

ZONING BOARD OF ADJUSTMENT
268B MAMMOTH ROAD
LONDONDERRY, NH 03053

DATE: JANUARY 16, 2013

CASE NO.: 1/16/2013-1

APPLICANT: KELLEY RAE SMITH REVOCABLE TRUST
KELLEY RAE & RAYMOND L SMITH, TRUSTEES
PO BOX 1105
LONDONDERRY, NH 03053

LOCATION: 81 GILCREAST ROAD; 7-65-3; AR-I

BOARD MEMBERS PRESENT: JIM SMITH, ACTING CHAIR
LARRY O'SULLIVAN, VOTING MEMBER
JAY HOOLEY, VOTING MEMBER
JAMES TOTTEN, VOTING ALTERNATE
NEIL DUNN, CLERK

REQUEST: VARIANCE TO ALLOW AN ACCESSORY APARTMENT WITH 967 SQUARE FEET, WHERE 750 SQUARE FEET IS LIMITED BY SECTION 2.3.1.7.4, TO PROVIDE ACCOMMODATIONS FOR A PERSON WITH A PHYSICAL DISABILITY.

PRESENTATION: Case No. 1/16/2013-1 was read into the record with no previous cases listed.

JAMES SMITH: Who will be presenting?

PAUL DONOVAN: Paul Donovan. Good evening. Thank you for hearing my request. A variance is requested from Section 2.3.1.7.4 of Section 2.3.1.7, accessory apartments in the AR-I zoning ordinance for the reason of installing a small galley-style kitchen in an existing family room to which a handicap master suite has been added. The buyers have a handicapped adult son who requires a wheelchair access. In order to install a kitchen, the family room combined with the master suite falls under the accessory apartment specifications. In combining the family room and the master suite, the square footage of these existing rooms will be approximately 967 square feet. Section 2.3.1.7.4 specifies 750 square feet. Five points of law; the variance will not be contrary to the public interest. There will be no change to the exterior of the house. There will be no additional exterior entrances. There will be no additional vehicles parked at the house. The accessory apartment will not be visible from the outside of the house. There will be adverse effect on the public. Point two; the spirit of the ordinance, Section 2.3.1.7., to increase alternatives while maintaining the neighborhood aesthetics and quality. The buyers are trying to provide accessible housing for a disabled adult son. The house has an existing first floor master bedroom suite that has handicap accessible features. The suite is adjacent to the existing family room. Adding a small galley-style kitchen to the existing family room will allow the buyer's son to live in the space more independently. Substantial justice is done. Not allowing the oversized accessory

