

TOWN OF SUTTON
Zoning Board of Adjustment
Pillsbury Memorial Hall
Meeting Minutes
March 18, 2014

Present: Zoning Board of Adjustment Members: Derek Lick, Dane Headley, Doug Sweet, and Ed Canane; alternate, Sue Reel (Bill Hallahan, Chair; and Carla Krajewski, alternate, were absent); Laurie Hayward, Land Use Coordinator; Adam Bronstein and Rachel Ruppel, applicants and Dan Sundquist, Chris Ashton, and other interested members of the public.

Derek Lick takes the Chair in William Hallahan's absence. Sue Reel will sit in for Derek Lick.

The meeting was called to order at 7:05 PM, by Derek Lick.

The Chair opened with an explanation of the process. He explained that the applicants are seeking a Special Exception and are in attendance. He explained that the applicant would have an opportunity to explain what is sought and why. The Board would have an opportunity to ask questions and then the public would be allowed to comment and that would close the public portion and the Board members would deliberate. The Chair explained that, to prevail, the proposal would need three votes out of the five.

The Chair then asked the LUC to read the notice for the hearing. The notice was read:

You are hereby notified of a Public Hearing to be held on **Tuesday, March 18, 2014** at or around 7:00 p.m. at the Pillsbury Memorial Town Hall, 93 Main Street, Sutton Mills, NH, concerning a request, **Case 2014-02:**

By **Adam Bronstein and Rachel Ruppel, applicants, 5 Davis Ct., Sutton, Tax Map # 07-904,365** for the following Special Exception under Article IV.B.1: To permit the change from a single family dwelling to a two-family dwelling; in a Residential District.

Documents are available for your review at the Town Office.

The Chair asked the LUC to confirm that all notices were sent and she confirmed that all notices were published as required.

The Chair then read the zoning ordinance.

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."

Ruppel stepped forward to explain the appeal request. She gave some history, including that they had appeared before the Board some years before with an appeal to permit a shop in the garage and have

used that as retail space for four or five years. She explained that they would now like to have a 500 sq. ft. apartment in the space and decommission the shop. She expressed that the plan to provide a rental apartment will actually represent a scale back in use. Specifically, she feels the traffic will be reduced. The Chair asked about the parking on the property. Ruppel showed the Board where the parking spots are and explained there is a one car garage underneath the upper portion which will house the rental unit. Ruppel stated that she did understand that, in the Town of Sutton, a garage with an apartment would need to be attached. She further explained that they had already obtained a building permit for a structure to attach the garage to the main building; but, they had not yet been able to start the work on it yet due to the cold weather. She explained that the intent is to provide a rental unit and to scale back the level of activity on the property. She noted that with only 500 sq. ft., there would be minimal impact from the apartment in terms of traffic and parking needs. Ruppel then explained that the septic system is from 2007 and is for two bedrooms. She stated that there is one bedroom in the house and will be one in the garage apartment. She stated that they have deeded rights to a well with their neighbor.

The Chair asked about egress and ingress. Ruppel explained that there are two means of entry and exit; one is a round circular stairway and the other a door at the front of the garage. The Chair called for questions from members. Reel asked about parking and how many vehicles they can park. Bronstein said that they could get four or five cars parked. Ruppel explained that they could get two cars parked diagonally on the side, one in the garage and three down the driveway. If there were only two in the driveway, then the two parked diagonally could just get by the second car to back out of the driveway; otherwise cars would be bound in until they could be moved around.

Canane asked the LUC if she had pulled the property card and if so, how many bedrooms it showed. The LUC stated that the property card showed two bedrooms and one bath in the main dwelling and another bathroom in the garage. Bronstein spoke, explaining that the house is not truly a two bedroom, there is another room; but, it is not really a bedroom. Canane asked about the building permit. Ruppel explained that they were waiting on the Special Exception before applying for a building permit for the apartment, to allow the installation of a bathroom and a sink and countertop. Headley asked about the current use of the first floor of the garage. Ruppel explained that up to this point it had been used as retail space for the guitar shop. Headley asked if there was a bathroom in that space now. Ruppel answered that there is a $\frac{3}{4}$ bath in the retail space on the first floor. Asked about the location of a washer and dryer, Ruppel explained that is currently in the house; but, they are considering moving it to the first floor of the garage.

