

**Zoning Board of Adjustment
Town of Sandwich
PO Box 194
Center Sandwich, NH 03227
Minutes December 8, 2022**

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

Others Present: Applicant Frederick Surette, April Surette, Carla Miller
Abutters Susan Bryant Kimball, Chip Kimball

Call to Order:

Vice Chair Grant called the meeting to order at 6:59 p.m.

Minutes of November 10, 2022: Mr. Gaisser had two corrections: page 4, line 19 change “Yeah” to “Aye”; page 5, line 25 “Mary” to “Ms. Cove”. Mr. Greenawalt **Motioned** to approve as amended. Mr. Olafsen seconded. 5 in favor (Mr. Grant abstained).

Mr. Grant identified the three regular members who will vote: Mr. Grant, Mr. Bullitt, and Mr. Gaisser, then appointed alternates Mr. Greenawalt and Mr. Olafsen to vote. Alternate Mr. Tyson may participate in all discussions but will not vote on the decision. Mr. Grant asked if any Board member had a conflict of interest. Being none, he outlined the process that Mr. Surette will present his application, followed by public comment, with abutters recognized for input. The members may then question the applicant and address any concerns expressed by the abutters.

New Business: Case 2022-03 Application

Mr. Grant announced the application for a Variance concerning Article III Section 150-10 A (minimum lot size for Multiple-Unit Structures) of the Zoning Ordinance for property owned by Frederick Surette located at 827 Whittier Highway, Center Sandwich, NH, Tax Map R2 Lot 34 in the Rural/Residential Zoning District. The Applicant proposes to renovate an existing dwelling structure into two dwelling units. Mr. Surette brought in a septic design plan that had not been filed with the application to present at the meeting.

Mr. Grant first asked the applicant to explain his application to determine whether the Board could move forward with accepting it as complete. Mr. Surette introduced the people with him – his daughter April and fiancé Carla Miller. He gave a history of obtaining the property. He had approached the previous owner 23-24 years ago when it was for sale, but no sale ever happened. Even then it was in a dilapidated condition. The Town took it by tax lien and put it out to sealed bid auction in August, and Mr. Surette was the highest bidder. He expressed he had to buy it sight unseen, so he was unaware of its true condition. He has determined that the cost of cleaning it up and starting renovations makes two dwelling units the most viable option. The abutters identified themselves as Susan Bryant Kimball and Chip Kimball with property on three sides of the applicant’s property. Mr. Grant asked if the application had the necessary information. There was not an actual size of the lot on the application (filled in as 2 acres, required is 175,000 sq. ft, or approximately 4 acres). Mr. Surette responded that he could find nothing in the Town records to confirm the size.

Mr. Grant asked if the Board members were satisfied with the application and there was consensus to proceed.

Mr. Olafsen **Motioned** to open the public hearing. Mr. Bullitt seconded. All in favor.

Mr. Grant advised that Mr. Surette should now explain why he is seeking this zoning variance addressing the five questions in the application, particularly the hardship, which cannot be financial, but due to a special condition of the property.

Mr. Surette continued with his explanation of the condition of the house that had been unoccupied for many years except by local wildlife. The house was not visible from the road it was so overgrown. His attempt to view it prior to bidding resulted in getting charged with trespassing. He and his fiancé Carla Miller have now done most of the reclamation work themselves. He detailed some of the problems that needed work. He believed the house was a Sears kit house built in 1910, making it historical. He estimated it was ~4,500 square feet and had two large kitchens (one on first floor and one on the second), indicating that it had probably been a two-family home at one time. There are architectural features worth saving. He is determined to save the house rather than demolish it, but he underestimated the work it would take to restore it. He stated that many people have stopped by with positive comments on seeing the house being saved. His goal is to provide an affordable housing opportunity in Sandwich. Many people are looking for a place to rent and there is a shortage. A two-unit dwelling makes this house financially viable for him.

When asked if he plans to live there, the answer was no, but his daughter April may stay there until she can buy a house. He likes to rent to people who are in dire need of housing.

The five criteria review as presented by the applicant:

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

Not contrary to the public interest as it is to provide needed housing and it is restoring a historic building that people have given positive comments of support for saving it.

2. The spirit of the ordinance is observed:

In this location on a highway at the edge of Town, the lot size to have a two-family house is not critical with no close by surrounding homes as it would be if in a suburban cul de sac. House is setback about 75 feet and now visible from the roadway.

3. Substantial justice is done:

Saving a house formerly occupied by squatters and critters and creating affordable housing for someone who needs it does not harm the public.

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

The building would be improved and there are no surrounding homes in sight nearby to be impacted. It does have the appearance of a single-family neighborhood and the house would look basically the same. Sandwich is a very desirable place to live, and this provides the affordable opportunity for people working in Town businesses.

