



# Town of Hopkinton

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## HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES May 1, 2012

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment meeting of Tuesday, May 1, 2012, at 6:30 PM in the Hopkinton Town Hall. Members present: Toni Gray, Harold Perkins, Gregory McLeod and David Brock.

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

### I. Application(s).

#2012-5 Chuck and Joyce Rose Variance to construct a garage having less than the required front setback. The property is located at 100 Chase Farm Road in the R-4 district, Tax Map 243, Lot 20. The application was submitted in accordance with Zoning Ordinance subsection 4.2.

Mrs. Rose addressed the Board advising that the garage replaces a temporary hoop building that had fallen down. The location of the garage is at the end of Chase Farm Road where the property on all sides is owned by the Roses. Mrs. Rose noted that there is no one that would drive past the garage unless they were going to her residence.

Mrs. Rose 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 garage will replace a temporary hoop building that had fallen down. The location of the new garage is not seen by others as the property on all sides is owned by the Applicant."

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 garage in the same manner as the hoop building, which was for personal use."

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

"By granting the Variance, substantial justice would be done because it will allow the owner to keep their vehicles under cover and to replace a temporary building that had fallen down."

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*Minutes are subject to review and approval.*

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 the owner owns property on both sides of Chase Farm Road, and there is no need for vehicles to pass the garage, unless they are going to the owner's residence."

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

- (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.

"Due to the contour of the land the location was selected. When considering other locations there were steep slopes."

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

"Again, the location is reasonable as the contour of the land."

Mr. McLeod questioned whether the hoop building had permanent footings and a foundation. Mrs. Rose replied no, explaining that she had put in new footings for the 28' x 36' garage. She then noted that behind the garage there is a power line easement so that the structure cannot be moved further back on the property.

Mrs. Gray questioned the location of the easement and the contours of the land, noting that the map presented does not show the location of the easement or contour lines. In response, Mrs. Rose stated that the property consists of 56-acres. Mrs. Gray suggested with 56-acres that there may be a potential location for the garage with a conforming front setback. She stated that addressing the criteria for a Variance is not easy.

Chairman Krzyzaniak advised that she had driven out to the property. She asked whether the unfinished structure that is located at a higher elevation than the road is the new garage. Mr. Rose replied yes, stating he had stopped construction once he was advised that a permit would be required. They had assumed that they would be permitted to construct the garage in the same location as the hoop building.

Following brief discussion and review of the site plan, Mrs. Gray suggested that the Applicant may be constricted to the location due to the odd shape of the land.

Public testimony was opened.

Randall Amsden, owner of property at 23 East Penacook Road, addressed the Board asking to view the map presented, and questioned whether the garage was for personal or commercial purposes. In response, Mr. Rose stated that the garage is for personal use, noting that garage door opening are only 10-feet high which would limit his ability to use it for storage of his commercial equipment.

Brenda Payne, owner of property at 323 East Penacook Road, addressed the Board indicating that she had no objections to the proposal.

Public Testimony was closed.

Mr. Perkins suggested that one could argue that garage complies with the setback requirements, due to the configuration of the lot. What is now being considered the front of the property could also be considered the side lot line. Mr. Perkins stated that the Applicant qualifies for a Variance due to the nature of the land.

*Motion made by Mrs. Gray, seconded by Mr. Perkins, to approve the application as presented. Motion carried unanimously (Gray, Perkins, McLeod, Brock 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 configuration of the lot is unique in that it surrounds Chase Farm Road (both sides and the end) with steep slopes.*

#2012-6 William Turner Variance to construct a single family residence in the B-1 (commercial) district. The property is located on the corner of Bound Tree Road, Tax Map 221, Lot 71. The application was submitted in accordance with Zoning Ordinance Table of Uses 3.6.A.1.

Mr. Turner of 55 Morgan Way in Gilford addressed the Board as the owner of property located on the corner of Bound Tree Road. Mr. Turner stated that he wishes to construct a single-family residence with attached garage.

Mr. Turner 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:

"My proposal to construct a single family residence with attached garage is consistent with the use of my abutters' properties and the neighborhood; therefore, there should be no adverse effects on surrounding property values."

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

"Granting of the Variance will allow me to utilize my property in the same manner as my abutters have been able to do with their properties. Allowing a single family residential use of the property would not be contrary to the public interest. Whereas, requiring the property to be utilized for a two-family dwelling or for commercial uses, such as a small retail business, restaurant, gas station, or auto body shop, would be contrary to my abutters interest in their properties and the neighborhood."