46 apartment would prevent the buyers from obtaining appropriate housing for this disabled son. Allowing the
47 variance for the apartment does not affect the public. Point four; the values of the surrounding property are
48 not diminished. The granting of this variance will not affect the surrounding properties. The exterior of the
49 structure will not change, as all modifications will be interior to the structure. There will be no increase in
50 traffic. Point five; literal enforcement of the provision of the ordinance would result in unnecessary hardship.
51 The seller has a unique property on the market for approximately six months. The seller has a potential buyer
52 who needs modifications to the property to meet the needs and accommodations for a disabled son. The
53 buyers need to incorporate an existing family room with the bedroom suite into a handicap accessible
54 apartment by adding a small galley kitchen. The ordinance specifies the accessory apartment to have 750
55 square foot limit. The family room has a square footage of approximately 300 square feet and the master
56 bedroom has a square footage of approximately 667 square feet. This is resulting in approximately 967 square
57 feet. The size of the combination of the apartment is ideal for wheelchair accessibility. Trying to modify the
58 space to meet the 750 square foot specification would actually make the apartment less wheelchair
59 accessible. And I believe you folks have...you have a copy of this? Where it says "please refer to Title..." So
60 much for Roman numerals. Planning and Zoning Chapter 672...674:33, Powers of the Zoning Board of
61 Adjustment, paragraph V. Paragraph V says "Notwithstanding [sub]paragraph [I]b, any zoning board of
62 adjustment may grant a variance from the terms of a zoning ordinance without finding hardship arising from
63 the condition of the premises subject to the ordinance, when the reasonable accommodations are necessary
64 to allow a person or persons with a recognized physical disability to reside in or regularly the use the premises,
65 provided that: the variances (sic) granted under this paragraph shall be harmony with the general purpose and
66 intent of the zoning ordinance." What you have in front of you in that little packet [see Exhibits "A," "B," and
67 "C"] is essentially an outline of a proposal of what we want to do with the particular family room. Figure 1 is
68 the room as it exists right now with the internal dimensions. These are not working drawings. These are just
69 basically comparison drawings. Figure 2 shows where we would basically...we have two...in Figure 1 there's
70 two French doors on one wall. We would like to remove those doors and add a galley-style kitchen coming
71 out of that corner, going from your right to your left. The other thing that we would need to do, because
72 there's two venues of egress required, is we want to put in a handicap door. If you look to the upper left hand
73 corner, it'll say...you know, a handicap door would be put in and right next to that is the existing exterior door.
74 And that picture that you have in front of you of the house, that little section there with the brick face? That is
75 the wall on the family room. So that white door that you see, that is the existing exterior door. You get in the
76 house, you open the door and you walk around a little corner outside of the family room. But what we would
77 be doing would basically be putting in the kitchen...we would be putting in, basically, a galley-style kitchen,
78 and then we would be addressing the egress out that existing door that you see on the photograph. The other
79 venue of egress is the garage door, which we would have to, you know, essentially build a ramp into the
80 garage so he would be able to enter and exit the building itself without any issues. The attraction is that all
81 of the very serious work has been done in this house. It's a magnificent master bedroom with all...handicap
82 bathrooms. It is handicap with doors. And essentially, as I said in the other...reading that document, is to try
83 to meet that 750 square foot requirement would be impossible. I'd have to do more remodeling than what
84 has already been done. So for us, this is a perfect solution to our problem.

85
86 LARRY O'SULLIVAN: Did we get an identification from this gentleman when we walked up?

87
88 JAMES SMITH: I'm not sure if he did. Did you identify yourself?

89
90 PAUL DONOVAN: Yes, I said "Paul Donovan."

91
92 LARRY O'SULLIVAN: Your address, Mr. Donovan?
93
94 PAUL DONOVAN: 19 Indian Rock Road in Windham.
95
96 LARRY O'SULLIVAN: Thank you.
97
98 PAUL DONOVAN: Okay.
99
100 LARRY O'SULLIVAN: What's your relationship with the owners? The Kelley Rae Smith Revocable Trust?
101
102 PAUL DONOVAN: None.
103
104 CINDY RONNING: He's the buyer.
105
106 PAUL DONOVAN: I'm the buyer.
107
108 LARRY O'SULLIVAN: I see.
109
110 CINDY RONNING: We're under Purchase and Sale.
111
112 JAMES SMITH: Okay.
113
114 CINDY RONNING: The seller is here.
115
116 JAMES SMITH: Okay, do you wanna identify yourself for the record, please?
117
118 CINDY RONNING: I'm Cindy Ronning, Sunlight Realty, 9 Gaston Street, Pelham, New Hampshire. I'm the buyer
119 agent.
120
121 LARRY O'SULLIVAN: And is the buyer here?
122
123 CINDY RONNING: This...Paul is the buyer.
124
125 PAUL DONOVAN: I'm the buyer. My name is Paul Donovan.
126
127 LARRY O'SULLIVAN: Right.
128
129 PAUL DONOVAN: I am buying this house if we can.
130
131 LARRY O'SULLIVAN: Okay, who's the owner?
132
133 WILMA WILSON: This is Kelley Rae Smith. This is the owner and I'm the [indistinct; calling out from the
134 audience]. I'm Wilma Wilson.
135

