

Hopkinton Zoning Board of Adjustment
Minutes
May 4, 2010

Acting Chairman Harold Perkins opened the Hopkinton Zoning Board of Adjustment meeting of Tuesday, May 4, 2010, at 7:00 PM in the Town Hall. Members present: Toni Gray, Charles Koontz, Dan Rinden and David Brock.

Chairman Perkins began the meeting by advising that, in advance of the meeting, applicants received copies of the Board's Rules of Procedure. Additional copies were available at the meeting for abutters and the general public.

I. Applications.

Case #: ZO2010-03 Dudley Millikin Attorney Erick Newman of the Concord law firm of Gallagher, Callahan & Gartrell addressed the Board on behalf of Mr. Millikin to request a Variance for an existing shed located within the rear and side setbacks and having less than the required setback between structures. The property is located at 2 Maple Street in the VB-1 district, Tax Map 101, Lot 10. The application was submitted in accordance with Section 4.3 and 4.4.1(a) of the Hopkinton Zoning Ordinance. This was a continuation of the Board's April 6, 2010 meeting.

Attorney Newman provided a brief overview of what had happened at the previous meeting, noting that he had previously reviewed the Variance criteria. The shed in its present location does not comply with the 10-foot setback between structures, nor does it comply with the rear and side line setbacks. The Applicant proposes to reduce the size of the shed by 1-foot so to allow for a 1-foot setback from the rear property line. He believes that this will provide ample space for him to access and maintain the shed. The revised dimensions of the shed will be 2'-1" x 4'-1".

Mr. Millikin advised of his conversation with the abutter Lynda Kimball, explaining that as long as the action of the Board does not create an easement on her property she would have no objections.

At this time, Chairman Perkins read into the record an email the Board had received from Ms. Kimball which basically indicated that her position was unchanged from that previously expressed. See attached copy of Ms. Kimball's email dated May 4, 2010, along with a copy of her letter dated April 6, 2010.

Mr. Brock asked Attorney Newman if he agreed that the doctrine of adverse possession would not apply in this case. Attorney Newman replied yes, stating that because the matter had been discussed with the abutter he believed that the Applicant would not satisfy the criteria required for adverse possession.

After reading Ms. Kimball's letter, Mrs. Gray stated that she did not interpret the meaning of the letter to be as understood by Mr. Millikin. Mr. Millikin reiterated his point that he had discussed his proposal to reduce the size of the shed with Ms. Kimball and she had no objections.

Chairman Perkins noted that Ms. Kimball states that her position is unchanged from that expressed in her letter to the Board. In reviewing Ms. Kimball's letter, dated April 6, 2010, she requested that the applicant's request for a Variance be denied.

Attorney Newman advised that the reason in part for the shed was to screen the trash cans, which was at the request of Ms. Kimball. He believed that Ms. Kimball would prefer the shed over the alternative which would be for the trash cans be visible.

Mrs. Gray question whether the doors would open over Ms. Kimball's property. In response, Mr. Millikin discussed reducing the size of the doors and changing them to bi-folds.

At this time, public testimony was closed.

During deliberation, Mrs. Gray expressed concern in granting a Variance for a 1-foot setback. Mr. Brock noted that the alternative is having trash out in the open. He was concern with the fact that the abutter had not attended either meeting. Mrs. Gray believed that the most recent email from Ms. Kimball was unclear. Mr. Koontz concurred, noted that it appears that there is a lack of opposition for the proposal. Mr. Rinden believed that the Applicant had made an attempt to meet the abutter half way in addressing her concerns with the setback. Mr. Perkins disagreed, stating that he does not believe a hardship has been shown. It is difficult to imagine the Applicant being able to access and maintain the shed with only a 12-inch area to stand on.

Mrs. Gray then questioned whether the Applicant could access the shed from the other side of his building, since there appears to be 3-feet of space available. Mr. Millikin replied yes.

Motion made by Mr. Brock, seconded by Mrs. Gray, to approve the application as modified (size and doors) with the understanding that the approval of the Variance is not intended to grant a license, easement or permission for current or future owners to access the shed by way of abutting property(ies). Furthermore, the owner, current or future, cannot use the Variance to claim adverse possession. With five members voting, four voted in favor (Gray, Koontz, Rinden and Brock) and one voted in opposition (Perkins).

The Applicant adequately addressed the criteria to be granted a Variance as set forth in paragraph 15.8.3 of the Hopkinton Zoning Ordinance. In considering the alternative, open trash in a high density neighborhood, the Board believed that the benefit to be gained by the public and applicant in having the trash stored in a shed is reasonable. In considering the design of the shed, the Board determined that a reduction in the size and a change in the doors would reduce any possible impact on abutting property.