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

"By granting the Variance substantial justice would be done as it would allow me to utilize my property in the same manner as my abutters have been able to use their properties. While my property is zoned B-1, the property is surrounded by single family residences and vacant residential zoned property. "

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

"The Bound Tree Road B-1 zone encompasses six lots with one lot partially zoned B-1 and R-2. The spirit and intent of the Ordinance will not be broken as the B-1 district allows for residential uses (two-family and multi-family up to 8 units). The Bound Tree Road B-1 zone consists of a total of six (6) lots that abut the R-3, R-2 and the R-1 districts. In fact, to get to the Bound Tree Road B-1 zone you have to drive past the residences in the R-1, R-2 and R-3 districts. The pictures show the uses of the six (6) lots in the B-1 district which includes the Crews' single family residence, which is my direct abutter, a landscape/storage building, a welding business with a residential unit on the second floor and two lots that remain land only."

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 purpose of the Zoning Ordinance is to "to protect and conserve the value of property, to encourage the most appropriate use of land...by promoting good civic design and arrangements". The purpose of the Commercial (B-1) district is "to provide limited commercial, institutional, professional and personal uses along with residential uses".

The fact that you have to drive past residences that are located in the R-1, R-2 and R-3 districts to get to my property and the fact that my property abuts a residence that is in the B-1 district and residences across the street in the R-3 district are obvious reasons as to why the most appropriate use of the property is for a single family residence. While the B-1 district allows for two-family and multi-family dwellings there are none in the B-1 zone and in the abutting R-3 zone."

(ii) The proposed use is a reasonable one.

"As I have stated above, in order to get to my property you need to drive past what is predominantly single family residences in the neighborhoods. The property is surrounded by the R-1, R-2, R-3 districts and is abutted by a residence that is located in the B-1 district. Again, there are six lots in the B-1 district. One lot has a residence on it, another lot has a residential/commercial use, one lot is being utilized by landscaping/storage use and there are two lots that are land only.

While the B-1 (commercial) district allows for commercial uses, including a retail establishment, restaurant, gas station and auto body shop, these uses would be contrary to the interest of those that own the residences that abut my property. The fact that one would have to drive through residential neighborhoods to get to a small retail business, restaurant, gas station or auto body shop is not realistic as it is unlikely that patrons would go out of their way to get to these businesses. The appropriate location for commercial uses is in the downtown, not in a residential neighborhood."

- (b) If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

“The lot is triangular shaped as a result of the highway being constructed and the construction of Bound Tree Road in order to access those lots on this side of the highway on what was formerly Spring Street. The shape of the lot hinders my ability to use the property for commercial purposes, without obtaining a Variance. The Ordinance requires a commercial use abutting a residential use (Crews’ residence) or residential district (R-3 district) to have a minimum front and rear setback of 100 feet and a side setback of 50 feet from the property line abutting the residential use or district. Whereas, a residential use requires setbacks of 30 feet front, 15 feet side and 40 feet rear.

While the lot is triangular shaped, it more than meets the minimum acreage and frontage requirements for the B-1 district. The lot contains .43 acres with 300+ feet of frontage along Bound Tree Road and 237.72 feet along Spring Street. If, due to the lots configuration, it cannot support a permitted commercial use then the only reasonable use is for a single family residence which is consistent with the other uses in the neighborhood.”

Mr. Perkins inquired as to whether Mr. Turner intends to live in the residence. Mr. Turner replied yes, explaining that when he is not travel he will be living at the residence. However, during the winter months he hopes to take his motor home and motorcycle and travel.

There was no one present to give public testimony.

Mrs. Gray believed that the configuration of the lot and its location, being surrounded residences and various zoning districts makes the property unique. She suggested that the highest and best use of the property would be for a residence.

*Motion made by Mr. Brock, seconded by Mr. Perkins, to approve the application as presented. Motion carried unanimously (Gray, Perkins, McLeod, Brock 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 property is unique as it is triangular shaped as a result of the construction of the highway and Bound Tree Road. The lot is surrounded by residential districts and single family residential uses.*

## **II. Review of the Minutes and Notice of Decisions of March 27 and April 3, 2012.**

*Mrs. Gray, seconded by Mr. Perkins, moved approval of the Minutes and Notice of Decision of March 27, 2012, as presented. With five members voting, three voted in favor (Gray, Brock and Krzyzaniak) and two voted in abstention (Perkins and McLeod).*

*Mr. Perkins, seconded by Mrs. Gray, moved approval of the Minutes and Notice of Decision of April 3, 2012, as presented. With five members voting, three voted in favor (Gray, Perkins and Krzyzaniak) and two voted in abstention (Brock and McLeod).*

**III. Other Business.**

*Mrs. Gray, seconded by Mr. Perkins, moved to re-appoint Janet Krzyzaniak as Chairman of the Zoning Board of Adjustment. Motion carried unanimously.*

**IV. Adjournment.**

*Mr. Koontz, seconded by Mrs. Gray, moved to adjourn the meeting at 7:15 PM. Motion carried unanimously.*

Karen L. Robertson  
Planning/Zoning Director

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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.

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