

Town of Farmington
Zoning Board of Adjustment Meeting Minutes
Thursday, August 1, 2019

Board Members Present:

Elmer "Butch" Barron, Chairman
John Aylard, Vice Chairman
Bill Fisher
Warren Morgan
Joe Pitre
John Scruton, Alternate Member

Others Present:

Kyle Jones, applicant

BUSINESS BEFORE THE BOARD:

Call to Order:

Chairman Barron called the meeting to order at 7 p.m.

Pledge of Allegiance:

All present stood for the Pledge of Allegiance.

Review Meeting Minutes:

January 3, 2019 – Chairman Barron said that due to an error made at the last meeting where the incorrect date was used to approve these minutes the Planner has advised the board to issue a new motion to accept the meeting minutes from Jan. 3, 2019.

Motion: (Aylard, second Morgan) to accept the minutes of Jan. 3, 2019 as written and to note that the date was in error at the July 11, 2019 meeting passed 5-0.

July 11, 2019- No errors or omissions

Motion: (Aylard, second Pitre) to accept the July 11, 2019 minutes as written;

Discussion: Mr. Scruton suggested that it be noted for the record that the mistake made in motion for the Jan. 3, 2019 minutes as shown in the July 11, 2019 minutes was corrected at the Aug. 1, 2019 meeting.

Vote: The motion passed 5-0.

Any Other Business to come before the Board: None

NEW CASES:

Application for a Variance by Kyle Jones (Tax Map U-5, Lot 215): The applicant requests relief from the provisions of Section 2.04 (B) of the Farmington Zoning Ordinance which states that the maximum net residential density within the Urban Residential District is one dwelling unit per 10,000 square feet. The applicant proposes to convert an existing single-family dwelling to a multi-residential unit with two apartments but does not currently meet minimum lot size requirements.

Chairman Barron said this property is located beside the Post Office and asked the applicant for the size of the lot.

Kyle Jones said the lot is approx. 0.3 acre or about 5,700 sq. ft.

Chairman Barron noted that is half the size that is required for a single family dwelling.

Mr. Jones said his property is the second biggest lot in this area and that many of the other dwellings have 3-4 apartments while he is asking to only have 2 apartments. He asked if the board was aware of this and noted they weren't exactly "kosher" with the rules.

Mr. Barron said he was correct but just because someone else has it or did it before the ordinance was adopted doesn't necessarily mean that he can do it too. That is why you are here he said.

Chairman Barron then asked the board to review the facts supporting this request as supplied by the applicant's application for a Variance as follows:

1). The Variance will not be contrary to the public interest:

Applicant Response – The Urban Residential District currently allows for multi-family units. This includes lots 208, 209 and 216 which are adjacent to lot 215 and are all multi-family units with similar lot sizes.

Board Discussion – Mr. Pitre said there is a problem in town and in NH with the lack of affordable housing and one of these units is going to be a mother-in-law apartment.

Mr. Jones said it is not a "mother-in-law apartment" but it is a full apartment where his mother-in-law lives. He said his wife's parents were being foreclosed and they were trying to help them.

Mr. Pitre asked about the living area in each apartment.

Mr. Jones said each apartment has about 1,000 sq. ft. of living space with 3 bedrooms. He said the total sq. ft. of the house is 2,700 sq. ft. with an attached barn so there is enough space.

Mr. Barron agreed there is enough space in the house but it doesn't meet the lot size requirements.

Mr. Scruton said he didn't know what the Town's regulations are regarding accessory dwelling units but it seemed that this is not that far from that kind of situation. He asked if the Town Meeting body voted on regulations for accessory dwelling units or if they would default to the state law.

Mr. Fisher said that accessory dwelling units can't be bigger than 800 sq. ft. and it must share a common wall or barrier. He said he didn't think this unit would qualify as an accessory dwelling unit because of its size.

Mr. Scruton said one of Mr. Jones' options would be to reduce the size of the additional unit to 800 sq. ft. so that he could have an accessory dwelling unit there.

Mr. Fisher said he could do that but Mr. Jones stated his in-laws have 3 children and reducing the size of the unit would create overcrowded conditions there.

Mr. Scruton said the board has to think about the building and the regulations not the occupants.

Mr. Jones said he wanted to follow the law but doesn't want to put his in-laws on the street.

Mr. Pitre clarified that there is a law and then there is a variance from the law.

Mr. Scruton said Mr. Jones said the units are over 1,000 sq. ft. each and asked how much over 1,000 sq. ft. each unit is in size.

