

NORTHFIELD BOARD OF ADJUSTMENT
AUGUST 8, 2012
MINUTES

Members present: Polly Fife, Dave Liberatore, Kent Finemore, Keith Murray, Phil Cain and Brian Brown.

Minutes: Keith Murray moved, seconded by Dave Liberatore to approve the minutes of July 23, 2012 as read. Motion passed.

John A. MacLennon: Re-hearing of an application for a variance from Article 7 Table 1 of the Northfield Zoning Ordinance to allow a detached 30'x50' garage with living space on a 1.44 acre lot at 15 Susan Lane (Tax Map R16 Lot 21-7) in the R1 zone. John MacLennon gave a brief presentation of his proposal to construct a garage with living space above to allow for multigenerational living on his property. He presented detailed drawings of the structure and photos of neighboring homes. Mr. MacLennon has reviewed the Zoning Ordinance changes over the years, court cases and ZBA authorization and he believes that the proposal will fit into the area and that the Board has the ability to approve it. The additional living space will not be rented and there will be no additional residents on the property. The proposal will not require additional services by the town, and it will allow the family to care for extended family members over the years. Mr. MacLennon stated that he does not believe the Zoning Ordinance was designed to discourage multi generational living and that the ZBA can make exceptions based upon individual situations. The alternative of adding to the existing home would not fit in with the neighborhood as the homes are of consistent size and many also have barns or garages similar to his proposal. Mr. MacLennon believes that the Zoning Ordinance was written to keep the area consistent with single families and this will still be a single family. The plan is to use the current well and install an additional septic system.

Questions from the Board:

- Dave Liberatore: Will the unit be fully self contained with kitchen and bathroom? Yes
- Keith Murray: Where is the current septic system located? It is behind the house on the left side and the location of the new septic has not been determined.
- Dave Liberatore: What is your intent when your family no longer lives there? The living space would be converted back to a garage/storage area.
- Keith Murray: What is preventing you from attaching the living area to the house? Nothing, but it would not fit in with the neighborhood, making the home too large and out of character.

- Kent Finemore: Are there any conditions on this lot that distinguish it from others? The lot has a fair amount of space in the back yard and there are no homes close by.
- Keith Murray: What is the size of the living space and what are the plans for the rest of the building? Living space is about 1,000 sq. ft and the balance is a garage for cars and woodworking tools.
- Keith Murray: Is the driveway wide enough for emergency vehicles to reach the proposed building? Yes.

Public hearing: Steve Bluhm asked how this would be classified under the Zoning Ordinance. Kent Finemore replied that the Ordinance states no more than one single or 2 family dwelling is allowed on one lot. Steve Bluhm asked if this living space is approved, couldn't it become a rentable apartment in the future. He also asked if there are any other lots with separate living quarters in town. John MacLennon believes there are other lots with separate units and that people put extra living quarters in their homes without getting permission which can cause safety issues for emergencies. He wants to seek permission in the correct manner. Public hearing closed.

Dave Liberatore commented that it is difficult to enforce removing an in-law apartment when it is no longer being used by family. This would be a separate building with a separate septic system and it would be very difficult to enforce the code at a later time. Keith Murray noted that the ZBA has set a precedent by denying Dick Dubois's request for two homes on his lot and the Bourdeau's request for two campers on one lot by referring to section 7.10 which does not allow two residences on one property. Keith further stated that he believes that the Board has the ability to grant a variance and restrict future use of the living unit, adding that due to its limited size there wouldn't be a large family living there. Dave Liberatore replied that this is not an in-law apartment as it is separate living quarters on the property with its own septic system and it's as large as many residences in the town. Dave added that it's possible the bottom level of the building could become living space as well. Kent Finemore reminded the Board that the applicant must show that it meets all five criteria and that the barn is not the issue, it is the two living units on one lot.

Polly Fife stated that the essence of a variance is for special circumstances and unique properties. She commented that she is sympathetic to the family situation believing that multi generational living is a good thing and that perhaps the Zoning Ordinance needs to address such situations. She added that the situation of this property is not unique and while the application is honorable this is not the time to deviate from the spirit of the ordinance. Ms. Fife stated that setting conditions that are impossible to enforce in the future is not a good idea and this is creating an entirely separate residence on one lot. Keith Murray disagreed that the lot is not unique because it would not be possible to attach the unit to the existing home because of the location of the

current septic system. Polly Fife replied that the property is also too small for a 2 family home as it is less than the required acreage. Phil Cain suggested that the Zoning Ordinance is a guide and the ZBA has the ability to change for individual situations. Polly Fife replied that yes, variances can be granted if there is a unique hardship.

