

Town of Canterbury, NH
Zoning Board of Adjustment
Date: 2024 June 26
Location: Meeting House

Members Present: Jim Wieck (Chair), F. Webster Stout (attended via Zoom), Calvin Todd, Christopher Evans, Sean O'Brien, Brendan O'Donnell (Alternate)

Members Absent: Lisa Carlson (Alternate)

Others Present: Mandy Irving (Assessor), Ron McClure (Applicant), Ken Folsom (Town Administrator), Kent Ruesswick (Selectboard), Jim Sojka (Abutter)

1. Call to Order
 - a. The meeting was called to order at 7:00 p.m.
2. Case No. 2024-3 Variance
 - a. Chairman Wieck advised those present that Beth and Ronald McClure are seeking a variance. The application involves Tax Map 247, Lot 8 located at 303 Southwest Road in the Residential Zone.
 - b. The proposed use states "Request to build a detached ADU on a nonconforming lot. After meeting with the Planning Board, it met all the requirements except for 18.3 - 3A and could be approved with a variance". The application references Articles 18.3, 4.1.
 - c. On May 14, 2024 the Planning Board approved with condition the application from Ron and Beth McClure for a Conditional Use Permit to construct a new Detached Accessory Dwelling Unit at the same property. The prerequisite for approval was that the applicant receive a variance from the Zoning Board of Adjustment for Article 18.3, 3.A.
 - d. Chairman Wieck gave a detailed description as to the conduct of the hearing procedure.
 - e. Ron McClure presented the variance application.
 - i. Mr. McClure read aloud the material that he already submitted to the Board in his application. He showed them the map that was part of the application. He described the shape of the lot and explained how it was a conforming lot at the time of purchase in 1986 and construction in 1987.
 - ii. Mr. McClure explained that the lot shape is fixed, the neighboring lots are occupied, and they don't own any other contiguous land, so they do not have another option to build an ADU.
 - iii. Mr. McClure said that this variance wouldn't be contrary to the public interest. This ADU would be constructed far from others and it would use the same driveway as the primary residence.
 - iv. Mr. McClure said that this variance wouldn't be out of the spirit of the ordinance since the Planning Board already approved the construction with the variance condition only required because of frontage. The either the ADU or the primary residence would be occupied by their children and they would occupy the other. The lot wouldn't be subdivided.
 - v. Mr. McClure said that he has spoken with his neighbors and all either supported him or had no objection.
 - vi. Sean asked if Mr. McClure had addressed the "hardship" requirement. Calvin and Jim clarified that the hardship was Mr. McClure's inability to construct the ADU.
 - vii. Christopher asked for an explanation of the map. Mr. McClure showed and explained the map to Calvin, Christopher, and Brendan.
 - f. Chairman Wieck asked if anyone present wanted to speak in favor of the proposed variance.

- i. Jim Sojka, an abutter on 297 Southwest Road, spoke in favor. He said that he bought his lot the same year as the McClures. The McClures are building right in the middle of their lot, well within the setback rules. When the lots were purchased in the 80s, they were conforming.
 - g. Chairman Wieck asked if anyone wanted to speak in opposition of the proposed variance.
 - i. No one spoke.
 - h. Chairman Wieck asked if Mr. McClure had anything else to add.
 - i. Mr. McClure did not.
 - i. The Board addressed questions to the applicant.
 - i. Brendan stated that he would not be participating in this discussion. He is also an alternate on the Planning Board and was involved in the Planning Board's discussion of this application.
 - ii. Sean asked if the ADU would be on the same well as the primary residence. Mr. McClure confirmed that it would use the same well.
 - j. Chairman Wieck closed the testimony portion of the hearing. He asked for discussion from the Board and explained that no more additional information can be provided at this point.
 - i. The Board discussed if this application even needed a variance.
 - ii. Chairman Wieck explained that he believes the application does need a variance because the intent of Article 18.3 is to have currently non-conforming lots be reevaluated for ADUs.
 - iii. Calvin explained that he believes it does not need a variance because Article 4.1 grandfathers the lot in, so it is not actually a non-conforming lot.
 - iv. Sean said he also believes it needs a variance because 18.3 is just for ADUs.
 - v. Chairman Wieck suggested granting this variance and then asking the Planning Board to reword Article 18.3 to provide clarification. This would allow the McClures to have a firm answer now and prevent further hardship.
 - vi. Calvin expressed concern about setting a precedent by accepting the idea that this does require a variance. He was also concerned about the cost to the McClures of having to pay both Planning Board and Zoning Board fees.
 - vii. Christopher agreed with granting the variance now and then taking the issue up with the Planning Board afterwards.
 - k. Decision
 - i. Chairman Wieck made a motion to grant a variance in Case No. 2024-3 because
 - 1. granting the permit wouldn't be contrary to public interest. ADUs are generally allowed in this area, the only issue is frontage.
 - 2. granting the permit would be in spirit of the ordinance. In this general area, with the exception of this one condition, ADUs are normally allowed.
 - 3. substantial justice would be done by granting the permit. The only issue with the lot is the frontage at the road. The actual width of the lot is greater than the frontage requirement and the lot is over 7 acres.
 - 4. the proposed use would not adversely affect the property values in the district. Based on the lot size and the general character of the neighborhood, it would not have an effect on the property values.
 - 5. denial of the permit would create a hardship for the applicants. It would prevent them from constructing an ADU which they need and is appropriate to that area.
 - ii. Christopher seconded. All in favor by roll call, motion carried. Brendan abstained. Web had connection issues and did not vote.
 - iii. Chairman Wieck explained the 30-day appeal period.
3. Discussion of application process

- a. Mr. McClure suggested that the application shouldn't require certified mail notification of outside providers and other non-abutter third parties.
 - b. Chairman Wieck said that he would look into that. He wasn't sure if it was a legal requirement or something that the Town had the power to change.
 - c. The Board discussed adding this and other procedural matters to a working session agenda. The Board now meets regularly on every third Wednesday of the month, so they can convene a little early to discuss these topics.
 - d. Assessor Mandy Irving said that she does not believe Article 18.3 required a variance in Case 2024-3. She believes that Article 4.1 means that it is a conforming lot.
 - e. Town Administrator Ken Folsom spoke in agreement with Mandy. He believes that it wasn't the intention of the Planning Board or the residents of the Town when they approved Article 18.3 to create a situation like this. This lot was established before the zoning regulations were established, so it is grandfathered in.
 - f. Brendan explained that every time a zoning ordinance is amended, new non-conforming lots are created. So it doesn't matter that this lot was conforming in 1986, it is no longer conforming and so 18.3 required a variance.
 - g. Ken expressed disagreement since the current zoning ordinance wouldn't have required a variance if it was a new build rather than the creation of an ADU. He feels this is creating hardship for residents.
 - h. Chairman Wieck said that he initially agreed with Ken, but the Town's Counsel, Michael Cortney, advised that the application should go to the Zoning Board.
 - i. The Board continued discussion about this topic and decided to table these concerns until the next meeting.
4. Adjournment
- a. Christopher made a motion to adjourn 7:51. Sean seconded. All in favor by roll call, motion carried.

Minutes submitted by Kathleen McKay, Administrative Assistant