



Town of Hopkinton

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HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES FEBRUARY 4, 2016

Chairman Daniel Rinden opened the Hopkinton Zoning Board of Adjustment meeting of Thursday, February 4, 2016, at 5:30 PM in the Hopkinton Town Hall. Members present: Toni Gray, Gregory McLeod, and Jessica Scheinman. Staff present: Planning Director Karen Robertson.

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

The Applicant was given an opportunity to post-pone review of the application to the March meeting as there were only four (4) members of the Board present and a possibility of a tie vote. In the case of a tie vote, the application fails.

I. **Call to Order.** Chairman Dan Rinden called the meeting to order at 5:30 PM in the Hopkinton Town Hall.

II. **Application(s).**

Equitable Waiver (#2016-01), Beaux Woods Contractors, LLC, 40 Gould Hill Road, Tax Map 239, Lot 27, R-2 District. John Wuellenweber, building contractor for Peter and Maryann Evers, addressed the Board to request an Equitable Waiver from a sideline dimensional requirement of the Zoning Ordinance. The application was submitted in accordance with Zoning Ordinance section 15.8.4.

The Evers property is located in the R-2 district, requiring a sideline setback of 20-feet. Mr. Wuellenweber explained the process by which he had physically measured the distance of, what was at the time, the proposed addition. Additionally, he had reviewed the property deed, and ultimately believed that he was aware of the location of the property line. As a result, Mr. Wuellenweber moved forward with construction and removed the Evers old garage and constructed a new garage. However, once completed, Merrimack County Savings Bank had completed a boundary survey and determined that the new garage was within 16-feet of the side lot line.

Mr. Wuellenweber's written response for an Equitable Waiver as outlined in Section XV of the Zoning Ordinance was as follows:

1. 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. and 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 setback of 20-feet was unknown to the owner or the building until G.C. Engineering, Inc. determined the barn/garage was 16-feet to the sideline setback.”

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

“The sideline setback violation was caused by a good faith error on the builder’s measurements at the property based on the warranty deed and the plot plan.”

- 3. That no public or private nuisance may be created by the violation:**

“There will be no public or private nuisance due to the structure.”

- 4. That there will be no diminution in the value of other property in the area:**

“The buildings and investment to the property, 40 Gould Hill Road, will benefit the values of the neighboring properties.”

- 5. That the violation will not interfere with or adversely impact any present or permissible future uses of any such property; and**

“The building of the garage will not adversely impact the current use of the property.”

- 6. 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 correct the violation outweighs any public benefit and would be inequitable to correct the violation.”

The Board reviewed with Mr. Wuellenweber photographs of the property showing the new garage. Mr. Wuellenweber explained discussed the configuration of the property, fronting on both Gould Hill Road and Stagecoach Road, and the change in slope of the property. The configuration of the lot, fronting on both Gould Hill Road and Stagecoach Road, limits alternative locations for the garage. He then suggested that to correct the situation would cost an estimated \$25,000.

While there was no member of the public present, Chairman Rinden did note for the record that abutter David Jensen had telephoned the Office, advising that he had no objection to the application. In response, Mr. Wuellenweber noted that sideline in question is shared by the Jensens as they are the closest abutters to the garage.

Toni Gray, seconded by Gregory McLeod, moved to **APPROVE** the application for Equitable Waiver (#2016-1) as presented as the violation was caused by a good faith error in measurement, and had not been discovered until Merrimack County Savings Bank had prepared a mortgage survey of the property. Motion passed unanimously (Gray, McLeod, Scheinman and Rinden).

III. Review of the Zoning Board of Adjustment Minutes and Notice of Decision of October 6, 2015.

Toni Gray, seconded by Daniel Rinden, moved to **APPROVE** the Minutes of October 6, 2015 as presented. With four members voting, three voted in favor (Gray, McLeod and Rinden) and one voted in abstention (Scheinman).

Toni Gray, seconded by Daniel Rinden, moved to **APPROVE** the Notice of Decision of October 6, 2015 as presented. With four members voting, three voted in favor (Gray, McLeod and Rinden) and one voted in abstention (Scheinman).

IV. Adjournment.

Toni Gray, seconded by Gregory McLeod, moved to **ADJOURN** the meeting at 5:50 PM. Motion passed unanimously. The next regular scheduled meeting of the Hopkinton Zoning Board of Adjustment is at 5:30 PM on Tuesday, March 15, 2016, at the Hopkinton Town Hall.

Karen Robertson
Planning Director