

**TOWN OF NEW BOSTON  
NEW BOSTON ZONING BOARD OF ADJUSTMENT  
Minutes of 2017**

**June 20, 2017**

The meeting was called to order at 7:00 p.m. by Zoning Board of Adjustment Chairman David Craig. Present were regular members Greg Mattison, Phil Consolini. Also present was Planning Coordinator Shannon Silver.

**OLD BUSINESS**

The Chairman noted that he had not reviewed the last set of draft minutes. He asked the Board for a motion on the minutes.

Greg Mattison **MOVED** to approve the Zoning Board of Adjustment meeting minutes of March 21, 2017. Phil Consolini seconded the motion and it **PASSED** unanimously.

**PHILLIPS, ROBERT S. & MARY C.**

Application for a Variance

Location: Gregg Mill Road

Tax/Map Lot # 3/9

Residential-Agricultural "R-A" District

Present in the audience were Robert and Mary Phillips, Jay Marden, Joshua Young, Brian Donovan and Nancy Carpenito.

The Chairman read the public hearing notice and invited the applicant to go over his variance application. He advised because there were only three Zoning Board of Adjustment members present, their decision needed to be unanimous, as opposed to a Board of four or five members where a member could dissent but the motion could still pass. He stated that the applicants could continue with the hearing as scheduled or they could choose to have the hearing at another meeting with more Board members present. The applicants chose to move forward with the hearing as scheduled.

Robert Phillips indicated that he and his wife owned the above-captioned property. He explained that he started a renovation project within the existing home on the property in order to make unlivable space, livable. He pointed out that the project did not create any changes to the exterior of the home.

Robert Phillips stated that the first objective of the project was to expand a tenant's residence on the first floor of the home by creating 25% more floor space. He continued that the second objective of the project was to create more space in his home as well as adding a kitchen.

Robert Phillips explained that he had been told that he could not install a stove in the new kitchen as it would create an accessory dwelling unit and that through this process it had been determined that his property was non-conforming due to the amount of units that existed on the lot.

Robert Phillips explained that he and his wife were before the Board seeking a variance to create a fourth attached dwelling unit to the existing three unit building. He advised that the space would be used to house visitors and as a temporary rental unit from

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time to time. He further explained that he was reaching retirement and would like to potentially move into the accessory dwelling unit and have his children move into the main house.

Robert Phillips indicated that the granting of the variance would not devalue surrounding properties. He also indicated that more activity would not create any issues, as there was only one property that could be seen from his property. He noted that the property was accessed by a driveway that only served his property.

The Chairman asked for an explanation of the existing floor plan, specifically, the space that had been described as unlivable. Robert Phillips used a plan to describe the area in question and point out the location of his closest abutters.

The Chairman stated that there were three existing dwelling units located on the property and that unit one was the main part of the house. He asked the applicant to point out the locations of the other existing units. Robert Phillips stated that unit two was located on the ground floor of the building. He pointed out the location of the unit three on the plan.

The Chairman asked which unit the Town did not know had existed. Robert Phillips answered that the Town was unaware of unit three.

The Chairman stated that the Board had to be careful when making a non-conforming property more non-conforming. He asked how long unit three had been used as dwelling unit. Jay Marden answered that the home had been used a three-family house since its inception. He noted that the previous Building Inspector, Dennis Sarette, had been aware that the house was a three-family home. He further noted that the space over the garage had been expanded twenty-five years ago. The Chairman asked if the space over the garage had been occupied. Jay Marden answered that it had been used for summer help. Shannon Silver believed that Jay Marden was pointing out that the three-family home had existed prior to zoning being implemented in Town. Jay Marden agreed with Shannon Silver.

The Chairman asked for the purpose of installing a kitchen in the back corner of the second floor. Robert Phillips answered that they had company visit from California that stayed with them for two to three weeks at a time and the kitchen would provide them with their own private space.

The Chairman asked for questions and/or comments from direct abutters in the audience. Jay Marden of 56 Gregg Mill Road indicated that he was the closest abutter and had in fact sold the property to Mr. and Mrs. Phillips. He commented that he had been very pleased with what the Phillips' had been doing with the property. He felt that there was a need for additional rental units in New Boston. He advised that he had served on a sub-committee of the Planning Board that addressed this issue and it had been determined that one way to expand rental units was to allow for rental units in existing, larger homes. He was in favor of the granting of the variance application.

The Chairman advised that a new State Statue would be going into effect on July 1st and would allow for interior dwelling units; however, he believed that it only would allow for one interior dwelling unit per property. He continued that he did not believe that this statue would change anything for this application, as two additional units to the main dwelling unit already existed.