Case #: ZO2010-05 Robert Clay & Katherine Mitchell Mr. Clay and Ms. Mitchell addressed the Board to request a Variance to construct an 8' x 12' utility shed having less than the required front setback and less than the required setback between structures. The property is located at 1677 Bound Tree Road in the R-3 district, Tax Map 204, Lot 7. The application was submitted in accordance with Section 4.3 and 4.4.1(a) of the Hopkinton Zoning Ordinance.

Ms. Mitchell began reviewing photographs of the property, indicating that the shed is proposed to be located behind the existing garage. The garage in its present location is non-conforming since it does not meet the required front yard setback. The reason for the proposed shed to be located within 4-feet of the garage is so to avoid the need to cut trees in the vicinity that otherwise act as a visual buffer from the Contoocook Precinct's water facility.

Ms. Mitchell reviewed the criteria for a Variance as outlined in Section XV of the Zoning Ordinance.

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

"a) it does not substantially increase the size of the non-conforming footprint that is visible from the road, b) it would be partially screened with mature trees that line the property along the road, c) it would be constructed with materials and finished in a manner that match the house (i.e. painted wood siding, Anderson and Pella windows and architectural roofing shingles), d) there are no houses within approximately ¼ of a mile of our house, e) other properties in the neighborhood have structures near the road that do not conform to the setback requirements, and f) the nearest structures include the Contoocook Village Precinct 50-foot, 500,000+ gallon water tank enclosed by a chain link fence."

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

"a) it would not diminish surrounding property values since there are no homes nearby, and several homes in the surrounding area have structures that do not conform to the setback requirements, b) by its nature, it would not pose any threat to the health and safety of the public, c) through careful design, it would not diminish the character of the town, and d) it would not encroach on anyone's use or enjoyment of their own property."

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

"a) there would be no diminution in surrounding property values, b) there would be no infringement upon the safety of or the rights to enjoyment of property by the abutters, c) due to the topography of the land, locating the shed within the vicinity of the garage (the logical, useful and most aesthetic location for a utility shed on this property) and within the setback requirements would necessitate substantial and costly site work and the removal of trees which serve landscaping and screening purposes, and d) according to the Office of State Planning Handbook, 'any loss to the individual that is not outweighed by a gain to the general public is an injustice.'"

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

"a) according to Section 1.2 (Purposes) of the Zoning Ordinance, the purpose of the zoning ordinance is to protect the health, safety, convenience, and general welfare of residents, and the proposed use, being in a sparsely populated area and by the very nature of the structure and its use, does not adversely impact any of these provisions, b) it is consistent with the purpose of preserving the value of property and the character of the town in that the structure would be architecturally designed to be consistent with that of other structures on the property, and c) several other properties in the neighborhood already have non-conforming structures."

5. Literal enforcement of the ordinance results in unnecessary hardship.

(a) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area.

(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.

"The purposes of the ordinance provision entail protecting the health and safety of Hopkinton residents and preserving the surrounding property values, as well as

the character of the town. Granting the variance would in no way be inconsistent with these purposes. There would be no safety issues inherent in the normal use of such a storage shed. The shed would be both architecturally designed in a manner that would allow it to aesthetically complement the existing structures on the property and partially screened from view by mature trees along the property line, thus eliminating the possibility of any negative impact on surrounding property values. Furthermore, the design and construction of the shed would be consistent with the character of the town. For these reasons, no fair or substantial relationship exists between the general public purposes of the ordinance provision and the specific application in this case.”

- (ii) The proposed use is a reasonable one.

“Placement of the shed is best suited, both practically and aesthetically, to the land directly behind the garage. It would be sited further from the road than the garage is situated and would represent a relatively small alteration in the non-conforming footprint. Because of the slope of the land, placing the shed elsewhere in the vicinity of the garage would entail significant site work and some tree removal, thus unnecessarily increasing the cost of the project and making it less aesthetically pleasing, with no concomitant gain by the general public. Furthermore, it is not inconsistent with other similarly placed, non-conforming structures that already exist in the neighborhood. The architectural nature of the design and construction are such that there would be no negative effect on surrounding property values.”

Ms. Mitchell presented photographs of other properties along Bound Tree Road which have sheds that are non-conforming in setback, so to show that her proposal is consistent with others in the neighborhood. Ms. Mitchell noted that her existing garage is approximately 6-feet from the front property line while the shed is proposed to be 14-feet.

The Board complimented Ms. Mitchell and Mr. Clay on their application and presentation, noting that they were very thorough.

At this time, public testimony was closed.

Mrs. Gray believed that sufficient information was submitted documenting other sheds in the neighborhood that are non-conforming in setback. Mr. Perkins agreed, noting that the Applicant met the necessary criteria to be granted a Variance.

Motion made by Mr. Rinden, seconded by Mr. Koontz, to approve the application as submitted. Motion carried unanimously (Gray, Koontz, Rinden, Brock and Perkins).

