



# Town of Hopkinton Planning Department

---

330 Main Street, Hopkinton NH 03229-2627 - (603) 746-8243 – [planzone@hopkinton-nh.gov](mailto:planzone@hopkinton-nh.gov)

## HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES FEBRUARY 2, 2021

Members present: Chairman Daniel Rinden, Seth Greenblott, Jessica Scheinman, Andrew Locke, and Alternate Dulcie Madden Lipoma. Staff present: Planning Director Karen Robertson.

- 
- I. **Call to Order.** Chairman Rinden called the meeting to order at 5:30 PM. Due to the COVID-19/Coronavirus crisis and per Governor Sununu's Emergency Order #12, under Executive Order 2020-04, the Zoning Board of Adjustment was authorized to meet electronically.

Roll Call: Seth Greenblott – present and alone, Jessica Scheinman – present and alone, Andrew Locke – present and alone, Dulcie Madden Lipoma – present and alone, and Dan Rinden – present and alone.

### II. Applications.

**#2021-1 56 Maple Street, LLC** Equitable Waiver of Dimensional Requirements from Zoning Ordinance Section 4.2 for two (2) accessory garages constructed with less than the required front yard setback for the VR-1 district. The property is located at 56 Maple Street, Tax Map 102, Lot 44.

Attorney Maria Dolder addressed the Board advising that the Applicant and his agent measured numerous times before construction to ensure that the accessory garages would meet the front yard setback requirement. It is believed that the error occurred when Applicant's agent dug and squared the foundations for the garages. If the violations were known, they would have set the garages back the needed .6 feet and 1.8 feet.

The Applicant's response to the criteria for an Equitable Waiver of Dimensional Requirements was as follows:

- 1) **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., an innocent purchaser who had no knowledge or reason to know of any problems and who, in good faith, paid full value):** "The first garage was fully constructed in June 2020 and the second was constructed in September 2020. In December 2020, the Applicant had a condominium site plan

---

Adopted: 03/02/2021.

prepared, and it was only at that time that the Applicant learned that the garages had been constructed within a portion of the front yard setback."

- 2) **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:** "Prior to having the garages constructed, the Applicant and his agents both measured out the setbacks to make sure they were met. The Applicant also double-checked the measurements using the centerline of Maple Street. According to his calculations, he was 57 feet from the centerline of the road to the garage. As a typical standard in the industry, they use a 20-foot offset from the centerline, which would put both garages outside of the setback."
  - 3) **No public or private nuisance may be created by the violation:** "The building itself is a pre-existing, grandfathered property which already encroaches into the front setback further than either of the accessory garages. The garage encroachments are 0.6 feet and 1.8 feet. Since the garages will only be used for parking cars on the property and they are set back further from the road than the building, they will not create any public or private nuisance."
  - 4) **There will be no diminution in the value of other property in the area:** "As stated, the building itself is a pre-existing, grandfathered property which already encroaches into the front setback further than either of the accessory garages. Given that the garage encroachments are minimal and are setback further from the road than the building, they will not create any diminution in value to the surrounding area or properties."
- Attorney Dolder commented that it would not be known that the garages encroach within the setback when driving by the property.
- 5) **The violation will not interfere with or adversely impact any present or permissible further uses of any such property:** "At this point in time, the property is fully developed and has been approved for use as a five-unit residential property. Although the Applicant does intent to condominiumize the property, no further development is possible on the lot. The minimal encroachment of the accessory garages into the setback does not impact use of the property. A setback of at least 28.2 feet is maintained."
  - 6) **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:** "As stated, the garages are fully constructed on the property and were done so several months prior to discovering the setback encroachment. Prior to having them constructed, the Applicant did take measurements to make sure that the setbacks were met. At this point, the Applicant would have to tear down both garages and re-build them. Given that the violations are so minimal, the cost to do this far outweighs any public benefit."

Ms. Scheinman inquired about the role of the Applicant's agent. John Wuellenweber, Manager of 56 Maple Street, LLC, responded that the site contractor typically looks at the plans and pulls measurements, and digs the foundation. A foundation contractor completes his work within the location that the site contractor has prepared. Mr. Wuellenweber assumed that the error occurred when setting the forms. If he had thought that they were close to meeting the setback, he would have had a land surveyor measure the location of the proposed foundation.

Ms. Scheinman inquired about the boundary indicator used as a reference point when measuring the setback. In response, Mr. Wuellenweber stated that he measured using a reference point from where the property had been surveyed further up Maple Street and also measured using the existing building shown on the engineer's plan as a reference point.

Mr. Locke noted that the Warranty Deed referenced granite bounds. Mr. Wuellenweber commented that there were no bounds to the best of his knowledge, but he had his surveyor place stakes in locations.

Ms. Scheinman recalled a prior request by the Applicant for another property. She asked the Applicant to explain the differences in the two requests to determine whether the error in measuring or the process of measuring was the same for both applications. In response, Mr. Wuellenweber stated that the property referenced is off Gould Hill Road. There was an error in measurement by a site contractor as the boundary line had many angles. Ms. Scheinman then noted when applicants request Equitable Waivers, it should be clear whether it is as a result of a "good faith error."

