



Town of Hopkinton Planning Department

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HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES JANUARY 3, 2023

The Hopkinton Zoning Board of Adjustment held a meeting on Tuesday, January 3, 2023, 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.** Buck, Scheinman, Locke, Cummings, and Chair Rinden.

II. **Applications.**

#2023-01 Accurate Transportation LLC Variance from Zoning Ordinance 3.6.1(d) Use Regulations to operate a towing and recovery business that will include the construction of a commercial garage to house its business office and equipment. In addition, permission to temporarily store vehicles that it recovers. The property is on the corner of Bound Tree Road and Pine Street, shown on Tax Map 221, Lot 75.2, R-2/B-1 district.

Attorney Maria Dolder of the law firm of Hebert & Dolder, PLLC, addressed the Board on behalf of the Applicant. Attorney Dolder explained that while most of the property is located in the R-2 (residential) district, a small portion is within the B-1 (commercial) district. In addition, the property abuts commercial property and NH I-89 in the rear. Given these facts, Attorney Dolder stated that "the property is not the best-suited location for a residential use."

The Applicant proposed to operate a towing and recovery business, constructing a four (4) bay garage on the property to house its business office and associated equipment. The business includes the need to temporarily store vehicles that it recovers, estimating on average five to ten vehicles per week stored at the property. The vehicles are a result of accidents or arrests along I-89. The vehicle storage area is depicted on the plan to be behind the building, adjacent to I-89. Privacy fencing will be used to buffer the vehicle storage area.

The Applicant'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: "The use itself is a use that will be similar to and consistent with uses permitted within the abutting B-1 Zoning District, being a low impact commercial

Adopted: 03/08/2023.

use. Although commercial in nature, the building being proposed is a four (4) bay garage and will be utilized for a business office and the storage of equipment. The use is not a retail commercial use, and therefore, there shall not be any routine customer traffic in or out of the property. Most of the residential lots located within the direct area are not currently developed, while those properties that are residential in nature are located across the intersection of Pine Street. On the other hand, one of the nearby lots which is also located in the residential district houses the American Legion. Accordingly, these properties shall not be impacted by the establishment of a limited commercial use. In fact, in designing the development, the Applicant has made a concerted effort to reduce any impact to the surrounding property values by providing for privacy fencing around the proposed outside storage area. The property will be developed in an aesthetic manner and will allow the property to be used in a similar manner as the abutting commercial properties. Accordingly, the proposal shall not have any adverse impact to the neighborhood, but such a limited commercial use shall be a benefit to the area. The use will be a low impact commercial use which will be contained entirely on site.."

2) Granting the variance would not be contrary to the public interest because:

"To be contrary to the public interest, the variance must unduly, and in a marked degree conflict with the Ordinance such that it violates the Ordinance's basic zoning objectives. To ascertain whether granting the variance would violate basic zoning objectives you must examine whether it would alter the essential characteristics of the neighborhood or would threaten the public health, safety or welfare of the public. The Applicant's requested variances do neither. As stated above, although the property itself is located within a residential district, it directly abuts a commercial district and I-89. The proposed use will be a low impact commercial use which will not create any adverse impact to the neighborhood. In fact, the direct neighborhood itself is already characterized as a commercial area, as most of the residential lots located within the direct area are currently undeveloped and one of the nearby lots, which is also located in the residential district, houses the American Legion. Furthermore, the use being proposed is not retail in nature and shall not have customers visiting the site. Accordingly, the granting of the relief requested herein shall have no impact on public safety, health, or the general welfare of the public and will not be contrary to the public interest. Instead, granting the variance will allow the property to be utilized in a reasonable manner, consistent with the unique setting of the property, along Route 89 and the abutting B-1 district."

