



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
THOMAS J. GARABEDIAN, Clerk

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October 26, 2004

Decision

Re: **Application for a Special Permit and Variance** filed by **Sean Davan**, 217 Wood Street, Hopkinton, MA 01748 for property located at 217 Wood Street (Assessors Map Plat U9, Block 34, Lot 0) with reference at Middlesex District Registry of Deeds in Book 38428 at Page 212.

The Massachusetts Zoning Act having been duly complied with regarding notice, a Public Hearing was held on July 28, 2004 at 7:30 PM in the Hopkinton Town Hall. Sean Davan appeared on behalf of the applicant.

Requested Relief

The Applicant is before the Board of Appeals pursuant to MGL c. 40A s. 9 and the Hopkinton Zoning By-laws to request a special permit to construct an addition to an existing building which does not conform to the setback requirements of the zoning district and which would be permitted only through the grant of a special permit under Section 210-128.

The Applicant is also before the Board to request a variance since the addition would increase the size of the structure by 45%, which is greater than the 25% allowed by Section 210-128(B) of the Zoning By-laws.

The Board asked various questions, including the arrangement of the building and the proposed addition. Comments and input from the public were solicited and received. Numerous public comments in support of the relief were heard by the Board.

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 particular

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

Vote of the Board of Appeals

After discussion, the following motions were duly made and seconded:

Special Permit - On motion to **Grant** the Application for a Special Permit to allow for the alteration of the structure on the respective lot in accordance with Section 210-128 of the Zoning By-Laws, the vote of the Board of Appeals was as follows:

Wayne R. Davies, Chairman	Yes
Thomas J. Garabedian	Yes
Ross D. Ginsberg	Yes
Michael DiMascio (Associate)	Yes
Patricia J. Rackauskis (associate)	Yes

The **Application for a Special Permit** is hereby *Granted*.

Variance - On motion to **Grant** the Application for a Variance to allow for the expansion of volume of the structure on the respective lot by up to 45%, the vote of the Board of Appeals was as follows:

Wayne R. Davies, Chairman	Yes
Thomas J. Garabedian	Yes
Ross D. Ginsberg	Yes
Michael DiMascio (Associate)	Yes
Patricia J. Rackauskis (associate)	Yes

The **Application for a Variance** is hereby *Granted*.

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.

Thomas J. Garabedian, Clerk
Board of Appeals