

TOWN OF SUTTON
Zoning Board of Adjustment
Pillsbury Memorial Hall
Meeting Minutes
February 19, 2014

Present: Zoning Board of Adjustment Members: Bill Hallahan, Chair, Derek Lick, Ed Canane; Alternate, Sue Reel (Doug Sweet and Dane Headley, members, and Carla Krajewski, alternate, were absent); Laurie Hayward, Land Use Coordinator; Vicki Simonds and interested member of the public, Karen Hoaglund.

The meeting was called to order at 7:05 PM, by Bill Hallahan.

Chairman Hallahan opened the first hearing. The Chair asked the LUC to read the notice for the first hearing, Case 2014-03. The notice was read.

You are hereby notified of a Public Hearing to be held on **February 19, 2014** at or around 7:00 p.m. at the Pillsbury Memorial Town Hall, 93 Main Street, Sutton Mills, NH, concerning a request, **Case 2014-03: By Vicki Simonds, applicant, 589 Rte. 114, Sutton, Tax Map # 04-286,255** for the following Special Exception under Articles IV.B.1: To permit the change from a single family dwelling to a two-family dwelling; in a Residential District (and Rural-agricultural District). Documents are available for your review at the Town Office.

Hallahan then read the Zoning Ordinance, Section B. in Article IV and V.

From the Article on the Residential District:

“IV.B. The following uses in the Residential District may be granted by a special exception by the Board of Adjustment after a public hearing: 1. Two-family dwellings.”

And

“V.B. Uses permitted as a special exception subject to the approval of the Board of Adjustment after a public hearing: 1. any special exception permitted to be granted in the Residential District.”

Hallahan asked Vicki Simonds, the applicant, to step forward. Hallahan explained that there were only four members there and she would have to have three of the four members vote in favor in order to have her request approved. Simonds said that she wished to move forward with the hearing. Hallahan asked Simonds to give a bit of the history.

Simonds explained that when she and her husband purchased the property it included an apartment. Recently in the process of selling the property the question came up of whether the apartment was “legal”. She said there was never a question when they purchased the property. She further explained that there has been a tenant throughout the years since they purchased, she reports income to the IRS, and the Town of Sutton real estate tax bills all show “tenant”; so there was nothing to cause her to question whether the apartment was legal. After some research, there did not seem to be a way to prove that the apartment was “legal” and that is a crucial factor in her current agreement with a potential buyer. The Chair explained that he has known of the apartment at the property for many years and that the apartment is connected to the building and it is clear that there are many who have simply assumed that it was a long standing use of the property.

The Chair asked if any of the members had questions for the applicant. He asked the alternate, Reel, if she had any questions. She said that she had driven by the property and was comfortable that she understood where the apartment was on the property. He asked Lick for his input. Lick had two thoughts, one that this apartment was here before the Ordinance, and therefore it is a preexisting and nonconforming property and does not require any action and then the only question would be was there any lapse in the use of the apartment as such and then there should be a Special Exception.

The Chair noted that he understands Lick's point of view; but, it is important to remember that the applicant is hoping to provide the potential buyer with something that clearly approves the use of the apartment and approving a Special Exception will do that. Lick explained that he is happy either way, with a Special Exception or simply making a finding that the apartment is "OK" and does not need a Special Exception. The LUC clarified that the research that was done and included discovering and old assessing document that proved the use of the apartment was known to the Town prior to the Simonds purchase of the property. However, nothing was found that would substantiate that the apartment was in use before the Zoning Ordinance requirement was adopted. It was agreed that the cleanest and best way to handle the applicant's request would be by special Exception. The chair asked if there were other questions. Canane asked the applicant about the septic system. Simonds explained that there was a 1,000 gallon tank septic system for the apartment and there was a separate septic system for the main portion of the house. Canane also said that he feels that the Special Exception is the way to go as it will resolve the question not just for today but for the future.

The Chair asked the LUC if there was any communication from abutters. The LUC stated that there was no input from abutters and there were no concerns expressed by anyone. There were no abutters present at the hearing.

The Chair moved to close the Public Hearing; Canane seconded and it was voted unanimously.

The Chair called for Worksheets. The Chair noted that the applicant had done her own "worksheet" as part of the application. Lick said that he would like to use the applicant's response to Special Exception Criteria Worksheet in lieu of a separate one. The Chair called for additional discussion. There was none.

The Chair asked for motion to close the public hearing and go to deliberations on Case 2014-03.

The meeting was closed and deliberation begun. The worksheets were reviewed and discussed briefly. Lick stated that he felt that he agreed with the applicant's assessment as expressed in the Special Exception form in the application package that she submitted. There was a brief discussion of the ways this met the Special Exception Criteria and each member indicated that they agreed that they would simply use the applicants form answers to support approval.

The Chair moved to reopen the hearing; it was seconded, and voted unanimously to reopen.

Lick moved to approve the application as submitted for the reasons articulated in the applicant's Special Exception Worksheet; Hallahan seconded the motion and it was voted unanimously.

The Chair thanked the applicant for coming to the Zoning Board of Adjustment and handling the issue the way that she did. The applicant asked about written documentation. The LUC explained that a Notice of Decision is written and then sent to the Merrimack County Registry of Deeds. The Registry records it and sends it back with Book and Page noted. She sends a copy of that out to the applicant.

In this case, she can give the applicant a copy of the notice in advance and then follow up with the registered copy.

The Chair explained to the applicant that there is a 30 day appeals period by state statute. It was explained by members that appeals are very rare even when there is some abutter dissent.

This ended the public hearing on Case 2014-03, Special Exception.

Administrative:

Minutes from the last meeting: It was noted that it was snowing and members were anxious to leave. Review was tabled until the next meeting.

Other Business: There was none.

Next meeting which includes a Public Hearing for another building with a proposed second dwelling is to be held Wednesday March 19th, 2014 at 7pm.

There being no further business, it was unanimously voted that the meeting be adjourned at 7:30 PM.

Respectfully submitted,

Laurie Hayward
Land Use Coordinator