



TOWN OF HOPKINTON

OFFICE OF BOARD OF APPEALS

TOWN HALL
18 MAIN STREET - 3RD FLOOR
HOPKINTON, MASSACHUSETTS 01748-3209
(508) 497-0012

WAYNE R. DAVIES, Chairman
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BUILDING DEPT.

www.hopkinton.org
ZBACHair@Hopkinton.org
ZBAClerk@Hopkinton.org

April 12, 2006

DECISION

RE: Petition for Variance and Application for Special Permit filed by **Michael C. and Patricia L. Boelsen** of 10 Commonwealth Avenue, Hopkinton, MA, 01748 regarding property at 10 Commonwealth Avenue, Hopkinton, MA, 01748 (Assessors' Map U19, Block 18 Lot 0; Middlesex South District Registry of Deeds **Book 19799 at Page 143**), Hopkinton, MA, 01748 (hereinafter the "Property").

Introduction

The Massachusetts Zoning Act having been duly complied with regarding notice, a Public Hearing was held on March 22, 2006 at 7:45 PM in the Hopkinton Town Hall

Requested Relief

The Applicant seeks relief to create an accessory family dwelling unit in an existing unoccupied building (garage) at 10 Commonwealth Avenue, Hopkinton, MA, 01748. The area of the existing building is 700 square feet and is in compliance with all requirements of the Hopkinton Zoning Bylaw as to location and position.

Section 210-126 of the Hopkinton Zoning Code provides for a special permit to allow for the conversion of an existing or new single family dwelling to accommodate an additional family

living unit by the partitioning of or extension of existing living space. The applicant requests a Special Permit for relief under this Section

Section 210-126B of the Hopkinton Zoning Code allows for the conversion of an existing single-family dwelling. The proposed accessory family dwelling unit is to be in a structure apart from the existing single-family dwelling. The Petitioner requests a Variance for relief under this Section:

Section 210-126C limits the use of the proposed accessory family dwelling unit to require the owner of record of the structure to be a resident of the structure and to require that there shall be no other living unit on the lot upon which accessory unit is to be located. The owner of the property intends to continue residing in the existing single-family dwelling while the owner's daughter and granddaughter will occupy the proposed accessory family dwelling unit in a separate structure. The Petitioner requests a Variance for relief under this Section.

Section 210-126E requires that an interior doorway be provided between the accessory family dwelling unit and the main dwelling unit. The proposed accessory family dwelling unit is to be in a separate structure from the existing single-family dwelling and the Petitioner requests a Variance for relief under this Section.

Section 210-126G limits the area of an accessory family dwelling unit to 800 square feet in floor area. The existing structure has an area of 700 square feet and it is the intent of the Petitioner to use the whole structure.

Section 210-126L requires that an accessory family dwelling unit be contained within or be an extension of a single-family structure. The proposed accessory family dwelling unit is to be in a structure separated from the existing single-family dwelling. The Petitioner requests a Variance for relief under this Section.

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 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.

Special Permit Review Standard

Special Permits, where granted, must be in harmony with the general purpose and intent of the zoning by-laws. Special Permits are granted for those specific uses which are deemed necessary or desirable but which are not allowed as of right because of their potential for incompatibility with the characteristics of the zoning district. Special Permits are granted only after weighing the benefits and detriments of a proposal. No one possesses a "right" to a Special Permit and the Board may deny an application for such relief in its discretion. 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.

Discussion

The Applicant appeared at the public hearing and presented their proposal. The Applicant described the existing garage and house and their intention to allow their daughter and granddaughter to live in the proposed accessory dwelling unit to be constructed in the existing space above their two-car garage in accordance with the Plans attached hereto and incorporated herein by reference as "Exhibit A". They request a variance because the garage is not attached to the house. Upon questioning the Applicant explained that to construct the accessory dwelling

unit within the existing house would require extensive addition and remodeling whereas the garage space already exists. The Applicant also pointed out that the property is served by public sewer.

The Applicant received a variance in 1989 to construct the house less than the required 40 feet from the sideline of Commonwealth Avenue due to a seasonal stream crossing the property to the rear, and a special permit to allow construction of the house only 52 feet from the seasonal stream.

Decision

Based on the Application, presentation of the Applicant, documentation and testimony presented at the Public Hearing a Variance and Special Permit were granted as follows:

1. A variance was granted under Section 210-126B, C, E and L to allow an accessory family dwelling unit to be located in a separate structure from the house on a finding that the shape of the lot and the configuration of the buildings present a substantial hardship, and that a variance would not be detrimental to the public good and would not derogate from the intent of the Zoning By-laws.

On a motion to grant, the Variance was granted as aforesaid by the following vote:

Wayne R. Davies, Chairman	Yes
Robert W. Foster, Vice Chairman	Yes
Thomas J. Garabedian, Clerk	Yes
Vascen J. Bogigian	Yes
Henry R. Kunicki	Yes

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

2. A Special Permit was granted under Section 210-126 to allow an accessory family dwelling unit to be constructed with the following conditions:

Smoke alarms be installed interconnecting the house and the accessory family dwelling unit.

The accessory family dwelling unit is to be occupied only by a family member related by blood, marriage or adoption to the owner of the premises.

Separate ingress and egress shall be provided to the outside of the accessory family dwelling unit.

The accessory family dwelling unit shall be constructed to the proposed floor area of 700 square feet but in no case greater than 800 square feet.

Off-street parking for residents and guests of both units shall be provided in a fashion consistent with the neighborhood as directed by the Director of Municipal Inspections.

No building permit for the accessory family dwelling unit shall be issued until this Special permit has been recorded in the Registry of Deeds.

No occupancy of the additional dwelling unit shall take place without an occupancy permit issued by the Director of Municipal Inspections. The initial occupancy permit shall remain in force for a period of two years from the date of issue, provided that ownership of the premises has not changed. Thereafter permits may be issued by the Director of Municipal Inspections for succeeding two-year period provided that the structure and use continue to comply with the relevant provisions of the State building Code, Section 210-126 of the Zoning Code and this Special Permit. The occupancy permit shall not be transferable upon change in ownership or change in occupancy.

On a motion to grant, the Special Permit was granted as aforesaid by the following vote:

Wayne R. Davies, Chairman	Yes
Robert W. Foster, Vice Chairman	Yes
Thomas J. Garabedian, Clerk	Yes
Vascen J. Bogigian	Yes
Henry R. Kunicki	Yes

The Petition for Special Permit is hereby **GRANTED**.



Thomas J. Garabedian, Clerk

Any and all plans or specifications submitted to the Board of Appeals that detail construction or improvements to be undertaken or performed in conjunction with the relief granted hereunder, are hereby made express conditions of the issuance of this Decision and are incorporated herein by reference. Unless this Decision expressly provides otherwise, the rights and privileges granted under a Variance run with the land; and the rights and privileges granted under a Special Permit and Appeal are personal to the Applicant or Appellant and do not run with the land; except for a Special Permit issued pursuant to Zoning By-law 210-119 for relief from side and rear set back requirements, which shall run with the land.

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.