Sweet asked about the traffic to the retail shop. Bronstein answered that some days there were 5 or 6 visitors as well as regular truck deliveries. It was noted that currently there are lesser numbers. Sweet asked if it was intended to have a car parked under the rental apartment in the first floor garage. Bronstein answered that they were not sure at this point. Sweet then asked about fire protection for the spiral stairway and he noted that when he visited, there was no door at the top. Bronstein noted

that there was a door at the bottom. Asked if the door was a fire door, Bronstein answered that it was not. Bronstein agreed that he would check the code again to determine what was required. He did know that two exits were required and they did have those.

Sweet further spoke about the septic system and whether it was adequate. He stated that he suspects that the system they have is undersized for what they propose to do. Ruppel said that she had checked DES requirements and couldn't find anything except that it was based on the number of bedrooms. Sweet indicated that it isn't just the number of bedrooms; but, the fact that there will be a second kitchen which makes a second dwelling unit. Sweet also asked about the well. Ruppel explained that the well is shared. Sweet asked if there would be any issue as a consequence of adding an apartment. There was some question about how many gallons were expected to be used. The plan provided showed that the shared well was expected to handle 750 gallons per day of which 450 gallons were allocated to the neighboring, larger house, and 300 gallons to the house in question. Sweet explained that DES says 150 gallons of water per bedroom. Sweet explained 300 gallons would be for the house. Sweet further explained that because of the kitchens in terms of the septic system and water usage the house is considered a 2 "bedroom" and the studio in the garage is considered 1 ½ "bedrooms" and that would make it a 3 ½ bedroom equivalent in terms of water and septic needs and this is using what the DES uses as a standard. Sweet emphasized that, as far as DES is concerned, there is no such thing as a one bedroom house. The minimal standard for a septic system, for example, is a "two bedroom" septic design, whether the house has only one or two bedrooms. Sweet explained that, for this Board's purposes it may be enough to simply have an approved design that shows that an adequate septic system can be built if needed. So the applicant might not have to rebuild the septic system as a condition.

Lick asked for any questions or comments from interested members of the public. Dan Sundquist stepped forward, stated that he was a friend of the applicants, and spoke in favor of the small studio. He explained that Sutton has very little "workforce" housing available and in his work with the Planning Board, he is very aware of the issues. He explained that in the immediate neighborhood and with the renovation of the Vernondale Store two large family size apartments were lost. He says that there have been discussions about how to provide moderately priced housing within Sutton and how this small second dwelling is an example of one way to address this issue of affordable housing. He stated that Sutton is well behind where it should be in terms of affordable housing according to Central Regional Planning Commission and he hoped that information is helpful in the consideration. He further stated that he did expect that the usual requirements, including considering water supply, parking, traffic and the septic system would be applied.

The chair asked the LUC whether there had been any comments/correspondence from abutters or The Chair asked if there were any additional comments. Sweet spoke, supporting the need for workforce housing; but, questioning how this proposal met the spirit of the Ordinance as it seemed to him to be nothing more than two residential boxes joined by roof material. Sweet further explained that when he considers the Ordinance, he pictures a fairly large home and the owners decide that it can be split to make two dwelling units. Ruppel replied saying that in New England there is a diversity of housing

stock; but, it is customary to have a main and larger building and a barn or smaller buildings attached by a breezeway. She mentioned some local houses with that sort of design and that she felt that they would maintain that sort of local character. Bronstein added that he also sees this as being common in the neighborhood.

Reel spoke, stating that in the Ordinance definitions, there was a specific statement about a common wall and she wondered if a "breezeway" would meet that standard for being "attached". The Zoning Ordinance was consulted and the Chair read the following definitions and they were discussed:

DWELLING: A privately or publicly owned, permanently fixed structure containing a dwelling unit or dwelling units. The terms "one family," "two family," or "multi-family" dwelling shall not include hotel, lodging house, hospital, membership club, trailer or dormitory.

