



Town of Hopkinton

Planning Department

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HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES APRIL 5, 2022

The Hopkinton Zoning Board of Adjustment held a meeting on Tuesday, April 5, 2022, at 5:30 PM in the Hopkinton Town Hall, 330 Main Street, Hopkinton. Members present: Chairman Daniel Rinden, Andrew Locke, Jessica Scheinman, Eric Buck, and Kristen Cummings. Staff present: Planning Director Karen Robertson.

I. Roll Call. Cummings, Buck, Scheinman, Locke, and Chair Rinden.

II. Applications.

#2022-03 J.E. Belanger Land Surveying, PLLC On behalf of Taylor Belanger, Jacques Belanger presented the application for a Variance from Zoning Ordinance 4.2 Table of Dimensional Requirements to construct an attached garage with less than the required front and sideline setbacks, 166 Branch Londonderry Turnpike, Tax Map 266, Lot 1, R-3 district.

One side of the property is the Bow/Hopkinton town line. On the opposite side of the property and towards the rear are wetlands. The front stoop of the house is approximately 3.5 feet from the front property line. The proposed attached 24' x 30' garage will be 5.8' from the front property line and 8.8 feet to the sideline.

Mr. Belanger reviewed drawings of the proposed garage, noting that Taylor Belanger had spoken to his neighbors, who had no objections to the proposal.

Mr. Belanger's response to the criteria 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:**
"Variance relief will not diminish property values in the neighborhood; it will allow space to store vehicles and equipment typically used for residential purposes stored out of sight. The garage will be constructed to be architecturally similar to the existing residence.

The existing residential use and accessory residential uses are permitted by right within the R3 district. Granting the Variance will allow the property to be utilized reasonably, consistent with how other properties in the neighborhood are being used."

- 2) Granting the Variance would not be contrary to the public interest because:** "A reduction in the front and side yard setbacks will not affect neighboring properties.

Adopted: 05/03/2022.

The Applicant is proposing a minimal size, two-car garage. Again, Variance relief will not adversely impact the neighborhood; it will allow space to store vehicles and equipment typically used for residential purposes stored out of sight.

Granting the Variance would not alter the essential characteristics of the neighborhood or threaten public health, safety or welfare. As previously indicated, residential uses, including associated accessory uses/structures, are permitted in the R3 district.

At the intersection of Stickney Hill Road and Branch Londonderry Turnpike to the Bow town line, two (2) residences are on the west side and three (3) residences on the east side of Branch Londonderry Turnpike. The Applicant's property is located at the Bow town line on the west side. The existing residence sits on .32 acres (13,836 SF) at the town line.

The property is irregular-shaped, triangular, and narrow. The proposed location of the garage is the most feasible location given the fact that the property is adjacent to Boutwell Brook, making the water table high in the area. Furthermore, portions of the property towards the rear have been designated by FEMA as a Special Flood Hazard Area (SFHA), which is 'an area that would be inundated by flood having a 1-percent chance of being equaled or exceeded in any given year (base flood).' Therefore, the most feasible location for the garage is towards the front of the property. As you can see by the site plan, the location is further restricted by the placement of the existing septic tank.

Granting the Variance will allow the property to be utilized reasonably, consistent with how other properties in the neighborhood are being used. To show that the proposal is not contrary to the public interest, I have included information about properties along the street with structures that do not meet setback requirements. Lot 59 contains an older residence that does not comply with the front setback for both Stickney Hill Road and Branch Londonderry Turnpike. The septic system is located in the road right-of-way. Lot 60 contains an existing residence built around 2005 that is 1.8 feet from the side property line. Lot 61 has two sheds located within the front setback. Lot 3 contains an existing residence that straddles the front lot line so that it is partially located within the road right-of-way. Lot 1 is the lot in question that also does not comply with the front yard setback requirement."

3) By granting the Variance, substantial justice would be done because:

"Substantial justice will be done by granting the Variance since a denial would be a loss to the Applicant without any justified gain to the public. Granting the Variance will allow the Applicant the same opportunity as others in the neighborhood; having a garage or outbuilding to secure and protect vehicles and other accessory residential equipment.

