

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
March 9, 2021

A public hearing of the Zoning Board of Adjustment was held on Tuesday, March 9, 2021 at 6:30 PM, via Zoom.

Steve Lionel, Chair, asked for a Roll Call. All members stated that they are alone:

Steve Lionel, Chair
Mariellen MacKay, Vice Chair
Jack Currier, Clerk
JP Boucher
Rob Shaw
Efstathia Booras
Jay Minkarah

Carter Falk, Deputy Planning Manager/Zoning
Kate Poirier, Zoning Coordinator

Mr. Lionel explained the Board's procedures, stating that the Board is operating under the Governor's Executive Order via Zoom. Mr. Lionel explained how public access is available by telephone, and additional access means by video or other electronic access, as well as the meeting being streamed through the City's website on Nashua's Community Link and also on Channel 16 on Comcast. Mr. Lionel identified the points of law required for applicants to address relative to variances and special exceptions. Mr. Lionel explained how testimony will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws.

1. Dorothy L. Grant (Owner) 80 Caldwell Road (Sheet 105 Lot 45) requesting special exception from land Use Code Section 190-15, Table 15-1 (#3) to allow an accessory (in-law) dwelling unit - by replacing existing breezeway and one car garage with a new breezeway and two car garage, with accessory dwelling unit above garage. R9 Zone, Ward 6.

Voting on this case:

Steve Lionel, Chairman
Mariellen MacKay, Vice Chair
Jack Currier, Clerk
Rob Shaw

JP Boucher

Dorothy Grant, 80 Caldwell Road, Nashua, NH. Mrs. Grant said that her intention is to put a rental unit above her existing garage by adding an additional garage and building a rental unit above approximately 640 sq.ft, there will be a storage space above the existing breezeway for her own personal use. She said that all the measurements and distances are within the guidelines and boundaries. She said that there will be an entryway on the side of the garage and a separate staircase inside the garage for access to the unit, and there will be an outside staircase on the back of the addition for access as well. She said that there are a couple additions in the neighborhood that are similar.

Mr. Lionel said that there is required to be an interior door between the primary dwelling unit and the accessory dwelling unit. He asked where it is being done.

Mrs. Grant said that she was not planning on adding an egress for her to access the unit. She said she could add a doorway in her garage, meeting to their garage, which would allow her access to the interior staircase that's in the garage, and she can also access the staircase outside. She said that there is a doorway on the exterior side of the house, where you see stairs going up, there's a porch, a small deck porch area with an outside door that's accessible from the outside staircase.

Mr. Lionel said that he doesn't believe that meets the ordinance.

Don DeSilva, 93 Newton Drive, Nashua, NH. Mr. Newton said that if you go to the second floor, there are sliders to the left of the stairs that enter into the kitchen. He said that Mrs. Grant would be able to access not only through that stairway, but could get through the deck stairs on the back of the building into the four season porch area on the upper deck into the sliding deck, or from her storage area, as well.

Mr. Lionel said that he doesn't think that qualifies as an interior door.

Mr. Falk said that as long as the building is not like a duplex, where there is no access whatsoever between one unit and the other, there has to be some kind of access between the main

structure and the accessory dwelling, whether it goes through a four-season room, or the garage. He said he thought that the drawing showed access from the main house on the left, going into the mudroom area, and that perhaps could be for access.

Mr. Lionel said that the drawing is showing a solid wall between the two garage bays, so that would not give access.

Mr. Falk said that they would have to have some access through there.

Mr. DeSilva said he momentarily lost connection. He asked if those access points would be ok.

Mr. Lionel said it looks at a minimum that there needs to be a door between the two garage bays, as it's a solid wall, and the ordinance requires an interior door, but the garage is not part of the dwelling unit, and is not convinced.

Mrs. Grant asked what she would need to do to remedy that.

Mr. Lionel said that there has to be some sort of interior door between the primary dwelling unit and the accessory dwelling unit.

