



ZONING BOARD OF ADJUSTMENT
WILTON
NEW HAMPSHIRE 03086

Minutes June 13, 1989

Meeting called to order at 7:31 PM in the Courtroom by Chairman Tom Mitchell. Members present are George Infanti, Grayson Parker, Neil Faiman and Alternate Steve Blanchard (sitting for Cindy Harris), Joanna K Eckstrom Secretary. Press representation from Ron Bitten Milford Cabinet and Peter Ferrand Nashua Telegraph. Mitchell announced two cases to be heard, the first of which was a request for Special Exception to Article V Section A-4 by Robert Bragdon.

Will Sullivan represents Bragdon and advised he wished to tape record proceedings. Sullivan said Bragdon wants Special Exception to allow renovation of existing single family house to three families according to new ordinance which allows three families within residential district on lot greater than $\frac{1}{2}$ acre that has town sewer and water available. Addresses criteria as follows:

1. Property in Residential district; 3 dwelling units allowed with excess of $\frac{1}{2}$ acre. Lot is .8 acres.

2. Ordinance requires two 9 x 18 parking spaces per dwelling unit; plans shown are for 10 x 20 spaces.

3. Open space must be at least two times area covered by structures and parking. Open space they've preserved far exceeds requirement.

4. Economic places to live are being provided in utilizing an existing older home within residential district. Building is over 100 years old with stone foundation throughout. Barn, post and beam construction, would become residential unit. Main house would have residential units on each of two floors.

Mitchell asked for open space details. Sullivan said building and parking space doubled would mean that 20K SF would need to remain open. With .8 acres, they'll have in excess of 30K SF open space.

Abutter comments were sought.

Harold Jowers, Intervale Rd (across from Bragdon) said he thought neighbors would go along with two units but feels three would be too many. Doesn't think house is large enough for two families; and third family unit would mean more children (and noise) and playing in the streets.

Abutter Richard Tuttle asked for parking to be shown on plan. There are six spaces proposed with direct access from street to each space (head in, no curb).

Responding to Jowers concern about possible increase in number of children, Sullivan quoted ordinance (pg A-5) "purpose of residential district is to provide opportunities for mixed types of residential uses with high density." Ordinance allows three units if criteria met, he added.

Mitchell wanted justification to the Board that proposed use would not be detrimental as far as noise, lights, odors, etc, are concerned. Sullivan responded that ordinance provides for this type (residential) use in that district. It assumes that the (residential) use would not adversely effect a residential district.

As far as effect to surrounding property values are concerned, Bragdon said he felt they'd increase. There would be little structural change to interior; outside would be cosmetic. Exterior would get more attractive appearance.

Mitchell then asked for Board comments. Neil Faiman had two. Felt Planning Board intention in proposing this ordinance was that it would apply to downtown residential buildings, ie buildings on Main Street or Maple Street from Forest to Prince.

Sullivan said this was his reason for wanting to record these proceedings. Said although that may have been Planning Board original intent, that is not what was approved at Town Meeting. This Board must deal with what was voted upon, not what may have been original intent. Asked where does "the Downtown" begin and end. The ordinance as adopted does not define or restrict where Special Exception may apply other than within the Residential district.

Faiman's second comment was that barn part of Bragdon's plan did not meet definition of residential building in existence. Said that by allowing Special Exception use of a non-residential building would be increasing amount of space for residential use.

Sullivan argued that reason for Special Exception was to "relax" criteria of "hardship" of a variance and make it easier to make use of large buildings. Felt that Board has historically considered barns as residential (or accessory) use.

In response to Faiman's comments, Ms Eckstrom said she agreed with Sullivan that what was voted upon was not specific to a certain area within the Residential district. As secretary to Planning Board she followed development of this ordinance. Planning Board may initially have wanted (or intended) to limit the Special Exception to certain lots within the Residential district, however comments from property owners and some Board members indicated this may be prejudiced. She cited "large" houses on Dale St and Forest Rd as examples. Specific streets or boundaries for the Special Exception were eliminated from final wording and what was voted at Town Meeting did not refer to "Downtown". What was voted upon was "within the Residential District."

