

SOMERSWORTH ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
JUNE 7, 2023

MEMBERS PRESENT: Matt Keiser – Chair, Richard Brooks, Brad Fredette, Anthony Jones, Ken Hilton

EXCUSED MEMBERS: Keith Perkins, Ken Vincent

STAFF PRESENT: Dana Crossley, Planning Technician
Anna Stockman, Planning Secretary

The meeting was called to order at 7:10pm.

1) Approval of the minutes:

Fredette MOVED to approve the May 3rd, 2023 minutes.

Hilton SECONDED the MOTION.

The MOTION CARRIED 5-0.

Matt Keiser appointed Anthony Jones and Ken Hilton as full voting members of the Board.

2) OLD BUSINESS

- a. Any old business that may come before the Board.
No old business.

3) NEW BUSINESS

- a. **Steve Forrest is seeking a Variance from Table 5.A.1 to allow a shed to be constructed within the rear setback for a property located at 107 Old Rochester Road in the Residential/Single Family (R1) District, Assessor's Map 65 Lot 07, ZBA#07-2023. PUBLIC HEARING**

Keiser opened the public hearing.

Crossley provided an overview of the application. She stated the applicant is proposing to construct a sixteen-by-twenty shed within the thirty-foot rear setback. She referenced the sketch of the proposed location from the septic plan provided by the applicant and stated there have been no past site plan or ZBA applications found related to this property. She stated the applicant has provided a complete application and the Board can begin their review of the application.

Steve Forrest, the property owner of 107 Old Rochester Road was present to represent the application. He stated he moved to Somersworth in October of 2019. He said the lot he owns is one hundred feet-by-one hundred feet so he is confined on where he can locate a shed to store tools and work on small projects. He said he has spoken to all direct abutters to his property and stated they are not opposed to the proposed project. He said he would like to be able to use his yard in a feasible way instead of having to limit construction of the shed to thirty feet from the back boundary.

A member of the public, **Harley Regonini**, voiced his support for Forrest's application and stated that as a contractor and owner of a shed, a shed is essential to the profession.

Jones referenced the sketch that shows the location of the shed. He asked Forrest if he has an idea of the minimum distance he would be seeking from the shed to the property line. He further asked Forrest if he could provide a summary of his responses to the five variance criteria.

Forrest stated he is seeking to locate the shed either four or five feet from the property line and he has spoken with his back abutter who does not have any opposition to the project. He said he would like to construct the shed to clean up his yard and store his tools and locating the shed closer to his rear property boundary would make it more feasible for him to use his backyard. He reiterated the support he has received

from abutters and stated he did not believe it would have a negative impact on their property values. He said he would ideally like to build a garage but that would encroach on the required setbacks of the lot.

Fredette stated the criteria that tends to be the most difficult to achieve satisfactorily in these cases is the hardship criteria. He asked Forrest about what makes his property unique that distinguishes it from other properties in the area.

Keiser referenced the first of the five variance criteria and asked for clarification that Forrest's neighbor does not believe the proposed project would diminish surrounding property values.

Forrest responded yes, there is over one hundred-and-fifty feet of woods from his rear abutter's property line to his home.

Keiser referenced the applicant's septic plan and stated it outlines the buildable area on the lot. He asked Forrest why he does not plan to locate the shed in the buildable area.

Forrest stated if he were to construct the shed in the buildable area, it would interfere with the location of where he would like to build a future garage.

Keiser stated if Forrest had a ten-by-twelve shed, it could be located right up to the property line based on the zoning ordinance. He asked Forrest why he needs a larger shed and if the shed would be used as a workshop.

Forrest stated he would like a larger space to do carpentry and work on minor projects.

Jones asked if he chose the site behind the house because of the undeveloped woods that are behind his house and he has neighbors to the left and right of him. He stated it appears that Forrest has selected a construction spot that is the farthest distance away from nearby dwellings.

Forrest stated he recently adopted a dog and he would like to install a fence in the future. He stated the shed would act as part of the fence. He noted that by locating the shed towards the back of his property, it would not impact the view of his neighbors.

Brooks asked if there is any reason Forrest could not construct the shed within the setbacks with the possibility of moving the shed at a later date. He asked further whether the applicant would still need a shed if he were able to build the garage. He noted the importance of fire suppression and safety and the reasoning behind regulations that prevent structures to be built close to property boundaries.

Forrest responded that would require him to apply for another variance and he would like to pursue the variance process once. He stated he would still want to build a shed even if he were able to construct a garage.

Jones pointed out that it appears the lot to the left of Forrest's is at least three times the size of his lot and the lots to the left of his are about fifty percent larger. He asked Forrest whether there are any other houses on Forrest's street that are one hundred-by-one hundred lots.

