

MINUTES
PEMBROKE ZONING BOARD OF ADJUSTMENT
April 26, 2010 Approved 5/24/10

MEMBERS PRESENT: William Bonney, Chair; Bruce Kudrick, Vice Chair; Dana Carlucci, Tom Hebert, Tom LoPizzo

ALTERNATES PRESENT: Mick Pinard, Paul Paradis, Mark Simard

EXCUSED:

STAFF PRESENT: Everett Hodge, Code Enforcement Officer; Susan Gifford, Recording Secretary

Chairman Bonney called the meeting to order at 7:05 p.m.

PUBLIC HEARING

Case #10-07-Z

Applicant: Michael Donnelly
419 Deerpath Lane
Pembroke, NH 03275

Property Owner(s): Michael and Maranda Donnelly
419 Deerpath Lane
Pembroke, NH 03275

Property Address: 419 Deerpath Lane
Pembroke, NH 03275
Tax Map 565 Lot 174 located in the R1 Medium Density-Residential
Zoning District

Variance from *Article V Section 143-21 (Table of Dimensional and Density Regulations)* of the Zoning Ordinance to convert a previously constructed and occupied duplex which is now a single family residence back to a duplex at 419 Deerpath Lane. A **Variance** is required because the property does not meet the frontage and lot size requirements for a duplex. The property is located at 419 Deerpath Lane.

Mr. Everett Hodge confirmed that all abutters were notified and that cards were received back from all abutters. An additional abutter notified is Jennie Beidler, 420 Deerpath Lane, Pembroke NH.

Chairman Bonney opened the public hearing at 7:06 p.m.

There were 5 regular members and 3 alternate members; therefore, there was a full five member board present for this hearing. Chairman Bonney explained the rules of the hearing.

Copies of assessment cards and copy of proposed duplex were included in the application packet.

Michael Donnelly, owner/applicant is requesting permission to reestablish the property to duplex status. Since the property was built and designed as a duplex, and a miscommunication changed the status to single family, we feel the original property status should be returned to Map 565 Lot 174 at 419 Deerpath Lane. Michael Donnelly stated that before they purchased the property on December 29, 2009 they came to the Town Code Enforcement Officer to make sure the duplex use could be reestablished. An electrical permit and plumbing permit were obtained on January 10, 2010 to relocate the range and kitchen (renovate/update). A copy of a past inspection on 2/8/10 was provided to the ZBA. Seventy five percent of the work has been completed. On 2/23/10 the applicant received a letter from the Town office stating they needed to obtain a variance. Maranda Donnelly, owner, stated we don't think we need a variance but the town has asked us to

apply for this variance so we have complied. The tax card has listed the property as “single-family” since 11/28/06 due to the request of previous owners (Maranda’s parents) to the Sewer Department to remove a line since one family occupied both sides of the duplex.

James Donnelly, 557 Pembroke Street, stated that when the house was built in 1980 there were two people living on each side, both renters, and the electric bill was to 419A and 419B Deerpath Lane. In construction there was a common firewall and sets of stairwells. Maranda’s parents, James and Laura Stacy, were the previous owners who took over both sides of the duplex and lived there 10-12 years. The sewer usage fee was \$16 per unit per quarter, so they asked the Sewer Department to bill for one sewer line only. There are two independent electric systems, two laundry hookups, and two kitchens. The second range was never disconnected. The Stacy’s jumped the 10000 amp electric service to the other panel to increase it to 200 amp service. The previous owners were never notified of the change in use by Vision Appraisal from duplex to single family on 11/28/06.

Michael Donnelly stated that the previous owners informed the Sewer Department that one family was occupying both sides and requested an abatement on the second connection. There was a mistake on the family’s part and the Sewer Department’s part as the property was billed as single line sewer from 11/98 but the change on the tax card to single family was 11/28/06.

