

**TOWN OF FARMINGTON
ZONING BOARD OF ADJUSTMENT MEETING
Thursday, September 3, 2015
356 Main Street, Farmington, NH**

Board Members Present:

Elmer Barron, Chairman
Joe Pitre
John Aylard

Board Members Absent:

Joanne Shomphe

Others Present:

Craig Lancey

At 7:00 pm Chairman Barron called the meeting to order.

BUSINESS BEFORE THE BOARD:

- **Review and approve Meeting Minutes of May 7, 2015.**

Joe Pitre motioned to approve the minutes of May 7, 2015 as written; 2nd Elmer Barron. Motion passed 2-0-1 (John David Aylard abstained).

NEW CASES:

Application for Variance from Article 2.00 Section 2.04(B) (Space and Bulk Standards – Urban Residential District) of the Farmington Zoning Ordinance by Farmington Realty LLC, Applicant and Property Owner (Tax Map U10 Lot 37): To allow the subdivision of a 1.2 acre parcel to create two (2) parcels one with 40,000 sq. ft. and four (4) units and one with 10,000 sq. ft. and one (1) single family home where the minimum lot size is one-half acre (21,780 sq. ft.) in the Urban Residential Zoning District. Parcel is located at 71–77 Bunker Street.

Chairman Barron told the Board that the Planner provided a summary of the application stating the applicant requested a variance for a non-conforming lot size within the urban residential district. The existing lot has one single family dwelling and one full lot dwelling. The lot was approved for seven units plus a single family house in 2003 but currently has four units plus the house. The applicant proposes to divide the lot into two parcels: one parcel of 40,000 square feet and four units and one parcel of 10,000 square feet having one house. The applicant proposes to comply with the maximum residential density for both parcels which is one dwelling per 10,000 sq. ft. for properties with access to town water and waste water. The proposed single family lot of 10,000 sq. ft. does not comply with the minimum lot size of the urban residential district of one-half acre. Planner Durfee's review of the criteria found:

Question one – The variance will not be contrary to the public interest

The Applicant's Response – Converting property from rental to owner occupied will benefit surrounding values and generally improves the impact of abutters.

Planner's comments – The requested variance increases the permitted maximum density of one of the proposed parcels by 54 percent. The closest adjacent district permits less density is less than 125 feet away. Due to the following conditions it is not likely the variance would alter the character of the neighborhood or threaten health, safety or general welfare of the public. The lot is in an urban district. It is intended to protect the existing mixed

and multi-family neighborhoods while allowing compatible uses in an innovative new development. The applicant proposes no additional units and the division will not result in greater density than currently exists.

Question 2 – The spirit of the ordinance is observed

Planner's comments – The applicant will surrender the approval for three additional units to comply with the current density. Because the Farmington Site Plan regulations contain no timeframe for exemption from zoning changes the five-year State exemption applies. No active or substantial development or building has occurred in the five year period following the applicant's 2003 site plan approval. Therefore, any future site plan or subdivision application would be subject to the countdown of the current application. The applicant's response to the criteria is not relevant.

Question 3 – Substantial justice is done

The Applicant's Response – The applicant indicates he is the only property suffering from this hardship as the result of a zoning change. As a result in the change in zoning, he is unable to subdivide the property as he originally intended when he purchased the property and must use as a single family home or rental property in perpetuity. The owner indicates that the rental unit has produced a loss each year of ownership because it is a rental property and dooms the property to economic loss in perpetuity.

Planner's comments – The zoning change that the applicant refers to is change from a net residential density of 5,000 square feet per unit at the time of his site plan application approval in 2003 to the current 10,000 square feet per unit permitted in the urban residential district. It appears there are not similar lots with single family multi-dwellings in the Bunker Street neighborhood. The applicant faces a financial hardship but does not provide substantial and relevant evidence to demonstrate that he incurs an injustice.

Question 4 – The value of surrounding properties are not diminished

The Applicant's Response – The applicant stated that single family homes have historically improved the value of surrounding property as compared to rental of the same.

Planner's comments – Due to the existing conditions of the lot, it is not likely that the value of surrounding properties would be significantly diminished if a variance were granted to permit the non-conforming lot size. However, based on the highlighted proposed lot subdivision provided by the applicant it does not appear that there are adequate setbacks from the accessory structures. A current more detailed plan is required to confirm this.

Question 5 – Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship

Applicant's response – The applicant states that his property is the only property affected in this way. The applicant reduced the unit count that was approved in 2003 to allow this subdivision in this zoning district.

Planner's comments – The applicant indicates through the application narrative that he is not realizing the financial gains he may have anticipated from a single family home and thus incurs a financial hardship. As there is still a reasonable use of the property he is not unfairly burdened by the ordinance.

In summary, the Planner said she does not recommend acceptance of the variance. The applicant faces a purely financial hardship and is still able to enjoy the reasonable use of his property. If the applicant were to submit a site plan or subdivision application, the most current regulations would apply. The applicant is not relinquishing density he is entitled to and if the applicant were to subdivide the lot, additional issues of non-conformance would likely arise.

Discussion with applicant Craig Lancey included definition of a hardship, that the hardship is that the house was constructed as a single family home and as a multi-family it is performing differently than the other single family homes, no development has occurred in the five years since the plan was approved, his claim to have advanced

occupancy for seven units because they are modular units and do not need inspection, and that the project is over 70 percent complete with site prep and some maintenance completed since the site plan was approved.

Mr. Lancey also told the Board that RSA 674:39 exempts the project from revocation of the site plan approval. He said the statute was tested by a Superior Court case on December 9, 2002 involving a Rochester development that was stalled due to poor market conditions. When the developer attempted to resume development several years later, he received a cease and desist order from the city. The order was struck down by the Court and the developer was granted the exemption he said. Chairman Barron said the dates listed in the case showed the City issued the cease and desist order before the five year exemption allowed by the State was up which is why the developer won the case.

