

# DRAFT—NO LEGAL VALUE

## Zoning Board of Adjustment Meeting

February 21, 2018

Members present: Rick Ferreira, Chairman, Susan Arnold, Herman Groth, Jean Chartrand Ewen, and Scott Hodgdon, designated voting Alternate member. Also present, Ashley Rowe, Alternate member.

The meeting was called to order at 7:05 PM by Susan Arnold, Acting Chairman. Ms. Arnold advised the audience that the Chairman was en route and would be arriving shortly. The Chairman arrived during discussion of Case Number #402. Notices for tonight's meeting were posted at the Strafford Post Office and at the Strafford Town Hall. Notice was published in Foster's Daily Democrat on or before February 7, 2018; notice of the continued hearing was posted on or before February 8, 2018. Bill and Patricia Libby, interested parties for Case Number #402 were present. John and Christine Monteiro, Peter and Carol Palmgren, and Atty. Mark Sullivan, interested parties for Case Number #401, were also present.

### Case Number #402

Petitioner: Patricia M. Libby is requesting a Special Exception under Article 1.4.1K of the Zoning and Land Use Ordinances in order to allow the construction of an approximately 750 square foot, one bedroom Accessory Dwelling Unit on the second floor of the newly constructed garage attached to the existing single-family home. The garage meets all setback requirements and the ADU will meet the required criteria under Article 1.4.1K. (40 Isaac Berry Road, Tax Map 18, Lot 28-5, Owner: Richard P. Libby)

Patricia Libby, petitioner, accompanied by Bill Libby, were present. There were no abutters present.

Bill Libby presented the Board with the Libby family's plans for constructing a one-bedroom accessory dwelling unit on the second floor of their recently constructed attached 30 by 40 foot garage. The garage has a gambrel roof, so they estimate that there would be about 18 feet by 40 feet of living space on the second floor, or about 720 square feet, meeting the ADU requirements. The new 2-car garage meets all setbacks, and the lot is fully conforming with current zoning. There is a long driveway and they have their own well. Discussion quickly turned to the septic system. Mr. Libby brought a new state-approved septic system design for the home and new unit. He noted that the existing one bedroom house has a 2-bedroom septic system, but the building inspectors had advised him that they would need a new design for the new unit. Their new plan is designed for 3 ½ bedrooms to accommodate the ADU and was approved on 1/28/2018. Ashley Rowe advised the applicant that he had researched the design and found that the approved design will need a larger septic tank because the reviewer at the state was new and did not apply the updated tank requirements for the ADU; DES rules now require an additional 250 gallons of capacity for each bedroom in the ADU, bringing the total that should have been required up to 1625 gallons. Mr. Rowe suggested that a 1700 gallon tanks are available and would meet the requirements. Mr. Rowe suggested that it would be simple to change the plans during the field review stage and that it would not require submitting new plans to the state for approval. There was a lengthy discussion of the septic requirements. Mr. Rowe said that calculated sewage load is always 2 bedrooms even if the home has only one bedroom, hence the requirement for a 3 ½ bedroom system for adding a one-bedroom ADU to the Libby home. ADU rules suggest that adequate sewerage must be provided.

Board members suggested that the question is whether or not the existing system meets the requirement for adequate sewerage, and expressed concern with setting precedents. It was generally agreed that the lot is large enough to accommodate the new septic as designed. The Libbys described the current layout of the existing home and confirmed that it is only one bedroom, and the proposed ADU is also one bedroom. The existing system is fairly recent and seems to be in good shape. However, additional units are rated for an additional ½ bedroom to accommodate kitchen, laundry etc. use. Ms. Arnold expressed concern that the Board should be very specific when drafting a final motion on this request to address the unique circumstances and to be clear about the Board's criteria for determining adequacy in this case. It was

suggested that the Board could restrict the existing home to one bedroom, but the difficulties for future code enforcement were noted. After continued discussion, it was agreed that it would make sense to require the upgraded new septic tank at this time, but not to require immediate reconstruction of the leach field. The newly approved septic design makes it clear that a new leach field could be constructed if the current leach field failed. Upgrading the tank would meet any immediate needs associated with adding the ADU; Scott Hodgdon noted the key concern is the second kitchen/laundry.