136 JAMES SMITH: Well, Ma'am, do you wanna approach a mic so we get it on the record?
137
138 LARRY O'SULLIVAN: We have nothing in our records that say that you can, Mr. Donovan, speak for...
139
140 JAYE TROTTIER: Yes, we do.
141
142 NEIL DUNN: Yes, we do. It's on the...
143
144 JAYE TROTTIER: It's in the application.
145
146 NEIL DUNN: ...front page of the application.
147
148 LARRY O'SULLIVAN: I don't see it.
149
150 NEIL DUNN: On the very front page of your packet. "Representative: Paul Donovan."
151
152 JAYE TROTTIER: [Indistinct] and it's in the file.
153
154 NEIL DUNN: Right here. I'll show you [indistinct]...
155
156 LARRY O'SULLIVAN: Oh, it's on the digital.
157
158 NEIL DUNN: Yeah.
159
160 JAMES SMITH: Yeah.
161
162 LARRY O'SULLIVAN: Sorry.
163
164 NEIL DUNN: That's alright. It's a new year. Gotta retrain you.
165
166 LARRY O'SULLIVAN: My apologies, Mr. Donovan.
167
168 JAMES SMITH: "Representative: Paul Donovan." Okay. Questions?
169
170 LARRY O'SULLIVAN: Sure. The work has already been done for other interior alterations, so...
171
172 PAUL DONOVAN: Yes. We have been looking for over two years at houses. Our son is...will be getting into a
173 wheelchair shortly. Over two years of trying to find some kind of a house that hopefully would have some
174 kind of a handicap accessible in-law apartment, whatever you folks...whatever you call it, an accessory
175 apartment, it doesn't matter. Ms. Smith here...what was it, your husband became wheelchair bound? So you
176 couldn't...
177
178 KELLEY RAE SMITH: No, we just...he figured he was going to.
179
180 PAUL DONOVAN: Okay. So this addition was put on by Ms. Smith and it has everything that we would

181 possible require without doing any construction other than putting in a...you know, as one would suspect,
182 people wanna maintain their sense of independence, even if they're in a tough situation. So what we would
183 be doing is putting in some kind of galley kitchen that he could use from the wheelchair.
184

185 LARRY O'SULLIVAN: So there's no additional bedrooms that you're building?
186

187 PAUL DONOVAN: No, nothing. Nothing. Actually, those two sketches, okay...
188

189 LARRY O'SULLIVAN: Mm-hmm.
190

191 PAUL DONOVAN: Basically, that shows you exactly what we're going to do. In Figure 1, in the family room as
192 it is right now, we will be removing the glass doors and we probably will be saving them, it doesn't matter.
193 But in that corner where the...the reason that I wanted to show you that picture was because you got...now
194 you know where the exterior white door is, is right across from that, we would have to put a handicap-width
195 door. So that, basically, he has two venues of egress. And I have chitchatted with a couple of Londonderry
196 firefighters about this over a period of time. So I'm pretty familiar with what needs to happen as far as a
197 handicap apartment goes.
198

199 JAY HOOLEY: So, just as a clarification then, this addition was built on the house as a handicap accessible part
200 of the main home.
201

202 PAUL DONOVAN: Yes.
203

204 JAY HOOLEY: And as such, the 750 square foot criteria didn't come into play.
205

206 PAUL DONOVAN: Correct.
207

208 JAY HOOLEY: It's an existing piece of a...
209

210 PAUL DONOVAN: Right. It was...when I looked... Mr. Canuel has been very gracious in helping me out. It was
211 put on as an addition with handicap features. It was not put on as an accessory apartment or a...
212

213 KELLEY RAE SMITH: No.
214

215 PAUL DONOVAN: No.
216

217 JAY HOOLEY: And a question to Richard, if I might; if approved as an accessory apartment straight variance,
218 then that continues, new ownership down the road, be it two, three sellers, et cetera, correct?
219

