

**Official**

HOOKSETT ZONING BOARD OF ADJUSTMENT

Tuesday, July 8, 2014

HOOKSETT MUNICIPAL BUILDING

**CALL TO ORDER**

Chair Chris Pearson called the meeting to order at 6:30 pm.

**PLEDGE OF ALLEGIANCE**

**ATTENDANCE:** Michael Simoneau, Don Pare, Gerald Hyde, Richard Bairam, Chris Pearson, and James Levesque, Council Rep.

**EXCUSED:** Roger Duhaime, Phil Denbow and Jackie Roy

**STAFF:** Matt Lavoie, Code Enforcement Officer

**APPROVAL OF MINUTES**

**June 10, 2014** – *G. Hyde moved the approval of the June 10, 2014 regular meeting minutes to the next meeting. Seconded by R. Bairam. Motion carried unanimously.*

**NEW PUBLIC HEARINGS**

**Severino Excavation Permit                      Case #14-07**  
**39 Pine Street                                      Map 7, Lots 3 & 3-2**  
**MDR**  
**Excavation Permit 1-Year Extension Request**

Ron Severino (Severino Trucking): I have a pit that has come up for renewal on Pine St. We are planning on this being the last one so we are asking for a 1-year extension. We will be finishing that up this year, hopefully by the Fall, but we would like a year to make sure everything is seeded in and wrapped up. We submitted an updated plan to show where we are. Most of the excavation is done. We have stockpiles that we would like to remove. Our shoreline protection permit expired last year but we are done in that area and shows as restored on the plan so there is no need to renew that. The water mains have been installed and the bonds taken care of.

M. Lavoie: I met with Ron, discussed everything that needed to be done, and we are up to date.

C. Pearson: Would July 15 work for everyone for a site walk at 6:30?

***The Board was unanimously in agreement with July 15 at 6:30 pm for the site walk.***

M. Simoneau: Could we please have an email.

M. Lavoie: Yes.

**Open public hearing.**

No public comments.

**Closed public hearing.**

C. Pearson: We will continue on August 12.

R. Severino: Thank you.

**Scott & Tracy Blevens**

**Case #14-08**

**29 Francis Avenue**

**Map 45, Lot 128**

**URD**

**Variance is requested from Article 3, Section H and Article 27, Section C.1 & C.2 of the Zoning Ordinance to permit an accessory dwelling unit above the garage and not contained within the primary structure.**

Tracy Blevens: Thank you for your time. We are in the process of purchasing a 50 x 100 piece of abutting property and during the process we were given a few items we need to complete, one of them is to get sewer approval for a unit over our garage as an accessory dwelling as well as required variances. The unit was originally built as an office and we would like to have it as an accessory dwelling.

C. Pearson: Is it currently an office or an accessory dwelling?

T. Blevens: It is currently being used as an office but under the laws of the Zoning and Planning Board an accessory dwelling.

C. Pearson: Matt, could you please let us know more about this.

M. Lavoie: The garage was built in 1932. In 1998 a permit was pulled from Ken Andrews to make a second floor to this garage to have an office space. At some point it was turned into a dwelling unit. Along side of that garage was a lean-to/carport type structure that was enclosed without a permit and we have no record of that in the Building Department. In 2008, the Blevens' came to the Building Department to try to get either a building permit or some kind of check off on turning that into a dwelling unit, and they were issued a denial letter that we have on file.

T. Blevens: We weren't denied.

M. Lavoie: I am going by the denial letter on file. They want to purchase a property that is

adjacent to it and part of that has to do with a sub-division that was in front of the Planning Board. It is 50 x 100. They own two pieces of property and they would like to move that lot line to make it more conforming and turn the lot they are purchasing into a 100 x 100 piece of property. The variance is needed prior to that because they are in violation of the zoning ordinance.

C. Pearson: When did you put carport on?

Scott Blevens: I got a permit for that in 2000 or 2001.

M. Lavoie: We checked our log book from 1998 – 2003 and there is no record of anyone even coming in to pay for a permit for that.

