

SOMERSWORTH ZONING BOARD OF ADJUSTMENTS
MINUTES OF MEETING
November 2, 2022

MEMBERS PRESENT: Richard Brooks, Keith Perkins, Matt Keiser Chair, and Brad Fredette, Anthony Jones-Alternate

EXCUSED MEMBERS: Kenneth Vincent and Ken Hilton – Alternate

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

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

Keiser appointed Jones as a full voting member.

1) Approval of the minutes:

Fredette **MOVED** to approve the October 5, 2022 minutes.

Brooks seconded the motion. The **MOTION CARRIED** 5-0

2) OLD BUSINESS

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

3) NEW BUSINESS

A) **Valerie Miller & Andrew Marks are seeking variances from Section 19.21.A.1, 19.21.A.2 and Table 5.A.1 to convert the single-family dwelling to a duplex without the required lot size, frontage, setbacks, and allow less than required parking on site that would be situated in a way that would require the applicant to back out onto the street on a property located at 54 Franklin Street, in the Residential Multifamily (R3) District, Assessor's Map 09 Lot 88, ZBA#11-2022 PUBLIC HEARING**

Keiser opened the public hearing.

Mears stated the applicant is requesting a variance to allow an existing single-family home within the Residential Multifamily (R3) District to be converted into a duplex. The applicant is also seeking relief from onsite parking requirements. The lot size is 15,420.24 SF where 20,000 SF is required to allow a duplex and has 58' of frontage where 150' is required for a duplex.

Chris Mulligan, Attorney from Bosen & Associates was in attendance to represent the application. **Valerie Miller & Andrew Marks** were also in attendance.

Mulligan stated this application request is to convert an existing single-family dwelling into a two-unit dwelling. The applicant purchased the property in June and started significant renovations, it was in partially renovated condition when purchased. The tax card included in the packet indicates that the property was once a 3-unit and that the second floor is partially gutted. The property has been used as a 2 or 3 unit over the years and at some point was converted into a single family. The property is non-conforming in frontage, lot size and setbacks. They are proposing is no change to exterior or foot print of existing building, not adding square footage to the built environment of the site. Proposing to convert the existing structure back into a 2-family unit, this is a permitted use in the R3 District. Need a variance from parking requirements, they are providing two on site parking spaces where 4 are required, also requesting relief from the requirement that one does not back out into the street. In addition, because it is a non-conforming structure seeking dimensional relief from

frontage, setback and lot size requirements. The dimensional relief request is straightforward, for street frontage and lot size there is no conceivable way for them to comply with the requirements the lot is what it is. The setback requirements could only be met if they tore the building down and re-built it which is an unnecessary hardship by definition which justifies a variance. Noted that there is an aerial photo included in the packet which graphically indicates some of the challenges and unique characteristics of the lot, the building is set close to the front of the lot, is a wide broad building that does not leave a lot of room on either side. Noted in the rear of the building is mature trees and a City sewer easement that runs through the property.

Mulligan reviewed the variance criteria. Stated the first 2 criteria is that the requested variance will not be contrary to the spirit of the ordinance nor contrary to the public interest, NH case law they are considered together and the test for those criteria is whether or not granting the variance would substantially alter the character of the neighborhood or threaten health safety or welfare. Stated here the essential character of the neighborhood will be essentially unchanged, requesting ability to add an additional dwelling unit in an already densely populated urban environment. This is a permitted use and has been found at this property is previous use, the use would not alter the essential character being a residential use in a residential zone. The stacked parking configuration already exists which can be seen in some of the pictures provided in the packet. the paved driveway curb cut is shared with the neighbor, there is two stacked parking spaces for each lot and has existed for as long as people have been driving cars to the site and therefore would not alter the essential character of the neighborhood. Stated they believe those criteria have been met. The health, safety or welfare of the public is not impacted by their proposal.

Mulligan stated in review of if substantial justice the Board needs to balance the loss to the applicant if the variance is denied against gain to general public if strict conformance of the ordinance is required. For the dimensional requirement request there is no way the requirements can be met, so it is easily tipped to the side of the applicant. In regards to the parking the property has been used in the past as a 2-family residence and evidence it was 3. There is sufficient on street parking in the neighborhood to support another household. Noted they submitted floor plans, if it was a single family dwelling it would have 5-6 bedrooms which is a very large unit for todays standards and would likely see more than two adults living in the unit. Likely due to the size this unit would have on-street parking regardless and see it as a reasonable ask to reduce off street parking requirement to what they can provide. Believe that substantial justice would be done by granting the variances.

