

MINUTES
ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, April 1, 2019 – 7:00 p.m.
Peterborough, New Hampshire

Present: Dario Carrara, Seth Chatfield, Sharon Monahan, Peter LaRoche, and Loretta Laurenitis.

Also Present: Tim Herlihy, Code Officer and Laura Norton, Office of Community Development.

Chair Carrara (Mr. Carrara) called the meeting to order at 7:00 p.m. “Good evening everyone and welcome to the regularly scheduled ZBA meeting for April.” He then introduced the Members and Staff.

Minutes:

A motion was made/seconded (LaRoche/Chatfield) to approve the minutes of March 4, 2019 as written with all in favor.

Case No. 1251: Timothy and Angela Robinson request a Variance to build a new home not connected to town sewer but to an individual septic disposal system as regulated by the zoning ordinance in Article II, Section 245-9.1 D. 2. The property is located at 236 MacDowell Road, Parcel No. U030-052-100, in the West Peterborough District.

Ms. Monahan recused herself from this case leaving a 4-member Board. Mr. Carrara then explained because the Board did not have a full 5-member Board and there was no alternate to seat the applicant has the opportunity to continue their case to the next regularly scheduled ZBA Meeting. The Robinsons elected to continue with their case. Mr. Carrara asked if the applicant had anything further to present.

Angela Robinson introduced herself and her husband Tim. A map of the area was projected, and Mr. Robinson pointed out their lot on MacDowell Road. “The Performance Standards of the West Peterborough District dictates that *all new development* must be connected to town water and sewer” he said adding “the Utility Supervisor (Nate Brown) confirmed the closest sewer line would have to be extended 680 feet (with three manhole covers) to achieve this.”

Mr. Robinson went on to say, “that is a huge process and a huge expense, we are the only lot on the road that would tap into this line, all the lots around us have septic systems.” He noted he had spoken with the abutters “and our request for a septic system is fine with them.”

Mr. Carrara agreed the extension was an extreme expense for one household and questioned the Performance Standards’ language of *all new development*. “It is not clear or helpful and there is no definition of this term” he said. Mr. Robinson noted a site plan and septic design existed before the West Peterborough Zoning District was created and encompassed their lot.

With no additional questions from the Board Mr. Carrara opened the Hearing to the public. With no questions, comments or concerns Mr. Carrara closed the Hearing and the reviewed the Board’s Deliberative Statement before entering the deliberative session.

Deliberation:

Mr. Carrara noted “with that said what is the general consensus of the Board?” After a brief review and discussion of the Variance Criteria each Member agreed that the applicants met the criteria and there was no reason to punish them because of a rezoning of their lot several years ago.

Mr. Carrara urged the Staff submit a correspondence to the Planning Board to consider clarification of the Performance Standards language “all new development” to avoid confusion in the future.

A motion was made/seconded (Chatfield/Laurenitis) to approve the request for a Variance to build a new home not connected to town sewer but to an individual septic disposal system as regulated by the zoning ordinance in Article II, Section 245-9.1 D. 2. With all in favor.

NOTICE OF DECISION

Case Number 1251

April 1, 2019

You are hereby notified that the request of Timothy and Angela Robinson, for a **Variance** to Chapter 245, Article II, Section 245-9.1 D. 2. of the Zoning Ordinance, to build a new home not connected to town sewer but to an individual septic disposal

system, on property located at 236 MacDowell Road, Parcel No. U030-052-100, in the West Peterborough District, is hereby **GRANTED**.

Signed, Dario Carrara, Chair

Case No. 1252: Steven Walker requests a Variance to build a new Accessory Dwelling Unit that is larger than the 30% of the gross living area of the principal living unit as regulated by the zoning ordinance in Article IV, Section 245-24.1 A. 1. The property is located at 128 Elm Hill Road, Parcel No. R002-039-000, in the Rural District.

Ms. Monahan was seated for this case

Steve Walker stood and introduced himself as the property owner. He distributed a graphic of the lot and pointed out a large barn with a small living space, a smaller barn and his primary dwelling unit.

