

SOMERSWORTH ZONING BOARD OF ADJUSTMENTS

MINUTES OF MEETING

January 13, 2022

MEMBERS PRESENT: Matt Keiser Chair, Richard Brooks, Keith Perkins, and Kenneth Vincent

EXCUSED MEMBERS: Brad Fredette and Glenn Garvin-Alternate

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

The meeting was called to order at 7:03PM.

1) NEW BUSINESS

- a. **MOTION FOR REHEARING:** Carl Aimesbury, is seeking a rehearing of the application denied on December 1, 2021, 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, in the Residential Multifamily (R3) District, Assessor's Map 09 Lot 27, ZBA#12-2021

Mears stated the applicant is requesting a rehearing of the application to allow a second dwelling unit within the existing structure without required lot area and frontage. The Board has received the submitted documents from the applicant. The rehearing process is a two-part process. The first step is for the applicant to request a rehearing per RSA 677:2. Per case law the rehearing shall be to correct any errors the ZBA may have made in the first hearing, if correction is necessary, and to consider new evidence provided by the applicant. If the Board grants the rehearing tonight, they shall schedule a rehearing within 30 days, with proper abutter notification (upon recommendation of our legal counsel).

Vincent stated where the applicant has come forward on the appeal, are they allowed to talk about other points from the last meeting, or restricted to new points, such as square footage.

Keiser stated for appeal process reviewing the information the applicant submitted to determine if there is new information or information that leads them to think the Board erred/could come to a new conclusion. Not here to re-hash the old meeting, if granted a rehearing the applicant would be able to re-present to the Board.

Keiser noted this is Board discussion and not public presentation.

Keiser stated in review of the information provided by the applicant, the memo and the 5 variance criteria in the twenty first century, the first item highlighted is the case of St. Onge vs. Concord. Second item speaks of the Simplex Case. In review of the 5 Variance Criteria in the 21st Century it is clear that the St. Onge and Simplex cases have been superseded by RSA 674:33, which is the criteria that the Board currently uses to review variances. There may be opinions in the cases but the criteria that was used has been updated by the State providing a criteria that is attempted to be more clear. Could say the criteria asked for an appeal against has been superseded. He stated it is invalid to say that, because the neighbors have multi-family that it should be applied to this lot, the variance criteria does not have to do with what the neighbors have or do not have, it hinges upon the subject property and those criteria or issues with the property. The square footage and frontage requirements both are used to control intensity or

density. Stated know that multifamily or duplexes are allowed uses and therefore not a use variance, which is the old Simplex and Bocca is for area. The case law and all the way through its criteria is specific that there need to be a unique characteristic of the property that would make granting the variance applicable, something that makes this property different such that it should be granted a variance. For example, a property without required frontage could be a pie shaped property or long which provides it with more SF to allow use. The minimum lot size criteria are harder to find the reason to be granted, for example a property on High Street that was connected to another lot. Laws are clear that there needs to be something unique about the property. In the applicant's submittal for rehearing nor the original submittal did not find anything that makes the property unique or special criteria to give it a hardship. In his opinion cannot find anything in the request for rehearing that is new or justify that the Board did not meet the criteria as set in the RSA.

Brooks stated as outlined by Keiser it makes sense and would agree. The hardship criteria is the item they found was not met, one thing he cannot find not just the dimensions in area but also frontage lacking. Does believe still lacking the hardship and as thorough as the document is, which he has learned a lot from, does not change his opinion after reading the supplied information.

Vincent would the Board consider that the property became unique and lacked SF when all the other properties around it became multifamily sites, because years ago when the SF stipulations were put on most of those buildings that surrounded this site were single family, now after several years all the buildings became multifamily (two or more) now his becomes unique because the lot was not large enough.

Keiser stated in his review of the law, the variance process does not allow, if your neighbors have a use does not mean it is a detriment to you, not a criteria but it is a criteria to not affect the neighborhood.

Perkins stated he would agree the Board did not err at the last meeting and providing superseded case law does not qualify as substantial evidence to change anything or justify a new hearing.

MOTION: Brooks stated after review of the request and all the information presented to the Board, I feel that the Board did not err in the decision-making process and no new substantial evidence was provided and I move that the request of Carl Aimesbury for a rehearing of application ZBA#12-2021 **be DENIED**

The MOTION is SECONDED by Perkins. The MOTION CARRIES 4-0.

- b. Any other new business that may come before the Board.

The Board welcomed the new alternate member Ken Hilton.

Brooks **MOVED** to **ADJOURN** the meeting.

Vincent seconded the Motion.

The **MOTION CARRIED** 4-0 7:15PM.

Respectfully Submitted, Dana Crossley, Planning Secretary