Mulligan stated values of surrounding properties would not be diminished by granting the variances because the exterior of the building will stay as is. The number of tenants of the building would remain as it is now just spread over two instead of one.

Mulligan stated there are special conditions of this property that prevent proper enjoyment of the property under strict terms of the ordinance and create an unnecessary hardship. Stated it is an L-shaped lot and the topography of the lot is that is slopes away from the rear of the structure to the rear of the lot. The abutting property to the left is very close to the shared lot line and oriented in a way that the entrance/covered porch of that property face the building and rear yard of this property. If they were to attempt to site parking anywhere on their lot, there is not room on the sides of the property, they would have to introduce a fair amount of engineering and fill to the property but would be creating a travel aisle between this property and the covered porch. It would create a conflict with the stacked parking next door and the travel aisle they would need to get to the rear of the property. It is an irregular L-shaped lot, a structure that does not conform to dimensional requirements as far as setbacks, the topography of the lot makes it difficult to put parking in the rear. Stated any type of arrangement that gets parking to the rear of the lot would have an extreme negative effect on the property next door. There is also a 20' sewer easement that they cannot build on for the benefit of the City and impacts their use of the rear of the property. Believe that requiring strict conformance is an unnecessary hardship, this is a reasonable use being a residential use in a residential zone, duplexes are permitted and therefor do not believe there is a fair and substantial relationship between the purpose of the ordinances and application to this property. There is no way they can comply with the dimensional requirements and stacked parking has existed on this property for quite some time. If this structure was to remain as a single-family

dwelling with 5-6 bedrooms thinks there would still be on street parking anyways and feel there is no fair and substantial relationship between that requirement and the application to this property.

Keiser opened for public comment:

Roland Noel, 103 Blackwater Road: stated he owns 50 Franklin Street that abuts this property. Agrees with the statements made by the applicant. Noted there would be two parking spaces on site and two likely using street parking, the number of bedrooms would not change if it remained single family or was converted to duplex, at some point there might be a situation where the tenants need more than 4 parking spaces, has no issue with that, but during parking bans where would the vehicles go. Was born and raised in the neighborhood, the structure has been a 3 to 2 different units. Noted that historically prior owners had permission from lot 89 to utilize parking there. During that time frame the owners lived on site and would be able to address any problems. Main concern is where the cars would go during on-street parking bans.

Rachel Budgele, co-owner of 50 Franklin St: stated she was born and raised in 50 Franklin. Attested that 54 Franklin has been a 3-unit, 2-unit and at that time most houses were not duplexes but now are and most park on the street because there is not the required lot space. Noted there are people from Green, Fremont and Silver St that park on Franklin. Have had experience where cars block their curb cut. Have no issue with the duplex request the issue is the parking. With prior owners there had been verbal agreements with a neighboring property that allowed for additional parking and access to their lot from the rear. The parking to them is the major issue of concern. Wants to ensure they will have their space and not have it infringed upon by tenants.

Brooks stated his biggest concern here is the requirement for the hardship criteria, this property may have been historically 2 or 3 units in the past but sounds like it has not been recently, therefore grandfathering would have been lost and at time of purchase was a 1-unit.

Mulligan stated that is correct and not taking the position that it is a grandfathered to allow more than one unit. To literally enforce the frontage and lot size requirements the lot could not be built on at all, literal enforcement of those requirements is an unnecessary hardship by definition. The setback requirements could only be met if the building was to be torn down and rebuilt and again is an unnecessary hardship. The parking requirements are a more difficult hurdle, the historical use has always had stacked parking. The amount of vehicles that would come from a building this size being a 1-unit or 2-unit is imperceptible due to the amount of bedrooms. The requirement is only that there be 2 parking spaces per unit, seeking relief from that requirement to use the excess space of this property to create a useful second dwelling. The size and configuration of the structure on this property councils against literal enforcement of the ordinance. The property is too big to be used as a single-family dwelling unit and does not have access to more than 2 off street parking spaces. Other than requiring the applicants to use the property at less than the highest and best use of the property, that is a hardship, unnecessary hardship, do not believe there is a corresponding burden to the general public by relaxing the regulation. Understand the abutter's concern regarding the on street parking and would agree to stipulate within their lease agreements with tenants that they will not impede on parking at 50 Franklin Street. The driveway where they have 2 stacked spaces, shares a curb cut and pavement pad with 50 Franklin where they have 2 stacked spaces as well. Would not be utilizing their parking area and have no right to do that.

