



Town of Hopkinton Planning Department

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

HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES MAY 2, 2023

The Hopkinton Zoning Board of Adjustment held a meeting on Tuesday, May 2, 2023, at 5:30 PM in the Hopkinton Town Hall, 330 Main Street, Hopkinton. Members present: Chair Daniel Rinden, Jessica Scheinman, Kristen Cummings, Andy Locke, and Jonathan Cohen. Staff present: Planning Director Karen Robertson.

I. **Roll Call.** Scheinman, Cummings, Locke, Cohen, and Rinden.

II. **Applications.**

#2023-04 John Millette Variances from Zoning Ordinance 4.1, 4.2, and 5.2.1 to construct a residential structure on a non-conforming lot having less than the required frontage for the R3 zoning district. The property is located off Broad Cove Road, shown on Tax Map 247, Lot 5.

Mr. Millette of 451 Broad Cove Road addressed the Board, explaining that the property consists of 3.7 acres with 119.22 feet of road frontage. Relief is requested to allow a single-family residence to be constructed. The lot meets all other zoning requirements except for frontage. Mr. Millette discussed his intentions to transfer the property to his daughter so she could build a home and live closer to him.

Mr. Millette noted stated that on December 28, 2022, he was told by the Town that the lot was a grandfathered building lot. Then, on January 30, 2023, upon further review, the Town advised that due to the lack of frontage, the lot was not a building lot. [Hopkinton Planning Board decision of

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: "Granting this Variance would permit the construction of a single-family residence allowing for the reasonable productive use of the existing property. This proposal would be consistent with the surrounding area and would have no negative impacts on the neighborhood. The subject property has dry enough, useable land to meet all town and state regulations to adequately support a single-family residence. The construction of this home would have no adverse effect on any abutters or the community. Granting the variance would provide

Adopted: 06/06/2023.

another much-needed home for the community, be an appropriate use of the land, and would not be contrary to the public interest."

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

"Granting this Variance would allow for productive use of a nice level lot of record containing 3.7 acres that would otherwise be unusable to the land owner. This property is in the residential (R3) zoning district, which has a minimum lot area requirement of 2.75 acres. The existing lot has 3.7 acres but is encumbered with 120 feet of frontage. Although restricted by the lack of frontage, there remains a dry and level land area with suitable soils and slopes that meet all other state and town regulations for residential development. Allowing relief from the minimum frontage portion only of the buildable land definition would allow for reasonable use of the property while still adhering to all environmental, conservation, and setback aspects of the Ordinance. This proposal will not alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public. For all these reasons, we believe that granting this variance would observe the spirit of the Ordinance."

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

"Granting the Variance would allow the landowner reasonable use of the property especially since no minimum area, wetland, or setback variances are being requested for the proposed new dwelling, only the frontage dimension. The proposed home as situated on the parcel, would be consistent with other homes in the area. This variance would do substantial justice because it would allow for the productive use of the property while providing responsible growth in the community. We believe that the denial of this variance request would be an injustice to us as there would be no apparent gain to the general public."

4) The spirit and intent of the Ordinance will not be broken by granting the variance because: "This proposal would allow for the creation of a new single-family home on an existing lot in a residential setting. The use is consistent with the zoning district and would comply with all other state and town regulations, including health, safety, and environmental regulations. Therefore, we do not believe this proposal would have a negative impact on the surrounding properties. It is our belief that a new home in the area would serve to have a positive impact on surrounding properties."

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 existing lot of record is 3.7 acres of level

woodland that, if not for the lack of required frontage, is an ideal site for a single-family home. I was told by the previous owner that this lot was originally slated to be access to a 52-acre backland plot. The proposed location of the home would be set further back to create maximum distance from neighboring homes, and it would no longer be slated as an access point. The land itself is unique from other properties, given its shape. Since the zoning ordinance allows for an Accessory Dwelling Unit (ADU) can be built on this land, the question then becomes, why can't we construct a single-family home in lieu of an ADU? The proposed home site has a sufficient area outside of setbacks to be developed in a responsible manner and in accordance with all other applicable state and town regulations. Since the proposed single-family home will meet all other dimensional requirements and would be in harmony with the surrounding neighborhood, we do not believe any fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of provisions to the property."

ii) The proposed use is a reasonable one. "It would allow for the responsible construction of a single-family home on a parcel with adequate dry and level land area and where all applicable setbacks would be satisfied. While the physical configuration of the land creates an opportunity for the owner to construct an Accessory Dwelling Unit, it is the owner's desire, given their extenuating circumstances, that a separate single-family home be built instead. A portion of the land runs perpendicular to the road, and a portion runs parallel to the road. Setting the home deep into the perpendicular portion of the land, we believe, would minimize any impact on adjacent neighbors while preserving the open land behind all abutters property - this, in our opinion, would be far more desirable to all parties concerned over the possibility of a full-scale subdivision on the 52-acre parcel this land could provide access to.

The hardship for this project is a consequence of the unique physical shape of the lot in that it was originally designed by the previous owners to be an access road to a backland parcel. Since it is under new ownership and since the boundaries have already been established, the new owner seeks to use the property in a different manner, being for a single-family home instead. With the frontage being the only obstacle to moving forward, the site is perfectly suited for all conditions necessary to construct a home under the remainder of the ordinance requirements. And, since it is permissible to construct a free-standing ADU, we hereby petition this Board to approve this variance request that will allow for the construction of a single-family home instead."

Mr. Millette provided a layout of the proposed location of his daughter's new home, suggesting that neighbors will still maintain their privacy.

Ms. Scheinman noted Mr. Millette had purchased Lot 8, which contains his residence, in 2019 and then Lot 5, the lot in question, in 2022. Mr. Millette agreed, noting that he was reluctant to purchase Lot 8, not knowing what would happen on the abutting lot, Lot 5.

