

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, May 7, 2017

6:30 PM

Council Chambers

Members Present:

Nathaniel Stout, Chair
Joshua Gorman, Vice Chair
Sean Wallin
Michael Welsh
Jeffrey Stevens, Alternate

Staff Present:

Gary Schneider, Plans Examiner
John Rogers, Zoning Administrator

Members Not Present:

John Rab, Alternate
Jeffrey Stevens, Alternate
Louise Zerba, Alternate

I. Introduction of Board Members

Chair Stout called the meeting to order at 6:30 PM introduced members of the Board and welcomed everyone to the meeting.

II. Minutes of the Previous Meeting-April 2, 2018

Mr. Welsh made a motion to accept the minutes from April 2, 2018. The motion was seconded by Vice Chair Gorman, which carried unanimously.

IV. Hearings

Continued ZBA 18-05:/ Petitioner, Michael Petrovick of Catlin & Petrovick Architects, PC of 51 Railroad Street, Keene, requests a Variance for property located at 809 Court Street, Keene, Tax Map Parcel # 188-01-001, which is in the Commerce District and owned by Hillsborough Capital, LLC of 63 Emerald Street, Suite 167, Keene. The Petitioner requests a Variance to permit the reduced number of parking spaces from the required 57 spaces to 50 parking spaces per Section 102-793 of the Zoning Ordinance.

Chair Stout announced the Board received a letter from Catlin & Petrovick Architects, PC that was dated on April 25, 2018. Vice Chair Gorman read the letter as follows:

Mr. Stout at the March 5, 2018 Zoning Board meeting the above case for Hillsborough Capital, LLC requesting to reduce the number of parking spaces was continued to April 2, 2018, in order for the owner to complete the City of Keene's Planning Board approval process for the project. This request was to provide for the Planning Board process to be completed which will determine the number of available parking spaces available on this site. At the March 26, 2018 Planning Board meeting the case was continued to address several concerns raised by abutters at the meeting.

We are working with the abutters and Planning staff to resolve the issues prior to the April 23, 2018 meeting of the Planning Board.

Our letter of April 2, 2018 requested the pending ZBA case be continued to May 7, 2018 Zoning Board meeting which was granted. At the April 23, 2018 Planning Board meeting the project was approved by the Board. The approved site plan will not require a Variance to reduce the required number of parking spaces. Therefore, we are withdrawing this application incase for consideration. We appreciate the consideration of the Zoning Board's consideration of this project.

Mr. Wallin made a motion to accept the request for withdrawal of ZBA 18-05. The motion was seconded by Mr. Welsh, which carried unanimously.

ZBA 18-08;/ Petitioner, Jim Phippard, of Brickstone Land Use Consultants, LLC, of 185 Winchester St., Keene, requests a Variance for property located at 186 North St., Keene, and owned by Timothy and Marybeth M. Sweeney. The Petitioner requests a Variance to construct a 90 sq. ft. two story addition to an existing non-conforming single family dwelling unit in place of an existing 115 sq. ft. attached shed. The existing attached shed is located entirely within the rear setback and is 1 foot from the rear property line where a setback of 10 feet is required. The replacement structure will remain 1 foot from the rear property line but be 4 feet narrower in width. The change in use from an existing shed to an addition to the dwelling unit changes the required rear setback from 10 feet per Section 102-888 to 20 feet per Section 102-791, Basic Zone Dimensional Requirements.

Mr. Schneider indicated the location of the property is in between Armory Street and Court Street. The property is located in the Medium Density Distirct and across the street from the property is the Low Density District.

Chair Stout stated in the interest of full disclosure, he lived in this neighborhood up until a year ago.

Chair Stout recognized Jim Phippard of Brickstone Land Use Consultants, located at 185 Winchester Street. Mr. Phippard stated that he was representing the applicants, who purchased the property and moved into the home a week ago. He noted this was another owner occupied home in the neighborhood. Mr. Phippard stated the property is an existing nonconforming use and is smaller than the 8,000 square foot lot size that is required in the Medium Density District. In addition, it is nonconforming because the house was constructed in 1890 and was built almost entirely within the side and front in rear yard setbacks. Mr. Phippard said in today's zoning the

property is nonconforming due to lot size and of the setback encroachments. He noted this created a unique situation for the property owners.

