

SOMERSWORTH ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
WEDNESDAY, JANUARY 4, 2023

Members Present: Matt Keiser, Chair, Richard Brooks, Brad Fredette, Ken Hilton, Alternate Keith Perkins, Kenneth Vincent

Members Absent: Anthony Jones, Alternate

Staff Present: Michelle Mears, Director of Planning and Community Development and Sarah Doucette-McLauchlin, Acting Planning Secretary

Mr. Keiser called the meeting to order at 7:00pm. Ms. Doucette-McLauchlin called the roll.

Mr. Hilton was appointed a full voting member of the Board for minutes.

1. Approval of the Minutes:

Mr. Brooks proposed a motion to approve the minutes from the December 7th, 2022 meeting of the Board; Mr. Fredette seconded the motion; and the Board voted to approve the minutes, 3-0 with two members abstaining.

2. Old Business:

There was no old business.

3. New Business:

- a) **PUBLIC HEARING for a PARTIAL REHEARING:** Valerie Miller and Andrew Marks are seeking a variance from Table 5.A.1 to permit the conversion of a single-family dwelling unit into a duplex without the required lot size, frontage or setbacks at 54 Franklin Street in the Residential Multifamily (R3) District, Assessor's Map 09, Lot 88 (ZBA# 11-2022).

Mr. Keiser opened the Public Hearing at 7:01pm.

The applicants were represented by Chris Mulligan of Bosen and Associates, PLLC. He presented the revised application to the Board, noting that it resolved issues about parking with an off-street parking area. He said the applicant would no longer need relief from parking requirements, but would still need relief from Table 5.A.1: Dimensional and Density Regulations for frontage, lot size and setbacks. He drew attention to a map of abutting multi-family homes surround the applicants' property, noting that multi-family dwelling were the norm in the area.

Mr. Mulligan reviewed the five variance criteria for the Board. He said that that it was not contrary to the public interest because concerns about the impacts of the proposed conversion had been met, including the creation of off-street parking; that the spirit of the ordinance would be observed because the property had once been a multi-family dwelling and had been converted to a single-family dwelling by a previous owner; that substantial justice would be denied the applicants as all of the surrounding properties were multi-family dwellings; that the values of surrounding properties would not be diminished because the surrounding properties were all multi-family dwellings; and that denial of the variance would create unnecessary hardship because the unique characteristics of

the dwelling (larger than surrounding properties, unusual lot shape) could not be corrected except by demolishing and rebuilding the property.

Mr. Mulligan noted a letter in support of the application submitted by an abutter.

Mr. Keiser invited comments from the public at 7:16pm.

Roxanne Nichols, Franklin Street, said she was a neighbor and had meet with the applicants. They had showed her the proposed parking. She said she had no issues with the parking and supported the application.

Mr. Fredette asked if the applicants had applied for necessary parking and driveway permits. Mr. Mulligan said that the applicants had met with the city and would get all necessary permits. Mr. Fredette asked whether the property had been advertised as a single-family or multi-family dwelling. Mr. Mulligan said the property has been advertised as “potentially” multi-family. Mr. Fredette asked what the square footage was and Ms. Mears, consulting the tax card, said it was approx. 2,400 SF. Mr. Fredette asked if the applicant had any photos showing duplicate infrastructure from when it was a multi-family dwelling and Mr. Mulligan said there was currently no visible duplicate infrastructure or appliances.

Mr. Fredette asked if the ordinance was created to reduce crowding in the neighborhood and questioned whether the ordinance expressed the goals of city development. Mr. Mulligan said the ordinance does not apply retroactively to existing developments and that he did not think that the city was looking to reduce density in a zone created for multi-family dwellings.

Mr. Keiser asked Mr. Mulligan what the purposes of the dimensional requirements were, and Mr. Mulligan said that they were to prevent overcrowding and promote livability as well as to ensure enough frontage for parking. Mr. Keiser noted that the applicant was asking for three exceptions to required dimensions and said that he questioned whether it was unfair to limit development in this situation. Mr. Mulligan said that the property was a larger structure than most single-family homes and added that keeping it a single-family unit could result in occupancy by more people than if it were a two-family dwelling.

MOTION: Mr. Brooks proposed a motion to declare that the variance application submitted by Valerie Miller and Andrew Marks did not have the potential for regional impact; Mr. Vincent seconded the motion; and the Board approved the motion 5-0.

The Board deliberated on the merits of the application. Mr. Fredette expressed concerns about crowding in the neighborhood; the number of exceptions requested in the variance application; the future impact of the change of use of the property; and the property not having been used a multi-family dwelling for many years.

Mr. Vincent said he thought the issue of who would occupy the dwelling if it were a single-family dwelling had merit and said he thought the applicant had submitted a reasonable request. He noted that he had reservations about how “grandfathering” was not uniformly enforced in the city, but said that if the neighborhood was mainly made up of multi-family properties, then he thought the application should be approved.

