construct the residence."

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

"The use of the property for a single family residence is permitted in the R-2 district. Based a review of deeds for the property it appears that the property was subdivided sometime between 1950 and 1953, prior to zoning. While the property does not meet the current acreage and frontage requirements, the lot was clearly intended to be used for residential purposes consistent with other uses and structures in the neighborhood. The granting of the Variance would not adversely impact neighboring properties. There are 30 lots along Rolfe Pond Drive that have been built on over the years with the most recent variance being granted in 1997 (Lot 24). According to Town records, the home was then constructed in 2005. There four (4) lots remaining with sole access by way of Rolfe Pond Drive, a private right-of-way."

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

"The proposed use is permitted and therefore consistent with the Ordinance. With the exception of the lot being located on a private road, the lot might otherwise be considered a non-conforming building lot that may be eligible to be built upon, which is consistent with the spirit and intent of the Ordinance. Given the fact that the size of the lot is larger than most of the lots that have been built upon, including the lot that was approved in 1997, and the fact that a residence can be constructed on the lot satisfying the setback requirements, 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:

"But for the fact that the property is located on a private road and is owned by the same owner of adjacent contiguous lots, the lot would be considered a grandfathered non-conforming lot. Once combined, the lot will consist of 1.58 acres whereas 1.84 acres is required. The lot will have 225 feet of frontage whereas 50 feet is required. The lot is a legal lot of record that was created prior to the enactment of zoning in Hopkinton. A similar variance was granted in 1997 for a lot consisting of .28 acres with 95 feet of frontage along Rolfe Pond Drive. We would like to utilize our property in the same manner as others in the neighborhood."

- 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.

"Since the private road is owned by Wayne Patenaude, we have no ability to change the status from private to public. Therefore, it is believed that the benefit sought cannot be achieved by some other method that is reasonably feasible, other than the granting of this area variance."

Mrs. Burney stated that the parcels were originally intended to be built on by her parents and uncle and aunt. However, that never happened and instead the property was utilized during the summer weekends by her family for picnics and tenting. At this point in time, Mrs. Burney's family would like to sell the lots to help pay for the care of Mrs. Jakubowski. Presently, the lots are not desirable due to their non-buildable status.

Mr. Perkins questioned whether setbacks could be met. Mrs. Burney assumed so due to the size of the lots, once combined. At the point, the Board reviewed a map of the property, noting that non-compliance with setbacks would require a Variance.

Abutter Joyce Wright addressed the Board to express concern with the potential impact that a new residence would have on her water quality and quantity. Mrs. Wright's residence is serviced by a dug well that is approximately sixty feet from Rolfe Pond Road. The Jakubowski lot(s) are located across the street.

As there was no rebuttal, Chairman Krzyzaniak declared public testimony closed.

Mrs. Gray advised that she was familiar with the 1997 Variance granted for Lot 24 located off Rolfe Pond Drive. She believed that Mrs. Burney successfully addressed the criteria to be granted an Area Variance. Mr. Perkins agreed that the presentation was well done and that the Applicant had demonstrated that a Variance should be granted.

Chairman Krzyzaniak suggested that prior to construction Mrs. Wright speak with the property owner or well company about her concerns. She then noted that the placement of the well and septic system will be reviewed by the NH DES due to the proximity of the property to the pond.

Mrs. Gray, seconded by Mr. Perkins, moved to vote on the application as presented. Following brief discussion concerning the need for a waiver of liability from the Applicant, Mrs. Gray and Mr. Perkins withdrew their motion.

Mrs. Gray, seconded by Mr. Perkins, moved to vote on the application subject to the execution of a waiver of liability¹. Motion carried unanimously and the application was approved. 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. There is other property along the private drive in which a Variance in 1997 for the same purpose.*
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 property is located off of a private road.*
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-2 district and is therefore consistent with the intent of the Ordinance. While the property does not meet the frontage requirement (frontage along a public street), the property appears to have sufficient acreage available to satisfy the required setbacks of the Ordinance. Furthermore, the property is surrounded by other year-round residences with the most recent residence constructed in 2005.*
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 property is located on a private road, 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-2 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 private road is not owned by the Applicant and therefore the Applicant has no ability to change the status from private to public. Therefore, it is believed that the benefit sought cannot be achieved by some other method that is reasonably feasible, other than the granting of the Area Variance.*

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

¹ Town assumes no responsibility for maintenance, including snow plowing, nor liability for any damages resulting from the use of the private road. Owner shall be responsible for maintaining access to the property and does hereby release and discharge the Town from any claim of any nature, including those incurred through failure to provide municipal services, including police, fire and ambulance services, arising out of the condition of the road as a private road.

Review of the Minutes and Notice of Decision of November 5, 2008 was deferred to the January 6, 2009 meeting.

III. Adjournment.

There being no further business to come before the meeting, Mr. Perkins, seconded by Mr. Rinden, moved to adjourn at 7:35 PM. The next scheduled meeting of the Board is Tuesday, January 6, 2009, 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.