



# Town of Hopkinton

330 Main Street • Hopkinton, New Hampshire 03229 • [www.hopkinton-nh.gov](http://www.hopkinton-nh.gov)

Tel: 603 746-3170

Fax: 603 746-2952

## HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES JULY 5, 2016

Members present: Chairman Dan Rinden, Toni Gray, Charles Koontz, 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.*

- I. **Call to Order.** Chairman Rinden called the meeting to order at 5:30 PM in the Hopkinton Town Hall.
- II. **Application(s).**

**Variance (#2016-06), Keith Tewksbury, 699 Brockway Road, Tax Map 266, Lot 33, R-3 District.** Applicant proposes two (2) principal structures/uses, residence and auto body shop. The application is submitted in accordance with Zoning Ordinance subsection 4.4.3.

Mr. and Mrs. Tewksbury addressed the Board explaining that they had purchased the property approximately three (3) years ago and have made many improvements. Due to the time that Mr. Tewksbury is at the business, they believe that it would be appropriate for them to relocate from their home in Bow to the property in Hopkinton. If approved, they will erect a module, cape-style, home behind the existing garage.

For the record, the written response for a Variance as outlined in Section XV of the Zoning Ordinance was as follows:

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

"There are other properties in the vicinity that contain residences. It is believed that construction of the residence on the same property as the small auto body business and within the residential neighborhood will have no impact on the property values in the area. While the existing auto body shop is grandfathered, it is small enough, looking like a two car garage that once the residence is constructed people will assume that it is a home business.

We believe that the property values in the area will increase with the construction of the new residence. Our existing building (small auto body shop) and property is well maintained, and in fact, is more aesthetically pleasing than some of the residences in the neighborhood. It is our hopes that our continued maintenance and improvements to the property and the construction of the new residence will encourage others in the neighborhood to do the same."

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

---

*Subject to review and approval.*

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

“The substantial justice provided to the Applicant could be considered a potential gain to the general public. In other words, the public would realize no appreciable gain by denying the Variance.

Granting the Variance would allow the owner to utilize his property in the same manner as others within the residential district.

The previous owner, Ronald Anderson, operated the auto body business while living in the residence on the adjacent property. In reviewing records, it appears that Mr. Anderson had been operating his business as early as the late 1960’s or early 1970’s. In fact, in 1985, the Select Board had written a letter indicating that both uses (auto body business property and Mr. Anderson’s residence in which he operated a dealership in a detached garage) were grandfathered. Mr. Anderson has passed away and the dealership that he had operated on the same property as his residence has not been in business for many years.

It is unusual to see an auto body business off of an old, gravel road in which there are residences along it. Permitting the residence to be constructed, in a residential district, while on the same property as the business, could be considered an attempt to make the property more conforming. That is there would be a residential building associated with the business, rather than a business sitting alone in a residential district. Furthermore, permitting the construction of the residence with conditions, such as, the business is to be owned/operated by the same owner as the residence would insure that the property remains owner/occupied and at the same time, continue to give the appearance that the business is a home business.”

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

“Again, single-family residences and home business are permitted in the R-3 district. While the business does not meet all of the standards to be considered a home business, at least the residence will help in giving the appearance that a home business is being operated from the premises. Additionally, permitting the residence to be constructed, in a residential district, while on the same property as the grandfathered business, could be considered as an attempt to make the property more conforming. Again, it would at least remedy the situation in which there is a grandfathered commercial business that sits alone in the middle of a residential neighborhood/zoning district.”

**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 restriction on the property (two-principal uses/structures) is not necessary in order to give full effect to the purpose of the Ordinance (health, safety, convenience, general welfare, property values, efficiency and economy), especially given the fact that the property is/has been used for at least 40 years for a commercial use (auto body). During this time, the Town’s records do not reflect any concerns raised with respect to the operation of the business. In fact, since purchasing the property in 2013, we have received numerous complements from

residents concerning the improvements (maintenance, paint, lawn and fencing) that we have done. These same residents are often calling when in need of assistance, whether related or unrelated to the business.

We would suggest that being able to utilize the property for residential purposes, in addition to the continued grandfathered business use, would have less of an impact to the general public and would be more likely consistent with the general purpose of the Ordinance. That is a residence in a residential neighborhood with the possibility of a small business that is being operated by the same owner/occupant of the residence.”

- (ii) The proposed use is a reasonable one.** “Again, the residential use is a permitted use in the R-3 district. The existing business, while grandfathered in a residential district and located off of a gravel country road, is well maintained and is part of our livelihood. Constructing a residence in a residential neighborhood, adjacent to our business, is a reasonable request. Again, Mr. Anderson, who lived in the adjacent home, had operated a dealership in his garage and at the same time had the auto body shop next door. Our request is somewhat similar in that we would like to be able to construct our residence and continue to operate our business.

Permitting the residence to be constructed, in a residential district, while on the same property as the grandfathered business, could be considered as an attempt to make the property more conforming. Again, it would at least remedy the situation in which there is a grandfathered commercial business that sits alone in the middle of a residential neighborhood/zoning district.”

- (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.** “Special conditions of the property that distinguish it from other properties in the area is the fact that the grandfathered commercial use/building is located in a residential district and has for more than 40 years. We believe it would be more pleasing to those in the neighborhood and more conforming to the Zoning Ordinance if the Town were to permit the residential use on the same property. Again, those driving by will assume that the residence was the primary use, since the property is in a residential neighborhood, and the business is a secondary use. It is unusual to find a commercial use, such as an auto body business, in a residential neighborhood when driving down a gravel country road.”

Abutter Claudette Phelps of 741 Brockway Road spoke in favor of the application.

