

SOMERSWORTH ZONING BOARD OF ADJUSTMENTS
MINUTES OF MEETING
December 1, 2021

MEMBERS PRESENT: Matt Keiser Chair, Richard Brooks, Keith Perkins, Glenn Garvin-Alternate and Kenneth Vincent

EXCUSED MEMBERS: Brad Fredette

STAFF PRESENT: Michelle Mears, Director of Development Services, and Dana Crossley Planning Secretary

The meeting was called to order at 7:00PM.

Keiser appointed Garvin as a full voting member for the meeting.

1) Approval of the minutes:

Brooks **MOVED** to accept the November 3, 2021 minutes as presented.

Perkins seconded the motion.

The **MOTION CARRIED** 4-0-1 (Vincent abstained).

2) OLD BUSINESS

A) CONTINUED: Carl Aimesbury, is seeking a Variance from Table 5.A.1 and 5.A.2 to allow a second dwelling unit within the existing structure without the required lot area and frontage for a property located at 7 Myrtle Street, in the Residential Multifamily (R3) District, Assessor's Map 09 Lot 27, ZBA#12-2021 PUBLIC HEARING

Keiser opened the public hearing. He noted this application was originally heard at the October and was continued to allow for the full Board, at this time the applicant will be able to present his case with additional information he previous discussion is part of the record.

Mears noted this application was continued from the October and November meeting, the Board should have received the staff memo from October in their packet again this month.

Carl Aimesbury was in attendance to represent the application.

Aimesbury stated he is seeking a variance because his lot size and frontage do not meet the requirements to allow for a duplex. The majority of the neighboring properties are 2-unit and larger, with less street frontage and lot size. He reached out to those neighbors for support, with the exception of three of those properties that are investment properties and could not get in touch with them received their signed support. The one area that he had not met the Board's concerns was due to hardship. He stated after further thought he hardship is more economic, that came out of discussion with neighbors who bought or added on for multiunit because it makes a difference. He stated a single person could not purchase his house in Somersworth based on income. Hoping the Board will see in this neighborhood, does not change the neighborhood or increase the density significantly because it would be 1 bedroom.

Keiser allowed for public comment:
No public comment received.

Board Questions:

Garvin stated he has read the previous minutes and followed this application, as mentioned the hardship has been the issue at previous discussion. He stated even though the Board might agree with everything, the criteria still needs to be met. He clarified the applicant is stating his hardship is money, the economics.

Aimesbury stated the reality is that he is unemployed, does not see that changing and his age comes into finding a new job, economic hardship comes into play for his age range and for the younger age trying to find housing. In talking with neighbors, they shared the same concerns and they were vocal in support for allowing him to be able to do this.

Garvin clarified the hardship statement is not that he needs to rental income to live.
Aimesbury stated no currently.

Vincent stated he is familiar with the previous discussion and area. This property was historically a residential electrical company. Clarified that 90% of the properties surrounding are duplex or multifamily, continued that when the zoning ordinances were established, sometimes they are not updated to meet the current standards of neighborhoods, this neighborhood is multifamily.

Brooks asked if the signatures were from property owners or renters.
Aimesbury attempted to get owners who have true interest in the property, there was one renter who wanted to sign the list and he was unable to get in touch with the property owner. There are two signatures from one property because they wanted to both sign.

Brooks stated the applicant could still do an ADU.
Aimesbury stated yes, due to the configuration of the basement he is cutting out about 160SF, making this unit just over 1,000 SF but it would be hard to get it down to 800 SF.

Vincent clarified the edge of the property is a driveway.
Aimesbury stated the driveway goes all the way around the house and there is adequate parking that would allow the tenant to park in the rear of the lot by the walk out basement, no on-street parking.

Keiser closed the public hearing.

Garvin stated he is still hung up on the hardship. He does not see a hardship for this application. He stated he has no issue with the request, but the criteria needs to be met and does not feel the hardship is met.

Vincent stated the hardship could be that the entire neighborhood has changed. The property is surrounded by multi-units and duplexes, there is adequate parking and he is in favor of this request. There are no abutters speaking against the request. He clarified that the variance runs with the land and not ownership.

Keiser stated that is correct, variance travels with the property. He noted the variances are dimensional variances, the use is allowed, but based on the regulations the lot does not meet the frontage and lot size requirements for a duplex.

Vincent asked if that could be a hardship.
Keiser stated no, the fact that one does not meet the requirements is not a hardship.

Garvin stated if as a Board they want to issue the message that a way to move forward is economic hardship is a hardship, wanted to make sure they are fair with all applicants.

Vincent stated each variance is unique.

Garvin stated he agrees they are all unique but also wants the Board to be fair with each applicant.

Vincent stated he thinks this Board looks out for the City and the applicant, situations are unique and that is why the Board is here.

Keiser stated he is not in favor of the variance, he does not see the hardship in this situation. Does not find this property unique in regards to the dimensional requirements, cannot support the hardship criteria.