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

“A. 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; B. and the proposed use is a reasonable one.”

Here it was reiterated to Mr. Surette by the Board that financial hardship to him is not a consideration when applying for a zoning variance. The hardship to be addressed must be due to a special condition that the land property presents. Mr. Surette was not sure how to address without the financial aspect. At this point, the septic plan map was presented to see the lay of the land – house in relation to the road, the driveway, and the septic location. The septic system is the largest noncommercial design, and it replaces a former cistern and cesspool and old cement holding tank. New design more than adequate to support two-family dwelling.

Mr. Olafsen asked if there is anything special about this land property that would make it unusable without the variance granted. Can it be used as a single-family home? Mr. Surette responded that it is a very large house and it's not really feasible for one family. Smaller houses are in, and he doesn't see a

market for it especially with utility costs today. But, other than the size, it could be used as single-family. Mr. Surette explained his plan to have real estate as his income.

The abutters were asked to speak. Ms. Kimball outlined the history of the property that formerly comprised of a couple hundred acres on which the house was built. In 1962, to settle the Sumner estate, the large house was retained for the family and the land was subdivided leaving the house on the smallest lot. It is a nonconforming pre-existing lot of record. The surrounding land is owned by the Kimballs. Mr. Kimball added that the house is a huge three-story Victorian and, in that sense, it is unique on this size property. The undeveloped property across the highway is zoned commercial. He felt no one would move to Sandwich into a 4,000+ foot house on a two-acre lot on the Route 25 highway. The two-family makes sense and it is good to provide needed housing. He has witnessed people living in their cars right here in this town and in Moultonborough. The abutters support granting the variance to allow the two-family dwelling. Being on the outskirts of Town on the highway with a commercial zone adjacent, it is a location that a multi-family dwelling is most appropriate.

The Board continued with questions. Mr. Greenawalt asked that when the house is fixed up, is it for rental or is he going to live there. Mr. Surette does not plan to live there, as he is well situated in Moultonborough. His plan is to rent out the two units. Mr. Greenawalt asked: What happens if the variance is not granted? Mr. Surette stated that he would probably have to sell it. Maybe try to sell to an extended family who can use the large space. He moved forward with this project hoping for the variance to provide an income property for him and housing for those who really need it. He has already been approached by agencies with housing placement programs and individuals looking for rentals.

Mr. Bullitt asked if there are indications that the house was two-family in the past. The two kitchens alone do not necessarily prove it, as it could have been an in-law apartment. These are allowed under the ordinance. Mr. Surette responded that when the Compliance Officer inspected for the septic, he thought it possible that it was once a two-family house. Both kitchens are full-sized. Asked about multiple entrances, the answer was, there are – front entrance into vestibule with stairs to second floor; two from the driveway side, one going straight up to second floor; and a back door that goes to the second floor. Total of three access the second floor. Mr. Surette has already started work on creating two egresses for each unit. Mr. Bullitt summed up that the two full-sized kitchens and multiple entrances to the second floor are indicators of possible two-family use.

Mr. Gaisser stated that it comes back to the hardship of the ~~land~~ property, and not financial hardship. So far, the majority of what has been said has been focused on the money issue. The Board has tried very hard to draw out an explanation of the special condition that the property has that is the hardship, not the finances. Mr. Surette stated that the historical house deserves to be saved. It definitely could have been a teardown. Creating housing is not financial, it is helping the community by providing a place to live for those in dire need.

Mr. Grant asked if the Board wanted to start deliberations before closing the public hearing to enable further questions. All agreed.

To the point of use of the ~~land~~ property, Mr. Olafsen asked whether there could be a single-family house, an ADU (two-unit) or home occupation there (these latter two require owner occupancy). Mr. Surette again stated no intention to occupy and that he considered a single-family not feasible. Mr. Kimball recapped that the pre-existing nonconforming small lot with a large house was impractical, and there seems to have been two sets of people living there in the past. The multi-dwelling makes more sense. Ms. Kimball stated that the lot is nonconforming as subdivided prior to zoning; current zoning [100,000 sq. ft, ~2.29 acres minimum] may allow to build on it as lot previously used [actual acreage not known here] but may require variances.

The Board then reviewed the criteria, noting that all five requirements need to be met:

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

Not contrary to the public interest as it is to provide housing supported in the ordinance. Well addressed by the applicant.

2. The spirit of the ordinance is observed:

Ordinance is observed as proposed use is allowable. The location has no surrounding houses and commercial zone is adjacent on the highway, so use is not in conflict with neighborhood. Abutters who were present (two abutters noticed with no response received from other) support this proposed use.

3. Substantial justice is done:

No injustice to public is created by allowing this use of this property.