The Board briefly reviewed the Applicant’s intentions to utilize the existing driveway entrance from Brockway Road with Mr. Tewksbury advising that the driveway is paved and runs along the left side of the garage.

Mr. Koontz inquired as to whether the Applicant has any intentions on renting/leasing the residence. In response, Mr. Tewksbury replied no, advising that if the home or business were to be sold that it would be a “package deal”.

Mrs. Gray initially expressed concern with the potential precedent that may be set in granting the Variance. Ms. Scheinman felt comfortable allowing the residence on the same property of

the business, but would not feel the same if the Applicant were to request a Variance to operate the business. Mrs. Gray concurred.

Charles Koontz, seconded by Gregory McLeod, moved to **APPROVE** the application for Variance (#2016-06) as presented. Motion carried unanimously in favor. The Board agreed that the Applicant successfully addressed all criteria to be granted a Variance as outlined in Section XV of the Zoning Ordinance.

Reasons for approval as follows:

1. There was no evidence that surrounding property values would diminish as a result of the two (2) principal uses on the property. The property is located in a residential zoning district. The closest neighbor at 741 Brockway Road spoke in favor. There were no other abutters present at the meeting.
2. There was no evidence that the public's interest would be impacted as a result of the two (2) principal uses, new residence and existing auto body garage. Certified notice was provided to the abutters. Public notice of the proceedings was published in the Concord Monitor. Subsequently, there was only one member of the public present at the meeting concerning the application.
3. Substantial Justice: It is anticipated that due to the location of the property, in a residential zoning district, and the fact that there were no objections from abutters, the two (2) principal uses on the property will have little to no impact on the public. In other words, the public would realize no appreciable gain from denial of the Variance.
4. The spirit and intent of the Ordinance will not be broken by granting the Variance as the addition of a residence in a residential zoning district, while on the same property as the grandfathered auto body business, will not change the character of the surrounding area. The addition of a residence would be more pleasing to those in the neighborhood and more conforming than the auto body business being by its self in a residential neighborhood, which is consistent with the uses in the area.
5. Literal enforcement of the Ordinance will result in an unnecessary hardship: Permitting the residence to be constructed, in a residential district, while on the same property as the grandfathered auto body business, is an attempt to make the property more conforming. It would at least remedy the situation in which there is a commercial business that sits alone in the middle of a residential neighborhood/zoning district.

**Variance (#2016-07), Christopher and Elizabeth Hodgdon, 644 Bound Tree Road, Tax Map 207, Lot 19.2, R-3 District.** Applicant proposes to construct a front porch having less than the required front setback. The application is submitted in accordance with Zoning Ordinance subsection 4.3.

Mr. Hodgdon addressed the Board explaining that the 8' x 36' open, covered porch will be built on the road side of the house. The southeast corner of the porch will extend into the setback by four (4) inches. The porch is proposed along the front of the house as it is the main entryway. The grade of the property is such that from Bound Tree Road to the house is a hill. This does prevent people traveling the road from being able to actually see the first floor of the house.

For the record, the written response for a Variance as outlined in Section XV of the Zoning Ordinance was as follows:

1. **The proposed use would not diminish surrounding property values because:**  
“It is in keeping with our street and neighborhood. Our project would minimally overlap with the front setback. One corner of the proposed porch will be in the setback. The area in the setback is approximately 36 square feet or 12% of the porch.”
2. **Granting the Variance would not be contrary to the public interest because:**  
“It is in keeping with the character of the neighborhood and none of our neighbors can see the porch from their property. The view from the road is minimal due to vegetation and the presence of a small hill.”
3. **By granting the Variance substantial justice would be done because:**  
“It would allow us to enjoy our front yard.”
4. **The spirit and intent of the Ordinance will not be broken by granting the Variance because:** “It will not diminish the rural nature of Bound Tree Road which the Ordinance is seeking to preserve.”
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.** “Because of the substantial vegetation between the road and the house, along with a small hill that obscures much of the first floor the presence of a portion of a front porch in the setback won’t impact the purpose of the Ordinance.”
    - (ii) **The proposed use is a reasonable one.** “Front porches are common on residential structures in the neighborhood and in keeping with the character of the house.”
  - (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.** “We need to seek a Variance because the house is built so close to the setback that we can’t accomplish our goal of a front porch without this Variance.”

Mr. Hodgdon assumed that the home was cited in its location due to the wetlands on the property.

Mr. Koontz inquired about other residences along Bound Tree Road that have porches constructed within the setback. In response, Mr. Hodgdon noted that there is a residence across from Autumn Ridge Road that has a front porch closer to Bound Tree Road than is being proposed.

Mrs. Gray questioned whether the porch could be shortened so to comply with the setback. In response, Mr. Hodgdon replied yes, but noted that if the porch is shortened it would not be centered when looking at the home. Furthermore, the steps are located on the southeast side of the porch and they would remain within the setback.

There was no one present wishing to offer public testimony.

Brief discussion ensued concerning the configuration of the home and the grade of the property.

Gregory McLeod, seconded by Jessica Scheinman, moved to **APPROVE** the application for Variance (#2016-07) as presented. Motion carried unanimously in favor. The Board agreed that the Applicant successfully addressed all criteria to be granted a Variance as outlined in Section XV of the Zoning Ordinance. In granting the Variance, the Board took into consideration the grade and topography of the property, the citing and design of the home, and the fact that there are other homes, along Bound Tree Road, within the setback.

### III. Adjournment.

Toni Gray, seconded by Charles Koontz, moved to **ADJOURN** the meeting at 6:25 PM. Motion passed unanimously. The next regular scheduled meeting of the Hopkinton Zoning Board of Adjustment is at 5:30 PM on Tuesday, August 2, 2016, at the Hopkinton Town Hall.

Karen Robertson  
Planning Director