

Zoning Board of Adjustment
April 4, 2005 7:00 p.m.
Council Chambers, City Hall

Meeting called to order at 7:00 p.m.

1. Roll Call

Present: Michael Hurd, Chair; Robert Woodman; Richard Dietz; Deborah Snelling
Absent: Erwin Caplan
Staff: Kenneth Walsh, Interim Construction Official
Other: Heather Giannuzzi, City Council

2. Appointment of Alternates

None appointed.

3. Report of Secretary

Minutes of March 22, 2005 were reviewed.

Motion: To approve the minutes of March 22, 2005 as presented.

Made by: First: Mr. Dietz Second: Mr. Woodman

Vote: Unanimous

4. New Business and related Public Hearings

Shirley St. Hilaire, 38 Franklin Street, Claremont NH—seeks approval to convert adjacent space to her business into an efficiency apartment. Space does not comply with Section 22-271 Maximum Residential Density as set forth in Section 22-231 which requires 10,000sf per unit. Map 120, Lot 65, District: B1

Ms. St. Hilaire, applicant, stated she would accept a four member board.

Open Public Hearing

No abutters present.

Ms. St. Hilaire stated her request to the Board and distributed photos of her home. Ms. Giannuzzi, who works with Ms. St. Hilaire at the Barber Shop, explained that when Ms. St. Hilaire purchased the building, it had two apartments and the commercial space. New plumbing and sewage was installed throughout the building. The salon closed, but the Barber Shop remains open. The salon is currently unused space and the applicant would like to convert it into an efficiency apartment. She advised the board that with the additional parking in the municipal lot she has a total of six spaces. She reported that there were five bedrooms and she would like to add one more, for a total of six. Mr. Hurd stated, theoretically she would need 9 parking spaces to meet the parking requirement.

Mr. Dietz asked Ms. St. Hilaire to explain to the Board her hardship. She stated it would be financially beneficial to rent this space versus leaving it unused. Mr. Dietz clarified his understanding that she was claiming a financial hardship. Mr. Hurd explained to the applicant that a "hardship" refers to a physical hardship in the land, property and/or building that makes it unique from everything else. Mr. Woodman stated the submitted plan is only 354sf and since 550sf is required, he suggested the space be used as a small office which would not be considered a "Change of Use". He stated by approving her request it would be setting a precedent and unless there is a physical hardship, for example, a ledge or steep topography, her situation cannot be considered a hardship.

Mr. Hurd stated that parking must be on site unless a parking easement is put in the deed to the property. Ms. Giannuzzi asked if the building is already non-conforming.

Mr. Hurd responded yes, but adding to the building would make it more non-conforming and the City Council has requested that not be done. Mr. Walsh stated to the Board that Ms. St. Hilaire needs to make an insertion of special conditions.

Public Hearing Closed

Motion: To deny the request as recommended by City Staff that approval of this request would establish an inappropriate precedent in the City.

Made by: **Fist: Mr. Woodman Second: Mr. Dietz**

Vote: **Unanimous**

Mr. Hurd informed Ms. St. Hilaire her application has been denied and she has 30 days to appeal the decision of the Board. Mr. Hurd instructed her to consult with Mr. Coogan, Interim City Planner, and he will explain the options allowed for the space.

Michael Dyer, 28 Highland Avenue, Claremont, NH—is seeking approval to convert said property from a single family to a two family home. Map 143, Lot 86; Zoning District: R1

Mr. Dyer agreed to a 4 member Board.

No Abutters Present

Mr. Dyer stated to the Board he has already spoken with his abutters and they are in favor of his application for a variance. He said this home is already set up for this purpose and no construction will be required. He also requested an approval or denial this evening since time is an issue due to the financial burden without additional rental income.

In regards to the variance guidelines the applicant stated the following four points:

- It would not be contrary to public interest because his home is located in a section of multiple family homes. Also, there are many homes in his neighborhood that are multi-family with equal or less land.

- He does not comply with the hardship because his hardship is that the home is an old New England style and was built on a .33 acre lot and is 1437sf. The Claremont Zoning Ordinance requires 10,000sf per apartment. His home is already set up as a two family and it would be costly to return it to a one family. The first unit is a separate in-law apartment attached to the house and the other apartment has four bedrooms. He read a letter from Haynes Property reporting that the home has been on the market since October, 2004, and while there have been many interested parties unless the in-law portion can be legally utilized as a rental unit, potential buyers do not consider the purchase of the home an economical decision. Per Mr. Dyer, claims he is in danger of losing the home due to financial hardship since he is on a limited income.
- The 10,000sf unit rule was issued to prevent low income housing and parking issues. He feels that his home is of high standard with ample parking and that the spirit of the ordinance will be met.

The applicant was unsure of the exact date the in-law apartment was added to the home, but the apartment was there in 1973. Mr. Woodman asked if a permit was obtained for the in-law apartment. Per the applicant, there is nothing on file; however, the status of the apartment is legal. Mr. Woodman asked if that was the case, why is this issue before the Board. The applicant responded he was advised by the Zoning Officer to continue renting the property, however the tenants at the time were arrears with their rent and they filed a complaint with the Zoning Board. To the best of his knowledge, they were told they did not have to pay rent since the apartment was not legal. The tenants did not pay rent for three months, and then moved to New York leaving him with a financial burden along with the responsibility of cleaning up the apartment. Mr. Dyer was told by the Zoning Officer that an in-law apartment can only be rented to family members. The applicant stated he was directed to go before the Zoning Board and present a hardship case to change the classification of the home from a one family to a two family. Mr. Woodman does not feel the applicant needs to be before the board.

- The home has hardwired smoke and security systems and new electrical which complies with Claremont Code.