Mitchell asked Ms Eckstrom if she recalled any reference to barns as residential use. There was no specific reference or definition but felt that historically, barns, garages, outbuildings, by whatever name, had no use other than being accessory or incidental to a residential use have been considered residential buildings.

George Infanti agreed. "Barn" is a question of semantics. Because it's a barn doesn't mean it's farm use. Case here is that it's used as a garage to store personal property.

Faiman replied maybe this meets definition then because it's attached to main building.

Board review without abutter input yielded one question. Grayson Parker asked if there could be a problem with one of the parking spaces encroaching on water line easement. Sullivan responded that there are no restrictions on parking

spaces or driveways going onto this kind of easement.

Mitchell summarized evidence. Applicant has shown no excessive noise, odor etc if the expansion of the residential use allowed; no evidence that surrounding property values would decrease; adequate sewer and water facilities; adequate on-site parking; attached barn is part of residence, fits definition of residential building; enough land for three units; open space exceeded; and all requirements met.

Harold Jowders asked clarification of term "noise". Mitchell responded Board must determine that noise from proposed use will not be detrimental or adverse to neighborhood in which use is proposed. There is no evidence that the noise from additional families or children is adverse to a residential neighborhood.

George Infanti moved to accept the Special Exception for the three families adding that proposal meets all criteria; second by Grayson Parker. Vote on the motion:

Faiman - yes - all conditions demonstrated;

Infanti - yes - for same reasons;

Parker - yes - same reasons, nothing against proposal;

Blanchard - yes - meets all criteria;

Mitchell - yes - same.

Special Exception granted unanimously.

Bragdon will next come before the Planning Board for Site Plan review. Mitchell advised audience of their rights to request rehearing. Case closed.

William McKeown - 45 Abbot Hill Rd, request for Special Exception under new ordinance. McKeown explained he wanted to take a gambrel (storage) building on his lot and put a apartment in it. Lot is 2.6 acres.

Faiman did not feel Board could hear request for variance (note application) because notice was for special exception only. Also because building permit not yet applied for and denied, Board had no basis on which to hear variance request, according to his interpretation of RSA 674:33.

Tom Mitchell said there is no historic precedent for order of appearance - that is whether an applicant comes to ZBA or Building Inspector first. Didn't feel denial had to be rubber stamped.

McKeown said he had Frank Millward, Building Inspector out to site. Millward apparently advised him to go to ZBA first to see if plan would be allowed. Millward said he had visited site on McKeown's request. Problem he saw with plan was that there were two separate buildings. He suggested his going to ZBA for variance. Millward added that since McKeown came to him first, Millward's response was like a denial. It doesn't make sense for a landowner to spend money and time on building plans or permits when the intended use could be denied.

Mitchell concurred. The sequence may not be totally in synch with statutes but is within the spirit of our ordinances. Steve Blanchard and George Infanti agreed with this as well.

Ms Eckstrom said that McKeown had first come for variance

and completed application for variance. She said she suggested applying for Special Exception because she felt situation complied with ordinance. Also "hardship" for variance must be something unique to the land, not financial. McKeown had addressed the five criteria necessary for granting a variance on the application. Eckstrom suggested the information be kept there as part of the application because the Board would ask similar questions for Special Exception. She admitted she also had some doubts as to which application relevant here. She did notice for Special Exception only and said should perhaps have noticed for both.

McKeown then addressed criteria and plan. He has two buildings, one his home, the other his workshop, storage gambrel building. Wants to put apartment in that building. Buildings are 70 ft apart. Each building has direct lines to Town Sewer and he pays sewer tax each year for both (although the service in the gambrel is unused). Water is now from a well, however Town water is available should he want to tie in. Property has 2.6 acres, plenty of land. Gambrel would have own parking area and it has own driveway running off main driveway to it. Abbot Hill Rd is State highway and his driveway location had to meet State requirements when put in. He can meet the open space requirement. He said his proposed use would have no adverse effect; he must live in close proximity too so noise, traffic, lights, etc would effect him as well. Would not want adverse activity there.

