

HOPKINTON ZONING BOARD OF ADJUSTMENT
MINUTES
FEBRUARY 1, 2011

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment meeting of Tuesday, February 1, 2011, at 7:00 PM in the Town Hall. Members present: Dan Rinden, Charles Koontz, Toni Gray and Gregory McLeod.

Note: The Zoning Board of Adjustment's Rules of Procedure was provided to the applicants during the application process and additional copies were available at the meeting for the general public.

I. Application(s).

ZBA#2011-1 Matthew & Maria Sharpe Mr. and Mrs. Sharpe addressed the Board to request a Variance to erect an addition to their existing non-conforming residence. The property is located at 855 Kearsarge Avenue in the R-4 district, Tax Map 223, Lot 1.3. The application was submitted in accordance with subsection 5.1.2 (a) of the Hopkinton Zoning Ordinance.

Mr. and Mrs. Sharpe began presenting photographs of their residence before and after a total refurbishment that they had completed in 2005. She stated that, "the result was significant and gratifying. It was small, but something to call our own right here in our hometown. We planned on adding on to the home when we were ready to start a family."

As Mr. and Mrs. Sharpe began preparing a site plan of their proposed addition they discovered that the front setback did not meet the required 60-feet. The front of the house is approximately 14 feet from the front property line. While the addition will not further encroach upon the non-conforming setback, the Zoning Ordinance requires that they obtain a Variance if they wish to build an addition greater than fifty (50) percent of the original size of the structure.

Mrs. Sharpe 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 proposed use will not diminish surrounding property values because the existing structure is only a 16' x 24' house with attached 10' x 16' porch. Thus, it would be fair to say that its value is at the lower end of the scale for the neighborhood. The rebuilt structure will substantially increase in value and therefore bring it more in line with the rest of the neighborhood."

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

"Granting the Variance would not be contrary to the public interest because we will continue to use the property as our residence in the same fashion that we do now. Moreover, there would no increased environmental impact due to upgrading the septic system or water supply. The amount of potential system loading will remain within the previously approved limits. The project will not create additional pedestrian or vehicular traffic beyond the current potential. Nothing in the planning of this addition project will create new burdens for the police or fire departments. It is therefore safe to conclude that this Variance would not be contrary to the public interest."

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

"By granting the Variance, substantial justice would be done because it's a win, win, win situation. We will enjoy the utilization of a reasonably sized home with space for modern amenities, the general public gains from the enhanced aesthetic value and the surrounding properties gain in value by virtue of neighborhood improvement."

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

"The spirit and intent of the Ordinance will not be broken by granting the Variance because no further encroachment of any current setbacks will occur. The dwelling will continue to be used as a residence without major disruptions of the natural terrain, vegetation, watercourses or surface drainage, as originally planned for in the R-4 district."

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

(a) "The zoning restriction as applied to our property interferes with the reasonable use of the property considering the unique size of the dwelling in its environment. The lot in question is slightly oversized for the zone it is in. However, our home sits too close to the front lot line per current zoning, in spite of the oversized lot. It should be noted that this structure has been in this exact location since the early 1800's, long before zoning was conceived. In recent years, the structure was meticulously refurbished to begin the creation of a homestead in a dwelling with such a long history. The plan was to refurbish and add on as needed. It would be an unnecessary hardship to us, the environment, and history to force some other solution, i.e. demolition, to the space problem inherent in the dwelling."

(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 general purpose of the Ordinance is certainly not to limit refurbishing and expansion of homes beyond fifty (50) percent of their original size, especially those in dire need. Yet, that is just what the specific restrictions do when a setback encroachment is discovered and a property is then categorized as non-conforming. Enforcing the size restriction with respect to the proposed addition will not improve the setback encroachment situation. As stated previously, our proposal poses no environmental, safety, or public health concerns. Therefore there is no specific redeeming value in adherence to the fifty (50) percent rule."

(ii) The proposed use is a reasonable one.

"The property was used as a residence over 100 years ago and current zoning suggested that use was most ideal for the area when it was included in the R-4 district. Modern day citizens, including those in the R-4 zone in Hopkinton require a certain amount of living space for reasonable utilization and enjoyment of their properties. Therefore, the expansion of the structure as proposed constitutes reasonable use of the property in spite of its unique location."

- (b) “The property cannot be reasonably used in strict conformance with the Ordinance, and a Variance is therefore necessary to enable reasonable use of it. The limitation to additional living space of not more than fifty (50) percent of original size interferes with the reasonable use of the property as planned by us at the time of purchase. The unique size and location of the dwelling would affect any owner the same way. All things considered, the only reasonable solution to the problem is a Variance to enable our full enjoyment of our property without major disturbance in this low density zone.”

Mrs. Gray inquired about the size of the proposed addition. Mrs. Sharpe estimated 16' x 26', but stated that the size had not been finalized. Mrs. Gray suggested that the size of the addition be limited to not more than 100 percent of the size of the existing structure. The Board unanimously agreed. When calculating the total size of the existing structure, the Board agreed to include the porch and the second floor of the residence.

It was then noted that the location of the residence does not change the applicant's need to expand the size of the home. Mr. McLeod agreed, stating that the applicant's proposed addition will not increase the non-conforming setback. Other members concurred.

Motion made by Mr. McLeod, seconded by Mr. Rinden, to approve the application as presented. Motion carried unanimously (Gray, Koontz, McLeod, Rinden and Krzyzaniak). The applicant successfully addressed the standards to be granted a Variance as set forth in subsection 15.8.3 of the Hopkinton Zoning Ordinance. The residence was constructed in the early 1800's, and is limited in size (555 sq ft living space and 160 sq ft porch) as compared to other homes in the R-4 district. Expanding the residence beyond fifty (50) percent of its original size will not further encroach upon the non-conforming setback.

II. Review of the Minutes of December 7, 2010 hearing.

Motion made by Mrs. Gray, seconded by Mr. Koontz, to accept the Minutes and Notice of Decision of December 7, 2010. Motion carried unanimously (Gray, Koontz, McLeod, Rinden and Krzyzaniak).

III. Adjournment.

Mrs. Gray, seconded by Mr. Koontz, moved to adjourn at 7:26 PM. Motion carried unanimously.

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 to the Zoning Board of Adjustment 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.