Mr. Hurd reminded the applicant that financial hardship can not be considered; however, if the apartment has existed prior to zoning it should be grandfathered. The applicant stated the hardship is in the amount of land—it is short of the required needed for a two family. He had been told he can rent it out, and reminded the board of the letter from Haynes Real Estate.

Zoning Board of Adjustment
April 4, 2005
Page 4

Mr. Dietz reminded him that his two units totaled 14,000sf and the requirement is

20,000sf for two units. Mr. Dyer stated he was directed to the Zoning Board by Mr. Inhof to plead a hardship case. Mr. Dyer further stated he had received a letter from Mr. Inhof which grandfathered the in-law apartment. Mr. Hurd stated that multi-family is currently allowed in the R1 Zone providing it meets the 10,000sf requirement. The applicant stated the tax card reads Single family with in-law apartment. And he needs to go before this board to change the terminology of "in-law apartment" to "two family". Mr. Walsh addressed this situation with Mr. Inhof to find out when the apartment was established. There are no records regarding the apartment.

Ms. Giannuzzi recommended an investigation into this situation—if the home is found to be grand-fathered, a refund of the application fee should be issued. Mr. Walsh indicated that if the Board makes the decision to investigate this situation without the records on file, it will be a very time consuming process. Mr. Hurd suggested looking at the tax card—if it is listed as an apartment, he does not need to be before the board. He apologized to the applicant for the troubles he has experienced and explained that the Planning Office has had multiple changes in recent months.

Public Hearing Closed

Motion: To approve the variance based on the applicants testimony that there is a real possibility this property is grandfathered as two units and the applicant has demonstrated with reasonable argument he has gotten the run around.

Made by: First: Mr. Dietz Second: Ms. Snelling

Roll Call Vote:

Mr. Woodman	No
Mr. Hurd	No
Mrs. Snelling	Yes
Mr. Dietz	Yes

Motion failed

Board Discussion

Mr. Woodman felt the motion is unnecessary since there are records and appraisals that have been done in the past; therefore, records do exist. Mr. Hurd agreed with Mr. Woodman, but that is not the issue this evening. Mrs. Snelling said she would vote to approve this request because Mr. Dyer has proven he has gotten the run around and because it has been a two unit home for a long time

The applicant stated Mr. Rivard, prior Building Inspector, had no issues with the electrical, remodeling, and classification of a single family home with an in-law apartment to a two family home. The question to the Board is whether this constitutes a

preexisting non-conforming two family unit. Mr. Hurd considered a motion to continue if Mr. Walsh would investigate the situation. The applicant offered to produce a letter from Mr. Inhof if this was acceptable to the Board.

Mr. Hurd stated he was unaware of a specific definition for "in-law apartment" but explained that the Board can not change the current use from an "in-law apartment" to a "two family home". Mr. Dietz advised that the burden of proof is the applicant's responsibility.

Motion: To recess
Made by: First: Mr. Dietz Second: Mr. Woodman

Roll Call Vote:
Mr. Dietz Yes
Mr. Woodman Yes
Mr. Hurd Yes
Ms. Snelling Yes

Meeting reopened.

Mr. Dyer presented the Board with a letter from Mr. Inhof, dated February 16, 2005, which stated that the in-law apartment has been grandfathered. Ms. Giannuzzi made copies of the letter and distributed a copy to each Board member along with a copy for the file. The tax card currently states, a single family with an in-law suite. In order to be able to rent the apartment, he needed to have the in-law suite changed to an apartment, classifying the home as a two family home. It was recommended he contact the Assessor's office for a definition of in-law suite versus an apartment.

Mr. Hurd said from a legal standpoint, they can not approve his request. He told Mr. Dyer if it is grandfathered as an in-law suite, to his knowledge there is no specific definition; however, there is a definition for an efficiency apartment which does not have a bedroom. He also stated he is unaware of who would have the authority to make the determination of classification and directed him to Mr. McMullan in the Assessor's office. Mr. Dietz suggested the applicant bring any paperwork he has on this situation when he meets with Mr. McMullan.

Open Public Hearing

Mr. Hurd said it is not a variance due to the size of the land and home since there are other large homes on small lots, and the home can also be utilized as a single family home. Mr. Hurd explained that the Board could only consider the 10,000sf requirement, which he does not meet, regardless of its status of either an in-law apartment or an

apartment. Mr. Dietz informed that if the applicant requests a determination on a two family unit and it is denied, the applicant can appeal to the ZBA as an administrative appeal and then the Board can act on it. Mr. Walsh stated that under the Construction

Code, it would be treated as a two family home and would be required to meet the multi family requirements. He explained the necessary process to apply for a Special Use Permit, however, he can not issue a COO that states the preexisting condition meets the current requirements due to the shortage of the square footage. Mr. Hurd said Mr. Coogan would be the person responsible for making the administrative decision as to whether it is considered an apartment or an in-law apartment.

Public Hearing Closed

Mr. Woodman suggested continuing the hearing. The applicant was not in favor since he would be out of the country. Mr. Hurd explained the Boards options which are to accept, deny or dismiss the request. His feeling is that this application should be dismissed. Ms. Snelling agreed.

Motion: To dismiss the application
Made by: First: Ms. Snelling Second: Mr. Dietz
Vote: Unanimous

Mr. Hurd directed the applicant to contact Mr. Coogan so that a determination can be made as to whether his situation is defined as either an in-law apartment or an apartment, or direct Mr. Dyer to the appropriate department that can be of assistance.

5. Reports of Boards and Committees

None presented.

6. Communications

None presented.

7. Adjournment

Motion: To adjourn
Made by: First: Mr. Woodman Second: Ms. Snelling
Vote: Unanimous

Respectfully Submitted,

Tracey Hagerman
Recording Secretary