Brooks stated there are a lot of things that make sense with the request, but there are guidelines they need to follow and there is no hardship, an ADU can be done, lacking a hardship in this situation.

Perkins stated at the last meeting he had been in favor of the request but after further consideration the argument was a stretch for the hardship and does not find a definite hardship.

Garvin stated he cannot find the hardship with this application.

Vincent inquired what the difference between an ADU and second dwelling unit.

Mears stated according to the zoning regulations an ADU shall be no larger than 800 SF, have no more than 2 bedrooms, have connected utilities, connected internally and be owner occupied.

MOTION: Brooks stated after review of the application, the file and all the information presented to the Board, I feel the hardship criteria of the five criteria has **NOT** been satisfied and I move that the request of Carl Aimesbury for a Variance from Table 5.A.1 and 5.A.2 to allow a second dwelling unit within the existing structure without the required lot area and frontage for a property located at 7 Myrtle Street **DENIED**.

The MOTION is SECONDED by Garvin. The MOTION CARRIES 4-1.

B) Any old business that may come before the Board. - No other old business.

3) NEW BUSINESS

A) Shane & Alexe Conlin, are seeking a variance from Table 5.A.1 to allow a shed to be within the 10' side setback on a property located at 2 Cinnamon Ridge Rd, in the Residential Single Family (R1) District, Assessor's Map 37 Lot 03, ZBA#14-2021 PUBLIC HEARING

Keiser opened the public hearing.

Mears stated the applicant is seeking to place a 10x14 (140 SF) shed within the 10' side setback on their property. The shed is larger than 120 SF and therefore must meet setback requirements. The lot is a corner lot with two fronts and two sides for setback requirements.

Brooks asked if the shed was already in place.

Mears stated yes.

Shane Conlin was in attendance to represent the application.

Conlin stated the shed is currently 4' from the property line. He stated the proposal would not diminish surrounding property values because the shed is built of high quality, painted/sided to match the house, conforms to the look of the community and houses surrounding. This shed would not diminish surrounding properties, prior to his ownership the house sat vacant for about 5 years, part of the renovation was to add a shed to keep the yard clean and store items for a tidy yard. He stated it would not be contrary to public interest because it does not unduly violate the objectives of the Zoning Ordinance, maintaining a shed in the current location does not alter the essential character of the neighborhood, safety or welfare or otherwise injure public rights. He communicated with his neighbors who have expressed support for the project. He

stated he felt that 3b. was the appropriate criteria to address, understands that hardship is one of the most important components of a variance. He stated prior to his ownership there was a large about 15x25' pool that was removed prior to his ownership by placing clay fill in the entire backyard. These soils do not drain well, there is a lot of heaving in the soils with hard freezes, not a place he would want to place a structure. The areas with undisturbed soils is where he placed the shed, due to the nature of the location of the previous pool it went far back in the yard and small backyard area leaving a small area to place the shed on undisturbed soils. He stated the 2020 International Building Code recommends placing structures such as shed on well draining soils and not expansive which is why he picked the location he did. He stated he read the OSP handbook and referenced their explanation of how to find substantial justice, the request does not cause harm to the public that outweighs the benefit of the property owner, maintaining a shed in the current location will not alter the general character, safety or welfare of the neighborhood, or otherwise injure public rights. He stated the variance would not have adverse impact to an individual neighbor, all his neighbors in immediate vicinity have expressed support of the variance. He stated the request is consistent with the surrounding area, design fits with the neighbor hood. And for those reasons feels that substantial justice would be done. He stated the spirit of the ordinance goes back to that it is designed to promote, protect the public health, safety, convenience and general welfare. He stated for this specific portion of the ordinance the setback requirement spirit of the ordinance is to protect from over crowding and this proposal does not do that. The proposal does not injure private or public rights of others.

Keiser allowed for public comment:

Michael Caton, 9 Stackpole Rd: stated he does not see any reason at all why this would not be allowed, applicant has done a fabulous job with the property. He has lived next to the house when it was empty and decrepit, and he has shed envy of this shed. Does not see it making a disturbance to anything behind it, there is a fence behind it and to pull the shed forward would make him loose a large chunk of his yard.

Board Questions:

Keiser asked if the shed is in place currently and if so, did he put it in.

Conlin stated yes, there is a current permit in place pending this approval. He had it delivered 2 years ago.

Brooks asked if the in-ground pool was deconstructed or just filled.

Conlin stated it was removed and filled in, according to contractor who worked on the property. Not intact based on excavation done, there is 6-10" of clay that was not only used to fill the area of the pool but because of excavation of the soil the backyard was graded with the poor fill, can find concrete rubble from breaking up the pool. The hardship is that he would not be able to remove all the clay and fill to fit his shed into the setback requirements.

Brooks asked if the bank was the one that completed the fill/deconstruction of pool.

Conlin explained it was bank owned then went up for auction and bought by a contractor who sat on the property for 5 years, cannot comment to the full history of the property prior to his ownership.