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Joshua Young of 4 Lull Road stated that his property abutted the Phillips' property and that he was fully in favor of the granting of the variance. The Chairman asked if Mr. Young had any concerns relative to an increase of traffic creating a burden on the neighborhood. Joshua Young answered that his concerns were that more affordable housing be made available in Town.

Brian Donovan of 12 West Lull Road had concerns with more demands being placed on the sewer and water supply for the property. Robert Phillips advised that he was a licensed septic designer and installer. The Chairman asked the applicant to report on the existing septic system at the property. Robert Phillips stated that three, 1K gallon tanks in a series existed in field beyond the existing red barn; he pointed out the location on the plan. He noted that the renovations did not include increasing the amount of bedrooms. He noted that one bedroom had been removed and relocated within the building. The Chairman asked for the number of people that occupied the property. Mary Phillips answered that currently there were 8 people occupying three units. The Chairman asked if the existing septic tanks were sufficient to service the 8 people that occupied the property. Robert Phillips answered yes and he added that the setback between the leach field and the river was about 300'.

The Chairman asked if Mr. Donovan was opposed to the granting of the variance. Brian Donovan answered that he was not opposed to the variance.

Nancy Carpenito indicated that she owned Tax Map/Lot #3/9-3, on Lull Road and planned to develop the property with a single family residence. She commented that the granting of the variance would add to the property and she was ok with it as long as the ZBA was ok with it.

The Chairman asked for the applicant to speak to the variance criteria. Robert Phillips stated that he felt that he was in compliance with the Zoning Ordinance because his property exceeded the acreage per family that was allowed; two-family homes were permitted on 2 acres of land. The Coordinator explained that Zoning allowed for single family and two family homes to be built on 2 acres of land with 200' of frontage. Robert Phillips pointed out that his property could not be further subdivided due to various conservation easements.

Robert Phillips stated that the granting of the variance would not be contrary to public interest because he would not substantially be changing the property by developing multi-units that would generate more traffic and devalue property.

Robert Phillips believed that the spirit and intent of the ordinance was to limit the density per lot. He continued that his property had more than adequate space to handle the necessary leach field and additional water. He commented that the infrastructure had been "beefed up" to handle the use. Jay Marden confirmed that a substantial leach field had been installed.

Robert Phillips indicated that the granting of the variance would provide substantial justice because it would give him use of the existing house.

Robert Phillips noted that the exterior of the property would not change and therefore, he believed that the surrounding property values would not change. The Chairman asked the number of abutters to the property. The Coordinator advised that there were a total of 12 abutters. She mentioned that an abutter had sent an email earlier in the day in

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support of the variance; the Chairman read the email from Donna Mombouquette and James Denesevich of 42 West Lull Place into the record.

Robert Phillips explained that having to pay taxes in their entirety would be a hardship for him. He explained that being able to move into the apartment on the property and have his children take over main house and pay the taxes would create a substantial savings to him. He continued that being allowed to rent a portion of the property and generate income helped him in his retirement.

Mary Phillips stated that the proposed uses were reasonable uses because the house would be devalued without the improvements that were completed.

Phil Consolini asked if the applicants obtained a permit for improvements completed on the first floor. Robert Phillips answered yes.

Greg Mattison stated that the situation was unique; however, he wanted to be clear on the fact that the property was already non-conforming, which bothered him. The Chairman stated that the Board could approve the variance and make known that they were not approving non-conformance of the property. The Coordinator read the following from the Building Inspector's letter of February 2, 2017, "As a matter of fact, the recorded evidence is that the third unit in the barn is not legal."

The Chairman acknowledged that people needed places to live and not everyone could afford a beautiful single family home on a single lot and it was a valid argument. He continued that the problem with this was as the ZBA they could not rewrite the laws. He further stated that the ordinance and criteria were specific and he did not believe that this variance application met the criteria. He stated that he was opposed to the granting of the variance. He explained that the applicant could withdraw their application and discuss other options with the Building Inspector. Mary Phillips asked what other options were available. The Chairman answered that he was unsure and advised that further discussion with the Building Inspector would be needed. He stated that if the applicants were dissatisfied with the Building Inspector's analysis they could appeal the decision.

The applicants decided to withdraw their application without prejudice.

Phil Consolini **MOVED** to adjourn at 8:08 p.m. David Craig seconded the motion and it **PASSED** unanimously.

Respectfully submitted,  
Valerie Diaz, Clerk

Minutes Approved: 07/17/18