DWELLING, TWO-FAMILY: a building containing two dwelling units constructed on a single lot.

DWELLING UNIT: one or more living or sleeping rooms arranged for the use of one or more individuals living as a single housekeeping unit, with cooking, living, sanitary and sleeping facilities.

BUILDING, ATTACHED: a building having any portion of one or more walls in common with adjoining buildings.

BUILDING, DETACHED: a building having open space on all sides.

BUILDING, ACCESSORY: a detached building, the use of which is customarily incidental and subordinate to that of the principal building; and which is located on the same lot as that occupied by the principal building.

STRUCTURE: Any object constructed or installed for the support, shelter or enclosure of persons, animals, goods, or property of any kind, as well as anything constructed or erected with a fixed location on or in the ground, such as a building, bridge, trestle, tower, framework, sign, flagpole, or the like, excluding any underground system (septic systems, wells, etc.).

It was reiterated that the Ordinance permits a Special Exception for a "two-family dwelling" which is defined as a building containing two dwelling units constructed on a single lot. After a discussion about the definitions, Lick suggested that the question is what the request is for and does it require a Special Exception or a Variance and to determine that they must answer the question whether this is one building or two. Ruppel asked Bronstein if he wasn't advised by the Building Inspector about the meaning of shared wall. Bronstein stated that he was given the impression that a breezeway constituted a shared wall and that would appropriately connect the garage to the house to allow an apartment in the garage. Sundquist spoke stating that the Code Enforcement Officer and Town Administrator had provided guidance to Bronstein and Ruppel about what would be adequate under the

Ordinance. Ruppel explained that they specifically applied for a building permit for a breezeway because they thought that was what town employees were advising.

The Chair asked for a motion to close the public hearing and go to deliberations on Case 2014-02. Lick moved to close the public portion of the hearing and Headley seconded the motion and it was voted unanimously.

The Chair closed the discussion and opened the deliberation. Sweet opened by explaining that he had researched the property that was referenced as an example of a breezeway connection. He stated that documents show that the Lowe property which is nearby the applicant's property does not have an apartment in the garage. It is a garage connected by a cannonade or open covered walkway and has a bathroom; but does not have a kitchen. That case was a Variance and not a Special Exception. Sweet further explained that the case came before the Board as a Variance because the structure was on a non-conforming lot, a lot which less than two acres in size. It was agreed that this situation did not relate to the applicant's petition.

The Chair suggested and Headley agreed that the Ordinance was not as specific as they would like. There was additional discussion about the ordinance wording and how it could be applied in this case and whether the proposed plan creates one or two buildings and whether there is a common wall. Canane said that he does see how something could be built which meets the ordinance definition. After additional discussion about how to meet the ordinance standards under the current definitions, it was agreed that where a breezeway has exterior walls and is connected to the main dwelling it would meet the definition of a single building. Headley suggested that perhaps if the owners were to create a finished and heated connecting structure, that structure would create a single building. Canane added that it was his sense that the spirit of the Ordinance was to allow Special Exceptions for situations like an "L" on a building with an apartment such as the one on the recently approved for the Simonds property. Board members agreeing that this interpretation of the Ordinance definitions including "attached by a common wall" was the primary issue. The Chair read the definition of building from the Ordinance:

BUILDING: A combination of any materials, whether portable or fixed, having a roof; and enclosed within exterior walls or firewalls; and built to form a structure for shelter of persons, animals or property. For the purposes of this definition "roof" shall include an awning or any similar covering, whether or not permanent in nature.

There was additional discussion regarding that the definition required an enclosed structure with exterior walls. The Chair reiterated that if they find the proposed structure does not meet the standards for a Special Exception, it might need to be treated as a request for Variance. He also noted that if they make that determination, the Town should be notified for future reference in similar situations.

Canane then spoke asking whether there was an option here for the applicants to consider enclosing the "breezeway". He asked whether heating should be a requirement. It was agreed that the option to enclose could be considered and that heating need not be a requirement. After working out the wording, **the Chair made a motion stating that the applicant provided proposal for a breezeway**

without exterior walls does not meet the definition and therefore does not qualify as a two-family dwelling eligible for a Special Exception; Canane seconded the motion and it was voted unanimously.