The Applicant adequately addressed the criteria to be granted a Variance as set forth in paragraph 15.8.3 of the Hopkinton Zoning Ordinance. The Board concluded that there would be no affects adversely on abutting properties and that the construction of the shed with less than the required front setback is similar to other sheds in the neighborhood.

Case #: ZO2010-06 Varel Freeman Woodbury Roberts addressed the Board representing the Freemans for a Variance to construct an addition having less than the required front setback. The property is located at 18 Watchtower Road in the R-2 district, Tax Map 241, Lot 3. The application was submitted in accordance with Section 4.3 of the Hopkinton Zoning Ordinance.

Mr. Roberts began by explaining to the Board that he had been contacted by the Freemans with a proposal to reconfigure and extend the size of their garage. The garage as it currently sits is 28-feet from the front property line. The proposal is to reconfigure and to reconstruct the garage with a 7' x 36' addition. Once constructed, the garage will be within 20-feet of the front property line. The setback takes into consideration the gable roof overhang of approximately 1-foot.

Mr. Roberts reviewed the criteria for a Variance as outlined in Section XV of the Zoning Ordinance.

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

"The project will increase the property value while maintaining its present character."

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

"This property sits alone at the end of a dead-end street. There is no road traffic and the project will not impact any neighboring views, drainage, etc."

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

"The home would be used in a more efficient and safe manner and the reduced setback would be consistent with several properties in the neighborhood. The garage in its present state needs maintenance. The addition will allow for adequate storage with sufficient living space above." At this time, Mr. Roberts presented photographs of other homes within the neighborhood that located less than the required setback to their front property lines.

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

"This allows for a safer living environment will conserving the value of the property."

5. Literal enforcement of the ordinance results in unnecessary hardship.

(b) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area.

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.

"This property has partial frontage on a seldom used roadway and the balance of the frontage is on an undeveloped old wood road."

- (ii) The proposed use is a reasonable one.

"This is the only area where a garage can reasonably be placed on this site and will not adversely affect any water drainage or views of others."

Mr. Roberts explained the process by which he would remove the existing garage and construct a new 28' x 36' garage. Mr. Brock inquired as to the height of the proposed garage taking into consideration the affects it may have on the views in the area. In response, Mr. Roberts stated that

the garage will include a new master bedroom above. In order to accomplish this he would need to lower the grade of the garage floor so that there is adequate room for the overhead doors. These changes may include changing the direction of the roof. He estimated the height of the garage at the highest point at approximately 18 to 20 feet.

Shane Clark of 34 Watchtower Road addressed the Board as an abutter reviewing the diagram of the proposed dimensional changes to the garage. Mr. Clark questioned whether the Board would treat an application for an addition to a residence or an addition to a garage differently. In response, Chairman Perkins stated that the addition to the garage will include living space and that the garage is attached to the home so that it is treated the same. Mr. Clark stated that the proposal does not affect his views.

Mrs. Robertson briefly discussed her findings concerning what is known as Watchtower Road Extension, noting that she was unsuccessful at locating a subdivision plan for the area. She believed that the road actual extended further than shown on the tax maps and that there was limited construction because there was no further development beyond the paved portion. She will review the Town's road files for further information.

Public testimony was closed.

Motion made by Mr. Perkins, seconded by Mrs. Gray, to approve the application with the condition that the height of the new garage shall not exceed the height of the existing home. Motion carried unanimously (Gray, Koontz, Rinden, Brock and Perkins). The Board agreed that the Applicant successfully addressed the criteria to be granted a Variance.

The Applicant adequately addressed the criteria to be granted a Variance as set forth in paragraph 15.8.3 of the Hopkinton Zoning Ordinance. The Board considered the affects, if any, the placement of the garage would have on views in the neighborhood and therefore conditioned the height of the garage to no higher than the existing residence. Furthermore, the Board concluded that there would be no adverse affects on abutting properties as the placement of the garage with less than the required front setback is similar to others in the neighborhood.

II. Review of the Minutes and Decision of April 6, 2010 hearing.

Motion made by Mrs. Gray, seconded by Mr. Koontz, to approve the Minutes and Decision of April 6, 2010 as submitted. Motion carried unanimously.

III. Other Business - Mrs. Robertson briefly reviewed the process by which an Administrative Appeal of involving the administration and enforcement of the NH State Building Code is to be brought before the Zoning Board of Adjustment. Decisions involving the administration or enforcement of the NH State Building Code have never come before the Board in the past; therefore, the Board requested that Mrs. Robertson consult with the Board's counsel with respect the Board's role when it comes to the NH State Building Code.

IV. Adjournment.

With no other business to come before the meeting, motion was made by Mrs. Gray, seconded by Mr. Koontz, to adjourn at 8:15 PM. Motion carried unanimously. The next scheduled meeting of the Board is Tuesday, June 1, 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.