There was a brief discussion about Accessory Dwelling Units (ADU) and Mr. Millette's ability to construct a unit, for his daughter, on Lot 8. Mr. Millette explained that for his daughter to obtain bank financing to construct the ADU, she must own the property. Chair Rinden suggested there are options available for transferring Lot 8 to Mr. Millette's daughter.

Chair Rinden opened public testimony.

Abutter Deb Walton of 413 Broad Cove Road spoke in opposition. Mrs. Walton advised that her family originally moved to Hopkinton because of the schools. At the time and throughout the years, she was advised that Lot 5 was not buildable. She noted that she had met the owners who had subdivided the property in 1979. Lot 5 was never intended to be used to access the rear lot, Lot 10. Instead, the owner, Mark Wallenstein, who owned what is now abutting lots 5 and 6, did not want to pay taxes on all of the acreage. The Town allowed Mr. Wallenstein to subdivide with the condition that Lot 5 not be a building lot since it did not meet the frontage requirement. Mrs. Walton noted that the assessment reflects the non-buildable status as the value is \$12,100.

Mrs. Walton suggested that it would not be aesthetically pleasing for the neighbors to have a residence "squeezed" within the 119 feet of frontage. She also noted a steep slope and wetlands on the rear portion of Lot 5.

Lastly, Mrs. Walton stated that the community expressed its values by requiring 200 feet of road frontage in 1978/1979 and then increasing the requirement to 300 feet in 1988. She recalled a 2021 request for a Variance before the Board concerning the property along Gould Hill Road. The property was shy of 14 feet of road frontage, and the request was denied. Mr. Millette's lot is shy of 81 feet.

Elaine Wilson of 369 Broad Cove Road concurred with what was said by Mrs. Walton.

In rebuttal, Mr. Millette stated that he appreciates and understands the abutters' concerns, and he agreed that there is an area towards the rear of Lot 5 with standing water; however, his daughter proposes to build towards the front portion of the property.

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

During deliberations, members of the Board discussed the provisions of 5.2.1 of the Zoning Ordinance, outlining the requirements to build on a non-conforming lot. Members also noted that the Planning Board had approved the subdivision in 1978, indicating that the lot was to be non-buildable.

Mr. Cohen recalled a request before the Board involving the former Drescher property along Maple Street. The application was to create a lot with less than the required frontage, which the Board denied.

Discussion ensued concerning the Applicant's ability to merge Lots 5 and 8 to construct an ADU. Based on the requirement in the Zoning Ordinance that the ADU be beside or behind the principal dwelling, members suggested that constructing an ADU in the area proposed by Mr. Millette may not be permissible since it would be two other lots between the principal dwelling and the proposed location.

Members unanimously agreed that given the various zoning provisions, and the Planning Board's decision, the property is not unique and therefore does not warrant granting a Variance. Furthermore, the Board agreed that granting the variance would not be consistent with the public's interest or spirit and intent of the Zoning Ordinance, noting that by requiring greater frontage and at least on one occasion increasing that requirement, the community is making a statement that in the R3 district, there should be larger open space. At the time of subdivisions in 1978 and 1979, the frontage requirement was 200 feet; because Lot 5 contained less than the required frontage, the Planning Board imposed the condition that the lot not be buildable. Then, at the time of the adoption of the Zoning Ordinance in 1988, the frontage requirement increased to 300 feet. While the Board is sympathetic to the need for housing and Mr. Millette's wishes to have his daughter live closer, it is clear that Lot 5 was never intended to be a buildable lot.

Jonathan Cohen, seconded by Andy Locke, moved to **DENY** application #2023-04. Motion carried in the affirmative (Cummings, Scheinman, Cohen, Locke, and Rinden).

The Board's decision was based on the following findings:

- 1) Public Interest, Spirit and Intent, and Unnecessary Hardship:
 - The property itself is not unique, justifying the granting of a variance.
 - In 1975 and 1978, at the time of subdivisions, the frontage requirement was 200 feet. In 1988 residents increased the frontage requirement to 300 feet.
 - The Zoning Ordinance reflects the community's wishes to require large lots to prevent overcrowding within the R3 zoning district.
 - Residences within the subdivision/neighborhood are on lots with at least 200 feet of frontage, conforming to the frontage requirement at the time of development. Lot 5 has 119.22 feet of frontage.

- The Planning Board knowingly created Lot 5 with less than 200 feet of road frontage, imposing a condition that the lot not be considered a new building lot but rather a "right of way to back land."

III. Minutes and Notice of Decision of January 3, 2022.

Ms. Scheinman asked that the minutes be corrected to reflect the condition requiring visual screening along the Pine Street side of Lot 75.2. Screening is to protect the residential uses that are on the opposite side of Pine Street. Members recalled the condition being imposed.

Jessica Scheinman, seconded by Kristen Cummings, motioned to **APPROVE** the January 3, 2023 minutes, with the correction noted in the above paragraph. Motion carried in the affirmative (Cummings, Scheinman, Cohen, Locke, and Rinden).

Dan Rinden, seconded by Kristen Cummings, motioned to **APPROVE** the January 3, 2023 Notice of Decision, with the correction noted in the above paragraph. Motion carried in the affirmative (Cummings, Scheinman, Cohen, Locke, and Rinden).

IV. Other Business.

- (a) Revised Rules of Procedure (Draft) – A draft of the revised Rules of Procedure will be reviewed at a meeting when all regular members can be present.

V. Adjournment.

Jessica Scheinman, seconded by Andy Locke, motioned to adjourn the meeting at 6:30 PM. Motion carried in the affirmative (Cummings, Scheinman, Cohen, Locke, and Rinden).

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."