S. Blevens: Ken Andrews came out, looked at the structure, told me what kind of headers and rafters to use, and the permit was nailed to a telephone pole at my building.

C. Pearson: Do you have the plan you drew up or any of the paperwork you submitted?

T. Blevens: We closed the business in 2007 because we had an employee embezzle a great deal of money from us and we did not keep most of the paperwork because we were not required to by IRS laws.

C. Pearson: Matt, in looking at some of the notes on the carport, did they come for a variance because it seems like it infringes on their lot lines?

M. Lavoie: It does.

S. Blevens: When I spoke to Ken Andrews I asked him if I needed a variance. He said that we owned both pieces of property and we didn't need a variance. He said if we built this, and we want to build something else, tear it down and you don't a variance from yourself because you own both pieces of property. He said if we invest more into it then it is worth we won't want to tear it down, but if we want to use the land for something else tear it up.

C. Pearson: You own Tax Map 45, Lot 127, 29 Francis Ave?

T. Blevens: Yes.

C. Pearson: What property does this abut?

T. Blevens: We own 128, 130, 127, and we are trying to purchase the other piece. We own three lots currently.

C. Pearson: Matt, this garage abuts their lots?

M. Lavoie: This garage is on the property line of their two lots.

S. Blevens: If you were to look at the garage, the original structure was on the 100 x 100. when I built the lean-to it is probably 12' from the property line. The lean-to is 22' so it goes over about 12'-14' with the overhang. When I did that, and I went to Ken for a permit, I asked him what I needed to do for the snow load. He told me the type of support I needed and what pitch to use for the roof.

T. Blevens: Unfortunately, we were informed later on that we were given bad advice.

C. Pearson: Do you remember getting the denial letter from Peter when you tried to convert the home office to an accessory apartment in 2008?

S. Blevens: They would not even let us get in front of the Board.

C. Pearson: In the letter it states you could have and tells you the avenues to take.

S. Blevens: They denied to let us get in front of the Board. We tried.

T. Blevens: I don't recall seeing the letter.

C. Pearson: Are you receiving rent on the apartment now?

T. Blevens: No.

J. Levesque: Have you received rent from that apartment in the past?

T. Blevens: Yes.

J. Levesque: How long was it rented?

T. Blevens: Approximately three years.

J. Levesque: Did you rent it to a family member?

T. Blevens: Initially my son lived there and then rented to a friend who was going through some hard times.

***Tracy Blevins read the application into record.***

T. Blevens: We received approval from the Sewer Commission.

C. Pearson: You mentioned, on the hardship, that the space was used as intended. It was used as an office, correct.

T. Blevens: It was used as intended for 15 years.

C. Pearson: We have plans from Ken that specifically says no kitchen.

T. Blevens: When we initially built it, we knew we weren't going to use it as an office forever. We intended to eventually come in front of this Board to ask you to turn it into an apartment. We had four employees that we did not want going in and out of our house. When the event happened in 2007 we closed the doors. We don't have the need for 690 sq. ft. of office now.

C. Pearson: At what point did you change it from an office to an apartment?

T. Blevens: In 2008 we came to ask for a variance. Regrettably, we went against what we were told, but we didn't feel that we were doing anything that would hurt anybody. Our son needed a place to stay.

C. Pearson: I am trying to get the timetable. You got the denial?

T. Blevens: I do not recall getting it, but I recall being in the office and being told that we could not even apply for it because of the existing expansion of Rt. 3. They had changed the zoning in that area. We purchased this as commercial residential property and I didn't understand why we could not do what we wanted to do.

G. Hyde: That was before it was the Performance Zone so at that time they couldn't.

C. Pearson: That is why I am trying to get the timetable because I know we established that at some point.

M. Lavoie: It was turned back to residential in 2010.

C. Pearson: There was a point where applicants were told that because they were in the Performance Zone. The Performance Zone rules superseded anything and that got changed.

G. Hyde: There was no appeals process to the Performance Zone at the time.

C. Pearson: In Peter's letter on October 17 it says you may appeal this decision to the Zoning Board of Adjustment per the Zoning Ordinance, Article 24 C (4).