Paulette Malo, Sewer Commissioner, stated that the Sewer Commission minutes of October 2004 reflect an abatement granted on the second sewer connection to 419 Deerpath Lane. Mrs. Stacy was not in attendance at that meeting and the abatement was years after the original request. The house was built in 1980 and was used as a rented duplex until 1998. In 1998 James and Laura Stacy bought the duplex and occupied both sides. James and Laura Stacy sold the property to Michael and Maranda Donnelly 12/31/2009 with the intent to reestablish a duplex, live in one side and rent out the other. Maranda Donnelly was nervous that the tax card said it was a single-family dwelling. Duplex has always been the use of the building, regardless how many families occupied it. Everett Hodge was led to believe from the property file that the structure was still a duplex. Michael and Maranda Donnelly proposed to reestablish the existing kitchen and existing electric. The home is set up as a duplex and was a duplex on the tax card until 2006. On 11/28/06 a reappraisal at the door, exterior view only, changed the use to single-family even though the property was used as a duplex since 1980.

Has this property been charged for duplex unit fees? Paulette Malo stated there was no way of knowing the amount paid as connection fees in 1980. Paulette stated that the property has been billed as single family sewer since 2004. The ZBA asked if there is an additional sewer connection available? Paulette Malo stated there is a sewer connection available now. In 2004 the Allenstown sewer plant hit capacity and that is why the Sewer Commission granted the Stacy’s abatement in 2004 without the Stacy’s present at the meeting. Michael Donnelly stated the Stacy’s are willing to go back to 2004 and pay the difference in usage fee and the Donnelly’s are willing to pay the current connection fee for an additional sewer use permit. The structure has always had two living facilities, four bedrooms and two kitchens. The lot size is .44 acre or 19,166 square feet. There is town sewer but not town water. Current zoning requires 40,000 square feet for the first unit and 40,000 square feet for the second unit or 80,000 square feet for a duplex. There is 125 feet of frontage where 135 feet is required for a single-family and 165 feet is required for a duplex.

Michael Donnelly addressed the criteria necessary for a Variance as they applied:

- 1) Granting the variance would not be contrary to the public interest because *the only changes proposed are within the structure.*
- 2A) How does the Zoning Ordinance interfere with your ability to reasonably use your property, considering you property’s unique setting in its environment? *To legally rent the property, it must be*

classified as a duplex.

- 2B) Explain why the proposed use can not be achieved through some other reasonable method other than an area variance. *The lot is simply not large enough for the proposed use.*
- 3) How would granting the variance be consistent with the Spirit of the Ordinance? *The duplex will not have a large impact on the surrounding public. The property has been a duplex in the past and did not have negative effects to the public.*
- 4) How would granting the variance ensure that substantial justice is done? *Granting the variance would be a fair solution since the permits have been issued and work is, in fact, complete.*
- 5) Granting the variance will not diminish surrounding property values because: *there will be no change to the outside appearance of the property. In fact, the property has been thought of as a duplex by many residents in the neighborhood.*

James Donnelly, 557 Pembroke Street, stated that there is clearly a hardship to the current owners Michael and Maranda Donnelly as permits were given from the town, and work was completed.

Bruce Kudrick asked who in the town decides changes on the tax card, and who is responsible for communicating those changes to the property owner?

Paulette Malo, Sewer Commissioner, asked if, in the future, as a condition of approval, the ZBA could specify that the property owner must pay the sewer connection fees to the Sewer Department as part of the process for an in-law apartment or second unit. Everett Hodge stated the property file states there is adequate parking for 4 vehicles and a permit was obtained for the garage. A plumbing and electrical permit were issued to reestablish the duplex use in 2010. However, no town permits are required to convert a duplex to a single-family. Bruce Kudrick stated that he understands the paperwork trail issue with the town.