3) By granting the variance, substantial justice would be done because: "One of the guiding rules in evaluating substantial justice is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Under this standard, the Applicant clearly satisfies this requirement. As stated above, the use itself is a low impact commercial use which will not have any adverse impact on the neighborhood. Since one of the residential lots that is located directly across the street from the Applicant's property is not developed,

and the other residential lots are located across the intersection of Pine Street, there is no justified gain to the public by restricting this property to residential uses. In fact, the location of the property abutting Route 89 along the entire rear of the site, combined with its direct proximity to the commercial district, makes a residential use of this property unreasonable. Such a result is not in the public interest, nor does it provide any benefit to the abutting residential lot. Instead, the Applicant has made a concerted effort to provide buffering for the abutting lot while proposing a reasonable use of the lot given its unique location. By granting the variance, substantial just will be done since a denial would be a tremendous loss to the Applicant without any justified gain to the public.

Substantial justice is also achieved by granting variances which do not adversely impact on nearby property owners and which allow a property to be used reasonably. As stated above, the location of the property abutting Route 89 along the entire rear of the site, as well as it abutting the B-1 zoning district, makes a residential use of this property unreasonable. Even with the requested relief, the use being proposed is so minimal that it shall not create any adverse affect on the adjoining neighborhood. The use being proposed is for a four (4) bay garage building and limited outside storage of vehicles, a low-impact commercial use. Given this, the proposed use will not adversely impact on nearby property owners, but alternatively, will allow the property to be used reasonably, therefore resulting in substantial justice."

- 4) The spirit and intent of the Ordinance will not be broken by granting the variance because:** "Once again, the property is located within the R-2 zoning district, with a small portion located within the B-1 commercial district, which it directly abuts. The stated purpose of the R-2 district is to provide for medium density residential development and permit the establishment of uses such as two family dwellings, along with limited commercial uses. The property itself directly abuts a commercial zoning district, as well as NH Route 89. In fact, the purpose of the abutting B-1 zoning district is to provide limited commercial, institutional, professional and personal services along with residential uses. Accordingly, the Zoning Ordinance anticipated that certain commercial uses could co-exist with residential uses. The use being proposed by the Applicant is such a use. And, given the property's proximity to I-89, it is more feasible to utilize this parcel for light commercial uses as opposed to residential. Furthermore, in this case, the lot directly across the street from the Applicant's property on Bound Tree Road is not yet developed and remains primarily wooded. The residential uses within the area are located across the intersection of Pine Street. As a result, there are no residential uses abutting this property that would be adversely impacted by such a limited commercial use. As stated above, the Applicant also made an effort to consider the residential uses by proposing both a privacy fence, along with additional landscaping. In addition, one of the general purposes of the Zoning Ordinance is to encourage the most appropriate use of land throughout the Town. In this particular case, granting the variances would be consistent with such purpose."

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. "This property is certainly unique in several ways. First of all, as already stated a number of times, the property is located within the R-2 District, but a small portion is located within the B-1 District, which directly abuts the property. The lot itself is also abutted by NH Route 89 along the entire rear of the property. Although this property is located within the residential district, it is not only unique in its location, but also unique in the fact that the zoning district line cuts through a small portion of the lot. The lot directly across the street from the Applicant's property on Bound Tree Road is currently undeveloped and wooded in nature. The residential uses within the area are located across the intersection of Pine Street. As a result, there are no residential uses abutting this property that would be adversely impacted by such a limited commercial use. On the other hand, the proposed use will allow the Applicant to balance its location in the residential district along with its location abutting NH Route 89 and its close proximity to commercial properties. The relief being requested by the Applicant is the minimum relief required in order to allow the Applicant to reasonably use the property. It is also important to once again note that even with the proposal, the proposed use will not alter the essential characteristics of the neighborhood or the property. In fact, even with the requested relief, the use being proposed will be consistent with the area. Accordingly, there is no fair and substantial relationship between the general purposes of the Zoning Ordinance and the specific restrictions on the property."

