

DUNBARTON ZONING BOARD OF ADJUSTMENT
Monday, August 8, 2022 ~ 7:00 p.m. ~ Town Office

MINUTES OF MEETING

Chair John Trottier called the meeting to order at 7:00 p.m.

Attendance: Chair John Trottier, Secretary Alison Vallieres, Dan Dal Pra, Jim Soucy.

Approval of previous meeting minutes: **Jim Soucy made a motion to approve the minutes of the July 11, 2022 meeting as submitted and reviewed by members; Dan Dal Pra seconded the motion.** There was no discussion. **All were in favor.**

Application #2022-ZBA-002, Karl & Jessica Bailey, 10 Samuels Court – (G3-01-12, Medium-Density Residential District) Request a special exception to Article 4, Section 1, Table of Uses, C. Commercial – to allow the use of an existing detached garage for storage of gutter materials and home office space. The applicants communicated that they have not been able to gather the information requested by the Board at the last meeting, therefore, they would like to continue this application to the September meeting. Since the July meeting, the Building Inspector determined that the use would be categorized as Warehousing and fall under Industrial in the Table of Uses. The applicants were notified of this decision and informed that they will have to request a variance for the undersized lot, then continue the special exception process, if they plan to continue the business at their residence.

Application #2022-ZBA-003, Michael Luksza, 135 Twist Hill Road – (C3-01-17, Low-Density Residential District) Requests a variance to Article 4, Section E-4 to allow an accessory dwelling unit with a total of 1,200 sq ft vs the 1,000 sq ft allowed by the Zoning Ordinance. Adam Luksza, son of the applicant, was also present.

Mr. Luksza explained that he has a two-story home with a full walkout basement. The basement was finished off as an apartment for his son and his family a number of years ago. They did not realize at the time that additional permits were necessary, and he is now trying to follow the process to make things right. Mr. Luksza noted that accessory dwelling units are allowed by Zoning; however, this unit is 200 square feet larger than permitted in the ordinance and that is the reason for this application.

John Trottier asked how many bedrooms are in the existing house. Mr. Luksza said there are three bedrooms in the main dwelling. Mr. Trottier stated they would be adding two with the ADU. He asked what the septic design is approved for. Mr. Luksza said it is a five-bedroom design; he submitted a copy of the septic approval for operation which showed five bedrooms. Dan Dal Pra asked when the apartment was done. Mr. Luksza said the rough-in was done at the same time the house was done. He explained that the lower level is complete, more so than the upper level. They have been living there since 2007-08. Adam Luksza said he and his wife finished the basement because they had a child coming and did not want a baby living in an unfinished environment. Mr. Dal Pra asked about the square footage of the main dwelling. Mr. Luksza said it is about 3,000 square feet.

Jim Soucy asked if there are currently any building permits out for the ADU. Donna explained that the applicant applied for an after-the-fact permit for the ADU, however the permit was denied because the square footage of the ADU was more than allowed by the Zoning Ordinance. The applicant was advised to request a variance through the ZBA.

John Trottier noted there are sheds depicted in the building setback on the certified plot plan. Mr. Luksza acknowledged the sheds, explaining that he is working with the building department on correcting that situation as well. Donna stated that the building inspector has met with the applicant at the site, and Mr. Luksza

has been very cooperative in rectifying the matter. She explained that there are a number of issues affecting the relocation of the sheds; once those are settled, the applicant has said he will move them.

Jim Soucy spoke about a note for a changing room and pool. Adam Luksza explained it is a spa pool and pump house, located outside the back door. Mr. Soucy asked about the heat source being used and living space vs storage space. Mr. Luksza said there are wall units and on demand water heaters. He handed out copies of the property assessment card on which he had depicted the floor plan of the ADU.

Mr. Luksza went through the points of the application as follows:

1. Granting the variance would not be contrary to the public interest because: This property is located in the Low-Density District. There is no impact on overcrowding, increased traffic or threat to the environment. The same family has resided there since it was built. No impact to wetlands or roadway.
2. If the variance were granted, the spirit of the Ordinance would be observed because: The use of ADUs is allowed. The current town maximum is 1,000 sq. ft., whereas the State of NH only sets a minimum of 750 sq. ft. The town requests a variance for over 1,000 sq. ft. The request for additional sq. ft. (200 sq. ft) is a minimal request. The increase would not burden, hinder the rights of others, or violate any State of NH regulations.
3. Granting the variance would do substantial justice because: The proposed ADU is built within the same footprint size of the existing home (large two-story colonial) and is in the walkout basement. This helps the family stay within the budget without having to build another separate structure. This would allow continued usage of an already occupied floor level with minimal expense for the granting as an allowed ADU unit. There would be no foreseeable harm to others.
4. If the variance were granted, the values of surrounding properties would not be diminished because: The properties in the surrounding area have been around for many years. The existing two-story colonial home is one of the newer ones (largest as well) in the area and was built to the building codes as required. The property is well maintained and kept in clean appearance. Also, due to the five-acre minimum and wooded coverage, most of the neighbors cannot see each other's home which creates a lot of privacy for each property.
5. a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because: The home is being occupied by the family in all levels of the large house. The intended space (lower level) or area does not meet the ADU requirement due to its minimal oversize. However, it does meet the remaining requirements. It would become a hardship should the family members be asked to "downsize" or build another structure.
 - (i.) No fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property because: The request for additional sq. ft. does not change the outward appearance of the existing structure or impact the general public.
 - (ii.) The proposed use is a reasonable one because: The design and layout of the floor plan allows for a good flow of movement and an affordable, comfortable living space. The ADU would still meet State of NH guidelines.