Forrest responded no, not to his knowledge. He has the smallest lot in the neighborhood.

Keiser closed the public hearing.

Regional Impact

MOTION: Jones MOVED that the variance request of Steve Forrest **DOES NOT HAVE POTENTIAL FOR REGIONAL IMPACT**

The MOTION was SECONDED by Brooks.
The MOTION CARRIED 5-0.

Discussion:

Jones stated the lot appears to be the smallest lot on the street which he considers to be part of the hardship. He noted that it doesn't seem like there have been any complaints from abutters about the project and the shed would be located towards the back of the lot close to the woods and far away from nearby dwellings. For those reasons, he stated he doesn't see any impact to property values nearby. He said there is also hardship in the restrictive setbacks. He said he doesn't think the shed size the applicant is requesting is unreasonable.

Fredette stated he doesn't think the hardship is established to the level it needs to be. He pointed out that there are many small lots throughout the City and recalled a past ZBA application for a shed on a small lot. He stated in this case, the shed is more than twice the size of what's allowed in the setback and eighty percent of the setback is being encroached upon.

Brooks stated he agrees the hardship is always the hardest criteria to meet. He said it does seem like the applicant could construct a shed on the property in a location that does comply with setback requirements. He said he does not see the hardship.

Jones stated he thinks on a lot that is forty percent of the minimum lot size and does not meet minimum frontage proves the hardship. A lot of the other lots on the street do meet minimum frontage and minimum lot size and this lot meets neither. He said the undersized nature of the lot definitely constitutes a hardship in this case.

Keiser stated he thinks the proposal does not meet the hardship criteria. He said the City's Zoning Ordinance is based on lot size and the requirements of the RSA are that there is something unique about the property that unfairly burdens that property when compared to other properties in the area.

Jones stated the Zoning Ordinance is based on a twenty-five thousand square foot lot and the lot in this case is ten square feet.

Keiser stated one can only put in their lot what they can fit according to the setbacks. He said a normal shed would be twelve-by-ten which would be allowed up to the property line. In this proposal which is a sixteen-by-twenty shed, that is the equivalent of a garage, which is larger than a normal shed. There is space on the property within the allowable zone where the applicant could place a shed or garage-like structure and not require a variance. Therefore, he does not think the variance request is reasonable or meets the hardship criteria, however, he does feel it meets the other four criteria.

Brooks stated if twenty-five thousand square feet is the minimum lot size in this area, the lot is already non-conforming and risks becoming overcrowded.

Fredette stated a shed of this size would likely be similar in construction to a garage minus a slab pour.

Jones stated the properties on this street in question are more rural and the properties are larger. He said a thirty-foot setback on a one-hundred-foot lot is very restrictive. He noted Keiser made great points about shed size because the applicant would be able to get closer to the lot line if the shed were smaller. He stated he does believe the lot size is a hardship because it is a grandfathered lot of record and the setbacks that are being enforced are meant for a larger lot.

Hilton stated that lot size is always a challenge. He said he agrees with Jones that the lot size in this neighborhood is a hardship. For that reason and because the applicant has support from abutters, he said he is in favor of granting the variance.

Jones expanded on Hilton's point about abutters. If the variance were granted, he stated he doesn't believe it opens up an avenue where other individuals would be granted variances for sheds by default. He stated it would be dismissive of abutters' support if the Board were to deny the variance.

MOTION: After review of the application, the file and all the information presented to the Board, Fredette MOVED that the hardship criteria has **NOT** been satisfied for the reasons discussed and he MOVED that the request of Steve Forrest for a Variance from Table 5.A.1 to allow a shed to be constructed within the rear setback for a property located at 107 Old Rochester Road be **DENIED**.

The MOTION was SECONDED by Brooks.

The MOTION CARRIED 3-2-0, with Jones and Hilton in opposition.

- b. **Robert Teague is seeking a Variance from Table 5.A.1 and Section 19.6.B to allow change of use from 2-family residential to a 3-unit apartment building without the required lot size, frontage or setback requirements for a property located at 41 Franklin Street in the Residential Multi-Family (R3) District, Assessor's Map 10 Lot 47, ZBA#08-2023. PUBLIC HEARING**

Keiser opened the public hearing.

Crossley provided an overview of the application. She noted the size of the existing lot and frontage along Franklin Street and Silver Street. She reminded the Board of the City's definition of frontage as multiple frontages on the same or different right of way cannot be combined to satisfy the minimum lot frontage requirement, and because they are not contiguous, they cannot be added together to meet that requirement. \. She stated the existing structure is also a nonconforming structure. She said if the variance is granted to allow for another unit to be added to this site to create the three-unit, multi-unit building, site plan approval through the Planning Board would be required. She noted the applicant's site plan files have been reviewed and there were no previous ZBA or Planning Board applications found. She said the applicant has addressed all of the criteria in the application for the Board to move forward in a public hearing and discuss the application.

