

**Zoning Board of Adjustment
Town of Sandwich
PO Box 194
Center Sandwich, NH 03227
Minutes September 9, 2022**

Members Present: Mary Cove, Jim Bullitt, Jim Gaisser, Chris Grant, Jon Greenawalt, Tim Miner, Katherine Thorndike, Kurt Olafsen
Member Absent with Notice: Geoff Tyson

Call to Order:

Ms. Cove called the meeting to order at 7:00 p.m. Mr. Greenawalt announced that he had a cold and if anyone felt uncomfortable about it, he would leave. No one objected to him remaining.

Minutes of June 9, 2022: Mr. Grant **Motioned** to approve as written. Mr. Greenawalt seconded. 6 in favor; 1 abstained (Mr. Miner)

New Business:

Case 2022-01 O’Connell Application for a Variance concerning Section XV Section 150-104 (principal setbacks for a Detached Accessory Dwelling) of the Zoning Ordinance. The application for property owned by Kim and Fran O’Connell located at 15 Thompson Road, Center Sandwich, NH, Tax Map/Lot R22 01 in the Rural/Residential Zoning District proposes to renovate an existing accessory structure by updating a bedroom and adding a bathroom and kitchen to create a Detached Accessory Dwelling for daughter to live in fulltime.

Does any member have a conflict of interest? There being none, members voting on this application are Mr. Bullitt, Ms. Cove, Mr. Gaisser, Mr. Grant, and Ms. Thorndike. Chair Cove explained the process and that the alternate members may participate fully in the discussion but cannot vote.

Mr. Gaisser questioned that on the application there were two different sections of the ordinance cited – Section 150-104 by the applicant, and Section 150-7:11 (k) in the denial of Building Permit. Section 150-104 addresses Variances, and the Code Compliance Officer referenced which requirement [150-7:11 (k)] needed the variance.

Mr. Grant **Motioned** to open the Public Hearing. Mr. Gaisser seconded. All in Favor. Mr. Miner questioned that the plan submitted did not have the data indicating the actual setbacks are less than 75 feet.

The applicant, Mr. Fran O’Connell explained the situation. The property had been owned by his wife’s parents for the past 25 years and when he and his wife Kim came to visit, they stayed in this existing “barn” building. It does not have running water or kitchen facilities. They bought the property and now their daughter Alison has moved to NH and is living with them. They all wish for her to have her own place and explored the option of building new on the adjoining lot, but this proved to be prohibitive in cost. Their contractor suggested using the existing structure as an Accessory Dwelling Unit. Although it is close to the dirt roadway, Thompson Road has little traffic with just one other neighbor across the road and it dead ends on conservation land. Other abutter’s house in view is across Holderness Road. Both the house and accessory building’s footprints pre-date zoning and do not meet the front setback. The plan for the conversion is to use both floors at just under 1,000 square feet.

Mr. Grant suggested to begin reviewing the criteria. For context, Ms. Cove read Section 150-7 A. (11) purpose of Accessory Dwelling Units (ADU): “The purpose and intent is to provide expanded and alternative housing opportunities and flexibility in household arrangements while maintaining aesthetics and residential use compatible with homes in the neighborhood.”

Questions: Using just one driveway? Yes.

Separate septic system? The current system will be upgraded with two tanks, one for each structure with the same leachfield. The well will be shared. RSA 674:72 V was referenced: *The applicant for a permit to construct an accessory dwelling unit shall make adequate provisions for water supply and sewage disposal for the accessory dwelling unit in accordance with RSA 485-A:38, but separate systems shall not be required for the principal and accessory dwelling units. In order to comply with this paragraph and prior to constructing an accessory dwelling unit, an application for approval for a sewage disposal system shall be submitted in accordance with RSA 485-A as applicable.* The applicant has septic design plans and he stated that the well is adequate.

Is the building going to be cosmetically the same? Basically, yes with some improvements such as new windows and some shingling. No surrounding shrubs to screen it from the road.

Are abutters agreeable to this? The applicant stated that he is on good terms with the abutter across Thompson Road, Kathleen Harrington and doesn't perceive any objections.

In renovating from seasonal to year-round, what is the heating source? A combination of a mini-splits, propane fireplace, and a gas stove on second floor.

The five criteria review:

1. The variance will not be contrary to public interest:

There is no change in appearance to the existing structure or its footprint and it is in keeping with the neighborhood. There is no impact to the public.

2. The spirit of the ordinance is observed:

The ordinance addresses allowing additional flexibility in providing housing of this type and specifically references maintaining neighborhood aesthetics and compatible uses.

3. Substantial justice is done:

The benefit to the applicant from using the structure as an ADU for family living outweighs any detriment from not enforcing primary setbacks given that the structure already exists, its appearance is not being modified and its footprint will be unchanged. There is no harm to the public interest.

4. The values of the surrounding properties are not diminished:

The neighboring residences are far enough away and this change of use of an existing building will have no visual difference to negatively impact values. Interior improvements will add value to applicants' property. Conservation land abuts as well.

5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship:

“Owing to the special conditions of the property that distinguish it from other properties in the area, no fair or substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.”

