



Town of Hopkinton

330 Main Street • Hopkinton, New Hampshire 03229 • www.hopkinton-nh.gov

Tel: 603 746-3170

Fax: 603 746-2952

HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES JANUARY 6, 2015

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment meeting of Tuesday, January 6, 2015, at 5:30 PM in the Hopkinton Town Hall. Members present: Toni Gray, Charles Koontz, Gregory McLeod and Daniel Rinden. 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. Application(s).

#2014-6 Daniel A. Bailey Attorney John Hayes addressed the Board on behalf of Daniel Bailey for an Administrative Appeal of Select Board's decision to issue a Building Permit (#2014-00204) for the construction of a 12' x 20' detached shed on property owned by Joshua and Emerson Cayer, located at 743 Main Street in the R-1 district, shown on Tax Map 102 as Lot 65. The application was submitted in accordance with Zoning Ordinance 15.8.1.

Mr. Bailey's contention is that the Select Board did not have the authority to issue the Cayers a Building Permit due to the fact that there is a question as to where the boundary is located between the Cayer and Bailey property. Therefore, it is believed to be unknown as to whether the shed meets the side line setback.

Surveyor Henry Amesden addressed the Board on behalf of Mr. Bailey to explain his efforts in attempting to survey Mr. Bailey's property; however, he was unsuccessful. Mr. Amesden presented a draft plan of the work that had been done to date showing the buildings and existing iron pins. He noted that while there were pins found at the front and rear of the properties, he questioned whether they were in the correct location as he did not believe that the predecessors ever had the intention of locating the property line through Mr. Bailey's garage, which is as it is now shown. Mr. Amesden stated that even though there are pins at the front and back of the property this is not where the property line "ought to be". He suggested that the Select Board did not have the authority to issue a permit to the Cayers without first establishing the property line.

In response, Mrs. Robertson provided the Board with an overview of the process by which Building Permit Applications are submitted and approved, and structures are inspected.

Mr. Amesden was willing to advise Mr. Bailey and the Cayers as to where the property line between the two properties could be located.

Members of the Board suggested that the location of the property line is a civil matter between the two parties. Mrs. Gray suggested that Mr. Bailey discuss his concerns with the Select Board. Mr. Koontz concurred, noting that “uncertainty” of the location of the property line isn’t grounds for overturning the Select Board’s decision in granting a permit. If there is uncertainty, Mr. Bailey should have his property surveyed or work with the Cayers in developing a boundary agreement. Mr. McLeod suggested that the Select Board acted in good faith in issuing the permit. He, again, indicated that the matter is a civil issue between the two parties and not the Town.

Chairman Krzyzaniak asked members of the public, that are directly, if they wished to offer public testimony.

Emerson Cayer of 743 Main Street provided photographs of the property, wood shed, barns and of the property pins. Mr. Cayer noted that based on the location of the front pin and the pin towards the rear of the property he and his brother had considered the pins to mark the property line between their property and Mr. Bailey’s. The wood shed is located approximately twenty (20) feet away from the property line. Based on the location of the existing barn, the wood shed is setback or in from the side of the barn approximately three (3) to four (4) feet.

In rebuttal, Attorney Hayes stated that the contention is “that what Mr. Bailey believes the boundary ought to be is not represented by the location of the pins”.

With no further testimony, Chairman Krzyzaniak declared public testimony closed.

Mrs. Gray, seconded by Mr. Koontz, moved to **DENY** the Administrative Appeal (#2014-6) of Daniel A. Bailey as presented. Motion carried unanimously (Gray, McLeod, Koontz, Rinden and Krzyzaniak). The Board unanimously believed that the Select Board acting in good faith in issuing the Building Permit to Emerson and Joshua Cayer based on the representations of the distance the proposed shed would be located to the side lot line. Furthermore, the Applicant did not make a sufficient case to show that the Select Board erred in their decision.

#2015-1 Meridian Land Service Inc. Attorney Phil Hastings of Cleveland, Waters and Bass addressed the Planning Board representing property owner, Fran Hart, for a **Variance** to create a lot having less than the required frontage in the R-3 District. The property is located at 157 Kast Hill Road, shown on Tax Map 210 as Lot 4. The application was submitted in accordance with Zoning Ordinance 4.1 and 4.2 Table of Dimensional Requirements.

