

NOTICE OF DECISION

ZONING BOARD OF ADJUSTMENT TOWN OF WATERVILLE VALLEY, NEW HAMPSHIRE

Case No. 80

On November 30, 2022, the Application for a Variance submitted by Pat Gaudette on October 21, 2022, was heard before the Board. The variance requested was from the Zoning Ordinance requirement that no structure in a Low Density Residential zone be closer than 20' from the lot line of an abutting property. See Waterville Valley Zoning Ordinance Art. IV(A)(1)(e)(ii). The Application concerned property located at 101 West Branch Road, Waterville Valley, NH, Map 102, lot 002.

The variance was requested to renovate and use an existing structure on the property as a home office/guest house. The existing structure is a 26' by 30' building that had been used as a work shop by the prior owner. At the time the structure was built, the zoning ordinance provided that an accessory building in an LDR - low density residential zone - must be set back 10' from the lot line. Subsequently, the ordinance was amended to require the set back be 20' for an accessory building of that size. At that point, the structure fell 5' within the new set back, but having been built before the change in zoning, it was "grandfathered in", and became non-conforming - a use not allowed in that particular place - but permitted to continue as originally designed.

The applicant intends to change the interior of the building, which now is a large empty room, by constructing a bedroom, bathroom, and kitchenette with a sitting area.

The Board issued a Notice of Hearing which identified two issues that must be resolved to determine whether criteria for a variance were met. First, does the requested use of the structure meet the criteria for a variance to develop a detached accessory dwelling unit (ADU). Art. IV.J.1(a). Second, does the requested use of the structure meet the criteria for a variance to alter a non-conforming structure. Art. VI.A.1-3.

Because the Board's notice raised issues not addressed in the initial Application, the Applicant submitted a supplement to the Application to address those issues.

At the hearing, the Applicant testified in support of the requested variance. In response to questions, she indicated that she planned to use the building for family and friends, as well as a home office. At the time of the hearing, she indicated she had no intention to rent it on a short term or other basis. She also indicated that there were two other properties in LDR zoning that had detached ADUs. She was unable to discuss the background of those properties, including when the ADUs were built and the circumstances under which they were built.

A number of individuals testified in opposition to the issuance of a variance, including two abutters. The primary concern was the allowance of a dwelling unit within the setback, thus setting a precedent for other similarly situated property owners to request a variance to establish a detached ADU within the setback. The abutters also addressed the concern that the activity associated with a dwelling unit so close to their homes would diminish the value of their homes, as well as their peaceful enjoyment of their homes.

At the close of the hearing, the Board moved to deliberation of the Application. There are five criteria that must be met to obtain a variance from the Zoning Ordinance. The Board discussed each criteria and voted on each one separately. In their deliberations, the Board Members referred to the discussion concerning variances in the publication, "The Zoning Board of Adjustment in New Hampshire, A Handbook for Local Officials" (Updated: 2021), issued by the New Hampshire Department of Business and Economic Affairs. The criteria and the Board's deliberations are discussed below.

1. The proposed use is not contrary to the public interest.

The Board understood the "public interest" to have an expansive meaning, i.e., that the proposed use is not contrary to the general purposes of the Zoning Ordinance to protect the health, safety and general welfare of the public at large as well as the particular neighborhood affected. In this regard, a majority of the Board found that a detached ADU would not harm the health, safety or general welfare of the public.

The Chair polled the Members and a majority of the Board found that the proposed use met the criteria.

2. The spirit of the ordinance is observed.

The Board focused on the ordinance that prohibited the altering of a non-conforming structure “for use for a purpose or in a manner substantially different from the use to which it was put before the alteration.” Art. VI.A.(1). The Board found that the change from a one-room woodworking shop without water or sewer and utilized by the homeowner to a dwelling with a bedroom, bathroom, kitchenette, and sitting area for guests of the owners was a “substantially different use.” As such, the Board found that the spirit of the ordinance could not be observed if the proposed use was specifically prohibited by the ordinance.

The Chair polled the Members and the Board unanimously found that the proposed use did not meet this criteria for a variance.

3. Substantial justice is done.

The Board found the term “substantial justice is done” to suggest that the loss to the individual must result in a gain to the general public. In other words, is it so inconsistent with the LDR zoning that the general public would suffer. The Board discussed the purpose of LDR zoning to ensure air and light, congestion, safety, and general welfare of the public would not be impacted to a degree that would overcome the loss of the building’s use as desired by the homeowner. The homeowner had testified that they had no plans to use the building other than the use proposed in the variance application, thus it would be a total loss to them.

The Chair polled the Members and the Board unanimously agreed that this criteria was met.

4. The value of the surrounding properties is not diminished.

The Board’s understanding of this criteria is that it relates to the financial value of the surrounding properties. Testimony from the abutters, in particular the homeowner next to the non-conforming structure, asserted that the value of his home would be lessened if the building was allowed to

become a dwelling unit and was sited so close to his home. Despite this assertion, the Board found that the value of homes in that area were based on the primary homes characteristics and generally the proposed change would not affect their resale value.

The Chair polled the Members and a majority of the Board agreed that this criteria was met.


5. Denial of the requested use will result in unnecessary hardship.

In making this determination, the criteria focuses on the question of whether the hardship claimed by this property owner is shared by all similarly situated property owners. In other words, is there some characteristic of the particular property that makes it different from others in this zoning area such that the homeowner would face unnecessary hardship if it is not substantially altered. The Board noted that the homeowners when they purchased the house knew that the structure was there as an accessory building. The Board found that the fact that the homeowners did not want to use this accessory building as it had been used did not make their property characteristics unique; there were other uses to which it could be put as an accessory building. See Art. IV.J(1)(f) (noting permitted accessory uses include “greenhouses, tool sheds, playhouses, home produce from a garden, garages and carports, studios, swimming pools, patios, and dog kennels”). This is the same hardship facing any other property owner in LDR purchasing a home with a pre-existing accessory building.

The Chair polled the Members and a majority found the Applicant had not proved the variance was required to prevent unnecessary hardship.

Therefore, the finding of the Board is that the Application does not meet the criteria for a variance to make the existing structure into a home office/guest house and the Application is denied.

12-12-22
Date



Jean R. Mullen, Chair
Zoning Board of Adjustment