ii) The proposed use is a reasonable one. "As stated above, the proposed use of the property is for low impact, light commercial purposes, which will be consistent with the general area and other properties within the abutting commercial 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. "As stated above, this property is certainly unique in several ways. First of all, as already stated a number of times, the property is located within the R-2 District, but a small portion is located within the B-1 District, which directly abuts the property. The lot itself is also abutted by NH Route 89 along the entire

rear of the property. Although this property is located within the residential district, it is not only unique in its location, but also unique in the fact that the zoning district line cuts through a small portion of the lot. The lot directly across the street from the Applicant's property on Bound Tree Road is currently undeveloped and wooded in nature. The residential uses within the area are located across the intersection of Pine Street. As a result, there are no residential uses abutting this property that would be adversely impacted by such a limited commercial use. On the other hand, the proposed use will allow the Applicant to balance its location in the residential district along with its location abutting NH Route 89 and its close proximity to commercial properties. The relief being requested by the Applicant is the minimum relief required in order to allow the Applicant to reasonably use the property. It is also important to once again note that even with the proposal, the proposed use will not alter the essential characteristics of the neighborhood or the property. In fact, even with the requested relief, the use being proposed will be consistent with the area. Accordingly, there is no fair and substantial relationship between the general purposes of the Zoning Ordinance and the specific restrictions on the property. Accordingly, the property cannot be reasonably used in strict compliance with the Ordinance, and a variance is, therefore, necessary to enable a reasonable use of it."

Ms. Scheinman asked about the route by which the trucks would be traveling through Town to the site. In response, business owner Michael Plante said they would often use the most direct route to the property.

Mr. Plante's employees are his sons. Currently, he has an impound yard in Goffstown and Weare. The Weare facility is the primary location of the business. The purpose of constructing the location in Hopkinton is so that they will have to drive less distance when recovering vehicles from I-89 or in the Hopkinton area. Usually, recovered vehicles are stored for one to two days because the insurance companies do not want to pay for storage any longer than necessary. That said, there are uninsured vehicles that are recovered. The uninsured vehicles are stored much longer.

At this time, there was a brief discussion concerning the anticipated traffic to and from the property. Mr. Plante noted that the people in the office would be his sons, wife, and customers completing a transaction.

Ms. Scheinman asked for an estimated period when the recovered vehicles would be at the property. Mr. Plante explained that the vehicles would be initially brought to the Hopkinton property and, within a few days, if necessary, moved to Weare.

Chair Rinden asked for a maximum number of days a vehicle will be in the storage yard. Again, Mr. Plante discussed the difference between insured and noninsured vehicles. He estimated a maximum of fifteen (15) days.

Mr. Buck noted that the hours of operation from 8:00 AM to 5:00 PM, Monday through Friday, except for emergencies, are shown on the plan. Along with a notation that there will be five (5) employees.

Mr. Buck assumed that the Applicant would go before the Planning Board for Site Plan Review, covering the architectural details, such as the building style. Attorney Dolder concurred.

Mr. Buck asked if there were plans for expansion, such as the building size, other buildings, or the number of tow/wrecker trucks. Mr. Plante replied no, explaining that he is awaiting a new truck; however, it will replace a truck to be sold. Attorney Dolder suggested that the wetlands on the property limits expansions.

Chair Rinden opened public testimony.

Louise Carr of Burnham Intervale Road questioned whether Attorney Dolder indicated that the property abuts a commercial use. Mrs. Carr noted that the property does not abut commercial uses. In response, Chair Rinden recalled the statement that the property abuts commercial property. The existing commercial businesses are located up the street from the property.

There being no further public comment, Chair Rinden declared public testimony closed.