Chairman Bonney summarized the case. The case is #10-07-ZA regarding 419 Deerpath Lane. Michael and Maranda purchased the property 12/28/09. Electrical and plumbing permits were issued by the town 1-10-10. The Code Enforcement Officer inspected the work 2/8/10. ON 2/23/10 the property owners received a letter from the town directing them to obtain a variance. The tax cards list the property as a duplex 1980-2006. A sewer abatement to a single-family was granted in 2004, related to a 1998 request from James and Laura Stacy. The town has taxed the property as a duplex from 1980 to 11/28/006 when a Vision appraisal changed the use to single-family without notice to the property owner. Everett Hodge had not looked at the property card, but used the property file which listed the property as a duplex. The lot is too small for a single-family home or a duplex. There is 19,166 square feet where 80,000 square feet is required for a duplex. There is 125 feet of frontage where 135 feet is required for single-family and 165 feet is required for a duplex. The tax card states the property was built in 1980 as a duplex and met the requirements at that time.

There being no further input, Chairman Bonney closed the public hearing at 7:45 p.m.

Deliberations: Bruce Kudrick noted that the property was built as a duplex in 1980, used as a rental duplex until 1998 and taxed as a duplex until 2006 when a Vision appraiser changed the use without notifying the property owners. The property is a non-conforming duplex. The owners in 1998 requested an abatement to reduce their use fee from \$64 to \$32. The abatement was not granted until 2004, without the property owners at the meeting, to remove gallonage and help with capacity issues at the Allentown plant. Should the application be for an 'equitable waiver' due to town actions that contributed to the misclassification? The Donnelly's purchased the property with the intent to turn it back into a duplex on a substandard lot. There is a common front door, a hallway with two stairwells and two doors leading to the back. Everett Hodge sees no safety issues. The current zoning regulations require 80,000 square feet where 19,166 are available and 165 feet of frontage where 125 feet are available for a duplex. The property was built and invested in as a duplex, even though one family occupied both sides from 1998 to 2009. The town taxed the property as a

duplex until 2006. Zoning came in 1974. In 1980 three Selectmen signed the building permit for a ‘one and a half story cape duplex’ so it met the regulations of that time. The lot is same size it was in 1980.

Everett looked at the property file. No correspondence was found in the file regarding change of use to single-family. The only request was to the Sewer Commission for an abatement of sewer use fees. The appraiser decision was not communicated or contested. The family who lived there was not renting out the second unit. There needs to be a clear paper trail in the property file when Building Inspectors have not been with the town for years and know the history of every property in town. The paper trail is lacking in this instance.

The ZBA reviewed each of the five variance criteria. 1) No one has spoken against the proposal. 2) Yes, there are other duplexes on Deerpath Lane, agreed. 2B) agreed 3) yes, because the town changed the use and did not notify the property owner, agreed 4) It is not supporting the spirit of the ordinance to have a duplex with 19,166 square foot lot where 80,000 square feet is required, however, the duplex did meet the ordinance in 1980 when it was built, Yes and 5) yes, this would create a paper trail for the future and no testimony was received that property values would be negatively affected

Motion : Bruce Kudrick moved to grant a Variance to convert a previously constructed and occupied duplex which is now a single family residence back to a duplex at 419 Deerpath Lane, Map 565, Lot 174 in the R1 Zoning District with the following conditions

1. Applicant must meet all state, local and federal regulations.
2. Applicant will meet with the Sewer Commission and pay connection fees necessary to put a single-family sewer use back to duplex use.

Tom Hebert seconded.

