



TOWN OF HOPKINTON

OFFICE OF BOARD OF APPEALS

TOWN HALL
18 MAIN STREET - ROOM 207
HOPKINTON, MASSACHUSETTS 01748-3209

WAYNE R. DAVIES, Chairman
ROBERT W. FOSTER, Vice Chairman
ROSS D. GINSBERG, Clerk

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September 22, 2003

Decision

Re: **Petition for Variance** filed by William A. DePietri, Trustee, 259 Turnpike Rd. Suite 100, Southborough, Ma. for property located at **130 Lumber Street**. (Assessors Map Plat R29, Block , Parcel 9), with reference at Middlesex District Registry of Deeds in Book 25083 at Page 453).

The Massachusetts Zoning Act having been duly complied with regarding notice, a Public Hearing was held on September 10, 2003 at 8:00 PM in the Hopkinton Town Hall.

Requested Relief

The Applicant is before the Board of Appeals pursuant to MGL c. 40A s. 10 and the Hopkinton Zoning By-laws to request relief from the definition of lot frontage requirements of the Hopkinton Zoning By-Laws 210.4 to allow access not to be over the designated frontage which requires a variance from the Board of Appeals.

Variance Review Standard

Variations from the terms of an applicable zoning ordinance or by-law may be granted where literal enforcement would involve substantial hardship due to conditions unique to the particular parcel or structure. Variations are always in derogation of zoning and their procedures presuppose that a proposed use would be prohibited by zoning by-law.

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As a matter of law, no person has a legal right to a variance and they are to be granted sparingly. If variances are granted with undue frequency or liberality, and without strict compliance with the prescribed statutory criteria, zoning regulations can become a matter of administration whim, and the intended uniformity may be destroyed. There is generally a distinction between “use” variances, which permit a use of land other than a use permitted by a by-law, and an “area” variance, which authorize deviations from restrictions dealing with such matters as setbacks, frontage, and lot size. Generally, a “use” variance is considered a more substantial departure from the goals of zoning than an “area” variance.

The test for a variance is not whether the requested relief is simply “desirable”, but whether it is justified, that is, whether there is evidence to show that the statutory prerequisites have been met. The prerequisites to the granting of a variance are conjunctive, not disjunctive; a failure to establish any one of them is fatal. However, even if the Board of Appeals finds that all the required conditions exist for the granting of a variance, as a matter of law the Board may exercise its discretion to refuse to issue the variance.

Variances from the term of the zoning by-law may be granted where owing to conditions (soil conditions, shape or topography) especially affecting such parcel or such building, but not generally the zoning district in which it is located, a literal enforcement of the provisions of the zoning by-law would involve substantial hardship, financial or otherwise, to the appellant, and where desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the by-law, but not otherwise. In granting such variances, the Board of Appeals may impose limitations, both of time and of use, and a continuation of the use permitted may be conditioned upon compliance with the regulations of the Board, if any, but may not be conditioned upon the continued ownership of the property to which the variance pertains.

In all matters on which it has jurisdiction to act, the Board of Appeals shall give due consideration to promoting the public health, safety, convenience and welfare, shall encourage the most appropriate use of land, and shall permit no building or use injurious, noxious, offensive, or detrimental to the neighborhood. To this end, it may prescribe appropriate conditions and safeguards in each case.

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Discussion

The petitioner seeks to access a lot via a common driveway over the frontage of another lot which is not allowed under Hopkinton zoning by-law 210.4. The petitioner presented testimony that due to the actions of the town and the construction of Interstate Highway Route 495, the parcel of land being subdivided has become mostly a wetland area and has made it necessary to use a common driveway for access to the 3^d lot he wants to create from the parcel. The petitioner presented a proposed Approval Not Required plan showing the lot layout that has not been endorsed by the Planning Board and according to the petitioner it is a 12 acre parcel with about 9 acres of wetlands. The Board asked various questions and made comments regarding the petition. There were no comments from the public. The hearing was duly closed on September 10, 2003.

Vote of the Board of Appeals

After discussion, the following motion was duly made and seconded:

The motion was made to grant the variance with following conditions:

- 1. Language in the deeds guaranteeing maintenance of the common driveway.
- 2. The proposed plan of land for the parcel presented by the petitioner be endorsed by the Planning Board.

On motion to grant the variance, the board found that the petitioner had created his own hardship with the subdivision of land and did not meet the standards for a variance. The vote of the Board was as follows:

Wayne R. Davies, Chairman	No
Michael DiMascio	No
Russell H. Ellsworth	No
Thomas J. Garabedian	Yes
Muriel E. Kramer	No

The **Petition for Variance** is hereby *Denied*.

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Appeal of this Decision, if any, shall be made pursuant to MGL c. 40A s. 17 and shall be filed within twenty (20) days after the date of filing of this Decision with the office of the Town Clerk. No Variance or Special Permit, or any extension, modification, or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town clerk that twenty days have elapsed after the decision has been filed in the office of the town clerk and no appeal has been filed, shall be recorded at the Middlesex District Registry of Deeds in Cambridge, Massachusetts in accordance with MGL c. 40A s. 11.

Wayne R. Davies, Chairman
Board of Appeals