T. Blevens: I was informed in the office they would not see me in front of the Zoning Board because there were no new residents allowed in our area.

G. Hyde: That is the only thing that would make sense.

C. Pearson: After you were told that, you turned it into an accessory apartment for your son. He moved out and you rented it for three years.

T. Blevens: Yes. That was closer to 2010.

C. Pearson: What is your intention now?

T. Blevens: We want to fix it and make our lots conform.

S. Blevens: I want to do a lot line adjustment so the lean-to doesn't have to get torn off. If not I still have a buildable lot. I will tear it off and build on my other lot if that is what I have to do. I am trying to work with the town to make it as easy as possible. In 1998 and 2000 I got bad information. I did what I was instructed to do within reason and when we went to the Zoning Board we were met with resistance and we could not do anything. In 1998, when I talked to Ken, we were commercial residential and the intent back then was to use it as an office for several years until I got ready to retire or close the business and that was the direction I was told to go in. I had engineered steel put in. I put a lot of money into that building.

T. Blevens: In 2008, before we came to the Planning Board, we asked our neighbors if they had any opposition to us having that as a rental unit and all of them have signed off.

C. Pearson: Sometimes we are presented with a mess and are tasked to clean it up and we can struggle with these types of things. I look at your permit with Ken and says there is to be no plumbing or electrical that resembles a kitchen.

T. Blevens: That was because we stated that we wanted to turn it into an apartment. He said at that time there were additional things that needed to be done before we could do that.

C. Pearson: How are you attached to sewer?

S. Blevens: In 1998, I went to the Sewer Department and asked if I could tie into the street because the driveway was all gravel back then. The sewer ends at my house and ends at the lot but does not go beyond. They told me there was no sewer to tie into. When I went to apply for my permit, I talked to Ken and asked him what I could do. He asked me how the septic came into the house. I told him it came through the floor where an old toilet was. He asked if I had the height to run it from the basement. I told him I did and he told me to dig it from the basement to the garage which is what I did. I was told to do that because there was no sewer in the street. Again I applied for the permit to put a full bath up there and the only thing he did not want me to do is put in a kitchen because that would make it a dwelling and he didn't want anyone living in there because I needed to do additional things. He told me I could have a sink downstairs and have the bathroom upstairs, but no kitchen, until we went over the rest of the

things. I told him we could cross that bridge when it came. He told me that when I was ready to go to Code Enforcement, which Tracy did.

C. Pearson: Do you have any plans of what this lot line adjustment will look like when you subdivide it?

*T. Blevens showed on the plans what the lot looks like now and what it would like if approved.*

S. Blevens: If I move that lot line my building, with the dwelling on it, will be 150' of road frontage. It will meet all of the setbacks except for the back lot line which was built in 1932. It will meet the new setback to the new 100 x 100 lot.

C. Pearson: Matt, the garage has never been conforming on the rear setback?

M. Lavoie: Correct. When it was built in 1932 it is with 12' to the property line. The addition that was put on was put in that same set-back. It is non-conforming there. The only reason they are here today is for the dwelling unit. That is a different issue.

C. Pearson: With the lot line adjustment the dwelling unit now meets the side setbacks?

M. Lavoie: Yes the side set backs, if they move the lot line.

S. Blevens: That is what the purchase of the land would take care of. We are trying to make a wrong better. We are working in an area in which the house was built in 1910/1912 so there are a lot of things that are different on the lots in that area.

C. Pearson: One of the things we need to establish when we give a variance is hardship. There is no hardship here except for a self-made hardship.

T. Blevens: The hardship is we have no use for the space if we are not granted the variance. It will not bring any additional value to the property and will be storage area. We spent a lot of money for it to be a storage unit.

S. Blevens: The intent in 1998 was to go in this direction. That is why there was a drawing with a kitchen on it that Ken crossed out. He knew what the intent was. The Board knew what the intent was. At that time, I didn't want to go any further and didn't need to. The kitchen was crossed off because we didn't go through the procedures and I wasn't using it for that at the time. There is a hardship because I spent a ton of money on that place just to be denied every time I come in to do anything.