Brian Brown commented that a new septic system is being built anyway, so moving the existing system and attaching the unit to the existing home would work. Polly Fife reminded the Board that the spirit of the Zoning Ordinance was designed for density control by establishing lot sizes, etc. to help regulate density. This application is contrary to the spirit of controlling the density in town. Phil Cain asked if this lot is grandfathered. Kent Finemore explained that if the second apartment was existing when zoning was adopted it would be grandfathered. The minimum lot size for residential lots has been increased since the lots on Susan Lane were created. Polly Fife commented that we are going to see this type of application again and again and the Board needs to address it in the Zoning Ordinance not through granting this variance where there is no real hardship. Kent Finemore added that some of the most significant changes made to the Zoning Ordinance over the years have had to do with density issues such as lot size. He reminded the Board that the Ordinance is not a guide but in fact is the regulation which has been adopted by the town.

John MacLennon stated that he is doing this the correct way while others have not come through the right channels. He believes he meets the criteria as the density is not going to change since it will be the same family members. He added that he doesn't want to be punished because enforcements can't be done. He also stated that there are circumstances that allow the ZBA to grant variances.

Review of the criteria for a variance:

(1) The variance will not be contrary to the public interest: Polly Fife believes it would be contrary to public interest because two separate dwellings are not allowed anywhere else in town. Kent Finemore added that the Zoning Ordinance is approved and amended by a 2/3 vote of the town. Keith Murray does not think this would damage the neighborhood in any way. Kent Finemore added that part of the public interest is that 2/3 of voters passed the ordinance. Keith replied that based on that argument no variances should be granted.

(2) The spirit of the Northfield Zoning Ordinance is observed: Keith Murray stated that the spirit of the ordinance can be upheld with conditions placed on the variance, it can be accepted on an individual basis rather than change zoning. Polly asked what special criteria would be used to grant the variances. Keith replied it would be on an individual basis and added that it is the New England tradition to have multi generational living and therefore it is within the spirit of the ordinance.

(3) Substantial justice is done: Polly Fife stated that there are other avenues and choices for the applicant to achieve his goals.

(4) The values of surrounding properties are not diminished: There would be no impact on property values and would add to the town's tax base, and

(5) Literal enforcement of the provisions of the Northfield Zoning Ordinance would result in an unnecessary hardship.

(A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area: Kent Finemore does not see any hardship on this property as all lots in the area are essentially the same.

(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

(ii) The proposed use is a reasonable one. Polly Fife stated that the property is currently being reasonably used and two residences is not reasonable.

(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Polly Fife moved, seconded by Dave Liberatore to deny the application for a variance from Article 7 Table 1 of the Northfield Zoning Ordinance to allow a detached 30'x50' garage with living space on a 1.44 acre lot at 15 Susan Lane (Tax Map R16 Lot 21-7) in the R1 zone. The reason for denial are that it is contrary to the public interest, contrary to the spirit of the ordinance, no substantial justice would be served, there is no proof of unnecessary hardship and no proof that the property cannot be reasonably used. Vote on the motion was 2 yes and 2 no. Chairman broke the tie with a yes vote, the application is denied.

Daniel D. Durgin: Request for an appeal of the Board's decision of 6-25-2012 relative to an application for a variance from Article 7 Table 2 of the Northfield Zoning Ordinance to allow construction of a 32'x30' garage and single family home on a lot that does not have the required road frontage on Ledge Road (Tax Map R6 Lot 15B-1) in the R1 zone.

Glenn Smith, representing the Board of Selectmen who requested the appeal, informed the Board that he has more information available to answer questions that were still outstanding at the June 25, 2012 hearing. He believed that the availability of this information would be the basis for granting a rehearing. Mr. Smith added that although the vote to discontinue the road in 1941 was ignored for years, now that the Selectboard is aware of it, the town has an obligation to honor it. Kent Finemore reminded that Board that additional evidence not previously considered by the Board is generally reason to grant a rehearing. Keith Murray agreed that it sounds like there is

more evidence to consider. Polly Fife stated that her previous vote was based on lack of information available, not her opinion of the application, but she asked if there is any advantage of rehearing the case if the same decision is reached. Kent Finemore replied that the goal of a rehearing is to start over and reconsider the application.

Dave Liberatore moved, seconded by Keith Murray to grant the request for a rehearing. Motion passed. The rehearing will be scheduled for August 27, 2012.

Meeting adjourned at 8:30 PM.

Respectfully submitted,

Eliza Conde, Secretary

Minutes approved August 27, 2012