Mr. Phippard presented the Board with a picture of the house as it exists today. He explained the house was essentially one room wide and there was a need to go through one room to get to the next room. The upstairs where the bedrooms are located have the same situation. Mr. Phippard stated the proposal was to finish an unfinished area in the back end of the house and make into a bedroom. He said in order to correct the situation, the applicants are requesting to remove an existing shed and replace it with a two story addition that is 6 feet wide. Mr. Phippard stated this would allow the applicants to add a stairwell so they are able to have an entry point from the ground floor up the stairs to the bedroom. He noted this would fix the issue of having to go through the other existing bedrooms to get to the other bedroom. Mr. Phippard said based on today's living standards it is unusual not to have a private entrance to a bedroom.

Mr. Phippard reviewed the criteria.

Granting the Variance would not be contrary to the public interest because:

Mr. Phippard said because the house is existing nonconforming, constructed in 1890, it creates an unusual situation. The egress from the first floor to the second floor being added will improve life safety conditions by adding the second egress. He said it will improve the value of the home and help to maintain neighborhood property values. Mr. Phippard said it is in the public interest to allow property improvements which enhance property value, improve life safety, and result in a more conforming building footprint. Mr. Phippard stated that he could not stress enough that this is an owner occupied home. He noted the whole end of North Street is owner occupied homes, which he stated is a good thing for a neighborhood.

*If the variance were granted, the spirit of the ordinance would be observed
Because:*

Mr. Phippard said the Spirit of the Ordinance in this case is to provide adequate separation of buildings and structures for fire safety; to avoid overcrowding; and to preserve line of sight for the safety of vehicles and pedestrians. He said granting this Variance will not violate the Spirit of the Ordinance. The proposed addition is at the rear of the existing building and smaller than the footprint of the existing shed. The smaller footprint results in greater separation from a neighboring shed to the west and is no closer to an existing shed to the south. He said the location at the rear of the building does not interfere with the line of sight for vehicles and pedestrians. Mr. Phippard said granting the Variance will allow the property to be used in a manner which will not result in a public hazard or diminish public safety, and therefore, observes the spirit of the ordinance.

Granting the variance would do substantial justice because:

Mr. Phippard said granting the Variance would do substantial justice because it will allow the property owner to upgrade and improve the value and life safety conditions of their residence. It

will not result in a hazard or threat to public safety or diminish surrounding property values. He said approval of the Variance would do substantial justice. Mr. Phippard provided the Board with a picture of the shed as it exists today. He noted the addition would have clapboard siding and will look like part of the original house.

If the variance were granted, the values of the surrounding properties would not be diminished because:

Mr. Phippard said this is an 1890's house in a neighborhood that consists primarily of owner-occupied single family homes. The owners intend to maintain the look and architecture of the original building. He said the renovations and small addition will improve the value of the house, which will help to maintain existing property values within the neighborhood. Mr. Phippard said approving the Variance will not result in a threat to public safety or be a nuisance to vehicles and pedestrians. In addition, he said it will enhance the value of this property and provide better life safety conditions for the property.

Unnecessary Hardship

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

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 because:

Mr. Phippard said the existing house was constructed in 1890, prior to creation of zoning in the City of Keene. The current zoning regulations have made the property nonconforming due to the lot size. The existing house is almost entirely within the front, side and rear setbacks. He said these result in a special condition on this property where it is not possible to add the second egress without a Variance. Mr. Phippard said the proposed encroachment will have no negative impact to public safety or public welfare. It is not fair or reasonable to deny the Variance in this case when there is no public benefit and no threat to public safety or welfare. He said denial of the Variance would result in an unnecessary hardship in this case.

ii. The proposed use is a reasonable one because:

He said the proposed addition is smaller than the existing footprint of the shed. The reduced building size in the setback area will make the building more conforming with the current setback regulations. The proposed addition will not result in a threat to public safety or diminish surrounding property values.

B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Mr. Phippard said the existing house was constructed in 1890, prior to creation of zoning in the City of Keene. Current zoning regulations have made the property nonconforming due to the lot

size: 5,625 square feet where 8,000 square feet is currently required in the Medium Density District. The existing house is almost entirely within the front, side and rear setbacks. This results in a special condition on this property where it is not possible to add the second egress without a variance. The proposed encroachment will have no negative impact to public safety or public welfare. It is not fair or reasonable to deny the variance in this case when there is no public benefit and no threat to public safety or welfare. Mr. Phippard stated denial of the Variance would result in an unnecessary hardship in this case.

Mr. Wallin asked what is keeping the applicants from building on the side where the porch is located. Mr. Phippard replied the existing porch is outside the footprint of the house and would be a much larger project. In addition, the applicants do not want to lose porch.

