



Town of Hopkinton

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HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES DECEMBER 3, 2013

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment meeting of Tuesday, **December 3, 2013, at 6:30 PM in the Hopkinton Town Hall**. Members present: Toni Gray, Charles Koontz, Daniel Rinden and Gregory McLeod.

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).

#2013-6 Sandra Burney VARIANCE to permit a single family residence on a lot containing 1.58 acres with 225 feet of frontage along Rolfe Pond Drive, a private right-of-way. The property is owned by the Estate of Jean Jakubowski and is located in the R-2 district, shown on Tax Map 209 as Lots 27. The application was submitted in accordance with Zoning Ordinance subsection 5.2.1(c).

Ms. Burney began her presentation by advising that she is before the Board on behalf of the Estate of her mother, Jean Jakubowski. She noted that she had previously come before the Board requesting the same Variance in 2008 and in 2010. *Note: In 2008, the Board initially approved the Variance and in 2010, the Board granted a two-year extension of the Variance.* She went on to explain that her family's initial intentions were to sell the lot in question so that they would be able to finance her mother's care; however, since that time her mother has passed and now their intentions are to sell the lot so that they may be able to settle her mother's estate. Ms. Burney explained how the State of NH is now entitled to all revenue gained from the sale of the lot as this is her mother's only remaining asset.

In speaking with realtors concerning the sale of the lot, Ms. Burney had been advised that without approval of the Variance that it would be highly unlikely that the lot would sell. While their intentions all along have been to sell the lot they have been unsuccessful believing that it may have been related to the economy.

According to Ms. Burney, the property was once part of a large parcel sold to Harold Martin in 1950. Later, the property was subdivided and her parents had purchased three contiguous building lots in July 1963, November 1963, and in June 1965. The family never built on the land, but did enjoy day trips and even had a small camper on the property. In 2008, the family decided to sell the land to provide money for her mother's care. It was at this time that Ms. Burney had learned of the Zoning Ordinance that had passed making the land no longer buildable. As a result, she had been advised that without the three lots merged that it would be unlikely that a Variance would be issued; subsequently, Ms. Burney had taken the necessary steps to have the lots merged so to create one large lot.

Adopted: 03/04/2014

At this time, the Zoning Board of Adjustment accepted and waived the reading of the criteria for a Variance as the criteria was included with the written application. For the record, the Applicant's response to the criterion for a Variance as outlined in Section XV of the Zoning Ordinance is as follows:

1. **The proposed use would not diminish surrounding property values because:** "The lots were originally purchased as three building lots. Upon recommendation of a Town administrator, the applicant merged the three (3) lots into one to provide for the building of one house. The proposed residential use will be consistent with the use of surrounding properties along Rolfe Pond Drive. The lot is the second largest lot fronting along Rolfe Pond Drive, the largest being a 57 acre parcel owned by Sally and Wayne Patenaude which has frontage along Pine Street and Rolfe Pond Drive."
2. **Granting the Variance would not be contrary to the public interest because:** "The existing non-conforming lot will be put to a productive use that is consistent with the neighborhood. All other residential structures in the neighborhood are on lots that are less than one acre. The use of the property for residential purposes, consistent with the neighborhood, would not be adverse to the public interest. Two properties down from ours is a new residence for which the prior owners received a Variance to construct that residence."
3. **By granting the Variance substantial justice would be done because:** "The use of the property for a single-family residence is permitted in the R-2 district. Based on a review of deeds, it appears that the 100 acres owned by Harold Martin was subdivided sometime between 1950 and 1953 prior to Zoning. While our property does not meet the current acreage and frontage requirements, the parcel was clearly intended to be used for residential purposes consistent with other uses and structures in the neighborhood. The granting of the Variance would not adversely impact neighboring properties. There are 30 lots along Rolfe Pond Drive that have been built over the years with the most recent Variance being granted in 1997 (Lot 24; .28 acres). Now that our three (3) lots are merged, there are only two lots remaining with sole access by way of Rolfe Pond Drive, a private right-of-way."
4. **The spirit and intent of the Ordinance will not be broken by granting the Variance because:** "The proposed use is permitted and therefore consistent with the Ordinance. With the exception of the lot being located on a private road, the lot might otherwise be considered a non-conforming building lot that might be eligible to be built upon, which is consistent with the spirit and intent of the Ordinance. Given the fact that the size of the lot is larger (1.58 acres) than most of the lots that have been built upon, including the lot that was approved in 1997 (.28 acres) and the fact that a residence can be constructed on the lot satisfying the setback requirements, granting the Variance meets the spirit and intent of the Ordinance."
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.** "But for the fact that the property is located on a private road and since the original three lots were owned by the same owners (Stephen and Jean Jakubowski) of

adjacent contiguous lots, they would have been considered grandfathered non-conforming lots. Now combined the single lot measures 1.58 acres whereas 1.84 acres is required. The lot has 225 feet of frontage whereas 50 feet is required. The lot is a legal lot of record; the three original lots of which it is composed were created prior to the enactment of zoning in Hopkinton. A similar Variance was granted in 1997 for a lot consisting of .28 acres with 95 feet of frontage along Rolfe Pond Drive. The Variance being sought is also for a single-family home. We seek to utilize our property in the same manner as others in the neighborhood and ask not to be treated differently in this quest.”