“We plan to build an ADU that is larger than the allowed 30% of the primary dwelling” he said and as he pointed out the location of the ADU added “having measured my house we come up with about 37 to 42%” Mr. Walker went on to explain his plans for a typical New England farmhouse that would match the historical buildings in the area. “It will be a net-zero house with solar power (still connected to the Grid) but with no net power consumed for heating or electricity.”

Mr. Walker noted he’d bought the parcel 16 years ago and had been buying lots around him as they came up for sale “to put the lot back together after having been subdivided a long time ago.” He pointed out the larger, restored barn would be kept with the smaller decrepit barn “(it is ready to fall over)” scheduled to be demolished with the ADU taking its place. “The small barn was used for horses, who when not watched *get out* like they did last night.” He noted he intended to build a smaller barn closer to his residence to be able to monitor his animals.

Mr. Walker noted other ADUs in his neighborhood that exceeded the 30% accessory allowance including one that was 64% of the primary living residence and another that was 61% He went on to tell the Members the purpose of building the ADU was to have his sister and her family move into it and farm the land. “I have actually tried to buy them a house with no luck, so I decided to build” he said noting “this house will be half the size of the houses in the neighborhood (a pre-fabricated modular, 3-bedroom dwelling approximately 1960 square feet for a family of four). He reminded the Members of the constrictions of the pre-set dimensions of the prefabricated modular

home and the net zero option taking up to 10% of the allowed space with its thick walls. Mr. Walker also noted access to the ADU was from Bass Road while his dwelling's access was from Elm Hill Road. "I won't even be able to see it" he said.

Mr. Carrara asked about the square footage of his residence with Mr. Walker replying "4692 square feet." Mr. Carrara noted "so the ADU allowed would be about 1400 square feet." Mr. Walker reiterated the actual useable space would be commensurate when considering the space consumed by the net zero construction.

Both Ms. Monahan and Ms. Laurenitis questioned why Mr. Walker did not opt to subdivide his land. A brief discussion about his farm land followed with Mr. Walker telling the Members he wanted to maintain the land as a family farm "and drawing (property) lines all over it is not a good idea." He noted he'd been restoring the fields for the past 10 years and that a subdivision was not a good idea for him, his family or the town. "I just think that would be a bad decision" he said.

Several Members also asked for clarification on the living quarters in the large barn. "No one has lived there in over one hundred years" replied Mr. Walker. From the audience abutter Kitty Cloud interjected "it is not an apartment, there are no utilities there." Another abutter, Rosalie Bass added "it is just a room that farmhands probably slept in while watching the animals." Ms. Monahan replied "well that makes a big difference because you cannot have more than two living units on a lot. It is clear now that the barn is not habitable."

Mr. Walker concluded by reviewing the five criteria for approval reiterating the home would be of high quality and maintain the historic fabric of the neighborhood while being farmed by a family member. Ms. Monahan noted site and septic plans would be necessary with Mr. Walker noted he planned to have both if the Variance was approved.

Mr. Carrara opened the hearing to the public. Kitty Cloud introduced herself as an abutter and pointed out the areas currently being farmed by Rosalie Bass. "We are trying to keep the spirit of farming alive" she said adding "Bass Road is a beautiful road, it used to be the main road to Nashua before Route 101 was constructed." Ms. Cloud voiced her support of the ADU noting "having a small farm house in that location will mirror the other farms."

Rosalie Bass introduced herself telling the Members "we are the only two owners on Bass Road, it is a bit lonely" adding "the small barn that is there now is an eyesore, I

think a small farmhouse will make the area more attractive, I support the ADU, I am excited about it.”

With no other questions, comments or concerns from the public Mr. Carrara closed the Hearing and the reviewed the Board’s Deliberative Statement before entering the deliberative session.

Deliberation:

Mr. Carrara again queried the Board. “What are your thoughts?” he said. Mr. Chatfield replied “I am inclined to grant the Variance, it is 100% in the spirit of what it is designed for. There is no reason not to.”