Bill Libby then continued to address the various criteria in the ordinance for an ADU. He noted that they are planning to re-side the home to match the new garage. They agreed to have their father, Richard Libby, complete the owner-occupied statement prior to receiving a final certificate of occupancy. Finally, discussion turned to the floor plan. It was noted that they do plan to add a dormer over the proposed bathroom area, which will slightly increase the footprint of the ADU. Bill Libby agreed that the ADU would not exceed 750 square feet of living space in order to meet the requirements of the ordinance. He agreed to provide the Board with a final floor plan showing dimensions, including the space created by the bathroom dormer. There being no further discussion, the Chairman closed the public hearing. Susan Arnold then made a motion, seconded by Jean Chartrand-Ewen:

To approve the request for a Special Exception under Article 1.4.1K to allow the construction of an Accessory Dwelling Unit, conditional upon the following: Replace the septic tank with a larger tank that meets the DES proposed standard of 1625 gallons or greater, with the consideration that the Board considers the current system adequate because the applicants are upgrading/replacing the tank, there is plenty of room for a replacement leach field if needed and the applicants have a state-approved design for a new system, and the current system is not in failure. Also conditional upon the submission of a floor plan showing the dimensions of the ADU living space, knee wall and bathroom (dormer), and upon submission of an original copy of the owner-occupied affidavit for recording at the Strafford County Registry of Deeds.

There was no further discussion and the Chairman called a vote. The motion carried by unanimous vote in the affirmative. The applicants were advised to apply for a building permit at the close of the 30-day appeal period.

#### Case Number #401

Petitioner: John Monteiro is requesting Variances to Article 1.4.1, Section B and Article 1.4.4, Section 3 of the Zoning and Land-Use Ordinances. Mr. Monteiro is proposing to construct a new home on an existing non-conforming lot. The new home would come within 23.6 feet of the northerly boundary and within 31.7 feet of the westerly side boundary, which is up to 16.4 feet closer to Fire Road 5 and up to 8.3 feet closer to the westerly private drive than ordinances require. The new structure would also come within 40.1 feet of poorly drained soils on an abutting lot, which is up to 10 feet closer to poorly drained soils than current ordinances require. (Fire Road 5, Tax Map 31, Lot 331)

Atty. Mark Sullivan, representing the applicant, and John and Christine Monteiro, petitioners, were present. Peter and Carol Palmgren, abutters, were present. Ashley Rowe recused himself from discussion on this case as an interested party.

The Chairman opened discussion by advising the audience that the Board needed to address the question of whether there was a material change such that the Board should hear the application, referencing Fisher v. Dover. It was noted that the Board had sought the advice of the town attorney. Susan Arnold said that it was clear that the laws governing variances had changed, both statutory and case law, and that given the advice of the attorney, she felt that the Board does not have any choice but to consider the application. The rest of the Board members agreed. Atty. Sullivan then noted that he had been in contact with the town attorney regarding a potential problem with notice regarding the lot to the rear of the Monteiro property. He noted that Richard Saunders has recently purchased the lot and that he is also one of the signatories to the letter of support from a number of residents of the neighborhood, and that he had also spoken in favor

of the project at the previous meeting. Atty. Sullivan then submitted a letter for the files from Mr. Saunders stating that he is aware of the application. Atty. Sullivan noted that he understood that the application had been discussed in December and then the Board had stopped to check the Fisher case. He then asked the Board if they would like to hear the application presented from the beginning, and Board members agreed that they would.