VOTE: TOM L- Y DANA - Y BRUCE- Y
TOM H Y BILL - Y

MOTION TO GRANT A VARIANCE TO FRONTAGE AND LOT SIZE FOR A DUPLEX AT 419 DEERPATH LANE, MAP 565 LOT 174 APPROVED WITH CONDITIONS ON A 5-0 VOTE

PUBLIC HEARING

Case #10-08-Z

Applicant: Rick and Tracy Bagley
502 North Pembroke Road
Pembroke, NH 03275

Property Owner(s): Rick and Tracy Bagley
502 North Pembroke Road
Pembroke, NH 03275

Property Address: 502 North Pembroke Road
Pembroke, NH 03275
Tax Map 935 Lot 31 located in the R3 Rural/Agricultural-Residential
Zoning District

Special Exception under *Article 143-18.1 Accessory Dwelling Units*- The applicant, Rick and Tracy Bagley, is requesting permission to convert an existing 670 square foot 2-story workshop into an in-law apartment. The property is located at 502 North Pembroke Road, Map 935, Lot 31 in the R3 Zoning District.

Mr. Everett Hodge confirmed that all abutters were notified and that cards were received back from all abutters.

Chairman Bonney opened the public hearing at 8:10 p.m.

There were 5 regular members and 3 alternate members; therefore, there was a full five member board present for this hearing. Chairman Bonney explained the rules of the hearing.

Copies of assessment cards and a sketch of the proposed in-law apartment were included in the application packet.

The applicant is requesting permission to convert an existing two-story garage/workshop as a living space for Rick's 76 year old father. The lot is not on town water or sewer. The Building Inspector has told us all we need to do to meet the requirements, if a Special Exception is approved, is add a breezeway from our house with a fire rated 90-minute door that goes into the garage. The only obvious structural change will be the added breezeway connecting the two buildings. The structure is an 18' x 22' Yankee barn. The first floor will be kitchen, living room and bathroom. The second floor (actual size 13' x 22' less a 5 foot knee wall) will be one bedroom. The total living space will be 630 square feet eliminating walls. Rick is a general contractor and has been in the trade 27 years.

Rick Bagley addressed the 9 points necessary for a Special Exception as they applied:

- 1) Please describe how the requested use is essential or desirable to the public convenience or the general welfare. *The in-law apartment would allow Mr. Bagley a safe place to live, that is convenient for us to care for him.*
- 2) Please state how the requested use will not impair the integrity or character of the district or adjoining zones, nor be detrimental to the health, morals or general welfare. *There are no structural changes being made, except for the addition of a breezeway between the buildings.*
- 3) Please describe how the specific site is an appropriate location for the proposed use and the character of adjoining uses will not be affected adversely. *The proposed space for an in-law apartment is the perfect size for an elderly parent to live in. Having it located on our property makes it easier for us to care for him. It will not affect any of our neighbors.*
- 4) Please show that no factual evidence is found that property values in the district will be adversely affected by such use. *There will be no changes to the structures that are visible from the street.*
- 5) Will undue traffic or no nuisance or unreasonable hazard result from your proposed use? *No, the elder Mr. Bagley had one vehicle and does not work. The car is for recreational and volunteer use only.*
- 6) Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use. *The in-law apartment will be maintained by Rick and Tracy Bagley.*
- 7) Please show that there are no valid objections from abutting property owners based on demonstrable fact. *There will be no visible changes to the property from the street.*
- 8) Please show that the proposed use has an adequate water supply and sewerage systems and meets the applicable requirements of the State. *Rick and Tracy Bagley had the septic replaced on 3/25/2010 and have a drilled well with adequate water for both structures. The new sewer is sized for three bedrooms. Mr. Bagley will eliminate a bedroom in the house, and switch his business office from the barn to his home. Two daughters are away at college, with a son to follow in the fall of 2010. Only three adults will be living in the two structures.*
- 9) If the proposed use is for multi-family dwellings, will it be served by the town water system and by the town sewerage system. *N/A*

Rick Bagley stated that he built his house ten years ago, and just wants to take care of his dad now.