Ms. Laurenitis agreed noting “I am also inclined to grant it, but I am struggling a bit with the hardship.” She went on to note the size limitation of the ordinance (square footage and number of bedrooms) saying “it is a large property and I can understand why they don’t want to break it up (subdivision). I am all for agriculture in the area but again, I struggle with the hardship.” Ms. Laurenitis went on to say, “this is definitely in the spirit of the ordinance, even without the hardship it is totally in the spirit and purpose and intent of having a family member there and that she will be farming the land.”

Referring to the allowance of only one accessory dwelling on the property Ms. Monahan interjected she was going to vote against the request until it was made clear that the room in the large barn was *not* an apartment and was *not* habitable. She stated she was in favor of the Variance on its merit but also struggled with the hardship criteria. “What is unique is its special conditions. You’ve made a good case for this” she said adding “you will have to provide adequate utilities and site plan to make a dwelling.”

As the Members agreed there would no change to the character of the neighborhood Mr. Carrara noted “I don’t see the hardship. The ADU ordinance allows for a maximum of 750 square feet or 30% of the primary living space for larger houses which would allow an ADU of about 1300 square feet in this instance.” Holding up the state statute Ms. Monahan pointed out the state’s *minimum* square footage for an ADU was 750 square feet. Mr. Carrara replied, “we are not considering state statute we are considering our zoning requirements which have not made provisions for larger houses.” He went on to say, “I am not sure why we took away two dwellings on one lot (by Special Exception) if you have the acreage in the first place.” He concluded “I just cannot get behind the Variance itself, it is not fair to other property owners to grant

this Variance especially when the parcel can be subdivided.” When another Member noted Mr. Walker’s reservation of any subdivision to his land Mr. Carrara replied, “it is an imaginary line more than anything else.” He concluded “I can see both sides of this, I really can, and I do like the story, the application is for family and farming and having the area look like a farm. I like that very much.”

Mr. Chatfield reiterated Mr. Walker’s intent to keep his property intact and move family members on to it. Ms. Monahan questioned the setting of a precedence for other accessory dwellings with Ms. Laurenitis reassuring her that was not the case and each application would be reviewed individually on a case by case basis. Mr. Chatfield interjected “this is Greenerboro, we pride ourselves on being a green community and his plan is green construction with the next sized (down) modular home being too small for the family.” Mr. Carrara replied “you don’t have to build a modular house for it to be a green house. That is like saying I have to drive 70 miles down the highway because I drive a V8 engine instead of driving V6 engine and going the allowed speed.” Mr. Chatfield disagreed noting “it is not a radical request.”

Citing the Variance application Ms. Monahan noted the proposed ADU was to be 46% (not 37%) as discussed. Mr. Walker replied, “it is all in how you measure the (primary) house, 46% is the worst-case scenario” adding “you can calculate it to 37%, it depends on how it is counted.”

Mr. Chatfield noted the attendance and support of the abutters who were strongly in favor of the ADU and the spirit and intent of the ordinance to bring family together on a unique farming property. He asked if the ADU ordinance had been written with the intension of housing just one person. It was noted ADUs can be up to 750 square feet or up to 30% of the primary living space with a maximum of three bedrooms “so no” replied Mr. Carrara. Mr. LaRoche noted trying to keep the farm intact and not subdividing it into multiple house lots was in itself a hardship.

A motion was made/seconded (LaRoche/Chatfield) to approve a Variance to build a new Accessory Dwelling Unit that is larger than the 30% of the gross living area of the principal living unit as regulated by the zoning ordinance in Article IV, Section 245-24.1 A. 1. With all in favor but Mr. Carrara who opposed.

NOTICE OF DECISION

You are hereby notified that the request of Steven Walker, for a **Variance** to Chapter 245, Article IV, Section 245-9.1 D. 2. of the Zoning Ordinance, to build a new Accessory Dwelling Unit that is larger than the 30% of the gross living area of the principal living unit as regulated, on property located at 128 Elm Hill Road, Parcel No. R002-039-000, in the Rural District, is hereby **GRANTED**.

In granting this variance, the Board imposes the following conditions:

- The overall area of the ADU will be limited to 1,968 square feet as submitted in the application.

Signed, Dario Carrara, Chair

The meeting adjourned at 8:15 p.m.

Respectfully submitted,

Laura Norton

Administrative Assistant.