Mr. Hilton said that in light of issues with the lack of housing, he thought that granting the variance would be beneficial for the housing situation in the city.

Mr. Keiser said he did not think granting the variance would change the characteristics of the neighborhood; would provide substantial justice; and would not affect surrounding property values or public health. He said he did have an issue with seeing the size of the structure as a true hardship. Mr. Fredette agreed, saying that he did not think that property was too large to be a single-family dwelling.

Mr. Keiser reviewed the five variance criteria for the Board. The members of the Board did not think that granting the application would be contrary to the public interest; would not diminish surrounding property values; would grant substantial justice; and would meet the spirit of the ordinance. The Board did not think that the criteria for hardship had been met because they did not see the size of the property as a hardship.

MOTION: Mr. Brooks stated that after review of the application, the file and all the information presented to the Board, he felt that the criteria for hardship as presented by the applicant had not been satisfied and that he moved that the request of Valerie Miller and Andrew Marks for a variance from Table 5.A.1 to allow for an existing single-family home to be converted into a duplex without the required lot size, frontage or setbacks be denied; Mr. Fredette seconded the motion; and the Board approved the motion to deny the application 5-0.

b) **PUBLIC HEARING:** Todd and Katrina Ellis are seeking a variance from 19.24.f to allow an Accessory Dwelling Unit that is not internally connected to an existing single-family dwelling on a property located at 18 Baker Way in the Residential Single-Family (R1) District, Assessor's map 32, Lot12B (ZBA#14-2022).

Mr. Keiser opened the Public Hearing at 8:00pm.

Ms. Ellis presented the variance application to the Board. She said that she wanted to convert a space above her connected garage currently being used as an office space into an accessory dwelling unit (ADU) for her college-aged daughter to live in while attending school. The configuration of her home and garage did not allow for an internal staircase to be built in the garage so she needed to build an external stairway to access the ADU.

Mr. Keiser asked her to review her responses to the five variance criteria for the Board. Ms. Ellis said that granting the variance would not be contrary to the public interest because the ADU and stairway would match the existing appearance of her home which is set back from the road and has no visible neighbors; would be true to the spirit of the ordinance because the unique conditions of her home do not allow her to meet the ordinance requirements; that substantial justice would be done as the ADU would not affect the public; that surrounding property values would not be affected because her house could not be seen from the road and she had no close neighbors; and that the configuration of her garage and style of her house, which is a single-story ranch, created a hardship which prevented the construction of an internal stairway.

Mr. Fredette asked how many bedrooms there would be and Ms. Ellis said one. Mr. Keiser asked if she had considered a stairway in the garage and Ms. Ellis said that building a stairway in the garage would not allow for use of the garage. Mr. Brooks asked if the garage was connected to the house and Ms. Ellis said it was.

Mr. Keiser opened the Public Hearing at 8:10pm. There were no comments from the public.

Mr. Brooks said he thought the application met the spirit criteria, but was unsure if he thought a hardship had been created. Mr. Fredette said he thought the applicant could find a way to meet the ordinance. Mr. Keiser said that he thought that the unique layout of the house met the requirements for granting the variance.

Mr. Vincent asked how the city would prevent the ADU from being used as a rental unit. Ms. Mears said that a restrictive covenant was required to be added to a property owner's deed stating that the ADU could not be used as an income-generating rental unit and that homeowners with ADUs had to pay a fee to the city each year.

Mr. Keiser reviewed the five variance criteria with the Board. Because of the semi-rural location of Ms. Ellis' property, the members of the Board did not think that granting the application would be contrary to the public interest; would not diminish surrounding property values; would grant substantial justice; would meet the spirit of the ordinance; and that the unique characteristics of the house created a hardship.

MOTION: Mr. Vincent proposed a motion to declare that the variance application submitted by Todd and Katrina Ellis did not have the potential for regional impact; Mr. Perkins seconded the motion; and the Board approved the motion 5-0.

MOTION: Mr. Vincent stated that after review of the application, the file and all the information presented to the Board, he felt that all five criteria for a variance had been satisfied due to the location of the property and the unique characteristics of the house and that he moved that the request of Todd and Katrina Ellis for a variance from 19.24.f to allow for an Accessory Dwelling Unit that is not internally connected to the existing single-family dwelling for a property located at 18 Baker Way be granted; Mr. Perkins seconded the motion; and the Board approved the motion 5-0.

c) Any other new business:

Ms. Mears informed the Board that Dana Crossley, the Board's Planning Secretary, would be promoted to a Planning Technician upon her return from maternity leave.

Mr. Vincent proposed a motion to adjourn; Mr. Fredette seconded the motion; and the Board approved the motion 5-0.

Mr. Keiser adjourned the meeting at 8:27pm.

Respectfully submitted,
Sarah Doucette-McLauchlin
Acting Planning Secretary