



TOWN OF HOPKINTON

OFFICE OF
BOARD OF APPEALS

TOWN HALL
18 MAIN STREET – 3RD FLOOR
HOPKINTON, MASSACHUSETTS 01748-3209

WAYNE R. DAVIES, Chairman
ROBERT W. FOSTER, Vice Chairman
THOMAS J. GARABEDIAN, Clerk

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June 8, 2005

DECISION

RE: Petition for Variance filed by **Community Covenant Church** of 2 West Elm Street, Hopkinton, MA, 01748 regarding property at 2 West Elm Street (Assessors' Map R23, Block 45 Lot 0; Middlesex South District Registry of Deeds **Book 12854** at **Page 024**), Hopkinton, MA, 01748 (hereinafter the "Property").

The Massachusetts Zoning Act having been duly complied with regarding notice, a Public Hearing was held on April 13, 2005 at 8:30 PM in the Hopkinton Town Hall.

Requested Relief

The Applicant seeks relief to construct an expansion of an existing church facility which would require a variance under Section 210-8 of the Hopkinton Zoning Code. Section 210-8(E) of the Hopkinton Zoning Code requires a minimum 50 foot setback from the street line, and the proposed structure would be located 13 feet from the street line, requiring a 37 foot variance.

Variance Review Standard

Variances 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

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particular parcel or structure. Variances are always in derogation of zoning and their procedures presuppose that a proposed use would be prohibited by zoning by-law.

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

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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.

Standard of Review for Exempt Entities

No zoning ordinance or by-law shall ... prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased ... by a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. MGL c. 40A s. 3.

Discussion

Representatives of the Applicant appeared at the public hearing and presented their proposal for expansion. The Church has outgrown its current facility and needs additional space to accommodate its religious education activities. These activities are currently being held in the Sanctuary and in a temporary trailer located on the property. The site is landlocked by town roads on the south, east, and west sides and by wetlands on the north side. A portion of the property was taken by the State under eminent domain proceedings to complete road work along West Elm Street and West Main Street. The applicant represented that highest use is on Sunday mornings when traffic and backup at the South Street/Main Street intersection is at its lightest. The applicant noted that the existing building structure, lot topography and wetlands location have rendered all other means of expanding the facility to accommodate the church's

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programmatic needs infeasible. The applicant further noted that the distance from the proposed building edge to the street curb was 20 feet and that sight lines for traffic on West Elm Street were adequate.

Decision

The Board of Appeals took note that the Applicant was a religious entity entitled to exemption under MGL c. 40A s. 3. The Board therefore considered the Applicant's request for relief based upon the standards outlined under Section 3. The Board considered correspondence from the Zoning Enforcement Officer to the Applicant dated March 2, 2005 in which Michael Shepard, Director of Municipal Inspections, stated the following:

"The right of the church to operate and expand is unquestionably allowed, subject to 'reasonable' regulations cited above (MGL c. 40A s. 3). At issue is the proposed 13 foot setback from West Elm Street.

In Rehabilitative Resources, Inc. v. Ginger Peabody, et. al. [2004 WL 2341387 (Mass.Super.)], the Court in its decision stated that "Our decision does not imply that any nonconforming structure for which an educational use is proposed will necessarily be free from the bulk and dimensional requirements of a local zoning law.... Local officials properly could refuse a building permit for alterations to a nonconforming structure where, for example, the failure to meet local zoning requirements raised safety concerns."

The Board also took note that in his correspondence, Mr. Shepard stated the following:

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In my opinion there are tow primary issues at play regarding the location of the addition:

1. The intersection of West Elm Street and West Main Street while recently improved is extremely busy. The Church fronts on this intersection. The location of the addition at 13 feet from the roadway will, in my opinion, exacerbate and already dangerous situation. It appears from personal observation that the building will diminish significantly the view of a driver has exiting the Church as well as the site distance of a driver heading North from West Main Street.

2. The 50 foot front setback requirement helps to establish the yard area that, I assume, Town Meeting had in mind when they established the setback requirement for the RB zoning district. The proposed citing will, in my opinion, “crowd” the street thereby diminishing “yard” envisioned by Town Meeting members.”

Based on the application, presentation of the applicant, opinion of the Zoning Enforcement Officer, documents and evidence presented at the Public Hearing and the authority to regulate contained within MGL, c. 40A s. 3, a Variance was denied on a finding that the location of a structure only 13 feet from the roadway will exacerbate the traffic situation and site distances at the West Elm Street and West Main Street intersection and will crowd the street, thereby diminishing the yard envisioned within the Zoning Bylaws.

On a motion to grant the requested relief, the Variance was denied by the following vote:

Wayne R. Davies, Chairman	No
Thomas J. Garabedian, Clerk	Yes
Vascen J. Bogigian	Yes

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Henry R. Kunicki

Yes

Michael DiMascio

No

The Petition for Variance is hereby *denied*.

Thomas J. Garabedian, 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. 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.