As previously stated, the residential use has already been established. The existing residence is already too close to the front property line. Other residences and accessory buildings in the neighborhood are similarly situated. One residence is only 1.8 feet from the sideline; one is located at the front property line; another

residence straddles the front property line, and sheds exist within the front setback. The proposed garage will be located more than 100-feet from the residence on Lot 2. A portion of the residence on Lot 2 straddles the property into the road right-of-way. Accordingly, the proposed garage will not adversely impact the neighborhood, and substantial justice would be done by granting the Variance. It will allow the Applicant to utilize his property similarly to others in the neighborhood.

Substantial justice is also achieved by granting variances that do not adversely impact nearby property owners and allow a property to be reasonably used. The difference between the requested setbacks compared to the setbacks of other residences and accessory structures along the road and within the neighborhood could be considered minimal. As the adjacent residence is located outside of the front property line within the road right-of-way, a residence across and further down the street is only 1.8 feet to the side lot line. Two other residences on the corner of the street also do not comply with setbacks. In fact, in 2000, a septic system for one of the residences was installed within the road right-of-way.

Given the lot's configuration, the proximity of Boutwell Brook (high water table), FEMA's designation as a SFHA, and the septic system location, the Applicant cannot reasonably construct the garage while maintaining the front and sideline setbacks."

- 4) **The spirit and intent of the Ordinance will not be broken by granting the Variance because:** "Again, the use is permitted and has already been established on the property. The area surrounding the property is generally open, with only five (5) residences along the street to the town line. Again, the existing residence is already too close to the front property line. Other residences and accessory buildings in the neighborhood are similarly situated, with one residence being only 1.8 feet from the sideline. Another residence is located at the property line, and there are sheds located within the front setback. The spirit and intent of the Ordinance will not be broken as there will remain a separation or open space between structures. The proposed garage will be located more than 100-feet from the residence on Lot 2, which also does not meet the front setback requirement. Again, a portion of the residence on Lot 2 straddles the property into the road right-of-way."

- 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 property is unique as it is irregular-shaped, triangular, and narrow. The lot is the smallest lot along the street, .32 acres (13,836 SF), and is at the town line. The residence is an existing nonconforming structure that does not comply with the front yard setback. Considering the way the residence is situated on the lot, the irregular shape of the lot, the proximity of

Boutwell Brook (high water table), FEMA's designation as SFHA, and the septic system location, the Applicant cannot reasonably construct the garage while maintaining the front and sideline setbacks. As previously stated, the proposed garage will be located more than 100-feet from the residence on Lot 2 and will be more conforming to the front yard setback than many residences along the street.

As previously stated, other residences and accessory buildings in the neighborhood are similarly situated to what is being proposed for setbacks. There is one residence that is only 1.8 feet from the sideline. Another residence is located at the property line, sheds located within the front setback, and a residence located partially into the road right-of-way.

Each property along the street has one or more accessory structures, such as a garage, barn, or shed. For example, Lot 61 has an existing two-story barn, lean-to, and sheds. Lot 62 has a garage, lean-to, and shed. Lot 59 has a garage and attached sheds, and Lot 3 has attached storage buildings. Granting relief will be consistent with the location and uses of other structures in the neighborhood."

ii) The proposed use is a reasonable one. "The proposed garage is a permitted use in the R3 district and, as previously stated, is reasonable and consistent with the location and uses of other structures in the neighborhood."

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. "As previously stated, the property is unique as it is irregular-shaped, triangular, and narrow. The lot is the smallest lot along the street, .32 acres (13,836 SF), and is at the Hopkinton/Bow town line. The residence on the lot is an existing nonconforming structure that does not comply with the front yard setback. Considering the way the residence is situated on the lot, the irregular shape of the lot, the proximity of Boutwell Brook (high water table), FEMA's designation as SFHA, and the septic system location, special conditions exist that distinguish it from other properties in the area. The Applicant cannot reasonably construct the garage in strict conformance with the Ordinance."

There was a brief discussion concerning the orientation of the garage and whether the garage could be setback further so as to increase the front setback. Mr. Belanger agreed that the garage could be moved back further; however, by doing so, the sideline setback would slightly decrease.