Atty. Sullivan then presented the applications for three variances: a variance to the front yard setback requirement for Fire Road 5, a variance to the front yard setback for the private drive to the west of the lot, and a variance for the setback to wetlands located to the rear of the property. They are proposing to construct a new home on a vacant lot; the structure would be 31.7 feet from the private drive to the west where 40 feet is required, 23 feet from the front where 40 feet is required, and 40 feet from wetlands where 50 feet is required. He then addressed the criteria for variance, stating that granting of the variances would not be contrary to the public interest and public safety is not at risk. This is a large lot for the area and the proposed building would have one of the smallest footprints. He suggested that last time there was a question of whether the lot was buildable, but that the question had been addressed by the assessor, when the lots were split for taxation. As for the suggestion that the lot is overburdened, he said that the houses in this area were built before zoning setbacks were established so there is no public effect in this neighborhood, and the neighbors do not feel that there is a problem. He said that the spirit of the ordinance is met because the intent is to allow the person who owns property to use it in a reasonable manner; residential use is permitted, and there is no other use for this lot. As for special conditions of the land, all of the lots in this area are the same size, and in order to comply with current zoning, no useable building can be built. They have an approved septic, he said. Mr. Monteiro noted that the septic plan has not been submitted to the state. They have Shoreland permits for the excavation for the foundation and for the disturbance for the septic system. Given that the town has assessed the lot as buildable, Atty. Sullivan said, it is unreasonable not to build and there is no suggestion of any other use. The building would not exceed a footprint of 624 square feet he said, and is "very small". The lot is 115.62 feet across the front with a depth of 80 feet on both sides, so the proposed building would be a reasonable coverage on the lot.

The Chairman then turned to the audience. Peter and Carol Palmgren attended and said that they had no objections. There were no other comments. The Chairman then turned to the Board. It was asked where the driveway would be located, and they said it would be off Fire Road 5. Jean Ewen said that she is concerned about water and the drainage. Scott Hodgdon noted that he had seen water where the structure would be located on more than one visit. Herman Groth said that standing water is not wetlands, and noted that as people build, all the water drains to the roads. Mr. Groth continued, noting that the lots were set up to build. He said that his concern is with sewerage. He said that provided they could design a septic system that could be approved with no waivers, it would be okay, but if waivers were required, it would be a problem. He said that he also is concerned with paving—he stressed that removing the existing paving from the lot would be important and said that he feels that removing the paving would need to be a condition of any approval. Board members then turned to the picture of the proposed structure. Rick Ferreira suggested cutting back the width of the garage and reorienting the structure to move it away from poorly drained soils without moving it closer to the fire road. Susan Arnold said that she feels that they have a threshold issue with the request for three variances, and suggested that if so many variances are required, the lot perhaps should not have a building. If they could reduce one of the variances, it would be better, the Board agreed. Poorly drained soils are performing a function, so if they can reconfigure the building so that no variance is required to wetlands, it would make a difference. Jean Ewen asked if they had considered building just a garage. Scott Hodgdon and Jean Ewen both suggested that the wetlands delineation be reviewed by a consultant for the town. Ashley Rowe said that he felt that the wetlands delineation was rock solid because both Randy Orvis and David Allain had agreed on the delineation. It was agreed that requesting another delineation would mean more expense to the applicant. Herman Groth noted that any decision regarding this lot would be unique to the circumstances of this lot, and said that he feels that it does not set a precedent. There was some general discussion, with Board members expressing concern about meeting the rules established under zoning and the attorney suggesting the role of variances. Board members suggested that it seems that the Monteiros could gain at least five feet of additional setback to the wetlands by making the proposed structure shallower and longer, and noted that there is room toward the easterly boundary of the lot. Following general discussion, it was suggested that the applicants return with a septic design with no waivers and the building reconfigured to set back as far as possible from the

wetlands. There was some additional discussion of whether separating the lot for assessment had deemed the lot as “buildable” according to the town. It was also noted that there are several sheds on the lot that add to the impervious surface coverage that the Board would want to see removed as part of any approval. The applicants were advised to return with additional information at the next regular meeting.

Board members then set the next meeting for Wednesday, March 21<sup>st</sup>, at 7PM. Board members briefly reviewed the applications received for the next meeting. Ashley Rowe requested that alternate members receive full briefings on upcoming business. There being no further business before the Board, a motion to adjourn was made and seconded. There was no further discussion, and the vote was unanimous in the affirmative. The meeting adjourned at 9:45 PM.

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