

Hopkinton Zoning Board of Adjustment
Minutes
August 4, 2009

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment meeting of Tuesday, August 4, 2009, at 7:00 PM in the Town Hall. Members present: Toni Gray, John Boatwright, Charles Koontz, Daniel Rinden and Gregory McLeod.

Chairman Krzyzaniak introduced members of the Board, advising that Mr. McLeod is an alternate member that will sit in place of full-time member Harold Perkins.

I. Application(s).

Case #: ZO2009-00010 Amy Messer and Jack Ruderman—Ms. Messer addressed the Board to request an AREA VARIANCE for the purpose of constructing a detached shed with less than the required setbacks for the R-1 (high density residential) district. The property is located at 15 Cottage Street, shown on Tax Map 102 as Lot 69. The application was submitted in accordance with Section 4.4.1 of the Hopkinton Zoning Ordinance.

Mr. Boatwright joined the Board.

Ms. Messer informed the Board that there is currently a detached shed located at the front of their property that has deteriorated to a point where they would like to remove it and construct a new shed towards the rear of the property. Their residence is located at the end of Cottage Street which is a dead-end street. The proposal has been discussed with the neighbors with no opposition.

Ms. Messier explained how the snow tends to build up in front of the doors of the existing shed making it difficult to open the doors. This seems to be due to the sheds close proximity to the driveway and street.

The proposed new shed will be located approximately 2'-6" into the rear setback and 5' into the side setback. While the shed will be less than the side and rear setbacks it will meet the front setback requirement, which is not the case with the existing shed.

Mrs. Gray noted that the proposed shed will not meet the setback requirement from the residence. Mrs. Messer agreed, noting that it will be 9-feet from the home.

Mrs. Gray suggested that if the shed were repositioned (turned) there would be no need for the Variance. Ms. Messer agreed, but stated that due to the size of the lot they would be limited as to the location of repositioning of the shed. The only location that it could be repositioned to would affect the view from the windows located on the side of the home. Ms. Messer and Mr. Ruderman reviewed photographs and a sketch map with the Board in an effort to show that portion of the home that would be affected should they be required to reposition the shed.

Mrs. Gray expressed concern with the fact that the Applicant could conform to the requirements of the Ordinance. In response, Mr. Ruderman stated that the repositioning of the shed would aesthetically affect their view from the kitchen side of the home. When looking out the windows you would look at the side of the shed.

Ms. Messer reviewed the standards for an Area Variance in accordance Section 15.8.3 of the Hopkinton Zoning Ordinance.

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

Locating the shed to the rear of the property will have no negative impact to the side or rear abutting properties. In fact, the removal of the existing shed from the front of the property will enhance the beauty of the side abutting neighbor's property as it will open up their view of the open space. The neighbor in the rear will not be negatively impacted because they have a pool and fence in the area in question. They also have no windows on that side of their residence.

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

"It will not diminish anyone's property value or encroach on anyone's use of their own property. The current structure is not within the setbacks either so it will not negatively impact the public interest and, in fact, be in a more appropriate and useful location."

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

This is a small piece of property; therefore, space to locate the shed is limited. Substantial Justice would be granted by allow the use of the property in a location that is more appropriate and useful. It is difficult to use the current shed due to the fact that the snow tends to build up around the doors.

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

"The intent of the Ordinance is to ensure respect for abutting property and for safety. Given the fact that the neighbors do not have any structures nearby and that there are no safety hazards this proposal is not contrary to the spirit or 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:

The current placement of the shed is impractical and unsightly; therefore, the shed would be better suited at the rear rather than at its current location at the front of the property. Again, the property is located at the end of a dead-end street and abuts conservation land so there should be no adverse affects on future development.

- 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 property is relatively small and the option is to either place the shed in the rear of the property where there will be no chance for snow to build-up around the door because it will not be adjacent to the driveway, or to construct a new shed in its current location. The alternative suggested by the Board would mean that the view from the windows along one side of the home would of the side of the shed which is not feasible to consider.

Jack Ruderman noted that his neighbor, Susan Covert, would prefer that the shed be moved back so to allow her a view of the open space. He further noted that along the rear property line there is a row of trees that acts as a barrier between his property and the Strickford's property.

Mr. Koontz questioned whether the special conditions are the fact that the property is very small; the use of the space is maximized, and the request is for a minimum variance. Ms. Messer replied yes, stating that the current shed is even closer to the side setback line than that proposed with the new shed.

