

Hopkinton Zoning Board of Adjustment
Minutes
February 2, 2010

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment meeting of Tuesday, February 2, 2010, at 7:00 PM in the Town Hall. Members present: Harold Perkins, Daniel Rinden, Toni Gray and Charles Koontz.

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

I. Applications.

Case #ZO2010-02 David & Jane Barkie Request for an EQUITABLE WAIVER for the existing residence (garage) to the side lot line setback requirement. The property is located at 174 Brockway Road in the R-3 district, Tax Map 256, Lot 25. The application was submitted in accordance with Section 4.3 of the Hopkinton Zoning Ordinance.

Surveyor Michael Dahlberg of Dahlberg Land Services addressed the Board on behalf of Mr. and Mrs. Barkie, noting that he had discovered the error in the side line setback.

Prior to the construction of the home, Mr. Barkie and the contractor had strung a line between the boundary (stonewall) and the location the proposed home. At the time, they had both presumed that the side line setback was 25-feet when in fact it is 30-feet. At the point in which the residence was almost completed, Mr. Dahlberg was asked to prepare the certified plot plan which is necessary prior to the issuance of a Certificate of Occupancy. While in the field, the contractor had commented that the setbacks should be fine since they had provided, what they believed to be, an extra inch or so in their calculations. However, once the information was plotted it was determined that the setback was 4-feet 6-inches short of the 30-foot requirement. This is when the contractor and Mr. Barkie had determined that they had made the mistake in presuming that the side line setback was 25-feet.

Mr. Dahlberg reviewed the standards for 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).

"The violation of the 30 foot setback was discovered on November 25, 2009. The owners started construction in May of 2009. The error was discovered by Michael R. Dahlberg, LLS, RPLS of Dahlberg Land Services, Inc. The finish carpenters were laying hardwood flooring on the date of the discovery of the error and the structure was substantially complete both indoors and outdoors. The owners were on schedule to move in prior to Christmas of 2009."

- (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

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

“The violation occurred by an incorrect belief that the side yard setback was 25 feet. A string line was strung between the two nearest property bounds so that reference could be made during excavation, setting up of concrete forms and the placement of concrete. Please note that under the presumed 25 foot side yard setback the excavation contractor gave himself an extra six inches at the northeast corner of the garage. A ‘Good Faith Effort’ was made by the contractor to have the house placement conform to the required 30 foot side yard setbacks. However, the presumption of a 25 foot setback was incorrect. The end result was a 4 foot 6 inch shortage instead of a 6 inch surplus.”

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

“No public nuisance is created by the location of the garage. The nearest house is the Gayer property (lot 24) and 400 feet to the northeast, and additional 4 feet 6 inches is negligible in terms of perception of location. There are no other properties in the area that could be developed where the current house location on lot 25 could be a nuisance.”

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

“The house constructed has an estimated value of \$690,000. This value is above the average property value in the neighborhood. In terms of location, where the house/garage in question is located has no diminution on any surrounding property values.”

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

“The house/garage location should have no impact on surrounding properties, especially in light of the surrounding geographic circumstances (streams, wetlands and steep slopes). The nearest property (Gayer) is undevelopable in the area directly adjacent to the garage in question.”

- (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.

“The cost to move the entire garage, the 4 feet 6 inches, far outweighs any public benefit gained. It would be inequitable to have the owner move the garage at great expense when the actual or perceived location of the house is negligible.”

Following Mr. Dahlberg’s presentation, Chairman Krzyzaniak opened public testimony.

Abutter Jacqueline Gayer of Brockway Road addressed the Board stating that she has no intentions in trying to build in the area near Mr. Barkie’s garage. However, she found it interesting that Mr. Barkie would choose to build in close proximity to the lot line when he has 13-acres. In rebuttal, Mr. Barkie stated that he had originally proposed the home closer to the brook, further back on the property; however, during Planning Board review of the subdivision there were concerns with the impact in disturbing the property in close proximity

of the brook. So, he moved the proposed location of the home further up hill. Mr. Barkie stated that he had made a good faith error in measuring the setback line.

Chairman Krzyzaniak closed public testimony.

Mrs. Gray believed that the Applicant had successfully addressed the criteria to be granted an Equitable Waiver. Mr. Perkins concurred.

Mrs. Gray, seconded by Mr. Perkins, moved to approve the application as presented. With five members voting, all five voted in favor (Gray, Perkins, Rinden, Koontz and Krzyzaniak). The Applicant adequately addressed the standards set forth in paragraph 15.8.4 of the Zoning Ordinance.

II. Review of the Minutes and Notice of Decision of December 22, 2009 and January 5, 2010.

Mrs. Gray, seconded by Mr. Perkins, moved approval of the December 22, 2009 Minutes and Notice of Decision. With five members voting, four voted in favor (Gray, Perkins, Krzyzaniak, Rinden) and one vote in abstention (Koontz).

Mrs. Gray, seconded by Mr. Perkins, moved approval of the January 5, 2010 Minutes and Notice of Decision. With five members voting, three voted in favor (Gray, Perkins and Rinden) and two vote in abstention (Koontz and Krzyzaniak).

III. Other Business.

Zoning Amendments 2010—Mrs. Robertson briefly discussed proposed changes to Section XV, 15.8.3 Variances. The amendment would replace the criteria required to demonstrate an “unnecessary hardship” with the new statutory definition of RSA 674:33, I (b), effective January 1, 2010.

Rules of Procedure—The Board, at their March 2, 2010 meeting, will vote to amend the Rules of Procedure to include the following:

- Minutes of all meetings including names of Board members, persons appearing before the Board, and a brief description of the subject matter shall be open to public inspection within five (5) business days after the meeting, rather than within 144 hours. NH RSA 91-A:2 II. The revision will be consistent with an amendment to the Right to Know Law.
- Final written decisions will be placed on file and available for public inspection within five (5) business days after the decision, rather than within 144 hours. NH RSA 676:3.
- 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.

Note: The Rules of Procedure may be amended by a majority vote of the members of the Board provided that such amendment is read at two (2) successive meetings immediately proceeding the meeting at which the vote is to be taken. Public notice of meetings shall be posted in the Concord Monitor and at the Town Hall and Town Clerk's Office not less than five (5) days before the date fixed for the hearing.

IV. Adjournment.

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With no other business to come before the meeting, motion was made by Mrs. Gray, seconded by Mr. Koontz, to adjourn at 7:40 PM. Motion carried unanimously. The next regular scheduled meeting of the Board is Tuesday, March 2, 2010, 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.