J. Levesque: The letter from Peter Rowell said you could apply for a variance or apply to overrule his ruling to the ZBA, but you never did that.

T. Blevens: We don't recall getting the letter. At the time I had other things I was dealing with and having money embezzled was the first thing on my mind. It was hard to deal with that as well, especially after being told at the office that I couldn't.

J. Levesque: Whether you got the letter or not it was generated and sent to you. Maybe we should look at sending letters registered mail with a return. You had the original permit that specified no living quarters.

T. Blevens: Yes, because it didn't meet the criteria that was needed at the time. We were willing to do that when we were ready.

J. Levesque: You can't just turn space into an apartment.

R. Bairam: You got the permit for the office and went ahead, at some point, and built the apartment without a permit.

T. Blevens: No. The floor plan never changed.

S. Blevens: I had kitchen cabinets in there with no sink, he passed it that way. It has never changed other than the plumbing for the kitchen sink.

J. Levesque: That is not what the letter says.

S. Blevens: The rooms were existing. It was framed that way. The framing inspection was that way. We wired it with smoke detectors and everything that was needed to conform with this in the future, and it was passed off that way in 1998.

C. Pearson: It is very specific from Ken.

T. Blevens: He was specific as far as no electrical or plumbing.

C. Pearson: No electrical or plumbing that resembles a kitchen.

T. Blevens: We are not denying that went against what were supposed to do. We are trying to make it right.

R. Bairam: You never got a Certificate of Occupancy for an apartment?

T. Blevens: No, not for an apartment.

R. Bairam: Do you have sewer now?

S. Blevens: Yes.



R. Bairam: The sewerage goes by there now?

S. Blevens: It goes through the house. The sewer never went by there.

R. Bairam: Why does the sewer department want \$3,000?

T. Blevens: Because of the additional unit.

M. Lavoie: They charge \$3,000 per dwelling unit. They also have a \$50 application fee.

R. Bairam: You have sewerage in your house?

T. Blevens: Yes.

J. Levesque: You have town water?

T. Blevens: Yes, Manchester water.

J. Levesque: So that is how they calculate the sewerage. If you use more water you pay more in sewerage.

**Open to Abutters.**

No abutters present.

**Closed to Abutters.**

S. Blevens: We have a signed letter that we sent to all of the abutters.

**Open public hearing.**

Nancy Comai (21 Elmer Ave.): I remember a building permit sticking on a telephone pole as Mr. Blevens mentioned. We moved to the property in 1987 and saw they were doing this work. I fully support what they are trying to do. Many things you have before you I understand, as a Town Councilor myself, and having to clean up things from the past, but I believe this kind of variance is not past your vote. In that area we have seen many things happen that are out of the box. If you pass this variance you will make a lot of people happy to say the Town of Hooksett is easier to deal with.

**Close public hearing.**

D. Pare: Matt, how much is gray area besides the kitchen? Are there a lot of issues on the property?

M. Lavoie: No. The main issue is the dwelling unit itself and that is why I wrote the letter of violation to them.

D. Pare: When they adjust the lot line everything will conform?

M. Lavoie: The garage will conform more. I spoke with our lawyer and he said you are better off giving them the opportunity to apply for a variance. They are also at a time limit because Wayne Kenney is applying to the Planning Board for a sub-division and they are part of that. It is up to the Zoning Board if they want to allow the lot line to move.

C. Pearson: We have a history of bad decisions and now it is whether or not we want to clean it up and allow them to take the area that could be an unrented storage area and make it into a apartment to rent.

R. Bairam: The only problem I have is that they have already made the apartment and rented it. Now they are asking for permission to do it. This is being done backwards. Have any inspections been done on that property as far as the kitchen, plumbing, and wiring?

M. Lavoie: They have had no permits pulled to make that renovation. None on the lean-to either.

T. Blevens: We did attempt to do it.

M. Lavoie: One of my recommendations is that the Blevens' pay for all building permits for the lean-to and the apartment that would be necessary if this variance is granted and I would want to inspect it.