Brooks asked if the property would be owner occupied.

Mulligan stated no.

Brooks noted then they would not be able to utilize an ADU. Inquired if the applicant is aware of the necessary changes that would need to be done to be code compliant.

Mulligan stated yes.

Fredette stated in review of the surrounding properties, considering value of surrounding properties, for 50 Franklin who has a 27' wide lot with a single curb cut would think there are several concerns for the parking in that area. There is already a pretty full street in that area and would have concern as noted by abutters with visitors who are unaware of areas that they would be allowed to park. Asked the applicant to address further.

Mulligan stated they would be willing to stipulate for the purposes of their tenants they can impose a restriction to avoid that situation. Understands where there can be some confusion, it could be striped if that is something the neighbors would like. Thinks the fundamental problem for them and the neighbors is that the only other solution is worse for them because it would require them to engineer some parking to the rear of the building. To do that would create a much more conflicting situation with that space. The abutting property structure goes almost lot line to lot line and is oriented to face the applicant property, where there is just landscaping, if it becomes parking it would not be an attractive view for that abutting property and a travel aisle between the properties that they would like to avoid. Relief would avoid that situation and improve the value of the abutting property.

Keiser inquired why they cannot build parking in the rear of the lot.

Mulligan stated because the conflict with the neighboring property is significant if they do as described. Also the topography is such that it slopes down significantly from the rear of the structure and in the L of the lot it drops even further. To create parking it would compromise some of the value of the neighboring property but also would require a fair amount of engineering and introduction of fill to the property. There is also a sewer easement in the rear of the lot. Do not want to destroy mature trees, mess with the beneficial parts of the lot that a beneficial to the neighborhood.

Keiser the existing house, is nonconforming because it does not meet frontage requirements and setback requirements. But the lot size is met for a single-family use. The request is to change the non-conforming use into a duplex. Why should the Board grant a variance to allow that.

Mulligan stated the existing single family was converted in the past from multi-family. The non-conforming portion of the property is not related to the use, it is related to the dimensional aspects. Changing the use does not make it more non-conforming dimensionally, does not create any more dimensional non-conformities, just creates two households where one exists.

Keiser stated in theory it does, if a single family requires 15,000 SF lot and 115' of frontage, a duplex requires 20,000 SF lot and 150' of frontage but setbacks are the same for each zone.

Mulligan stated his understanding for R3 District.

Keiser explained Table 5.A.1 Note 5.

Mulligan stated it would not conform to those dimensional requirements.

Keiser closed the public hearing.

Brooks stated they have recently had several requests similar to this, many do not conform to the regulations that exist, this one has some conformance outside of frontage and setbacks. Still would not conform for two units or three units. This lends to overcrowding and translates to parking. Thinks historically when start crowding so many units it becomes a hinderance of the values in ways that emergency calls seem to gather in the area and other things that do not help the environment. Some consider the single-family neighborhoods better neighborhoods, but the concern is the overcrowding. The ordinance speaks to requiring larger lots to support more units and this request does not meet that. Does not feel he is in favor of this request.

Fredette stated his biggest concern is the parking and if that could be planned out a little better would be more in favor. Thinks Franklin, lower Franklin, is fairly unique in that there are not many owner-occupied single-family dwellings in that neighborhood anymore. Thinks that may produce a uniqueness or hardship, this house needs work based on the real-estate listing and having a building that requires the owner to rehab as a single family is a hard sell.