Attorney Dolder commented that while she is unfamiliar with the past application, it appears there is a difference in how the boundary lines are configured. She noted that there is no benefit to the Applicant in making the error in this particular case.

Ms. Scheinman also inquired about the use of the space behind the garages. Mr. Wuellenweber noted that there is a walkway in the area.

Chairman Rinden opened and closed public testimony closed, at which time the Board began deliberations.

Mr. Greenblott suggested that given that there is no benefit to not meeting the setback, it is difficult to imagine that the error was made in bad faith. Concerning the prior request, Mr. Greenblott stated that mistakes are made even by the most diligent professionals.

Mr. Locke agreed with Mr. Greenblott that there is no advantage to the Applicant having the buildings located within the setback. However, he advised the Applicant that if working in an area where the measurements are close, he needs a surveyor to assist. Measuring off the center of a street is not a useful way of determining whether setbacks will be met. Furthermore, this is the second request for an Equitable Waiver, making it more difficult for the Board to find that no pattern exists.

Mrs. Lipoma concurred with Mr. Locke. While she agreed that the 6 inches and 18 inches are not a major issue, she made it clear that she did not want to send the wrong message to contractors that this is permissible. Mrs. Lipoma then noted that it would be a shame and not environmentally friendly to tear down the garages.

Lastly, Ms. Scheinman stated that it was helpful that Attorney Dolder pointed out that the error was not for any benefit. Furthermore, it appears that there is not anything behind the garages that extending the useable space would have benefited. Again, Ms. Scheinman was troubled because this is the Applicant's second application for an Equitable Waiver. She, too, did not want to send a message to others that it is okay to develop property in this manner.

Based on the presentation, Mrs. Scheinman agreed that the Applicant had made a good-faith error in measuring. With that said, she concurred with Mr. Locke's point that there needs to be a better way to measure where the setbacks are, and it should be incumbent upon every one that is building to measure twice and construct once. The setbacks are important as they are in the Zoning Ordinance for a reason.

Seth Greenblott, seconded by Andrew Locke, moved to **APPROVE** Application #2021-1 as presented. Motion passed in the affirmative (Locke – yes, Lipoma – yes, Greenblott – yes, Scheinman – yes, and Rinden – yes).

Reason for approval as follows:

- 1) The owner or owner's agent made a good faith error in measurement or calculation as before having the accessory garages constructed, the Applicant and his agents measured the setbacks.
- 2) The owner's surveyor discovered the violations while preparing a condominium site plan after the accessory garages had been constructed within the front yard setback.
- 3) The violation does not constitute a public or private nuisance, nor diminish surrounding property values, nor interfere with or adversely affect any present or permissible future use of the property. The garages are .6 feet and 1.8 feet less than the required front yard setback. In comparison, the residential building is pre-existing, grandfathered, that encroaches into the front setback considerably more than either of the accessory garages.
- 4) The cost to correct the violation would be inequitable compared to any public benefit in having one garage moved .6 feet, and the other moved by 1.8 feet.

### **III. Approval of Meeting Minutes and Notices of Decisions for August 4, October 6, October 13, November 18, and December 1, 2020.**

Seth Greenblott, seconded by Andrew Locke, moved to **APPROVE** the Minutes of August 4, October 6, and November 18, 2020, as presented, and October 13 and December 1, 2020, with corrections. Motion carried unanimously in the affirmative (Locke - yes, Lipoma - yes, Greenblott - yes, Scheinman – yes, and Rinden - yes).

Andy Locke, seconded by Dulcie Madden Lipoma, moved to **APPROVE** the Notices of Decisions of August 4 and December 1, 2020, as presented and November 18, 2020, with corrections. Motion carried unanimously in the affirmative (Locke - yes, Lipoma - yes, Greenblott - yes, Scheinman – yes, and Rinden - yes).

**IV. Adjournment.** Andrew Locke, seconded by Seth Greenblott, moved to **ADJOURN** the meeting. Motion carried in the affirmative (Locke - yes, Lipoma - yes, Greenblott - yes, Scheinman – yes, and Rinden - yes). The meeting adjourned at 6:20 PM.

Karen Robertson  
Planning Director

---

Ordinance §15.10. "Representations made at the public hearing or material submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking, or uses which are subject to regulations pursuant to subsection 15.8.2 or 15.8.3 shall be deemed conditions upon such special exception or variance."

*Note: Due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Ordinance #12, pursuant to Executive Order 2020-04, the Board was authorized to meet electronically. There was no physical location to observe and listen contemporaneously to the meeting, which was authorized pursuant to the Governor's Emergency Order. In accordance with the Emergency Order, public access to the meeting by video and telephone was provided. All members of the Board had the ability to communicate contemporaneously during this meeting through the Zoom platform, and the public had access to listen contemporaneously and, if interested, participate in the meeting through the website: <https://zoom.us/j/99890143215> or by dialing the following phone #: 1-929-205-6099 and using Meeting ID: 998 9014 3215. A mechanism for the public to alert the Board during the meeting if there were problems with access was provided.*