Lick then made a motion to approve an enclosed breezeway that connects the house and garage; thereby meeting the definition of a two-family, making the entire a single building and therefore available for Special Exception. Doug Sweet seconded the motion and the Chair then called for discussion. There was a brief discussion about what is a “breezeway” and it was agreed that the term “breezeway” was probably not appropriate for their deliberations and that “structure” or “room” was likely a better word. Headley spoke explaining that from an assessment point of view, the garage is an accessory building with a dwelling unit. There was further discussion about definitions included in the Ordinance and how they apply in this case. **The Chair restated the motion. The Chair moved that the Board would find that this structure would qualify as a single building if connected by a fully enclosed room with exterior walls and suggested that they reopen the hearing to discuss this with the applicant before taking a vote.**

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

Lick explained to the applicants that they are working with difficult definitions; however, they, the applicants, could agree to enclose the proposed open breezeway and proceed with a Special Exception or, instead, they could ask for a Variance for two dwellings. Chris Ashton spoke, explaining that he did not see that the enclosed structure would provide as nice aesthetics as the proposed open structure. Headley explained that the Board could not ignore the definitions, nor did it make sense to ask the applicants to hold off for a year while they worked on new definitions. Ruppel asked what would be involved procedurally in changing to a Variance for two dwellings. Lick suggested that they would not need to pay additional fees and they would only need to complete a Variance worksheet and he gave the applicants that option. Lick was in favor of completing the decision this evening with conditions. Headley, Sweet, and Canane spoke in favor of holding off on a decision until the applicants can provide a plan for an enclosed room. There was also a quick discussion about the need for designs with dimensions. Additionally, there was some discussion about how wide the connecting structure should be to be a “room”. **Lick moved that the hearing on a Special Exception be continued to April 16th at 7 PM; Canane seconded the motion and it was voted unanimously.** The applicants were told that they must notify the LUC by April 1, 2014 if it is their intention to continue to propose an open-sided breezeway and/or wish to seek a Variance instead of a Special Exception. It was explained that this notification is necessary so that the appropriate new notices can be published and mailed which is required if they are to change the appeal request from Special Exception to Variance. It was noted that new notices are not required if they intend to continue with the request as originally made. Lick gave the applicants the Variance Criteria Sheet and explained that it is more restrictive than the Special Exception Criteria Sheet. There was mention of the fact that “hardship” is with the property and often difficult to prove in a request for variance.

The public hearing on Case 2014-03, Special Exception, is to be continued on Wednesday, April 16, 2014.

Administrative:

Minutes from the last meetings: The LUC pointed out that there were a number of meetings during which the minutes had been “tabled”. It was agreed that she would email drafts of the meetings in November, January and February as well as the minutes for this one and that they could all review them anew and address them in the April meeting.

Other Business: There was a discussion about “workforce housing” and the need to really look at the issue. There was also some discussion about the need to rewrite the sections of the Zoning Ordinance under consideration in order to bring better clarity to definitions and requirements.

There was a brief discussion about whether there should be a certain width required in a connecting structure in order to meet the definition and whether the LUC should let the applicants know that this was discussed after they left. Lick argued that it was the fact of exterior walls that was important to him, not what the size of the space is or whether there are windows and only a half wall. The LUC said that she would contact one of the applicants and explain the importance of dimensions in the plans.

There was also a discussion about how there might be confusion in this case in connection with both the definitions and what the addition of a breezeway might mean to obtaining an approval for an apartment in an accessory building and especially in light of the fact that people seemed to think that another property had a similar apartment that was approved. That similar property does not have a similar apartment so the problem is that there were some incorrect understandings of the facts. Board members agreed that they did have some sympathy for the misinformation/misunderstandings in connection to this case.

Next meeting, which includes the continuance of Case ZBA 2014-02, is to be held Wednesday, April 16th, 2014 at 7pm.

There being no further business, the Chair moved to adjourn and it was voted unanimously that the meeting be adjourned at 9:08 PM.

Respectfully submitted,

Laurie Hayward
Land Use Coordinator