220 RICHARD CANUEL: Well, that depends how the Board decides on the variance.
221

222 JAY HOOLEY: That was...
223

224 RICHARD CANUEL: If the Board wants to apply the criteria of that section that Mr. Donovan quoted to the

225 Board, to provide a variance for someone with a physical disability, that variance lasts only as long as that
226 applicant has use of the property.
227
228 JAY HOOLEY: If we approve it under 674, versus approving it as simply...
229
230 RICHARD CANUEL: As a straight forward variance, that's right.
231
232 JAMES SMITH: Yeah.
233
234 NEIL DUNN: And at that time, Richard, if I may, Mr. Chairman? At that time, Richard, would they have to
235 remove the kitchen? Whoever...I mean, essentially, that's what makes it a...accessory apartment, whatever
236 you wanna call it.
237
238 RICHARD CANUEL: Yeah. Yeah.
239
240 NEIL DUNN: So at that time...?
241
242 RICHARD CANUEL: Yeah, at this point in time, the only addition to that living space would be the inclusion of a
243 kitchen.
244
245 NEIL DUNN: Right, so then if we invoke clause V, section (b), that it only survives as long as the particular
246 person needs to use the premises, then the kitchen would be removed, theoretically, at the end of it?
247
248 RICHARD CANUEL: Exactly. It would have to be restored to its previous configuration.
249
250 JAY HOOLEY: And that's why I asked; that we may be creating a future case for ourselves...
251
252 LARRY O'SULLIVAN: If we [indistinct]...
253
254 JAY HOOLEY: If we do it one way versus the other.
255
256 LARRY O'SULLIVAN: ...without the restriction.
257
258 JAY HOOLEY: Because having built that as a handicap accessible addition is, in my estimation, and I'm getting
259 ahead of myself, unique, versus if you were designing something in as an accessory apartment. That's gonna
260 be a little...but I'm way ahead. Just my thought was, you know, you end up with two very different results,
261 potentially approving it one way versus the other and potentially, a future case.
262
263 RICHARD CANUEL: Well, if I could just remind the Board of the differences there. With applying the physical
264 disability clause, there is no reason to prove hardship in applying the variance criteria.
265
266 JAY HOOLEY: Right.
267
268 RICHARD CANUEL: If you're going with a straight forward variance, then there needs to be that hardship test
269 proven to the Board. That's the difference.

270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313

JAMES SMITH: Ma'am, we'll get to you in a few minutes, please. I think, basically, what we're coming up with is, if we use the handicap law, it gives a variance for the time that the person who needs it is there. The gain is we do not have to have a hardship proven on the property to grant this type of a variance.

LARRY O'SULLIVAN: Mm-hmm.

JAMES SMITH: And at the end of the time, whenever the person moves out, then it has to be restored back to the original configuration. And that's really the two choices at this point. Any other comments or questions or...?

NEIL DUNN: My only thought is the applicant's response to the five points of law, number five, if you will, was invoking that statute.

LARRY O'SULLIVAN: Mm-hmm. Sure.

JAMES SMITH: Yeah.

NEIL DUNN: So instead of going beyond that and say no, we're looking at a straight variance, I think is...

JAMES SMITH: Okay.

NEIL DUNN: ...not supported there, is all my point was.

JAMES SMITH: Any other questions?

JAMES TOTTEN: Just one.

JAMES SMITH: Yeah.

JAMES TOTTEN: Are all the other conditions of the ordinance met?

PAUL DONOVAN: Yes. I believe the major concerns are, you know, any change to the exterior of the house, the property values in the area go down, the usage is right in line with the AR-I zoning. Nothing is being changed. Everything is interior to the house. All of the plumbing is very accessible because of the...where the addition is is right on the other side of the wall where this kitchen is gonna go. So, essentially, all we have to do is basically just plug into all of the existing utilities that are there. And that also is another great attraction to the whole thing. The septic system is fine with...you know, Mr. Canuel and I have had chats about that. It's fine with the number of bedrooms. There's...basically all we really need to do is put in a small galley kitchen. And move a couple of doors.

JAMES SMITH: Okay. No further questions from the Board?

NEIL DUNN: Not at this time.

314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358

JAMES SMITH: At this point, we'd open it up to anyone who's in favor of the applicant? Okay, wanna approach a mic and identify yourself?

SUSAN HAUSSLER: Sure.

JAMES SMITH: Name and address.

SUSAN HAUSSLER: Hi, I'm Susan Haussler and I live at 89 Gilcreast Road. Neighbor. And I indeed support the granting of this variance, looking at it as a straight variance. There will be no changes to the external part of the house. This is all internal and we certainly want to welcome Mr. Donovan to the neighborhood. So thank you.

JAMES SMITH: Okay.

PAUL DONOVAN: It's a lovely day in the neighborhood.

JAMES SMITH: Anyone else in...>

SUSAN HAUSSLER: Okay?

JAMES SMITH: Thank you. Anyone else in support?

JAY BARRETT: Hi. I'm Jay Barrett from 107 Wiley Hill Road and I think...I understand his hardship, having a handicapped child myself. And I think that you guys should grant this variance for him.

PAUL DONOVAN: Thank you very much. Appreciate it.