Ms. Poirier said that she did go over the requirements with the applicant. She said that she informed the applicant that as long as they can go through the garage from the principal structure to the accessory unit without going outside, it can be accessed that way.

Mrs. MacKay said that she doesn't see the interior door. She said that the ordinance says that an interior door shall be provided between the primary dwelling and the accessory dwelling.

Mr. Minkarah said that he doesn't see where it meets the requirement. He said that they would have to go outside, out from one of the garage units and into one of the garage units or access the exterior stairs. He said that he doesn't see how this meets the requirements.

Mr. Shaw agreed, and said that there has to be some way to connect in-between the primary dwelling and the accessory dwelling unit. He said that one way that can be done to

overcome this is to simply put a door between the two garage bays, and certainly a locked door would satisfy the concerns about access between them. He said that they cannot go outside to access between the two different units. He said that we cannot look at the familial requirements now.

Mr. Falk said that staff rarely sees a two-car garage with a wall between them. He said that if there was a door there, or not even the wall, perhaps it can work. He said that if they have a door, it still can be locked.

Mrs. Grant said that would be a very easy solution to this problem. She said that her garage is attached to her home, although it's not living space. She said that she can put in an egress doorway leading into the new garage so that it would allow her access to the dwelling above.

Mr. Lionel said that there are nine special conditions to be met, and read them to Mrs. Grant.

Mrs. Grant agreed to them all.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING.

Mrs. MacKay said that she is still considering the connection.

Mr. Currier said that the interior door is a direct result of what we're used to seeing as a familial accessory dwelling unit. He said that since the laws have changed, we've only had familial living ADU's coming before the Board, but from the applicant's testimony, this would clearly be a non-familial rental, but that is permitted. He asked if it is too much to go through the garage, and is leaning towards the interior door between the garages is ok.

Ms. Poirier said that a previous example of a non-familial tenant in an ADU is the case for 18 Smithfield Terrace, a couple

years ago.

Mr. Lionel recalled that case, and said that the Board has had several applicants saying that they would have an interior door, and it would remain locked, which apparently meets the State law.

Mr. Falk said it does.

Mr. Shaw said he's in support of the application as long as the applicant is willing to add that door in the garage. He said that an interior door shall be provided between the primary dwelling unit and the accessory dwelling unit, and in this case, the applicant is defining the primary dwelling unit as essentially the existing house along with part of the garage, and the new addition is the second bay of the garage and the upstairs living space, so by connecting those two dwelling units, as defined by the barrier of the interior garage wall, is sufficient to meet what is intended. He said that his understanding of when the revised legislation was adopted and passed was with the expressed intent of allowing people to remain in their homes and potentially generate extra income by having an ADU that could be rented to someone else, as long as the owner occupies one of the units. He said he is in favor of what is being asked.

Mr. Boucher said he supports the application, and his concerns were about the interior access. He said he is satisfied with the applicant stating that the interior door would be there. He said that the Board has seen other situations like this and most recently across from Almont Street there was an L-shaped ranch, and the main access was through the garage, so it's typical. He said it meets the purpose of the dwelling unit regulations, and is in support.

Ms. Booras said that she concurs, as long as there is that interior door, it meets all the criteria, and is in support of the application.

Mr. Minkarah said that when it comes to the interior door, the intent was twofold. He said that it doesn't have to be a relative, but there is a higher level of familiarity between someone who lives in the accessory dwelling unit and someone in the principal unit. He said that he doesn't think it meets the intent of the interior door, and one of the reasons why there is

an interior door requirement is there, is because it allows in a single-family home setting for the potential for the accessory dwelling unit to become part of the single-family home again. He said that he doesn't think that this one meets the intent of the interior door requirement, and doesn't think it meets the letter of the interior door requirement, as going from the primary dwelling into a garage, through a door, to another garage, up a staircase, and then across a porch, he said it doesn't meet it.

