

Town of Newington, NH
ZONING BOARD OF ADJUSTMENT

Meeting Minutes, Monday, May 15, 2017

Call to Order: Chair Matt Morton called the May 15, 2017 meeting at 6:30 p.m.

Present: Chair Matt Morton, Ralph Estes; John Frink; Edna Mosher; Jim Weiner; Town Planner, Gerald Coogan and Jane Kendall, Recorder

Absent: Alternate member, Brandon Arsenault

Public Guests: John Liatsis; Brian Conover with Walmart; Dan Backstrom with SGA Design Group; Planning Board Vice-Chair Christopher Cross; Planning Board Chair Denis Hebert

Public Hearings:

Chair Morton announced that there were four members present for the meeting and that he would vote if there was a tie on any motions.

- 1) A request by John Liatsis, regarding his property at 271 Nimble Hill Road, Tax Map 18, Lot 30B for a variance from Article V, standards B.1 to allow an Accessory Dwelling Unit (ADU) to be 1,200 square feet instead of 1,000 square feet

Board member, John Frink commented that his copy of the Zoning Ordinance did not include a section B1 under Article V regarding Accessory Dwelling Units (ADU) for his reference in preparation of the hearing. Town Planner, Gerald Coogan replied that he was in the process of updating copies of the Zoning Ordinance for Board members and he expected it to be ready in a week.

Newly appointed Board member, Edna Mosher commented that no Zoning Ordinance book had been provided to her at all. Mr. Coogan advised her to see administrative assistant, Eleanor Boy for a copy.

The applicant, John Liatsis appeared before the Board and presented his request for a variance. Mr. Liatsis stated that he had purchased the property that included two stories of unfinished space above the garage. He said the some of the electric and plumbing had been roughed in and he wanted to finish the space for an accessory

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dwelling unit, but the Ordinance on in-law apartments had changed to ADU's with a maximum size of 1,000 square feet. Mr. Liatsis showed the Board a floor layout of the third, which included two bedrooms a bath, and existing knee walls that made the space 1,200 square feet.

Chair Morton commented that he would have liked to have liked to have been provided the dimensions of the structure on the application.

Ms. Mosher asked if it were possible for him to decrease the living space to comply with the Ordinance and Mr. Liatsis replied that the existing knee walls and stairwell made it impossible to move the walls in without limiting the livable space. He added that a dormer would improve the height, but it would also increase the floor space.

Mr. Liatsis said the staircase to access the apartment was already on the side of the house when he purchased the house and it couldn't be moved to the back because the back was necessary to meet the fire department's requirement for egress.

Board member, Jim Weiner asked what would be required to comply and Mr. Liatsis replied that he couldn't comply without gutting the existing electric, insulation and wall structures and putting a wall across the middle of the bedroom. He added that the sloped ceilings only left so much space to work and there wouldn't be enough room for a bed or closet if he reduced the space by 200 square feet. Mr. Liatsis showed a bulleted list of the ADU requirements and said the structure met everything except it exceeded the maximum square feet restriction and that was why he was requesting a variance.

Mr. Frink asked what State's motivation was for limiting the square feet of an ADU. Mr. Coogan replied that the State set a minimum requirement of 750 square feet for accessory dwelling units, but gave towns flexibility in setting a maximum so Newington established 1,000 square feet as a maximum.

Mr. Weiner stated that the Planning Board set the maximum square footage of ADU's to 1,000 to provide inhabitants with more living space and reasonably accommodate the possibility of creating an ADU in the lower or upper level of an existing home, noting that anything larger might qualify as a duplex.

Mr. Weiner asked Mr. Liatsis if he might consider converting the dwelling to a duplex. Mr. Liatsis replied that he spoke with John Stowell, the building inspector regarding a duplex, but there would be more stringent requirements that would change his entire property. He said Mr. Stowell and he agreed that it made more sense to request a variance for a slightly larger ADU.