JAMES SMITH: Anyone else in support? At this point, anyone who has questions or in opposition?

CINDY RONNING: I have a question

JAMES SMITH: Okay, you wanna approach a mic and identify yourself?

CINDY RONNING: I'm Cindy Ronning, I'm the buyer agent. I have some experience sitting on the Zoning Board. I was an alternate on the Pelham Zoning Board. And from my experience as an agent, accessory apartments do not go with any house, so that any buyer would have to reapply if they were gonna use the accessory apartment. I think, as a buyer agent, I wouldn't want to have to put a stipulation on this in-law, that he would have to take out this kitchen when he does sell. That seems to be a bit of a hardship to have to do that. I think any in-law or accessory apartment, the new owners would have to come up to the Board and reapply anyway for it. Am I correct?

JAMES SMITH: No.

CINDY RONNING: Okay.

359

360 JAMES SMITH: We have a specific provision within our zoning regulations which allow accessory apartments
361 up to 750 square feet.

362

363 CINDY RONNING: To go with the house from then on?

364

365 JAMES SMITH: Correct. There are some other stipulations; how old the house is and it has to be owner
366 occupied, I believe, or something to that effect. But it's built-in as something that can be granted. If it meets
367 that criteria, it wouldn't even have to come to the Zoning Board.

368

369 CINDY RONNING: Okay, so it would go with it, but it seems to me it would be a hardship to take out this
370 kitchen again.

371

372 JAMES SMITH: Okay...

373

374 CINDY RONNING: That was...

375

376 JAMES SMITH: Well, okay, here's where we have the conflict between the...there's the law that they quoted...

377

378 CINDY RONNING: Correct.

379

380 JAMES SMITH: ...gives specific leeway in granting a variance for a person who has a handicap.

381

382 CINDY RONNING: Okay.

383

384 JAMES SMITH: The provision of that law states that it's only valid while that person is in occupancy.

385

386 CINDY RONNING: I understand. Is there any way of granting this without using that provision?

387

388 JAMES SMITH: Then they would have to prove a hardship other than just the being handicapped.

389

390 LARRY O'SULLIVAN: Right now, Mr. Donovan has asked for this.

391

392 CINDY RONNING: I know, but I don't know if he was aware that we would have to take out the kitchen after...

393

394 PAUL DONOVAN: Yes, I was.

395

396 CINDY RONNING: You were? You were aware of it?

397

398 PAUL DONOVAN: I read the thing.

399

400 CINDY RONNING: Oh, man. Alright. Well, as a buyer agent, I have a little bit...it's a little bit pragmatic. So I
401 was only trying to make it a little easier at the end of the day.

402

403 JAMES SMITH: Well, again, you're trading one advantage versus another.

404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448

CINDY RONNING: I get it. I get it.

JAMES SMITH: So it's a...you want to take it this way, you gotta pay back on the other end.

CINDY RONNING: I get it. Well, thank you for hearing me.

JAMES SMITH: Yes?

JAY HOOLEY: Mr. Chairman, if I could go to Richard. The very end of the referenced section 674, V, part (b), "In granting any variance pursuant to this subparagraph (sic), the zoning board of adjustment may provide, in a finding included in the variance, that the variance shall survive only as long as that (sic) particular person has a continuing need to use the premises." So that door is actually open to us...

RICHARD CANUEL: Sure.

JAY HOOLEY: ...to approve this under that section, but without the stipulation that it expire upon the change in residency?

RICHARD CANUEL: That's absolutely correct.

JAY HOOLEY: Okay. Which would then remove the hardship portion.

RICHARD CANUEL: That's right.

JAY HOOLEY: Okay.

JAMES SMITH: Okay. Any other...?

LARRY O'SULLIVAN: Anybody else?

JAMES SMITH: Anyone else? At this point, we bring it back to the applicant, if you wanna make any comments about what has been brought up.

PAUL DONOVAN: Yes, actually, this is the first time I've met Mrs. Smith and it's very nice to get a little bit of support from the neighborhood. As I say, this house is gonna...you drive by it in six months and you'd think she's still living there. Nothing is going to change. I appreciate the support from the neighborhood. Thank you.

JAMES SMITH: Okay. At that point, I'll bring it back to the Board. Any further comments or questions? If not, we'll close the public hearing and take this under advisement.