Vice Chair Gorman asked how an interior stairwell provides a means of egress, noting that a second means of egress should directly go to the outside. Mr. Phippard replied under the code, Vice Chair Gorman was correct. He explained that the addition will improve the egress because there is only one means of egress from the second floor that is all the way to front of the house where stairwell is located. Mr. Phippard noted this was a big improvement over what exists today.

Chair Stout asked if the shed is attached to the house. Mr. Phippard replied in the affirmative. Mr. Stevens asked how the addition will match with the roof line. Mr. Phippard replied the roof will go all the way up to match the gable roof. In addition, Mr. Phippard stated that instead of the roof of the shed draining to the west into neighbor's yard, it will be replaced with a roof that will drain back onto the property.

Vice Chair Gorman referred to Mr. Phippard's comment that granting the Variance would be more conforming with today's criteria. He stated given the increase setback from 10 feet to 20 feet this would mean it would be less conforming. Mr. Phippard replied this is true given the change from the storage area to habitable space. He stated the shed is attached to the structure and will merit a Variance in this case. Mr. Schneider stated they discussed filing an Appeal of an Administrative Decision on this matter and the applicant's decided to go with the Variance. Chair Stout asked if the Board approves the Variance would it remove the need for another Variance on the setback. Mr. Schneider replied in the affirmative.

Vice Chair Gorman asked in lieu of not granting the Variance, could the applicant apply for an Appeal of the Administrative Decision. Mr. Schneider replied this was a good question but could not provide an answer at this time.

Chair Stout opened the public hearing and welcomed public comment.

Chair Stout recognized Marybeth Sweeney of 186 North Street and Tim Sweeney of 186 North Street. Ms. Sweeney stated she appreciates the opportunity to meet with Board in order to request a Variance because she and her family are excited to live this neighborhood. She explained they moved into this home knowing this was a two bedroom home but saw potential space in the back of the house. After a conversation with a friend, that is an architect, they were

told this space could not be considered a bedroom. Ms. Sweeney said they are eager to conform to zoning standards but also want to improve the property so that it feels like it is a good investment to them.

Ms. Sweeney noted she had a letter of an approval from a neighbor. Chair Stout stated this letter would be read into the record after Ms. Sweeney's statements.

Ms. Sweeney informed the Board that their builder is Jason Beam, whom she stated has worked with the City of Keene. Chair Stout thanked the applicant's for taking the right route with the Zoning Board.

Mr. Wallin asked Ms. Sweeney which neighbor provided the letter of approval, in reference to the location of the property. Ms. Sweeney replied that it was the neighbor to the left of the property, located at 46 Prospect Street.

Michelle Greene, 36 Prospect Street, indicated the location her property in reference to the applicant's property and spoke in support of the application. She noted the proposal will eliminate the water dripping onto her shed and property from the applicant's shed. The Board thanked her for her comments.

Mr. Stevens read a letter dated April 28, 2018 from Barbara and James Sovik as follows:

Dear Board Members:

Our property on 46 Prospect Street, Keene, NH continues with frontage on North Street, and we are therefore direct abutters to the referenced property seeking a variance.

We wish the Board to know that we have no objection to the granting of the variance, and recommend that you approve it as it will do no harm, improve the utility of the property, and should not impact the neighborhood in any way. In fact, granting the variance will make the property less non-conforming than it presently is.

We suspect that many properties within the city "core" , of which 186 North Street is an example, predate the zoning ordinances including setbacks, etc., and "as built" situations pretty much need to be accepted and some flexibility given to allow the owners to modify their properties to conform to changing living standards.

We urge you to accept the variance as described. Thank you.

With no comment, Chair Stout closed the public hearing.

The Board reviewed the criteria.

Granting the Variance would not be contrary to the public interest:

Mr. Stevens stated properties of this age run when making any type of modification run into this sort of thing. He said clearly the entire house is almost outside of where it would be able to be built today and he does not see a problem granting the Variance. Chair Stout concurred with Mr. Stevens remarks. He added that the Board has not heard from any neighbors in opposition. Chair Stout stated that there has been reference to a change of use and a change of use is a different consideration than a setback. Mr. Rogers stated it was not a change of use and was more of a change of structure. Chair Stout asked if the use being changed to is a use that is already permitted in the High Density District. Mr. Rogers replied in the affirmative.

Vice Chair Gorman added that encroachment regulations are different for inhabitable space and that the Board was here to determine that 20 feet is a further nonconforming use.