Mr. Jones said he didn't know the exact square footage and estimated that one unit is about 1,200 sq. ft. and the other unit is about 1,300 sq. ft.

Mr. Scruton said at 1,200 sq. ft. the unit is 50% over what is allowed for an accessory dwelling unit so going to that size (800 sq. ft.) probably would not be a reasonable alternative.

Mr. Barron said that according to the property tax card the second floor is 1,100 sq. ft. and the first floor is 1,620 sq. ft.

Mr. Pitre asked if this building was ever a multi-family residence.

Mr. Jones said that when he purchased the house it was a multi-family with 4 units.

Mr. Barron asked when the units were occupied and noted that what is listed and what is fact may be 2 different things.

Mr. Fisher read from the tax card that there was an alteration done to the house to change it back to a single family home in 2015.

Mr. Jones said the previous owner told him he fell upon hard financial times and decided to make that change and that he (Mr. Jones) would have to apply to return it to a multi-family house. He said he bought the house in 2016 and it has taken him 3 years to be ready to do this.

Mr. Scruton asked if Mr. Jones knew if any enforcement action was ever taken against the previous owner for improper conversion to a multi-family building from what it was previously.

Mr. Jones said he did not know.

Mr. Barron speculated that if they did an alteration and changed it back to a single family home that the multi-family units were okay at that time. There were apartments there before there was an ordinance against it or it was properly done although I don't think that was the case as the ordinance was ½ an acre per dwelling unit before it was changed he said.

Mr. Scruton said from the beginning of zoning ½ an acre was required and unless those units were grandfathered in they may not have been allowed.

Mr. Jones said the house was built in 1870 and the previous owner bought it in 1972 and that he was not familiar with any of the ordinances back then.

Mr. Pitre said that in 1972 there wasn't any ordinance against it.

Mr. Barron said his position was that if the Town was changing it back to a single family then as far as the Town was concerned at that time it was an allowed use.

Mr. Scruton said he asked about the history of the property because he wondered if the Town was forcing the previous owner to go back to a single family dwelling because he had expanded the units improperly. He asked what the public interest was in keeping it as a single family dwelling if it has adequate parking and everything around it are multi-family units. He suggested it may have been to keep the number of people in town lower.

Mr. Barron said it may be to keep the aesthetics in line with the character of the neighborhood. Mr. Pitre said that is a 3,000 sq. ft. building is a big building for one family to live in.

Mr. Jones said it was never truly a one family house and the amount of work he would have to do to make it a one family house would not be worth it. He asked what he would do with 1,100 sq. ft. upstairs that he can't really use.

He said he knew of a property that is 0.2 acres with 4 bedrooms which seems overcrowded so he understood the need for regulations.

Mr. Barron said some of the reasons for regulations are adequate room for the kids to play, to have some privacy and a lot of things that come into consideration. The spirit and intent of it is what somebody at some time decided that this is what they needed for a lot size he said.

Mr. Aylard said he was still struggling with this issue and that he would have liked to have seen a map of the house when it had 4 apartment units.

Chairman Barron said the previous 4 units don't come into this issue. His problem is that now it is a single family unit with a lot that is 5,700 sq. ft. no matter what it used to be he said.

Mr. Aylard asked if the barn has anything to do with the units.

Mr. Barron said it is just taxable real estate and that he was not asking to expand into the barn.

Mr. Morgan said if the house was more than a single family before he could not see where it is against the public interest to go back to 2 units.

Mr. Barron repeated that whether the house had 4 units before or not has absolutely nothing to do with what is before them now. He said what would be contrary to the public interest is if they were all single family homes on that street now then it would be changing the character of the area but as he has pointed out one neighbor is the Post Office and his other neighbors are all multi-family units on that side of the road and some of them are (multi-family) on the other side of the road. From my point of view there is no damage to the public interest as that is already the neighborhood and that is the point I'm trying to get you to focus on he said.

Mr. Fisher said he agreed and that the area is predominately multi-housing units and turning this property back to 2 units would not be detrimental.

Mr. Scruton asked if Mr. Jones would agree not to expand into the barn or to expand the floor area of either unit if the Variance is granted.

Mr. Morgan said he would have to go before the Planning Board to do that.

Mr. Barron said he only needs a building permit to expand and that they would have to make this a condition of granting the Variance.

Mr. Jones agreed to the condition and said that he has no intention of making it any larger.

Consensus of the board was that the variance is not contrary to the public interest.