Chair Morton stated that he had done a site walk and observed both a larger garage door and a smaller door. He asked if the purpose was to rent the space or to create an in-law apartment. Mr. Liatsis replied that his intent was to create an apartment for his mother, who watches his children, but Mr. Stowell informed him that in-law apartments had been replaced with ADU requirements. Ms. Mosher commented that the applicant's mother wouldn't always reside in the dwelling.

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Mr. Liatsis stated that the house was built in 2001, prior to the ADU Ordinance, but that the septic system met all the requirements and the leach field was very large for the number of bedrooms

Chair Morton asked how many bedrooms there were in the main house and Mr. Liatsis said he thought there were four very large bedrooms and another room was more like a den because it didn't have a closet. He added that the right side by the garage was not finished. Chair Morton remarked that he wouldn't need a variance if he only used the existing house.

Board member, Ralph Estes asked if there was a bathroom in the dwelling and Mr. Liatsis replied that there was. Mr. Frink asked if the septic met the requirement for the number of bedrooms and Mr. Liatsis replied that it did.

Mr. Frink commented that this ADU was less than 20% of the existing living space. He added that the dwelling was half a mile in the woods and wouldn't impact any abutters.

Mr. Weiner asked if he had already started working on the dwelling and Mr. Liatsis said he had prior to the Ordinance change and had discovered the ADU restriction when he applied for his electric permit.

Chair Morton asked if he would use the same electric meter and Mr. Liatsis replied that he could, but his electrician advised to put in a second meter to avoid putting the additional load on his existing house meter.

Mr. Weiner stated that he thought there was enough room to reconfigure the dwelling to meet the Ordinance, even if had to do away with a closet. Mr. Liatsis replied that it was not as simple as moving a wall because it was not like building from scratch and he would have to move the existing electric, insulation and plumbing that had been started.

Mr. Liatsis added that apartments were getting bigger and that he thought 1,000 square feet was good for one bedroom, but 1,200 square feet was more adequate for two bedrooms. Weiner commented that he had lived in a smaller two-bedroom apartment with a roommate himself and it had been perfectly adequate for him.

Mr. Liatsis replied that there were built-ins already on the first floor of the apartment before the Ordinance changed so there wasn't anything he could do there and he would need to eliminate an entire bedroom in the upstairs and wall off and eliminate the front of house to meet the 1,000-square foot requirement and there would be no windows on that side of the dwelling if he took the second bedroom out. He added that he would do it if it was easy, but it was not.

Mr. Liatsis went on to say that there were slanted ceilings on the third floor and a staircase on the outside with a landing that went to the second floor above the garage. He said he was working with the fire department to determine the best way to exit the third floor so he didn't want to constrain that egress.

Ms. Mosher agreed that it sounded as if the applicant was trying to make the best of the existing space and conditions.

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Mr. Weiner replied that Mr. Liatsis was speaking logically, but asked if he had talked with an architect or designer to assist him in a design that complied with the Ordinance. Mr. Liatsis replied that he hadn't because the space had already been started. Chair Morton added that an architect would cost more and they were quibbling over 200 square feet, which was 10 feet by 10 feet.

Mr. Weiner went on to say that Mr. Liatsis' mother could live there within limits, but if it became a rental unit, a larger family could move in and it might not be up to code. Mr. Weiner asked why Mr. Liatsis was trying to meet the ADU requirements instead of requirements for a duplex. Mr. Liatsis replied that Mr. Stowell had said the same thing and he agreed. Mr. Coogan replied that this was an independent living space with a kitchen, bath, ingress and egress that met the fire safety code and was architecturally consistent. He went on to say that the applicant wouldn't have applied for a variance if the structure was in complete compliance with the Ordinance.

Mr. Weiner stated that his concern was that it would set a precedent for requests for larger ADU's if the Board granted an exception from the 1,000-square foot minimum.

Chair Morton closed the public hearing and opened the discussion to the Board.

Jim Weiner move to deny the request by John Liatsis for a variance from Article V, standards B.1, regarding his property at 271 Nimble Hill Road, Tax Map 18, Lot 30B to allow an Accessory Dwelling Unit (ADU) to be 1,200 square feet instead of 1,000 square feet. Ralph Estes seconded the motion for discussion.