If the Variance were granted, the spirit of the Ordinance would be observed:

Mr. Wallin stated that the Board was giving actual living space by getting rid of a shed to add an addition well within the setback. He noted that he had trouble correlating this with the spirit of the Ordinance. Vice Chair Gorman stated the other issue is going from one story to two stories and that the space is no longer a wood shed and is living space. Chair Stout stated that the Ordinance has stipulations for the High Density District. He noted that the High Density District in most of the City has preexisting conditions. He said most buildings have these situations and does not see that the spirit of the Ordinance is being violated in an expansion of a building that is already in a widely highly developed area. Vice Chair Gorman noted the property in question was located in the Medium Density District.

Vice Chair Gorman stated the silver lining is the fact that the applicant is diminishing the foot print and is increasing the path between an abutter.

Mr. Stevens referred to the intent of the Medium Density District and read Section 102-391 from the Zoning Code as follows, *“The intent of the medium density (MD) district is to provide for a medium density/medium intensity residential area. There is a very limited number of other uses permitted which are associated with a residential setting. Normal commercial/industrial uses are excluded. All uses in this zone are required to have city water and sewer service”*. Mr. Stevens stated this does not change the intent because it is being changed from a two bedroom to three bedrooms and it was hard to argue having a three bedroom home in a Medium Density District. He said as far as the setback, by removing the shed, the house is still 14 feet where it should be and was not changing much of the footprint. Mr. Welsh said in terms of the spirit of the ordinance, the proposed modification does improve the safety of the house and the surrounding homes.

Mr. Wallin said that he is concerned with removing something that is already in a setback and then adding another permanent structure. He noted that there may be other options.

Chair Stout noted that for the arguments he made for the High Density District also apply to the Medium Density District. Chair Stout thanked Vice Chair Gorman for noting the correction.

Granting the Variance would do substantial justice:

Chair Stout said he understands the necessity of tearing down a major feature of the house would be an injustice. Mr. Stevens stated the loss to the home owner would far outweigh gain to the public by not allowing the Variance.

If the Variance were granted, the values of the surrounding properties would not be diminished:

All members of the Board agreed that granting the Variance would not diminish the value of surrounding properties.

Unnecessary Hardship

E. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because:

ix. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property:

Mr. Stevens stated this was a unique property and is something that is seen often in older homes.

x. The proposed use is a reasonable one

Mr. Stevens stated this was reasonable proposed use.

Vice Chair Gorman requested to reopen the public hearing. The Board agreed.

Vice Chair Gorman asked how the proposal would impact the abutters, in terms of the increased height to the structure. He stated, in his opinion, the impact could be stronger if there were windows overlooking the abutters. Vice Chair Gorman stated that Mr. Phippard mentioned there are no windows in the addition. Mr. Phippard stated that was correct. Vice Chair Gorman asked how a secondary egress from the sleeping room was permitted without a window. Mr. Phippard replied the applicant would be allowed a window on the side walls but not on the gable end.

Mr. Welsh stated that egress has a technical definition involving sizes of windows that may not apply here and what is before the Board is a de facto of egress. He said at the same time it is improvement to the safety of the home and also add fire escape capabilities. Vice Chair Gorman noted that it is under the purview of the Board when making a decision how one property may impact another abutter.

With no further comment, Chair Stout closed public hearing.

Chair Stout reviewed the Findings of Fact:

Granting the Variance would not be contrary to public interest: Granted, 5-0

If the Variance were granted, the spirit of the Ordinance would be observed: Granted 5-0

Granting the Variance would do substantial justice: Granted, 5-0

If the Variance were granted, the values of the surrounding properties would not be diminished:
Granted, 5-0

Unnecessary Hardship

E. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because:

ix. 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:

Granted, 5-0

x. The proposed use is a reasonable one: Granted, 5-0

Mr. Welch made motion to approve ZBA 18-08 as stated in the application. The motion was seconded by Vice Chair Gorman, which carried unanimously.

With a vote of 5-0, The Zoning Board of Adjustment approved ZBA 18-08.

V. New Business:

Mr. Rogers reported that the Parcel Mapping Project is almost complete and ready to go live. He explained that the objective of the mapping system is to generate current, accurate parcel maps which show the correct size, shape, location, and ownership of every property in the City. In addition, the public will have access to the parcel maps and the system will be able to perform tasks such as creating abutter lists.

VII. Adjournment

Mr. Welsh made a motion to adjourn the meeting, which was seconded by Vice Chair Gorman and carried unanimously. Hearing no further business, Chair Stout adjourned the meeting at 7:29 PM.

Respectfully submitted by,
Jennifer Clark, Minute Taker