Regional Impact MOTION: Perkins stated I move that the variance request of Valerie Miller & Andrew Marks **DOES NOT HAVE POTENTIAL FOR REGIONAL IMPACT**

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

Keiser stated in review of the property value criteria, could go either way. Increasing the number of people there impacts the density of the property but not much impact to surrounding property values. Thinks if it was

permitted to be a duplex it would not be contrary to public interest because it would not significantly change the neighborhood. Not sure that substantial justice is done, the neighborhood is already a dense neighborhood, the size of properties equates to the density, increasing the density of the neighborhood it is already very dense. Does not feel it meets the hardship criteria, in review of the parking though it could be costly it is possible to put parking out back and it would eliminate the need for the stacked parking as well. The different dimensional requirements, looking for something unique about the lot that makes it such that the ordinance unfairly hinders this property. For example if the area requirement was met but there was a small frontage because the lot is L shaped that would create a uniqueness to allow for granting. Does not see anything in this property that makes it unique where the zoning ordinance creates a hardship to go from a single family to duplex.

1. Section 19.21.A.1 – Requirement for two parking spaces

MOTION: Perkins stated after review of the application, the file and all the information presented to the Board, I feel that all five of the five criteria have **NOT** been satisfied as discussed and I move that the request of Valerie Miller & Andrew Marks for a variance from Section 19.21.A.1 to allow less than two (2) parking spaces per dwelling unit **be DENIED.**

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

2. Section 19.21.A.2 – For the ability to arrange parking in stacked manner

MOTION: Perkins stated after review of the application, the file and all the information presented to the Board, I feel that all of the five criteria have **NOT** been satisfied and I move that the request of Valerie Miller & Andrew Marks for a variance from Section 19.21.A.2 to allow parking to be located and arranged in way that vehicles may need to back out into the street **be DENIED.**

The MOTION is SECONDED Fredette.

Discussion: Brooks stated this ordinance hasn't come up too many times in the past, has a problem with this in the sense that nearly every house in the City has to back out of their driveway. Could be interpreted that if you back in you are not un-compliant with the ordinance. Feels like it was not intended for properties like this but rather commercial properties.

Keiser noted that for this property as a single family dwelling it is grandfathered to allow for stacked parking on site, the request is for the expansion of use. Can ask staff to look into revising this.

Brooks stated it seems odd for a parcel of this use.

The MOTION CARRIES 3-2 (Jones and Brooks voted in the negative)

3. Table 5.A.1 to allow the existing single family to be converted to a duplex without dimensional requirements.

MOTION: Brooks stated after review of the application, the file and all the information presented to the Board, I feel that the hardship criteria of the five criteria has **NOT** been satisfied and I move that the request of Valerie Miller & Andrew Marks for a variance from Table 5.A.1 to allow an existing single-family home to be converted to a duplex without the required lot size or frontage and setbacks **be DENIED.**

The MOTION is SECONDED by Perkins.

Discussion: Jones stated he does not feel like denying the conversion of the existing single-family structure would be inconsistent with the character of the neighborhood. To him the main issue and concern was the parking and overcrowding does take away from neighbors being to enjoy their space. For that reason the criteria for dimensional relief has been met.

The MOTION CARRIES 3-2 (Jones and Fredette voted in the negative)

B) Jesse Van Deirse, is seeking a use variance from Table 4.A.5 to allow a Personal Service Establishment (barbershop) on a property located at 279 High Street, in the Residential Duplex (R2) District, Assessor's Map 15 Lot 16, ZBA#12-2022 PUBLIC HEARING

Keiser opened the public hearing.

Mears stated the applicant is seeking to establish a barbershop in the existing commercial unit which was previously occupied by Accupet Vet. The property is located in the R2 District which does not permit commercial use. There is also an existing duplex located on the lot.

Fredette noted it was a hair salon prior to Acupet Vet, asked if there was a variance prior for the hair salon/personal service us.

Mears stated no variance was approved for the hair salon there was an existing site plan and was a grandfathered use.

Attorney Johnathan McPhee at North Atlantic Legal and Jesse Van Deirse were in attendance to represent the application.

McPhee provided images of the property to the Board for reference. Stated they are not proposing changes to the property besides a new sign but no deviation from how the site has historically been used. The property is located in the Residential Duplex (R2) District but not residential in any form is a commercial property with a well lit and maintained asphalt parking lot and designed to be ADA accessible. There are 14 parking spaces that are well marked. The structure is designed to look similar to a house but has a glass front. Has not met anyone that recalls it being used as a residence and was historically used as a hair salon for about 20 years and then the vet. The site is located on High Street and located close to other businesses in the corridor.