2). The spirit of the ordinance is observed:

Applicant Response – The lot can comfortably fit 8 parked cars which is more than enough for the 2 units requested. This preserves enough open space to allow for easy maneuverability and a high quality of life for both families.

Board Discussion – Mr. Barron said this response is part of what he was addressing with his earlier remarks about the spirit of the ordinance but he did not know if the rest of it would apply in this instance at this point.

He said the biggest problem he has with this item is that they don't tell us what the spirit of the ordinance is when they draft them. He said when someone comes in looking for a small adjustment he doesn't have a problem with it but when he is at almost half of what is already required that bothers him.

Mr. Aylard asked if he would feel better if Mr. Jones was asking to allow 4 units in his house.

Mr. Barron said he would have a much different attitude than he would potentially have for 2 units and that they are struggling with 2 units right now.

Mr. Pitre asked for clarification on the total number of units.

Mr. Jones said it is 2 units-one where he and his wife live and 1 apartment for a total of 2 units. Consensus of the board was that the spirit of the ordinance would be observed.

3). Substantial justice is done:

Applicant Response – The size and layout of the house is not conducive to support a single family. The house's only accesses from the bottom half to the top are through the front entry way and the barn.

Board Discussion –Mr. Scruton said that when he thinks of substantial justice he thinks about what would be fairest. He asked if it is fair for Mr. Jones to have 2 units when the rest of houses in the area are multi-families or if it is fair to say no even though he has this big unit and he can't have 2 apartments. It's a fairness issue and the layman's way of thinking about it he said. Mr. Barron said that was a reasonable explanation and that he would add that they also need to consider the impact on the neighborhood, which in this case is negligible, so that we aren't injuring anybody or infringing upon their justice.

Consensus of the board was that substantial justice would be done.

4).The value of surrounding properties are not diminished:

Applicant Response – Since there are multiple lots on Pleasant Street that have multiple units the value of the surrounding properties would not diminish.

Board Discussion – Chairman Barron asked the board if anyone took issue with Mr. Jones' response. There were no members opposed to the applicant's response.

Consensus of the board was that the value of surrounding properties is not diminished.

5). Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

Applicant Response – Currently my in-laws live in the second apartment due to financial necessity. If they could not utilize this apartment they would have to search for a different apartment that they might not be able to afford.

Board Discussion – Mr. Scruton said he thought the applicant could meet the unnecessary hardship but the answer given is not how he would meet it. He said he would base it upon the

layout and size of the building and the economics of the area. It's the land and the building not the residents but in my opinion you meet the test he said.

Mr. Barron said that considering what Mr. Scruton just said and the location, size of the unit and the fact that it was 4 units at one point, not to be confused with what is being asked for tonight, his position would be that the building would be a hardship the way it sits.

Consensus of the board was that literal enforcement of the ordinance would result in an unnecessary hardship.

Chairman Barron asked if there was any more discussion on the matter.

Mr. Scruton suggested that when the motion is made it should include a condition that there are 2 units and that they cannot expand their footprint into the barn.

Mr. Barron said that limiting what they can do as far as expanding into the barn like not allowing them to remodel a very small kitchen or something like that could be a problem. I would be more interested in limiting the fact that no further expansion to the number of units so that he gets two he said.

Mr. Pitre said he would have to come back to add more units.

Mr. Barron said he could not come back if they put that condition on and end it right there.

Mr. Scruton agreed and said that Mr. Barron's suggestion made more sense.

Mr. Barron said telling somebody they can't expand into a barn they can't use or can't turn it into a playroom or something like that could be problematic.

Motion: (Pitre, second Aylard) to grant the Variance as requested with the limit of two units on that one lot;

Amendment: (by Mr. Barron) to grant the Variance as presented with the stipulation that they cannot expand the number of units in the future;

Mr. Aylard accepted and seconded the amendment.

Discussion: Mr. Scruton said he wanted to clarify that this includes an accessory dwelling unit and that they couldn't decide to put 800 sq. ft. of space in the barn and say it is an accessory dwelling unit. This means no more units including accessory dwelling units he said.

Mr. Pitre said two units means two units.

Mr. Barron said the motion stipulates there will be no future expansion so that should cover it.

Vote: The motion passed 5-0.

Adjournment:

Motion: (Fisher, second Aylard) to adjourn the meeting passed 5-0 at 7:50 p.m.

Respectively submitted

Kathleen Magoon, Recording Secretary



Elmer Barron, Chairman