Ms. Mosher stated that the property was huge and irregular and it seemed reasonable to request a variance for an additional 200 square feet to use the property to its best advantage.

Mr. Estes agreed that it was an existing condition and that the applicant wouldn't have been required to seek a variance if he had completed the construction a few months earlier, before the Ordinance was revised.

Mr. Weiner commented that the applicant should have gone to the building inspector first if he wanted to be grandfathered under the old Ordinance, but the Ordinance change that was voted for at the Town meeting.

Chair Morton stated that he thought the applicant had a hardship because the construction had begun before the Ordinance had changed. He added that the town voted for the Planning Board's recommendation of 1,000 square feet maximum, but they could have picked 1,500 square feet and then he wouldn't have needed a variance.

Mr. Estes added that everyone that voted may not have had a point of reference as to the ramifications of the Planning Board's maximum either. Mr. Weiner replied that anyone with a modicum of intelligence could understand the intent.

Mr. Frink commented that the intent of the town vote was to prevent people from building dwellings that were duplexes and calling them ADU's.

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Mr. Frink went on to say that the Ordinance was changed seven years after this overly large dwelling had been built by a former owner that ran out of money to complete the construction and that created an unusual situation that was virtually grandfathered. He said the applicant purchased the dwelling in that condition and discovered the Ordinance change when he applied for an electric permit.

Mr. Frink reminded the Board that they had to go through the criteria for the motion to deny unless the motion maker withdrew the motion, but he wanted to make his point, so it was important for Board members to keep in mind that the motion was to deny.

Mr. Frink stated that denying the request would be *contrary to the public interest* because the applicant was trying to complete the dwelling that had already been started when he purchased it prior to the Ordinance change to establish regulations for ADU's. He added that the applicant already investigated what would be involved with reducing the space to adhere to the 1,000-square foot regulation and it was determined to be impractical.

Mr. Weiner replied that other homes in town were large as well, but the Planning Board hadn't proposed an ordinance change that would require every ADU to follow the same architectural proportions for every dwelling as criteria.

Mr. Weiner went on to say that it was possible to finish a space large enough for his mother, but he was concerned that an ADU of this size could become a renter's unit. He said the Planning Board limited the size to reduce the possibility of residential growth explosion in town and even though it was in the woods, granting this request would be contrary to the public interest because it would encourage an argument for similar ADU's.

Chair Morton stated that each application for relief from the Zoning Board of Adjustment (ZBA) was entitled to be considered as an individual case on their own merit and the Board's decisions did not set an established precedent the way zoning ordinances did.

Ms. Mosher agreed that the Planning Board provided guidelines, but that the ZBA always looked at each case individually. She said this was a special case on an existing building space and it would be an individual decision for one person in the community.

Mr. Frink went on to say that it would not be in the *spirit of the Ordinance* of providing good living conditions with light and space if the variance to complete the existing space was denied.

Mr. Frink stated that *substantial justice* would not be served and there would be *no benefit to the general public* by denying the variance for an applicant that was trying to complete and make use of the large structure that had been designed as an accessory dwelling unit.

Chair Morton added that there would be no benefit to the public by denying as there would be *no impact to surrounding properties* as the residence was surrounded by

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woods and there were no visible abutters and *literal enforcement of the Ordinance* would create an unnecessary hardship on the applicant.

The motion to deny the variance did not pass, 1-3 with Jim Weiner voting in favor and Ralph Estes, John Frink, and Edna Mosher opposing.

Ralph Estes moved to accept the request by John Liatsis for a variance from Article V, standards B.1, regarding his property at 271 Nimble Hill Road, Tax Map 18, Lot 30B to allow an Accessory Dwelling Unit (ADU) to be 1,200 square feet instead of 1,000 square feet. Edna Mosher seconded the motion and the motion passed 3-1 with Ralph Estes, John Frink and Edna Mosher voting in favor and Jim Weiner opposing.

(Planning Board Chair Denis Hebert left at 7:21 p.m. at this point in the meeting.)