McPhee stated it would not diminish or impact surrounding properties because they would not be changing physical appearance or traditional use of the property. It would be within the public interest because it would be keeping with what has always been there. It would not damage public interest because it is a continuance of a personal service use on the site. Granting the variance would enable the continued operation of the applicant's small business that is already located in Somersworth. There is no change in the character of the property or use, similar businesses have operated at this location and reasonable to use the property this way to make an economic contribution to the community. With respect to special conditions, it is not suited to residential use, there is a very large parking lot at the rear of the lot and very limited grassed area on the lot, about 75% of the lot is paved. Substantial justice would be achieved because they would be continuing the status quo by allowing a business to stay within Somersworth. For the spirit of the ordinance, which is to promote health and safety, create order for use and development, but not talking about changing anything nor a noxious use. The ordinance provides for variance, it is already a mixed-use area, a business has been operating there for many years, ordinance is there to create order but there will always be areas of mixed use. Does not think this is a close call because it is preservation of the status quo and a good use for the site. Noted that the applicant is already under contract to lease the space, understands that can displease the Board but he acted in good faith worked through a commercial real estate broker.

Van Deirse stated he operates the 1886 Barbershop which is located within Somersworth and he is looking to grow within the community. He stated he found this spot and contacted the real estate agent to start the process to move into the space. They were unaware of the zoning history of the property and the need for a variance. The building has been used for commercial since 1980 when it was constructed, there is only a toilet and sink and could not be a residence. For the majority of its existence it has been a hair salon with the exception of when it was a vet office. All existing plumbing fixtures would allow for transition back to hair business and would not be making any changes to the exterior. His business is appointment

driven and would do not accept walk ins and therefore would not alter the existing traffic flow. Granting the variance would not change the aesthetic of the neighborhood since it is surrounded by some commercial uses. The property owner has been making improvements to the site by adding parking lot striping. Everything would remain the same for the neighborhood.

Keiser noted there is no public in attendance and no comments received.

Keiser inquired how many employees there would be.
Van Deirse stated himself and 3 barbers.

Keiser inquired if there would be site plan review required.
Mears stated if anything minor site, but believes there is an existing site plan for the site.

Fredette asked what the hours of operation are.
Van Deirse stated Monday through Friday from 10-8pm and Saturday 10-5pm and Sunday 10-4pm.
McPhee noted that it is a busy area already, the parking lot is already commercially lit and in use now.

Keiser stated there is house right to the left, do the lights turn off.
Van Deirse stated the lights are on a timer and would remain consistent unless requested to alter.
McPhee noted there is landscaping along the western side and wooded on the other side for properties adjacent to the parking lot.
Keiser noted that the duplex is on the same lot and likely owned by the same person.

Mears noted the Planning Board approved a site plan for the hair salon.
Keiser inquired if she saw any issue with the site being utilized for the 4 barbers now and how many booths are being used.
Van Deirse stated there will be 4 booths.
McPhee noted that not all work at the same time.

Keiser closed the public hearing.

Regional Impact MOTION: Brooks stated I move that the variance request of Jesse Van Deirse **DOES NOT HAVE POTENTIAL FOR REGIONAL IMPACT.**

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

Fredette stated he is in favor of this request. The building has been built and used for commercial for as long as he can recall. Does not think it would ever become a residence and it is a business owner that is looking to expand use with a better site.

Brooks stated he agrees with Fredette. Does not see this being an issue, it has existed there for many years without an issue.

Keiser stated it would not impact surrounding property values, does not think it is contrary to public interest, would not change the character of the neighborhood, the building is unique because it is designed as a commercial business and has been for use to apply to zoning ordinance to require it to be residential would create a hardship. Substantial justice would be done there is no detriment to the public and no impact to the character of the neighborhood.

MOTION: Brooks 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 discussion and I move that the request of Jesse Van Deirse, for a use variance from Table 4.A.5 to allow a Personal Service Establishment **be GRANTED.**

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

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

Mears stated included in the packet is the 2023 schedule if the Board has any questions.

Mears noted staff is working on some zoning amendments, one of those is a proposal to discuss the requirement about parking configuration.

Perkins **MOVED** to **ADJOURN** the meeting.

Brooks seconded the Motion.

The **MOTION CARRIED** 5-0 at 8:16 PM.

Respectfully Submitted,

Dana Crossley, Planning Secretary