The property in question consists of a total of thirty-six (36) acres with two residences on the property. One residence is the original farm house while the second residence is much newer (1975), located behind the farm house. The proposal is to subdivide the property so that the two (2) residences are located on their own lots. The farm house and accessory buildings will be located on a five (5) acre lot having 300 feet of frontage. The newer residence will be located on the remaining twenty-nine (29) acres with 152.11 feet of frontage.

Attorney Hastings believed that the subdivision would make a less non-conforming situation by separating the two (2) residences. Furthermore, he did not believe that creating a lot with

less than the required frontage would cause harm to the public; nor would there be any diminish of property values.

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:**
“The granting of the Variance will not diminish the surrounding property values in that the use of the property is residential which is consistent with the neighborhood and there will be no new structures built as the two homes already exist.”
- 2. Granting the Variance would not be contrary to the public interest because:**
“Granting the Variance will allow each house to be situated on an individual lot and will not alter the essential character of the neighborhood.”
- 3. By granting the Variance substantial justice would be done because:**
“Granting the Variance will allow each house to be situated on a lot of its own lot. This is similar to all other properties in the area.”
- 4. The spirit and intent of the Ordinance will not be broken by granting the Variance because:** “The proposal will allow each house to be situated on its own lot which is consistent with the Zoning Ordinance. In addition, the appearance will be that of at least the minimum amount of frontage as the sliver of land taken along Kast Hill Road is unusable.”
- 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.** “Prior to the taking of the property by the Federal government there was adequate frontage available for each building. The taking did not account for the frontage requirement of the Zoning Ordinance compelling the Variance request.”
 - (ii) The proposed use is a reasonable one.** “Granting the Variance allows each house to be on a separate lot as are all other houses in the area. The appearance will be that it has adequate frontage due to the non-useable sliver of property the government owns.”

There was no one in the audience to offer public testimony.

Mr. McLeod asked whether they anticipate relocating the driveway or granting an easement for a second drive. In response, Tim Ferwerda of Meridian Land Services stated that he anticipates that Mrs. Hart will construct a new driveway where there is an existing tractor access drive. He also suggested that Mrs. Hart will need to have a new well installed,

unless there is a cross easement for both homes to continue to utilize the same well. There are already separate septic systems servicing each home.

Mrs. Gray, seconded by Mr. McLeod, moved to **APPROVE** the Variance (#2015-1) as presented. Motion carried unanimously (Koontz, Gray, Rinden, McLeod and Krzyzaniak).

Reasons for approval as follows:

1. There was no evidence that the surrounding property values would diminish as a result of creating a lot with less than the required frontage. The subdivision will make a nonconforming situation less nonconforming by separating the two (2) residences so that they are located on separate lots of record.
2. There was no evidence that the public's interest will be impacted as a result of the creation of a lot with less than the required frontage. In fact, creating separate lots with one lot having less than the required frontage will be unnoticeable to the public.
3. Substantial Justice: The subdivision will have little to no impact on the public. In other words, the public would realize no appreciable gain from denial of the Variance. Again, the lot having less than the required frontage will be unnoticeable as the lot will have the appearance of having more frontage than what is actually provided. The Small strips of land that abut the lot in question and that front along Kast Hill Road are non-buildable and are owned by the Federal government.
4. The spirit and intent of the Ordinance will not be broken by granting the Variance as the subdivision will not change the character of the surrounding area. Each lot will have an existing residence thereby making a situation less non-conforming.
5. In this case, requiring the Applicant to meet the minimum frontage requirement is not necessary in order to give full effect to the purpose of the Zoning Ordinance as the subdivision will make a nonconforming situation less nonconforming by allowing the two (2) residences to be located on separate lots of record.

II. Review of the minutes of December 2, 2014.

Mrs. Gray, seconded by Mr. Koontz, moved to **APPROVE** the Minutes of December 3, 2014 as presented. Motion carried unanimously (Koontz, Gray, Rinden, McLeod and Krzyzaniak).

III. Adjournment.

Charles Koontz, seconded by Toni Gray, moved to **ADJOURN** the meeting at 7:15 PM. Motion carried unanimously. The next regular scheduled meeting of the Hopkinton Zoning Board of Adjustment is at 5:30 PM on Tuesday, February 3, 2015, at the Hopkinton Town Hall.

Karen Robertson
Planning Director