Mr. Lionel said he doesn't consider an interior door added between the two bays of the garage to meet the letter of the ordinance requiring an interior door. He said that he is aware of other approved ADU's where there is a stairway up to the ADU, and at the end of the stairway there is a locked door, and presumably the primary unit owner doesn't have the keys or has them somewhere else. He said that the way the State wrote the law, it is fairly liberal in terms of not requiring a familial relationship and implicitly encouraging these ADU's as rentals. He said he would be a lot happier if there was an actual door between the primary and the ADU, rather than going through a door in the garage, which is not part of the ADU and then up into this mudroom. He said if there was no wall there, it may be a little bit different. He said if the wall is there, it really implies that the garage belongs to the ADU, and that it allows a lot of square footage to the ADU, and exceeds the 750 square foot limit.

Mr. Shaw asked if the garage counts towards the footage of the ADU.

Mr. Falk said that they just count the living space, the heated/air conditioned space.

Mr. Shaw said he understands the comments about going through the garage and the steps, that it may not meet the spirit and intent, but the garage having a wall or no wall may be a secondary issue. He said that many of these requests have had the only common connection was in the garage space, where there was an interior stairwell in the garage that went directly up to the ADU. He said that the Board, in the past, has had approvals that has met this criteria. He said that one of the objectives is that for the criteria is that it shall be clearly incidental and subordinate in extent, use and purpose from the primary structure, which is met.

Mr. Currier said that when the State implemented this, the examples given were mostly up north in the country, but they were big farmhouses, big colonials where the family had aged, and is struggling to hold onto the property, and it was designed to allow some income for the person to remain in the house. He said that the intent here wasn't to build a rental unit, but to have an that this addition doesn't seem to be where it would be one unit again, because you have to traverse down and around through the garage. He said it can be argued either way if this is or isn't in the spirit and intent of the ordinance. He said that he is struggling with this one as well.

Mrs. MacKay said that she is struggling with this one. She said that when the State law changed it to accommodate rental units, it should have addressed the #7 in the Special Exception, as if there is not an interior door between the primary and the accessory, then it's not an ADU, and if it's not an ADU, how do we agree to allow an ADU when it does not meet all the specific criteria. She said that she agrees with Mr. Minkarah's statements earlier, the intent of this law states clearly that there has to be a connection between two, and it can't be through the garage, it seems like there are two separate units, they are two individualized units that are not connected, and it's not an ADU, and cannot support the application the way it is now, as it doesn't meet #7 of the special exception rules.

Mr. Shaw asked if the City considers garage spaces, garage structures when it comes to the principal dwelling.

Mr. Falk said that garages are not considered part of the 750 square feet that someone would be allotted, it doesn't include the garage or basement or attic, or a mechanical room, it's only air conditioned or heated living space. He said that whether the accessory dwelling unit is proposed is included in this space or not, staff doesn't count garage space towards the 750 square feet that they're permitted. He said that the City has had several other ADU's that had access to a garage, in one way, shape or another. He said that ADU's are special exceptions, so they're generally a use that is supported by the Board. He said a possible solution would be to table this, and let the applicant come back with a design that might be more comfortable. He said that if the garage wall wasn't there, it may work, but it wouldn't be the most typical design. He said that as long as there is access from the principal structure it

should work. He said that perhaps the applicant may want to re-design this.

Mr. Currier said that perhaps there could be an interior door from that middle room, to the second floor of the proposed new area, and if there was, it would meet everything that the State and City are seeking. He said that the middle room is only three or four steps of a different height to the other, so there could be a door and some stairs there, and perhaps there is an opportunity for the applicant to consider that.

Mr. Shaw said he would be in favor of tabling this. He asked if the question could be asked of Corporation Counsel whether the connection through the garage could meet the intent of the connection between the primary and accessory unit.

Mr. Falk said that staff could ask Corporation Counsel, as well as the Building Department as well.

Mr. Currier said it may be interesting to visit what the original intent of what the door issue is from when this was adopted. He said that the intent isn't in the ADU code specifically, but would be interesting to see what was brought up.

Mr. Falk said that there have been several ADUs that have had access through a garage, and there have been several different examples, some better than others, they're all different.