J. Levesque: Matt, you inspected the apartment?

M. Lavoie: Yes.

J. Levesque: Is it done to code?

M. Lavoie: My only goal at the time was to see if it was an actual dwelling unit. I did not go into detail.

J. Levesque: It should be brought up to code.

M. Lavoie: If this variance is granted the Fire Department would also have to go in to approve the dwelling unit as well.

J. Levesque: It should be up to standard on the codes.

C. Pearson: My point of view is we have had this before when there have been a lot of past mistakes. We need to put that aside, look at it as it stands, and ask if we are comfortable granting this.

G. Hyde: Having lived in that neighborhood there are at least a couple of other buildings that lie in the same type of 100 x 100 lot that have multiple units in them. This is a double lot and there are some that are on single lot and that makes it easier for me to say yes. If they were coming before us without bucking the system a bit, I think we would be much more inclined to vote in their favor.

C. Pearson: The additional with the carport wouldn't have make it too much easier. There are a lot of mistakes. If I were to go along with this there would be conditions. One would be to have the lot line go through because then at least we have a conforming lot. We are nonconforming on both structures that were not permitted. That would have to be part of it.

D. Pare: All of the permits would have to be paid.

C. Pearson: Paid and it would have to be thoroughly inspected. They never got a CO for a dwelling unit or carport.

M. Lavoie: Garages don't require a CO but the dwelling unit would, but we could give it a final inspection approval.

C. Pearson: Mike, any comments?

M. Simoneau: No, I am trying to follow the history. It is hard when you are missing paper trails.

G. Hyde: I think this gives us an opportunity to bring us closer to what should have been done in the first place. I think if we deny it we are going backwards. Also, to their credit they have come to try to make this as right as possible.

***G. Hyde motioned to grant the variance from Article 3, Section H of the Zoning Ordinance in Case #14-08, 29 Francis Avenue, Map 45, Lot 128 to the set article with the conditions that: 1) the lot line adjustment must be completed; 2) all buildings, structures, and dwelling units must be brought to code to the Code Enforcement Officer's inspections; 3) All buildings, structures, and dwelling units must be permitted. Seconded by R. Bairam.***

C. Pearson: Matt, is there a condition that we should add to mention the sewer?

M. Lavoie: Yes saying that they will pay this bill which they have already agreed to with the Sewer Commission.

**Motion carried unanimously.**

G. Hyde motioned to amend his previous motion to add a 4<sup>th</sup> condition.

***G. Hyde motioned to grant a variance from Article 3, Section H of the Zoning Ordinance in Case #14-08, 29 Francis Avenue, Map 45, Lot 128 to the set article with the conditions that: 1) the lot line adjustment must be completed; 2) all buildings, structures, and dwelling units must be brought to code to the Code Enforcement Officer's inspections; 3) All buildings, structures, and dwelling units must be permitted and paid to the Code Enforcement's liking; 4) the Sewer Commission's findings and permits must be followed and paid. Seconded by R. Bairam. Motion carried unanimously.***

***G. Hyde motioned to grant a variance from Article 27, Section C.1 & C.2 of the Zoning Ordinance in Case #14-08, 29 Francis Avenue, Map 45, Lot 128 to the set article with the conditions that: 1) the lot line adjustment must be completed; 2) all buildings, structures, and dwelling units must be brought to code to the Code Enforcement Officer's inspections; 3) All buildings, structures, and dwelling units must be permitted and paid to the Code Enforcement's liking; 4) the Sewer Commission's findings and permits must be followed and paid. Seconded by R. Bairam. Motion carried unanimously.***

C. Pearson: This town is good to work with. Please come, get your proper permits in place, if you need a variance come in front of us. We like to work with the people in the town.

J. Levesque: I believe all of the paperwork is now on-line and it can be printed.

***R. Bairam motioned to adjourn. Seconded by G. Hyde. Motion carried unanimously.***

## **ADJOURNMENT**

The meeting adjourned at 7:33 pm.

Respectfully submitted by,

AnnMarie White  
Recording Clerk