DELIBERATIONS:

JAMES SMITH: Discussion?

449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493

LARRY O'SULLIVAN: I believe they've met all the points. Whether they wanted to include the...whether or not they included the section V of the requirement for...in effect, it's a hardship release. Because of the reasonable accommodations, I don't think there's any issue there. Since there's not gonna be any additional bathrooms, bedrooms, traffic, I don't see any issue. I think they've covered the points. It's in the spirit of the ordinance, it's not contrary to the public interest. I believe it is...it's not going to have any effect on the surrounding properties. I think they've got everything covered.

JAMES SMITH: Anyone else? Neil?

NEIL DUNN: Well, where the applicant has invoked or referenced the 674 chapter, if you will, I think without that, then we go back to the...I always have trouble with the spirit of the ordinance when we start going over 750. That's a fairly new addition to our zoning ordinance and, I mean, the 750 was there for a reason and if we try to...we've had other ones that come in before that were looking for larger space and it has come up at the spirit of the ordinance. And they get around that by invoking Chapter 674, if you will, so if we take 674 out of the picture, and I'm only saying this because I'm tending to support putting the stipulation in that the kitchen does get removed, I don't think it's that big of a deal. It's gonna be some wiring and plumbing and it's not a huge thing. But anyway, if we withdraw the clause (b) where it says we can put in that stipulation that it's only for as long as that person lives there, then we have to go back to look at the spirit of the ordinance and that's the only way I see getting really around that and going larger than this fairly new zoning ordinance that said no, it should be 750 and that's there for a reason and I presume it was there because there was due diligence on the part of the people who put it in.

JAMES SMITH: If you read (b), I think it gives us the option...

NEIL DUNN: Right, no, I understand that. Yeah.

JAMES SMITH: We don't have to...

NEIL DUNN: No.

JAMES SMITH: But that still meets that criteria, though.

LARRY O'SULLIVAN: The spirit regarding accessory apartments? [Indistinct]?

JAMES SMITH: No, I mean, as far as the hardship goes. It still qualifies as being...

NEIL DUNN: It gets past the hardship, which is number five, if they invoke that, yes, and we could go without that, but then if we're gonna say we're not gonna put in there that the variance shall survive only as long as they particular person, then I start having issues with the intent or the spirit of the ordinance. Only because that is...that's documented. It's 674. It's says you can do that, so it kind of overrides the spirit, If we take that out and don't make it part of it, then...I mean, we've had other accessory apartments that were applied for larger than 750 that didn't pass and they didn't invoke that any maybe that wasn't applicable at the time. I'm not saying it was or wasn't, but...So if...that's all I'm bringing up for it. I'm tending to lean in favor of the (b) granting it pursuant to the use of the premises by the person.

494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536

JAMES SMITH: Okay. Jay or...? Any questions?

LARRY O'SULLIVAN: Sure. What was the lot size?

JAMES SMITH: What?

LARRY O'SULLIVAN: What's the lot size? Do we know?

PAUL DONOVAN: It's just about an acre. Give or take, plus or minus.

LARRY O'SULLIVAN: Do you know how much frontage you've got on the road?

KELLEY RAE SMITH: I didn't...with what?

PAUL DONOVAN: The frontage. What's it, about 150, 200 feet?

KELLEY RAE SMITH: Oh, it's pretty large.

PAUL DONOVAN: Yeah. I wanna say it's at least 200 feet.

KELLEY RAE SMITH: Yeah.

LARRY O'SULLIVAN: Is there Town water there? On that property? Or Town sewer? Is it a septic system?

PAUL DONOVAN: It's a septic system.

JAMES SMITH: Septic. He mentioned that.

JAY HOOLEY: I'm just gonna go, if I could, to Neil's point, relative to the...I think you were questioning the spirit and intent...?

NEIL DUNN: Mm-hmm.

JAY HOOLEY: ...and accessory apartments. "To increase housing alternatives while maintain neighborhood aesthetics and quality, one accessory apartment within a detached single family dwelling shall be permitted." And looking at this, I think that is accomplished. That was why I asked the question about the design happening before it was designed as a handicap accessible addition to the home and aesthetically, it fits right in as opp....