Jones asked what would constitute multiple frontages on the same right of way.

Keiser stated a u-shaped lot would be a good example of lots that have multiple frontages and stated there are several lots in Somersworth that have more than one frontage.

The property owner, **Harley Regonini**, was present to represent the application. He stated his contractor, Robert Teague intended to attend as well but could not. He stated he is seeking permission for a variance to convert the previously approved 2-unit residential to a three-unit apartment building. He described the layout of the building at present and stated he would intend to divide units on the second and third floors into two different residential units, which would lower the total bedroom count in the building and potentially reduce the occupancy load on the building.

He noted the conversion would result in the enactment of stricter building regulations such as a sprinkler system, building egress components, and a higher fire rating. He noted the increased level of fire safety for the neighborhood and code deficiencies that would be corrected as a result of the building's rehabilitation.

Keiser asked Regonini if he could provide an overview of the five criteria required for a variance.

Regonini provided a summary of the five criteria, including how the variance would result in a less crowded building, contribute to neighborhood fire safety, and reduce the footprint of the building by downsizing the exterior deck and eliminating a small L-style addition off the back of the building.

Keiser reminded Regonini of the option offered by the Board to table cases to later dates and reminded him that he could exercise that option if he wished.

Regonini stated in the interest of financial pressures to move forward with the project, he would like the Board to continue their review of the application at the current meeting.

Keiser asked the applicant to elaborate on the elimination of the L-style addition in the back of the building.

Regonini stated there is a second story outcropping perched on two steel pipes that is currently dysfunctional and it is part of the proposal to remove it. He also referenced the porch on Silver Street that currently extends nearly to this corner of the building. The proposal is to reduce that in size to reduce the current nonconformity.

Brooks clarified the building's proximity to Silver Street and Franklin Street. He asked whether there is a driveway on the property.

Regonini stated there is no driveway on the site and the proposal does not involve the addition of one. He referenced an intermediate gravel area in close proximity to the property that will be used for parking. He pointed out the possibility of a parking burden if the variance is not granted, as there could be up to seven working age adults with their own vehicles all sharing a five-bedroom apartment. Due to the small size and dysfunctional shape of the yard, he said he believes it would be unlikely that a family would want to live at the property. He also stated the current two-family residence would likely result in the subletting of the property in addition to a higher density of vehicles.

Jones clarified the applicant would be eliminating between one hundred and one-hundred-and-fifty square feet of the total building square footage with proposal.

Keiser asked about the impact on property values of neighboring properties and whether there would be any increase of demand on City utilities.

Regonini stated the project would not adversely affect local property values and he said he doesn't think the additional unit would significantly increase the building's water demand.

Keiser asked Regonini about what makes the property unique that the Zoning Ordinance unfairly burdens it.

Regonini stated the building is very large and has a dysfunctional layout. He noted building costs are very high and it's not a premiere neighborhood. He said it is financially infeasible to renovate this building and bring everything up to code without creating a third apartment. He also referenced disadvantageous characteristics of the building, including its location, the size and shape of the backyard, and the layout of the neighborhood.

Keiser asked if other houses in the neighborhood are a similar size to his property.

Regonini stated there are some other large ones. He said he thinks this is one of the most disadvantaged architectural designs for a building of its size. He noted it needs dramatic changes to its design to make it a functional and modern building.

Regional Impact

MOTION: Brooks MOVED that the variance request of Robert Teague **DOES NOT HAVE POTENTIAL FOR REGIONAL IMPACT**

The MOTION was SECONDED by Jones.

The MOTION CARRIED 5-0.

Discussion:

Fredette stated he is really in favor of the project, the only challenge he faces is the ZBA has received a past application for a property with a similar request for a unit conversion and the Board opted not to grant the variance.

Jones stated this proposal was well put together and they are providing compromises in a way other applicants don't always provide. He thinks it speaks to the nature of the intent of the proposal. He said the applicant would effectively reduce density, reduce the parking load, and increase fire safety ratings.

Fredette stated he wonders if it is possible to modify the plan in such a way that some of the encroachments in the right of way are removed when the proposed renovation is completed, if the variance is granted.

Jones pointed to the first variance criteria. He said he thinks repairing a property always yields an increase in property value as long as it's done reasonably and keeps with architectural standards and character of the neighborhood. He stated it would be in the public's interest to add fire safety and reduce total square footage of a nonconforming structure. He said he would also propose that because this is an allowed use in the zone and there's a net reduction in total bedrooms, he thinks the variance request is reasonable.

Fredette referenced the proposed unit conversation and asked why a variance is not needed for not having enough off-street parking.