Eric Buck moved to **APPROVE** Application #2023-01 with the following conditions:

- 1) The vehicles recovered by the business owner are the only vehicles to be stored at the property.
- 2) The maximum number of days for any individual vehicle to be stored at the property shall not exceed twenty (20) days.
- 3) The maximum number of tow/wrecker trucks to be stored at the property at any one time shall not exceed four (4) trucks at one time, and all trucks are to be stored inside the garage.
- 4) The hours of operation are to be 8:00 AM to 5:00 PM, Monday through Friday, except for emergencies such as but not limited to gathering tools and equipment for roadside assistance and returning to the site with vehicles in Town from such situations.

Andrew Locke seconded the motion. The motion passed unanimously (Locke, Buck, Scheinman, Cummings, and Rinden). The Applicant successfully addressed all criteria to be granted a Variance as outlined in Section XV of the Zoning Ordinance. The Board's decision was based on the following findings:

- 1) Property Values:
 - While abutters were notified, no abutters attended the meeting.

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- There was no evidence surrounding property values would diminish because of the light commercial business.
 - The property includes a small portion of the commercial district and abuts vacant and developed residential and undeveloped commercial properties.
 - Based on representations made and conditions imposed, the number of tow/wrecker trucks will be limited and stored within the building.
 - Based on representations made and conditions imposed, the time period for the temporary storage of any one vehicle is limited. Additionally, privacy fencing will buffer the use from residential properties.
- 2) Public Interest:
- There was no evidence that the public's interest would be negatively affected.
 - While the property is zoned residential, a small portion of the commercial district transects the property. As a result, the property abuts a commercial district and undeveloped commercial property.
- 3) Substantial Justice:
- There is no justified gain to the public by restricting the property to residential use.
 - The property abuts I-89 along the entire rear, the commercial district, and vacant and developed residential properties.
 - Considering the neighborhood's current mixed residential and commercial uses, the proposed use will not adversely impact neighboring properties.
 - Granting the variance will allow the property to be reasonably used, resulting in substantial justice.
- 4) Spirit and Intent:
- The nature and character of the surrounding properties will not change as the section of Bound Tree Road in question has mixed residential and commercial uses.
 - The addition of light commercial activity with limitations on hours of operation and storage of vehicles will have a minimal visual impact on abutting properties.
 - Residential and light commercial activities currently co-exist along Bound Tree Road.
 - The lot is the only one in the area with the B-1 (commercial) and R-2 (residential) zoning district line running through it.
- 5) Unnecessary Hardship:
- The property is unique as it is the only property in the area with the B-1 (commercial) zoning district line through a small portion of the lot.
 - The property directly abuts I-89 and the commercial district.
 - The residential uses in the area are located across the intersection of Pine Street. The building will be accessible from Bound Tree Road.
 - Granting the variance will allow reasonable use of the property.
 - The use will not alter the essential characteristics of the neighborhood as the light commercial use will be consistent with other uses in the area.
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III. Minutes and Notice of Decision of October 4, 2022.

With five members voting, four voted in favor (Locke, Buck, Scheinman, and Rinden), and one voted in abstention (Cummings) to **APPROVE** the October 4, 2022, Minutes as presented.

With five members voting, four voted in favor (Locke, Buck, Scheinman, and Rinden), and one voted in abstention (Cummings) to **APPROVE** the October 4, 2022, Notice of Decision as presented.

IV. Other Business.

- (a) Revised Rules of Procedure (Draft) – The Board will review the draft Rules of Procedure at the next regularly scheduled meeting.
- (b) Zoning Amendments 2023 – Mrs. Robertson provided a brief update on the Planning Board's proposed zoning amendments. The remaining two public hearings are scheduled for 5:30 PM on Wednesday, January 4, and Tuesday, January 24, 2023.
- (c) 2023 Meeting Schedule – The 2023 Meeting Schedule was provided with some members indicating meeting dates they could not attend.
- (d) Any other business to legally come before the meeting – The Board was told of vacancies on the Board, suggesting that if they are aware of residents interested, they complete the Board/Committee Application Form on the Town's website.

V. Adjournment. Chair Daniel Rinden declared the meeting adjourned at 7:07 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."