Mr. Boucher said that he'd support a table of this case. He said that he believes that the applicant meets the criteria, it is their design, it just may not be to the satisfaction of the Board. He said the design may not be the best, but said that it does meet the criteria. He said it is a permitted use.

Mr. Minkarah said that getting input is fine from either Corporation Counsel or the Building Department, he said that ultimately, interpretations of the Zoning Ordinance is up to the Zoning Board, so it's for this Board to determine to its satisfaction whether or not a particular provision of the Ordinance is met. He said that when it says interior connection, he said he'd expect to see is a connection pretty direct from the principal unit to the accessory unit, so if this were to be tabled and re-designed, that is what he'd be looking for. He said that in this case, what would be proposed if we go

with the door between the garages, still is insufficient in that it is a connection from the principal dwelling unit to a garage, that then connects to another garage, which then you go up a flight of stairs, then cross a porch, then you access the unit. He said that is too many connections that you have to make between different spaces before you get to the accessory unit from the principal. He said he's looking for something much more direct. He said if it were from an open garage with a staircase up, that would be far more direct.

MOTION by Mr. Lionel to re-open the Public Hearing to ask the applicant if they are willing to have this case tabled, or if they wish to proceed with the application as presented.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0 PER VERBAL ROLL CALL OF THE MEMBERS.

Mrs. Grant said that she is willing to do whatever it takes as far as getting the egress from her dwelling into the ADU. She said she would not be opposed to not putting up a wall in the garage, that would be the simplest solution for her. She said that if that is not acceptable to the Board, she will be willing to re-design the location of the staircase so that there is access to the dwelling unit. She said that the storage area above her breezeway is going to be her storage, it will not be connected to the ADU at all. She said that the above storage area will not be connected to her house, she said that she'd have to use the outside staircase to access the storage area. She asked if she could add a door to that accessing the ADU.

Mr. Lionel said that it would qualify, but in looking at the drawing, it isn't clear where the door would be placed.

Mrs. Grant said that they would be able to have the doorway accessed to the four-season porch.

Mr. Shaw said that it looks like she's interested in adding a door from the storage area into her primary structure, it would make the connection.

Mrs. Grant said that is correct. She said that the door would

be locked, and not really utilized, so, in that case, there wouldn't be an issue accessing the door, the renter could rearrange the furniture around the door in the bedroom, and can work around that.

Mr. Currier said that there may be a nice solution to this, and we could table this to allow her to think it through and come up with a simple solution, as it's hard to do it on the fly. He said that it could be tabled for two weeks.

Mr. Boucher said that the Board should be clear in intentions, so she doesn't come back with a plan that won't work, or doesn't meet the intent of the ordinance.

Mr. Lionel said that the Board is looking for a door between the interior of the primary unit and the interior of the accessory unit, and how she does that, we won't design it for her, she may want to consult with the Planning Department to see what might work for her. He said that for himself, access from the porch, even from the enclosed porch, is not what he would be looking for, although the door can be locked, there does need to be an interior door. He asked if two weeks is sufficient, or more time. He said that the next meeting is March 23, and the meeting after that is April 13th.

Mrs. Grant said that she believes that the March 23rd meeting will be sufficient time, and will re-design the staircase and the access entryway, and will submit the new design, since it appears that the removal of the garage wall will not be sufficient or adequate, as the egress needs to go directly from her dwelling to the new dwelling, and there will be no leeway on that.

Mr. Lionel said that is a fair assessment. She said that she is willing to adhere to all the guidelines, and will re-design the egress so that she can access it through her dwelling.

MOTION by Mr. Lionel to table this case to the March 23, 2021 meeting.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0 PER VERBAL ROLL CALL OF THE VOTING MEMBERS.

2. Riverside Properties of Nashua, Inc. (Owner) H.E.A.R.T.S. Peer Support Center of Greater Nashua Region VI (Applicant) 5 Pine Street Extension (Sheet 77 Lot 10) requesting use variance to allow a three-bedroom short-term transitional stay facility in a portion of an existing building. GI/MU Zone, Ward 4.