Chair Rinden opened and closed public testimony as no one was present other than the Applicant.

During deliberations, all members agreed that there were several unique factors. Mr. Buck agreed that given the location of the residence and other factors, the placement of

the proposed garage is challenging. If possible, he suggested that the garage be setback further from the front property line.

Andy Locke moved to **APPROVE** Application #2022-03 with the condition that the front yard setback not be less than the existing residence. Eric Buck seconded the motion. The motion passed unanimously. Roll Call vote: Locke – in favor, Cummings – in favor, Buck – in favor, Scheinman – in favor, and Rinden – in favor. The Applicant successfully addressed all criteria to be granted a Variance as outlined in Section XV of the Zoning Ordinance. Overview of reasons for approval:

1) Property Values:

- There was no evidence surrounding property values would diminish because of the garage's encroachment into the setbacks.
- The residence is approximately 3.5 feet from the front property line. The proposed garage will be no closer.
- While the garage will have less than the required side yard setback, it will be approximately 100-feet to the side residence.

2) Public Interest:

- There was no evidence that granting the Variance would alter the essential characteristics or threaten public health, safety, or welfare.
- The residence currently encroaches into the front yard setback.
- All properties along that portion of Stickney Hill Road have structures that have less than the required setbacks. In fact, one residence straddles the front property line into the road right-of-way. Another residence is 1.8 feet from the sideyard line.
- Residential use and accessory structures are permitted in the R3 district.

3) Substantial Justice:

- The public would realize no appreciable gain from denial of the Variance.
- The garage will be no closer to the front property line than the existing residence.
- While the garage will have less than the required side yard setback, it will be approximately 100-feet to the side residence.
- Other residences and accessory buildings in the neighborhood are similarly situated to what is being proposed for setbacks. There is one residence that is 1.8 feet from the sideline. Another residence is located at the front property line, sheds located within the front setback, and a residence located partially into the road right-of-way.

4) Spirit and Intent:

- The nature and character of the surrounding properties will not change as the property in question will continue to be used for residential purposes, the same as abutting properties.
- The spirit and intent of the Ordinance will not be broken as there will remain a separation or open space between structures.
- The proposed garage will be located more than 100-feet from the side residence on Lot 2. The abutting residence on Lot 2 straddles the front property line into the road right-of-way.

5) Unnecessary Hardship:

- Literal enforcement of the Ordinance will result in unnecessary hardship since the Applicant would not be permitted to construct a garage. In contrast, others in the neighborhood have residences, garages, and other accessory structures with less than the required front and sideline setbacks. In some cases, the other residences and accessory structures are closer to the property lines than the Applicant requested.
- Special conditions exist that distinguish the property from others because of the location of the existing nonconforming residence and the septic system on an irregular-shaped lot at the Hopkinton/Bow town line, which is close to Boutwell Brook (high water table) and includes FEMA's designated SFHA.

III. Minutes and Notice of Decision of January 4, 2022.

Daniel Rinden moved to **APPROVE** the Minutes of January 4, 2022, as amended. Andrew Locke seconded the motion. With five members voting, four voted in favor (Locke, Scheinman, Buck, and Cummings), and one voted in abstention (Rinden).

Daniel Rinden moved to **APPROVE** the Notice of Decision of January 4, 2022. Jessica Scheinman seconded the motion. With five members voting, four voted in favor (Locke, Scheinman, Buck, and Cummings), and one voted in abstention (Rinden).

IV. Other Business.

- (a) Submittal Requirements – There was a brief discussion on whether the Board should require plans of existing conditions stamped by a licensed professional. When reviewing requests for setback variances, the exact location of the existing and proposed structures is necessary. The Board agreed that it is a reasonable requirement to ensure distances from property lines. The requirement will be included when revising the Board's Rules of Procedure.

V. Adjournment.

Andrew Locke moved to **ADJOURN** the meeting at 6:40 PM. Jessica Scheinman seconded the motion. Motion passed unanimously. The Board's next scheduled meeting is Tuesday, May 3, 2022.

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."