NEIL DUNN: I'm not arguing that.

JAY HOOLEY: Okay. But...

537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581

NEIL DUNN: I'm arguing the 750 that was also in that same clause of the ordinance. That we have been pretty tough on.

LARRY O'SULLIVAN: Well, what he's saying is the 750 isn't really the spirit, or not the [indistinct].

JAY HOOLEY: The spirit is the stated purpose at the beginning which is to increase housing alternatives while maintaining neighborhood aesthetics.

LARRY O'SULLIVAN: [Indistinct]

JAY HOOLEY: And I think this clearly accomplishes that.

NEIL DUNN: Oh, okay. I could see where you're going with...

JAY HOOLEY: If...yeah.

NEIL DUNN: So what would you call the 750 then? Just a parameter? I look at it because it...

JAY HOOLEY: Well...

JAMES SMITH: Well, I think...

NEIL DUNN: I think the whole thing is the spirit. I understand what you're saying, Jay, I'm just trying to think where do we place any physical or...

LARRY O'SULLIVAN: Mm-hmm.

NEIL DUNN: ...or dimensional requirements if those aren't included in the spirit.

JAMES SMITH: I think it makes a difference in the fact we're talking about something that's existing.

JAY HOOLEY: Right.

JAMES SMITH: If it was being built...

JAY HOOLEY: You would design it.

JAMES SMITH: ...then you could design it to that 750 and there's no real problem. In this situation, they have an existing bedroom which was built as a handicap accessible bedroom. I presume it's in suite because it must...and they had an existing family room which were adjacent. So now they're just combining those two spaces which happens to be outside the dimensions that we normally require for that type of thing. If they were building it to that dimension, I'd have a problem similar to what you're saying. But since it's existing and they're not making any real modifications to the building, other than adding...taking those two doors out and adding the kitchen...I would also suggest that maybe those two doors are too close together the way they're

582 proposed. For handicap, I think you're supposed to have a little more room between them, but that's
583 something that I'm sure Richard could work out with you. But...so I would agree with everybody that it's
584 meeting the spirit of the whole thing. I think our choice, if we grant it, is whether or not we want to have that
585 provision on the end that it be restored back to the original configuration or not.
586

587 JAY HOOLEY: Well that's why I raised that in the beginning.
588

589 JAMES SMITH: Yeah. We have...
590

591 JAY HOOLEY: I'd be inclined not to create a future case unnecessarily.
592

593 JAMES SMITH: Which, at that point...
594

595 JAMES TOTTEN: Or a future hardship, right?
596

597 JAY HOOLEY: Yeah.
598

599 JAMES TOTTEN: I mean, when you go to sell a home, it's tough to remove a kitchen.
600

601 JAY HOOLEY: It says we "may." It gives the option for a reason, I'm sure.
602

603 JAMES SMITH: Yeah. Okay, any...
604

605 JAY HOOLEY: Assuming we even...
606

607 LARRY O'SULLIVAN: Just to be devil's advocate. One of the things that we've done in the past is we've
608 required, I believe, Richard, you've required somebody to block up a kitchen counter...counter and sink and so
609 forth when we have refused or denied an application. Isn't that correct?
610

611 RICHARD CANUEL: That's true.
612

613 LARRY O'SULLIVAN: And it's not removal, it's take it out use. Isn't that correct?
614


615 RICHARD CANUEL: That's right. That's right.
616

617 LARRY O'SULLIVAN: Okay, so it's not a major major. Which means you can do it with a big piece of granite on
618 top of the thing. You know, so it's not a...or a two by four or, you know, bunches of plywood or something.
619 But the intention that I'd like to be able to accomplish here is we have the spirit of the ordinance that was the
620 question. The spirit of the ordinance is to increase the ability for accessory uses within the structure and the
621 framework so that we don't disrupt the neighborhood, or that we don't do anything adverse to safety and so
622 forth, and...or health of anybody surrounding or anybody in it. So, I don't see any issue here.
623