Voting on this case:

Steve Lionel, Chairman
Mariellen MacKay, Vice Chair
Jack Currier, Clerk
Rob Shaw
JP Boucher

Ken Lewis, H.E.A.R.T.S., Executive Director, 1 Oriole Court, Merrimack, NH. Mr. Lewis said that they are an adult educational wellness center. He said that they've been around since 2009, and have been in the Mill Cove Building since that time. He said that a few years ago, they were granted a variance for a two-bedroom respite short-term stay. He said that the State of New Hampshire has approached other centers in the State, including this one, under the Ten Year Mental Health Plan, and are trying to alleviate the problem of the emergency room and their overflows by providing some community services.

Mr. Lewis said that the plan is to provide a three-bedroom setting similar to the respite, where it would be fully staffed 24/7, allowing folks to prevent either going into hospitalization or for people coming out of the State hospital or residential program, to step down into the community and be more successful by connecting to the resources in the community, and working with the community mental health centers and other providers in the community. He said that this building is an Industrial zoning, the old mill, and the setting is similar to the last approval by the Board, and there is only one tenant space between us, but it would be at the same end of the building. He said it would be a three-bedroom with staff. He said that there used to be a youth behavioral program there called Directions, they just recently vacated the property and went to Technology Way. He said that there is a reception area, three offices that would be fully converted to bedrooms and handicap accessible, and one of the bedrooms, closest to the interior egress, would be a handicap bedroom. He said it already has two handicap bathrooms built into the facility and will be asking the owner to retrofit a handicap bathroom.

Mr. Currier asked if this would be the first time folks would be living there, versus more business use.

Mr. Lewis said that in 2014, they got approved for the respite center, which is short term, and Mobile Crisis is on the other side of the building, and they'll be having three bedrooms over there as well for their community mental health residential crisis beds. He said that the owner is supportive of them. He said that they are a 501-c3. He said that they've provided for the community for many years.

Mr. Shaw asked to confirm the previous variance, if it is for 1-7 days, and if it still is in existence.

Mr. Lewis said yes.

Mr. Shaw asked to confirm if this is an additional program, and the other one will continue.

Mr. Lewis said yes, this is part of the 10-year mental health plan that the State has come up with, before Covid-19 hit, it's to help provide better services to the community to minimize the overcrowded conditions in the emergency rooms.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Board members all expressed support for the application.

MOTION by Mr. Shaw to approve the application on behalf of the applicant as advertised. Mr. Shaw stated that the variance is needed to enable the applicant's proposed use of the property, specifically, this is a 30-90 day residential program to provide support to persons recovering from mental health issues and the applicant already is using space in the same building for similar but shorter term stays for the past 6-7 years.

Mr. Shaw said that the request is within the spirit and intent of the Ordinance.

Mr. Shaw stated that the request will not adversely affect the property values of surrounding parcels.

Mr. Shaw said that it is not contrary to the public interest, and substantial justice to the owner will be served.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 5-0 BY VERBAL ROLL CALL OF THE VOTING MEMBERS.

MISCELLANEOUS:

MINUTES:

2-24-2021:

MOTION by Mr. Shaw to approve the minutes with minor typographical correction of the date on page 1, waive the reading, and place the minutes in the file.

Mr. Falk said that the change will be made.

SECONDED by Mr. Lionel.

MOTION CARRIED UNANIMOUSLY 4-0 PER VERBAL ROLL CALL OF THE VOTING MEMBERS (Mrs. MacKay abstained).

REGIONAL IMPACT:

The Board did not see any cases of Regional Impact for the March 9, 2021 meeting.

ADJOURNMENT:

MOTION by Mr. Shaw to adjourn the meeting at 8:06 p.m.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 5-0 PER VERBAL ROLL CALL OF THE MEMBERS.

Zoning Board of Adjustment

March 9, 2021

Page 14

Submitted by: Mr. Currier, Clerk.

CF - Taped Hearing