Chairman Bonney summarized the case. One accessory dwelling unit/in-law apartment is allowed with conditions as long as it does not exceed 675 square feet, is attached to the primary dwelling and follows all the regulations. Mr. Bagley installed a new septic system on 3/25/10 that meets design capacity, one off street parking space is provided, and use as a rental unit is prohibited. The property is at 502 North

Pembroke Road and the workshop/Yankee barn would be turned into living space for Mr. Bagley's elderly father. There will be a breezeway with a 90 minute fire rated door connecting the buildings through the sun room. A roller barn door will be replaced with a side light door. Only Rick and Tracy Bagley and the elder Mr. Bagley will live on the property as of fall. Three Bagley children will be attending college. Rick Bagley has already eliminated a bedroom in the house and moved his business office from the barn to the house. Rick constructed the house in 1999.

There being no further input, Chairman Bonney closed the public hearing at 8:30 p.m.

Chairman Bonney led a review of the Special Exception criteria. 1) Essential or desirable to the public, agree. 2) agree. 3) Meets all requirements of 143-18.1 for accessory in-law apartment 4) agree 5) agree 6) agree. 7) No one attended the meeting stating they were opposed. 8) new septic installed 3/25/10 and well water 9) N/A

Motion: Bruce Kudrick moved to approve a Special Exception to allow Applicant to convert an existing 670 square foot 2-story garage/workshop into an in-law apartment in the R3 District with the following conditions:

1. Must follow all regulations of 143-18.1 Accessory dwelling in-law apartment
2. Must follow all applicable State and Town regulations.

Dana Carlucci seconded.

VOTE: TOM L - Y DANA - Y BRUCE- Y
TOM H Y BILL - Y

MOTION TO GRANT A SPECIAL EXCEPTION TO PERMIT CONVERSION OF AN EXISTING 670 SQUARE FOOT, 2-STORY GARAGE/WORKSHOP INTO AN IN-LAW APARTMENT AT 502 NORTH PEMBROKE ROAD, MAP 935 LOT 31 IN THE R3 RURAL/AGRICULTURAL-RESIDENTIAL ZONING DISTRICT, APPROVED WITH CONDITIONS ON A 5-0 VOTE

MINUTES OF PREVIOUS MEETINGS

Motion: Bruce Kudrick moved to approve the minutes of April 15, 2010 as amended. Dana Carlucci seconded.

VOTE: BRUCE - Y TOM L - Y DANA -Y
TOM H - Y BILL - Y

MINUTES OF APRIL 15, 2010 APPROVED AS AMENDED ON 5-0 VOTE.

OTHER

Potential request for extension - Everett Hodge reported that Shawn Matte of Case #10-06-Z asked if he doesn't meet the one year deadline (from date the foundation walls are inspected and approved for backfill) for the variance granted April 15, 2010, can he come back to the ZBA to request an extension. The applicant may file a request for extension if that occurs but it is not automatically granted.

Email from Jeffrey Belanger, Mitchell Municipal Group PA regarding variance application Part A and B, and clarification on addition to non-conforming structures - Now that the legislature has changed the variance statute, the applicant establishes criteria in part A, 1,2,3 and then moves on to Part B, special conditions of the property make the provision of the zoning ordinance so arduous the property cannot be used in any reasonable way. Regarding non-conforming uses, specifically a structure on a lot of record too small for current zoning, Attorney Belanger advises that an addition can be made if the addition does not infringe on any setbacks of the lot.

Storage pods - The current zoning ordinance addresses job site trailers, but not storage unit trailers located

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on a lot. Zoning modifications are needed to control how long storage pods remain on a lot, and prohibiting storage of hazardous materials in a storage pod. The ZBA suggests modifications to the zoning ordinance and the Planning Board holds hearings and brings them forward for a vote.

New Variance application - The most recent version emailed to members is the version that will be made into hard copies and posted on the town website.

Date of next ZBA meeting – The May 2010 meeting will be on Monday, May 24, 2010.

ADJOURN Motion: Tom Hebert moved to adjourn. Bruce Kudrick seconded. Vote was unanimous in favor of motion. Meeting adjourned at 8:50 p.m.

Respectfully submitted,

Susan P. Gifford
Recording Secretary