Jim Soucy addressed point 5-a, asking what the special conditions are that would constitute the unnecessary hardship element. Mr. Luksza said a denial would require them to go back to 1,000 sq ft, noting this is a family unit and his 10-year-old granddaughter needs her own space. Dan Dal Pra said parking arrangements should not change. Mr. Luksza said that was correct, there is plenty of parking space that would be enough for five cars. He pointed out the driveway location and width on the plot plan.

Alternate Matthew Delude arrived at this point. He said he has read through all the materials but would abstain from any votes as he was not present for the beginning of the hearing.

Alison Vallieres said she feels the applicant is maximizing the use of the property, is limited by the square footage, is not adding anything, and is working within the existing footprint. John Trottier asked to confirm that the sheds are to be moved out of the setback. Donna explained the Department's discussions with Mr. Luksza about the sheds. An abutter has an easement over this property, and there are ongoing issues

relative to the easement. Those issues and alleged wetland violations need to be resolved before Mr. Luksza determines where the shed can be placed. Mr. Luksza said he can only do one step at a time, but all will be resolved eventually.

The chair noted that there were no abutters present. He closed the public hearing and brought the discussion back to the Board. Mr. Trottier read through the applicant's responses, asking the members if they felt each point was met.

1. Granting the variance would not be contrary to the public interest – John Trottier said he would agree that the request is not contrary to the public interest; all agreed.
2. If the variance were granted, the spirit of the Ordinance would be observed – John Trottier said he feels the property is residential in nature; Dan Dal Pra said that is not going to change. All agreed.
3. Granting the variance would do substantial justice – John Trottier said he feels substantial justice would be followed; all agreed.
4. If the variance were granted, the values of surrounding properties would not be diminished – John Trottier said he would agree, saying it would probably increase the value of this property as well as those around it; all agreed.
5. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship – John Trottier said he is struggling with this one as there is nothing out of the ordinary for the shape or condition of the parcel. Jim Soucy said he has trouble with this point as well, as do the courts. He said the hardship is supposed to be due to the property, not the use/occupancy. He said he understands the family dynamics, however the hardship element is the higher threshold and needs to be satisfied. Mr. Soucy said he is not clear on the design and layout of the floor plan, but there really is not anything in the special conditions of the property and he cannot see that point being satisfied. Donna made copies of the floor plan submitted as part of the building permit packet and distributed them to the board members. John Trottier said what the applicant is trying to do is within the existing footprint, nothing to do with the property. He noted that the easement has not been shown on the plot plan. Jim Soucy said where the right-of-way is has no real bearing on this application. Alison Vallieres said the easement has been in dispute for years. Dan Dal Pra asked if the depicted storage area is just for the ADU. Mr. Luksza said that was correct. Alison Vallieres said she feels the request is governed by the footprint of the house, even though she knows that is not a special condition of the property.

Hearing no further discussion, the chair asked how the board would like to proceed. **Jim Soucy made a motion to approve Application #2022-ZBA-003 for Michael Luksza of 135 Twist Hill Road, Map C7-01-17, for a Variance from Article 4, Section E. Accessory Dwelling Units, sub-section 4, of the Dunbarton Zoning Ordinance to allow an accessory dwelling unit with a total of 1,200 square feet vs the 1,000 square feet allowed by the Zoning Ordinance at his property located in the Low-Density Residential District. Dan Dal Pra seconded the motion.** John Trottier said he would like to add the condition of cleaning up the sheds in the building setback before any building permits are issued. Mr. Soucy and Mr. Dal Pra agreed to the condition on their motion. **The chair asked for a vote on the amended motion: Alison Vallieres, Dan Dal Pra, John Trottier – in favor; Jim Soucy – opposed. Matthew Delude – abstained. Variance granted 3-1.**

Adam Luksza said he understood the reasoning behind Mr. Trottier's condition, but their plan was to build a new shed and move everything to that from the existing shed. The existing shed would then be torn down. He explained that they would not want to have the items in the existing shed exposed to weather during the time it would take to build a new shed. Mr. Trottier suggested they figure out a way to move the existing shed, making it compliant, then proceed with their plan for a new shed.

Adjournment: Having no further business, **Dan Dal Pra made a motion to adjourn the meeting at 7:55 p.m. Alison Vallieres seconded the motion. All were in favor.**

Respectfully submitted,
Donna White, Office Administrator