Board saw two particular problems with this application. First the buildings a detached and therefore would have more than one residential building on the lot.

Steve Blanchard mentioned the deed - felt there were covenants with deed restricting number of residential buildings there. Eckstrom said she had done some research on the deed back to 1967. There were no restrictions as far as further subdivision is concerned. McKeown's lot was part of a two lot subdivision. The two newly created lots changed hands on almost the same day in 1974/1975. The language regarding residential use is different in each. McKeown's deed states "premises shall be used for one-family residential homes." The other deed differs by saying "premises shall be used for one one-family residential home.) Feels language in McKeown's deed unique and suggested Town Counsel opinion, clarification be sought on this and defining "residential buildings" before decisions made.

Parker said he understood "one-family residential homes." His problem is with "residential building"; feel McKeown should subdivide as there is plenty of land to do this. Lot requirement 1 acre but could be as small as $\frac{1}{2}$ if water and sewer there.

Ron Bitten asked status of water. Is Board considering application for Special Exception on basis of water. Board replied problem is that there are two buildings on lot. Approving the Special Exception would be in violation of another ordinance.

Eckstrom said another reason she recommended Special

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Exception is that water is available and lot is on sewer. Board agreed that availability of the service is key here.

Bitten asked if Special Exception were granted, could Board require McKeown to tie in to Town Water. ZBA felt it could not.

Pam Ellis, newly appointed Planning Board alternate, pointed out that Board was considering this "barn" quite differently from the barn in the previous case. She sees them both as residential use. Board insisted that difference is that buildings here are detached.

Eckstrom agreed that Board was viewing buildings differently.

George Infanti moved to accept the application for special exception as submitted. Second by Neil Faiman. Motion then withdrawn because of improper wording.

Grayson Parker moved to grant Special Exception as submitted; second by Faiman. Vote on the motion follows:

Steve Blanchard - No - does not conform to Art V Section A 4. And there can be no more than one residential building on a lot.

George Infanti - No - for same reasons.

Neil Faiman - No - it was not a residential building in existence as of March 14, 1989; does not conform to Art V Section A 4 or D-2-e. It is not providing economic housing in existing old large structures in Town.

Grayson Parker - No - does not meet Art V section A-4.

Tom Mitchell - No - not residential building; creates more than one residential building on lot; not in spirit of ordinance.

Request Denied Unanimously. McKeown was advised of his rights to appeal.

Ms Eckstrom said she felt she had committed technical error in advising McKeown to seek Special Exception; may have misguided him. She apologized to him and invited him to come to Planning Board work session on July 6 on pre-ap basis to find out what would be needed for subd and to get application filed for July meeting.

Other business, minutes of May 30, 1989 were reviewed. Motion for acceptance by Parker, second by Infanti; unanimously approved.

Next meeting to be held July 12. Hearings scheduled are Linda Vanetti, Special Exception and Granite State Concrete, appeal from Administrative Decision and variance. Eckstrom said that Vanetti situation similar to McKeown's in that there'd be two separate residential buildings on lot. Some research revealed that there are several parcels in Town that already have two residential buildings on lot; how can Special Exceptions be granted to these people and not to one like McKeown simply because there's no one "living" in the residential building as of March 14. This is why she felt Town Counsel opinion necessary.

Board suggested she contact Ms Vanetti and advise her

that because of two separate buildings, granting Special Exception would violate ordinance. Give her option of withdrawing application before legal notice, etc and refund money paid. Eckstrom will do this and will speak with Planning Board further on the matter.

Meeting adjourned at 9:10 PM.

Respectfully,

A handwritten signature in cursive script, reading "Joanna K. Eckstrom". The signature is written in dark ink and is positioned above the typed name and title.

Joanna K Eckstrom
Secretary