Mr. McLeod questioned whether the property dimensions and setbacks proposed were correct since the distances did not add up correctly. Ms. Messer reviewed the lot dimensions and noted that the setback proposed should read 79-feet, rather than 75-feet as shown on the drawing.

Mrs. Gray inquired as to the height of the proposed shed. Ms. Messer stated 9-feet. Mrs. Gray then asked whether the snow and ice build-up is a recent occurrence or had been in existence for the past nine years of living at the property. Ms. Messer stated that it has always been a problem and that due to the condition of the existing shed they believed it was time to construct a new shed. The shed would be better suited towards the rear of the property.

Chairman Krzyzaniak questioned whether the shed was used as a garage. Ms. Messer replied no, indicating that their utility equipment is stored in the building.

Chairman Krzyzaniak concurred with Mrs. Gray's comments concerning the Applicant's ability to reposition the shed in conformance with the setbacks. Chairman Krzyzaniak viewed the property, prior to the meeting, and agreed that relocating the shed to the rear of the property would provide for open space in the front of the property.

Ms. Messer again stated that the only alternative would be for them to reconstruct the shed in its current location. Chairman Krzyzaniak stated that she understood what Ms. Messer and Mr. Ruderman were trying to accomplish; however, they are requesting a variance to violate three different setback requirements. In response, Mr. Ruderman stated that there would be no harm or safety issues as a result of granting the Variance especially, given the fact that the neighbors are in agreement.

At this time, testimony was closed.

Mr. Boatwright, seconded by Mr. Rinden, moved to vote on the application as presented. Motion in favor of voting.

At this time, Chairman Krzyzaniak noted that while there are six members present only five members are voting members. She informed Mr. Rinden that because Mr. Boatwright is present and is a regular member of the Board he will be voting on the application. Note: Mr. Rinden and Mr. McLeod are alternate members of the Board.

Mrs. Gray was sympathetic with the Applicant's efforts to locate the shed in an aesthetically pleasing location; however, she stated that she could not vote in favor a Variance when there is an alternative available that could be achieved which would limit the need for the Variance. Chairman Krzyzaniak concurred.

Mr. Boatwright was in favor of the proposal as presented. Mr. Koontz concurred, stating that he believed that the Applicants are trying maximize their open space while minimizing their need for a Variance.

With five members voting, two voted in favor (Boatwright and Koontz) and three voted in opposition (Gray, McLeod and Krzyzaniak). The application as presented failed due the fact that the Applicant had not adequately addressed the following requirements for a Variance:

- ***By Granting the Variance substantial justice would be done.*** *The injustice (ice build-up and snow storage) represented by the Applicant has been occurring for a number of years. It is believed that a redesign of the existing shed doors could minimize, if not alleviated this issue. The inability to relocate the shed to the location proposed by the Applicant, rather than that suggested the Board, provides no loss to the Applicant or gain to the general public.*
- ***The spirit and intent of the Ordinance will be broken by granting the variance.*** *The granting of the Variance would be contrary to the spirit and intent of the Ordinance as the Ordinance requires a 10-foot setback from existing structures and from the rear and side property lines. The relocating or repositioning of the shed would minimize, if not alleviate the need for an Area Variance.*
- ***Special conditions exist such that literal enforcement of the Ordinance results in unnecessary hardship.*** *While the Applicant indicated that the “special condition” of the property was due to the size of the property a majority of the Board found no sufficient evidence to indicate that the property is unique in its surroundings since there are other properties within the neighborhood similarly situated. The lack of interest in relocating or repositioning the proposed shed so to conform or minimize the Area Variance was due to visual aesthetics and therefore reinforced the majority of the Board’s belief that the location as proposed is not necessary, but rather a personal preference. Therefore, the benefit sought by the applicant can be achieved by another method reasonably feasible – that is relocating or repositioning the placement of the proposed shed.*

II. Minutes and Notice of Decision of July 7, 2009.

Review of the Minutes and Notice of Decision was deferred to the September 1, 2009 meeting.

III. Other Business.

- Procedural Matter (Motion to Vote) – Mrs. Gray, seconded by Mr. Koontz, moved for the Chairman to no longer request a motion of the Board to vote on an application. Motion carried unanimously (Gray, Koontz, McLeod, Boatwright and Krzyzaniak).

IV. Adjournment.

With there being no other business the meeting was adjourned at 7:55 PM. The next regular scheduled meeting of the Board is Tuesday, September 1, 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.