- 2) A request by Walmart Real Estate Business Trust regarding their property at 2200 Woodbury Avenue, Tax Map `9, Lot 1 for a variance from Article IX in order to allow a sign to exceed the maximum height of 35 to 40 feet, and from Article VI to reduce minimum sign front yard setback distance of 75 feet and side yard setback distance of 30 feet.

Dan Backstrom with SGA Design Group, one of Walmart's architects appeared before the Board to present Walmart's case for granting the variance for a taller pylon sign that would replace their existing sign at a slightly different position on Woodbury Avenue for greater visibility.

Mr. Backstrom stated that Walmart took over the space in 2000. He explained that the store was originally designed to face Route 16, Spaulding Turnpike with its entrance off the northbound exit, but that exit had since been removed, leaving the Woodbury Avenue entrance as its main entrance taking Exit 3 on the Spaulding Turnpike heading south.

Mr. Backstrom stated that there were tall trees and a 5-6 foot drop from the hill that made visibility of the sign and finding the entrance before the turn a hardship. He said it was a part of the original developer's agreement that the trees would remain, but the trees were at the peak of their height and were in declining health so they were proposing to cut and replace eight of them with the same species of 6-7-foot fir trees to retain the 300-foot line of sight.

Chair Morton asked if they were concerned with the trees growing and covering the sign. Mr. Backstrom said the existing trees were there a long time and so they thought they wouldn't grow any taller.

Mr. Estes asked if Walmart had been aware that the New Hampshire Department of Transportation (DOT) was changing their entrance at the time. Mr. Backstrom said he

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was not sure. Mr. Estes replied that Walmart should have been aware and argued against the change.

Mr. Frink stated that an ordinary person would not know that there was a stepdown area and asked who owned the stepdown area and curb cut. Mr. Backstrom said he thought the adjacent property owner owned the curb cut and the State owned the stepdown area.

Ms. Mosher asked how far the sign would be from the Isaac Dow house and Mr. Backstrom replied that it would be approximately 600 feet away.

Ms. Mosher commented that she thought there were too many signs on the Woodbury Avenue corridor and wondered if they could put the sign on the side of the building instead so the marquee could be seen at a distance by the north bound highway traffic. Mr. Backstrom replied that they had considered it, but the Isaac Dow house blocked the view of the Walmart building when coming up Exit 3 to Woodbury Avenue and the purpose of the sign was to help drivers find the entrance.

Mr. Coogan agreed that it was difficult for anyone unfamiliar with the area to find Walmart. Mr. Weiner also agreed that changes to the highway made it difficult to find the Walmart entrance.

Mr. Estes commented that Town Faire Tire was required to comply with their sign on the abutting lot. Mr. Backstrom replied the Fox Run Mall sign was closer to Woodbury Avenue as was Newington industrial park and the property across from 2229 Woodbury Avenue. Chair Morton agreed that there was another case where a sign was allowed to be closer to the road on Shattuck Way. Mr. Estes said some of the signs were put in before the Ordinance was established. Mr. Cross added that those signs were also lower.

Ms. Mosher commented that she was fine with Town Faire Tire's sign that complied, but she thought anyone looking for the large Walmart building could find it with their GPS and the existing signs and a new sign would not make anyone else go there.

Mr. Backstrom said if they were starting from scratch they would move the building, but they were stuck with existing conditions. He added that they were complying with one sign, but they wanted to be more visible to potential customers that were unfamiliar with their location.

Ms. Mosher pointed out that the Isaac Dow house and the old Beane Farm house was on the National Register of Historic Places and that it was her understanding that the large sign on the Beane Farm was coming down. She added that a taller sign would also obstruct the view of the mountains as drivers approached the hill and the Spaulding Turnpike heading north.

Chair Morton replied that the sign that belonged to the current owner would come down as soon as the property was sold, but the new developer had the right to put another sign up to advertise their business. He pointed out that there was the historic

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Newington village, but this was on the commercial side and there was nothing very pretty along Woodbury Avenue.