624 JAMES SMITH: Okay. Any other comments?
625

626 NEIL DUNN: One other thing I might mention is the way the doors configured, it would be very easy to make it
627 a standalone apartment and have [indistinct] remove it [indistinct] down the road, say Mr. Donovan should
628 move out.
629
630 JAMES SMITH: Well....
631
632 NEIL DUNN: I'm just bringing up by the way it looks.
633
634 JAMES SMITH: No, I mean...by definition, that's what it is.
635
636 NEIL DUNN: And that's when we start allowing larger than the 750, that it becomes more of a two family or an
637 apartment. Again, I'm just...that's the only part I have an issue with if we don't invoke it, so I guess I'll wait
638 and hear what happens.
639
640 LARRY O'SULLIVAN: But we would allow a two family in that area. Two families are allowed in that zone. It's
641 an AR-I zone.
642
643 NEIL DUNN: I know, but that's all the application is.
644
645 JAMES SMITH: Yeah, but they...the lot wouldn't [indistinct]...
646
647 NEIL DUNN: I'm sticking with the application and what's in front of us with the 750.
648
649 JAMES SMITH: Yeah.
650
651 NEIL DUNN: We've been very tough on it before. I'm just pointing that out.
652
653 JAMES SMITH: What would...if it's only an acre, it wouldn't meet the requirements for a...
654
655 LARRY O'SULLIVAN: A two family?
656
657 JAMES SMITH: ...two family. You need one point four percent, or 140 percent or something like that.
658
659 LARRY O'SULLIVAN: Mm-hmm.
660
661 JAMES SMITH: Two hundred feet of frontage.
662
663 PAUL DONOVAN: May I say something, Mr. Dunn, please?
664
665 JAMES SMITH: No, at this point...
666
667 PAUL DONOVAN: Oh, I'm sorry. I didn't mean that.
668

669 JAY HOOLEY: Well, with that said, Neil, if we approved it under Chapter 674, V, Section (a), "Any variance
670 granted in (sic) this paragraph shall be in harmony with the general purpose and intent of the zoning
671 ordinance. Do you think it meets that threshold?
672
673 NEIL DUNN: Yeah, I think...
674
675 JAY HOOLEY: Okay.
676
677 NEIL DUNN: ...in invoking 674, we do, yeah. But that's only because it was invoked. And again, we can...we
678 don't have to let that statement in there.
679
680 JAY HOOLEY: That's...
681
682 NEIL DUNN: I'm just saying be...so if it met...
683
684 JAY HOOLEY: We have the option of...
685
686 NEIL DUNN: Right.
687
688 JAY HOOLEY: ...limiting it to the current user or not.
689
690 NEIL DUNN: Yup.
691
692 JAY HOOLEY: But I just think if not, we're just...it's a matter of time before, at some point, he'll move on.
693
694 JAMES SMITH: At best, it would be difficult to monitor.
695
696 JAY HOOLEY: Yeah. Okay.
697
698 JAMES SMITH: So, if there's no further comment...
699
700 LARRY O'SULLIVAN: Will you take a motion?
701
702 JAMES SMITH: ...I would take a motion.
703
704 LARRY O'SULLIVAN: Are you ready? Okay, I'd like to make a motion to approve case 1/16/2013-1 as
705 presented, as they have met all the criteria for an ordinance...I'm sorry, for a variance per our ordinances,
706 without restriction.
707
708 JAY HOOLEY: I'll second the motion.
709
710 JAYE TROTTIER: With what restriction?
711
712 LARRY O'SULLIVAN: Without.
713

714 JAY HOOLEY: Without.
715
716 JAYE TROTTIER: Oh, without.
717
718 JAMES SMITH: Without restriction. Do we have a second?
719
720 JAY HOOLEY: Second.
721
722 JAMES SMITH: All those in favor?
723
724 LARRY O'SULLIVAN: Aye.
725
726 NEIL DUNN: Aye.
727
728 JAY HOOLEY: Aye.
729
730 JAMES TOTTEN: Aye.
731
732 JAMES SMITH: Aye. Those in opposition? Okay, five-nothing.
733
734 RESULT: THE MOTION TO GRANT CASE NO. 1/16/2013-1 WAS APPROVED, 5-0-0.
735
736
737 RESPECTFULLY SUBMITTED.
738
739 
740
741
742 NEIL DUNN, CLERK
743 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY
744
745 **APPROVED FEBRUARY 20, 2013** WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY JAY HOOLEY
746 AND APPROVED 4-0-0.