Although a building new option was mentioned as cost prohibitive, financial hardship is not what this criteria addresses. A question was raised whether an Attached ADU was feasible, however because the house does not meet the front setback, any addition would need to be further away from the road, complicating how to configure it. Additionally, members referenced a driveway access issue – Detached ADUs must use the same driveway as the principal structure and that space is within current primary setbacks. The request is for an otherwise allowed ADU as opposed to a new residence on another lot. Mr. Miner pointed out the hardship of the land is that it is comparable to other properties in the area, but it has existing structures that are nonconforming. Beyond the already

referenced Harrington property, the only other building within view nearby is a butter across on Holderness Road. That abutter, Joel Slocum did send in message that he has no objection to this application.

Ms. Cove asked if the Board had any more questions and was ready to close the public hearing. Mr. Grant **Motioned** to close the public hearing. Mr. Bullitt seconded. 5-0 in favor.

Reviewing criteria:

Proposed use is not contrary to the public interest: Mr. Grant stated the application supported this.

The spirit of the ordinance is observed: Mr. Miner stated that the public interest as reflected in the ordinance supports more housing. Mr. Grant concurred that spirit has been addressed.

Substantial justice is done: Purpose is a balance of benefitting the public interest and the property owner. Mr. Gaisser felt the improved living conditions for the applicant with no detriment to the public is appropriate. Mr. Miner stated the disadvantage may be to the occupant of the building close to the road.

The values of the surrounding properties are not diminished: With limited surrounding properties and no different visible impact of existing building, there should be no change in property values.

Literal enforcement of the provisions of the ordinance would result in unnecessary hardship:

The special condition of the property is that it is unique with existing structures that do not meet the setback – the house used as a residence and the accessory building for seasonal guests, may be considered “grandfathered”.

Mr. Bullitt asked if it is approved as an ADU, can future owners use as a rental apartment and not for just family? RSA 674:73 VI specifies that one of the dwelling units must be owner occupied, and VIII states that municipalities cannot specify that ADU occupant must be related. Renting of the space is allowed.

Mr. Miner reminded that this is the first case concerning a Detached ADU, and others will have different situations – each case will be considered with the existing conditions of the property.

Mr. Gaisser **Motioned** to Grant a Variance of Section 150-7 11 (k) of 65 feet of the front setback of a Principal Structure. Mr. Grant seconded. Discussion to modify the Motion to not mention measurement as it may be imprecise resulted in revised motion.

Mr. Gaisser **Motioned** to Grant the Variance from the Principal Structure front setback for a Detached Accessory Dwelling Unit as required in Section 150-7: 11 (k) for the existing accessory building. Mr. Grant seconded. Any further discussion? Being none, Ms. Cove called for a roll call vote.

Mr. Gaisser, Yeah; Mr. Bullitt, Yeah; Ms. Cove, Yeah, Mr. Grant, Yeah; Ms. Thorndike, Yeah.

Ms. Cove read the statement that anyone wishing to appeal this decision has 30 days from the day the Notice of Decision is posted to file an application for rehearing.

7:58 pm: The applicants left. Mr. Greenawalt stated he reviewed materials in packet and had no comments to add, so he left as well.

Old Business:

Rules of Procedure Review: Some proposed changes reflect the legislative updates.

Page 1: It was decided to change all references to “Chairman” to “Chair”; for clerk, change “shall be elected” to “may be elected”.

Page 3: It was decided to add the italicized copy regarding statement about having five voting members for a case. Make sure in the Chair script that applicant acknowledges understanding this and the consequences.

Page 4: Under 1 for appeals of administrative decisions, Mr. Gaisser was concerned that the 30 days does not address ability to appeal building permit decisions in that timeframe. Without permits being

posted publicly, until construction begins there is not the opportunity to object if perceived error is made in its issuance. It was determined that this is an issue to take up with the Selectmen. Mr. Gaisser had an email from NHMA on this and will forward it to Ms. Cove and the land use office. Under 2, it was agreed to change the 30 days to 45 days as in RSA referenced. Change the applications received from “Town Administrative Assistant” to “Board or its designee”; add “days” at end of this paragraph after (7); and add after mailed, “or electronically emailed”.

Page 5: Under Public Hearing h and j: the question of allowing all present to speak with use of “shall” was discussed. Some controls if a large number of people are present at a hearing were to set time limits to speak, only allow town residents, announce after several have said the same thing or it is not pertinent, that only new information relevant to the use of the land will be heard. In addition, some members questioned whether it was possible to adjust procedures to allow, once the public hearing is closed, the Board to request clarifying information from an applicant or other participant. Discussion ensued. Ms. Cove and Secretary will work on wording and may confer with Town Counsel.

Page 6: Paragraph from legislative update inserted regarding ZBA timeline to decide. It wasn’t clear on new 90-day timeline when the clock starts for receiving an application, accepting an application, closing the public hearing and deliberating (the term used was “to begin consideration”). Will need to be researched for clarification. On “Insert” note on voting method. It is suggested to specify in the rules how the Board votes on a case to be consistent. This Board discusses each of the criteria, then votes to grant or deny as opposed to the alternative method of voting on each criteria individually.

Review of Application Forms: Format of separating the Information Packet from individual applications considered an improvement. Secretary will forward any changes for fees to Selectmen for hearing on September 26. Revising all applications will continue.

Adjournment:

8:43 p.m. Ms. Cove **Motioned** to adjourn. Mr. Bullitt seconded. All in Favor.

Scheduled Meetings:

October 13, 2022, November 10, 2022 regular meetings, subject to applications.

Respectfully submitted,
Susan MacLeod, Land Use Secretary