Planning Board Vice-Chair Chris Cross commented that although Woodbury Avenue was not residential, it was the intent of the Town to preserve the existing rural character when possible, but the Commercial and Industrial businesses did degrade that appearance. He went on to say that arrangements had been made for extensive plantings to during the development of the original Walmart site to soften the monolithic building that abutted the historic Beane Farm and Isaac Down house and preserve little pockets of landscaping along Woodbury Avenue.

Mr. Cross went on to say that a tall sign might be appropriate along the highway, but in the development of that area of Woodbury Avenue was to encourage signage that would be more in keeping with the historic area.

Mr. Cross asked if the sighting distance of 300 feet for the sign was based on speed and Mr. Backstrom said it was based on standards for all Walmarts. Mr. Cross commented that he thought a lower sign that was closer to the entrance would be more in keeping with the area and would be sufficient for anyone using a GPS to find the entrance.

Mr. Frink asked if it might be possible to place a lower sign would be screened from the north bound lane so it wouldn't interrupt the view of the mountains since the median strip prevented entrance from that direction anyhow. Mr. Estes, Ms. Mosher and Mr. Weiner all agreed that a lower sign to steer toward drivers to the entrance going south wouldn't be necessary to view from other side. Mr. Backstrom replied that there was an existing telephone pole line in front of the trees that would prevent that placement. Mr. Estes suggested that he consider placement before the telephone pole.

Ms. Mosher agreed that the trees and the existing sign needed to be replaced as no one would see a 40-foot sign when traveling down Woodbury Avenue from the highway.

Discussion continued regarding the size and setback of the proposal. Mr. Weiner stated that he still thought the sign could be smaller and Mr. Estes said other businesses had placed their signs in their parking lot within the setback.

Mr. Cross commented that as a member of the public that fought for area to have historic significance, he didn't think the sign design was carefully.

Mr. Estes pointed out that the ZBA couldn't redesign the sign, but could only vote on the proposal as presented. Ms. Mosher replied that the applicant could go to the Planning Board. Mr. Coogan said the applicant went to the ZBA for relief first. Chair Morton added that they could then go to the Planning Board for a site design review.

Ralph Estes moved to grant the request by Walmart Real Estate Business Trust regarding their property at 2200 Woodbury Avenue, Tax Map `9, Lot 1 for a variance from Article IX in order to allow a sign to exceed the maximum height of 35 to 40 feet,

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and from Article VI to reduce minimum sign front yard setback distance of 75 feet and side yard setback distance of 30 feet for discussion. John Frink seconded the motion.

Mr. Frink stated that granting the request *would not be contrary to the public interest* because a more visible sign would be beneficial for the public to find Walmart.

Mr. Estes stated he didn't think the request met the *spirit of the Ordinance*, however, it was up in the air whether *substantial justice* would be served because the entrance was difficult to see and get to coming from both directions without a visible sign.

Ms. Mosher stated that a sign wouldn't change the entrance access or visibility. She said Walmart was a destination that anyone that saw the marquee sign from the highway would take a turn and find one of the two entrances. Chair Morton replied that it was possible to miss the entrance going up Woodbury Avenue from the highway.

Mr. Estes, Mr. Frink and Mr. Weiner all agreed that there was a hardship because of the highway changes, but Mr. Estes said he was still befuddled that Walmart didn't do anything to petition the DOT to keep their entrance from the highway.

The motion to grant the request passed, 3-2 with John Frink, Jim Weiner and Matt Morton voting in favor and Edna Mosher and Ralph Estes opposing.

Chair Morton stated that he wished the applicant had proposed a different sign, but it was not in the Board's prevue to design signs and although residents and locals were familiar with the Walmart entrances, he understood that travelers needed a better sign to find the entrance.

Minutes: *Mr. Frink moved to approve the Minutes for the March 6, 2017 and April 3, 2017 meetings. Ralph Estes seconded, and all were in favor.*

Town Planner Update:

Mr. Coogan informed the Board that the New Hampshire Legislators had issued a mandate that Zoning Boards of Adjustment would have to go through and vote on each of the five criteria separately for their decisions.

Adjournment: *The meeting adjourned at 8:07 p.m.*

Next Meeting: TBD

Respectfully

Submitted by: Jane K. Kendall, Recording Secretary