Vincent stated there appears to be a natural barrier behind the house, can the neighbors be seen through that.

Conlin stated the neighbor directly behind the house can always see it.

Keiser clarified the shed would be within 4' of the property line that is "behind the house".

Conlin stated yes, cannot see that neighbor when standing next to shed because of the fence that surrounds the side yards.

Garvin asked if that neighbor was notified of the hearing.

Conlin stated yes, they came over today and they expressed no issue.

Garvin clarified if the shed was moved 6' to be compliant it would be on the pool filled area.

Conlin stated yes.

Keiser stated the Boccia hearing was referenced, 120 SF shed could be put on the property line, what is the use of the shed.

Conlin stated garden implements and kids toys, takes a lot of pride in his house and yard, wants to keep it a clean yard and storage is important.

Keiser inquired if there is power to the shed or would be used as a workshop.

Conlin stated no to both.

Keiser noted the front yard area is sustainably larger than the backyard area, what is the distance from the back of the house to the back lot line.

Conlin stated about 35'.

Keiser stated his point is there is not a lot of space there, but you could put the shed in the front yard.

Conlin stated it would be an eyesore and could have more risk of theft, even if the shed was closer to Cinnamon Ridge Rd, there is a 35' setback from that property line.

Keiser inquired what the shed is sitting on, cinder blocks or something else.

Conlin stated he placed it on a 6" pad of crushed stone with 10x10 timbers to hold the stones in place, drainage is better in that location but it is an investment so he put a pad down.

Keiser closed the public hearing.

Garvin stated he is in favor of the variance and feel the 5 criteria have been met.

Keiser stated he is in favor as well. Putting this shed 4' from the boundary, would not affect the neighbors property value because they could put a 120 SF shed right on the property line, this is less infringing on the neighbor. He stated it is not contrary to the public interest or the City. The hardship comes from the soils being uneven, small backyard compared to the front yard, inconvenient place to put it. Does justice and the shed is not going to be used as a workshop which could cause impact to the neighbors, does not change characteristics of the neighborhood.

Perkins stated he is in favor of the request and agree with Keiser's statements.

Brooks stated it is a little bit of a stretch but does agree with hardship for the quality of the ground, not the best example but does fall towards hardship, to place it in the front yard would be out of place and impact property values.

MOTION: Brook stated after review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied because of hardships discussed and other discussion and I move that the request of Shane & Alexe Conlin, for a variance from Table 5.A.1 to allow a shed to be within the 10' side setback on a property located at 2 Cinnamon Ridge Rd **be GRANTED.**

The MOTION is SECONDED by Perkins.

Discussion: Keiser inquired if they should put a condition for the setback requirement of 4'.

Mears stated yes.

Brooks amended the motion to include the condition that **the shed shall be no closer than 4' to the property line.**

Perkins seconded the amendment.

The MOTION CARRIES 5-0.

B) Brian Rodonets of Coastal Architects is seeking a variance from Table 4.A.1 and Table 5.A.1 to allow multifamily use and variance relief from the 150' frontage requirement on a property located at 271 High Street, in the Residential Duplex (R2) District, Assessor's Map 15 Lot 16A, ZBA#15-2021 PUBLIC HEARING

Keiser stated the applicant is seeking a variance for a use (multifamily) and dimensional (frontage) requirement but the application talks to square footage and how many units can be allowed based on the size of the property. Inquired if the Board wanted to continue the application to the January meeting to allow the applicant the opportunity to provide information closer to what they are seeking.

Mears noted she spoke with the applicant about this issue.

Garvin clarified the applicant was in favor of continuing.

Mears stated yes based on her discussion with that.

Brian Rodonets of Coastal Architects was in attendance to represent the application.

Vincent stated he would like to know the information on who the applicant is representing. Rodonets stated the person whom he represents is Anji Reddy of Reddy INFO SYS.

Discussion of continuing application to the January meeting.

MOTION: Brooks stated I move that the request of Brian Rodonets of Coastal Architects for a variance from Table 4.A.1 and Table 5.A.1 to allow multifamily use and variance relief from the 150' frontage requirement on a property located at 271 High Street be **CONTINUED to the January 5, 2022 meeting, to allow the applicant to provide additional information.**

The MOTION is SECONDED by Vincent. The MOTION CARRIES 5-0.

C) Any other new business that may come before the Board.

Mears stated the schedule has been passed out for 2022.

Vincent stated there has been some fill in issues for attendance, hates to see meetings have to be postponed, thinking an additional alternate member should be added, 2 if possible. Noted they would need to amend their Rules of Procedure to allow for 3 alternate members.

There was a brief discussion and the Board agreed to address this at the next meeting.

Brooks inquired if there is penalty when people do work without a permit.
Mears stated there is a violation process and a fine with double the permit fee.

Vincent **MOVED** to **ADJOURN** the meeting.

Perkins seconded the Motion.

The **MOTION CARRIED** 5-0 7:59 PM.

Respectfully Submitted,
Dana Crossley, Planning Secretary