- (ii) **The proposed use is a reasonable one.** “Since the private road is owned by Wayne Patenaude, we have no ability to change the status of the road from private to public. Therefore, it is believed that the benefit sought cannot be achieved by some other method that is reasonably feasible, other than the granting of this Variance. Thirty single-family homes exist in this area. In our memory some as early as the 1960’s (maybe earlier) and the latest in 1997. These homes utilize the private roads in the area including Rolfe Pond Drive.

In addition to addressing the provisions for a Variance, Ms. Burney included with her application responses to subsection 5.2.1 of the Zoning Ordinance, which allows a non-conforming lot to be built upon, if at the time of the enactment of the Ordinance the:

- (a) **Lot conformed to the existing dimensions (if any).** “In this case, the lot(s) predated the enactment of the 1988 Ordinance and the original Ordinance of 1964. The lots were part of an original 100 acres, more or less, sold to Harold Martin in 1950.
- (b) **Owner of the lot owned no contiguous land. Should the owner(s) own contiguous land, the land shall be annexed to the non-conforming lot to the extent necessary to bring it into conformance with the present zoning standards.** “In this case, the original three lots were merged into one parcel consisting of 1.58 acres. While the parcel will lack the necessary acreage and frontage for compliance with the R-2 district, the lot will be the second largest lot along Rolfe Pond Drive; the largest lot being a 57 acre parcel owned by Wayne and Sally Patenaude which has frontage along Pine Street and Rolfe Pond Drive.”
- (c) **Lot has frontage of at least 50 feet.** “It is our understanding that frontage has to be along a lawful public way and that Rolfe Pond Drive is a private way. Again, the original lots were combined to form a lot having 225 feet of frontage; whereas, 50 feet are required for a non-conforming building lot. The private way was established in the early 1950’s and used since by other homeowners.”

Mrs. Gray inquired as to the number of perspective buyers there have been since the approval of the Variance in 2008. Mrs. Burney’s response was that three people have been interested in the property. In one case, two couples that camp at Sandy Beach Campground were interested in purchasing the property to subdivide and construct two summer homes. Planning Director Karen Robertson recalled speaking with one of the individuals and informing them that the lot could not be subdivided as there is insufficient acreage and frontage. In fact, she had advised that the lot has no frontage as frontage is defined as being along a public way.

Ms. Burney and members of the Board briefly discussed the asking price for the lot and fact that Ms. Burney consults with the State of NH concerning the status of the lot and the sale price that is being offered since any proceeds will be directed to the State.

There was no one present wishing to offer public testimony.

Mrs. Gray, seconded by Mr. Rinden, moved to **APPROVE** application #2013-6 as presented. Motion carried unanimously (Gray, McLeod, Koontz, Rinden and Krzyzaniak). The Applicant satisfied all requirements to be granted a Variance in accordance with Section 15.8.3 of the Zoning Ordinance.

Reasons for approval as follows:

1. The proposed use would not diminish surrounding property values. *There was no evidence that any of the surrounding property values would diminish. The impact of granting the Variance is no greater than other properties in the area that contain similar or less acreage with residences already existing.*
2. Granting the variance would not be contrary to the public interest. *The use is allowed and is not contrary to the public interest. There is other property along the private drive in which a Variance was granted in 1997 for the same purpose.*
3. By granting the variance substantial justice would be done. *There was no evidence that the granting of the Variance would injure the rights of others. Granting of the Variance would allow the Applicant to use property that would otherwise be considered a grandfathered lot if it were not for the fact that the property is located off of a private road.*
4. The spirit and intent of the Ordinance will not be broken by granting the variance. *The use of the property for a single family residence is permitted in the R-2 district and is therefore consistent with the intent of the Ordinance. While the property does not meet the frontage requirement (frontage along a public street), the property appears to have sufficient acreage available to satisfy the required setbacks of the Ordinance. Furthermore, the property is surrounded by other year-round residences with the most recent residence constructed in 2005.*
5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship. *But for the fact that the property is located on a private road, the property would be considered a grandfathered building lot. Again, the use of the property for a single family residence is a permitted use in the R-2 district. There is other property along the private drive in which a Variance was granted for the same purpose. Furthermore, the private road is not owned by the Applicant and therefore the Applicant has no ability to change the status from private to public. Therefore, it is believed that the benefit sought cannot be achieved by some other method that is reasonably feasible, other than the granting of a Variance.*

II. Review of the Minutes and Notice of Decision of June 4, 2013.

Mrs. Gray, seconded by Mr. Koontz, moved to **APPROVE** the Minutes and Notice of Decision as presented. Motion carried unanimously (Gray, McLeod, Koontz, Rinden and Krzyzaniak).

III. Adjournment.

With no further business to come before the meeting, motion was made by Mr. McLeod, seconded by Mrs. Gray, to adjourn the meeting at 7:35 PM. The next regular scheduled meeting of the Board is Tuesday, January 7, 2013, at 5:30 PM in the Town Hall.

Karen L. Robertson
Planning 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.