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

There are no surrounding homes in sight nearby to be impacted. The house would look basically the same in a much-improved condition.

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

“A. 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; B. and the proposed use is a reasonable one.”

Mr. Grant asked if an interpretation of hardship is on the structure as part of the property or hardship is specific to “land”. The special condition of the property is that there exists a huge house on a small lot and there are no other house lots around it. Consider this instead of land or topography. One view the Board could take is that the house is the special condition of the property resulting in an unnecessary hardship and it is really only designed to be a home for two families instead of one. General agreement among Board members that the term “land” should be strictly interpreted and this interpretation of building hardship is stretching it. Consider the next part of the test that the property cannot be reasonably used in strict conformance of the ordinance. Unfortunately for the applicant, the property can be used for a single-family house, or as single-family with an attached Accessory Dwelling Unit (ADU). So, there are reasonable uses of the property if the ordinance is enforced. The applicant is not left with a completely unusable property. Another use could be a home occupation. The requirements for an ADU were outlined to answer a question by Ms. Miller. [Section 150-7, 11.]

Mr. Gaisser cited references to case law regarding unnecessary hardship of the ~~land~~ property. Mr. Surette’s discussion around single-family being unviable comes back to dollars. The proposal is a good idea, but the Board is not judging value of ideas, its role is to enforce what the voters of this Town have enacted as regulations to follow. The hardship test is a very difficult one that must be met.

Back to discussion of whether a variance should be granted if there is a reasonable use without one. This property can be used without a variance. Options are available to owner.

Question whether being so close to commercial zone, could this property be rezoned commercial to allow the use? That possibility is a long process requiring a survey, notifications, hearings, and a Town Meeting vote and is not an immediate solution.

Mr. Kimball read the hardship statement “A” about conditions of the *property* and asserted the opinion that then part “B” does not apply because part “A” criteria had been established. He felt the application of *land* hardship is wrong here. Mr. Gaisser countered with reading from his State book [*NH Planning and Land Use Regulation*, under RSA 674:33, the footnotes of court interpretation II. Variances, 13, Unnecessary hardship]. Financial does not apply. Mr. Surette repeated his opinion that it is not only a financial issue.

Mr. Olafsen pointed out the language in both parts A and B require showing special conditions of the property.

Mr. ~~Greenaway~~ Greenawalt **Motioned** to close the public hearing. Mr. Bullitt seconded. All in favor. **Motion** made by Mr. Grant:

To deny the Variance concerning Article III Section 150-10 A (minimum lot size for Multiple-Unit Structures) of the Zoning Ordinance for property owned by Frederick Surette located at 827 Whittier Highway, Center Sandwich, NH, Tax Map R2 Lot 34 in the Rural/Residential Zoning District to renovate an existing dwelling structure into two dwelling units. Seconded by Mr. Bullitt.

Roll call vote (aye means to deny):

Mr. Grant: Aye; Mr. Greenawalt: Nay; Mr. Olafsen: Aye; Mr. Bullitt: Aye; Mr. Gaisser: Aye.

By 4-1 vote, the motion to deny the variance passed.

Mr. Grant made 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.

The findings of fact for the decision: The first four criteria were satisfied; the Hardship criterion failed -- Only hardship presented was financial; the property could be reasonably used in conformance to the zoning ordinance without a variance.

Old Business:

Rules of Procedure Review: Two of the points discussed on November 10 resulted in warrant questions that Ms. Cove submitted to the Planning Board to add to the full draft that has been sent to Town Counsel. (Copies distributed to members). If warrant on deleting the 30-day deadline for administrative appeals passes in March, that section will be revised in the rules.

Motion by Mr. Grant to approve as revised. Mr. Tyson seconded. All in favor. Revised copies to be filed with Town Clerk and OPD and posted online.

Review of Application Forms: Started with Information packet. Mr. Olafsen will send a few comments to LU Secretary to amend draft regarding Rehearing information on page 2 and whether there is an actual application for requesting a rehearing. First step for a rehearing is to request one with a letter and Board decides whether to do it. If yes, public hearing is noticed at applicant's expense and ZBA makes the decision to confirm or change the prior decision. If request denied, it next goes to court where judge can make decision to remand back to ZBA to do (at Town's expense).

Other point was regarding language about closing the public hearing and then allowing further questioning. Discussion on November 10 included Town Counsel advice (but not recommendation) that it could be done only if there is an announcement prior to close of public hearing that Board may extend questioning at that meeting only.

Adjournment:

8:22 p.m. Mr. Tyson motioned to adjourn. Seconded by Mr. Greenawalt. All in Favor.

Scheduled Meetings:

January 12, 2023; February 9, 2023

Respectfully submitted,
Susan MacLeod, Land Use Secretary