

Hopkinton Zoning Board of Adjustment
Minutes
September 15, 2009

Acting Chairman Toni Gray opened the Hopkinton Zoning Board of Adjustment meeting of Tuesday, September 15, 2009, at 7:00 PM in the Town Hall. Members present: Harold Perkins, Charles Koontz, David Brock and Gregory McLeod.

I. Application.

Case #Z02009-00010-A Amy Messer and Jack Ruderman – Request for an AREA VARIANCE for the purpose of constructing a detached shed with less than the required setbacks for the R-1 district (Hopkinton Zoning Ordinance section 4.4.1). The property is located at 15 Cottage Street, shown on Tax Map 102 as Lot 69.

Note: Standards addressed by the Applicant as part of their application for an Area Variance are included as part of this record.

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.

Ms. Messer referenced the application packet of information provided to the members, noting that the proposal is to construct a 10' x 16' small detached shed in the rear of her property. While the setback requirement for the district is 10-feet from the rear and side property lines, the proposal is to construct the shed with a 4' side setback and 7'-6" rear setback. The original application had included a proposed 9-foot setback between the residence and shed; however, since then they propose to locate the shed so that there will be 10-feet between structures.

Currently, there is an existing shed located towards the front of the property which is approximately 2-feet from the side lot line. The shed is deteriorated and should be removed. The proposal is to replace the shed with a new shed located towards the rear of the property. Ice tends to build up in front of the doors of the shed due to its poor location.

To date, all of the neighbors received three notices of the proposal with no objections.

Ms. Messer discussed comments raised during the hearing on the Motion for Rehearing concerning the need for a 10-foot setback in order for safety vehicles to be able to access a building. Ms. Messer stated that her property consists of .23 acre. Behind the proposed shed is a row of trees and the neighbor's driveway. Towards the side of the property there is a field so that there would be no need for a safety vehicle to drive between the proposed shed and house. The closest structure to the shed is the neighbor's pool fence which is approximately 40-feet away.

Ms. Messer noted that there isn't a safety or over crowding issue as it relates to the location of the proposed shed. To deny the request would create an unnecessary hardship. Furthermore, the Office of State Planning Handbook indicates that "any loss to the individual that is not outweighed by a gain to the general public is an injustice." Ms. Messer believed that the matter of safety and public justice had been met.

Mr. McLeod addressed the issue of access of safety vehicles. To say that there is no public interest in requiring a 10-foot setback would be a mistake. The 10-foot setback is intended to provide for safe movement of fire apparatus and personnel. It is not intended to provide for adequate space for vehicle movement.

Mr. McLeod further stated that the Applicant currently has a shed that is 2-feet from the side property line. The placement of a new shed towards the rear of the property will not increase the non-conformity on the property.

Mr. Brock inquired as to whether the shed will purely be used for storage, rather than for moving vehicles. Ms. Messer replied yes.

An abutter was present advising that he had no objections to the proposal.

Mr. Perkins stated that the Applicant has clearly met all the criteria to be granted an Area Variance. He believed the hardship is due to the size and configuration of the Applicant's property. He further stated that the Applicant has addressed the issue of substantial justice and public interest.

With five members voting, all five voted in favor (Gray, Koontz, Perkins, Brock and McLeod) of approving the application as presented.

II. Adjournment.

With no further business to come before the meeting, Acting Chairman Gray declared the meeting adjourned at 7:20 PM. The next scheduled meeting of the Board is Tuesday, October 6, 2009, at 7:00 PM in the Town Hall.

Karen L. Robertson
Planning/Zoning Director