Chairman Barron said the issue is not pertinent to Mr. Lancey's request as the five-year State exemption has passed and that the three additional approved units have "gone away". After some discussion about giving up the additional units to gain the variance, Chairman Barron said it is not for the Board to argue whether they are his to give up.

Mr. Lancey said the revised plan he submitted addresses comments by the Planner that the plan is conceptual. The revised plan demonstrates the current frontage and setback requirements are being met including a 13,000 square foot lot for the single family house and the structure that did not meet the setback requirements was removed "a while ago" but was not represented correctly on the original submission.

Chairman Barron said the problem is the single unit house lot doesn't comply with the half-acre lot size required in this zone. The proposal is about 8,000 square feet short of the requirement even with the readjusted boundary line.

Additional discussion included if the hardship is financial, if reasonable use of the property still exists if the variance is denied, if the "dysfunctional" rental unit is denying a reasonable use of the lot, if the proposal betters the neighborhood, the subjective nature of a hardship and reasonable use decision and if there was sufficient criteria for the Board to reach a decision.

Mr. Lancey said the house can't be sold as a single family home but must be attached to rental properties because the change in zoning took that option away from him.

Member Joe Pitre asked what level of construction needed to be completed as cited in RSA 674:39. Mr. Lancey said 70 percent of the project must be completed and said he put in everything on the plan except the actual three units. Mr. Pitre said that amounts to about 71 percent of the approved plan and asked what remains to complete the project. Mr. Lancey said the site is 100 percent developed according to the plan except for the additional three units. He said this means he will have four units with parking and drainage for seven units.

Chairman Barron said Mr. Lancey is exempted for a period of five years after the date of approval no matter what the ordinance does providing you have substantial vested interest in the property. After five years it goes away. If the three units had been constructed but not occupied he would still have them, but where the units have not been constructed it is an issue for legal counsel he said.

Member John Aylard said it may not be the use Mr. Lancey wants but the property is still usable. He added if the project had been finished after it was first approved we would not be here today. Chairman Barron said there are five criteria that must be met and even if only one of those criteria can't be met the request for variance must fail. Joe Pitre said he would vote for the variance as it is a unique property and is what it is. It will still be an "outlier" from the actual property itself even if it is granted. It was approved at one time not to be separated. Chairman Barron said it was only approved for the density and the density changed. Mr. Pitre said it (the zoning change) is like changing a horse in mid stream.

John Aylard said he was torn because the lot should have been split into two in the first place. The fact that the lot was kept together because it was easier than splitting them doesn't really constitute a hardship. Mr. Lancey said he didn't do it because there were issues going on with the property and there was a hostile environment then with the Planning Board. Mr. Aylard asked if he understood the property would have to sell as one if it was not

split. Mr. Lancey said he did.

Chairman Barron said his problem was the applicant was looking for variance on not just a few feet. There would be a 40-45 percent reduction in lot size and the applicant stated several times in the application that this is a financial issue which cannot be considered in their decision. The three additional units are not in the Board's purview in this decision which is between the Building Inspector, the attorneys and the applicant. Mr. Lancey said he removed the financial consideration and resubmitted a more detailed proposal as requested by the Planner.

Chairman Barron said he did not know about the legality of a resubmitted application as the application has to be publically posted for two weeks. Mr. Lancey said the plan was modified and presented to the Board and it was entered into review. Chairman Barron said it is still a financial consideration and the lot size is still off by 40 percent and he attempted to get the applicant to come up with something to enable the Board to grant the application. Telling the Board that the renters on the property are a problem for the neighborhood really has nothing to do with the property itself he said.

Chairman Barron then said he agrees the variance would not be contrary to the public interest, the spirit of the ordinance is at least mostly observed, the value of surrounding properties will not be diminished and substantial justice would be served. He said the big problem is the hardship requirement and disputed Mr. Lancey's claim that it is a hardship situation because his lot is the only one affected by the change in zoning. Any other lot on that street that could not be divided into a half-acre lot would have exactly the same problem. Mr. Lancey disagreed and said he has the only single family home that is being forced to share a multi-plex situation. Chairman Barron reminded him that he created that situation and said he would not keep arguing the same point with him. Chairman Barron said the lot as it currently exists is a conforming lot of one half-acre with the proper density and Mr. Lancey is trying to create a non-conforming lot that will be less than a half-acre. Variances are for situations that can't be surmounted due to variations in the land not because of past bad decisions or because someone wants to subdivide off a lot and sell it he said.

Mr. Aylard suggested Mr. Lancey could remove one of the existing rental units and then he would have the ability to subdivide the land as the single family house lot would have the required half-acre of land. Mr. Lancey said that would create two lots with a hardship and he would rather take his chances getting the additional three units constructed.

Mr. Lancey then asked if the review could be continued until there is another Board member present. Chairman Barron said there was quorum of members and it was late in the process for the request. Mr. Pitre said the Board could entertain his request and allow Mr. Lancey time to provide more supporting information.

John David Aylard motioned to continue the discussion to the next scheduled meeting to allow the Board to get further insight on this issue and to have the Planner seek legal counsel on the matter; 2nd Joe Pitre. Motion passed 3-0.

- **Any other business to come before the Board.**

None

At 8:25 pm John David Aylard motioned to adjourn; 2nd Joe Pitre. Motion carried unanimously.

Respectfully submitted,
Kathleen Magoon, Recording Secretary

Elmer W. "Butch" Barron III, Chairman
Zoning Board of Adjustment

Date