Crossley stated in January, the City Council adopted an ordinance change which removed the parking requirement for multi-family properties (being three and above) and because a proposal as such would need to go under site plan review, parking is under jurisdiction of the Planning Board. She stated under the Site Plan Review Regulations, the previous property was a duplex and duplexes and single-families are still within the Zoning Ordinance requiring two spaces per unit.

Brooks stated he believes 2-unit buildings should also have fire safety in addition to three-unit buildings. He said he finds it interesting it would be less costly to renovate a three-unit building than a 2-unit building.

Jones stated fire safety regulations vary a lot.

Keiser stated he was having a difficult time with the hardship criteria and identifying what makes the property unique and unfairly burdened by the Zoning Ordinance.

Brooks said he was in agreement in Keiser. He stated a two-unit building can easily be reconfigured in any way and he doesn't see the hardship in creating a three-unit building. He referenced Regonini's point about a parking burden and stated three couples could have six cars whereas two families might have two cars.

Jones stated a lot of other density regulations are based on number of bedrooms. He pointed to the hardship criteria question that no fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of this property. He said he doesn't think there is an issue with use because this is an allowable use in the zone.

Keiser stated he believes one would need to answer 3A of the hardship criteria before answering the subsequent questions.

Fredette said he understands high construction costs, but he believes as a Board, they need to stick with the variance criteria and pointed out the challenge with the hardship criteria, and that there has been a lot of litigation over it for the last twenty years.

Hilton stated if the property owner is trying to better his property and improve the City, the Board should try to work with the applicant. He said he would consider a financial issue to be a hardship.

MOTION: After review of the application, the file and all the information presented to the Board, Jones MOVED that that all five criteria has been satisfied for the reasons listed below and he MOVED that the request of Robert Teague for a Variance from Table 5.A.1 and Section 19.6.B to allow change of use from 2-family residential to a 3-unit apartment building **be GRANTED.**

- Substantial justice has been done allowing the property to be renovated;
- A reduction in occupancy would not diminish property values or create unnecessary burden on parking;
- The proposal would not be contrary to public interest or to the spirit of the ordinance because it's effectively increasing housing units while decreasing density; and
- The proposal would result in an increase in sellable units while contributing to the reduction in density.

The MOTION was SECONDED by Hilton.

The MOTION DID NOT CARRY 2-3-0, with Keiser, Fredette, and Brooks in opposition.

MOTION: After review of the application, the file and all the information presented to the Board, Brooks MOVED that the hardship criteria has **NOT** been satisfied and I move that the request of Robert Teague for a Variance from Table 5.A.1 and Section 19.6.B to allow change of use from 2-family residential to a 3-unit apartment building **be DENIED.**

The MOTION was SECONDED by Fredette.

The MOTION CARRIED 3-2-0, with Jones and Hilton in opposition.

c. Election of Officers

Fredette nominated Matt Keiser as ZBA Chair.

The nomination passes 5-0.

Fredette nominated Richard Brooks as ZBA Vice Chair.

The nomination passes 5-0.

d. Any other new business that may come before the Board.

Crossley reminded the Board of two zoning amendments that were passed by City Council in January of 2023. One amendment was for Section 21, Circulation and Parking Regulations, as the Board discussed in the last application. That revised the parking requirements for commercial and multi-family sites of three residential units or more. Those parking regulations follow the Site Plan Review Regulations and single-family homes and duplexes remain in the Zoning Ordinance requiring two parking spaces.

Crossley stated another item that has been updated is Table 4.A.1, under the Table of Uses. She said this revision came from a suggestion by the Zoning Board in 2019 or 2020. Note two (2) has been updated to indicate that new residential use is not allowed at street level except within the Business District starting at the intersection of Fayette Street and Main Street continuing along the length of the Business District until the Rollinsford town line, including both sides of Main Street within the Business District. The Board had received many applications where a commercial use was required on that first level on a portion of Main

Street that was much more residential in character. That has been updated as well. She said if any Board members would like a new ordinance printed with these revisions, new copies can be provided at the next meeting.

Keiser asked if any members cannot make the next meeting scheduled on July 5th. No members indicated that date would conflict with their schedules.

Jones asked if the Board got legal counsel to weigh in on the hardship criteria, whether it would change other members' opinions on how hardship is enforced.

Keiser and Brooks stated they are confident in his understanding of the hardship criteria.

Keiser stated a hardship can only be applied in unique cases and the Zoning Ordinance has to cause the hardship.

MOTION: Fredette made a MOTION to ADJOURN.
The MOTION was SECONDED by Brooks.
The MOTION CARRIED 5-0.

The meeting was adjourned at 8:39pm.

Respectfully submitted,

Anna Stockman
Planning Secretary